

**WSR 14-08-043**  
**EXPEDITED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed March 27, 2014, 9:49 a.m.]

Title of Rule and Other Identifying Information:  
 Amends WAC 181-79A-257 to comply with statute requirements for expedited applications for out-of-state candidate for teacher certification that are military spouses per RCW 18.340.020.

**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 David Brenna, Professional Educator Standards Board (PESB), 600 Washington Street South, Room 400, Olympia, WA 98504, AND RECEIVED BY June 5, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The legislature in 2011 required that all authorities for licensure provide assurance that military spouses receive expedited service. PESB rules already provided for out-of-state procedures that made all out-of-state candidates able to receive reciprocity for certification. This rule clarifies the importance of RCW 18.340.020.

Reasons Supporting Proposal: Statutory.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, 600 Washington Street South, Olympia, WA 98504, (360) 725-6238.

March 27, 2014

David Brenna

Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 11-15-038, filed 7/13/11, effective 8/13/11)

**WAC 181-79A-257 Out-of-state candidates.** Candidates for certification from other states who meet the general certificate requirements described in WAC 181-79A-150 (1) and (2) shall be eligible for Washington certificates as follows:

(1) Residency certificates. The residency certificate shall be issued by the superintendent of public instruction to any candidate who meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, and who meets one of the following:

(a) Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter has completed a state approved preparation program in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4). Such programs shall include a defined course of study and a supervised internship.

(b) Provided, That if a candidate for teacher, administrator or educational staff associate certification does not meet the qualifications described in (a) of this subsection, a residency certificate shall be issued to a candidate who:

(i) Holds an appropriate degree from a regionally accredited college or university.

(ii) Holds or has held a certificate in the role, comparable to a residency certificate, issued by another state and has practiced at the P-12 level in the role outside the state of Washington for at least three years within the last seven years.

(c) Holds an appropriate degree from a regionally accredited college or university and has practiced three years as an educational staff associate in that role in a state where such certificate was not required.

(d) Holds a valid Nationally Certified School Psychologist (NCSP) certificate issued by the National School Psychology Certification Board (NSPCB) after December 31, 1991, and applies for an initial/residency educational staff associated school psychologist certificate.

(2) Professional certificate. After August 31, 2000, the professional certificate shall be issued to out-of-state candidates if the candidate meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, meets the child abuse course work requirement as described in WAC 181-79A-206 (3)(b), and if one of the following conditions is met:

(a) The candidate has completed an advanced level certification procedure approved by the professional educator standards board as equivalent to the approved program procedure required in Washington; or

(b) The candidate holds a valid teaching certificate issued by the National Board for Professional Teaching Standards; or

(c) The candidate holds a valid school counselor certificate issued by the National Board for Professional Teaching Standards; or

(d) A Washington state college or university with an approved professional certificate program verifies that the candidate has met all the requirements of that institution's approved program. The college/university shall evaluate the candidate's background to determine whether or not course work or certification activities are equivalent to that college/university's approved program.

(3) As per RCW 18.340.020 out-of-state candidates who are military spouses shall receive expedited issuance of the appropriate certificate in accordance with this section.

**WSR 14-08-056**  
**EXPEDITED RULES**  
**DEPARTMENT OF REVENUE**

[Filed March 28, 2014, 3:55 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-169 Nonprofit organizations, this rule reviews how the B&O tax, retail sales and use taxes apply to activities often performed by nonprofit organizations.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov, AND RECEIVED BY June 2, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to make the following changes to WAC 458-20-169:

- Add information pertaining to 2013 legislation that provides a use tax exemption for items valued at less than \$10,000 and purchased or received as a prize from a nonprofit organization or a library.
- Replace resale certificate language with reseller permit language.
- Change references pertaining to "nonprofit boarding homes" to "nonprofit assisted living facilities."
- Include reference to RCW 82.08.02573 that provides a retail sales tax exemption for the sales exempt under RCW 82.04.3651.
- Add language that health or social welfare organizations qualify for a deduction for compensation received for providing mental health services, and child welfare services, when under a government-funded program.
- Add that temporary medical housing qualifies under health or welfare services when criteria are met.

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

Reasons Supporting Proposal: Legislation.

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

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

Name of Proponent: Department of revenue, governmental.

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

534-1583; and Enforcement: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

March 28, 2014  
 Dylan Waits  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-070, filed 2/25/10, effective 3/28/10)

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

Other ~~((sections))~~ rules that may be relevant to specific activities of nonprofit organizations include the following:

(a) ~~((Artistic or cultural organizations, WAC 458-20-249;~~

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

(c) ~~Hospitals, nursing homes, boarding homes, adult family homes and similar health care facilities, WAC 458-20-168;~~

(d) ~~Membership organizations, nonprofit groups and clubs providing amusement, recreation, or physical fitness services, WAC 458-20-183; and~~

(e) ~~Organizations holding trade shows, conventions, or seminars, WAC 458-20-256.)~~ WAC 458-20-167. Educational institutions, school districts, student organizations, and private schools:

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

(c) WAC 458-20-183. Amusement, recreation, and physical fitness services:

(d) WAC 458-20-249. Artistic or cultural organizations: and

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

(2) **Registration requirements.** Nonprofit organizations with \$12,000 or more per year in gross receipts from sales, and/or gross income from services subject to the B&O tax, or ~~((who))~~ that are required to collect or pay to the department of revenue (department) retail sales tax or any other tax or fee which the department administers (regardless of the level of annual gross receipts) must register with the department. Nonprofit organizations ~~((that have))~~ with less than twelve

thousand dollars per year in gross receipts (of less than \$12,000 per year)) and (who) that are not required to collect retail sales tax or any other tax or fee administered by the department are not required to register with the department.

~~(For more details on registration requirements see)~~ Refer to WAC 458-20-101 (Tax registration and tax reporting) for more information on registration requirements.

(3) **Filing excise tax returns.** Nonprofit organizations making retail sales that require the collection of the retail sales tax must file a tax return, regardless of the annual level of gross receipts or gross income and whether or not any B&O tax is due. (See also WAC 458-20-104 ((f)). Small business tax relief based on income of business((g)).) The excise tax return with payment is generally filed on a monthly basis. However, under certain conditions the department may authorize taxpayers to file and remit payment on either a quarterly or annual basis. Refer to WAC 458-20-22801 (Tax reporting frequency) for more information regarding how reporting frequencies are assigned.

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

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

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

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

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

(b) **Retail sales tax.** A nonprofit organization must collect and remit retail sales tax on all retail sales, unless the sale is specifically exempt by statute. Examples of retail sales tax

exemptions that (~~commonly~~) may apply to nonprofit organizations are those for sales of certain food products (see WAC 458-20-244 (~~for more information regarding sales of~~), Food and food ingredients), construction materials purchased by a health or social welfare organization for new construction of alternative housing for youth in crisis, to be licensed as a family foster home (see RCW 82.08.02915), and fund-raising activities (see subsection (5)((e))) (g) of this (~~section~~) rule. New construction includes renovating an existing structure to provide new housing for youth in crisis.

A nonprofit organization must pay retail sales tax when it purchases goods or retail services for its own use as a consumer, unless the purchase is specifically exempt by statute. Items purchased for resale without intervening use are purchases at wholesale and are not subject to the retail sales tax (~~The purchaser should provide the seller with a resale certificate for purchases made before January 1, 2010, or a reseller permit for purchases made on or after January 1, 2010, to document the wholesale nature of any sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits))~~ if the seller takes from the buyer a copy of the buyer's reseller permit. The reseller permit documents the wholesale nature of any sale. Reseller permits replaced resale certificates effective January 1, 2010. See WAC 458-20-102 (Reseller permits) for more information on reseller permits and their proper use. Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

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

A common application of the use tax occurs when items are purchased from an out-of-state seller who has no presence in Washington. Because the out-of-state seller is under no obligation to collect Washington's retail sales or use tax, the buyer is statutorily required to remit use tax directly to the department. ((f))See (~~also~~) WAC 458-20-178 for more information regarding the use tax.((h))

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

(i) **Use tax exemption for donated items.** RCW 82.12.-02595 provides a use tax exemption for personal property donated to a nonprofit charitable organization. This exemption is available for the nonprofit charitable organization and the donor, if the donor did not previously use the (~~item~~) personal property as a consumer. It also applies to the use of property by a donor who is incorporating the property into a

nonprofit organization's real or personal property for no charge.

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

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

(iii) Effective October 1, 2013, RCW 82.12.225 provides a use tax exemption for the use of any article of personal property, valued at less than ten thousand dollars, purchased or received as a prize in a contest of chance, as defined in RCW 82.04.285, from a nonprofit organization or a library. This exemption only applies if the gross income from the sale by the nonprofit organization or library is exempt under RCW 82.04.3651. This exemption is scheduled to expire July 1, 2017.

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

(a) **Adult family homes.** (~~The~~) RCW 82.04.327 exempts from B&O tax ((does not apply to income earned by a)) amounts received by licensed adult family homes or ((an)) adult family homes that are exempt from licensing under rules of the department of social and health services. ((RCW 82.04.327.))

(b) **Nonprofit assisted living facilities.** RCW 82.04.-4262 exempts from B&O tax amounts received by a nonprofit assisted living facility licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the assisted living facility. Nonprofit assisted living facilities

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

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

(~~Income derived~~) Amounts received from the sale of the following items and services (~~is~~) are exempt:

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

(ii) Food and meals;

(iii) Books, tapes, and other products that are available exclusively to the participants at the camp, conference, or meeting and are not available to the public at large. Effective July 26, 2009, electronically transferred items are included in the exemption.

(~~The property tax exemptions are further discussed at WAC 458-16-210 (Church camps), WAC 458-16-220 (Nonprofit organizations or associations organized and conducted for nonsectarian purposes), and WAC 458-16-230 (Character building organizations).~~)

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

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

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

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

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

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

(~~e~~) (f) **Day care provided by churches.** (~~The~~) RCW 82.04.339 exempts from B&O ((tax does not apply to income derived)) amounts received by a church for the care of children of any age for periods of less than twenty-four hours, provided the church is exempt from property tax under RCW 84.36.020. ((RCW 82.04.339.

(~~f~~) (g) **Fund-raising.** RCW 82.04.3651 ((provides a)) and 82.08.02573 respectfully exempt from B&O tax ((exemption for)) and retail sales tax amounts received from certain fund-raising activities. ((RCW 82.08.02573 provides a comparable retail sales tax exemption.

It is important to note that))

These exemptions apply only to the fund-raising income received by the nonprofit organization. For example, ~~((the))~~ commission income received by a nonprofit organization selling books owned by a for-profit entity on a consignment basis is exempt of tax only if the statutory requirements are satisfied. The nonprofit organization is generally responsible for collecting and remitting retail sales tax upon the gross proceeds of sales when selling items for another person ~~((f))~~ See WAC 458-20-159~~((f))~~ (Consignees, bailees, factors, agents and auctioneers) for more information regarding such sales.

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

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

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

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

~~((A nonprofit organization may meet (A), (B), or (C) above.))~~

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

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

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

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

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

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

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

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

(B) A nonprofit organization that makes catalog sales throughout the year with a twenty-four hour telephone line for taking orders has a regular place of business at the loca-

tion where the sales orders are processed and regular hours of twenty-four hours a day. Catalog sales are not exempt as fund-raising amounts even though the funds are raised for a nonprofit purpose.

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

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

(v) **Fund-raising sales by libraries.** RCW 82.04.3651 specifically provides that the sale of used books, used videos, used sound recording, or similar used information products in a library is not the operation of a regular place of business, if the proceeds are used to support the library. The library must be a free public library supported in whole or in part with money derived from taxes. RCW 27.12.010.

~~((g))~~ Effective July 1, 2010, RCW 82.08.02573 provides a comparable retail sales tax exemption for the same sales, as mentioned above, made by a library. See RCW 82.04.3651.

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

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

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

(ii) **What is meant by "gainful employment or rehabilitation services to a handicapped person"?** Gainful employment or rehabilitation services must be an interim step in the rehabilitation process which is provided because the

person cannot be readily absorbed into the competitive labor market or because employment opportunities for the person do not exist during that time in the competitive labor market.

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

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

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

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

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

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

**(b) Mental health services.** Effective August 1, 2011, health or social welfare organizations also qualify for a deduction for amounts received as compensation for providing mental health services under a government-funded program. Regional support networks may also deduct from the measure of tax amounts received from the state of Washington for distribution to health or social welfare organizations eligible to deduct the distribution under RCW 82.04.4277. Persons claiming deductions under RCW 82.04.4277 must file an annual report with the department. See RCW 82.32.-534. These deductions are scheduled to expire August 1, 2016.

**(c) Child welfare services.** Also effective August 1, 2011, health or social welfare organizations qualify for a deduction for amounts received as compensation for providing child welfare services under a government-funded program. Persons may also deduct from the measure of tax amounts received from the state of Washington for distribution to health or social welfare organizations eligible to deduct the distribution under RCW 82.04.4275(1).

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

(i) Be a corporation sole under chapter 24.12 RCW or a domestic or foreign not-for-profit corporation under chapter 24.03 RCW. It does not include a corporation providing professional services authorized under chapter 18.100 RCW;

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

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

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

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

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

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

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

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

~~((b))~~ **(e) Qualifying health or welfare services.** The term "health or social welfare services ~~((are))~~" includes and is limited ~~((exclusively))~~ to ~~((the following services))~~:

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

(ii) Family counseling;

(iii) Health care services;

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

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

(vi) Care of orphans or foster children;

(vii) Day care of children;

(viii) Employment development, training, and placement;

(ix) Legal services to the indigent;

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

(xi) Assistance to low-income homeowners and renters to offset the cost of home heating energy, through direct ben-

efits to eligible households or to fuel vendors on behalf of eligible households; and

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

(xiii) Effective July 1, 2008, temporary medical housing, as defined in RCW 82.08.997, if the housing is provided only;

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

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

### WSR 14-08-057

#### EXPEDITED RULES

#### DEPARTMENT OF REVENUE

[Filed March 28, 2014, 4:08 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-261 Commute trip reduction incentive, this rule discusses the various commute trip reduction incentives available. The amendments in this proposal are to the commute trip reduction incentives under chapter 82.70 RCW in connection with ride sharing, public transportation, car sharing, and nonmotorized commuting.

#### 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 Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, AND RECEIVED BY Monday, June 2, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend WAC 458-20-261 ("Rule 261") to recognize provisions of ESSB 5024, sections 718 and 719, chapter 306, Laws of 2013, 2013 regular session; and ESSB 6001, passed legislature, section 707, 2014 regular session. The commute trip reduction incentives provided by chapter 82.70 RCW were extended to June 30, 2015. The law was also amended to reduce the fiscal year limitation on the credit for the fiscal year periods beginning July 1, 2013, through June 30, 2016, from \$2.75 million to \$1.5 million for these final fiscal years.

The department proposes to remove all language in the rule that references to pre-2005 periods and also to make the

following amendments to subsection (4)(h) and (i), as follows:

Subsection (4)(h) changes the expiration date from July 1, 2013, to June 30, 2015.

Subsection (4)(i) explains that the total credit granted to all persons under both the B&O tax and the public utility tax, including any credit carry forward from the prior fiscal years, may not exceed:

(A) Two million seven hundred fifty thousand dollars in any fiscal year through the fiscal year ending June 30, 2013; and

(B) One million five hundred thousand dollars per fiscal year for the period beginning July 1, 2013, through June 30, 2016.

After these changes and the removal of the language describing the pre-2005 periods from the rule, the remaining section designations in the rule consisting of letters and roman numerals were adjusted as necessary.

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

Reasons Supporting Proposal: To recognize provisions of ESSB 5024, sections 718 and 719, chapter 306, Laws of 2013, 2013 regular session, as well as ESSB 6001, passed legislature, section 707, 2014 regular session, and remove language from the rule that references the pre-2005 tax periods.

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

Statute Being Implemented: RCW 82.70.020 and 82.70.040.

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: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

March 28, 2014  
Dylan Waits  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-01-026, filed 12/13/05, effective 1/13/06)

**WAC 458-20-261 Commute trip reduction incentives.** (1) **Introduction.** This rule explains the various commute trip reduction incentives that are available. First, RCW 82.04.355 and 82.16.047 provide exemptions from business and occupation (B&O) tax and public utility tax on amounts received from providing commuter ride sharing and ride sharing for persons with special transportation needs. RCW 82.08.0287 and 82.12.0282 provide sales and use tax exemptions for sales or use of passenger motor vehicles as ride-sharing vehicles. Finally, chapter 82.70 RCW provides commute trip reduction incentives in the form of B&O tax or public utility tax credit, effective July 1, 2003, in connection with

ride sharing, public transportation, car sharing, and nonmotorized commuting.

(2) **B&O tax and public utility tax exemptions on providing commuter ride sharing or ride sharing for persons with special transportation needs.** Amounts received in the course of commuter ride sharing or ride sharing for persons with special transportation needs are exempt from the business and occupation tax and from the public utility tax. RCW 82.04.355 and 82.16.047.

(a) **What is "commuter ride sharing"?** "Commuter ride sharing" means a car pool or van pool arrangement, whereby one or more fixed groups:

(i) Not exceeding fifteen persons each, including the drivers; and

(ii) Either:

(A) Not fewer than five persons, including the drivers; or

(B) Not fewer than four persons, including the drivers, where at least two of those persons are confined to wheelchairs when riding;

Are transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding any special rider equipment. The transportation must be between their places of residence or near such places of residence, and their places of employment or educational or other institutions. Each group must be in a single daily round trip where the drivers are also on the way to or from their places of employment or educational or other institutions.

(b) **What is "ride sharing for persons with special transportation needs"?** "Ride sharing for persons with special transportation needs" means an arrangement, whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider, in a passenger motor vehicle as defined by the department of licensing to include small buses, cutaways, and modified vans not more than twenty-eight feet long. The driver need not be a person with special transportation needs.

(i) **What is a "private, nonprofit transportation provider"?** A "private, nonprofit transportation provider" is any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs.

(ii) **What is "persons with special transportation needs"?** "Persons with special transportation needs" are those persons, including their personal attendants, who because of physical or mental disability, income status, or age, are unable to transport themselves or to purchase appropriate transportation.

(3) **Retail sales tax and use tax exemptions on sales or use of passenger motor vehicles as ride-sharing vehicles.** RCW 82.08.0287 and 82.12.0282 provide retail sales tax and use tax exemptions for sales and use of passenger motor vehicles as ride-sharing vehicles.

(a) **What are the requirements?** The requirements are that the passenger motor vehicles must be used:

(i) For commuter ride sharing or ride sharing for persons with special transportation needs; and

(ii) As ride-sharing vehicles for thirty-six consecutive months beginning from the date of purchase (retail sales tax



exemption) and the date of first use (use tax exemption). If the vehicle is used as a ride-sharing vehicle for less than thirty-six consecutive months, the registered owner must pay the retail sales tax or use tax.

(b) **Additional requirements in certain cases.** Vehicles with five or six passengers, including the driver, used for commuter ride sharing must be operated within a county, or a city or town within that county, which has a commute trip reduction plan under chapter 70.94 RCW in order to be exempt from retail sales tax or use tax. In addition, for the exemptions to apply, at least one of the following conditions must apply:

(i) The vehicle must be operated by a public transportation agency for the general public;

(ii) The vehicle must be used by a major employer, as defined in RCW 70.94.524, as an element of its commute trip reduction program for their employees; or

(iii) The vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work.

Individual-employee owned and operated motor vehicles require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commute ride-sharing arrangement conforms to a car pool/van pool element contained within their commute trip reduction program.

(4) **B&O tax or public utility tax credit for ride sharing, public transportation, car sharing, or nonmotorized commuting.** Effective July 1, 2003, RCW 82.70.020 provides a credit against B&O tax or public utility tax liability for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(a) **Who is eligible for this credit?**

(i) Employers in Washington are eligible for this credit, for amounts paid to or on behalf of their own or other employees, as financial incentives to such employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(ii) Property managers who manage worksites in Washington are eligible for this credit, for amounts paid to or on behalf of persons employed at those worksites, as financial incentives to such persons for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(b) **What is "ride sharing"?** "Ride sharing" means a car pool or van pool arrangement, whereby a group of at least two but not exceeding fifteen persons, including the driver, is transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding any special rider equipment. The transportation must be between their places of residence or near such places of residence, and their places of employment or educational or other institutions. The driver must also be on the way to or from his or her place of employment or educational or other institution. "Ride sharing" includes ride sharing on Washington state ferries.

(c) **What is "public transportation"?** "Public transportation" means the transportation of packages, passengers, and their incidental baggage, by means other than by charter bus or sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems. "Public transportation" includes passenger services of the Washington state ferries.

(d) **What is "car sharing"?** "Car sharing" means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis.

(e) **What is "nonmotorized commuting"?** "Nonmotorized commuting" means commuting to and from the workplace by an employee, by walking or running or by riding a bicycle or other device not powered by a motor. "Nonmotorized commuting" does not include teleworking, which is a program where work functions normally performed at a traditional workplace are instead performed by an employee at his or her home, at least one day a week for the purpose of reducing the number of trips to the employee's workplace.

(f) **What is the credit amount?** The amount of the credit is equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per fiscal year.

(g) **What is a "fiscal year"?** A "fiscal year" begins at July 1st of one year and ends on June 30th of the following year.

(h) **When will the credit expire?** The credit program is scheduled to expire ~~((July 1, 2013))~~ June 30, 2015.

(i) **What are the limitations of the credit?** ~~((+))~~ For periods after June 30, 2005:

~~((A))~~ (i) The credit may not exceed the amount of B&O tax or public utility tax that would otherwise be due for the same fiscal year.

~~((B))~~ (ii) A person may not receive credit for amounts paid to or on behalf of the same employee under both B&O tax and public utility tax.

~~((C))~~ (iii) A person may not take a credit for amounts claimed for credit by other persons.

~~((D))~~ (iv) Total credit received by a person against both B&O tax and public utility tax may not exceed two hundred thousand dollars for a fiscal year. This limitation does not apply to credits deferred from prior fiscal years as described in ~~(i)((+)(G))~~ (vii) and ~~((H))~~ (viii) of this subsection.

~~((E))~~ (v) Total credit granted to all persons under both B&O tax and public utility tax ~~((may not exceed two million seven hundred fifty thousand dollars for a fiscal year))~~, including any credits carried forward from prior fiscal years as described in ~~(i)((+)(G))~~ (vii) of this subsection, may not exceed:

(A) Two million seven hundred fifty thousand dollars in any fiscal year through the fiscal year ending June 30, 2013; and

(B) One million five hundred thousand dollars per fiscal year for the period beginning July 1, 2013, through June 30, 2016.

~~((F))~~ (vi) No credit or portion of a credit denied, because of exceeding the limitations in ~~(i)((+)(D))~~ (iv) or

~~((E))~~ ~~(v)~~ of this subsection, may be used against tax liability for other fiscal years, subject to ~~(i)((+)(G))~~ ~~(vii)~~ and ~~((H))~~ ~~(viii)~~ of this subsection.

~~((G))~~ ~~(vii)~~ A person, with B&O tax and public utility tax liability equal to or in excess of the credit for a fiscal year, may use all or part of the credit deferred prior to July 1, 2005, for a period of not more than three fiscal years after the fiscal year in which the credit accrued. No credit deferred under this paragraph (i)((+)(G)) (vii) of this subsection may be used after June 30, 2008. The person must submit an application, as provided in ~~(j)(i)((A))~~ of this subsection, in the fiscal year tax credit will be applied, and the credit must be approved by the department before use. This application is subject to eligibility under ~~(i)((+)(E))~~ ~~(v)~~ of this subsection for the fiscal year tax credit will be applied. If a deferred credit is subject to proportional reduction under ~~(j)((+)(D))~~ ~~(iv)~~ of this subsection, the amount of deferred credit reduced may be carried forward as long as the period of deferral does not exceed three years after the year the credit was earned.

~~((H))~~ ~~(viii)~~ For deferred credit approved by the department after June 30, 2005, the approved credit may be carried forward to subsequent years until used. The limitation described in ~~(i)((+)(E))~~ ~~(v)~~ of this subsection does not apply to such deferred credit approved after June 30, 2005.

~~((H))~~ ~~(ix)~~ No person is eligible for the tax credit, including the deferred tax credit authorized under ~~(i)((+)(G))~~ ~~(vii)~~ and ~~((H))~~ ~~(viii)~~ of this subsection, after June 30, ~~(2013)~~ 2014.

~~((H))~~ ~~(x)~~ No person is eligible for tax credit if the additional revenues for the multimodal transportation account created under RCW 46.68.035(1), 82.08.020(3), 82.12.045(7), 46.16.233(2), and 46.16.690 (created by the Engrossed Substitute House Bill No. 2231, chapter 361, Laws of 2003) are terminated.

**~~((ii) For periods prior to July 1, 2005:~~**

~~(A) The credit may not exceed the amount of B&O tax or public utility tax that would otherwise be due for the same fiscal year.~~

~~(B) A person may not receive credit for amounts paid to or on behalf of the same employee under both B&O tax and public utility tax.~~

~~(C) A person may not take a credit for amounts claimed for credit by other persons.~~

~~(D) Total credit received by a person against both B&O tax and public utility tax may not exceed two hundred thousand dollars for a fiscal year. This limitation does not apply to credits deferred from prior fiscal years as described in (i)(ii)(G) of this subsection.~~

~~(E) Total credit granted to all persons under both B&O tax and public utility tax may not exceed two million two hundred fifty thousand dollars for a fiscal year, including any credits carried forward from prior fiscal years as described in (i)(ii)(G) of this subsection.~~

~~(F) No credit or portion of a credit denied, because of exceeding the limitations in (i)(ii)(D) or (E) of this subsection, may be used against tax liability for other fiscal years, subject to (i)(ii)(G) of this subsection.~~

~~(G) A person, with B&O tax and public utility tax liability equal to or in excess of the credit for a fiscal year, may defer all or part of the credit for a period of not more than~~

three fiscal years after the fiscal year in which the credit accrued. Such person deferring tax credit must submit an application in the fiscal year tax credit will be applied. This application is subject to eligibility under ~~(i)(ii)(E)~~ of this subsection for the fiscal year tax credit will be applied.

~~(H) No person is eligible for the tax credit, including the deferred tax credit authorized under (i)(ii)(G) of this subsection, after June 30, 2013.~~

~~(I) No person is eligible for tax credit if the additional revenues for the multimodal transportation account created under RCW 46.68.035(1), 82.08.020(3), 82.12.045(7), 46.16.233(2), and 46.16.690 (created by the Engrossed Substitute House Bill No. 2231, chapter 361, Laws of 2003) are terminated.)~~

~~(j) What are the credit procedures? ((+))~~ For periods after June 30, 2005:

~~((A))~~ ~~(i)~~ Persons applying for the credit must complete an application. The application must be received by the department between January 1 and January 31, following the calendar year in which the applicants made incentive payments. The application must be made to the department in a form and manner prescribed by the department.

~~((B))~~ ~~(ii)~~ An application due by January 31, 2006, must not include incentive payments made from January 1, 2005, to June 30, 2005.

~~((C))~~ ~~(iii)~~ The department must rule on an application within sixty days of the January 31 deadline. In addition, the department must disapprove an application not received by the January 31 deadline. Once the application is approved and tax credit is granted, the department is not allowed to increase the credit.

~~((D))~~ ~~(iv)~~ If the total amount of credit applied for by all applicants in a fiscal year exceeds the limitation as provided in ~~(i)((+)(E))~~ ~~(v)~~ of this subsection, the amount of credit allowed for all applicants is proportionally reduced so as not to exceed the limit. The amount reduced may not be carried forward and claimed in subsequent fiscal years, except as provided in ~~(i)((+)(G))~~ ~~(vii)~~ of this subsection.

**~~((ii) For periods prior to July 1, 2005:~~**

~~(A) Persons apply for the credit, by completing a commute trip reduction reporting schedule and filing it with the excise tax return covering the period for which the credit is claimed. The commute trip reduction reporting schedule is available upon request from the department of revenue.~~

~~(B) Credit must be claimed by the due date of the last tax return for the fiscal year in which the payment to or on behalf of employees was made.~~

~~(I) Credit not previously claimed may not be claimed for the first time on supplemental or amended tax returns filed after the due date of the last tax return for the fiscal year in which the payment to or on behalf of employees was made.~~

~~(H) If the department of revenue has granted an extension of the due date for the last tax return for the fiscal year in which the payment to or on behalf of employees was made, the credit must be claimed by the extended due date.~~

~~(C) Once the statewide limitation of two million two hundred fifty thousand dollars is reached in a fiscal year, no further credit will be available for that fiscal year. Credit is permitted by the department of revenue on a first-come first-serve basis. Credit claimed after the statewide limitation is~~

reached may be deferred to the next three fiscal years before the credit expires.)

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

(i) An employer pays one hundred eighty dollars for a yearly bus pass for one employee. For another employee, the employer buys a bicycle helmet and bicycle lock for a total of fifty dollars. These are the total expenditures during a fiscal year of amounts paid to or on behalf of employees in support of ride sharing, using public transportation, using car sharing, and using nonmotorized commuting. The employer may claim a credit of sixty dollars for the amount spent for the employee using the bus pass. Fifty percent of one hundred eighty dollars is ninety dollars, but the credit is limited to sixty dollars per employee. The employer may claim a credit of twenty-five dollars (fifty percent of fifty dollars) for the amount spent for the employee who bicycles to work. Even though fifty percent of two hundred thirty dollars, the amount spent on both employees, works out to be less than sixty dollars per employee, the credit is computed by looking at actual spending for each employee and not by averaging the spending for both employees.

(ii) An employer provides parking spaces for the exclusive use of ride-sharing vehicles. Amounts spent for signs, painting, or other costs related to the parking spaces do not qualify for the credit. This is because the credit is for financial incentives paid to or on behalf of employees. While the parking spaces support the use of ride-sharing vehicles, they are not financial incentives and do not involve amounts paid to or on behalf of employees.

(iii) As part of its commute trip reduction program, an employer pays the cab fare for an employee who has an emergency and must leave the workplace but has no vehicle available because he or she commutes by ride-sharing vehicle. The cab fare qualifies for the credit, if it does not cause the sixty-dollar limitation to be exceeded, because it is an amount paid on behalf of a specific employee.

(iv) An employer pays the property manager for a yearly bus pass for one employee who works at the worksite managed by the property manager. The property manager in turn pays the amount received from the employer to a public transportation agency to purchase the bus pass. Either the employer or the property manager, but not both, may take the credit for this expenditure.

taxing districts when the statutory aggregate dollar rate limit is exceeded, 458-19-075 Constitutional one percent limit calculation, and 458-19-085 Refunds—Procedures—Applicable limits.

#### 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 Jay Jetter, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail JayJ@dor.wa.gov, AND RECEIVED BY June 2, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue is proposing to amend these rules to incorporate recent legislation:

WAC 458-14-056 incorporates ESHB 1826 (2011), which requires a board of equalization to waive the filing deadline for valuation appeals when certain criteria are met.

WAC 458-19-045 incorporates 2SSB 5433 (2009), which allows property tax resulting from levy lid lifts to be used to supplant existing funds in certain counties in certain years; ESB 6641 (2008), which clarifies that all single year and multiple year lid lifts are considered temporary unless the ballot proposition approved by voters make[s] the increase permanent; ESB 5498 (2007), which extended the ability to request multiple year lid lifts to all taxing districts; and 2ESSB 5659 (2003), which allowed counties, cities, and towns to approve lid lifts for a six-year period with one vote.

WAC 458-19-055 incorporates ESHB 1432 (2013), which provides that the veteran's assistance levy and developmental disability and mental health levy may be increased or reduced in the same proportion as the regular county property tax levy, as approved by the county legislative authority. This authorization includes situations where the county legislative authority has decided to not levy the full amount of property tax revenue otherwise allowed under the law and bank the unused levy capacity for future use.

WAC 458-19-060 incorporates SSB 5381 (2012), which adjusts the voter requirements for the "uninterrupted continuation" renewal of a six-year or ten-year EMS levy to only require a majority vote and does not contain any validation requirements; also incorporates SB 5628 (2011), relating to a limited property tax exemption for part of a city from a county's emergency medical services levy.

WAC 458-19-070 incorporates 2ESB 5638 (2011), which allows certain metropolitan park districts to protect a portion of its levy rate outside of the \$5.90 limitation with voter approval; also incorporates EHB 1969 (2011), which allows a flood control zone district in certain counties to protect a portion of its levy rate outside of the \$5.90 limitation.

WAC 458-19-075 incorporates 2ESB 5638 (2011), which allows certain metropolitan park districts to protect a portion of its levy rate outside of the \$5.90 limitation with

**WSR 14-08-086**  
**EXPEDITED RULES**  
**DEPARTMENT OF REVENUE**

[Filed April 1, 2014, 1:36 p.m.]

Title of Rule and Other Identifying Information: WAC 458-14-056 Petitions—Time limits—Waiver of filing deadline for good cause, 458-19-045 Levy limit—Removal of limit (lid lift), 458-19-055 Levy limit—Proration of earmarked funds, 458-19-060 Emergency medical service levy, 458-19-070 Procedure to adjust consolidated levy rate for

voter approval; also incorporates EHB 1969 (2011), which allows a flood control zone district in certain counties to protect a portion of its levy rate outside of the \$5.90 limitation.

WAC 458-19-085 incorporates SHB [SSB] 5705 (2013), which provides that taxes may be levied within a taxing district in order to reimburse a taxing district for taxes that were abated or cancelled, offset by any supplemental tax, in the next levy cycle. Any tax received to reimburse the taxing district for taxes that were abated or cancelled does not reduce the levy authority of that taxing district.

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

Reasons Supporting Proposal: To recognize past legislation.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.48.080, 84.48.200, 84.52.0502, 84.55.060.

Statute Being Implemented: RCW 71.20.110, 73.08.080, 84.40.038, 84.55.050, 84.52.043, 84.52.010, 84.52.069, 84.52.120, 84.52.81 [84.52.815], 84.69.180.

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: Jay Jetter, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1575; Implementation and Enforcement: Kathy Beith, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 534-1403.

April 1, 2014  
Dylan Waits  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 10-07-133, filed 3/23/10, effective 4/23/10)

**WAC 458-14-056 Petitions—Time limits—Waiver of filing deadline for good cause.** (1) The sole method for appealing an assessor's determination to the board, as to valuation of property, or as to any other types of assessor determinations is by means of a properly completed and timely filed taxpayer petition.

(2) A taxpayer's petition for review of the assessed valuation placed upon property by the assessor or for review of any of the types of appeals listed in WAC 458-14-015 must be filed in duplicate with the board (~~on or before July 1st of the assessment year or within thirty days, or up to sixty days if a longer time period is adopted by the county legislative authority, after the date an assessment or value change notice or other determination notice is mailed to the taxpayer, whichever date is later~~). The deadline for filing such petition with the board shall be the later of:

(a) July 1st of the year of assessment or determination;

(b) Thirty days from the date that an assessment, value change notice, or other notice has been mailed; or

(c) Sixty days from the date that an assessment, value change notice, or other notice has been mailed, if a longer time period was established by the county legislative authority. (RCW 84.40.038).

(3) No late filing of a petition shall be allowed except as specifically provided in this subsection. The board may

waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows good cause, as defined in this subsection, for the late filing. However, the board must waive the filing deadline for the circumstance described under (g) of this subsection if the petition is filed within a reasonable time after the deadline. A petition that is filed after the deadline without a showing of good cause, as described in this subsection, must be dismissed unless, after the taxpayer is notified by the board that the petition will be dismissed because of the late filing, the taxpayer promptly shows good cause for the late filing. The board must decide a taxpayer's claim of good cause without holding a public hearing on the claim and must promptly notify the taxpayer of the decision, in writing. The board's decision regarding a waiver of the filing deadline is final and not appealable to the state board of tax appeals. Good cause may be shown by documentation of one or more of the following events or circumstances:

(a) The taxpayer was unable to file the petition by the filing deadline because of a death or serious illness of the taxpayer or of a member of the taxpayer's immediate family occurring at or shortly before the time for filing. For purposes of this subsection, the term "immediate family" includes, but is not limited to, a grandparent, parent, brother, sister, spouse, domestic partner, child, grandchild, or domestic partner's child or grandchild.

(b) The taxpayer was unable to file the petition by the filing deadline because of the occurrence of all of the following:

(i) The taxpayer was absent from his or her home or from the address where the assessment notice or value change notice is normally received by the taxpayer. If the notice is normally mailed by the assessor to a mortgagee or other agent of the taxpayer, the taxpayer must show that the mortgagee or other agent was required, pursuant to written instructions from the taxpayer, to promptly transmit the notice and failed to do so; and

(ii) The taxpayer was absent (as described in (b)(i) of this subsection) for more than fifteen of the days allowed in subsection (2) of this section prior to the filing deadline; and

(iii) The filing deadline is after July 1<sup>st</sup> of the assessment year.

(c) The taxpayer was unable to file the petition by the filing deadline because the taxpayer reasonably relied upon incorrect, ambiguous, or misleading written advice as to the proper filing requirements by either a board member or board staff, the assessor or assessor's staff, or the property tax advisor designated under RCW 84.48.140, or his or her staff.

(d) The taxpayer was unable to file the petition by the filing deadline because of a natural disaster such as a flood or earthquake occurring at or shortly before the time for filing.

(e) The taxpayer was unable to file the petition by the filing deadline because of a delay or loss related to the delivery of the petition by the postal service. The taxpayer must be able to provide documentation from the postal service of such a delay or loss.

(f) The taxpayer is a business and was unable to file the petition by the filing deadline because the person employed by the business, responsible for dealing with property taxes, was unavailable due to illness or unavoidable absence.

(g) The taxpayer was not sent a revaluation notice under RCW 84.40.045 for the current assessment year and the taxpayer can demonstrate both of the following:

(i) The taxpayer's property value did not change from the previous year; and

(ii) The taxpayer's property is located in an area revalued by the assessor for the current assessment year.

(4) If a petition is filed by mail it must be postmarked no later than the filing deadline. If the filing deadline falls upon a Saturday, Sunday or holiday, the petition must be filed on or postmarked no later than the next business day.

(5) A petition is properly completed when all relevant questions on the form provided or approved by the department have been answered and the answers contain sufficient information or statements to apprise the board and the assessor of the reasons for the appeal. A petition which merely states that the assessor's valuation is too high or that property taxes are excessive, or similar such statements, is not properly completed and must not be considered by the board. If, at the time of filing the petition, the taxpayer does not have all the documentary evidence available which he or she intends to present at the hearing, the petition will be deemed to be properly completed for purposes of preserving the taxpayer's right of appeal, if it is otherwise fully and properly filled out. However, any comparable sales, valuation evidence, or other documentary evidence not submitted at the time the petition is filed must be provided by the taxpayer to the assessor and the board at least seven business days, excluding legal holidays, prior to the board hearing. A copy of the completed petition must be provided to the assessor by the clerk of the board. Any petition not fully and properly completed must not be considered by the board (RCW 84.40.038) and a notice of the board's rejection of the petition must be promptly mailed to the taxpayer. See: WAC 458-14-066 Requests for valuation information—Duty to exchange information—Time limits, for an explanation of the availability, use and exchange of valuation and other documentary information prior to the hearing before the board.

(6) Whenever the taxpayer has an appeal pending with the board, the state board of tax appeals or with a court of law, and the assessor notifies the taxpayer of a change in property valuation, the taxpayer is required to file a timely petition with the board in order to preserve the right to appeal the change in valuation. For example, if a taxpayer has appealed a decision of the board to the board of tax appeals regarding an assessed value for the year 2005, and that appeal is pending when the assessor issues a value change notice for the 2006 assessment year, the taxpayer must still file a timely petition appealing the valuation for the 2006 assessment year in order to preserve his or her right to appeal from that 2006 assessed value.

(7) Petition forms shall be available from the clerk of the board and from the assessor's office.

**AMENDATORY SECTION** (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

**WAC 458-19-045 Levy limit—Removal of limit (lid lift).** (1) **Introduction.** The levy limit may be exceeded when authorized by a majority of the voters voting on a proposition

to "lift the lid" of the levy limit in accordance with RCW 84.55.050. This "lid lift" is intended to allow the levy limit to be exceeded for the levy made immediately following the vote on the proposition. The purpose of the lid lift is to allow additional property taxes to be collected at a time when the levy limit in chapter 84.55 RCW is the effective legal constraint to the collection of additional property taxes. Lid lifts may result in increasing the limit factor for one year or up to six consecutive years. The result of the limit factor increase can temporarily or permanently impact subsequent levy limit calculations. The requirements for the text of a ballot title and measure differ depending on whether the levy limit will be exceeded for a single year or multiple years, up to six consecutive years. This rule explains the procedures for implementing a lid lift ballot measure when a taxing district wants to ask its voters for the authority to exceed the levy limit.

(2) **Election for approval of lid lift proposition—when held.** The election to approve a lid lift proposition must be held within the taxing district and may be held at the time of a general election, or at a special election called by the governing body of the taxing district for that purpose. The election must be held not more than twelve months prior to the date the proposed levy is to be made. For purposes of this rule, a levy is "made" when the taxing district's budget is certified. The ballot title and measure proposing the lid lift ~~(is)~~ are prepared by the county prosecutor or city attorney, as applicable, in accordance with RCW ~~((29.27.066))~~ 29A.36.071. RCW ~~((29.27.066))~~ 29A.36.071 requires a ballot title to include a concise description of the measure, not to exceed seventy-five words. A simple majority vote is required for approval of a lid lift.

(3) ~~(Ballot title and contents of ballot measure.)~~ **Single year lid lift.** A "single year lid lift" allows a taxing district to increase its levy by more than one percent over its highest lawful levy since 1986 for one year. The text of a ballot title and measure for a single year lid lift must contain~~(s)~~ the following:

(a) The dollar rate of the proposed levy so that it reflects the total dollar rate for the taxing district, which may be less than the maximum statutory dollar rate allowed for the particular class of taxing district; ~~(and)~~

(b) Any of the following limitations that are applicable:

(i) The number of years the increased levy is to be made by the taxing district; however, if one of the purposes of the increased levy is to make redemption payments on bonds of the taxing district, the duration of the increased levy cannot exceed nine years; and/or

(ii) The purpose or purposes of the increased levy; and

(iii) Whether the dollar amount of the increased levy will be used for the purpose of computing the limitations for subsequent levies and thereby permanently increase the taxing district's levy base.

(4) **Multiple year lid lift.** A "multiple year lid lift" allows a taxing district to increase its levy by more than one percent over its highest lawful levy since 1986 for up to six consecutive years.

(a) The text of a ballot title and measure for a multiple year lid lift must contain the following:

(i) The dollar rate of the first year's proposed levy so that it reflects the total dollar rate for the taxing district, which

may be less than the maximum statutory dollar rate allowed for the particular class of taxing district:

(ii) The limit factor, or specific index used to determine the limit factor (such as the consumer price index), which need not be the same for all years, by which the regular tax levy for the district may be increased in each of the subsequent consecutive years;

(iii) Any of the following limitations that are applicable:

(A) The number of years the increased levy is to be made by the taxing district; however, if one of the purposes of the increased levy is to make redemption payments on bonds of the taxing district, the duration of the increased levy cannot exceed nine years;

(B) The purpose or purposes of the increased levy; and

(C) Whether the dollar amount of the increased levy will be used for the purpose of computing the limitations for subsequent levies and thereby permanently increase the taxing district's levy base.

(b) Supplanting of existing funds.

(i) Except as otherwise provided in (b) of this subsection, funds raised by a levy under this section may not supplant existing funds used for the limited purpose specified in the ballot title. For purposes of (b) of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the control of the taxing district receiving the services, and major nonrecurring capital expenditures.

(ii) In counties with a population of less than one million five hundred thousand, funds raised through a lid lift can be used to supplant existing funds beginning with levies submitted and approved by the voters after July 26, 2009.

(iii) In counties with a population of one million five hundred thousand or more, funds raised through a lid lift can be used to supplant existing funds for levies approved by the voters between July 26, 2009, and December 31, 2011.

~~((4))~~ **(5) Permanent lid lift.** A permanent lid lift occurs when the ballot title and ~~(the)~~ ballot measure ~~((contain none of the limitations stated in subsection (3)(b) of this rule))~~ expressly state that the levy will be used for the purpose of computing the limitations for subsequent levies as provided in subsection (3)(a)(iii) and (4)(a)(iii)(C) of this section. Approval of a permanent lid lift permanently increases the base used to calculate the levy limit.

(a) The first regular levy of a taxing district made after voter approval of a permanent lid lift proposition is calculated on the basis of the dollar rate stated in the ballot title, but that dollar rate is subject to the constitutional one percent limit and the statutory aggregate dollar rate limit and any applicable prorationing.

(b) The levy limit on regular levies of a taxing district made subsequent to the first regular levy made after voter approval of a permanent lid lift proposition is calculated by multiplying the highest amount that could have been lawfully levied since 1985, including the dollar amount of the regular levy calculated in accordance with (a) of this subsection by the limit factor.

~~((5))~~ **(6) Temporary lid lift.** ~~((A temporary lid lift occurs when the ballot title and the ballot measure contain a time limit for the increased levy or contains a limited purpose or purposes for the increased levy, or both.))~~ If the ballot title and ballot measure do not expressly indicate that the final levy will be used for the purpose of computing subsequent levies, the levy increase is presumed temporary.

(a) The first regular levy of a taxing district made after voter approval of a temporary lid lift proposition is calculated on the basis of the dollar rate stated in the ballot title, but that dollar rate is subject to the constitutional one percent limit and the statutory aggregate dollar rate limit and any applicable prorationing.

(b) The levy limit on regular levies of a taxing district made subsequent to the first regular levy made after voter approval of a temporary lid lift proposition is calculated by multiplying the highest amount that could have been lawfully levied since 1985, including the dollar amount of the regular levy calculated in accordance with (a) of this subsection by the limit factor.

~~((c) After expiration of the time limit authorized or satisfaction of the limited purpose for which the lid lift was authorized, whichever comes first, the levy limit as defined in RCW 84.55.005 on the taxing district's subsequent regular levies is calculated as if the lid lift proposition had not been approved.))~~

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

**WAC 458-19-060 Emergency medical service levy.**

(1) **Introduction.** This rule explains the criteria contained in RCW 84.52.069 relative to a taxing district imposing a limited or permanent regular levy for emergency medical care or emergency medical services. It describes the permitted duration of this levy, the ballot title and measure that must be presented to and approved by the voters, the maximum rate for this levy, and the applicable limits.

(2) **Purpose - Voter approval required - Who may levy.** An emergency medical service (EMS) levy is a regular voter approved levy. Any taxes collected as a result of this levy can only be used to provide emergency medical care or emergency medical services, including related personnel costs, training for such personnel and related equipment, supplies, vehicles, and structures needed to provide this care or service. ~~((A))~~ A permanent EMS levy, or the initial imposition of a six-year or ten-year EMS levy must be approved by a super majority of registered voters at a general or special election. However, the uninterrupted continuation of a six-year or ten-year EMS levy only requires the authorization of a majority of the registered voters at a general or special election. For purposes of this section, an "uninterrupted continuation of a six-year or ten-year EMS levy" means the continuation of both the levy itself and its maximum levy rate. Only a county, emergency medical service district, city, town, public hospital district, urban emergency medical service district, regional fire protection service area, or fire protection district is authorized to impose an EMS levy.

(3) **Duration - Maximum rate.** An EMS levy is imposed each year for six consecutive years, each year for ten

consecutive years, or permanently. ~~((If approved,))~~ Except as provided in subsection (10) of this section, a taxing district ~~((can))~~ may impose a regular property tax levy in an amount that cannot exceed fifty cents per thousand dollars of assessed value of the property of the taxing district.

(4) **Contents of ballot title and measure.** Any ballot title and measure seeking authorization of an EMS levy must conform to the requirements of RCW ~~((29.30.114))~~ 29A.36.210. A taxing district cannot submit to the voters at the same election multiple propositions to impose a levy under RCW 84.52.069. If the approved ballot title and measure did not authorize the maximum allowable levy rate (fifty cents) for the EMS levy, any future proposition to increase the rate up to the maximum allowable must be specifically authorized by voters at a general or special election. That is, a taxing district may impose a levy rate up to, but no greater than, the rate contained in the approved ballot measure without obtaining additional voter approval. The ballot title and measure authorizing a taxing district to impose:

(a) An EMS levy for a limited duration must state the name of the taxing district, the maximum rate per thousand dollars of assessed value to be imposed, and the maximum number of years the levy is to be allowed; or

(b) A permanent EMS levy must state the name of the taxing district and the maximum rate per thousand dollars of assessed value to be permanently imposed. A ballot title for this type of levy must include wording to indicate that it is a permanent EMS levy. A taxing district that seeks to impose a permanent levy must also provide for a referendum procedure to apply to the ordinance or resolution imposing the tax. The detailed specifics of this procedure are set forth in RCW 84.52.069(4).

(5) **County-wide EMS levy.** A county-wide EMS levy cannot be placed on the ballot without first obtaining the approval of the legislative authority of any city within the county having a population exceeding fifty thousand. No other taxing district within the county may hold an election on a proposed EMS levy at the same time as the election on a proposed county-wide EMS levy. To the extent feasible, emergency medical care and services must be provided throughout the county whenever the county levies an EMS levy. In addition, if a county levies an EMS levy, the following conditions apply:

(a) Any other taxing district within the county, authorized to levy an EMS levy may do so, but only if the taxing district's EMS levy rate does not exceed the difference between the county's EMS levy rate and fifty cents per thousand dollars of assessed value of the property of the taxing district; and

(b) When a taxing district within the county levies an EMS levy and the voters of the county subsequently approve a county-wide EMS levy, the taxing district must then reduce its EMS levy rate so that the combined EMS levy rate of the county and the taxing district does not exceed fifty cents per thousand dollars of assessed value in the taxing district; and

(c) An EMS levy of limited duration of a taxing district within the county, authorized by the voters subsequent to a county-wide EMS levy of limited duration, will expire concurrently with the county EMS levy; and

(d) A fire protection district that has annexed an area described in subsection (10) of this section may levy the maximum amount of tax that would otherwise be allowed, notwithstanding any limitations in this subsection.

(6) **EMS levy of taxing district other than county.** Once a taxing district that has the authority to levy an EMS levy has done so within the county, only the county may currently levy an EMS levy within the boundaries of that taxing district; all other taxing districts are prohibited from levying an EMS levy within that taxing district's boundaries while it collects an EMS levy.

(a) If a regional fire protection service authority imposes a tax under this section, no other taxing district that is a participating fire protection jurisdiction in the regional fire protection service authority may levy a tax under this section.

(b) For purposes of this subsection, "participating fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district that is represented on the governing board of a regional fire protection service authority.

(7) **Constitutional one percent limit is applicable.** An EMS levy is subject to the constitutional one percent limit for regular property taxes. If a reduction of the rate of an EMS levy is required because this limit is exceeded, it is to be reduced in the manner set forth in RCW 84.52.010(1) and WAC 458-19-075.

(8) **Statutory aggregate dollar rate limit is not applicable.** An EMS levy is not subject to the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value (see RCW 84.52.043).

(9) **Applicability of limit factor to EMS levy.** The first year an EMS levy is made following voter approval, the levy limit set forth in RCW 84.55.010 does not apply. However, after the first year any EMS levy made is subject to this limit. In other words, beginning the second year this levy is made it cannot exceed the limit factor multiplied by the highest amount of regular property taxes that could have lawfully been levied since the voters last approved such a levy plus an additional dollar amount calculated by multiplying the increase in assessed value in that district resulting from new construction, improvements to property, and any increase in the assessed value of state-assessed property by the regular property tax rate for the district in the preceding year. The EMS levy is calculated separately from any other levies made by the taxing district for purposes of calculating the levy limit.

(10) For purposes of imposing the tax authorized under this section, the boundary of a county with a population greater than one million five hundred thousand does not include the area of the county that is located within a city that has a boundary in two counties, if the locally assessed value of all the property in the area of the city within the county having a population greater than one million five hundred thousand is less than two hundred fifty million dollars.

AMENDATORY SECTION (Amending WSR 09-19-010, filed 9/3/09, effective 10/4/09)

**WAC 458-19-070** ~~((Procedure to adjust consolidated levy rate for taxing districts when the statutory aggregate~~

~~dollar rate limit is exceeded.)~~ **Five dollars and ninety cents statutory aggregate limit calculation.** (1) **Introduction.** The aggregate of all regular levy rates of junior taxing districts and senior taxing districts, other than the state and other specifically identified districts, cannot exceed five dollars and ninety cents per thousand dollars of assessed value in accordance with RCW 84.52.043. When the county assessor finds that this limit has been exceeded, the assessor recomputes the levy rates and establishes a new consolidated levy rate in the manner set forth in RCW 84.52.010. This section describes the prorationing process used to establish a consolidated levy rate when the assessor finds the statutory aggregate levy rate exceeds five dollars and ninety cents. If prorationing is required, the five dollar and ninety cents limit is reviewed before the constitutional one percent limit.

(2) **Levies not subject to statutory aggregate dollar rate limit.** The following levies are not subject to the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value:

- (a) Levies by the state;
- (b) Levies by or for port or public utility districts;
- (c) Excess property tax levies authorized in Article VII, section 2 of the state Constitution;
- (d) Levies by or for county ferry districts under RCW 36.54.130;
- (e) Levies for acquiring conservation futures under RCW 84.34.230;
- (f) Levies for emergency medical care or emergency medical services under RCW 84.52.069;
- (g) Levies for financing affordable housing for very low-income households under RCW 84.52.105;
- (h) The portion of metropolitan park district levies protected under RCW 84.52.120;
- (i) The portion of fire protection district levies protected under RCW 84.52.125;
- (j) Levies for criminal justice purposes under RCW 84.52.135; ~~(and)~~
- (k) Levies for transit-related purposes by a county ~~((with a population of one million five hundred thousand or more under section 5, chapter 551, Laws of 2009))~~ under RCW 84.52.140; and
- (l) The protected portion of the levies imposed under RCW 86.15.160 by flood control zone districts in a county with a population of seven hundred seventy-five thousand or more that are coextensive with a county.

(3) **Prorationing under consolidated levy rate limitation.** RCW 84.52.010 sets forth the prorationing order in which the regular levies of taxing districts will be reduced or eliminated by the assessor to comply with the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value. The order contained in the statute lists which taxing districts are the first to either reduce or eliminate their levy rate. Taxing districts that are at the same level within the prorationing order are grouped together in tiers. Reductions or eliminations in levy rates are made on a pro rata basis within each tier of taxing district levies until the consolidated levy rate no longer exceeds the statutory aggregate dollar rate limit of five dollars and ninety cents.

As opposed to the order contained in RCW 84.52.010, which lists the taxing districts that are the first to have their

levy rates reduced or eliminated, this section is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the statutory aggregate dollar rate is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis. The proration factor, which is multiplied by each levy rate within the tier, is obtained by dividing the dollar rate remaining available to the taxing districts in that tier as a group by the sum of the levy rates originally certified by or for all of the taxing districts within the tier.

(a) Step one: Total the aggregate levy rates requested by all affected taxing districts in the tax code area. If this total is less than five dollars and ninety cents per thousand dollars of assessed value, no prorationing is necessary. If this total levy rate is more than five dollars and ninety cents, the assessor must proceed through the following steps until the aggregate dollar rate is brought within that limit.

(b) Step two: Subtract from \$5.90 the levy rates of the county and the county road district if the tax code area includes an unincorporated portion of the county, or the levy rates of the county and the city or town if the tax code area includes an incorporated area, as applicable.

(c) Step three: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first fifty cents per thousand dollars of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first fifty cents per thousand dollars of assessed value for public hospital districts under RCW 70.44.060(6).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step four.

(d) Step four: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c). However, under RCW 84.52.125 fire protection districts may protect up to twenty-five cents per thousand dollars of assessed value of the total levies made under RCW 52.16.140 and 52.16.160 from prorationing.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. It is at this point that the provisions of RCW 84.52.-125 come into play; that is, a fire protection district may protect up to twenty-five cents per thousand dollars of assessed value of the total levies made under RCW 52.16.140 and 52.16.160 from prorationing under RCW 84.52.043(2), if the



total levies would otherwise be prorated under RCW 84.52.-010 (2)(e) with respect to the five-dollar and ninety cent per thousand dollars of assessed value limit. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step five.

(e) Step five: Subtract from the remaining levy capacity the levy rate, if any, for the first fifty cents per thousand dollars of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step six.

(f) Step six: Subtract from the remaining levy capacity the twenty-five cent per thousand dollars of assessed value levy rate for metropolitan park districts if it is not protected under RCW 84.52.120, the twenty-five cent per thousand dollars of assessed value levy rate for public hospital districts under RCW 70.44.060(6), and the levy rates, if any, for cemetery districts under RCW 68.52.310 and all other junior taxing districts if those levies are not listed in steps three through five or seven or eight of this subsection.

**(4) Example.**

DISTRICT	ORIGINAL LEVY RATE	PRORATION FACTOR	FINAL LEVY RATE	REMAINING LEVY CAPACITY
County Road	1.8000 2.2500	NONE NONE	1.8000 2.2500	1.850
Library	.5000	NONE	.5000	.350
Fire	.5000	NONE	.5000	
Hospital	.5000	NONE	.5000	
Fire	.2000	NONE	.2000	.150
Cemetery	.1125	.4138	.0466	
Hospital	.2500	.4138	.1034	
Totals	6.1125		5.90	

1. Beginning with the limit of \$5.90, subtract the original certified levy rates for the county and county road taxing districts leaving \$1.85 available for the remaining districts.

2. Subtract the total of the levy rates for each district within the next tier: The library's \$.50, the fire district's \$.50 and the hospital's \$.50 = \$1.50, which leaves \$.35 available for the remaining districts.

3. Subtract the fire district's additional \$.20 levy rate, which leaves \$.15 available for the remaining districts.

4. The remaining \$.15 must be shared by the cemetery and the hospital districts within the next tier of levies. The

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seven.

(g) Step seven: Subtract from the remaining levy capacity the levy rate, if any, for flood control zone districts (~~under RCW 86.15.160~~) other than the portion of a levy protected under RCW 84.52.815.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eight.

(h) Step eight: Subtract from the remaining levy capacity the levy rates, if any, for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.145, and cultural arts, stadium, and convention districts under RCW 67.38.130 on a pro rata basis until the remaining levy capacity equals zero.

cemetery district originally sought to levy \$.1125 and the hospital district sought to levy \$.25. The proration factor is arrived at by dividing the amount available (\$.15) by the original levy rates (\$.3625) requested within that tier resulting in a proration factor of .4138. And finally, the original levy rates in this tier of \$.1125 and \$.25 for the cemetery and hospital respectively are multiplied by the proration factor.

AMENDATORY SECTION (Amending WSR 09-19-010, filed 9/3/09, effective 10/4/09)

**WAC 458-19-075 Constitutional one percent limit calculation.** (1) **Introduction.** The total amount of all regular property tax levies that can be applied against taxable property is limited to one percent of the true and fair value of the property in money. The one percent limit is stated in Article VII, section 2 of the state Constitution and the enabling statute, RCW 84.52.050. The constitutional one percent limit is based upon the amount of taxes actually levied on the true and fair value of the property, not the dollar rate used in computing property taxes. This section explains how to determine if the constitutional one percent limit is being exceeded and the sequence in which levy rates will be reduced or eliminated in accordance with RCW 84.52.010 if the constitutional one percent limit is exceeded. The constitutional one percent calculation is made after the assessor ensures that the ~~\$5.90~~ statutory aggregate dollar rate limit is not exceeded.

(2) **Preliminary calculations.** After prorationing under RCW 84.52.043 (the five dollar and ninety cent per thousand dollars of assessed value limit) has occurred, make the following calculations to determine if the constitutional one percent limit is being exceeded:

(a) First, add all the regular levy rates, except the rates for port and public utility districts, in the tax code area, to arrive at a combined levy rate for that tax code area. "Regular levy rates" in this context means the levy rates that remain after prorationing under RCW 84.52.043 has occurred. The levy rates for port and public utility districts are not included in this computation because they are not subject to the constitutional one percent limit. The rates for the following regular ~~((levy rates))~~ levies are used to calculate the combined levy rate of any particular tax code area:

- (i) The local rate for the state levy;
- (ii) Levies by or for county ferry districts under RCW 36.54.130;
- (iii) Levies for acquiring conservation futures under RCW 84.34.230;
- (iv) Levies for emergency medical care or emergency medical services under RCW 84.52.069;
- (v) Levies for financing affordable housing for very low-income households under RCW 84.52.105;
- (vi) The portion of metropolitan park district levies protected under RCW 84.52.120;
- (vii) The portion of fire protection district levies protected under RCW 84.52.125;
- (viii) Levies for criminal justice purposes under RCW 84.52.135; ~~((and))~~
- (ix) ~~((The levy rate))~~ Levies for transit-related purposes by a county with a population of one million five hundred thousand or more under ~~((section 5, chapter 551, Laws of 2009))~~ RCW 84.52.140; and
- (x) The protected portion of the levies imposed under RCW 86.15.160 by flood control zone districts in a county with a population of seven hundred seventy-five thousand or more that are coextensive with a county.

(b) Second, divide ten dollars by the higher of the real or personal property ratio of the county for the assessment year in which the levy is made to determine the maximum effective levy rate. If the combined levy rate exceeds the maxi-

imum effective levy rate, then the individual levy rates must be reduced or eliminated until the combined levy rate is equal to the maximum effective levy rate.

(3) **Prorationing - Constitutional one percent limit.** RCW 84.52.010 sets forth the prorationing order in which levy rates are to be reduced or eliminated when the constitutional one percent limit is exceeded. ~~((The order contained in this statute begins with the taxing districts that are the first to have their levy rates either reduced or eliminated. Taxing districts that are at the same level within the prorationing order are grouped together in tiers. Levy rates are reduced or eliminated on a pro rata basis within each tier of taxing district levies until the combined levy rate no longer exceeds one percent of the true and fair value of property.))~~

As opposed to the order contained in RCW 84.52.010, which lists the taxing districts that are the first to have their levy rates reduced or eliminated, this section is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the constitutional one percent limit is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis.

If the constitutional one percent limit is exceeded after performing the preliminary calculations described in subsection (2) of this section, the following levies ~~((are to))~~ must be reduced or eliminated ~~((in the following order))~~ until the combined levy rate no longer exceeds the maximum effective levy rate:

- ~~((a))~~ The levy rate for transit-related purposes by a county with a population of one million five hundred thousand or more under section 5, chapter 551, Laws of 2009;
- ~~(b)~~ The levy rate for fire protection districts protected under RCW 84.52.125;
- ~~(c)~~ The levy rate for criminal justice purposes imposed under RCW 84.52.135;
- ~~(d)~~ The levy rate for county ferry districts under RCW 36.54.130;
- ~~(e)~~ The levy rate for metropolitan park districts protected under RCW 84.52.120;
- ~~(f)~~ The levy rates for levies used for acquiring conservation futures under RCW 84.34.230, financing affordable housing for very low-income households under RCW 84.52.105, and any portion of a levy rate for emergency medical care or emergency medical services under RCW 84.52.069 in excess of thirty cents per thousand dollars of assessed value are reduced on a pro rata basis or eliminated;
- ~~(g)~~ The levy rate for the first thirty cents per thousand dollars for emergency medical care or emergency medical services under RCW 84.52.069;
- ~~(h)~~ The levy rates for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.145, and cultural arts, stadium, and convention districts under RCW 67.38.130 are reduced on a pro rata basis or eliminated;
- ~~(i)~~ The levy rate for flood control zone districts under RCW 86.15.160;
- ~~(j)~~ The levy rates for all other junior taxing districts, except fire protection districts under RCW 52.16.140 and 52.16.160, regional fire protection service authorities under

RCW 52.26.140, library districts under RCW 27.12.050 and 27.12.150, and the first fifty cents per thousand dollars of assessed value for metropolitan park districts under RCW 84.52.120 and for public hospital districts under RCW 70.44.060(6) are reduced on a pro rata basis or eliminated;

(k) The levy rate of the first fifty cents per thousand dollars of assessed value for metropolitan park districts created on or after January 1, 2002 under RCW 35.61.210;

(l) The levy rates for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c) are reduced on a pro rata basis or eliminated;

(m) The levy rates for fire protection service authorities under RCW 52.16.130, regional fire protection districts under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first fifty cents per thousand dollars of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and for public hospital districts under RCW 70.44.060(6) are reduced on a pro rata basis or eliminated;

(n) The levy rates for the county, county road district, and for city or town purposes are reduced on a pro rata basis or eliminated; and

(o) The levy rate for the state for the support of common schools.) (a) Step one: Subtract the levy rate for the state for the support of common schools from the effective rate limit;

(b) Step two: Subtract the levy rates for the county, county road district, and for city or town purposes;

(c) Step three: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.-130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first fifty cents per thousand dollars of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first fifty cents per thousand dollars of assessed value for public hospital districts under RCW 70.44.060(6).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step four.

(d) Step four: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.-140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step five.

(e) Step five: Subtract from the remaining levy capacity the levy rate for the first fifty cents per thousand dollars of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance from step four. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step six.

(f) Step six: Subtract from the remaining levy capacity the levy rates for all other junior taxing districts if those levies are not listed in steps three through five or steps seven through sixteen of this subsection.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seven.

(g) Step seven: Subtract from the remaining levy capacity the levy rate for flood control zone districts other than the portion of a levy protected under RCW 84.52.815.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step six. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eight.

(h) Step eight: Subtract from the remaining levy capacity the levy rates for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.-145, and cultural arts, stadium, and convention districts under RCW 67.38.130.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step nine.

(i) Step nine: Subtract from the remaining levy capacity the levy rate for the first thirty cents per thousand dollars for emergency medical care or emergency medical services under RCW 84.52.069.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step eight. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step ten.

(j) Step ten: Subtract from the remaining levy capacity the levy rates for levies used for acquiring conservation futures under RCW 84.34.230, financing affordable housing for very low-income households under RCW 84.52.105, and any portion of a levy rate for emergency medical care or emergency medical services under RCW 84.52.069 in excess of thirty cents per thousand dollars of assessed value.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eleven.

(k) Step eleven: Subtract from the remaining levy capacity the portion of the levy by a metropolitan park district with a population of one hundred fifty thousand or more that is protected under RCW 84.52.120.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step ten. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step twelve.

(l) Step twelve: Subtract from the remaining levy capacity the levy rates for county ferry districts under RCW 36.54.130.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step eleven. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step thirteen.

(m) Step thirteen: Subtract from the remaining levy capacity the levy rate for criminal justice purposes imposed under RCW 84.52.135.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step twelve. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step fourteen.

(n) Step fourteen: Subtract from the remaining levy capacity the levy rate for fire protection districts protected under RCW 84.52.125.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step thirteen. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step fifteen.

(o) Step fifteen: Subtract from the remaining levy capacity the levy rate for transit-related purposes by a county under RCW 84.52.140.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step fourteen. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step sixteen.

(p) Step sixteen: Subtract from the remaining levy capacity the protected portion of the levy imposed under RCW 86.15.160 by a flood control zone district in a county with a population of seven hundred seventy-five thousand or more that is coextensive with a county.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step fifteen. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seventeen.

(q) Step seventeen: Subtract from the remaining levy capacity the portion of the levy by a metropolitan park district that has a population of less than one hundred fifty thousand and is located in a county with a population of one million five hundred thousand or more that is protected under RCW 84.52.120 until the remaining levy capacity equals zero.

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

**WAC 458-19-055 Levy limit—Proration of earmarked funds.** (1) **Introduction.** Certain taxing districts are authorized to make "earmarked" levies for specific purposes. An "earmarked levy" is not a taxing district in and of itself; the levy is included within, or is in addition to, the general regular levy made by a taxing district. Because these levies are generally placed within a taxing district treasury as a separately identified fund, they are often referred to as "earmarked funds." A taxing district is either directed by statute to levy or is authorized by statute to levy, but is not required to levy, for these earmarked funds; that is, some of the underlying statutes are mandatory while others are permissive in nature. This rule only discusses those taxing districts with the statutory authority to reduce their earmarked levies from their budgeted levy amount when they are up against ~~((their general levy limit; that is,))~~ the levy limit contained in chapter 84.55 RCW. ~~((Only those taxing districts having specific authorization to reduce the earmarked levy as a result of the levy limit under this chapter are addressed in this rule.))~~

(2) **Reduction of earmarked funds ~~((to be reduced only))~~ when regular levy affected.** Cities having a regularly organized full-time, paid, fire department may levy an additional amount for a firemen's pension fund under RCW 41.16.060. Counties are required to annually levy amounts for the developmental disabilities or mental health services fund under RCW 71.20.110 and for ~~((veteran's))~~ veterans' assistance fund under RCW 73.08.080. Each of these earmarked levies may be reduced if the taxing district's general regular levy is restricted by the levy limit contained in chapter 84.55 RCW. If a reduction is necessary, the earmarked levy may be reduced from its budgeted levy amount in the same proportion as the district's general levy is reduced from its budgeted amount.

~~((In other words, if the taxing district is unable to levy its total budgeted amount because it is restricted by the levy limit under chapter 84.55 RCW, the amount levied for the earmarked fund may be reduced proportionately to the reduction in the taxing district's general regular levy. For example, if the overall budget of the county or city/town is limited by the levy limit, and that levy includes specific amounts earmarked for special purposes, the county or city/town may take the total amount it receives from property taxes and allocate "x" amount to the earmarked fund and the remainder to its general purposes.))~~

**(3) Modification of county earmarked funds when regular levy affected.** The budgeted amount for an ear-

marked levy may be modified by the county legislative authority as provided in this subsection. For the purposes of this subsection, refund levies are not included within the general county property tax levy.

(a) If the general county property tax levy is reduced from the preceding year's levy, funding for the earmarked levies may be reduced by no more than the same percentage as the general county property tax levy was reduced from the preceding year's levy;

(b)(i) If the general county property tax levy is increased from the preceding year's levy, funding for the developmental disabilities and mental health services fund must be increased by at least the same percentage as the general county property tax levy was increased from the preceding year's levy; however, funding does not need to be increased for the portion of a voter-approved levy increase that is dedicated to a specific purpose;

(ii) If the general county property tax levy is increased from the preceding year's levy, funding for the veterans' assistance fund cannot be less than the base allocation (the most recent allocation that was not reduced when collections exceed expectations per RCW 73.08.080(2)) increased by the same percentage as the general county property tax levy was increased from the preceding year's levy; however, funding does not need to be increased for the portion of a voter-approved levy increase that is dedicated to a specific purpose;

or

(c) If the general county property tax levy is unchanged from the preceding year's levy, funding for the programs must equal or exceed the previous year's funding.

(4) Nothing in this section precludes a county from increasing funding for the programs to an amount that is greater than the change in the regular county levy.

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

**WAC 458-19-085 Refunds—Procedures—Applicable limits.** (1) **Introduction.** Chapters 84.68 and 84.69 RCW both set out procedures and conditions under which property taxes are refunded. This rule explains the differences between the types of refunds authorized under each chapter, the procedures related to the refunds, and the effect the refunds have on levy limits and the levy setting process in general.

(2) **Court ordered refunds under chapter 84.68 RCW - County tax refund fund levy.** Any person who believes that the taxes levied against their property are unlawful or excessive may pay the taxes under protest, setting forth all the grounds upon which the tax is claimed to be unlawful or excessive, and bring an action in superior court or in any federal court of competent jurisdiction against the state, county, or municipality. RCW 84.68.020. If the court determines that the taxes were indeed unlawful or excessive, it will enter a judgment in favor of the taxpayer who paid the tax under protest and determine the amount to be refunded to the taxpayer. When such a judgment is entered, the law provides a specific procedure for refunding the money to the taxpayer in RCW 84.68.030 and for taxing districts to generate the moneys to be refunded in RCW 84.68.040. Any and all taxing districts that were levying taxes against the property at the time for

which a refund is directed by court order under RCW 84.68.-020 must levy, or have levied for them, an amount for the county tax refund fund. The county tax refund fund levy is a regular levy that is subject to all the applicable levy limitations provided in law for regular levies. However, the law specifically exempts a refund fund levy from the levy limit set forth in RCW 84.55.010.

(a) Method used to make refunds. When a court judgment is entered in favor of a taxpayer, RCW 84.68.030 states that the refund is to be paid via warrants drawn against the "county tax refund fund." If, at the time the judgment is entered, there are no moneys in that fund, then the warrants bear interest and are "callable under such conditions as are provided by law for county warrants."

(b) Process used to generate funds for the county tax refund fund. RCW 84.68.040 provides that as part of the annual levying of taxes for county purposes, the county is required to make and enter a tax levy or levies for the county tax refund fund. The purpose of the refund fund levy is to produce moneys to be deposited into a fund from which a taxpayer, who paid taxes that were later adjudged to be unlawful or excessive, can be repaid, without unduly affecting the operating funds of the taxing districts. This levy has precedence over all other tax levies for county and/or taxing district purposes.

(c) Who makes and enters the tax levies for the refund fund levy? Officers of local taxing districts, the county legislative authority, the county assessor, and any other person or entity that would normally be involved in the levy making process are required to make and enter the refund fund levy. However, if a taxing district is required to levy for the county tax refund fund and fails to do so, or if a taxing district is required to levy for the county tax refund fund and does not have a regular nonvoted levy, then the county legislative authority levies the tax for or on behalf of the district, the assessor sets the rate, and the treasurer collects the tax.

(d) What limitations apply to the county tax refund fund levy? There are four basic levy limitations that need to be taken into consideration: The levy limit set forth in RCW 84.55.010; the constitutional (Article VII, section 2) and statutory (RCW 84.52.010) one percent limit; the statutory dollar rate limit for the various taxing districts; and the aggregate dollar rate limit contained in RCW 84.52.043.

(i) The levy limit set forth in RCW 84.55.010 does not apply to the county tax refund fund levy, regardless of which taxing district is involved (see RCW 84.55.070). Therefore, a taxing district(s) can levy the amount to be refunded even if that amount will cause the total levy of the taxing district to exceed the levy limit. For example, a court orders County A to refund \$10,000 to a Taxpayer. The proper county officials in County A must determine what portion of the \$10,000 is attributable to Taxing District No. 1. For purposes of this example, Taxing District No. 1 owes the Taxpayer \$1,000. Taxing District No. 1's levy last year was \$30,000. Without considering new construction, improvements to property, and increase in value of state assessed property the levy for this year under the levy limit would be \$30,300. However, Taxing District No. 1's levy for this year, including the refund fund levy, can be \$31,300.

(ii) The constitutional one percent limit, the statutory dollar rate limit, and the aggregate dollar rate limit apply to any refund fund levy. Consequently, any refund fund levy must be contained within the maximum dollar rate authorized by law for any taxing district. For example, if under the levy limit, the county current expense levy rate is \$1.80/\$1,000 and the refund fund levy rate is \$.10/\$1,000 A.V., then only \$1.70 may go to the current expense fund. Similarly, if the current expense levy rate, as limited by the levy limit, is \$1.50/\$1,000 A.V., then the \$.10/\$1,000 is added to the \$1.50 making a levy rate that is \$1.60/\$1,000 A.V. Any combination is possible as long as the total of the two does not exceed the statutory dollar rate maximum of \$1.80/\$1,000 A.V. for levies made for county purposes. All moneys levied for the county tax refund fund levy are allocated first, without consideration of any delinquency, and then whatever balance is remaining goes to the district's operating fund.

(e) Refund fund's relationship to excess levies. Because the refund fund levy is the direct result of a court ordered judgment in a specific amount, it does not matter whether the judgment amount is derived from taxes paid on regular, excess, or bond levies, or any combination of these levies. The refund fund levy is separate and independent of the levies from which it arose. The levy includes an additional amount deemed necessary to meet the obligations of the county tax refund fund, taking into consideration the probable portions of the taxes that will not be collected or collectible during the year in which they are due and payable, as well as any unobligated cash in hand in this fund.

(f) Applicability to school district levies and state school levy. All taxing districts for which, and within which, taxes were collected unlawfully are required to levy for the refund fund. A refund fund for the school district would not be limited by a dollar rate limit. However, the school district refund fund levy would be subject to the constitutional one percent limit because the refund fund is a regular levy subject to all applicable limits. The state school levy will include a refund fund levy, which will be calculated by the department at the time it levies the state school levy. The state, as a taxing district itself, follows the same procedures that apply to any other taxing district, to the extent that those procedures are applicable.

(g) Separate account in county treasury. The county treasurer must keep a separate account for each district for which a refund fund is created and can only disburse money from that account to the taxpayer(s) entitled to receive a court ordered refund.

**(3) Administrative refunds under chapter 84.69 RCW.** Property taxes may be refunded on the order of the county treasurer before or after delinquency if the property taxes were paid under one of the circumstances listed in RCW 84.69.020. These circumstances include errors, changes in valuation or status by a county board of equalization or the state board of tax appeals, and delays in applying for a senior citizen exemption or deferral.

(a) The levy limit set forth in RCW 84.55.010 does not apply. RCW 84.55.070 states that the limitations contained in chapter 84.55 RCW do not apply to property tax refunds paid or to be paid under the provisions of (~~chapter 84.69~~) RCW 84.69.180. Therefore, an amount necessary to fund any

refund paid in accordance with RCW 84.69.020 may be added to the levy for a taxing district without regard to the levy limit. A refund fund levy is not subject to the levy limit. However, the statutory dollar rate limit still applies to each taxing district, as well as the five dollar and ninety cent limit set forth in RCW 84.52.043 and the constitutional one percent limit set forth in Article VII, section 2 of the state Constitution and RCW 84.52.050.

(b) Refunds include interest. Refunds authorized under RCW 84.69.020 must include interest that is payable from the time the taxes were paid. The rate of interest is calculated in accordance with RCW 84.69.100, established annually by the department, and published in WAC 458-18-220.

(c) Taxing districts other than the state may levy a tax upon all the taxable property within the district for the purpose of:

(i) Funding refunds paid or to be paid under this chapter, except for refunds due to taxes paid more than once, RCW 84.69.020(1), including interest, as ordered by the county treasurer or county legislative authority within the preceding twelve months; and

(ii) Taxes that have been abated or canceled, offset by any supplemental taxes collected under Title 84 RCW other than amounts collected due to highly valued disputed property, RCW 84.52.018, within the preceding twelve months can be levied by taxing districts other than the state.

(iii) This subsection (3)(c)(ii) only applies to abatements and cancellations that do not require a refund under chapter 84.69 RCW. Cancellations that require a refund are included within the scope of (c)(i) of this subsection.

(d) Example 1. This example demonstrates net refunds, cancellations, and supplements that occurred within the past twelve months and the refund levy that can be requested by the taxing district:

<u>Refunds</u>		<u>\$8,000</u>
<u>Cancellations</u>	<u>\$10,000</u>	
<u>Abatements</u>	<u>\$ 1,000</u>	
<u>Supplements</u>	<u>\$ 7,000</u>	
<u>Net cancellations and abatements offset by supplements</u>		<u>\$4,000</u>
<u>Net amount eligible for a refund levy</u>		<u>\$12,000</u>

(e) ~~Example((s-Both))~~ 2. This example((s)) assumes that the base for computing the allowable levy is \$10,000 and refers to the county current expense levy rate that may not exceed one dollar and eighty cents per thousand dollars of assessed value in accordance with RCW 84.52.043.

(i) Statutory rate requested does not exceed the dollar rate allowable:

The allowable levy for the county current expense fund	\$10,000
Refunds paid or to be paid	<u>2,000</u>
Total amount of levy	\$12,000
Assessed value	\$7,000,000

Levy rate	\$1.714/\$1,000
The levy rate is within the statutory rate limit of \$1.80/\$1,000	

(ii) Statutory rate requested exceeds the dollar rate allowable:

Allowable levy	\$10,000
Refunds paid or to be paid	<u>2,000</u>
Total amount of levy	\$12,000
Assessed value	\$6,500,000
Levy rate	\$1.846/\$1,000
The dollar rate cannot exceed \$1.80/\$1,000; therefore, the maximum that can be levied is \$6,500,000 x \$1.80/\$1,000	
Amount to be refunded	\$2,000
Amount to be credited to current expense	\$9,700

~~((s))~~ (f) The base for computing the following year's levy limit does not include the refund levy amount. In the preceding example((s)), the base for the following year's levy limit calculation is \$10,000. However, when calculating the additional levy amount based on the value of new construction, improvements to property and any increase in the value of state assessed property, the actual regular levy rate (including the refund levy) is used.

**WSR 14-08-087**  
**EXPEDITED RULES**  
**RECREATION AND CONSERVATION**  
**OFFICE**

(Salmon Recovery Funding Board)  
 [Filed April 1, 2014, 2:38 p.m.]

Title of Rule and Other Identifying Information: Updating references and the agency's name in Title 420 WAC, Salmon recovery.

**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 Connelly, Recreation and Conservation Office, 1111 Washington Street S.E., P.O. Box 40917, Olympia, WA 98504-0917, AND RECEIVED BY June 3, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Makes changes to Title 420 WAC to update the agency's name and statutory references. The recreation and conservation office, formerly

called the interagency committee for outdoor recreation, provides administrative support to the salmon recovery funding board. The agency's name was changed in 2007. The changes to the WAC will bring the agency's name in alignment with state law and update other statutory references which have changed since 2001.

Reasons Supporting Proposal: Section 39, chapter 241, Laws of 2007, changed the agency's name from the interagency committee for outdoor recreation to the recreation and conservation office.

Statutory Authority for Adoption: RCW 77.85.120 (1)(d).

Statute Being Implemented: Chapter 77.85 RCW.

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

Name of Proponent: Recreation and conservation office, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Connelly, 1111 Washington Street S.E., Olympia, WA 98501-0917, (360) 902-3080; Implementation and Enforcement: Kaleen Cottingham, 1111 Washington Street S.E., Olympia, WA 98501-0917, (360) 902-3000.

April 1, 2014  
Leslie Connelly  
Rules Coordinator  
Natural Resources  
Policy Specialist

**AMENDATORY SECTION** (Amending WSR 01-04-052, filed 2/2/01, effective 3/5/01)

**WAC 420-04-010 Definitions.** For purposes of Title 420 WAC, the definitions in RCW 77.85.010 apply. In addition, unless the context clearly indicates otherwise, the following definitions also apply:

"Acquisition" means the gaining of rights of public ownership by purchase, negotiation, or other means, of fee or less than fee interests in real property, and related interests such as water or mineral claims and use rights.

"Applicant" means any agency, person or organization that meets qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the board. Generally, eligible applicants for ~~((SRFB))~~ board funds include a state, local, tribal or special purpose government, a nonprofit organization, a combination of such governments, or a landowner for projects on its land.

"Application" means the form(s) developed and implemented for use by applicants in soliciting project funds administered by the board.

"Board" means the salmon recovery funding board ~~((SRFB))~~ created by chapter 13, Laws of 1999 1st sp. sess. (2E2SSB 5595), now codified as ~~((chapter 77.85))~~ RCW 77.85.110.

"Chair" means the chair of the board.

"Development" means the construction or alteration of facilities, the placement or removal of materials, or other physical activity to restore or enhance salmon habitat resources.

"Director" means the director of the ~~((IAC))~~ office or that person's designee, as described in RCW 79A.25.150,

responsible for implementation of board activities under chapter ~~((s 79A.25 and))~~ 77.85 RCW.

~~("IAC" means the interagency committee for outdoor recreation (IAC), an executive state agency established under chapter 79A.25 RCW.)~~

"Lead entity" means the local organization or group designated under RCW 77.85.050.

"Manual(s)" means a compilation of state and federal policies, procedures, rules, forms, and instructions that have been assembled in manual form and which have been approved by the ~~((board))~~ office for dissemination by paper, electronic or other formats to all who may wish to participate in the board's grant program(s).

"Office" means the recreation and conservation office or the office of recreation and conservation as described in RCW 79A.25.010.

"Preliminary expense" means project costs incurred prior to board approval, other than site preparation/development costs, necessary for the preparation of a development project.

"Project" means the undertaking which is, or may be, funded in whole or in part with funds administered by the ~~((IAC))~~ office on behalf of the board.

"Project agreement" means a project agreement, supplemental agreement, intergovernmental agreement, or project contract between the ~~((IAC))~~ office acting on behalf of the board, and a project sponsor.

"Project sponsor" means an applicant under RCW 77.85.010(6) who has been awarded a grant of funds, and has a signed project agreement.

**AMENDATORY SECTION** (Amending WSR 01-04-052, filed 2/2/01, effective 3/5/01)

**WAC 420-04-015 Address.** All communications with the board shall be directed to the ~~((IAC offices))~~ recreation and conservation office at the Natural Resources Building, 1111 Washington Street S.E., P.O. Box 40917, Olympia, Washington 98504-0917. Telephone ~~((360) 902-3000. Web site: www.wa.gov/iac/salmonmain))~~ 360-902-3000.

**AMENDATORY SECTION** (Amending WSR 01-04-052, filed 2/2/01, effective 3/5/01)

**WAC 420-04-020 Organization and operations.** The board:

(1) Is an unsalaried body of ten members. Five members are citizens appointed by the governor from the public-at-large, with the consent of the senate, for a term of three years each. The other members are the:

- (a) Commissioner of public lands;
- (b) Director of the department of fish and wildlife;
- (c) Director of the state conservation commission;
- (d) Director of the department of ecology; and
- (e) Secretary of transportation (or the designees of these individuals).

The five citizen members, including the chair, are voting members. The chair of the board is appointed by the governor from among the five citizen members.



(2) Is authorized and obligated to administer grant programs for salmon recovery, and related programs and policies.

(3) Performs and accomplishes work by a staff under the supervision of the ((IAC)) director appointed by the governor.

(4)(a) Conducts regular meetings, pursuant to RCW 42.30.075, according to a schedule it adopts in an open public meeting.

(b) May conduct special meetings at any time, pursuant to RCW 42.30.080, if called by the chair.

(c) Maintains an official record of its meetings in a recorded audio format, unless written minutes are otherwise indicated for logistical reasons.

(5) Defines a quorum as three of its voting members, with a preference that at least two of the agency members shall also be present.

(6) Adopts parliamentary meeting procedure generally as described in *Robert's Rules of Order*. Only voting members may make motions or formal amendments, but agency members may request the chair for leave to present a proposal for board consideration.

AMENDATORY SECTION (Amending WSR 01-04-052, filed 2/2/01, effective 3/5/01)

**WAC 420-04-030 Manuals and waivers—Guidance.**

(1) The board shall adopt one or more manuals that describe its general administrative policies, for use by grant applicants, potential applicants, project sponsors, and others. The board shall inform all applicants in any given grant cycle of the specific project application process and methods of review, including current evaluation tests and instruments, by explaining these items in the manuals or other publicly available formats. Manuals may be adopted for each grant cycle, or for a topical issue, and shall contain a clear statement of the applicability of the policies outlined. The board also instructs the director to use applicable ((IAC)) office administrative manuals for general guidance in the implementation of ((SRFB)) board grant contracts. These include ((IAC)) manuals regarding land acquisition, conservation easements, funded projects, and reimbursement procedures.

(2) Board policies, including those referenced in the manuals, shall be considered and approved by the board in an open public meeting. Notice of such considerations will be given by distribution of the agenda for the meeting, press releases, meeting notice in the *Washington State Register*, or other means.

(3) Project applicants, project sponsors, or other interested parties may petition the director for a waiver or waivers of those items within the manuals dealing with general administrative matters and procedures. Determinations on petitions for such waivers made by the director are subject to review by the board at the request of the petitioner.

(4) Petitions for waivers of subjects regarding board policy, and those petitions that in the judgment of the director require board review, shall be referred to the board for deliberation. Policy waivers may be granted after consideration by the board at an open public meeting.

AMENDATORY SECTION (Amending WSR 01-04-052, filed 2/2/01, effective 3/5/01)

**WAC 420-04-060 Delegated authority.** Consistent with RCW 79A.25.240 and other applicable laws, the director is delegated the authority and responsibility to carry out policies and administrative functions of the board. This includes, but is not limited to, the authority to:

(1) Administer board programs ((at the offices of the IAC));

(2) Administer all applicable rules, regulations and requirements established by the board or reflected in the laws of the state;

(3) Implement board decisions; and

(4) Approve certain waiver requests or other administrative matters.

AMENDATORY SECTION (Amending WSR 01-04-052, filed 2/2/01, effective 3/5/01)

**WAC 420-04-100 Public records access.** (1) The board is committed to public access to its public records. All public records of the board, as defined in RCW ((42-17-260)) 42.56.070 as now or hereafter amended, are available for public inspection and copying pursuant to this regulation, except as otherwise provided by law, including, but not limited to, RCW ((42-17-310 and 42-17-255 (Exemptions))) 42.56.050 and 42.56.210.

(2) The board's public records shall be available through the public records officer designated by the director. All records access for board records shall be conducted in the same manner as records access for ((IAC)) office records, including office location, hours, copy fee and request forms. The board adopts by reference the records access procedures of the ((IAC)) office and charges the director to administer for access purposes the board's records in the same manner as records of the ((IAC)) office are administered, pursuant to chapter 286-06 WAC.

(3) Any person who objects to the denial of a request for a public record of the board may petition the director for review by submitting a written request. The request shall specifically refer to the written statement which constituted or accompanied the denial.

(4) After receiving a written request for review of a decision denying inspection of a public record, the director, or designee, will either affirm or reverse the denial by the end of the second business day following receipt according to RCW ((42-17-320)) 42.56.520. This shall constitute final board action. Whenever possible in such matters, the director or designee shall consult with the board's chair and members.

AMENDATORY SECTION (Amending WSR 01-04-052, filed 2/2/01, effective 3/5/01)

**WAC 420-12-040 Eligible matching resources.** (1) Applicant resources used to match board funds may include: Cash, certain federal funds, the value of privately owned donated real estate, equipment, equipment use, materials, labor, or any combination thereof. The specific eligible matches for any given grant cycle shall be detailed in the pub-

lished manual. The director shall require documentation of values.

(2) Agencies and organizations may match board funds with other state funds, including ~~((IAC))~~ recreation and conservation funding board funds, so long as the other state funds are not administered by the board and if otherwise allowed by state law. For the purposes of this subsection, grants issued by other agencies under the Jobs for Environment program and the Forests & Fish program are not considered to be administered by the board.

(3) Private donated real property, or the value of that property, must consist of real property (land and facilities) that would otherwise qualify for board grant funding.

(4) The eligibility of federal funds to be used as a match is governed by federal requirements and thus may vary with individual proposals and grant cycles.