



PROPOSED RULE MAKING

CR-102 (October 2017) (Implements RCW 34.05.320)

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FILED

DATE: April 26, 2018

TIME: 4:06 PM

WSR 18-10-051

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 to these types of facilities..

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
June 7, 2018	10:00 AM	Conference Room 252 6400 Linderson Way SW Tumwater, Washington 98501	

Date of intended adoption: June 14, 2018 (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) _____

Assistance for persons with disabilities:

Contact Julie King or Renee Cosare

Phone:

Fax:

TTY: 800-833-6384

Email:

Other:

By (date) _____

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 and associations 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:	Randy Simmons	6400 Linderson Way SW, Tumwater, WA	360-534-1605
Enforcement:	Randy Simmons	6400 Linderson Way SW, Tumwater, WA	360-534-1605

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)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- 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: April 26, 2018

Name: Erin T. Lopez

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 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 organized and conducted for nonsectarian purposes.

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

(a) "Benevolent" refers to social service~~((s or))~~ programs directed at persons of all ages arising from or 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 are organized for the purpose of doing good. For example, a benevolent organization may provide a food bank~~((, a))~~ or soup kitchen~~((, or counseling services at cost))~~.

(b) "Character building" means social service~~((s or))~~ programs designed for the general public good that assist people with general living skills, developing interview and 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.

(c) "Commercial or enterprise activity" 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 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" 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))~~ programs 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 an exoffender's reentry into the community or assist 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 are exempt from taxation if the organization, association, or corporation is organized and con-

ducted for nonprofit and nonsectarian purposes. To be exempt, the property must be exclusively used ~~((for))~~ to deliver 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 voluntarily giving something of value with no expectation of compensation or ~~((remuneration))~~ payment. ~~((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 demonstrate that the use of the property meets one of the following conditions:

(i) Provide 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))~~, to a minimum of fifteen percent of the total number of people assisted by that nonprofit organization, association, or corporation; or

(ii) Contributes at least ten percent of ~~((its))~~ the total annual income earned from the property towards the support of character-building, benevolent, protective or rehabilitative social services or programs. For purposes of meeting the ten percent requirement:

(A) "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))~~ (B) A nonprofit organization, association, or corporation may include, but is not limited to including, 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))~~ (C) If a nonprofit organization ~~((utilizes))~~, association, or corporation includes 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))~~ (D) If a nonprofit organization, association, or corporation 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 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. 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) Relief of public obligation. To qualify for an exemption under this rule, property must be used to relieve a public obligation. For example, a court ruled that a student housing provider did not qualify for a property tax exemption because the provider did not relieve county taxpayers of a legal requirement to provide student housing. *Adult Student Housing, Inc. v. Department of Revenue*, 41 Wn.App. 583, 593-94, 705 P.2d 793, 798-99 (1985).

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

~~((d))~~ (e) Nonqualifying property. If any portion of the organization's ~~((or))~~, association's, or corporation's property is used for a commercial or enterprise activity 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 upon the applicant to prove that the property is not used for commercial or enterprise activities.

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

~~((f))~~ (g) Property with option to repurchase. Pursuant to RCW 84.36.031, property leased, loaned, ~~((or))~~ sold with the option to repurchase, 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 nonprofit organization ~~((or))~~, association, or corporation 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.

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 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. This rule also explains the property tax exemption available to property leased to and used by a hospital for hospital purposes 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.

(2) **Definitions.** For purposes of this 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 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, but a nominal fee may be imposed for any materials that are damaged, lost, or not returned by the borrower in a timely manner.

(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 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 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~~), 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.** All real and personal property exclusively used for the actual operation of the activity for which the exemption is granted, 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 rule is also exempt from taxation if:

(a) The property is exclusively used for the actual operation of the activity for which the exemption is granted, 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 publicly owned and operated hospitals.** 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. The benefit of the exemption must inure to the entity using the exempt property.

(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~~), including licensing obligations, which must be complied with to obtain a property tax exemption under RCW 84.36.040.