

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

Chapter 458-18A WAC

LIMITED INCOME DEFERRAL PROGRAM

NEW SECTION

WAC 458-18A-010 Deferral of special assessments and/or property taxes--Definitions. Introduction. This section is intended to provide definitions of the terms most frequently used to administer the deferral program for special assessments and/or property taxes on residential housing created by chapter 84.37 RCW. Unless a different meaning is plainly required by the context, the words and phrases used in this chapter have the following meanings:

(1) "Boarding house" means a residence in which lodging and meals are provided. Each resident of a boarding house is charged a lump sum to cover the costs of lodging and meals with no separate accounting for the fair selling price of the meals.

(2) "Claimant" means a person who elects under chapter 84.37 RCW to defer payment of special assessments and/or real property taxes accrued on his or her residence by filing a declaration to defer as allowed under chapter 84.37 RCW. If more than one individual in a household wishes to defer special assessments and/or taxes, only one may file a declaration to defer; in other words, only one claimant per household is allowed.

(3) "Cooperative housing" means any existing structure, including surrounding land and improvements, that contains one or more dwelling units and is owned by:

(a) An association with resident shareholders who are granted renewable leasehold interests in dwelling units in the building. Unlike owners of a condominium, the resident shareholders who hold a renewable leasehold interest do not own their dwelling units; or

(b) An association organized under the Cooperative Association Act (chapter 23.86 RCW).

(4) "Department" means the state department of revenue.

(5) "Domestic partner" means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(6) "Domestic partnership" means a partnership registered

under chapter 26.60 RCW or a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(7) "Equity value" means the amount by which the true and fair value of a residence exceeds the total amount of all liens, obligations, and encumbrances against the property excluding the deferral liens. As used in this context, the "true and fair value" of a residence is the value shown on the county tax rolls maintained by the assessor for the assessment year in which the deferral claim is made.

(8) "Fire and casualty insurance" means a policy with an insurer that is authorized by the state insurance commission to insure property in this state.

(9) "Good cause" means factors peculiar to each claimant. At a minimum, the applicant must be able to demonstrate that factors outside of his or her control were the cause for missing the statutory deadline. This includes factors which would effectively prevent a reasonable person facing similar circumstances from filing a timely application, such as acting or failing to act based on authoritative written advice received directly from persons upon which a reasonable person would normally rely, severe weather conditions preventing safe travel to the point of filing, incapacity due to illness or injury, and other factors of similar gravity. Inadvertence or oversight is not a basis for a "good cause" extension of the filing deadline.

(10) "Irrevocable trust" means a trust that may not be revoked after its creation by the trustor.

(11) "Lease for life" means a lease that terminates upon the death of the lessee.

(12) "Lien" means any interest in property given to secure payment of a debt or performance of an obligation, including a deed of trust. A lien includes the total amount of special assessments and/or property taxes deferred and the interest thereon. It also may include any other outstanding balance owed to local government for special assessments.

(13) "Life estate" means an estate that consists of total rights to use, occupy, and control real property, but is limited to the lifetime of a designated party; this party is often called a "life tenant."

(14) "Local government" means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi municipal corporation, or other political subdivision authorized to levy special assessments.

(15) "Perjury" means the willful assertion as to a matter of fact, opinion, belief, or knowledge made by a claimant upon the declaration to defer that the claimant knows to be false.

(16) "Real property taxes" means ad valorem property taxes

levied on a residence in this state. The term includes foreclosure costs, interest, and penalties accrued as of the date the declaration to defer is filed.

(17) "Residence" has the same meaning given in RCW 84.36.383; it means a single-family dwelling unit whether the unit is separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands, and it includes any additional property up to a total of five acres that comprises the residential parcel if local land use regulations require this larger parcel size.

(18) "Revocable trust" means an agreement that entitles the trustor to have the full right to use the real property and to revoke the trust and retake complete ownership of the property at any time during his or her lifetime. The trustee of a revocable trust holds only bare legal title to the real property. Full equitable title to the property remains with the trustor; the original property owner.

(19) "Rooming house" means a residence where persons may rent rooms.

(20) "Special assessment" means the charge or obligation imposed by local government upon real property specially benefited by improvements.

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NEW SECTION

WAC 458-18A-020 Deferral of special assessments and/or property taxes--Qualifications for deferral. A person may defer payment of the second installment portion of special assessments and/or real property taxes included on the annual property tax statement and due on October 31 in any year in which the following conditions are met:

(1) The special assessments and/or real property taxes must be imposed upon a residence that was occupied by the claimant as a principal place of residence as of January 1 of the year in which the special assessments and/or real property taxes are due. Confinement of the person to a hospital, nursing home, boarding home, or adult family home does not disqualify the claim for deferral if:

(a) The residence is temporarily unoccupied;

(b) The residence is occupied by a spouse or a domestic partner and/or a person financially dependent on the claimant for support;

(c) The residence is rented for the purpose of paying nursing home, hospital, boarding home, or adult family home costs; or

(d) The residence is occupied by a caretaker who is not

paid for watching the house.

(2) The claimant must have a combined disposable income, as defined in RCW 84.36.383, of fifty-seven thousand dollars or less.

(3) The first installment portion of the special assessments and/or property taxes listed on the annual tax statement and due on April 30 for the year in which the deferral claim is made must already be paid.

(4) A deferral is not allowed for special assessments and/or property taxes levied for payment in the first five calendar years in which the claimant owns the residence. To defer special assessments and/or property taxes in 2008, the claimant must have had an ownership interest in the residence by December 31, 2003.

(5) The claimant must have owned, at the time of filing, the residence on which the special assessment and/or real property taxes have been imposed. For purposes of this subsection a residence owned by a marital community, a state registered domestic partnership, or cotenants is deemed to be owned by each spouse, each domestic partner, and each cotenant. A claimant who has only a share ownership in cooperative housing, a life estate, a lease for life or a revocable trust does not satisfy the ownership requirement.

(6) The total amount deferred must not exceed forty percent of the amount of the claimant's equity value in the residence. If the amount deferred is to exceed one hundred percent of the claimant's equity value in the land or lot only, the claimant must have and keep in force fire and casualty insurance in sufficient amount to protect the interest of the state of Washington and designate the state as a loss payee upon said policy. In no case should the deferred amount exceed the amount of the insured value of the improvement plus the land value.

(7) A claimant may not defer taxes under both this chapter and chapter 84.38 RCW in the same tax year.

(8) In the case of special assessment deferral, the special assessments must have been included on the annual property tax statement.

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NEW SECTION

WAC 458-18A-030 Deferral of special assessments and/or property taxes--Declarations to defer--Filing--Forms. (1)

Declarations to defer special assessments and/or real property taxes for any year are due no later than the first day of September of the year in which the tax or assessment is due. For good cause shown, the department may waive this requirement with respect to the filing deadline. All declarations to defer must be made and signed by the claimant. If the claimant is unable to make his or her own declaration, it may be made and signed by a duly authorized agent or by a guardian or other person charged with care of the person or property of such claimant.

(2) The declaration to defer must be made solely upon forms prescribed by the department of revenue and supplied by the county assessor. Such forms will contain the following:

(a) Name and address of the claimant.

(b) A complete and accurate legal description that encompasses the residence and the residential parcel of land eligible for deferral and/or to be included in the lien.

(c) An affirmation that the claimant meets the conditions of WAC 458-18A-020 including, but not limited to, the name, address, policy number, and amount of fire and casualty insurance carried on the residence.

(d) A list of all members of the claimant's household.

(e) The claimant's equity in the residence including all liens, obligations, and encumbrances against the property.

(f) The names, signatures, and percentage of interest of other parties with an interest in the residence to which the deferral applies.

(g) An affirmation that the claimant is aware of the lien of the deferred special assessments and/or real property taxes and when the lien becomes payable.

(h) A numbering system approved by the department.

(i) Any other pertinent information the department deems relevant.

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NEW SECTION

WAC 458-18A-040 Deferral of special assessments and/or property taxes--Lien of state--Mortgage--Purchase contract--Deed of trust.

(1) Whenever any special assessments and/or real property taxes are deferred under the provisions of this chapter, the amount deferred, including interest, becomes a lien in favor of the state upon this property and has priority as provided in chapters 35.50 and 84.60 RCW except as provided in subsection (2) of this section.

(2) The interest of the holder of a mortgage or purchase contract requiring the accumulation of reserves out of which the holder of the mortgage, deed of trust, or purchase contract is required to pay real property taxes, has priority to the lien established in subsection (1) of this section.

(3) A person's right to defer special assessments and/or property taxes under chapter 84.37 RCW may not be reduced by contract or agreement.

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NEW SECTION

WAC 458-18A-050 Deferral of special assessments and/or property taxes--Declarations to renew deferral--Filing--Forms.

(1) Declarations to defer assessments and/or real property taxes for all years following the first year must be made by filing a "declaration to renew deferral" with the county assessor no later than the first day of September of the year in which the tax or assessment is due. For good cause shown, the department may waive this requirement with respect to the filing deadline. If the claimant is unable to make his or her renewal declaration, it may be made and signed by a duly authorized agent or by a guardian or other person charged with care of the person or property of such claimant.

(2) Such "declaration to renew deferral" will be made solely upon forms prescribed by the department and supplied by the county assessor. The "declaration to renew deferral" form must include, but not be limited to, those requirements contained in WAC 458-18A-030 (2)(a), (c), (d), (e), (f), (g), (h), and (i).

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NEW SECTION

WAC 458-18A-060 Deferral of special assessments and/or property taxes--Limitations of deferral--Interest. No deferral will be granted if the liens created by the deferrals of special assessments and/or real property taxes equal or exceed forty percent of the claimant's equity value in said property. Equity value will be determined as of January 1 in the year the taxes are to be deferred.

The liens include:

(1) The total amount of special assessments and/or real property taxes deferred; plus

(2) Interest on the amount deferred. The rate of interest is an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year is computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average is calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year. The interest is calculated from the time it could have been paid before delinquency until such obligation is paid. In the case of a mobile home, the department of licensing will show the state's lien on the certificate of ownership for the mobile home. In the case of all other property, the department of revenue will file a notice of the deferral with the county recorder or auditor.

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NEW SECTION

WAC 458-18A-070 Deferral of special assessments and/or property taxes--Duties of the county assessor. The county assessor will:

(1) In January of each year mail renewal declarations to each claimant who had received a deferral the previous year;

(2) Determine each year if each claimant filing a "declaration to defer" and/or a "declaration to renew deferral" will be granted a deferral. If the assessor determines the claimant is not eligible, the assessor must notify the claimant in writing as soon as possible, setting forth the reason for denial and instructions for appealing the decision;

(3) Notify the county treasurer of which claimants and properties have qualified for deferral and request a tax statement for the second installment special assessments and/or

property taxes due in October;

(4) Immediately transmit one copy of each approved declaration to the department;

(5) Notify the county treasurer and the department immediately upon occurrence of any condition set forth in WAC 458-18A-100(1).

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NEW SECTION

WAC 458-18A-080 Deferral of special assessments and/or property taxes--Duties of the department of revenue--State treasurer. The department will:

(1) Notify the county assessor as soon as possible of any declaration to defer, where any factor appears to disqualify the claimant.

(2) Certify to the state treasurer the amount due the respective treasurers for any special assessments and/or real property taxes deferred for that year.

(3) File a notice of the deferral with the county recorder or auditor.

(4) Notify the department of licensing to show the state's lien on the certificate of ownership of a mobile home.

(5) The department may audit any "declaration to defer" and/or "declaration to renew deferral" it deems necessary.

(6) The state treasurer will pay, before delinquency, to the county treasurers the amounts certified by the department of revenue. The amount paid must be distributed to the districts which levied the taxes.

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NEW SECTION

WAC 458-18A-090 Deferral of special assessments and/or property taxes--Appeals. Any claimant whose "declaration to defer" or "declaration to renew deferral" is denied by the county assessor, may appeal to the county board of equalization under the provisions of RCW 84.40.038. The decision of the county board of equalization will be final for that year and no further appeal will be allowed.

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NEW SECTION

WAC 458-18A-100 Deferral of special assessments and/or property taxes--When payable--Collection--Partial payment. (1) Any special assessments and/or real property taxes deferred will become payable together with interest:

(a) Upon the conveyance of property which has a deferred special assessment and/or real property tax lien upon it.

(b) Upon the death of the claimant except when the surviving spouse or surviving domestic partner is qualified and elects to incur the lien and continue the deferment by (i) filing an original "declaration to defer" within ninety days of the claimant's death and (ii) continuing to meet the qualifications of WAC 458-18A-010 through 458-18A-100.

When a surviving spouse or surviving domestic partner elects to continue the deferment, the spouse or domestic partner then becomes the claimant and is fully subject to the conditions of WAC 458-18A-010 through 458-18A-100.

(c) Upon condemnation of property with a deferred special assessment and/or real property tax lien upon it by a public or private body exercising the power of eminent domain: Provided, That if the assessed value of the property not condemned exceeds the amount of the liens, including interest, the claimant may elect to have the liens set over to the property retained: Provided further, That the amount of the lien allowed to be set over must not exceed forty percent of the claimant's equity in the retained property.

(d) At such time as the claimant ceases to reside permanently in the residence upon which the deferral has been granted. If the cessation occurs between filing the declaration and the date the taxes are payable, the deferral will not be allowed.

(e) Upon the failure of the claimant to have or keep in force fire and casualty insurance in sufficient amount to protect the interest of the state of Washington or failure to keep the state listed as a loss payee upon said policy. Subsection (1)(b) of this section takes precedence over subsection (1)(d) of this section.

(2) Once a deferral has been granted, the various conditions contained within WAC 458-18A-010 through 458-18A-100 may prohibit the claimant from qualifying for further deferrals, but any obligations resulting from deferrals previously granted will become due and payable only upon occurrence of the conditions set forth in subsection (1) of this section.

(3) Upon occurrence of any condition requiring the payment of any deferred special assessments and/or real property taxes, the county treasurer must proceed to collect the same in the

manner provided for in chapter 84.56 RCW. For purposes of collection of the deferred taxes and interest, provisions of chapters 84.56, 84.60, and 84.64 RCW are applicable. When these moneys are collected, they must be credited to a special account in the county treasury and must then be remitted to the state treasurer within thirty days from collection with remittance advice to the department of revenue. The state treasurer must deposit the moneys in the state general fund.

(4) Any person may at any time pay a part or all of the deferred assessments and/or taxes including the interest, but such payment will not affect the deferred tax status of the property. Any payment made will be credited to the oldest deferred amount and will be applied to accrued interest and then to deferred assessments and/or taxes.

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