



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Department of Revenue

- Preproposal Statement of Inquiry was filed as WSR 16-09-048; or
- Expedited Rule Making--Proposed notice was filed as WSR; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

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

Title of rule and other identifying information: WAC 458-50-160 Exempt intangible property distinguished from other intangibles.

Hearing location(s):

Capital Plaza Building
Fourth Floor Executive Conference Room
1025 Union Avenue SE
Olympia, Washington 98501

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

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

Date: **September 7, 2016** Time: **10:00 A.M.**

Date of intended adoption: September 14, 2016
(Note: This is **NOT** the effective date)

Submit written comments to:

Name: Jay Jetter
Address: Department of Revenue
Interpretations & Technical Advice Division
PO Box 47453
Olympia, Washington 98504-7453

E-mail: JayJ@dor.wa.gov

By: September 7, 2016

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

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is considering revisions to WAC 458-50-160 to clarify that the intangible personal property tax exemption provided by RCW 84.36.070 only applies to intangible personal property and not to attributes of property like location, view, zoning regulations, office organization, trained workforce, etc. These "attributes" of property can be considered by the appraiser in determining the fair market value of taxable property.

Reasons supporting proposal: The revisions will provide clarification of the intangible personal property tax exemption provided by RCW 84.36.070.

Statutory authority for adoption: RCW 84.08.010, RCW 84.08.070, and RCW 84.36.865

Statute being implemented: RCW 84.36.070

Is rule necessary because of a:

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

DATE

July 26, 2016

NAME

Kevin Dixon

SIGNATURE

TITLE

Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 26, 2016

TIME: 4:32 PM

WSR 16-16-048

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

Name of proponent: Department of Revenue

- Private
- Public
- Governmental

Name of agency personnel responsible for:

| Name | Office Location | Phone |
|----------------------------------|---|----------------|
| Drafting..... Jay Jetter | 1025 Union Ave. SE. Ste #544, Olympia ,WA | (360) 534-1575 |
| Implementation.... Marcus Gasper | 1025 Union Ave. SE. Ste #500, Olympia ,WA | (360) 534-1615 |
| Enforcement..... Marcus Gasper | 1025 Union Ave. SE. Ste #500, Olympia ,WA | (360) 534-1615 |

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

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

A copy of the statement may be obtained by contacting:

Name:
Address:

phone ()
fax ()
e-mail

No. Explain why no statement was prepared.

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

Is a cost-benefit analysis required under RCW 34.05.328?

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

Name:
Address:

phone ()
fax ()
e-mail

No: Please explain:

The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

AMENDATORY SECTION (Amending WSR 06-24-043, filed 11/30/06, effective 12/31/06)

WAC 458-50-160 Exempt intangible property distinguished from other intangibles. (1) **Distinction between property, and characteristics or attributes of property.** The statute (RCW 84.36.070) draws a distinction between intangible personal property and the characteristics or attributes of property, both real and personal. Intangible personal property is exempt from property taxation. However, some characteristics or attributes of property, even though intangible, may be considered in establishing the taxable value of tangible property.

(2) **What intangible personal property is exempt?** The listings of examples of intangible personal property contained in RCW 84.36.070(2) must be consulted, but those listings can be summarized as follows:

(a) Financial intangible property, such as moneys, credits, and publicly issued bonds and warrants, and the bonds, stocks, or shares of private corporations;

(b) Private personal service contracts and athletic or sports franchises, or sports agreements that do not pertain to the use or possession or any interest in tangible personal or real property; and

(c) Miscellaneous types of intangible personal property, such as trademarks, trade names, brand names, patents, copyrights, trade secrets, franchise agreements, licenses, permits, core deposits of financial institutions, noncompete agreements, customer lists, patient lists, favorable contracts, favorable financing agreements, reputation, exceptional management, prestige, good name, integrity of a business, and other similar types of intangible personal property.

(3) **Identifying exempt intangible personal property.** (~~Intangible property is only exempt if it is personal property capable of being individually owned, used, transferred, or held separately from other property.~~) The market value of separate items of intangible personal property should not be identified or characterized solely using residual accounting methods, or other indirect techniques, such as isolating "excess earnings," from a total business valuation. Market value of exempt intangible personal property should be verifiable, to the extent possible, in an openly traded market where the value of comparable intangible properties can be observed and considered. Intangible assets that are separately identified and valued in reports filed with any state or federal regulatory agency, may be considered when identifying and valuing intangible personal property of the types listed in subsection (2)(c) of this section.

(4) **What intangible characteristics, attributes or other factors affect value and may be considered?** Nonproperty intangible characteristics or attributes are elements or components of value associated with a real or tangible asset. These characteristics or attributes are "intangible" but they are not "property" and therefore are not tax exempt intangible personal property. They are contingent and dependent upon other property and cannot be owned, used, transferred, or held separately from other property. To the extent that these characteristics, attributes, or other factors contribute to, or affect, the value of property, they must be appropriately considered when determining taxable value. They include the following types:

(a) Zoning, location, view, geographic features, easements, covenants, proximity to raw materials, condition of surrounding property, proximity to markets, or the availability of a skilled work force;

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

(b) Grants of licenses, permits, and franchises by a government agency that affect the use of the property being valued; and

(c) Other characteristics of property, such as scarcity, uniqueness, adaptability, or utility as an integrated unit.

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