



PROPOSED RULE MAKING

CR-102 (October 2017)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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DATE: August 29, 2019

TIME: 10:48 AM

WSR 19-18-035

Agency: Department of Revenue

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-22-127 ; 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); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) WAC 458-16-210 (Rule 210) titled, Nonprofit organizations or associations organized and conducted for nonsectarian purposes, is the rule that describes the property tax exemption for nonprofit organizations that are organized and conducted for nonsectarian purposes. WAC 458-16-260 (Rule 260) titled, Nonprofit child day care centers, libraries, orphanages, homes for sick or infirm, hospitals, outpatient dialysis facilities, is the rule that describes the property tax exemption available for these types of facilities..

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
October 10, 2019	10:00 A.M.	Conference Room 114A 6400 Linderson Way SW Tumwater, Washington 98501	

Date of intended adoption: October 17, 2019 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Leslie Mullin

Address: PO Box 47453, Olympia, WA 98504-7453

Email: LeslieMu@dor.wa.gov

Fax: 360-534-1606

Other:

By (date) October 10, 2019

Assistance for persons with disabilities:

Contact

Phone:

Fax:

TTY: 800-833-6384

Email:

Other:

By (date) October 4, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Rule 210 and Rule 260 are being amended to clarify property tax exemption standards and requirements for certain non-profit organizations.

Reasons supporting proposal: Providing the qualifying standards used by the Department of Revenue when evaluating nonprofit exemption applications will provide nonprofit organizations with a better understanding of the exemption requirements before they apply.

Statutory authority for adoption: RCW 84.36.865

Statute being implemented: RCW 84.36.030, 84.36.031, and 84.36.040

Is rule necessary because of a:

- Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

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

Name of proponent: (person or organization) Department of Revenue

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Leslie Mullin	6400 Linderson Way SW, Tumwater, WA	360-534-1589
Implementation:	John Ryser	6400 Linderson Way SW, Tumwater, WA	360-534-1603
Enforcement:	John Ryser	6400 Linderson Way SW, Tumwater, WA	360-534-1603

Is a school district fiscal impact statement required under RCW 28A.305.135?

- Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

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:
TTY:
Email:
Other:

- No: Please explain: This rule is not a significant legislative rule as defined by RCW 34.05.328.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. The proposed amendments for Rule 210 and Rule 260 clarify the standards currently used by the Department of Revenue when determining eligibility for the property tax exemptions described in RCW 84.36.030(1) and RCW 84.36.040, respectively. The proposed rule amendments do not impose more than a minor cost on businesses as they do not impose any new fees, filing requirements, or recordkeeping guidelines that have not already been established by the Department of Revenue in the administration of property tax exemptions.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: August 28, 2019

Name: Atif Aziz

Title: Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 15-07-021, filed 3/10/15, effective 4/10/15)

WAC 458-16-210 Nonprofit organizations (~~(or)~~), associations, or corporations organized and conducted for nonsectarian purposes. (1)

Introduction. This rule explains the real and personal property tax exemption available under ((the provisions of)) RCW 84.36.030(1) to nonprofit organizations (~~(or)~~), associations, or corporations organized and conducted for nonsectarian purposes.

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

(a) "Benevolent ((refers to)) social services" ((or programs directed at)) are services provided to persons of all ages ((arising from or prompted by motives of charity or a sense of benevolence, that are marked by a kindly disposition)) for charitable reasons to promote the happiness and prosperity of others ((by)) through generosity ((in)) and pleasure at doing good works, or ((are organized)) for the purpose of doing good. ((For example, a benevolent organization may provide)) Examples of benevolent social services include, but are not limited to, providing a food bank ((, a)) or soup kitchen ((, or counseling services at cost)).

(b) "Character building ((means)) social services" ((or programs designed)) are services offered for the general public good that assist people with general living ((skills, developing interview and)) or job seeking skills, or 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.)) Examples of character building social services include, but are not limited to, providing financial assistance and counseling, and vocational training which includes resume writing and job interview training.

(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,)) Examples of a community outreach group include, but are not limited to, 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 or denomination.

(f) "Protective social services" ((refers to activities that are meant to cover, to guard, or to shield)) are services that protect other persons from injury or destruction ((or to)) , save others from financial loss ((. For example, a protective organization may provide housing)), or assist persons with behavioral problems by providing encouragement, support, and training. Examples of protective social services include, but are not limited to, providing housing, counseling, encouragement, or support for battered persons or ((for the developmentally disabled or may assist persons with behavioral problems by providing encouragement, support, and training)) the physically or mentally disabled.

(g) "Rehabilitative ((or rehabilitation" refers to activities designed to)) social services" are services that restore individuals to a former capacity, to a condition of health, or to useful or construc-

tive activity. ~~((For example, a))~~ Examples of rehabilitative ~~((organization may assist))~~ social services include, but are not limited to, assisting an exoffender's reentry into the community, assisting persons to overcome alcohol or substance abuse, or to overcome the 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 nonprofit organizations, associations, or corporations ~~((collectively, "organizations"))~~ are exempt from taxation if the ~~((organization, association, or corporation))~~ following requirements are satisfied:

(a) The nonprofit organization is organized and conducted for ~~((nonprofit and))~~ nonsectarian purposes ~~((To be exempt,))~~ ;

(b) The property ~~((must be))~~ is exclusively used ~~((for))~~ to provide benevolent, character-building, ~~((benevolent,))~~ protective, or rehabilitative social services ~~((directed at))~~ to persons of all ages ~~((-~~

~~(a-))~~ ;

(c) The services provided by the nonprofit organization relieves a public obligation; and

(d) A portion of the nonprofit organization's services are gifted or donated to the people it serves as explained in subsection (4) of this section.

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

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

~~((ii))~~ (b) Contributes at least ten percent of its total annual income earned from the property towards the support of benevolent, character-building, ~~((benevolent,))~~ protective, or rehabilitative social service ~~((s-or))~~ programs. To determine whether the ten percent requirement has been met:

(i) "Total annual income" refers to the total income ~~((reported))~~ the nonprofit organization earns from the property and reports to the Internal Revenue Service for ~~((that))~~ the calendar 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,))~~ (ii) A nonprofit organization~~(, association, or corporation may include, but is not limited to,))~~ may include in its ten percent calculation the value of time volunteers donate to carry out program services and functions, the loan of its facilities free of charge to community outreach groups, and gifts of scholarships and other fee subsidies.

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

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

~~((b) Conditions and restrictions.))~~ (5) Additional exemption information. A nonprofit organization~~(, association, or corporation)~~ that applies for this property tax exemption must also comply with the provisions of WAC 458-16-165 and 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))~~ those that are reasonably necessary to safeguard the exempt property and to comply with ~~((the purposes of))~~ this exemption.

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

~~((d) Nonqualifying property))~~. For information regarding exemptions for property used for fraternal organizational purposes, see WAC 458-16-300 Public meeting hall—Public meeting place—Community meeting hall.

(b) Commercial purpose. If any portion of the nonprofit organization's ~~((or association's))~~ property is used for a commercial rather than a nonprofit, nonsectarian exempt purpose, then that portion will not qualify for this exemption and must be segregated from property used for exempt purposes. The burden is on the nonprofit organization to prove that the property is not used for a commercial purpose.

~~((e))~~ (c) Selling donated merchandise. When property is otherwise exempt under this rule, the sale of donated merchandise is ~~((considered))~~ not considered a disqualifying commercial purpose, but rather an exempt use of the property if the proceeds are dedicated to the exempt purpose ~~((associated with))~~ of the nonprofit~~(, nonsectarian))~~ organization ~~((or association)).~~ For example, a job training program conducted through the operation of a thrift store ~~((operations that are restricted to the sale of "donated merchandise" will not jeopardize))~~ is eligible for this exemption if the ~~((claimant))~~ thrift store can verify the proceeds are directed to an exempt purpose.

~~((f))~~ (d) Property with option to repurchase. According to RCW 84.36.031, property leased, loaned, ~~((or))~~ sold with the option to re-

purchase, or otherwise made available to organizations described in RCW 84.36.030, does not qualify for ~~((this))~~ an exemption under RCW 84.36.030 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))~~ provided 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))~~ provided 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 rule must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 provides additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.030)) is passed on to the nonprofit organization using the property for exempt purposes.~~

AMENDATORY SECTION (Amending WSR 15-07-021, filed 3/10/15, effective 4/10/15)

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

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

(a) "Child day care center" means a 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.

(b) "Convalescent" or "chronic care" means any or all procedures commonly ((employed)) provided 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 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) "Free library" means a building or room containing collections of books, periodicals, other written materials such as magazines and newspapers, and audio or visual recordings. A free library must be accessible to the public for viewing, listening to, or borrowing these materials without charge. A nominal fee may be imposed for any materials that are damaged, lost, or not returned by the borrower in a timely manner. In the context of this rule, a "free library" does not include a library owned by an entity listed in RCW 84.36.010(1).

(d) "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))~~ offered to the public as providing and supplying only room, board, or laundry services to persons who do not need medical or nursing treatment or supervision is not considered a "home for the sick or infirm" for purposes of this rule.

~~((d))~~ (e) "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 incompe-

tent persons, or treatment of chemically dependent persons. The term also ~~((means all))~~ includes:

~~(i)~~ (i) 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))~~;

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

~~((ii))~~ (iii) 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))~~ (iv) 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))~~ include:

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

(B) Clinics or physician's offices ~~((not)), unless 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. A nonprofit organization, association, or corporation (collectively, "organization") that operates one of the following institutions is exempt from taxation on all real and personal property exclusively used~~((by a nonprofit organization, association, or corporation for the following institutions is exempt from taxation))~~ for the actual operation of the activity for which the exemption is granted:

(a) Child day care centers;

(b) Free ~~((public))~~ libraries;

(c) Orphanages and orphan ~~((asylums))~~ shelters;

(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 subsection~~((§ (3)(a) through (f))~~) (3) of this 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))~~ for the actual operation of the activity for which the exemption is granted;

(b) The benefit of the exemption is passed on to the nonprofit organization using the property for exempt purposes; 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 publicly owned and operated hospitals. All real and personal property leased or rented to and used by a hospital for hospital purposes as defined in subsection~~((2)(e) of this rule~~) 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. The benefit of the exemption must~~((inure to the entity using the exempt property))~~

be passed on to the nonprofit organization using the property for exempt purposes.

(6) **Additional requirements.** Any nonprofit organization (~~(or association)~~) 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 provides additional conditions and requirements that must be complied with to obtain a property tax exemption under RCW 84.36.040.~~)

DRAFT