



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Revenue

- |   |   |
|---|---|
| <input type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR ; or                           | <input checked="" type="checkbox"/> Original Notice |
| <input checked="" type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR 13-02-086; or | <input type="checkbox"/> Supplemental Notice to WSR |
| <input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).                       | <input type="checkbox"/> Continuance of WSR         |

**Title of rule and other identifying information:**

WAC 458-16A-120 *Senior citizen, disabled person, and one hundred percent disabled veteran exemption -- Determining combined disposable income.* This rule describes how an assessor determines a claimant's combined disposable income.

**Hearing location(s):**

Capitol Plaza Building  
4<sup>th</sup> Floor Conference Room Lg (L&P)  
1025 Union Avenue SE  
Olympia, Washington 98504

Date: May 7, 2013 Time: 10:00 A.M.

**Date of intended adoption:**  
May 14, 2013

**Submit written comments to:**

Name: Jay Jetter  
E-mail: JayJ@dor.wa.gov  
Address: Post Office Box 47453  
Olympia, Washington 98504-7453  
Fax (360-534-1606) by: May 7, 2013

**Assistance for persons with disabilities:** Contact Mary Carol LaPalm (360) 725-7499 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:**

See attachment

**Reasons supporting proposal:** To update the rule to recognize recent legislation.

**Statutory authority for adoption:** RCW 84.36.389 and 84.36.865

**Statute being implemented:** RCW 84.36.381, 84.36.383, and 84.36.385.

**Is rule necessary because of a:**

- |                         |                              |  |
|-------------------------|------------------------------|--|
| Federal Law?            | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
- If yes, CITATION:

**DATE** March 27, 2013

**NAME** Alan R. Lynn

**SIGNATURE**

**TITLE** Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: March 27, 2013**  
**TIME: 12:05 PM**  
**WSR 13-08-029**

**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..... Jay M. Jetter	1025 Union Ave. SE. Ste #200, Olympia ,WA	(360) 534-1405
Implementation.... Kathy Beith	1025 Union Ave. SE. Ste #200, Olympia ,WA	(360) 534-1403
Enforcement..... Kathy Beith	1025 Union Ave. SE. Ste #200, Olympia ,WA	(360) 534-1403

**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.

**This rule does not impose any new performance requirement or administrative burden on any small business not already required by statute.**

**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: **This is not a significant legislative rule as defined under RCW 34.05.328.**



STATE OF WASHINGTON  
**DEPARTMENT OF REVENUE**

Attachment to CR102 filing  
(WAC 458-16A-120)

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

The Department of Revenue is proposing to amend WAC 458-16A-120 to recognize and incorporate recent legislation:

- 2012 – SHB 2056. This legislation changed the term "boarding home" to "assisted living facility" throughout the Revised Code of Washington;
- 2011 – SSB 5167. This made two changes to the Property Tax Relief Program for Low-Income Seniors and Disabled Persons: (1) eligibility requirements for disabled veterans are modified to reflect federal definitions of service-connected disability; and (2) a section requiring notice to taxpayers is changed to reflect the 2010 legislative changes to renewal filings.
- 2010 – E2SHB 1597. This made various technical corrections, including making two reference dates to federal law the same within the senior property tax relief law, and DOR is allowed to update the reference by rule in a way that is consistent with the purpose. Also, the time period for exemption renewal is extended under the senior property tax relief program from four to six years, and recovery of back taxes is also allowed for up to five years if an exemption was based on erroneous information.

This rule was previously filed for amendment using the expedited rule making process authorized by RCW 34.05.353. The Department has elected to proceed using the standard rule making process, and a CR102 public hearing, to provide interested persons additional opportunity to comment on the proposed rule.

Copies of draft rules are available for viewing and printing on our website at:

<http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

THIS PROPOSED RULE IS SUBMITTED FOR PUBLIC COMMENTS AFTER INPUT FROM INTERESTED PARTIES AND IS TO BE USED SOLELY FOR DISCUSSION PURPOSES AT THE PUBLIC HEARING ON THE PROPOSED RULE. UNDER NO CIRCUMSTANCES IS THIS PROPOSED RULE TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.

AMENDATORY SECTION (Amending WSR 08-16-078, filed 7/31/08, effective 8/31/08)

**WAC 458-16A-120 Senior citizen, disabled person, and one hundred percent disabled veteran exemption--Determining combined disposable income.** (1) **Introduction.** This rule describes how an assessor determines a claimant's combined disposable income.

(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 claimant, the claimant's spouse or domestic partner, or a cotenant does not provide a federal income tax return, the assessor must calculate disposable income from copies of other income documents (e.g., W-2, 1099-R, 1099-INT, etc.). The assessor may want to review the definitions of gross income, WAC 458-16A-110, and adjusted gross income, WAC 458-16A-115, to help calculate the combined disposable income for a claimant. These rules provide some guidance on how to determine adjusted gross income without copies of a federal income tax return. On the federal income tax return, the adjusted gross income is found on the front pages of Form 1040, Form 1040A, and Form 1040EZ. Even when a 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 his/her spouse's or domestic partner's whereabouts or whether the spouse or domestic partner has any income or not, 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 by the applicant under the penalty of perjury. This statement must state that more than one year prior to filing this application:

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

(ii) The claimant has not and does not know the whereabouts

of the claimant's spouse or domestic partner;

(iii) The claimant has not had any communication with the claimant's spouse or domestic partner;

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

The statement must also agree to provide this income information if the claimant is able to obtain it anytime in the next (~~four~~) six years.

(b) **Form 1040EZ.** Generally, the adjusted gross income on Form 1040EZ represents the disposable income for the person or couple filing the return. However, that person's or couple's adjusted gross income as shown on the Form 1040EZ must be increased by the following amounts that are excluded from their adjusted gross income.

(i) **Gain from a sold residence.** Under certain circumstances, gain from a sold residence is added onto the seller's adjusted gross income. Since there is no federal form used for reporting the exclusion of capital gains from the sale of a principal residence, the exemption application asks if a home has been sold, whether the sale proceeds were reinvested in new principal residence, and the amount of capital gain from the sale.

(A) If the proceeds were reinvested in a new principal residence, the excluded capital gain reinvested in the new residence is ignored. The adjusted gross income on Form 1040EZ is not adjusted for any part of the excluded capital gain reinvested in the new residence.

(B) If the proceeds were not reinvested in a new principal residence or only a part of the proceeds were reinvested in a new principal residence, the amount of excluded capital gain that is not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The assessor may accept the excluded capital gain amount claimed upon the application or request a copy of documents demonstrating the seller's basis in the property and the capital gain earned upon the sale.

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

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse or domestic partner, or any cotenants own

state or local government bonds. If the return does not show the tax exempt amount from the bond, the assessor may ask to see a copy of the Form 1099-INT (Interest Income).

(B) If the claimant does not have this form, the bond issuer should be able to tell the owner whether the interest is taxable. The issuer should also give the owner a periodic (or year-end) statement showing the tax treatment of the bond. If the income recipient invested in the bond through a trust, a fund, or other organization, that organization should give the recipient this information.

(iii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added onto the adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed in more detail (~~(below)~~) in (~~(paragraph (e))~~) (d)(vii) of this subsection.

(iv) **Veterans benefits.** Veterans benefits are added onto the veteran's adjusted gross income to determine the veteran's disposable income, except for:

(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 Department of Veterans Affairs (VA);

(B) Disability compensation, defined as payments made by the Department of Veterans Affairs (VA) to a veteran because of service-connected disability. (RCW 84.36.383 (5)(f)(iii).)

(C) Dependency and indemnity compensation, defined as payments made by the Department of Veterans Affairs (VA) to a surviving spouse, child, or parent. (RCW 84.36.383 (5)(f)(iv).)

Veterans benefits are discussed in more detail (~~(below)~~) in (~~(paragraph (e))~~) (d)(viii) of this subsection.

(c) **Form 1040A.** If a claimant provides a copy of a Form 1040A, the assessor calculates the disposable income for the person or couple filing the return by adding onto the adjusted gross income reported the items described below 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. The amount is reported on the exemption application. Refer to (~~(paragraph (a))~~) (b)(i) (~~(above)~~) of this subsection for a more complete discussion of excluded capital gain upon a sold residence.

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(ii) **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 reported on Form 1040A is added back onto the bond owner's adjusted gross income to determine the bond owner's disposable income. Refer to ~~((paragraph (a)))~~ (b)(ii) ((above)) of this subsection for a more complete discussion of tax-exempt interest on state and municipal bonds.

(iii) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference in the total pension and annuity amounts reported from the taxable amounts reported. If the total amount of the pension and annuity amounts are not reported on the 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 amount of pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account; and

(iv) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on Form 1040A is added onto 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 in the total Social Security benefits or equivalent railroad retirement amounts reported from the taxable amount reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the 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.

(v) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added onto adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed ~~((below))~~ in ~~((paragraph (e)))~~ (d)(vii) of this subsection.

(vi) **Veterans benefits.** Veterans benefits are added back onto the veteran's adjusted gross income to determine the

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veteran's disposable income, except for:

(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 Department of Veterans Affairs (VA);

(B) Disability compensation, defined as payments made by the Department of Veterans Affairs (VA) to a veteran because of service-connected disability. (RCW 84.36.383 (5)(f)(iii).)

(C) Dependency and indemnity compensation, defined as payments made by the Department of Veterans Affairs (VA) to a surviving spouse, child, or parent. (RCW 84.36.383 (5)(f)(iv).)

Veterans benefits are discussed (~~(below)~~) in (~~(paragraph (e))~~) (d)(viii) of this subsection.

(d) **Form 1040.** If a claimant provides a copy of a Form 1040, the assessor calculates the disposable income for the person or couple filing the return by adding onto the reported adjusted gross income all the items described below 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. The excluded capital gain amount is reported on the exemption application.

(ii) **Capital gains.** If the return shows capital gains or losses, the assessor examines a copy of the following 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 onto the 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 onto that adjusted gross income to determine disposable income.

(iii) **Losses.** Amounts deducted for loss are added onto the adjusted gross income to determine the disposable income. Most losses are reported on the return in parentheses to reflect that these loss amounts are to be deducted. The net losses are reported on Form 1040 as business losses, as capital losses, as other losses, as rental or partnership-type losses, and as farm losses. Add these amounts in parentheses onto the adjusted gross income. In addition, 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

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the Internal Revenue Code.

(A) The taxpayer only reports the net amount of 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 return to calculate adjusted gross income. The assessor adds onto the adjusted gross income the amount of losses used to reduce income on these other schedules and forms. ~~((If the assessor has already added capital gains reduced by losses, the assessor does not add this amount onto adjusted gross income as it has already been accounted for.))~~ The amount of losses that were used to reduce adjusted gross income must be added onto that adjusted gross income to determine disposable income. For example, the claimant reports on the front page of the 1040 a capital loss of (five thousand dollars). The assessor examines the Schedule D. On the Schedule D, the claimant reports two thousand dollars in long-term capital gains from the sale of Company X stock and seven thousand dollars in long-term capital losses from the sale of an interest in the Y limited partnership. The assessor has already ~~((reduced the claimant's adjusted gross income by))~~ added the five thousand dollars from the net capital loss reported on the front page of the return. The assessor would add onto adjusted gross income only the additional two thousand dollars in losses from this 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 onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference ~~((in))~~ between the total pension and annuity amounts reported ~~((from))~~ and the taxable amounts reported. If the total ~~((amount of the))~~ pension and annuity amounts are not reported on the 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 ~~((amount of))~~ 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 onto 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 ~~((in))~~ between the total Social Security benefits or equivalent railroad retirement amounts reported ~~((from))~~ and the taxable amounts reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the 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 pay or benefits for attendant care or medical aid, are added onto 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 in box 12 of the 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 benefits payments, paid under any law,

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regulation, or administrative practice administered by the Department of Veterans Affairs (VA). To determine disposable income, allowances or payments made from the VA must be added on the veteran's adjusted gross income, except for:

(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 Department of Veterans Affairs (VA);

(B) Disability compensation, defined as payments made by the Department of Veterans Affairs (VA) to a veteran because of service-connected disability. (RCW 84.36.383 (5)(f)(iii).)

(C) Dependency and indemnity compensation, defined as payments made by the Department of Veterans Affairs (VA) to a surviving spouse, child, or parent. (RCW 84.36.383 (5)(f)(iv).)

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. (~~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 VA;~~)

(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 onto 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 him or her 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 he or she has 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. This tax-exempt interest is reported on the Form 1040 and added onto the bond owner's adjusted gross income to determine the bond owner's disposable income.

(3) **Calculate the combined disposable income.** When the assessor has calculated the disposable income for the claimant, the claimant's spouse or domestic partner, and any cotenants, the assessor combines the disposable income of these people

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together. The assessor reduces this combined income by the amount paid by the claimant or the claimant's spouse or domestic partner during that calendar year for their legally prescribed drugs, home health care; nursing home, (~~boarding home~~) assisted living facility, or adult family home expenses; and health care insurance premiums for medicare under Title XVIII of the Social Security Act to calculate the claimant's combined disposable income.

DRAFT