WSR 24-18-043
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed August 27, 2024, 9:16 a.m.]

Title of Rule and Other Identifying Information: WAC 458-19-070 Five dollars and ninety cents statutory aggregate dollar rate limit calculation, and 458-19-075 Constitutional one percent limit calculation.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue (department) is amending WAC 458-19-070 and 458-19-075 to incorporate 2024 legislation, SHB 2348. This legislation created a stand-alone hospital levy in addition to the county's general levy. The stand-alone hospital levy only applies to counties with a population greater than 2,000,000.

Reasons Supporting Proposal: Updating these rules will provide clarity to county assessors on how to prorate this additional property tax levy.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070.

Statute Being Implemented: RCW 84.52.010, 84.52.043, 36.62.090.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: Jeannette Gute, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1599.

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

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is applicable to this rule update because the department is incorporating changes resulting from 2024 legislation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Leslie Mullin, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone 360-534-1589, fax 360-534-1606, email LeslieMu@dor.wa.gov, BEGINNING August 27, 2024, 12:00 a.m., AND RECEIVED BY November 4, 2024, 11:59 p.m.

August 27, 2024
Brenton Madison

Rules Coordinator

OTS-5773.2

AMENDATORY SECTION (Amending WSR 24-02-017, filed 12/21/23, effective 1/21/24)

WAC 458-19-070 Five dollars and ninety cents statutory aggregate dollar rate limit calculation. (1) **Introduction.** This rule describes the process used to reduce or eliminate a levy rate when the assessor finds the statutory aggregate dollar rate limit exceeds $5.90. The aggregate of all regular levy rates of junior taxing districts and senior taxing districts, other than the state and other specifically identified districts, cannot exceed $5.90 per $1,000 of assessed value in accordance with RCW 84.52.043. When the county assessor finds that this limit has been exceeded, the assessor recalculates the levy rates and establishes a new consolidated levy rate as described in RCW 84.52.010. The $5.90 statutory aggregate dollar rate limit is reviewed before the constitutional one percent limit.

(2) **Levies not subject to statutory aggregate dollar rate limit.** The following levies are not subject to the statutory aggregate dollar rate limit of $5.90 per $1,000 of assessed value:

(a) Levies by the state;

(b) Levies by or for port or public utility districts;

(c) Excess property tax levies authorized in Article VII, section 2 of the state Constitution;

(d) Levies by or for county ferry districts under RCW 36.54.130;

(e) Levies for acquiring conservation futures under RCW 84.34.230;

(f) Levies for emergency medical care or emergency medical services under RCW 84.52.069;

(g) Levies for financing affordable housing under RCW 84.52.105;

(h) The portion of metropolitan park district levies protected under RCW 84.52.120;

(i) The portions of levies by fire protection districts and regional fire protection service authorities protected under RCW 84.52.125;

(j) Levies for criminal justice purposes under RCW 84.52.135;

(k) Levies for transit-related purposes by a county under RCW 84.52.140;

(l) The protected portion of the levies imposed under RCW 84.52.816 by flood control zone districts;

(m) Levies imposed by a regional transit authority under RCW 81.104.175;

(n) Levies imposed under RCW 36.69.145, by a park and recreation district located on an island and within a county with a population exceeding 2,000,000, for collection in calendar years 2022 through 2026; ((~~and~~))

(o) The portion of any levy resulting from the correction of a levy error under RCW 84.52.085(3)<u>; and</u>

<u>(p) Levies for county hospital purposes under RCW 36.62.090</u>.

(3) **Consolidated levy rate limitation.** RCW 84.52.010 explains the order in which the regular levies of taxing districts will be reduced

or eliminated by the assessor to comply with the statutory aggregate dollar rate limit of $5.90 per $1,000 of assessed value. The order in the statute lists which taxing districts are the first to either reduce or eliminate their levy rate. Taxing districts that are at the same level are grouped together in tiers. Reductions or eliminations in levy rates are made on a pro rata basis within each tier of taxing district levies until the consolidated levy rate no longer exceeds the statutory aggregate dollar rate limit of $5.90.

As opposed to the order in RCW 84.52.010, which lists the taxing districts that are the first to have their levy rates reduced or eliminated, this rule is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the statutory aggregate dollar rate is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis. The proration factor, which is multiplied by each levy rate within the tier, is obtained by dividing the dollar rate remaining available to the taxing districts in that tier as a group by the sum of the levy rates originally certified by or for all of the taxing districts within the tier.

(a) Step one: Total the aggregate regular levy rates requested by all affected taxing districts in the tax code area. If this total is less than $5.90 per $1,000 of assessed value, no levy rate reduction or elimination is necessary. If this total levy rate is more than $5.90, the assessor must proceed through the following steps until the aggregate dollar rate is brought within that limit.

(b) Step two: Subtract from $5.90 the levy rates of the county, including the rate of any separate property tax levy as described in RCW 84.55.135, and the county road district if the tax code area includes an unincorporated portion of the county, or the levy rates of the county and the city or town if the tax code area includes an incorporated area, as applicable.

(c) Step three: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first 50 cents per $1,000 of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first 50 cents per $1,000 of assessed value for public hospital districts under RCW 70.44.060(6).

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

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

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

(d) Step four: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c). However, under RCW 84.52.125, a fire protection district or regional fire protection service authority may protect up to 25 cents per $1,000 of assessed value of the total levies

made under RCW 52.16.140 and 52.16.160, or 52.26.140 (1)(b) and (c) from reduction or elimination.

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

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. It is at this point that the provisions of RCW 84.52.125 come into play; that is, a fire protection district or regional fire protection service authority may protect up to 25 cents per $1,000 of assessed value of the total levies made under RCW 52.16.140 and 52.16.160, or 52.26.140 (1)(b) and (c) from reduction or elimination under RCW 84.52.043(2), if the total levies would otherwise be reduced or eliminated under RCW 84.52.010 (3)(a)(iii) with respect to the $5.90 per $1,000 of assessed value limit. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

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

(e) Step five: Subtract from the remaining levy capacity the levy rate, if any, for the first 50 cents per $1,000 of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

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

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

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

(f) Step six: Subtract from the remaining levy capacity the 25 cent per $1,000 of assessed value levy rate for metropolitan park districts if it is not protected under RCW 84.52.120, the 25 cent per $1,000 of assessed value levy rate for public hospital districts under RCW 70.44.060(6), and the levy rates, if any, for cemetery districts under RCW 68.52.310 and all other junior taxing districts if those levies are not listed in steps three through five or seven or eight of this subsection.

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

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

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

(g) Step seven: Subtract from the remaining levy capacity the levy rate, if any, for flood control zone districts other than the portion of a levy protected under RCW 84.52.816.

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

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

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

(h) Step eight: Subtract from the remaining levy capacity the levy rates, if any, for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.145, except a park and recreation district described in subsection (2)(n) of this rule, and cultural arts, stadium, and convention districts under RCW 67.38.130.

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

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

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

(i) Step nine: Subtract from the remaining levy capacity the levy imposed, if any, for cultural access programs under RCW 36.160.080 until the remaining levy capacity equals zero.

(4) **Example.**

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

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

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

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

(d) The remaining $.15 must be shared by the cemetery and the hospital districts within the next tier of levies. The cemetery district originally sought to levy $.1125 and the hospital district

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

AMENDATORY SECTION (Amending WSR 24-02-017, filed 12/21/23, effective 1/21/24)

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

(2) **Preliminary calculations.** After reducing or eliminating the levy rates under RCW 84.52.043 (the $5.90 statutory aggregate dollar rate limit) has occurred, make the following calculations to determine if the constitutional one percent limit is being exceeded:

(a) First, add together all regular levy rates in the tax code area, including the rates for the state levy, but not the rates for port and public utility districts, to arrive at a combined levy rate for that tax code area. "Regular levy rates" in this context means the levy rates that remain after reduction or elimination under RCW 84.52.043 has occurred. The levy rates for port and public utility districts are not included in this calculation because they are not subject to the constitutional one percent limit.

(b) Second, divide $10 by the higher of the real or personal property ratio of the county for the assessment year in which the levy is made to determine the maximum effective levy rate. If the combined levy rate exceeds the maximum effective levy rate, then the individual levy rates must be reduced or eliminated until the combined levy rate is equal to the maximum effective levy rate.

(3) **Constitutional one percent limit.** RCW 84.52.010 provides the order in which levy rates are to be reduced or eliminated when the constitutional one percent limit is exceeded.

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

If the constitutional one percent limit is exceeded after performing the preliminary calculations described in subsection (2) of

this rule, the following levies must be reduced or eliminated until the combined levy rate no longer exceeds the maximum effective levy rate:

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

(b) Step two: Subtract the levy rates for the county, including the rate of any separate property tax levy as described in RCW 84.55.135, county road district, regional transit authority, and for city or town purposes.

(c) Step three: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first 50 cents per $1,000 of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first 50 cents per $1,000 of assessed value for public hospital districts under RCW 70.44.060(6).

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

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

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

(d) Step four: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c).

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

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

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

(e) Step five: Subtract from the remaining levy capacity the levy rate for the first 50 cents per $1,000 of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

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

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

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

(f) Step six: Subtract from the remaining levy capacity the levy rates for all other junior taxing districts if those levies are not listed in steps three through five or steps seven through 18 of this subsection.

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

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

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

(g) Step seven: Subtract from the remaining levy capacity the levy rate for flood control zone districts other than the portion of a levy protected under RCW 84.52.816.

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

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

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

(h) Step eight: Subtract from the remaining levy capacity the levy rates for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.145, except a park and recreation district located on an island and within a county with a population exceeding 2,000,000, and cultural arts, stadium, and convention districts under RCW 67.38.130.

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

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

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

(i) Step nine: Subtract from the remaining levy capacity the levy imposed, if any, for cultural access programs under RCW 36.160.080.

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

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

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed to step 10.

(j) Step 10: Subtract from the remaining levy capacity the levy rate for the first 30 cents per $1,000 for emergency medical care or emergency medical services under RCW 84.52.069.

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

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

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 11.

(k) Step 11: Subtract from the remaining levy capacity the levy rates for levies used for acquiring conservation futures under RCW 84.34.230, financing affordable housing under RCW 84.52.105, funding for county hospital purposes under RCW 36.62.090, and any portion of a levy rate for emergency medical care or emergency medical services under RCW 84.52.069 in excess of 30 cents per $1,000 of assessed value.

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

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis from the remaining balance in step 10 until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 12.

(l) Step 12: Subtract from the remaining levy capacity the levies imposed under RCW 36.69.145 for a park and recreation district located on an island and within a county with a population exceeding 2,000,000.

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

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step 11. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 13.

(m) Step 13: Subtract from the remaining levy capacity the portion of the levy by a metropolitan park district with a population of 150,000 or more that is protected under RCW 84.52.120.

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

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step 12. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 14.

(n) Step 14: Subtract from the remaining levy capacity the levy rates for county ferry districts under RCW 36.54.130.

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

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step 13. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 15.

(o) Step 15: Subtract from the remaining levy capacity the levy rate for criminal justice purposes imposed under RCW 84.52.135.

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

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step 14. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 16.

(p) Step 16: Subtract from the remaining levy capacity the levy rate for a fire protection district or regional fire protection service authority protected under RCW 84.52.125.

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

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step 15. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 17.

(q) Step 17: Subtract from the remaining levy capacity the levy rate for transit-related purposes by a county under RCW 84.52.140.

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

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step 16. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 18.

(r) Step 18: Subtract from the remaining levy capacity the protected portion of the levy imposed under RCW 84.52.816 by a flood control zone district until the remaining levy capacity equals zero.

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

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step 17. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 19.

(s) Step 19: Subtract from the remaining levy capacity any portion of a levy resulting from the correction of a levy error under RCW 84.52.085(3) until the remaining levy capacity equals zero.

WSR 24-18-045
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed August 27, 2024, 11:18 a.m.]

Title of Rule and Other Identifying Information: WAC 458-57-135 Washington estate tax return to be filed—Penalty for late filing—Interest on late payments—Waiver or cancellation of penalty—Application of payment.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue (DOR) intends to amend WAC 458-57-135 to recognize 2024 legislation (HB 1867), which eliminates the estate tax filing requirement for certain estates involving a qualifying familial residence.

Reasons Supporting Proposal: The Washington state legislature enacted HB 1867 in 2024 that changes the filing requirements for certain estates. Beginning with decedents dying on or after January 1, 2025, a new estate tax filing exemption is authorized. A Washington estate tax return is not required to be filed if: (1) The decedent's estate is not required to file a return to claim a specific election; the decedent was survived by a spouse and the decedent's interest in the qualifying family residence passed from the decedent to the spouse; and (2) the value of the decedent's gross estate after deducting the value of the decedent's interest in the qualifying residence is less than the applicable exclusion amount.

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

Statute Being Implemented: RCW 83.100.050.

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

Name of Proponent: DOR, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Mandell, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1584; Implementation and Enforcement: Jeannette Gute, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1599.

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

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is applicable to this rule update because DOR is incorporating changes resulting from 2024 legislation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Melinda Man-

dell, DOR, P.O. Box 47467, Olympia, WA 98504-7467, phone 360-534-1584, fax 360-534-1606, email MelindaM@dor.wa.gov, BEGINNING August 27, 2024, 12:00 a.m., AND RECEIVED BY November 4, 2024, 11:59 p.m.

August 27, 2024
Brenton Madison
Rules Coordinator

OTS-5784.2

AMENDATORY SECTION (Amending WSR 20-14-063, filed 6/26/20, effective 7/27/20)

WAC 458-57-135 Washington estate tax return to be filed—Penalty for late filing—Interest on late payments—Waiver or cancellation of penalty—Application of payment. (1) **Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and discusses the due date for filing of Washington's estate tax return and payment of the tax due. It explains that a penalty is imposed on the taxes due with the state return when the return is not filed on or before the due date, and that interest is imposed when the tax due is not paid by the due date. The rule also discusses the limited circumstances under which the law allows the department of revenue to cancel or waive the penalty, and the procedure for requesting that cancellation or waiver. The estate tax rule on the estate tax return etc., for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-035.

(2) **Estate tax return.** The Washington state estate and transfer tax return and the instructions for completing the return can be found on the department's website at https://www.dor.wa.gov. They may also be requested by emailing estates@dor.wa.gov.

(3) **Filing the state return—Payment of the tax due.**

(a) ((~~The~~)) Except as provided in subsection (9) of this rule, a Washington estate tax return (state return) must be filed ((~~with the Washington state department of revenue (department)~~)) if the gross estate ((~~of a decedent~~)) equals or exceeds the applicable exclusion amount described in RCW 83.100.020(1) and WAC 458-57-105 (3)(b). The state return and payment ((~~is~~)) are due nine months after the date of the decedent's death. A granted extension of time to file will extend the time to file the return, but the payment is still due nine months after the date of the decedent's death. The state return must be signed by the person required to file. The following items must accompany the state return:

(i) All applicable state return schedules and addendums, if any;

(ii) If the person required to file the state return is also required to file a federal return or has filed a federal return, a copy of the filed federal tax return (Form 706, Form 706-NA, or Form 706-QDT), signed by the person required to file, including all applicable schedules and statements;

(iii) One copy of all supporting documentation for completed state return schedules. If federal return schedules differ from state return schedules, provide an explanation for differences;

(iv) A copy of any previously filed extension request(s). If a federal Form 4768 extension request has been filed, provide an Internal Revenue Service approved copy;

(v) A copy of the decedent's death certificate;

(vi) A copy of the letters testamentary or the letters of administration, if any;

(vii) A copy of the decedent's will, if any, and a copy of all trust agreements that pertain to the decedent, if any;

(viii) A copy of state estate or inheritance return(s) filed with any other state, and proof of payment of the estate or inheritance tax owed to another state(s), if any; and

(ix) Payment of the Washington estate tax due, if any.

(b) A state return must be filed with the department on or before the date that the federal return is required or would have been required to be filed. That date is typically nine months after the date of the decedent's death, as specified in section 6075 of the Internal Revenue Code (IRC). The due date for filing the state return may be extended, as described in subsection (3)(c) of this ((~~subsection~~)) rule.

(c) **Extensions to file or extensions for payment of tax.**

(i) Section 6081 of the IRC permits the granting of a reasonable extension of time for filing the federal return, generally not to exceed six months from the original due date. If a federal extension of the time to file is granted, the personal representative is required to file a true copy of that extension or installment approval with the department on or before the original due date, or within ((~~thirty~~)) 30 days of the issuance of the federal extension or installment approval, whichever is later. RCW 83.100.050. If the personal representative fails to do so, the department may deny the extension request.

(ii) When the personal representative obtains an extension of time for payment of the federal tax, or elects to pay that tax in installments, the personal representative may choose to pay the state estate tax over the same time period and in the same manner as the federal tax. The personal representative is required to file a true copy of that extension with the department on or before the original due date, or within ((~~thirty~~)) 30 days of the issuance of the federal extension, whichever is later. RCW 83.100.060(2). If the personal representative fails to do so, the department may require the personal representative to pay the state tax immediately.

(iii) **Extensions to file for estates that are not required to file a federal estate tax return.** For those estates that are not required to file a federal return, the personal representative may request a one-time automatic six-month extension to file. The request must be in writing and acknowledge that interest will begin to accrue from the original due date of the state return on any outstanding tax. The written request for the extension must be made prior to the date the state return is due.

(iv) **Extension to pay tax owed for estates that are not required to file a federal estate tax return.** For those estates that are not required to file a federal return, the personal representative may request an extension of time for paying the tax owed when payment of the tax would cause an undue hardship upon the estate or for a payment plan for closely held businesses. The granting of an extension of time to pay the tax owed or for a payment plan for closely held business will not operate to prevent the running of interest. RCW 83.100.070.

(v) **Hardship extensions to pay.**

(A) In any case in which the department finds that payment, on the due date prescribed, or any part of a deficiency would impose undue hardship upon the estate, the department may extend the time for payment for a period or periods not to exceed one year for any one period and for all periods not to exceed four years from the original due date of payment.

(B) The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the estate. It must appear that a substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the estate from making payment of the tax owed at the date payment is due. If a market exists, a sale of property at the current market price is not ordinarily considered as resulting in an undue hardship. No extension will be granted if the deficiency is due to negligence or intentional disregard of rules and regulations or to fraud with intent to evade the tax. During a state of emergency declared under RCW 43.06.010(12), the department, on a case-by-case basis, may evaluate whether the emergency imposes on an estate an undue hardship as described above.

(C) An application for such an extension must be in writing and must contain, or be supported by, information in a written declaration made under penalties of perjury showing the undue hardship that would result to the estate if the extension were refused. The application, with the supporting information, must be filed with the department. When received, it will be examined, and, if possible, within ((~~thirty~~)) 30 days will be denied, granted, or tentatively granted subject to certain conditions of which the personal representative will be notified. The department will not consider an application for such an extension unless it is applied for on or before the due date for payment. If the personal representative desires to obtain an additional extension, it must be applied for on or before the date of the expiration of the previous extension.

(D) The amount of tax owed for which an extension is granted, along with interest as determined by RCW 83.100.070, shall be paid on or before the expiration of the period of extension without the necessity of notice and demand from the department.

(vi) **Payment plans for closely held businesses.** The department will apply the provisions of section 6166 of the 2005 IRC for the granting of payment plans for closely held businesses. For estates with an approved payment plan with the Internal Revenue Service, the department will follow the same terms as granted with the federal return.

(4) **The late filing penalty.** If the state return is not filed by the due date, or any extension of the state return's due date, the person required to file the return may be subject to a late filing penalty.

(a) **When does the penalty apply?** The late filing penalty applies if the person required to file the return has not timely filed the state return with the department prior to being notified by the department, in writing, of the necessity to file the state return.

(b) **How is the penalty computed?** The late filing penalty is equal to five percent of the tax due for each month during which the state return has not been filed, inclusive of the filing date, and not to exceed the lesser of ((~~twenty-five~~)) 25 percent of the tax or ((~~one thousand five hundred dollars~~)) $1,500. RCW 83.100.070. The penalty is calculated on a daily basis for periods less than a month by first taking the five percent monthly rate and dividing it by the total num-

ber of days for that month. For instance, in a common (nonleap) year, the five percent monthly rate must be divided by ((~~twenty-eight~~)) 28 to arrive at a daily rate of 1.7857 percent for the month of February. After arriving at this daily rate, it is multiplied by the number of delinquent days, inclusive of the filing date.

(i) **Example.** The following example identifies a number of facts and then states a conclusion. This example should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

A state return is due on February 3rd, in a common (nonleap) year, but is not filed until April 20th of the same year. The state return is delinquent starting with February 4th. The amount of tax due with the state return is $10,000.

(ii) The penalty is computed as follows:

Feb 4-Feb 28	$10,000 tax at 0.17857% × 25 days	$446.43
Mar 1-Mar 31	$10,000 tax at 5% per month	$500.00
Apr 1-Apr 20	$10,000 tax at 0.1667% × 20 days	$333.40
Total delinquent penalty due on April 20th filing date		$1,279.83

In this example, the first month (February) is a partial month. Since February would have ((~~twenty-eight~~)) 28 days, the five percent monthly rate is divided by ((~~twenty-eight~~)) 28 days to arrive at a daily rate of 0.0017857 (or 0.17857 percent). The daily rate is then multiplied by the ((~~twenty-five~~)) 25 days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (0.0017857 x 25 days = .044643 or 4.4643 percent). The second calendar month (March) is complete and incurs the full five percent penalty. Since April has ((~~thirty~~)) 30 days total, the five percent monthly rate is divided by the ((~~thirty~~)) 30 days in April to arrive at a daily rate of .001667 (or 0.1667 percent). The daily rate is then multiplied by the ((~~twenty~~)) 20 days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (0.001667 x 20 days =.03334 or 3.334 percent).

(5) **Interest is imposed on late payment.** The department is required by law to impose interest on the tax due with the state return if payment of the tax is not made on or before the due date. RCW 83.100.070. Interest applies to the delinquent tax only, and is calculated from the due date until the date of payment. Interest imposed for periods after January 1, 1997, will be computed at the annual variable interest rate described in RCW 82.32.050(2). Interest imposed for periods prior to January 2, 1997, will be computed at the rate of ((~~twelve~~)) 12 percent per annum.

(6) **Waiver or cancellation of penalties.** RCW 83.100.070(3) authorizes the department to waive or cancel the penalty for late filing of the state return under limited circumstances.

(a) **Claiming the waiver.** 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 request must be made in the form of a letter and submitted to the department. The person responsible bears the burden of establishing that the circumstances were beyond their control and directly caused the late filing. The department will cancel or waive the late filing penalty imposed on the state return when the delinquent filing is the result of circumstances beyond the control of the person responsible for filing of the state return. The person responsible for filing the state return is the same person who is responsible for filing the federal return.

(b) **Circumstances eligible for waiver.** In order to qualify for a waiver of penalty the circumstances beyond the control of the person responsible for filing the state return must directly cause the late filing of the return. These circumstances are generally immediate, unexpected, or in the nature of an emergency. Such circumstances result in the person not having reasonable time or opportunity to obtain an extension of their due date (see subsection (3)(a) of this rule) or to otherwise timely file the state return. Circumstances beyond the control include, but are not necessarily limited to, the following:

(i) The delinquency was caused by the death or serious illness of the person responsible for filing the state return or a member of the immediate family. In order to qualify for penalty waiver, the death or serious illness must directly prevent them from having reasonable time or opportunity to arrange for timely filing of the state return. Generally, the death or serious illness must have occurred within ((~~sixty~~)) 60 days prior to the due date, provided that a valid state return is filed within ((~~sixty~~)) 60 days of the due date.

(ii) The delinquency was caused by an unexpected and unavoidable absence of the person responsible. Generally, this absence must be within ((~~sixty~~)) 60 days prior to the due date, provided that a valid state return is filed within ((~~sixty~~)) 60 days of the due date. "Unavoidable absence of the person responsible" does not include absences because of business trips, vacations, personnel turnover, or personnel terminations.

(iii) The delinquency was caused by the destruction by fire or other casualty of estate records necessary for completion of the state return.

(iv) An estate tax return was timely filed, but was filed incorrectly with another state due to an issue of the decedent's domicile.

(v) A Washington estate tax return was properly prepared and timely filed, but was sent to the location for filing of the federal estate tax return.

(7) **Waiver or cancellation of interest.** Title 83 RCW (Estate taxation) does not provide any circumstances that allow for waiver of the interest, even though penalty may be waived under limited circumstances (see subsection (6) of this ((~~section~~)) rule).

(8) **Application of payment towards liability.** The department will apply taxpayer payments first to interest, next to penalties, and then to the tax, without regard to any direction of the taxpayer.

(9) **Estate tax return filing exemption—Qualifying family residence.**

(a) A Washington return is not required to be filed for a decedent's estate if:

(i) The estate is not otherwise required to file an estate tax return to claim a specific election;

(ii) The decedent was survived by a spouse, and the decedent's qualifying family residence included in the decedent's gross estate passed from the decedent to the spouse, consistent with section 2056 of the Internal Revenue Code;

(iii) The value of the decedent's gross estate less the value of the decedent's interest in a qualifying family residence that is included in the value of the decedent's gross estate is less than the applicable exclusion amount; and

(iv) The decedent died on or after January 1, 2025.

(b) The following definitions apply to subsection (9) of this rule:

(i) "Principal place of residence" means:

(A) A residence that has been occupied by both the decedent and the decedent's spouse or domestic partner for more than six months of the 12 months immediately preceding the decedent's date of death; or

(B) A residence of the decedent and the decedent's spouse or domestic partner when, during the six-month period immediately preceding the decedent's date of death, the decedent, the decedent's spouse or domestic partner, or both the decedent and decedent's spouse or domestic partner, were confined to a hospital, nursing home, assisted living facility, adult family home, or home of a relative of the decedent or decedent's spouse or domestic partner for purposes of long-term care, if the decedent and the decedent's spouse or domestic partner did not occupy any other residence for more than six months of the 12 months immediately preceding the decedent's date of death, and during the six-month period immediately preceding the decedent's date of death:

(I) The residence was temporarily unoccupied;

(II) The residence was occupied by either or both the decedent's spouse or domestic partner; or a person financially dependent on the decedent or the decedent's spouse or domestic partner for support; or

(III) The residence or portion of the residence was rented for the purposes of paying costs related to the care of the decedent or the decedent's spouse or domestic partner in a nursing home, hospital, assisted living facility, or adult family home.

(ii) "Qualifying family residence" means the principal place of residence of the marital community or domestic partnership at the decedent's date of death.

(iii) "Relative" has the same meaning as "member of the family" in RCW 83.100.046.

(iv) "Residence" means a single-family dwelling unit, whether such unit is separate or part of a multiunit dwelling, including the land on which such dwelling stands, regardless of whether ownership of the single-family dwelling unit and land on which the dwelling unit stands is vested in the same person. "Residence" includes:

(A) A single-family dwelling unit in a cooperative housing association, corporation, or partnership, when the decedent has an ownership share in such entity;

(B) A single-family dwelling unit situated upon lands the fee of which is vested in or held in trust by the United States or any of its instrumentalities, a federally recognized Indian tribe, a state of the United States or any of its political subdivisions, or a municipal corporation;

(C) A single-family dwelling unit consisting of a manufactured/mobile home or park model that has substantially lost its identity as a mobile unit by virtue of it being fixed in location and placed on a foundation with fixed pipe connections with sewer, water, or other utilities; and

(D) A single-family dwelling unit consisting of a floating home as defined in RCW 82.45.032.

(c) The tax preference performance statement described in RCW 82.32.808 is not required for purposes of eligibility for the exemption described in this subsection.

WSR 24-18-064
EXPEDITED RULES
OFFICE OF MINORITY AND
WOMEN'S BUSINESS ENTERPRISES
[Filed August 28, 2024, 4:55 p.m.]

Title of Rule and Other Identifying Information: Chapter 326-20 WAC; WAC 326-20-010, 326-20-047, 326-20-048, 326-20-049, 326-20-050, 326-20-055, 326-20-060, 326-20-080, 326-20-094, 326-20-099, and 326-20-150.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The office of minority and women's business enterprises (OMWBE) is the sole certifying agency for small minority, women, and socially and economically disadvantaged business enterprises. OMWBE has both a state and federal certification program with similar rules. On April 9, 2024, the United States Department of Transportation (USDOT) announced that the disadvantaged business enterprise (DBE) and airport concessions disadvantaged business enterprise (ACDBE) rules will change and become effective on May 9, 2024. The USDOT rules are codified in 49 C.F.R. Parts 23 and 26 and used for OMWBE's federal certification. To align OMWBE's state certification program with its federal program, OMWBE proposes changes to the above-listed certification rules, which are found in chapter 326-20 WAC.

Reasons Supporting Proposal: To align state certification program rules with federal certification program rules.

Statutory Authority for Adoption: RCW 34.05.353 (1)(b).

Statute Being Implemented: 49 C.F.R. Parts 23 and 26.

Rule is necessary because of federal law, Title 49 C.F.R., Parts 23 and 26.

Name of Proponent: OMWBE, governmental.

Name of Agency Personnel Responsible for Drafting: Sharon Harvey Hughes, Olympia, 360-704-8437; Implementation and Enforcement: Phyllis Martin, Olympia, 360-664-9750.

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

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Adopts without material change federal regulations.

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 Julie Bracken, OMWBE, 1110 Capitol Way South, Suite 150, Olympia, WA 98504, phone

360-664-9750, fax 360-586-7079, email rules@omwbe.wa.gov, AND RECEIVED BY November 5, 2024.

August 28, 2024
Julie Bracken
Public Records Officer
Records Manager
Rules Coordinator

OTS-5813.1

AMENDATORY SECTION (Amending WSR 04-08-093, filed 4/6/04, effective 5/7/04)

WAC 326-20-010 In general. (1) Any business which meets the definition of a minority business enterprise, a women's business enterprise, a minority woman's business enterprise, ((~~or~~)) a combination minority and women's business enterprise, ((~~or~~)) socially and economically disadvantaged business enterprise, ((~~or~~)) corporate-sponsored dealership as set forth in this title, or public works small business enterprise is eligible to be certified by the state of Washington.

(2) It is not the intent of the program to encourage the participation of businesses owned and controlled by minorities, and/or women, and/or socially and economically disadvantaged individuals, who have not encountered practices which prohibited or limited their access to contract opportunities, markets, financing, and other resources, based on their race, ethnic origin, or sex, or disability.

(3) Notwithstanding the provisions in subsection (1) of this section, to be eligible for certification, any business applying for certification shall have obtained all licenses necessary to lawfully conduct business in the state of Washington.

AMENDATORY SECTION (Amending WSR 04-08-093, filed 4/6/04, effective 5/7/04)

WAC 326-20-047 Proof of economic disadvantage. Evidence of individual social disadvantage and/or individual economic disadvantage must include the following elements:

(1) Submission of narrative and financial information.

(a) Each individual claiming economic disadvantage must describe the conditions, which are the basis for the claim in a narrative statement, and must submit personal financial information.

(b) When married, an individual claiming economic disadvantage also must submit separate financial information for ((~~his or her~~)) their spouse, unless the individual and the spouse are legally separated.

(2) Factors to be considered. In considering diminished capital and credit opportunities, the office will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash),

personal net worth, and the fair market value of all assets, whether encumbered or not. The office will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that the office will compare include total assets, net sales, pretax profit, sales/working capital ratio, and net worth.

(3) Transfers within two years.

(a) Except as set forth in (b) of this subsection, the office will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(b) The office will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(c) In determining an individual's access to capital and credit, the office may consider any assets that the individual transferred within such two-year period described by (a) of this subsection that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

AMENDATORY SECTION (Amending WSR 19-13-014, filed 6/7/19, effective 7/8/19)

WAC 326-20-048 Presumption of disadvantage. (1) Social disadvantage. The agency rebuttably presumes the following persons are socially disadvantaged individuals for the purposes of certification, consistent with 49 C.F.R. ((~~Part~~)) Section 26.67: Women; persons who are black/African American, Hispanic/Latino, Native American, Asian, Pacific Islander, native Hawaiian, and Alaska native; and other minorities found disadvantaged by the small business association.

(2) Each presumptively socially disadvantaged applicant must submit a signed declaration of eligibility (DOE), as provided by the office, that ((~~she or he is~~)) they are socially and economically disadvantaged.

(3)(a) Economic disadvantage. Each owner of a firm applying for state certification must sign a declaration that ((~~he or she has~~)) they have a personal net worth that does not exceed ((~~1.32 million dollars~~)) $2,047,000, per WAC 326-20-049. The office will adjust the personal net worth cap routinely.

(b) Rebuttal of economic disadvantage. If the statement of personal net worth that an individual submits under this section shows that the individual's personal net worth exceeds ((~~1.32 million dollars~~)) $2,047,000 or ((~~shows that a person has been able to accumulate substantial wealth~~)) a reasonable person would not consider the person economically disadvantaged, the individual's economic disadvantage is

rebutted, and the individual is not deemed to be economically disadvantaged. Such an individual is no longer eligible to participate in the program and cannot regain eligibility by making an individual showing of disadvantage. The office is not required to have a proceeding under this section ((~~in order~~)) to rebut the presumption of economic disadvantage in this case.

(4) Individual determinations of social and economic disadvantage. Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged may apply for Socially and Economically Disadvantaged Business Enterprise (SEDBE) certification. The office makes a case-by-case determination of whether each individual whose ownership and control are relied upon for SEDBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to the office, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds ((~~1.32 million dollars~~)) $2,047,000 shall not be deemed to be economically disadvantaged. In making these determinations, the office uses WAC 326-20-046 and 326-20-047. The office requires that applicants provide sufficient information to permit determinations under WAC 326-20-046 and 326-20-047.

AMENDATORY SECTION (Amending WSR 17-13-020, filed 6/12/17, effective 8/1/17)

WAC 326-20-049 Personal net worth. (1) Each individual owner of a firm applying for state certification, whose ownership and control are relied on for certification, must fill out a personal net worth statement and sign a declaration of eligibility that ((~~his or her~~)) their personal net worth does not exceed ((~~1.32 million dollars~~)) $2,047,000. If any individual's personal net worth exceeds ((~~1.32 million dollars~~)) $2,047,000, the individual's presumption of economic disadvantage is rebutted and the individual does not meet the criteria for certification.

(2) The office may require additional financial information where necessary to accurately determine an individual's personal net worth.

(3) In determining an individual's personal net worth, the office will use the following criteria:

(a) Exclude the individual's ownership interest in the applicant firm;

(b) Exclude the individual's equity in his or her primary residence. The equity is the market value of the residence less any mortgages and home equity loan balances;

(c) Not use a contingent liability to reduce the individual's net worth;

(d) ((~~With respect to assets held in vested pension plans, individual retirement accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time~~)) Exclude retirement assets in full;

(e) Include any assets the individual has transferred within two years prior to the application or ((~~renewal~~)) certification update to:

(i) An immediate family member;

(ii) A trust where the beneficiary is an immediate family member; or

(iii) The applicant firm for less than fair market value.

(f) The assets described in (e) of this subsection will not be counted toward an individual's personal net worth if:

(i) The applicant demonstrates that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support; or

(ii) The transfer is consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(g) For the purposes of this section, "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under state law.

(4) If an individual's personal net worth does not exceed ((~~1.32 million dollars~~)) $2,047,000 as described in this section, the office may rebut an individual's presumption of economic disadvantage if the statement of personal net worth and supporting documentation demonstrates that ((~~the individual is able to accumulate substantial wealth. In making this determination, the office may consider factors that include, but are not limited to:~~

~~(a) Whether the average adjusted gross income of the owner over the most recent three year period exceeds three hundred fifty thousand dollars;~~

~~(b) Whether the income was unusual and not likely to occur in the future;~~

~~(c) Whether the earnings were offset by losses;~~

~~(d) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;~~

~~(e) Other evidence that income is not indicative of lack of economic disadvantage; and~~

~~(f) Whether the total fair market value of the owner's assets exceed six million dollars~~)) a reasonable person would not consider the individual to be economically disadvantaged even though the individual's personal net worth (PNW) did not exceed the limitation cap. Among the evidence the office can consider are ready access to wealth, income or assets of a type or magnitude inconsistent with economic disadvantage, a lavish lifestyle, community property, or other circumstances that economically disadvantaged people typically do not enjoy. Liabilities and the kind of asset exclusions used in PNW calculations would not be taken into account as part of this determination.

AMENDATORY SECTION (Amending WSR 19-13-014, filed 6/7/19, effective 7/8/19)

WAC 326-20-050 Proof of ownership of business. ((~~(1) In determining whether a socially and economically disadvantaged participant(s) in a firm owns the business, the agency considers all facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership, or transfer of ownership, must be in the normal course of business.~~

~~(2) To be an eligible for certification, a firm must be at least fifty-one percent owned by a socially and economically disadvantaged individual(s).~~

~~(a) In the case of a sole proprietorship or other cases where documentary proof of ownership is not available, the agency may undertake further investigation and may require documents showing how and when the socially and economically disadvantaged owner(s) interest in the business was acquired.~~

~~(b) In the case of a corporation, a socially and economically disadvantaged individual(s) must own at least fifty-one percent of each class of voting stock outstanding and fifty-one percent of the aggregate of all stock outstanding.~~

~~(c) In the case of a partnership, a socially and economically disadvantaged individual(s) must own at least fifty-one percent of each class of partnership interest.~~

~~(d) In the case of a limited liability company, a socially and economically disadvantaged individual(s) must own at least fifty-one percent of each class of member interest.~~

~~(3) The socially and economically disadvantaged individual(s) ownership, including the individual's contribution of capital or expertise to acquire ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm. It may include ownership interest acquired:~~

~~(a) As the result of a final property settlement or court order in a divorce or legal separation, provided no term or condition of the agreement or divorce decree is inconsistent with this section;~~

~~(b) Through inheritance or because of the death of the former owner; and~~

~~(c) Through debt instruments from financial institutions or other organizations lending funds in the normal course of business, even when the debtor's ownership interest is security for the loan.~~

~~(4) The disadvantaged owner(s) must enjoy the customary incidents of ownership, share in the risks, and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form of arrangements.~~

~~(5) When expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership, the applicant must have a significant financial investment in the firm, and the applicant's expertise must be:~~

~~(a) In a specialized field;~~

~~(b) In areas critical to the firm's operations;~~

~~(c) Indispensable to the firm's potential success;~~

~~(d) Specific to the type of work the firm performs; and~~

~~(e) Documented in the records of the firm, which must show the contribution of expertise and value to the firm.~~

~~(6) The following are insufficient to be considered ownership in a firm by a socially and economically disadvantaged individual for the purposes of certification:~~

~~(a) A promise to contribute capital; an unsecured note payable to the firm or an owner who is not a disadvantaged individual; mere participation in a firm's activities as an employee; capitalization not commensurate with the value for the firm; and any terms or practices giving a nondisadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s).~~

~~(b) Except as allowed by this section, interests or assets obtained by an applicant in the form of a gift or transfer without adequate consideration from any nondisadvantaged individual or firm who~~

~~is: Involved in the same firm or affiliate where the individual is seeking certification; involved in the same or a similar line of business; or engaged in an ongoing business relationship with the firm or an affiliate where the individual is seeking certification. To overcome this presumption and permit the interests or assets, the disadvantaged individual must demonstrate by clear and convincing evidence that: The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification; and the disadvantaged individual controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a nondisadvantaged individual who provided the gift or transfer.~~)) (1) General rule: A socially and economically disadvantaged owner must own at least 51 percent of each class of ownership of the firm. Each socially and economically disadvantaged owner whose ownership is necessary to the firm's eligibility must demonstrate that their ownership satisfies the requirements of this section. If not, the firm is ineligible.

(2) Overall requirements. A socially and economically disadvantaged owner's acquisition and maintenance of an ownership interest meets the requirements of this section only if the owner demonstrates the following:

(a) Acquisition. The socially and economically disadvantaged owner acquires ownership at fair value and by one or more "investments" as defined in subsection (3) of this section.

(b) Proportion. No owner derives benefits or bears burdens that are clearly disproportionate to their ownership shares.

(c) Maintenance. This section's requirements continue to apply after the socially and economically disadvantaged owner's acquisition and the firm's certification. The socially and economically disadvantaged owner must maintain their investment and its proportion relative to those of other owners such that eligible individuals retain at least 51 percent ownership.

(i) The socially and economically disadvantaged owner may not withdraw or revoke their investment.

(ii) When an existing co-owner contributes significant, additional, post-acquisition cash or property to the firm, the socially and economically disadvantaged owner must increase their own investment to a level not clearly disproportionate to the nondisadvantaged owner's investment.

(iii) An organic increase in the value of the business does not affect maintenance because the value of the owners' investments remains proportional.

(3) Investments. A socially and economically disadvantaged owner may acquire ownership by purchase, capital contribution, or gift. Subject to the other requirements of this section, each is considered an "investment" in the firm, as are additional purchases, contributions, and qualifying gifts.

(a) Investments are unconditional and at full risk of loss.

(b) Investments include a significant outlay of the socially and economically disadvantaged owner's own money.

(c) For purposes of this part, title determines ownership of assets used for investments and of ownership interests themselves. This rule applies regardless of contrary community property, equitable distribution, banking, contract, or similar laws, rules, or principles.

(i) The person who has title to the asset owns it in proportion to their share of title.

(ii) However, the title rule is deemed not to apply when it produces a certification result that is manifestly unjust.

(d) If the socially and economically disadvantaged owner jointly (50/50) owns an investment of cash or property, the socially and economically disadvantaged owner may claim at least a 51 percent ownership interest, only if the other joint owner formally transfers to the socially and economically disadvantaged owner enough of his ownership in the invested asset(s) to bring the socially and economically disadvantaged owner's investment to at least 51 percent of all investments in the firm. Such transfers may be gifts described in subsection (5) of this section.

(4) Purchases and capital contributions.

(a) The following situations qualify as purchase and/or capital contributions:

(i) A purchase of an ownership interest is an investment when the consideration is entirely monetary and not a trade of property or services.

(ii) Capital that the socially and economically disadvantaged owner contributes directly to the company is an investment when the contribution is all cash or a combination of cash and tangible property and/or realty.

(iii) Debt-financed purchases or capital contributions are investments when they comply with the requirements of this section.

(b) The following situations do not qualify as purchase and/or capital contribution:

(i) Contributions of time, labor, services, and the like are not investments or components of investments.

(ii) Loans are not investments. The proceeds of loans may be investments to the extent that they finance the socially and economically disadvantaged owner's qualifying purchase or capital contribution.

(iii) Guarantees are not investments.

(iv) The firm's purchases or sales of property, including ownership in itself or other companies, are not the socially and economically disadvantaged owner's investments.

(v) Other persons' or entities' purchases or capital contributions are not the socially and economically disadvantaged owner's investments.

(5) Gifts. A gift to the socially and economically disadvantaged owner is an investment when it meets the requirements of this section. The gift rules apply to partial gifts, bequests, inheritances, trust distributions, and transfers for inadequate consideration. They apply to gifts of ownership interests and to gifts of cash or property that the socially and economically disadvantaged owner invests. The following requirements apply to gifts on which the socially and economically disadvantaged owner relies for their investment:

(a) The transferor/donor is or immediately becomes uninvolved with the firm in any capacity and in any other business that contracts with the firm other than as a lessor or provider of standard support services;

(b) The transferor does not derive undue benefit; and

(c) A writing documents the gift. When the socially and economically disadvantaged owner cannot reasonably produce better evidence, a receipt, canceled check, or transfer confirmation suffices, if the writing identifies transferor, transferee, amount or value, and date.

(d) Curative measures. The rules of this section do not prohibit transactions that further the objectives of, and compliance with, the provisions of this part. A socially and economically disadvantaged owner or firm may enter into legitimate transactions, alter the terms of ownership, make additional investments, or bolster underlying docu-

mentation in a good faith effort to remove, surmount, or correct defects in eligibility, as long as the actions are consistent with this part.

(i) The certifier may notify the firm of eligibility concerns and give the firm time, if the firm wishes, to attempt to remedy impediments to certification.

(ii) The firm may, of its own volition, take curative action up to the time of the certifier's decision. However, it must present evidence of curation before the certifier's decision.

(iii) The certifier may provide general assistance and guidance but not professional (legal, accounting, valuation, etc.) advice or opinions.

(iv) While the certifier may not affirmatively impede attempts to cure, it may maintain its decision timeline and make its decision based on available evidence.

(v) The certifier must deny or remove certification when the firm's efforts or submissions violate the rules in (e) of this subsection.

(e) Anti-abuse rules.

(i) The substance and not the form of transactions drives the eligibility determination.

(ii) The certifier must deny applications based on sham transactions or false representations, and it must decertify firms that engage in or make them. Transactions or representations designed to evade or materially mislead subject the firm to the same consequences.

(iii) Fraud renders the firm ineligible and subjects it to possible sanctions, suspension, debarment, criminal prosecution, civil litigation, and any other consequence or recourse not proscribed in this part.

(6) Debt-financed investments.

(a) Subject to the other provisions of this subpart, a socially and economically disadvantaged owner may borrow money to finance an investment to acquire ownership if the following requirements are met:

(i) Money that the socially and economically disadvantaged owner receives as a gift is their own money.

(ii) The firm does not finance any part of the investment, directly or indirectly. The socially and economically disadvantaged owner does not rely on the company's credit or other resources to repay any part of the debt or otherwise to finance any part of their investment.

(iii) The loan is real, enforceable, not in default, not offset by another agreement, and on standard commercial, arm's length terms. The loan agreement requires level, regularly recurring payments of principal and interest, according to a standard amortization schedule. The loan agreement must permit prepayments, including by refinancing.

(b) If the creditor forgives or cancels all or part of the debt, or the socially and economically disadvantaged owner defaults, the entire debt-financed portion of the socially and economically disadvantaged owner's purchase or capital contribution is no longer an investment. This does not prohibit refinancing with debt that meets the requirements of this section or preclude prompt cures of ownership issues.

AMENDATORY SECTION (Amending WSR 19-13-014, filed 6/7/19, effective 7/8/19)

WAC 326-20-055 Subsidiaries. An eligible firm must be owned by an individual(s) who is socially and economically disadvantaged, rather than owned by another firm, except as provided below:

(1) If a socially and economically disadvantaged individual(s) owns and controls a firm through a parent or holding company that is established for tax, capitalization, or other purposes consistent with industry practice; and the parent or holding company owns and controls the subsidiary.

(2) The agency may certify such a subsidiary if there is cumulatively ((~~fifty-one~~)) 51 percent ownership of the subsidiary by a socially and economically disadvantaged individual(s). Examples of such subsidiaries include, but are not limited to:

(a) A socially and economically disadvantaged individual(s) owns ((~~one hundred~~)) 100 percent of a holding company and has a wholly owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

(b) A socially and economically disadvantaged individual(s) owns ((~~one hundred~~)) 100 percent of the holding company and owns ((~~fifty-one~~)) 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

(c) A socially and economically disadvantaged individual(s) owns ((~~eighty~~)) 80 percent of the holding company and the holding company in turn owns ((~~seventy~~)) 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is ((~~fifty-six~~)) 56 percent (((~~eighty~~)) 80 percent of the ((~~seventy~~)) 70 percent). This is more than ((~~fifty-one~~)) 51 percent, so the agency may certify the subsidiary, if all other requirements are met.

(d) Same as the examples in (b) and (c) of this subsection, but someone other than the socially and economically disadvantaged owner(s) of the parent or holding company control the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, the agency cannot certify it because it fails to meet control requirements.

(e) A socially and economically disadvantaged individual(s) owns ((~~sixty~~)) 60 percent of the holding company and ((~~fifty-one~~)) 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is approximately ((~~thirty-one~~)) 31 percent. This is less than ((~~fifty-one~~)) 51 percent, so the agency cannot certify the subsidiary.

(f) The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification or the gross receipts cap of WAC 326-20-096. Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(3) Businesses certified by the office are limited to having one level of ownership above an operating company. That is, there could be a "parent" company but not a "grandparent" company.

AMENDATORY SECTION (Amending WSR 19-13-014, filed 6/7/19, effective 7/8/19)

WAC 326-20-060 Community ownership. (1) When an ownership interest arises in a nonapplicant spouse or registered domestic partner solely because of community property laws, the agency will not disqualify the applicant if both parties certify that:

(a) Only the applicant spouse or registered domestic partner participates in the management of the business; and

(b) The nonparticipating spouse or registered domestic partner relinquishes control over ((~~his/her~~)) their community interest in the business.

(2) When an ownership interest arising in a nonapplicant spouse or registered domestic partner solely because of community property laws, the agency will not disqualify the applicant because of a provision for the nonapplicant spouse or domestic partner to cosign a financing agreement, contract for the purchase or sale of real or personal property, bank signature card, or other document.

(3) The agency must give particular scrutiny to the ownership and control of a firm to ensure it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual, when the ownership of the firm or its assets is transferred from a spouse or registered domestic partner who is not a socially and economically disadvantaged individual.

AMENDATORY SECTION (Amending WSR 19-13-014, filed 6/7/19, effective 7/8/19)

WAC 326-20-080 Factors considered in determining control. ((~~(1) In determining whether disadvantaged owner(s) control a business, the office must consider all of the facts in the record, viewed as a whole.~~

~~(2) The disadvantaged owner(s) must demonstrate the ability to make independent and unilateral business decisions needed to guide the future and direction of the business.~~

~~(3) The certifiable business must not be subject to any formal or informal restrictions limiting the customary discretion of the disadvantaged owner(s). Restrictions through corporate charter provisions, bylaw requirements, contracts or any other formal or informal devices, such as cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by nondisadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, limitations on or assignments of voting rights, preventing the disadvantaged owner(s), without the cooperation or vote of any nondisadvantaged individual, from making any business decision are prohibited. This subsection does not preclude a spouse or registered domestic partner cosignature on the office's spouse or domestic partner nonparticipation statement.~~

~~(4) Disadvantaged owner(s) must possess the power to direct or cause the direction of the management and policies of the business and make daily and long-term decisions on matters of management, policy, and operations.~~

~~(a) Disadvantaged owner(s) must hold the highest officer position in the company, such as chief executive officer or president.~~

~~(b) In a corporation, disadvantaged owners must control the board of directors.~~

~~(c) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions. In order for a partnership to be controlled by disadvantaged individuals, any nondisadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.~~

~~(d) Nondisadvantaged or immediate family members may be involved in a certified business as owners, managers, employees, stockholders, officers, or directors. They must not possess or exercise the power to control the business or be disproportionately responsible for the operation of the business.~~

~~(e) Disadvantaged owner(s) of the business may delegate various areas of the management, policymaking, or daily operations of the business to other participants in the business, regardless of whether these participants are disadvantaged individuals. Such delegations of authority must be revocable, and the disadvantaged owner(s) must retain the power to hire and fire any person to whom such authority is delegated. The disadvantaged owner(s) managerial role in the business's overall affairs must be such that the recipient can reasonably conclude the disadvantaged owners actually exercise control over the business's operations, management, and policy.~~

~~(f) Disadvantaged owner(s) must demonstrate the ability to make basic decisions pertaining to the daily operations of the business independently and have an overall understanding of, managerial and technical competence and experience directly related to, the type of business in which the business is engaged and operating. The owner(s) are not required to have experience or expertise in every critical area of operations or given field than managers or key employees. They must have the ability to intelligently and critically evaluate information presented by other participants in the business's activities and to use this information to make independent decisions concerning the business's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principle business activities of the business is insufficient to demonstrate control.~~

~~(g) If state or local law requires the persons to have a particular license or other credential in order to own or control a certain type of business, then the disadvantaged person(s) who own and control a potential certifiable business of that type must possess the required license or credential. If state or local law does not require the applicant to possess such a license or credential to own or control a business, the office must not deny certification solely on the ground the person lacks the license or credential. However, the office may take into account the absence of the license or credential as one factor in determining whether the disadvantaged owner(s) actually control the business.~~

~~(h) The office may consider differences in remuneration between the disadvantaged owner(s) and other business participants in determining whether to certify a business. Such consideration must be in the context of the duties of the persons involved, normal industry practices, the business's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the business. The office may determine a disadvantaged owner controls a business although that owner's remuneration is lower than that of~~

~~some other participants in the business. In a case where a nondisadvantaged individual formerly controlled the business, and a disadvantaged individual now controls it, the office may consider a difference between the remuneration of the former and current controller of the business as a factor in determining who controls the business, particularly when the nondisadvantaged individual remains involved with the business and continues to receive greater compensation than the disadvantaged individual.~~

~~(i) In order to be viewed as controlling a business, a disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the business or prevent the individual from devoting sufficient time and attention to the affairs of the business to control its activities. For example, absentee ownership of a business and part-time work in a full-time business are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings or weekends, if the individual controls it all the time it is operating.~~

~~(j) A disadvantaged individual may control a business even though one or more of the individual's nondisadvantaged immediate family members, participate in the business as a manager, employee, owner, or in another capacity. Except as otherwise provided in this subsection, the office must make a judgment about the control the disadvantaged owner exercises vis-a-vis other persons involved in the business as the office does in other situations, without regard to whether or not the other persons are immediate family members. If the office cannot determine the disadvantaged owners, as distinct from the family as a whole, control the business, then the disadvantaged owners failed to carry their burden of proof concerning control, even though they may participate significantly in the business's activities.~~

~~(k) When a business was formerly owned or controlled by a nondisadvantaged individual, whether or not an immediate family member, and ownership or control was transferred to a disadvantaged individual, and the nondisadvantaged individual remains involved with the business in any capacity, there is a rebuttable presumption of control by the nondisadvantaged individual unless the disadvantaged individual now owning the business demonstrates to the office, by clear and convincing evidence, that:~~

~~(i) The transfer of ownership or control to the disadvantaged individual was made for reasons other than obtaining certification; and~~

~~(ii) The disadvantaged individual actually controls the management, policy, and operations of the business, notwithstanding the continuing participation of a nondisadvantaged individual who formerly owned or controlled the business.~~

~~(l) In determining whether its disadvantaged owner controls a business, the office may consider whether the business owns equipment necessary to perform its work. However, the office must not determine a business is not controlled by disadvantaged individuals solely because the business leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the business.~~

~~(m) A business operating under a franchise or license agreement may be certified if it meets the standards in this paragraph and the franchiser or licenser is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the office should generally not consider the restraints relating to standardized quality,~~

~~advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.~~

~~(n) The disadvantaged individual(s) controlling a business may use an employee leasing company. The use of such a company does not preclude the individual(s) from controlling their business if they continue to maintain an employer-employee relationship with the leased employees. This includes responsibility for hiring, firing, training, assigning, and otherwise controlling on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.~~)) (1) General rules.

(a) One or more socially and economically disadvantaged owners of the firm must control it.

(b) Control determinations must consider all pertinent facts, viewed together and in context.

(c) A firm must have operations in the business for which it seeks certification at the time it applies.

The office does not certify plans or intentions, or issue contingent or conditional certifications.

(2) Socially and economically disadvantaged owner as final decision maker. A socially and economically disadvantaged owner must be the ultimate decision maker in fact, regardless of operational, policy, or delegation arrangements.

(a) Governance. Governance provisions may not require that any socially and economically disadvantaged owner obtain concurrence or consent from a nonsocially and economically disadvantaged owner to transact business on behalf of the firm.

(i) Highest officer position. A socially and economically disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(ii) Board of directors. A socially and economically disadvantaged owner must have present control of the firm's board of directors, or other governing body, through the number of eligible votes.

(A) Quorum requirements. Provisions for the establishment of a quorum must not block the socially and economically disadvantaged owner from calling a meeting to vote and transact business on behalf of the firm.

(B) Shareholder actions. A socially and economically disadvantaged owner's authority to change the firm's composition via shareholder action does not prove control within the meaning of this section.

(iii) Partnerships. In a partnership, at least one socially and economically disadvantaged owner must serve as a general partner, with control over all partnership decisions.

(iv) Exception. Bylaws or other governing provisions that require nonsocially and economically disadvantaged owner consent for extraordinary actions generally do not contravene the control rules of this section. Nonexclusive examples are a sale of the company or substantially all of its assets, mergers, and a sudden, wholesale change of type of business.

(b) Expertise. At least one socially and economically disadvantaged owner must have an overall understanding of the business and its

essential operations sufficient to make sound managerial decisions not primarily of an administrative nature. These requirements vary with type of business, degree of technological complexity, and scale.

(c) Socially and economically disadvantaged owner decisions. To distinguish control, the firm must show that the socially and economically disadvantaged owner has authority, critically analyzes information, and uses that analysis to make independent decisions. The firm must also demonstrate that the eligible owner makes the business decisions not primarily of an administrative nature.

(d) Delegation. A socially and economically disadvantaged owner may delegate administrative activities or operational oversight to a non-SED individual as long as at least one socially and economically disadvantaged owner retains unilateral power to fire the delegate(s), and the chain of command is evident to all participants in the company and to all persons and entities with whom the firm conducts business.

(i) No non-SED participant may have power equal to or greater than that of a socially and economically disadvantaged owner, considering all the circumstances. Aggregate magnitude and significance govern; a numerical tally does not.

(ii) Non-SED participants may not make nonroutine purchases or disbursements, enter into substantial contracts, or make decisions that affect company viability without the socially and economically disadvantaged owner's consent.

(iii) Written provisions or policies that specify the terms under which non-SED participants may sign or act on the socially and economically disadvantaged owner's behalf with respect to recurring matters generally do not violate this paragraph, as long as they are consistent with the socially and economically disadvantaged owner having ultimate responsibility for the action.

(e) Franchise and license agreements. A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licenser is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the certifier should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, if the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

AMENDATORY SECTION (Amending WSR 19-13-014, filed 6/7/19, effective 7/8/19)

WAC 326-20-094 Assignment of North American ((~~Industrial~~)) Industry Classification System (NAICS) code. The office must grant certification to a business only for specific types of work the disadvantaged owner(s) have the ability to control. To become certified in an additional type of work, the business needs to demonstrate its owner(s) are able to control the business with respect to that type of work. The office must not require the business to recertify or submit

a new certification application but verify the disadvantaged owner(s) control of the business in the additional type of work.

(1) The types of work a business can perform, whether at initial certification or when a new type is added, must be described in terms of the most specific available North American Industry Classification System (NAICS) code for that type of work. In addition to applying the appropriate NAICS code, the office may apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one describing, as specifically as possible, the ((~~principle~~)) principal goods or services the business would provide to the state. Multiple NAICS codes may be assigned when appropriate. The office must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a business's certification.

(2) Businesses and recipients must check carefully to make sure the NAICS codes cited in a certification are current and accurately reflect work the office has determined the business owners can control. The business bears the burden of providing detailed company information the office needs to make an appropriate NAICS code designation.

(3) If a business believes there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified, the business may request the office, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the business is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients must not rely on such a description in determining whether a business's participation can be counted toward goals.

(4) The office is not precluded from changing a certification classification or description if there is a factual basis in the record. However, the office must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

AMENDATORY SECTION (Amending WSR 19-13-014, filed 6/7/19, effective 7/8/19)

WAC 326-20-099 Small business concern requirement and size standards. (1) In addition to meeting the ownership and control requirements of chapter 39.19 RCW, a business must qualify as a small business concern for certification eligibility or ((~~recertification~~)) certification update.

(a) A small business concern is a business that is independently owned and operated, is not dominant in its field of operations, and does not exceed the size limitations as set forth in the current table of North American ((~~Industrial~~)) Industry Classification System (NAICS) codes or corresponding industry size standards as set forth in 49 C.F.R. Part 26 and amendments or inflationary adjustments thereof.

(b) The number of employees or amount of annual receipts listed as the size standard for each NAICS code indicates the maximum allowed for a business, including its affiliates, to qualify as a small business concern.

(c) The office's determination of whether a business qualifies as a small business concern must be, whenever possible, based on criteria

consistent with the small business requirements defined under section 3 of the Small Business Act, 15 U.S.C. 632, and its implementing regulations, taking into consideration statewide markets.

(2) A business exceeding the small business size limits after certification by the office must be subject to graduation.

(3) At the time of application for certification and recertification, a business must demonstrate to the office that it is a small business concern. The office may verify the business is still a small business concern at any time after certification. In verifying the business's size, the office will review such financial documentation made available to the office, such as annual financial statements, federal income tax returns, state and local excise tax reports, and other relevant information.

(4) Except as otherwise provided in this chapter, affiliation occurs when either directly or indirectly:

(a) One business controls or has power to control the other;

(b) A third party or parties controls or has power to control both; or

(c) An "identity of interest" exists among them so the presumption of affiliation exists.

(5) When reference sets the maximum size standard to "annual receipts," a business exceeding the monetary figure in the standard is not eligible for certification. Annual receipts includes all revenue received or accrued from sources, such as sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. The term "receipts" excludes proceeds from any of the following:

(a) Sales of capital assets and investments;

(b) Proceeds from transactions between a concern and its domestic and foreign affiliates;

(c) Proceeds from payments of notes receivable, accounts receivable, and amounts collected as an agent for another, such as gross bookings when a commission is earned, in which case only the commission earned constitutes revenue, and taxes collected for remittance to a taxing authority.

(6) The measurement period must comply with the following:

(a) The size of a business with three or more completed fiscal years will be determined by averaging the annual receipts of the business for the most recent three years;

(b) The size of a business with less than three fiscal years will be determined by computing the average of the annual receipts from the time the business formed, calculating total revenues compiled over the period divided by the number of weeks, including fractions of a week, multiplied by ((~~fifty-two~~)) 52;

(c) Method of determining annual receipts. Revenue may be taken from the regular books of account of the concern. If the office so elects or the business has not kept regular books of account or the Internal Revenue Service has found such records to be inadequate and has reconstructed income of the concern, then revenue as shown on the federal income tax return of the concern may be used in determining annual receipts along with other information the office deems relevant.

(7) Where the size standard is "number of employees," size eligibility requires the concern may not exceed the number of employees in that standard.

(a) "Number of employees" means that average employment of the concern, including domestic and foreign affiliate employees, based

upon employment during each of the pay periods for the preceding completed ((~~twelve~~)) 12 calendar months.

(b) In computing average employment, part-time and temporary employees count as full-time employees for each applicable pay period.

(c) If a concern has not been in business for ((~~twelve~~)) 12 months, "number of employees" means the average employment of the concern, including its affiliates, during each of the pay periods during which it has been in business.

(8) No business, regardless of its primary NAICS code, is eligible for certification if it exceeds the largest annual revenue limit contained in 49 C.F.R. Part 26 and any amendments or inflationary adjustments thereof.

(9) In determining the business's primary industry, including its affiliates, the office must consider the distribution of receipts, employees, and costs in the differing industry areas the business operated during its most recently completed fiscal year. Other factors, such as patents, contract awards, and assets, may be considered.

(10) If the activities of the business encompass two or more NAICS codes, the first NAICS code listed in the directory is the primary industry classification of the business.

(11) A business exceeding the small business size limits after certification by the office must be subject to graduation.

(12) For purposes of utilization on projects funded by any operating modal of the U.S. Department of Transportation the maximum dollar size standard in 49 C.F.R. Part 26 as may be amended or adjusted for inflation, must apply, even if the size standard would otherwise be set by reference to number of employees. This standard is a maximum. Certified businesses are still subject to applicable lower limits on business size as established by the United States Small Business Administration and these regulations.

AMENDATORY SECTION (Amending WSR 92-11-007, filed 5/11/92, effective 6/11/92)

WAC 326-20-150 On-site investigations. The office may, whenever it deems necessary, conduct unannounced on-site investigations into the operations of a business. By submitting the certification application form, an applicant agrees that the office may conduct such investigations at any time. On-site reviews may be conducted in-person or virtually.

WSR 24-18-097
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed September 3, 2024, 9:34 a.m.]

Title of Rule and Other Identifying Information: WAC 458-02-200 Business licensing service—Applications, licenses, renewals—Fees.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue (department) is amending the rule to replace the term "city's license endorsement" with "local government's business license endorsement" in WAC 458-02-200 to reflect the changes from SB 5897, chapter 270, Laws of 2024, as codified under RCW 19.02.075 (1)(b)(ii).

Reasons Supporting Proposal: To clarify that the handling fee exemption for a nonresident business is in regard to the "local government's business license endorsement," as codified under RCW 19.02.075 (1)(b)(ii).

Statutory Authority for Adoption: RCW 19.02.030.

Statute Being Implemented: RCW 19.02.085.

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: Tiffany Do, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1558; Implementation and Enforcement: Jeannette Gute, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1599.

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

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is appropriate because the department is incorporating 2024 legislation into the rule.

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 Tiffany Do, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone 360-534-1558, fax 360-534-1606, email TiffanyDo@dor.wa.gov, BEGINNING September 4, 2024, 12:00 a.m., AND RECEIVED BY November 4, 2024, 11:59 p.m.

September 3, 2024
Brenton Madison
Rules Coordinator

OTS-5837.1

AMENDATORY SECTION (Amending WSR 24-04-006, filed 1/24/24, effective 2/24/24)

WAC 458-02-200 Business licensing service—Applications, licenses, renewals—Fees. (1) **Introduction.** This rule provides information about business license application handling fees, renewal application handling fees, and late filing delinquency fees as described in chapter 19.02 RCW. Information about individual licenses may be obtained from the business licensing service (BLS) of the department of revenue (department) and is available online at dor.wa.gov.

(2) **Definitions.** The definitions in RCW 19.02.020 apply to this rule.

(3) **What fee do I need to pay when applying for or renewing a license?** Individual license fees vary depending on the license(s) for which you are applying or renewing. The fee payable is the total amount of all applicable individual license fees, business license application handling fees, renewal application handling fees, late filing delinquency fees, and other penalty fees. The method of payment may result in additional charges for credit or debit card processing.

(4) **What does the department do with the fees?** The department will distribute the fees received for individual licenses to the respective regulatory agencies. The application and renewal handling fees and the late filing delinquency fees support the operation of the BLS. Credit or debit card payment processing fees are charged and retained by a third-party payment processor.

(5) **When do I get my business license?** A business license will not be issued until the total fees due are collected and all required information has been submitted. Some individual licenses require review and approval by the regulating authorities, and the business license will not be issued until the regulating authorities have approved them.

(6) **Can I get a refund?** The business license application handling fee and renewal application handling fee collected under RCW 19.02.075 are not refundable. The late filing delinquency fee under RCW 19.02.085 may not be waived or refunded unless:

(a) The department determines that the licensee failed to renew a license by the business license expiration date due to an undisputable error or failure by the department that caused the late filing; or

(b) The licensee requests the waiver and has timely renewed all business licenses and paid the applicable business license fees for a period of 24 months immediately preceding the period covered by the renewal application for which the licensee is requesting the waiver.

When a license is denied or when an applicant withdraws an application, a refund of any other refundable portion of the total payment will be made in accordance with the applicable licensing laws.

(7) **What are the fees?** The business license application handling fee, renewal application handling fee, late renewal filing delinquency fee, and individual license fee amounts are as follows:

Type of fee:	Fee amount:
Business license application handling fee to open the first business location of a new business, or to reopen a closed business:	$50.00

Type of fee:	Fee amount:
Business license application handling fee for an existing business adding a new business location or requesting a ((~~city's~~)) local government's business license endorsement for a nonresident business:	$0
Business license application handling fee for any other purpose(s):	$10.00
Business license renewal application handling fee:	$5.00
Late renewal filing delinquency fee:	Up to $150.00 per business location. See subsection (9)(b) of this rule.
Individual license fee:	Varies depending on type of license.

(8) **What should I do with my business license?** The business license document must be displayed in a conspicuous place at the business location for which the license is issued.

(9) **Do I need to renew my business license?**

(a) The various licenses endorsed and displayed on the business license may each have a requirement to be renewed periodically. The department may prorate the terms of individual licenses and associated fees as needed so that all requested licenses on the account are due for renewal at the same time.

(b) Licenses requiring renewal must be renewed by the expiration date or the department will assess a delinquency fee. The delinquency fee is calculated according to RCW 19.02.085 and must be paid by the licensee before a business license is renewed. Other regulatory agencies may also assess delinquency fees and/or penalties for late renewal, and may cancel the individual licenses for nonrenewal. Reissuance of individual licenses canceled for nonrenewal may require the filing of a new business license application.

WSR 24-18-104
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed September 3, 2024, 1:23 p.m.]

Title of Rule and Other Identifying Information: WAC 458-16A-100 Senior citizen, persons with disabilities, and veterans with disabilities exemption—Definitions, 458-16A-120 Senior citizen, persons with disabilities, and veterans with disabilities exemption—Determining combined disposable income, 458-18-010 Deferral of special assessments and/or property taxes—Definitions, and 458-18A-010 Deferral of special assessments and/or property taxes—Definitions.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue (department) is amending these rules to incorporate 2024 legislation, HB 2375. This legislation expanded the senior citizens, persons with disabilities, and veterans with disabilities exemption and deferral under chapter 84.36 and 84.38 RCW, respectively, and the limited income deferral under chapter 84.37 RCW, by modifying the definition of "residence" to include an accessory dwelling unit.

Reasons Supporting Proposal: Updating these rules will provide clarity to county assessors who administer these property tax-related exemptions and deferrals.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070.

Statute Being Implemented: RCW 84.36.383, 84.37.020, and 84.38.020.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: Jeannette Gute, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1599.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is applicable to these rule updates because the department is incorporating changes resulting from 2024 legislation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Leslie Mullin, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone 360-534-1589, fax 360-534-1606, email LeslieMu@dor.wa.gov, beginning September 4, 2024, 12:00 a.m., AND RECEIVED BY November 4, 2024, 11:59 p.m.

September 3, 2024
Brenton Madison
Rules Coordinator

OTS-5834.1

AMENDATORY SECTION (Amending WSR 24-03-003, filed 1/3/24, effective 2/3/24)

WAC 458-16A-100 Senior citizen, persons with disabilities, and veterans with disabilities exemption—Definitions. (1) **Introduction.** This rule contains definitions of the terms used for the senior citizen, persons with disabilities, and veterans with disabilities property tax exemption described in RCW 84.36.381 through 84.36.389.

(2) **Accessory dwelling unit.** "Accessory dwelling unit" means a separate, autonomous residential dwelling unit that provides complete independent living facilities for one or more persons and includes permanent provisions for living, sleeping, eating, cooking, and sanitation.

(3) **Annuity.** "Annuity" means a series of long-term periodic payments, under a contract or agreement. It does not include payments for the care of dependent children. For purposes of this rule, "long-term" means a period of more than one full year from the annuity starting date.

Annuity distributions must be included in "disposable income," as that term is defined in subsection ((~~(12)~~)) (13) of this rule, regardless of whether the distributions are taxable under federal law. A one-time, lump sum, total distribution is not an "annuity" for purposes of this rule, and only the taxable portion that would be included in federal adjusted gross income should be included in disposable income.

((~~(3)~~)) (4) **Assessment year.** "Assessment year" means the year the assessor lists and values the principal residence for property taxes. The assessment year is the calendar year prior to the year the taxes are due and payable. The assessment year is the year before the claimant receives the reduction in their property taxes because of the senior citizen, persons with disabilities, and veterans with disabilities exemption.

((~~(4)~~)) (5) **Capital gain.** "Capital gain" means the amount the seller receives for property, other than inventory, over that seller's adjusted basis in the property. The seller's initial basis in the property is the property's cost plus taxes, freight charges, and installation fees. In determining the capital gain, the seller's costs of transferring the property to a new owner are also added onto the adjusted basis of the property. If the property is acquired in some other manner than by purchase, the seller's initial basis in the property is determined by the way the seller received the property (e.g., property exchange, payment for services, gift, or inheritance). The seller increases and decreases the initial basis of the property for events occurring between the time the property is acquired and when it is sold (e.g., increased by the cost of improvements made later to the property).

((~~(5)~~)) (6) **Claimant.** "Claimant" means a person claiming the senior citizen, persons with disabilities, and veterans with disabilities exemption by filing an application with the assessor in the county where the property is located.

((~~(6)~~)) (7) **Combined disposable income.** "Combined disposable income" means the annual disposable income of the claimant, the claimant's spouse or domestic partner, and any cotenant occupying the resi-

dence for the assessment year, reduced by amounts paid by the claimant or the claimant's spouse or domestic partner for their:

(a) Legally prescribed drugs;

(b) Home health care as defined in subsection ((~~(18)~~)) (19) of this rule;

(c) Nursing home, boarding home, assisted living facility, or adult family home expenses;

(d) Health care insurance premiums for medicare under Title XVIII of the Social Security Act;

(e) Costs related to medicare supplemental policies as defined in Title 42 U.S.C. Sec. 1395ss;

(f) Durable medical equipment, mobility enhancing equipment, medically prescribed oxygen, and prosthetic devices as defined in RCW 82.08.0283 (see also WAC 458-20-18801);

(g) Long-term care insurance as defined in RCW 48.84.020;

(h) Cost-sharing amounts as defined in RCW 48.43.005;

(i) Nebulizers as defined in RCW 82.08.803;

(j) Medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW;

(k) Ostomic items as defined in RCW 82.08.804;

(l) Insulin for human use;

(m) Kidney dialysis devices; and

(n) Disposable devices used to deliver drugs for human use, as defined in RCW 82.08.935.

Disposable income is not reduced by any of the amounts in this subsection ((~~(6)~~)) (7) if payments are reimbursed by insurance or a government program (e.g., medicare or medicaid). When the application is made, the combined disposable income is calculated for the assessment year.

((~~(7)~~)) (8) **Cotenant.** "Cotenant" means a person who resides with the claimant and who has an ownership interest in the residence.

((~~(8)~~)) (9) **County median household income.** "County median household income" means the median household income estimates for the state of Washington by county of the legal address of the principal place of residence, as published by the office of financial management.

((~~(9)~~)) (10) **Department.** "Department" means the state department of revenue.

((~~(10)~~)) (11) **Depreciation.** "Depreciation" means the annual deduction allowed to recover the cost of business or investment property having a useful life of more than one year. In limited circumstances, this cost, or a part of this cost, may be taken as a section 179 expense on the federal income tax return in the year business property is purchased.

((~~(11)~~)) (12) **Disability.** "Disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. RCW 84.36.383; 42 U.S.C. Sec. 423 (d)(1)(A).

((~~(12)~~)) (13) **Disposable income.** "Disposable income" means the adjusted gross income as defined in the Federal Internal Revenue Code of 2001, and as amended after that date, plus all items described below to the extent they are not included in or have been deducted from adjusted gross income:

(a) Capital gains, other than gain excluded from the sale of a principal residence that is reinvested prior to the sale or within the same calendar year in a different principal residence;

(b) Amounts deducted for loss;

(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the military;

(f) Veterans benefits other than:

(i) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the VA;

(ii) Disability compensation, defined as payments made by the VA to a veteran because of a service-connected disability; and

(iii) Dependency and indemnity compensation, defined as payments made by the VA to a surviving spouse, child, or parent because of a service-connected death;

(g) Federal Social Security Act and railroad retirement benefits;

(h) Dividend receipts; and

(i) Interest received on state and municipal bonds.

((~~(13)~~)) (14) **Domestic partner.** "Domestic partner" means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

((~~(14)~~)) (15) **Domestic partnership.** "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

((~~(15)~~)) (16) **Excess levies.** "Excess levies" has the same meaning as provided in WAC 458-19-005 for "excess property tax levy."

((~~(16)~~)) (17) **Excluded military pay or benefits.** "Excluded military pay or benefits" means military pay or benefits excluded from a person's federal gross income, other than those amounts excluded from that person's federal gross income for attendant-care and medical-aid payments. Members of the armed forces receive many different types of pay and allowances. Some payments or allowances are included in their gross income for federal income tax purposes while others are excluded. Excluded military pay or benefits include:

(a) Compensation for active service while in a combat zone or a qualified hazardous duty area;

(b) Death allowances for burial services, gratuity payment to a survivor, or travel of dependents to the burial site;

(c) Moving allowances;

(d) Travel allowances;

(e) Uniform allowances;

(f) Group term life insurance payments made by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant; and

(g) Survivor and retirement protection plan premiums paid by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant.

((~~(17)~~)) (18) **Family dwelling unit.** "Family dwelling unit" means the dwelling unit occupied by a single person, any number of related

persons, or a group not exceeding a total of eight related and unrelated nontransient persons living as a single noncommercial housekeeping unit. The term does not include a boarding or rooming house.

((~~(18)~~)) (19) **Home health care.** "Home health care" means the treatment or care of either the claimant or the claimant's spouse or domestic partner received in the home. It must be similar to the type of care provided in the normal course of treatment or care in a nursing home, although the person providing the home health care services need not be specially licensed. The treatment and care must meet at least one of the following criteria. It must be for:

(a) Medical treatment or care received in the home;

(b) Physical therapy received in the home;

(c) Food, oxygen, lawful substances taken internally or applied externally, necessary medical supplies, or special needs furniture or equipment (such as wheel chairs, hospital beds, or therapy equipment), brought into the home as part of a necessary or appropriate in-home service that is being rendered (such as a meals on wheels type program); or

(d) Attendant care to assist the claimant, or the claimant's spouse or domestic partner, with household tasks, and such personal care tasks as meal preparation, eating, dressing, personal hygiene, specialized body care, transfer, positioning, ambulation, bathing, toileting, self-medication a person provides for himself or herself, or such other tasks as may be necessary to maintain a person in their own home, but does not include improvements or repair of the home itself.

((~~(19)~~)) (20) **Income threshold 1.** "Income threshold 1" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to $30,000;

(b) For taxes levied for collection in calendar years 2020 through 2023, a combined disposable income equal to the greater of "income threshold 1" for the previous year or 45 percent of the county median household income; and

(c) For taxes levied for collection in calendar year 2024 and thereafter, a combined disposable income equal to the greater of "income threshold 1" for the previous year or 50 percent of the county median household income, adjusted every three years beginning August 1, 2023, and by March 1st every third year thereafter, as provided in RCW 84.36.385(8).

((~~(20)~~)) (21) **Income threshold 2.** "Income threshold 2" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to $35,000;

(b) For taxes levied for collection in calendar years 2020 through 2023, a combined disposable income equal to the greater of "income threshold 2" for the previous year or 55 percent of the county median household income; and

(c) For taxes levied for collection in calendar year 2024 and thereafter, a combined disposable income equal to the greater of "income threshold 2" for the previous year or 60 percent of the county median household income, adjusted every three years beginning August 1, 2023, and by March 1st every third year thereafter, as provided in RCW 84.36.385(8).

((~~(21)~~)) (22) **Income threshold 3.** "Income threshold 3" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to $40,000;

(b) For taxes levied for collection in calendar years 2020 through 2023, a combined disposable income equal to the greater of

"income threshold 3" for the previous year or 65 percent of the county median household income; and

(c) For taxes levied for collection in calendar year 2024 and thereafter, a combined disposable income equal to the greater of "income threshold 3" for the previous year or 70 percent of the county median household income, adjusted every three years beginning August 1, 2023, and by March 1st every third year thereafter, as provided in RCW 84.36.385(8).

((~~(22)~~)) (23) **Lease for life.** "Lease for life" means a lease that terminates upon the death of the lessee.

((~~(23)~~)) (24) **Legally prescribed drugs.** "Legally prescribed drugs" means drugs supplied by prescription of a medical practitioner authorized to issue prescriptions by the laws of this state or another jurisdiction.

((~~(24)~~)) (25) **Life estate.** "Life estate" means an estate whose duration is limited to the life of the party holding it or of some other person.

(a) Reservation of a life estate upon a principal residence placed in trust or transferred to another is a life estate.

(b) Beneficial interest in a trust is considered a life estate for the settlor of a revocable or irrevocable trust who grants to themselves the beneficial interest directly in their principal residence, or the part of the trust containing their personal residence, for at least the period of their life.

(c) Beneficial interest in an irrevocable trust is considered a life estate, or a lease for life, for the beneficiary who is granted the beneficial interest representing their principal residence held in an irrevocable trust, if the beneficial interest is granted under the trust instrument for a period that is not less than the beneficiary's life.

((~~(25)~~)) (26) **Owned.** "Owned" includes "contract purchase" as well as "in fee," a "life estate," and any "lease for life." A residence owned by a marital community or domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant.

((~~(26)~~)) (27) **Ownership by a marital community or domestic partnership.** "Ownership by a marital community or domestic partnership" means property owned in common by both spouses or domestic partners. Property held in separate ownership by one spouse or domestic partner is not owned by the marital community or domestic partnership. The person claiming the exemption must own the property for which the exemption is claimed. For example, a person qualifying for the exemption by virtue of age, disability, or disabled veteran status may not claim this exemption on a residence owned by the person's spouse or domestic partner as a separate estate outside the marital community or domestic partnership unless the claimant has a life estate in that separate estate.

((~~(27)~~)) (28) **Pension.** "Pension" generally means an arrangement providing for payments, not wages, to a person or to that person's family, who has fulfilled certain conditions of service or reached a certain age. Pension distributions may be triggered by separation from service, attainment of a specific age, disability, death, or other events. A pension may allow payment of all or a part of the entire pension benefit, in lieu of regular periodic payments.

((~~(28)~~)) (29) **Principal residence.** "Principal residence" means the claimant owns and occupies the residence as their principal or

main residence. It does not include a residence used merely as a vacation home. For purposes of this exemption:

(a) Principal or main residence means the claimant occupies the residence for more than six months each calendar year.

(b) Confinement of the claimant to a hospital, nursing home, assisted living facility, adult family home, or home of a relative for the purpose of long-term care, does not disqualify the claim for exemption if:

(i) The residence is temporarily unoccupied;

(ii) The residence is occupied by the claimant's spouse or domestic partner or a person financially dependent on the claimant for support;

(iii) The residence is occupied by a caretaker who is not paid for watching the house;

(iv) The residence is rented for the purpose of paying nursing home, hospital, boarding home, or adult family home costs.

(c) For purposes of this subsection, "relative" means any individual related to the claimant by blood, marriage, or adoption.

((~~(29)~~)) (30) **Regular gainful employment.** "Regular gainful employment" means consistent or habitual labor or service which results in an increase in wealth or earnings.

((~~(30)~~)) (31) **Regular property tax levies.** "Regular property tax levies" has the same meaning as provided in WAC 458-19-005 for "regular property tax levy."

((~~(31)~~)) (32) **Replacement residence.** "Replacement residence" means a residence that qualifies for the senior citizen, persons with disabilities, and veterans with disabilities exemption and replaces the prior residence of the person receiving the exemption.

((~~(32)~~)) (33) **Residence.** "Residence" means a single-family dwelling unit whether the unit is separate or part of a multiunit dwelling, may include one accessory dwelling unit and includes up to one acre of the parcel of land on which the dwellings stand((~~s~~)). A residence also includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size. The term also includes:

(a) A share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of the structure in which they reside.

(b) A single-family dwelling situated on leased lands and on lands the fee of which is vested in the United States, any instrumentality thereof including an Indian tribe, the state of Washington, or its political subdivisions.

(c) A mobile home which has substantially lost its identity as a mobile unit by being fixed in location on land owned or rented by the owner of the mobile home and placed on a foundation, posts, or blocks with fixed pipe connections for sewer, water or other utilities even though it may be listed and assessed by the county assessor as personal property. It includes up to one acre of the parcel of land on which the mobile home is located if both the land and mobile home are owned by the same qualified claimant. It also includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size.

((~~(33)~~)) (34) **Veteran.** "Veteran" means a veteran of the armed forces of the United States.

((~~(34)~~)) (35) **Veteran with disabilities.** "Veteran with disabilities" means a veteran of the armed forces of the United States enti-

tled to and receiving compensation from the United States Department of Veterans Affairs (VA) at:

(a) A combined service-connected evaluation rating of 80 percent or higher; or

(b) A total disability rating for a service-connected disability without regard to evaluation percent.

((~~(35)~~)) (36) **Veterans benefits.** "Veterans benefits" means benefits paid or provided under any law, regulation, or administrative practice administered by the VA. Federal law excludes from gross income any veterans' benefits payments, paid under any law, regulation, or administrative practice administered by the VA.

AMENDATORY SECTION (Amending WSR 24-03-003, filed 1/3/24, effective 2/3/24)

WAC 458-16A-120 Senior citizen, persons with disabilities, and veterans with disabilities exemption—Determining combined disposable income. (1) **Introduction.** This rule describes how an assessor determines a claimant's combined disposable income.

Examples. This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide.

(2) **Begin by calculating disposable income.** The assessor must determine the disposable income of the claimant, the claimant's spouse or domestic partner, and all cotenants. The assessor begins by obtaining a copy of the claimant's, the claimant's spouse's or domestic partner's, and any cotenant's federal income tax return. If the federal income tax returns are not provided, the assessor must calculate disposable income from copies of other income documents (e.g., W-2, 1099-R, 1099-INT, etc.). If the federal income tax returns are provided, adjusted gross income is found on the front pages of Form 1040. Even if a federal income tax return is provided, an assessor may request copies of supporting documents to verify the amount of the claimant's combined disposable income.

(a) **Absent spouse or domestic partner.** When a spouse or domestic partner has been absent for over a year and the claimant has no knowledge of their spouse's or domestic partner's location or whether the spouse or domestic partner has income, and the claimant has not received anything of value from the spouse or domestic partner or anyone acting on behalf of the spouse or domestic partner, the disposable income of the spouse or domestic partner is deemed to be zero for purposes of this exemption. The claimant must submit with the application a dated statement signed under the penalty of perjury. This statement must state that more than one year prior to filing the exemption application:

(i) The claimant's spouse or domestic partner was absent;

(ii) The claimant has not and does not know the location of their spouse or domestic partner;

(iii) The claimant has not had any communication with their spouse or domestic partner; and

(iv) The claimant has not received anything of value from their spouse or domestic partner or anyone acting on behalf of their spouse or domestic partner.

The statement must also agree to provide this income information if the claimant is able to obtain it anytime within the next six years.

(b) **Form 1040.** If a claimant provides a copy of the Form 1040, the assessor will calculate the disposable income for the person or couple filing the return by adding to the reported adjusted gross income all of the items described below, but only to the extent these items were excluded or deducted from gross income.

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income.

(ii) **Capital gains.** If the federal income tax return shows capital gains or losses, the assessor examines a copy of the schedule or forms, if any, that were filed with the return. The assessor should examine the capital gains reported on Schedule D (Capital Gains and Losses) and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), and 8829 (Business Use of Home).

The assessor adds to adjusted gross income, any amount of capital gains reduced by losses or deductions on the schedules or forms listed above to determine the total capital gains. The amount of capital gains that were excluded or deducted from adjusted gross income must be added to the adjusted gross income to determine disposable income.

(iii) **Losses.** Amounts deducted for losses are added to adjusted gross income to determine disposable income. Most losses are reported on the federal income tax return in parentheses to reflect that these loss amounts are to be deducted. Net losses are reported on Form 1040 as business losses, capital losses, other losses, rental or partnership-type losses, or as farm losses. The assessor adds these amounts to the adjusted gross income. Additionally, the assessor adds to adjusted gross income the amount reported as a penalty on early withdrawal of savings because the amount represents a loss under section 62 of the Internal Revenue Code.

(A) The claimant only reports the net amount of these losses on the front page of the Form 1040 federal income tax return. A loss may be used on other schedules or forms to reduce income before being transferred to the front page of the tax return to calculate adjusted gross income. The assessor adds to the adjusted gross income the amount of losses used to reduce income on these other schedules and forms. The amount of losses that were used to reduce adjusted gross income must be added to the adjusted gross income to determine disposable income.

For example, a claimant reports a $5,000 capital loss on the front page of the 1040. On the Schedule D, the claimant reports $2,000 in long-term capital gains from the sale of Company X stock and $7,000 in long-term capital losses from the sale of an interest in the Y limited partnership. The assessor has already added the $5,000 loss from the net capital loss reported on the front page of the tax return. The assessor would add onto adjusted gross income only the additional $2,000 in losses from the Schedule D that was used to offset the capital gain the claimant earned from the sale of Company X stock.

(B) The assessor should examine losses reported on Schedules C (Profit or Loss from Business), D (Capital Gains and Losses), E (Supplemental Income and Loss), F (Profit or Loss from Farming), and K-1 (Shareholder's Share of Income, Credits, Deductions, etc.), and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property),

8582 (Passive Activity Loss Limitations), and 8829 (Business Use of Home) to determine the total amount of losses claimed.

(iv) **Depreciation.** Amounts deducted for the depreciation, depletion, or amortization of an asset's costs are added onto the adjusted gross income to determine the disposable income. This includes section 179 expenses, as an expense in lieu of depreciation. Amounts deducted for depreciation, depletion, amortization, and 179 expenses may be found on Schedules C, C-EZ, E, F, K and K-1, and on Form 4835 (Farm Rental Income and Expenses). If the schedule or form results in a loss transferred to the front of the Form 1040 federal income tax return, the depreciation deduction to the extent it is represented in that loss amount should not be added onto the adjusted gross income, as this would result in it being added back twice;

(v) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added to the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference between the total pension and annuity amounts reported and the taxable amounts reported. If the total pension and annuity amounts are not reported on the tax return, the assessor may use a copy of the Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the total pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account.

(vi) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on the Form 1040 federal income tax return is added to the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference between the total Social Security benefits or equivalent railroad retirement amounts reported and the taxable amounts reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the tax return, the assessor may use a copy of the Form SSA-1099 or Form RRB-1099 issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the Social Security benefits or the railroad retirement benefits received.

(vii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than military pay and benefits for attendant care or medical aid, are added to the adjusted gross income of the military personnel receiving the military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are not reported on the Form 1040. Excluded military pay and benefits such as pay earned in a combat zone, basic allowance for subsistence (BAS), basic allowance for housing (BAH), and certain in-kind allowances, are reported on Form W-2. The claimant should disclose when excluded military pay and benefits were received and provide copies of the Form W-2 or other documents that verify the amounts received.

(viii) **Veterans benefits.** Federal law excludes from gross income any veterans benefit payments paid under any law, regulation, or administrative practice administered by the VA. The following veterans benefits are not added to a veteran's adjusted gross income:

(A) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the VA;

(B) Disability compensation, defined as payments made by the VA to a veteran because of a service-connected disability; and

(C) Dependency and indemnity compensation, defined as payments made by the VA to a surviving spouse, child, or parent.

VA benefits are not reported on the Form 1040. The claimant should disclose when excluded veterans benefits were received and provide copies of documents that verify the amount received.

(ix) **Dividend receipts.** Exempt-interest dividends received from a regulated investment company (mutual fund) are reported on the tax-exempt interest line of the Form 1040 and added to the recipient's adjusted gross income to determine that recipient's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse or domestic partner, or any cotenants have received exempt-interest dividends.

(B) Generally, the mutual fund owner will receive a notice from the mutual fund telling them the amount of the exempt-interest dividends received. These exempt-interest dividends are not shown on Form 1099-DIV or Form 1099-INT. Although exempt-interest dividends are not taxable, the owner must report them on the Form 1040 tax return if they have to file; and

(x) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. The tax-exempt interest is reported on the Form 1040 and added to the bond owner's adjusted gross income to determine the bond owner's disposable income.

(3) **Calculate the combined disposable income.** Once the assessor has calculated the disposable income for the claimant, the claimant's spouse or domestic partner, and any cotenants, the assessor will add the disposable incomes together. To calculate the combined disposable income for the claimant, the assessor will subtract from the sum of the disposable income, the amounts paid by the claimant or the claimant's spouse or domestic partner during that calendar year for the deductible amounts listed in WAC 458-16A-100((~~(6)~~)) (7).

OTS-5835.1

AMENDATORY SECTION (Amending WSR 24-03-004, filed 1/3/24, effective 2/3/24)

WAC 458-18-010 Deferral of special assessments and((~~/or~~)) property taxes—Definitions. (1) **Introduction.** This rule provides definitions of the terms used to administer the deferral program in chapter 84.38 RCW and this section through WAC 458-18-100 for special assessments and((~~/or~~)) property taxes on residential housing.

(2) **"Boarding house"** means a residence in which lodging and meals are provided. Each resident of a boarding house is charged a lump sum to cover the costs of lodging and meals with no separate accounting for the fair selling price of the meals.

(3) **"Claimant"** means a person who either elects under chapter 84.38 RCW or is required under RCW 84.64.050, to defer payment of special assessments and((~~/or~~)) real property taxes accrued on their residence by filing a declaration to defer as allowed under chapter 84.38 RCW. Only one individual per household may file a declaration to defer.

(4) **"Cooperative housing"** means any existing structure, including surrounding land and improvements, which contains one or more dwelling units and is owned by:

(a) An association with resident shareholders who are granted renewable leasehold interests in dwelling units in the building. Unlike owners of a condominium, the resident shareholders who hold a renewable leasehold interest do not own their dwelling units; or

(b) An association organized under the Cooperative Association Act (chapter 23.86 RCW).

(5) **"Department"** means the state department of revenue.

(6) **"Devisee"** has the same meaning as provided in RCW 21.35.005((~~: Any person designated in a will to receive a disposition of real or personal property~~)).

(7) **"Domestic partner"** means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(8) **"Domestic partnership"** means a partnership registered under chapter 26.60 RCW or a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(9) **"Equity value"** means the amount by which the true and fair value of a residence exceeds the total amount of all liens, obligations, and encumbrances against the property, excluding deferral liens. As used in this context, the "true and fair value" of a residence is the value shown on the county tax rolls maintained by the assessor for the assessment year in which the deferral claim is made.

(10) **"Fire and casualty insurance"** means a policy with an insurer that is authorized by the ((~~state insurance commission~~)) Washington state office of the insurance commissioner to insure property in this state.

(11) **"Heir"** has the same meaning as provided in RCW 21.35.005((~~: Any person, including the surviving spouse, who is entitled under the statutes of intestate succession to the property of a decedent~~)).

(12) **"Income threshold"** means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to $45,000; and

(b) For taxes levied for collection in calendar year 2020 and thereafter, a combined disposable income equal to the greater of the income threshold for the previous year, or 75 percent of the county median household income, adjusted every three years beginning August 1, 2023, as provided in RCW 84.36.385(8).

(i) Beginning with the adjustment made by August 1, 2023, as provided in RCW 84.36.385(8), if the income threshold in a county is not adjusted based on percentage of county median income, then the income threshold must be adjusted based on the growth of the consumer price index for all urban consumers (CPI-U) for the prior 12-month period as published by the United States Bureau of Labor Statistics.

(ii) In no case may the adjustment be greater than one percent and if the income threshold adjustment is negative, the income threshold for the prior year continues to apply. The adjusted threshold must be rounded to the nearest one dollar.

(13) **"Irrevocable trust"** means a trust that may not be revoked after its creation by the trustor.

(14) **"Lease for life"** means a lease that terminates upon the death of the lessee.

(15) **"Lien"** means any interest in property given to secure payment of a debt or performance of an obligation, including a deed of trust. A lien includes the total amount of special assessments and((~~/or~~)) property taxes deferred and the interest. It also may include any other outstanding balances owed to local governments for special assessments.

(16) **"Life estate"** means an estate that consists of total rights to use, occupy, and control real property but is limited to the lifetime of a designated party; this party is often called a "life tenant."

(17) **"Local government"** means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi municipal corporation, or other political subdivision authorized to levy special assessments.

(18) **"Perjury"** means the willful assertion as to a matter of fact, opinion, belief, or knowledge made by a claimant upon the declaration to defer that the claimant knows to be false.

(19) **"Real property taxes"** means ad valorem property taxes levied on a residence in this state. The term includes foreclosure costs, interest, and penalties accrued as of the date the declaration to defer is filed.

(20) **"Residence"** has the same ((~~definition~~)) meaning as provided in RCW 84.36.383 ((~~and is defined as:~~

~~(a) A single-family dwelling unit whether the unit is separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands. Residence also includes any additional property up to a total of five acres that comprises the residential parcel if local land use regulations require this larger parcel size;~~

~~(b) A share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that their share represents the specific unit or portion of such structure in which they reside; or~~

~~(c) A single-family dwelling situated upon lands the fee of which is vested in the United States or any instrumentality of the United States, including an Indian tribe, or in the state of Washington, notwithstanding the provisions of RCW 84.04.080 and 84.04.090, such a residence is deemed real property~~)).

(21) **"Revocable trust"** means an agreement that entitles the trustor to have the full right to use the real property and to revoke the trust and retake complete ownership of the property at any time during their lifetime. The trustee of a revocable trust holds only bare legal title to the real property. Full equitable title to the property remains with the trustor; the original property owner.

(22) **"Rooming house"** means a residence where persons may rent rooms.

(23) **"Special assessment"** means the charge or obligation imposed by a local government upon real property specially benefited by improvements.

OTS-5836.1

AMENDATORY SECTION (Amending WSR 13-08-030, filed 3/27/13, effective 4/27/13)

WAC 458-18A-010 Deferral of special assessments and((~~/or~~)) property taxes—Definitions. Introduction. This ((~~section~~)) rule is intended to provide definitions of the terms most frequently used to administer the deferral program for special assessments and((~~/or~~)) property taxes on residential housing created by chapter 84.37 RCW. Unless a different meaning is plainly required by the context, the words and phrases used in this chapter have the following meanings:

(1) "Boarding house" means a residence in which lodging and meals are provided. Each resident of a boarding house is charged a lump sum to cover the costs of lodging and meals with no separate accounting for the fair selling price of the meals.

(2) "Claimant" means a person who elects under chapter 84.37 RCW to defer payment of special assessments and((~~/or~~)) real property taxes accrued on his or her residence by filing a declaration to defer as allowed under chapter 84.37 RCW. If more than one individual in a household wishes to defer special assessments and((~~/or~~)) taxes, only one may file a declaration to defer; in other words, only one claimant per household is allowed.

(3) "Cooperative housing" means any existing structure, including surrounding land and improvements, that contains one or more dwelling units and is owned by:

(a) An association with resident shareholders who are granted renewable leasehold interests in dwelling units in the building. Unlike owners of a condominium, the resident shareholders who hold a renewable leasehold interest do not own their dwelling units; or

(b) An association organized under the Cooperative Association Act (chapter 23.86 RCW).

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

(5) "Domestic partner" means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(6) "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(7) "Equity value" means the amount by which the true and fair value of a residence exceeds the total amount of all liens, obligations, and encumbrances against the property excluding the deferral liens. As used in this context, the "true and fair value" of a resi-

dence is the value shown on the county tax rolls maintained by the assessor for the assessment year in which the deferral claim is made.

(8) "Fire and casualty insurance" means a policy with an insurer that is authorized by the ((~~state insurance commission~~)) Washington state office of the insurance commissioner to insure property in this state.

(9) "Good cause" means factors peculiar to each claimant. At a minimum, the applicant must be able to demonstrate that factors outside of his or her control were the cause for missing the statutory deadline. This includes factors which would effectively prevent a reasonable person facing similar circumstances from filing a timely application, such as acting or failing to act based on authoritative written advice received directly from persons upon which a reasonable person would normally rely, severe weather conditions preventing safe travel to the point of filing, incapacity due to illness or injury, and other factors of similar gravity. Inadvertence or oversight is not a basis for a "good cause" extension of the filing deadline.

(10) "Irrevocable trust" means a trust that may not be revoked after its creation by the trustor.

(11) "Lease for life" means a lease that terminates upon the death of the lessee.

(12) "Lien" means any interest in property given to secure payment of a debt or performance of an obligation, including a deed of trust. A lien includes the total amount of special assessments and((~~/or~~)) property taxes deferred and the interest thereon. It also may include any other outstanding balance owed to local government for special assessments.

(13) "Life estate" means an estate that consists of total rights to use, occupy, and control real property, but is limited to the lifetime of a designated party; this party is often called a "life tenant."

(14) "Local government" means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi municipal corporation, or other political subdivision authorized to levy special assessments.

(15) "Perjury" means the willful assertion as to a matter of fact, opinion, belief, or knowledge made by a claimant upon the declaration to defer that the claimant knows to be false.

(16) "Real property taxes" means ad valorem property taxes levied on a residence in this state. The term includes foreclosure costs, interest, and penalties accrued as of the date the declaration to defer is filed.

(17) "Residence" has the same meaning given in RCW 84.36.383((~~; it means a single-family dwelling unit whether the unit is separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands, and it includes any additional property up to a total of five acres that comprises the residential parcel if local land use regulations require this larger parcel size~~)).

(18) "Revocable trust" means an agreement that entitles the trustor to have the full right to use the real property and to revoke the trust and retake complete ownership of the property at any time during his or her lifetime. The trustee of a revocable trust holds only bare legal title to the real property. Full equitable title to the property remains with the trustor; the original property owner.

(19) "Rooming house" means a residence where persons may rent rooms.

(20) "Special assessment" means the charge or obligation imposed by local government upon real property specially benefited by improvements.

WSR 24-18-111
EXPEDITED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed September 3, 2024, 4:54 p.m.]

Title of Rule and Other Identifying Information: High voltage lines and equipment—Automated external defibrillators (AED); WAC 296-32-22515 First aid, and 296-45-125 Medical services and first aid.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this expedited proposal is to implement the requirements of HB 1542, chapter 253, Laws of 2023, codified as RCW 49.17.510. The department of labor and industries (L&I) will be adding the requirements into WAC 296-32-22515 First aid, and 296-45-125 Medical services and first aid. The law requires employers who build, maintain, and operate high voltage systems 601 volts and over to have and maintain an AED on-site where two or more employees are working in close proximity to high voltage lines and equipment. In WAC 296-45-125, without exceeding the statute, added a reference to existing standards around minimum approachable distances in high voltage work to WAC 296-45-325 regarding close proximity. L&I also connected close proximity in WAC 296-32-22515 by adding references to WAC 296-32-23518 and 296-32-23520. The law requires AEDs to be available; L&I added references in each section to tie the availability of an AED to the same availability requirement for first aid kits to ensure it is clear when and how many need to be available. Employers who perform line clearance tree trimming activities are also included in this change. The proposed amendments include a housekeeping update in WAC 296-32-22515, incorporating a note that is further in the section to have information on format of the certificate being next to the requirement.

Reasons Supporting Proposal: High voltage worksites can be extremely dangerous for any workers around or in them. Accidents from working by high voltage power lines can lead to both nonfatal and fatal injuries. Employees are better protected by providing an AED at any job site with employees who operate, maintain, or construct high voltage lines with a voltage of 601 or greater. These rule amendments are needed to implement the requirements established in HB 1542 and ensure employers and employees understand what measures are required when an employee may suffer an injury requiring cardiopulmonary resuscitation (CPR) or an AED.

RCW 49.17.510 (HB 1542) becomes effective January 1, 2025.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.510.

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy West, Tumwater, Washington, 509-237-2372; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

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

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of

statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed language adopts without material change the AED requirements at high voltage work sites described under RCW 49.17.510.

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 Tari Enos, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-902-5541, fax 360-902-5619, email Tari.Enos@Lni.wa.gov, BEGINNING September 4, 2024, at 8:00 a.m., AND RECEIVED BY November 4, 2024, at 5:00 p.m.

September 3, 2024
Joel Sacks
Director

OTS-5658.2

AMENDATORY SECTION (Amending WSR 20-20-109, filed 10/6/20, effective 11/6/20)

WAC 296-32-22515 First aid. This section is designed to ensure that all employees in this state are afforded quick and effective first-aid attention in the event of an on-the-job injury.

(1) For fixed locations, the employer must make sure that first-aid trained personnel are available to provide prompt first aid. Designated first-aid trained personnel must have a valid first-aid certificate.

(2) For field work involving two or more employees at a work location, at least two trained persons holding a valid first-aid and CPR certificate must be available.

(3) Employees working alone must have basic first-aid training and hold a valid first-aid certificate. The first-aid certificate can be in electronic format.

(4) The first-aid kits and supplies requirements of the safety and health core rules, WAC 296-800-15020, apply within the scope of this chapter.

(5) When practical, a poster must be fastened and maintained either on or in the cover of each first-aid kit and at or near all phones plainly stating the worksite address or location, and the phone numbers of emergency medical responders for the worksite.

(6) All vehicles used to transport an employee or work crews must be equipped with first-aid supplies.

((~~Note: A valid first-aid certificate can be in an electronic form.~~))

(7) Any employer with employees who operate, maintain, or construct high voltage lines and equipment or who conduct line-clearance tree trimming in close proximity to high voltage lines and equipment must:

(a) Make an automated external defibrillator available, similar to first-aid kits under WAC 296-800-15020(1), and accessible to employees when work is being performed on, or in close proximity to, high voltage lines and equipment by two or more employees;

(b) Conduct regular maintenance, in accordance with the manufacturer instructions, and conduct annual inspections of the automated external defibrillator to ensure operability and availability; and

(c) Provide training or facilitate the provision of training to ensure there are at least two employees proficient on the proper and safe use of the automated external defibrillator at any site involving work on, or in close proximity to, high voltage lines and equipment. To be considered proficient, an employee must have completed initial or updated training within the previous two years.

(8) For the purposes of this section:

(a) "Close proximity" refer to WAC 296-32-23518 and 296-32-23520.

(b) "High voltage lines and equipment" refers to any energized communication line, electric supply line, or equipment with a voltage of 601 or greater.

OTS-5659.2

AMENDATORY SECTION (Amending WSR 19-13-083, filed 6/18/19, effective 8/1/19)

WAC 296-45-125 Medical services and first aid. The employer must provide medical services and first aid as required in WAC 296-800-150. The following requirements also apply:

(1) Cardiopulmonary resuscitation and first-aid training. When employees are performing work on or associated with exposed lines or equipment energized at 50 volts or more, persons trained in first aid including cardiopulmonary resuscitation (CPR) must be available as follows:

(a) For field work involving two or more employees at a work location, at least two trained persons must be available. However, for line-clearance tree trimming operations performed by line-clearance tree trimmers who are not qualified electrical employees, only one trained person need be available if all new employees are trained in first aid, including CPR, within ((~~3~~)) three months of their hiring dates.

(b) For fixed work locations such as generating stations, the number of trained persons available must be sufficient to ensure that each employee exposed to electric shock can be reached within ((~~4~~)) four minutes by a trained person. However, where the existing number of employees is insufficient to meet this requirement (at a remote substation, for example), all employees at the work location will be trained.

(2) First-aid supplies. First-aid supplies required by WAC 296-800-150 must be placed in weatherproof containers if the supplies could be exposed to the weather.

(3) First-aid kits. The employer must maintain each first-aid kit, ensure that it is readily available for use, and must inspect it frequently enough to ensure that expended items are replaced. The employer also must inspect each first-aid kit at least once per year.

(4) Any employer with employees who operate, maintain, or construct high voltage lines and equipment or who conduct line-clearance tree trimming in close proximity to high voltage lines and equipment must:

(a) Make an automated external defibrillator available, similar to first-aid kits under subsection (3) of this section, and accessible to employees when work is being performed on, or in close proximity to, high voltage lines and equipment by two or more employees;

(b) Conduct regular maintenance, in accordance with the manufacturer instructions, and conduct annual inspections of the automated external defibrillator to ensure operability and availability; and

(c) Provide training or facilitate the provision of training to ensure there are at least two employees proficient on the proper and safe use of the automated external defibrillator at any site involving work on, or in close proximity to, high voltage lines and equipment. To be considered proficient, an employee must have completed initial or updated training within the previous two years.

(5) For the purposes of this section:

(a) "Close proximity" refer to WAC 296-45-325.

(b) "High voltage lines and equipment" refers to any energized communication line, electric supply line, or equipment with a voltage of 601 or greater.