



# EXPEDITED RULE MAKING

**CR-105 (June 2004)**  
(Implements RCW 34.05.353)  
**EXPEDITED RULE MAKING ONLY**

**Agency:** Department of Revenue

**Title of rule and other identifying information:** WAC 458-20-169 Nonprofit organizations. This rule reviews how the B&O tax, retail sales and use taxes apply to activities often performed by nonprofit organizations.

### NOTICE

**THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO**

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**AND RECEIVED BY:** June 2, 2014

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

The Department is proposing to make the following changes to WAC 458-20-169:

- Add information pertaining to 2013 legislation that provides a use tax exemption for items valued at less than \$10,000 and purchased or received as a prize from a nonprofit organization or a library.
- Replace resale certificate language with reseller permit language.
- Change references pertaining to “nonprofit boarding homes” to “nonprofit assisted living facilities.”
- Include reference to RCW 82.08.02573 that provides a retail sales tax exemption for the sales exempt under RCW 82.04.3651.
- Add language that health or social welfare organizations qualify for a deduction for compensation received for providing mental health services, and child welfare services, when under a government-funded program.
- Add that temporary medical housing qualifies under health or welfare services when criteria are met.

Copies of draft rules are available for viewing and printing on our website at [Rules Agenda](#)

**Reasons supporting proposal:** Legislation.

**Statutory authority for adoption:**

RCW 82.32.300 and 82.01.060(2)

**Statute being implemented:**

**Is rule necessary because of a:**

- |                         |                              |                                        |
|-------------------------|------------------------------|----------------------------------------|
| Federal Law?            | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

**Date** March 28, 2014

**Name**  
Dylan Waits

**Signature**

**Title**  
Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** March 28, 2014

**TIME:** 3:55 PM

**WSR 14-08-056**

**Name of proponent:** Department of Revenue

- Private
- Public
- Governmental

**Name of agency personnel responsible for:**

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**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

None.

AMENDATORY SECTION (Amending WSR 10-06-070, filed 2/25/10, effective 3/28/10)

**WAC 458-20-169 Nonprofit organizations.** (1) **Introduction.** Unlike most states' and the federal tax systems, Washington's tax system, specifically its business tax, applies to the activities of nonprofit organizations. Washington's business tax is imposed upon all entities that generate gross receipts or proceeds, unless there is a specific statutory exemption or deduction. This ~~((section))~~ rule reviews how the business and occupation (B&O), retail sales, and use taxes apply to activities often performed by nonprofit organizations. Although some nonprofit organizations may be subject to other taxes (e.g., public utility or insurance premium taxes on income from utility or insurance activities), these taxes are not discussed in this ~~((section))~~ rule. The ~~((section))~~ rule describes the most common exemptions and deductions for the B&O, retail sales, and use taxes specifically provided to nonprofit organizations by state law. Other exemptions and/or deductions not specific to nonprofit organizations may also apply.

Other ~~((sections))~~ rules that may be relevant to specific activities of nonprofit organizations include the following:

- (a) ~~((Artistic or cultural organizations, WAC 458-20-249;~~
- ~~(b) Educational institutions, school districts, student organizations, and private schools, WAC 458-20-167;~~
- ~~(c) Hospitals, nursing homes, boarding homes, adult family homes and similar health care facilities, WAC 458-20-168;~~
- ~~(d) Membership organizations, nonprofit groups and clubs providing amusement, recreation, or physical fitness services, WAC 458-20-183; and~~
- ~~(e) Organizations holding trade shows, conventions, or seminars, WAC 458-20-256.)~~ WAC 458-20-167, Educational institutions, school districts, student organizations, and private schools;
- (b) WAC 458-20-168, Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities;
- (c) WAC 458-20-183, Amusement, recreation, and physical fitness services;
- (d) WAC 458-20-249, Artistic or cultural organizations; and
- (e) WAC 458-20-256, Trade shows, conventions and seminars.

(2) **Registration requirements.** Nonprofit organizations with \$12,000 or more per year in gross receipts from sales, and/or gross income from services subject to the B&O tax, or ~~((who))~~ that are required to collect or pay to the department of revenue (department) retail sales tax or any other tax or fee which the department administers (regardless of the level of annual gross receipts) must register with the department. Nonprofit organizations ~~((that have))~~ with less than twelve thousand dollars per year in gross receipts ~~((of less than \$12,000 per year))~~ and ~~((who))~~ that are not required to collect retail sales tax or any other tax or fee administered by the department are not required to register with the department.

~~((For more details on registration requirements see))~~ Refer to WAC 458-20-101 (Tax registration and tax reporting) for more information on registration requirements.

(3) **Filing excise tax returns.** Nonprofit organizations making retail sales that require the collection of the retail sales tax must file a tax return, regardless of the annual level of gross receipts or gross income and whether or not any B&O tax is due. (See also WAC

458-20-104 ((+)), Small business tax relief based on income of business((+)).) The excise tax return with payment is generally filed on a monthly basis. However, under certain conditions the department may authorize taxpayers to file and remit payment on either a quarterly or annual basis. Refer to WAC 458-20-22801 (Tax reporting frequency) for more information regarding how reporting frequencies are assigned.

Nonprofit organizations that do not have retail sales tax to remit, but are required to register, do not have to file a tax return if they meet certain statutory requirements (e.g., annual gross income of less than \$28,000) and are placed on an "active nonreporting" status by the department. Refer to WAC 458-20-101 for more information regarding the "active nonreporting" status.

(4) **General tax reporting responsibilities.** While Washington state law provides some tax exemptions and deductions specifically targeted toward nonprofit organizations, these organizations otherwise have the same tax-reporting responsibilities as those of for-profit organizations.

(a) **Business and occupation tax.** Chapter 82.04 RCW imposes a B&O tax (~~(upon all)~~) on every person((s)) with substantial nexus in Washington (see RCW 82.04.067) engaged in business activities within this state, unless the income is specifically exempt or deductible under state law. The B&O tax applies to the value of products, gross proceeds of sales, or gross income of the business, as the case may be. RCW 82.04.220.

(i) **Common B&O tax classifications.** Chapter 82.04 RCW provides a number of classifications that apply to specific activities. The most common B&O tax classifications (~~(that apply)~~) applying to income received by nonprofit organizations are the ((service and other activities,)) retailing, ((and)) wholesaling, and service, and other activities classifications. RCW 82.04.250, 82.04.270, and 82.04.290. If an organization engages in more than one kind of business activity, the gross income from each activity must be reported under the appropriate tax classification. RCW 82.04.440(1).

(ii) **Measure of tax.** The most common measures of the B&O tax are "gross proceeds of sales" and "gross income of the business." RCW 82.04.070 and 82.04.080, respectively. These measures include the value proceeding or accruing from the sale of tangible personal property or services rendered without any deduction for the cost of property sold, cost of materials used, labor costs, discounts paid, delivery costs, taxes, losses, or any other expenses.

(b) **Retail sales tax.** A nonprofit organization must collect and remit retail sales tax on all retail sales, unless the sale is specifically exempt by statute. Examples of retail sales tax exemptions that (~~(commonly)~~) may apply to nonprofit organizations are those for sales of certain food products (see WAC 458-20-244 ((for more information regarding sales of)), Food and food ingredients), construction materials purchased by a health or social welfare organization for new construction of alternative housing for youth in crisis, to be licensed as a family foster home (see RCW 82.08.02915), and fund-raising activities (see subsection (5)((+e)) (g) of this ((section)) rule). New construction includes renovating an existing structure to provide new housing for youth in crisis.

A nonprofit organization must pay retail sales tax when it purchases goods or retail services for its own use as a consumer, unless the purchase is specifically exempt by statute. Items purchased for resale without intervening use are purchases at wholesale and are not subject to the retail sales tax(~~(. The purchaser should provide the~~

~~seller with a resale certificate for purchases made before January 1, 2010, or a reseller permit for purchased made on or after January 1, 2010, to document the wholesale nature of any sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits))~~ if the seller takes from the buyer a copy of the buyer's reseller permit. The reseller permit documents the wholesale nature of any sale. Reseller permits replaced resale certificates effective January 1, 2010. See WAC 458-20-102 (Reseller permits) for more information on reseller permits and their proper use. Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(c) **Use tax.** The use tax is imposed on every person, including nonprofit organizations, using tangible personal property within this state as a consumer, unless such use is specifically exempt by statute. The use tax applies only if retail sales tax has not previously been paid on the item. The rate of tax is the same as the sales tax rate that applies at the location where the property is first used.

A common application of the use tax occurs when items are purchased from an out-of-state seller who has no presence in Washington. Because the out-of-state seller is under no obligation to collect Washington's retail sales or use tax, the buyer is statutorily required to remit use tax directly to the department. ((+))See ((also)) WAC 458-20-178 for more information regarding the use tax.((+))

Except for fund-raising, ~~((exemptions from))~~ use tax exemptions generally correspond to ~~((the))~~ retail sales tax exemptions. For example, ~~((a))~~ the use tax exemption for construction materials acquired by a health or social welfare organization for new construction of alternative housing for youth in crisis, to be licensed as a family foster home~~((7))~~ (RCW 82.12.02915~~((7))~~) corresponds with the retail sales tax exemption described in subsection (4)(b) ~~((above))~~ of this rule for purchasing these construction materials.

(i) **Use tax exemption for donated items.** RCW 82.12.02595 provides a use tax exemption for personal property donated to a nonprofit charitable organization. This exemption is available for the nonprofit charitable organization and the donor, if the donor did not previously use the ~~((item))~~ personal property as a consumer. It also applies to the use of property by a donor who is incorporating the property into a nonprofit organization's real or personal property for no charge.

The exemption also applies to another person using property originally donated to a charitable nonprofit organization that is subsequently donated or bailed to that person by the charitable nonprofit organization, provided that person uses the property in furtherance of the charitable purpose for which the property was originally donated to the charitable nonprofit organization. For example, a hardware store donates an industrial pressure washer to a nonprofit community center for neighborhood cleanup, the community center bails this washer to people enrolled in its neighborhood improvement group for neighborhood clean-up projects. No use tax is due from any of the participants in these transactions. An example of a gift that would not qualify is when a car is donated to a church for its staff and the church gives that car to its pastor. The pastor must pay use tax on the car because it serves multiple purposes. It serves the church's charitable purpose, but it also acts as compensation to the pastor and is available for the pastor's personal use. The subsequent donation of property from the charity to another person must be solely for a charitable purpose. If the property is donated or bailed to the third party for a

charitable purpose in line with the nonprofit organization's charitable activities, generally, no additional proof is required that this was the charitable purpose for which the property was originally donated.

(ii) **Use tax implications with respect to fund-raising activities.** Subsection (5)(~~(e)~~ below) (g) of this rule explains that a retail sales tax exemption is available for certain fund-raising sales. However, there is usually no comparable use tax exemption provided to the buyer/user of property purchased at these fund-raising sales. While the nonprofit organization is (~~under no obligation~~) not obligated to collect use tax from the buyer, the organization is encouraged to inform the buyer of the buyer's possible use tax obligation.

(iii) Effective October 1, 2013, RCW 82.12.225 provides a use tax exemption for the use of any article of personal property, valued at less than ten thousand dollars, purchased or received as a prize in a contest of chance, as defined in RCW 82.04.285, from a nonprofit organization or a library. This exemption only applies if the gross income from the sale by the nonprofit organization or library is exempt under RCW 82.04.3651. This exemption is scheduled to expire July 1, 2017.

(5) **Exemptions.** The following sources of income are specifically exempt from tax. As such they should not be included or reported as gross income if the organization is required to file an excise tax return.

(a) **Adult family homes.** (~~The~~) RCW 82.04.327 exempts from B&O tax (~~does not apply to income earned by a~~) amounts received by licensed adult family homes or (~~an~~) adult family homes that are exempt from licensing under rules of the department of social and health services. (~~RCW 82.04.327.~~)

(b) **Nonprofit assisted living facilities.** RCW 82.04.4262 exempts from B&O tax amounts received by a nonprofit assisted living facility licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the assisted living facility. Nonprofit assisted living facilities were formerly known as "nonprofit boarding homes" in the statute.

(c) **Camp or conference centers.** RCW 82.04.363 and 82.08.830 respectively (~~provide~~) exempt from B&O tax and retail sales (~~exemptions to~~) tax amounts received by a nonprofit organization from the sale or furnishing of certain items or services at a camp or conference center conducted on property exempt from the property tax under RCW 84.36.030 (1), (2), or (3). See WAC 458-16-210 (Nonprofit organizations or associations organized and conducted for nonsectarian purposes), WAC 458-16-220 (Church camps), and WAC 458-16-230 (Character building organizations) for more information about property tax exemptions that may apply.

(~~Income derived~~) Amounts received from the sale of the following items and services (~~is~~) are exempt:

(i) Lodging, conference and meeting rooms, camping facilities, parking, and similar licenses to use real property;

(ii) Food and meals;

(iii) Books, tapes, and other products that are available exclusively to the participants at the camp, conference, or meeting and are not available to the public at large. Effective July 26, 2009, electronically transferred items are included in the exemption.

(~~The property tax exemptions are further discussed at WAC 458-16-210 (Church camps), WAC 458-16-220 (Nonprofit organizations or~~

associations organized and conducted for nonsectarian purposes), and WAC 458-16-230 (Character building organizations).

~~(e))~~ **(d) Child care resource and referral services.** ~~((The))~~ RCW 82.04.3395 ~~exempts from~~ B&O tax ~~((does not apply to nonprofit organizations with respect to))~~ amounts received ~~((for))~~ by nonprofit organizations for providing child care resource and referral services. Child care resource and referral services do not include child care services provided directly to children. ~~((RCW 82.04.3395.~~

~~(d))~~ **(e) Credit and debt services.** RCW 82.04.368 ~~((provides a))~~ exempts from B&O tax ~~((exemption for))~~ amounts received by nonprofit organizations for providing specialized credit and debt services. These services include:

(i) Presenting individual and community credit education programs including credit and debt counseling;

(ii) Obtaining creditor cooperation allowing a debtor to repay debt in an orderly manner;

(iii) Establishing and administering negotiated repayment programs for debtors; and

(iv) Providing advice or assistance to a debtor with regard to (i), (ii), or (iii) of this subsection.

~~((e))~~ **(f) Day care provided by churches.** ~~((The))~~ RCW 82.04.339 ~~exempts from~~ B&O ~~((tax does not apply to income derived))~~ amounts received by a church for the care of children of any age for periods of less than twenty-four hours, provided the church is exempt from property tax under RCW 84.36.020. ~~((RCW 82.04.339.~~

~~(f))~~ **(g) Fund-raising.** RCW 82.04.3651 ~~((provides a))~~ and 82.08.02573 ~~respectfully exempt from~~ B&O tax ~~((exemption for))~~ and retail sales tax amounts received from certain fund-raising activities. ~~((RCW 82.08.02573 provides a comparable retail sales tax exemption.~~

~~It is important to note that))~~

These exemptions apply only to the fund-raising income received by the nonprofit organization. For example, ~~((the))~~ commission income received by a nonprofit organization selling books owned by a for-profit entity on a consignment basis is exempt of tax only if the statutory requirements are satisfied. The nonprofit organization is generally responsible for collecting and remitting retail sales tax upon the gross proceeds of sales when selling items for another person ~~((+))~~ See WAC 458-20-159((+)) (Consignees, bailees, factors, agents and auctioneers) for more information regarding such sales.

(i) **What nonprofit organizations qualify?** Nonprofit organizations that qualify for this exemption are those that are:

(A) A tax-exempt nonprofit organization described by section 501(c)(3) (educational and charitable), 501(c)(4) (social welfare), or 501(c)(10) (fraternal societies operating as lodges) of the Internal Revenue Code; or

(B) A nonprofit organization that would qualify for tax exemption under ~~((these codes))~~ section 501(c)(3), (4), or (10) except that it is not organized as a nonprofit corporation; or

(C) A nonprofit organization that does not pay its members, stockholders, officers, directors, or trustees any amounts from its gross income, except as payment for services rendered, does not pay more than reasonable compensation to any person for services rendered, and does not engage in a substantial amount of political activity. Political activity includes, but is not limited to, influencing legislation and participating in any campaign on behalf of any candidate for political office.

~~((A nonprofit organization may meet (A), (B), or (C) above.))~~

(ii) **Qualifying fund-raising activities.** For the purpose of this exemption, "fund-raising activity" means soliciting or accepting contributions of money or other property, or activities involving the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited, for the purpose of furthering the goals of the nonprofit organization.

(A) Money raised by a nonprofit charitable group from its annual telephone fund drive to fund its homeless shelters where nothing is promised in return for a donor's pledge is exempt as fund-raising contributions of money to further the goals of the nonprofit organization.

(B) A nonprofit group organized as a community playhouse has an annual telephone fund drive. The group gives the caller a mug, jacket, dinner, or vacation trip depending on the amount of pledge made over the phone. The community playhouse does not sell or exchange the mugs, jackets, dinners, or trips for cash or property, except during this pledge drive. The money is used to produce the next season's plays. The money earned from the pledges is exempt from both B&O tax and retail sales tax (~~and business and occupation tax~~) to the extent these amounts represent an exchange (~~for~~) of goods and services for money to further the goals of the nonprofit group. The money earned from the pledges above the value of the goods and services exchanged is exempt as a fund-raising contribution of money to further the goals of the nonprofit organization.

(C) A nonprofit group sells ice cream bars at booths leased during the two-week runs of three county fairs, for a total of six weeks during the year, to fund youth camps maintained by the nonprofit group. The money earned from the booths is exempt from both B&O tax and retail sales tax (~~and business and occupation tax~~) as a fund-raising exchange of goods for money to further the goals of the nonprofit group.

(iii) **Contributions of money or other property.** The term contributions includes grants, donations, endowments, scholarships, gifts, awards, and any other transfer of money or other property by a donor, provided the donor receives no significant goods, services, or benefits in return for making the gift. For example, an amount received by a nonprofit educational broadcaster from a group that conditions receipt upon the nonprofit broadcaster airing its seminars is not a contribution regardless of how the amount paid (~~was~~) is titled by the two organizations.

It is not unusual for the person making a gift to require some accountability for how the gift is used as a condition for receiving the gift or future gifts. Such gifts remain exempt, provided the "accountability" required does not result in a direct benefit to the donor (examples of direct benefits to a donor are: Money given for a report on the soil contamination levels of land owned by the donor, medical services provided to the donor or the donor's family, or market research benefitting the donor directly). This "accountability" can take the form of conditions or restrictions on the use of the gift for specific charitable purposes or can take the form of written reports accounting for the use of the gift. Public acknowledgment of a donor for the gift (~~does not result in~~) is not a significant service or benefit (~~simply because the gift is publicly acknowledged~~).

(iv) **Nonqualifying activities.** Fund-raising activity does not include the operation of a regular place of business in which services are provided or sales are made during regular hours such as a bookstore, thrift shop, restaurant, legal or health clinic, or similar

business. It also does not include the operation of a regular place of business from which services are provided or performed during regular hours such as the provision of retail, personal, or professional services. A regular place of business and the regular hours of that business depend on the type of business being conducted.

(A) In the example demonstrating that an amount received by a nonprofit broadcaster was not a contribution because services were given in return for the funds, this activity must also be examined to see whether the exchange was for services as part of a fund-raising activity. The broadcaster ~~((was))~~ is in the business of broadcasting programs. It ~~((had))~~ has a regular site for broadcasting programs and ~~((ran))~~ runs broadcasts for twenty-four hours every day. Broadcasting ~~((was))~~ is a part of its business activity performed from a regular place of business during regular hours. The money received from the group with the requirement that its seminars be broadcast would not qualify as money received from a fund-raising activity even though the parties viewed the money as a "donation."

(B) A nonprofit organization that makes catalog sales throughout the year with a twenty-four hour telephone line for taking orders has a regular place of business at the location where the sales orders are processed and regular hours of twenty-four hours a day. Catalog sales are not exempt as fund-raising amounts even though the funds are raised for a nonprofit purpose.

(C) A nonprofit group organized as a community playhouse has three plays during the year at a leased theatre. The plays run for a total of six weeks and the group provides concessions at each of the performances. The playhouse has a regular place of business with regular hours for that type of business. The concessions are done at that regular place of business during regular hours. The concessions are not exempt as fund-raising activities even though amounts raised from the concessions may be used to further the nonprofit purpose of that group.

(D) A nonprofit student group, that raises money for scholarships and other educational needs, sets up an espresso stand that is open for two hours every morning during the school year. The espresso stand is a regular place of business with regular hours for that type of business. The money earned from the espresso stand is not exempt, even though the amounts are raised to further the student group's nonprofit purpose.

(v) **Fund-raising sales by libraries.** RCW 82.04.3651 specifically provides that the sale of used books, used videos, used sound recording, or similar used information products in a library is not the operation of a regular place of business, if the proceeds are used to support the library. The library must be a free public library supported in whole or in part with money derived from taxes. RCW 27.12.010.

~~((g))~~ Effective July 1, 2010, RCW 82.08.02573 provides a comparable retail sales tax exemption for the same sales, as mentioned above, made by a library. See RCW 82.04.3651.

(h) **Group training homes.** RCW 82.04.385 ~~((provides—))~~ exempts from B&O tax ~~((exemption—))~~ amounts received from the department of social and health services for operating a nonprofit group training home. The amounts excluded from gross income must be used for the cost of care, maintenance, support, and training of developmentally disabled individuals. A nonprofit group training home is an approved non-sectarian facility equipped, supervised, managed, and operated on a full-time nonprofit basis for the full-time care, treatment, training,

and maintenance of individuals with developmental disabilities. RCW 71A.22.020.

~~((h))~~ (i) Sheltered workshops. RCW 82.04.385 ~~((provides a))~~ also exempts from B&O tax ~~((exemption for))~~ amounts received by a non-profit organization for operating a sheltered workshop.

(i) **What is a sheltered workshop?** A sheltered workshop is that part of the nonprofit organization engaged in business activities that are performed primarily to provide evaluation and work adjusted services for a handicapped person or to provide gainful employment or rehabilitation services to a handicapped person. The sheltered workshop can be maintained on or off the premises of the nonprofit organization.

(ii) **What is meant by "gainful employment or rehabilitation services to a handicapped person"?** Gainful employment or rehabilitation services must be an interim step in the rehabilitation process which is provided because the person cannot be readily absorbed into the competitive labor market or because employment opportunities for the person do not exist during that time in the competitive labor market.

"Handicapped," for the purposes of this exemption, means a physical or mental disability that restricts normal achievement, including medically recognized addictions and learning disabilities. However, this term does not include social or economic disadvantages that restrict normal achievement (e.g., prior criminal history or low-income status).

~~((i))~~ (j) Student loan services. RCW 82.04.367 ~~((provides a))~~ exempts from B&O tax ~~((exemption for the gross income of))~~ amounts received by nonprofit organizations that are exempt from federal income tax under section 501 (c)(3) of the Internal Revenue Code that:

(i) Are guarantee agencies under the federal guaranteed student loan program or that issue debt to provide or acquire student loans; or

(ii) Provide guarantees for student loans made through programs other than the federal guaranteed student loan program.

**(6) B&O tax deduction of ~~((government))~~ payments made to health or social welfare organizations.**

(a) Compensation from public entities. RCW 82.04.4297 provides a B&O tax deduction to health or social welfare organizations for amounts received from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivision of the state of Washington as compensation for or to support health or social welfare services, rendered by a health or social welfare organization, as defined in RCW 82.04.431, or by a municipal corporation or political subdivision. ~~((A deduction is not allowed, however, for amounts that are received under an employee benefit plan.))~~ These deductible amounts should be included in the gross income reported on the excise tax return, and then deducted on the return when determining the amount of the organization's taxable income. A deduction is not allowed, however, for amounts that are received under an employee benefit plan.

(b) Mental health services. Effective August 1, 2011, health or social welfare organizations also qualify for a deduction for amounts received as compensation for providing mental health services under a government-funded program. Regional support networks may also deduct from the measure of tax amounts received from the state of Washington for distribution to health or social welfare organizations eligible to deduct the distribution under RCW 82.04.4277. Persons claiming deductions under RCW 82.04.4277 must file an annual report with the depart-

ment. See RCW 82.32.534. These deductions are scheduled to expire August 1, 2016.

(c) Child welfare services. Also effective August 1, 2011, health or social welfare organizations qualify for a deduction for amounts received as compensation for providing child welfare services under a government-funded program. Persons may also deduct from the measure of tax amounts received from the state of Washington for distribution to health or social welfare organizations eligible to deduct the distribution under RCW 82.04.4275(1).

~~((a))~~ (d) What is a health or social welfare organization? A health or social welfare organization is ~~((a nonprofit))~~ an organization, including any community action council, providing health or social welfare services ~~((that is also))~~ as defined in subsection (6) (e) of this rule. To be exempt under RCW 82.04.4297, a corporation must satisfy all of the following conditions:

(i) Be a corporation sole under chapter 24.12 RCW or a domestic or foreign not-for-profit corporation under chapter 24.03 RCW. It does not include a corporation providing professional services authorized under chapter 18.100 RCW;

(ii) Be governed by a board of not less than eight individuals who are not paid corporate employees when the organization is a not-for-profit corporation;

(iii) Not ~~((paying))~~ pay any part of its corporate income directly or indirectly to its members, stockholders, officers, directors, or trustees except as executive or officer compensation or as services rendered by the corporation in accordance with its purposes and bylaws to a member, stockholder, officer, or director or as an individual;

(iv) Only ~~((paying))~~ pay compensation to corporate officers and executives for actual services rendered. This compensation must be at a level comparable to like public service positions within Washington;

(v) ~~((Irrevocably dedicating))~~ Have irrevocably dedicated its corporate assets to health or social welfare activities. Upon corporate liquidation, dissolution, or abandonment, any distribution or transfer of corporate assets may not inure directly or indirectly to the benefit of any member or individual, except for another health or social welfare organization;

(vi) Be duly licensed or certified as required by law or regulation;

(vii) ~~((Using))~~ Use government payments to provide health or social welfare services;

(viii) ~~((Making))~~ Make its services available regardless of race, color, national origin, or ancestry; and

(ix) Provide ~~((s))~~ access to the corporation's books and records to the department's authorized agents upon request.

~~((b))~~ (e) Qualifying health or welfare services. The term "health or social welfare services ~~((are))~~ includes and is limited ~~((exclusively))~~ to ~~((the following services))~~:

(i) Mental health, drug, or alcoholism counseling or treatment;

(ii) Family counseling;

(iii) Health care services;

(iv) Therapeutic, diagnostic, rehabilitative, or restorative services for the care of the sick, aged, physically-disabled, developmentally-disabled, or emotionally-disabled individuals;

(v) Activities, including recreational activities, intended to prevent or ameliorate juvenile delinquency or child abuse;

(vi) Care of orphans or foster children;

(vii) Day care of children;

(viii) Employment development, training, and placement;

(ix) Legal services to the indigent;

(x) Weatherization assistance or minor home repairs for low-income homeowners or renters;

(xi) Assistance to low-income homeowners and renters to offset the cost of home heating energy, through direct benefits to eligible households or to fuel vendors on behalf of eligible households; and

(xii) Community services to low-income individuals, families and groups that are designed to have a measurable and potentially major impact on ~~((the))~~ causes of poverty in communities of the state of Washington; and

(xiii) Effective July 1, 2008, temporary medical housing, as defined in RCW 82.08.997, if the housing is provided only:

(A) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(B) By a person that does not furnish lodging or related services to the general public.

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