PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017)
(Implements RCW 34.05.310)
Do **NOT** use for expedited rule making

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DATE: January 08, 2019
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WSR 19-03-043

Agency: Department of Revenue

Subject of possible rule making: WAC 458-16-266 Homeownership development.

Statutes authorizing the agency to adopt rules on this subject: RCW 84.08.010 and RCW 84.36.865.

Reasons why rules on this subject may be needed and what they might accomplish: The Department is amending WAC 458-16-266 to incorporate legislation passed in 2018 (Engrossed Substitute Senate Bill 5143). This legislation allows a nonprofit housing developer to be eligible for the property tax exemption under RCW 84.36.049, if it leases land it owns to a low-income household for life or 99 years, and the nonprofit housing developer has sold the residence located on that land to the low-income household.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None.

Process for developing new rule (check all that apply):

- ☐ Negotiated rule making
- ☐ Pilot rule making
- ☐ Agency study
- ☒ Other (describe) Parties interested in this rule making may contact the individual listed below. The public may also participate by providing written comments throughout this rule making or by giving oral testimony at the public meeting or public hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

	(If necessary)
Name: Leslie Mullin	Name:
Address: P.O. Box 47453, Olympia, WA 98504-7453	Address:
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Other:	Other:

Additional comments: Written comments may be submitted by mail or email and should be directed to Leslie Mullin using one of the contact methods above.
Written and oral comments will be accepted at the Public Meeting.
Date: February 20, 2019 Time: 10:00 a.m.
Public Meeting Location:
Conference Room 114A
6400 Linderson Way SW
Tumwater, Washington 98501

Date: January 8, 2019	**Signature:**
Name: Erin T. Lopez	
Title: Rules Coordinator	

AMENDATORY SECTION (Amending WSR 17-24-032, filed 11/29/17, effective 12/30/17)

WAC 458-16-266 Homeownership development. (1) **Introduction.** ((~~RCW 84.36.049~~)) This rule explains ((~~that~~)) the property tax exemption available under RCW 84.36.049 for real property owned by a nonprofit entity ((~~for the purpose of developing or redeveloping on the real property one or more residences~~)) on which one or more residences are developed or redeveloped to be sold to low-income households ((~~is exempt from state and local property taxes, subject to certain limitations~~)), including land to be leased under certain conditions.

(2) **Definitions.**

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

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

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

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

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

(f) "Residence" means:

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

(ii) The land on which the dwelling unit in (f)(i) of this subsection stands, whether it is to be sold, or to be leased for life or ninety-nine years, to the low-income household that owns the dwelling unit. A lease for life, in this context, refers to a lease for the life of the purchaser/resident owner of the single-family dwelling unit.

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

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

(a) ((~~Initial application. Initial~~)) Application for initial exemption. Applications for the initial exemption will not be accepted after December 31, ((~~2026~~)) 2027. To apply for this exemption, the nonprofit entity must submit a completed application to the department as follows:

(i) On or before July 1, 2016, for the 2017 property tax year, for a single-family dwelling unit on land that is purchased;

(ii) On or before August 6, 2018, for the 2019 property tax year, for a single-family dwelling unit on land that is purchased or is leased for life or ninety-nine years;

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

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

(b) Retroactive applications. Retroactive applications for this exemption for previous years are accepted, up to a maximum of three years from the date taxes were due on the property. The last day to file a retroactive application for this exemption is December 31, 2027. The applicant must provide the department with acceptable proof that the property qualified for exemption during the pertinent assessment years and pay the late filing penalties. Retroactive applications will not be approved for taxes due prior to:

(i) The 2017 property tax year ((~~and will not be accepted after December 31, 2026.~~

~~(c)~~)) for a single-family dwelling unit on land that is purchased; or

(ii) The 2019 property tax year for a single-family dwelling unit on land that is leased for life or ninety-nine years.

(c) Late filing. Late filing penalties apply to retroactive applications, as described in (b) of this subsection, and to initial exemption applications filed after the deadlines described in (a) of this subsection. Late filing penalties of ten dollars per month or portion of a month will accrue beginning the date following the application deadline and continues through the application's actual postmark or email date. RCW 84.36.825.

(d) Renewal application. Once a nonprofit entity is approved by the department for this exemption on a specific property, no annual renewal application for that property is required.

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

~~(e)~~)) (4) **Reporting requirements.** To measure the effectiveness of this exemption:

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

((~~(ii)~~)) (b) The department must provide, upon request, approved initial applications for this exemption and owner occupancy notices reported by the nonprofit entity receiving this exemption, to the joint legislative audit and review committee. RCW 84.36.815 and 84.36.049.

(5) **Extensions.** ((~~(a)~~)) If the nonprofit entity believes that title to the ((~~real property~~)) single-family dwelling unit, as described in subsection (2)(f)(i) of this rule, will not be transferred by the

end of the sixth consecutive property tax year, it may file a notice of extension with the department. The extension:

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

((~~(ii)~~)) (b) Must be filed with the department on or before March 31st of the sixth consecutive property tax year((~~. If the sixth consecutive property tax year occurs on or after January 1, 2027, the nonprofit entity must file an extension application no later than December 31, 2026~~)) to avoid a late filing penalty as described in subsection (3)(c) of this rule. However, extension applications will not be accepted after December 31st of the seventh consecutive property tax year; and

((~~(iii)~~)) (c) Requires a filing fee equal to the greater of two hundred dollars or one-tenth of one percent of the real market value of the property as of the most recent assessment date. RCW 84.36.049 (3)(b).

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

(a) The date on which the nonprofit entity transfers title of the single-family dwelling unit as described in subsection (2)(f)(i) of this rule;

(b) The date on which the nonprofit entity executes a lease of land as described in subsection (2)(f)(ii) of this rule;

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

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

(e) The date the property is no longer held for the purpose for which the exemption was granted as described in subsection (8) of this rule.

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

(a) Example 1. ABC Homes, a nonprofit entity, purchases vacant land on ((~~December 1, 2017~~)) September 1, 2018, and begins building a single-family ((~~residence~~)) dwelling unit that will ((~~subsequently~~)) be sold to a low-income household. ABC Homes does not intend to sell the land on which the single-family dwelling unit stands, but instead, will lease the land for ninety-nine years to the low-income household. ABC Homes must submit an initial application to the department within sixty days of acquiring the property to qualify for the exemption beginning in the ((~~2018~~)) 2019 property tax year. If approved, the exemption will continue until the ((~~residence is sold or~~)) earlier of:

(i) The date the title to the single-family dwelling unit is transferred to ((~~a~~)) the low-income household ((~~or through the 2024 property tax year, whichever is earlier~~));

(ii) The date ABC Homes executes a lease of the land for ninety-nine years to the low-income household; or

(iii) December 31, 2025 (the end of the seventh consecutive property tax year without an extension).

If ABC Homes ((~~believes the residence~~)) determines that title to the single-family dwelling unit will not be ((~~sold or~~)) transferred to a low-income household by December 31, ((~~2023~~)) 2024 (the end of the sixth consecutive property tax year), it may apply for a three-year extension ((~~no later than~~)) by March 31, ((~~2023~~)) 2024. If the extension is approved, the exemption will be effective for taxes payable through the ((~~2027~~)) 2028 property tax year.

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

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

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

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

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

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

~~(7)~~)) (8) **Disqualification and additional tax.**

(a) ((~~If~~)) Real property is disqualified from the exemption if:

(i) The nonprofit entity has not transferred title of the ((~~real property~~)) single-family dwelling unit to a low-income household within the applicable periods described in subsection (6)((~~(b) or~~)) (c) or (d) of this rule((~~, or if~~)); or

(ii) The real property is no longer held for the purpose for which the exemption was granted ((~~as described in subsection (6)(d) of this rule, then the real property is disqualified from the exemption~~)). An example of a nonqualifying use is the lease or rental of the single-family dwelling unit.

(b) Additional tax and interest. When real property is disqualified, additional tax and interest are due. ((~~(b) Additional tax and interest.~~)) The additional tax and interest are a lien on the real property. If the nonprofit entity sells or transfers the property, any unpaid additional tax and interest must be paid by the nonprofit entity selling the property prior to conveyance of the property. The nonprofit entity or the new owner may appeal the assessed value on which the additional tax was calculated to the county board of equalization. RCW 84.40.038.

When real property is disqualified from this exemption, the county treasurer must:

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

(ii) Distribute the additional ((~~taxes~~)) tax and interest. The additional tax collected by the treasurer is distributed in the same manner that current property taxes on the real property are distributed. The ((~~additional tax and interest are a lien on the real property. If the nonprofit entity sells or transfers the property, any unpaid additional tax and interest must be paid by the nonprofit entity selling the property prior to conveyance of the property. The nonprofit entity or the new owner may appeal the assessed value on which the additional tax was calculated to the county board of equalization (see RCW 84.40.038)~~)) interest collected by the treasurer is credited to the county current expense fund as indicated in RCW 84.56.020.

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

(d) Example 4. Dream Home, Inc., a nonprofit entity, is building a duplex on land it owns and intends on selling each ((~~unit, along with the land, to~~)) single-family dwelling unit to two low-income households. Dream Home, Inc. will be leasing the land on which the single-family dwelling units stand to the two low-income households. These leases will be executed for the life of each of the purchasers/resident owners of the single-family dwelling units. Dream Home, Inc. ((~~,~~)) applies to the department and is approved for the exemption. Upon completion of the duplex, Dream Home, Inc.((~~,~~)) sells one of the two single-family dwelling units to a low-income household. The second single-family dwelling unit goes unsold so Dream Home, Inc.((~~,~~)) applies to the department for a three-year extension and is approved. Upon expiration of the three-year extension, the second single-family dwelling unit has still not been sold to a low-income household. The second single-family dwelling unit ((~~of~~)) in the duplex is disqualified from the exemption and is subject to additional tax and interest.

((~~(8)~~ ~~**Sale or transfer**~~)) (9) **Sale of real property to a low-income household.** A nonprofit entity must immediately notify the department when the exempt real property is sold ((~~or transferred~~)) to a low-income household. This notice must include:

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

(b) The date when the title to the ((~~real property~~)) single-family dwelling unit was transferred.

((~~(9)~~)) (10) **Cessation of exemption.** Upon expiration or disqualification of the exemption, the value of new construction and improvements to the property, if not previously considered as new construction, must be considered as new construction for the purposes of calculating levies under chapter 84.55 RCW. If the value of new construction and improvements to property were previously considered as new construction when calculating levies under chapter 84.55 RCW, then it may not be considered as new construction upon expiration or disqualification of the exemption.