

**WSR 20-20-006**  
**EXPEDITED RULES**  
**DEPARTMENT OF REVENUE**

[Filed September 24, 2020, 10:15 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-17802 Collection of use tax by county auditors and department of licensing—Measure of tax.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal corrects typographical errors in subsection (5)(a). The two instances where the subsection states "\$2,000" should be "20 percent."

Reasons Supporting Proposal: The proposed amendments are necessary to reflect the rule's policies concerning the measure of use tax for motor vehicles.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 82.12.045.

Statute Being Implemented: RCW 82.12.045.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Brenton Madison, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1583; 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:

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is applicable to this rule update because the department is merely correcting language in the rule (the example in subsection (5)(a)) without changing the rule's 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 Brenton Madison, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone 360-534-1583, fax 360-534-1606, email BrentonM@dor.wa.gov, AND RECEIVED BY December 7, 2020.

September 24, 2020  
 Atif Aziz  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-14-064, filed 6/26/20, effective 10/1/20)

**WAC 458-20-17802 Collection of use tax by county auditors and department of licensing—Measure of tax.**

(1) **Introduction.** The department of revenue (department) has authorized county auditors and the department of licensing to collect the use tax imposed by chapter 82.12 RCW when a person applies to transfer the certificate of title of a vehicle acquired without the payment of sales tax. See RCW 82.12.045. This rule explains how county auditors, their subagents, and the department of licensing determine the measure of the use tax. This rule does not relieve a seller registered with the department of the statutory requirement to collect sales tax when selling tangible personal property, including vehicles. RCW 82.08.020 and 82.08.0251. The use tax reporting responsibilities of Washington residents in other situations and the general nature of the use tax are addressed in WAC 458-20-178 (Use tax). The application of tax to vehicles acquired by Indians and Indian tribes is discussed in WAC 458-20-192 (Indians—Indian country).

Vehicle licensing locations and information about vehicle titles and registration are available from the department of licensing on their website at: [dol.wa.gov](http://dol.wa.gov). This information is also available by contacting the local county auditor's office listed in the government pages of a telephone directory.

(2) **What is use tax based on?** For purposes of computing the amount of use tax due, the value of the article used is the measure of tax. The value of the article used is generally the purchase price. If the purchase price does not represent the true value of the article used, the value must be determined as nearly as possible according to the retail selling price at place of use of similar vehicles of like quality and character. RCW 82.12.010.

(3) **Use of automated system to verify measure of tax.** When a person applies to transfer the certificate of title of a vehicle, county auditors, their subagents, or the department of licensing must verify that the purchase price represents the true value. In doing so, county auditors, their subagents, or the department of licensing compare the vehicle's purchase price to the average retail value of comparable vehicles using an automated valuing system. The automated valuing system identifies the average retail value using a database that is provided by a regional industry standard source specializing in providing valuation services to local, state, and federal governments, and the private sector.

In limited situations, the automated valuing system's database may not provide the average retail value for a vehicle. For example, the automated valuing system's database does not provide average retail value information for collectible vehicles or vehicles that are over twenty years of age. In the absence of an average retail value, county auditors, their subagents, or the department of licensing will determine the true value as nearly as possible according to the retail selling price at place of use of similar vehicles of like character and quality. To assist in this process, the department of revenue and the department of licensing may approve the use of alternative valuing authorities as necessary.

(4) **What happens when the purchase price is presumed to represent the true value?** County auditors, their subagents, or the department of licensing will use the pur-

chase price to compute the amount of use tax due when the purchase price represents the vehicle's true value. County auditors, their subagents, or department of licensing will presume the purchase price represents the vehicle's true value if one of the following conditions is met:

(a) The vehicle's average retail value, as provided by the automated valuing system, is less than \$7,500.

For example, a person buys a vehicle for \$2,800. The automated valuing system indicates that the vehicle's average retail value is \$4,900. The purchase price is presumed to represent the vehicle's true value because the average retail value is less than \$7,500.

(b) The vehicle's purchase price is not more than 20 percent below the average retail value as provided by the automated valuing system.

For example, a person buys a used vehicle for \$17,000. The automated valuing system indicates the vehicle's average retail value is \$20,000. When compared to the average retail value, the purchase price is not more than 20 percent (\$4,000) below the average retail value. Consequently, the purchase price is presumed to represent the vehicle's true value.

(5) **What happens when the purchase price is not presumed to represent the true value?** If the vehicle's purchase price is not presumed to be the true value as explained in subsection (4) of this rule, a person may remit use tax based on the average retail value as indicated by the automated valuing system or substantiate the true value of the vehicle using any one of the following methods.

(a) **Industry-accepted pricing guide.** A person applying to transfer a certificate of title may provide the county auditor, a subagent, or the department of licensing with documentation from one of the various industry-accepted pricing guides. The value from the industry-accepted pricing guide must represent the retail value of a similarly equipped vehicle of the same make, model, and year in a comparable condition. The purchase price is presumed to represent the vehicle's true value if the purchase price is not more than ~~(\$2,000)~~ 20 percent below the retail value.

For example, a person buys a vehicle for \$6,500. The automated valuing system indicates that the vehicle's average retail value is \$8,700. An industry-accepted pricing guide shows that the retail value of a similarly-equipped vehicle in a comparable condition of the same make, model, and year is \$8,000. When compared to the retail value established by the industry-accepted pricing guide, the purchase price is not more than ~~(\$2,000)~~ 20 percent (\$1,600 in this case) below the retail value. Consequently, the purchase price is presumed to represent the vehicle's true value.

(b) **Declaration of buyer and seller.** A person applying to transfer a certificate of title may provide to the county auditor, a subagent, or the department of licensing a Declaration of Buyer and Seller Regarding Value of Used Vehicle Sale (REV 32 2501) to substantiate that the purchase price is the true value of the vehicle. The declaration must be signed by both the buyer and the seller and must certify to the purchase price and the vehicle's condition under penalty of perjury. The department may review a declaration and assess additional tax, interest, and penalties. A person may seek review of an assessment to the department as provided in WAC 458-20-100 (Informal administrative reviews).

The declaration is available on the department's website at [dor.wa.gov](http://dor.wa.gov). It is also available at all vehicle licensing locations, department's field offices, or by writing:

Department of Revenue  
Taxpayer Services  
P.O. Box 47478  
Olympia, WA 98504-7478

(c) **Written appraisal.** A person applying to transfer a certificate of title may present to the county auditor, a subagent, or the department of licensing a written appraisal from an automobile dealer, insurance or other vehicle appraiser to substantiate the true value of the vehicle. If an automobile dealer performs the appraisal, the dealer must be currently licensed with the department of licensing dealer services division or be a licensed vehicle dealer in another jurisdiction.

The written appraisal must appear on company stationery or have the business card attached and include the vehicle description, including the vehicle make, model, and identification number (VIN). The person performing the appraisal must certify that the stated value represents the retail selling price of a similarly equipped vehicle of the same make, model, and year in a comparable condition. The department may review an appraisal and assess additional tax, interest, and penalties. A person may seek review of an assessment to the department as provided in WAC 458-20-100 (Informal administrative reviews).

(d) **Declaration of use tax.** A person applying to transfer a certificate of title may present to the county auditor, a subagent, or the department of licensing a Declaration of Use Tax (REV 32 2486e) to substantiate the true value of the vehicle. An authorized employee of the department must complete the declaration. Determining the true value may require a visual inspection that is not available at all department locations.

(e) **Repair estimate.** A person applying to transfer a certificate of title may present to the county auditor, a subagent, or the department of licensing a written repair estimate, prepared by an auto repair or auto body repair business. This estimate will then be used to assist with determining the true value of the vehicle. The written estimate must appear on company stationery or have the business card attached. In addition, the written estimate must include the vehicle description, including the vehicle make, model, and identification number (VIN), and an itemized list of repairs. The department may review an appraisal and assess additional tax, interest, and penalties. A person may seek review of an assessment to the department as provided in WAC 458-20-100 (Informal administrative reviews).

The purchase price is presumed to represent the true value if the total of the purchase price and the repair estimate is not more than 20 percent below the average retail value. For example, a person purchases a vehicle with extensive bumper damage for \$13,700. The automated valuing system indicates that the vehicle's average retail value is \$18,000. An estimate from an auto body repair business indicates a cost of \$2,500 to repair the bumper damage. The purchase price is presumed to represent the vehicle's true value because when the total of the purchase price and the repair estimate

(\$13,700 + \$2,500 = \$16,200) is compared to the average retail value, the total is not more than 20 percent below the average retail value (\$18,000).

**WSR 20-20-053**  
**EXPEDITED RULES**  
**DEPARTMENT OF REVENUE**

[Filed October 1, 2020, 9:55 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 458-20-168 to incorporate 2020 legislation ESB 5402. The legislation codifies terms relating to sales and use tax exemptions in RCW 82.08.808, 82.12.808, 82.08.-02807, and 82.12.02749.

Reasons Supporting Proposal: The rule is being updated to clarify terms relating to existing sales and use tax exemptions pursuant to 2020 legislation.

Statutory Authority for Adoption: RCW 82.24.550 and 82.01.060.

Statute Being Implemented: RCW 82.08.808, 82.12.808, 82.08.02807, and 82.12.02749.

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: Darius Massoudi, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1572; 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 appropriate for these rule updates 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 Darius Massoudi, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1572, fax 360-534-1606, email [dariusm@dor.wa.gov](mailto:dariusm@dor.wa.gov), AND RECEIVED BY December 7, 2020.

October 1, 2020  
Atif Aziz  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-21-092, filed 10/21/15, effective 11/21/15)

**WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities.** (1) **Introduction. This rule explains the application of business and occupation (B&O), retail sales, and use taxes to persons operating:**

- Hospitals as defined in RCW 70.41.020;
  - Nursing homes as defined in RCW 18.51.010;
  - Assisted living facilities as defined in RCW 18.20.020;
  - Adult family homes as defined in RCW 70.128.010;
- and
- Similar health care facilities.

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

(b) **What other rules might apply?** The department of revenue (department) has adopted other rules that may apply to the provision of health care. Readers may want to refer to the rules in the following list for additional information:

- (i) WAC 458-20-102 Reseller permits.
- (ii) WAC 458-20-111 Advances and reimbursements.
- (iii) WAC 458-20-150 Optometrists, ophthalmologists, and opticians.
- (iv) WAC 458-20-151 Dentists and other health care providers, dental laboratories, and dental technicians.
- (v) WAC 458-20-169 Nonprofit organizations.
- (vi) WAC 458-20-178 Use tax and the use of tangible personal property.
- (vii) WAC 458-20-18801 Medical substances, devices, and supplies for humans—Drugs prescribed for human use—Medically prescribed oxygen—Prosthetic devices—Mobility enhancing equipment—Durable medical equipment.
- (viii) WAC 458-20-233 Tax liability of medical and hospital service bureaus and associations and similar health care organizations.

(2) **Personal and professional services of hospitals.** For the purpose of this subsection, the following definitions apply:

- **"Hospital"** - The term hospital is as defined in RCW 70.41.020. It includes hospitals that come within the scope of chapter 71.12 RCW, but only if they are also licensed under chapter 70.41 RCW.

• **"Public hospital" or "nonprofit hospital"** - Public or nonprofit hospitals are hospitals operated by the state or any of its political subdivisions or operated as nonprofit corporations.

(a) **Hospital services to patients.** Gross income earned by hospitals for providing personal or professional services to patients is subject to B&O tax as shown on the table below. RCW 82.04.260.

Report Income From Providing Personal or Professional Services	Time Frame Prior to May 1, 2010	Time Frame May 1, 2010 and After
For profit hospitals	Service and other B&O tax classification	For profit hospitals B&O tax classification
Public and nonprofit hospitals	Public or nonprofit hospitals B&O tax classification	Public or nonprofit hospitals B&O tax classification

Gross income earned for providing nonmedical services, interest received on patient accounts receivable, and amounts earned for providing transcribing services to physicians are subject to service and other activities B&O tax.

(b) **Clinics and departments operated by hospitals.** Gross income earned by medical clinics and departments providing services to patients and operated by a hospital is subject to B&O tax as shown in the table in subsection (2)(a) of this rule, where the operation of a medical clinic or department is covered by the hospital's license. If the clinic or department is not covered by the hospital's license, the gross income earned by a medical clinic or department providing services to patients is subject to B&O tax under the service and other activities B&O tax classification.

(i) **Example 1.** Acme Hospital is a nonprofit hospital that has a medical clinic that is physically located within the hospital. The clinic is open only during regular business hours (8:00 a.m. to 5:00 p.m.) and provides no domiciliary care or overnight facilities to its patients. The medical clinic is covered under Acme Hospital's hospital license. Gross income earned by the medical clinic for providing patient care is subject to the Public and Nonprofit Hospital B&O Tax Classification because the clinic is covered under the hospital license.

(ii) **Example 2.** Mountain Hospital is a for profit hospital with a cancer treatment facility that is located one mile from the hospital campus. The cancer treatment facility provides the type of services normally provided by hospitals to cancer patients but only during regular business hours. The cancer treatment facility is covered under the hospital's license. Gross income earned by the cancer treatment facility is subject to B&O tax as shown in the table in subsection (2)(a) of this rule because the facility is covered under the hospital's license.

(c) **Educational programs and services.** Amounts earned by public or nonprofit hospitals for providing educational programs and services to the general public are subject to B&O tax under the public or nonprofit hospitals classification if the educational programs and services are an integral, interrelated, and essential part of the hospital. Otherwise, such amounts are subject to B&O tax under the service and other activities tax classification. Educational services are considered an integral, interrelated, and essential part of the hospital only if they are unique and incidental to the provision of hospitalization services. Only those educational programs and services offered by a hospital that would be very difficult or impossible to duplicate by a person other than a

hospital because of the specialized body of knowledge, facilities, and equipment required are unique and incidental to the provision of hospitalization services. Amounts received from educational programs and services are subject to the service and other activities B&O tax when the educational programs or services could be provided by any physician, clinic, or trained lay person.

(3) **Personal and professional services from other medical clinics, nursing homes, and similar health care facilities.** Gross income earned by medical clinics, nursing homes, and similar health care facilities for providing personal and professional services is subject to service and other activities B&O tax. Physicians performing these services are also subject to service and other activities B&O tax on gross income earned. Services provided are ones not integral, interrelated, and an essential part of a hospital operation.

(4) **Assisted living facilities and domiciliary care.** For the purpose of this rule, "assisted living facilities" and "domiciliary care" have the same meaning as found in RCW 18.20.020. A preferential B&O tax rate is provided by RCW 82.04.2908 to persons operating assisted living facilities licensed under chapter 18.20 RCW. Persons operating licensed assisted living facilities should report their gross income derived from providing room and domiciliary care to residents under the licensed assisted living facilities B&O tax classification. Refer to subsection (9)(h) of this rule for B&O tax deductions and exemptions available to persons operating assisted living facilities.

(5) **Hospitals or other health care facilities operated by the state of Washington.** Gross income earned by the state of Washington for operating a hospital or other health care facilities, whether or not owned by the state, is not subject to B&O tax.

(6) **Nonprofit corporations and associations performing research and development.** A separate B&O tax rate applies to nonprofit corporations and nonprofit associations for gross income earned in performing research and development within this state, including medical research. See RCW 82.04.260.

(7) **Sales of tangible personal property.** Retailing B&O tax applies to sales of tangible personal property sold and billed separately from the performance of personal or professional services by hospitals, nursing homes, assisted living facilities, adult family homes, and similar health care facilities. This includes charges for making copies of medical records. The seller must collect retail sales tax from the buyer

and remit the tax to the department unless the sale is specifically exempt by law.

(a) **Tangible personal property used in providing medical services to patients.** Retailing B&O and retail sales taxes do not apply to charges to a patient for tangible personal property used in providing medical services to the patient, even if separately billed. Tangible personal property used in providing medical services is not considered to have been sold separately from the medical services simply because those items are separately invoiced. These charges, even if separately itemized, are for providing medical services.

For example, when a hospital charges a patient for drugs physically administered by the hospital staff, the charges to the patient are subject to B&O tax under the appropriate tax classification as shown in the table in subsection (2)(a) of this rule based on the hospital making the charge. On the other hand, charges for drugs sold to persons or their caregivers, either for self-administration or administration by a caregiver other than the seller, are subject to retailing B&O tax and retail sales tax unless specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding retail sales tax exemptions that apply to sales of prescription drugs and other medical items.

(b) **Sales of meals.** Although the sale of meals is generally considered to be a retail sale, hospitals, nursing homes, assisted living facilities, and similar health care facilities that furnish meals to patients or residents as a part of the services provided to those patients or residents are not considered to be making retail sales of meals. Thus amounts earned by hospitals, nursing homes, assisted living facilities, and similar health care facilities for furnishing meals to patients or residents are subject to B&O tax as part of the services provided to those patients or residents. Such amounts are not subject to retail sales tax.

RCW 82.08.0293 and 82.12.0293 provide, respectively, retail sales tax and use tax exemptions for prepared meals sold to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW. The exemptions apply to sales of prepared meals to not-for-profit organizations organized under chapter 24.03 or 24.12 RCW, that provide the meals to senior citizens, disabled persons, or low-income persons as a part of the patient services they render.

Hospitals, nursing homes, assisted living facilities, and similar health care facilities may have restaurants, cafeterias, or other dining facilities where meals are sold to doctors, employees, and visitors. These sales of meals are subject to retailing B&O and retail sales taxes. For additional information regarding the sale of meals, including meals furnished to employees, refer to WAC 458-20-124.

(8) **Industry reporting.** This subsection discusses common reporting issues affecting persons operating medical or other health care facilities.

(a) **Adjustments to revenues.** Many hospitals provide medical care without charge or where some portion of the charge will be canceled. In other cases, medical care is billed to patients at "standard" rates but is later adjusted to reduce the charges to the rates established by contract with medicare, medicaid, or private insurers. In these situations, the hospital must initially include the total charges as billed to the patient

as gross income unless the hospital's records clearly indicate the amount of income to which it will be entitled under its contracts with insurance carriers. Where tax returns are initially filed based on gross charges, an adjustment may be taken on future tax returns after the hospital has adjusted its records to reflect the actual amounts collected. In no event may the hospital reduce the amount of its current gross income by amounts that were not previously reported on its excise tax return. If the tax rate changes from the time the B&O tax was first paid on the gross charges and the time of the adjustment, the hospital must file amended tax returns to report the B&O tax on the transaction as finally completed at the rate in effect when the service was performed.

(b) **What are the tax consequences when a hospital contracts with an independent contractor to provide medical services at the hospital?** When a hospital contracts with an independent contractor (service provider) to provide medical services, such as managing and staffing the hospital's emergency department, the hospital may not deduct the amount paid to the service provider from its gross income. If, however, the patients are alone liable for paying the service provider, and the hospital has no personal liability, either primarily or secondarily, for paying the service provider, other than as agent for the patients, then the hospital may deduct from its gross income the amount it receives and pays to the service provider.

In addition, the service provider is subject to service and other activities B&O tax on the amount earned from the hospital for providing these services for the hospital. If the service provider subcontracts with a third party, such as a physician or nurse, to help provide medical services as an independent contractor, the service provider may not deduct from its gross income amounts paid to the subcontractor where the service provider is personally liable, either primarily or secondarily, for paying the subcontractor. If, however, the hospital is alone liable for paying the subcontractor, and the service provider has no personal liability, either primarily or secondarily, other than as agent for the hospital, then the service provider may deduct from its gross income the amount it receives from the hospital and pays to the subcontractor. For additional information regarding deductible advances and reimbursements, refer to WAC 458-20-111.

(c) **May nursing homes and assisted living facilities claim a B&O tax exemption for the rental of real estate?** No. The purpose of nursing homes is to provide medical care to their residents. The purpose of assisted living facilities is to assume general responsibility for the safety and well-being of their residents and to provide other services to residents such as housekeeping, meals, laundry, and activities. Assisted living facilities may also provide residents with assistance with activities of daily living, health support services, and intermittent nursing services. Because the purpose of nursing homes and assisted living facilities is to provide services and not to lease or rent real property, no part of the gross income of nursing homes or assisted living facilities is exempted from B&O tax as the rental of real estate.

(9) **B&O tax deductions, credits, and exemptions.** This subsection provides information about B&O tax deductions, credits, and exemptions available to persons operating medical or other health care facilities.

Deductible amounts should be included in the gross income reported on the excise tax return and then identified on the appropriate deduction detail line of the excise tax return to determine the amount of taxable income.

(a) **Organ procurement organizations.** RCW 82.04.326 provides a B&O tax exemption for amounts earned by a qualified organ procurement organization under 42 U.S.C. Sec. 273(b) in effect as of January 1, 2001, to the extent that the amounts are exempt from federal income tax.

(b) **Contributions, donations, and endowment funds.** RCW 82.04.4282 provides a B&O tax deduction for amounts received as contributions, donations, and endowment funds, including grants, which are not in exchange for goods, services, or business benefits. For example, a B&O tax deduction is allowed for donations received by a public hospital, as long as the donors do not receive any goods, services, or any business benefits in return. On the other hand, a public hospital may not take a B&O tax deduction on amounts earned from a state university for work-study programs or training seminars, because the university receives business benefits in return, as students receive education and training while enrolled in the university's degree programs.

(c) **Adult family homes.** RCW 82.04.327 provides a B&O tax exemption for gross income derived from personal and professional services of adult family homes licensed by the department of social and health services (DSHS), or which are specifically exempt from licensing under the rules of DSHS. This exemption does not apply to persons who provide home care services to clients in the clients' own residences.

For the purpose of this rule, "adult family home" has the same meaning as in RCW 70.128.010.

(d) **Nonprofit kidney dialysis facilities, hospice agencies, and nonprofit nursing homes and homes for unwed mothers.** RCW 82.04.4289 provides a B&O tax exemption for amounts earned as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by kidney dialysis facilities operated as a nonprofit corporation, nonprofit hospice agencies licensed under chapter 70.127 RCW, nonprofit nursing homes and homes for unwed mothers operated as religious or charitable organizations. This exemption applies only if no part of the net earnings earned by such an institution inures, directly or indirectly, to any person other than the institution entitled to this exemption. This exemption is available to nonprofit hospitals for income from the operation of kidney dialysis facilities if the hospital accurately identifies and accounts for the income from this activity.

Examples of nonprofit nursing homes include nursing homes operated by church organizations or by nonprofit corporations designed to assist alcoholics in recovery and rehabilitation. Nursing homes and homes for unwed mothers operated by governmental entities, including public hospital districts, do not qualify for the B&O tax exemption provided in RCW 82.04.4289.

(e) **Government payments made to health or social welfare organizations.** RCW 82.04.4297 provides a B&O tax deduction to health or social welfare organizations, as defined in RCW 82.04.431, for amounts earned directly 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 health or social welfare services.

Effective August 1, 2011, RCW 82.04.4275 provides a B&O tax deduction for amounts health or social welfare organizations receive as compensation for providing child welfare services under a government-funded program.

A deduction is not allowed, however, for amounts that are received under an employee benefit plan. For purposes of the deduction provided by RCW 82.04.4297, "employee benefit plan" includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501 (c)(9) and (17) through (23) of the Internal Revenue Code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law.

(f) **Amounts earned under a health service program subsidized by federal or state government.** RCW 82.04.-4311 provides a B&O tax deduction to:

- A public hospital that is owned by a municipal corporation or political subdivision; or
- A nonprofit hospital; or
- A nonprofit community health center; or
- A network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW 82.04.431, for amounts earned as compensation for health care services covered under the federal medicare program authorized under Title XVIII of the federal Social Security Act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. This deduction applies to amounts received directly or through a third party from the qualified programs or plans. However, it does not apply to amounts received from patient copayments or patient deductibles. For purposes of the deduction provided by RCW 82.04.4311, "community health center" means a federally qualified health center as defined in 42 U.S.C. Sec. 1396d as existed on August 1, 2005.

**Example 3.** Acme Hospital is a nonprofit hospital that qualifies as a health and social welfare organization as defined in RCW 82.04.431. Acme receives \$1,000 for providing health care services to Jane, who qualifies for the federal medicare program authorized under Title XVIII of the federal Social Security Act. Jane is covered in a health care plan that is a combination of medicare, which is B&O tax deductible by Acme, and a medicare plus plan, which is paid for by Jane and is not B&O tax deductible by Acme. Jane pays \$20 to Acme as patient copayments. Medicare pays \$600 to Acme for the health care services, and the medicare plus plan pays \$380. Acme may deduct only the \$600 received from medicare.

(g) **Blood and tissue banks.** Except as otherwise provided, RCW 82.04.324 provides a B&O tax exemption for amounts earned by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank to the extent such amounts are exempt from federal income tax.

Effective October 1, 2013, RCW 82.04.324 provides that persons claiming this exemption must report amounts exempt under this subsection to the department on their excise tax returns. Except for persons whose primary business purpose is the collection, preparation, and processing of blood, the exemption per person is limited to one hundred fifty thousand dollars in tax per calendar year. RCW 82.04.324(3) is scheduled to expire June 30, 2016.

For the purposes of this exemption, the following definitions apply:

(i) **Qualifying blood bank.** "Qualifying blood bank" means a blood bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, that is registered under 21 C.F.R., Part 607 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood.

Effective October 1, 2013, the definition of "qualifying blood bank" includes an exempt organization, as described above, that tests or processes blood, on behalf of itself or other qualifying blood bank or qualifying blood and tissue bank. This definition is scheduled to expire June 30, 2016. "Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(ii) **Qualifying tissue bank.** "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Part 1271 as existing on June 10, 2004, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(iii) **Qualifying blood and tissue bank.** "Qualifying blood and tissue bank" means a bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Parts 607 and 1271 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue.

Effective October 1, 2013, the definition of "qualifying blood and tissue bank" includes an exempt organization, as described in (g)(iii) of this subsection, that tests or processes blood, on behalf of itself or other qualifying blood bank or qualifying blood and tissue bank. "Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute. This definition is scheduled to expire June 30, 2016.

(h) **Assisted living facilities.** RCW 82.04.4337 provides a B&O tax deduction to licensed assisted living facility operators for amounts earned as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with the department of social and health services authorized by chapter 74.39A RCW to residents who are medicaid recipients. For the purpose of this

rule, "adult residential care," "enhanced adult residential care," and "assisted living services" have the same meaning as in RCW 74.39A.009.

In addition, RCW 82.04.4264 provides a B&O tax exemption for amounts earned 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. For purposes of this rule, "nonprofit assisted living facility" means an assisted living facility that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501 (c)(3), is incorporated under chapter 24.03 RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district.

(i) **Comprehensive cancer centers.** RCW 82.04.4265 provides a B&O tax exemption for amounts earned by a comprehensive cancer center to the extent such amounts are exempt from federal income tax. For purposes of this rule, "comprehensive cancer center" means a cancer center that has written confirmation that it is recognized by the National Cancer Institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501 (c)(3) as existing on July 1, 2006.

(j) **Prescription drugs administered by the medical service provider.** RCW 82.04.620 allows a deduction from the measure of tax for reporting under the service and other activities classification of the B&O tax (RCW 82.04.290) for amounts earned by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription. This deduction only applies to amounts that:

(i) Are separately stated on invoices or other billing statements;

(ii) Do not exceed the then current federal rate; and

(iii) Are covered or required under a health care service program subsidized by the federal or state government.

For the purpose of this deduction only, amounts that "are covered or required under a health care service program subsidized by the federal or state government" include any required drug copayments made directly from the patient to the physician or clinic.

(A) "Federal rate" means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the medicare, Part B, drugs average sales price information resource as published by the United States Department of Health and Human Services, or any index that succeeds it.

(B) The deduction is available on an "all or nothing" basis against the total amount earned for a specific drug charge. If the total amount earned by the physician or clinic for a specific drug exceeds the federal reimbursement rate, none of the total amount earned qualifies for the deduction (including any required copayment received directly from the patient). In other words, a physician or clinic may not simply take an "automatic" deduction equal to the federal reimbursement rate for each drug.

(C) For physicians or clinics reporting taxes on the accrual basis, the total amount charged for a drug must be included in the gross income at the time of billing if it is in excess of the federal rate. However, in some cases the gross income from charges may be adjusted, as indicated in subsec-

tion (8)(a) of this rule. If such an adjustment to gross income is appropriate, the exemption discussed in this subsection may also be taken at the time of billing if the adjustment leaves the physician or clinic contractually liable to receive a total amount (including any copayment received from the patient) that does not exceed the federal rate.

(10) **Sales, use, and other specified taxes deductions and exemptions.** Unless otherwise exempt by law, hospitals, nursing homes, adult family homes, assisted living facilities, and similar health care providers are required to pay retail sales tax on purchases of equipment and supplies. The ~~((following))~~ deductions and exemptions listed in this subsection are available to qualified persons.

(a) For the purpose of this subsection, the following definitions apply:

(i) "Chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(ii) "Materials" for the purposes of RCW 82.08.02807 means any item of tangible personal property including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants, used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(iii) "Medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(A) Provide preparatory treatment of blood, bone, or tissue;

(B) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(C) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(iv) "Research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(b) **Temporary medical housing provided by a health or social welfare organization.** RCW 82.08.997 provides an exemption from state and local sales taxes and lodging taxes for temporary medical housing provided by a health or social welfare organization. The term "health or social welfare organization" is defined in RCW 82.04.431. "Temporary medical housing" means transient lodging and related services provided to a patient or the patient's immediate family, legal guardian, or other persons necessary to the patient's mental or physical well-being.

(i) The exemption applies to the following taxes:

(A) Retail sales tax levied under RCW 82.08.020;

(B) Lodging taxes levied under chapter 67.28 RCW;

(C) Convention and trade center tax levied under chapter 36.100 RCW;

(D) Public facilities tax levied under RCW 36.100.040; and

(E) Tourism promotion areas tax levied under RCW 35.101.050.

(ii) The exemptions in this subsection apply to charges made for "temporary medical housing" 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.

~~((b))~~ (c) **Purchases for resale.** Purchases of tangible personal property for resale without intervening use are not subject to retail sales tax. Persons purchasing tangible personal property for resale must furnish a copy of their reseller permit to the seller to document the wholesale nature of the sale. Reseller permits replaced resale certificates effective January 1, 2010.

~~((e))~~ (d) **Sales of medical supplies, chemicals, or materials to a comprehensive cancer center.** RCW 82.08.-808 and 82.12.808 provide, respectively, retail sales tax and use tax exemptions for sales of medical supplies, chemicals, or materials to a comprehensive cancer center. These exemptions do not apply to sales of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

~~((i))~~ **Medical supplies.** For purposes of this exemption, "medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(A) Provide preparatory treatment of blood, bone, or tissue;

(B) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(C) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(ii) **Chemicals.** For purposes of this exemption, "chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(iii) **Materials.** For purposes of this exemption, "materials" means any item of tangible personal property including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

~~((iv))~~ **Research.** For purposes of this exemption, "research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.



~~(d)~~ (e) **Sales of medical supplies, chemicals, or materials to organ procurement organizations.** RCW 82.08.-02807 and 82.12.02749 provides, respectively, retail sales tax and use tax exemptions for sales of medical supplies, chemicals, or materials to organ procurement organizations exempt under RCW 82.04.326. These exemptions do not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(11) **Buyer's responsibility to remit deferred sales or use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless the purchases are specifically exempt by law. For detailed information regarding the use tax, refer to WAC 458-20-178.

(a) **How do I report deferred sales or use tax.** Persons registered with the department and required to file tax returns should report deferred sales or use tax on their excise tax return. As the excise tax return does not have a separate line for reporting deferred sales tax, the buyer should report the tax liability on the use tax line. If a deferred sales tax or use tax liability is incurred by a person who is not required to be registered with the department, the person must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department.

(b) **Where can I obtain a Consumer Use Tax Return?** The Consumer Use Tax Return may be obtained from the department's website at dor.wa.gov, or by calling the department's telephone information center at 1-800-647-7706.

**WSR 20-20-054**  
**EXPEDITED RULES**  
**DEPARTMENT OF REVENUE**

[Filed October 1, 2020, 10:25 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-27702 Taxpayer relief—Sourcing compliance—One thousand dollar credit and certified service provider compensation for small businesses.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is repealing WAC 458-20-27702 to account for the repeal of RCW 82.32.760 via ESB 5402 (2020).

Reasons Supporting Proposal: The rule is being repealed because the statute implemented by the rule has been repealed.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Statute Being Implemented: Repeal of RCW 82.32.760.

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: Darius Massoudi, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1572; 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 repeal process for these rules:

The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The amendment implements the statutory repeal of RCW 82.32.760 stemming from ESB 5402 (2020).

**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 Darius Massoudi, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1572, fax 360-534-1606, email [dariusm@dor.wa.gov](mailto:dariusm@dor.wa.gov), AND RECEIVED BY December 7, 2020.

October 1, 2020  
Atif Aziz  
Rules Coordinator

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 458-20-27702 Taxpayer relief—Sourcing compliance—One thousand dollar credit and certified service provider compensation for small businesses.

**WSR 20-20-059**  
**EXPEDITED RULES**  
**DEPARTMENT OF REVENUE**

[Filed October 1, 2020, 11:11 a.m.]

Title of Rule and Other Identifying Information: WAC 458-16-110 Applications—Who must file, initial applications, annual declarations, appeals, filing fees, penalties, and refunds, 458-16-150 Cessation of use—Taxes collectible for prior years, and 458-16-560 Housing for very low-income households.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to incorporate 2020 legislation, SHB 2384. This legislation changed the eligibility requirements for nonprofit organizations receiving this exemption to account for income growth in qualifying households.

Reasons Supporting Proposal: Updating these rules to provide the correct exemption requirements will provide

accurate information to nonprofit organizations that apply for this exemption.

Statutory Authority for Adoption: RCW 84.36.865.

Statute Being Implemented: RCW 84.36.560, 84.36.815.

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

Name of Proponent: Department of revenue, governmental.

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

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 appropriate for these rule updates 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 Leslie Mullin, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone 360-534-1589, fax 360-534-1606, email LeslieMu@dor.wa.gov, AND RECEIVED BY December 7, 2020.

October 1, 2020

Atif Aziz

Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-23-060, filed 11/12/10, effective 12/13/10)

**WAC 458-16-110 ((Applications — Who must file, initial applications, annual declarations, appeals, filing fees, penalties, and refunds.)) Initial application and renewal declaration.** (1) **Introduction.** This rule explains the ((procedures)) requirements in RCW 84.36.815 that property owners must follow to apply for and renew all real and personal property exemptions or leasehold excise tax exemp-

tions under chapter 84.36 RCW ((for which the taxpayer must apply in order to receive)). It also ((specifies)) explains the late filing penalty that is due whenever an application or renewal declaration is received after the filing deadline.

(2) **Application required.** All foreign national governments((s)); cemeteries((s)); nongovernmental nonprofit corporations, organizations, or associations((s)); soil and water conservation districts((s)); hospitals established under chapter 36.62 RCW; and ((a)) public hospital districts established under chapter 70.44 RCW, seeking a property tax exemption or a leasehold excise tax exemption under chapter 84.36 RCW must submit an application for exemption ((and)) with supporting documentation to the ((state)) department of revenue (department). Unless otherwise exempted by law, no real or personal property or leasehold interest is exempt from taxation until an application is submitted and an exemption is granted.

(3) **Where to obtain initial application and ((annual)) renewal declaration forms.** An initial application((s)) for exemption may be obtained from any county assessor's office((, the department's property tax division,)) or on the ((internet at <http://dor.wa.gov> under Property Tax, "Forms." ~~Annual~~)) department's website at [dor.wa.gov](http://dor.wa.gov). Renewal declaration forms are ((mailed)) provided by the department to all entities receiving a property tax or leasehold excise tax exemption, except for certain cemeteries, military housing providers and tribal governments. ((If such a form is not received in the mail, an annual renewal declaration may be obtained from the department's property tax division.)) Refer to subsection (8) of this rule for additional information on renewal declarations.

(4) **Initial application((, filing deadlines, and other requirements)).** ((In general)) Generally, initial applications for exemption must be filed with the department on or before March 31st to exempt the property from taxes due in the following year. However, an initial application may be filed after March 31st if the property is acquired or converted to an exempt use after that date, if the property may qualify for an exemption under chapter 84.36 RCW. ((In this situation)) For property acquired or converted after March 31st, the initial application must be submitted within sixty days of acquisition or conversion ((of the property)) to an exempt use. If an initial application is not received within this sixty day period, the late filing penalty described in subsection (12) of this rule is imposed.

The following requirements apply to all initial applications:

(a) The application must be made on a form prescribed by the department and signed by the applicant or the applicant's authorized agent;

(b) One application can be submitted for all real property that is contiguous and part of a homogeneous unit. If exemption is sought for multiple parcels of real property, which are not contiguous ((nor)) or not part of a homogeneous unit, a separate application for each parcel must be submitted. However, multiple applications are not required for church property with a noncontiguous parsonage or convent.

(i) "Contiguous property" means real property adjoining other real property, all of which is under the control of a sin-

gle applicant even though the properties may be separated by public roads, railroads, rights of way, or waterways.

(ii) "Homogeneous unit" means the property is controlled by a single applicant and the operation and use of the property is integrated with and directly related to the exempt activity of the applicant.

(5) **Documentation** ~~((a nonprofit organization must submit with its))~~ **required for initial application** ~~((for exemption)).~~ Unless the following information was previously submitted to the department and ~~((it))~~ is still current, the applicant must submit the following in addition to the initial application ~~((for exemption, a nonprofit organization, corporation, or association must also submit))~~:

(a) ~~((Copies of the articles of incorporation or association, constitution, or other establishing documents, as well as all current amendments to these documents, showing nonprofit status;~~

~~((b))~~ A legal description of all real property, listing the county tax parcel number;

~~((b))~~ A copy of the deed for real property owned by the applicant or a copy of the lease agreement if the property is being leased. If leased, the applicant must also indicate how the property is being used, and the monthly amount of maintenance and operation costs related to rented or loaned property if a nonprofit entity is claiming an exemption for property leased to another party;

~~((c))~~ A copy of the bylaws of the nonprofit entity, and articles of incorporation or association, constitution, or other establishing documents, as well as all current amendments to these documents showing nonprofit status, if requested by the department;

~~((e))~~ (d) A copy of any current letter issued by the Internal Revenue Service that exempts the applicant from federal income taxes ~~((This letter is not usually, but may be, required if the nonprofit entity applying for an exemption is part of a larger organization, association, or corporation, like a church or the Boy Scouts of America, that was issued a group 501 (c)(3) exemption ruling by or is otherwise exempt from filing with the Internal Revenue Service)); and~~

~~((d))~~ The information required in subsection (6) of this rule.

~~((6))~~ **Other documentation a nonprofit entity, foreign national government, hospital established under chapter 36.62 RCW, hospital owned and operated by a public hospital district, or soil and water conservation district must submit with its initial application for exemption.** In addition to the initial application for exemption, a nonprofit entity, foreign national government, and public hospital district established under chapter 70.44 RCW, or soil and water conservation district must submit the following information regarding the real or personal property for which exemption is sought, unless it was previously submitted to the department and it is still current:

(a) An accurate description of the real and personal property;

~~((b))~~ (c) An accurate map identifying by dimension the use or proposed use of all real property that shows buildings, building sites, parking areas, landscaping, vacant areas, and if requested by the department, floor plans of the buildings. The map will be used to determine whether the property is entitled

to a total or partial exemption based upon the use of the total area

~~((e))~~ A legal description of all real property, listing the county tax parcel number, and if the property is owned by the applicant, a copy of the current deed; and

~~((d))~~ If the property is rented or loaned to or from another property owner, a copy of the rental agreement or other document explaining the terms of the lease or loan. This documentation must describe:

~~((i))~~ What property is rented or loaned;

~~((ii))~~ The amount of the rent or other consideration paid or received;

~~((iii))~~ The name of the party from whom and the name of the party to whom the property is rented or loaned;

~~((iv))~~ How the property is being used; and

~~((v))~~ The monthly amount of maintenance and operation costs related to rented or loaned property if a nonprofit entity is claiming an exemption for property leased to another party).

~~((7))~~ **Department's review of the** (6) Initial application review and notice of ~~((its))~~ **determination.** Upon receipt of an initial application for exemption, the department will review the application and all supporting documentation. Additional information may be requested by the department ~~((if the department needs this information))~~ to determine if the exemption should be granted. An application for exemption is not considered complete until all required and requested information is received by the department.

(a) Physical inspection. The department may physically inspect the property as part of the application review process.

(b) Deadline. If a complete application is received by March 31st ~~((for that))~~ of the assessment year, the department will issue a determination about the application by August 1st of that same year. If a complete application is not received by March 31st, the determination will be made within thirty days of the date the complete application is received by the department or by August 1st, whichever is later.

(c) Notice to applicant. The department will ~~((mail))~~ issue a written determination about the exemption application to the applicant. An application may be approved or denied, in whole or in part. If the application is denied for any portion of the property covered by the application, the department must clearly explain its reason for denial in its written determination.

(d) Notice to assessor. Once the department makes its determination about the application for exemption, it will notify the assessor of the county in which the property is located ~~((about))~~ regarding the determination ~~((made. In turn,))~~ The assessor will then take ~~((s))~~ appropriate action so ~~((that))~~ the department's determination is reflected on the county's assessment ~~((roll(s) for the years covered by the determination))~~ roll.

~~((8))~~ (7) Effective date of ~~((the))~~ **exemption.** If an initial application is approved, the property is exempt from property taxes due the year immediately following the year the application for exemption is submitted.

~~((a))~~ For example, if an application for exemption is submitted to the department in ~~((2019))~~ 2020 and the applica-

tion is approved for assessment year ~~((2010))~~ 2020, the property will be exempt from taxes due in ~~((2011))~~ 2021.

~~((b))~~ Retroactive initial applications for exemption for previous years are accepted, up to a maximum of three years from the date taxes were due on the property, if the applicant provides the department with acceptable proof that the property qualified for exemption during the pertinent assessment years and pays the late filing penalties described in subsection (12) of this rule.

~~((9) Annual)~~ (8) Renewal declarations. ~~((To retain a property tax exemption, each nonprofit entity (except nonprofit cemeteries), foreign national government, public hospital district, and soil and water conservation district))~~ The renewal declaration is a form provided by the department and may be submitted electronically.

(a) Annual renewal declaration. Except as provided in (b) and (c) of this subsection, any entity receiving an exemption must annually submit a renewal declaration certifying that the use and exempt status of the real and personal property has not changed.

~~((The renewal declaration is a form provided by the department.))~~ (b) Other renewal declarations. Nonprofits receiving an exemption under RCW 84.36.560 must file a renewal declaration on or before March 31st of every third year following initial qualification for the exemption. Except for this renewal requirement, all other requirements in this rule apply to this exemption. Refer to WAC 458-16-560 Housing for qualifying households, for additional information about this exemption.

(c) No renewal declaration. Nonprofit cemeteries receiving an exemption under RCW 84.36.020 and nonprofit low-income housing developers receiving an exemption under RCW 84.36.049, are not required to file a renewal declaration. See subsection (11) of this rule for additional information on renewal declarations for cemeteries.

(9) Documentation required for renewal declaration. Unless otherwise indicated in subsection (8) of this rule, the following requirements apply to all renewal declarations:

(a) On or before January 1st of each year, the department ~~((mails a))~~ will send information about the renewal declaration to the entity receiving an exemption for the property ~~((at the entity's last known address)).~~ If an entity changes its mailing or contact information at any time during the year, it must notify the department within sixty days ~~((of changing its mailing address, the exempt entity must notify the department))~~ about the change.

(b) The renewal declaration, signed by the exempt entity or the exempt entity's authorized agent, must be ~~((mailed or delivered))~~ submitted to the department ~~((or submitted electronically using the department's online service))~~ no later than March 31st of each year.

(i) The renewal declaration must include information about any change of use of the exempt property and a statement certifying the truth and accuracy of the information listed.

(ii) The renewal declaration is due on or before March 31st of each year even if the department fails to ~~((mail))~~ send the declaration to the exempt entity. ~~((If an exempt entity does not receive a renewal declaration, a replacement))~~ A renewal declaration form may be requested from the depart-

ment to renew the exemption or the exempt entity may use the department's online system to submit the declaration.

(c) If the renewal declaration and renewal fee are not received by March 31st, the department will ~~((mail))~~ send a second notice to the exempt entity ~~((at the entity's last known mailing address)).~~ If the exempt entity fails to respond to the second notice, the department will remove the exemption from the property and notify the assessor of the county in which the property is located that the exemption has been canceled.

(d) Real property, which was previously exempt from taxation, is assessed and taxed as provided in RCW 84.40-350 through 84.40.390 when it loses its exempt status.

(i) Property that no longer retains its exempt status is subject to a pro rata portion of the taxes allocable to the remaining portion of the year after the date the property lost its exempt status.

(ii) The assessor lists and assesses the property with reference to its true and fair value on the date the property lost its exempt status.

(iii) RCW 84.40.380 ~~((sets forth))~~ provides the dates ~~((upon which))~~ that taxes are payable when property loses its exempt status. Taxes due and payable under RCW 84.40.350 through 84.40.390 constitute a lien on the property that attaches on the date the property loses its exempt status.

(10) Failure to submit ~~((an annual))~~ a renewal declaration ~~((and reapplication for exemption)).~~ ~~((If))~~ When property loses its exempt status because the ~~((annual))~~ renewal declaration was not submitted and ~~((subsequently))~~ the owner wishes to reapply for the property tax exemption:

(a) If the owner reapplies within the same assessment year ~~((during which))~~ the exemption ~~((is canceled))~~ was removed, the owner must submit the ~~((annual))~~ renewal declaration and pay the required late filing penalties; or

(b) If the owner reapplies after the assessment year ~~((during which))~~ the exemption ~~((is canceled))~~ was removed, the owner must submit an initial application and pay the required late filing penalties.

(11) Initial application and renewal declaration procedures ~~((regarding))~~ for cemeteries. There are several types of cemeteries. The initial application for exemption and renewal declaration procedures are specific as to the type of cemetery at issue.

(a) The assessor ~~((shall))~~ will consider the following types of cemeteries exempt from property tax, and no initial application or renewal declaration is required for:

(i) Cemeteries owned, controlled, operated, and maintained by a cemetery district authorized by RCW 68.52.090; or

(ii) Indian cemeteries, which are considered to be held by the tribe or held in trust for the tribe by the United States.

(b) An initial application is submitted to the department, but no renewal declaration is required, for:

(i) Family cemeteries;

(ii) Historical cemeteries;

(iii) Community cemeteries; and

(iv) Cemeteries belonging to nonprofit organizations, associations, or corporations.

(c) An initial application ~~((for exemption))~~ is submitted to the department, and a renewal declaration ~~((must be sub-~~

mitted)) is required annually by all for-profit cemeteries seeking a property tax exemption.

(12) **Late filing penalty.** When an initial application or renewal declaration is submitted after the due date, a late filing penalty of ten dollars is due for every month, or portion ~~((thereof))~~ of the month. This penalty is calculated from the date the initial application or renewal declaration was due until the postmark date shown on the application or declaration or the date the application or declaration is ~~((given to))~~ received by the department. RCW 84.36.825.

(13) **Refund of filing penalty.** No late filing penalty is refunded after a determination on the application is issued by the department. However, the late filing penalty will be refunded under the following circumstances:

(a) ~~((When))~~ A duplicate application or renewal declaration for the same property is submitted during the same calendar year;

(b) ~~((When))~~ An application or renewal declaration is received by the department and the department has no authority to grant the exemption requested; or

(c) ~~((When))~~ A written request to withdraw the application is received before the department issues a determination. The withdrawal request must be ~~((signed))~~ submitted by the owner or the owner's authorized agent.

(14) **Appeals.** Any applicant that receives a negative determination from the department on either an initial application or a renewal declaration may appeal this determination to the state board of tax appeals (BTA). Similarly, any assessor who disagrees with the department's determination may appeal the determination to the BTA. See WAC 458-16-120 Appeals, for specific information about the appeal process.

AMENDATORY SECTION (Amending WSR 02-02-009, filed 12/20/01, effective 1/20/02)

**WAC 458-16-150 Cessation of use—Taxes collectible for prior years.** (1) **Introduction.** This rule explains what occurs when property loses its tax exempt status and is placed back on the tax rolls. It also describes the back taxes and interest that are collected when an exempt use ceases, unless the property has been exempt for more than ten consecutive years or is otherwise exempt from the provisions of RCW 84.36.810. This rule does not apply to property that received an exemption as a nature conservancy under RCW 84.36.-260~~((; see))~~, RCW 84.36.262 and WAC 458-16-290 ~~((for more))~~ Nature conservancy lands, provide additional information about the collection of back taxes ((in this situation)) for nature conservancies.

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

(a) "Back taxes" means the property taxes that would have been paid but for the existence of the property tax exemption during the three years immediately preceding the cancellation or removal of the exemption or during the life of the exemption, whichever is less, plus interest at the same rate and computed in the same way as delinquent property taxes. However, if the property was exempt under RCW 84.36.050(2), "back taxes" means the taxes that would have been collected but for the existence of the property tax exemption during the seven years immediately preceding the

cancellation or removal of the exemption or during the life of the exemption, whichever is less.

(b) "Cessation of use" means that an owner or user of exempt real property has ceased to use the property for an exempt purpose. The term also refers to property that has lost its exempt status because it was transferred, loaned, or rented to an owner that is not entitled to an exemption.

(c) "Department" means the state department of revenue.

(d) "Relocation of the activity" means that a portion or all of an exempt use has been relocated from the original site to a new location. The term ~~((shall))~~ does not include undeveloped property of camp facilities.

(e) "Rollback" means the back taxes and interest imposed in accordance with RCW 84.36.810 because the exempt property has lost its exempt status and is now taxable. However, when an exemption granted to a nature conservancy under RCW 84.36.260 is ~~((cancelled))~~ cancelled or removed different rollback procedures ~~((are applied,))~~ apply. See RCW 84.36.262 and WAC 458-16-290 Nature conservancy lands, for additional information.

(3) **Applicability of this rule.** Upon cessation of a use for which an exemption was granted under one of the statutes listed below, and if directed to do so by the department, the county treasurer ~~((shall))~~ must collect all taxes which would have been paid ~~((but))~~ if not for the existence of the property tax exemption. If the property was exempt for more than ten consecutive years, no back taxes or interest are due. Back taxes and interest will be collected only when ownership of property is transferred or when fifty-one percent or more of the total exempt property loses its exempt status.

(a) **Generally applied rollback - Three years of back taxes plus interest.** When the status of real property changes from exempt to taxable, all taxes that would have been collected ~~((but))~~ if not for the existence of the exemption during the three preceding years, or the life of the exemption, whichever is less, plus interest at the same rate and computed in the same way as that ~~((upon))~~ on delinquent property taxes are due. The rollback provisions of RCW 84.36.810 apply if the property was previously exempt from property tax under any of the following statutes:

TYPE OF EXEMPT ORGANIZATION	AUTHORIZING STATUTE
A nonprofit character building, benevolent, protective, or rehabilitative social service organization, association or corporation	RCW 84.36.030
A church camp owned by a nonprofit church, denomination, group of churches, or an organization or association, the membership of which is comprised solely of churches and/or their qualified representatives	RCW 84.36.030

TYPE OF EXEMPT ORGANIZATION	AUTHORIZING STATUTE
A nonprofit organization or association engaged in character building of boys and girls under eighteen years of age or to serve boys and girls up to twenty-one years if the charter of the nonprofit organization or association requires it	RCW 84.36.030
An organization or society of veterans of any war of the United States	RCW 84.36.030
Corporations formed under an act of Congress to furnish volunteer aid to members of the armed forces of the United States	RCW 84.36.030
Corporations formed under an act of Congress to carry on a system of national and international relief to mitigate and to prevent suffering caused by pestilence, famine, fire, floods, and other national calamities	RCW 84.36.030
Nonprofit organizations exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code that are guarantee agencies under the federal guaranteed student loan program or guarantee agencies that issue debt to provide or acquire student loans	RCW 84.36.030
Nonprofit organizations, associations or corporations in connection with the operation of a public assembly hall, public meeting place, community meeting hall, or community celebration facility	RCW 84.36.037
Nonprofit day care centers	RCW 84.36.040
Free public libraries	RCW 84.36.040
Nonprofit orphanages	RCW 84.36.040
Nonprofit homes for the sick or infirm or nonprofit hospitals for the sick	RCW 84.36.040
Nonprofit outpatient dialysis facilities	RCW 84.36.040
Public hospital district established under chapter <u>36.62</u> or <u>70.44</u> RCW for hospital purposes	RCW 84.36.040
Nonprofit homes for the aging	RCW 84.36.041

TYPE OF EXEMPT ORGANIZATION	AUTHORIZING STATUTE
A nonprofit organization, corporation, or association providing housing for low income eligible persons with developmental disabilities	RCW 84.36.042
Nonprofit organizations providing emergency or transitional housing to low-income homeless persons or victims of domestic violence	RCW 84.36.043
A nonprofit organization, corporation, or association in connection with a nonprofit cancer clinic or center	RCW 84.36.046
Nonprofit schools or colleges	RCW 84.36.050
Associations maintaining and exhibiting art, scientific or historical collections for the benefit of the general public and not for profit	RCW 84.36.060
Associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit	RCW 84.36.060
Fire companies for preventing and fighting fires	RCW 84.36.060
Humane societies	RCW 84.36.060
Nonprofit organizations created for the solicitation or collection of gifts, donations, or grants for character building, benevolent, protective, or rehabilitative social services or for the distribution of funds to at least five other nonprofit organizations or associations that provide such social services	RCW 84.36.550
A nonprofit organization, corporation, or association providing rental housing for ( <del>very low income</del> ) <u>qualifying</u> households	RCW 84.36.560
A nonprofit organization, corporation, or association providing a demonstration farm with research and extension facilities, a public agricultural museum, and an educational tour site, which is used by a state university for agricultural research and education programs	RCW 84.36.570

TYPE OF EXEMPT ORGANIZATION	AUTHORIZING STATUTE
<u>Nonprofit organizations soliciting or collecting donations, gifts, or grants for artists</u>	<u>RCW 84.36.650</u>

(b) **Exception to general rollback provision - Property exempt under RCW 84.36.050(2) - Seven years of back taxes plus interest.** If property owned by a not-for-profit foundation but leased to and used by an institution of higher education, as defined in RCW 28B.10.016, loses its exempt status and it has not been exempt for at least ten consecutive years under RCW 84.36.050(2), the county treasurer, if directed by the department to do so, will collect all taxes that would have been paid on the property but for the existence of the exemption during the seven preceding years, or the life of the exemption, whichever is less, plus interest at the same rate and computed in the same way as that ~~(upon)~~ on delinquent property taxes are due.

(c) **No rollback imposed.** Back taxes and interest are not imposed if the cessation of use results solely from any of the following:

(i) Transfer to a nonprofit organization, association, or corporation for a use that also qualifies for and is granted exemption under the provisions of chapter 84.36 RCW;

(ii) A taking through an exercise of the power of eminent domain;

(iii) A sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of this power;

(iv) An official action by an agency of the state of Washington or by the county or city within which the exempt property is located that disallows the present exempt use of the property;

(v) A natural disaster (such as a flood, windstorm, earthquake, or other such calamity) that changes the use of the property;

(vi) Relocation of the activity and use of another location or site except for undeveloped properties of camp facilities exempt under RCW 84.36.030. This exemption does not apply to property leased to a state institution of higher education and exempt under RCW 84.36.050(2);

(vii) Cancellation of a lease on property previously exempt as:

(A) A nonprofit day care center;

(B) A library;

(C) An orphanage;

(D) A home for the sick or infirm;

(E) A hospital;

(F) An outpatient dialysis facility;

(G) A nonprofit home for the aging;

(H) A nonpermanent shelter for low-income homeless persons or victims of domestic violence;

(I) An organization that either produces or performs, or both, musical, dance, artistic, dramatic, or literary works;

(J) Housing for low-income eligible persons with developmental disabilities;

(K) A nonprofit cancer clinic or center; or

(L) Rental housing for ~~(very low income)~~ qualifying households.

(viii) A change in the exempt portion of a home for the aging that is partially exempt from property tax, as long as some portion of the home remains exempt.

(4) **Duty to notify.**

(a) An owner of exempt property who knows of or who has information regarding a change in the use of exempt property ~~(shall)~~ must notify the department of this change. If any portion of the exempt property is loaned or rented, the owner is required to report this change to the department because the loan or rental may affect the taxable status of the property ~~((see)),~~ RCW 84.36.813(~~g~~).

(b) Any other person who knows or has information regarding a change in use of exempt property is to notify the county assessor of any such change. The assessor ~~(, in turn,)~~ is required to report this information to the department.

(c) The department may physically inspect exempt property after being notified about a change in the use or ownership of exempt property. It may also conduct physical inspections at any time ~~(that)~~ it deems necessary to ~~(ascertain)~~ determine the exempt use of the property ~~(, this)~~ and may ~~(include)~~ conduct routine inspections.

(d) The department will determine whether the property may retain its exempt status or whether it will become taxable after a change in use is reported.

(5) **Notice to owner.** The department must notify the current owner and, in the case of a transfer, the previous legal owner of the exempt property that the cessation of use of the property for an exempt purpose has changed the property's taxable status. The notice must address the applicability of the rollback provisions ~~(set forth)~~ in subsection (3) of this rule. Within thirty days of receiving this notice, the owner(s) may submit comments or information to the department as to why the exemption should not be removed or rollback provisions should not be applied. The department will then issue a final determination.

(6) **County treasurer.** The treasurer will ~~(compute)~~ calculate and collect the back taxes and interest due when the department notifies the treasurer that the property tax exemption is to be ~~(cancelled)~~ cancelled or removed. The interest will be computed at the same rate and in the same manner as that ~~(upon)~~ on delinquent property taxes. The back taxes collected are ~~(to be)~~ disbursed to the taxing districts impacted by the previous property tax exemption. The interest collected is ~~(to be)~~ placed in the county current expense fund.

**AMENDATORY SECTION** (Amending WSR 20-03-105, filed 1/15/20, effective 2/15/20)

**WAC 458-16-560 Housing for ~~(very low income)~~ qualifying households.** (1)(a) **Introduction.** This rule explains the real and personal property tax exemption that may be claimed by nonprofit entities providing rental housing or lots for mobile homes within a mobile home park, mobile home park cooperative, or manufactured housing cooperative for occupancy by ~~(a very low income household)~~ qualifying households in accordance with RCW 84.36.560.

(b) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These exam-

ples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

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

(a) "Group home" means a single-family dwelling financed, in whole or in part, by one or more of the sources listed in subsection ~~((3))~~ (4)(d) of this rule. A "group home" has multiple units occupied on a twenty-four-hour basis by persons who are not related by birth or marriage and who are not dependent upon each other financially. Residents of a "group home" typically receive financial assistance from the federal or state government, such as Social Security benefits or supplementary security insurance~~((s))~~.

(b) "Mobile home lot" or "mobile home park" means the same as these terms are defined in RCW 59.20.030~~((s))~~.

(c) "Nonprofit entity" means a:

(i) Nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended;

(ii) Limited partnership in which a general partner is a nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended, a public corporation established under RCW 35.21.660, 35.21.670, or 35.21.730, a housing authority created under RCW 35.82.030 or 35.82.300, or a housing authority meeting the definition in RCW 35.82.210 (2)(a);

(iii) Limited liability company in which a managing member is a nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended, a public corporation established under RCW 35.21.660, 35.21.670, or 35.21.730, a housing authority established under RCW 35.82.030 or 35.82.300, or a housing authority meeting the definition in RCW 35.82.210 (2)(a); or

(iv) Mobile home park cooperative or a manufactured housing cooperative, as defined in RCW 59.20.030. A "mobile home park cooperative" and a "manufactured housing cooperative" are defined as real property consisting of common areas and two or more lots held out for placement of mobile homes, manufactured homes, or park models in which both the individual lots and the common areas are owned by an association of shareholders which leases or otherwise extends the right to occupy individual lots to its own members.

(d) "Occupied dwelling unit" means a living unit that is occupied by an individual or household as of December 31st of the first assessment year the rental housing or mobile home park becomes operational or is occupied by an individual or household on January 1st of each subsequent assessment year in which the claim for exemption is submitted~~((s))~~.

(e) "Qualifying household" means:

(i) Until June 30, 2021, a single person, family, or unrelated persons living together whose income is at or below fifty percent of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located. The median

income level is that which is in effect as of January 1st of the year the application for exemption is submitted.

(ii) Beginning July 1, 2021, a single person, family, or unrelated persons living together whose income is at or below sixty percent of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located. The median income level is that which is in effect as of January 1st of the year the application for exemption is submitted.

~~(f) "Rental housing" means a residential housing facility or group home that is occupied, but not owned, by ((very low income households; and~~

~~(f) "Very low income household" means a single person, family, or unrelated persons living together whose income is at or below fifty percent of the median income adjusted for family size as most recently determined by the federal department of housing and urban development for the county in which the rental housing or mobile home park is located. The median income level is that which is in effect as of January 1st of the year the application for exemption is submitted.~~

~~(3)) qualifying households.~~

**(3) Initial application and renewal declaration.**

(a) Initial application. An initial application for exemption must be filed with the department on or before March 31st to exempt property from taxes due in the following year. However, an initial application may be filed after March 31st if the property is acquired or converted to an exempt use after that date, if the property may qualify for an exemption under chapter 84.36 RCW.

(b) Renewal declaration. In order to requalify for exempt status, a nonprofit entity receiving this exemption must file a renewal declaration on or before March 31st of every third year following initial qualification for exemption.

(c) Additional information about the application and renewal requirements for this exemption can be found in WAC 458-16-110 Initial application and renewal declaration.

**(4) Full exemption.** Real and personal property is exempt from property taxes if:

(a) The property is owned or used by a nonprofit entity, as defined in subsection (2) of this rule, in providing rental housing for ~~((very low income))~~ qualifying households or used to provide a lot of land upon which a mobile home for a ~~((very low income))~~ qualifying household will be placed in a mobile home park;

(b) The benefit of the exemption is received by the nonprofit entity. That is, if the property is leased to or used by, but not owned by, a nonprofit entity, the reduction in property taxes due to the exemption is passed on to the nonprofit user either through a reduction in rent, reimbursement of rent, or property tax paid;

(c) At least seventy-five percent of the occupied dwelling units in the rental housing or lots in the mobile home park are occupied by ~~((very low income))~~ qualifying households; and

(d) The rental housing or lots in the mobile home park are insured, financed, or assisted, in whole or in part, through one or more of the following sources:

(i) A federal or state housing program administered by the department of commerce;



(ii) A federal housing program administered by a city or county government;

(iii) An affordable housing levy authorized under RCW 84.52.105;

(iv) The surcharges authorized by RCW 36.22.178 and 36.22.179 and any of the surcharges authorized in chapter 43.185C RCW; or

(v) The Washington state housing finance commission, provided that the financing is for a mobile home park cooperative or a manufactured housing cooperative, as defined in RCW 59.20.030, or a nonprofit entity.

~~((4))~~ **(5) Partial exemption.** If less than seventy-five percent of the occupied dwelling units within the rental housing or lots in the mobile home park are occupied by ~~((very low income))~~ qualifying households, the rental housing or mobile home park is eligible for a partial exemption on the real property and a total exemption on the housing's or park's personal property. The property must be owned or used by a nonprofit entity in providing rental housing for ~~((very low income))~~ qualifying households or used to provide a lot upon which a mobile home for a ~~((very low income))~~ qualifying household will be placed in a mobile home park.

(a) A partial exemption will be allowed for each dwelling unit in the rental housing or for each lot in the mobile home park occupied by a ~~((very low income))~~ qualifying household; and

(b) The amount of the real property exemption will be calculated by multiplying the assessed value of the property reasonably necessary to provide the rental housing or to operate the mobile home park by a fraction. The formula for determining the fraction is as follows:

(i) The numerator of the fraction is the number of dwelling units or lots occupied by ~~((very low income))~~ qualifying households as of December 31st of the first assessment year in which the rental housing facility or mobile home park becomes operational, or on January 1st of each subsequent assessment year in which the claim for exemption is submitted; and

(ii) The denominator of the fraction is the total number of dwelling units or lots occupied as of December 31st of the first assessment year in which the rental housing facility or mobile home park becomes operational, or on January 1st of each subsequent assessment year in which the claim for exemption is submitted.

~~((5))~~ **(6) Exempt facility with three or fewer units or a mobile home park with three or fewer lots with vacancy on January 1st.** If the rental housing or mobile home park is comprised of three or fewer dwelling units or lots and there are any unoccupied dwelling units or lots on January 1st, the department will determine the size of the exemption based on the number of occupied dwelling units or lots as of December 31st of the first assessment year the rental housing becomes operational, and on May 1st of each subsequent assessment year in which a claim for exemption is submitted. For example, if one-half of an exempt duplex is vacant on January 1st and it is the duplex's third year of operation, the department will determine the size of the exemption based on the number of occupied units on May 1st of that assessment year.

~~((6) Facilities with ten or fewer units or mobile home parks with ten or fewer lots -))~~ **(7) Allowance for income**

**growth.** Because the occupants of rental housing and mobile home parks granted an exemption under RCW 84.36.560 are generally attempting to improve their financial situation, the income of the household is likely to fluctuate during the time they occupy the rental housing unit or lot in the mobile home park.

(a) In an attempt to assist these households in improving their circumstances, the exemption will continue for specific rental housing units or mobile home lots ~~((when))~~ if the rental housing or mobile home park continues to meet the certification requirements in subsection (4)(d) of this rule, and if the household's income rises above ~~((fifty percent of median income under the following conditions:~~

(i) ~~The currently exempt rental housing unit in a facility with ten or fewer units, or mobile home lots in a mobile home park with ten or fewer lots, was occupied by a very low income household at the time the exemption was granted;~~

(ii) ~~The household's income rises above fifty percent of the median income)~~ the applicable "qualifying household" threshold in subsection (2)(e) of this rule, but remains at or below eighty percent of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located; and

~~((iii) The rental housing or mobile home park continues to meet the certification requirements of a very low income housing program listed in subsection (3)(d) of this rule; and))~~

(b) If a ~~((dwelling))~~ rental housing unit or mobile home lot receiving an exemption under ~~((this))~~ the exception in (a) of this subsection becomes vacant and is subsequently rented, the income of the household moving into the rental unit or onto the mobile home lot must ~~((be at or below fifty percent of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located))~~ meet the applicable median income requirements for a qualifying household as described in subsection (2)(e) of this rule to remain exempt from property tax.

(c) Example. If a rental unit is occupied by a qualifying household whose income rises up to ~~((sixty))~~ seventy percent of median income, the unit will retain its exempt status as long as the household continues to occupy the rental unit and the household's income remains below eighty percent of median income. If the residents of ~~((this))~~ the rental unit move out on June 1st and the unit is subsequently rented to a qualifying household whose income is at or below ~~((fifty percent of median income,))~~ the median income threshold in subsection (2)(e) of this rule, the unit will retain its exempt status. Conversely, if the rental unit is rented to a household whose income is above ~~((fifty percent of))~~ the median income threshold in subsection (2)(e) of this rule, the unit becomes ineligible for exemption as of January 1st of the following year.

~~((7))~~ **(8) Group homes - Income of residents.** The income of the individual residents of a group home, as defined in subsection (2) of this rule, will not be combined so as to constitute the income of a single household. Each resident will be considered an independent household occupying a separate dwelling unit. In other words, the income of the

residents of a group home will not be aggregated when the department determines the size of the exemption the group home is entitled to receive. For example, if there are six residents in a group home, the department will process the application for exemption as if there were six separate dwelling units and determine the size of the exemption on that basis. If three of the residents have income at or below ~~((fifty percent of))~~ the median income threshold in subsection (2)(e) of this rule, the group home will receive a fifty percent reduction in the property taxes due on the group home.

~~((8))~~ **(9) Eligibility of property unoccupied at the time of initial application or at any time after the exemption is granted.** Property that is unoccupied at the time of ini-tial application or on January 1st of any subsequent year is still eligible for exemption if certain conditions are met. If the property is currently taxable, it may receive exempt status as of the assessment year in which the claim for exemption is submitted. If the property is currently exempt but the exempt use will cease or will be reduced because of renovations or repairs, the exempt status of the property may be continued for taxes payable the next year. The following conditions must be satisfied to receive an exemption under either of these circumstances:

(a) The rental housing or mobile home park will be used for the exempt purpose stated in RCW 84.36.560 within two assessment years;

(b) The nonprofit entity applying for or receiving the exemption has obtained a commitment for financing, in whole or in part, to acquire, construct, remodel, renovate, or otherwise convert the property to provide housing for ~~((very low-income))~~ qualifying households from one or more of the sources listed in subsection ~~((3))~~ (4)(d) of this rule;

(c) The nonprofit entity has manifested its intent in writing to construct, remodel, renovate, or otherwise convert the rental housing or mobile home park to housing for ~~((very low-income))~~ qualifying households; and

(d) If less than the entire facility or mobile home park will be used to provide rental housing or mobile home lots for ~~((very low-income))~~ qualifying households, only that portion is entitled to an exemption under this rule.

~~((9))~~ **(10) Exclusive use required.** To be exempt under RCW 84.36.560, the property must be exclusively used to provide rental housing or mobile home lots for ~~((very low-income))~~ qualifying households, except as provided in RCW 84.36.805.

~~((10))~~ **(11) Payments in-lieu of property tax will be accepted.** Any nonprofit entity that qualifies for a property tax exemption under RCW 84.36.560 may agree to make payments to the city, county, or other political subdivision for the improvements, services, and facilities furnished by the city, county, or political subdivision for the benefit of the exempt rental housing facility or mobile home lots. However, these payments may not exceed the amount of property tax last levied as the annual tax by the city, county, or political subdivision ~~((upon))~~ on the property prior to the time the exemption was effective.

**WSR 20-20-103**  
**EXPEDITED RULES**  
**DEPARTMENT OF HEALTH**  
(Board of Physical Therapy)  
[Filed October 5, 2020, 3:06 p.m.]

Title of Rule and Other Identifying Information: WAC 246-915-110 AIDS education and training, the board of physical therapy (board) is proposing expedited rule making to repeal WAC 246-915-110 in support of ESHB 1551.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective June 11, 2020, the following laws are repealed as a result of ESHB 1551: RCW 70.24.260 Emergency medical personnel—Rules for AIDS education and training, 70.24.270 Health professionals—Rules for AIDS education and training, 70.24.310 Health care facility employees—Rules for AIDS education and training.

As a result of these laws being repealed, the department will repeal and not enforce chapter 246-12 WAC, Part 8 - AIDS prevention and information education requirements. These rules detail the definitions, acceptable training and education, and documentation requirements for health professionals and employees concerning AIDS.

WAC 246-915-110 under the authority of the physical therapy board requires seven clock hours of AIDS education and compliance with WAC 246-12, Part 8. The board is proposing to repeal WAC 246-915-110, and will no longer enforce this rule during the repeal process.

Reasons Supporting Proposal: When Washington adopted statues [statutes] concerning AIDS, very little was known about the disease compared to today. Now, AIDS is so treatable and preventable, governor Inslee issued a proclamation in 2014 supporting End AIDS Washington; a statewide initiative to reduce new HIV cases by fifty percent by the end of 2020. Part of this effort includes reducing stigma, which includes updating state law. ESHB 1551 repeals statutes concerning AIDS education and training for emergency medical personnel, health professionals, and health care facility employees to help reduce stigma towards people living with HIV by not singling out AIDS as an exceptional disease that requires specific training and education separate from other health conditions.

Statutory Authority for Adoption: RCW 18.74.023.

Statute Being Implemented: ESHB 1551 (chapter 76, Laws of 2020).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kris Waidley, 111 Israel Road S.W., Tumwater, WA 98501, 360-236-4847.

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

The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: RCW 34.05.535 (2)(a) allow[s] for rules to be repealed using the

expedited rule-making process if the statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule. RCW 34.05.353 (2)(c) authorizes an expedited repeal if the rule is no longer necessary because of changed circumstances.

#### 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 Kris Waidely, Department of Health, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4847, fax 360-236-2901, email <https://fortress.wa.gov/doh/policyreview>, AND RECEIVED BY December 7, 2020.

October 5, 2020  
Renee Fullerton  
Executive Director

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-915-110 AIDS education and training.

**WSR 20-20-114**  
**EXPEDITED RULES**  
**DEPARTMENT OF REVENUE**

[Filed October 6, 2020, 10:33 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-249 Artistic and cultural organizations.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue (DOR) intends to update and amend WAC 458-20-249 to incorporate 2020 legislation, chapter 139, Laws of 2020 (ESB 5402). In addition, the rule has been updated with formatting changes to improve clarity.

Reasons Supporting Proposal: The Washington legislature enacted statutory changes in 2020 to RCW 82.04.4327 and 82.04.4328 to simplify administration that necessitated an amendment to the rule. The rule is also being updated to provide guidance, clarity and for easier reference.

Statutory Authority for Adoption: RCW 82.01.060, 82.32.300.

Statute Being Implemented: RCW 82.04.4327, 82.04.-4328.

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

Name of Proponent: DOR, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Mandell, 6400 Linderson Way S.W., Tumwater, 360-534-1584; 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: No substantive changes were made to the existing rule other than to update and simplify it to facilitate administration.

#### 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 Melinda Mandell, DOR, P.O. Box 47453, phone 360-534-1584, fax 360-534-1606, email [MelindaM@dor.wa.gov](mailto:MelindaM@dor.wa.gov), AND RECEIVED BY December 7, 2020.

October 6, 2020  
Atif Aziz  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 86-07-006, filed 3/6/86)

**WAC 458-20-249 Artistic or cultural organizations.** (~~For purposes of business and occupation tax deduction and certain retail sales tax and use tax exemptions, RCW 82.04.4328 expressly defines the term "artistic or cultural organizations" in pertinent part as follows:~~

~~". . . the term)~~ **(1) Introduction.** This rule explains deductions and exemptions from Washington business and occupation tax, retail sales tax and use tax as applied to artistic and cultural organizations. Readers may refer to the following for additional information.

RCW 82.04.4327 Deductions—Artistic and cultural organizations—Income from business activities.

RCW 82.04.4328 Artistic or cultural organization defined.

RCW 82.08.031 Exemptions—Sales to artistic or cultural organizations of certain objects acquired for exhibition or presentation.

RCW 82.12.031 Exemptions—Use by artistic or cultural organizations of certain objects.

WAC 458-20-169 Nonprofit organizations.

WAC 458-20-178 Use tax and the use of tangible personal property.

**(2) Definitions.**

(a) "Artistic or cultural organization" means an organization ~~((which))~~ that is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs ~~((...))~~ for viewing or attendance by the general public ~~((:))~~ and meets all of the following requirements:

(i) The organization ~~((must be))~~ is a not-for-profit corporation under chapter 24.03 RCW ~~((and))~~;

(ii) The organization is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization ~~((or by a corporation sole under chapter 24.12 RCW. In addition, to qualify for deduction or exemption from taxation... the corporation shall satisfy the following conditions:~~

~~((a))~~;

(iii) No part of ~~((its))~~ the organization's income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

~~((b))~~ (iv) Salary or compensation paid to ~~((its))~~ the organization's officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;

~~((c))~~ (v) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted ~~((and))~~;

(vi) On the liquidation, dissolution, or abandonment by the corporation, assets of the corporation may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

~~((d))~~ (vii) The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;

~~((e))~~ (viii) The amounts received that qualify for exemption must be used for the activities for which the exemption is granted;

~~((f))~~ (ix) Services must be available regardless of race, color, national origin, or ancestry; and

~~((g))~~ (x) The director of revenue ~~((shall))~~ must have access to its books in order to determine whether the corporation is exempt from taxes.

~~((2))~~ (b) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

~~((a))~~ (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;

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

~~((c))~~ (iii) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject.~~(("~~

Effective July 1, 1985, artistic or cultural organizations, as defined herein, are not subject to business and occupation tax upon amounts derived from conducting any business activities whatever. Formerly, a business and occupation tax deduction was available only for amounts received by such organizations from the United States and its instrumentalities or the state and local government entities (RCW 82.04.4322); certain manufacturing activities (RCW 82.04.4324); and tuition fees for artistic or cultural education programs (RCW 82.04.4326). Under current law, however, the deduction is ~~unrestricted and applies to all activities conducted by such qualifying organizations.)~~ (3) **Business and occupation tax deduction.** In computing tax under RCW 82.04.4327, an artistic or cultural organization may deduct the following from the measure of tax:

(a) All amounts received by the artistic or cultural organization; and

(b) The value of articles manufactured by the artistic or cultural organization solely for use by the organization in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs for attendance or viewing by the general public.

**(4) Retail sales tax.**

(a) Artistic or cultural organizations ~~((which make any))~~ that charge ~~((s))~~ for goods or services ~~((which are))~~ included in the definition of "retail sale" under RCW 82.04.050, must collect and report the retail sales tax ~~((thereon))~~. No sales tax exemption is available for sales by such organizations.

(b) Such organizations are exempt ~~((of))~~ from paying retail sales tax ~~((upon))~~ on their purchases of certain "objects" for the purpose of exhibition or presentation to the general public if the objects are:

~~((1))~~ (i) Objects of art;

~~((2))~~ (ii) Objects of cultural value;

~~((3))~~ (iii) Objects to be used in the creation of a work of art, other than tools; or

~~((4))~~ (iv) Objects to be used in displaying art objects or presenting artistic or cultural exhibitions or performances. (RCW 82.08.031)

(c) The term "objects" ~~((is deemed to))~~ means items of tangible personal property. It does not include professional or commercial services rendered by third parties. Where ~~((, however,))~~ certain services are performed which are merely incidental to sales of tangible personal property, e.g., designing playbills or altering stage curtains which are then sold to qualifying organizations, the total charge ~~((therefore))~~ will be exempt.

(d) Charges for materials, equipment, and services related to repair, maintenance, or replacement of buildings or structures are not exempt. Thus, e.g., theater seats, aisle carpeting, air conditioning systems, painting of interior or exterior of buildings, and the like are not tax exempt "objects."

~~((Under Washington law))~~ (e) Exempt sales include rentals of exempt objects. Examples of objects ~~((which may be purchased by))~~ that qualifying artistic or cultural organizations may purchase without payment of retail sales tax are:

~~((a))~~ (i) Tickets, programs, signs, posters, fliers, and playbills printed for particular displays or performances; scenery, costumes, stage ~~((:))~~ props, scrims, and materials for their construction;

WSR 20-20-124  
EXPEDITED RULES  
DEPARTMENT OF  
ENTERPRISE SERVICES  
[Filed October 6, 2020, 1:30 p.m.]

~~((b))~~ (ii) Stage lights, filters, control panels, color medium, stage drapes, sets, set paint, gallery exhibition materials, risers, display platforms, and materials for their construction;

~~((e))~~ (iii) Sheet music, recordings, musical instruments and musical supplies for the staging of displays and performances;

~~((d))~~ (iv) Movie projectors, films, sound systems, video and sound equipment and supplies ~~((and))~~, computer hardware and standard, prewritten software directly used exclusively in the staging of performances or actual display of art objects.

(f) Examples of objects ~~((which may be purchased by))~~ that qualifying artistic or cultural organizations may purchase, ((upon)) on which the retail sales tax must be paid are:

~~((a))~~ (i) Supplies and equipment for clerical support, including bulk tickets for general use, stationery, typewriters, copy machines, and general office supplies;

~~((b))~~ (ii) Theater seats, lobby furniture, carpeting, vending machines, and general supplies for audience or patrons' convenience and use;

~~((e))~~ (iii) Shipping and packing materials, crates, boxes, dunnage, labels, tags, and container-related items for transfer or storage of exempt objects;

~~((d))~~ (iv) Sewing machines and other durable equipment used to prepare, repair, and maintain exempt objects (such items are deemed to be "tools," rather than exempt objects);

~~((e))~~ (v) Theater or building lighting and utility fixtures and systems, and computer hardware and software not directly and exclusively used in staging performances or actually displaying art objects.

(g) Qualified artistic and cultural organizations may obtain the tax exemptions by providing their suppliers with a written statement in essentially the following form:

I, (buyer's name), hereby confirm that the items purchased on (date of purchase), without payment of retail sales tax, from (seller's name) are all objects of art or cultural value or to be used in the creation of such objects or in displaying art objects or presenting artistic or cultural exhibitions or performances.

(signature of authorized purchaser)  
for: (name of organization)  
(registration no. of organization)

(h) Vendors who accept such certifications in good faith ~~((will be excused from the responsibility of collecting and remitting))~~ are not required to collect and remit sales tax on such sales.

(6) Use tax. Under RCW 82.12.031, the use tax does not apply to the use of any objects ~~((for the purposes explained earlier in this rule, and upon which the retail sales tax would be exempt if))~~ that would be exempt from sales tax had the objects ~~((were))~~ been purchased in this state. The use tax applies ~~((upon))~~ to all other items of tangible personal property ~~((used by))~~ that artistic or cultural organizations use upon which retail sales tax has not been paid.

Title of Rule and Other Identifying Information: Public records, develops and explains the department's process for responding to public record requests. Includes updated reference to legislative statutory fee schedule.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The changes clarify the language of rule WAC 200-01-075 without changing its effect. Additional changes update descriptions of the department to align with its current structure and organization

Reasons Supporting Proposal: WAC 200-01-075(1) adopts the statutory fee schedule, RCW 42.56.120 Charges for copying. The relevant section of this Public Records Act (PRA) statute states "An agency may waive any charge assessed for a request pursuant to agency rules and regulations RCW 42.56.120(4)." However in the current WAC, the preceding statement is: "DES may charge for providing public records or waive charges for providing public records." This statement is confusing for two reasons:

(i) The statement adds no new information concerning waivers.

(ii) The statement is immediately followed by the statutory reference that conditions waivers of any charges on "agency rules."

Removing the sentence above clarifies the agency rule because the revised WAC will neither permit nor refer to waivers.

Statutory Authority for Adoption: RCW 34.05.353 provides that an agency may file notice for expedited rule making when rules meet any one of the following criteria. RCW 34.05.353 (1)(a) to (f).

Statute Being Implemented: RCW 42.56.120.

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

Name of Proponent: Department of enterprise services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Harold Goldes, 1500 Jefferson [Street], Olympia, WA, 360-480-8425.

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

Is being amended after a review under RCW 34.05.328.

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

Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: WAC 200-01-075(1) adopts the statutory fee schedule, RCW 42.56.120 Charges for copying. The relevant section of this PRA statute states "An agency may waive any charge assessed for a request pursuant to agency rules and regulations RCW 42.56.120(4)." However in the current WAC, the preceding statement is: "DES may charge for providing public records

or waive charges for providing public records." This statement is confusing for two reasons:

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October 6, 2020

Jack Zeigler  
Policy and Rules Manager

AMENDATORY SECTION (Amending WSR 12-02-004, filed 12/22/11, effective 1/22/12)

**WAC 200-01-010 Purpose.** ~~((The purpose of this chapter is to provide rules for the department of enterprise services to implement the provisions of chapter 42.56 RCW relating to public records and to ensure compliance with that chapter.))~~ (1) These rules establish the procedures DES will follow in order to provide full access to public records.

These rules (a) provide information to persons wishing to request DES public records and (b) establish processes for both requestors and DES staff to fully assist the public in obtaining such access.

(2) In carrying out its public records responsibilities DES will be guided by the provisions of chapter 42.56 RCW, Public Records Act.

AMENDATORY SECTION (Amending WSR 12-02-004, filed 12/22/11, effective 1/22/12)

**WAC 200-01-015 Definitions.** The definitions set forth in RCW 42.56.010 apply throughout this chapter. In addition, the definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commercial purposes" means a business activity by any form of business enterprise intended to generate revenue or financial benefit.

(2) "Customary business hours" refers to Olympia administrative office hours which are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and days DES is closed.

(3) "Days" means calendar days unless otherwise stated.

~~((2))~~ (4) "DES" or "department" means the department of enterprise services established in chapter ((43, Laws of 2011)) 43.19 RCW. Where appropriate, DES or agency also refers to the staff and employees of the department of enterprise services.

~~((3))~~ (5) "Director" means the director of the department of enterprise services.

~~((4))~~ (6) "Electronic format" or "electronic records" or "electronic records format" refer to digital records as distinct from paper; examples include email, Word or Excel documents, PDF or media files.

(7) "Page" means one impression/image on a single side of a sheet of paper. It also applies to one electronic image of ((one)) a single side of a sheet of paper. For example, DES considers a physical sheet of paper with an impression/image on both sides as two pages.

~~((5))~~ (8) "Public Records Act" means the same as chapter 42.56 RCW.

(9) "Public records officer" means the public records officer or designee for the department of enterprise services appointed by the director.

(10) "Request" or "PRR" or "PRRs" means a public records request made pursuant to chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 12-02-004, filed 12/22/11, effective 1/22/12)

**WAC 200-01-020 ~~((Description of))~~ About the department of enterprise services.** ~~((The department, created in chapter 43, Laws of 2011, provides centralized leadership in efficiently and cost-effectively managing resources necessary to support the delivery of state government services. The department is an administrative, service and regulatory state agency.~~

The administrative office of the department and its staff are located at 1500 Jefferson Ave., Olympia, Washington 98504.) Headquartered in Olympia and located in the 1500 Jefferson Building, 1500 Jefferson, Olympia, Washington, DES employs people, maintains service locations, and staffs major field offices in Olympia, across the state, and in Idaho. Contact and location information and the agency organizational chart are available on our website at des.wa.gov.

In addition to being a regulatory agency, DES provides services for state government, local governments, the public, private businesses, and state employees. DES is organized into the following service areas:

(1) Executive office and administrative services for the agency;

(2) Contracting and purchasing;

(3) Employee assistance program;

(4) Employee training and development;

(5) Facilities and leasing;

(6) Printing and mail;

(7) Risk management;

(8) Small agency services;

(9) Surplus; and

(10) Travel, cars, and parking.

AMENDATORY SECTION (Amending WSR 12-02-004, filed 12/22/11, effective 1/22/12)

**WAC 200-01-030 Public records officer.** (1) The public records officer is appointed by the director and is located in the ~~((contracts and legal affairs division of the department))~~ Olympia office.

(2) The public records officer is in charge of the ~~((department's))~~ DES public records program. The public records officer is responsible for ~~((the implementation of the department's rules regarding the release of public records for inspection and copying, coordinating the department staff in this regard, and))~~;

(a) Overseeing compliance with the Public Records Act ((requirements in chapter 42.56 RCW));

(b) Implementing DES rules regarding the release of public records for inspection and copying;

(c) Coordinating DES staff in this regard.

(3) In compliance with DES policy, the public records officer may ~~((choose))~~ delegate a designee to act in ~~((his or her))~~ the officer's place to carry out the responsibilities in this chapter, including processing and responding to public records requests. The ~~((department's))~~ DES public records officer will provide the fullest assistance to requestors.

AMENDATORY SECTION (Amending WSR 12-02-004, filed 12/22/11, effective 1/22/12)

**WAC 200-01-040 Processing of public records requests—Request.** (1) ~~((Any person wishing to inspect or copy public records of DES may submit the request in writing using the department's request form, or by letter, fax, or email addressed to the public records officer. The request should include the following information:))~~ Publicly available web records.

Before submitting a PRR, persons seeking DES public records are strongly encouraged to first review the DES website at [www.des.wa.gov](http://www.des.wa.gov).

Another website, [data.wa.gov](http://data.wa.gov), offers data collected from a variety of government agencies. This website provides substantial numbers of public records concerning agency business that are free for viewing and downloading at any time and accessible without submitting a PRR to DES.

(2) Public Records Act requests. DES requires no special form. However, all Public Records Act requests to DES must be sent only to the public records officer in the Olympia office. DES will accept PRRs in any one of the following ways:

Email: [publicrecords@des.wa.gov](mailto:publicrecords@des.wa.gov)

U.S. mail or delivery:

Public Records Officer

Department of Enterprise Services

1500 Jefferson Street E.

P.O. Box 42445

Olympia, WA 98504-2445

Requestors are strongly encouraged to submit written requests. At a minimum, a written request must include the following information:

• Name of requestor;

~~((~~• Address of requestor;

~~• Other contact information, including telephone number and any email address;))~~

• Contact information;

• Identification of the public records adequate for the public records officer to locate the records; and

• The date and time of day of the request.

~~((2))~~ (3) If the requestor wishes to have copies of the records made instead of inspecting them, ((he or she)) the request should so indicate. Costs will be assessed in compliance with WAC 200-01-075.

~~((3))~~ A request form is available for use by requestors at the office of the public records officer and online at <http://www.des.wa.gov>.

(4) The public records officer may accept public records requests by telephone or in person; however, the requesting party may be asked to reduce the request to writing. In the alternative, the public records officer may confirm receipt of the request and restate the substance of the request in writing.) DES accepts in-person requests at the Olympia administrative office during customary business hours. If DES receives an oral request, the public records officer will reduce the request to writing and verify in writing with the requestor that it correctly memorialized the request.

Only the Olympia administrative office is authorized to accept public records requests.

Offices other than the Olympia administrative office, other DES email addresses, other DES fax or phone numbers, and other DES staff are not authorized to accept Public Records Act requests to DES.

All communications with DES to access public records of the department or to seek assistance in making such a request, or for the purpose of obtaining information, making requests or making inquiries concerning the agency's rules for compliance with the Public Records Act shall be addressed as follows:

Public Records Officer

Department of Enterprise Services

1500 Jefferson Street E.

P.O. Box 42445

Olympia, WA 98504-2445

Communications seeking DES records sent or provided to unauthorized locations, addresses or staff, will not be accepted or processed as PRRs. DES will process such communications as general informal inquiries, general correspondence, general requests for information, or discovery, as appropriate. The requestor may resubmit his/her request to the public records officer at the Olympia office.

This Public Records Act records request procedure provides the fullest assistance to requestors by:

(a) Establishing a uniform point of contact for all Public Records Act requests to DES and related inquiries, consistent with the public records officer contact information published in the *Washington State Register*, and pursuant to RCW 42.56.580;

(b) Enabling DES to promptly distinguish PRRs from the high volume of other daily communications to DES on multiple topics. This enables timely responses and avoids excessive interference with essential agency functions as provided in RCW 42.56.100; and

(c) Ensuring that PRRs are centrally reviewed during customary business hours by the public records officer, so DES may more efficiently assign a tracking number to the request, log it in, review it, provide an initial or other response within five business days after receipt as provided in RCW 42.56.520, and otherwise timely process the request pursuant to the Public Records Act and these rules.

(4) Processing - General. The public records officer oversees compliance with the Public Records Act. The public records officer and the office will provide the fullest assistance to requestors; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the office. More information about submitting public records requests to the office is in this chapter and on the DES website.

AMENDATORY SECTION (Amending WSR 12-02-004, filed 12/22/11, effective 1/22/12)

**WAC 200-01-045 Processing of public records requests—Response.** (1) DES shall respond promptly to requests for records made under the Public Records Act. Within five business days of ((receipt of the request,)) receiving a PRR, DES will log the request and assign the request a tracking number. The public records officer will evaluate the request according to the nature of the request, clarity, volume, and availability of requested records.

(2) Response. Following the initial evaluation of the request, and within five business days of receipt of the request, the public records officer will do one or more of the following:

(a) Make the requested records available for inspection or copying(;

(b)) including:

(i) If copies are available on the DES website, provide an internet address and link on the website to specific records requested;

(ii) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor(;

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, obtain clarification from the requestor. Such clarification may be obtained and provided by telephone. The public records officer may then revise the estimate of when records will be available; or

(e) Deny the request.

(2) In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure pursuant to RCW 42.56.540. The notice to the affected persons will include a copy of the request.

(3) Some records are exempt from disclosure, in whole or in part. If DES believes that an entire record is exempt from disclosure and should be withheld, the public records officer will identify the record, state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, the public records officer will redact the exempt portions, provide the nonexempt portions, state the specific exemption and provide a brief explanation of why the portions of the record are exempt from disclosure.

(4) When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that DES has closed the request)).

(b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available (the public records officer may revise the estimate of when records will be available); or

(c) Acknowledge receipt of the request and ask the requestor to clarify all or any part of the request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of the time DES will require to respond to the unclear request or unclear part of a request if it is not clarified.

(i) Such clarification may be requested and provided by telephone and memorialized in writing, or by email or letter;

(ii) Clarification may include identifying a record with specificity sufficient for DES to locate or produce the record;

(iii) If the requestor fails to respond to a request for clarification and the entire request is unclear, DES need not respond to it. DES will respond to those portions of a request that are clear; or

(d) Deny the request.

(3) If requested records contain information that may affect rights of others and may be exempt from disclosure, then prior to providing the records, the public records officer may give notice to such others whose rights may be affected by the disclosure. When such notice is given, affected others at their option may contact the requestor and ask the requestor to revise the request. The affected others may, if necessary, seek a court order to prevent or limit the disclosure pursuant to RCW 42.56.540. The notice to all parties, to the affected others or to agencies will include a copy of the request.

(4) Additional time to respond. Additional time for the office to respond to a request may be based upon the need to clarify the request, locate and assemble the records requested, notify affected others or agencies affected by the request, or determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(5) Exemptions. Public records may be exempt from disclosure, in whole or in part. If DES believes that a record is exempt from disclosure and should be withheld (in whole or in part) the public records officer will provide an exemption log which will identify the record, state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld.



If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and state within the exemption log the specific exemption and provide a brief explanation of why the portions of the record are exempt from disclosure.

(6) Communication encouraged. If the requestor has not received a response in writing or has questions or concerns regarding the records request, the requestor is encouraged to contact the public records officer.

(7) The public records officer will close a request and notify the requestor that DES has closed the request administratively under the following conditions:

(a) When the requestor withdraws the request;

(b) When the requestor fails to fulfill an obligation to inspect the records; or

(c) When the requestor fails to pay a deposit, partial payment, or final payment for the requested copies.

AMENDATORY SECTION (Amending WSR 12-02-004, filed 12/22/11, effective 1/22/12)

**WAC 200-01-050 Inspection of public records.** ~~((+) Consistent with other demands, DES will provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document.~~

~~(2) After inspection is complete, the requestor shall identify which documents he or she wishes the agency to copy. Consistent with other demands and the volume of documents requested, DES may copy the document at that time or provide the copies to the requestor at a later date.~~

~~(3) Within thirty days of the department's notification that the records are available for inspection or copying, the requestor must claim or review the assembled records. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the department may close the request and refile the assembled records. If the requestor makes a request for the same records, it will be processed as a new request.~~

~~(4) When the inspection of the requested records is complete and all requested copies are provided, the public records officer will indicate that DES has completed its search for the requested records and made any nonexempt records available for inspection.)~~ (1) A requestor must notify DES in advance of their intent to inspect public records. Using the tracking ID that DES assigns to each public records request, a requestor must identify with specificity and in advance, the records the requestor wishes to inspect. DES will assist the requestor in scheduling an appointment for inspection and may propose convenient alternatives to an in-person visit. Public records will be available for inspection during customary business hours and when staff are available to assist the requestor.

(2) When the request to inspect is for a large number of records, the public records officer may schedule inspection in installments.

(3) DES will notify the requestor of the scheduled appointment. The requestor must inspect the requested records within thirty days of the scheduled appointment. If the requestor or a representative of the requestor fails to inspect the records within the thirty-day period or fails to make other arrangements, DES may close the request and refile the assembled records. If the requestor makes a request for the same records, it will be processed as a new request.

(4) Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency.

Inspections are conducted in accordance with the requirement that agencies protect the requested records from damage or disorganization. No member of the public shall remove a document from the inspection area or disassemble or alter any public record.

(5) After inspection is complete, the requestor may wish to identify which documents the requestor wishes the agency to copy.

(a) Where DES charges for copies, the requestor must pay for the copies prior to the copies being provided to the requestor.

(b) Electronic records will be provided as a link to the records on the DES website if the records are located on the website, or in a format used by DES and which is generally commercially available.

(6) When the inspection of the requested records is complete and any requested copies are provided, the public records officer will close the PRR.

AMENDATORY SECTION (Amending WSR 12-02-004, filed 12/22/11, effective 1/22/12)

**WAC 200-01-055 Protection of public records.** ~~(1) ((The department)) DES will maintain its records in a reasonably organized manner. ((The department)) DES will take reasonable ((actions)) measures to protect records from damage and disorganization. ((A requestor shall not take DES records from DES offices without the permission of the public records officer. A variety of records is available on the DES web site at (web site address). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.)) If DES records are maintained in a digital format, they will be provided digitally in response to a PRR. If records are maintained and inspected on paper, a requestor may ask for copies.~~

(2) Records will be made available to the requestor for inspection subject to the following restrictions:

(a) ((The records may not be removed from the area designated.)) Only the public records officer will remove records from the designated inspection area.

(b) The quantity of records may be limited in accordance with the ((requested use)) available space.

(c) All possible care ((with)) shall be taken by the requestor to prevent damage to the records.

(d) Records ((may)) shall not be marked, altered, cut or mutilated in any way.

(e) ~~((Use of liquids and fountain pens and eating, drinking, and smoking while utilizing the records is))~~ During inspection, eating, drinking, and smoking are prohibited.

(f) Records shall not be defaced in any way including writing on, folding or folding anew if in folded form, tracing or fastening with clips or other fasteners except those that ~~((may))~~ already exist in the file.

(g) Records must be kept in the order in which received.

(h) ~~((All copying of records will be done by departmental personnel-))~~ Departmental personnel will provide all requested copies of records.

(i) ~~((Records will be returned to))~~ The public records officer ~~((by the requestor))~~ will remove the records from the inspection area when no longer required by the requestor and no later than the end of the customary ~~((office))~~ business hours ~~((as set forth in WAC 200-01-035))~~.

**AMENDATORY SECTION** (Amending WSR 12-02-004, filed 12/22/11, effective 1/22/12)

**WAC 200-01-065 Processing public records requests—Electronic records.** (1) The process for requesting electronic public records is the same as for requesting paper public records.

(2) When a requestor requests records in an electronic format, the public records officer will provide available non-exempt electronic public records or portions of such records that are reasonably locatable in an electronic format ~~((that is))~~ used by the agency and that is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record, or as otherwise agreed to between the requestor and the public disclosure officer.

(3) Whenever possible, DES will provide records in electronic format. If ~~((the department))~~ DES has only a paper copy of the record, the ~~((department))~~ public records officer, when feasible, may scan the paper record and provide the resulting electronic copy to the requestor subject to any cost as provided for in WAC 200-01-075. If ~~((the department))~~ DES maintains the record in electronic format, the record will be provided in the maintained electronic format unless the requestor specifically asks to receive the record in paper copies or it is otherwise not feasible to provide the record in electronic format.

(4) If a record exists on a web page, DES will respond to a request for the record by providing the link to the record on the web page.

(5) Closing withdrawn or abandoned request. The public records officer will close a request when the requestor:

- (a) Withdraws the request;
  - (b) Fails to clarify an entirely unclear request;
  - (c) Fails to fulfill an obligation to inspect the records;
  - (d) Fails to pay a deposit;
  - (e) Fails to pay required fees for an installment;
  - (f) Fails to claim an installment;
  - (g) Fails to make final payment for the requested copies.
- The public records officer will notify the requestor that DES has closed the request.

(6) Later discovered documents. If, after DES has informed the requestor that it has provided all available

records, DES discovers additional responsive documents that existed at the time of the request, DES will promptly inform the requestor of the newly discovered additional documents and provide them on an expedited basis.

(7) DES is not required to create a record that does not otherwise exist.

~~((6))~~ (8) Costs for providing electronic records as provided in this section are governed by WAC 200-01-075.

**AMENDATORY SECTION** (Amending WSR 12-02-004, filed 12/22/11, effective 1/22/12)

**WAC 200-01-070 Exemptions.** (1) DES reserves the right to determine that a public record ~~((requested))~~ is exempt, in whole or in part, ~~((under the))~~ consistent with provisions of ~~((chapter 42.56 RCW))~~ the Public Records Act or other applicable provision of law.

(2) ~~((In addition, there are exemptions outside the Public Records Act that restrict the availability of some documents held by DES for inspection and copying; to include, but not limited to, RCW 4.92.210 (information in a claim filed with the office of risk management) and RCW 5.60.060 (attorney-client privilege).))~~

(3) ~~In addition, DES reserves the right to delete identifying details when it makes available any public record in cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.56 RCW.~~

(4) ~~The department is prohibited by statute from disclosing lists of individuals for commercial purposes pursuant to RCW 42.56.070(9).) Certain exemptions other than the Public Records Act itself restrict the disclosure of documents held by DES. Some examples of such other applicable statutory exemptions include, but are not limited to:~~

RCW 4.92.210: Privileged and confidential contents of risk management tort claims file.

RCW 5.60.060: Attorney-client privileged records.

RCW 41.04.730: Employee assistance program—Information confidential—Exceptions.

(3) DES reserves the right to delete identifying details when producing any public record when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by RCW 42.56.050.

(4) DES is prohibited by statute from disclosing lists of individuals or records that may be manipulated to created lists of individuals for commercial purposes pursuant to RCW 42.56.070.

**AMENDATORY SECTION** (Amending WSR 18-09-014, filed 4/9/18, effective 5/10/18)

**WAC 200-01-075 Costs of providing public records.** ~~((1) There is no fee for inspecting public records. DES may charge for providing public records or waive charges for providing public records. DES will charge using the fees listed under RCW 42.56.120 and will maintain a fee schedule on its web site.~~

(2) ~~There will be no charge for emailing electronic records to a requestor, unless another cost applies.~~

(3) DES has determined calculating the actual costs for providing public records is unduly burdensome for the following reasons:

(a) The level of effort, supplies, and shipping costs incurred by DES vary widely for each records request and are unique to each records request;

(b) Recordkeeping needed to capture all allowed costs unnecessarily increases DES's administrative overhead; and

(c) Determining actual costs for each records request within the statutory response time frame requires a greater than normal level of administrative resources.

(4) Before beginning to copy public records, the public records officer may require:

(a) A deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor;

(b) The payment of the remainder of the copying costs before providing all the records; or

(c) The payment of the costs of copying an installment before providing that installment. The department will not charge sales tax when it makes copies of public records.

(5) Payment may be made by cash in the exact amount charged, check, or money order to the department of enterprise services:)) (1) The following copy fees and payment procedures apply to requests to DES under the Public Records Act and received on or after July 8, 2019, date.

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

(a) DES does not have the resources to conduct a study to determine all its actual copying costs;

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

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

(3) DES will charge for the electronic delivery, copies of records, and for transfer and storage media pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). DES will charge the following additional applicable fees allowed pursuant to RCW 42.56.120:

(a) Customized services pursuant to RCW 42.56.120(3).

(b) Optional alternative fee agreements with a requestor pursuant to RCW 42.56.120(4).

The charges for copying and delivery methods used by DES are summarized in the fee schedule available on the DES website at [www.des.wa.gov](http://www.des.wa.gov).

(4) Requestors are required to pay any or all applicable charges in advance of receiving records.

(5) DES accepts public records payment by cash, money order, or credit card. DES has limited resources to accept in-person payments. In-person payments are accepted by appointment only and during customary office hours. Using the tracking ID that DES assigns to each public records request, a requestor must identify with specificity and in advance, the record(s) to which payment applies. Whenever a requestor has more than one request pending, the agency must know which fees apply; for this reason the tracking number is required and is provided on the invoice DES sends when payment is due.

Cash is accepted in the exact amount. DES will assist the requestor in scheduling an appointment to pay for records during customary office hours and may propose convenient alternatives to an in-person visit.

(6) DES will close a request when a requestor fails by the payment date to pay in the manner prescribed.

AMENDATORY SECTION (Amending WSR 12-02-004, filed 12/22/11, effective 1/22/12)

WAC 200-01-090 ((~~Communications with the agency~~)) **Commercial purposes.** ((All communications with DES to access public records of the department or seek assistance in making such a request, or for the purpose of obtaining information, making submittals or requests, or making inquiries concerning the agency's rules for compliance with chapter 42.56 RCW shall be addressed as follows:

Department of Enterprise Services  
Public Records Officer  
1500 Jefferson Ave.  
P.O. Box 42445  
Olympia, WA 98504-2445

The telephone number of the public records officer is 360-407-8768, or you can email your request to [publicdisclosure@des.wa.gov](mailto:publicdisclosure@des.wa.gov).

Information is also available at the DES web site at <http://www.des.wa.gov>.) No provisions of any rule contained in this title shall be construed as giving authority to any DES officer or employee to give, sell, or provide access to lists of individuals requested for commercial purposes. If a list of individuals is included in the records requested, DES may require requestors to identify themselves and the purpose of their request, and provide a signed statement that the requestor will not use the list of individuals for commercial purposes.

When DES has credible indication that a requested list of individuals might be used for commercial purposes, DES will investigate the request further. DES will determine on a case-by-case basis whether such further investigation is necessary, based on the identity of the requestor, the nature of the records requested, and any other information available to DES. When DES determines further investigation is necessary, DES will require requestors to identify the purpose of their request.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 200-01-025 Organizations, operations, and procedures.

WAC 200-01-035 Availability of records.

**WSR 20-20-125**  
**EXPEDITED RULES**  
**EVERETT COMMUNITY COLLEGE**

[Filed October 6, 2020, 1:30 p.m.]

Title of Rule and Other Identifying Information: Supplemental Title IX Student Conduct Procedures, WAC 132E-122-410 through 132E-122-49.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires emergency updates to the college's student conduct code to be compliant with federal regulations.

Reasons Supporting Proposal: Everett Community College (EVCC) is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which take effect on August 14, 2020.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Rule is necessary because of federal law, 20 U.S.C. 1092(f), Title IX of the Education Amendments of 1972, 20 U.S.C. 1682 et seq.

Name of Proponent: EVCC, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Erin Carr, EVCC-Everett, 425-388-9100; and Implementation: Rita Belvill, EVCC-Everett, 425-388-9100.

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 federal government implemented these rules which are being adopted to comply.

**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 Rita Belvill, EVCC, 2000 Tower Street, Everett, WA 98201, phone 425-388-9100,

email rbelvill@everettcc.edu, AND RECEIVED BY December 7, 2020.

December 7, 2020  
 Rita Belvill  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

**WAC 132E-122-170 Reporting—Sexual misconduct and discrimination.** (1) Persons who believe that a sexual misconduct or discrimination violation has been committed may contact and make a report to the Title IX coordinator directly (~~(or by filing a report online at everettcc.edu/Title IX)~~).

~~((Becky Lambole))~~  
 Title IX Coordinator  
 425-388-9271  
 TitleIXcoordinator@everettcc.edu  
 Olympus Hall ~~((207))~~ 114  
 2000 Tower Street  
 Everett, WA 98201

(2) The person filing the report will be asked to write a brief statement of allegation(s), including dates, names, a description of the incident, and the remedy sought.

(3) **Sexual misconduct responsible employee reporting.** Any employee who receives a report, formally or informally, of an alleged Title IX violation is required to report such information to the Title IX coordinator. The employee may contact the Title IX coordinator directly ~~((at TitleIX coordinator@everettcc.edu or 425-388-9271))~~ at TitleIX coordinator@everettcc.edu or 425-388-9271 ~~((or may file a Title IX report through the college online reporting system))~~.

(4) **Campus counselors.** If information regarding a possible sexual misconduct violation is disclosed during a confidential counseling session with a campus counselor, the counselor is not required to report this information to the Title IX coordinator.

(5) If the complaint is against the conduct officer or Title IX coordinator, the matter is to be reported to the vice president of ~~((administrative services))~~ human resources.

Vice President of ~~((Administrative Services vpadmin@everettcc.edu))~~ Human Resources  
 hr@everettcc.edu  
 425-388-9232  
 2000 Tower Street  
 Everett, WA 98201

NEW SECTION

**WAC 132E-122-410 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Everett Community College's standard disciplinary procedures, WAC 132E-122-010 through 132E-122-490, these supplemental procedures shall take precedence.

NEW SECTION

**WAC 132E-122-420 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Everett Community College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) **Quid pro quo harassment.** An Everett Community College employee conditioning the provision of an aid, benefit, or service of Everett Community College on an individual's participation in unwelcome sexual conduct.

(2) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Everett Community College's educational programs or activities, or employment.

(3) **Sexual assault.** Sexual assault includes the following conduct:

(a) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) **Nonconsensual sexual contact.** Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) **Statutory rape.** Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

**WAC 132E-122-430 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during an Everett Community College educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which Everett Community College exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by Everett Community College.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit Everett Community College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Everett Community College's student conduct code, WAC 132E-122-010 through 132E-122-490.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

**WAC 132E-122-440 Initiation of Title IX proceedings.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
  - (b) Identify the alleged Title IX violation(s);
  - (c) Set forth the facts underlying the allegation(s);
  - (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
  - (e) Explain that the parties are entitled to be accompanied by their chosen advisor(s) during the hearing and that:
    - (i) The advisor(s) will be responsible for questioning all witnesses on the party's behalf;
    - (ii) An advisor may be an attorney; and
    - (iii) Everett Community College will appoint the party an advisor of the Everett Community College's choosing at no cost to the party, if the party fails to do so.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

#### NEW SECTION

**WAC 132E-122-450 Prehearing procedure.** (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132E-122-440. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether Everett Community College intends to offer the evidence at the hearing.

#### NEW SECTION

**WAC 132E-122-460 Rights of parties.** (1) Everett Community College's student conduct procedures and this supplemental procedure shall apply equally to all parties.

(2) Everett Community College bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of Everett Community College's choosing on the party's behalf at no expense to the party.

#### NEW SECTION

**WAC 132E-122-470 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their

reasons for excluding any question based on lack of relevance.

(2) **Relevance** means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

#### NEW SECTION

**WAC 132E-122-480 Initial order.** The student conduct committee will be responsible for conferring and drafting an initial order that:

(1) Identifies the allegations of sexual harassment;

(2) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(3) Makes findings of fact supporting the determination of responsibility;

(4) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(5) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(6) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(7) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Everett Community College's education programs or activities; and

(8) Describes the process for appealing the initial order to Everett Community College's president.

(9) The committee chair will serve the initial order on the parties simultaneously.

#### NEW SECTION

**WAC 132E-122-490 Title IX appeals.** (1) The parties have the right to appeal from the determination of responsibility and/or from a Title IX dismissal, in whole or part, of a formal complaint, as set forth in the initial order.

(2) The president or the president's delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.

(3) If a request for reconsideration is received, the Title IX coordinator shall respond within seven business days. The Title IX coordinator shall either deny the request or, if the Title IX coordinator determines that the request for reconsideration has merit, issue amended findings.

(4) If any of the grounds in the request for appeal do not meet the grounds in this policy, that request will be denied and the parties and their advisors will be notified in writing of the denial and the rationale.

(5) If any of the grounds in the request for appeal meet the grounds in this policy, then the other party(ies) and their advisors, and, when appropriate, the investigators and/or the original decision-maker(s) will be notified of the decision.

(6) The other party(ies) and their advisors, and, when appropriate, the investigators and/or the original decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and be provided seven business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the appeal decision-maker(s) to all parties for review and comment.

(7) The nonappealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the appeal decision-maker(s) and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the investigator(s) and/or original decision-maker(s), as necessary, who will submit their responses in seven business days, which will be circulated for review and comment by all parties.

(8) Neither party may submit any new requests for appeal after this time period. The appeal decision-maker(s) will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than seven business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

(9) A notice of appeal outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The notice of appeal outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the recipient is permitted to share according to state or federal law, and the rationale sup-

porting the essential findings to the extent the recipient is permitted to share under state or federal law.

(10) Notification will be made in writing and may be delivered by one or more of the following methods: In person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' recipient-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

(11) The grounds for appeal are as follows:

(a) Procedural irregularity that affected the outcome of the matter;

(b) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

(c) The Title IX coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the specific complainant or respondent that affected the outcome of the matter.

(12) All decisions reached through this process are final. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

(13) If no request for reconsideration is received within seven days, the findings become final.

(14) Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.

(15) Appeals are not intended to provide for a full rehearing of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

(16) An appeal is not an opportunity for appeal decision-maker(s) to substitute their judgment for that of the original decision-maker(s) merely because they disagree with the finding and/or sanction(s).

(17) Once an appeal is decided, the outcome is final. Further appeals are not permitted, even if a decision or sanction is changed on remand except in the case of a new hearing.

(18) Any amended findings are final and no further reconsideration is available.