RULE-MAKING ORDER
PERMANENT RULE ONLY

CR-103P (October 2017)
(Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 29, 2017
TIME: 12:57 PM

WSR 17-24-032

Agency: Department of Revenue

Effective date of rule:

Permanent Rules

☒ 31 days after filing.

☐ Other (specify) _____ **(If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)**

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: WAC 458-16-266 Homeownership Development is a new rule that explains the requirements of a new property tax exemption for nonprofit organizations that develop or redevelop on real property, one or more residences that are sold to low-income households.

Citation of rules affected by this order:

New: WAC 458-16-266 Homeownership Development
Repealed:
Amended:
Suspended:

Statutory authority for adoption: RCW 84.36.865

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 17-17-059 on August 11, 2017 (date).

Describe any changes other than editing from proposed to adopted version: None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Web site:
Other: An analysis was not prepared

Note: If any category is left blank, it will be calculated as zero.
No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	____	Amended	____	Repealed	____
Federal rules or standards:	New	____	Amended	____	Repealed	____
Recently enacted state statutes:	New	1	Amended	____	Repealed	____

The number of sections adopted at the request of a nongovernmental entity:

New ____ Amended ____ Repealed ____

The number of sections adopted on the agency's own initiative:

New 1 Amended ____ Repealed ____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New 1 Amended ____ Repealed ____

The number of sections adopted using:

Negotiated rule making:	New	____	Amended	____	Repealed	____
Pilot rule making:	New	____	Amended	____	Repealed	____
Other alternative rule making:	New	____	Amended	____	Repealed	____

Date: November 29, 2017	**Signature:** Erin Lopez
Name: Erin T. Lopez	
Title: Rules Coordinator	

NEW SECTION

WAC 458-16-266 Homeownership development. (1) **Introduction.** RCW 84.36.049 explains that real property owned by a nonprofit entity for the purpose of developing or redeveloping on the real property one or more residences to be sold to low-income households is exempt from state and local property taxes, subject to certain limitations.

(2) **Definitions.**

(a) "Financial statements" means an audited annual financial statement and a completed United States treasury internal revenue service return form 990 for organizations exempt from income tax.

(b) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the property is located.

(c) "Nonprofit entity" means a nonprofit as defined in RCW 84.36.800 that is exempt from federal income taxation under 26 U.S.C. Sec. 501(c)(3) of the federal Internal Revenue Code of 1986, as amended.

(d) "Property tax year" means the year in which property taxes are due.

(e) "Real property" has the same meaning as contained in RCW 84.04.090.

(f) "Residence" means a single-family dwelling unit whether such unit is separate or part of a multiunit dwelling, including the land on which such dwelling stands. If the residence is part of a multiunit dwelling, such as a condominium complex, the purchaser must also receive a fractional interest in the land for the nonprofit entity to qualify for the exemption.

(3) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(4) **Exemption application.** The exemption is effective June 9, 2016. Nonprofit entities may qualify for this exemption for up to a maximum of ten consecutive property tax years. The initial exemption is for a period of up to seven consecutive property tax years and the exemption extension, as described in subsection (5) of this rule, is for an additional period of up to three consecutive property tax years.

(a) Initial application. Initial applications will not be accepted after December 31, 2026. To apply for this exemption, the nonprofit entity must submit a completed application to the department:

(i) On or before July 1, 2016, for the 2017 property tax year;

(ii) On or before March 31st of each year, thereafter, for taxes to be collected in the following property tax year; or

(iii) Within sixty days of either acquiring the property or converting the property to an exempt use, whichever is later.

(b) Retroactive applications. Retroactive applications for this exemption for previous years are accepted, up to a maximum of three years from the date taxes were due on the property. The applicant must provide the department with acceptable proof that the property qualified for exemption during the pertinent assessment years and pay the late filing penalties. Retroactive applications will not be approved for taxes due prior to the 2017 property tax year and will not be accepted after December 31, 2026.

(c) Renewal application. Once a nonprofit entity is approved by the department for this exemption, no annual renewal application is required.

(d) Late filing. Late filing fees apply to retroactive applications, as described in (b) of this subsection, and to late applications filed under (a) of this subsection. Late filing fees of ten dollars per month or portion of a month will accrue beginning the date following the application deadline and continues through the application's actual postmark or email date.

(e) Reporting requirements. To measure the effectiveness of this exemption:

(i) All nonprofit entities receiving this exemption must provide, upon request by the joint legislative and audit review committee, annual financial statements for each year the exemption was claimed. The nonprofit entity must clearly identify the line or lines on the financial statements that represent the percentage of revenues dedicated to the development of affordable housing; and

(ii) The department must provide, upon request, approved initial applications for this exemption and owner occupancy notices reported by the nonprofit entity receiving this exemption, to the joint legislative audit and review committee.

(5) **Extensions.**

(a) If the nonprofit entity believes that title to the real property will not be transferred by the end of the sixth consecutive property tax year, it may file a notice of extension with the department. The extension:

(i) Is for a period of up to three property tax years;

(ii) Must be filed with the department on or before March 31st of the sixth consecutive property tax year. If the sixth consecutive property tax year occurs on or after January 1, 2027, the nonprofit entity must file an extension application no later than December 31, 2026; and

(iii) Requires a filing fee equal to the greater of two hundred dollars or one-tenth of one percent of the real market value of the property as of the most recent assessment date.

(b) **Example 1.** ABC Homes, a nonprofit entity, purchases vacant land on December 1, 2017, and begins building a single family residence that will subsequently be sold to a low-income household. ABC Homes must submit an initial application to the department within sixty days of acquiring the property to qualify for the exemption beginning in the 2018 property tax year. If approved, the exemption will continue until the residence is sold or transferred to a low-income household or through the 2024 property tax year, whichever is earlier. If ABC Homes believes the residence will not be sold or transferred to a low-income household by December 31, 2023 (the sixth consecutive property tax year), it may apply for a three-year extension no later than March 31, 2023. If the extension is approved, the exemption will be effective for taxes payable through the 2027 property tax year.

(c) **Example 2.** DEF Development, a nonprofit entity, purchases a residence on August 1, 2021. The residence will be remodeled and then sold to a low-income household. DEF Development must submit an initial application to the department within sixty days of acquiring the property to qualify for the exemption beginning in the 2022 property tax year. If approved, the exemption will continue until the residence is sold or transferred to a low-income household or through the 2028 property tax year, whichever is earlier. If DEF Development believes the residence will not be sold or transferred to a low-income household by December 31, 2027 (the sixth consecutive property tax year), it may apply for a three-year extension no later than December 31, 2026 (the last day to apply for a three-year extension). If the extension is approved, the exemption will be effective for taxes payable through the 2031 property tax year.

(6) **Expiration.** This exemption expires on or at the earlier of:

(a) The date on which the nonprofit entity transfers title of the real property;

(b) The end of the seventh consecutive property tax year without an extension;

(c) The end of the tenth consecutive property tax year with an extension; or

(d) The date the real property and residence is no longer held for the purpose for which the exemption was granted. The lease or rental of the property is not considered a qualifying exempt purpose.

(7) **Disqualification and additional tax.**

(a) If the nonprofit entity has not transferred title of the real property to a low-income household within the applicable periods described in subsection (6)(b) or (c) of this rule, or if the real property is no longer held for the purpose for which the exemption was granted as described in subsection (6)(d) of this rule, then the real property is disqualified from the exemption. When real property is disqualified, additional tax and interest are due.

(b) Additional tax and interest. When real property is disqualified from this exemption, the county treasurer must:

(i) Collect additional tax. The additional tax is equal to all taxes that would have been paid on the real property had the exemption not been granted, along with interest at the same rate and calculated in the same manner as interest on delinquent property taxes. The additional tax and interest are due in full thirty days from the issue date on the treasurer's statement; and

(ii) Distribute the additional taxes in the same manner that current property taxes on the real property are distributed. The additional tax and interest are a lien on the real property. If the nonprofit entity sells or transfers the property, any unpaid additional tax and interest must be paid by the nonprofit entity selling the property prior to conveyance of the property. The nonprofit entity or the new owner may appeal the assessed value on which the additional tax was calculated to the county board of equalization (see RCW 84.40.038).

(c) **Example 3**. Homes Unlimited, a nonprofit entity, owns a residence that it will improve and then sell to a low-income household. Homes Unlimited applies to the department and is approved for the exemption. Upon completion of the improvements, Homes Unlimited leases the residence to a low-income household until it can find a low-income household to purchase the residence. Because the lease of the property is not a qualifying exempt purpose, the residence is disqualified from the exemption and is subject to additional tax and interest.

(d) **Example 4**. Dream Home, Inc., a nonprofit entity, is building a duplex on land it owns and intends on selling each unit, along with the land, to low-income households. Dream Home, Inc., applies to the department and is approved for the exemption. Upon completion of the duplex, Dream Home, Inc., sells one of the two units to a low-income household. The second unit goes unsold so Dream Home, Inc., applies to the department for a three-year extension and is approved. Upon expiration of the three-year extension, the second unit has still not been sold to a low-income household. The second unit of the duplex is disqualified from the exemption and is subject to additional tax and interest.

(8) **Sale or transfer of real property to a low-income household.** A nonprofit entity must immediately notify the department when the exempt real property is sold or transferred to a low-income household. This notice must include:

(a) Certification by the nonprofit entity that the occupants are a low-income household. Low-income verification forms can be found on the department's web site at dor.wa.gov; and

(b) The date when the title to the real property was transferred.

(9) **Cessation of exemption.** Upon expiration or disqualification of the exemption, the value of new construction and improvements to the property, if not previously considered as new construction, must be considered as new construction for the purposes of calculating levies under chapter 84.55 RCW. If the value of new construction and improvements to property were previously considered as new construction when calculating levies under chapter 84.55 RCW, then it may not be considered as new construction upon expiration or disqualification of the exemption.