



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Revenue

Permanent Rule Only

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 458-16A-010 (Nonprofit homes for the aging); WAC 458-16A-020 (Nonprofit homes for the aging – Initial application and annual review); and WAC 458-16A-135 (Senior citizen, disabled person, and one hundred percent disabled veteran exemption - Application procedures) are amended to make the statutory language change from the phrase “physical disability” to “disability” to comply with SSB 5275, Sec. 313 and 314; Chapter 86, Laws of 2015; 2015 Regular Session. This language change is at these three subsections:

- WAC 458-16A-010(2)(l)(ii);
- WAC 458-16A-020(i)(ii); and
- WAC 458-16A-135(5)(e)(iv).

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 458-16A-010, WAC 458-16A-020, and WAC 458-16A-135

Suspended:

Statutory authority for adoption: RCW 84.08.010, RCW 84.08.070, RCW 84.52.0502, and RCW 84.55.060

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as **WSR 15-18-110 on September 1, 2015.**

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: phone ()

Address: e-mail

Date adopted: November 3, 2015

NAME

Kevin Dixon

SIGNATURE

TITLE

Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 03, 2015

TIME: 9:45 AM

WSR 15-22-086

**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Federal statute:	New	Amended		Repealed
Federal rules or standards:	New	Amended		Repealed
Recently enacted state statutes:	New	Amended	3	Repealed

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

	New	Amended		Repealed
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The number of sections adopted in the agency's own initiative:

	New	Amended	3	Repealed
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	Amended	3	Repealed
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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

AMENDATORY SECTION (Amending WSR 08-16-064, filed 7/30/08, effective 8/30/08)

WAC 458-16A-010 Nonprofit homes for the aging. (1) **Introduction.** Under RCW 84.36.041, a nonprofit home for the aging may be totally or partially exempt from property tax. This section explains the exemptions allowed and the criteria that must be met in order to receive an exemption under this statute. Throughout this section, all requirements will pertain to all types of homes for the aging including, but not limited to, adult care homes, assisted living facilities, continuing care retirement communities (CCRC), and independent housing, unless a particular type of home is separately identified.

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

(a) "Acquisition" means that an existing home for the aging (or home) currently in operation is acquired by a nonprofit organization and the ownership of the facility will change as a result of a purchase, gift, foreclosure, or other method.

(b) "Assistance with activities of daily living" means the home provides, brokers, or contracts for the provision of auxiliary services to residents, such as meal and housekeeping service, transportation, ambulatory service, and attendant care including, but not limited to, bathing and other acts related to personal hygiene, dressing, shopping, food preparation, monitoring of medication, and laundry services.

(c) "Combined disposable income" means the disposable income of the person submitting the income verification form, plus the disposable income of the person's spouse or domestic partner, and the disposable income of each cotenant occupying the dwelling unit for the preceding calendar year, less amounts paid by the person submitting the income verification form or the person's spouse, domestic partner or cotenant during the previous year for the treatment or care of either person received in the dwelling unit or in a nursing home.

(i) If the person submitting the income verification form was retired for two months or more of the preceding calendar year, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person during the months the person was retired by twelve.

(ii) If the income of the person submitting the income verification form is reduced for two or more months of the preceding calendar year because of the death of the person's spouse or domestic partner, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person after the death of the spouse or domestic partner by twelve.

(d) "Complete and separate dwelling units" means that the individual units of a home contain complete facilities for living, sleeping, cooking, and sanitation.

(e) "Construction" means the actual construction or building of all or a portion of a home that did not exist prior to the construction.

(f) "Continuing care retirement community" or "CCRC" means an entity that provides shelter and services under continuing care contracts with its residents or includes a health care facility or health service.

(g) "Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of

one year, shelter along with nursing, medical, health-related or personal care services, that is conditioned upon the transfer of property, the payment of an entrance fee to the provider of the services, and/or the payment of periodic charges in consideration for the care and services provided. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(h) "Cotenant" means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

(i) "Disposable income" means adjusted gross income as defined in the federal Internal Revenue Code, as amended prior to January 1, 1994, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(i) Capital gains, other than gain excluded from income under section 121 of the federal Internal Revenue Code to the extent it is reinvested in a new principal residence;

(ii) Amounts deducted for loss;

(iii) Amounts deducted for depreciation;

(iv) Pension and annuity receipts;

(v) Military pay and benefits other than attendant-care and medical-aid payments;

(vi) Veterans benefits other than attendant-care and medical-aid payments;

(vii) Federal Social Security Act and railroad retirement benefits;

(viii) Dividend receipts; and

(ix) Interest received on state and municipal bonds.

(j) "Domestic partner" means a partner 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.

(k) "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.

(l) "Eligible resident" means a person who:

(i) Occupied the dwelling unit as their principal place of residence as of December 31st of the assessment year the home first became operational or in each subsequent year, occupied the dwelling unit as their principal place of residence as of January 1st of the assessment year. If an eligible resident is confined to a hospital or nursing home and the dwelling unit is temporarily unoccupied or occupied by a spouse or domestic partner, a person financially dependent on the claimant for support, or both, the dwelling will still be considered occupied by the eligible resident;

(ii) Is sixty-one years of age or older on December 31st of the year in which the claim for exemption is filed, or is, at the time of filing, retired from regular gainful employment by reason of ((~~physi-~~~~ea-~~)) disability. A surviving spouse or domestic partner of a person who was receiving an exemption at the time of the person's death will qualify for this exemption if the surviving spouse or domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this subsection; and

(iii) Has a combined disposable income that is no more than the greater of twenty-two thousand dollars or eighty percent of the median income adjusted for family size as determined by the federal Department of Housing and Urban Development (HUD) for the county in which the person resides and in effect as of January 1 of the year the application for exemption is submitted.

(m) "First assessment year the home becomes operational" or "the assessment year the home first became operational" means the first year the home becomes occupied by and provides services to eligible residents. Depending upon the facts, this year will be the year during which construction of the home is completed or the year during which a nonprofit organization purchases or acquires an existing home and begins to operate it as a nonprofit home for the aging.

(n) "Home for the aging" or "home" means a residential housing facility that:

(i) Provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person;

(ii) Has only residents who are at least sixty-one years of age or who have needs for care generally compatible with persons who are at least sixty-one years of age; and

(iii) Provides varying levels of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal.

(o) "HUD" means the federal Department of Housing and Urban Development.

(p) "Local median income" means the median income adjusted for family size as most recently determined by HUD for the county in which the home is located and in effect on January 1st of the year the application for exemption is submitted.

(q) "Low income" means that the combined disposable income of a resident is eighty percent or less of the median income adjusted for family size as most recently determined by HUD for the county in which the home is located and in effect as of January 1st of the year the application for exemption is submitted.

(r) "Occupied dwelling unit" means a living unit that is occupied either on January 1st of the year for which the application for exemption is made or on December 31st of the assessment year the home first becomes operational and for which application for exemption is made.

(s) "Property that is reasonably necessary" means all property that is:

(i) Operated and used by a home; and

(ii) The use of which is restricted to residents, guests, or employees of a home.

(t) "Refinancing" means the discharge of an existing debt with funds obtained through the creation of new debt. For purposes of this section, even if the application for tax exempt bond financing to re-finance existing debt is treated by the financing agent as something other than refinancing, an application for a property tax exemption because of refinancing by tax exempt bonds will be treated as refinancing and the set-asides specific to refinancing will be applied. "Refinancing" shall include tax exempt bond financing in excess of the amount of existing debt that is obtained to modify, improve, restore, extend, or enlarge a facility currently being operated as a home.

(u) "Rehabilitation" means that an existing building or structure, not currently used as a home, will be modified, improved, re-stored, extended, or enlarged so that it can be used as a home for

elderly and disabled individuals. A project will be considered a rehabilitation if the costs of rehabilitation exceed five thousand dollars. If a home has acquired tax exempt bond financing and does not meet the definition of "rehabilitation" contained in this subsection, the home may be eligible for a total exemption under the "refinancing" definition and if it meets the "refinancing" set-aside requirements. If such a home is not eligible for a total exemption, the department will determine the home's eligibility for a partial exemption in accordance with the pertinent parts of RCW 84.36.041 and this section.

(v) "Set-aside(s)" means the percentage of dwelling units reserved for low-income residents when the construction, rehabilitation, acquisition, or refinancing of a home is financed under a financing program using tax exempt bonds.

(w) "Shared dwelling units" or "shared units" means individual dwelling units of a home that do not contain complete facilities for living, eating, cooking, and sanitation.

(x) "Taxable value" means the value of the home upon which the tax rate is applied in order to determine the amount of property taxes due.

(y) "Total amount financed" means the total amount of financing required by the home to fund construction, acquisition, rehabilitation, or refinancing. Seventy-five percent of this amount must be supplied by tax exempt bonds to receive the total exemption from property tax available under the tax exempt bond financing provision of RCW 84.36.041.

(3) **General requirements.** To be exempt under this section, a home for the aging must be:

(a) Exclusively used for the purposes for which exemption is granted, except as provided in RCW 84.36.805;

(b) Operated by an organization that is exempt from income tax under section 501(c) of the federal Internal Revenue Code; and

(c) The benefit of the exemption must inure to the home.

(4) **Total exemption.** There are three ways in which a home may be totally exempt from property tax. All real and personal property used by a nonprofit home that is reasonably necessary for the purposes of the home is exempt if it meets the general requirements listed in subsection (3) of this section and:

(a) At least fifty percent of the occupied dwelling units in the home are occupied by eligible residents;

(b) The home is subsidized under a HUD program; or

(c) The construction, rehabilitation, acquisition, or refinancing of a home is financed under a program using bonds exempt from federal income tax if at least seventy-five percent of the total amount financed uses tax exempt bonds and the financing program requires the home to reserve or set-aside a percentage of all dwelling units so financed for low-income residents. See subsections (5), (6), and (7) of this section for tax exempt bond requirements and the percentage of units that must be set-aside for low-income residents in order for the home to be totally exempt.

(5) **Homes or CCRCs financed by tax exempt bonds—Generally.** All real and personal property used by a nonprofit home or CCRC may be totally exempt from property tax if at least seventy-five percent of the total amount financed for construction, rehabilitation, acquisition, or refinancing uses tax exempt bonds and the financing program requires the home or CCRC to reserve or set-aside a percentage of all dwelling units so financed for low-income residents.

(a) The percentage of set-aside units required will vary depending on whether the home is a CCRC, the purpose for which the tax exempt bond financing was obtained, the type of dwelling unit, and the receipt of medicaid funds. The set-aside requirements for homes are set forth in subsection (6) of this section and for CCRCs are set forth in subsection (7) of this section.

(b) The exemption will be granted in direct correlation to the total amount financed by tax exempt bonds and the portion of the home or CCRC that is constructed, acquired, rehabilitated, or refinanced by tax exempt bonds.

(c) If tax exempt bonds are used for refinancing, the set-aside requirements set forth in subsections (6) and (7) of this section will be applied to the actual area or portion of the home or CCRC to which the bonds correspond.

(i) Example 1. A CCRC (that accepts medicaid funds) is composed of a multistory building, six duplexes, and two independent homes and the CCRC has secured tax exempt bonds to satisfy an existing mortgage on the multistory building. Only the multistory building will be considered eligible for a total exemption from property tax because of tax exempt bond financing. To receive the exemption, at least twenty percent of the dwelling units of the multistory building must be set-aside for residents at or below fifty percent of the local median income or at least forty percent of the dwelling units must be set-aside for residents at or below sixty percent of the local median income.

(ii) Example 2. A home obtains tax exempt bonds to refinance a portion of the home and to fund construction. The department will separately consider the area of the home that corresponds to the purpose for which the tax exempt bonds were obtained. The set-aside requirements related to refinancing will be applied to the portion of the home that corresponds to the mortgage being refinanced and the set-aside requirements related to construction will be applied to the area of the home to be newly constructed. The department will determine the eligibility for partial exemption of the remainder of the home that is not being refinanced or constructed.

(d) If a total exemption is granted under the tax exempt bond financing provision, the total exemption will remain in effect as long as:

(i) The home or CCRC remains in compliance with the requirements under which it received the tax exempt bonds;

(ii) The tax exempt bonds are outstanding; and

(iii) The set-aside requirements are met.

(e) If a home or CCRC has obtained tax exempt bond financing to modify, improve, restore, extend, or enlarge its existing facility and the project does not meet the definition of rehabilitation contained in subsection (2) of this section, the project will not be considered a rehabilitation. In this situation, the set-aside requirements related to refinancing or acquisition will be applied in determining eligibility for a total exemption.

(f) When a home or CCRC no longer meets the criteria for exemption under the tax exempt bond financing portion of the statute, eligibility for exemption under RCW 84.34.041 will be determined by the other provisions of the statute. In other words, a home may receive a total or partial exemption depending on the number of residents who are deemed to be "eligible residents" or who require "assistance with activities of daily living." For example, if a home that previously received a total exemption due to the receipt of tax exempt bond financing has one hundred dwelling units and sixty of those dwelling

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units are occupied by eligible residents, the home may receive a total exemption.

(6) **Set-aside requirements related to homes and tax exempt bond financing.** A specified number of dwelling units within a home must be set-aside for low income residents to obtain a total property tax exemption because of tax exempt bond financing. The set-aside requirements for homes will be determined according to the type of dwelling units contained in the home and the purpose for which the tax exempt bond financing was obtained. The provisions of this section do not apply to CCRCs. The specific set-aside requirements for CCRCs are described in subsection (7) of this section.

A home must meet the following set-aside requirements to be totally exempt from property tax:

PURPOSE OF BOND FINANCING	TYPE OF DWELLING UNIT	SET-ASIDE REQUIREMENTS
New construction or Rehabilitation	Complete & Separate units	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 50% of local median income
Acquisition or Refinancing of dwelling units currently satisfying 10% and 10% set-aside requirements	Complete & Separate units	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 50% of local median income
Acquisition or Refinancing of dwelling units not currently satisfying 10% and 10% set-aside requirements	Complete & Separate units	20% of total units set-aside for residents at or below 50% of local median income or 40% of total units set-aside for residents at or below 60% of local median income

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PURPOSE OF BOND FINANCING	TYPE OF DWELLING UNIT	SET-ASIDE REQUIREMENTS
Acquisition, New Construction, Refinancing, or Rehabilitation	Shared units	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 50% of local median income

(7) **Set-aside requirements related to CCRCs and tax exempt bond financing.** A specified number of dwelling units of a CCRC must be set-aside for low income residents to obtain a total property tax exemption because of tax exempt bond financing. The set-aside requirements for CCRCs will be determined by whether the CCRC does or does not have medicaid contracts for continuing care contract residents and the purpose for which the tax exempt bond financing was obtained. The provisions of this section do not apply to other homes. The specific set-aside requirements for other homes are described in subsection (6) of this section.

(a) The continuing care contract between the resident and the CCRC is a contract to provide shelter along with nursing, medical, health-related or personal care services to the resident for the duration of the resident's life or for a term in excess of one year. A resident's tenancy may not be terminated due to inability of the resident to fully pay the monthly service fee when the resident establishes facts to justify a waiver or reduction of these charges. This provision shall not apply if the resident, without the CCRC's consent, has impaired his and/or her ability to meet financial obligations required by the continuing care contract due to a transfer of assets, after signing the continuing care contract, other than to meet ordinary and customary living expenses, or by incurring unusual or unnecessary new financial obligations.

(b) A CCRC without medicaid contracts for continuing care contract residents may not receive medicaid funds from Washington state or the federal government during the term that the bonds are outstanding, except during the initial transition period as allowed by state law or if the regulatory agreement with the tax exempt bond financier exempts the CCRC from compliance with this requirement.

(c) The following set-aside requirements must be met by CCRCs not receiving medicaid funds (including CCRCs that are permitted to receive medicaid funds during an initial transition period only) to receive a total exemption:

PURPOSE OF BOND FINANCING	SET-ASIDE REQUIREMENTS
New construction or Rehabilitation	10% of total units set-aside for residents at or below 80% of local median income and 15% of total units set-aside for residents at or below 100% of local median income

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PURPOSE OF BOND FINANCING	SET-ASIDE REQUIREMENTS
Acquisition or Refinancing of dwelling units currently satisfying 10% and 15% set-aside requirements	10% of total units set-aside for residents at or below 80% of local median income and 15% of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units not currently satisfying 10% and 15% set-aside requirements	20% of total units set-aside for residents at or below 50% of local median income or 40% of total units set-aside for residents at or below 60% of local median income

(d) The following set-aside requirements must be met by CCRCs receiving medicaid funds to receive a total exemption:

PURPOSE OF BOND FINANCING	SET-ASIDE REQUIREMENTS
New construction or Rehabilitation	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units currently satisfying 10% and 10% set-aside requirements	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units not currently satisfying 10% and 10% set-aside requirements	20% of total units set-aside for residents at or below 50% of local median income or 40% of total units set-aside for residents at or below 60% of local median income

(8) **Partial exemption.** If a home does not qualify for a total exemption from property tax, the home may receive a partial exemption for its real property on a unit by unit basis and a total exemption for its personal property.

(a) Real property exemption. If the real property of a home is used in the following ways, the portion of the real property so used will be exempt and the home may receive a partial exemption for:

(i) Each dwelling unit occupied by a resident requiring significant assistance with activities of daily living;

(ii) Each dwelling unit occupied by an eligible resident; and

(iii) Common or shared areas of the home that are jointly used for two or more purposes that are exempt from property tax under chapter 84.36 RCW.

(b) Assistance with activities of daily living. A home may receive a partial exemption for each dwelling unit that is occupied by a resident who requires significant assistance with the activities of

daily living and the home provides, brokers, facilitates, or contracts for the provision of this assistance. A resident requiring assistance with the activities of daily living must be a resident who requires significant assistance with at least three of the nonexclusive list of activities set forth below and who, unless the resident receives the assistance, would be at risk of being placed in a nursing home. Activities of daily living include, but are not limited to:

- (i) Shopping;
- (ii) Meal and/or food preparation;
- (iii) Housekeeping;
- (iv) Transportation;
- (v) Dressing;
- (vi) Bathing;
- (vii) General personal hygiene;
- (viii) Monitoring of medication;
- (ix) Ambulatory services;
- (x) Laundry services;
- (xi) Incontinence management; and
- (xii) Cuing for the cognitively impaired.

(c) Examples of assistance with the activities of daily living:

(i) If the resident of a home requires assistance with daily dressing, bathing, and personal hygiene, weekly housekeeping chores, and daily meal preparation, the person is a resident requiring significant assistance with activities of daily living and the home may receive a partial exemption for the dwelling unit in which the person resides.

(ii) If the resident of a CCRC only requires someone to clean the house weekly and to do the laundry weekly, the resident does not require significant assistance with activities of daily living and the CCRC may not receive a partial exemption for the dwelling unit.

(d) Common or shared areas. Areas of a home that are jointly used for two or more purposes exempt from property tax under chapter 84.36 RCW will be exempted under RCW 84.36.041.

(i) The joint use of the common or shared areas must be reasonably necessary for the purposes of the nonprofit organization, association, or corporation exempt from property tax under chapter 84.36 RCW. A kitchen, dining room, and laundry room are examples of the types of common or shared areas for which a partial property tax exemption may be granted.

(ii) Example. A nonprofit organization uses its facility as a home for the aging and a nursing home. The home and nursing home jointly use the kitchen and dining room. The home may receive a property tax exemption for the common or shared areas under RCW 84.36.041. The eligibility of the other areas of the facility will be determined by the appropriate statute. The home's eligibility will be determined by RCW 84.36.041 and the nursing home's eligibility will be determined by RCW 84.36.040.

(e) Amount of partial exemption. The amount of partial exemption will be calculated by multiplying the assessed value of the property reasonably necessary for the purposes of the home, minus/less the assessed value of any common or shared areas, by a fraction. The numerator and denominator of the fraction will vary depending on the first assessment year the home became operational and occupied by eligible residents.

(i) Numerator. If the home becomes operational after the January 1st assessment date, the numerator is the number of dwelling units occupied by eligible residents and by residents requiring assistance

with activities of daily living on December 31st. The December 31st date will be used only in the first year of operation. In any other assessment year, the numerator is the number of the dwelling units occupied on January 1st of the assessment year by eligible residents and by residents requiring assistance with activities of daily living.

(ii) Denominator. If the home becomes operational after the January 1st assessment date, the denominator is the number of dwelling units occupied on December 31st. The December 31st date will be used only in the first assessment year the home becomes operational. In any other assessment year, the denominator is the total number of occupied dwelling units as of January 1st of the assessment year.

(iii) Example:

Assessed value of home:	\$500,000
Less assessed value of common area:	<u>- 80,000</u>
Total	\$420,000
Number of units occupied on 1/1 by eligible residents and people requiring assistance with daily living activities	= 6
Total of occupied units on 1/1	40 or .15
\$420,000 x .15 = \$63,000	Amount of partial exemption
\$420,000 - \$63,000 = \$357,000	Taxable value of home

(f) Valuation of the home. The assessor will value a home that receives a partial exemption by considering only the current use of the property during the period in which the partial exemption is received and will not consider any potential use of the property.

(9) **Income verification required from some residents.** If a home seeks a total property tax exemption because at least fifty percent of the occupied dwelling units are occupied by eligible residents or seeks to receive a partial exemption based upon the number of units occupied by eligible residents, the residents must submit income verification forms. The department may request income verification forms from residents of homes receiving a total exemption because of tax exempt bond financing.

(a) The income verification forms must be submitted to the assessor of the county in which the home is located by July 1st of the assessment year in which the application for exemption is made. If the home becomes operational after the January 1st assessment date, these forms must be submitted to the assessor as soon as they are available but no later than December 31st of that assessment year.

(b) The income verification form will be prescribed and furnished by the department of revenue.

(c) If an eligible resident filed an income verification form for a previous year, the resident is not required to submit a new form unless there is a change in status affecting the resident's eligibility, such as a significant increase or decrease in disposable income, or the assessor or the department requests a new income verification form to be submitted.

(10) **Additional requirements.** Any nonprofit home for the aging that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16A-020 and 458-16-165. WAC 458-16A-020 contains information regarding the initial application and renewal procedures relating to the exemption discussed in this section. WAC 458-16-165 sets forth additional requirements that must be

complied with to obtain a property tax exemption pursuant to RCW 84.36.041.

AMENDATORY SECTION (Amending WSR 08-16-064, filed 7/30/08, effective 8/30/08)

WAC 458-16A-020 Nonprofit homes for the aging—Initial application and annual renewal. (1) **Introduction.** This section explains the initial application process that must be followed when a home for the aging wishes to obtain a property tax exemption under RCW 84.36.041. This section also describes the annual renewal requirements that a home must follow to retain its tax exempt status, as well as the role of the assessor's office and the department of revenue in administering this exemption. Throughout this section, all requirements will pertain to all types of homes for the aging including, but not limited to, adult care homes, assisted living facilities, continuing care retirement communities (CCRC), and independent housing.

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

(a) "Assessor" means the county assessor or any agency or person who is duly authorized to act on behalf of the assessor.

(b) "Combined disposable income" means the disposable income of the person submitting the income verification form, plus the disposable income of the person's spouse or domestic partner, and the disposable income of each cotenant occupying the dwelling unit for the preceding calendar year, less amounts paid by the person submitting the income verification form, the person's spouse or domestic partner, or any cotenant during the previous year for the treatment or care of any of them received in the dwelling unit or in a nursing home.

(i) If the person submitting the income verification form was retired for two months or more of the preceding calendar year, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person during the months the person was retired by twelve.

(ii) If the income of the person submitting the income verification form is reduced for two or more months of the preceding calendar year by reason of the death of the person's spouse or domestic partner, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person after the death of the spouse or domestic partner by twelve.

(c) "Continuing care retirement community" or "CCRC" means an entity that provides shelter and services under continuing care contracts with its residents or includes a health care facility or health service.

(d) "Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related or personal care services, that is conditioned upon the transfer of property, the payment of an entrance fee to the provider of the services, and/or the payment of periodic charges in consideration for the care and services provided. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(e) "Cotenant" means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

(f) "Department" means the department of revenue.

(g) "Domestic partner" means a partner 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.

(h) "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.

(i) "Eligible resident" means a person who:

(i) Occupied the dwelling unit as their principal place of residence as of December 31st of the assessment year the home first became operational or in each subsequent year, occupied the dwelling unit as their principal place of residence as of January 1st of the assessment year. If an eligible resident is confined to a hospital or nursing home and the dwelling unit is temporarily unoccupied or occupied by a spouse or domestic partner, a person financially dependent on the claimant for support, or both, the dwelling will still be considered occupied by the eligible resident;

(ii) Is sixty-one years of age or older on December 31st of the year in which the claim for exemption is filed, or is, at the time of filing, retired from regular gainful employment by reason of (~~physi-~~~~ea~~) disability. A surviving spouse or domestic partner of a person who was receiving an exemption at the time of the person's death will qualify for this exemption if the surviving spouse or domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this subsection; and

(iii) Has a combined disposable income that is no more than the greater of twenty-two thousand dollars or eighty percent of the median income adjusted for family size as determined by federal Department of Housing and Urban Development (HUD) for the county in which the person resides.

(j) "First assessment year the home becomes operational" or "the assessment year the home first became operational" means the first year the home becomes occupied by and provides services to eligible residents. Depending upon the facts, this year will be the year during which construction of the home is completed or the year during which a nonprofit organization purchases or acquires an existing home and begins to operate it as a nonprofit home for the aging.

(k) "Homes for the aging" or "home(s)" means a residential housing facility that:

(i) Provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person;

(ii) Has only residents who are at least sixty-one years of age or who have needs for care generally compatible with persons who are at least sixty-one years of age; and

(iii) Provides varying levels of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal.

(l) "HUD" means the federal Department of Housing and Urban Development.

(m) "Occupied dwelling unit" means a living unit that is occupied either on January 1st of the year in which the claim for exemption is filed or on December 31st of the first assessment year the home becomes operational and in which the claim for exemption is filed.

(n) "Property that is reasonably necessary" means all property that is:

(i) Operated and used by a home; and

(ii) The use of which is restricted to residents, guests, or employees of a home.

(3) **Application for exemption.** The tax exemption authorized by RCW 84.36.041 is claimed by and benefits a nonprofit home for the aging, not the residents of the home. Therefore, the claim for this exemption is submitted by a home to the department.

(a) If a claim for exemption is filed on behalf of a home under RCW 84.36.041 and the exemption is granted, no resident of that home may receive a personal exemption under RCW 84.36.381.

(b) A listing of the varying levels of care and supervision provided or coordinated by the home must accompany all initial applications submitted for exemption. Examples of the varying levels of care and supervision include, but are not limited to, the following:

(i) Conducting routine room checks;

(ii) Arranging for or providing transportation;

(iii) Arranging for or providing meals;

(iv) On-site medical personnel;

(v) Monitoring of medication; or

(vi) Housekeeping services.

(c) Homes having real property that is used for purposes other than as a home (for example, property used for a barber shop) must provide the department with a floor plan identifying the square footage devoted to each exempt and nonexempt use.

(d) At the time an application for exemption is submitted, the home must submit proof that it is recognized by the Internal Revenue Service as a 501(c) organization.

(e) Homes that apply for a total exemption because of tax exempt bond financing must submit a copy of the regulatory agreement between the home and the entity that issues the bonds. When only a portion of the home is financed by a program using tax exempt bonds, the home must submit a site plan of the home indicating the areas so financed.

(4) **Segregation.** A nonprofit organization that provides shelter and services to elderly and disabled individuals may use the facility for more than one purpose that is exempt from property tax under chapter 84.36 RCW. Property that is used for more than one exempt purpose and that qualifies for exemption under a statute other than RCW 84.36.041 will be segregated and exempted pursuant to the applicable statute.

(a) If a home includes a nursing home, the department will segregate the home and the part of the facility that is used as a nursing home. The department will separately determine the eligibility of the home under RCW 84.36.041 and the nursing home under RCW 84.36.040 for the property tax exemption available under each statute.

Exception: If the home does not receive medicaid funds (including CCRCs that are permitted to receive medicaid funds during an initial transition period only) and is seeking a total exemption because of tax exempt bond financing, the home and nursing home will be considered as a whole when the set-aside requirements are applied.

(b) Dwelling units that are occupied by residents who do not meet the age or disability requirements of RCW 84.36.041 will be segregated and taxed.

(c) Common or shared areas. Areas of a home that are jointly used for two or more purposes exempt from property tax under chapter 84.36 RCW will be exempted under RCW 84.36.041.

(i) The joint use of the common or shared areas must be reasonably necessary for the purposes of the nonprofit organization, association, or corporation exempt from property tax under chapter 84.36 RCW. A kitchen, dining room, and laundry room are examples of the types of common or shared areas for which a property tax exemption may be granted.

(ii) Example. A nonprofit organization uses its facility as a home for the aging and a nursing home. The home and nursing home jointly use the kitchen and dining room. The home may receive a property tax exemption for the common or shared areas under RCW 84.36.041. The eligibility of the other areas of the facility will be determined by the appropriate statute. The home's eligibility will be determined by RCW 84.36.041 and the nursing home's eligibility will be determined by RCW 84.36.040.

(5) **Homes subsidized by HUD.** Homes subsidized by a HUD program must initially and each March 31st thereafter provide the department with a letter of certification from HUD of continued HUD subsidy and a list of the name, age, and/or disability of all residents. If the property is subsidized by more than one HUD contract and one of the contracts expires or is otherwise no longer in effect, the eligibility of the portion of the facility still subsidized by HUD will be conditioned on receipt of a letter of certification from HUD and a listing of all persons residing on the property. The eligibility of the remainder of the property will be determined by the number of dwelling units occupied by eligible residents on January 1st following the expiration or cancellation of the HUD subsidy.

(6) **Homes that are not subsidized by HUD.** If a home is not subsidized by HUD or does not meet the requirements to receive a total exemption because of tax exempt bond financing, it may receive a total or partial exemption from property tax. The extent of the exemption will be determined by the number of dwelling units occupied by eligible residents. If more than fifty percent of the dwelling units are occupied by eligible residents, the home may receive a total exemption. Alternatively, if less than fifty percent of the dwelling units are occupied by eligible residents, the home may receive partial exemption for its real property on a unit by unit basis and a total exemption for its personal property. An income verification form will be used to determine if a resident of a home meets the criteria of "eligible resident." During the initial application process, the residents of a home applying for exemption will be asked to submit an income verification form with the assessor of the county in which the home is located and the assessor and/or the department may request any relevant information deemed necessary to make a determination.

(a) The type of income verification form required and its due date depends upon the date the home first became operational and began to provide services to eligible residents:

(i) If the home was operating and providing services to eligible residents on the January 1st assessment date, the residents are to submit Form REV 64-0043 between January 1st and July 1st of the year preceding the year in which the tax is due; or

(ii) If the home started operating and providing services to eligible residents after the January 1st assessment date, the residents are to submit Form REV 64-0042 on or before December 31st of the year preceding the year in which the tax is due. In this situation, no in-

come verification forms will be required during the following year if the same eligible residents occupy the same dwelling units on December 31st and January 1st of the subsequent year.

(b) If two or more residents occupy one unit, only one cotenant is required to file verification of combined disposable income, as defined in subsection (2) of this section, with the assessor.

(c) Form REV 64-0043 will not be accepted by the assessor if it is submitted or postmarked after July 1st unless the assessor and/or the department has agreed to waive this deadline. Form REV 64-0042 will not be accepted if it is submitted or postmarked after December 31st unless the assessor and/or department agrees to waive this deadline.

(d) After the application for exemption is approved, residents will not be required to file a new income verification form unless a change in their circumstances occurs or the assessor requests it. However, at any time after the initial application is approved, assessors and/or the department may:

(i) Request residents to complete Form REV 64-0043;

(ii) Conduct audits; and

(iii) Request other relevant information to ensure continued eligibility.

(e) By March 31st each year, a home not subsidized by HUD that wishes to retain its exempt property tax status must file with the department a list of the total number of dwelling units in its complex, the number of occupied dwelling units in its complex as of January 1st, the number of previously qualified dwelling units in its complex that are no longer occupied by the same eligible residents, and a list of the name, age, and/or disability of all residents and the date upon which they moved into or occupied the home. If a home's eligibility was based upon the number of units occupied on December 31st, the home must only provide the department with an amended list of additions or deletions as of the subsequent January 1st assessment date.

(7) **Homes financed by tax exempt bonds.** Homes that receive a total property tax exemption because of tax exempt bond financing must initially and each March 31st thereafter provide the department with a letter of certification from the agency or organization monitoring compliance with the bond requirements. The letter of certification must verify that the home is in full compliance with all requirements and set-asides of the underlying regulatory agreement.

(a) If the set-aside requirements contained in the regulatory agreement differ from the set-aside requirements established by the department and set forth in WAC 458-16A-010, the department may require the residents of the home to submit income verification forms (Form REV 64-0042 or 64-0043) to the assessor of the county in which the home is located.

(b) A home for the aging that is receiving a property tax exemption must annually submit a list of the name, age, and/or disability of all residents in the home to the department.

(8) **Assessor's responsibilities.** Assessors will determine the age or disability and income eligibility of all residents who file Form REV 64-0042 or 64-0043, the income verification forms. By July 15th each year or by January 15th of the assessment year following the first assessment year a home becomes operational, the assessor will forward a copy of Form REV 64-0042 or 64-0043 to the department for each resident who meets the eligibility requirements.

(9) **Appeals.** An applicant who is determined not to be an "eligible resident" by the assessor and a home that is denied a property tax

exemption by the department each have the right to appeal. Appeals must be filed within thirty days of the date the notice of ineligibility or denial was mailed by the assessor or the department.

(a) If the assessor determines that an applicant does not meet the definition of an "eligible resident," the resident may appeal this decision to the board of equalization of the county in which the home is located.

(b) If the department denies, in whole or in part, an application for exemption, the home may appeal this denial to the state board of tax appeals.

(10) **Additional requirements.** Any nonprofit home for the aging that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16A-010 and 458-16-165. WAC 458-16A-010 contains information regarding the basic eligibility requirements to receive a total or partial exemption under RCW 84.36.041. WAC 458-16-165 sets forth additional requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.041.

AMENDATORY SECTION (Amending WSR 13-08-028, filed 3/27/13, effective 4/27/13)

WAC 458-16A-135 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Application procedures. (1) **Introduction.** This rule explains when and how a senior citizen, disabled person, or one hundred percent disabled veteran may apply for a property tax exemption on that person's principal residence. RCW 84.36.381 through 84.36.389.

(2) **When to apply for the exemption.** A claimant may first apply for the exemption in the calendar year that he or she meets the age, disability, or disabled veteran requirements for exemption of taxes due in the following year. If the claimant does not apply when he or she meets the age, disability, or disabled veteran requirements, then he or she may apply for the exemption in any subsequent year. The exemption may be claimed on his or her principal residence for previous years by applying with separate applications for each year. However, refunds based upon an exemption made in previous years may be refunded only for up to three years after the taxes were due as provided in chapter 84.69 RCW.

(3) **Application required.** A claimant must submit to the county assessor's office an application for exemption with supporting documents. If the claimant applies for more than one year when the application is first made, an application must be made for each year the claimant seeks the exemption.

(4) **Where to obtain the application form.** A claimant may obtain the application form and the list of required supporting documents from the county assessor's office where his or her principal residence is located.

(5) **How to apply for the exemption.** Applications and supporting documents are filed in person or by mail at the county assessor's office where the principal residence is located.

(a) **The application form.** The county assessor designs the application form or adapts a master form obtained from the department. The

county must obtain approval of the final form from the department before it may be distributed and used. The claimant must use an application form from the county where the principal residence is located and provide true and accurate information in the application.

(b) **Signatures.** The signature must certify that under penalty of perjury under the laws of Washington the application is true and correct. The application must be signed, dated, and state the place (city, county, or address) where it was signed. The application must be signed by:

- (i) The claimant;
- (ii) The claimant's designated agent;
- (iii) The legal guardian for the claimant (if applicable); or
- (iv) If the property is subject to a deed of trust, mortgage, or purchase contract requiring an accumulation of reserves to pay property taxes, the lien holder; and
- (v) If the claimant resides in a cooperative housing unit or portion of a cooperative structure representing the claimant's ownership share in that cooperative, the authorized agent of the cooperative must also sign the application.

(c) **Perjury statement.** The perjury statement certifying under the penalty of perjury that the application is true and correct must be placed upon the application immediately above a line for the signature. Any person signing a false claim with the intent to defraud or evade the payment of any tax is guilty of perjury under chapter 9A.72 RCW. If a person receives an exemption based on erroneous information, the assessor assesses any unpaid taxes with interest for up to five years. If a person receives an exemption based on erroneous information, and the person either provided that information with the intent to defraud or intentionally failed to correct that information, the assessor assesses any unpaid taxes with interest, for up to five years, with the one hundred percent penalty provided in RCW 84.40.130. RCW 84.36.385(5).

(d) **Cooperative agreement to reduce rent.** A cooperative must also agree, in a statement attached to the application, to reduce amounts owed by the claimant to the cooperative by the amount of the tax exemption. The agreement must also state that when the exemption exceeds the amount owed to the cooperative, the cooperative must pay to the claimant any amount of the tax exemption remaining after this offsetting reduction. RCW 84.36.387(5).

(e) **Supporting documents.** Unless the assessor determines that all or some of the supporting documents are not necessary, a claimant must present the documents listed below with his or her application. Except for affidavits, the assessor's office should not accept original documents from the claimant. If the assessor's office is presented with original documents (other than affidavits), they must make copies or note the information provided in the documents on a separate sheet and return these original documents to the claimant. The claimant submits the following documents with the application:

- (i) If the county records do not reflect the claimant as the property owner, copies of any legal instruments demonstrating the claimant's interest held in the property;
- (ii) Documents demonstrating that the property is the claimant's principal residence (i.e., copy of a driver's license and voter's registration card);
- (iii) Copies of legal identification showing the claimant's age (i.e., copy of a driver's license or birth certificate);

(iv) If the claim is based upon a (~~physical~~) disability, either:

(A) An affidavit from a licensed physician or certified physician's assistant (medical or osteopath doctor), a licensed or certified psychologist for disabling mental impairments, or a licensed podiatrist for disabling impairments of the foot, that states the claimant is unable to enter into regular gainful employment because of his or her disability and the expected term of the disability; or

(B) Copies of a written acknowledgment or decision by the Social Security Administration or Veterans Administration that the claimant is permanently disabled;

(v) If the claim is based upon the claimant's veteran status, copies of legal documents showing that the claimant is a veteran of the armed forces of the United States entitled to and receiving compensation from the United States Department of Veterans Affairs at a total disability rating for a service-connected disability;

(vi) Copies of documents showing income earned or reported by the claimant, the claimant's spouse or domestic partner and any cotenants, even when the income is estimated (income information should be provided to the degree possible and then confirmed with supporting documents in the follow-up period), such proof shall include to the extent it is relevant:

(A) If the claimant, the claimant's spouse or domestic partner, or any cotenants receive Social Security payments, a federal statement showing Social Security paid (generally, Form SSA-1099);

(B) If the claimant, the claimant's spouse or domestic partner, or any cotenants receive railroad retirement benefits, a federal statement showing railroad retirement benefits paid (generally, Forms RRC-1099 and RRC 1099-R);

(C) If the claimant, the claimant's spouse or domestic partner, or any cotenants file federal income tax returns, those returns with supporting forms, schedules, and, if specifically requested, worksheets for the deductions taken from gross income (generally, Form 1040 with its supporting forms and schedules);

(D) If the claimant or the claimant's spouse or domestic partner has been in a nursing home, assisted living facility, or adult family home or has been receiving in-home care, copies of invoices (or an equivalent billing statement or payment statement) for nonreimbursed nursing home and in-home care;

(E) If the claimant indicates that the nonreimbursed prescription drug expenses for the claimant and the claimant's spouse or domestic partner for the period under review exceeds five hundred dollars, copies of checks or other payment statements (i.e., pharmacy printout of payments for purchases) showing amounts paid for nonreimbursed prescription drug expenses;

(F) Copies of documents showing premiums paid if the claimant or the claimant's spouse or domestic partner pays health care insurance premiums for medicare under Title XVIII of the Social Security Act (i.e., 1099, or medicare plan policy declaration);

(G) If no federal returns were filed or received, the claimant must still provide copies of documents to demonstrate his or her income and the income of his or her spouse or domestic partner and any cotenants (i.e., federal income statements such as Form W-2 (wages), Form 1099-INT (interest), Form 1099-DIV (dividends), Form 1099-R (pension amounts), Form 1099-G (unemployment), or Form 1099-Misc. (contract income)). Even claimants who claim they have no federal income (or an inordinately small amount of federal income) must have income

to maintain themselves and their residences. In these situations, the claimant must produce copies of documents demonstrating the source of the funds they are living on (i.e., checking account registers and bank statements) and the bills for maintaining the claimant and the residence (i.e., public assistance check stubs, utility invoices, cable TV invoices, check registers, bank statements, etc.); and

(vii) Any other copies of documents the assessor requires in his or her discretion for the claimant to produce in order to demonstrate the claimant qualifies for the exemption.

(f) Public disclosure of the application. The application form may not be disclosed. A copy of the application may be disclosed only if all income information on the form is obliterated so that it cannot be read. Except as required by law, no public disclosure may be made of the checklist of supporting documents or any supporting documents retained that concern the income of the claimant, the claimant's spouse or domestic partner, or any cotenant.