EXPEDITED RULE MAKING

CR-105 (June 2004)
(Implements RCW 34.05.353)
EXPEDITED RULE MAKING ONLY

Agency: Department of Revenue

Title of rule and other identifying information: WAC 458-16-165 *Conditions under which nonprofit organizations, associations, or corporations may obtain a property tax exemption.***WAC 458-16-**190 *Churches, parsonages, and convents.***WAC 458-16-210** *Nonprofit organizations or associations organized and conducted for nonsectarian purposes.* **WAC 458-16-220** *Church camps.***WAC 458-16-230** *Character building organizations.***WAC 458-16-240** *Veterans organizations.***WAC 458-16-260** *Nonprofit child day care center, libraries, orphanages, homes for the sick or infirm, hospitals, outpatient dialysis facilities.***WAC 458-16-270** *Schools and colleges.***WAC 458-16-280** *Art, scientific, and historical collections.***WAC 458-16-282** *Musical, dance, artistic, dramatic, and literary associations.***WAC 458-16-290** *Nature conservancy lands.* **WAC 458-16-310** *Community celebration facilities.*

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

Name: Leslie Mullin
Agency: Department of Revenue
Address: Post Office Box 47453
Olympia, Washington 98504-7453
E-mail: LeslieMu@dor.wa.gov

AND RECEIVED BY: March 9, 2015

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

WAC 458-16-165 incorporates SB 6405 (2014), which standardizes criteria for non-exempt uses of tax exempt property owned by nonprofit organizations; E2SSB 5078 (2013), which modified the property tax exemption for nonprofit fair associations; E2SHB 1597 (2010), which updated a cross reference to hospitals; and SB 6280 (2006), which removed the irrevocable dedication requirement for nonprofit organizations. Updated rule to reflect existing language in RCW 84.36.805 and clarified due dates.

(continued on the attached page)

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

Reasons supporting proposal: (see descriptions of each rule on the attached page)

Statutory authority for adoption: RCW 84.08.010, 84.08.070, 84.08.080, 84.36.389, 84.36.865.

Statute being implemented: RCW 84.36.020, 84.36.030, 84.36.031, 84.36.037, 84.36.040, 84.36.050, 84.36.060, 84.36.260, 84.36.264, 84.36.480, 84.36.800, 84.36.805, 84.36.840.

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

Date January 6, 2015

Name
Dylan Waits

Signature

Title
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 06, 2015
TIME: 11:01 AM

WSR 15-02-063

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....	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

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

WAC 458-16-190 incorporates SB 6405 (2014), which standardizes criteria for non-exempt uses of tax exempt property owned by nonprofit organizations; SHB 2402 (2010), which allows tax exempt property to be used to conduct a farmers market; and updated rule to reflect existing language in RCW 84.36.020.

WAC 458-16-210 incorporates SSB 6600 (2012), which extends a property tax exemption to property used exclusively by certain nonprofit organizations that is leased from an entity that acquired the property from a previously exempt nonprofit organization.

WAC 458-16-220 incorporates SSB 6600 (2012), which extends a property tax exemption to property used exclusively by certain nonprofit organizations that is leased from an entity that acquired the property from a previously exempt nonprofit organization; and updated rule to reflect existing language in RCW 84.36.800.

WAC 458-16-230 incorporates SSB 6600 (2012), which extends a property tax exemption to property used exclusively by certain nonprofit organizations that is leased from an entity that acquired the property from a previously exempt nonprofit organization.

WAC 458-16-240 incorporates SSB 6600 (2012), which extends a property tax exemption to property used exclusively by certain nonprofit organizations that is leased from an entity that acquired the property from a previously exempt nonprofit organization; updated rule to reflect existing language in RCW 84.36.030; and removed duplicative language incorporated into WAC 458-16-165.

WAC 458-16-260 incorporates E2SHB 1597 (2010), which updates a cross reference to hospitals and day care centers; and removed duplicative language incorporated into WAC 458-16-165.

WAC 458-16-270 incorporates SB 6405 (2014), which standardizes criteria for non-exempt uses of tax exempt property owned by nonprofit organizations; removed duplicative language incorporated into WAC 458-16-165; and updated rule to reflect existing language in RCW 84.36.840.

WAC 458-16-280 incorporates SB 6405 (2014), which standardizes criteria for non-exempt uses of tax exempt property owned by nonprofit organizations; and removed duplicative language incorporated into WAC 458-16-165.

WAC 458-16-282 incorporates SB 6405 (2014), which standardizes criteria for non-exempt uses of tax exempt property owned by nonprofit organizations; and removed duplicative language incorporated into WAC 458-16-165.

WAC 458-16-290 incorporates SB 6405 (2014), which standardizes criteria for non-exempt uses of tax exempt property owned by nonprofit organizations; and updated rule to reflect language in RCW 84.34.250, RCW 84.36.260, and RCW 84.36.264.

WAC 458-16-310 incorporates SB 6405 (2014), which standardizes criteria for non-exempt uses of tax exempt property owned by nonprofit organizations; removed duplicative language incorporated into WAC 458-16-165 and covered by WAC 458-16-300; and updated rule to reflect existing language in RCW 84.36.037 and RCW 84.36.805.

This rule draft is being proposed under an expedited rule-making process that does not require the agency to hold public hearings. Under no circumstances is this proposed rule to be used as a basis for determining tax liability or eligibility for a tax deduction, exemption, or credit.

AMENDATORY SECTION (Amending WSR 02-02-009, filed 12/20/01, effective 1/20/02)

WAC 458-16-165 Conditions under which nonprofit organizations, associations, or corporations may obtain a property tax exemption. (1) **Introduction.** In order to receive the property tax exemption authorized in chapter 84.36 RCW, most nonprofit organizations, associations, and corporations must also satisfy the conditions set forth in RCW 84.36.805 and 84.36.840. This rule describes these conditions.

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

(a) "Department" means the ((~~state~~)) department of revenue.

(b) "Inadvertent use" or "inadvertently used" means the use of the property in a manner inconsistent with the purpose for which the exemption is granted through carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.

(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 property.

((~~(c)~~)) (d) "Revenue" means income received from the loan or rental of exempt property when the income exceeds the amount of maintenance and operation expenses attributable to the portion of the property loaned or rented.

((~~(d)~~)) (e) "Personal service contract" means a contract between a nonprofit organization, association, or corporation and an independent contractor under which the independent contractor provides a service on the organization's, association's, or corporation's tax exempt property. (See example contained in subsection (4)(c) of this rule.)

(3) **Applicability of this rule.** This rule does not apply to exemptions granted to:

(a) Public burying grounds or cemeteries under RCW 84.36.020;

(b) Churches, parsonages, convents, and church grounds under RCW 84.36.020;

(c) Administrative offices of nonprofit recognized religious organizations under RCW 84.36.032;

(d) Water distribution property owned by a nonprofit corporation or cooperative association under RCW 84.36.250; or

(e) ((~~Property used for the conservation of ecological systems, natural resources, or open space by a nonprofit corporation or association under RCW 84.36.260.~~)) Nonprofit fair associations under RCW 84.36.480(2).

(4) **Exclusive use.** Exempt property must be exclusively used for the actual operation of the activity for which the nonprofit organization, association, ((~~or~~)) corporation, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW, received the property tax exemption unless the authorizing statute states otherwise. The property exempted from taxation ((~~shall~~)) must not exceed an area reasonably necessary to facilitate the exempt purpose.

(a) Loan or rental of exempt property. As a general rule, the loan or rental of exempt property does not make it taxable if:

(i) The rents or donations received for the use of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4), 84.36.037, 84.36.050, and 84.36.060 (1)(a) and (b), the property would be exempt

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from tax if owned by the organization to which it is loaned or rented. ((~~Property owned by organizations and societies of war veterans, public assembly halls, public meeting places, community meeting halls, and community celebration facilities are not subject to these limitations.~~

~~(i) Exception - loaned or rented for less than fifteen days. The status of exempt property will not be affected if:~~

~~(A) The property is loaned or rented for a period of fifteen consecutive days or less;~~

~~(B) The property is loaned or rented to another nonprofit organization, association, or corporation or public hospital district established under chapter 70.44 RCW that would qualify for exemption if it owned the loaned or rented property; and~~

~~(C) All income received from the rental is devoted exclusively to the exempt purpose of the nonprofit organization, association, or corporation or public hospital district established under chapter 70.44 RCW receiving the tax exemption.~~

~~(ii) Loaned or rented to produce income. If the lessor or lessee of exempt property intends to produce income from exempt property, the property will lose its exempt status. Property loaned or rented to produce income must be segregated from property used for exempt purposes. However, property exempt under RCW 84.36.030(4) (an organization or society of veterans of any war of the United States for veterans) and RCW 84.36.037 (public assembly halls, public meeting places, community meeting halls, and community celebration facilities) may be loaned or rented:~~

~~(A) For pecuniary gain or to promote business activities for a maximum of seven days each assessment year; or~~

~~(B) In a county with less than ten thousand people, the property may be used to promote the following business activities: Dance lessons; art classes; or music lessons (see WAC 458-16-300 and 458-16-310).~~

~~(iii) Example. If a portion of a building owned by a nonprofit hospital is rented to a sandwich shop, this portion of the hospital must be segregated from the remainder of the building that is being used for exempt hospital purposes. The portion of the building rented to the sandwich shop is subject to property tax.~~))

(b) Fund-raising ((~~activities~~)) events. The use of exempt property for fund-raising ((~~activities sponsored~~)) events conducted by an exempt organization, association, ((~~or~~)) corporation ((~~or~~)), hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW, does not jeopardize the exemption if the fund-raising ((~~activities~~)) events are consistent with the purposes for which the exemption was granted. The term "fund-raising" means any revenue-raising ((~~activity~~)) event limited to less than five days in length that disburses fifty-one percent or more of the profits realized from the ((~~activity~~)) event to the exempt nonprofit entity ((~~holding~~)) conducting the fund-raising event.

(i) Example 1. A nonprofit social service agency holds an art auction in the auditorium of its tax exempt facility to raise funds. The ((~~activity~~)) event must be less than five days in length and fifty-one percent of the profits must be disbursed to the social service agency because the fund-raising ((~~activity~~)) event is being held on exempt property.

(ii) Example 2. A nonprofit school has a magazine subscription drive to raise funds and the subscriptions are being sold door-to-door by students. There are no limitations on this fund-raising ((~~activi-~~

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~~ty~~)) event because the subscription drive is not being held on exempt property.

(c) Personal service contract - Exempt programs. Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(i) The program is compatible and consistent with the purposes of the exempt organization, association, or corporation;

(ii) The exempt organization, association, or corporation maintains separate financial records as to all receipts and expenses related to the program; and

(iii) A summary of all receipts and expenses of the program are provided to the department upon request.

(iv) Example. A nonprofit school may decide to contract with a provider to offer aerobic classes to promote general health and fitness. All brochures and bulletins advertising these classes must show that the school is sponsoring the classes. Under the terms of the contract between the nonprofit school and the aerobics instructor, an independent contractor, the instructor must provide the classes for a predetermined fee. All fees collected from the participants of the classes must be received by the school; the school, in turn, will absorb all costs related to the classes.

(d) Personal service contract - Nonexempt programs. Programs provided under a personal service contract (i) that require the contractor to reimburse the nonprofit organization for program expenses or (ii) in which the instructor is paid a fee based on the number of people who attend the program will be viewed as a rental agreement and will subject the property to property tax.

((~~(4) **Irrevocable dedication required.** The property must be irrevocably dedicated to the purpose for which the exemption was granted. Upon the liquidation, dissolution, or abandonment by an exempt nonprofit entity, the property must not directly or indirectly benefit any shareholder or other individual except a nonprofit organization, association, or corporation that would be entitled to receive a property tax exemption if it applied for it.~~

~~Irrevocable dedication is not required if the property is leased or rented to an entity qualified for a property exemption under chapter 84.36 RCW. This exception only applies if the lease or rental agreement requires the lessee nonprofit organization, association, or corporation or public hospital district established under chapter 70.44 RCW to receive the benefit of the exemption.~~)) (e) Inadvertent use. An inadvertent use of the property in a manner inconsistent with the purpose for which the exemption was granted does not subject the property to tax if the inadvertent use is not part of a pattern of use. A "pattern of use" is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.

(5) **No discrimination allowed.** The exempt property and the services offered ((~~thereon~~)) must be available to all persons regardless of race, color, national origin, or ancestry.

(6) **Compliance with licensing or certification requirements.** A nonprofit entity, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW seeking or receiving a property tax exemption must comply with all applicable licensing and certification requirements imposed by law or regulation.

(7) **Property sold subject to an option to repurchase.** Property sold to a nonprofit entity, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW

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with an option to be repurchased by the seller cannot qualify for an exemption. This prohibition does not apply to property sold to a nonprofit entity, as defined in RCW 84.36.560(7), by:

(a) A nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code;

(b) A governmental entity established under RCW 35.21.660, 35.21.670, or 35.21.730;

(c) A housing authority created under RCW 35.82.030;

(d) A housing authority meeting the definition of RCW 35.82.210 (2)(a); or

(e) A housing authority established under RCW 35.82.300.

(8) **Duty to produce financial records.** In order to determine whether a nonprofit entity is entitled to receive a property tax exemption under the provisions of chapter 84.36 RCW and before the exemption is renewed each year, the entity claiming exemption must submit a signed statement((~~,~~)) made under oath, with the department. This sworn statement must include a declaration that the income, receipts, and donations of the entity seeking the exemption have been used to pay the actual expenses incurred to maintain and operate the exempt facility or for its capital expenditures and to no other purpose. It ((~~shall~~)) must also include a statement listing the receipts and disbursements of the organization, association, or corporation. This statement ((~~shall~~)) must be made on a form prescribed and furnished by the department.

(a) The provisions of this subsection do not apply to an entity either applying for or receiving an exemption under RCW 84.36.020 or 84.36.030.

(b) This signed statement must be submitted on or before ((~~April 1~~)) March 31st each year by any entity currently receiving a tax exemption. If this statement is not received on or before ((~~April 1~~)) March 31st, the department ((~~shall~~)) will remove the tax exemption from the property. However, the department ((~~shall~~)) will allow a reasonable extension of time for filing if the exempt entity has submitted a written request for an extension on or before the required filing date and for good cause.

(9) **Caretaker's residence.** If a nonprofit entity, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW exempt from property tax under chapter 84.36 RCW employs a caretaker to provide either security or maintenance services and the caretaker's residence is located on exempt property, the residence may qualify for exemption if the following conditions are met:

(a) The caretaker's duties include regular surveillance, patrolling the exempt property, and routine maintenance services;

(b) The nonprofit entity, hospital established under chapter 36.62 RCW, or the public hospital district established under chapter 70.44 RCW demonstrates the need for a caretaker at the facility;

(c) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property; and

(d) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utility expenses created by the caretaker's presence ((~~are~~)) is not considered rent.

(10) **Nonexempt uses of property.** The use of property exempt under this chapter, other than as specifically authorized by this chapter, nullifies the exemption otherwise available for the property for the

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assessment year. However, the exemption is not nullified by the use of the property by any individual, group, or entity, where such use is not otherwise authorized by this chapter, for not more than fifty days in each calendar year, and the property is not used for pecuniary gain or to promote business activities for more than fifteen of the fifty days in each calendar year. The fifty and fifteen-day limitations do not include days for setup and takedown activities that take place immediately preceding or following a meeting or other event. If these requirements are not met, the exemption is removed for the affected portion of the property for that assessment year.

(11) **Segregation of nonqualifying property.** Any portion of exempt property not meeting the qualifications of this rule will lose its exempt status. Nonqualifying property must be segregated from property used for exempt purposes. For example, if a portion of a building owned by a nonprofit hospital is rented to a sandwich shop, this portion of the hospital must be segregated from the remainder of the building that is being used for exempt hospital purposes. The portion of the building rented to the sandwich shop is subject to property tax.

AMENDATORY SECTION (Amending WSR 94-07-008, filed 3/3/94, effective 4/3/94)

WAC 458-16-190 Churches, parsonages and convents. (1) **Introduction.** This ((~~section~~)) rule explains the property tax exemption available under the provisions of RCW 84.36.020 to churches, parsonages, and convents.

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

(a) "Church purposes" means the use of real and personal property owned by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities. This definition is to be broadly construed. The term "use" includes real property owned by a nonprofit religious organization upon which a church ((~~shall~~)) will be built.

(b) "Clergy person" means a person ordained or regularly licensed for religious service and includes both male and female individuals.

(c) "Commercial" refers to an activity or enterprise that has profit making as one of its primary purposes.

(d) "Convent" means a house or set of buildings occupied by a community of clergy or nuns devoted to religious life under a superior.

(e) "Eleemosynary" means charitable, including types of activities in which some social objective is served or general welfare is advanced.

(f) "Owned" means owned in fee or by contract purchase.

(g) "Parsonage" means a residence, owned by a church, that is occupied by a clergy person designated for a particular congregation and who holds regular services for that congregation.

(h) "Regular services" means religious services that are conducted on a routine and systematic basis at prearranged times, days, and places. This term includes religious services that are conducted by a visiting or circuit clergy person who may only hold services once a

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month in a particular location if that person is scheduled to conduct services on a routine and prearranged basis on the exempt property.

(i) "Unoccupied land" means land that is undeveloped, unused, and upon which no structures or improvements have been built.

(A) This land includes, but is not limited to, greenbelt, wetland, and other undeveloped areas contiguous to an exempt church, parsonage, or convent.

(B) This land does not include parking lots, landscaped grounds, or playing fields.

(3) **Property exempt and extent of exemption.** ((~~All churches~~)) The church and the ground upon which a church is or ((~~shall~~)) will be built, together with a parsonage, convent, structures and ground necessary for street access, parking, light, ventilation, and buildings and improvements required to maintain and safeguard the property owned by a nonprofit religious organization and wholly used for church purposes ((~~shall~~)) will be exempt from property taxation to the following extent:

(a) The exempt area ((~~shall~~)) must not exceed five acres of land, including ground that is occupied and unoccupied. Occupied ground is ground covered by the church, parsonage, convent, structures and ground necessary for street access, parking, light, ventilation, and buildings and improvements required for the maintenance and security of such property.

(b) The unoccupied land included within this five-acre limitation may not exceed one-third of an acre (fourteen thousand four hundred square feet), unless additional unoccupied land is required to conform with state or local codes, zoning, or licensing requirements.

(4) **Noncontiguous property.** A parsonage or convent may qualify for exemption even if located on land that is not contiguous to the church property; however, the five acre limitation still applies, as does the limitation described in subsection (3)(b) of this ((~~section~~)) rule with respect to unoccupied land.

(5) **Exemption of caretaker's residence.** A caretaker's residence located on church property may qualify for exemption if the following conditions are met:

(a) The caretaker's duties include regular surveillance and patrolling of the property;

(b) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property;

(c) The caretaker is required to provide either security or maintenance service described as follows:

(i) Security of the premises is provided by the caretaker, not merely by his or her presence, but by regular surveillance and patrolling of the grounds, locking gates if necessary, and generally acting in a manner to ensure the security of the property; or

(ii) Maintenance service is provided on a daily basis to open and close the premises, activate or shut down environmental systems, and provide other maintenance and custodial services necessary for the effective operation and utilization of the facilities; and

(d) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utilities expenses created by the caretaker's presence will not be considered as rent.

(6) **Property not used for church purposes.** Except as provided in this rule, when property is not used for church purposes, the exemption is lost. If a portion of the exempt property is used for commercial rather than church purposes, that portion must be segregated and

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taxed whether or not the proceeds received by the church from the commercial use are applied to church purposes.

(7) **Loan or rental of exempt property.** If the rental income or donations, if any, are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property being loaned or rented, the tax exempt status of any property exempt under this ((~~section~~)) rule will not be affected ((~~if it is loaned or rented under the following conditions~~)) by:

(a) The loan or rental ((~~must be~~)) to a nonprofit organization, association, corporation, or school to conduct eleemosynary activities or to conduct activities related to a farmers market. Activities related to a farmers market may not occur on the property more than fifty-three days each assessment year. For the purposes of this rule, "farmers market" has the same meaning as "qualifying farmers market" as defined in RCW 66.24.170;

(b) The ((~~loan or~~)) rental ((~~must be for an eleemosynary activity; and~~

~~(c) The rental income must be reasonable and devoted solely to the operation and maintenance~~)) or use of the property by any individual, group, or entity, where such rental or use is not otherwise authorized by this rule, for not more than fifty days in each calendar year, and the property is not used for pecuniary gain or to promote business activities for more than fifteen of the fifty days in each calendar year. The fifty and fifteen-day limitations do not include days for setup and takedown activities preceding or following a meeting or event; or

(c) An inadvertent use of the property in a manner inconsistent with the purpose for which the exemption was granted, if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.

(8) **Fund-raising ((~~activities~~)) events.** The use of exempt property for fund-raising ((~~activities~~)) events sponsored by an exempt organization, association, or corporation does not subject the property to taxation if the fund-raising ((~~activities~~)) events are consistent with the purposes for which the exemption was granted. The term "fund-raising" means any revenue-raising ((~~activity~~)) event limited to less than five days in length, that disburses fifty-one percent or more of the profits realized from the ((~~activity~~)) event to the exempt nonprofit organization, association, or corporation that is holding the fund-raising, and that takes place on exempt property.

(a) Example 1. ((~~A~~)) An exempt nonprofit social service agency holds an art auction in the church basement to raise funds. Since the fund-raising ((~~activity~~)) event is being held on exempt property, the ((~~activity~~)) event must be less than five days in length and fifty-one percent of the profits must be disbursed to the social service agency.

(b) Example 2. The women's auxiliary of the church has a candy sale to raise funds for the church's program to provide meals to the homeless during which the candy is sold door-to-door by members of the auxiliary. Since the candy sale is not being held on the exempt property, the sale is not limited to five days in duration nor do fifty-one percent of the profits from this fund-raising ((~~activity~~)) event have to be remitted to the church.

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AMENDATORY SECTION (Amending WSR 94-07-008, filed 3/3/94, effective 4/3/94)

WAC 458-16-210 Nonprofit organizations or associations organized and conducted for nonsectarian purposes. (1) **Introduction.** This ((~~section~~)) rule explains the property tax exemption available under the provisions of RCW 84.36.030(1) to nonprofit organizations or associations organized and conducted for nonsectarian purposes.

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

(a) "Benevolent" refers to social services or programs ((~~that are~~)) directed at persons of all ages((~~, that arise~~)) arising from or ((~~are~~)) prompted by motives of charity or a sense of benevolence, that are marked by a kindly disposition to promote the happiness and prosperity of others((~~,~~)) by generosity in and pleasure at doing good works, or ((~~that~~)) are organized for the purpose of doing good. For example, a benevolent organization may provide a food bank, a soup kitchen, or counseling services at cost.

(b) "Character building" means social services or programs ((~~that are~~)) designed for the general public good((~~,~~)) that assist people with general living skills, ((~~that develop~~)) developing interview and job seeking skills, or ((~~that~~)) assist people in working towards independent living and self sufficiency. These services include, but are not limited to, programs designed to develop an individual's moral or ethical strength, leadership, integrity, self-discipline, fortitude, self-esteem, and reputation.

(c) "Commercial" refers to an activity or enterprise that has profit making as its primary purpose.

(d) "Community outreach group" means a nonprofit group organized to extend social services to a particular segment of the community((~~;~~)). For example, a rescue mission organized to feed the homeless or a program that targets juveniles "at risk" of criminal or abusive behavior.

(e) "Nonsectarian purpose" means a purpose that is not associated with or limited to a particular religious group.

(f) "Protective" refers to activities that are meant to cover, to guard, or to shield other persons from injury or destruction or to save others from financial loss. For example, a protective organization may provide housing for battered persons or for the developmentally disabled or may assist persons with behavioral problems by providing encouragement, support, and training.

(g) "Rehabilitative or rehabilitation" refers to activities designed to restore individuals to a former capacity, to a condition of health, or to useful or constructive activity. For example, a rehabilitative organization may assist persons to overcome alcohol or substance abuse, or to overcome the ((~~affects~~)) effects of a physical injury, stroke, or heart attack.

(h) "Social service" means programs designed to help people resolve problems, become more self-sufficient, prevent dependency, strengthen family relationships, and/or enhance the functioning of individuals in society. These services include, but are not limited to, programs in the general categories of:

(i) Socialization and development; and

(ii) Therapy, help, rehabilitation, and social protection.

(3) **Exemption.** The real and personal property owned by ((~~a~~)) nonprofit organizations ((~~or~~)), associations ((~~is~~)), or corporations are

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exempt from taxation if the organization, association, or corporation is organized and conducted for nonprofit and nonsectarian purposes. To be exempt, the property must be used for ((~~and integrally related to~~)) character-building, benevolent, protective, or rehabilitative social services directed at persons of all ages.

(a) Gift and giving. To qualify for this exemption, there must be an element of gift and giving in the nonprofit organization's, association's, or corporation's activities, in relation to the people it serves. This element of gift and giving requires giving something of value with no expectation of compensation or remuneration. The words "gift" and "giving," within the context of this ((~~section~~)) rule, mean a voluntary act. In order to meet this requirement of gift and giving, the nonprofit organization, association, or corporation must annually meet one of the following conditions:

(i) Provide goods and/or services free of charge or at a rate that is at least twenty percent below the total actual cost of such goods and/or services to a minimum of fifteen percent of the total number of people assisted by that nonprofit organization, association, or corporation; or

(ii) Contribute at least ten percent of its total annual income towards the support of character-building, benevolent, protective or rehabilitative social services or programs. "Total annual income" refers to the total income reported to the Internal Revenue Service for that year and includes, but is not limited to, funds received through direct and indirect public support, government grants, membership fees, and other contributions. The term does not include funds that are specifically donated or contributed for capital improvements.

(A) In order to meet this ten percent requirement, a nonprofit organization, association, or corporation may include, but is not limited to, the value of time volunteers donate to carry out program services and functions, the loan of its facilities to community outreach groups, and gifts of scholarships and other fee subsidies.

(B) If a nonprofit organization utilizes volunteer time to reach the ten percent requirement, it must maintain records identifying the individuals who donate their services and the number of hours they donate. The value of donated time will be calculated by using the federal minimum wage standard.

(C) If a nonprofit organization allows community outreach groups to use its facilities free of charge, it must maintain records identifying the community outreach groups that used the exempt property and the number of hours each group used the exempt property. The value of this use will be calculated by ((~~multiplying~~)) taking the number of hours((~~,~~)) or any portion of an hour, the facility is used by these groups ((~~times~~)) and multiplying it by the ((~~usual and~~)) customary charge the nonprofit organization, association, or corporation charges to rent its facility to any other group.

(b) Conditions and restrictions. A nonprofit organization, association, or corporation may not impose conditions or restrictions on the use of the exempt property by persons who do not personally pay the total actual cost of a social service, except conditions or restrictions that are reasonably necessary to safeguard the exempt property and to comply with the purposes of this exemption.

(c) Fraternal organizations. Property used by a fraternal organization or association for fraternal purposes does not qualify for an exemption under this ((~~section~~)) rule.

(d) Nonqualifying property. If any portion of the organization's or association's property is used for a commercial rather than a non-

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profit, nonsectarian exempt purpose, then that portion will not qualify for this exemption and must be segregated ((~~and taxed~~)) from property used for exempt purposes.

(e) Selling donated merchandise. The sale of donated merchandise ((~~shall not be~~)) is considered ((~~a commercial~~)) an exempt use of the property if the proceeds are dedicated to the exempt purpose associated with the nonprofit, nonsectarian organization or association. For example, thrift store operations that are restricted to the sale of "donated merchandise" will not jeopardize this exemption if the claimant can verify the proceeds are directed to an exempt purpose.

(f) Property with option to repurchase. Property leased, loaned, or sold with the option to repurchase or made available to organizations described in RCW 84.36.030, does not qualify for this exemption unless:

(i) The property is owned by an organization exempt under RCW 84.36.020 or 84.36.030 and the organization loans, leases, or rents the property to another organization for the exempt purposes described in RCW 84.36.030; or

(ii) The property is owned by an entity formed exclusively for the purpose of leasing the property to an organization that will use the property for the exempt purposes described in RCW 84.36.030 if:

(A) The lessee uses the property for the exempt purposes provided in RCW 84.36.030;

(B) The immediate previous owner of the property had received an exemption under RCW 84.36.020 or 84.36.030 for the property; and

(C) The benefit of the exemption inures to the benefit of the lessee organization.

(4) **Additional requirements.** Any organization or association 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 to obtain a property tax exemption pursuant to RCW 84.36.030.

AMENDATORY SECTION (Amending WSR 94-07-008, filed 3/3/94, effective 4/3/94)

WAC 458-16-220 Church camps. (1) **Introduction.** This ((~~section~~)) rule explains the property tax exemption available under the provisions of RCW 84.36.030(2) to property used as a church camp and owned by a nonprofit church, denomination, group of churches, or an organization or association of churches.

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

(a) "Church purposes" means the use of real and personal property ((~~as a church camp and~~)) owned by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities.

(b) "Property" means real or personal property owned by a nonprofit church, denomination, group of churches, or an organization or association of churches.

(3) **Exemption.** Property owned by a nonprofit church, denomination, group of churches, or an organization or association comprised solely of churches or their qualified representatives that is used ex-

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clusively on a regular and scheduled basis for organized and supervised recreational or educational activities and church purposes related to ((~~such~~)) camp facilities is exempt from ((~~ad valorem taxation~~)) property tax up to a maximum of two hundred acres as selected by the church, including buildings and other improvements ((~~thereon~~)) located on the land.

(4) **Property with option to repurchase.** Property leased, loaned, or sold with the option to repurchase or made available to organizations described in RCW 84.36.030 does not qualify for this exemption unless:

(a) The property is owned by an organization exempt under RCW 84.36.020 or 84.36.030 and the organization loans, leases, or rents the property to another organization for the exempt purposes described in RCW 84.36.030; or

(b) The property is owned by an entity formed exclusively for the purpose of leasing the property to an organization that will use the property for the exempt purposes described in RCW 84.36.030 if:

(i) The lessee uses the property for the exempt purposes provided in RCW 84.36.030;

(ii) The immediate previous owner of the property had received an exemption under RCW 84.36.020 or 84.36.030 for the property; and

(iii) The benefit of the exemption inures to the benefit of the lessee organization.

(5) **Additional requirements.** Any organization or association 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 to obtain a property tax exemption pursuant to RCW 84.36.030.

AMENDATORY SECTION (Amending WSR 94-07-008, filed 3/3/94, effective 4/3/94)

WAC 458-16-230 Character building organizations. (1) **Introduction.** This ((~~section~~)) rule explains the property tax exemption available under the provisions of RCW 84.36.030(3) to property owned by a nonprofit organization or association engaged in character building of children under eighteen years of age.

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

(a) "Character building" refers to activities for children under eighteen years of age that are for the general public good. The activities may build, improve, or enhance a child's moral constitution by developing moral or ethical strength, leadership, integrity, self-discipline, fortitude self-esteem, and reputation. For example, "character building" activities may involve organized and supervised recreational activities including, but not limited to, exploring, hiking, beachcombing, swimming, fishing, studying, and discussion groups.

(b) "Commercial" refers to ((~~as~~)) an activity or enterprise that has profit making as its primary purpose.

(c) "Property" means real and personal property owned and used by a nonprofit organization or association engaged in character building of children under eighteen years of age and includes all buildings,

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structures, and improvements required to maintain and to safeguard the property.

(3) **Exemption.** Property ((~~that is~~)) owned by nonprofit organizations or associations engaged in character building of children under eighteen years of age is exempt from taxation if it is exclusively used((~~, or to the extent it is exclusively used,~~)) to promote character building.

(a) To be entitled to receive this exemption, the organization or association must be nonprofit and its purpose must be for the general public good. All property of a character building organization or association must be devoted to the general public benefit.

(b) Except as otherwise provided in this rule, only property that is exclusively used for character building of children under eighteen years of age, is exempt under this ((~~section~~)) rule. If the property is used for any other purpose, whether commercial or otherwise, it must be segregated and taxed.

(c) A nonprofit character building organization or association may also qualify for this exemption if, prior to 1971, its articles of incorporation or charter mandated the organization or association to provide services to children up to the age of twenty-one years.

(4) **Property with option to repurchase.** Property leased, loaned, or sold with the option to repurchase or made available to organizations described in RCW 84.36.030 does not qualify for this exemption unless:

(a) The property is owned by an organization exempt under RCW 84.36.020 or 84.36.030 and the organization loans, leases, or rents the property to another organization for the exempt purposes described in RCW 84.36.030; or

(b) The property is owned by an entity formed exclusively for the purpose of leasing the property to an organization that will use the property for the exempt purposes described in RCW 84.36.030 if:

(i) The lessee uses the property for the exempt purposes provided in RCW 84.36.030;

(ii) The immediate previous owner of the property had received an exemption under RCW 84.36.020 or 84.36.030 for the property; and

(iii) The benefit of the exemption inures to the benefit of the lessee organization.

(5) **Additional requirements.** Any organization or association 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 to obtain a property tax exemption pursuant to RCW 84.36.030.

((~~(5)~~)) (6) **Related statute.** See RCW 82.04.4271; if a "nonprofit youth organization" is exempt from property taxation under RCW 84.36.030, it may deduct membership fees and certain service fees in calculating the amount of business and occupation tax due.

AMENDATORY SECTION (Amending WSR 94-07-008, filed 3/3/94, effective 4/3/94)

WAC 458-16-240 Veterans organizations. (1) **Introduction.** This ((~~section~~)) rule explains the property tax exemption available under the provisions of RCW 84.36.030(4) for real and personal property

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owned by organizations and societies of veterans of any war of the United States.

(2) ((~~**Definitions.** For purposes of this section, 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 to promote business activities through either carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.~~

~~(b) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles.~~

~~(c) "Property" means real and personal property owned by organizations or societies of war veterans.~~

~~(3)~~)) **Exemption.** Property owned by organizations or societies of war veterans, which are recognized by the department of defense and nationally chartered, is exempt from taxation.

(a) The general purposes and objectives of these organizations or societies ((~~shall~~)) must be to:

(i) ((~~To~~)) Preserve memories and associations incident to war service; and

(ii) ((~~To~~)) Devote their members' efforts to mutual helpfulness and to patriotic and community service to state and nation.

(b) In order to qualify for this exemption, the property must be used in a manner reasonably necessary to carry out the purposes and objectives of the organization or society of war veterans. For example, a building owned by a chapter of the veterans of foreign wars that is used to hold meetings to plan a Veterans Day celebration may qualify for exemption.

((~~(c) 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.~~

~~(4) **Use of property for pecuniary gain or to promote business activities.** If property owned by an organization or society of veterans that is exempt under subsection (3) of this section is used for pecuniary gain or to promote business activities, the property tax exemption will be lost for the assessment year in which the exempt property was so used. The exemption will not be lost if:~~

~~(a) The exempt property is used for pecuniary gain not more than three days a year; or~~

~~(b) The exempt property is inadvertently used by an individual, organization, association, or a corporation to promote business activities as long as the inadvertent use is not a pattern of use. A "pattern of use" is presumed when an inadvertent use of the property to promote business activities is repeated within the same assessment year or within two or more successive assessment years.~~

~~(5)~~)) (3) **Property with option to repurchase.** Property leased, loaned, or sold with the option to repurchase or made available to organizations described in RCW 84.36.030 does not qualify for this exemption unless:

(a) The property is owned by an organization exempt under RCW 84.36.020 or 84.36.030 and the organization loans, leases, or rents the property to another organization for the exempt purposes described in RCW 84.36.030; or

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(b) The property is owned by an entity formed exclusively for the purpose of leasing the property to an organization that will use the property for the exempt purposes described in RCW 84.36.030 if:

(i) The lessee uses the property for the exempt purposes provided in RCW 84.36.030;

(ii) The immediate previous owner of the property had received an exemption under RCW 84.36.020 or 84.36.030 for the property; and

(iii) The benefit of the exemption inures to the benefit of the lessee organization.

(4) **Additional requirements.** Any 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 to obtain a property tax exemption pursuant to RCW 84.36.030.

AMENDATORY SECTION (Amending WSR 10-02-010, filed 12/24/09, effective 1/24/10)

WAC 458-16-260 Nonprofit child day care centers, libraries, orphanages, homes for sick or infirm, hospitals, outpatient dialysis facilities. (1) **Introduction.** This ((~~section~~)) rule explains the property tax exemption available under the provisions of RCW 84.36.040 ((~~to~~)) for property used by nonprofit child day care centers, libraries, orphanages, homes for the sick or infirm, hospitals, and outpatient dialysis facilities. This ((~~section~~)) rule also explains the property tax exemption available to property leased to and used by a hospital ((~~that~~)) for hospital purposes if the hospital is established under chapter 36.62 RCW or is owned and operated by a public hospital district ((~~for hospital purposes~~)) established under chapter 70.44 RCW.

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

(a) "Convalescent" or "chronic care" means any or all procedures commonly employed in caring for the sick including, but not limited to, administering medicines, preparing special diets, providing bedside nursing care, applying dressings and bandages, and carrying out any treatment prescribed by a duly licensed practitioner of the healing arts.

(b) "Child day care center" means a ((~~facility~~)) nonprofit organization that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four consecutive hours.

(c) "Home for the sick or infirm" means any home, place, or institution that operates or maintains facilities to provide convalescent or chronic care, or both, for three or more persons not related by blood or marriage to the operator, who by reason of illness or infirmity, are unable to properly care for themselves.

(i) The services must be provided to persons over a continuous period of twenty-four hours or more.

(ii) A boarding home, guest home, hotel, or similar institution that is held forth to the public as providing and supplying only room, board, or laundry services to persons who do not need medical or nurs-

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ing treatment or supervision is not considered a "home for the sick or infirm" for purposes of this ((~~section~~)) rule.

(d) "Hospital" means a nonprofit organization, association, or corporation engaged in providing medical, surgical, nursing, or related health care services for the prevention, diagnosis, or treatment of human illness, pain, injury, disability, deformity, or abnormality, including mental illness, treatment of mentally incompetent persons, or treatment of chemically dependent persons. The term also means all buildings or portions of buildings that are currently licensed as part of a hospital pursuant to chapters 70.41 or 71.12 RCW, and are part of an integrated, interrelated, homogeneous unit exclusively used for hospital purposes. The licensed hospital must be able to provide health care services to inpatients over a continuous period of twenty-four hours or more. The term also includes:

(i) Administrative and support facilities integral and necessary to the functioning of the licensed hospital;

(ii) Buildings used as a residence for persons engaged or employed on a regular basis in the operation of a licensed hospital. Such buildings include, but are not limited to, a nurse's home or a residence for hospital employees; and

(iii) Residential units administered by a licensed hospital that are exclusively used to temporarily house families of inpatients in an integrated program of therapy.

"Hospital" does not mean:

(A) Hotels or similar places that furnish only food and lodging or simple domiciliary care;

(B) Clinics or physician's offices not licensed as part of a hospital, where patients are not regularly kept as bed patients for twenty-four hours or more;

(C) Nursing homes as defined in chapter 18.51 RCW; and

(D) Maternity homes as defined in chapter 18.46 RCW.

(3) **Exemption for exclusively used property.** All real and personal property exclusively used by a nonprofit organization, association, or corporation for the following institutions is exempt from taxation:

(a) Child day care centers;

(b) Free public libraries;

(c) Orphanages and orphan asylums;

(d) Homes for the sick or infirm;

(e) Hospitals for the sick; and

(f) Outpatient dialysis facilities.

(4) **Exemption for loaned, leased, or rented property.** Property loaned, leased, or rented to an institution listed in subsections (3)(a) through (f) of this ((~~section~~)) rule is also exempt from taxation if:

(a) The property is exclusively used by the nonprofit organization, association, or corporation;

(b) The benefit of the exemption inures to the user; and

(c) The property was specifically identified as loaned, leased, or rented when the application for exemption was made.

(5) **Property leased or rented to and used by ((~~a~~)) hospitals ((~~that is owned and operated by a public hospital district~~)).** All real and personal property leased or rented to and used by a hospital for hospital purposes is exempt from property tax if the hospital is established under chapter 36.62 RCW or is owned and operated by a public hospital district established under chapter 70.44 RCW ((~~for hospital purposes is exempt from taxation~~)). The benefit of the exemption must inure to the entity using the exempt property.

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(6) ((~~**Exclusive use required.** Any portion of property exempt under subsections (3) through (5) of this section that is not exclusively used in a manner furthering the exempt purposes of the nonprofit organization, association, or corporation must be segregated and taxed. For example, hospital property used by, and under the administrative control of, a physician to conduct his private practice must be segregated and taxed.~~

~~(7)~~)) **Additional requirements.** Any organization or association 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 to obtain a property tax exemption under RCW 84.36.040.

AMENDATORY SECTION (Amending WSR 09-19-069, filed 9/14/09, effective 10/15/09)

WAC 458-16-270 Schools and colleges. (1) **Introduction.** This ((~~section~~)) rule explains the two property tax exemptions available under the provisions of RCW 84.36.050. The first exemption applies to property owned or used by or for a nonprofit school or college. The second exemption is for property owned by a not-for-profit foundation established for the exclusive support of an institution of higher education, as defined in RCW 28B.10.016, that is leased to and used by the institution. Nonprofit schools, colleges, and not-for-profit foundations seeking a property tax exemption under RCW 84.36.050 must also comply with the relevant requirements of RCW 84.36.805 ((~~and~~)), 84.36.840, and WAC 458-16-165. (See subsection ((~~(9)~~)) (8) of this ((~~section~~)) rule.)

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

(a) "College or campus purposes" means principally designed to further the educational, athletic, or social functions of an institution of higher education, as defined in RCW 28B.10.016, and only applies to property that is owned by a not-for-profit foundation and leased to and used by such an institution.

(b) "Cultural or art educational program" means:

(i) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(ii) A musical or dramatic performance or series of performances; or

(iii) An educational seminar or program, or series of such programs, offered by a nonprofit school or college to the general public on an artistic, cultural, or historical subject. (See RCW 82.04.4328(2).)

(c) "Educational, social and athletic programs" or "educational, social and athletic functions" individually or collectively mean those programs offered or functions performed by or for the school or college in each such general area, including, but not limited to, those illustrated by the examples set forth in this definition, and including educational, social, and athletic programs and functions sponsored or cosponsored by the school or college, offered by others on school or college-owned property in a manner consistent with the school or

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college's programs, and such programs and functions on school or college property that may involve alumni and community members.

(i) Examples of educational programs and functions include, in addition to those described in the definition of "educational purposes" in (d) of this subsection: Classes, seminars, conferences, providing instructional support to students and other participants in such programs and functions, and programs and functions that utilize and apply the academic and instructional resources and facilities of the school or college, including related administrative and support activities for these programs and functions.

(ii) Examples of athletic programs and functions include: Physical training, sport events and practices, athletic camps, and use of school or college recreational and fitness resources and facilities by students, alumni, faculty, staff, or third parties, including related administrative and support activities, which use the property in a manner consistent with the school or college's programs.

(iii) Examples of social programs or functions include activities engaged in by or for the school or college that further the health, safety, well being, emotional growth, welfare, psychological development, socialization, preparation and training for participation in society, development of adaptive skills and cultural awareness and related activities for students including, but not limited to, theatrical or musical performances, artistic, cultural, or technology exhibits or fairs, events, presentations and programs providing students with information about and access to goods and services they need while a student at the school or college.

(d) "Educational purposes" means, in addition to the educational programs and functions described in (c) of this subsection, systematic instruction, either formal or informal, in any and all branches of learning directed to an indefinite class of persons and from which a substantial public benefit is derived. The term includes all purposes that seek to promote or advance education.

(e) "Schools and colleges" means:

(i) Nonprofit educational institutions that are approved by the superintendent of public instruction or whose students and credentials are accepted without examination by schools and colleges established under either Title 28A or 28B RCW and offer students an educational program of a general academic nature; or

(ii) Nonprofit institutions that meet the following criteria:

(A) They have a definable curriculum and measurable outcomes for a specific group of students;

(B) They have a qualified or certified faculty;

(C) They have facilities and equipment that are designed for the primary purpose of the educational program;

(D) They have an attendance policy and requirement;

(E) They have a schedule or course of study that supports the instructional curriculum; and

(F) They are accredited, recognized, or approved by an external agency that certifies educational institutions and the transferability of courses.

(f) "Net income" means the amount received from the loan or rental of exempt property that exceeds the amount of the maintenance and operation expenses, as defined in WAC 458-16-165, attributable to the portion of the property loaned or rented.

(g) "Pecuniary gain" means the generation of monetary receipts from commercial operations or other sales activities, when those re-

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ceipts exceed expenses of operations or are intended to exceed expenses of operations.

(h) "Religious faculty" means a person who:

(i) Teaches at a school or college; and

(ii) Is a member of the clergy or a religious order or officially invested with ministerial or priestly authority, as distinguished from laity.

(i) "Third parties" means individuals, groups, organizations, associations, corporations, and entities other than the school or college to which an exemption is granted under this ((~~section~~)) rule.

(3) **Exemption - Nonprofit schools or colleges.** Property owned or used by or for any nonprofit school or college within this state is exempt to the extent that it is used for educational purposes or cultural or art educational programs.

(a) Real property exempt under this ((~~section~~)) rule cannot exceed four hundred acres. The exempt property includes, but is not limited to:

(i) Buildings and grounds principally designed for the educational, athletic, or social programs or functions of the school or college;

(ii) Buildings that house part-time or full-time students, religious faculty, or the chief administrator of the school or college;

(iii) Buildings used for athletic activities of the school or college; and

(iv) All other school or college facilities, such as maintenance facilities, heating plants, storage facilities, security services facilities, food services facilities, transportation facilities, administrative offices, or a student union building or student commons, which are needed because of the presence of the school or college.

(b) ((~~With respect to all~~)) Property that is not a part of, or contiguous to, the main campus of a school or college and for which the institution wishes to obtain an exemption, the department may require the institution to provide, in detail, the following information:

(i) The names of courses taught or a description of the educational purposes or cultural or art educational programs taking place at the off-campus site;

(ii) A calendar of dates and times that shows how the subject property is used; and

(iii) The number of students who participate in the educational activities or cultural or art educational programs conducted at the off-campus site.

(c) If property is leased to a school or college, in order to be exempt, the benefit of the exemption must inure to the school or college.

(4) **Exemption - Property owned by a not-for-profit foundation that is leased to and used by an institution of higher education.** RCW 84.36.050 also provides a property tax exemption to real or personal property owned by a not-for-profit foundation established for the exclusive support of an institution of higher education, as defined in RCW 28B.10.016. The property must be leased to and used by the institution for college or campus purposes and it must be principally designed to further the educational, athletic or social functions of the institution.

(a) An institution of higher education is defined in RCW 28B.10.016 as synonymous with "postsecondary institutions" and means the University of Washington, Washington State University, Western Wash-

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ington University at Bellingham, Central Washington University at Ellensburg, Eastern Washington University at Cheney, The Evergreen State College, the community colleges, and the technical colleges.

(b) The exemption can only be obtained for property actively utilized by currently enrolled students.

(c) The benefit of the exemption must inure to the educational institution using the exempt property.

(5) **Uses of the exempt property that affect the exemption - Exceptions.** For purposes of the school and college exemption:

(a) If exempt property is used by a third party entitled to a property tax exemption, the property remains exempt as long as the amount of rent or donations received by the school or college for that use is reasonable and does not result in net income.

(b) If exempt property is used by a third party not entitled to a property tax exemption, ((~~for pecuniary gain or to promote business activities~~)) except as otherwise provided in this rule, then the property, or portion ((~~so~~)) used((~~,~~)) is taxable for the entire assessment year in which the nonqualifying use occurs and will remain taxable until a new application is filed with the department and approved((~~, except as otherwise provided in this subsection, and subsection (6) of this section (nonqualifying inadvertent use), and subject to the provisions of subsection (9) of this section~~)). When an exemption is denied for only a portion of the school or college's property, ((~~any~~)) the renewal application ((~~need~~)) only needs to address that portion of the property denied((~~,~~)) and not the entire property.

(c) There are three general exceptions to the loss of exemption when exempt property is used by a third party not entitled to a property tax exemption, which exceptions are described in (i), (ii), and (iii) of this subsection (5)(c), as follows:

(i) If exempt property is used by students, alumni, faculty, staff, or other third parties in a manner consistent with the educational, social, or athletic programs of the school or college, including property used for related administrative and support functions, and not for pecuniary gain or to promote business activities, then the property remains exempt.

(ii) When the school or college contracts with and permits the use by third parties of exempt property to provide school or college-related programs or services directed at students, faculty, and staff, and not primarily at the general public, then the property remains exempt, regardless of whether payment for the programs or services is made to such third party by the school or college, or by program participants or service recipients, and regardless of whether the use by the third party results in pecuniary gain for the third party or the promotion of the third party's business. Examples of such programs or services include school or college educational, social and athletic programs and functions; the provision of food services, including snack and coffee bars, food or bottled drink vending machines, or on-campus catering services for school or college events; placement of an automated teller machine on exempt property; the operation of a bookstore on campus that sells textbooks and other student oriented items; and the provision of maintenance, operational, or administrative services.

(iii) If exempt property is used for pecuniary gain or to promote business activities for ((~~seven~~)) fifteen days or less each calendar year by third parties who are not entitled to a property tax exemption, the property remains exempt. Disqualifying use of more than ((~~seven~~)) fifteen days is measured separately with respect to each

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specific portion of the exempt property used, and is cumulative with respect to each such separate portion each year for all such third party use. For example, if a classroom in a building is used by three separate third parties for ((~~disqualifying uses~~)) pecuniary gain or to promote business activities on three separate occasions in one calendar year for periods of ((~~two, three, and five~~)) four, six, and eight days respectively (for a total of ((~~ten~~)) eighteen days ((~~of disqualifying use~~))), that classroom, but not the entire floor or building, loses its exemption for that calendar year. By contrast, if the ((~~five~~)) six day disqualifying use occurred in a different portion of the building, such as an auditorium, neither the classroom nor the auditorium would be disqualified, since neither portion of the building would have been used for ((~~a disqualifying use~~)) pecuniary gain or to promote business activities for more than ((~~seven~~)) fifteen days in that year. This ((~~seven~~)) fifteen day limitation does not apply when exempt property is used as or for a sports or educational camp or program that is taught, operated, or conducted by a faculty member who is required or permitted to do so as part of his or her compensation package, whether or not participants pay a fee directly to such faculty member.

(d) Unless otherwise authorized under this rule, the use of exempt property by any individual, group, or entity, does not nullify the exemption if the property is used for nonexempt purposes for up to fifty days each calendar year and is used for pecuniary gain or to promote business activities, as described in subsection (5)(c)(iii) of this rule, for not more than fifteen of the fifty days in each calendar year. The fifty and fifteen-day limitations do not include days for setup and takedown activities that take place immediately preceding or following a meeting or other event.

(6) ((~~**Effect of inadvertent use in a nonqualifying manner.** If property exempt under this section is inadvertently or accidentally used in a manner inconsistent with the purposes for which the exemption was granted, the exemption will not be nullified unless the use is part of a pattern of nonexempt use. A pattern of nonexempt use is presumed when an inadvertent or accidental use is repeated in the same assessment year or in two or more successive assessment years.~~

~~(7)~~)) **Examples of uses that do not nullify the exemption.** In order to clarify the property tax exemption for schools and colleges, this subsection describes and gives examples of the types of use by third parties not entitled to a property tax exemption that do not nullify the tax exempt status of property owned or used by or for a school or college. The following examples should be used only as a general guide. The tax results of other specific situations must be determined after a review of all of the facts and circumstances. In the following examples, as long as any rent or donation associated with the use is reasonable and does not result in net income to the school or college, the exemption is not affected.

(a) Exempt property is used by students, alumni, faculty, staff, or other third parties for weddings, anniversary celebrations, family or school reunions, funeral services, or similar events. These uses are consistent with the educational or social programs of the school or college and the property remains exempt. The property remains exempt even when the persons or groups using the school or college property for such an event also hire persons such as a caterer, a musical group, or a wedding photographer specifically for the event.

(b) Exempt property is used by third parties, such as members of the community, for lectures, presentations, musical recitals, semi-

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nars, debates, or similar educational activities. If the third party use is contracted for and permitted by the school or college, for example when the school or college pays the presenter directly, or when the participants or patrons pay the presenter directly, there is no loss of exemption, as long as the uses are consistent with the educational, social, or athletic programs of the school or college. The presenter may also offer for sale, at the time of the presentation, books, tapes, CDs or similar items that relate directly to the presentation.

(c) Exempt property is used by third parties such as students, alumni, faculty, staff, or members of the community for athletic activities or events on sports fields, tennis courts, and in buildings used for athletics. These uses are consistent with the athletic programs of the school or college and the property remains exempt as long as the property is not used for third party pecuniary gain or to promote business activities. (The example is intended only to illustrate the application of the exception set forth in subsection (5)(c)(i) of this ((~~section~~)) rule, and should be distinguished from the exceptions described under subsections (5)(c)(ii) and (iii) of this ((~~section~~)) rule which permits the generation of third party pecuniary gain in certain identified circumstances.) Any fees, charges, rents, donations or other remuneration for the use of the school or college exempt facilities may not result in net income.

(d) Exempt property is used by third parties for educational or instructional programs, such as private instruction, tutoring, driving instruction, English as a second language or other language courses, examination preparation, or other similar programs. These programs are consistent with the educational programs of the school or college and the property remains exempt as long as the property use is contracted for and permitted by the school or college and the uses are consistent with the educational programs of the school or college.

(e) Exempt property, such as student housing, is used for purposes of recruiting prospective students. Exempt school or college facilities, when not being used by currently enrolled students, are offered by the school or college to third parties for educational programs consistent with the educational purposes of the school or college. Such uses are consistent with the educational programs of the school or college and the property remains exempt.

(f) A school or college provides courses in vocational-technical skills, such as culinary arts, hotel management, automotive mechanics, or cosmetology. As a part of the course work, students obtain practical experience by providing products or services to the public. As long as the charge to the public for these products or services is exclusively used for the school or college's educational, social, or athletic programs, this use of exempt property is consistent with the school's educational programs and functions and will not result in the loss of exemption.

(g) Exempt property is used by a bank or credit union in a school or college student orientation program of limited duration and not more than one time each year, through which students receive information from a variety of local businesses about services that they may need while attending a school or college. This is considered to be a social or educational program of the school or college and is not a disqualifying use.

(h) The school or college contracts with and permits third parties to use exempt property to conduct fund-raising ((~~activities~~)) events when the funds raised will be used for educational purposes or

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cultural or art educational programs of the school or college. Such ((~~activities~~)) events must be conducted in accordance with the provisions of WAC 458-16-165.

((~~(8)~~)) (7) **Examples of disqualifying use.** In order to clarify the property tax exemption for schools and colleges, this subsection describes and gives examples of the types of use by third parties not entitled to a property tax exemption that will nullify the tax exempt status of property owned or used by or for a school or college. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other specific situations must be determined after a review of all of the facts and circumstances.

(a) The placement and operation of a bank or credit union on exempt property. Such an activity is using the exempt property for pecuniary gain and to promote business activities and will cause the loss of exemption. Such an operation provides a service that is not distinguishable from services provided to the general community. The exemption is nullified for the portion of the property occupied by the bank or credit union.

(b) An antique shop, gift shop, or retail store that sells a variety of merchandise, but does not primarily sell products directed at students, faculty, or staff of the school or college, and occupies an exempt college-owned building on the school or college campus on a regular and continuing basis. Such a store does not provide a specific school or college related program or service, and is being operated for pecuniary gain and to promote business activities. The exemption is nullified for the portion of the building occupied by the business.

((~~(9)~~)) (8) **Additional requirements.**

(a) Any school or college, or not-for-profit foundation established for the exclusive support of an institution of higher education, that applies for a property tax exemption under this ((~~section~~)) rule must also comply with the provisions of RCW 84.36.805 to the extent applicable. Schools, colleges, and not-for-profit foundations established for the exclusive support of an institution of higher education may, without losing the exemption, loan or rent exempt property to organizations even though the property would not be exempt if owned by such organizations, as long as the rents or donations received for the use of the portion of the property loaned or rented are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented. WAC 458-16-165 describes and explains additional conditions and requirements that must be complied with to obtain and maintain a property tax exemption for a school, college, or not-for-profit foundation.

(b) Any school or college, or not-for-profit foundation established for the exclusive support of an institution of higher education, that applies for a property tax exemption under this ((~~section~~)) rule must also comply with the provisions of RCW 84.36.840. In accordance with that statute, the applicant must annually file a report with the department on or before ((~~April 1st~~)) March 31st. The report must be signed, and state that the revenues of the school, college, or foundation, including donations, have been applied to maintenance and operation expenses or capital expenditures of the school or college or foundation and to no other purpose. The report must also contain the following information:

(i) A list of all property, real and personal, claimed to be exempt, including the parcel number(s) and/or addresses for all real property;

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(ii) The purpose(s) for which the property was used;

(iii) The revenue derived from the property for the preceding calendar year;

(iv) The use to which the revenue was applied;

(v) The number of students who attended the school or college; and

(vi) The total revenues of the school, college, or foundation, with the source from which they were derived, and the purposes to which the revenues were applied, giving a detailed accounting of the revenues and expenditures.

AMENDATORY SECTION (Amending WSR 09-19-010, filed 9/3/09, effective 10/4/09)

WAC 458-16-280 Art, scientific, and historical collections. (1) **Introduction.** This ((~~section~~)) rule explains the property tax exemption available under the provisions of RCW 84.36.060 (1)(a) to art, scientific, or historical collections.

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

(a) "Governmental entity" means any political unit or division of the federal, state, city, county, or municipal government.

(b) "Property" means all real and personal property exclusively used to secure, maintain, and exhibit art, scientific, or historical collections.

(3) **Exemption for existing property.** All art, scientific, or historical collections owned by associations maintaining and exhibiting the collections to the general public and not for profit, together with all real and personal property owned by these associations and used exclusively to secure, maintain, and exhibit the collections, ((~~shall~~)) will be exempt from taxation under the following conditions:

(a) An organization, association, or corporation must be organized and operated exclusively for artistic, scientific, or historical purposes.

(b) The organization, association, or corporation organized and operated for artistic, scientific, or historical purposes must receive a substantial part of its income from a governmental entity or through direct or indirect contributions of money, real or personal property, or services from the general public. Admission or entrance fees derived from exercising or performing its purpose or function ((~~shall~~)) will not be included within the figures used to calculate "a substantial part" of the organization's, association's, or corporation's income.

(i) For example, an art museum may receive support from a city government and from donations made by the general public in addition to general admission fees paid by visitors. When determining whether the art museum receives a substantial part of its income from a governmental entity or through contributions from the general public, the admission fees may not be considered as contributions from the general public.

(ii) Any organization, association, or corporation that relies on services donated by the general public for a substantial part for its support must maintain records identifying the individuals who donate their services and the number of hours they donate. The value of dona-

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ted time will be calculated by using the federal minimum wage standard.

(4) **Exemption for property under construction or soon to be used for an exempt purpose.** Property that is being constructed, remodeled, or otherwise prepared to maintain and exhibit art, scientific, or historical collections, may qualify for exemption under certain circumstances. A nonprofit organization, association, or corporation seeking an exemption for property not currently being used for an exempt purpose may qualify if the property will be used for an exempt purpose within a reasonable period of time and proof is submitted that a reasonably specific and active program is being carried out to enable the property to be used to maintain and exhibit an art, scientific, or historical collection.

(a) Acceptable proof of a specific and active building or remodeling program ((~~shall~~)) must include, but is not limited to, the following items:

(i) Affirmative action by the board of directors, trustees, or governing body of the nonprofit organization, association, or corporation endorsing and underwriting the construction or remodeling;

(ii) Itemized reasons for the proposed construction or remodeling;

(iii) Clearly established plans for financing the construction or remodeling; and

(iv) Building permits necessary to begin or continue the construction or remodeling.

(b) Property under construction ((~~shall~~)) will not qualify for exemption during this interim period if the property is used by, loaned to, or rented to a for-profit organization or business enterprise.

(5) ((~~**Use of exempt property by entities not entitled to a property tax exemption.** As a general rule, exempt property may not be used by an entity not entitled to receive a property tax exemption under this chapter. The use of exempt property by an ineligible entity will nullify the exemption for the assessment year. However, the property exemption will not be nullified if:~~

~~(a) The property is used by entities not entitled to a property tax exemption under this chapter for periods of not more than fifty days in a calendar year;~~

~~(b) The property is not used for pecuniary gain or to promote business for more than fifteen of the fifty days in a calendar year; and~~

~~(c) The property is used for:~~

~~(i) Artistic, scientific, or historic purposes;~~

~~(ii) The production and performance of musical, dance, artistic, dramatic, or literary works; or~~

~~(iii) Community gatherings or assembly, or meetings.~~

~~(d) The fifty and fifteen day limitations set forth in (a) and (b) of this subsection do not include the days the exempt property is used for setup and takedown activities preceding or following a meeting or other event by an entity using the property as described in this subsection.~~

~~(6)~~)) **Additional requirements.** Any organization, association, or corporation applying 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 to obtain a property tax exemption pursuant to RCW 84.36.060.

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AMENDATORY SECTION (Amending WSR 09-19-010, filed 9/3/09, effective 10/4/09)

WAC 458-16-282 Musical, dance, artistic, dramatic and literary associations. (1) **Introduction.** This ((~~section~~)) rule explains the property tax exemption available under the provisions of RCW 84.36.060 (1)(b) to organizations, associations, or corporations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works.

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

(a) "Governmental entity" means any political unit or division of the federal, state, county, city, or municipal government.

(b) "Property" means all real and personal property exclusively used to produce or perform musical, dance, artistic, dramatic, or literary works.

(3) **Exemption.** All real and personal property owned by or leased to a nonprofit organization, association, or corporation engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit ((~~shall~~)) will be exempt from taxation under the following conditions:

(a) The property must be used exclusively to produce or perform musical, dance, artistic, dramatic, or literary works.

(b) An organization, association, or corporation must be organized and operated exclusively for musical, dance, artistic, dramatic, literary, or educational purposes.

(c) The organization, association, or corporation organized and operated for musical, dance, artistic, dramatic, literary, or educational purposes must receive a substantial portion of its income from a governmental entity or from direct or indirect contributions of money, real or personal property, or services from the general public. Admission or entrance fees derived from producing or performing musical, dance, artistic, dramatic, literary, or educational works ((~~shall~~)) will not be included within the figures used to calculate "a substantial part" of the organization's, association's or corporation's income.

(i) For example, a theater may receive support from a city government and from donations made by the general public in addition to ticket sales for admission to its performances. When determining whether the theater receives a substantial part of its income from a governmental entity or through contributions from the general public, the ticket sales may not be considered as contributions from the general public.

(ii) Any organization, association, or corporation that relies on services donated by the general public for a substantial portion of its support must maintain records identifying the individuals who donate their services and the number of hours they donate. The value of donated time will be calculated by using the federal minimum wage standard.

(4) **Exemption for property under construction or soon to be used for an exempt purpose.** Property that is being constructed, remodeled, or otherwise prepared to be used by organizations, associations, or corporations engaged in the production and performance of musical, dance, artistic, dramatic, literary, or educational works, may qualify for exemption under certain circumstances. A nonprofit organization,

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association, or corporation seeking an exemption for property not currently being used for an exempt purpose, may qualify if the property will be used for an exempt purpose within a reasonable period of time and proof is submitted that a reasonably specific and active program is being carried out to enable the property to be used by organizations, associations, or corporations engaged in the production and performance of musical, dance, artistic, dramatic, literary, or educational works.

(a) Acceptable proof of a specific and active building or remodeling program ((~~shall~~)) must include, but is not limited to, the following items:

(i) Affirmative action by the board of directors, trustees, or governing body of the nonprofit organization, association, or corporation endorsing and underwriting the construction or remodeling;

(ii) Itemized reasons for the proposed construction or remodeling;

(iii) Clearly established plans for financing the construction or remodeling; and

(iv) Building permits necessary to begin or continue the construction or remodeling.

(b) Property under construction ((~~shall~~)) will not qualify for exemption during this interim period if the property is used by, loaned to, or rented to a for-profit organization or business enterprise.

(5) ((~~**Use of exempt property by entities not entitled to a property tax exemption.** As a general rule, exempt property may not be used by an entity not entitled to receive a property tax exemption under this chapter. The use of exempt property by an ineligible entity will nullify the exemption for the assessment year. However, the property exemption will not be nullified if:~~

~~(a) The property is used by entities not entitled to a property tax exemption under this chapter for periods of not more than fifty days in a calendar year;~~

~~(b) The property is not used for pecuniary gain or to promote business for more than fifteen of the fifty days in a calendar year; and~~

~~(c) The property is used for:~~

~~(i) Artistic, scientific, or historic purposes;~~

~~(ii) The production and performance of musical, dance, artistic, dramatic, or literary works; or~~

~~(iii) Community gatherings or assembly, or meetings.~~

~~(d) The fifty and fifteen day limitations set forth in (a) and (b) of this subsection do not include the days the exempt property is used for setup and takedown activities preceding or following a meeting or other event by an entity using the property as described in this subsection.~~

~~(6)~~)) **Additional requirements.** Any organization, association, or corporation applying 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 to obtain a property tax exemption pursuant to RCW 84.36.060.

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AMENDATORY SECTION (Amending WSR 94-07-008, filed 3/3/94, effective 4/3/94)

WAC 458-16-290 Nature conservancy lands. (1) **Introduction.** This ((~~section~~)) rule explains the property tax exemption available under the provisions of RCW 84.36.260 to a nonprofit corporation or association, of which the primary purpose ((~~of which~~)) is to conduct or facilitate scientific research or to conserve natural resources or open space for the general public.

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

(a) "Cessation of use" means a nonprofit association or corporation that has an interest in, or a nonprofit association or corporation that exclusively used exempt real property, has ceased to physically use the property for a use exempt under the provisions of subsection (3) of this ((~~section~~)) rule. The term also refers to ((~~the situation where the~~)) property ((~~is~~)) no longer being used for an exempt use even ((~~though~~)) if the owner intends to find or is pursuing an alternative exempt use for the property. "Cessation of use" also refers to property that has lost its exempt status because it was sold, transferred, loaned, or rented to an ((~~entity~~)) owner or user that is not qualified to be exempt from ((~~ad valorem~~)) property taxes.

(b) "Conservation futures" means rights in perpetuity to the future development of any open space land, farm and agricultural land, and timber land, ((~~so designated~~)) classified under the provisions of chapter 84.34 RCW and taxed at the current use assessment rate as provided by that chapter ((~~that~~)) and are purchased or acquired (except by eminent domain) by a county, city, town, municipal corporation, nonprofit historic preservation corporation, or nonprofit conservancy corporation or association.

(c) "Governmental entity" means any political unit or division of the federal, state, county, city, or municipal government.

(d) "Nonprofit conservancy corporation or association" means an organization that qualifies as being tax exempt under ((~~29~~)) 26 U.S.C. Sec. 501 (c)(3) of the United States Internal Revenue Code as it existed on June 25, 1976, and that has as one of its principal purposes: The conducting or facilitating of scientific research; the conserving of natural resources, including but not limited to biological resources, for the general public; or the conserving of open spaces, including but not limited to wildlife or plant habitat to be utilized as public access areas, for the use and enjoyment of the general public.

(e) "Nonprofit historical preservation corporation" means an organization that qualifies as being tax exempt under ((~~29~~)) 26 U.S.C. Sec. 501 (c)(3) of the United States Internal Revenue Code of 1954, as amended, and has as one of its principal purposes the conducting or facilitating of historic preservation activities within a state including, but not limited to, the conservation or preservation of historic sites, districts, buildings, and artifacts.

(f) "Person or company" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political unit or division of the state of Washington, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States and any instrumentality thereof.

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(g) "Real property interests" means any interest in real property including, but not limited to, fee simple or a lesser ownership interest, developmental rights, easements, covenants, and conservation futures.

(h) "Rollback" refers to the provisions of RCW 84.36.262 that make previously exempt property subject to back taxes and interest because of the cessation of an exempt use or a change in ownership.

(3) **Exemption.** All real property interests exclusively used to conserve ecological systems, natural resources, or open space, including park lands, by a nonprofit association or corporation whose primary purpose is to conduct or facilitate scientific research or to conserve natural resources or open space for the general public ((~~shall~~)) will be exempt from ((~~ad valorem taxation~~)) property tax if either of the following conditions is met:

(a) The property, to the extent feasible considering the nature of the interest involved, is:

(i) Used and effectively dedicated primarily to providing scientific research or educational opportunities to the general public or to preserving native plants, animals, biotic communities, works of ancient man, or geological or geographical formations of distinct scientific and educational interests;

(ii) Open to the general public for educational and scientific research purposes subject to reasonable restrictions designed to protect the property; and

(iii) Not for the pecuniary benefit of any person or company; or

(b) The property is subject to an option, which has been accepted in writing by any political unit or department of the federal, state, county, or city government, for purchase by the United States, a state, a county, or a city at a price not exceeding the lesser of the following amounts:

(i) The sum of the original purchase price paid by the nonprofit association or corporation plus interest from the date of acquisition at the rate of six percent per annum compounded annually to the date the option is exercised; or

(ii) The appraised value of the property interest, as determined by the department of revenue, at the time the option is accepted in writing.

(4) **Property used for recreational activities.** Property used merely for recreational activities does not qualify for an exemption under this ((~~section~~)) rule.

(5) **Application for exemption under this ((~~section~~)) rule.** A nonprofit association or corporation that wants to obtain the property tax exemption ((~~described in subsection (3) of this section~~)) under this rule, must submit an application for exemption.

(a) ((~~No~~)) Real property ((~~shall be~~)) is not exempt from taxation unless an application has been filed and the exemption ((~~has been granted therefor~~)) approved by the department of revenue.

(b) ((~~Prior to approval, the department of revenue must receive a copy of the application and,~~)) In addition to the application, if the property is subject to an option for purchase, a copy of the option agreement and the written acceptance ((~~thereof~~)) must be submitted to the department of revenue. The option must either state the purchase price pursuant to the option or the appraisal value as determined by the department of revenue.

(6) **Cessation of exempt use.** ((~~Upon cessation of the use that gave rise to the exemption set forth in subsection (3) of this section,~~)) When land is no longer being used for an exempt purpose de-

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scribed in this rule, the county treasurer ((~~shall~~)) will collect all taxes that would have been paid if the property had not been exempt during the preceding ten years, or for the life of the exemption, whichever is less, plus interest computed at the same rate and in the same manner as that upon delinquent property taxes.

((~~(a) Type of property affected. The provisions of this section apply to the cessation of use relating to exempt property:~~

~~(i) Used to provide scientific research or educational opportunities to the general public (RCW 84.36.260(1));~~

~~(ii) Used to preserve native plants, animals, biotic communities, works of ancient man, or geological or geographic formations of distinct scientific and educational interests (RCW 84.36.260(1)); or~~

~~(iii) Subject to an option for purchase by the United States, a state, a county, or a city (RCW 84.36.260(2)).~~

~~(b) Duty to notify.~~

~~(i)~~)) (7) **Change in use.** An owner of exempt property who knows of or who has information regarding a change in the use of exempt property ((~~shall~~)) must notify the department of revenue of this change. An owner of exempt property must also report the loan or rental of all or a portion of the exempt property since loaning or renting this property may change the taxable status of exempt property.

((~~(ii)~~)) Any other person who knows or has information regarding a change in use of exempt property ((~~shall~~)) must notify the county assessor of any such change. The assessor, in turn, ((~~shall~~)) will report this information to the department of revenue.

((~~(iii)~~)) (a) After being notified about a change in use of exempt property, the department may physically inspect the property to determine if the reported change has taken place.

((~~(iv)~~)) (b) After a change in use, the final determination of the taxable status of the subject property will be made by the department of revenue.

(c) ((~~Notice to owner.~~)) When ((~~it~~)) the department determines that a change in use has occurred, ((~~the department of revenue shall~~)) it will notify the current owner of the exempt property and, in the case of a transfer, the previous legal owner of exempt property that the change in use may change the taxable status of the property and that the property may be subject to the rollback provisions ((~~set forth~~)) in subsection (6) of this ((~~section~~)) rule. The owner(s) of this property ((~~shall~~)) will have thirty days from the date of the notice to submit any comments or information relevant to this change in use to the department. The department ((~~shall~~)) will then issue a final determination about the taxable status of this property.

(d) ((~~County treasurer.~~)) Upon notification from the department of revenue that the exempt use of the property has ceased, the county treasurer ((~~shall~~)) will compute the taxes payable, including interest computed at the same rate and in the same manner as that upon delinquent property taxes. The interest collected ((~~shall~~)) will be placed in the county current expense fund.

(8) **Additional requirements.** Any organization, association, or corporation that applies for a property tax exemption under this rule must also comply with the provisions of WAC 458-16-165 that explains the additional conditions and requirements necessary to obtain a property tax exemption pursuant to RCW 84.36.260.

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

WAC 458-16-310 Community celebration facilities. (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 primarily for annual community celebration events.

(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 corporation for pecuniary gain or to promote business activities through either carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.~~

~~(b)~~)) "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)~~)) has the same meaning as provided in WAC 458-16-300.

(b) "Property" ((~~means real or personal property owned by a nonprofit organization, association, or corporation~~)) has the same meaning as provided in WAC 458-16-300.

(3) **Exemption.** Real and personal property owned by a nonprofit organization, association, or corporation and used primarily for annual community celebration events ((~~shall~~)) may be exempt from taxation under the following conditions:

(a) Exemption for real property - Area. The area of real property to be exempt ((~~shall~~)) may not exceed twenty-nine acres.

(b) Primary use. The property has been primarily used for annual community celebration events for at least ten years.

(c) Essentially unimproved property. The property is essentially unimproved except for restroom facilities and covered shelters. A "covered shelter," for example, may consist of a covered area that is ((~~unenclosed~~)) not enclosed but allows some protection from the elements or it may provide a sheltered eating area with or without a picnic table or outside grill, or both.

(d) Purpose. The purpose of the property is to provide a facility for an annual community celebration.

(e) 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 conditions and restrictions that are reasonably necessary to safeguard the property and to promote the purposes of this exemption.

(f) Annual summary required. The owner ((~~shall~~)) must annually 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:

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(i) The name of any 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) The income derived from the rental of the property; and

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

((~~(g) 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.~~))

(4) **Use of property for pecuniary gain or to promote business activities.** If a community celebration facility 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~~))

(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. 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~~))

(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.~~)) 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 exempt purposes.

(5) **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.

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