

This draft is provided for discussion purposes only, to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine tax liability and/or eligibility for tax exemption.

WAC 458-16-270 Schools and colleges. (1) Introduction.

This ((rule)) section explains the two property tax exemptions available under the provisions of RCW 84.36.050. The first exemption applies to property owned ((by)) or used by or for a nonprofit school or college ((and to)). 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 RCW 84.36.840. (See subsection (9) of this section.)

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

(a) ((~~"Campus or college"~~)) 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 ((only needed because of the presence of the nonprofit school or college)) owned by a not-for-profit foundation and leased to and used by such an institution ((and is principally designed to further the educational purposes and functions of a nonprofit school or college or an institution of higher education, as defined in RCW 28B.10.016)).

(b) "Cultural or art education program" ((~~includes and is limited to~~)) 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.)

(c) "Educational purposes" means 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.

(d) "Schools and colleges" means:

(i) Nonprofit educational institutions that are approved by

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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) ((An institution of higher education, as defined in RCW 28B.10.016; or~~

~~—(iii))) 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.

(e) (~~"Revenue"~~) "Income" means (~~(income)~~) an amount received from the loan or rental of exempt property ((when the income)) 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.

(f) "Pecuniary gain" means the generation of monetary receipts, without regard to profit.

(g) "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.

(h) "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.

(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 (~~(exclusively)~~) for educational purposes or cultural or art educational programs.

(a) Real property exempt under this (~~(rule)~~) section cannot exceed four hundred acres (~~(and must be used exclusively for school, college, or campus purposes)~~). The exempt property includes, but is not limited to:

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(i) Buildings and grounds principally designed for the educational, athletic, or social programs or functions of the ~~((nonprofit))~~ school or college ~~((and the need for which would be nonexistent except for the existence 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 ~~((that house religious faculty))~~ specifically used for athletic activities; and

(iv) ~~((Buildings that house the chief administrator))~~ All other school or college facilities, such as a maintenance facility, heating plant, or a student union building or student commons, which are needed because of the presence of the school or college.

(b) ~~((The use of exempt property by professional organizations for conferences, seminars, or other activities that enhance the reputation of the nonprofit school or college will not nullify the exemption. Similarly, the use of exempt property owned by a nonprofit school or college for any education purpose will not nullify the exemption.~~

~~((e))~~ With respect to all property that is not part of, or contiguous to, the main campus of a school or college and for which the institution wishes to obtain an exemption ((under this rule)), the department may require ((said)) 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 ~~((was))~~ is used; and

(iii) The number of students ~~((that))~~ who ~~((participated))~~ 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.

~~((d)) To be eligible to receive this exemption, the nonprofit school or college must be open to all persons regardless of race, color, national origin, or ancestry. However, there is no limitation on the type of courses the institution may offer.~~

~~(4) **Property leased to a nonprofit school or college.** If property is leased to a nonprofit school or college, in order to~~

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~~be exempt, the property must be:~~

~~—— (a) Irrevocably dedicated to the purpose for which exemption has been granted; and~~

~~—— (b) The benefit of the exemption must inure to the user.~~

~~—— (c) For example, if a private citizen leases real or personal property to a nonprofit school or college to be used for educational purposes or cultural or art educational programs, the leased property may qualify for exemption if it meets the requirements of subsection (3)(a), (b), and (c) of this rule.~~

~~—— (5) **Production of financial records - nonprofit schools or colleges.** In addition to the financial records that must be produced to comply with the requirements of WAC 458-16-165, a nonprofit school or college claiming exemption under this rule must annually submit a detailed summary containing the following information regarding the previous calendar year:~~

~~—— (a) A list of all property that it claimed was exempt;~~

~~—— (b) The purpose for which the property was used;~~

~~—— (c) The income derived from the property;~~

~~—— (d) The manner in which the income received was applied;~~

~~—— (e) The number of students who attended the school or college;~~

~~—— (f) The total income of the school or college and the sources from which it was derived; and~~

~~—— (g) The purposes to which the total income of the school or college was applied including, but not limited to, all income received and expenditures made.~~

~~—— (6)) (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 (~~(that is)~~) established for the exclusive support of an institution of higher education, as defined in RCW 28B.10.016(~~(, if it is)~~). The property must be leased to and used by the institution (~~(exclusively)~~) for (~~(campus or)~~) college or campus purposes and (~~(is)~~) 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 Washington University at Bellingham, Central Washington University at Ellensburg, Eastern Washington University at Cheney, The Evergreen State College, the community colleges, and

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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 the 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 does not include income.

(b) If the exempt property is used for a nonqualifying purpose by a third party not entitled to a property tax exemption, then the property 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), and subject to the provisions of subsection (9).

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

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

(A) Similarly, if the exempt property is used by students, alumni, faculty, staff, or other third parties for administrative and support functions related to educational, social, or athletic programs of the school or college, and not for pecuniary gain or to promote business activities, then the property remains exempt.

(B) When the school or college contracts with or permits the use of exempt property by third parties to provide school or college-related programs or services directed at students, faculty or staff, and not the general public, then the property remains exempt. Examples of such programs or services are: the provision of food services, the operation of a bookstore on campus, and the provision of maintenance, operational, or administrative services.

(ii) If the exempt property is used for pecuniary gain or to promote business activities for seven days or less each

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calendar year by third parties who are not entitled to a property tax exemption, the property remains exempt. The use is measured separately with respect to each specific portion of the exempt property used, and is cumulative each year for all third party use. This seven day limitation does not apply when exempt property is used as 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.

(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) ((Additional requirements. Any organization, association, corporation, or foundation that applies for a property tax exemption under this rule must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption under RCW 84.36.050.))~~

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 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 charge associated with the use does not include 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.

(b) Exempt property is used by third parties such as members of the community for lectures, presentations, musical recitals, seminars, debates, or similar activities. These uses are consistent with the educational or social programs of the

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school or college and the property remains exempt as long as the property is not used for pecuniary gain or to promote business activities.

(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 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 pecuniary gain or to promote business activities.

(d) Exempt property is used by third parties for educational or instructional programs, such as tutoring, driving instruction, or similar programs. These programs are consistent with the educational programs of the school and the property remains exempt as long as the property is not used for pecuniary gain or to promote business activities.

(e) Exempt property, such as student housing, is used for purposes of recruiting prospective students. Such use is consistent with the educational programs of the school or college and the property remains exempt.

(f) The school or college contracts with, or permits third parties to use exempt property for the provision of school or college-related programs or services, including:

(i) Maintenance services such as janitorial services;

(ii) Food service programs directed to students, faculty, and staff, including snack and coffee bars, food or bottled drink vending machines, or on-campus catering for school or college events; or

(iii) The operation of a student-oriented bookstore on campus. These programs or services are directed to students, faculty and staff and are related to the school or college and the property remains exempt.

(8) **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 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

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and is thus prohibited by the statute. Also, although such an operation provides a service, it is not the type of service that is distinguishable from services 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, occupies an exempt building on the school or college campus on a regular and continuing basis. Such businesses are being operated for pecuniary gain and to promote business activities. Such stores also do not provide a specifically school or college related service directed at students or staff. The exemption is nullified for the portion of the building occupied by the business.

(c) An accredited, private, not-for-profit barber college trains unemployed persons to cut hair and offers haircuts to the public at reduced prices in order to provide the students with practical experience. The haircuts are provided in a portion of the college building that is exempt from property tax. Although the use of the property to provide haircuts to the public is "consistent with the educational program" of the college, the property is being used for pecuniary gain, and the exemption for that portion of the property is nullified for the assessment year.

(d) The school or college co-sponsors a seminar, or series of seminars, with a local financial services business, on financial and estate planning. The seminar is presented over a two week time period. The seminar is held in a building exempt from property tax. The purpose of the co-sponsorship by the financial services business is to promote its business. Although the seminar includes an educational component, it is also designed "to promote business activities," and is giving a for-profit business a competitive advantage by means of the use of exempt property. Such a seminar nullifies the exemption for the portion of the building that was used, for the assessment year in which the seminar occurred.

(e) The school or college sponsors a "Renaissance Faire" inviting vendors of crafts, food, school related memorabilia, pennants, decals, coffee mugs, and other similar types of items. The "faire" occupies space in or around the student union building at the start of the school year, and runs for a period of four weekends. Since the exempt property is used by the vendors for pecuniary gain for more than seven days in the calendar year, this use nullifies the exemption for the area used.

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(9) 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 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 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 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. The report must be signed under oath, 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 shall 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;

(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;

(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.

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[Statutory Authority: RCW 84.36.865, 84.36.040 and 84.36.050. 01-24-037, § 458-16-270, filed 11/28/01, effective 12/29/01. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. 94-07-008, § 458-16-270, filed 3/3/94, effective 4/3/94. Statutory Authority: RCW 84.36.865. 85-05-025 (Order PT 85-1), § 458-16-270, filed 2/15/85. Statutory Authority: RCW 84.36.389 and 84.36.865. 83-19-029 (Order PT 83-5), § 458-16-270, filed 9/14/83. Statutory Authority: RCW 84.36.865. 82-22-060 (Order PT 82-8), § 458-16-270, filed 11/2/82; 81-05-017 (Order PT 81-7), § 458-16-270, filed 2/11/81; Order PT 77-2, § 458-16-270, filed 5/23/77; Order PT 76-2, § 458-16-270, filed 4/7/76. Formerly WAC 458-12-230.]