



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Revenue

- Preproposal Statement of Inquiry was filed as WSR 15-03-083; or
- Expedited Rule Making--Proposed notice was filed as WSR ; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information:

WAC 458-16-300 (Public meeting hall-Public meeting place-Community meeting hall) provides administrative guidance regarding criteria of eligibility for nonprofit organizations applying for a property tax exemption under RCW 84.36.037 (Nonprofit organization property connected with operation of public assembly hall or meeting place).

Hearing location(s):

Capital Plaza Building
4th Floor Executive. Conference Rm.
1025 Union Avenue SE
Olympia, Washington

Copies of draft rules are available for viewing and printing on our website at [Rules Agenda](#)

Call in option can be provided upon request no later than 3 days before the hearing date.

Date: **June 21, 2016** Time: **1:00 P.M.**

Date of intended adoption: **June 28, 2016**

(Note: This is NOT the effective date)

Submit written comments to:

Name: Leslie Mullin

Address: Department of Revenue
Post Office Box 47453
Olympia, Washington 98504-7453

E-mail: LeslieMu@dor.wa.gov

By: June 21, 2016

Assistance for persons with disabilities: Contact Julie King (360) 704-5717 or Renee Cosare (360) 725-7514 no later than 10 days before the hearing date. For Hearing Impaired please contact us via the Washington Relay Operator at (800) 833-6384.

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Amending WAC 458-16-300 will update language due to the passage of SB 6405 (2014), which standardized criteria for non-exempt uses of tax exempt property owned by nonprofit organizations; SHB 2402 (2010), which allowed tax exempt property to be used to conduct a farmers market; and SHB 1510 (2006), which allowed certain uses of property located in counties with a population of less than twenty thousand. Amending WAC 458-16-300 will also provide clarity for nonprofit organizations on the types of qualifying uses allowable for this exemption.

Reasons supporting proposal: The amendments are needed to recognize legislation and to provide clarity on eligibility requirements for nonprofit organizations.

Statutory authority for adoption: RCW 84.08.010 and 84.36.865.

Statute being implemented: RCW 84.36.037 and 84.36.805

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: May 09, 2016

TIME: 10:33 AM

WSR 16-11-025

DATE

May 9, 2016

NAME

Kevin Dixon

SIGNATURE

TITLE

Rules Coordinator

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

Name of proponent: Department of Revenue

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Leslie Mullin	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360)534-1589
Implementation.... Marcus Glasper	1025 Union Ave. SE. Ste #500, Olympia ,WA	(360) 534-1615
Enforcement..... Marcus Glasper	1025 Union Ave. SE. Ste #500, Olympia ,WA	(360) 534-1615

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No. Explain why no statement was prepared.

The proposed rule does not impose more than minor costs on businesses in an industry.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No: Please explain: **The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.**

AMENDATORY SECTION (Amending WSR 98-18-006, filed 8/20/98, effective 9/20/98)

WAC 458-16-300 Public meeting hall—Public meeting place—Community meeting hall. (1) **Introduction.** This ~~((section))~~ rule explains the property tax exemption available under the provisions of RCW 84.36.037 for real and personal property owned by a nonprofit organization, association, or corporation and used exclusively as a public meeting hall, public meeting place, or community meeting hall.

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

(a) ~~(("Inadvertent use or inadvertently used" means any unintentional or accidental use of exempt property by an individual, organization, association, or a corporation for pecuniary gain or to promote business activities through either carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.))~~ "Affiliate" means an association, organization, or corporation that is a branch, unit, chapter, or appendant body of the property owner.

(b) "Property" means real or personal property owned by a nonprofit organization, association, or corporation.

(c) "Public gathering" means ((any social function that the general public could, if invited, attend. For example, a public gathering includes, but is not limited to, a wedding, reception, funeral, reunion, or meeting of any organization, association, or corporation that is open to nonmembers. The term does not mean a meeting to which only members of a specific organization, association, or corporation are allowed to attend.

(c) ~~"Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles to maintain and operate the loaned or rented portion of the exempt facility.~~

(d) ~~"Owner" means a nonprofit organization, association, or corporation.~~

(e) ~~"Property" means real or personal property owned by a nonprofit organization, association, or corporation))~~ a meeting or event in which attendance is not limited or restricted to only members of the organization, association, or corporation that owns the property or members of an affiliate. Refer to subsection (4) of this rule for examples of public gatherings.

(3) **Exemption.** Real and personal property owned by a nonprofit organization, association, or corporation and used exclusively as a public assembly hall, public meeting place, or community meeting hall ~~((shall))~~ will be exempt from taxation under the following conditions:

(a) **Exclusive use.** The property is used exclusively for public gatherings and is available to any individual, organization, association, or corporation that may desire to use or rent the property. Membership in ~~((a particular))~~ the organization, association, or corporation ~~((shall not be required to))~~ that owns the property or membership in an affiliate of the property owner cannot be a requirement or condition for those persons desiring to rent or use the property.

(i) Availability of property. To ensure the public is aware of the availability of the property, the property owner must provide written notification to the public that the property is available for use or rental. This written notification may include, but is not limited to, advertising in community newsletters or web sites, on facility reader boards or signs, or in local newspapers. The property owner

must make substantial and actual efforts to ensure that the public knows that the property is available for use or rental.

(ii) Qualifying use of property. In a calendar year, the total number of hours used for public gatherings, as that term is defined in this rule, held at the property must exceed the total number of hours used for nonpublic gatherings held at the property, regardless of whether the owner, the owner's affiliate, or renter, hosted or benefited from the public gathering.

(b) Exemption for real property - Area. The area of real property exempt under this ~~((section shall))~~ rule may not exceed one acre ~~((This area shall include))~~ including the building(s), the land under the building(s), and any additional area needed for parking.

(c) Statement of availability and fees required. The owner of the property ~~((shall))~~ must prepare and make available upon request a schedule of fees, a policy on the availability of the facility, and any restrictions on the use of the facility. The owner may impose ~~((any))~~ conditions or restrictions reasonably necessary to safeguard the property and to comply with the purposes of this exemption.

(d) Annual summary required. The owner ~~((shall))~~ must provide the department of revenue with a detailed summary containing the following information regarding the manner in which the exempt property was used during the preceding year:

(i) The name of ~~((any))~~ the person, organization, association, or corporation that used the property;

(ii) The date(s) on which the property was used;

(iii) The purpose for which the property was used;

(iv) Whether the meeting or event was a public gathering;

(v) The methods used to advertise the availability of the property to the public;

(vi) The income derived from the rental of the property; and

~~((v))~~ (vii) The expenses incurred relating to the use of the property.

~~((e) Entities that schedule regular meetings. Any property owned by a nonprofit organization, association, or corporation that schedules regular meetings of its members or shareholders will also qualify for this exemption if:~~

~~(i) The owner meets the conditions set forth in (a) through (d) of this subsection;~~

~~(ii) The owner does not use the property more than twenty five percent of the useable time; and~~

~~(iii) The facility is used an equal number or greater number of times for public gatherings than the number of times it is used by the owner for gatherings not open to the general public.~~

~~(f) Loan or rental of property. The tax exempt status of the property will not be affected if it is loaned or rented and the amount of rent or donations collected for the use, loan, or rental of the exempt property:~~

~~(i) Is reasonable; and~~

~~(ii) Does not exceed the maintenance and operation expenses that are created by the corresponding use, loan, or rental.~~

~~(g) Property not included within this exemption. Property that is used more than fifty percent of the time by a nonprofit organization, association, or corporation that allows only members to attend its activities does not qualify for this exemption.)~~

(4) Examples. Examples found in this rule identify a number of facts and then state a conclusion. These examples should be used only

as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(a) Example 1. Prior to a member only meeting, a fraternal organization hosts a dinner at its facility that is open to nonmembers. The fraternal organization advertised the dinner on its web site and reader board, which clearly conveyed the public could attend. The dinner and the member only meeting are considered two separate events. The dinner is considered a public gathering because nonmembers are allowed to attend. However, the member only meeting following the dinner is not considered a public gathering.

(b) Example 2. A boys youth organization hosts a spaghetti feed at its facility to raise money for a camping trip. The organization advertised the spaghetti feed in the local newspaper, which stated nonmembers are allowed to attend. The spaghetti feed is considered a public gathering.

(c) Example 3. A girls youth organization has weekly club meetings at its facility. The weekly meetings are advertised on the organization's public web site as being open for nonmembers to also attend. The weekly club meetings are considered public gatherings.

(d) Example 4. A member only organization allows its public assembly hall to be rented for weddings, receptions, reunions, funerals, and other special events. The organization advertises the availability of its facility for rental by the public in a community newsletter. There are no restrictions on who can rent the hall, so these events are considered public gatherings. However, if the ability to rent the hall is based on membership in the owning organization or membership in an affiliate of the owning organization, then the events would not be considered public gatherings.

(e) Example 5. A garden club offers horticultural workshops for a fee at its facility one day each month. The workshop is advertised in the community newsletter as being open to anyone who wants to attend. The workshops are considered public gatherings because members of the public can attend, even if registration and/or payment are required. Although a fee is charged, the monthly workshops offered by the garden club do not count towards the fifteen day pecuniary gain limitation described in subsection (5)(a) of this rule because the fee only covers the materials and supplies necessary to conduct the workshop.

(f) Example 6. A member only organization rents a public assembly hall for its monthly board meetings. The board meetings are not open to the public. The organization that owns the facility advertises its availability to the public in the local newspaper. The two organizations are not affiliated with each other. Although the monthly board meetings are not open to the public, they are considered public gatherings for the purpose of this exemption because the rental of the facility is not being restricted to only members of the owning organization or to members of affiliates of the owning organization.

(5) Use of property for pecuniary gain or to promote business activities. If a public meeting hall, public meeting place, or community meeting hall exempt under subsection (3) of this (~~section~~) rule is used for pecuniary gain or to promote business activities, the property tax exemption will be lost (~~for the assessment year following the year in which the exempt property is so used~~). However, the exemption will not be lost if:

(a) The exempt property is used for pecuniary gain or to promote business activities (~~seven~~) fifteen days or less in an assessment year; (~~or~~)

Under no circumstances is this proposed rule to be used to determine tax liability and/or exemptions.

(b) In a county with a population of less than ((ten)) twenty thousand people, the exempt property is used to promote the following business activities: Dance lessons; art classes; or music lessons(~~(+ or~~

~~(c) The exempt property is inadvertently used by an individual, organization, association, or a corporation for pecuniary gain or to promote business activities if the inadvertent use is not a pattern of use. A "pattern of use" is presumed when an inadvertent use of the property for pecuniary gain or to promote business activities is repeated within the same assessment year or within two or more successive assessment years)). The rental income or donations, if any, must be reasonable and not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented;~~

~~(c) The exempt property is used to conduct a farmers market, as defined in RCW 66.24.170, for fifty-three days or less each assessment year. The rental income or donations, if any, must be reasonable and not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; or~~

~~(d) All income received from the rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation expenses of the exempt property, or for other exempt purposes that support the goals of the nonprofit organization receiving the property tax exemption.~~

~~((+5))~~ **(6) Additional requirements.** Any nonprofit organization, association, or corporation that applies for a property tax exemption under this ~~((section))~~ rule must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 ~~((sets forth))~~ provides additional conditions and requirements that must be ~~((complied with))~~ satisfied to obtain a property tax exemption pursuant to RCW 84.36.037.