

WSR 13-19-041
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed September 12, 2013, 2:15 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-107 Requirement to separately state sales tax—Advertised prices including sales tax and 458-20-124 Restaurants, cocktail bars, taverns and similar businesses.

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 November 18, 2013.

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 458-20-107:

- Delete language that is no longer accurate due to the court case noted below;
- Insert the name of WAC 458-20-124 where referenced in subsection (2);
- Insert the statute number, RCW 82.08.055, in subsection (3)(a) where the rule previously just stated "The law."

Proposed changes to WAC 458-20-124 include:

- Addition of statute number in subsection (2)(d);
- Addition of explanation of retail sales tax exemption for sales of products to restaurants of products that impart flavor to food during the cooking process; and
- Deletion of language that is no longer accurate due to the court case noted below.

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

Reasons Supporting Proposal: To recognize the decision in *Dep't of Revenue v. Bi-Mor, Inc.*, 171 Wash.App. 197, 286 P.3d 417 (2012) and the provisions of chapter 13, Laws of 2013 (ESSB 5882).

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

Statute Being Implemented: RCW 82.08.050 and chapter 13, Laws of 2013.

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 and

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

September 12, 2013

Alan R. Lynn
Assistant Director

AMENDATORY SECTION (Amending WSR 08-14-021, filed 6/20/08, effective 7/21/08)

WAC 458-20-107 Requirement to separately state sales tax—Advertised prices including sales tax. (1) **Introduction.** Under the provisions of RCW 82.08.020 the retail sales tax is to be collected and paid upon retail sales, measured by the selling price.

(2) **Retail sales tax separately stated.** RCW 82.08.050 specifically requires that the retail sales tax must be stated separately from the selling price on any sales invoice or other instrument of sale, i.e., contracts, sales slips, and/or customer billing receipts. (For an exception covering ~~((restaurant))~~ food and beverage receipts ~~((of Class H liquor licensees))~~, see WAC 458-20-124, Restaurants, cocktail bars, taverns and similar businesses.) This is required even though the seller and buyer may know and agree that the price quoted is to include state and local taxes, including the retail sales tax.

(a) The law creates a "conclusive presumption" that, for purposes of collecting the tax and remitting it to the state, the selling price quoted does not include the retail sales tax. This presumption is not overcome or rebutted by any written or oral agreement between seller and buyer.

(b) Selling prices may be advertised as including the tax ~~((or that the seller is paying the tax and)), and in such cases, the advertised price ((must not be considered to be)) is not the taxable selling price ((under certain prescribed conditions explained in this section. Even when prices are advertised as including the sales tax, the actual sales invoices, receipts, contracts, or billing documents must list the retail sales tax as a separate charge. Failure to comply with this requirement may result in the retail sales tax due and payable to the state being computed on the gross amount charged even if it is claimed to already include all taxes due)).~~

(3) **Advertising prices including tax.**

(a) ~~((The law))~~ RCW 82.08.055 provides that a seller may advertise prices as including the sales tax or that the seller is paying the sales tax under the following conditions:

(i) The words "tax included" are stated immediately following the advertised price in print size at least half as large as the advertised price print size, unless the advertised price is one in a listed series;

(ii) When advertised prices are listed in series, the words "tax included in all prices" are placed conspicuously at the head of the list in the same print size as the list;

(iii) If the price is advertised as including tax, the price listed on any price tag must be shown in the same way; and

(iv) All advertised prices and the words "tax included" are stated in the same medium, whether oral or visual, and if oral, in substantially the same inflection and volume.

(b) If these conditions are satisfied, as applicable, then price lists, reader boards, menus, and other price information mediums need not reflect the item price and separately show

the actual amount of sales tax being collected on any or all items.

(c) The scope and intent of the foregoing is that buyers have the right to know whether retail sales tax is being included in advertised prices or not and that the tax is not to be used for the competitive advantage or disadvantage of retail sellers.

AMENDATORY SECTION (Amending WSR 12-07-060, filed 3/19/12, effective 4/19/12)

WAC 458-20-124 Restaurants, cocktail bars, taverns and similar businesses. (1) **Introduction.** This ~~((section))~~ rule explains Washington's business and occupation (B&O) tax and retail sales tax applications to sales by restaurants and similar businesses. It discusses the sales of meals, beverages, and foods at prices inclusive of the retail sales tax. This ~~((section))~~ rule also explains how discounted and promotional meals are taxed. Caterers and persons who merely manage the operations of a restaurant or similar business should refer to WAC 458-20-119 to determine their tax liability.

(a) **Restaurants, cocktail bars, and taverns.** The term "restaurants, cocktail bars, taverns, and similar businesses" means every place where prepared foods and beverages are sold and served to individuals, generally for consumption on the premises where sold.

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

(c) **What other ~~((sections))~~ rules might apply? In addition to information available on the department's web site pertaining to prepared food and beverage sales, the following ~~((sections))~~ rules may contain additional relevant information:**

- WAC 458-20-107 Requirement to separately state sales tax—Advertised prices including sales tax.
- WAC 458-20-119 Sales by caterers and food service contractors.
- WAC 458-20-131 Gambling activities.
- WAC 458-20-183 Amusement, recreation, and physical fitness services.
- WAC 458-20-187 Coin operated vending machines, amusement devices and service machines.
- WAC 458-20-189 Sales to and by the state of Washington, counties, cities, towns, school districts, and fire districts.
- WAC 458-20-190 Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments.
- WAC 458-20-243 Litter tax.
- WAC 458-20-244 Food and food ingredients.

(2) **Retailing B&O and retail sales taxes.** Sales to consumers of meals and prepared foods by restaurants, cocktail bars, taverns and similar businesses are subject to the retailing tax classification and generally subject to retail sales tax. A retail sales tax exemption is available for the following sales of meals:

(a) Prepared meals sold under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040(6);

(b) Prepared meals sold to or for senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW;

(c) Prepared meals sold to the federal government. (See WAC 458-20-190.) However, meals sold to federal employees are taxable, even if the federal employee will be reimbursed for the cost of the meals by the federal government;

(d) Effective July 1, 2011, ~~((chapter 55 (SB 5501), Laws of 2011,))~~ RCW 82.08.9995 exempts meals from retail sales tax when provided without specific charge to employees by a restaurant. ~~((The legislation also exempts))~~ Such meals also are exempt from B&O tax and use tax. (RCW 82.04.750 and 82.12.9995.) If any charge is made for meals to employees, retailing B&O tax and retail sales tax apply.

For the purposes of (d) of this subsection, the following definitions apply:

(i) "Meal" means one or more items of prepared food or beverages other than alcoholic beverages. For the purposes of (d) of this subsection, "alcoholic beverage" and "prepared food" have the same meanings as provided in RCW 82.08.-0293.

(ii) "Restaurant" means any establishment having special space and accommodation where food and beverages are regularly sold to the public for immediate, but not necessarily on-site, consumption, but excluding grocery stores, mini-markets, and convenience stores. Restaurant includes, but is not limited to, lunch counters, diners, coffee shops, espresso shops or bars, concession stands or counters, delicatessens, and cafeterias. It also includes space and accommodations where food and beverages are sold to the public for immediate consumption that are located within:

- Hotels, motels, lodges, boarding houses, bed and breakfast facilities;
- Hospitals, office buildings, movie theaters; and
- Schools, colleges, or universities, if a separate charge is made for such food or beverages.

Restaurants also include:

- Mobile sales units that sell food or beverages for immediate consumption within a place, the entrance to which is subject to an admission charge; and
- Public and private carriers, such as trains and vessels, that sell food or beverages for immediate consumption if a separate charge is made for such food or beverages.

A restaurant is open to the public for purposes of this subsection if members of the public can be served as guests. "Restaurant" does not include businesses making sales through vending machines or through mobile sales units such as catering trucks or sidewalk vendors of food or beverage items.

(3) **Wholesaling B&O tax.** Persons making sales of prepared meals to persons who will be reselling the meals are subject to the wholesaling B&O tax classification. Sellers must obtain resale certificates for sales made before January 1, 2010, or reseller permits for sales made on or after January 1, 2010, from their customers to document the wholesale

nature of any sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). 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.

(4) **Service B&O tax.** Compensation received from owners of vending machines for allowing the placement of those machines at the restaurant, cocktail bar, tavern, or similar business is subject to the service and other business activities tax. Persons operating games of chance should refer to WAC 458-20-131.

(5) **Exemptions.** Effective October 1, 2013, chapter 13 (ESSB 5882), Laws of 2013, provides retail sales tax and use tax exemptions for sales to restaurants of products that impart flavor to food during the cooking process; and

• Are completely or substantially consumed by combustion during the cooking process; or

• That support the food during the cooking process and are comprised entirely of wood.

The exemption includes products such as wood chips, charcoal, charcoal briquettes, grapevines, and cedar grilling planks. The exemptions do not apply to any type of gas fuel. For the purpose of these exemptions, "restaurant" has the same meaning as found in RCW 82.08.9995. These exemptions are scheduled to expire July 1, 2017.

(6) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Purchases of dishes, kitchen utensils, linens, and items which do not become an ingredient of the meal, are subject to retail sales tax.

(b) Retail sales tax or use tax applies to purchases of equipment, repairs, appliances, and construction.

(c) The retail sales or use tax does not apply to purchases of food or beverage products which are ingredients of the meals being sold.

(d) Purchases of paper plates, paper cups, paper napkins, toothpicks, or any other articles which are furnished to customers, the first actual use of which renders such articles unfit for further use, are not subject to retail sales tax when purchased by restaurants and similar businesses making actual sales of meals.

~~((6))~~ (7) **Combination business.** Persons operating a combination of two kinds of food sales, of which one is the sale of prepared food (i.e., an establishment, such as a deli, selling food products ready for consumption and in bulk quantities), should refer to WAC 458-20-244 for taxability information.

~~((7))~~ (8) **Discounted meals, promotional meals, and meals given away.** Persons who sell meals on a "two for one" or similar basis are not giving away a free meal, but rather are selling two meals at a discounted price. Both the retailing B&O and retail sales taxes should be calculated on the reduced price actually received by the seller.

Persons who provide meals free of charge to persons other than employees are consumers of those meals. Persons operating restaurants or similar businesses are not required to report use tax on food and food ingredients given away, even if the food or food ingredients are part of prepared meals. For example, a restaurant providing meals to the homeless or hot

dogs free of charge to a little league team will not incur a retail sales or use tax liability with respect to these items given away. A sale has not occurred, and the food and food ingredients exemption applies. Should the restaurant provide the little league team with soft drinks free of charge, the restaurant will incur a deferred retail sales or use tax liability with respect to those soft drinks. Soft drinks are excluded from the exemption for food and food ingredients. (See WAC 458-20-244.)

~~((8))~~ (9) **Sales of meals, beverages and food at prices including retail sales tax.** Persons may advertise and/or sell meals, beverages, or any kind of food product at prices including sales tax. Any person electing to advertise and/or make sales in this manner must clearly indicate this pricing method on the menus and other price information.

~~((If sales slips, sales invoices, or dinner checks are given to the customer, the sales tax must be separately stated on all such sales slips, sales invoices, or dinner checks. If not separately stated on the sales slips, sales invoices, or dinner checks, it will be presumed that retail sales tax was not collected. In such cases the measure of tax will be gross receipts. (See WAC 458-20-107.)~~

~~(9))~~ (10) **Spirits, beer, and wine restaurant licensees.** Restaurants operating under the authority of a license from the liquor control board to sell spirits, beer, and wine by the glass for on-premises consumption generally have both dining and cocktail lounge areas. Customers purchasing beverages or food in lounge areas are generally not given sales invoices, sales slips, or dinner checks, nor are they generally provided with menus.

(a) Many spirits, beer, and wine restaurant licensees elect to sell beverages or food at prices inclusive of the sales tax in the cocktail lounge area. If this pricing method is used, notification that retail sales tax is included in the price of the beverages or foods must be posted in the lounge area in a manner and location so that customers can see the notice without entering employee work areas. It will be presumed that no retail sales tax has been collected or is included in the gross receipts when a notice is not posted and the customer does not receive a sales slip or sales invoice separately stating the retail sales tax.

(b) The election to include retail sales tax in the selling price in one area of a location does not preclude the restaurant operator from selling beverages or food at a price exclusive of sales tax in another. For example, a spirits, beer, and wine restaurant licensee may elect to include the retail sales tax in the price charged for beverages in the lounge area, while the price charged in the dining area is exclusive of the sales tax.

(c) Spirits, beer, and wine restaurant licensees are not required to post actual drink prices in the cocktail lounge areas. However, if actual prices are posted, the advertising requirements expressed in WAC 458-20-107 must be met.

~~((10))~~ (11) **Gratuities.** Tips or gratuities representing donations or gifts by customers under circumstances which are clearly voluntary are not part of the selling price and not subject to tax. However, mandatory additions to the price by the seller, whether labeled service charges, tips, gratuities or otherwise must be included in the selling price and are subject to both the retailing B&O and retail sales taxes.

~~((H))~~ (12) **Examples.**

(a) XYZ Restaurant operates both a cocktail bar and a dining area. XYZ has elected to sell drinks and appetizers in the bar at prices including the retail sales tax while selling drinks and meals served in the dining area at prices exclusive of the sales tax. There is a sign posted in the bar area advising customers that all prices include retail sales tax. Customers in the dining area are given sales invoices which separately state the retail sales tax. As an example, a typical well drink purchased in the bar for \$2.50 inclusive of the sales tax, is sold for \$2.50 plus sales tax in the dining area. The pricing requirements have been satisfied and the drink and food totals are correctly reflected on the customers' dinner checks. XYZ may factor the retail sales tax out of the cocktail bar gross receipts when determining its retailing and retail sales tax liability.

(b) RBS Restaurant operates both a cocktail bar and a dining area. RBS has elected to sell drinks at prices inclusive of retail sales tax for all areas where drinks are served. It has a sign posted to inform customers in the bar area of this fact and a statement is also on the dinner menu indicating that any charges for drinks includes retail sales tax. Dinner checks are given to customers served in the dining area which state the price of the meal exclusive of sales tax, sales tax on the meal, and the drink price including retail sales tax. Because the business has met the sign posting requirement in the bar area and has indicated on the menu that sales tax is included in the price of the drinks, RBS may factor the sales tax out of the gross receipts received from its drink sales when determining its taxable retail sales.

(c) Z Tavern sells all foods and drinks at a price inclusive of the retail sales tax. However, there is no mention of this pricing structure on its menus or reader boards. The gross receipts from Z Tavern's food and drink sales are subject to the retailing and retail sales taxes. Z Tavern has failed to meet the conditions for selling foods and drinks at prices including tax. Z Tavern may not assume that the gross receipts include any sales tax and may not factor the retail sales tax out of the gross receipts.

THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gayle Pauley, Office of the Superintendent of Public Instruction (OSPI), 600 Washington, Olympia, WA 98504-7200, AND RECEIVED BY November 19, 2013.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Substantial changes to chapter 28A.165 RCW, the learning assistance program (LAP), were made during the 2013 second special legislative session under ESSB 5946. Hearings were held by the house and the senate education committees on the proposed legislative changes to LAP and on the proposed new additions to LAP. The changes include the following: The removal of the requirement for districts to submit a LAP application to OSPI for approval, the removal of the requirement for districts to have an accelerated student learning plan for all LAP students, the additional requirement to serve students in grades kindergarten through four who are at basic or below basic on state or local assessments, the requirement that districts must select best practices and strategies selected by a state panel of experts for reading (ELA), mathematics, and programs to reduce disruptive student behaviors in the classroom.

Reasons Supporting Proposal: Changes to chapter 392-162 WAC reflect the changes made by legislation and reflect only those changes.

Statutory Authority for Adoption: RCW 28A.165.075.

Statute Being Implemented: Chapter 392-162 WAC.

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

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Gayle Pauley, Office – Title I/LAP/CPR, (360) 725-6100.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The changes made to chapter 392-162 WAC are made because of legislative changes and provide clear guidance to districts on the implementation of LAP.

September 16, 2013
Randy Dorn
State Superintendent
of Public Instruction

WSR 13-19-058

EXPEDITED RULES

**SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed September 16, 2013, 2:26 p.m.]

Title of Rule and Other Identifying Information: Chapter 392-162 WAC, Special service program—Learning assistance.

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

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

WAC 392-162-005 Authority. The authority for this chapter is RCW 28A.165.075 which authorizes the superintendent of public instruction to adopt rules and regulations for the administration of a program designed to provide learning assistance to public school students in grades kindergarten through twelve who ~~((are deficient in basic skills achievement))~~ score below standard in reading, writing, and mathematics for his or her grade level.

AMENDATORY SECTION (Amending WSR 09-24-075, filed 11/30/09, effective 12/31/09)

WAC 392-162-010 Purpose. The purpose of this chapter is to set forth policies and procedures for the administration of and to ensure district compliance with state requirements for a program designed to ~~((provide extended learning opportunities to public school))~~ assist underachieving students in grades kindergarten through twelve who score below standard in reading, writing, and mathematics for his or her grade level ((on the statewide assessments and assessments in the basic skills administered by local school districts)).

The learning assistance program requirements in this chapter are designed to:

(1) ~~((Provide the means by which a school district becomes eligible for learning assistance program funds and the distribution of those funds;~~

(2) Promote the use of assessment data when developing programs to assist underachieving students;)) Direct districts as they implement a learning assistance program that learning assistance program funds must first be used to address the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills to improve reading literacy;

(2) Promote the use of data when developing programs to assist underachieving students and reduce disruptive behaviors in the classroom;

(3) Guide school districts in providing the most effective and efficient practices when implementing supplemental instruction and services to assist underachieving students and reduce disruptive behaviors in the classroom; and

(4) Guide school districts in providing extended learning opportunities to assist underachieving students and students in grades eleven and twelve who are at risk of not meeting state and local graduation requirements.

AMENDATORY SECTION (Amending WSR 09-24-075, filed 11/30/09, effective 12/31/09)

WAC 392-162-020 Definition—Learning assistance program (LAP). As used in this chapter, the term "learning assistance program" means a statewide program designed to enhance educational opportunities for public school students in grades kindergarten through twelve who do not meet state reading, writing, and mathematics standards by providing supplemental instruction and services to those students. School districts implementing a learning assistance program must first focus on addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills. The learning assistance program may then be used to support underachieving students in grades kindergarten through twelve by providing supplemental reading, writing, or mathematics instruction, by addressing the needs of eleventh and twelfth grade students to assist them in meeting state and district graduation requirements, and to reduce disruptive behaviors in the classroom.

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

WAC 392-162-025 Definition—Statewide student assessments. As used in this chapter, the term "statewide student assessments" means one or more of the ~~((several basic skills assessments administered as part of the state's student assessment system, and))~~ assessments ((in the basic skills areas)) administered by ((local)) school districts as required under RCW 28A.655.070.

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

WAC 392-162-032 Definition—Participating student. As used in this chapter, the term "participating student" means a student in kindergarten through grade twelve who scores below standard for his or her grade level ~~((on the statewide assessments and who is identified in the approved plan to receive services and students in grades eleven and twelve who are at risk of not meeting state or local graduation requirements))~~ using multiple measures of performance, including on the statewide student assessments or other assessments and performance or other assessments and performance measurement tools administered by the school or district and who is identified by the district to receive services.

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

WAC 392-162-033 Definition—Underachieving students. As used in this chapter, the term "underachieving students" means students with the greatest academic deficits in basic skills as identified by ~~((the))~~ statewide, school, or district assessments ((and assessments in the basic skills areas administered by the local school district)) or other performance tools.

NEW SECTION

WAC 392-162-041 Best practices. Best practices as identified by the office of superintendent of public instruction are to be used to provide learning assistance program educational instructional materials and strategies to identified learning assistance students. The practices implemented must be research-based and have demonstrated that the practice has increased student academic success. During the 2013-14 and 2014-15 school years, districts may select from the following:

- (1) Extended learning opportunities occurring:
 - (a) Before or after the regular school day;
 - (b) On Saturday; and
 - (c) Beyond the regular school year.
- (2) Services under RCW 28A.320.190.
- (3) Professional development for certificated and classified staff that focuses on:
 - (a) The needs of a diverse student population;
 - (b) Specific literacy and mathematics content and instructional strategies; and

(c) The use of student work to guide effective instruction and appropriate assistance.

(4) Consultant teachers to assist in implementing effective instructional practices by teachers serving participating students.

(5) Tutoring support for participating students.

(6) Outreach activities and support for parents of participating students, including employing parent and family engagement coordinators.

(7) Up to five percent of district's learning assistance program allocation may be used for development of partnerships with community-based organizations, educational service districts, and other local agencies to deliver academic and nonacademic supports to participating students who are significantly at-risk of not being successful in school to reduce barriers to learning, increase student engagement, and enhance students' readiness to learn. The office of the superintendent of public instruction must approve any community-based organization or local agency before learning assistance program funds may be expended.

NEW SECTION

WAC 392-162-051 District selection of best practices and strategies for use in the learning assistance program. Beginning in the 2016-17 school year districts must select a practice or strategy that is on the state-approved menu for the learning assistance program. School districts may enter into cooperative agreements with state agencies, local governments, or school districts for administrative or operational costs needed to provide services in accordance with the state menus developed beginning in 2016-17.

AMENDATORY SECTION (Amending WSR 09-24-075, filed 11/30/09, effective 12/31/09)

WAC 392-162-054 Definition—District eligibility and distribution of funds. ~~((Each school district with an approved program is eligible for state funds provided for the learning assistance program.))~~ The funds for the learning assistance program shall be appropriated ~~((for the learning assistance program))~~ in accordance with the Omnibus Appropriations Act and RCW 28A.150.260. The distribution formula is for school district allocation purposes only, but funds appropriated for the learning assistance program must be expended for the purposes of RCW 28A.165.005 through 28A.165.065 ~~((The distribution formula shall be based on one or more family income factors measuring economic need))~~ and for chapter 28A.655 RCW. A school district's funded students for the learning assistance program shall be the sum of the district's full-time equivalent enrollment in grades K-12 for the prior school year multiplied by the district's percentage of October headcount enrollment in grades K-12 eligible for free or reduced price lunch in the prior school year.

NEW SECTION

WAC 392-162-056 Exception to state-approved selection of best practices and strategies for use in the learning assistance program. Beginning in the 2016-17

school year, school districts may use a practice or strategy that is not on the state menu for two years. At the end of the two years, the district must be able to demonstrate improved outcomes for participating learning assistance program students. If the district is able to demonstrate improved outcomes commensurate with the state approved menu for such students, the office of the superintendent of public instruction will approve the use of the alternative practice for one additional year. For each subsequent year, the district must provide data that demonstrates that participating students are meeting or exceeding academic achievement compared to those students who are being served by a state approved best practices and strategy.

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

WAC 392-162-080 Program requirement—Selection of students. Students selected to participate in the learning assistance program shall be limited to those who:

- (1) Are enrolled in grades kindergarten through twelve;
- (2) ~~((Are performing below the state standard for his or her grade level;~~
- (3) ~~Have been identified in the approved district plan to receive services;~~
- (4) ~~Have been determined to have the greatest risk of not meeting the state's challenging content and performance standards; and~~
- (5) Who score below standard for his or her grade level using multiple measures of performance, including on the statewide student assessments or other assessments and performance measurement tools administered by the school or district and who is identified by the district to receive services; and
- (3) Are in grades eleven or twelve and are at risk of not meeting state or local graduation requirements as defined in RCW 28A.320.190.

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-110 Program requirement—~~((End of year)) Annual report.~~ Districts shall submit to the superintendent of public instruction ~~((at the close of the state fiscal year))~~ by August 1, 2014, and each August 1st thereafter, an ((end of the year)) annual report on electronic forms provided by the superintendent of public instruction. The report must include the following:

- (1) The amount of academic growth gained by students participating in the learning assistance program;
- (2) The number of students who gain at least one year of academic growth; and
- (3) The specific practices, activities, and programs used by each school building that received learning assistance program funds.

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-115 Monitoring of districts. In order to insure that school districts are meeting the requirements of

this chapter, the superintendent of public instruction shall monitor ~~((district))~~ learning assistance programs no less than once every four years by using the state program review process. The primary purpose of the monitoring is to evaluate the effectiveness of a district's allocation and expenditure of resources and to monitor school district fidelity in their implementation of best practices. Individual student records shall be ~~((maintained at the school district))~~ recorded beginning with the 2014-15 school year, in the statewide individual student data system annual entrance and exit performance data for each student participating in the learning assistance program according to specifications established by the office of the superintendent of public instruction.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-162-034 Accelerated learning plans.
- WAC 392-162-045 Definition—Approved program.
- WAC 392-162-060 District application.
- WAC 392-162-062 Program plan revision.
- WAC 392-162-068 Program plan.
- WAC 392-162-072 Program plan—Approved activities.
- WAC 392-162-075 Program approval.
- WAC 392-162-105 Program requirement—Program evaluation.