

WSR 08-05-106
EXPEDITED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed February 19, 2008, 8:54 a.m.]

Title of Rule and Other Identifying Information: Repealing WAC 388-511-1105 SSI-related eligibility requirements.

See below for additional Title 388 WAC cross-referencing corrections as they relate to the repeal of WAC 388-511-1105.

WAC	Section Title	Description of Change
WAC 388-106-0225 (2)(c).	How do I pay for MPC?	WAC cross-reference correction.
WAC 388-106-0310 (1)(a).	Am I eligible for COPEF-funded services?	WAC cross-reference correction.
WAC 388-106-0410 (1)(a).	Am I eligible for MNRW-funded services?	WAC cross-reference correction.
WAC 388-106-0510 (1)(a).	Am I eligible for MNIW-funded services?	WAC cross-reference correction.
WAC 388-106-0705 (1)(a).	Am I eligible for PACE services?	WAC cross-reference correction.
WAC 388-500-0005 Medicaid.	Medical definitions.	WAC cross-reference correction.
WAC 388-503-0510 (1)(a) and (b).	How a client is determined "related to" a categorical program.	WAC cross-reference correction.
WAC 388-513-1363 (2)(d)(ii) (A), (e), (f)(iii) and (iv).	Evaluating the transfer of assets on or after May 1, 2006, for persons applying for or receiving long-term care (LTC) services.	WAC cross-reference correction.
WAC 388-513-1364 Introduction.	Evaluating the transfer of an asset made on or after April 1, 2003 for long-term care (LTC) services.	Adding a reference to WAC 388-513-1363.
WAC 388-513-1364 (1)(b), (d) (ii)(A), (e)(iii) and (iv), (f), (6)(a).	Evaluating the transfer of an asset made on or after April 1, 2003, for long-term care (LTC) services.	WAC cross-reference corrections.
WAC 388-513-1365 Introduction.	Evaluating the transfer of an asset made on or after March 1, 1997, and before April 1, 2003 for long-term care (LTC) services.	Adding a reference to WAC 388-513-1363.
WAC 388-513-1365 (1)(b), (d)(ii)(A), (e)(iii) and (iv), (7)(a).	Evaluating the transfer of an asset made on or after March 1, 1997, and before April 1, 2003 for long-term care (LTC) services.	WAC cross-reference corrections.
WAC 388-515-1540 (1)(c), (i), (2), (12)(b), (c), and (d).	Medically needy residential waiver (MNRW) effective March 17, 2003.	WAC cross-reference corrections.
WAC 388-561-0100 (3)(b)(ii) (B), (6)(a) and (b), (7)(a) and (b), (9), (13).	Trusts.	WAC cross-reference additions and corrections.
WAC 388-561-0300 (3), (5), (6)(b).	Life estates.	WAC cross-reference additions.

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 Rules Coordinator, Department of Social and Health Services, P.O. Box 45850, Olympia, WA 98504-5850, or deliver to Blake Office Park East, 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, AND RECEIVED BY 5:00 p.m. on May 5, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 388-475 WAC incorporates language published in chapter 388-511 WAC for SSI-related eligibility requirements. The proposed repeal of this WAC section is appropriate because the language is duplicated in chapter 388-475 WAC. The repeal of this WAC section provides the opportunity to consolidate and improve the usability of rules concerning the financial eligibility requirements for SSI within chapter 388-475 WAC.

The rule's effect remains unchanged and the department is not required to draft a cost-benefit analysis for housekeeping rules that correct typographical errors or update cross-references.

Reasons Supporting Proposal: There will be less confusion for people because the WAC cross-references will be correct.

An agency may file notice for the expedited repeal of rules under the procedures set forth in RCW 34.05.353 for rules with this criteria: RCW 35.05.353 [34.05.353] (2)(d) - other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 35.05.353 [34.05.-353] (2)(d).

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

Name of Proponent: Department of social and health services, health and recovery services administration (HRSA), governmental.

Name of Agency Personnel Responsible for Drafting: Jonell Blatt, ORP, 626 8th Avenue, Olympia, WA 98504, (360) 725-1571; Implementation and Enforcement: Cathy Fisher, EPACE, 626 8th Avenue, Olympia, WA 98504, (360) 725-1357.

February 13, 2008
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-21-020, filed 10/8/07, effective 11/8/07)

WAC 388-106-0225 How do I pay for MPC? (1) If you live in your own home, you do not participate toward the cost of your personal care services.

(2) If you live in a residential facility and are:

(a) An SSI beneficiary who receives only SSI income, you only pay for board and room. You are allowed to keep a personal needs allowance of forty dollars and twelve cents per month;

(b) An SSI beneficiary who receives SSI and SSA benefits, you only pay for board and room. You are allowed to keep a personal needs allowance of forty dollars and twelve cents. You keep an additional twenty dollar disregard from non-SSI income;

(c) An SSI-related person under WAC ((~~388-511-1105~~) 388-475-0050), you may be required to participate towards the cost of your personal care services in addition to your board and room if your financial eligibility is based on the facility's state contracted rate described in WAC 388-513-1305. You are allowed to keep a personal needs allowance of forty dollars and twelve cents. You keep an additional twenty dollar disregard from non-SSI income; or

(d) A GA-X client in a residential care facility, you are allowed to keep a personal allowance of only thirty-eight dollars and eighty-four cents per month. The remainder of your grant must be paid to the facility.

(3) The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the Medicaid resident dies in the facility; or

(b) Day of service before the day the Medicaid resident is discharged.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0310 Am I eligible for COPES-funded services? You are eligible for COPES-funded services if you meet all of the following criteria. The department must assess your needs in CARE and determine that:

(1) You are age:

(a) Eighteen or older and blind or have a disability, as defined in WAC ((~~388-511-1105~~) 388-475-0050); or

(b) Sixty-five or older.

(2) You meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC 388-515-1505, community options program entry system (COPES).

(3) You:

(a) Are not eligible for Medicaid personal care services (MPC); or

(b) Are eligible for MPC services, but the department determines that the amount, duration, or scope of your needs is beyond what MPC can provide.

(4) Your CARE assessment shows you need the level of care provided in a nursing facility (or will likely need the level of care within thirty days unless COPES services are provided) which is defined in WAC 388-106-0355(1).

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0410 Am I eligible for MNRW-funded services? You are eligible for MNRW-funded services if you

choose to receive services in a residential facility and you meet all of the following criteria. The department must assess your needs, using CARE, and determine that:

(1) You are age:

(a) Eighteen or older and blind or have a disability, as defined in WAC ((~~388-511-1105~~) 388-475-0050); or

(b) Sixty-five or older.

(2) You meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC 388-515-1540.

(3) You are not eligible for Medicaid personal care services (MPC) or COPES.

(4) Your CARE assessment shows you need the level of care provided in a nursing facility (or will likely need the level of care within thirty days unless MNRW services are provided) which is defined in WAC 388-106-0355(1).

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0510 Am I eligible for MNIW-funded services? You are eligible for MNIW-funded services if you choose to receive services in your own home and you meet all of the following criteria. The department must assess your needs in CARE and determine that:

(1) You are age:

(a) Eighteen or older and blind or have a disability, as defined in WAC ((~~388-511-1105~~) 388-475-0050); or

(b) Sixty-five or older.

(2) You meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC 388-515-1505;

(3) You are not eligible for Medicaid personal care services (MPC) or COPES;

(4) Your CARE assessment shows you need the level of care provided in a nursing facility (or will likely need the level of care within thirty days unless MNIW services are provided) which is defined in WAC 388-106-0355(1).

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-106-0705 Am I eligible for PACE services? To qualify for Medicaid-funded PACE services, you must apply for an assessment by contacting your local home and community services office. The department will assess and determine whether you:

(1) Are age:

(a) Fifty-five or older, and blind or have a disability, as defined in WAC ((~~388-511-1105~~) 388-475-0050), SSI-related eligibility requirements; or

(b) Sixty-five or older.

(2) Need nursing facility level of care as defined in WAC 388-106-0355;

(3) Live within the designated service area of the PACE provider;

(4) Meet financial eligibility requirements. This means the department will assess your finances, determine if your income and resources fall within the limits, and determine the

amount you may be required to contribute, if any, toward the cost of your care as described in WAC 388-515-1505;

(5) Not be enrolled in any other Medicare or Medicaid prepayment plan or optional benefit; and

(6) Agree to receive services exclusively through the PACE provider and the PACE provider's network of contracted providers.

AMENDATORY SECTION (Amending WSR 98-15-066, filed 7/13/98, effective 7/30/98)

WAC 388-500-0005 Medical definitions. Unless defined in this chapter or in other chapters of the *Washington Administrative Code*, use definitions found in the *Webster's New World Dictionary*. This section contains definitions of words and phrases the department uses in rules for medical programs. Definitions of words used for both medical and financial programs are defined under WAC 388-22-030.

"Assignment of rights" means the client gives the state the right to payment and support for medical care from a third party.

"Base period" means the time period used in the limited casualty program which corresponds with the months considered for eligibility.

"Beneficiary" means an eligible person who receives:

*A federal cash Title XVI benefit; and/or

*State supplement under Title XVI; or

*Benefits under Title XVIII of the Social Security Act.

"Benefit period" means the time period used in determining whether Medicare can pay for covered Part A services. A benefit period begins the first day a beneficiary is furnished inpatient hospital or extended care services by a qualified provider. The benefit period ends when the beneficiary has not been an inpatient of a hospital or other facility primarily providing skilled nursing or rehabilitation services for sixty consecutive days. There is no limit to the number of benefit periods a beneficiary may receive. Benefit period also means a "spell of illness" for Medicare payments.

"Cabulance" means a vehicle for hire designed and used to transport a physically restricted person.

"Carrier" means:

*An organization contracting with the federal government to process claims under Part B of Medicare; or

*A health insurance plan contracting with the department.

"Categorical assistance unit (CAU)" means one or more family members whose eligibility for medical care is determined separately or together based on categorical relatedness.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 388-503-0310, chapter 388-517 WAC and WAC 388-523-2305.

"Children's health program" means a state-funded medical program for children under age eighteen:

*Whose family income does not exceed one hundred percent of the federal poverty level; and

*Who are not otherwise eligible under Title XIX of the Social Security Act.

"Coinsurance-Medicare" means the portion of reimbursable hospital and medical expenses, after subtraction of any deductible, which Medicare does not pay. Under Part A, coinsurance is a per day dollar amount. Under Part B, coinsurance is twenty percent of reasonable charges.

"Community services office (CSO)" means an office of the department which administers social and health services at the community level.

"Couple" means, for the purposes of an SSI-related client, an SSI-related client living with a person of the opposite sex and both presenting themselves to the community as husband and wife. The department shall consider the income and resources of such couple as if the couple were married except when determining institutional eligibility.

"Deductible-Medicare" means an initial specified amount that is the responsibility of the client.

"Part A of Medicare-inpatient hospital deductible" means an initial amount of the medical care cost in each benefit period which Medicare does not pay.

"Part B of Medicare-physician deductible" means an initial amount of Medicare Part B covered expenses in each calendar year which Medicare does not pay.

"Delayed certification" means department approval of a person's eligibility for medicaid made after the established application processing time limits.

"Department" means the state department of social and health services.

"Early and periodic screening, diagnosis and treatment (EPSDT)" also known as the "healthy kids" program, means a program providing early and periodic screening, diagnosis and treatment to persons under twenty-one years of age who are eligible for Medicaid or the children's health program.

"Electronic fund transfers (EFT)" means automatic bank deposits to a client's or provider's account.

"Emergency medical condition" means the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

*Placing the patient's health in serious jeopardy;

*Serious impairment to bodily functions; or

*Serious dysfunction of any bodily organ or part.

"Emergency medical expense requirement" means a specified amount of expenses for ambulance, emergency room or hospital services, including physician services in a hospital, incurred for an emergency medical condition that a client must incur prior to certification for the medically indigent program.

"Essential spouse" see "spouse."

"Extended care patient" means a recently hospitalized Medicare patient needing relatively short-term skilled nursing and rehabilitative care in a skilled nursing facility.

"Garnishment" means withholding an amount from earned or unearned income to satisfy a debt or legal obligation.

"Grandfathered client" means:

*A noninstitutionalized person who meets all current requirements for Medicaid eligibility except the criteria for blindness or disability; and

*Was eligible for Medicaid in December 1973 as blind or disabled whether or not the person was receiving cash assistance in December 1973; and

*Continues to meet the criteria for blindness or disability and other conditions of eligibility used under the Medicaid plan in December 1973; and

*An institutionalized person who was eligible for Medicaid in December 1973 or any part of that month, as an inpatient of a medical institution or resident of an intermediate care facility that was participating in the Medicaid program and for each consecutive month after December 1973 who:

*Continues to meet the requirements for Medicaid eligibility that were in effect under the state's plan in December 1973 for institutionalized persons; and

*Remains institutionalized.

"Health maintenance organization (HMO)" means an entity licensed by the office of the insurance commissioner to provide comprehensive medical services directly to an eligible enrolled client in exchange for a premium paid by the department on a prepaid capitation risk basis.

"Healthy kids," see **"EPSDT."**

"Home health agency" means an agency or organization certified under Medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence.

"Hospital" means an institution licensed as a hospital by the department of health.

"Income for an SSI-related client," means the receipt by an individual of any property or service which the client can apply either directly, by sale, or conversion to meet the client's basic needs for food, clothing, and shelter.

***"Earned income"** means gross wages for services rendered and/or net earnings from self-employment.

***"Unearned income"** means all other income.

"Institution" means an establishment which furnishes food, shelter, medically-related services, and medical care to four or more persons unrelated to the proprietor. This includes medical facilities, nursing facilities, and institutions for the mentally retarded.

***"Institution-public"** means an institution, including a correctional institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

***"Institution for mental diseases"** means an institution primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases including medical attention, nursing care, and related services.

***"Institution for the mentally retarded or a person with related conditions"** means an institution that:

*Is primarily for the diagnosis, treatment or rehabilitation of the mentally retarded or a person with related conditions; and

*Provides, in a protected residential setting, on-going care, twenty-four hour supervision, evaluation, and planning to help each person function at the greatest ability.

***"Institution for tuberculosis"** means an institution for the diagnosis, treatment, and care of a person with tuberculosis.

***"Medical institution"** means an institution:

*Organized to provide medical care, including nursing and convalescent care;

*With the necessary professional personnel, equipment and facilities to manage the health needs of the patient on a continuing basis in accordance with acceptable standards;

*Authorized under state law to provide medical care; and

*Staffed by professional personnel. Services include adequate physician and nursing care.

"Intermediary" means an organization having an agreement with the federal government to process Medicare claims under Part A.

"Legal dependent" means a person for whom another person is required by law to provide support.

"Limited casualty program (LCP)" means a medical care program for medically needy, as defined under WAC 388-503-0320 and for medically indigent, as defined under WAC 388-503-0370.

"Medicaid" means the federal aid Title XIX program under which medical care is provided to persons eligible for:

*Categorically needy program as defined in WAC 388-503-0310 (~~and 388-511-1105~~); or

*Medically needy program as defined in WAC 388-503-0320.

"Medical assistance." See **"Medicaid."**

"Medical assistance administration (MAA)" means the unit within the department of social and health services authorized to administer the Title XIX Medicaid and the state-funded medical care programs.

"Medical assistance unit (MAU)" means one or more family members whose eligibility for medical care is determined separately or together based on financial responsibility.

"Medical care services" means the limited scope of care financed by state funds and provided to general assistance (GAU) and ADATSA clients.

"Medical consultant" means a physician employed by the department.

"Medical facility" see **"Institution."**

"Medically indigent (MI)" means a state-funded medical program for a person who has an emergency medical condition requiring hospital-based services.

"Medically necessary" is a term for describing requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or mal-function. There is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the service. For the purpose of this section, "course of treatment" may include mere observation or, where appropriate, no treatment at all.

"Medically needy (MN)" is the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"Medicare" means the federal government health insurance program for certain aged or disabled clients under Titles II and XVIII of the Social Security Act. Medicare has two parts:

***"Part A"** covers the Medicare inpatient hospital, post-hospital skilled nursing facility care, home health services, and hospice care.

***"Part B"** is the supplementary medical insurance benefit (SMIB) covering the Medicare doctor's services, outpatient hospital care, outpatient physical therapy and speech pathology services, home health care, and other health services and supplies not covered under Part A of Medicare.

"Medicare assignment" means the method by which the provider receives payment for services under Part B of Medicare.

"Month of application" means the calendar month a person files the application for medical care. When the application is for the medically needy program, at the person's request and if the application is filed in the last ten days of that month, the month of application may be the following month.

"Nursing facility" means any institution or facility the department [of health] licenses as a nursing facility, or a nursing facility unit of a licensed hospital, that the:

*Department certifies; and

*Facility and the department agree the facility may provide skilled nursing facility care.

"Outpatient" means a nonhospitalized patient receiving care in a hospital outpatient or hospital emergency department, or away from a hospital such as in a physician's office, the patient's own home, or a nursing facility.

"Patient transportation" means client transportation to and from covered medical services under the federal Medicaid and state medical care programs.

"Physician" means a doctor of medicine, osteopathy, or podiatry who is legally authorized to perform the functions of the profession by the state in which the services are performed.

"Professional activity study (PAS)" means a compilation of inpatient hospital data, conducted by the commission of professional and hospital activities, to determine the average length of hospital stay for patients.

"Professional review organization for Washington (PRO-W)" means the state level organization responsible for determining whether health care activities:

*Are medically necessary;

*Meet professionally acceptable standards of health care; and

*Are appropriately provided in an outpatient or institutional setting for beneficiaries of Medicare and clients of Medicaid and maternal and child health.

"Prosthetic devices" means replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law to:

*Artificially replace a missing portion of the body;

*Prevent or correct physical deformity or malfunction;

or

*Support a weak or deformed portion of the body.

"Provider" or **"provider of service"** means an institution, agency, or person:

*Who has a signed agreement with the department to furnish medical care, goods, and/or services to clients; and

*Is eligible to receive payment from the department.

"Resources for an SSI-related client," means cash or other liquid assets or any real or personal property that an individual or spouse, if any, owns and could convert to cash to be used for support or maintenance.

*If an individual can reduce a liquid asset to cash, it is a resource.

*If an individual cannot reduce an asset to cash, it is not considered an available resource.

*Liquid means properties that are in cash or are financial instruments which are convertible to cash such as, but not limited to, cash, savings, checking accounts, stocks, mutual fund shares, mortgage, or a promissory note.

*Nonliquid means all other property both real and personal evaluated at the price the item can reasonably be expected to sell for on the open market.

"Retroactive period" means the three calendar months before the month of application.

"Spell of illness" see **"benefit period."**

"Spendedown" means the process by which a person uses incurred medical expenses to offset income and/or resources to meet the financial standards established by the department.

"Spouse" means:

***"Community spouse"** means a person living in the community and married to an institutionalized person or to a person receiving services from a home and community-based waived program as described under chapter 388-515 WAC.

***"Eligible spouse"** means an aged, blind or disabled husband or wife of an SSI-eligible person, with whom such a person lives.

***"Essential spouse"** means, a husband or wife whose needs were taken into account in determining old age assistance (OAA), aid to the blind (AB), or disability assistance (DA) client for December 1973, who continues to live in the home and to be the spouse of such client.

***"Ineligible spouse"** means the husband or wife of an SSI-eligible person, who lives with the SSI-eligible person and who has not applied or is not eligible to receive SSI.

***"Institutionalized spouse"** means a married person in an institution or receiving services from a home or community-based waived program.

***"Nonapplying spouse"** means an SSI-eligible person's husband or wife, who has not applied for assistance.

"SSI-related" means an aged, blind or disabled person not receiving an SSI cash grant.

"Supplemental security income (SSI) program, Title XVI" means the federal grant program for aged, blind, and disabled established by section 301 of the Social Security amendments of 1972, and subsequent amendments, and administered by the Social Security Administration (SSA).

"Supplementary payment (SSP)" means the state money payment to persons receiving benefits under Title XVI, or who would, but for the person's income, be eligible for such benefits, as assistance based on need in supplementation of SSI benefits. This payment includes:

"Mandatory state supplement" means the state money payment to a person who, for December 1973, was a client receiving cash assistance under the department's former programs of old age assistance, aid to the blind and disability assistance; and

"Optional state supplement" means the elective state money payment to a person eligible for SSI benefits or who, except for the level of the person's income, would be eligible for SSI benefits.

"Third party" means any entity that is or may be liable to pay all or part of the medical cost of care of a medical program client.

"Title XIX" is the portion of the federal Social Security Act that authorizes grants to states for medical assistance programs. Title XIX is also called Medicaid.

"Transfer" means any act or omission to act when title to or any interest in property is assigned, set over, or otherwise vested or allowed to vest in another person; including delivery of personal property, bills of sale, deeds, mortgages, pledges, or any other instrument conveying or relinquishing an interest in property. Transfer of title to a resource occurs by:

*An intentional act or transfer; or

*Failure to act to preserve title to the resource.

"Value-fair market for an SSI-related person" means the current value of a resource at the price for which the resource can reasonably be expected to sell on the open market.

"Value of compensation received" means, for SSI-related medical eligibility, the gross amount paid or agreed to be paid by the purchaser of a resource.

"Value-uncompensated" means, for SSI-related medical eligibility, the fair market value of a resource, minus the amount of compensation received in exchange for the resource.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 05-07-097, filed 3/17/05, effective 4/17/05)

WAC 388-503-0510 How a client is determined "related to" a categorical program. (1) A person is related to the Supplemental Security Income (SSI) program if they are:

(a) Aged, blind, or disabled as defined in (~~WAC 388-511-1105(1) or~~) chapter 388-475 WAC; or

(b) Considered as eligible for SSI under (~~WAC 388-511-1105(5) or~~) chapter 388-475 WAC; or

(c) Children meeting the requirements of WAC 388-505-0210(5).

(2) A person or family is considered to be related to the temporary assistance for needy families (TANF) program if they:

(a) Meet the program requirements for the TANF cash assistance programs or the requirements of WAC 388-505-0220; or

(b) Would meet such requirements except that the assistance unit's countable income exceeds the TANF program standards in WAC 388-478-0065.

(3) Persons related to SSI or to TANF are eligible for categorically needy (CN) or medically needy (MN) medical coverage if they meet the other eligibility criteria for these medical programs. See chapters 388-475, 388-505 and 388-519 WAC for these eligibility criteria.

(4) Persons related to SSI or to TANF and who receive the related CN medical coverage have redetermination rights as described in WAC 388-503-0505(6).

AMENDATORY SECTION (Amending WSR 07-17-152, filed 8/21/07, effective 10/1/07)

WAC 388-513-1363 Evaluating the transfer of assets on or after May 1, 2006 for persons applying for or receiving long-term care (LTC) services. This section describes how the department evaluates asset transfers made on or after May 1, 2006 and their affect on LTC services. This applies to transfers by the client, spouse, a guardian or through an attorney in fact. Clients subject to asset transfer penalty periods are not eligible for LTC services. LTC services for the purpose of this rule include nursing facility services, services offered in any medical institution equivalent to nursing facility services, and home and community-based services furnished under a waiver program. Program of all-inclusive care of the elderly (PACE) and hospice services are not subject to transfer of asset rules. The department must consider whether a transfer made within a specified time before the month of application, or while the client is receiving LTC services, requires a penalty period.

- Refer to WAC 388-513-1364 for rules used to evaluate asset transfers made on or after April 1, 2003 and before May 1, 2006.

- Refer to WAC 388-513-1365 for rules used to evaluate asset transfer made prior to April 1, 2003.

(1) When evaluating the effect of the transfer of asset made on or after May 1, 2006 on the client's eligibility for LTC services the department counts sixty months before the month of application to establish what is referred to as the "look-back" period.

(2) The department does not apply a penalty period to transfers meeting the following conditions:

(a) The total of all gifts or donations transferred do not exceed the average daily private nursing facility rate in any month;

(b) The transfer is an excluded resource described in WAC 388-513-1350 with the exception of the client's home, unless the transfer of the home meets the conditions described in subsection (2)(d);

(c) The asset is transferred for less than fair market value (FMV), if the client can provide evidence to the department of one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation. To establish such an intent, the department must be provided with written evidence of attempts to dispose of the asset for fair market value as well as evidence to support the value (if any) of the disposed asset.

(ii) The transfer is not made to qualify for LTC services, continue to qualify, or avoid Estate Recovery. Convincing evidence must be presented regarding the specific purpose of the transfer.

(iii) All assets transferred for less than fair market value have been returned to the client.

(iv) The denial of eligibility would result in an undue hardship as described in WAC 388-513-1367.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC 388-475-0050 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and provided care that enabled the individual to remain in the home; or

(iii) Brother or sister, who has:

(A) Equity in the home, and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC 388-475-0050 (1)(b) or (c);

(f) The transfer meets the conditions described in subsection (3), and the asset is transferred:

(i) To another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To trust established for the sole benefit of the individual's child who meets the disability criteria described in WAC 388-475-0050 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC (~~388-511-1105~~) 388-475-0050 (1)(b) or (c); or

(3) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (1)(f), if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable;

(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term of the trust, whichever is less; and

(d) The requirements in subsection (2)(c) of this section do not apply to trusts described in WAC 388-561-0100 (6)(a) and (b) and (7)(a) and (b).

(4) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of long-term care service if:

(a) The transfer is in exchange for care services the family member provided the client;

(b) The client has a documented need for the care services provided by the family member;

(c) The care services provided by the family member are allowed under the medicaid state plan or the department's waiver services;

(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(f) The time for which care services are claimed is reasonable based on the kind of services provided; and

(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.

(5) The department considers the transfer of an asset in exchange for care services given by a family member that does not meet the criteria as described under subsection (4) as the transfer of an asset without adequate consideration.

(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which the individual is not eligible for LTC services.

(7) If a client or the client's spouse transfers an asset on or after May 1, 2006, the department must establish a penalty period by adding together the total uncompensated value of all transfers made on or after May 1, 2006. The penalty period:

(a) For a LTC services applicant, begins on the date the client would be otherwise eligible for LTC services based on an approved application for LTC services or the first day after any previous penalty period has ended; or

(b) For a LTC services recipient, begins the first of the month following ten-day advance notice of the penalty period, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or the first day after any previous penalty period has ended; and

(c) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later.

(8) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC 388-513-1350 does not affect the client's eligibility;

(b) That remain after an acquisition described in subsection (8)(a) becomes an available resource as of the first day of the following month.

(9) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 (6) through (8).

(10) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in subsection (10)(a) is divided by the statewide average daily private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole days found by following subsections (7)(a), (b), and (c).

(11) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless both spouses are receiving LTC services. When both spouses are receiving LTC services;

(a) We divide the penalty between the two spouses.

(b) If one spouse is no longer subject to a penalty (e.g. the spouse is no longer receiving institutional services or is deceased) any remaining penalty that applies to both spouses must be served by the remaining spouse.

(12) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.

(13) Additional statutes which apply to transfer of asset penalties, real property transfer for inadequate consideration, disposal of realty penalties, and transfers to qualify for assistance can be found at:

(a) RCW 74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty;

(b) RCW 74.08.338 Real property transfers for inadequate consideration;

(c) RCW 74.08.335 Transfers of property to qualify for assistance; and

(d) RCW 74.39A.160 Transfer of assets—Penalties.

AMENDATORY SECTION (Amending WSR 03-20-059, filed 9/26/03, effective 10/27/03)

WAC 388-513-1364 Evaluating the transfer of an asset made on or after April 1, 2003 for long-term care (LTC) services. This section describes how the department evaluates the transfer of an asset made on or after April 1, 2003, by a client who is applying or approved for LTC services. The department must consider whether a transfer made within a specified time before the month of application requires a penalty period in which the client is not eligible for these services. Refer to WAC 388-513-1365 for rules used to evaluate the transfer of an asset made before April 1, 2003. Refer to WAC 388-513-1363 for rules used to evaluate the transfer of an asset made on or after May 1, 2006.

(1) The department does not apply a penalty period to the following transfers by the client, if they meet the conditions described:

(a) Gifts or donations totaling one thousand dollars or less in any month;

(b) The transfer of an excluded resource described in WAC ((~~388-513-1360~~) 388-513-1350) with the exception of the client's home, unless the transfer of the client's home meets the conditions described in subsection (1)(d);

(c) The transfer of an asset for less than fair market value (FMV), if the client can provide evidence to the department of one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation;

(ii) The transfer is not made to qualify for LTC services;

(iii) The client is given back ownership of the asset;

(iv) The denial of eligibility would result in an undue hardship.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC ((~~388-511-1105 (1)(b) or (e))~~) 388-475-0050 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and provided care that enabled the client to remain in the home; or

(iii) Brother or sister, who has:

(A) Equity in the home; and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The transfer of an asset, if the transfer meets the conditions described in subsection (4), and the asset is transferred:

(i) To another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To trust established for the sole benefit of the client's child who meets the disability criteria described in WAC ((~~388-511-1105 (1)(b) or (e))~~) 388-475-0050 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC ((~~388-511-1105 (1)(b) or (e))~~) 388-475-0050 (1)(b) or (c); or

(f) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC ((~~388-511-1105 (1)(b) or (e))~~) 388-475-0050 (1)(b) or (c).

(2) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of institutional status, if:

(a) The transfer is in exchange for care services the family member provided the client;

(b) The client has a documented need for the care services provided by the family member;

(c) The care services provided by the family member are allowed under the Medicaid state plan or the department's waived services;

(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(f) The time for which care services are claimed is reasonable based on the kind of services provided; and

(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.

(3) The department considers the transfer of an asset in exchange for care services given by a family member that

does not meet the criteria as described under subsection (2) as the transfer of an asset without adequate consideration.

(4) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (1)(e), if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable;

(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term of the trust, whichever is less; and

(d) The requirements in subsection (4)(c) of this section do not apply to trusts described in WAC 388-561-0100 (6)(a) and (b).

(5) If a client or the client's spouse transfers an asset within the look-back period described in WAC 388-513-1365 without receiving adequate compensation, the result is a penalty period in which the client is not eligible for LTC services. If a client or the client's spouse transfers an asset on or after April 1, 2003, the department must establish a penalty period as follows:

(a) If a single or multiple transfers are made within a single month, then the penalty period:

(i) Begins on the first day of the month in which the transfer is made; and

(ii) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application.

(b) If multiple transfers are made during multiple months, then the transfers are treated as separate events and multiple penalty periods are established that begin on the latter of:

(i) The first day of the month in which the transfer is made; or

(ii) The first day after any previous penalty period has ended and end on the last day of the whole number of days as described in subsection (5)(a)(ii).

(6) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC (~~388-513-1360~~) 388-513-1350 does not affect the client's eligibility;

(b) That remain after an acquisition described in subsection (6)(a) becomes an available resource as of the first day of the following month.

(7) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 (6) through (8).

(8) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of

the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in subsection (8)(a) is divided by the statewide average daily private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole days found by following subsections (5)(a) and (b) and (8)(a) and (b) is applied that begins on the latter of:

(i) The first day of the month in which the client transfers the income; or

(ii) The first day of the month after any previous penalty period has ended.

(9) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless:

(a) Both spouses are receiving LTC services; and

(b) A division of the penalty period between the spouses is requested.

(10) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.

AMENDATORY SECTION (Amending WSR 03-14-038, filed 6/23/03, effective 8/1/03)

WAC 388-513-1365 Evaluating the transfer of an asset made on or after March 1, 1997 and before April 1, 2003 for long-term care (LTC) services. This section describes how the department evaluates the transfer of an asset made on or after March 1, 1997 and before April 1, 2003, by a client who is applying or approved for LTC services. The department must consider whether a transfer made within a specified time before the month of application requires a penalty period in which the client is not eligible for these services. Refer to WAC 388-513-1366 for rules used to evaluate the transfer of an asset made before March 1, 1997. Refer to WAC 388-513-1364 for rules used to evaluate the transfer of an asset made on or after March 31, 2003. Refer to WAC 388-513-1363 for rules used to evaluate the transfer of an asset made on or after May 1, 2006.

(1) The department disregards the following transfers by the client, if they meet the conditions described:

(a) Gifts or donations totaling one thousand dollars or less in any month;

(b) The transfer of an excluded resource described in WAC (~~388-513-1360~~) 388-513-1350 with the exception of the client's home, unless the transfer meets the conditions described in subsection (1)(d);

(c) The transfer of an asset for less than fair market value (FMV), if the client can provide evidence to the department that satisfies one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation;

(ii) The transfer is not made to qualify for LTC services;

(iii) The client is given back ownership of the asset;

(iv) The denial of eligibility would result in an undue hardship.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

- (i) Spouse; or
- (ii) Child, who:

(A) Meets the disability criteria described in WAC ~~((388-511-1105 (1)(b) or (e)))~~ 388-475-0050 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

- (iii) A son or daughter, who:

(A) Lived in the home for at least two years immediately before the client's current period of institutional status; and

(B) Provided care that enabled the client to remain in the home; or

- (iv) A brother or sister, who has:

(A) Equity in the home, and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The transfer of an asset other than the home, if the transfer meets the conditions described in subsection (4), and the asset is transferred:

(i) To the client's spouse or to another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To the client's child who meets the disability criteria described in WAC ~~((388-511-1105 (1)(b) or (e)))~~ 388-475-0050 (1)(b) or (c) or to a trust established for the sole benefit of this child; or

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC ~~((388-511-1105 (1)(b) or (e)))~~ 388-475-0050 (1)(b) or (c).

(f) The transfer of an asset to a member of the client's family in exchange for care the family member provided the client before the current period of institutional status, if a written agreement that describes the terms of the exchange:

(i) Was established at the time the care began;

(ii) Defines a reasonable FMV for the care provided that reflects a time frame based on the actuarial life expectancy of the client who transfers the asset; and

(iii) States that the transferred asset is considered payment for the care provided.

(2) When the fair market value of the care described in subsection (1)(f) is less than the value of the transferred asset, the department considers the difference the transfer of an asset without adequate consideration.

(3) The department considers the transfer of an asset in exchange for care given by a family member without a written agreement as described under subsection (1)(f) as the transfer of an asset without adequate consideration.

(4) The transfer of an asset or the establishment of a trust is considered to be for the sole benefit of a person described in subsection (1)(e), if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable; and

(b) Provides for spending all funds involved for the benefit of the person for whom the transfer is made within a time frame based on the actuarial life expectancy of that person.

(5) When evaluating the effect of the transfer of an asset on a client's eligibility for LTC services received on or after October 1, 1993, the department counts the number of

months before the month of application to establish what is referred to as the "look-back" period. The following number of months apply as described:

(a) Thirty-six months, if all or part of the assets were transferred on or after August 11, 1993; and

(b) Sixty months, if all or part of the assets were transferred into a trust as described in WAC 388-561-0100.

(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which the client is not eligible for LTC services. If a client or the client's spouse transfers an asset on or after March 1, 1997 and before April 1, 2003, the department must establish a penalty period as follows:

(a) If a single or multiple transfers are made within a single month, then the penalty period:

(i) Begins on the first day of the month in which the transfer is made; and

(ii) Ends on the last day of the number of whole months found by dividing the total uncompensated value of the assets by the statewide average monthly private cost for nursing facilities at the time of application.

(b) If multiple transfers are made during multiple months, then the transfers are treated as separate events and multiple penalty periods are established that:

(i) Begin on the latter of:

(A) The first day of the month in which the transfer is made; or

(B) The first day after any previous penalty period has ended; and

(ii) End on the last day of the whole number of months as described in subsection (6)(a)(ii).

(7) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC ~~((388-513-1360))~~ 388-513-1350 does not affect the client's eligibility;

(b) That remains after an acquisition described in subsection (7)(a) becomes an available resource as of the first day of the following month.

(8) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 (6) through (8).

(9) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in (9)(a) is divided by the statewide average monthly private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole months found by following subsections (9)(a) and (b) is applied that begins on the latter of:

(i) The first day of the month in which the client transfers the income; or

(ii) The first day of the month after any previous penalty period has ended.

(10) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless:

(a) Both spouses are receiving LTC services; and

(b) A division of the penalty period between the spouses is requested.

(11) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-515-1540 Medically needy residential waiver (MNRW) effective March 17, 2003. This section describes the financial eligibility requirements for waiver services under the medically needy residential waiver (MNRW) and the rules used to determine a client's responsibility in the total cost of care.

(1) To be eligible for MNRW, a client must meet the following conditions:

(a) Does not meet financial eligibility for Medicaid personal care or the COPEs program;

(b) Is eighteen years of age or older;

(c) Meets the SSI related criteria described in WAC ((388-511-1105(4))) 388-475-0050;

(d) Requires the level of care provided in a nursing facility as described in WAC 388-106-0355;

(e) In the absence of waiver services described in WAC 388-106-0400, would continue to reside in a medical facility as defined in WAC 388-513-1301, or will likely be placed in one within the next thirty days;

(f) Has attained institutional status as described in WAC 388-513-1320;

(g) Has been determined to be in need of waiver services as described in WAC 388-106-0410;

(h) Lives in one of the following department-contracted residential facilities:

(i) Licensed adult family home (AFH);

(ii) Assisted living (AL) facility; or

(iii) Enhanced adult residential care (EARC) facility.

(i) Is not subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and

(j) Meets the resource and income requirements described in subsections (2) through (6).

(2) The department determines a client's nonexcluded resources under MNRW as described in WAC 388-513-1350 ((1) through (4)(a) and WAC 388-513-1360));

(3) Nonexcluded resources, after disregarding excess resources described in (4), must be at or below the resource standard described in WAC 388-513-1350 (1) and (2).

(4) In determining a client's resource eligibility, the department disregards excess resources above the standard described in subsection (3) of this section:

(a) In an amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and Medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; or

(iii) Necessary medical care covered under the state's Medicaid plan.

(b) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Have not been used to satisfy a previous spend down liability;

(iii) Have not previously been used to reduce excess resources;

(iv) Have not been used to reduce client responsibility toward cost of care; and

(v) Are amounts for which the client remains liable.

(5) The department determines a client's countable income under MNRW in the following way:

(a) Considers income available described in WAC 388-513-1325 and 388-513-1330 (1), (2), and (3);

(b) Excludes income described in WAC 388-513-1340;

(c) Disregards income described in WAC 388-513-1345;

(d) Deducts monthly health insurance premiums, except Medicare premiums.

(6) If the client's countable income is:

(a) Less than the residential facility's department-contracted rate, based on an average of 30.42 days in a month the client may qualify for MNRW subject to availability per WAC 388-106-0435;

(b) More than the residential facility's department-contracted rate, based on an average of 30.42 days in a month the client may qualify for MNRW when they meet the requirements described in subsections (7) through (9), subject to availability per WAC 388-106-0435.

(7) The portion of a client's countable income over the department-contracted rate is called "excess income."

(8) A client who meets the requirements for MNRW chooses a three or six month base period. The months must be consecutive calendar months.

(9) A client who has or will have "excess income" is not eligible for MNRW until the client has medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown." The excess income from each of the months in the base period is added together to determine the total "spenddown" amount.

(10) Medical expenses described in subsection (4) of this WAC may be used to meet spenddown if not already used in subsection (4) of this WAC to disregard excess resources or to reduce countable income as described in subsection (5)(d).

(11) In cases where spenddown has been met, medical coverage begins the day services are authorized.

(12) The client's income that remains after determining available income in WAC 388-513-1325 and 388-513-1330 (1), (2), (3) and excluded income in WAC 388-513-1340 is paid towards the cost of care after deducting the following amounts in the order listed:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Personal needs allowance (PNA) described in WAC 388-515-1505 ((7)(b)). (Long-term care standards can be

found at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>);

(c) Medicare and health insurance premiums not used to meet spenddown or reduce excess resources described in WAC 388-513-1350;

(d) Incurred medical expenses described in (4) not used to meet spenddown or reduce excess resources described in WAC 388-513-1350.

AMENDATORY SECTION (Amending WSR 03-13-113, filed 6/17/03, effective 8/1/03)

WAC 388-561-0100 Trusts. (1) The department determines how trusts affect eligibility for medical programs.

(2) The department disregards trusts established, on or before April 6, 1986, for the sole benefit of a client who lives in an intermediate care facility for the mentally retarded (ICMR).

(3) For trusts established on or before August 10, 1993 the department counts the following:

(a) If the trust was established by the client, client's spouse, or the legal guardian, the maximum amount of money (payments) allowed to be distributed under the terms of the trust is considered available income to the client if all of the following conditions apply:

(i) The client could be the beneficiary of all or part of the payments from the trust;

(ii) The distribution of payments is determined by one or more of the trustees; and

(iii) The trustees are allowed discretion in distributing payments to the client.

(b) If an irrevocable trust doesn't meet the conditions under subsection (3)(a) then it is considered either:

(i) An **unavailable** resource, if the client established the trust for a beneficiary other than the client or the client's spouse; or

(ii) An **available** resource in the amount of the trust's assets that:

(A) The client could access; or

(B) The trustee distributes as actual payments to the client and the department applies the transfer of assets rules of WAC 388-513-1363, 388-513-1364 or 388-513-1365.

(c) If a revocable trust doesn't meet the description under subsection (3)(a):

(i) The full amount of the trust is an available resource of the client if the trust was established by:

(A) The client;

(B) The client's spouse, and the client lived with the spouse; or

(C) A person other than the client or the client's spouse only to the extent the client had access to the assets of the trust.

(ii) Only the amount of money actually paid to the client from the trust is an available resource when the trust was established by:

(A) The client's spouse, and the client did not live with the spouse; or

(B) A person other than the client or the client's spouse; and

(C) Payments were distributed by a trustee of the trust.

(ii) The department considers the funds a resource, not income.

(4) For trusts established on or after August 11, 1993:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed to the trust by the client are available to the client when part of the trust assets were contributed by any other person.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of distributions from the trust.

(d) For a revocable trust established as described under subsection (4)(a) of this section:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under subsection (4)(d)(ii), are considered a transfer of client assets.

(e) For an irrevocable trust established as described under subsection (4)(a) of this section:

(i) Any part of the trust from which payment can be made to or for the benefit of the client is an available resource. When payment is made from such irrevocable trusts, we will consider the payments as:

(A) Income to the client when payment is to or for the client's benefit; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the client's benefit;

(ii) A trust from which a payment cannot be made to or for the client's benefit is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established; or

(B) The client is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(5) For trusts established on or after August 1, 2003:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client or the client's spouse;

- (ii) The trust is not established by will; and
- (iii) The trust was established by:
 - (A) The client or the client's spouse;
 - (B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or
 - (C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.
 - (b) Only the assets contributed other than by will to the trust by either the client or the client's spouse are available to the client or the client's spouse when part of the trust assets were contributed by persons other than the client or the client's spouse.
 - (c) The department does not consider:
 - (i) The purpose for establishing a trust;
 - (ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;
 - (iii) Restrictions on when or whether distributions may be made from the trust; or
 - (iv) Restrictions on the use of the distributions from the trust.
 - (d) For a revocable trust established as described under subsection (5)(a) of this section:
 - (i) The full amount of the trust is an available resource of the client;
 - (ii) Payments from the trust to or for the benefit of the client are income of the client; and
 - (iii) Any payments from the trust, other than payments described under subsection (5)(d)(ii), are considered a transfer of client assets.
 - (e) For an irrevocable trust established as described under subsection (5)(a) of this section:
 - (i) Any part of the trust from which payment can be made to or for the benefit of the client or the client's spouse is an available resource. When payment is made from such irrevocable trusts, the department will consider the payment as:
 - (A) Income to the client or the client's spouse when payment is to or for the benefit of either the client or the client's spouse; or
 - (B) The transfer of an asset when payment is made to any person for any purpose other than the benefit of the client or the client's spouse;
 - (ii) A trust from which a payment cannot be made to or for the benefit of the client or client's spouse is a transfer of assets. For such a trust, the transfer of assets is effective the date:
 - (A) The trust is established; or
 - (B) The client or client's spouse is prevented from receiving benefit, if this is after the trust is established.
 - (iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.
- (6) Trusts established on or after August 11, 1993 are not considered available resources if they contain the assets of either:
 - (a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC ((~~388-503-0510~~)) 388-475-0050) and the trust:
 - (i) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and

- (ii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, up to the amount of Medicaid spent on the client's behalf; or
 - (b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC ((~~388-503-0510~~)) 388-475-0050), and the trust meets the following criteria:
 - (i) It is irrevocable;
 - (ii) It is established and managed by a nonprofit association;
 - (iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;
 - (iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;
 - (v) Accounts in the trust are established by:
 - (A) The individual;
 - (B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;
 - (C) The individual's parent, grandparent, legal guardian;
 - (D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
 - (E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
 - (vi) It stipulates that either:
 - (A) The state will receive all amounts remaining in the client's separate account upon the death of the client, up to the amount of Medicaid spent on the client's behalf; or
 - (B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.
- (7) Trusts established on or after August 1, 2003 are not considered available resources if they contain the assets of either:
 - (a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC ((~~388-503-0510~~)) 388-475-0050) and the trust:
 - (i) Is irrevocable;
 - (ii) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and
 - (iii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of Medicaid spent on the client's behalf; or
 - (b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC ((~~388-503-0510~~)) 388-475-0050), and the trust meets the following criteria:
 - (i) It is irrevocable;
 - (ii) It is established and managed by a nonprofit association;
 - (iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;
 - (iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;

(v) Accounts in the trust are established by:

(A) The individual;

(B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;

(C) The individual's parent, grandparent, legal guardian;

(D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(vi) It stipulates that either:

(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of Medicaid spent on the client's behalf; or

(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.

(8) Trusts described in subsection (6)(a) and (7)(a) continue to be considered an unavailable resource even after the individual becomes age sixty-five. However, additional transfers made to the trust after the individual reaches age sixty-five would be considered an available resource and would be subject to a transfer penalty.

(9) The department does not apply a penalty period to transfers into a trust described in subsections (6)(b) and (7)(b) if the trust is established for the benefit of a disabled individual under age sixty-five as described in WAC 388-513-1363 and 388-513-1364 and the transfer is made to the trust before the individual reaches age sixty-five.

(10) The department considers any payment from a trust to the client to be unearned income. Except for trusts described in subsection (6), the department considers any payment to or for the benefit of either the client or client's spouse as described in subsections (4)(e) and (5)(e) to be unearned income.

(11) The department will only count income received by the client from trusts and not the principal, if:

(a) The beneficiary has no control over the trust; and

(b) It was established with funds of someone other than the client, spouse or legally responsible person.

(12) This section does not apply when a client establishes that undue hardship exists.

(13) WAC 388-513-1363, 388-513-1364, 388-513-1365, and 388-513-1366 apply under this section when the department determines that a trust or a portion of a trust is a transfer of assets.

AMENDATORY SECTION (Amending WSR 01-06-043, filed 3/5/01, effective 5/1/01)

WAC 388-561-0300 Life estates. (1) The department determines how life estates affect eligibility for medical programs.

(2) A life estate is an excluded resource when either of the following conditions apply:

(a) It is property other than the home, which is essential to self-support or part of an approved plan for self-support; or

(b) It cannot be sold due to the refusal of joint life estate owner(s) to sell.

(3) Remaining interests of excluded resources in subsection (2) may be subject to transfer of asset penalties under WAC 388-513-1363, 388-513-1364 and 388-513-1365.

(4) Only the client's proportionate interest in the life estate is considered when there is more than one owner of the life estate.

(5) A client or a client's spouse, who transfers legal ownership of a property to create a life estate, may be subject to transfer-of-resource penalties under WAC 388-513-1363, 388-513-1364 and 388-513-1365.

(6) When the property of a life estate is transferred for less than fair market value (FMV), the department treats the transfer in one of two ways:

(a) For noninstitutional medical, the value of the uncompensated portion of the resource is combined with other non-excluded resources; or

(b) For institutional medical, a period of ineligibility will be established according to WAC 388-513-1363, 388-513-1364 and 388-513-1365.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-511-1105	SSI-related eligibility requirements.
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WSR 08-06-036

EXPEDITED RULES

GAMBLING COMMISSION

[Filed February 27, 2008, 9:14 a.m.]

Title of Rule and Other Identifying Information: WAC 230-10-455 Operating linked bingo prize games, 230-07-150 Financial statements required for Groups III, IV and V, and 230-17-125 Noncompliance with rules on expert witnesses or written statements.

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 Susan Arland, Washington State Gambling Commission, P.O. Box 42400, Olympia, WA 98504, AND RECEIVED BY May 6, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This filing is to fix incorrect citations to other rules and to remove a rule that is duplicated.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

February 27, 2008
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 609, filed 4/24/07, effective 1/1/08)

WAC 230-07-150 Financial statements required for Groups III, IV, and V. (1) In addition to information required in WAC ((~~230-07-028~~) ~~230-07-145~~, charitable or nonprofit licensees in Groups III, IV, and V must also submit complete financial statements prepared in accordance with generally accepted accounting principles (GAAP).

(2) Licensees in Groups IV and V must have the financial statements prepared by an independent certified public accountant.

(3) The statements and all required disclosures or footnotes no later than one hundred twenty days following the end of the licensee's fiscal year.

(4) The financial statements must include:

(a) A statement of financial position;

(b) A statement of activities. This statement may be presented in a consolidated form if licensees provide the details of each component as supplemental information. Licensees must present revenue and expenses for each activity separately as follows:

(i) Each gambling activity; and

(ii) Retail sales conducted in conjunction with gambling activities;

(c) A statement of cash flows;

(d) A statement of functional expenses;

(e) In addition to all disclosures required by GAAP, the financial statements must disclose the following:

(i) Loans to or from officers, board members, and employees: We will not consider employee salary advances of five hundred dollars or less as loans. Details of all terms, including interest rates and payment schedules, must be disclosed;

(ii) All civil penalties, fines, bribes, or embezzlements incurred or discovered during the period; and

(iii) An explanation of any adjustments made to prior period capital accounts or net asset balances;

(f) An explanation of material differences between amounts reported on gambling activity reports and the financial statements.

(5) We may require additional information to ensure completeness of the information reported.

(6) We may grant an organization additional time to submit the information required if a written request is received before the due date. The president of the organization must sign any request for additional time and include a statement

explaining the hardship causing the delay, and the expected date the required report(s) will be submitted.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-10-455 Operating linked bingo prize games.

AMENDATORY SECTION (Amending Order 615, filed 10/24/07, effective 1/1/08)

WAC 230-17-125 Noncompliance with rules on expert witnesses or written statements. If expert witnesses or written statements on economic or statistical data do not meet the requirements of WAC ((~~230-17-650~~) ~~230-17-115~~ or ((~~230-17-660~~) ~~230-17-120~~, the presiding officer may receive them as evidence only if the party can clearly show good cause.

WSR 08-06-073

EXPEDITED RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed March 4, 2008, 11:17 a.m.]

Title of Rule and Other Identifying Information: Accident reporting and investigation, chapter 296-305 WAC, Firefighting.

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 Josh Swanson, Department of Labor and Industries, P.O. Box 4001, Olympia, WA 98504-4001, AND RECEIVED BY May 5, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to change the reporting requirements contained in WAC 296-305-01503 to match the reporting requirements in other DOSH standards. This section was inadvertently left out of the previous rule filing that changed these requirements (see WSR 08-05-012).

Reasons Supporting Proposal: All employees will be protected equally, and DOSH rules will be consistent throughout industries.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, Washington, (360) 902-5530; Implementation and Enforcement: Stephen M. Cant, Tumwater, Washington, (360) 902-5495.

March 4, 2008

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

WAC 296-305-01503 Accident investigation. (1)

After the emergency actions following accidents that cause serious injuries that have immediate symptoms, a preliminary investigation of the cause of the accident shall be conducted. The investigation shall be conducted by a person designated by the employer. The fire department shall establish a written procedure and a program for investigating, and evaluating the facts, relating to the cause of accidents. The findings of the investigation shall be documented by the employer for reference at any following formal investigations.

(2) Within eight hours after the fatality or probable fatality of any fire fighter or employee from a work-related incident or the inpatient hospitalization of ~~((two or more))~~ an employee~~((s))~~ as a result of a work-related incident, the employer of any employees so affected, shall orally report the fatality~~((multiple))~~ hospitalization by telephone or in person, to the nearest office of the department or by using the OSHA toll-free central telephone number, 1-800-321-6742.

(3) Equipment involved in an accident resulting in an immediate or probable fatality, shall not be moved, until a representative of the consultation and compliance services division investigates the accident and releases such equipment, except where removal is essential to prevent further accident. When necessary to remove the victim, such equipment may be moved only to the extent of making possible such removal.

(4) Upon arrival of the department's investigator, the employer shall assign to assist the investigator such personnel as are deemed necessary by the department to conduct the investigation.

(5) The fire department shall preserve all records, photographic materials, audio, video, recordings, or other documentation concerning an accident.

Reference: WAC 296-24-020 (2), (3).

WSR 08-06-090

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed March 5, 2008, 9:09 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-174 Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce,

this rule explains the retail sales tax exemptions provided in RCW 82.08.0262 and 82.08.0263 for sales to for-hire motor carriers operating in interstate or foreign commerce.

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, fax (360) 586-0127, e-mail GayleC@dor.wa.gov, AND RECEIVED BY May 5, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-20-174 (Rule 174) currently explains that blanket exemption certificates (certificates intended to cover more than one sales transaction) must be renewed every four years. The department is proposing to amend Rule 174 to recognize that effective July 1, 2008, a blanket exemption certificate continues as long as the seller has a recurring business relationship with the buyer, which is defined by law as making at least one purchase from the vendor within a period of twelve consecutive months.

The department is also adding a reference to the department's internet site for locating standard revenue forms.

Reasons Supporting Proposal: To incorporate provision of SSB 5089 (chapter 6, Laws of 2007).

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

Statute Being Implemented: RCW 82.08.0262 and 82.08.0263.

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) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

March 5, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 97-11-022, filed 5/13/97, effective 6/13/97)

WAC 458-20-174 Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce. (1) **Introduction.** This section explains the retail sales tax exemptions provided by RCW 82.08.0262 and 82.08.0263 for sales to for hire motor carriers operating in interstate or foreign commerce. Addressed are the require-

ments which must be met and the documents which must be preserved to substantiate a claim of retail sales tax exemption. Motor carriers should refer to WAC 458-20-17401 for a discussion of the use tax and use tax exemptions available to motor carriers for the purchase or use of vehicles and parts under RCW 82.12.0254.

(2) **Business and occupation tax.** Business and occupation (B&O) tax is due on all sales to motor carriers when delivery is made in Washington, notwithstanding that the retail sales tax may not apply because of the specific statutory exemptions provided by RCW 82.08.0262 and 82.08.0263.

(a) **Retailing of interstate transportation equipment.** This B&O tax classification, with respect to sales to motor carriers, applies to retail sales which are exempt from retail sales tax because of the provisions of RCW 82.08.0262 or 82.08.0263. (See RCW 82.04.250.) The retailing of interstate transportation B&O tax applies to the following, but only when the retail sales tax exemption requirements for RCW 82.08.0262 or 82.08.0263 are met:

- (i) Sales of motor vehicles, trailers, and component parts thereof;
- (ii) The lease of motor vehicles and trailers without operator; and
- (iii) Charges for labor and services rendered in respect to constructing, cleaning, repairing, altering or improving vehicles and trailers or component parts thereof. The term "component parts" means any tangible personal property which is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, paint, permanently affixed decals, and tires. "Component parts" includes the axle and wheels, referred to as "converter gear" or "dollies," which is used to connect a trailer behind a tractor and trailer. "Component parts" can include tangible personal property which is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It includes cellular telephones, communication equipment, fire extinguishers, and other such items, whether themselves permanently attached to the vehicle or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle. It does not include antifreeze, oil, grease, and other lubricants which are considered as consumed at the time they are placed into the vehicle, even though required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses and belts.

(b) **Retailing.** The retailing B&O tax applies to the following:

- (i) Sales and services as described in (a)(i) through (iii) of this subsection, which do not meet the exemption requirements provided in RCW 82.08.0262 or 82.08.0263;
- (ii) Sales of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property therein;
- (iii) Sales of consumable supplies, such as oil, antifreeze, grease, other lubricants, cleaning solvents and ice; and
- (iv) Towing charges.

(c) **Interstate sales deduction for lease income.** Persons who lease motor vehicles and trailers to motor carriers at retail (without operator) may claim an interstate sales deduction for the amount of the lease income attributable to the actual out-of-state use of the vehicles and trailers. Documentation substantiating such a claim must be retained by the lessor. This deduction may be taken even if the vehicle is not used substantially in interstate hauls for hire. The B&O tax applies to that portion of use of the vehicle while the vehicle is being used in Washington, even if the usage is in connection with interstate hauls and the vehicle is used substantially in hauling for hire in interstate commerce. See also WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property.

(3) **Retail sales tax.** RCW 82.08.0262 and 82.08.0263 provide retail sales tax exemptions for certain sales to motor carriers when delivery is made in Washington.

(a) **Sales of motor vehicles and trailers.** RCW 82.08.-0263 provides an exemption from the retail sales tax for sales of motor vehicles and trailers to be used for transporting therein persons or property for hire in interstate or foreign commerce. This exemption is available whether such use is by a for hire motor carrier, or by persons operating the vehicles and trailers under contract with a for hire motor carrier. The for hire carrier must hold a carrier permit issued by the Interstate Commerce Commission or its successor agency to qualify for this exemption. The seller, at the time of the sale, must retain as a part of its records an exemption certificate which must be completed in its entirety. The ~~((exemption certificate))~~ buyers' retail sales tax exemption certificate is available on the department's internet site at <http://dor.wa.gov>, or can be obtained by contacting the department at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

If the department's buyers' retail sales tax exemption certificate is not used, the form used must be in substantially the following form:

Exemption Certificate

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of carrier permit No., issued by the Interstate Commerce Commission or its successor agency, and that the vehicle this date purchased from you being a (specify truck or trailer and make) , Motor No. , Serial No. is entitled to exemption from the Retail Sales Tax under the provisions of RCW 82.08.0263. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Dated
.....
(name of carrier-purchaser)

By
(title)
.....
(address)

Exemption Certificate

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of a carrier permit, No., issued by the Interstate Commerce Commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state. The undersigned further certifies that the motor truck or trailer to be constructed, repaired, cleaned, altered, or improved by you, or to which the subject matter of this purchase is to become a component part, will be used in direct connection with the business of transporting therein persons or property for hire; and that such sale and/or charges are exempt from the Retail Sales Tax under the provisions of RCW 82.08.0262. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Dated.....
.....
(name of carrier-purchaser)
.....
(address)
By
(title)

The lease of motor vehicles and trailers to motor carriers, without operator, must satisfy all conditions and requirements provided by RCW 82.08.0263 to qualify for the retail sales tax exemption. Failure to meet these requirements will require the lessor to collect the retail sales tax on the lease. However, where the exemption from retail sales tax has not been met, a retail sales tax exemption may continue to apply to that portion of the lease while the vehicle is being used outside Washington, provided the lessor can substantiate the usage outside Washington. (See WAC 458-20-193.)

(b) **Sales of component parts of motor vehicles and trailers and charges for repairs, etc.** RCW 82.08.0262 provides an exemption from the retail sales tax for sales of component parts and repairs of motor vehicles and trailers. This exemption is available only if the user of the motor vehicle or trailer is the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency which authorizes transportation by motor vehicle across the boundaries of Washington. Since carriers are required to obtain these permits only when the carrier is hauling for hire, the exemption applies only to parts and repairs purchased for vehicles which are used in hauling for hire. The exemption includes labor and services rendered in constructing, repairing, cleaning, altering, or improving such motor vehicles and trailers.

(i) This exemption is available whether the motor vehicles or trailers are owned by, or operated under contract with, persons holding the carrier permit. This exemption applies even if the motor vehicle or trailer to which the parts are attached will not be used substantially in interstate hauls, provided the vehicles are used in hauling for hire.

(ii) The seller must retain as a part of its records a completed exemption certificate. This certificate may be:
(A) Issued for each purchase;
(B) Incorporated in or stamped upon the purchase order;

or

(C) In blanket form certifying all future purchases as being exempt from sales tax. (~~Blanket forms must be renewed every four years.~~) Blanket exemption certificates are valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. RCW 82.08.050 (7)(c).

(iii) (~~This certificate~~) The buyers' retail sales tax exemption certificate is available on the department's internet site at <http://dor.wa.gov>, or can be obtained by contacting the department at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

If the department's buyers' retail sales tax exemption certificate is not used, the form used must be in substantially the following form:

(c) **Taxable sales.** The following sales do not qualify for exemption under the provisions of RCW 82.08.0262 or 82.08.0263, and are subject to the retail sales tax when delivery is made in Washington.

(i) Sales of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property for hire. This includes items such as tire chains and tarps which are not custom made for a specific vehicle.

(ii) Sales of consumable supplies, such as oil, antifreeze, grease, other lubricants, cleaning solvents and ice.

(iii) Towing charges.

WSR 08-06-092
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed March 5, 2008, 9:26 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-177 Sales of motor vehicles, campers and trailers to nonresidents, explains the tax consequences and tax exemption requirements for sales of motor vehicles, campers, and trailers to nonresidents.

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 47454, Olympia, WA 98504-7454, fax (360) 586-0127, e-mail GayleC@dor.wa.gov, AND RECEIVED BY May 5, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 458-20-177 to reflect provisions of SHB 2158 (chapter 135, Laws of 2007). This legislation in part identifies in statute the type of documentation a seller of motor vehicles, trailers, or campers needs to retain from a nonresident buyer.

Reasons Supporting Proposal: To add information provided by chapter 135, Laws of 2007.

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

Statute Being Implemented: RCW 82.08.0264.

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 #501, Olympia, WA, (360) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #501, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #501, Olympia, WA, (360) 570-6147.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-14-086, filed 6/30/05, effective 7/31/05)

WAC 458-20-177 Sales of motor vehicles, campers, and trailers to nonresident consumers. (1) **Introduction.** This ~~(rule)~~ section applies to any sale of a vehicle to a consumer who is not a resident of the state, including nonresident military personnel temporarily stationed in Washington. The ~~(rule)~~ section describes the different business and occupation (B&O) and retail sales tax consequences that result from vehicle sales to nonresidents, particularly the sales tax exemption provided by RCW 82.08.0264. It also describes the documentation a seller must retain to demonstrate that a sale is exempt.

For information on use tax liability associated with vehicles, see WAC 458-20-178, Use tax.

For sales of vehicles to Indians or Indian tribes and required documentation, see WAC 458-20-192, Indians—Indian country.

Questions regarding vehicle licensing or registration requirements should be directed to the department of licensing.

(2) **What is a "vehicle"?** For the purposes of this ~~(rule)~~ section, a "vehicle" is any vehicle of a type that may be lawfully licensed under chapter 46.16 RCW for operation on a public highway in this state, except that the term does not include any machinery and implements for use in conducting a farming activity subject to RCW 82.08.0268. The term "vehicle" includes, but is not limited to, a car, truck,

camper, trailer, bus, motorhome, and motorcycles equipped for road use. It does not include farm tractors, bicycles, mopeds, motorized scooters, snowmobiles, or vehicles that are manufactured for exclusively off-road use.

(3) **What are the tax consequences when a vehicle sold to a nonresident is delivered in-state?** A sale of a vehicle to a nonresident where the vehicle is delivered in-state is exempt from retail sales tax if the sale meets the requirements of RCW 82.08.0264. In all other cases where the vehicle is delivered to the buyer in this state, the retail sales tax applies and must be collected at the time of sale, unless otherwise exempt by law. The mere fact that the buyer may be or claims to be a nonresident or that the buyer intends to, and actually does, use the vehicle in some other state does not, by itself, entitle the buyer to the exemption. In any case where the seller licenses or registers the vehicle in Washington on the buyer's behalf, the retail sales tax applies.

In computing the B&O tax liability of persons engaged in the business of selling vehicles, no deduction is allowed for a sale made to a nonresident for use outside this state if the nonresident buyer takes delivery in Washington. This is true even if the buyer is entitled to an exemption from the retail sales tax.

(a) **Exemption requirements.** If a vehicle is delivered within this state to a nonresident buyer, retail sales tax does not apply if the vehicle is purchased for use outside this state and, immediately upon delivery, the vehicle:

(i) Is removed from the state under the authority of a trip permit issued by the department of licensing pursuant to RCW 46.16.160 or any agency of another state that has authority to issue similar permits; or

(ii) Is registered and licensed in the state of the buyer's residence, will not be used in this state more than three months, and will not be legally required to be registered and licensed in this state.

If the vehicle bears Washington state license plates, the seller must remove the Washington plates before delivering the vehicle and retain evidence of that removal to avoid liability for collection and payment of the retail sales tax.

(b) **Seller obligations; documentation.** For sales completed before July 22, 2007, the seller must properly document the following facts:

(i) The buyer is a nonresident of Washington;

(ii) The vehicle is for use outside this state;

(iii) The vehicle is to be removed from the seller's premises under the authority of either:

(A) A trip permit; or

(B) Valid license plates issued for that vehicle by the state of the buyer's residence, with the plates actually affixed to the vehicle upon final delivery; and

(iv) If the vehicle bears Washington state license plates, the seller has removed the Washington plates before delivery.

(c) Seller obligations effective July 22, 2007. For sales completed on or after July 22, 2007, the seller must retain the following documents, which must be made available upon request by the department of revenue (department):

(i) A copy of the buyer's currently valid out-of-state driver's license or other official picture identification issued by a jurisdiction other than Washington state;

(ii) A copy of any one of the following documents, on which there is an out-of-state address for the buyer:

- A current residential rental agreement;
- A property tax statement from the current or previous year;

year:

- A utility bill, dated within the previous two months;
- A state income tax return from the previous year;
- A voter registration card;
- A current credit report; or
- Any other document determined by the department to be acceptable;

(iii) A witnessed declaration in the form designated by the department, signed by the buyer, and stating that the buyer's purchase meets the requirements of this section (buyer's affidavit); and

(iv) A seller's certification, in the form designated by the department, that either a vehicle trip permit was issued or the vehicle was immediately registered and licensed in another state as required by RCW 82.08.0264.

To comply with these requirements, the seller must retain a properly completed buyer's affidavit and seller's certificate (in-state delivery) ~~((in substantially the form prescribed in subsection (5) of this rule. The seller must also retain documentation of the buyer's nonresidence, as required in subsection (6) of this rule)).~~ If the nonresident buyer is a corporation, the seller must also retain the number of the corporate nonresident permit.

(d) What are the consequences for noncompliance?

Any seller that makes sales without collecting the tax to a person who does not provide the documents required under (c) of this subsection, and any seller who fails to retain the documents required under (c) of this subsection for the period prescribed by RCW 82.32.070 is personally liable for the amount of tax due.

Any seller that makes sales without collecting the retail sales tax under RCW 82.08.0264 and who has actual knowledge that the buyer's documentation required by (c) of this subsection is fraudulent is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the buyer and the seller are liable for any penalties and interest assessable under chapter 82.32 RCW.

(4) What are the tax consequences when a vehicle sold to a nonresident is delivered out-of-state? A sale of a vehicle to a nonresident where the seller delivers the vehicle out-of-state is exempt from retail sales tax. If the vehicle is delivered to the buyer outside the state, the seller may also deduct the sale amount from the gross proceeds of sales for B&O tax purposes. The deductible amount must be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income. The deduction must be identified on the deduction detail page of the return as an "interstate and foreign sales" deduction.

(a) Requirements. If a vehicle is delivered outside the state to a nonresident buyer, retail sales tax does not apply if:

(i) The seller, as required by the contract of sale, delivers possession of the vehicle to the buyer at a point outside Washington; and

(ii) The vehicle is not licensed or registered in this state. If the vehicle bears Washington state license plates, the seller must remove the Washington plates before delivery and retain evidence of that removal to avoid liability for collection and payment of the retail sales tax.

(b) Seller obligations; documentation. The seller must properly document the following facts:

(i) The buyer's out-of-state address;

(ii) The vehicle is not licensed or registered in this state or the Washington state license plates have been removed from the vehicle before delivery;

(iii) Under the terms of the sales agreement, the seller is required to deliver the vehicle to the buyer at a point outside this state; and

(iv) The out-of-state delivery was actually made by the seller or by a common carrier acting as the seller's agent.

To comply with these requirements, the seller must retain a properly completed buyer's certificate and seller's certificate (out-of-state delivery) ~~((in substantially the form prescribed in subsection (5) of this rule)).~~ The seller's certificate must be signed by the person who actually delivers the vehicle to the buyer at the out-of-state location and may be completed only after delivery occurs.

(c) Documentation when delivery is made by common carrier. When a vehicle is delivered outside the state by common carrier acting as the seller's agent, no buyer's certificate or seller's certificate is required. Instead, the seller must retain:

(i) Evidence that the vehicle's license plates (if licensed in Washington) were removed; and

(ii) A signed copy of the bill of lading issued by the carrier. The bill of lading must show the seller as the consignor and indicate that the carrier agrees to transport the vehicle to a point outside the state.

(5) What forms should be used to document an exempt sale? The ~~((following))~~ documents: "Buyer's Affidavit," "Seller's Certificate In-State Delivery," "Buyer's Certificate Out-of-State Delivery," and "Seller's Certificate Out-of-State Delivery" are necessary to substantiate exempt sales to nonresidents. Do not send the documents ~~((described in this subsection))~~ to the department ~~((of revenue))~~, but keep them as part of the seller's permanent records for five years. Without this documentation, claims that a transaction was exempt from tax will be disallowed.

Copies of the forms can be obtained:

- From the department's internet web site at <http://dor.wa.gov>

- By facsimile by calling fast fax at 360-705-6705 or 800-647-7706 (using menu options)

- By writing to:

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

(a) In-state delivery. A sale with in-state delivery requires a completed buyer's affidavit and seller's certificate-in-state delivery.

~~((The buyer's affidavit must be substantially in the following form:~~

Buyer's Affidavit

To Be Completed by the Buyer When the Vehicle Is Delivered to the Buyer in Washington

I, (Name of buyer), swear that:
I am a resident of the State of I am not a resident of the state of Washington and do not claim to be a resident of Washington for any purpose. My home address is (Street and number or rural route), (City, town or post office), (State), (Zip Code). On (Date), I purchased from (Name of seller) the following vehicle:
Make Model
Year Serial No. (VIN)

I am purchasing this vehicle for use outside Washington state. The vehicle will be removed from Washington state by the following means: **(Select and complete one)**

- A: The vehicle will be driven from the seller's premises under the authority of a trip permit numbered which has been issued to me by the Washington state department of licensing.
- B: The vehicle will not be used in the state of Washington for more than three months and has been licensed in the state of That state has issued to me license plates numbered Those license plates are valid until (Expiration date of license). The plates have been affixed to the vehicle before it has left the seller's premises.

I, the undersigned buyer, understand that by completing and signing this affidavit I am swearing that I qualify for the tax-exempt purchase of the vehicle described above. In addition, I understand that false or erroneous use of this affidavit will result in liability for unpaid tax with interest and may result in additional penalties.

Dated at
.....
(Buyer's signature)

.....
Service No. if member of armed services
Subscribed and sworn to before me at
Washington, this
day of 20....

My appointment expires:

The seller's certificate must be substantially in the following form and be attached to the buyer's affidavit:

Seller's Certificate In-State Delivery

I certify that before final delivery of the vehicle described in the buyer's affidavit: (a) I examined trip permit No.

which authorizes the vehicle's transit; or (b) license plates numbered, issued for the vehicle by the state of and expiring, were affixed to the vehicle. I further certify that I have examined and retained a copy of the following item(s) of documentary evidence showing the buyer's residency in the state of

SELECT AT LEAST ONE

- Driver's license #
- Other picture identification #
- Other (specify) #

(If the vehicle sold was previously licensed with Washington plates) I further certify that the Washington state license plates were removed by, agent of the seller.

.....
(Signature of seller or representative)
.....
(Title officer or agent))

(b) **Delivery out-of-state by seller.** A sale with out-of-state delivery by a seller requires a completed buyer's certificate and seller's certificate-out-of-state.

((The buyer's certificate must be substantially in the following form:

Buyer's Certificate Out-of-State Delivery

To Be Completed by Buyer at Time of Delivery Outside Washington State

(Name of buyer)
(Street and number or rural route)
(City, town or post office)
(State), (Zip Code)
On, I purchased from (Name of seller) the following vehicle:
Make Model
Year Serial No. (VIN)

Under the terms of the sales agreement the seller was required to, and did on this day, deliver this vehicle to me at (Place of delivery) in (State).

Dated at, this day of, 20....
.....
(Signature)

.....
Service No. if Member of Armed Services

~~THE FOLLOWING STATEMENTS MUST BE INITIALED BY THE BUYER:~~

~~..... I certify under penalty of perjury under the laws of the State of Washington that all of the information on this certificate is true. I further understand that I may be subject to criminal prosecution or other legal penalties for providing false information on this certificate.~~

~~..... I have completed and signed this certificate after the vehicle was delivered to me at the place and time described above.~~

The seller's certificate must be substantially in the following form and be attached to the buyer's certificate:

**Seller's Certificate
Out-of-State Delivery**

To Be Completed at Time of Delivery by the Person Who Delivers the Vehicle to the Buyer

I certify that today I delivered the vehicle described in the buyer's certificate to (Name of buyer), at (Place of delivery). (If the vehicle sold was previously licensed with Washington plates) I further certify that the Washington state license plates were removed by, agent of the seller.

Dated

.....
(Signature of the person who delivered the vehicle to the buyer)

.....
(Title Officer or Agent)

The Following Statements Must Be Initialed by the Person Who Delivered the Vehicle to the Buyer:

~~..... I certify under penalty of perjury under the laws of the State of Washington that all of the information on this certificate is true. I further understand that I may be subject to criminal prosecution or other legal penalties for providing false information on this certificate.~~

~~..... I have completed and signed this certificate after the vehicle was delivered to the buyer as described above.)~~

(6) What are a seller's obligations to verify a buyer's statements on nonresidency?

(a) Prior to July 22, 2007, completion of a buyer's affidavit documents the exempt nature of a sale under RCW 82.08.0264 unless there are facts that negate the presumption that the seller relied on the buyer's affidavit in good faith. The seller, however, must exercise a reasonable degree of care in accepting statements regarding a buyer's nonresidence. If delivery occurs in-state, the seller must examine and retain a copy of at least one form of documentary evidence showing the buyer's out-of-state residence. Lack of good faith on the part of the seller or lack of the exercise of the degree of care required is indicated, for example, in the following circumstances:

((a)) (i) If the seller knows that the buyer is living in Washington;

((b)) (ii) If the buyer gives a Washington address for the purpose of financing the purchase of the vehicle;

((c)) (iii) If, at the time of sale, arrangements are made for future servicing of the vehicle in the seller's shop and a Washington address or telephone number is shown for the shop customer; or

((d)) (iv) If the seller has ready access to any other information that discloses that the buyer may be a resident of Washington.

(b) When can the department contact a buyer? For sales completed on or after July 22, 2007, if the department has information indicating the buyer is a Washington resident, or if the addresses for the buyer shown on the documentation provided under subsection (3)(c) of this section are not the same, the department may contact the buyer to verify the buyer's eligibility for the exemption provided by RCW 82.08.0264.

(7) Do military personnel qualify for the nonresident exemptions? A member of the armed services who is temporarily stationed in Washington is presumed to be a nonresident, unless that person was a resident of this state when inducted. This presumption does not apply to a civilian employee of the armed services. Nonetheless, a sale to a nonresident member of the armed forces must meet all of the statutory requirements for a retail sales tax exemption or B&O tax deduction. If a vehicle sold to a member of the armed forces will remain in Washington for more than three months, retail sales tax is due on the sale, even if the vehicle is registered in the home state of the armed forces member.

(a) **Military temporary license.** In addition to the exemptions provided under RCW 82.08.0264, a member of the armed forces may alternatively qualify for the retail sales tax and use tax exemptions provided by RCW 46.16.480 if the member obtains a forty-five day nonresident military temporary license from the department of licensing under RCW 46.16.460 and satisfies the requirements of RCW 46.16.480.

(b) **Additional documentation required.** In addition to the documentation otherwise required by this ~~(rule)~~ section, for a sale to a member of the armed forces a seller must retain a copy of military orders showing that the buyer:

(i) Is temporarily stationed in Washington and will leave within three months of the date of purchase; or

(ii) Is permanently reassigned to a new duty station outside Washington and will leave within three months of the date of purchase.

(c) **Military personnel of NATO-member nations.** Pursuant to treaty, a member of the armed forces of any NATO-member nation who is stationed in Washington is considered to be a nonresident for purposes of the RCW 82.08.0264 retail sales tax exemption. The buyer must meet all otherwise applicable requirements for exemption. In addition, the seller must retain proof of the buyer's military assignment in Washington as a member of a NATO-member nation's armed forces.

(8) Are sales to residents of noncontiguous states exempt from Washington retail sales tax? RCW 82.08.-0269 exempts purchases of tangible personal property from

the retail sales tax if the property is purchased for use in states, territories, and possessions of the United States that are not contiguous with any other state. However, the exemption only applies if, as a necessary incident to the contract of sale, the seller delivers the property to the purchaser or the purchaser's designated agent at the usual receiving terminal of the carrier selected to transport the goods, under such circumstances that it is reasonably certain that the goods will be transported directly to a destination in a noncontiguous state, territory, or possession.

RCW 82.08.0269 applies to the sale of motor vehicles when the requirements stated above are met. Therefore, in addition to being exempt from retail sales tax under RCW 82.08.0264 (discussed above), a sale of a motor vehicle to a resident of a noncontiguous state, territory, or possession may qualify for exemption under RCW 82.08.0269. If so, the sale is exempt from retail sales tax but does not qualify for a B&O tax deduction. For more information on the requirements of the RCW 82.08.0269 exemption, including the documentation requirements, see WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.

(9) Are sales to residents of states with no sales tax exempt from Washington retail sales tax? RCW 82.08.-0273 exempts purchases of tangible personal property from the retail sales tax if the purchaser is a resident of another state or possession or a province of Canada that does not impose a retail sales tax or use tax of three percent or more. That statute does not apply to purchases of vehicles. Because RCW 82.08.0264 more specifically applies to the sale of vehicles, it takes precedence over RCW 82.08.0273. A resident of another state or possession or a province of Canada that does not impose a retail sales tax or use tax of three percent or more may purchase and take delivery of a vehicle in Washington free of retail sales tax only if the person meets the requirements of RCW 82.08.0264 or 82.08.0269.

(10) 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 facts and circumstances.

(a) Buyer purchases a vehicle from Dealer. Buyer provides identification indicating that Buyer is a resident of California and provides California license plates for the vehicle. However, Buyer also states that he intends to use the vehicle in the state of Washington for four months before returning to California. Buyer does not qualify for a sales tax exemption because Buyer will use the vehicle for more than three months in the state.

(b) Buyer provides proof of residency in Idaho; there are no contrary facts regarding Buyer's residency. Buyer completes the buyer's affidavit, stating that the vehicle is for use out-of-state. Buyer obtains and uses a trip permit issued under authority of RCW 46.16.160 to remove the vehicle from Washington. The Dealer completes a seller's certificate and certifies that the Dealer removed the Washington license plates before delivering the vehicle to Buyer. This sale qualifies for the retail sales tax exemption but not the B&O tax deduction.

(c) Buyer is a Washington resident, employed by out-of-state Corporation X. On behalf of Corporation X, Buyer pur-

chases and accepts in-state delivery of a vehicle from Dealer. The vehicle will be used as a company car out-of-state and will not be used or garaged in Washington. Payment is made by corporate check. Buyer provides a trip permit for transport of the vehicle out of Washington. This sale qualifies for the retail sales tax exemption (but not for the B&O tax deduction) notwithstanding the Washington residency of its employee. The Dealer must record in its records the number of the corporate nonresident permit.

(d) Buyer is a resident of Alaska and purchases a vehicle from Dealer in Washington. The sales contract requires Dealer to deliver the vehicle to Buyer ~~((at))~~ in Anchorage, Alaska. Before shipping the vehicle, Dealer removes the vehicle's Washington state license plates and retains a photocopy of the plates as evidence of the removal. Seller ships the vehicle to Alaska by common carrier. Seller retains a signed copy of the bill of lading, indicating the Seller as consignor and the Buyer as consignee. This sale qualifies for the retail sales tax exemption and a B&O tax deduction.

(e) Buyer is a resident of Alaska and purchases a vehicle from Dealer in Washington. Dealer delivers the vehicle to the Buyer at dockside in Seattle to be shipped to Anchorage, Alaska by common carrier. Dealer retains the exemption certificate and dock receipt required by WAC 458-20-193. This sale qualifies for the retail sales tax exemption provided by RCW 82.08.0269 but not for a B&O tax deduction.

(f) Buyer is a member of the armed forces and provides a copy of her orders showing that she is temporarily stationed in Washington. Before entering military service, buyer resided in another state. Buyer purchases a vehicle from Dealer and licenses it in her home state, but intends to keep the vehicle in this state for over three months. This sale does not qualify for any exemption or deduction. If the vehicle were to be removed from the state within three months, the sale would qualify for the RCW 82.08.0264 retail sales tax exemption but not for a B&O tax deduction.

(g) Buyer owns homes in Washington and Arizona, spending summers in Washington and winters in Arizona. In October, Buyer purchases a vehicle from Dealer, asserting that he will immediately drive the vehicle to Arizona and license it in that state. Buyer presents an Arizona driver's license for identification and provides a trip permit to remove the vehicle from Washington. Dealer is aware that Buyer lives in Washington for a significant portion of each year. In such a case, the sale would not qualify for the retail sales tax exemption. Under these facts, Buyer has dual residency in Washington and Arizona for tax purposes ~~((and Dealer cannot, in good faith, rely upon a buyer's affidavit from Buyer))~~.

~~(h) ((Buyer provides an Oregon driver's license and states that the vehicle will be licensed in Oregon and used out-of-state. However, when Dealer runs a credit check on Buyer, the credit report contains several references to a Washington address for Buyer. In this situation, Dealer cannot rely in good faith on Buyer's single form of identification as proof of nonresidency. The dealer must obtain additional evidence of nonresidency to substantiate a claimed exemption before making a tax-exempt sale in this situation.~~

~~(i))~~ Buyer purchases a motorcycle from Dealer in Vancouver, Washington. The motorcycle is equipped for use on public highways. Buyer provides an Oregon driver's license

and asserts that the motorcycle will be licensed in Oregon. Buyer also states that the motorcycle will only be used outside of Washington. Buyer places the motorcycle in the back of a truck for transport to Oregon. This sale does not qualify for any exemption or deduction. To qualify for the sales tax exemption, RCW 82.08.0264 requires the Buyer to obtain a trip permit or provide license plates from another state before removing the vehicle from Washington.

WSR 08-06-093
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed March 5, 2008, 9:27 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-229, explains the procedures relating to refunds or credits for the overpayment of taxes, penalties, or interest. It describes how to calculate the four-year period and clarifies the: Nonclaim statute and its consequences; definition of what constitutes a valid claim; description of required substantiation with timelines for compliance; representative's requirement for providing a confidential information waiver; allowable sampling procedures; and how interest is calculated.

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, fax (360) 586-0127, e-mail markbohe@dor.wa.gov, AND RECEIVED BY May 5, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is making one change, which occurs at two locations. This change occurs at subsection (8)(a)(i) and (ii). This correction

is to merely change two references from "subsection (7)(b) of this section" to instead read "(b) of this subsection."

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

Statute Being Implemented: RCW 82.32.060.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark E. Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-17-065, filed 8/13/07, effective 9/13/07)

WAC 458-20-229 Refunds. (1) Introduction. This section explains the procedures relating to refunds or credits for the overpayment of taxes, penalties, or interest. It describes the statutory time limits for refunds and the interest rates that apply to those refunds.

References to a "refund application" in this section include a request for a credit against future tax liability as well as a refund to the taxpayer.

Examples provided in this section 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.

(2) What are the time limits for a tax refund or credit?

(a) **Time limits.** No refund or credit may be made for taxes, penalties, or interest paid more than four years before the beginning of the calendar year in which a refund application is made or examination of records by the department is completed. See RCW 82.32.060. This is a nonclaim statute rather than a statute of limitations. This means a valid application must be filed within the statutory period, which may not be extended or tolled, unless a waiver extending the time for assessment has been entered into as described in (c) of this subsection.

For example, a refund or credit may be granted for any overpayment made in a shaded year in the following chart:

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Year 6</u>
					<u>Refund application is filed no later than December 31st</u>

(b) **Relation back to date paid.** Because the time limits relate to the date the taxes, penalties, or interest is paid, a refund application can be timely even though the payment concerned liabilities for a tax year normally outside the time limits. For example, Taxpayer P owes \$1,000 in B&O tax for activity undertaken in December 2000. In January 2001, Taxpayer P makes an arithmetic error and submits a payment of \$1,500 with its December 2000 tax return. In December 2005, Taxpayer P requests a refund of \$500 for the overpayment of taxes for the December 2000 period. This request is timely because the overpayment occurred within the time limits, even though the payment concerned tax liabilities incurred (December 2000) outside the time limits.

Fact situations can be complicated. For example, Taxpayer P pays B&O taxes in Years 1 through 4. The department subsequently conducts an audit of Taxpayer P that includes Years 1-4. The audit is completed in Year 5. As a result of the audit, the department issues an assessment in Year 5 for \$50,000 in additional retail sales taxes that were due from Years 1-4. Taxpayer P pays the assessment in full in Year 6. In Year 10, Taxpayer P files an application requesting a refund of B&O taxes. Taxpayer P's application is timely because it relates to a payment (payment of the assessment in Year 6) made no more than four years before the year in which the application is filed. It does not matter that the taxes relate to years outside the time limits; the actual payment occurred within four years before the refund application. Nor does it matter that the refund is based on an overpayment of B&O taxes while the assessment involved retail sales taxes, because both taxes relate to the same tax years. However, the amount of any refund is limited to \$50,000 - the amount of the payment that occurred within the time limits.

Assume the same facts as described above. When the department reviews Taxpayer P's refund application, it determines that the refund is valid. After reviewing the new information, however, the department also determines that Taxpayer P should have paid \$20,000 in additional B&O taxes during Years 1-4. Because Taxpayer P paid \$30,000 more than the amount properly due (\$50,000 overpayment less \$20,000 underpayment), the amount of the refund will be \$30,000.

(c) **Waiver.** Under RCW 82.32.050 or 82.32.100, a taxpayer may agree to waive the time limits and extend the time for the assessment of taxes, penalties and interest. If the taxpayer executes such a waiver, the time limits for a refund or credit are extended for the same period.

(3) How do I get a refund or credit?

(a) **Departmental examination of returns.** If the department performs an examination of the taxpayer's records and determines that the taxpayer has overpaid taxes, penalties, or interest, the department will issue a refund or a credit, at the taxpayer's option. In this situation, the taxpayer does not need to apply for a refund.

(b) Taxpayer application.

(i) If a taxpayer discovers that it has overpaid taxes, penalties, or interest, it may apply for a refund or credit. Refund application forms are available from the following sources:

- The department's internet web site at <http://dor.wa.gov>
- By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options)

• By writing to:

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

The application form should be submitted to the department at the following location:

Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476.

Taxpayers are encouraged to use the department's refund application form to ensure that all necessary information is provided for a timely valid application. However, while use of the department's application form is encouraged, it is not mandatory and any written request for refund or credit meeting the requirements of this section shall constitute a valid application. Filing an amended return showing an overpayment will also constitute an application for refund or credit, provided that the taxpayer also specifically identifies the basis for the refund or credit.

(ii) A taxpayer must submit a refund application within the time limits described in subsection (2)(a) of this section. An application must contain the following five elements:

(A) The taxpayer's name and UBI/TRA number must be on the application.

(B) The amount of the claim must be stated. Where the exact amount of the claim cannot be specifically ascertained at time of filing, the taxpayer may submit an application containing an estimated claim amount. Taxpayers must explain why the amount of the claim cannot be stated with specificity and how the estimated amount of the claim was determined.

(C) The tax type and taxable period must be on the application.

(D) The specific basis for the claim must be on the application. Any basis for a refund or credit not specifically identified in the initial refund application will be considered untimely, except that an application may be refiled to add additional bases at any time before the time limits in subsection (2) of this section expire.

(E) The signature of the taxpayer or the taxpayer's representative must be on the application. If the taxpayer is represented, the confidential taxpayer information waiver signed by the taxpayer specifically for that refund claim must be received by the department by the date the substantiation documents are first required, without regard to any extensions. If the signed confidential taxpayer information waiver for the refund claim lists the representative as an entity, every member or employee of that entity is authorized to represent the taxpayer. If the signed confidential taxpayer information waiver for the refund claim lists the representative as an individual, only that individual is authorized to represent the taxpayer.

(iii) If the nonclaim statute has run prior to the filing of the application, the department will deny the application and notify the taxpayer.

(iv) If the department determines that the taxpayer is not entitled to a refund as a matter of law, the application may be denied without requiring substantiation. The taxpayer shall

be responsible for maintaining substantiation as may eventually be needed should taxpayer appeal.

(v) The taxpayer is encouraged to file substantiation documents at the time of filing the application. However, once an application is filed, the taxpayer must submit sufficient substantiation to support the claim for refund or credit before the department can determine whether the claim is valid. The department will notify the taxpayer if additional substantiation is required. The taxpayer must provide the necessary substantiation within ninety days after such notice is sent, unless the documentation is under the control of a third party, not affiliated with or under the control of the taxpayer, in which case the taxpayer will have one hundred eighty days to provide the documentation. The department may request any other books, records, invoices or electronic equivalents and, where appropriate, federal and state tax returns to determine whether to accept or deny the claimed refund and to assess an existing deficiency.

(vi) In its discretion and upon good cause shown, the department may extend the period for providing substantiation upon its own or the taxpayer's request, which may not be unreasonably denied.

(vii) If the department does not receive the necessary substantiation within the applicable time period, the department shall deny the claim for lack of adequate substantiation and shall so notify the taxpayer. Any application denied for lack of adequate substantiation may be filed again with additional substantiation at any time before the time limits in subsection (2) of this section expire. Once the department determines that substantiation is sufficient, the department shall process the refund claim within ninety days, except that the department may extend the time of processing such claim upon notice to the taxpayer and explanation of why the claim cannot be completed within such time.

(viii) The following examples illustrate the refund application process:

(A) A taxpayer discovers in January 2005 that its June 2004 excise tax return was prepared using incorrect figures that overstated its sales, resulting in an overpayment of tax. The taxpayer files an amended June 2004 tax return with the department's taxpayer account administration division. The department will treat the taxpayer's amended June 2004 tax return as an application for a refund or credit of the amounts overpaid during that tax period, except that the taxpayer must also specifically identify the basis for the refund or credit and provide sufficient substantiation to support the claim for refund or credit. The taxpayer may satisfy this obligation by submitting a completed refund application form with its amended return or providing the additional required substantiation by other means.

(B) On December 31, 2005, a taxpayer files an amended return for the 2001 calendar year. The return includes changed figures indicating that an overpayment occurred, but does not provide any supporting substantiation. No written waiver of the time limits, under subsection (2)(c) of this section, for this time period exists. The department sends a letter notifying the taxpayer that the taxpayer's application is not complete and substantiation must be provided within ninety days or the application will be denied. If the taxpayer does not provide the necessary substantiation by the stated date,

the claim will be denied and, if refiled, will not be granted because it is then past the nonclaim limit of the statute.

(C) Taxpayer submits a refund application on December 31, 2004, claiming that taxpayer overpaid use tax in 2000 on certain machinery and equipment obtained by the taxpayer at that time. No substantiation is provided with the application and no written waiver of the time limit, under subsection (2)(c) of this section, for this taxable period exists. The department sends a letter notifying the taxpayer that the taxpayer's application is not complete and substantiation must be provided within ninety days or the application will be denied. The taxpayer does not respond by the stated date. The claim will be denied and, if refiled, will not be granted since it is then past the nonclaim limit of the statute.

(D) Assume the same facts as in (b)(viii)(B) and (C) of this subsection, except that within ninety days from the date the department sent the letter the taxpayer submits substantiation, which the department deems sufficient. The taxpayer's claim is valid, notwithstanding that the substantiation was provided after the nonclaim limit expired.

(E) Assume the same facts as in (b)(viii)(B) and (C) of this subsection, except that before the ninety-day period expires, the taxpayer requests an additional fifteen days in which to respond, explaining why the substantiation will require the additional time to assemble. The department agrees to the extended deadline. If the taxpayer submits the requested substantiation within the resulting one hundred five-day period, the department will not deny the claim for failure to provide timely substantiation.

(F) Assume the same facts as in (b)(iii)(B) and (C) of this subsection, except that the taxpayer submits substantiation within ninety days. The department reviews the substantiation and finds that it is still insufficient. The department, in its discretion, may extend the deadline and request additional substantiation from the taxpayer or may deny the refund claim as not substantiated.

(4) May I get a refund of retail sales tax paid in error?

(a) **Refund from seller.** Except as provided for in RCW 82.08.130 regarding deductions for tax paid at source, if a buyer pays retail sales tax on a transaction that the buyer later believes was not taxable, the buyer should request a refund or credit directly from the seller from whom the purchase was made. If the seller determines the tax was not due and issues a refund or credit to the buyer, the seller may seek its own refund from the department. It is better for a buyer to seek a retail sales tax refund directly from the seller. This is because the seller has the records to know if retail sales tax was collected on the original sale, knows the buyer, knows the circumstances surrounding the original sale, is aware of any disputes between itself and the buyer concerning the product, and may already be aware of the circumstances as to why a refund of sales tax is or is not appropriate. If a seller questions whether he or she should refund sales tax to a buyer, the seller may request advice from the department's telephone information center at 1-800-647-7706.

(b) **Refund from department.** In certain situations where the buyer has not received a refund from the seller, the department will refund retail sales tax directly to a buyer. The buyer must file a complete refund application as described in subsection (3)(b) of this section and either a

seller's declaration or a buyer's declaration, under penalty of perjury, must be provided for each seller.

(i) If the buyer is able to obtain a waiver from the seller of the seller's right to claim the refund, the buyer should file a seller's declaration, under penalty of perjury, with the refund application. A seller's declaration substantiates that:

(A) Retail sales tax was collected and paid to the department on the purchase for which a refund is sought;

(B) The seller has not refunded the retail sales tax to the buyer or claimed a refund from the department; and

(C) The seller will not seek a refund of the sales tax from the department.

(ii) If the seller no longer exists, the seller refuses to sign the declaration, under penalty of perjury, or the buyer is unable to locate the seller, the buyer should file a buyer's declaration, under penalty of perjury, with the refund application. The buyer's declaration explains why the buyer is unable to obtain a seller's declaration and provides information about the seller and declares that the buyer has not obtained and will not in the future seek a refund from the seller for that claim.

(iii) Seller's declaration, under penalty of perjury, and buyer's declaration, under penalty of perjury, forms are available from the following sources:

- The department's internet web site at <http://dor.wa.gov>
- By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options)
- By writing to:

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

(5) **May I use statistical sampling to substantiate a refund?** Sampling will only be used when a detailed audit is not possible. However, if your applications for refund or credit involve voluminous documents, the preferred method for substantiating your application is the use of statistical sampling. Alternative methods of sampling, including but not limited to, random sampling, time period sampling, transaction sampling, and block sampling, may be used when the department agrees that such methods are appropriate.

When using statistical sampling or an alternative method to substantiate an application for refund or credit, the applicant must contact the department prior to preparing the sampling plan. The sampling plan will describe the following:

- Population and sampling frame;
- Sampling unit;
- Source of the random numbers;
- Who will physically locate the sample units and how and where they will be presented for review;
- Any special instructions to those who were involved in reviewing the sample units;
- Special valuation guidelines to any of the sample units selected in the sample;
- How the sample will be evaluated, including the precision and confidence levels; and
- The applicant must obtain a seller's declaration from those sellers identified in the sample and separately certify,

under penalty of perjury, that applicant will not otherwise request or accept a refund or credit for sales or deferred sales tax paid to any seller or any use tax remitted during the taxable period covered by the audit.

Failure to contact the department before preparing the sampling may result in the department rejecting the application on the grounds that the results are not statistically valid.

Contact the department prior to performing a statistical sampling at these locations:

- The department's internet web site at <http://dor.wa.gov>
- By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options)
- By writing to:

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

(6) **Is my refund final?** The department may review a refund or credit provided on the basis of a taxpayer application without an examination by audit. If the refund or credit is granted and the department subsequently determines that the refund or credit exceeded the amount properly due the taxpayer, the department may issue an assessment to recover the excess amount. This assessment must be made within the time limits of RCW 82.32.050.

(7) **Refunds made as a result of a court decision.** The department will grant refunds or credits required by a court or Board of Tax Appeals decision, if the decision is not under appeal.

If the court action requires the refund or credit of retail sales taxes, the department will not require that buyers attempt to obtain a refund directly from the seller if it would be unreasonable and an undue burden on the buyer. In such a case, the department may refund the retail sales tax directly to the buyer and may use the public media to notify persons that they may be entitled to refunds or credits. The department will make available special refund application forms that buyers must use for these situations. The application will request the appropriate information needed to identify the buyer, item purchased, amount of sales tax to be refunded, and the seller. The department may, at its discretion, request additional documentation that the buyer could reasonably be expected to retain, based on the particular circumstances and value of the transaction. The department will approve or deny such refund requests within ninety days after the buyer has submitted all documentation.

(8) **What interest is due on my refund?** Interest is due on a refund or credit granted to a taxpayer as provided in this subsection.

(a) **Rate for overpayments made between 1992 through 1998.** For amounts overpaid by a taxpayer between January 31, 1991 and December 31, 1998, the rate of interest on refunds and credits is:

(i) Computed the same way as the rate provided under ~~((subsection (7))~~(b) of this ~~((section))~~ subsection minus one percent, for interest allowed through December 31, 1998; and

(ii) Computed the same way as the rate provided under ~~((subsection (7))~~(b) of this ~~((section))~~ subsection, for interest allowed after December 31, 1998.

(b) **Rate for overpayments after 1998.** For amounts overpaid by a taxpayer after December 31, 1998, the rate of interest on refunds and credits is the average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate is adjusted on the first day of January of each year by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April and July of the immediately preceding calendar year and October of the previous preceding year, as published by the United States Secretary of Treasury.

(c) **Start date for the calculation of interest.** If the taxpayer made all overpayments for each calendar year and all reporting periods ending with the final month included in a credit notice or refund on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund, interest is computed from either:

(i) January 31st following each calendar year included in a notice or refund; or

(ii) The last day of the month following the final month included in a notice or refund.

If the taxpayer did not make all overpayments for each calendar year and all reporting periods ending with the final month included in the notice or refund, interest is computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(d) **Calculation of interest on credits.** The department will include interest on credit notices with the interest computed to the date the taxpayer could reasonably be expected to use the credit notice, generally the due date of the next tax return. If a taxpayer requests that a credit notice be converted to a refund, interest is recomputed to the date the refund (warrant) is issued, but not to exceed the interest that would have been granted through the credit notice.

(9) **May the department apply my refund against other taxes I owe?** The department may apply overpayments against existing deficiencies and/or future assessments for the same legal entity. However, if preliminary schedules have not been issued regarding existing deficiencies or future assessments and the taxpayer is not presently under audit, the refund of an overpayment may not be delayed when the department determines a refund is due. The following examples illustrate the application of overpayments against existing deficiencies:

(a) The taxpayer's records are audited for the period Year 1 through Year 4. The audit disclosed underpayments in Year 2 and overpayments in Year 4. The department will apply the overpayments in Year 4 to the deficiencies in Year 2. The resulting amount will indicate whether a refund or credit is owed the taxpayer or whether the taxpayer owes additional tax.

(b) The department has determined that the taxpayer has overpaid its real estate excise tax. The department believes that the taxpayer may owe additional B&O taxes, but this has yet to be established. The department will not delay the

refund of the real estate excise tax while it schedules and performs an audit for the B&O taxes.

(c) The department simultaneously performed a timber tax audit and a B&O tax audit of a taxpayer. The audit disclosed underpayments of B&O tax and overpayments of timber tax. Separate assessments were issued on the same date, one showing additional taxes due and the other overpayments. The department may apply the overpayment against the tax deficiency assessment since both the underpayment and overpayment have been established.

(10) **How do I appeal the department's decision?** The taxpayer may appeal the denial of: A refund claim (or any part thereof, including tax, penalties, or interest overpayments), a request for an extension for providing substantiation, or a request to use a specific sampling technique. Taxpayer may appeal to either:

(a) The department as provided in WAC 458-20-100, Appeals, small claims and settlements; or

(b) Directly to Thurston County superior court.

(11) **Application.** This section applies to refund applications or amended returns showing overpayments, where the taxpayer has also specifically identified the basis for the refund or credit, that are received by the department on or after the effective date of this section.

WSR 08-06-095
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed March 5, 2008, 9:34 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-110 Delivery charges, explains the manner in which delivery charges are subject to the business and occupation (B&O), retail sales, and use taxes.

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, fax (360) 586-0127, e-mail GayleC@dor.wa.gov, AND RECEIVED BY May 5, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing revisions to WAC 458-20-110 (Rule 110) to incorporate provisions of chapter 6, Laws of 2007 (SSB 5089). Rule 110 is being revised to incorporate statutory provisions on apportioning delivery charges included in the sales price when a shipment includes both product subject to retail sales tax and product not subject to sales tax. The law provides that the seller may use:

- A percentage based on the total sales price of the taxable tangible personal property compared to the total sales price of all tangible personal property in the shipment; or
- A percentage based on the total weight of the taxable tangible personal property compared to the total weight of all tangible personal property in the shipment.

Reasons Supporting Proposal: To recognize provisions of SSB 5089 (chapter 6, Laws of 2007).

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

Statute Being Implemented: Chapters 82.04, 82.08 and 82.12 RCW, as they apply to delivery charges.

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) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-02-039, filed 12/30/04, effective 1/30/05)

WAC 458-20-110 Delivery charges. (1) Introduction.

This (~~rule~~) section explains the manner in which delivery charges are considered for purposes of business and occupation (B&O), retail sales, and use taxes. For information about delivery charges with regard to promotional materials, see WAC 458-20-17803 (Use tax on promotional materials).

(2) **What are delivery charges?** "Delivery charges" means charges by the seller for preparation and delivery to a location designated by the purchaser of tangible personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. RCW 82.08.010 and chapter 168, Laws of 2003, adopted the national Streamlined Sales and Use Tax Agreement definition of "delivery charges."

(3) **Do the business and occupation (B&O) and retail sales taxes apply to delivery charges?** The measure of the tax is "gross proceeds of sales" for B&O tax (RCW 82.04.-070) and "selling price" for retail sales tax (RCW 82.08.010). Gross proceeds of sales and selling price include all consideration paid by the buyer, without any deduction for costs of doing business such as material, labor, and transportation costs, including delivery charges. Thus, delivery charges by the seller are a component of these tax measures.

(a) **What if delivery charges are separately itemized on the sales invoice?** Amounts received by a seller from a buyer for delivery charges are included in the measure of tax regardless of whether charges for such costs are billed separately, itemized, or whether the seller is also the carrier. Limiting delivery charges to the actual cost of delivery to the seller does not affect taxability.

(b) **Does retail sales tax apply to all delivery charges by the seller?** Delivery charges by the seller making a retail sale are a component of the selling price. If the sale of the tangible personal property or service is exempt from retail sales tax, such as certain "food and food ingredients," retail sales tax does not apply to the selling price, including delivery charges, associated with that sale. Similarly, if the product is sold at wholesale, retail sales tax does not apply to the delivery charges of that sale.

If a retail sale consists of both taxable and nontaxable tangible personal property, and delivery charges are a component of the selling price, retail sales tax applies to the percentage of delivery charges allocated to the taxable tangible personal property. Retail sales tax is not due on delivery charges allocated to exempt tangible personal property.

The seller may use either of the following percentages to determine the taxable portion of the delivery charges:

(i) A percentage based on the total sales price of the taxable tangible personal property compared to the total sales price of all tangible personal property in the shipment; or

(ii) A percentage based on the total weight of the taxable tangible personal property compared to the total weight of all tangible personal property in the shipment.

(c) **Are there any situations in which delivery charges by the seller may be excluded from the measure of tax?**

There is no specific exclusion from the measure of tax for delivery charges by the seller. Actual delivery costs, regardless of whether separately charged, may be excluded from the measure of the manufacturing and extracting B&O taxes when the products are delivered outside the state. For further discussion, refer to WAC 458-20-112 (Value of products). WAC 458-20-13501 (Timber harvest operations) provides guidance regarding this issue for persons engaged in activities associated with timber harvesting.

(d) **Delivery charges in cases of payments to third parties.** Delivery charges incurred after the buyer takes delivery of the goods are not part of the selling price when the seller is not liable for payment of the delivery charges. To be excluded from the gross proceeds of sales for B&O tax and selling price for retail sales tax, the seller must document that the buyer alone is responsible to pay the carrier for the delivery charges.

(e) **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. In these examples, if the seller had been required to collect use tax (RCW 82.12.040) instead of retail sales tax (RCW 82.08.050), the use tax collection responsibility remains the same as for retail sales tax. This is because, in this context, the "value of article used" has the same meaning as the "purchase price" or "selling price."

(i) **Example 1.** Jane Doe orders a life vest from Marine Sales and requests that the vest be mailed by the United States Postal Service to her home. Marine Sales places the correct postage on the package using its postage meter and separately itemizes a charge on the sales invoice to Jane at the exact amount of the postage cost. Marine Sales is subject to the retailing B&O tax on the gross proceeds of the sale and

must collect retail sales tax on the selling price, both of which measures of tax include the charge for postage.

(ii) **Example 2.** XYZ Corporation orders equipment from ABC Distributors and provides ABC with a properly completed resale certificate. ABC ships the equipment using overnight air delivery and itemizes the actual amount of its shipping costs on the sales invoice. ABC must remit wholesaling B&O tax on the gross proceeds of sale, which includes the amount billed as shipping charges. Since the equipment is purchased for resale, ABC does not collect or report retail sales tax.

(iii) **Example 3.** The facts in this example are the same as those in (ii) of this subsection except that XYZ provides ABC with a properly completed exemption certificate. Retail sales tax does not apply to the delivery charge because the selling price, of which the delivery charge is a component, is exempt from retail sales tax. However, the delivery charge is included in the gross proceeds of the sale, and thus, is subject to retailing B&O tax.

(iv) **Example 4.** Jones Computer Supply, a distributor, makes retail sales of computer products primarily by mail order. It is the practice of Jones Computer Supply to add a ten-dollar handling charge for each order. No separate charge is made for actual transportation. The handling charge is part of the measure of tax for the retailing B&O and retail sales taxes.

(v) **Example 5.** ABC Construction in Seattle purchased a new saw from XYZ, Inc. The sales contract specifies that ABC will contract with MNO, Inc. for shipping to Seattle and that MNO, Inc. will pick up the saw in Spokane. ABC does contract with MNO for the shipping and is shown as the consignor on the bill of lading. The transportation charge is not included in the measure of tax for purposes of the retailing B&O and retail sales taxes because ABC, the buyer, is liable for payment to MNO, for shipping the new saw.

(4) **Delivery charges and use tax.** Beginning June 1, 2002, "value of article used," which is the measure of the use tax for tangible personal property, includes the amount of any delivery charge paid or given to the seller or on behalf of the seller with respect to the purchase of such article. Beginning July 1, 2004, both the "value of the article used" and the "value of the service used" will be the "purchase price" in instances where the seller is required under RCW 82.12.040 to collect use tax from the purchaser. RCW 82.12.010. "Purchase price" has the same meaning as "selling price" as described in subsection (3) of this ~~(rule)~~ section. Consumers responsible for remitting use tax directly to the department should refer to WAC 458-20-178 (Use tax).

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. Presume that all transactions in the following examples occur July 1, 2004, or later.

(a) **Example 1.** ABC Construction ordered replacement parts for a saw from XYZ, Inc., a business located in Chicago that is not required to collect Washington taxes. XYZ contracted with MNO Freight to ship the parts from Chicago. ABC is subject to use tax on the value of the article used (presumed to be the purchase price of the parts) including the cost

of the transportation, regardless of whether the transportation costs are itemized.

(b) **Example 2.** The facts in this example are the same as those in (a) of this subsection except that instead of ordering a replacement part, ABC Construction sends a broken part to XYZ, Inc. in Chicago for repair. ABC is subject to use tax on the repair service. The cost of transportation is included in the value of the service used, regardless of whether the transportation costs are itemized.

(c) **Example 3.** ABC Construction ordered replacement parts for a saw from XYZ, Inc., a business located in Chicago that is not required to collect Washington taxes. ABC hired MNO Freight to ship the parts from Chicago and was responsible for payment. ABC may exclude the cost of the transportation from the value on which use tax is due. The transportation costs ABC pays MNO are not a component of the value of the article used because the cost is not part of the consideration paid to XYZ for the replacement parts. ABC is subject to use tax on the value of the parts, which is presumed to be their purchase price.

WSR 08-06-096

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed March 5, 2008, 9:44 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment, this rule explains the sales and use tax exemption to manufacturers or processors for hire of machinery and equipment (M&E) used directly in a manufacturing operation or a research and development operation, as well as to third parties engaged in testing for manufacturers or processors for hire of M&E used directly in a testing operation.

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, fax (360) 586-0127, e-mail GayleC@dor.wa.gov, AND RECEIVED BY May 5, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-20-13601 (Rule 13601) currently explains that blanket exemption certificates (certificates intended to cover more than one sales transaction) must be renewed every four years. The department is proposing to amend Rule 13601 to recognize that effective July 1, 2008, a blanket exemption certificate continues as long as the seller has a recurring business relationship with the buyer, which is defined by law as making a

least one purchase from the vendor within a period of twelve consecutive months.

Subsection (2) of the existing rule, titled "legislative history," is being removed. This subsection identifies legislative changes that occurred prior to July 25, 1999, and is no longer needed.

Reasons Supporting Proposal: To incorporate provisions of SSB 5089 (chapter 6, Laws of 2007).

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

Statute Being Implemented: RCW 82.08.02565 and 82.12.02565.

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) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

March 5, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-11-096, filed 5/17/00, effective 6/17/00)

WAC 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment. (1) **Introduction.** This ~~((rule))~~ section explains the retail sales and use tax exemption provided by RCW 82.08.02565 and 82.12.02565 for sales to or use by manufacturers or processors for hire of machinery and equipment (M&E) used directly in a manufacturing operation or research and development operation. This ~~((rule))~~ section explains the requirements that must be met to substantiate a claim of exemption. For information regarding the distressed area sales and use tax deferral refer to WAC 458-20-24001 and chapter 82.60 RCW. For the high technology business sales and use tax deferral refer to chapter 82.63 RCW.

~~((On and after July 25, 1999, a person engaged in testing for manufacturers or processors for hire is eligible to take the exemption, subject to the requirements explained below.~~

(2) **Legislative history.** The manufacturing machinery and equipment exemption, codified as RCW 82.08.02565 and 82.12.02565, became effective July 1, 1995. The exemption has since been the subject of a number of changes: See 1995 1st sp.s. c 3, 1996 c 173, 1996 c 247, 1998 c 330, and 1999 c 211. The 1995 legislation covered installation charges for qualifying machinery and equipment as well as replacement parts that increased the productivity, improved efficiency, or extended the useful life of the machinery and equipment.

~~(a) In 1996, the exemption was extended to include charges for repairing, cleaning, altering, or improving the machinery and equipment. The same act also revised the definition of "machinery and equipment" to include tangible personal property that becomes an ingredient or component of~~

~~the machinery and equipment, including repair and replacement parts. A second act extended the exemption to research and development engaged in by manufacturers or processors for hire. Both acts took effect June 6, 1996.~~

~~(b) In 1998, the duplicate certificate and annual reporting requirements were eliminated, effective June 11, 1998.~~

~~(c) In 1999, the 1995 legislation was clarified retroactively by ESHB 1887, chapter 211, Laws of 1999, to include certain logging and mining activities, segmented manufacturing, and off site testing by manufacturers, and to explain that hand-powered tools were excluded. On July 25, 1999, the exemption was extended on a prospective basis to persons who perform third-party testing for manufacturers or processors for hire.~~

~~(3))~~ (2) **Definitions.** For purposes of the manufacturing machinery and equipment tax exemption the following definitions will apply.

(a) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel. See RCW 82.08.02565.

(b) "Device" means an item that is not attached to the building or site. Examples of devices are: Forklifts, chain-saws, air compressors, clamps, free standing shelving, software, ladders, wheelbarrows, and pulleys.

(c) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(d) "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a qualifying operation to prevent air pollution, water pollution, or contamination that might otherwise result from the operation. "M&E" means "machinery and equipment."

(e) "Manufacturer" has the same meaning as provided in chapter 82.04 RCW.

(f) "Manufacturing" has the same meaning as "to manufacture" in chapter 82.04 RCW.

(g) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site. The operation includes storage of raw materials at the site, the storage of in-process materials at the site, and the storage of the processed material at the site. The manufacturing operation is defined in terms of a process occurring at a location. To be eligible as a qualifying use of M&E, the use must take place within the manufacturing operation, unless specifically ~~((excepted))~~ exempted by law. Storage of raw material or other tangible personal property, packaging of tangible personal property, and other activities that potentially qualify under the "used directly" criteria, and that do not constitute manufacturing in and of themselves, are not within the scope of the exemption unless they take place at a

manufacturing site. The statute specifically allows testing to occur away from the site.

The term "manufacturing operation" also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

(i) Neither duration or temporary nature of the manufacturing activity nor mobility of the equipment determine whether a manufacturing operation exists. For example, operations using portable saw mills or rock crushing equipment are considered "manufacturing operations" if the activity in which the person is engaged is manufacturing. Rock crushing equipment that deposits material onto a roadway is not used in a manufacturing operation because this is a part of the constructing activity, not a manufacturing activity. Likewise, a concrete mixer used at a construction site is not used in a manufacturing operation because the activity is constructing, not manufacturing. Other portable equipment used in non-manufacturing activities, such as continuous gutter trucks or trucks designed to deliver and combine aggregate, or specialized carpentry tools, do not qualify for the same reasons.

(ii) Manufacturing tangible personal property for sale can occur in stages, taking place at more than one manufacturing site. For example, if a taxpayer processes pulp from wood at one site, and transfers the resulting pulp to another site that further manufactures the product into paper, two separate manufacturing operations exist. The end product of the manufacturing activity must result in an article, substance, or commodity for sale.

(h) "Processor for hire" has the same meaning as used in chapter 82.04 RCW and as explained in WAC 458-20-136 Manufacturing, processing for hire, fabricating.

(i) "Qualifying operation" means a manufacturing operation, a research and development operation, or ~~(, as of July 25, 1999,)~~ a testing operation.

(j) "Research and development operation" means engaging in research and development as defined in RCW 82.63.-010 by a manufacturer or processor for hire. RCW 82.63.010 defines "research and development" to mean: Activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the Federal Food and Drug Administration under chapter 21, C.F.R., as amended. The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(k) "Sale" has the same meaning as "sale" in chapter 82.08 RCW, which includes by reference RCW 82.04.040.

RCW 82.04.040 includes by reference the definition of "retail sale" in RCW 82.04.050. "Sale" includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price.

(l) "Site" means the location at which the manufacturing or testing takes place.

(m) "Support facility" means a part of a building, or a structure or improvement, used to contain or steady an industrial fixture or device. A support facility must be specially designed and necessary for the proper functioning of the industrial fixture or device and must perform a function beyond being a building or a structure or an improvement. It must have a function relative to an industrial fixture or a device. To determine if some portion of a building is a support facility, the parts of the building are examined. For example, a highly specialized structure, like a vibration reduction slab under a microchip clean room, is a support facility. Without the slab, the delicate instruments in the clean room would not function properly. The ceiling and walls of the clean room are not support facilities if they only serve to define the space and do not have a function relative to an industrial fixture or a device.

(n) "Tangible personal property" has its ordinary meaning.

(o) "Testing" means activities performed to establish or determine the properties, qualities, and limitations of tangible personal property.

(p) "Testing operation" means the testing of tangible personal property for a manufacturer or processor for hire. A testing operation begins at the point where the tangible personal property enters the testing site and ends at the point where the tangible personal property leaves the testing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail. The testing operation is defined in terms of a process occurring at a location. To be eligible as a qualifying use of M&E, the use must take place within the testing operation, unless specifically excepted by law.

~~((4))~~ **(3) Sales and use tax exemption.** The M&E exemption provides a retail sales and use tax exemption for machinery and equipment used directly in a manufacturing operation or research and development operation. Sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying machinery and equipment are also exempt from sales tax. However, because the exemption is limited to items with a useful life of one year or more, some charges for repair, labor, services, and replacement parts may not be eligible for the exemption. In the case of labor and service charges that cover both qualifying and nonqualifying repair and replacement parts, the labor and services charges are presumed to be exempt. If all of the parts are nonqualifying, the labor and service charge is not exempt, unless the parts are incidental to

the service being performed, such as cleaning, calibrating, and adjusting qualifying machinery and equipment.

~~((On and after July 25, 1999,))~~ The exemption may be taken for qualifying machinery and equipment used directly in a testing operation by a person engaged in testing for a manufacturer or processor for hire.

Sellers remain subject to the retailing B&O tax on all sales of machinery and equipment to consumers if delivery is made within the state of Washington, notwithstanding that the sale may qualify for an exemption from the retail sales tax.

(a) Sales tax. The purchaser must provide the seller with an exemption certificate. The exemption certificate must be completed in its entirety. The seller must retain a copy of the certificate as a part of its records. This certificate may be issued for each purchase or in blanket form certifying all future purchases as being exempt from sales tax. ~~((Blanket forms must be renewed every four years.))~~ Blanket certificates are valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. RCW 82.08.050 (7)(c).

The form must contain the following information:

- (i) Name, address, and registration number of the buyer;
- (ii) Name of the seller;
- (iii) Name and title of the authorized agent of the buyer/user;
- (iv) Authorized signature;
- (v) Date; and
- (vi) Whether the form is a single use or blanket-use form.

A copy of a M&E certificate form may be obtained from the department of revenue (department) on the internet at <http://www.dor.wa.gov/>, ~~((under "Other forms and schedules"))~~ or by contacting the department's taxpayer services division at:

Department of Revenue
Taxpayer Services
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

(b) Use tax. The use tax complements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any tangible personal property purchased at retail, where the user has not paid retail sales tax with respect to the purchase of the property used. (See also chapter 82.12 RCW and WAC 458-20-178 Use tax.) If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the retail sales tax (commonly referred to as "deferred sales tax") or the use tax directly to the department unless the purchase and/or use is exempt from the retail sales and/or use tax. A qualifying person using eligible machinery and equipment in Washington in a qualifying manner is exempt from the use tax. If an item of machinery and equipment that was eligible for use tax or sales tax exemption fails to overcome the majority use threshold or is totally put to use in a nonqualifying manner, use tax is due on the fair market value at the time the item was put to nonqualifying use. See subsection ~~((+0))~~ (9) of this ~~((rule))~~ section for an explanation of the majority use threshold.

~~((5))~~ (4) **Who may take the exemption.** The exemption may be taken by a manufacturer or processor for hire who manufactures articles, substances, or commodities for sale as tangible personal property, and who, for the item in question, meets the used directly test and overcomes the majority use threshold. (See subsection ~~((9))~~ (8) of this ~~((rule))~~ section for a discussion of the "used directly" criteria and see subsection ~~((+0))~~ (9) of this ~~((rule))~~ section for an explanation of the majority use threshold.) However, for research and development operations, there is no requirement that the operation produce tangible personal property for sale. A processor for hire who does not sell tangible personal property is eligible for the exemption if the processor for hire manufactures articles, substances, or commodities that will be sold by the manufacturer. For example, a person who is a processor for hire but who is manufacturing with regard to tangible personal property that will be used by the manufacturer, rather than sold by the manufacturer, is not eligible. See WAC 458-20-136 and RCW 82.04.110 for more information. ~~((On and after July 25, 1999,))~~ Persons who engage in testing for manufacturers or processors for hire are eligible for the exemption. To be eligible for the exemption, the taxpayer need not be a manufacturer or processor for hire in the state of Washington, but must meet the Washington definition of manufacturer.

~~((6))~~ (5) **What is eligible for the exemption.** Machinery and equipment used directly in a qualifying operation by a qualifying person is eligible for the exemption, subject to overcoming the majority use threshold.

There are three classes of eligible machinery and equipment: Industrial fixtures, devices, and support facilities. Also eligible is tangible personal property that becomes an ingredient or component of the machinery and equipment, including repair parts and replacement parts. "Machinery and equipment" also includes pollution control equipment installed and used in a qualifying operation to prevent air pollution, water pollution, or contamination that might otherwise result from the operation.

~~((7))~~ (6) **What is not eligible for the exemption.** In addition to items that are not eligible because they do not meet the used directly test or fail to overcome the majority use threshold, there are four categories of items that are statutorily excluded from eligibility. The following property is not eligible for the M&E exemption:

(a) Hand-powered tools. Screw drivers, hammers, clamps, tape measures, and wrenches are examples of hand-powered tools. Electric powered, including cordless tools, are not hand-powered tools, nor are calipers, plugs used in measuring, or calculators.

(b) Property with a useful life of less than one year. All eligible machinery and equipment must satisfy the useful life criteria, including repair parts and replacement parts. For example, items such as blades and bits are generally not eligible for the exemption because, while they may become component parts of eligible machinery and equipment, they generally have a useful life of less than one year. Blades generally having a useful life of one year or more, such as certain sawmill blades, are eligible. See subsection ~~((8))~~ (7) of this ~~((rule))~~ section for thresholds to determine useful life.

(c) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building. Buildings provide work space for people or shelter machinery and equipment or tangible personal property. The building itself is not eligible, however some of its components might be eligible for the exemption. The industrial fixtures and support facilities that become affixed to or part of the building might be eligible. The subsequent real property status of industrial fixtures and support facilities does not affect eligibility for the exemption.

(d) Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical. Examples of nonqualifying fixtures are: Fire sprinklers, building electrical systems, or washroom fixtures. Fixtures that are integral to the manufacturing operation might be eligible, depending on whether the item meets the other requirements for eligibility, such as the used directly test.

~~((8))~~ (7) **The "useful life" threshold.** RCW 82.08.-02565 has a per se exception for "property with a useful life of less than one year." Property that meets this description is not eligible for the M&E exemption. The useful life threshold identifies items that do not qualify for the exemption, such as supplies, consumables, and other classes of items that are not expected or intended to last a year or more. For example, tangible personal property that is acquired for a one-time use and is discarded upon use, such as a mold or a form, has a useful life of less than one year and is not eligible. If it is clear from taxpayer records or practice that an item is used for at least one year, the item is eligible, regardless of the answers to the four threshold questions. A taxpayer may work directly with the department to establish recordkeeping methods that are tailored to the specific circumstances of the taxpayer. The following steps should be used in making a determination whether an item meets the "useful life" threshold. The series of questions progress from simple documentation to complex documentation. In order to substantiate qualification under any step, a taxpayer must maintain adequate records or be able to establish by demonstrating through practice or routine that the threshold is overcome. Catastrophic loss, damage, or destruction of an item does not affect eligibility of machinery and equipment that otherwise qualifies. Assuming the machinery and equipment meets all of the other M&E requirements and does not have a single one-time use or is not discarded during the first year, useful life can be determined by answering the following questions for an individual piece of machinery and equipment:

(a) Is the machinery and equipment capitalized for either federal tax purposes or accounting purposes?

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(b) Is the machinery and equipment warranted by the manufacturer to last at least one year?

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(c) Is the machinery and equipment normally replaced at intervals of one year or more, as established by industry or

business practice? (This is commonly based on the actual experience of the person claiming the exemption.)

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(d) Is the machinery and equipment expected at the time of purchase to last at least one year, as established by industry or business practice? (This is commonly based on the actual experience of the person claiming the exemption.)

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no," it does not qualify for the exemption.

~~((9))~~ (8) The "used directly" criteria. Items that are not used directly in a qualifying operation are not eligible for the exemption. The statute provides eight descriptions of the phrase "used directly." The manner in which a person uses an item of machinery and equipment must match one of these descriptions. If M&E is not "used directly" it is not eligible for the exemption. Examples of items that are not used directly in a qualifying operation are cafeteria furniture, safety equipment not part of qualifying M&E, packaging materials, shipping materials, or administrative equipment. Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation, if the machinery and equipment meets any one of the following criteria:

(a) Acts upon or interacts with an item of tangible personal property. Examples of this are drill presses, concrete mixers (agitators), ready-mix concrete trucks, hot steel rolling machines, rock crushers, and band saws. Also included is machinery and equipment used to repair, maintain, or install tangible personal property. Computers qualify under this criteria if:

- (i) They direct or control machinery or equipment that acts upon or interacts with tangible personal property; or
- (ii) If they act upon or interact with an item of tangible personal property.

(b) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or the testing site. Examples of this are wheelbarrows, handcarts, storage racks, forklifts, tanks, vats, robotic arms, piping, and concrete storage pads. Floor space in buildings does not qualify under this criteria. Not eligible under this criteria are items that are used to ship the product or in which the product is packaged, as well as materials used to brace or support an item during transport.

(c) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site. Examples of "away from the site" are road testing of trucks, air testing of planes, or water testing of boats, with the machinery and equipment used off site in the testing eligible under this criteria. Machinery and equipment used to take readings or measurements is eligible under this criteria.

(d) Provides physical support for or access to tangible personal property. Examples of this are catwalks adjacent to production equipment, scaffolding around tanks, braces under vats, and ladders near controls. Machinery and equipment used for access to the building or to provide a work space for people or a space for tangible personal property or machinery and equipment, such as stairways or doors, is not eligible under this criteria.

(e) Produces power for or lubricates machinery and equipment. A generator providing power to a sander is an example of machinery and equipment that produces power for machinery and equipment. An electrical generating plant that provides power for a building is not eligible under this criteria. Lubricating devices, such as hoses, oil guns, pumps, and meters, whether or not attached to machinery and equipment, are eligible under this criteria.

(f) Produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation. Machinery and equipment that makes dies, jigs, or molds, and printers that produce camera-ready images are examples of this.

(g) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported.

(h) Is integral to research and development as defined in RCW 82.63.010.

~~((10))~~ **(9) The majority use threshold.**

(a) Machinery and equipment both used directly in a qualifying operation and used in a nonqualifying manner is eligible for the exemption only if the qualifying use satisfies the majority use requirement. Examples of situations in which an item of machinery and equipment is used for qualifying and nonqualifying purposes include: The use of machinery and equipment in manufacturing and repair activities, such as using a power saw to make cabinets in a shop versus using it to make cabinets at a customer location; the use of machinery and equipment in manufacturing and constructing activities, such as using a forklift to move finished sheet rock at the manufacturing site versus using it to unload sheet rock at a customer location; and the use of machinery and equipment in manufacturing and transportation activities, such as using a mixer truck to make concrete at a manufacturing site versus using it to deliver concrete to a customer. Majority use can be expressed as a percentage, with the minimum required amount of qualifying use being greater than fifty percent compared to overall use. To determine whether the majority use requirement has been satisfied, the person claiming the exemption must retain records documenting the measurement used to substantiate a claim for exemption or, if time, value, or volume is not the basis for measurement, be able to establish by demonstrating through practice or routine that the requirement is satisfied. Majority use is measured by looking at the use of an item during a calendar year using any of the following:

(i) Time. Time is measured using hours, days, or other unit of time, with qualifying use of the M&E the numerator, and total time used the denominator. Suitable records for time measurement include employee time sheets or equipment time use logs.

(ii) Value. Value means the value to the person, measured by revenue if the qualifying and nonqualifying uses both produce revenue. Value is measured using gross revenue, with revenue from qualifying use of the M&E the numerator, and total revenue from use of the M&E the denominator. If there is no revenue associated with the use of the M&E, such as in-house accounting use of a computer system, the value basis may not be used. Suitable records for

value measurement include taxpayer sales journals, ledgers, account books, invoices, and other summary records.

(iii) Volume. Volume is measured using amount of product, with volume from qualifying use of the M&E the numerator and total volume from use of the M&E the denominator. Suitable records for volume measurement include production numbers, tonnages, and dimensions.

(iv) Other comparable measurement for comparison. The department may agree to allow a taxpayer to use another measure for comparison, provided that the method results in a comparison between qualifying and nonqualifying uses. For example, if work patterns or routines demonstrate typical behavior, the taxpayer can satisfy the majority use test using work site surveys as proof.

(b) Each piece of M&E does not require a separate record if the taxpayer can establish that it is reasonable to bundle M&E into classes. Classes may be created only from similar pieces of machinery and equipment and only if the uses of the pieces are the same. For example, forklifts of various sizes and models can be bundled together if the forklifts are doing the same work, as in moving wrapped product from the assembly line to a storage area. An example of when not to bundle classes of M&E for purposes of the majority use threshold is the use of a computer that controls a machine through numerical control versus use of a computer that creates a camera ready page for printing.

(c) Typically, whether the majority use threshold is met is decided on a case-by-case basis, looking at the specific manufacturing operation in which the item is being used. However, for purposes of applying the majority use threshold, the department may develop industry-wide standards. For instance, the aggregate industry uses concrete mixer trucks in a consistent manner across the industry. Based on a comparison of selling prices of the processed product picked up by the customer at the manufacturing site and delivery prices to a customer location, and taking into consideration the qualifying activity (interacting with tangible personal property) of the machinery and equipment compared to the nonqualifying activity (delivering the product) of the machinery and equipment, the department has determined that concrete trucks qualify under the majority use threshold. Only in those limited instances where it is apparent that the use of the concrete truck is atypical for the industry would the taxpayer be required to provide recordkeeping on the use of the truck in order to support the exemption.

WSR 08-06-097

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed March 5, 2008, 9:45 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-262 Retail sales and use tax exemptions for agricultural employee housing, explains the retail sales and use tax exemptions in respect to the constructing, repairing, decorating, or improving of new or existing buildings or structures used for agricultural employee housing.

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, fax (360) 586-0127, e-mail GayleC@dor.wa.gov, AND RECEIVED BY May 5, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-20-262 (Rule 262) currently explains that an exemption certificate provided for multiple purchases over a period must not exceed four years. The department is proposing to amend Rule 262 to recognize that effective July 1, 2008, such an exemption certificate continues as long as the seller has a recurring business relationship with the buyer, which is defined by law as making at least one purchase from the vendor within a period of twelve consecutive months.

The sample blank exemption certificate form in the rule is being deleted and an explanation on how a "farmers' retail sales tax exemption certificate" can be obtained is added.

Reasons Supporting Proposal: To recognize provisions of SSB 5089 (chapter 6, Laws of 2007).

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

Statute Being Implemented: RCW 82.08.02745 and 82.12.02685.

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) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-24-069, filed 11/30/98, effective 12/31/98)

WAC 458-20-262 Retail sales and use tax exemptions for agricultural employee housing. (1) **Introduction.** RCW 82.08.02745 and 82.12.02685 provide a retail sales and use tax exemption for agricultural employee housing (~~as of March 20, 1996. Chapter 438, Laws of 1997, effective May 20, 1997, amended both RCW 82.08.02745 and 82.12.02685 by limiting the exemptions and allowing additional agricultural employee housing providers to receive the exemption~~). This (~~rule~~) section also explains the exemptions, who is entitled to the exemption and (~~the required information to be contained in~~) how to obtain an exemption certificate.

(2) **Definitions.** The following definitions apply throughout this section.

(a) "Agricultural employee" means any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity (RCW 19.30.010).

(b) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the reforestation or reforestation of lands, which includes but is not limited to the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash, the harvest of Christmas trees, and other related activities (RCW 19.30.010).

(c) "Agricultural employee housing" means all facilities provided by an agricultural employer, housing authority, local government, state or federal agency, nonprofit community or neighborhood-based organization that is exempt from income tax under section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. sec. 501(c)), or for-profit provider of housing for housing agricultural employees on a year-round or seasonal basis, including bathing, food handling, hand washing, laundry, and toilet facilities, single-family and multifamily dwelling units and dormitories, and includes labor camps (~~under RCW 70.54.110~~). The term also includes but is not limited to mobile homes, travel trailers, mobile bunkhouses, modular homes, fabricated components of a house, and tents. Agricultural employee housing does not include housing regularly provided on a commercial basis to the general public (~~chapter 438, Laws of 1997~~). Agricultural employee housing does not include housing provided by a housing authority unless at least eighty percent of the occupants are agricultural employees whose adjusted income is less than fifty percent of median family income, adjusted for household size, for the county where the housing is provided.

(d) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof (RCW 82.04.030).

(e) "Agricultural land" has the same meaning as "agricultural and farm land" in RCW 84.34.020(2).

(3) **Retail sales and use tax exemptions for agricultural employee housing.** RCW 82.08.02745 and 82.12.02685, respectively, provide retail sales tax and use tax exemptions for the purchase, construction, and use of agricultural employee housing. Both exemptions require that agricultural employee housing provided to year-round employees of the agricultural employer must be built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW. Neither of these exemptions apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(a) The retail sales tax does not apply to charges for labor and services rendered by any person in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures used as agricultural employee housing. Also exempt are sales of tangible personal property that becomes an ingredient or component of the buildings or other structures, including but not limited to septic tanks, pump houses, cisterns, and driveways. Examples of ingredients or components include but are not limited to cement, lumber, nails, paint and wallpaper.

(i) Appliances and furniture, including but not limited to stoves, refrigerators, bed frames, lamps and television sets, bolted or strapped directly to the building or structure are considered components of the building or structure. Additionally, appliances and furniture bolted or strapped to another item that is bolted or strapped directly to the building or structure (e.g., a television set bolted to a refrigerator that is strapped to the structure) are considered components of the building or structure.

(ii) Items that are not bolted or strapped directly to the building or structure, or to another item similarly bolted or strapped, do not qualify for this exemption. These items include but are not limited to kitchen utensils, mattresses, bedding, portable heating units, and throw rugs. Stoves, refrigerators, bed frames, lamps and television sets that are not bolted or strapped as discussed in (a)(i) of this subsection, also do not qualify as components of the building or structure.

(iii) Purchases of labor and transportation charges necessary to move and set up mobile homes, mobile bunkhouses, and other property and component parts as agricultural employee housing are exempt of retail sales tax.

(iv) As a condition for exemption, the seller must take from the buyer an exemption certificate ~~((which substantially contains the information included in the sample form provided in subsection (5) of this section.))~~ completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department of revenue's "Farmers' Retail Sales Tax Exemption Certificate" which can be obtained through the following means:

(A) From the department's internet site at <http://dor.wa.gov>;

(B) By calling taxpayer services at 1-800-647-7706; or

(C) By writing to:

Taxpayer Services

Washington State Department of Revenue

P.O. Box 47478

Olympia, WA 98504-7478

The seller may accept a legible fax or duplicate copy of an original exemption certificate. In all cases, the exemption certificate must be ~~((accepted in good faith by the seller, and must be))~~ retained by the seller for a period of at least five

years. An exemption certificate may be provided for a single ~~((purpose.))~~ purchase or for multiple purchases over a period ~~((not to exceed four years))~~ of time. If the certificate is provided for multiple purchases over a period of time, the certificate is valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. RCW 82.08.050 (7)(c). Failure to comply with the provisions in this section may result in a denial of the exemption and the agricultural employer may be subject to use tax plus penalties and interest. ~~((Copies of the sample form provided in subsection (5) of this section are available through the department of revenue's taxpayer services division (360) 753-7634.))~~

(b) The use tax exemption is available for the use of tangible personal property that becomes an ingredient or component of buildings or other structures used as agricultural employee housing during the course of constructing, repairing, decorating, or improving the buildings or other structures by any person. Again, appliances and furniture that are bolted or strapped to the actual building or structure are considered components of the building or structure.

(i) The exemption for materials incorporated into buildings or other structures used as agricultural employee housing also applies to persons/consumers constructing these buildings or structures for the federal government or county housing authorities. (See also WAC 458-20-17001 on government contracting.)

(ii) An agricultural employer claiming the exemption who retitles a used mobile home or titles a new mobile home acquired from an out-of-state seller must provide a completed exemption certificate to the department of licensing or its agent to substantiate the exempt nature of the home.

(4) Requirement to remit payment of tax if agricultural housing fails to continue to satisfy the conditions of exemption. The agricultural employee housing must be used for at least five consecutive years from the date the housing is approved for occupancy to retain the retail sales and use tax exemption. If this condition is not satisfied, the full amount of tax otherwise due shall be immediately due and payable together with interest, but not penalties, from the date the housing is approved for occupancy until the date of payment.

If at any time agricultural employee housing that is not located on agricultural land ceases to be used as agricultural employee housing, the full amount of tax otherwise due shall be immediately due and payable with interest, but not penalties, from the date the housing ceased to be used as agricultural employee housing.

~~((5) Retail sales tax exemption certificate. The agricultural employer (buyer) must provide an exemption certificate to a seller to show entitlement to the exemption provided by the statute. This exemption certificate must be substantially in the form shown below.~~

AGRICULTURAL EMPLOYEE HOUSING EXEMPTION CERTIFICATE

This exemption certificate is to be solely for allowable purchases by an agricultural employee housing provider.

1. Name of Seller:

2. Name of Agricultural Employee Housing Provider:

3. Address of Agricultural Employee Housing Provider:

Street, City, State Zip Code

4. Agricultural Employee Housing Providers UBI/Registration No.:

For the purpose of the exemption, the agricultural employer certifies the following:

- The buildings or other structures built on agricultural land will be used as agricultural employee housing for at least five years from the date the housing is approved for occupation otherwise the entire tax becomes due plus interest from the time the housing ceases to be used for agricultural housing until date of payment.
- It is understood that buildings or other structures built on nonagricultural land must conform to the state building code and be provided to year-round agricultural employees otherwise the total tax exempted is due plus interest from the date the housing ceases to be used as agricultural employee housing as defined in WAC 458-20-262(3) until date of payment.
- The buildings or other structures used to house year-round agricultural employees will be constructed to meet the state building code (chapter 19.27 RCW) for single family or multifamily dwelling.
- The buildings or other structures will not be used as housing for an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.
- The buildings or other structures will not be used to regularly provide housing on a commercial basis to the general public.
- If purchases are being made to construct agricultural employee housing for a housing authority, at least eighty percent of the occupants will be agricultural employees whose adjusted gross income is less than fifty percent of median family income adjusted for household size, for the county where the housing is provided.

Is the agricultural employee housing being built on agricultural land: Yes No

If yes, please provide parcel number:

Print Name of Buyer:

Signature:

Date Signed: Effective Date: through (Not to exceed 4 years)

To inquire about the availability of this document in an alternate format for the visually impaired or a language other than English, please call (360) 753-3217. Teletype (TTY) users may call (800) 451-7985. You may also access tax information on our internet home page at http://www.wa.gov/dor/wador.htm))

WSR 08-06-098
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed March 5, 2008, 9:46 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-250 Solid waste collection tax, this rule explains how the solid waste collection tax applies, who is required to collect the tax; and the B&O, retail sales, and use tax obligations of persons providing solid waste collection services.

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, fax (360) 586-0127, e-mail GayleC@dor.wa.gov, AND RECEIVED BY May 5, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To prevent the

pyramiding of the solid waste collection tax, the rule provides a sample solid waste collector's exemption certificate for use by a solid waste collection business using the services of another solid waste collection business for purposes of transferring, storing, or disposing of collected wastes. The rule currently explains that a blanket certificate must [be] renewed every four years.

Chapter 6, Laws of 2007, provides that effective July 1, 2008, a "blanket exemption certificate" used for retail sales tax purposes continues as long as the seller has a recurring business relationship with the buyer, which is defined as making at least one purchase from the vendor within a period of twelve consecutive months. While this provision does not require that the department apply this standard to the solid waste collection tax, the department is for consistency purposes proposing to apply this standard to the exemption certificate for the solid waste collection tax.

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

Statute Being Implemented: Chapter 82.18 RCW.

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) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-12-017, filed 5/26/06, effective 6/26/06)

WAC 458-20-250 Solid waste collection tax. (1) **Introduction.** This section explains how the solid waste collection tax imposed under chapter 82.18 RCW applies; who is required to collect the tax; and the B&O, sales, and use tax obligations of persons providing solid waste collection services. The tax imposed under chapter 82.18 RCW was previously known as the "refuse collection tax." For the purposes of this section, the tax is referred to by its statutory name, the "solid waste collection tax."

(2)(a) **What is "solid waste"?** "Solid waste" or "waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste nor does it include material collected primarily for recycling or salvage.

(b) **Who is the taxpayer for purposes of the solid waste collection tax?** "Taxpayer" means that person upon whom the solid waste collection tax is imposed, that is, the private or commercial consumer.

(c) **Who is required to collect the solid waste collection tax?** Every person who receives waste for transfer, storage, or disposal including, but not limited to, all collection services, public or private dumps, transfer stations, and similar operations, must collect the solid waste collection tax from the private or commercial consumer.

(d) **What is the measure of the tax?** The solid waste collection tax applies to the consideration charged for solid waste collection services.

"Consideration charged for the services" is the total amount billed as compensation for solid waste collection services, without any deduction for any costs of doing business or any other expense whatsoever, paid or accrued. The term does not include:

(i) Any amount included in the charges for materials collected primarily for recycling;

(ii) The solid waste collection tax itself, whether separately itemized or not;

(iii) Any utility taxes or consumer taxes, imposed by the state or any political subdivision thereof or any municipal corporation, directly upon the consumer and separately itemized on the taxpayer's billing; or

(iv) Late charges or penalties which may be imposed for nontimely payment.

(3) **Reporting and collection obligations.** The person who collects the charges for solid waste collection services from the taxpayer is responsible for collecting the solid waste collection tax and remitting it to the state.

(a) **Failure to collect tax.** If any person charged with collecting the tax fails to bill the taxpayer for it, or to notify the taxpayer in writing that the tax is due, then that person shall be personally liable for the tax. Thus, unlike the retail sales tax, the solid waste collection tax may be included within the gross fee or charge billed to taxpayers and need not be separately itemized on such billings, but only if such taxpayers are notified in writing that the tax has been imposed and is being collected. Nothing prevents any solid waste collection business from separately itemizing the tax on customer billings, at its option.

(b) **Failure to remit collected tax.** If any person collects the tax and fails to pay it to the department in the manner provided in this section, for any reason whatsoever, the person shall be personally liable for the tax.

(4) **Due date.** The solid waste collection tax is due from the taxpayer within twenty-five days from the date the taxpayer is billed for the solid waste collection services. The solid waste collection tax must be separately reported upon lines provided on the excise tax return.

The tax is due to be remitted to the department by the person collecting it at the end of the tax reporting period in which the tax is received by that person.

(5) **Partial payments.** If a taxpayer makes only a partial payment of the amount billed for the services and tax, the amount paid must first be used to remit the solid waste collection tax to the department. The tax has first priority over all other claims against the amount paid by the taxpayer.

(6) **Sales to the federal government, Indians and Indian tribes.** The federal government, its agencies and instrumentalities, and all solid waste collection service contracts with such federal entities are not subject to the solid waste collection tax. Similarly, Indians and Indian tribes may be exempt from the tax. Refer to WAC 458-20-190 and 458-20-192 for more information about tax reporting and record-keeping obligations relating to sales to the federal government and Indians or Indian tribes.

(7) **Transactions with multiple collection businesses.** To prevent pyramiding or multiple taxation of single transactions, the solid waste collection tax does not apply to any person other than the ultimate consumer of the solid waste service.

(a) **Exemption certificate.** Persons engaged in the solid waste collection business by operating facilities for the transfer, storage, or disposal of waste, including public and private dumps, and who provide such services directly to taxpayers for a charge, are liable for the collection of the solid waste collection tax on such charges. However, persons who collect the solid waste collection tax and who, themselves, utilize the further services of others for the transfer, storage, or disposal of the waste collected are not required to again pay the tax to such other service providers. In order to be exempt from such tax payment a solid waste collection business must provide other solid waste service providers with a solid waste collector's exemption certificate in the following form:

We hereby certify that we are engaged in the solid waste collection business and are registered with the state department of revenue to collect and report the solid waste collection tax imposed under chapter 82.18 RCW. We certify further that the solid waste collection tax due with respect to the solid waste collection business being performed under this certificate has been or will be collected and paid and that we are exempt from further payment of such tax on charges for any solid waste collection services being procured by us.

Business Name Authorized Signature
Business Address Date
Revenue Registration No.
U.T.C. Certificate of Public Necessity No.
If not regulated by U.T.C., please check here

(b) **Blanket exemption certificates.** Blanket certificates may be provided in advance by solid waste collectors or other persons who collect the customer charges for solid waste collection and who are liable for collecting and remitting the solid waste collection tax. ~~((A blanket certificate must be renewed every four years.))~~ Blanket certificates are valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. RCW 82.08.050 (7)(c).

~~(c) ((**Good faith acceptance of certificates.** Solid waste collection businesses which provide services for the transfer, storage, or disposal of waste, and who accept completed certifications in good faith are not required to collect and remit the solid waste collection tax and will not be held personally liable for it.~~

~~(d))~~ **Examples.** Examples of taxable and tax exempt transactions are:

(i) A private person or commercial customer hauls its own waste to a dump site for disposal and pays a fee - the fee is subject to the solid waste collection tax.

(ii) A solid waste collection company picks up and hauls residential or commercial waste to a dump for disposal - this company bills the customer for the tax and need not pay the tax upon any further charge made by the dump site operator, by providing an exemption certificate.

(iii) A city provides solid waste collection services to its residents through an independent hauler under a negotiated contract, and uses a county operated land fill. The city bills the residents on their utility bills. The tax applies to the solid waste portion of the utility bill adjusted as provided in this section. These taxes do not apply to any charge paid by the city to the hauling company, nor to any charge made by the county to the city for dumping services. The city must provide the hauler and the county with an exemption certificate.

(8) **Business and occupation tax.** A solid waste collection business is subject to service and other activities B&O tax on the gross income from solid waste collection activities. There is no deduction for any cost of doing business or any amounts paid over to other solid waste collection businesses. Late charges or penalties are subject to the service and other activities B&O tax.

Solid waste collection is an "enterprise activity," when funded over fifty percent by user fees. Amounts derived from this activity by a local governmental entity are subject to service and other activities B&O tax. See RCW 82.04.419, 82.04.4291, and WAC 458-20-189.

(9) **Sales of containers.** Solid waste collection businesses which provide waste receptacles, containers, dumpsters, and the like to their customers for a charge, separate from any charge for collection of the waste, are engaged in the business of renting tangible personal property taxable separate and apart from the solid waste collection business. Charges for such rentals, however designated, are subject to retailing B&O and retail sales taxes when they are billed separately or are line itemized on customer billings.

(10) **Sales and use tax obligations for the use of property.** Solid waste collection businesses are themselves the consumers of all tangible personal property purchased for their own use in conducting such business, other than items for resale or renting to customers, e.g., rented receptacles. Retail sales tax must be paid to materials suppliers and providers of such tangible consumables. (See RCW 82.04.050.) If the seller does not collect retail sales tax, the solid waste collection business must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax should be reported on the buyer's excise tax return. However, the excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. For detailed information regarding the use tax, refer to WAC 458-20-178 (Use tax).