

WSR 16-01-006
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed December 3, 2015, 10:27 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-22802 Electronic filing and payment, 458-20-254 Recordkeeping, 458-20-267 Annual reports for certain tax adjustments, 458-20-277 Certified service providers—Compensation, and 458-20-27701 Model 2 volunteer sellers—Compensation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, AND RECEIVED BY February 22, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposal incorporates the legislative changes from SSB 5275 (chapter 86, Laws of 2015). Changes are made concerning:

- Section 309 defining the term "tax" for chapter 82.32 RCW;
- Section 310 concerning recordkeeping and examination requirements; and
- Section 401 concerning the taxability matrix.

Clarifying language added throughout, including changing "section" to "rule," updating legislative cites to statutory cites, and editing for grammar.

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

Reasons Supporting Proposal: Proposal incorporates the legislative changes from SSB 5275, 2015 regular session (chapter 86, Laws of 2015).

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

Statute Being Implemented: RCW 82.32.020, 82.32.070, and 82.32.740.

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

Name of Proponent: Department of revenue, governmental.

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December 3, 2015
 Kevin Dixon
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-22-047, filed 11/1/13, effective 12/2/13)

WAC 458-20-22802 Electronic filing and payment.

(1) **Introduction.** The department of revenue makes electronic filing (also known as e-file) and electronic payment available to taxpayers. The law requires certain taxpayers to file and pay excise taxes electronically. RCW 82.32.080.

(a) Taxpayers who are required to electronically file and pay their excise taxes must register to use e-file. If they choose to pay using certain electronic payment methods they must also furnish the department with the necessary banking information. Taxpayers who are not specifically required to file or pay taxes electronically are encouraged to voluntarily take advantage of e-file and pay electronically.

(b) Electronic filing and electronic payment are available for taxes reported on the combined excise tax return, which includes those taxes administered by the department under chapter 82.32 RCW. For purposes of the taxes under chapter 82.32 RCW, unless the context clearly requires otherwise, the term "tax" is defined under RCW 82.32.020. Electronic filing and electronic payment are not available for city and town taxes on financial institutions (chapter 82.14A RCW), cigarette tax (chapter 82.24 RCW), leasehold excise tax (chapter 82.29A RCW), and forest tax (chapter 84.33 RCW).

(2) **Electronic filing and electronic payment.** E-file is an internet-based application that provides a secure and encrypted method for taxpayers to file and pay Washington state's business related excise taxes.

(a) All taxpayers are required to use e-file and pay electronically unless the department waives the requirement for good cause, or the taxpayer has an assigned reporting frequency that is less than quarterly.

(b) If good cause exists, the department may waive the e-file and/or electronic payment requirement for any taxpayer. Waiver for "good cause" is generally temporary. Reasons for good cause include, but are not limited to:

- (i) The taxpayer does not have the necessary equipment or software;
- (ii) The equipment or software necessary is not functioning properly;
- (iii) The taxpayer does not have access to the internet using the taxpayers own equipment;
- (iv) The taxpayer does not have a bank account or credit card;
- (v) The taxpayer's bank is unable to send or receive electronic funds transfer transactions; or
- (vi) Some other circumstance or condition exists that, in the department's judgment, prevents the taxpayer from complying.

(3) **Electronic payments.** There are two electronic payment methods: Electronic funds transfer (EFT) and credit card.

Those taxpayers who are required to use e-file to submit their tax return must also pay the associated taxes electronically. For a taxpayer who is required to pay electronically, electronic funds transfer (EFT) must be used, unless the department authorizes some other type of electronic payment for that particular taxpayer.

(a) **Payment by electronic funds transfer (EFT).** EFT is a method of transferring funds from a taxpayer's bank account into the department's bank account.

(i) **Definitions.** For the purposes of this ((section)) rule, the following terms will apply:

(A) "Electronic funds transfer" or "EFT" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit a checking or other deposit account. Electronic funds transfer includes payments made by electronic check (e-check).

(B) "ACH" or "automated clearing house" means a central distribution and settlement system for the electronic clearing of debits and credits between financial institutions.

(C) "EFT debit" means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the department's bank to charge the taxpayer's account and deposit the funds to the department's account. E-check is a singular payment transaction that functions in the same manner as an EFT debit transaction.

(D) "EFT credit" means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the taxpayer's bank to charge the taxpayer's account and deposit the funds to the department's account.

(E) "Department's bank" means the bank with which the department of revenue has a contract to assist in the receipt of taxes and includes any agents of the bank.

(F) "Collectible funds" means funds that have completed the electronic funds transfer process and are available for immediate use by the state.

(G) "ACH CCD+addenda" and "ACH CCD+record" mean the information in a required ACH format that needs to be transmitted to properly identify the payment.

(ii) **EFT methods.** Taxpayers paying by EFT must use the EFT debit, EFT credit, or e-check methods. In an emergency, the taxpayer should contact the department for alternative methods of payment.

(iii) **Form and content of EFT.** The form and content of EFT will be as follows:

(A) If the taxpayer wishes to use EFT debit, the taxpayer must furnish the department with the information needed to complete the transaction by registering for electronic funds transfer on the department's web site.

(B) If the taxpayer wishes to use EFT credit, the taxpayer is responsible for ensuring that its bank has the information necessary in order to complete the payment. The payment must be submitted using the ACH CCD+addenda format. The EFT credit payment method requires the taxpayer to complete an EFT authorization form.

(C) If the taxpayer wishes to use e-check, they must enter their bank account and routing number for each payment transaction. The e-check transaction authorizes the department to withdraw the payment amount from the taxpayer's bank account.

(iv) **Due date of EFT payment.** The EFT payment is due on or before the next banking day following the tax return due date.

(A) An EFT payment made using the EFT debit or e-check method is timely if the payment is initiated on or before 11:59 p.m. Pacific Time on the tax return due date, and the effective date for that payment is on or before the next banking day following the tax return due date.

(B) An EFT payment made using the EFT credit method is timely when the state receives collectible U.S. funds on or before 5:00 p.m., Pacific Time, on the EFT payment due date.

(C) The ACH system, either EFT debit or EFT credit, requires that the necessary information be in the originating bank's possession on the banking day preceding the date for completion of the transaction. Each bank generally has its own transaction deadlines and it is the responsibility of the taxpayer to ensure timely payment.

(D) The tax return due date is the next business day after the statutory due date if the statutory due date falls on a Saturday, Sunday, or legal holiday. Legal holidays are determined under state of Washington law and banking holidays are those recognized by the Federal Reserve System.

Example. The tax return due date is December 25th, a legal and banking holiday, which, for the example, falls on a Friday. The next business day is Monday, December 28th, and this is the new tax return due date. This means EFT debit and e-check users must initiate their debit payment by 11:59 p.m., Pacific Time, on December 28th, with a payment effective date of Tuesday December 29th, in order for the payment to be considered timely. EFT credit users must contact their bank to ensure funds are deposited in the department's bank no later than 5:00 p.m., Pacific Time, on Tuesday, December 29th, in order for the payment to be considered timely.

(b) **Payment by credit card.** Payment by credit card is available using American Express, Discover, Visa, or MasterCard. Taxpayers who wish to make their payment with one of these credit cards are directed to the web site of a third-party, nonstate, vendor when they submit their electronic return. Taxpayers then provide their credit card number in the same manner as with any other credit card payment transaction. A credit card payment is considered timely if the payment is completed, including the time it takes to enter the required information on the credit card vendor's web site, on or before 11:59 p.m., Pacific Time, on the tax return due date. Each credit card payment may be subject to a convenience fee charged by the third-party, nonstate, vendor.

(4) **Electronic refunds.** If the taxpayer pays taxes on the combined excise tax return by EFT debit, the taxpayer is entitled to a refund of those taxes by EFT. If the taxpayer wishes to have the refund made by EFT, the taxpayer must provide the department with the information necessary to make an appropriate EFT transaction or the refund will be issued as a paper check. No electronic adjustments or refunds are made directly to taxpayer credit card accounts or on e-check transactions. Overpayments of tax will either be retained to be credited to future tax liabilities or, at the taxpayer's request, will be refunded.

(5) **Coordinating a paper return and an electronic payment.** When a taxpayer voluntarily uses the EFT credit payment method but files a paper return, the department will match the payment with the return. A return will be considered timely filed only if it is received by the department on or before the tax return due date. The associated EFT credit pay-

ment must be received by the next banking day after the tax return due date. If the return is sent through the U.S. Postal Service, it will be considered received on the date shown by the post office cancellation mark stamped on the envelope. RCW 82.32.080. If both events occur, there is timely filing and payment and no penalties apply.

(6) **Crediting and proof of payment.** The department will credit the taxpayer with the amount paid as of the date the payment is received by the department's bank. The proof of payment by the taxpayer will depend on the means of transmission.

(a) EFT debit and e-check transactions may be proved by use of the confirmation number received from the department that the transaction was initiated and bank statements or other evidence from the bank that the transaction was settled.

(b) An EFT credit transaction is initiated by the taxpayer through the taxpayer's bank. The taxpayer is responsible for completion of the transaction. The taxpayer generally will be given a verification number by the taxpayer's bank. This verification number with proof of the ACH CCD+record showing the department's bank and account number, plus confirmation that the transaction has been settled will constitute proof of payment.

(c) A taxpayer(s) using any other electronic payment method ~~((are))~~ is responsible for completion of the transaction. Proof of payment will include transaction initiation date and any other evidence from a financial institution or credit card company that the transaction was settled.

(7) **Correcting errors.** Errors in the electronic payment process may result in either an underpayment or an overpayment of the tax. In either case, the taxpayer needs to contact the department to arrange for appropriate action. Overpayments may be used as a credit or the taxpayer may apply for a refund. The department will expedite a refund where it is caused by an error in transmission. Underpayments should be corrected by the taxpayer immediately to avoid any penalties.

(8) **Penalties.** There are no special provisions for penalties when payment is made by electronic means. To avoid the imposition of penalties, the taxpayer must provide correct bank account information to the department, and ensure their payment is timely.

(a) If the department finds that a taxpayer disregarded specific written instructions to file returns or remit payments electronically, as provided by RCW 82.32.080, the department will add a penalty of ten percent to the amount of the tax that should have been reported and/or paid electronically or the additional tax found due if there is a deficiency because of failure to follow written instructions.

(b) A taxpayer will be considered to have willfully disregarded the requirement to file returns or remit payment electronically if the department:

(i) Has mailed or otherwise delivered the specific written instructions to the taxpayer on at least two occasions; and

(ii) Has provided the taxpayer at least forty-five days after the second written notice to come into compliance with its electronic filing and/or payment obligations. WAC 458-20-228 discusses the various penalties that may apply and the limited circumstances under which they may be waived.

(c) In an EFT debit and e-check transaction, the department's bank is the originating bank and is responsible for the

accuracy of transmission. If the taxpayer has timely initiated the EFT debit or e-check transaction, provided accurate bank account information, received a confirmation number, and shows adequate funds were available in the account, no late payment penalties will apply with respect to those funds authorized.

(d) In an EFT credit transaction, the taxpayer's bank is the originating bank and the taxpayer is primarily responsible for its accuracy. The taxpayer must have timely initiated the transaction, provided the correct information for the ACH CCD+record, and shown that there were sufficient funds in the account, in order to prove timely compliance. If the taxpayer can make this showing, then no late payment penalties will apply with respect to those funds authorized if the transaction is not completed.

(e) When a payment is made using an approved credit card, the credit card company acts as the taxpayer's agent and the taxpayer is primarily responsible for the accuracy of this transaction. If the taxpayer can prove the payment was initiated and submitted timely, no late payment penalties will apply to those funds authorized.

AMENDATORY SECTION (Amending WSR 07-04-100, filed 2/6/07, effective 3/9/07)

WAC 458-20-254 Recordkeeping. (1) Introduction. This ~~((section))~~ rule defines the requirements for the maintenance and retention of books, records, and other sources of information. It also addresses these requirements where all or a part of the taxpayer's books and records are received, created, maintained, or generated through various computer, electronic, and/or imaging processes and systems.

The general requirements imposed on taxpayers under RCW 82.32.070 are to retain and make available those records necessary to verify that the correct tax liability has been reported and paid by the taxpayer with respect to the taxes administered by the department of revenue ("department"). The records provided to the department are confidential and privileged. Such records may not be disclosed by the department, except as provided by RCW 82.32.330.

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

(a) "Data base management system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a data base.

(b) "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized structured electronic format.

(c) "Hard copy" means any documents, records, reports or other data printed on paper.

(d) "Machine-sensible record" means a collection of related information in any electronic format (e.g., data base management systems, EDI technology, automated data process systems, etc.). Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

(e) "Records" means all books, data, documents, reports, or other information, including those received, created, main-

tained, or generated through various computer, electronic, and/or imaging processes and systems.

(f) "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

(3) Recordkeeping requirements—General.

(a) Every taxpayer liable for a tax or fee imposed by the laws of the state of Washington for which the department of revenue has primary or secondary administrative responsibility, e.g., Title 82 RCW, chapter 67.28 RCW (hotel/motel tax), chapter 70.95 RCW (fee on tires), and chapter 84.33 RCW (forest excise tax), must keep complete and adequate records from which the department may determine any tax liability for such taxpayer.

(b) It is the duty of each taxpayer to prepare and preserve all records in a systematic manner conforming to accepted accounting methods and procedures. Such records are to be kept ~~(and) preserved~~. All of the taxpayer's records must be presented upon request ~~(of) by~~ the department or its authorized representatives ~~(which) that~~ will demonstrate:

(i) The amounts of gross receipts and sales from all sources, however derived, including barter or exchange transactions, whether or not such receipts or sales are taxable. These amounts must be supported by original source documents or records including but not limited to all purchase invoices, sales invoices, contracts, and such other records as may be necessary to substantiate gross receipts and sales.

(ii) The amounts of all deductions, exemptions, or credits claimed through supporting records or documentation required by statute or administrative rule, or other supporting records or documentation necessary to substantiate the deduction, exemption, or credit.

(iii) The payment of retail sales tax or use tax on capital assets, supplies, articles manufactured for your own use, and other items used by the taxpayer as a consumer.

(iv) The amounts of any refunds claimed. These amounts must be supported by records as may be necessary to substantiate the refunds claimed. Refer to WAC 458-20-229 for information on the refund process.

(c) The records kept, preserved, and presented must include the normal records maintained by an ordinary prudent business person. Such records may include general ledgers, sales journals, cash receipts journals, bank statements, check registers, and purchase journals, together with all bills, invoices, cash register tapes, and other records or documents of original entry supporting the books of account entries. The records must include all federal and state tax returns and reports and all schedules, work papers, instructions, and other data used in the preparation of the tax reports or returns.

(d) If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the department in machine-sensible format upon request of the department. However, the taxpayer is not prohibited from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, although this

does not eliminate the requirement that they provide access to machine-sensible records, if requested.

(e) Machine-sensible records used to establish tax compliance must contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request.

(f) At the time of an examination, the retained records must be capable of being retrieved and converted to a readable record format, as required in subsection (6) of this ~~(section)~~ rule.

(g) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(4) **Record retention period.** All records must be open for inspection and examination at any time by the department, upon reasonable notice, and must be kept and preserved for a period of five years. RCW 82.32.070.

(5) **Failure to maintain or disclose records.** Any taxpayer who fails to comply with the requirements of RCW 82.32.070 or this ~~(section)~~ rule is forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department based upon any period for which such books, records, and invoices have not been so kept, preserved, or disclosed. RCW 82.32.070.

(6) Electronic records.

(a) Electronic data interchange requirements.

(i) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.

(ii) The taxpayer may capture the information at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists and make them available to the department. In this example, the taxpayer need not retain its EDI transaction for tax purposes if the vendor master file contains the required information.

(b) Electronic data processing systems requirements.

The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this ((~~section~~)) rule.

(c) Internal controls.

(i) Upon the request of the department, the taxpayer must provide a description of the business process that created the retained records. Such description must include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(ii) The taxpayer must be capable of demonstrating:

(A) The functions being performed as they relate to the flow of data through the system;

(B) The internal controls used to ensure accurate and reliable processing; and

(C) The internal controls used to prevent unauthorized access, alteration, or deletion of retained records.

(iii) The following specific documentation is required for machine-sensible records retained pursuant to this ((~~section~~)) rule:

(A) Record formats or layouts;

(B) Field definitions (including the meaning of all codes used to represent information);

(C) File descriptions (e.g., data set name); and

(D) Detailed charts of accounts and account descriptions.

(7) Access to machine-sensible records.

(a) The manner in which the department is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(b) Such access will be provided in one or more of the following manners:

(i) The taxpayer may arrange to provide the department with the hardware, software and personnel resources to access the machine-sensible records.

(ii) The taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the machine-sensible records.

(iii) The taxpayer may convert the machine-sensible records to a standard record format specified by the department, including copies of files, on a magnetic medium that is agreed to by the department.

(iv) The taxpayer and the department may agree on other means of providing access to the machine-sensible records.

(8) Storage-only imaging systems.

(a) For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this ((~~section~~)) rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this ((~~section~~)) rule are met. Documents which may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(b) Microfilm, microfiche and other storage-only imaging systems must meet the following requirements:

(i) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche or other storage-only imaging system must be maintained and made available upon request. Such documentation must, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(ii) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for a period of five years.

(iii) Upon request by the department, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system.

(iv) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(v) All data stored on microfilm, microfiche or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

(vi) There must be no substantial evidence that the microfilm, microfiche, or other storage-only imaging system lacks authenticity or integrity.

(9) Effect on hard-copy recordkeeping requirements.

(a) The provisions of this ((~~section~~)) rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations, except as otherwise provided in this ((~~section~~)) rule. Hard-copy records may be retained on a recordkeeping medium as provided in subsection (8) of this ((~~section~~)) rule.

(b) If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hard-copy records need not be created.

(c) Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this ((~~section~~)) rule.

(d) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(e) Nothing in this ((~~section~~)) rule prevents the department from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

(10) **Out-of-state businesses.** An out-of-state business which does not keep the necessary records within this state may either produce within this state such records as are required for examination by the department or permit the examination of ((~~the~~)) all of the taxpayer's records by the

department or its authorized representatives at the place where the records are kept. RCW 82.32.070.

AMENDATORY SECTION (Amending WSR 14-19-018, filed 9/5/14, effective 10/6/14)

WAC 458-20-267 Annual reports for certain tax adjustments. (1) **Introduction.** In order to take certain tax exemptions, credits, and rates ("tax adjustments"), taxpayers must file an annual report with the department of revenue (the "department") detailing employment, wages, and employer-provided health and retirement benefits.

(a) **Reporting requirements for tax adjustments.** This ~~((section))~~ rule explains the reporting requirements for tax adjustments provided to computer data centers, the aerospace industry, aluminum manufacturing, electrolytic processing, solar electric manufacturing, semiconductor manufacturing, newspaper industries, and government funded mental health services. Unless the context clearly requires otherwise, the term "tax" is defined under RCW 82.32.020. This ~~((section))~~ rule explains who is required to file annual reports, how to file reports, and what information must be included in the reports.

(b) **Examples.** This ~~((section contains))~~ rule includes a number of examples~~((These examples))~~ that identify a ~~((number))~~ set of facts and then state a conclusion. These examples ~~((should be used))~~ are only ~~((as))~~ a general guide. ~~((The results of other situations must be determined after a review of all of the facts and circumstances.))~~ The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority.

(2) **Who is required to file the report?** A recipient of the benefit of the following tax adjustments must complete and file an annual report with the department:

(a) **Tax adjustments for the aerospace industry:**

(i) The business and occupation ("B&O") tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes, component parts, and tooling specially designed for use in manufacturing commercial airplanes or components of such airplanes;

(ii) The B&O tax credit provided by RCW 82.04.4461 for qualified ~~((development))~~ aerospace product development expenditures;

(iii) The B&O tax rate for FAR 145 Part certified repair stations under RCW 82.04.250(3);

(iv) The retail sales and use tax exemption provided by RCW 82.08.980 and 82.12.980 for constructing new buildings used for manufacturing superefficient airplanes;

(v) The leasehold excise tax exemption provided by RCW 82.29A.137 for facilities used for manufacturing superefficient airplanes;

(vi) The property tax exemption provided by RCW 84.36.655 for property used for manufacturing superefficient airplanes; and

(vii) The B&O tax credit for property taxes and leasehold excise taxes paid on property used for manufacturing of commercial airplanes as provided by RCW 82.04.4463.

(viii) An annual report must be filed with the department for any person who takes any of the above tax adjustments of

this subsection for employment positions in Washington; however, persons engaged in manufacturing commercial airplanes or components of such airplanes may report per manufacturing job site.

(b) **Tax adjustments for the aluminum smelter industry:**

(i) The B&O tax rate provided by RCW 82.04.2909 for aluminum smelters;

(ii) The B&O tax credit for property taxes provided by RCW 82.04.4481 for aluminum smelter property;

(iii) The retail sales and use tax exemption provided by RCW 82.08.805 and 82.12.805 for property used at aluminum smelters; and

(iv) The use tax exemption provided by RCW 82.12.022 (5) for the use of natural or manufactured gas at aluminum smelters;

(c) **Tax adjustment for the electrolytic processing industry.** The public utility tax exemption provided by RCW 82.16.0421 for sales of electricity to electrolytic processing businesses.

(d) **Tax adjustment for the solar electric manufacturing industry.** The B&O tax rate for manufacturers of solar energy systems using photovoltaic modules, or silicon components of such systems provided by RCW 82.04.294.

(e) **Tax adjustments for the semiconductor manufacturing and processing industry.**

(i) The B&O tax rate for manufacturers or processors for hire of semiconductor materials provided by RCW 82.04.-2404.

(ii) The sales and use tax exemptions for sales of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials provided by RCW 82.08.9651, 82.12.9651, and 82.12.970.

(f) **Tax adjustments for various industries.**

(i) The B&O tax rate for printing a newspaper, publishing a newspaper, or both provided by RCW 82.04.260(14).

(ii) The sales tax exemption for sales of eligible server equipment to be installed without intervening use in an eligible computer data center ~~((as provided by chapters 1 and 23, Laws of 2010 sp. sess))~~ under RCW 82.08.986.

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

(a) **Electronic filing.** Reports must be filed electronically unless the department waives this requirement upon a showing of good cause. A report is filed electronically when the department receives the report in an electronic format. A person accesses electronic filing through their department "My Account." To file and submit electronically, go to <http://dor.wa.gov/TaxIncentiveReporting>.

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

(c) **How to obtain the form.** Persons who have received a waiver of the electronic filing requirement from the department or who otherwise would like a paper copy of the report may obtain the report from the department's web site (www.dor.wa.gov). It may also be obtained from the department's district offices, by telephoning the telephone informa-

tion center (800-647-7706), or by contacting the department's taxpayer account administration division at:

((Attn: Local Finance Team))
 Department of Revenue
 Taxpayer Account Administration
Attn: Local Finance Team
 Post Office Box 47476
 Olympia, WA 98504-7476
 Fax: 360-586-0527

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

(e) **Due date.**

(i) **For reports due in 2011 or later.** For persons claiming any B&O tax credit, tax exemption, or tax rate listed under subsection (2) of this ((section)) rule, the report must be filed or postmarked by April 30th following any calendar year in which the person becomes eligible to claim the tax credit, tax exemption, or tax rate.

(ii) **For reports due in 2010 or earlier.** For persons claiming any B&O tax credit, tax exemption, or tax rate listed under subsection (2) of this ((section)) rule, with the exception of the tax rate provided by RCW 82.04.2404, the report must be filed or postmarked by March 31st following any calendar year in which the tax credit, tax exemption, or tax rate is claimed. For persons claiming the tax rate provided by RCW 82.04.2404 the report must be filed or postmarked by April 30th following any calendar year in which the tax rate is claimed.

(iii) **Due date extensions.** The department may extend the due date for timely filing annual reports as provided in subsection (18) of this ((section)) rule.

(f) **Examples.**

(i) An aerospace firm begins taking the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts on October 1, 2010. By April 30, 2011, the aerospace firm must provide an annual report covering calendar years 2009 and 2010. If the aerospace firm continues to take the B&O tax rate provided by RCW 82.04.260(11) during calendar year 2011, a single annual report is due on April 30, 2012, covering calendar year 2011.

(ii) An aluminum smelter begins taking the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters on July 31, 2010. By April 30, 2011, the aluminum smelter must provide an annual report covering calendar years 2009 and 2010. If the aluminum smelter continues to take the B&O tax rate provided by RCW 82.04.2909 during calendar year 2011, a single annual report is due on April 30, 2012, covering calendar year 2011.

(4) **What employment positions are included in the annual report?**

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

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

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

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

(B) **Are there alternative methods for reporting separately for each manufacturing site?** For purposes of completing the annual report, the department may agree to allow a person whose manufacturing sites are within close geographic proximity to consolidate its manufacturing sites onto a single annual report provided that the jobs located at the manufacturing sites have equivalent employment positions, wages, and employer-provided health and retirement benefits. A person may request written approval to consolidate manufacturing sites by contacting the department's taxpayer account administration division at:

((Attn: Local Finance Team))
 Department of Revenue
 Taxpayer Account Administration
Attn: Local Finance Team
 Post Office Box 47476
 Olympia, WA 98504-7476
 Fax: 360-586-0527

(c) **Examples.**

(i) ABC Airplanes, a company manufacturing FAA certified airplane landing gear, conducts activities at three locations in Washington state. ABC Airplanes is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. In Seattle, WA, ABC Airplanes maintains its corporate headquarters and administrative offices. In Spokane, WA, ABC Airplanes manufactures the brake systems for the landing gear. In Vancouver, WA, ABC Airplanes assembles the landing gear using the components

manufactured in Spokane, WA. If filing per manufacturing site, ABC Airplanes must file separate annual reports for employment positions at its manufacturing sites in Spokane and Vancouver because these are the Washington state locations in which manufacturing occurs that supports activities qualifying for a tax adjustment.

(ii) Acme Engines, a company manufacturing engine parts, conducts manufacturing in five locations in Washington state. Acme Engines is reporting tax under the B&O tax rate provided by RCW 82.04.260(10) for manufacturers and processors for hire of commercial airplanes and component parts. It manufactures FAA certified engine parts at its Puyallup, WA location. Acme Engines' four other locations manufacture non-FAA certified engine parts. If filing per manufacturing site, Acme Engines must file an annual report for employment positions at its manufacturing site in Puyallup because it is the only location in Washington state in which manufacturing occurs that supports activities qualifying for a tax adjustment.

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

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

(v) Worldwide Aerospace, an aerospace company, manufactures wing systems for commercial airplanes in twenty locations around the world, but none located in Washington state. Worldwide Aerospace manufactures wing surfaces in San Diego, CA. Worldwide Aerospace sells the wing systems to an airplane manufacturer located in Moses Lake, WA and is reporting tax on these sales under the B&O tax rate provided by RCW 82.04.260(11) for sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person. Worldwide Aerospace is required to complete the annual report for any employment positions in Washington that are directly related to the qualifying activity.

(5) What jobs are included in the annual report?

(a) The annual report covers all full-time, part-time, and temporary jobs in this state or, for persons filing as provided in subsection (4)(b) of this ~~((section))~~ rule, at the manufactur-

ing site as of December 31st of the calendar year for which an applicable tax adjustment is claimed. Jobs that support non-qualifying activities or support both nonqualifying and qualifying activities for a tax adjustment are included in the report if the job is located in the state of Washington or, for persons filing as provided in subsection (4)(b) of this ~~((section))~~ rule, at the manufacturing site.

(b) Examples.

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

(ii) AAA Tire Company manufactures tires at one manufacturing site located in Centralia, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. FAA certified tires comprise only 20% of the products it manufactures and are manufactured in a separate building at the manufacturing site. If filing under the method described in subsection (4)(b) of this ~~((section))~~ rule, AAA Tire Company must report all jobs at the manufacturing site, including the jobs engaged in the nonqualifying activities of manufacturing non-FAA certified tires.

(6) How is employment detailed in the annual report?

The annual report is organized by employee occupational groups, consistent with the United States Department of Labor's Standard Occupation Codes (SOC) System. The SOC System is a universal occupational classification system used by government agencies and private industries to produce comparable occupational data. The SOC classifies occupations at four levels of aggregation:

- (a) Major group;
- (b) Minor group;
- (c) Broad occupation; and
- (d) Detailed occupation.

All occupations are clustered into one of twenty-three major groups. The annual report uses the SOC major groups to detail the levels of employment, wages, and employer-provided health and retirement benefits at the manufacturing site. A detailed description of the SOC System is available by ~~((contacting the department's special programs division or by))~~ consulting the United States Department of Labor, Bureau of Labor Statistics online at www.bls.gov/soc. The annual report does not require names of employees.

(7) What is total employment? The annual report must state the total number of employees for each SOC major group that are currently employed on December 31st of the calendar year for which an applicable tax adjustment is taken. Total employment includes employees who are on authorized leaves of absences such as sick leave, vacation, disability leave, jury duty, military leave, regardless of whether those employees are receiving wages. Leaves of absences do not include separations of employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

(8) **What are full-time, part-time and temporary employment positions?** An employer must provide information on the number of employees, as a percentage of total employment in the SOC major group, that are employed in full-time, part-time or temporary employment positions on December 31st of the calendar year for which an applicable tax adjustment is claimed. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

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

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

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

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

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

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

(c) **Examples.** Assume these facts for the following examples. National Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. National Airplane Inc. is claiming all the tax adjustments available for manufacturers and processors for hire of commercial airplanes and component parts. National Airplane Inc. employs one hundred people. Seventy-five of the employees work directly in the manufacturing operation and are classified as SOC Production Occupations. Five employees work in the engineering and design division and are classified as SOC Architect and Engineering Occupations. Five employees are sales representatives and are classified as SOC Sales and Related Occupations. Five employees are service technicians and are classified as SOC Installation, Maintenance, and Repair Occupations. Five employees are administrative assistants and are classified as SOC Office and Administrative Support. Five executives are classified as SOC Management Occupations.

(i) Through a college work-study program, National Airplane Inc. employs six interns from September through June in its engineering department. The interns work twenty hours

a week. The six interns are reported as temporary employees, and not as part-time employees, because the intern positions are intended to be filled for a period of less than twelve consecutive months. Assuming the five employees classified as SOC Architect and Engineering Occupations are full-time employees, National Airplane Inc. will report a total of eleven employment positions in SOC Architect and Engineering Occupations with 45% in full-time employment positions and 55% in temporary employment positions.

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

(iii) On December 1st, ten National Airplane Inc. full-time employees classified as SOC Production Occupations take family and medical leave for twelve weeks. National Airplane Inc. hires five people to perform the work of the employees on leave. Because the ten employees classified as SOC Production Occupations are on authorized leave, National Airplane Inc. will include those employees in the annual report as full-time employment positions. The five people hired to replace the absent employees classified as SOC Production Occupations will be included in the report as temporary employees. National Airplane Inc. will report a total of eighty employment positions in SOC Production Occupations with 93.8% in full-time employment positions and 6.2% in temporary employment positions.

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

(v) All National Airplane Inc. employees classified as SOC Office and Administrative Support Occupations work forty hours a week, fifty-two weeks a year. On November 1st, one employee must limit the number of hours worked to thirty hours each week to accommodate a disability. The employee receives wages based on the actual hours worked each week. Because the employee works less than thirty-five hours a week and is not paid a wage equivalent to a full-time position, the employee's position is a part-time employment position. National Airplane Inc. will report a total of five employment positions in SOC Office and Administrative Support Occupations with 80% in full-time employment positions and 20% in part-time employment positions.

(9) **What are wages?** For the purposes of the annual report, "wages" means the base compensation paid to an individual for personal services rendered to an employer, whether denominated as wages, salary, commission, or otherwise. Compensation in the form of overtime, tips, bonuses, benefits (insurance, paid leave, meals, etc.), stock options, and severance pay are not "wages." For employees that earn an annual salary, hourly wages are determined by dividing annual salary by 2080. If an employee is paid by commission, hourly wages are determined by dividing the total amount of commissions paid during the calendar year by 2080.

(10) **How are wages detailed for the annual report?**

(a) An employer must provide information on the number of employees, as a percentage of the total employment in the SOC major group, paid a wage within the following five hourly wage bands:

- Up to \$10.00 an hour;
- \$10.01 an hour to \$15.00 an hour;
- \$15.01 an hour to \$20.00 an hour;
- \$20.01 an hour to \$30.00 an hour; and
- \$30.01 an hour or more.

Percentages should be rounded to the nearest 1/10th of 1% (XX.X%). For purposes of the annual report, wages are measured on December 31st of the calendar year for which an applicable tax adjustment is claimed.

(b) **Examples.** Assume these facts for the following examples. Washington Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. Washington Airplane Inc. is claiming all the tax adjustments available for manufacturers and processors for hire of commercial airplanes and component parts. Washington Airplane Inc. employs five hundred people at the manufacturing site, which constitutes its entire work force in this state. Four hundred employees engage in activities that are classified as SOC Production Occupations. Fifty employees engage in activities that are classified as SOC Architect and Engineer Occupations. Twenty-five employees are engaged in activities classified as SOC Management Occupations. Twenty employees are engaged in activities classified as SOC Office and Administrative Support Occupations. Five employees are engaged in activities classified as SOC Sales and Related Occupations.

(i) One hundred employees classified as SOC Production Occupations are paid \$12.00 an hour. Two hundred employees classified as SOC Production Occupations are paid \$17.00 an hour. One hundred employees classified as SOC Production Occupations are paid \$25.00 an hour. For SOC Production Occupations, Washington Airplane Inc. will report 25% of employment positions are paid \$10.01 an hour to \$15.00 an hour; 50% are paid \$15.01 an hour to \$20.00 an hour; and 25% are paid \$20.01 an hour to \$30.00 an hour.

(ii) Ten employees classified as SOC Architect and Engineering Occupations are paid an annual salary of \$42,000; another ten employees are paid \$50,000 annually; and the remaining employees are all paid over \$70,000 annually. In order to report wages, the annual salaries must be converted to hourly amounts by dividing the annual salary by 2080 hours. For SOC Architect and Engineering Occupations, Washington Airplane Inc. will report 40% of employ-

ment positions are paid \$20.01 an hour to \$30.00 an hour and 60% are paid \$30.00 an hour or more.

(iii) All the employees classified as SOC Sales and Related Occupations are sales representatives that are paid on commission. They receive \$10.00 commission for each navigation system sold. Three sales representatives sell 2,500 navigation systems during the calendar year. Two sales representatives sell 3,500 navigation systems during the calendar year and receive a \$10,000 bonus for exceeding company's sales goals. In order to report wages, the employee's commissions must be converted to hourly amounts by dividing the total commissions by 2080 hours. Washington Airplane Inc. will report that 60% of employment positions classified as SOC Sales and Related Occupations are paid \$10.01 an hour to \$15.00 an hour. Because bonuses are not included in wages, Washington Airplane Inc. will report 40% of employment positions classified as SOC Sales and Related Occupations are paid \$15.01 an hour to \$20.00 an hour.

(iv) Ten of the employees classified as SOC Office and Administrative Support Occupations earn \$9.50 an hour. The remaining ten employees classified as SOC Office and Administrative Support Occupations earn wages between \$10.01 an hour to \$15.00 an hour. On December 1st, Washington Airplane Inc. announces that effective December 15th, all employees classified as SOC Office and Administrative Support Occupations will earn wages of at least \$10.50 an hour, but no more than \$15.00 an hour. Because wages are measured on December 31st, Washington Airplane Inc. will report 100% of employment positions classified as SOC Office and Administrative Support Occupations Sales and Related Occupations are paid \$10.01 an hour to \$15.00 an hour.

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

- (a) Total number of staffing company employees furnished by staffing companies;
- (b) Top three occupational codes of all staffing company employees; and
- (c) Average duration of all staffing company employees.

(12) **What are employer-provided health benefits?** For purposes of the annual report, "health benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A health plan that is equally available to employees and the general public is not an "employer-provided" health benefit.

(a) "Dental care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of human teeth, alveolar process, gums, or jaw.

(b) "Dental care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' dental care services.

(c) "Health plan" means any plan, fund, or program established, maintained, or funded by an employer for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, medical care and dental care services. Health plans include any "employee welfare benefit plan" as defined by the Employee Retirement

Income Security Act (ERISA), any "health plan" or "health benefit plan" as defined in RCW 48.43.005, any self-funded multiple employer welfare arrangement as defined in RCW 48.125.010, any "qualified health insurance" as defined in Section 35 of the Internal Revenue Code, an "Archer MSA" as defined in Section 220 of the Internal Revenue Code, a "health savings plan" as defined in Section 223 of the Internal Revenue Code, any "health plan" qualifying under Section 213 of the Internal Revenue Code, governmental plans, and church plans.

(d) "Medical care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(e) "Medical care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' medical care services.

(13) How are employer-provided health benefits detailed in the annual report? The annual report is organized by SOC major group and by type of health plan offered to or with enrolled employees on December 31st of the calendar year for which an applicable tax adjustment is claimed.

(a) **Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided medical care plan. An employee is "eligible" if the employee can currently participate in a medical care plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, preexisting conditions, and other limitations may prevent an employee from being eligible for coverage in an employer's medical care plan. If an employer provides multiple medical care plans, an employee is "eligible" if the employee can currently participate in one of the medical care plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(b) Examples.

(i) On December 31st, Acme Engines has one hundred employees classified as SOC Production Occupations. It offers these employees two medical care plans. Plan A is available to all employees at the time of hire. Plan B is available to employees after working ninety days. For SOC Production Occupations, Acme Engines will report 100% of its employees are eligible for employer-provided medical benefits because all of its employees are eligible for at least one medical care plan offered by Acme Engines.

(ii) Apex Aluminum has fifty employees classified as SOC Transportation and Material Moving Occupations, all of whom have worked for Apex Aluminum for over five years. Apex Aluminum offers one medical care plan to its employees. Employees must work for Apex Aluminum for six months to participate in the medical care plan. On October 1st, Apex Aluminum hires ten new employees classified as SOC Transportation and Material Moving Occupations. For SOC Transportation and Material Moving Occupations, Apex Aluminum will report 83.3% of its employees are eligible for employer-provided medical benefits.

(c) **Detail by type of health plan.** The report also requires detailed information about the types of health plans the employer provides. If an employer has more than one

type of health plan, it must report each health plan separately. If a person offers more than one of the same type of health plan as described in (c)(i) of this subsection, the person may consolidate the detail required in (c) through (e) of this subsection by using ranges to describe the information. The details include:

(i) A description of the type of plan in general terms such as self-insured, fee for service, preferred provider organization, health maintenance organization, health savings account, or other general description. The report does not require a person to disclose the name(s) of their health insurance carrier(s).

(ii) The number of employees eligible to participate in the health plan, as a percentage of total employment at the manufacturing site or as otherwise reported. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the health plan, as a percentage of employees eligible to participate in the health plan at the manufacturing site or as otherwise reported. An employee is "enrolled" if the employee is currently covered by or participating in an employer-provided health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The average percentage of premium paid by employees enrolled in the health plan. "Premium" means the cost incurred by the employer to provide a health plan or the continuance of a health plan, such as amounts paid to health carriers or costs incurred by employers to self-insure. Employers are generally legally responsible for payment of the entire cost of the premium for enrolled employees, but may require enrolled employees to share in the cost of the premium to obtain coverage. State the amount of premium, as a percentage, employees must pay to maintain enrollment under the health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(v) If necessary, the average monthly contribution to enrolled employees. In some instances, employers may make contributions to an employee health plan, but may not be aware of the percentage of premium cost borne by the employee. For example, employers may contribute to a health plan sponsored by an employee organization, or may sponsor a medical savings account or health savings account. In those instances where the employee's contribution to the health plan is unknown, an employer must report its average monthly contribution to the health plan by dividing the employer's total monthly costs for the health plan by the total number of employees enrolled in the health plan.

(vi) Whether legal spouses, state registered domestic partners, and unmarried dependent children can obtain coverage under the health plan and if there is an additional premium for such coverage.

(vii) Whether part-time employees are eligible to participate in the health plan.

(d) **Medical care plans.** In addition to the detailed information required for each health plan, report the amount of enrolled employee point of service cost-sharing for hospital services, prescription drug benefits, and primary care physician services for each medical care plan. If differences exist within a medical care plan, the lowest cost option to the enrolled employee must be stated in the report. For example,

if employee point of service cost-sharing is less if an enrolled employee uses a network of preferred providers, report the amount of point of service cost-sharing using a preferred provider. Employee point of service cost-sharing is generally stated as a percentage of cost, a specific dollar amount, or both.

(i) "Employee point of service cost-sharing" means amounts paid to health carriers directly providing medical care services, health care providers, or health care facilities by enrolled employees in the form of copayments, co-insurance, or deductibles. Copayments and co-insurance mean an amount specified in a medical care plan which is an obligation of enrolled employees for a specific medical care service which is not fully prepaid. A deductible means the amount an enrolled employee is responsible to pay before the medical care plan begins to pay the costs associated with treatment.

(ii) "Hospital services" means covered in-patient medical care services performed in a hospital licensed under chapter 70.41 RCW.

(iii) "Prescription drug benefit" means coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy.

(iv) "Primary care provider services" means non-emergency medical care services provided in an office setting by the employee's primary care provider.

(e) **Dental care plans.** In addition to the health plan information required for each dental care plan, the annual maximum benefit for each dental care plan must be stated in the report. Most dental care plans have an annual dollar maximum benefit. This is the maximum dollar amount a dental care plan will pay toward the cost of dental care services within a specific benefit period, generally one year. The enrolled employee is personally responsible for paying costs above the annual maximum.

(f) Examples.

(i) Assume the following facts for the following examples. Mosaic Aerospace employs one hundred employees and offers two medical care plans as health benefits to employees at the time of hire. Plan A is a managed care plan (HMO). Plan B is a fee for service medical care plan.

(A) Forty Mosaic Aerospace employees are enrolled in Plan A. It costs Mosaic Aerospace \$750 a month for each employee covered by Plan A. Enrolled employees must pay \$150 each month to participate in Plan A. If an enrolled employee uses its network of physicians, Plan A will cover 100% of the cost of primary care provider services with employees paying a \$10.00 copayment per visit. If an enrolled employee uses its network of hospitals, Plan A will cover 100% of the cost of hospital services with employees paying a \$200 deductible. If an enrolled employee does not use a network provider, Plan A will cover only 50% of the cost of any service with a \$500 employee deductible. An enrolled employee must use a network of retail pharmacies to receive any prescription drug benefit. Plan A will cover the cost of prescription drugs with enrolled employees paying a \$10.00 copayment. If an enrolled employee uses the mail-order pharmacy option offered by Plan A, copayment for prescription drug benefits is not required.

Mosaic Aerospace will report Plan A separately as a managed care plan. One hundred percent of its employees are

eligible to participate in Plan A. The percentage of eligible employees enrolled in Plan A is 40%. The percentage of premium paid by an employee is 20%. Mosaic Aerospace will also report that employees have a \$10.00 copayment for primary care provider services and a \$200 deductible for hospital services because this is the lowest cost option within Plan A. Mosaic Aerospace will report that employees have a \$10.00 copayment for prescription drug benefit. Mosaic Aerospace cannot report that employees do not have a prescription drug benefit copayment because "prescription drug benefit" is defined as coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy, not a mail-order pharmacy.

(B) Fifty Mosaic Aerospace employees are enrolled in Plan B. It costs Mosaic Aerospace \$1,000 a month for each employee covered by Plan B. Enrolled employees must pay \$300 a month to participate in Plan B. Plan B covers 100% of the cost of primary care provider services and 100% of the cost of prescription drugs with employees paying a \$200 annual deductible for each covered service. Plan B covers 80% of the cost of hospital services with employees paying a \$250 annual deductible.

Mosaic Aerospace will report Plan B separately as a fee for service medical care plan. One hundred percent of its employees are eligible to participate in Plan B. The percentage of eligible employees enrolled in Plan B is 50%. The percentage of premium paid by an employee is 30%. Mosaic Aerospace will also report that employees have a \$200 annual deductible for both primary care provider services and prescription drug benefits. Hospital services have a \$250 annual deductible and 20% co-insurance obligation.

(C) On December 1st, Mosaic Aerospace acquires General Aircraft Inc., a company claiming all the tax adjustments available for manufacturers and processors for hire of commercial airplanes and component parts. General Aircraft Inc. had fifty employees, all of whom were retained by Mosaic Aerospace. At General Aircraft Inc., employees were offered one managed care plan (HMO) as a benefit. The former General Aircraft Inc. employees will retain their current managed care plan until the following June when employees would be offered Mosaic Aerospace benefits. On December 31st, Mosaic Aerospace is offering employees two managed care plans. Mosaic Aerospace may report each managed care plan separately or may consolidate the detail required in (c) through (e) of this subsection for this type of medical care plan by using ranges to report the information.

(ii) Aero Turbines employs one hundred employees. It offers employees health savings accounts as a benefit to employees who have worked for the company for six months. Aero Turbines established the employee health savings accounts with a local bank and makes available to employees a high deductible medical care plan to be used in conjunction with the account. Aero Turbines deposits \$500 a month into each employee's health savings account. Employees deposit a portion of their pretax earnings into a health savings account to cover the cost of primary care provider services, prescription drug purchases, and the high deductible medical care plan for hospital services. The high deductible medical care plan has an annual deductible of \$2,000 and covers 75% of the cost of hospital services. Sixty-six employees open health

savings accounts. Four employees have not worked for Aero Turbines for six months.

Aero Turbines will report the medical care plan as a health savings account. Ninety-six percent of employees are eligible to participate in health savings accounts. The percentage of eligible employees enrolled in health savings accounts is 68.8%. Because the amount of employee deposits into their health savings accounts will vary, Aero Turbines will report the average monthly contribution of \$500 rather than the percentage of premium paid by enrolled employees. Because employees are responsible for covering their primary care provider services and prescription drugs costs, Aero Turbines will report that this health plan does not include these services. Because the high deductible medical care plan covers the costs of hospital services, Aero Turbines will report that the medical care plan has an annual deductible of \$2,000 and employees have 25% co-insurance obligation.

(14) What are employer-provided retirement benefits? For purposes of the annual report, "retirement benefits" mean compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods extending to the termination of employment or beyond. Retirement plans include pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code. A retirement plan that is equally available to employees and the general public is not an "employer-provided" retirement benefit.

(15) How are employer-provided retirement benefits detailed in the annual report? The annual report is organized by SOC major group and by type of retirement plans offered to employees or with enrolled employees on December 31st of the calendar year for which an applicable tax adjustment is claimed. Inactive or terminated retirement plans are excluded from the annual report. An inactive retirement plan is a plan that is not offered to new employees, but has enrolled employees, and neither enrolled employees nor the employer are making contributions to the retirement plan.

(a) Detail by SOC major group. For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided retirement plan. An employee is "eligible" if the employee can currently participate in a retirement plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, and other limitations may prevent an employee from being eligible for coverage in an employer's retirement plan. If an employer provides multiple retirement plans, an employee is "eligible" if the employee can currently participate in one of the retirement plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(b) Examples.

(i) Lincoln Airplane has one hundred employees classified as SOC Production Occupations. Fifty employees were enrolled in defined benefit pension at the time of hire. All employees are eligible to participate in a 401(k) Plan. For SOC Production Occupations, Lincoln Airplane will report 100% of its employees are eligible for employer-provided retirement benefits because all of its employees are eligible for at least one retirement plan offered by Lincoln Airplane.

(ii) Fly-Rite Airplanes has fifty employees classified in SOC Computer and Mathematical Occupations. Fly-Rite Airplane offers a SIMPLE IRA to its employees after working for the company one year. Forty-five employees classified in SOC Computer and Mathematical Occupations have worked for the company more than one year. For SOC Computer and Mathematical Occupations, Fly-Rite Airplanes will report 90% of its employees are eligible for retirement benefits.

(c) Detail by retirement plan. The report also requires detailed information about the types of retirement plans an employer offers employees. If an employer offers multiple retirement plans, it must report each type of retirement plan separately. If an employer offers more than one of the same type of retirement plan, but with different levels of employer contributions, it may consolidate the detail required in (i) through (iv) of this subsection by using ranges to describe the information. The report includes:

(i) The type of plan in general terms such as 401(k) Plan, SEP IRA, SIMPLE IRA, cash balance pension, or defined benefit plan.

(ii) The number of employees eligible to participate in the retirement plan, as a percentage of total employment at the manufacturing site, or as otherwise reported. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the retirement plan, as a percentage of employees eligible to participate in the retirement plan at the manufacturing site. An employee is "enrolled" if the employee currently participates in an employer-provided retirement plan, regardless of whether the employee has a vested benefit. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The maximum benefit the employer will contribute into the retirement plan for enrolled employees. The maximum benefit an employer will contribute is generally stated as a percentage of salary, specific dollar amount, or both. This information is not required for a defined benefit plan meeting the qualification requirements of Employee Retirement Income Security Act (ERISA) that provides benefits according to a flat benefit, career-average, or final pay formula.

(d) Examples.

(i) General Airspace is a manufacturer of airplane components located in Centralia, WA. General Airspace employs one hundred employees. Fifty employees are eligible for and enrolled in a defined benefit pension with a flat benefit at the time of retirement. Twenty-five employees are eligible for and enrolled in a cash balance pension with General Airspace contributing 7% of an employee's annual compensation with a maximum annual contribution of \$10,000. All General Airspace employees can participate in a 401(k) Plan. Sixty-five employees are participating in the 401(k) Plan. General Air-

space does not make any contributions into the 401(k) Plan. Five employees are former employees of United Skyways, a company General Airspace acquired. United Skyways employees were enrolled in a cash balance pension at the time of hire. When General Airspace acquired United Skyways, it did not terminate or liquidate the United Skyways cash balance plan. Rather, General Airspace maintains cash balance plan only for former United Skyways employees, allowing only interest to accrue to the plan.

(A) General Airspace will report that it offers three retirement plans - A defined benefit pension, a cash-balance pension, and a 401(k) Plan. General Airspace will not report the inactive cash balance pension it maintains for former United Skyways employees.

(B) For the defined benefit pension, General Airspace will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

(C) For the cash-balance pension, General Airspace will report 25% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled. General Airspace will report a maximum contribution of \$10,000 or 7% of an employee's annual compensation.

(D) For the 401(k) Plan, General Airspace will report 100% of its total employment positions are eligible to participate in the retirement plan. Of the employment positions eligible to participate, 65% are enrolled. General Airspace will report that it does not make any contributions into the 401(k) Plan.

(ii) Washington Alloys is an aluminum smelter located in Grandview, WA. Washington Alloys employs two hundred employees. Washington Alloys offers a 401(k) Plan to its employees after one year of hire. One hundred seventy-five employees have worked for Washington Alloys for one year or more. Of that amount, seventy-five have worked more than five years. Washington Alloys will match employee contributions up to a maximum 3% of annual compensation. If an employee has worked for Washington Alloys for more than five years, Washington Alloys will contribute 5% of annual compensation regardless of the employee's contribution. One hundred employees receive a 3% matching contribution from Washington Alloys. Fifty employees receive a contribution of 5% of annual compensation.

(A) Washington Alloys can report each 401(k) Plan separately - A 401(k) Plan with a maximum employer contribution of 3% of annual compensation and a 401(k) Plan with a maximum employer contribution to 5% of annual compensation. Alternatively, Washington Alloys can report that it offers a 401(k) Plan with a maximum employer contribution ranging from 3% to 5% of annual compensation.

(B)(I) If Washington Alloys reports each 401(k) Plan separately, for the 401(k) Plan with a maximum employer contribution of 3% of annual compensation, Washington Alloys will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

For the 401(k) Plan with a maximum employer contribution of 5% of annual compensation, Washington Alloys will report 37.5% of its total employment positions are eligible to

participate. Of the employment positions eligible to participate, 66.6% are enrolled.

(II) If Washington Alloys consolidates its detailed information about its 401(k) Plans, it will report that 87.5% of its total employment positions are eligible to participate in 401(k) Plans. Of the employment positions eligible to participate in the 401(k) Plans, 85.7% are enrolled.

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

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

(18) What are the consequences for failing to file a complete annual report?

(a) If a person claims a tax adjustment that requires an annual report under this ((~~section~~)) rule but fails to submit a complete report by the due date or any extension under RCW 82.32.590 the amount of the tax adjustment claimed for the previous calendar year becomes immediately due and payable. Interest, but not penalties, will be assessed on these amounts due. The interest will be assessed at the rate provided for delinquent taxes provided for in RCW 82.32.050, retroactively to the date the tax preference was claimed, and accrues until the taxes for which the tax preference was claimed are repaid.

(b) **Complete annual report.** An annual report is complete if:

(i) The annual report is filed on the form required by this ((~~section~~)) rule; and

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

The answer "varied," "various," or "please contact for information" is not a good faith response to a question.

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

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

(d) **One-time only extension.** A taxpayer who fails to file an annual report required under this ((~~section~~)) rule by the due date of the report is entitled to an extension of the due

date. A request for an extension under this subsection must be made in writing to the department.

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

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

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

AMENDATORY SECTION (Amending WSR 08-01-017, filed 12/7/07, effective 1/7/08)

WAC 458-20-277 Certified service providers—Compensation. (1) **Introduction.** This ~~((section))~~ rule explains compensation paid to certified service providers (CSPs) as defined in ~~((Substitute Senate Bill No. 5089 (SSB 5089), chapter 6, Laws of 2007 and))~~ RCW 82.58.080. The ~~((section))~~ rule also lists rights and responsibilities applicable to these CSPs when collecting and remitting retail sales and use taxes in Washington. ~~((On March 22, 2007, Washington enacted SSB 5089, a legislative package that brings Washington's sales and use tax laws into conformity with the streamlined sales and use tax agreement (SSUTA). For more information concerning the SSUTA, visit <http://www.streamlinedsalestax.org>.)~~ Washington became a full member state on July 1, 2008. See SSB 5089 (chapter 6, Laws of 2007). The web sites referenced in this ~~((section))~~ rule are not maintained by Washington or the department of revenue (department). These referenced web sites may contain recommendations that require a change to Washington law prior to becoming effective in Washington.

(2) CSP compensation for volunteer sellers.

(a) **What is a CSP?** A CSP is an agent of the seller certified under the SSUTA to perform all of a seller's retail sales and use tax functions, other than the seller's obligation to remit retail sales and use tax on its own purchases. For more information concerning CSP certification or a list of current CSPs, visit the SSUTA web site located at: <http://www.streamlinedsalestax.org>.

(b) **What is a volunteer seller?** A volunteer seller is any seller that has selected a CSP, as agent, to perform all of that seller's retail sales and use tax functions, other than the obligation to remit retail sales and use tax on the seller's own purchases and who has voluntarily registered through the SSUTA central registration system (CRS) in accordance with the terms of the CSP contract (CSP contract). The CSP contract is the agreement executed between each CSP and the streamlined sales tax executing board under which CSPs perform services in SSUTA associate and member states.

(c) **What are member states and associate member states?** Member states are those states that have petitioned and been granted full membership under the SSUTA. Associate member states are those states that have petitioned and been designated associate member status under the SSUTA. Washington became an associate member state on July 1, 2007. Washington has been granted full membership status as of July 1, 2008. For a list of the current member and associate

member states, visit the SSUTA web site at: <http://www.streamlinedsalestax.org>.

(d) **What are monetary allowances?** As a condition of becoming an associate member and member state, Washington has agreed to permit CSPs to act as agents for sellers in collecting and remitting sales and use taxes in Washington. Washington has agreed to provide monetary allowances to CSPs acting as agents for volunteer sellers. A CSP will obtain these monetary allowances by retaining a portion of the Washington retail sales and use tax they collect. However, monetary allowances will not reduce the retail sales and use taxes collected for and remitted to local taxing jurisdictions. The calculation of these monetary allowances is discussed in subsection (3) of this ~~((section))~~ rule.

(e) **What is a certified automated system (CAS)?** A certified automated system is software certified by Washington under the SSUTA: To calculate the sales and use tax imposed by each taxing jurisdiction on a transaction; to determine the amount of tax to remit; and to maintain a record of the transaction.

(3) **How are monetary allowances calculated?** The formula for determining monetary allowances is set forth in the CSP contract. This monetary allowance is the CSP's sole form of compensation with respect to volunteer sellers during the term of the CSP contract and is the same with respect to all CSPs.

This monetary allowance is calculated by using the following formula: (The combined volume of taxes due to all member and associate member states from a volunteer seller in such capacity) multiplied by (the applicable base rate). Simply stated, the formula is (combined collected taxes) x (base rate). Affiliated volunteer sellers will be treated as a single volunteer seller if they are related persons under 267(b) or 707(b) of the United States Internal Revenue Code. The base rate resets annually. Table A below sets forth the schedule for "combined collected taxes" and the applicable "base rate":

Table A

Combined Collected Taxes:			Base Rate:
\$0.00	-	\$250,000	8%
\$250,000.01	-	\$1,000,000	7%
\$1,000,000.01	-	\$2,500,000	6%
\$2,500,000.01	-	\$5,000,000	5%
\$5,000,000.01	-	\$10,000,000	4%
\$10,000,000.01	-	\$25,000,000	3%
Over \$25,000,000.01			2%

(a) **Can volunteer sellers lose volunteer seller status?** Volunteer seller status ceases when the seller conducts activities in Washington that would require the seller to legally register in Washington as described in the CSP contract.

(b) **Seller statements.** Each volunteer seller must periodically send written statements (statement) to the CSP verifying that the seller continues to qualify as a volunteer seller in Washington. The volunteer seller must send the first state-

ment twenty-four consecutive months from the date on which the CSP began remitting sales and use taxes for the volunteer seller in Washington. Subsequently, volunteer sellers will send a statement every twelve consecutive months thereafter. A CSP may request a statement verifying a seller's volunteer seller status at any time. The CSP must notify the department when a seller loses volunteer seller status and this notification must be sent no later than ten business days after receipt of a seller's statement indicating the seller is no longer a volunteer seller. Notice to the department must be provided consistent with the notice provisions contained in the CSP contract. Entitlement to monetary allowances will be terminated after a seller sends a statement that the seller is no longer a volunteer seller.

(c) **When will monetary allowances terminate?** A CSP is entitled to retain monetary allowances granted prior to receiving a statement indicating that the seller has lost volunteer seller status. However, entitlement to monetary allowances will end on the first day of the month following receipt of such statement. Regardless, a CSP will be entitled to monetary allowances for services performed under this ((section)) rule with respect to a volunteer seller for a period of twenty-four months (beginning on the date the CSP commenced remitting sales and use taxes for the volunteer seller in Washington and ending twenty-four consecutive months later).

(4) CSP rights and responsibilities.

(a) **Responsibility for retail sales and use taxes.** A CSP is liable to the member states and associate member states for the retail sales and use taxes on the sales transactions that it processes.

If the CSP does not remit the collected retail sales and use taxes when due, those taxes are delinquent. Washington may send a notice of delinquency to a CSP for these delinquent taxes. The CSP must then remit the delinquent taxes within ten business days of that notification. If the CSP does not remit the delinquent taxes within those ten business days, the CSP is not entitled to monetary allowances with respect to the delinquent taxes and is liable for the payment of the taxes along with penalties and interest. However, if the taxes are delinquent because a seller has not remitted part or all of the delinquent taxes to the CSP, the CSP will be given relief if it properly notifies the department. In order to obtain this relief, the CSP must notify the department of the seller's failure to remit the retail sales and use taxes to the CSP within ten business days of the date on which those delinquent taxes should have been remitted to the department. Notice by the CSP under this subsection must be provided consistent with the notice provisions contained in the CSP contract.

(b) **CSP liability relief.** The department is responsible for maintaining the state's taxability matrix.

(i) A CSP is not liable for charging or collecting the incorrect amount of sales or use tax where that error results from reliance on incorrect data provided in the department's taxability matrix, or from tax rates, boundaries, and taxing jurisdiction assignments listed in Washington's rates and boundaries data bases.

(ii) Beginning July 1, 2015, if the taxability matrix is amended, sellers and certified service providers are relieved from liability to the state and to local jurisdictions to the extent that the seller or certified service provider relied on the

immediately preceding version of the state's taxability matrix. Relief under this subsection (4)(b) of this rule is available until the first day of the calendar month that is at least thirty days after the department submits notice of a change to the state's taxability matrix to the streamlined sales tax governing board.

(iii) To obtain a copy of the taxability matrix, visit the SSUTA web site located at: ((<http://www.streamlinedsales-tax.org>)) [streamlinedsalestax.org](http://www.streamlinedsales-tax.org). Additionally, CSPs will be held harmless and not liable for sales and use taxes, interest, and penalties on those taxes not collected due to reliance on Washington's certification of the CSP's CAS. Pursuant to RCW 82.58.080, sellers that contract with a CSP are not liable to Washington for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresents the type of items it sells or commits fraud.

(c) **Seller's contract with the CSP.** A CSP must provide the department with a copy of its agreement with contracting sellers if requested.

(d) **Credits or refunds with respect to bad debt.** A CSP may, on the behalf of a seller, claim credits or refunds for sales taxes paid on bad debts. Bad debts have the same meaning provided in 26 U.S.C. Section 166, as amended in 2003. Bad debts do not include expenses incurred in collecting bad debts; repossessed property; and amounts due on property in the possession of the seller until the full purchase price has been paid. See ((~~section 103, SSB 5089~~)) RCW 82.08.037, 82.12.037, and WAC 458-20-196 for more information regarding bad debts.

(e) **Retention of personally identifiable consumer information.** With limited exceptions, CSPs must perform their services without retaining personally identifiable consumer information. A CSP may retain personally identifiable consumer information only as long as it is needed to ensure the validity of tax exemptions or to show the intended use of the goods or services purchased. See ((~~section 601, SSB 5089~~)) RCW 82.32.735 for more information regarding personally identifiable consumer information.

(f) **Filing of tax returns and remittance of retail sales and use taxes.** CSP will file retail sales and use excise tax returns using Washington's electronic filing system (E-file). CSPs will remit retail sales and use taxes due with respect to these returns using ACH Debit, ACH Credit, or the Fedwire Funds Transfer System.

AMENDATORY SECTION (Amending WSR 08-22-048, filed 10/31/08, effective 12/1/08)

WAC 458-20-27701 Model 2 volunteer sellers— Compensation. (1) **Introduction.** As a requirement of membership in the Streamlined Sales and Use Tax Agreement (SSUTA), Washington has agreed to provide compensation to model 2 volunteer sellers collecting and remitting retail sales and use taxes in Washington. For more information concerning the SSUTA, visit ((<http://www.streamlinedsales-tax.org>)) [streamlinedsalestax.org](http://www.streamlinedsales-tax.org). This ((section)) rule explains who qualifies as a model 2 volunteer seller and the compensation available to such sellers as authorized under RCW 82.32.715.

The web site referenced in this ~~((section))~~ rule is not maintained by Washington or the department of revenue (department). This referenced web site may contain recommendations that require a change to Washington law before becoming effective in Washington. The web site is current as of the date of adoption of this ~~((section))~~ rule, but may change in future periods by action of the owner of the web site without notice.

(2) **Model 2 volunteer sellers.** This subsection discusses the qualifications for status as a model 2 seller and a model 2 volunteer seller. Only those model 2 sellers qualifying as model 2 volunteer sellers are eligible to receive compensation for remitting sales and use taxes to Washington under subsection (3) of this ~~((section))~~ rule. A taxpayer that qualifies as a model 2 volunteer seller under this subsection will be referred to as a "qualified seller."

(a) **What is a model 2 seller?** You will qualify as a model 2 seller if you meet all of the following conditions:

(i) You use a certified automated system to perform part of your sales and use tax functions. (See (f) of this subsection for a definition of certified automated system); and

(ii) You retain the responsibility for remitting your sales and use taxes to Washington.

(b) **What is a model 2 volunteer seller?** If you are a model 2 seller under (a) of this subsection, you will be a model 2 volunteer seller if you are registered through the SSUTA central registration system (CRS) as a model 2 seller and you meet the following additional conditions:

(i) You have represented that you do not have a legal requirement to register and do not in fact have a legal requirement to register in Washington at the time you register with the CRS, regardless of any previous registration you may have made in Washington; or

(ii) You register with Washington through the CRS after November 12, 2002, and you meet all of the following requirements immediately before the date of your registration with Washington through the CRS (and you do not cease to meet these requirements thereafter pursuant to subsection (3)(d) of this ~~((section))~~ rule):

(A) You have no fixed place of business in Washington for more than thirty days;

(B) You have less than fifty thousand dollars of property in Washington;

(C) You have less than fifty thousand dollars of payroll in Washington; and

(D) You have less than twenty-five percent of your total property or payroll in Washington.

If you have registered in Washington because you had a legal requirement to register resulting from an administrative, legislative, or judicial action before October 1, 2005, you cannot be a model 2 volunteer seller under this subsection.

(c) **If I am a qualified seller, do I still need to register with the department for Washington state tax purposes under RCW 82.32.030(1)?** Your status as a qualified seller does not impact your requirement to register with the department. If you meet the conditions for registration with the department under RCW 82.32.030, you must register with the department.

(d) **What is property for purposes of (b) of this subsection and how is it valued?** Property refers to the "average

value" of the real property and tangible personal property that you own and rent. You will value owned property at its original cost basis. Rented property will be valued at eight times the net annual rental rate of that property. The net annual rental rate is the annual rental rate paid by you less any annual rental rates you receive from subrentals.

You must determine the "average value" of this property by averaging the value of property at the beginning of the twelve-month period immediately before the date you register with Washington with the value of property at the end of the twelve-month period immediately before you register with Washington.

(e) **What is payroll for purposes of (b) of this subsection?** Payroll is the total amount paid by you for compensation during the twelve-month period immediately ~~((preceding))~~ preceding the date you register with Washington. Compensation means wages, salaries, commissions, and any other form of payment to employees or similar persons that meet the definition of gross income under section 61 of the Internal Revenue Code in effect on the effective date of this ~~((section))~~ rule.

Compensation is deemed to be payroll in Washington if:

(i) The employee's service is performed entirely within Washington;

(ii) The employee's service is performed both within and outside Washington, and the performance of services outside Washington is merely incidental to the services performed within Washington;

(iii) The employee performs some services within Washington, and the base of operations or the place from which the services are directed or controlled is within Washington; or

(iv) The employee performs some services within Washington, and the base of operations or place from which the services are directed or controlled is not within any state (where some part of the services are performed), but the employee's residence is within Washington.

(f) **What is a certified automated system for purposes of this ~~((section))~~ rule?** A certified automated system is software certified by Washington under the SSUTA: To calculate the sales and use tax imposed by each taxing jurisdiction on a transaction; to determine the amount of tax to remit; and to maintain a record of the transaction.

(3) **Qualified seller compensation.** This subsection explains compensation available to qualified sellers.

(a) **What type of compensation is available to qualified sellers?** If you are a qualified seller, you are eligible to receive monetary allowances from Washington under this subsection and this is in addition to any existing discount afforded by each member state. ~~((For))~~ You may view a list of SSUTA member and associate member states ~~((visit~~ <http://www.streamlinedsalestax.org> ~~))~~ at [streamlinedsalestax.org](http://www.streamlinedsalestax.org). You obtain these monetary allowances from Washington by retaining a portion of the Washington state retail sales and use taxes you collect and report to Washington. You are not entitled to monetary allowances unless you are a qualified seller and have filed and paid a timely return.

(b) **How long are qualified sellers permitted to receive monetary allowances?** If you install a certified automated system on or after July 1, 2007, you are eligible to receive monetary allowances under this subsection for a period up to

twenty-four months from the date that you install your certified automated system.

(c) **How do qualified sellers calculate their monetary allowances?** You will calculate your monetary allowance under the following formula:

(Applicable rate) multiplied by (Washington retail sales and use taxes you collect and report).

The applicable rate for this formula is one and one-half percent. Your total monetary allowance for the first twelve months of the twenty-four month period described in (b) of this subsection cannot exceed ten thousand dollars. Your total monetary allowance for the second twelve months of the twenty-four month period described in (b) of this subsection cannot exceed ten thousand dollars. For purposes of determining when each ten thousand dollar limit is reached, affiliated qualified sellers must be treated as a single qualified seller if they would qualify as "related persons" under sections 267(b) or 707(b) of the Internal Revenue Code in effect on the effective date of this ((section)) rule.

You may not retain monetary allowances under this subsection based on any sales taxes determined or calculated without the use of a certified automated system. Moreover, you may not retain monetary allowances under this subsection based on any sales taxes determined or calculated with a certified automated system that you have failed to update or modify in accordance with your agreement with your certified automated system provider. It is your duty to make sure all updates and modifications to your certified automated system are properly implemented.

(d) **Can a qualified seller continue to receive monetary allowances if it ceases to be a qualified seller?** No. If you cease to be a qualified seller, you are not entitled to monetary allowances. If you cease to be a qualified seller during any part of a calendar month, you will not be entitled to monetary allowances for that entire month. You will cease to be a qualified seller if you conduct activities in Washington that would require you to register in Washington and as a result of these activities fail to meet one or more of the requirements of subsection (2)(b)(ii)(A) through (D) of this ((section)) rule. The meanings given to property and payroll in subsection (2)(d) and (e) of this ((section)) rule apply for purposes of this subsection (3)(d). However, you must determine the "average value" of property and the amount of payroll under this subsection (3)(d) as follows:

(i) You must determine the "average value" of property by averaging the values at the beginning and end of your last fiscal year that terminates at least thirty days before the date the determination is made.

(ii) You must determine payroll, by calculating the total amount of compensation paid to employees during your last fiscal year that terminates at least thirty days before the date the determination is made.

(e) **Are monetary allowances funded from both Washington state and local retail sales and use taxes?** No, monetary allowances will only be funded from the Washington state portion of the retail sales and use taxes that you collect and must remit.

(4) **Do qualified sellers have any liability protections when operating in Washington?** You are not liable for

charging or collecting the incorrect amount of sales or use tax when that error results from reliance on incorrect data provided in the ((department's)) state's taxability matrix.

(a) Beginning July 1, 2015, if the taxability matrix is amended, sellers and certified service providers are relieved from liability to the state and to local jurisdictions to the extent that the seller or certified service provider relied on the immediately preceding version of the state's taxability matrix. Relief under this subsection (4)(a) of this rule is available until the first day of the calendar month that is at least thirty days after the department submits notice of a change to the state's taxability matrix to the streamlined sales tax governing board. To obtain a copy of the taxability matrix, visit the SSUTA web site located at: ((<http://www.streamlinedsalestax.org>)) [streamlinedsalestax.org](http://www.streamlinedsalestax.org).

(b) Additionally, you will be held harmless and not liable for sales and use taxes, including interest and penalties on those taxes, not collected due to reliance on Washington's certification of the certified automated system you use. However, you will not be held harmless for the incorrect classification of an item or transaction into a product based exemption certified by the department unless that item or transaction is listed within a product definition approved by the SSUTA's governing board or the department. See also RCW 82.32.745.

(5) **Filing returns and remitting taxes.** Qualified sellers must electronically file retail sales and use excise tax returns and must remit retail sales and use taxes due with respect to these returns using ACH Debit, ACH Credit, or the Fed Wire Funds Transfer System.

WSR 16-01-008

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed December 3, 2015, 11:09 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-228 Returns, payments, penalties, extensions, interest, stays of collection.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, AND RECEIVED BY February 22, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposal incorporates changes from ESSB 6138 (section 401, chapter 5, Laws

of 2015) that increases the penalties for late payments as follows:

- Five percent to nine percent;
- Fifteen percent to nineteen percent; and
- Twenty-five percent to twenty-nine percent.

Clarifying language was also added throughout, including changing "section" to "rule," updating legislative cites to statutory cites, and editing for grammar.

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

Reasons Supporting Proposal: Proposal incorporates the legislative changes from ESSB 6138, 2015 3rd sp. sess. (chapter 5, Laws of 2015).

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

Statute Being Implemented: RCW 82.32.090.

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

Name of Proponent: Department of revenue, governmental.

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December 3, 2015
Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-22-049, filed 11/1/13, effective 12/2/13)

WAC 458-20-228 Returns, payments, penalties, extensions, interest, stays of collection. (1) **Introduction.** This ~~((section))~~ rule discusses the responsibility of taxpayers to pay their tax by the appropriate due date, and the acceptable methods of payment. It discusses the interest and penalties that are imposed by law when a taxpayer fails to pay the correct amount of tax by the due date. It also discusses the circumstances under which the law allows the department of revenue (department) to waive interest or penalties.

(a) **Where can I get my questions answered, or learn more about what I owe and how to report it?** Washington's tax system is based largely on voluntary compliance. Taxpayers have a legal responsibility to become informed about applicable tax laws, to register with the department, to seek instruction from the department, to file accurate returns, and to pay their tax liability in a timely manner (chapter 82.32A RCW, Taxpayer rights and responsibilities). The department has a taxpayer services program to provide taxpayers with accurate tax-reporting assistance and instructions. The department staffs local district offices, maintains a toll-free question and information phone line (1-800-647-7706), provides information and electronic forms on the internet (<http://dor.wa.gov>), and conducts free public workshops on tax reporting. The department also publishes notices, interpretive statements, and ~~((sections))~~ rules discussing important tax issues and changes.

(b) **What is electronic filing (or e-file), and how can it help me?** E-file is an internet-based application that provides a secure and encrypted way for taxpayers to file and pay many of Washington state's business related excise taxes online. The e-file system automatically performs math calculations and checks for other types of reporting errors. **Using e-file to file electronically will help taxpayers avoid penalties and interest related to unintentional underpayments and delinquencies.** E-file can be accessed on the department's internet site <http://dor.wa.gov>. Open the page for electronic filing. The page contains additional links to pages answering frequently asked questions, and explains the registration process for e-file. Taxpayers may also call the department's toll-free electronic filing help desk for more information, during regular business hours.

All taxpayers are required to electronically file and electronically pay their taxes unless the department waives the requirement for good cause, or the taxpayer has an assigned reporting frequency that is less than quarterly. The requirement for electronic filing and payment also includes taxpayers who once met the criteria for being assigned to a monthly reporting frequency, but ~~((who))~~ whom since have been authorized by the department to file and remit taxes on a less frequent basis. For more detailed information on the requirement and exceptions for electronic filing (e-file) and electronic payment (e-pay), see WAC 458-20-22802 (Electronic filing and payment).

(c) **Index of subjects addressed in this ~~((section))~~ rule:**

Topic—Description	See subsection
Where can I get my questions answered, or learn more about what I owe and how to report it? - By phone or online, the department provides a number of free and easy resources to help you find answers.	(1)(a) of this ((section)) <u>rule</u> , (see above)
What is electronic filing (or e-file), and how can it help me? - E-filing guides you through the return and helps you avoid many common mistakes.	(1)(b) of this ((section)) <u>rule</u> , (see above)
Do I need to file a return? - How do I access returns and file them?	(2) of this ((section)) <u>rule</u>
What methods of payment can I use? - What can I use to pay my taxes?	(3) of this ((section)) <u>rule</u>
When is my tax payment due? - Different reporting frequencies can have different due dates. What if the due date is a week-end or a holiday? If my payment is in the mail on the due date, am I late or on time?	(4) of this ((section)) <u>rule</u>
Penalties - What types of penalty exist? How big are they? When do they apply?	(5) of this ((section)) <u>rule</u>

Topic—Description	See subsection
Statutory restrictions on imposing penalties - More than one penalty can apply at the same time, but there are restrictions. Which penalties can be combined?	(6) of this ((section)) <u>rule</u>
Interest - In most cases interest is required. What interest rates apply? How is interest applied?	(7) of this ((section)) <u>rule</u>
Application of payment towards liability - Interest, penalties, and taxes are paid in a particular order. If my payment doesn't pay the entire liability, how can I determine what parts have been paid?	(8) of this ((section)) <u>rule</u>
Waiver or cancellation of penalties - I think I was on time, or I had a good reason for not paying the tax when I should have. What reasons qualify me for a waiver of penalty? How can I get a penalty removed?	(9) of this ((section)) <u>rule</u>
Waiver or cancellation of interest - Interest will only be waived in two limited situations. What are they?	(10) of this ((section)) <u>rule</u>
Interest and penalty waiver for active duty military personnel - Is a majority owner of the business on active duty with the military? BOTH interest and penalty can be waived if all the statutory requirements are met. What are the requirements?	(11) of this ((section)) <u>rule</u>
Stay of collection - Revenue will sometimes temporarily delay collection action on unpaid taxes. When can this happen? Can I request that revenue delay collection?	(12) of this ((section)) <u>rule</u>
Extensions - Can I get an extension of my due date? How long does an extension last? A special extension may be available if the governor proclaims a state of emergency in your area.	(13) of this ((section)) <u>rule</u>

(2) **Do I need to file a return?** A "return" is defined as any paper or electronic document a person is required to file by the state of Washington in order to satisfy or establish a tax or fee obligation which is administered or collected by the department, and that has a statutorily defined due date. RCW 82.32.045.

(a) Electronic returns and payments are to be filed with the department by every person liable for any tax which the department administers and/or collects, except for the taxes imposed under chapter 82.24 RCW (Tax on cigarettes), which are collected through sales of revenue stamps. Returns must be filed through the electronic filing (e-file) system (see subsection (1)(b) of this ((~~section~~)) rule), or by other means if approved by the department.

E-file taxpayers do not receive paper returns. However, if an e-file taxpayer specifically requests it, the department

will send an electronic reminder for each upcoming return as the time to file approaches.

(b) Taxpayers whose accounts are placed on an "active nonreporting" status do not automatically receive a tax return and must request a return, or register to file by e-file, if they no longer qualify for this reporting status. (See WAC 458-20-101, Tax registration, for an explanation of the active nonreporting status.)

(c) Some consumers may not be required to register with the department and obtain a tax registration endorsement. (Refer to WAC 458-20-101 for detailed information about tax registration and when it is required.) But even if they do not have to be registered, consumers may be required to pay use tax directly to the department if they have purchased items without paying Washington's sales tax. An unregistered consumer must report and pay their use tax liability directly to the department. Use tax can be reported and paid on a "Consumer Use Tax Return" or the consumer can create an online account at the department's web site to conveniently report and pay use tax electronically. Consumer use tax returns are available from the department at any of the local district offices. A consumer may also call the department's toll free number 1-800-647-7706 to request a consumer use tax return by fax or mail. Finally, the consumer use tax return is available for download from the department's internet site at <http://dor.wa.gov>, along with a number of other returns and forms which are available there.

The interest and penalty provisions of this rule may apply if use tax is not paid on time. Unregistered consumers should refer to WAC 458-20-178 (Use tax) for an explanation of their tax reporting responsibilities.

(3) **What methods of payment can I use?** The law requires taxpayers to file and pay their taxes electronically. There are two electronic payment methods: Electronic funds transfer (EFT) and credit card. The department may waive the electronic payment requirement for any taxpayer or class of taxpayers, for good cause or for whom the department has assigned a reporting frequency that is less than quarterly. Waivers may be temporary or permanent, and may be made on the department's own motion. (See WAC 458-20-22802 for more information on electronic filing and payment.)

(a) For taxpayers not required to pay electronically, payment may be made by cash, check, cashier's check, or money order.

(b) Payment by cash should only be made at an office of the department to ensure that the payment is safely received and properly credited.

(c) Payment may be made by uncertified bank check, but if the check is not honored by the financial institution on which it is drawn, the taxpayer remains liable for the payment of the tax, as well as any applicable interest and penalties. RCW 82.32.080. The department may refuse to accept any check which, in its opinion, would not be honored by the financial institution on which that check is drawn. If the department refuses a check for this reason the taxpayer remains liable for the tax due, as well as any applicable interest and penalties.

(4) **When is my tax payment due?** RCW 82.32.045 provides that payment of the taxes due with the excise tax return must be made monthly and within twenty-five days

after the end of the month in which taxable activities occur, unless the department assigns the taxpayer a longer reporting frequency. Payment of taxes due with returns covering a longer reporting frequency is due on or before the last day of the month following the period covered by the return. (For example, payment of the tax liability for a first quarter tax return is due on April 30th.) WAC 458-20-22801 (Tax reporting frequency—Forms) explains the department's procedure for assigning a quarterly or annual reporting frequency.

(a) If the date for payment of the tax due on a tax return falls upon a Saturday, Sunday, or legal holiday, the filing will be considered timely if performed on the next business day. RCW 1.12.070 and 1.16.050.

(b) When a taxpayer is not required to electronically file and pay taxes and chooses to file or pay taxes through the U.S. Postal Service, the postmark date as shown by the post office cancellation mark stamped on the envelope will be considered conclusive evidence by the department in determining if a tax return or payment was timely filed or received. RCW 1.12.070. It is the responsibility of the taxpayer to mail the tax return or payment sufficiently in advance of the due date to assure that the postmark date is timely.

(c) Taxpayers required to file and pay taxes electronically should refer to WAC 458-20-22802 (Electronic filing and payment) for more information regarding electronic filing (e-file), electronic payment (e-pay) due dates, and when electronic payments are considered received.

(d) If a taxpayer suspects that it will not be able to file and pay by the coming due date, it may be able to obtain an extension of the due date to temporarily avoid additional penalties. Refer to subsection (12) of this ((~~section~~)) rule for details on requesting an extension.

(5) **Penalties.** Various penalties may apply as a result of the failure to correctly or accurately compute the proper tax liability, or to timely pay the tax. Separate penalties may apply and be cumulative for the same tax. Interest may also apply if any tax has not been paid when it is due, as explained in subsection (7) of this ((~~section~~)) rule. (The department's electronic filing system (e-file) can help taxpayers avoid additional penalties and interest. See subsection (1)(b) of this ((~~section~~)) rule for more information.)

The penalty types and rates addressed in this subsection are:

Penalty Type—Description	Penalty Rate	See subsection
Late payment of a return - ((Five)) <u>Nine</u> percent added when payment is not received by the due date, and increases if the tax due remains unpaid.	((5/15/25 %)) 9/19/29%	(5)(a) of this ((section)) <u>rule</u>
Unregistered taxpayer - Five percent added against unpaid tax when revenue discovers a taxpayer who has taxable activity but is not registered.	5%	(5)(b) of this ((section)) <u>rule</u>

Penalty Type—Description	Penalty Rate	See subsection
Assessment - Five percent added when a tax assessment is issued if the tax was "substantially underpaid," and increases if the tax due remains unpaid.	5/15/25% or 0/15/25%	(5)(c) of this ((section)) <u>rule</u>
Issuance of a warrant - Ten percent added when a warrant is issued to collect unpaid tax, and does not require actual filing of a lien.	10%	(5)(d) of this ((section)) <u>rule</u>
Disregard of specific written instructions - Ten percent added when the department has provided specific, written reporting instructions and tax is underpaid because the instructions are not followed.	10%	(5)(e) of this ((section)) <u>rule</u>
Evasion - Fifty percent added when tax is underpaid and there is an intentional effort to hide that fact.	50%	(5)(f) of this ((section)) <u>rule</u>
Misuse of resale certificates or a reseller permit - Fifty percent added against unpaid sales tax when a buyer uses a resale certificate or reseller permit, but should not have.	50%	(5)(g) of this ((section)) <u>rule</u>
Failure to remit sales tax to seller - Ten percent added against sales tax when the department proceeds directly against a buyer who fails to pay sales tax to the seller as part of a sales taxable retail purchase.	10%	(5)(h) of this ((section)) <u>rule</u>
Failure to obtain the contractor's unified business identifier (UBI) number - A two hundred fifty dollar maximum penalty (does not require any tax liability) when specified businesses hire certain contractors but do not obtain and keep the contractor's UBI number.	\$250 (max)	(5)(i) of this ((section)) <u>rule</u>
Disregarded transaction - A thirty-five percent penalty of the additional tax found to be due as a result of engaging in a disregarded transaction.	35%	(5)(j) of this ((section)) <u>rule</u>

(a) **Late payment of a return.** RCW 82.32.090(1) imposes a ((~~five~~)) nine percent penalty if the tax due on a taxpayer's return is not paid by the due date. A total penalty of

((fifteen)) nineteen percent is imposed if the tax due is not paid on or before the last day of the month following the due date, and a total penalty of ((twenty-five)) twenty-nine percent is imposed if the tax due is still not paid on or before the last day of the second month following the due date. The minimum penalty for late payment is five dollars.

Various sets of circumstances can affect how the late payment of a return penalty is applied. See (a)(i) through (iii) of this subsection for some of the most common circumstances.

(i) Will I avoid the penalty if I file my return without the payment? The department may refuse to accept any return ((which)) that is not accompanied by payment of the tax shown to be due on the return. If the return is not accepted, the taxpayer is considered to have failed or refused to file the return. RCW 82.32.080. Failure to file the return can result in the issuance of an assessment for the actual, or an estimated, amount of unpaid tax. Any assessment issued may include an assessment penalty. (See RCW 82.32.100 and (c) of this subsection for details of when and how the assessment penalty applies.) If the tax return is accepted without payment and payment is not made by the due date, the late payment of return penalty will apply.

(ii) What if my account is given an active nonreporting status, but I later have taxes I need to report and pay? WAC 458-20-101 provides information about the active nonreporting status available for tax reporting accounts. In general, the active nonreporting status allows persons, under certain circumstances, to engage in business activities subject to the Revenue Act without filing excise tax returns. Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities no longer meet the conditions to be in active nonreporting status. One of the conditions is that the person is not required to collect or pay a tax the department is authorized to collect. The late payment of return penalty will be imposed if a person on active nonreporting status incurs a tax liability that is not paid by the due date for taxpayers that are on an annual reporting basis (i.e., the last day of January next succeeding the year in which the tax liability accrued).

(iii) I didn't register my business with the department when I started it, and now I think I was supposed to be paying taxes! What should I do? You should fill out and send in a business license application to get your business registered. It is important for you to register before the department identifies you as an unregistered taxpayer and contacts you about your business activities. (WAC 458-20-101 provides information about registering your business.) Except as noted below, if a person engages in taxable activities while unregistered, but then registers prior to being contacted by the department, the registration is considered voluntary. When a person voluntarily registers, the late payment of return penalty does not apply to those specific tax-reporting periods representing the time during which the person was unregistered.

(A) However, even if the person has voluntarily registered as explained above, the late payment of return penalty will apply if the person:

(I) Collected retail sales tax from customers and failed to remit it to the department; or

(II) Engaged in evasion or misrepresentation with respect to reporting tax liabilities or other tax requirements; or

(III) Engaged in taxable business activities during a period of time in which the person's previously open tax reporting account had been closed.

(B) Even though other circumstances may warrant retention of the late payment of return penalty, if a person has voluntarily registered, the unregistered taxpayer penalty (see (b) of this subsection) will not be due.

(b) Unregistered taxpayer. RCW 82.32.090(4) imposes a five percent penalty on the tax due for any period of time where a person engages in a taxable activity and does not voluntarily register prior to being contacted by the department. "Voluntarily register" means to properly complete and submit a master application to any agency or entity participating in the unified business identifier (UBI) program for the purpose of obtaining a UBI number, all of which is done before any contact from the department. For example, if a person properly completes and submits a business license application to the department of labor and industries for the purpose of obtaining a UBI number, and this is done prior to any contact from the department of revenue, the department considers that person to have voluntarily registered. A person has not voluntarily registered if a UBI number is obtained by any means other than submitting a properly completed business license application. WAC 458-20-101 (Tax registration and tax reporting) provides additional information regarding the UBI program.

(c) Assessment. If the department issues an assessment for substantially underpaid tax, a five percent penalty will be added to the assessment when it is issued. If any tax included in the assessment is not paid by the due date, or by any extended due date, the penalty will increase to a total of fifteen percent against the amount of tax that remains unpaid. If any tax included in the assessment is not paid within thirty days of the original or extended due date, the penalty will further increase to a total of twenty-five percent against the amount of tax that remains unpaid. The minimum for this penalty is five dollars. RCW 82.32.090(2).

(i) As used in this ((section)) rule, "substantially underpaid" means that:

(A) The taxpayer has paid less than eighty percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination; and

(B) The amount of underpayment is at least one thousand dollars. If both of these conditions are true when an assessment is issued, it will include the initial five percent assessment penalty. If factual adjustments are made after issuance of an assessment, and those adjustments change whether a taxpayer paid less than eighty percent of the tax due, the department will reevaluate imposition of the original five percent penalty.

(ii) If the initial five percent assessment penalty is included with an assessment when it is issued, the penalty is calculated against the total amount of tax that was not paid when originally due and payable (see RCW 82.32.045). Audit payments made prior to issuance of an assessment will be applied to the assessment after calculation of the initial

five percent assessment penalty. At the discretion of the department, preexisting credits or amendments paid prior to an audit or unrelated to the scope of the assessment may be applied before the five percent assessment penalty is calculated, reducing the amount of the penalty. Additional assessment penalty is assessed against the amount of tax that remains unpaid at that particular time, after payments are applied to the assessment.

(d) **Issuance of a warrant.** If the department issues a tax warrant for the collection of any fee, tax, increase, or penalty, an additional penalty will immediately be added in the amount of ten percent of the amount of the tax due, but not less than ten dollars. RCW 82.32.090(3). Refer to WAC 458-20-217 for additional information on the application of warrants and tax liens.

(e) **Disregard of specific written instructions.** If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting of tax liabilities, an additional penalty of ten percent of the additional tax found due will be imposed because of the failure to follow the instructions. RCW 82.32.090(5).

(i) **What is "disregard of specific written instructions"?** A taxpayer is considered to have received specific written instructions when the department has informed the taxpayer in writing of its tax obligations and specifically advised the taxpayer that failure to act in accordance with those instructions may result in this penalty being imposed. The specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement. The penalty applies when a taxpayer does not follow the specific written instructions, resulting in underpayment of the tax due. The penalty may be applied only against the taxpayer given the specific written instructions. However, the taxpayer will not be considered to have disregarded the instructions if the taxpayer has appealed the subject matter of the instructions and the department has not issued its final instructions or decision.

(ii) **What if I try to follow the written instructions, but I still don't get it quite right?** The penalty will not be applied if the taxpayer has made a good faith effort to comply with specific written instructions.

(f) **Evasion.** If the department finds that all or any part of the deficiency resulted from an intent to evade the tax due, a penalty of fifty percent of the additional tax found to be due will be added. RCW 82.32.090(7). The evasion penalty is imposed when a taxpayer knows a tax liability is due but attempts to escape detection or payment of the tax liability through deceit, fraud, or other intentional wrongdoing. An intent to evade does not exist where a deficiency is the result of an honest mistake, miscommunication, or the lack of knowledge regarding proper accounting methods. The department has the burden of showing the existence of an intent to evade a tax liability through clear, cogent and convincing evidence.

(i) **Evasion penalty only applies to the specific taxes that a taxpayer intended to evade.** To the extent that the evasion involved only specific taxes, the evasion penalty will be added only to those taxes. The evasion penalty will not be applied to those taxes which were inadvertently underpaid. For example, if the department finds that the taxpayer inten-

tionally understated the purchase price of equipment in reporting use tax and also inadvertently failed to collect or remit the sales tax at the correct rate on retail sales of merchandise, the evasion penalty will be added only to the use tax deficiency and not the sales tax.

(ii) **What actions may establish an intent to evade?** The following is a nonexclusive list of actions that are generally considered to establish an intent to evade a tax liability. This list should only be used as a general guide. A determination of whether an intent to evade exists may be ascertained only after a review of all the facts and circumstances.

(A) The use of an out-of-state address by a Washington resident to register property to avoid a Washington excise or use tax, when at the time of registration the taxpayer does not reside at the out-of-state address on a more than temporary basis. Examples of such an address include, but are not limited to, the residence of a relative, mail forwarding or post office box location, motel, campground, or vacation property;

(B) The willful failure of a seller to remit retail sales taxes collected from customers to the department; and

(C) The alteration of a purchase invoice or misrepresentation of the price paid for property (e.g., a used vehicle) to reduce the amount of tax owing.

(g) **Misuse of resale certificates, reseller permits, and other documents.** Any buyer who uses a resale certificate, a reseller permit, or other documentation authorized under RCW 82.04.470, to purchase items or retail services without payment of sales tax, and who is not entitled to use the certificate, permit, or other documentation for the purchase, will be assessed a penalty of fifty percent of the tax due. RCW 82.32.291. The penalty can apply even if there was no intent to evade the payment of the tax. For more information concerning this penalty or the proper use of resale certificates, reseller permits, and other documentation, refer to WAC 458-20-102 (Resale certificates).

(h) **Failure to remit sales tax to seller.** The department may assert an additional ten percent penalty against a buyer who has failed to pay the seller the retail sales tax on taxable purchases, if the department proceeds directly against the buyer for the payment of the tax. This penalty is in addition to any other penalties or interest prescribed by law. RCW 82.08.050.

(i) **Failure to obtain the contractor's unified business identifier (UBI) number.** If a person who is liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW contracts with another person or entity for work subject to chapter 18.27 RCW (Registration of contractors) or chapter 19.28 RCW (Electricians and electrical installations), that person must obtain and preserve a record of the UBI number of the person or entity performing the work. A person failing to do so is subject to the public works contracting restrictions in RCW 39.06.010 (Contracts with unregistered or unlicensed contractors prohibited), and a penalty determined by the director, but not to exceed two hundred and fifty dollars. RCW 82.32.070(2).

(j) **Engaging in disregarded transactions.** (~~Chapter 23 (2ESSB 6143), Laws of 2010 1st sp. s.-)~~ RCW 82.32.090 imposes a thirty-five percent penalty for engaging in a disre-

garded transaction as defined in RCW 82.32.655(3). See RCW 82.32.090(6), 82.32.655, and 82.32.660.

(6) **Statutory restrictions on imposing penalties.** Depending on the circumstances, the law may impose more than one type of penalty on the same tax liability. However, those penalties are subject to the following restrictions:

(a) The penalties imposed for the late payment of a return, unregistered taxpayer, assessment, and issuance of a warrant (see subsection (5)(a) through (d) of this ((~~section~~) rule) may be applied against the same tax concurrently, each unaffected by the others, up to their combined maximum rates. Application of one or any combination of these penalties does not prohibit or restrict full application of other penalties authorized by law, even when they are applied against the same tax. RCW 82.32.090(8).

(b) The department may impose either the evasion penalty (subsection (5)(f) of this ((~~section~~) rule) or the penalty for disregarding specific written instructions (subsection (5)(e) of this ((~~section~~) rule), but may not impose both penalties on the same tax. RCW 82.32.090(9). The department also will not impose the penalty for the misuse of a resale certificate (subsection (5)(g) of this ((~~section~~) rule) in combination with either the evasion penalty or the penalty for disregarding specific written instructions on the same tax.

(c) The penalty provided in subsection (5)(j) of this ((~~section~~) rule) may be assessed together with any other applicable penalties provided in this ((~~section~~) rule) on the same tax found to be due, except for the evasion penalty provided in subsection (5)(f) of this ((~~section~~) rule).

(7) **Interest.** The department is required by law to add interest to assessments for tax deficiencies and overpayments. RCW 82.32.050 and 82.32.060. Interest accrued against an underpayment only applies to underpaid tax. (Refer to WAC 458-20-229 for a discussion of interest as it relates to refunds and WAC 458-20-230 for a discussion of the statute of limitations as applied to interest.)

(a) For interest imposed after December 31, 1998, interest will be added from the last day of the month following each calendar year included in a notice, or the last day of the month following the final month included in a notice if not the end of the calendar year, until the due date of the notice. However, for 1998 taxes only, interest may not begin to accrue any earlier than February 1, 1999, even if the last period included in the notice is not at the end of calendar year 1998. If payment in full is not made by the due date of the notice, additional interest will be due until the date of payment. The rate of interest continues at the annual variable interest rates described below in (e) of this subsection. ((~~For information on interest imposed before December 31, 1998, see RCW 82.32.050.~~)

(b) **How is interest applied to an assessment that includes underpaid tax from multiple years?** The following is an example of how the interest provisions apply. Assume that a tax assessment is issued with a due date of June 30, 2010. The assessment includes periods from January 1, 2008, through September 30, 2009.

(i) For calendar year 2008 tax, interest begins February 1, 2009, (from the last day of the month following the end of the calendar year). When the assessment is issued interest is computed through June 30, 2010, (the due date).

(ii) For the 2009 tax period ending with September 30, 2009, interest begins November 1, 2009, (from the last day of the month following the last month included in the assessment period). When the assessment is issued interest is computed through June 30, 2010, (the due date).

(iii) Interest will continue to accrue on any portion of the assessed taxes which remain unpaid after the due date, until the date those taxes are paid.

(c) **How is each year's interest rate determined?** The annual variable interest rate will be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate for each new year will be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. The average is calculated using the federal short-term rates from January, April, July of the calendar year immediately preceding the new year, and October of the previous preceding year, as published by the United States Secretary of the Treasury. The interest rate will be adjusted on the first day of January of each year.

(d) **How is the interest applied if an assessment includes some years that are underpaid and some that are overpaid?** If the assessment contains tax deficiencies in some years and overpayments in other years with the net difference being a tax deficiency, the interest rate for tax deficiencies will also be applied to the overpayments. (Refer to WAC 458-20-229 for interest on refunds.)

(8) **Application of payment towards liability.** The department will apply taxpayer payments in the following order:

- Interest,
- penalties,
- fees,
- other nontax amounts,
- tax, except spirits tax,
- spirits tax,

without regard to any direction of the taxpayer. RCW 82.32.080.

In applying a partial payment to a tax assessment, the payment will first be applied against the oldest tax liability. For purposes of RCW 82.32.145 (Limited liability business entity - Terminated, dissolved, abandoned, insolvent - Collection of unpaid trust fund taxes), it will be assumed that any payments applied to the tax liability will be first applied against any retail sales tax liability, and then to other trust fund tax liabilities. For example, an audit assessment is issued covering a period of two years, which will be referred to as "YEAR 1" (the earlier year) and "YEAR 2" (the most recent year). The tax assessment includes total interest and penalties for YEAR 1 and YEAR 2 of five hundred dollars, retail sales tax of four hundred dollars for YEAR 1, six hundred dollars retail sales tax for YEAR 2, two thousand dollars of other taxes for YEAR 1, and seven thousand dollars of other taxes for YEAR 2. The order of application of any payments will be first against the five hundred dollars of total interest and penalties, second against the four hundred dollars retail sales tax in YEAR 1, third against the two thousand dollars of other taxes in YEAR 1, fourth against the six hundred dollars retail sales tax of YEAR 2, and finally against the seven thousand dollars of other taxes in YEAR 2.

(9) **Waiver or cancellation of penalties.** RCW 82.32.105 authorizes the department to waive or cancel penalties under limited circumstances.

(a) **Circumstances beyond the control of the taxpayer.** The department will waive or cancel the penalties imposed under chapter 82.32 RCW upon finding that the underpayment of the tax, or the failure to pay any tax by the due date, was the result of circumstances beyond the control of the taxpayer. It is possible that a taxpayer will qualify for a waiver of one type of penalty, without obtaining a waiver for all penalties associated with a particular tax liability. Circumstances determined to be beyond the control of the taxpayer when considering a waiver of one type of penalty are not necessarily pertinent when considering a waiver of a different penalty type. For example, circumstances that qualify for waiver of a late payment of return penalty do not necessarily also justify waiver of the substantial underpayment assessment penalty. Refer to WAC 458-20-102 (~~(((Resale certificates)))~~) Reseller permits for examples of circumstances which are beyond the control of the taxpayer specifically regarding the penalty for misuse of a (~~(resale certificate or)~~) reseller permit found in RCW 82.32.291.

(i) A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The taxpayer bears the burden of establishing that the circumstances were beyond its control and directly caused the late payment. The request should be made in the form of a letter; however, verbal requests may be accepted and considered at the discretion of the department. Any petition for correction of assessment submitted to the department's appeals division for waiver of penalties must be made within the period for filing under RCW 82.32.160 (within thirty days after the issuance of the original notice of the amount owed or within the period covered by any extension of the due date granted by the department), and must be in writing, as explained in WAC 458-20-100 (Appeals(~~(small claims and settlements)~~)). Refund requests must be made within the statutory limitation period.

(ii) The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay. Circumstances beyond the control of the taxpayer include, but are not necessarily limited to, the following.

(A) The return payment was mailed on time but inadvertently sent to another agency.

(B) Erroneous written information given to the taxpayer by a department officer or employee caused the delinquency. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not canceling the penalty in cases of oral information is because of the uncertainty of the facts presented, the uncertainty of the instructions or information imparted by the department employee, and the uncertainty that the taxpayer fully understood the information given. Reliance by the taxpayer on incorrect advice received from

the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.

(C) The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's immediate family. The same circumstances apply to the taxpayer's accountant or other tax preparer, or their immediate family. This situation is not intended to have an indefinite application. A death or serious illness which denies a taxpayer reasonable time or opportunity to obtain an extension or to otherwise arrange timely filing and payment is a circumstance eligible for penalty waiver.

(D) The delinquency was caused by the unavoidable absence of the taxpayer or key employee, prior to the filing date. "Unavoidable absence of the taxpayer" does not include absences because of business trips, vacations, personnel turnover, or terminations.

(E) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

(F) The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the taxpayer's employee or other persons contracted with the taxpayer, which the taxpayer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place. See (a)(iii)(E) of this subsection.

(G) The department does not respond to the taxpayer's request for a tax return (or other forms necessary to compute the tax) within a reasonable period of time, which directly causes delinquent filing and payment on the part of the taxpayer. This assumes that, given the same situation, if the department had provided the requested form(s) within a reasonable period of time, the taxpayer would have been able to meet its obligation for timely payment of the tax. In any case, the taxpayer has responsibility to insure that its return is filed in a timely manner (e.g., by keeping track of pending due dates) and must anticipatively request a return for that purpose, if one is not received. (Note: Tax returns and other forms are (~~(immediately)~~) available (~~(to download)~~) at no cost from the department's (~~(internet)~~) web site, (~~(http://dor.wa.gov)~~) dor.wa.gov. When good cause exists, taxpayers are advised to contact the department and request an extension of the due date for filing, before the due date of concern has passed. See subsection (12) of this (~~(section)~~) rule. Taxpayers who have registered to file electronically with e-file will avoid potential penalties relating to paper returns not received. See subsection (1)(b) of this (~~(section)~~) rule.)

(iii) The following are examples of circumstances that are generally not considered to be beyond the control of the taxpayer and will not qualify for a waiver or cancellation of penalty:

(A) Financial hardship;

(B) A misunderstanding or lack of knowledge of a tax liability;

(C) The failure of the taxpayer to receive a tax return form, EXCEPT where the taxpayer timely requested the form and it was still not furnished in reasonable time to mail the return and payment by the due date, as described in (a)(ii)(G) of this subsection;

(D) Registration of an account that is not considered a voluntary registration, as described in subsection (5)(a)(iii) and (b) of this ((section)) rule;

(E) Mistakes or misconduct on the part of employees or other persons contracted with the taxpayer (not including conduct covered in (a)(ii)(F) of this subsection); and

(F) Reliance upon unpublished, written information from the department that was issued to and specifically addresses the circumstances of some other taxpayer.

(b) **Waiver of the late payment of return penalty.** The late payment of return penalty (see subsection (5)(a) of this ((section)) rule) may be waived either as a result of circumstances beyond the control of the taxpayer (RCW 82.32.105 (1) and (a) of this subsection) or after a twenty-four month review of the taxpayer's reporting history, as described below.

(i) If the late payment of return penalty is assessed on a return but is not the result of circumstances beyond the control of the taxpayer, the penalty will still be waived or canceled if the following two circumstances are satisfied:

(A) The taxpayer requests the penalty waiver for a tax return which was required to be filed under RCW 82.32.045 (taxes reported on the combined excise tax return), RCW 82.23B.020 (oil spill response tax), RCW 82.27.060 (tax on enhanced food fish), RCW 82.29A.050 (leasehold excise tax), RCW 84.33.086 (timber and forest lands), RCW 82.14B.030 (tax on telephone access line use); and

(B) The taxpayer has timely filed and paid all tax returns due for that specific tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested. RCW 82.32.105(2).

If a taxpayer has obtained a tax registration endorsement with the department prior to engaging in business within the state and has engaged in business activities for a period less than twenty-four months, the taxpayer is eligible for the waiver if the taxpayer had no delinquent tax returns for periods prior to the period covered by the return for which the waiver is being requested. As a result, the taxpayer's very first return due can qualify for a waiver under the twenty-four month review provision. (See also WAC 458-20-101 for more information regarding the tax registration and tax reporting requirements.) This is the only situation under which the department will consider a waiver when the taxpayer has not timely filed and paid tax returns covering an immediately preceding twenty-four month period.

(ii) A return will be considered timely for purpose of the waiver if there is no tax liability on it when it is filed. Also, a return will be considered timely if any late payment penalties assessed on it were waived or canceled due to circumstances beyond the control of the taxpayer (see (a) of this subsection). The number of times penalty has been waived due to circumstances beyond the control of the taxpayer does not influence whether the waiver in this subsection will be granted. A taxpayer may receive more than one of the waivers in this subsection within a twenty-four month period if returns for more than one of the listed tax programs are filed, but no more than one waiver can be applied to any one tax program in a twenty-four month period.

For example, a taxpayer files combined excise tax returns as required under RCW 82.32.045, and timber tax returns as required under RCW 84.33.086. This taxpayer may qualify for two waivers of the late payment of return penalty during the same twenty-four month period, one for each tax program. If this taxpayer had an unwaived late payment of return penalty for the combined excise tax return during the previous twenty-four month period, the taxpayer may still qualify for a penalty waiver for the timber tax program.

(iii) The twenty-four month period reviewed for this waiver is not affected by the due date of the return for which the penalty waiver is requested, even if that due date has been extended beyond the original due date.

For example, assume a taxpayer's September 2012 return has had the original due date of October twenty-fifth extended to November twenty-fifth. The return and payment are received after the November twenty-fifth extended due date. A penalty waiver is requested. Since the delinquent return represented the month of September 2012, the twenty-four months which will be reviewed begin on September 1, 2010, and end with August 31, 2012, (the twenty-four months prior to September 2012). All of the returns representing that period of time will be included in the review. The extension of the original due date has no effect on the twenty-four month period under review.

(iv) A twenty-four month review is only valid when considering waiver of the late payment of return penalty described in subsection (5)(a) of this ((section)) rule. The twenty-four month review process cannot be used as justification for a waiver of interest, assessment penalty, or any penalty other than the late payment of return penalty.

(10) **Waiver or cancellation of interest.** The department will waive or cancel interest imposed under chapter 82.32 RCW only in the following situations:

(a) The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department. RCW 82.32.105(3).

(11) **Interest and penalty waiver for active duty military personnel.** RCW 82.32.055 provides a waiver of BOTH interest and penalty imposed under chapter 82.32 RCW when:

(a) The majority owner of the business is:

(i) On active duty in the military;

(ii) Participating in an armed conflict;

(iii) Assigned to a location outside the territorial boundaries of the United States; and

(b) The gross income of the business is one million dollars or less for the calendar year immediately prior to the year in which the majority owner is initially deployed outside the United States for the armed conflict.

Interest and penalty may not be waived or canceled for a period longer than twenty-four months. The waiver applies to interest or penalty based on the date they are imposed, which must be within the twenty-four month waiver period.

To receive a waiver or cancellation of interest and penalty under this subsection, the taxpayer must submit a copy of

the majority owner's deployment orders for deployment outside the territorial boundaries of the United States.

(12) **Stay of collection.** RCW 82.32.190 allows the department to initiate a stay of collection, without the request of the taxpayer and without requiring any bond, for certain tax liabilities when they may be affected by the outcome of a question pending before the courts (see (a) of this subsection). RCW 82.32.200 provides conditions under which the department, at its discretion, may allow a taxpayer to file a bond in order to obtain a stay of collection on a tax assessment (see (b) of this subsection). The department will grant a taxpayer's stay of collection request, as described in RCW 82.32.200, only when the department determines that a stay is in the best interests of the state.

(a) Circumstances under which the department may consider initiating a stay of collection without requiring a bond (RCW 82.32.190) include, but are not necessarily limited to, the existence of the following:

- (i) A constitutional issue to be litigated by the taxpayer, the resolution of which is uncertain;
- (ii) A matter of first impression for which the department has little precedent in administrative practice; or
- (iii) An issue affecting other similarly situated taxpayers for whom the department would be willing to stay collection of the tax.

(b) The department will give consideration to a request for a stay of collection of an assessment (RCW 82.32.200) if:

- (i) A written request for the stay is made prior to the due date for payment of the assessment; and
- (ii) Payment of any unprotested portion of the assessment and other taxes due is made timely; and
- (iii) The request is accompanied by an offer of a cash bond, or a security bond that is guaranteed by a specified authorized surety insurer. The amount of the bond will generally be equal to the total amount of the assessment, including any penalties and interest. However, where appropriate, the department may require a bond in an increased amount not to exceed twice the amount for which the stay is requested.

(c) Claims of financial hardship or threat of litigation are not grounds that justify the granting of a stay of collection. However, the department will consider a claim of significant financial hardship as grounds for staying collection procedures, but this will be done only if a partial payment agreement is executed and kept in accordance with the department's procedures and with such security as the department deems necessary.

(d) If the department grants a stay of collection, the stay will be for a period of no longer than two calendar years from the date of acceptance of the taxpayer request, or thirty days following a decision not appealed from by a tribunal or court of competent jurisdiction upholding the validity of the tax assessed, whichever date occurs first. The department may extend the period of a stay originally granted, but only for good cause shown.

(e) Interest will continue to accrue against the unpaid tax portion of a liability under stay of collection. ~~((Effective January 1, 1997, the interest rates prescribed by RCW 82.32.190 and 82.32.200 changed from nine percent and twelve percent per annum, respectively, to the same predetermined annual~~

~~variable rates as are described in subsection (7)(c) of this rule.))~~

(13) **Extensions.** The department, for good cause, may extend the due date for filing any return.

(a) Any permanent extension more than ten days beyond the due date, and any temporary extension in excess of thirty days, must be conditional upon deposit by the taxpayer with the department of an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit is credited to the taxpayer's account and may be applied to the taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where a temporary extension of more than thirty days has been granted.

The amount of the deposit is subject to departmental approval. The amount will be reviewed from time to time, and a change may be required at any time that the department concludes that such amount does not approximate the tax liability for the reporting period or periods for which the extension was granted.

(b) ~~((Chapter 181, Laws of 2008 (Senate Bill No. 6950);))~~ RCW 82.32.080 allows department of revenue to grant extensions of the due date for any taxes due to department of revenue when the governor has proclaimed a state of emergency under RCW 43.06.040. In general, the bill gives department of revenue the authority to provide extensions on its own initiative, or at the specific request of any taxpayers affected by the emergency. The specific details of how, where, and to whom any extensions are granted will depend on the type and scope of each unique emergency and will be determined when an emergency is declared.

WSR 16-01-012

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed December 4, 2015, 8:57 a.m.]

Title of Rule and Other Identifying Information: WAC 458-14-026 Assessment roll corrections agreed to by taxpayer and 458-16A-140 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Exemption described—Exemption granted—Exemption denied—Freezing property values.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, AND RECEIVED BY February 22, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To incorporate legislative changes from SSB 5275 (sections 102 and 103, chapter 86, Laws of 2015), 2015 regular session.

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

Reasons Supporting Proposal: Updates WAC 458-14-026 and 458-16A-140 to incorporate legislative changes from SSB 5275 (chapter 86, Laws of 2015), 2015 regular session.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.52.0502, and 84.55.010.

Statute Being Implemented: RCW 84.41.030 and 84.41.-041.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation and Enforcement: Marcus Glasper, 1025 Union Avenue S.E., Suite #500, Olympia, WA, (360) 534-1615.

December 4, 2015
Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-13-034, filed 6/14/06, effective 7/15/06)

WAC 458-14-026 Assessment roll corrections agreed to by taxpayer. (1) The assessor must make a correction to the assessment roll for the current assessment year when the correction involves an error in the determination of the valuation of property and the following conditions are met:

(a) The assessment roll has previously been certified in accordance with RCW 84.40.320;

(b) The taxpayer has timely filed a completed petition with the board for the current assessment year;

(c) The board has not yet held a hearing on the merits of the taxpayer's petition; and

(d) The assessor and taxpayer have signed an agreement as to the true and fair value of the taxpayer's property in which agreement the parties set forth the valuation information which was used to establish the true and fair value. The true and fair value must be the value as of January 1 of the year in which the property was last revalued by the assessor ~~((according to a revaluation cycle approved by the department. For example, if the county is on a four-year revaluation cycle, and the taxpayer's property was last revalued in 2005, any agreement between the taxpayer and the assessor based on an appeal by the taxpayer in 2007, must use the true and fair value of the taxpayer's property in 2005 as the basis of the agreement. The value thus agreed to will, in this example, only apply to the 2007 assessment year (the assessment year for which the taxpayer timely filed his or her appeal) and thereafter until the taxpayer's property is again revalued in accordance with an approved revaluation cycle)).~~

(2) The assessor must immediately notify the board of any corrections to the assessment roll made in accordance with subsection (1) of this ~~((section))~~ rule, with a copy of the

notification provided to the taxpayer, and the taxpayer's petition shall be deemed withdrawn as of the date of notification to the board.

AMENDATORY SECTION (Amending WSR 13-08-028, filed 3/27/13, effective 4/27/13)

WAC 458-16A-140 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Exemption described—Exemption granted—Exemption denied—Freezing property values. (1) **Introduction.** This rule explains how county assessors process a claimant's application form for the senior citizen, disabled person, or one hundred percent disabled veteran property tax exemption. The rule describes the exemption and what happens when the exemption is granted or denied by the assessor.

(2) **The exemption described.** This property tax exemption reduces or eliminates property taxes on a senior citizen's, disabled person's, or one hundred percent disabled veteran's principal residence. Except for benefit charges made by a fire protection district, this exemption does not reduce or exempt an owner's payments for special assessments against the property. Local governments impose special assessments on real property because the real property is specially benefitted by improvements made in that area (e.g., local improvement district assessments for roads or curbs, surface water management fees, diking/drainage fees, weed control fees, etc.). All the property owners in that area share in paying for these improvements. The only exceptions related to this program is for benefit charges made by a fire protection district, a regional fire protection service authority, or by a city or town for enhancement of fire protection services. Fire protection benefit charges are reduced twenty-five, fifty, or seventy-five percent depending upon the combined disposable income of the claimant. RCW 52.18.090, 52.26.270, and 35.13.256.

(a) **Excess levies.** A qualifying claimant receives an exemption from excess levies on his or her principal residence.

(b) **Regular levies.** Depending upon the claimant's combined disposable income, the exemption may also apply to all or a portion of the regular levies on the claimant's principal residence. Both the level of the claimant's combined disposable income and the assessed value of the home determine the amount of the regular levy exempted from property taxes. The exemption applies to all the regular and excess levies when the assessed value of the claimant's principal residence falls below the amount of exempt assessed value identified in RCW 84.36.381 (5)(b) and the claimant's combined disposable income is also below the levels set in that section.

(c) **Property taxes due.** Generally the owner pays the property taxes on the principal residence and obtains directly the benefit of this exemption. If the claimant is not the property's owner, or is not otherwise obligated to pay the property taxes on the principal residence, but "owned" the principal residence for purposes of this exemption, the property owner that owes the tax must reduce any amounts owed to them by the claimant up to the amount of the tax exemption. If the amounts owed by the claimant to this property owner are less than the tax exemption, the owner must pay to the claimant in

cash any amount of the tax exemption remaining after this offsetting reduction. RCW 84.36.387(6).

(3) **Processing exemption applications.** County assessors process applications for the senior citizen, disabled person, or one hundred percent disabled veteran exemption. The assessors grant or deny the exemption based upon these completed applications.

(a) **Application review.** The county assessor reviews a completed application and its supporting documents.

The assessor:

(i) Notes on a checklist for the claimant's file the supporting documents received;

(ii) Reviews the supporting documents;

(iii) Records relevant information from the supporting documents into the claimant's file. In particular, the assessor records into the file the claimant's age and a summary of the income information received; and

(iv) After reviewing the supporting documents, must either destroy or return the supporting documents used to verify the claimant's age and income.

(b) **Incomplete applications.** A county assessor may return an incomplete application or a duplicate application. An incomplete application may be missing:

(i) Signatures;

(ii) Information upon the form; or

(iii) Supporting documents.

Upon returning an incomplete application, the assessor should provide the claimant with a dated denial form listing the signatures, information, or documents needed to complete the application. The denial of an incomplete application may be appealed in the same manner as a denial of the exemption.

(c) The assessor may accept any late filings for the exemption even after the taxes have been levied, paid, or become delinquent. An application filed for the exemption in previous years constitutes a claim for a refund under WAC 458-18-210.

(4) **Exemption timing if approved.** Property taxes are reduced or eliminated on the claimant's principal residence for the year following the year the claimant became eligible for the program. When a late application is filed, the exemption may only result in:

(a) A refund for any paid property taxes that were due within the previous three years; and

(b) Relief from unpaid property taxes for any previous years.

(5) **Exemption procedure when claim granted.** When the exemption is granted, the county assessor:

(a) Freezes the assessed value of the principal residence upon the assessment roll;

(b) Determines the level of exemption the claimant qualifies for;

(c) Notifies the claimant that the exemption has been granted;

(d) Notifies the claimant of his or her duty to file timely renewal applications;

(e) Notifies the claimant of his or her duty to file change of status forms when necessary;

(f) Notifies the claimant of the need to reapply for the exemption if the claimant moves to a replacement residence;

(g) Notifies the claimant that has supplied estimated income information whether or not follow-up income information is needed;

(h) Places the claimant on a notification list for renewal of the exemption;

(i) Places the claimant on a notification list if supporting documents are needed to confirm estimated income information prior to May 31st of the following year;

(j) Exempts the residence from all or part of its property taxes; and

(k) Provides the department with a recomputation of the assessed values for the immediately preceding year as a part of the annual recomputation process.

(6) **Exemption procedure when claim denied.** The assessor denies the exemption when the claimant does not qualify. The assessor provides a dated denial form listing his or her reasons for this denial. A claimant may appeal the exemption's denial to the county board of equalization as provided for in WAC 458-14-056.

(7) **Freezing the property value.** The assessor freezes the assessed value of the principal residence either on the latter of January 1, 1995, or January 1st of the year when a claimant first qualifies for the exemption. The assessor then tracks both the market value of the principal residence and its frozen value. The assessor provides both the principal residence's market value and its frozen value in the valuation notices sent to the owner.

~~(a) ((Frozen values in counties using a cyclical revaluation plan. In counties using a cyclical revaluation plan, the assessor:~~

~~(i) Revalues the principal residence, for property revalued in that assessment year, before the assessed value is frozen; or~~

~~(ii) Freezes the principal residence's value at the most recent assessed value for property that is not revalued in that assessment year.~~

~~The assessor continues to revalue the principal residence during the regular revaluation cycles to track the market value for the property.~~

~~(b)) Adding on improvement costs.~~ The assessor adds onto the frozen assessed value the cost of any improvements made to the principal residence.

~~((e)) (b) One-year gaps in qualification.~~ If a claimant receiving the exemption fails to qualify for only one year because of high income, the previous frozen property value must be reinstated on January 1st of the following year when the claimant again qualifies for the program.

~~((d)) (c) Moving to a new residence.~~ If an eligible claimant moves, the county assessor freezes the assessed value of the new principal residence on January 1st of the assessment year in which the claimant transfers the exemption to the replacement residence.

WSR 16-01-013

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed December 4, 2015, 9:25 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools (Rule 167), provides guidance on the business and occupation (B&O) tax and retail sales and use tax reporting responsibilities of educational institutions, schools districts, student organizations, private schools, and persons operating nursery schools, preschools, or providing child care.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Leslie Mullin, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail LeslieMu@dor.wa.gov, AND RECEIVED BY February 22, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 458-20-167 to incorporate legislative changes from HB 1550 (chapter 169, Laws of 2015) that simplifies the taxation of amusement, recreation, and physical fitness services, and ESHB 2075 (chapter 535, Laws of 2009) relating to the taxation of certain products and services provided or furnished electronically.

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

Reasons Supporting Proposal: To recognize 2009 and 2015 legislation.

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

Statute Being Implemented: RCW 82.04.050, 82.12.-0284.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1589; Implementation and Enforcement: Marcus Glasper, 1025 Union Avenue S.E., Suite #500, Olympia, WA, (360) 534-1615.

December 4, 2015

Kevin Dixon

Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-10-056, filed 4/27/07, effective 5/28/07)

WAC 458-20-167 Educational institutions, school districts, student organizations, and private schools. (1) **Introduction.** This ~~((section))~~ rule explains the application of Washington's business and occupation (B&O), retail sales, and use taxes to educational institutions, school districts, student organizations, and private schools. It also gives tax reporting information to persons operating nursery schools, preschools, or providing child care. ~~((Educational institutions which are institutions of the state of Washington should also refer to WAC 458-20-189 (Sales to and by the state of Washington, etc.). Nonprofit organizations should also refer to WAC 458-20-169 (Religious, charitable, benevolent, nonprofit service organizations, and sheltered workshops).))~~

(a) Other rules that may apply. Readers may also want to refer to other rules for additional information, including those in the following list:

(i) WAC 458-20-169 Nonprofit organizations.

(ii) WAC 458-20-189 Sales to and by the state of Washington, counties, cities, towns, school districts, and fire districts.

(iii) WAC 458-20-244 Food and food ingredients.

(b) Examples. Examples found in this rule 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.

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

(a) **Tuition fees.** The term "tuition fees" includes fees for instruction, library, laboratory, and health services. The term also includes special fees and amounts charged for room and board when the property or service for which such charges are made is furnished exclusively to the students, teachers, or other staff of the institution. RCW 82.04.170.

(b) **Educational institutions.** "Educational institutions" means the following:

(i) Institutions which are established, operated, and governed by this state or its political subdivisions under Title 28A (Common school provisions), 28B (Higher education), or 28C (Vocational education) RCW.

(ii) Nonpublic schools, including parochial or independent schools or school districts, carrying out a program for any or all of ~~((the))~~ grades one through twelve, which have been approved by the Washington state board of education. (See also chapter 180-90 WAC, Private schools.)

(iii) Degree-granting institutions offering educational credentials, instruction, or services prerequisite to or indicative of an academic or professional degree or certificate beyond the secondary level, provided the institution is accredited by an accrediting association recognized by the United States Secretary of Education and offers to students an educational program of a general academic nature. Degree-granting institutions should refer to chapter 28B.85 RCW for information about the requirement for authorization by the Washington higher education coordinating board.

(iv) Institutions which are not operated for profit, and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture.

(v) Programs that an educational institution cosponsors with a nonprofit organization, as defined by the Internal Revenue Code Sec. 501 (c)(3), provided that educational institutions grants college credit for course work successfully completed through the educational program.

(vi) Certain branch campuses of foreign degree-granting institutions, provided the following requirements, among others, are satisfied:

(A) The branch campus must be owned and operated directly by a foreign degree-granting institution or indirectly through a Washington profit or nonprofit corporation in which the foreign degree-granting institution is the sole or controlling shareholder or member;

(B) Courses must be provided solely and exclusively to students enrolled in a degree-granting program offered by the institution;

(C) The branch campus must be approved by the Washington higher education coordinating board to operate in this state; and

(D) The branch campus must be recognized to be exempt from income taxes pursuant to 26 U.S.C. Sec. 501(c).

(vii) "Educational institutions" does not include any entity defined as a "private vocational school" under RCW 28C.10.020 and/or any entity defined as a "degree-granting private vocational school" under chapters 28C.10 and 28B.85 RCW (other than those described in (b)(iv) of this subsection).

(c) **Private schools.** "Private schools" means all schools and institutions which are excluded from the above definition of "educational institutions." For example, an elementary school operated by a church organization is a "private school" if the school is not approved. It will be given the tax treatment of an "educational institution" for purposes of this ~~((section))~~ rule only if it has obtained approval from the Washington state board of education.

(3) **Business and occupation tax.** Departments and institutions of the state of Washington are not subject to the B&O tax. ~~((See WAC 458-20-189.))~~ School districts are also not subject to the B&O tax, except as to income derived from a public utility or enterprise activity. RCW 82.04.419. Private schools, student organizations, and school districts engaging in utility or enterprise activities, and educational institutions which are not departments or institutions of the state of Washington are subject to the B&O tax as follows:

(a) **Service and other business activities.** The service and other business activities B&O tax applies to the following nonexclusive list of activities or sources of income:

(i) Tuition fees received by private schools. However, educational institutions, as defined above, may deduct amounts derived from tuition fees. RCW 82.04.4282.

(ii) Rental of conference facilities to various organizations or groups.

(iii) Rental by private schools of dormitories or other student lodging facilities which are not generally available to the public and where the student does not have an absolute right of control and occupancy. ~~((See WAC 458-20-118.))~~ However, educational institutions may deduct the income from charges for lodging made to students. These amounts are defined by law as being tuition. For additional information on

the rental of real estate and the license to use real estate, see WAC 458-20-118.

(iv) Amounts received by private schools for providing meals to students where the meals are provided exclusively for students, teachers, staff, and their guests. However, refer to the comments under retailing for the taxability of meals sold to guests of students. Income from providing meals to students by educational institutions is deductible.

(v) Amounts received from owners of ~~((coin-operated))~~ vending machines ~~((or amusement devices))~~ that operate after accepting payment, for allowing the placement of those machines on the premises of the school. ~~((Refer also to WAC 458-20-187.))~~ For additional information on sales through vending machines, see WAC 458-20-187.

(b) **Retailing.** Activities and sources of income subject to the retailing B&O tax include, but are not limited to, the following:

(i) Sales of tangible personal property or services classified as retail sales. This includes sales of books and supplies to students where these materials are not supplied as part of the tuition charge. Sales of academic transcripts are exempt from B&O tax. RCW 82.04.399.

(ii) Sales of meals to guests of students.

(iii) Sales of meals or prepared foods in facilities which are generally open to the public, including those sold to students. ~~((See also WAC 458-20-119.))~~ For additional information on sales by caterers and food service contractors, see WAC 458-20-119.

(iv) Amounts derived from charges made by an educational institution to its alumni or other members of the public for the use of any of the educational institution's athletic or fitness facilities, or charges for the recreational activities defined as retail sales under RCW 82.04.050.

(4) **Retail sales tax.** The retail sales tax applies to all retail sales including, but not limited to, those identified in subsection (3)(b) of this ~~((section))~~ rule, unless a specific statutory exemption applies.

(a) **Tangible personal property and retail services.** Educational institutions, school districts, student organizations, and private schools, including departments or institutions of the state of Washington, are required to collect the retail sales tax on sales of tangible personal property and retail services to consumers, even though such sales may be exempt from the retailing B&O tax. Retail sales tax exemptions are provided for sales of academic transcripts (RCW 82.08.02537) and certain food products (RCW 82.08.0293 and 82.08.0297~~((, and WAC 458-20-244))~~).

(b) **Interdepartmental charges.** Amounts derived from charges between departments or institutions of the state of Washington, or between departments of the same entity, constitute interdepartmental charges and are not subject to the retailing B&O tax or retail sales tax. ~~((See WAC 458-20-201 and 458-20-189.))~~ For additional information on interdepartmental charges, see WAC 458-20-201.

(c) **Sales through vending machines.** Persons selling ~~((merchandise))~~ through vending machines should refer to WAC 458-20-187.

(d) **Charges to alumni and members of the public.** Amounts derived from charges made by an educational institution to its alumni or other members of the public for the use

of any of the educational institution's athletic or fitness facilities, or charges for the recreational activities defined as retail sales under RCW 82.04.050.

(5) **Deferred sales or use tax.** Educational institutions, school districts, student organizations, and private schools are required to report the deferred sales or use tax upon the use of all tangible personal property purchased or acquired under conditions whereby the Washington retail sales tax has not been paid, unless a specific statutory exemption applies. If items are purchased for dual purposes (i.e., for both consumption and resale), a tax paid at source deduction may be claimed for the cost of the articles resold upon which retail sales tax was previously paid. ~~((See WAC 458-20-102.))~~ For additional information on reseller permits, see WAC 458-20-102. For additional information on use tax and the use of tangible personal property, see WAC 458-20-178.

(a) **Meals for students and faculty.** These organizations are the consumers of food or beverage products which are ingredients of meals that are furnished to students and faculty. However, certain food products are exempt from the retail sales and/or use tax. RCW 82.12.0293 and 82.12.0297 ~~((, and WAC 458-20-244)).~~

(b) **Exemptions.** Use tax exemptions are also provided for the following:

(i) Academic transcripts. RCW 82.12.0347.

(ii) Computers, computer components, computer accessories, ~~((or))~~ computer software, digital goods, or digital codes, irrevocably donated to any public or private nonprofit school or college in this state, as defined by chapter 84.36 RCW. For the purposes of this exemption, RCW 82.04.215 defines "computer" as an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. RCW 82.12.0284. This exemption is available to both the donor and the public or private nonprofit school or college receiving the donation.

(iii) Tangible personal property donated to a nonprofit charitable organization or state or local governmental entity including the subsequent use of the property by a person to whom the property is donated or bailed by the nonprofit charitable organization, or state or local governmental entity, if used to further the purpose of that organization. RCW 82.12.02595.

(iv) The donation of tangible personal property without intervening use to a nonprofit charitable organization, or the incorporation of tangible personal property without intervening use into real or personal property of or for a nonprofit charitable organization in the course of installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating the real or personal property for no charge. RCW 82.12.02595.

(v) Motor vehicles equipped with dual controls loaned to and exclusively used by a school in connection with the school's driver training program. This exemption is available to both the donor and the school receiving the donation. For the purposes of this exemption, RCW 82.12.0264 limits the term "school" to:

(A) The University of Washington, Washington State University, the regional universities, The Evergreen State College, and the state community colleges;

(B) Any public, private, or parochial school accredited by either the state board of education or by the University of Washington (the state accrediting station); or

(C) Any public vocational school meeting the standards, courses, and requirements established and prescribed or approved in accordance with the Community College Act of 1967.

(6) **Nursery schools, preschools, child care providers, privately operated kindergartens, and persons monitoring home child care facilities.** Income received by nursery schools, preschools, child care providers, and privately operated kindergartens for the care or education of children who are under eight years of age and not enrolled in or above the first grade is exempt from the B&O tax. RCW 82.04.4282. Such persons are, however, subject to B&O tax upon the gross proceeds derived from providing child care to children who are eight years of age or older or enrolled in or above the first grade.

Persons providing child care for periods of less than twenty-four hours are subject to tax under the child care B&O tax classification. RCW 82.04.2905. The service and other business activities B&O tax classification applies to child care services provided for periods in excess of twenty-four hours. Nursery schools, preschools, and child care providers receiving both taxable and exempt income must properly segregate such income in their books of account.

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

(b) Persons who monitor home child care facilities under one or more federal nutrition programs are required to register with the department and are taxable on their gross income under the service and other business activities classification of the B&O tax. These monitors contract with, and are accountable to the office of superintendent of public instruction which receives funds from the United States Department of Agriculture and disburses funds to each monitor. Commonly, a portion of the funds received by the monitor is required by law to be passed directly to the home child care facilities for the provision of qualifying meals. That portion of the funds received by the monitor may be taken as a "reimbursement" deduction on the monitor's excise tax return, so that the monitor is subject to B&O tax only on the portion of funds retained for the rendering of services.

(7) **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.))~~

(a) **Example 1.** MN University is an educational institution created by the state of Washington. MN University operates a book store at which it sells text books, school supplies, and apparel to students and nonstudents. As an institution of the state of Washington, MN University is exempt from the B&O tax with respect to all sales, irrespective that sales are made to nonstudents. However, MN is required to collect and remit retail sales tax on its gross proceeds of sales made through its book store.

(b) **Example 2.** DMG College is a degree-granting institution accredited by an accrediting association recognized by the United States Secretary of Education. DMG College is an educational institution operated by a church. DMG makes charges to its students for tuition, meals, and lodging. It also receives income for occasionally providing lodging and meals to guests of its students during the year. DMG also rents its conference and dormitory facilities to various groups during the summer, providing cafeteria services when needed. The income from tuition, meals, and lodging received from the students is exempt ~~((of))~~ from B&O tax and retail sales tax because this entity ((comes within)) meets the definition of an educational institution. However, DMG must report the retailing B&O tax and collect and remit retail sales tax upon the gross proceeds derived from the sales of meals and prepared foods to the conference attendees and guests. The income derived from the rental of the conference and dormitory facilities to various groups and student guests is subject to the service and other business activities B&O tax. The college is not considered as holding itself out for the sale of lodging to the general public.

(c) **Example 3.** JB College is an educational institution which is not a department or institution of the state of Washington. JB College has converted five housing units from student use ~~((for))~~ to use by nonstudents. Guests of the administration use these units for stays of two or three days, and are charged a specific amount per night. The college provides linen, towels, etc., to the users. These units are always rented for periods under thirty days. JB College must report this rental income under the retailing B&O tax and collect and remit retail sales tax. This income is not derived from the occasional rental of student lodging facilities, but is derived from the rental of accommodations specifically maintained for public use.

(d) **Example 4.** Jane Doe operates a private preschool and kindergarten, providing care and elementary education for children. She also provides after hours child care. Jane Doe may claim a deduction for the income received for the care and education of children under eight years old and not enrolled in or above the first grade, provided this income is properly segregated in her books of account. The income attributable to the care of children at or above the first grade level ~~((s))~~ (i.e., eight years old or enrolled in or above the first grade), is subject to the child care B&O tax classification. Jane Doe may be able to reduce or eliminate any child care B&O tax liability if she qualifies for the small business B&O tax credit. RCW 82.04.4451 and WAC 458-20-104.

388-06A WAC. This change needs to be reflected in the division of licensed resources (DLR) WAC. The following DLR WAC will replace references to chapter 388-06 WAC with chapter 388-06A WAC: WAC 388-145-1325(2) What is required to apply for a group care facility license?, 388-145-1400(1) Can employees, volunteers and subcontractors be disqualified from having access to the children in my facility?, 388-147-1325(2) What is required to apply for a child placing agency license?, 388-147-1420(1) Can employees, volunteers and subcontractors be disqualified from having access to the children in my agency?, and 388-148-1635(1) Can people living in my home be disqualified from having access to the children in my care?

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 1115 Washington, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, AND RECEIVED BY February 22, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to update the DLR WAC with the current background check chapter 388-06A WAC. There are no anticipated effects to this change.

Reasons Supporting Proposal: The DLR WAC need to cite the correct background check WAC which was changed on February 15, 2015, to chapter 388-06A WAC.

Statutory Authority for Adoption: RCW 74.08.090, 74.15.030(2).

Statute Being Implemented: RCW 74.15.030(2).

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Drafting [Implementation], and Enforcement: Kristina Wright, OB2, Olympia, Washington, (360) 902-8349.

December 11, 2015
Katherine I. Vasquez
Rules Coordinator

WSR 16-01-084
EXPEDITED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed December 15, 2015, 9:27 a.m.]

Title of Rule and Other Identifying Information: Chapter 388-06 WAC, Background check requirements for children's administration, was changed on February 15, 2015, to chapter

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

WAC 388-145-1325 What is required to apply for a group care facility license? (1) You, the person responsible for the license, must submit a completed application which is available from the division of licensed resources, children's administration.

(2) You must submit the following for your executive director, agency staff, consultants, interns, volunteers, and anyone who may have unsupervised access to children per chapter 388-06A WAC:

(a) Completed background authorization form; and
 (b) FBI fingerprint check if the individual over eighteen years of age has lived out of state during any portion of the previous three years.

(3) You must ensure that no employee, volunteer or subcontractor has unsupervised access to children until a full and satisfactory background check is completed and returned to you, qualifying the individual for unsupervised access. If your employee requires FBI fingerprints, they are allowed to work while awaiting fingerprint results, under the provisions of WAC 388-06-0500 through 388-06-0540.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

WAC 388-145-1400 Can employees, volunteers and subcontractors be disqualified from having access to the children in my facility? (1) The department must disqualify employees, volunteers or subcontractors if they do not meet the regulations of chapter 388-145 WAC, or cannot have unsupervised access to children because of their background check as outlined in chapter 388-06A WAC.

(2) We will notify you if a person in your facility is disqualified from having unsupervised access to children. This could also lead to denial, suspension or revocation of your license.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

WAC 388-147-1325 What is required to apply for a child placing agency license? (1) You must submit a completed application which is available from the division of licensed resources; and

(2) You, your executive director, agency staff, consultants, interns, volunteers, and anyone who may have unsupervised access to children per chapter 388-06A WAC are required to:

(a) Submit a completed background authorization form;
 (b) Complete an FBI fingerprint check if the individual over eighteen years of age has lived out of state during any portion of the previous three years; and

(c) Ensure that no employee, volunteer or subcontractor has unsupervised access to children until a full and satisfactory background check is completed and documentation qualifying the individual for unsupervised access, has been returned to you. Your employees are allowed to work while awaiting fingerprint results, under the provisions of WAC 388-06-0500 through 388-06-0540.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

WAC 388-147-1420 Can employees, volunteers and subcontractors be disqualified from having access to the children in my agency? (1) The department must disqualify employees, volunteers or subcontractors if they do not meet

the regulations of chapter 388-147 WAC or cannot have unsupervised access to children because of their background check as outlined in chapter 388-06A WAC.

(2) We will notify you if a person in your agency is disqualified from having unsupervised access to children. This could also lead to denial, suspension or revocation of your license.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

WAC 388-148-1635 Can people living in my home be disqualified from having access to the children in my care? (1) The department must disqualify people living in your home if they do not meet the requirements of chapter 388-148 WAC, or cannot have unsupervised access to children because of their background check (chapter 388-06A WAC).

(2) We will notify you if a person in your home is disqualified from having unsupervised access to children. This could also lead to denial, suspension or revocation of your license.

WSR 16-01-097

EXPEDITED RULES

WESTERN WASHINGTON UNIVERSITY

[Filed December 16, 2015, 9:23 a.m.]

Title of Rule and Other Identifying Information: WAC 516-108-050 Brief adjudicative procedures.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jennifer Sloan, Rules Coordinator, Western Washington University, 516 High Street, Mailstop 9015, Bellingham, WA 98225, AND RECEIVED BY February 22, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: There is an error in subsection (3). The original version reads, "Student conduct proceedings. The procedural rules in chapter 516-22 WAC apply to these proceedings." The section should read "Student conduct proceedings. The procedural rules in chapter 516-21 WAC apply to these proceedings." There is a scrivener's error that requires correcting chapter 516-22 WAC to chapter 516-21 WAC. The anticipated effect is correcting an error and directing readers to the correct rule.

Reasons Supporting Proposal: Correcting scrivener's error.

Statutory Authority for Adoption: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688 (Title IX Education Amendments of 1972).

Statute Being Implemented: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688 (Title IX Education Amendments of 1972).

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

Name of Proponent: Western Washington University, public.

Name of Agency Personnel Responsible for Drafting: Jennifer Sloan, Rules Coordinator, 516 High Street, OM 331, Mailstop 9015, Bellingham, WA 98225, (360) 650-3117; Implementation: Michael Sledge, Assistant Dean of Students, 516 High Street, VU 506A, Mailstop 9105, Bellingham, WA 98225, (360) 650-2484; and Enforcement: Ted Pratt, Dean of Students, 516 High Street, VU 544, Mailstop 9105, Bellingham, WA 98225, (360) 650-3450.

December 16, 2015
Jennifer L. Sloan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-10-042, filed 4/27/90, effective 5/1/90)

WAC 516-108-050 Brief adjudicative procedures.

This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are hereby adopted. Brief adjudicative procedures shall be used in all matters related to:

- (1) Residency determinations made pursuant to RCW 28B.15.013, conducted by the admissions office;
- (2) Challenges to contents of education records;
- (3) Student conduct proceedings. The procedural rules in chapter ((516-22)) 516-21 WAC apply to these proceedings;
- (4) Parking violations. The procedural rules in chapter 516-12 WAC apply to these proceedings;
- (5) Outstanding debts owed by students or employees;
- (6) Loss of eligibility for participation in institution-sponsored athletic events, pursuant to chapter 516-400 WAC.

WSR 16-01-141
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed December 21, 2015, 9:33 a.m.]

Title of Rule and Other Identifying Information: WAC 458-07-010 Valuation and revaluation of real property—Introduction, 458-07-015 Revaluation of real property((—Annual counties)), and 458-07-020 Revaluation of real property—Multiyear counties (repeal).

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE

RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, AND RECEIVED BY February 22, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To incorporate legislative changes from SSB 5275, 2015 regular session (sections 102 through 104, chapter 86, Laws of 2015). Further, language contained in repealed WAC 458-07-020 was transferred to WAC 458-07-015 at new subsection (5).

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

Reasons Supporting Proposal: Updates WAC 458-07-010 and 458-07-015 to incorporate legislative changes from SSB 5275, 2015 regular session (chapter 86, Laws of 2015); and repeals WAC 458-07-020 due to the same legislative changes.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.52.0502, and 84.55.010.

Statute Being Implemented: RCW 84.41.030, 84.41.041, and 84.48.034.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation and Enforcement: Marcus Glasper, 1025 Union Avenue S.E., Suite #500, Olympia, WA, (360) 534-1615.

December 21, 2015
Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-01-043, filed 12/7/99, effective 1/7/00)

WAC 458-07-010 Valuation and revaluation of real property—Introduction. The Washington state Constitution requires that all taxes be uniform upon the same class of property within the territorial limits of the authority levying the tax. In order to comply with this constitutional mandate and ensure that all taxes are uniform, all real property must be valued in a manner consistent with this principle of uniformity. Also, to comply with statutory and case law, the county assessor must value all taxable real property in the county on a regular, systematic, and continuous basis. ((This valuation may be accomplished on an annual basis for all real property in the county, or it may be accomplished on a multiyear basis with all the real property in the county revalued within a time period of not more than four years. Whether on an annual basis or a multiyear basis,)) All taxable real property within a county must be valued or revalued annually, and all taxable real property within a county must be physically inspected at least once every six years. The assessor must adhere to a revaluation plan that will ensure equality and uniformity in

the valuation of real property, and must use proper appraisal methods. The administrative rules in this chapter describe and explain the processes to be used by the county assessor in valuing and revaluing real property for purposes of taxation.

AMENDATORY SECTION (Amending WSR 00-01-043, filed 12/7/99, effective 1/7/00)

WAC 458-07-015 Revaluation of real property(~~—Annual counties~~)). (1) **Appropriate statistical data defined.** (~~In any county where all real property is revalued each year.~~) The assessor must revalue the property at its current true and fair value using appropriate statistical data. For purposes of this chapter, "appropriate statistical data" means the data required to accurately adjust real property values and includes, but is not limited to, data reflecting costs of new construction and real property market trends.

(2) **Comparable sales data.** In gathering appropriate statistical data and determining real property market trends, the assessor must consider current sales data. "Current sales data" means sales of real property that occurred within the past five years of the date of appraisal and may include sales that occur in the assessment year. To the extent feasible, and in accordance with generally accepted appraisal practices, the assessor shall compile the statistical data into categories of comparable properties. Comparability is most often determined by similar use and location and may be based upon the following use classifications:

- (a) Single family residential;
- (b) Residential with from two to four units;
- (c) Residential with more than four units;
- (d) Residential hotels, condominiums;
- (e) Hotels and motels;
- (f) Vacation homes and cabins;
- (g) Retail trade;
- (h) Warehousing;
- (i) Office and professional service;
- (j) Commercial other than listed;
- (k) Manufacturing;
- (l) Agricultural; and
- (m) Other classifications as necessary.

(3) **Appraisal processes.** Appropriate statistical data shall be applied to revalue real property to current true and fair value using one or more of the following processes:

- (a) Multiple or linear regression;
- (b) Sales ratios;
- (c) Physical inspection; or
- (d) Any other appropriate statistical method that is recognized and accepted with respect to the appraisal of real property for purposes of taxation.

(4) **Physical inspection cycles.**

(a) For purposes of this chapter, "physical inspection" means, at a minimum, an exterior observation of the property to determine whether there have been any changes in the physical characteristics that affect value. The property improvement record must be appropriately documented in accordance with the findings of the physical inspection. (~~In a county where all real property is revalued at its current true and fair value each year, using appropriate statistical data.~~)

The assessor must physically inspect all real property at least once within a six-year time period.

(b) Physical inspection of all the property in the county shall be accomplished on a proportional basis in cycle, with approximately equal portions of taxable property of the county inspected each year. Physical inspections of properties outside of the areas scheduled for physical inspection under the plan filed with the department (see WAC 458-07-025) may be conducted for purposes of validating sales, reconciling inconsistent valuation results, calibrating statistical models, valuing unique or nonhomogeneous properties, administering appeals or taxpayer reviews, documenting digital images, or for other purposes as necessary to maintain accurate property characteristics and uniform assessment practices. All properties shall be placed on the assessment rolls at current true and fair value as of January 1st of the assessment year.

(c) In any year, when the area of the county being physically inspected is not completed in that year, the portion remaining must be completed before beginning the physical inspection of another area in the succeeding year. All areas of the county must be physically inspected within the cycle established in the revaluation plan filed with the department.

(5) **Revaluation outside of approved cycle.** In certain circumstances the assessor is authorized to revalue real property, using appraisal judgment, outside of the approved revaluation cycle. These revaluations must not be arbitrary or capricious, nor violate the equal protection clauses of the federal and state Constitutions, nor the uniformity clause of the state Constitution. The assessor may disregard the revaluation cycle and change a property valuation, as appropriate, in the following situations:

(a) If requested by a property owner, when a notice of decision pertaining to the value of real property is received under RCW 36.70B.130 (Notice of decision—Distribution: local project review), chapter 35.22 RCW (First class cities), chapter 35.63 RCW (Planning commissions), chapter 35A.63 RCW (Planning and zoning in code cities), or chapter 36.70 RCW (Planning Enabling Act);

(b) When the owner or person responsible for payment of taxes on any real property petitions the assessor for a reduction in the assessed value in accordance with RCW 84.40.039, within three years of adoption of a restriction by a government entity;

(c) When there has been a "definitive change of land use designation" by an authorized land use authority, and the revaluation is in accordance with RCW 84.48.065;

(d) When a bona fide mistake has been made by the assessor in a prior valuation made within the current valuation cycle. The change in property valuation is not retroactive to the prior year;

(e) When property has been destroyed, in whole or in part, and is entitled to a reduction in value in accordance with chapter 84.70 RCW; or

(f) When property has been subdivided or merged.

(6) **Change of value notice.** (~~In a county that revalues all real property each year.~~) Revaluation notices must be mailed or transmitted electronically by the assessor to the taxpayer when there is any change in the assessed value of

real property, not later than thirty days after an appraisal or adjustment in value.

December 21, 2015

Kevin Dixon

Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 458-07-020 Revaluation of real property—Multi-year counties.

AMENDATORY SECTION (Amending WSR 08-16-077, filed 7/31/08, effective 8/31/08)

WAC 458-18-020 Deferral of special assessments and/or property taxes—Qualifications for deferral. A person may defer payment of special assessments and/or real property taxes on up to eighty percent of the amount of his equity value in said property if the following conditions are met:

(1) The claimant must have owned, at the time of filing, the residence on which the special assessment and/or real property taxes have been imposed. For purposes of this subsection a residence owned by a marital community, a state registered domestic partnership, or cotenants shall be deemed to be owned by each spouse, each domestic partner, and each cotenant. A claimant who has only a share ownership in cooperative housing, a life estate, a lease for life or a revocable trust does not satisfy the ownership requirement.

(2) If the amount deferred is to exceed one hundred percent of the claimant's equity value in the land or lot only, the claimant must have and keep in force fire and casualty insurance in sufficient amount to protect the interest of the state of Washington and shall designate the state as a loss payee upon said policy. In no case shall the deferred amount exceed the amount of the insured value of the improvement plus the land value.

(3) In the case of special assessment deferral, the claimant must have opted for payment of such special assessments on the installment method if such method was available.

(4) The claimant must meet all requirements for an exemption for the residence under RCW 84.36.381, other than the income requirements, and to the extent eligible, must have first applied for the exemptions under RCW 84.36.381 through 84.36.389 prior to filing a declaration to defer.

(5) The claimant must have a combined disposable income, as defined in RCW 84.36.383, ~~((of forty thousand dollars or less))~~ at or below the statutory limit amount provided in RCW 84.38.030.

WSR 16-01-142
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed December 21, 2015, 10:15 a.m.]

Title of Rule and Other Identifying Information: WAC 458-18-020 Deferral of special assessments and/or property taxes—Qualifications for deferral (Rule 18-020), describes the deferral of payments of special assessments and/or real property taxes on up to eighty percent of the amount of an eligible individual's equity value in certain property if requirements are met.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, AND RECEIVED BY February 22, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To incorporate legislation enacted in the 3rd sp. sess. of 2015, specifically: SSB 5186 (section 3, chapter 30, Laws of 2015).

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

Reasons Supporting Proposal: Updates Rule 18-020 to incorporate 2015 legislation: SSB 5186, (section 3, chapter 30, Laws of 2015).

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

Statute Being Implemented: RCW 84.38.030.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation and Enforcement: Marcus Glasper, 1025 Union Avenue S.E., Suite #500, Olympia, WA, (360) 534-1615.

WSR 16-01-143
EXPEDITED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed December 21, 2015, 10:34 a.m.]

Title of Rule and Other Identifying Information: WAC 388-426-0005 How do I make a complaint to the department?

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 1115 Washington, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, AND RECEIVED BY February 22, 2015 [2016].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed text updates the WAC with the correct contact information for the United States Department of Agriculture (USDA) in order to file a civil rights complaint or receive more information. The proposed changes update the title of the USDA director, the phone number for USDA and propose changing "Food Stamp Act" to "Food and Nutrition Act of 2008."

Reasons Supporting Proposal: The proposed changes are needed to comply with USDA, Food and Nutrition Service supplemental nutrition assistance program civil rights management evaluation review and compliance audit corrective action.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.510, 74.04.515, 74.08.090.

Statute Being Implemented: Public Law No. 110-234, § 4001(a).

Rule is necessary because of federal law, Public Law No. 110-234, § 4001(a).

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ezra Paskus, Capitol View 1, 712 Pear Street S.E., Olympia, WA 45470 [98501], (360) 725-4611.

December 18, 2015
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-10-057, filed 5/1/06, effective 6/1/06)

WAC 388-426-0005 How do I make a complaint to the department? If you do not agree with a decision we made or an action we took, you can make a complaint. We address your concerns based on the nature of your complaint.

Civil Rights:

(1) We will not discriminate based on your race, color, national origin, sex, age, disability, religion, or political beliefs. This agrees with:

(a) Federal law and policy of the United States Department of Agriculture (USDA) and the United States Department of Health and Human Services (HHS) that ban discrimination based on race, color, national origin, sex, age or disability; and

(b) The Food ~~(Stamp)~~ and Nutrition Act of 2008 and USDA policy, which bans discrimination on religion or political beliefs.

(2) To file a complaint that we discriminated based on your race, color, national origin, sex, age, disability, religion, or political beliefs, contact USDA or HHS:

Write:	
USDA	HHS
Director, Office of <u>the Assistant Secretary for Civil Rights</u>	Director, Office for Civil Rights
1400 Independence Avenue, S.W.	Room 506-F
Washington, D.C. 20250-9410	200 Independence Avenue, S.W.
	Washington, D.C. 20201
Or call:	
USDA	HHS
((800) 795-3272)) <u>(866) 632-9992</u> (voice); or	(202) 619-0403 (voice); or
((202) 720-6382)) <u>(800) 877-8339</u> (TTY).	(202) 619-3257 (TTY).
USDA and HHS are equal opportunity providers and employers.	

Complaints about our decisions or actions:

(3) If you do not agree with a decision we made or an action we took, you may use our complaint process:

(a) **Supervisor review:** You may give a supervisor a written complaint. We will:

(i) Make a decision about your written complaint within ten days of the date we get it; and

(ii) Send you a letter telling you what we decided and that you may have another review by the local office administrator if you ask for it.

(b) **Administrator review:** If you do not accept the decision you get from a supervisor, you may give the local office administrator a written complaint. We will:

(i) Make a decision about your written complaint within ten days of the date we get it; and

(ii) Send you a letter telling you what we decided.

(4) When we send you a letter with the administrator's decision, this ends the complaint process.

(5) If you file a written complaint, you may still ask for a fair hearing under chapter 388-02 WAC.

(6) You may always speak with your worker's supervisor or have them review your worker's decision even if you do not file a formal complaint.

WSR 16-01-162
EXPEDITED RULES

OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2015-18—Filed December 22, 2015, 9:24 a.m.]

Title of Rule and Other Identifying Information: Essential health benefits (EHB): Amendment to comply with recent federal guidance regarding coverage for obesity.

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 Bianca Stoner, Office of Insurance Commissioner (OIC), P.O. Box 40260, Olympia, WA 98504-0260, e-mail rulescoordinator@oic.wa.gov, AND RECEIVED BY February 22, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In late October, the United States Department of Health and Human Services, United States Department of Labor and United States Department of the Treasury jointly issued Affordable Care Act Frequently Asked Questions #29, which requires applicable health plans to cover "intensive, multicomponent behavioral interventions for weight management" for some adults and for kids ages six and up.

This conflicts with a sentence in the OIC's recently adopted EHB rules, so the agency needs to make minor revisions to bring the rules into alignment with the new guidance.

Reasons Supporting Proposal: This change is required in order to bring the OIC's EHB rule into alignment with recent federal guidance.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.715.

Statute Being Implemented: RCW 48.43.715.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Bianca Stoner, P.O. Box 40260, Olympia, WA 98504-0260, (360) 725-7041; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: AnnaLisa Gellerman, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

December 22, 2015
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 15-20-042, filed 9/29/15, effective 9/29/15)

WAC 284-43-8781 Essential health benefit categories. (1) A health benefit plan must cover "ambulatory patient services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as "ambulatory patient services" those medically necessary services delivered to enrollees in settings other than a hospital or skilled nursing facility, which are generally recognized and accepted for diagnostic or therapeutic purposes to treat illness or injury.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as ambulatory patient services:

- (i) Home and outpatient dialysis services;
- (ii) Hospice and home health care, including skilled nursing care as an alternative to hospitalization consistent with WAC 284-44-500, 284-46-500, and 284-96-500;
- (iii) Provider office visits and treatments, and associated supplies and services, including therapeutic injections and related supplies;
- (iv) Urgent care center visits, including provider services, facility costs and supplies;
- (v) Ambulatory surgical center professional services, including anesthesiology, professional surgical services, surgical supplies and facility costs;
- (vi) Diagnostic procedures including colonoscopies, cardiovascular testing, pulmonary function studies and neurology/neuromuscular procedures; and
- (vii) Provider contraceptive services and supplies including, but not limited to, vasectomy, tubal ligation and insertion or extraction of FDA-approved contraceptive devices.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the ambulatory category:

- (i) Infertility treatment and reversal of voluntary sterilization;
- (ii) Routine foot care for those that are not diabetic;
- (iii) Coverage of dental services following injury to sound natural teeth. However, health plans must cover oral surgery related to trauma and injury. Therefore, a plan may not exclude services or appliances necessary for or resulting from medical treatment if the service is either emergency in nature or requires extraction of teeth to prepare the jaw for radiation treatments of neoplastic disease;
- (iv) Private duty nursing for hospice care and home health care, to the extent consistent with state and federal law;
- (v) Adult dental care and orthodontia delivered by a dentist or in a dentist's office;
- (vi) Nonskilled care and help with activities of daily living;
- (vii) Hearing care, routine hearing examinations, programs or treatment for hearing loss including, but not limited to, externally worn or surgically implanted hearing aids, and the surgery and services necessary to implant them. However, plans must cover cochlear implants and hearing screen-

ing tests that are required under the preventive services category, unless coverage for these services and devices are required as part of and classified to another essential health benefits category; and

(viii) Obesity or weight reduction or control other than covered nutritional counseling. However, for children ages six and over who qualify as obese, and for adult patients who have a body mass index of 30 kilograms/meter squared or higher, plans must cover intensive, multicomponent weight management behavioral interventions. Health plans must cover such services without cost-sharing. These services include, but are not limited to:

(A) Group and individual sessions of high intensity; and

(B) Behavioral management activities, such as weight-loss goals.

(c) The base-benchmark plan's visit limitations on services in the ambulatory patient services category include:

(i) Ten spinal manipulation services per calendar year without referral;

(ii) Twelve acupuncture services per calendar year without referral;

(iii) Fourteen days respite care on either an inpatient or outpatient basis for hospice patients, per lifetime; and

(iv) One hundred thirty visits per calendar year for home health care.

(d) State benefit requirements classified to the ambulatory patient services category are:

(i) Chiropractic care (RCW 48.44.310);

(ii) TMJ disorder treatment (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iii) Diabetes-related care and supplies (RCW 48.20.391, 48.21.143, 48.44.315, and 48.46.272).

(2) A health benefit plan must cover "emergency medical services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as emergency medical services the care and services related to an emergency medical condition.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as emergency services:

(i) Ambulance transportation to an emergency room and treatment provided as part of the ambulance service;

(ii) Emergency room and department based services, supplies and treatment, including professional charges, facility costs, and outpatient charges for patient observation and medical screening exams required to stabilize a patient experiencing an emergency medical condition;

(iii) Prescription medications associated with an emergency medical condition, including those purchased in a foreign country.

(b) The base-benchmark plan does not specifically exclude services classified to the emergency medical services category.

(c) The base-benchmark plan does not establish visit limitations on services in the emergency medical services category.

(d) State benefit requirements classified to the emergency medical services category include services necessary to screen and stabilize a covered person (RCW 48.43.093).

(3) A health benefit plan must cover "hospitalization" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as hospitalization services the medically necessary services delivered in a hospital or skilled nursing setting including, but not limited to, professional services, facility fees, supplies, laboratory, therapy or other types of services delivered on an inpatient basis.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as hospitalization services:

(i) Hospital visits, facility costs, provider and staff services and treatments delivered during an inpatient hospital stay, including inpatient pharmacy services;

(ii) Skilled nursing facility costs, including professional services and pharmacy services and prescriptions filled in the skilled nursing facility pharmacy;

(iii) Transplant services, supplies and treatment for donors and recipients, including the transplant or donor facility fees performed in either a hospital setting or outpatient setting;

(iv) Dialysis services delivered in a hospital;

(v) Artificial organ transplants based on an issuer's medical guidelines and manufacturer recommendations; and

(vi) Respite care services delivered on an inpatient basis in a hospital or skilled nursing facility.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the hospitalization category:

(i) Hospitalization where mental illness is the primary diagnosis to the extent that it is classified under the mental health and substance use disorder benefits category;

(ii) Cosmetic or reconstructive services and supplies except in the treatment of a congenital anomaly, to restore a physical bodily function lost as a result of injury or illness, or related to breast reconstruction following a medically necessary mastectomy;

(iii) The following types of surgery:

(A) Bariatric surgery and supplies;

(B) Orthognathic surgery and supplies unless due to temporomandibular joint disorder or injury, sleep apnea or congenital anomaly.

(iv) Reversal of sterilizations; and

(v) Surgical procedures to correct refractive errors, astigmatism or reversals or revisions of surgical procedures which alter the refractive character of the eye.

(c) The base-benchmark plan establishes specific limitations on services classified to the hospitalization category that conflict with state or federal law as of January 1, 2017, and should not be included in essential health benefit plans:

(i) The base-benchmark plan allows a waiting period for transplant services; and

(ii) The base-benchmark plan excludes coverage for sexual reassignment treatment, surgery, or counseling services. Health plans must cover such services consistent with 42 U.S.C. 18116, Section 1557, RCW 48.30.300 and 49.60.040.

(d) The base-benchmark plan's visit limitations on services in the hospitalization category include:

(i) Sixty inpatient days per calendar year for illness, injury or physical disability in a skilled nursing facility;

(ii) Thirty inpatient rehabilitation service days per calendar year. For purposes of determining actuarial value, this benefit may be classified to the hospitalization category or to the rehabilitation services category, but not to both.

(e) State benefit requirements classified to the hospitalization category are:

(i) General anesthesia and facility charges for dental procedures for those who would be at risk if the service were performed elsewhere and without anesthesia (RCW 48.43.185);

(ii) Reconstructive breast surgery resulting from a mastectomy that resulted from disease, illness or injury (RCW 48.20.395, 48.21.230, 48.44.330, and 48.46.280);

(iii) Coverage for treatment of temporomandibular joint disorder (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iv) Coverage at a long-term care facility following hospitalization (RCW 48.43.125).

(4) A health benefit plan must cover "maternity and newborn services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as maternity and newborn services the medically necessary care and services delivered to women during pregnancy and in relation to delivery and recovery from delivery and to newborn children.

(a) A health benefit plan must cover the following services which are specifically covered by the base-benchmark plan and classify them as maternity and newborn services:

(i) In utero treatment for the fetus;

(ii) Vaginal or cesarean childbirth delivery in a hospital or birthing center, including facility fees;

(iii) Nursery services and supplies for newborns, including newly adopted children;

(iv) Infertility diagnosis;

(v) Prenatal and postnatal care and services, including screening;

(vi) Complications of pregnancy such as, but not limited to, fetal distress, gestational diabetes, and toxemia; and

(vii) Termination of pregnancy. Termination of pregnancy may be included in an issuer's essential health benefits package, but nothing in this section requires an issuer to offer the benefit, consistent with 42 U.S.C. 18023 (b)(a)(A)(i) and 45 C.F.R. 156.115.

(b) A health benefit plan may, but is not required to, include genetic testing of the child's father as part of the EHB-benchmark package. The base-benchmark plan specifically excludes this service. If an issuer covers this benefit, the issuer may not include this benefit in establishing actuarial value for the maternity and newborn category.

(c) The base-benchmark plan's limitations on services in the maternity and newborn services category include coverage of home birth by a midwife or nurse midwife only for low risk pregnancy.

(d) State benefit requirements classified to the maternity and newborn services category include:

(i) Maternity services that include diagnosis of pregnancy, prenatal care, delivery, care for complications of preg-

nancy, physician services, and hospital services (RCW 48.43.041);

(ii) Newborn coverage that is not less than the postnatal coverage for the mother, for no less than three weeks (RCW 48.43.115); and

(iii) Prenatal diagnosis of congenital disorders by screening/diagnostic procedures if medically necessary (RCW 48.20.430, 48.21.244, 48.44.344, and 48.46.375).

(5) A health benefit plan must cover "mental health and substance use disorder services, including behavioral health treatment" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as mental health and substance use disorder services, including behavioral health treatment, the medically necessary care, treatment and services for mental health conditions and substance use disorders categorized in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, including behavioral health treatment for those conditions.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as mental health and substance use disorder services, including behavioral health treatment:

(i) Inpatient, residential, and outpatient mental health and substance use disorder treatment, including diagnosis, partial hospital programs or inpatient services;

(ii) Chemical dependency detoxification;

(iii) Behavioral treatment for a DSM category diagnosis;

(iv) Services provided by a licensed behavioral health provider for a covered diagnosis in a skilled nursing facility;

(v) Prescription medication including medications prescribed during an inpatient and residential course of treatment;

(vi) Acupuncture treatment visits without application of the visit limitation requirements, when provided for chemical dependency.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer may not include these benefits in establishing actuarial value for the category of mental health and substance use disorder services including behavioral health treatment:

(i) Counseling in the absence of illness, other than family counseling when the patient is a child or adolescent with a covered diagnosis and the family counseling is part of the treatment for mental health services;

(ii) Mental health treatment for diagnostic codes 302 through 302.9 in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, or for "V code" diagnoses except for medically necessary services for parent-child relational problems for children five years of age or younger, neglect or abuse of a child for children five years of age or younger, bereavement for children five years of age or younger, and gender dysphoria consistent with 42 U.S.C. 18116, Section 1557, RCW 48.30.300 and 49.60.040, unless this exclusion is preempted by federal law; and

(iii) Court-ordered mental health treatment which is not medically necessary.

(c) The base-benchmark plan establishes specific limitations on services classified to the mental health and substance abuse disorder services category that conflict with state or federal law as of January 1, 2017. The state EHB-benchmark plan requirements for these services are: The base-benchmark plan does not provide coverage for mental health services and substance use disorder treatment delivered in a home health setting in parity with medical surgical benefits consistent with state and federal law. Health plans must cover mental health services and substance use disorder treatment that is delivered in parity with medical surgical benefits, consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include court-ordered treatment only when medically necessary.

(e) State benefit requirements classified to this category include:

(i) Mental health services (RCW 48.20.580, 48.21.241, 48.44.341, and 48.46.285);

(ii) Chemical dependency detoxification services (RCW 48.21.180, 48.44.240, 48.44.245, 48.46.350, and 48.46.355); and

(iii) Services delivered pursuant to involuntary commitment proceedings (RCW 48.21.242, 48.44.342, and 48.46.-292).

(f) The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) (MHPAEA) applies to a health benefit plan subject to this section. Coverage of mental health and substance use disorder services, along with any scope and duration limits imposed on the benefits, must comply with the MHPAEA, and all rules, regulations and guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26) including where state law is silent, or where federal law preempts state law.

(6) A health benefit plan must cover "prescription drug services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as prescription drug services medically necessary prescribed drugs, medication and drug therapies.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as prescription drug services:

(i) Drugs and medications both generic and brand name, including self-administrable prescription medications, consistent with the requirements of (b) through (e) of this subsection;

(ii) Prescribed medical supplies, including diabetic supplies that are not otherwise covered as durable medical equipment under the rehabilitative and habilitative services category, including test strips, glucagon emergency kits, insulin and insulin syringes;

(iii) All FDA-approved contraceptive methods, and prescription-based sterilization procedures for women with reproductive capacity;

(iv) Certain preventive medications including, but not limited to, aspirin, fluoride, and iron, and medications for tobacco use cessation, according to, and as recommended by,

the United States Preventive Services Task Force, when obtained with a prescription order; and

(v) Medical foods to treat inborn errors of metabolism in accordance with RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services for the prescription drug services category. If an issuer includes these services, the issuer may not include the following benefits in establishing actuarial value for the prescription drug services category:

(i) Insulin pumps and their supplies, which are classified to and covered under the rehabilitation and habilitation services category; and

(ii) Weight loss drugs.

(c) The base-benchmark plan's visit limitations on services in the prescription drug services category include:

(i) Prescriptions for self-administrable injectable medication are limited to thirty day supplies at a time, other than insulin, which may be offered with more than a thirty day supply. This limitation is a floor, and an issuer may permit supplies greater than thirty days as part of its health benefit plan;

(ii) Teaching doses of self-administrable injectable medications are limited to three doses per medication per lifetime.

(d) State benefit requirements classified to the prescription drug services category include:

(i) Medical foods to treat inborn errors of metabolism (RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176);

(ii) Diabetes supplies ordered by the physician (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143). Inclusion of this benefit requirement does not bar issuer variation in diabetic supply manufacturers under its drug formulary;

(iii) Mental health prescription drugs to the extent not covered under the hospitalization or skilled nursing facility services, or mental health and substance use disorders categories (RCW 48.44.341, 48.46.291, 48.20.580, and 48.21.241);

(e) An issuer's formulary is part of the prescription drug services category. The formulary filed with the commissioner must be substantially equal to the base-benchmark plan formulary, both as to U.S. Pharmacopoeia therapeutic category and classes covered and number of drugs in each class. If the base-benchmark plan formulary does not cover at least one drug in a category or class, an issuer must include at least one drug in the uncovered category or class.

(i) An issuer must file its formulary quarterly, following the filing instructions defined by the insurance commissioner in WAC 284-44A-040, 284-46A-050, and 284-58-025.

(ii) An issuer's formulary does not have to be substantially equal to the base-benchmark plan formulary in terms of formulary placement.

(7) A health benefit plan must cover "rehabilitative and habilitative services" in a manner substantially equal to the base-benchmark plan.

(a) For purposes of determining a plan's actuarial value, an issuer must classify as rehabilitative services the medically necessary services that help a person keep, restore or

improve skills and function for daily living that have been lost or impaired because a person was sick, hurt or disabled.

(b) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as rehabilitative services:

- (i) Cochlear implants;
- (ii) Inpatient rehabilitation facilities and professional services delivered in those facilities;
- (iii) Outpatient physical therapy, occupational therapy and speech therapy for rehabilitative purposes;
- (iv) Braces, splints, prostheses, orthopedic appliances and orthotic devices, supplies or apparatus used to support, align or correct deformities or to improve the function of moving parts; and
- (v) Durable medical equipment and mobility enhancing equipment used to serve a medical purpose, including sales tax.

(c) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes the following benefits in a health plan, the issuer may not include these benefits in establishing actuarial value for the rehabilitative and habilitative services category:

- (i) Off-the-shelf shoe inserts and orthopedic shoes;
 - (ii) Exercise equipment for medically necessary conditions;
 - (iii) Durable medical equipment that serves solely as a comfort or convenience item; and
 - (iv) Hearing aids other than cochlear implants.
- (d) For purposes of determining a plan's actuarial value, an issuer must classify as habilitative services the range of medically necessary health care services and health care devices designed to assist a person to keep, learn or improve skills and functioning for daily living. Examples include services for a child who isn't walking or talking at the expected age, or services to assist with keeping or learning skills and functioning within an individual's environment, or to compensate for a person's progressive physical, cognitive, and emotional illness. These services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient or outpatient settings.

(i) As a minimum level of coverage, an issuer must establish limitations on habilitative services on parity with those for rehabilitative services. A health benefit plan may include such limitations only if the limitations take into account the unique needs of the individual and target measurable, and specific treatment goals appropriate for the person's age and physical and mental condition. When habilitative services are delivered to treat a mental health diagnosis categorized in the most recent version of the DSM, the mental health parity requirements apply and supersede any rehabilitative services parity limitations permitted by this subsection.

(ii) A health benefit plan must not limit an enrollee's access to covered services on the basis that some, but not all, of the services in a plan of treatment are provided by a public or government program.

(iii) An issuer may establish utilization review guidelines and practice guidelines for habilitative services that are

recognized by the medical community as efficacious. The guidelines must not require a return to a prior level of function.

(iv) Habilitative health care devices may be limited to those that require FDA approval and a prescription to dispense the device.

(v) Consistent with the standards in this subsection, speech therapy, occupational therapy, physical therapy, and aural therapy are habilitative services. Day habilitation services designed to provide training, structured activities and specialized assistance to adults, chore services to assist with basic needs, vocational or custodial services are not classified as habilitative services.

(vi) An issuer must not exclude coverage for habilitative services received at a school-based health care center unless the habilitative services and devices are delivered pursuant to federal Individuals with Disabilities Education Act of 2004 (IDEA) requirements and included in an individual educational plan (IEP).

(e) The base-benchmark plan's visit limitations on services in the rehabilitative and habilitative services category include:

(i) Inpatient rehabilitation facilities and professional services delivered in those facilities are limited to thirty service days per calendar year; and

(ii) Outpatient physical therapy, occupational therapy and speech therapy are limited to twenty-five outpatient visits per calendar year, on a combined basis, for rehabilitative purposes.

(f) State benefit requirements classified to this category include:

(i) State sales tax for durable medical equipment; and

(ii) Coverage of diabetic supplies and equipment (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143).

(g) An issuer must not classify services to the rehabilitative services category if the classification results in a limitation of coverage for therapy that is medically necessary for an enrollee's treatment for cancer, chronic pulmonary or respiratory disease, cardiac disease or other similar chronic conditions or diseases. For purposes of this subsection, an issuer must establish limitations on the number of visits and coverage of the rehabilitation therapy consistent with its medical necessity and utilization review guidelines for medical/surgical benefits. Examples of these are, but are not limited to, breast cancer rehabilitation therapy, respiratory therapy, and cardiac rehabilitation therapy. Such services may be classified to the ambulatory patient or hospitalization services categories for purposes of determining actuarial value.

(8) A health plan must cover "laboratory services" in a manner substantially equal to the base-benchmark plan. For purposes of determining actuarial value, an issuer must classify as laboratory services the medically necessary laboratory services and testing, including those performed by a licensed provider to determine differential diagnoses, conditions, outcomes and treatment, and including blood and blood services, storage and procurement, and ultrasound, X ray, MRI, CAT scan and PET scans.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as laboratory services:

(i) Laboratory services, supplies and tests, including genetic testing;

(ii) Radiology services, including X ray, MRI, CAT scan, PET scan, and ultrasound imaging; and

(iii) Blood, blood products, and blood storage, including the services and supplies of a blood bank.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes procurement and storage of personal blood supplies provided by a member of the enrollee's family when this service is not medically indicated. If an issuer includes this benefit in a health plan, the issuer may not include this benefit in establishing the health plan's actuarial value.

(9) A health plan must cover "preventive and wellness services, including chronic disease management" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as preventive and wellness services, including chronic disease management, the services that identify or prevent the onset or worsening of disease or disease conditions, illness or injury, often asymptomatic; services that assist in the multi-disciplinary management and treatment of chronic diseases; and services of particular preventative or early identification of disease or illness of value to specific populations, such as women, children and seniors.

(a) If a plan does not have in its network a provider who can perform the particular service, then the plan must cover the item or service when performed by an out-of-network provider and must not impose cost-sharing with respect to the item or service. In addition, a health plan must not limit sex-specific recommended preventive services based on an individual's sex assigned at birth, gender identity or recorded gender. If a provider determines that a sex-specific recommended preventive service is medically appropriate for an individual, and the individual otherwise satisfies the coverage requirements, the plan must provide coverage without cost-sharing.

(b) A health benefit plan must include the following services as preventive and wellness services, including chronic disease management:

(i) Immunizations recommended by the Centers for Disease Control's Advisory Committee on Immunization Practices;

(ii)(A) Screening and tests for which the U.S. Preventive Services Task Force for Prevention and Chronic Care have issued A and B recommendations on or before the applicable plan year.

(B) To the extent not specified in a recommendation or guideline, a plan may rely on the relevant evidence base and reasonable medical management techniques, based on necessity or appropriateness, to determine the frequency, method, treatment, or setting for the provision of a recommended preventive health service;

(iii) Services, tests and screening contained in the U.S. Health Resources and Services Administration ("HRSA") Bright Futures guidelines as set forth by the American Academy of Pediatricians; and

(iv) Services, tests, screening and supplies recommended in the HRSA women's preventive and wellness services guidelines:

(A) If the plan covers children under the age of nineteen, or covers dependent children age nineteen or over who are on the plan pursuant to RCW 48.44.200, 48.44.210, or 48.46.-320, the plan must provide the child with the full range of recommended preventive services suggested under HRSA guidelines for the child's age group without cost-sharing. Services provided in this regard may be combined in one visit as medically appropriate or may be spread over more than one visit, without incurring cost-sharing, as medically appropriate; and

(B) A plan may use reasonable medical management techniques to determine the frequency, method, treatment or setting for a recommended preventive service, including providing multiple prevention and screening services at a single visit or across multiple visits.

(v) Chronic disease management services, which typically include, but are not limited to, a treatment plan with regular monitoring, coordination of care between multiple providers and settings, medication management, evidence-based care, measuring care quality and outcomes, and support for patient self-management through education or tools; and

(vi) Wellness services.

(c) The base-benchmark plan does not specifically exclude any services that could reasonably be classified to this category.

(d) The base-benchmark plan does not establish visit limitations on services in this category. In accordance with Section 2713 of the Public Health Service Act (PHS Act) and its implementing regulations relating to coverage of preventive services, the base-benchmark plan does not impose cost-sharing requirements with respect to the preventive services listed under (b)(i) through (iv) of this subsection that are provided in-network.

(e) State benefit requirements classified in this category are:

(i) Colorectal cancer screening as set forth in RCW 48.43.043;

(ii) Mammogram services, both diagnostic and screening (RCW 48.21.225, 48.44.325, and 48.46.275); and

(iii) Prostate cancer screening (RCW 48.20.392, 48.21.-227, 48.44.327, and 48.46.277).

(10) Some state benefit requirements are limited to those receiving pediatric services, but are classified to other categories for purposes of determining actuarial value.

(a) These benefits include:

(i) Neurodevelopmental therapy, consisting of physical, occupational and speech therapy and maintenance to restore or improve function based on developmental delay, which cannot be combined with rehabilitative services for the same condition (RCW 48.44.450, 48.46.520, and 48.21.310). This state benefit requirement may be classified to ambulatory patient services or mental health and substance abuse disorder including behavioral health categories; and

(ii) Treatment of congenital anomalies in newborn and dependent children (RCW 48.20.430, 48.21.155, 48.44.212, and 48.46.250). This state benefit requirement may be classi-

fied to hospitalization, ambulatory patient services or maternity and newborn categories.

(b) The base-benchmark plan contains limitations or scope restrictions that conflict with state or federal law as of January 1, 2017. Specifically, the plan covers outpatient neurodevelopmental therapy services only for persons age six and under. Health plans must cover medically necessary neurodevelopmental therapy for any DSM diagnosis without blanket exclusions.

(11) Issuers must know and apply relevant guidance, clarifications and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor and the U.S. Department of the Treasury.

(12) This section applies to health plans that have an effective date of January 1, 2017, or later.