

WAC 458-16-165 Conditions under which nonprofit organizations, associations, or corporations may obtain a property tax exemption.

(1) **Introduction.** This rule describes the conditions in RCW 84.36.805 and 84.36.840 that most nonprofit organizations, associations, and corporations must satisfy in order to receive a property tax exemption under chapter 84.36 RCW.

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

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

(b) "Inadvertent use" or "inadvertently used" means the use of the property in a manner inconsistent with the purpose for which the exemption is granted through carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.

(c) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles to maintain and operate the loaned or rented portion of the exempt property.

(d) "Revenue" means income received from the loan or rental of exempt property when the income exceeds the amount of maintenance and operation expenses attributable to the portion of the property loaned or rented.

(e) "Personal service contract" means a contract between a nonprofit organization, association, or corporation and an independent contractor under which the independent contractor provides a service on the organization's, association's, or corporation's tax exempt property. (See example in subsection (5)(c) of this rule.)

(3) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide. The department will evaluate each case on its particular facts and circumstances.

(4) **Applicability of this rule.** This rule does not apply to exemptions granted to:

(a) Public burying grounds or cemeteries under RCW 84.36.020;

(b) Churches, parsonages, convents, and church grounds under RCW 84.36.020;

(c) Administrative offices of nonprofit recognized religious organizations under RCW 84.36.032;

(d) Nonprofit homeownership development entities under RCW 84.36.049;

(e) Water distribution property owned by a nonprofit corporation or cooperative association under RCW 84.36.250;

(f) Nonprofit fair associations under RCW 84.36.480(2); or

(g) Multipurpose senior citizen centers under RCW 84.36.670.

(5) **Exclusive use.** Exempt property must be exclusively used for the actual operation of the activity for which the nonprofit organization, association, corporation, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW, received the property tax exemption unless the authorizing statute states otherwise. The property exempted from taxation must not exceed an area reasonably necessary to facilitate the exempt purpose.

(a) Loan or rental of exempt property. For information on loans and rentals of property exempt under RCW 84.36.030, see RCW 84.36.031. For other exempt property, generally, the loan or rental of exempt property does not make it taxable if:

(i) The rents or donations received for the use of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented;

(ii) Except for the exemptions under RCW 84.36.030(4), 84.36.037, 84.36.050, and 84.36.060 (1)(a) and (b), the property would be exempt from tax if owned by the organization to which it is loaned or rented; and

(iii) The loan and rental provisions described in this subsection (5)(a) do not apply to real and personal property owned or leased by a nonprofit organization, corporation, or association to provide housing for eligible persons with developmental disabilities, as described under RCW 84.36.042.

(b) Fund-raising events. The use of exempt property for fund-raising events conducted by an exempt organization, association, corporation, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW, does not jeopardize the exemption if the fund-raising events are consistent with the purposes for which the exemption was granted. The term "fund-raising" means any revenue-raising event limited to less than five days in length that disburses 51 percent or more of the profits realized from the event to the exempt nonprofit entity conducting the fund-raising event.

(i) Example 1. A nonprofit social service agency holds an art auction in the auditorium of its tax exempt facility to raise funds. The event must be less than five days in length and 51 percent of the profits must be disbursed to the social service agency because the fund-raising event is being held on exempt property.

(ii) Example 2. A nonprofit school has a magazine subscription drive to raise funds and the subscriptions are being sold door-to-door by students. There are no limitations on this fund-raising event because the subscription drive is not being held on exempt property.

(c) Personal service contract - Exempt programs. Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(i) The program is compatible and consistent with the purposes of the exempt organization, association, or corporation;

(ii) The exempt organization, association, or corporation maintains separate financial records as to all receipts and expenses related to the program; and

(iii) A summary of all receipts and expenses of the program are provided to the department upon request.

(iv) Example 3. A nonprofit school may decide to contract with a provider to offer aerobic classes to promote general health and fitness. All brochures and bulletins advertising these classes must show that the school is sponsoring the classes. Under the terms of the contract between the nonprofit school and the aerobics instructor, an independent contractor, the instructor must provide the classes for a predetermined fee. All fees collected from the participants of the classes must be received by the school; the school, in turn, will absorb all costs related to the classes.

(d) Personal service contract - Nonexempt programs. Programs provided under a personal service contract (i) that require the contractor to reimburse the nonprofit organization for program expenses, or (ii) in which the instructor is paid a fee based on the number of people who attend the program will be viewed as a rental agreement and will subject the property to property tax.

(e) Inadvertent use. An inadvertent use of the property in a manner inconsistent with the purpose for which the exemption was granted does not subject the property to tax if the inadvertent use is not part of a pattern of use. A "pattern of use" is presumed when an inad-

vertent use is repeated in the same assessment year or in two or more successive assessment years.

(6) **No discrimination allowed.** The exempt property and the services offered must be available to all persons regardless of race, color, national origin, or ancestry.

(7) **Compliance with licensing or certification requirements.** A nonprofit entity, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW seeking or receiving a property tax exemption must comply with all applicable licensing and certification requirements imposed by law or regulation.

(8) **Property sold subject to an option to repurchase.** Property sold to a nonprofit entity, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW with an option to be repurchased by the seller cannot qualify for an exemption. This prohibition does not apply to:

(a) Limited equity cooperatives as defined in RCW 84.36.675; or

(b) Property sold to a nonprofit entity, as defined in RCW 84.36.560, by:

(i) A nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code;

(ii) A governmental entity established under RCW 35.21.660, 35.21.670, or 35.21.730;

(iii) A housing authority created under RCW 35.82.030;

(iv) A housing authority meeting the definition of RCW 35.82.210

(2) (a); or

(v) A housing authority established under RCW 35.82.300.

(9) **Duty to produce financial records.** To determine whether a nonprofit entity is entitled to receive a property tax exemption under the provisions of chapter 84.36 RCW and before the exemption is renewed each year, the entity claiming exemption must submit a signed statement made under oath, with the department. This sworn statement must include a declaration that the income, receipts, and donations of the entity seeking the exemption have been used to pay the actual expenses incurred to maintain and operate the exempt facility or for its capital expenditures and to no other purpose. It must also include a statement listing the receipts and disbursements of the organization, association, or corporation. This statement must be made on a form prescribed and furnished by the department.

(a) The provisions of this subsection do not apply to an entity either applying for or receiving an exemption under RCW 84.36.020, 84.36.030, or 84.36.049.

(b) This signed statement must be submitted on or before March 31st each year by any entity currently receiving a tax exemption. If this statement is not received on or before March 31st, the department will remove the tax exemption from the property. However, the department will allow a reasonable extension of time for filing if the exempt entity has submitted a written request for an extension on or before the required filing date and for good cause.

(10) **Caretaker's residence.** If a nonprofit entity, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW exempt from property tax under chapter 84.36 RCW employs a caretaker to provide either security or maintenance services and the caretaker's residence is located on exempt property, the residence may qualify for exemption if the following conditions are met:

(a) The caretaker's duties include regular surveillance, patrolling the exempt property, and routine maintenance services;

(b) The nonprofit entity, hospital established under chapter 36.62 RCW, or the public hospital district established under chapter 70.44 RCW demonstrates the need for a caretaker at the facility;

(c) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property; and

(d) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utility expenses created by the caretaker's presence is not considered rent.

(11) **Nonexempt uses of property.** The use of property exempt under this chapter, other than as specifically authorized by this chapter, nullifies the exemption otherwise available for the property for the assessment year. However, the exemption is not nullified by the use of the property by any individual, group, or entity, where such use is not otherwise authorized by this chapter, for not more than 50 days in each calendar year, and the property is not used for pecuniary gain or to promote business activities for more than 15 of the 50 days in each calendar year. The 50 and 15-day limitations do not include days for setup and takedown activities that take place immediately preceding or following a meeting or other event. If these requirements are not met, the exemption is removed for the affected portion of the property for that assessment year.

(12) **Farmers markets.** The 50 and 15-day limitations in subsection (11) of this rule do not apply to exempt property under RCW 84.36.037 if the property is used for activities related to a qualifying farmers market, for up to 53 days each calendar year, and all income received from the rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation of the exempt property, or exempt purposes. For purposes of this rule, "farmers market" has the same meaning as "qualifying farmers market" as defined in RCW 66.24.170.

(13) **Segregation of nonqualifying property.** Any portion of exempt property not meeting the qualifications of this rule will lose its exempt status. Nonqualifying property must be segregated from property used for exempt purposes. For example, if a portion of a building owned by a nonprofit hospital is rented to a sandwich shop, this portion of the hospital must be segregated from the remainder of the building that is being used for exempt hospital purposes. The portion of the building rented to the sandwich shop is subject to property tax.

[Statutory Authority: RCW 84.08.010, 84.08.070, and 84.36.865. WSR 24-02-018, § 458-16-165, filed 12/21/23, effective 1/21/24. Statutory Authority: RCW 84.36.865. WSR 22-24-097, § 458-16-165, filed 12/6/22, effective 1/6/23. Statutory Authority: RCW 84.08.010, 84.08.070, 84.36.389, 84.52.0502, and 84.55.060. WSR 18-04-006, § 458-16-165, filed 1/25/18, effective 2/25/18. Statutory Authority: RCW 84.08.010, 84.08.070, 84.08.080, 84.36.389, and 84.36.865. WSR 15-07-021, § 458-16-165, filed 3/10/15, effective 4/10/15. Statutory Authority: RCW 84.36.865, 84.36.040, 84.36.042, 84.36.045, 84.36.046, 84.36.050, 84.36.385, 84.36.560, 84.36.570, 84.36.800, 84.36.805, 84.36.810, 84.36.815, 84.36.820, 84.36.825, 84.36.830, 84.36.833, 84.36.840, 84.36.850, and 84.40.350 through 84.40.390. WSR 02-02-009, § 458-16-165, filed 12/20/01, effective 1/20/02. Statutory Authority: RCW 84.36.865, 84.36.037, 84.36.805, 84.36.815, 84.36.825 and 84.36.840. WSR 98-18-006, § 458-16-165, filed 8/20/98, effective

9/20/98. Statutory Authority: RCW 84.08.010, 84.08.070 and chapter 84.36 RCW. WSR 94-07-008, § 458-16-165, filed 3/3/94, effective 4/3/94.]