

NO. 38781-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

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WILLIAM SCHEIDLER,

Appellant,

v.

KITSAP COUNTY ASSESSOR,

Respondent.

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JUL 13 2009
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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KITSAP COUNTY
Superior Court No. 08-2-02882-0

BRIEF OF RESPONDENT

RUSSELL D. HAUGE
Kitsap County Prosecuting Attorney

ALAN L. MILES
Senior Deputy Prosecuting Attorney
614 Division Street, MS-35A
Port Orchard, WA 98366
(360) 337-7223

<p>Catherine C. Clark Melody Staubit The Law Office of Catherine C. Clark PLLC 701 Fifth Avenue, Suite 4785 Seattle, WA 98104 Attorneys for Appellant William Scheidler</p>	<p>This brief was served, as stated below, via U.S. Mail. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED this 6th day of July, 2009, at Port Orchard, Washington. [Signature] Original AND ONE COPY filed at the Court of Appeals, 950 Broadway, Suite 300, Tacoma WA 98402; Copy to counsel listed at left.</p>
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I. INTRODUCTION

The appellant in this appeal, William Scheidler (“Mr. Scheidler”), filed an action in Kitsap County Superior Court (the “Superior Court”) seeking a judicial declaration that the respondent, Kitsap County Assessor Jim Avery (the “Assessor”), was violating various federal constitutional and statutory provisions in how he administers the State’s property tax exemption program for disabled persons. He also sought an injunction prohibiting the Assessor from collecting supporting income documentation required by state law in connection with the program.

Mr. Scheidler never actually applied for property tax exemption, nor did he avail himself of the many administrative and legal remedies the Legislature has provided to taxpayers who feel that their applications have been wrongfully denied by a county assessor. Instead, he simply speculated that, if he did apply, the Assessor would misapply state law and wrongfully deny him exemption.

The Superior Court denied Mr. Scheidler’s motion for preliminary injunction and granted the Assessor’s motion to dismiss the case, awarding a small amount of statutory costs. Mr. Scheidler now appeals the dismissal of his case.

Mr. Scheidler’s action was properly dismissed by the Superior Court because (a) the action was non-justiciable and (b) the Court lacked

jurisdiction because Mr. Scheidler failed to name and serve the State of Washington in an action alleging that state law was unconstitutional.

The Superior Court's decision should be affirmed if the result reached is supported by any legal reason within the pleadings, the facts and the applicable law. *City of Kirkland v. Steen*, 68 Wn.2d 804, 810, 416 P.2d 80 (1966); *Yurtis v. Phipps*, 143 Wn. App. 680, 690, 181 P.3d 849 (2008).

Mr. Scheidler's appeal is meritless and this Court should affirm the Superior Court's dismissal.

II. COUNTERSTATEMENT OF THE ISSUES

1. Did the Superior Court err by granting the Assessor's motion to dismiss for failure to state a claim upon which relief can be granted upon a complaint seeking declaratory relief, where Mr. Scheidler did not apply for property tax exemption or exercise the administrative and legal remedies available to him in the event he believed any application by him was wrongfully denied?

2. Did the Superior Court err by granting the Assessor's motion to dismiss for lack of jurisdiction upon a complaint seeking declaratory relief, where Mr. Scheidler claimed the state law requiring him to submit his income tax return to the Assessor for property tax exemption determination violated the United States Constitution, but he failed to

name the State of Washington as a party and serve the Attorney General with a copy of the proceeding?

3. Did the Superior Court err by awarding the Assessor his statutory costs, where the Assessor prevailed in the action?

III. STATEMENT OF THE CASE

This section provides factual and procedural summaries of the case and a summary of the Superior Court decision under appeal.

A. Factual Summary

State law provides for partial or total exemption from property tax for residential property owned by qualifying taxpayers, including senior citizens and disabled persons who meet statutory criteria, including criteria relating to income.¹ To obtain property tax exemption, an eligible taxpayer must apply to the county assessor and supply specific documentation required by state law, including proof of qualifying income level as defined by state law. A taxpayer who believes that his or her exemption application has been improperly denied by a county assessor may appeal the denial to the County Board of Equalization, to the State Board of Tax Appeals and, ultimately, to the Superior Court.

¹ A fuller discussion of these legal rules, and appropriate legal citations, is found in the Argument section of the brief.

Based on the allegations in his complaint, Mr. Scheidler is an owner of real property in Kitsap County who wants to be wholly or partially exempt from paying taxes on his property on account of disability without demonstrating that he meets all of the statutory eligibility requirements for this exemption and without supplying the supporting documentation expressly required by state law. He did not actually apply for property tax exemption, claiming that he believes that, if he did apply, the Assessor will misapply state property tax exemption law to his application and unfairly deny him tax exemption. CP 3-4.

Mr. Scheidler's complaint sought a judgment declaring that the state law requirements for the exemption program and the Assessor's potential application of them to his hypothetical exemption application violate federal law. He also sought an injunction prohibiting the Assessor from seeking the supporting documentation that the Assessor is expressly required by law to obtain. CP 12-13.

B. Procedural Summary

Mr. Scheidler filed his complaint on November 20, 2008, CP 3, and filed a motion for preliminary injunction on December 3, 2008, CP 14. The preliminary injunction motion sought to enjoin the Assessor from following his standard policies and procedures for the property tax exemption program. CP 14-20.

The Assessor did not answer, but instead moved to dismiss the action on a number of grounds. CP 114-27.

On January 2, 2009, the Superior Court entered a memorandum opinion denying Mr. Scheidler's motion for preliminary injunction and granting the Assessor's motion to dismiss. CP 64-65.

On January 9, 2009, after the memorandum decision had been issued but before final orders had been entered, Mr. Scheidler moved for reconsideration. CP 66-70. The Superior Court denied the reconsideration motion in an order entered on February 11, 2009. CP 106-07.

Mr. Scheidler filed a premature notice of appeal on January 23, 2009. The notice of appeal stated that Mr. Scheidler was appealing the Superior Court's memorandum opinion. CP 103-05.

Final orders denying the preliminary injunction motion and granting the dismissal motion were entered on February 27, 2009. CP 108-11.

Mr. Scheidler prepared a notice of appeal "addendum" dated March 3, 2009.² The "addendum" attached the two final orders entered

² The notice of appeal "addendum" does not appear to be a part of the Clerk's Papers in this appeal. Therefore, the Assessor is unable to cite to the Clerk's Papers for references to it.

February 27, 2009 denying the preliminary injunction motion and granting the dismissal motion.³

C. Basis For Superior Court's Decision

The Superior Court's memorandum opinion relied upon both procedural reasons and substantive reasons for dismissing the action.

First, the Superior Court noted that Mr. Scheidler had not even applied for property tax exemption, much less been denied exemption. The Court held that the matter was not ripe for consideration because Mr. Scheidler could show no denial of right. CP 104.

Secondly, the Court noted that Mr. Scheidler had various administrative remedies available to him if he applied for exemption and believed his application was denied improperly. Therefore, he had failed to exhaust his administrative remedies. CP 104.

Thirdly, to the extent that Mr. Scheidler claimed that provisions of state law on property tax exemption were unconstitutional, he failed to name and serve the State of Washington as required by state law.

³ Although the order denying Mr. Scheidler's preliminary injunction motion was attached to the notice of appeal "addendum," his brief assigns no error to that order. Appellant's Brief at 2. Therefore, any argument upon appeal that the order denying the injunction should be reversed has been waived. *Stuewe v. State Department of Revenue*, 98 Wn. App. 947, 950 n.2, 991 P.2d 634 (2000), *review denied*, 141 Wn.2d 1015, 10 P.3d 1072 (2000).

Moreover, his argument that the Assessor might apply state law unconstitutionally was premature, because Mr. Scheidler had not actually applied for exemption. CP 105.

IV. ARGUMENT

This section of the brief contains the following: (a) a summary of the Assessor's argument; (b) an explanation of state property tax exemption law as it applies to the issues in the appeal; (c) an explanation of why Mr. Scheidler's claimed "controversy" is non-existent; and (d) detailed legal arguments in support of affirmation of the Superior Court's decision dismissing the case.

A. Summary of Argument

Mr. Scheidler's case was dismissable on two independent grounds. Each provided a separate proper legal basis for dismissal. First, his complaint failed to state a claim upon which relief could be granted because: (a) his declaratory relief action did not present a justiciable controversy or raise an issue of major public importance; (b) he had no standing to bring the case; (c) he had adequate legal remedies; and (d) he failed to exhaust his administrative remedies.

Secondly, the Superior Court lacked jurisdiction in the case because Mr. Scheidler alleged that state property tax exemption law was unconstitutional, but he failed to name the State of Washington as a party

and to serve the Attorney General with the complaint.

The Superior Court's judgment should be affirmed if the result reached is supported by any legal reason within the pleadings, the facts and the applicable law. *City of Kirkland v. Steen*, 68 Wn.2d 804, 810, 416 P.2d 80 (1966); *Yurtis v. Phipps*, 143 Wn. App. 680, 690, 181 P.3d 849 (2008).

B. State Property Tax Exemption Law

The following is an explanation of state law on property tax exemption as it relates to this appeal.

1. Introduction

All property located in Washington State is subject to assessment and taxation, except property expressly exempted from taxation by law. RCW 84.36.005; WAC 458-16-100(2). Because property tax exemptions shift the property tax burden from one group of property owners to others, statutory exemptions to property tax are strictly construed, although fairly and in keeping with the ordinary meaning of the language employed. The burden of proving entitlement to a property tax exemption rests upon the taxpayer claiming exemption. If there is any doubt regarding the exact meaning of a statute exempting property from taxation, the statute must be construed in favor of the power to tax and against the person claiming the exemption because taxation is the rule and exemption is the exception.

WAC 458-16-100(2).

2. Senior Citizens and Disabled Persons Property Tax Exemption Program

The Legislature has authorized various exemptions from property tax. *See* Chapter 84.36 RCW (property tax exemptions). The state property tax exemption program relevant to this appeal is the program for qualifying senior citizens and disabled persons. The program is governed by Wash. Const. art. VII, § 10, RCW 84.36.379 to 84.36.389, and WAC 458-16A-100 to 458-16A-150.⁴ The program's legal requirements are imposed by state statute and by regulations issued by the State Department of Revenue, but the program is administered by county assessors.

Under the program, qualifying senior citizens and disabled persons receive a property tax exemption based on their "disposable income" or "combined disposable income" as defined in RCW 84.36.383. RCW 84.36.381(4). Depending upon their income level as defined by statute, the exemption may be total or partial. RCW 84.36.381(4) -(6). For this reason, a determination of qualifying income, including examining all relevant documentation, is central to consideration of a taxpayer's application for exemption. The rules for computing disposable income are fairly complicated and are spelled out in statute and in Department of

⁴ For ease of reference, this law is set forth in the Appendix to the brief.

Revenue regulations. *See* RCW 84.36.383(4) (definition of combined disposable income), (5) (definition of disposable income); WAC 458-16A-100 (definitions), 458-16A-110 (explanation of gross income), 458-16A-115 (how to determine adjusted gross income), 458-16A-120 (how to determine combined disposable income).

State law requires a taxpayer to submit specific documents with his or her application in order for the county assessor to determine whether or not the taxpayer qualifies for property tax exemption under the senior citizens and disabled persons program. The documentation includes the taxpayer's federal income return, if the taxpayer has filed one. WAC 458-16A-135(5)(e).

Upon submission of a complete application, the county assessor determines whether or not the application meets state law requirements for exemption, and either approves or denies the application on that basis. RCW 84.36.385(5), WAC 458-16A-140(6).

If the application is denied, the applicant may appeal the denial to the county board of equalization. RCW 84.36.385(6), 84.48.010(5); WAC 458-16A-140(6). The decision of the county board of equalization may be appealed to the State of Washington Board of Tax Appeals. RCW 84.08.130(1). Further, if the taxpayer elects to file a formal appeal with the Board of Tax Appeals, the Board of Tax Appeal's decision may, in

turn, be appealed to the Superior Court under the Administrative Procedure Act, Chapter 34.05 RCW. RCW 84.03.140, 82.03.180; WAC 456-09-010(1).

C. The Claimed “Controversy” is Non-Existent

Before turning to the Assessor’s detailed legal arguments in support of the Superior Court’s dismissal of Mr. Scheidler’s action, the Assessor is compelled to note that the following claim of Mr. Scheidler in his brief is simply false: “[T]he County is misrepresenting the statute to the retired and disabled public and is wrongfully gaining from such misrepresentation in violation of the legislative mandate contained in RCW 84.34.379 and extended to the disabled under RCW 84.36.381.” Appellant’s Brief at 15.

First, contrary to Mr. Scheidler’s assertion otherwise, a county or county assessor has no financial stake in property tax exemption determinations. In a “budget-based” tax system state like Washington’s, a reduction in the assessed value of one taxpayer’s property, or a group of taxpayers’ properties, does not reduce the overall level of property taxes collected by the county; it merely shifts the tax burden from the exempt taxpayers to all of the other property taxpayers in the State. That is why property is exempt from taxation only when the Legislature has created an exemption by clear and explicit language and the burden of proving

entitlement to an exemption rests upon the taxpayer claiming it. WAC 458-16-100; CP 131-32; *see also* RCW 84.68.040 (the amount of any property taxes the county is required by law to refund to a taxpayer may be recouped in the next county-wide levy).

Secondly, Mr. Scheidler's contention that it is the Assessor's practice to misinterpret the state law definitions of "disposable income" and "combined disposal income," Appellant's Brief at 8-14, is also false. Mr. Scheidler in his brief conveniently fails to draw this Court's attention to the fact that the State Department of Revenue has actually issued very detailed, legally binding direction to assessors on what constitutes "disposable income" (and the corresponding term "combined disposable income"), specifically including how capital gains and losses must be treated.⁵ The Assessor is legally required to follow these rules and Mr. Scheidler's contention in this regard is meritless.

The record in this appeal shows that the Department of Revenue itself disagrees with Mr. Scheidler's contention that the Assessor does not comply with state law. On November 18, 2008, the Department of Revenue responded in part as follows to Mr. Scheidler's complaint about how the Assessor treats capital gains and losses for purposes of calculating

⁵ State property tax disability exemption law is set forth in the Appendix. Required treatment of capital gains and losses is addressed by WAC 458-16A-120(2)(d).

disposable income:

Dear Mr. Scheidler,

Thank you for your email expressing concerns about the disposable income calculation used to determine eligibility for the Property Tax Exemption Program for Senior Citizens and Disabled Persons.

In your email, you expressed concern regarding the Kitsap County Assessor's method of calculating disposable income and you asked me for an opinion on what should be included in disposable income in five different situations. My calculated responses are on the blank lines provided in your original email (see below) [the calculated responses are omitted from this brief, but can be found at CP 136-43].

Calculating Disposable Income

RCW 84.36.379 was enacted by the Legislature in 1980.

The intent section declares that the property tax exemption authorized in our State Constitution should be available on the basis of a retired person's ability to pay property tax and that a person's disposable income is the best measure of that ability. For purposes of the property tax exemption, "disposable income" was given a specific definition by the Legislature.

RCW 84.36.383(5) defines "disposable income" as adjusted gross income, as defined in the federal internal revenue code, plus all of the following items to the extent they were deducted or excluded from adjusted gross income:

- (a) 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;
- (b) Amounts deducted for loss;
- (c) Amounts deducted for depreciation;
- (d) Pension and annuity receipts;
- (e) Military pay and benefits other than attendant-care and medical-aid payments;

- (f) Veterans benefits, other than:
 - i. Attendant-care payments;
 - ii. Medical-aid payments;
 - iii. Disability compensation, as defined in Title 38, part 3, section 3.4 of the code of federal regulations, as of January 1, 2008; and
 - iv. Dependency and indemnity compensation, as defined in Title 38, part 3, section 3.5 of the code of federal regulations, as of January 1, 2008;
- (g) Federal social security and railroad retirement benefits;
- (h) Dividend receipts; and
- (i) Interest received on state and municipal bonds.

As you can see, the statute requires that we begin with adjusted gross income, and then add any amounts deducted for losses. In addition, we cannot use losses to offset gains.

WAC 458-16A-120(2)(d)(ii) provides further instruction and says that if the return shows capital gains or losses, the assessor should examine a copies [sic] of the following schedule or forms that were filed with the return: Schedule D (Capital Gains and Losses), Form 4684 (Casualty and Thefts), Form 4797 (Sales of Business Property), and Form 8829 (Business Use of Home). The assessor is instructed to add onto the adjusted gross income any amount of capital gains reduced by losses or deductions on the schedules or forms listed above to determine the total gains. The amount of capital gains that were excluded or deducted from adjusted gross income must be added onto that adjusted gross income to determine disposable income.

Although I am sympathetic to your situation and understand your thoughts on the matter, the laws and rules governing the exemption program are very clear. The Legislature has set specific criteria for exempting property from property taxes because exemptions result in a "tax shift" and other taxpayers in the taxing district actually pay higher property taxes when a parcel of property is exempted.

....

Sincerely,

Peggy Davis
Exemption/Deferral Programs Specialist
State of Washington Department of Revenue
(360) 570-5867

CP 59-60.⁶

The rest of this brief is devoted to the Assessor's specific legal arguments in the appeal.

D. Mr. Scheidler's Complaint Was Properly Dismissed Because It Failed to State a Claim Upon Which Relief Could Be Granted

1. Standard of Review

The first ground on which Mr. Scheidler's complaint was properly dismissed was failure to state a claim upon which relief can be granted under Civil Rule 12(b)(6). The standard of review for this issue is as follows:

A trial court's ruling to dismiss a claim under CR 12(b)(6) is reviewed de novo. Dismissal is warranted only if the court concludes, beyond a reasonable doubt, the plaintiff cannot prove any set of facts which would justify recovery. The court presumes all facts alleged in the plaintiff's complaint are true. The court is not, however, required to accept the complaint's legal conclusions as true.

⁶ Mr. Scheidler incorporated this e-mail message into his pleadings. See CP 59-60. Therefore, the e-mail message may appropriately be considered in connection with a motion to dismiss based on the pleadings.

A motion to dismiss is granted sparingly and with care and, as a practical matter, only where it appears on the face of the complaint that there is some insuperable bar to relief.

Jain v. J.P. Morgan Securities, Inc., 142 Wn. App. 574, 580, 177 P.3d 117 (2008) (footnotes omitted). The trial court's judgment will be affirmed if the result reached is supported by any legal reason within the pleadings, the facts and the applicable law. *City of Kirkland v. Steen*, 68 Wn.2d 804, 810, 416 P.2d 80 (1966); *Yurtis v. Phipps*, 143 Wn. App. 680, 690, 181 P.3d 849 (2008).

2. The Complaint Did Not Present a Justiciable Controversy

Mr. Scheidler's case was brought under the Uniform Declaratory Judgments Act (sometimes referred to herein as the "UDJA"), Chapter 7.24 RCW. Appellant's Brief at 7-8. A matter may be heard under the UDJA only if it presents a justiciable controversy, unless the case presents an issue of major public importance. In this context, a justiciable controversy is: (1) an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement; (2) between parties having genuine and opposing interests; (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic; and (4) a judicial determination of which will be final and conclusive.

Washington State Republican Party v. Washington State Public Disclosure

Com'n, 141 Wn.2d 245, 283-84, 4 P.3d 808 (2000). Where the four justiciability factors for a declaratory judgment action are not met, the court steps into the prohibited area of advisory opinions. *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 416, 27 P.3d 1149 (2001). In addition, the four factors must “coalesce” to ensure that the court will be rendering a final judgment on an actual dispute between opposing parties with a genuine stake in the resolution. *To-Ro Trade Shows v. Collins*, 144 Wn.2d at 411.

Mr. Scheidler’s case fails three of the four parts of the test: First, his case presents a hypothetical or speculative disagreement, as distinguished from an actual, present and existing dispute. Secondly, the case involves interests that are potential or theoretical, rather than direct and substantial. Thirdly, a judicial determination of his case would not be final and conclusive.

The basis for Mr. Scheidler’s claim of “controversy” is his contention that, *if he were to apply for property tax exemption*, the Assessor might misapply the legal definitions of “disposable income” and “combined disposable income,” thereby denying him a tax exemption to which he is entitled. Appellant’s Brief at 8-14. Because he has not actually applied for exemption, his claim presents a hypothetical or speculative disagreement and the interests involved are only potential or

theoretical. Such a claim is non-justiciable.

Further, even if the Superior Court were to entertain his case and rule in his favor, that judicial determination would not be final and conclusive. Mr. Scheidler's objective by his litigation is to obtain exemption from the property tax. CP 5. Even if the Superior Court had ruled in his favor on the merits, he would not obtain his tax exemption. It is legally impossible to obtain tax exemption without applying and being granted the exemption. *See* Chapter 84.36 RCW (statutory requirements for obtaining exemption). In fact, Mr. Scheidler's lawsuit actually sought a Superior Court order *prohibiting* the Assessor from collecting the very income information the Assessor is required by state law to collect in order to determine a taxpayer's eligibility for exemption. If he had succeeded in his case, he would actually prevent the Assessor from acting on any application he might eventually submit. For these reasons, any Superior Court determination of his case would not be final and conclusive. Therefore, his case is non-justiciable.

For example, in *Washington State Republican Party v. Washington State Public Disclosure Com'n*, a political party filed a complaint for declaratory and injunctive relief alleging that the State Public Disclosure Commission's application of the Fair Campaign Practices Act section limiting contributions to political candidates and parties in the

Commission's enforcement action against the party violated the party's civil rights to free speech and association and was unconstitutional. 141 Wn.2d at 250-54. Our Supreme Court held that the trial court lacked jurisdiction to issue a declaratory judgment as to whether the political party could use exempt funds to pay for polls, surveys and political research, because there was no justifiable controversy and no issue of major public importance. The disagreement over the use of exempt funds to buy polls and opposition research existed only with the State Public Disclosure Commission's enforcement staff, and the Commission itself failed to take action or declare that the buying of polls and opposition research violated the Fair Campaign Practices Act. 141 Wn.2d at 283-85.

Similarly, in Mr. Scheidler's case, the Assessor has never taken any action on property tax exemption for Mr. Scheidler because Mr. Scheidler refuses to apply for exemption. Therefore, his case is non-justiciable.

3. The Complaint Did Not Present an Issue of Major Public Importance

A case that fails to meet the four-part justiciable test may still be heard if it presents an issue of "broad overriding public import." This exception, however, applies "only on those rare occasions where the interest of the public in the resolution of an issue is overwhelming and where the issue has been adequately briefed and argued." *To-Ro Trade*

Shows, 144 Wn.2d at 416 (internal punctuation omitted); *see also* *Washington State Republican Party*, 141 Wn.2d at 284-84 (to invoke UDJA, there must be a justiciable controversy unless there is an issue of major public importance).

Our Supreme Court has been careful to narrowly interpret this exception so as to avoid injecting the courts into hypothetical or speculative issues or requiring them to render advisory opinions. “Issues of major public importance have included questions of salary, tenure and eligibility to stand for office, being matters directly affecting the freedom of choice in the election process, and whether a statute increasing the amount of excise tax was constitutional.” *Washington State Coalition for the Homeless v. Department of Social and Health Services*, 133 Wn.2d 894, 917, 949 P.2d 1291 (1997).

Mr. Scheidler’s argument on this issue is limited to his conclusory assertion that the Assessor is “misrepresenting” state property tax exemption law in order to “wrongfully gain.” Appellant’s Brief at 15. For the reasons explained Section IV(C), this contention is false. Mr. Scheidler’s case presented no issue of major public importance and therefore it was properly dismissed.

4. Mr. Scheidler Did Not Have Standing to Bring His Claim

Further, Mr. Scheidler lacked *standing* to bring his declaratory

relief action. Standing requirements tend to overlap the requirements for justiciability under the Uniform Declaratory Judgment Act. *American Legion Post # 149 v. Washington State Dept. of Health*, 164 Wn.2d 570, 593, 192 P.3d 306 (2008). A plaintiff seeking relief under the UDJA, however, must separately meet a two-part standing test in order to avoid dismissal of his or her action. First, the plaintiff must be within the “zone of interests” to be protected or regulated by the statute in question. Secondly, the party must have suffered an “injury in fact.” *American Legion Post # 149*, 164 Wn.2d at 594-94.

Here, Mr. Scheidler has suffered no “injury in fact.” He posits a hypothetical situation where he may at some time in the future apply for property tax exemption and be improperly denied it. He has not, however, even applied for exemption, let alone been denied it.⁷ Even if he did apply and was denied exemption, he would have more-than-adequate administrative and legal remedies available short of declaratory relief. Because Mr. Scheidler did not suffer an injury in fact, he had no standing to maintain his action. For this reason, the action was properly dismissed.⁸

⁷ The Superior Court ruled that Mr. Scheidler had not yet been denied the enjoyment of any right. CP 104.

⁸ Washington cases sometimes also find a lack of standing where a plaintiff fails to exercise available legal remedies or fails to exhaust administrative remedies. These alternative theories justifying dismissal are discussed separately under the appropriate headings in this Argument.

**5. Declaratory Relief May Not Be Sought Because the
Legislature Has Provided a Special Statutory Method
for Resolving Tax Exemption Eligibility Disputes**

Notwithstanding the fact that the Uniform Declaratory Judgments Act is to be liberally construed, *see* RCW 7.24.120, where a plaintiff has a completely adequate remedy available apart from declaratory relief, the plaintiff is not entitled to relief by way of a declaratory judgment. *Reeder v. King County*, 57 Wn.2d 563, 564, 358 P.2d 810 (1961); *King County v. Boeing Co.*, 18 Wn. App. 595, 602, 570 P.2d 713 (1977). Our Supreme Court has expressly held that “the courts will not entertain a bill in equity nor a petition for a declaratory judgment designed to call for decision of a case for the determination of which a special statutory method has been provided.” *Mulhausen v. Bates*, 9 Wn.2d 264, 270, 114 P.2d 995 (1941). Discussing this exception to the general rule that the UDJA is to be liberally construed, our Supreme Court has said:

Where, however, a special statutory method for the determination of the particular type of case has been provided, it is not proper to permit that issue to be tried by declaration. This would amount to ousting of its jurisdiction a statutory court prescribed for the particular case, and it was not intended that a declaration should be employed for such a purpose.

Mulhausen, 9 Wn.2d at 270 (citation, internal quotation marks and emphasis omitted).

Here, as previously explained, if Mr. Scheidler were to apply for

property tax exemption and if he were to be, in his opinion, improperly denied the exemption, he may avail himself of the complete and exclusive statutory procedure created by the state legislature for the determination of rights under property tax exemption law: First, he may appeal the Assessor's denial of his application to the Kitsap County Board of Equalization. RCW 84.36.385(6), 84.48.010(5); WAC 458-16A-140(6). Secondly, if he were dissatisfied with the Board of Equalization's decision, he could file a formal appeal to the State of Washington Board of Tax Appeals. RCW 84.08.130(1). Thirdly, if he were dissatisfied with the Board of Tax Appeals' decision in the formal appeal, he could seek judicial review of that decision in Superior Court under the Administrative Procedure Act, Chapter 34.05 RCW. RCW 84.03.140, 82.03.180; WAC 456-09-010(1).

Because the Legislature has created a complete and exclusive statutory procedure for determination of rights under the property tax exemption statute, Mr. Scheidler may not seek declaratory relief.

For example, in *Mulhausen v. Bates*, a former employee of the plaintiff had filed a claim for unemployment compensation, identifying the plaintiff as his last employer. When the former employee's claim was denied, in accordance with statutory procedures he appealed the denial to a statutory appeal tribunal. The appeal tribunal found that the plaintiff had,

in fact, been the employee's employer. The plaintiff then appealed the decision of the appeal tribunal to the State Commissioner of Unemployment Compensation and Placement, who affirmed the decision of the appeal tribunal. The plaintiff then appealed to the Superior Court and, at the same time, filed a bill in equity and petition for a declaratory judgment. The Superior Court struck the plaintiff's bill in equity and petition for declaratory relief. The plaintiff appealed the Superior Court's decision. 9 Wn.2d at 266-69.

Our Supreme Court affirmed the Superior Court's refusal to entertain the plaintiff's declaratory relief petition because the Legislature had provided a statutory scheme for resolution of the issues raised by the plaintiff:

[T]he courts will not entertain a bill in equity nor a petition for a declaratory judgment designed to call for decision of a case for the determination of which a special statutory method has been provided. . . .

. . . .

The Unemployment Compensation Act sets up a complete and exclusive statutory procedure for the determination of rights and liabilities arising under it. The court very properly dismissed appellant's bill in equity and petition for a declaratory judgment.

9 Wn.2d at 270-71 (citations omitted).

Because the Legislature has provided Mr. Scheidler with a complete and exclusive statutory method for resolving disputes over

eligibility for property tax exemption, his declaratory relief action was properly dismissed by the Superior Court.

6. Declaratory Relief May Not Be Sought Because Mr. Scheidler Failed to Exhaust His Administrative Remedies

Where a plaintiff fails to exhaust his or her administrative remedies and to show harm, he or she may not maintain an action for declaratory relief.⁹ This is true even where a plaintiff (a) seeks to raise a constitutional issue in the declaratory relief action, (b) contends that the administrative remedies would be unavailing or (c) contends that the governmental action was arbitrary and capricious. *Ackerley Communications, Inc. v. City of Seattle*, 92 Wn.2d 905, 908-12, 602 P.2d 1177 (1979); *Reeder v. King County*, 57 Wn.2d 563, 563-64, 358 P.2d 810 (1961); *Lechelt v. City of Seattle*, 32 Wn. App. 831, 834-36, 650 P.2d 240 (1982).

As discussed previously, Mr. Scheidler would have full administrative recourse in the event he files an exemption application and he believes the application is wrongfully denied by the Assessor: He may appeal to the Kitsap County Board of Equalization, to the State Board of Tax Appeals and, if he files a formal appeal to the Board of Tax Appeals, to the Superior Court. He has failed to file an application, let alone

⁹ Failure to exhaust administrative remedies was one basis upon which the Superior Court dismissed Mr. Scheidler's action. CP 104.

exercise any appeal rights. In addition, he has failed to demonstrate more than hypothetical harm. Therefore, his case was properly dismissed for failure to exhaust administrative remedies.

For example, in *Lechelt v. City of Seattle*, property owners brought an action to compel the county to construct a new access road to their property, maintain the current road and approve the subdivision plat of their property without access conditions. The county appealed the Superior Court's granting of summary judgment to the property owners on the issue of plat approval. On appeal, the county contended that the property owners did not have standing to bring suit because they failed to timely seek judicial review of the county's decision as authorized by statute. The property owners contended that they elected not to appeal out of reliance on an earlier agreement to alter and upgrade the road and that under those circumstances they had no duty to exhaust their administrative remedies. 32 Wn. App. at 832-34. The Court of Appeals rejected the property owners' argument, finding that the record demonstrated that construction of the proposed road, or continued maintenance of the existing road, was never assured. 32 Wn. App. at 835-36. The court held that even remedies thought to be unavailing must be pursued:

Here the property owners are seeking renewal of their request for plat approval without conditions relating to access. By failing to timely appeal the conditions placed upon prior plats, the earlier controversies became moot

after preliminary approval expired. The record reveals no actual, present and existing dispute since there is no pending or completed administrative action, nor is there a showing that bringing such an action would be useless. The owners thus lack standing to maintain an action for declaratory and injunctive relief since they have failed to pursue and exhaust their administrative remedies.

32 Wn. App. at 836 (citation omitted). *See also Ackerley*

Communications, Inc., 92 Wn.2d at 908-12 (owners of billboards who failed to exhaust administrative remedies and to show conclusively that ordinance requiring removal of billboards would harm them lacked standing to maintain action for declaratory and injunctive relief against enforcement of ordinance); *Reeder*, 57 Wn.2d at 564 (declaratory judgment action was not available to property owners who contended that conduct of county commissioners in not rezoning their property was arbitrary, inasmuch as writ of certiorari was available to them and would have afforded them all relief to which they might be entitled).

Here, Mr. Scheidler failed to exhaust his administrative remedies and failed to demonstrate harm. Therefore, his case properly was dismissed.¹⁰

¹⁰ In his brief, Mr. Scheidler contends that he was not required to exhaust his administrative remedies before seeking declaratory relief. Appellant's Brief at 17-18. His brief, however, ignores the controlling law on exhaustion of administrative remedies and instead relies exclusively on *Hartman v. Washington State Game Commission*, 85 Wn.2d 176, 532 P.2d 614 (1975), Appellant's Brief at 17-18, a case which does not even address exhaustion of administrative remedies.

**E. Mr. Scheidler's Complaint Was Properly Dismissed
Because the Superior Court Lacked Jurisdiction Over a
Necessary Party**

1. Introduction

An independent proper basis for dismissal of the case was Mr. Scheidler's failure to name the State of Washington as a party and to serve the proceeding on the Attorney General, where he claimed a part of state property tax exemption law was unconstitutional. Failure to name and serve the State as a party as required by Section 7.24.110 of the Uniform Declaratory Judgments Act deprived the Superior Court of jurisdiction over the case. Similarly, failure to name the State as a necessary party deprived the Superior Court of jurisdiction pursuant to Superior Court Civil Rule 19. Therefore, the case was properly dismissed for lack of jurisdiction.¹¹

Dismissal for lack of jurisdiction presents a question of law reviewed de novo. *Cf. In re Estate of Kordon*, 157 Wn.2d 206, 209, 137 P.3d 16 (2006) (dismissal for lack of personal jurisdiction under CR 12(b)(2)).

¹¹ One bases for the Superior Court's dismissal of the case was Mr. Scheidler's failure to name the State of Washington as a party. CP 105. In any event, an objection grounded in the failure to join an affected party, or lack of jurisdiction, may properly be considered for the first time on appeal. *Treyz v. Pierce County*, 118 Wn. App. 458, 462, 76 P.3d 292 (2003); *Henry v. Town of Oakville*, 30 Wn. App. 240, 243, 633 P.2d 892 (1981).

2. The Superior Court Lacked Jurisdiction Because the UDJA Required Mr. Scheidler to Name the State as a Party and Serve the Attorney General

The Uniform Declaratory Judgments Act provides:

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general shall also be served with a copy of the proceeding and be entitled to be heard.

RCW 7.24.110 (emphases added).

Therefore, the UDJA requires a plaintiff to both (a) make all affected persons parties to the action and (b) serve the action on the Attorney General where the plaintiff alleges that a state law is unconstitutional. Failure to do either deprives the trial court of jurisdiction.

First, with regard to joining affected parties, the trial court lacks jurisdiction if all necessary parties are not joined in the declaratory relief action. A party is necessary if (1) the trial court cannot make a complete determination of the controversy without that party's presence, (2) the party's ability to protect its interest in the subject matter of the litigation would be impeded by a judgment in the case and (3) judgment in the case necessarily would affect the party's interest. *Bainbridge Citizens United v.*

Washington State Dept. of Natural Resources, 147 Wn. App. 365, 371-72, 198 P.3d 1033 (2008). The necessary-party requirement should be liberally construed in favor of joinder. *Treyz v. Pierce County*, 118 Wn. App. 458, 462, 76 P.3d 292 (2003).

Secondly, the trial court will also lack jurisdiction if the plaintiff fails to serve the Attorney General in an action alleging the unconstitutionality of state law. *Kendall v. Douglas, Grant, Lincoln and Okanogan Counties Public Hosp. Dist. No. 6*, 118 Wn.2d 1, 11-12, 820 P.2d 497 (1991); *Petition by City of Bellingham*, 52 Wn.2d 497, 499, 326 P.2d 741 (1958); *Roehl v. Public Utility Dist. No. 1 of Chelan County*, 43 Wn.2d 214, 245, 261 P.2d 92 (1953).¹²

The requirement that the Attorney General be served when an action alleges that a state law is unconstitutional “certainly manifests a decision by the State that its attorney general has a strong interest in defending the State’s statutes in court.” *Fordyce v. City of Seattle*, 55 F.3d 436, 441-43 (9th Cir. 1995) (federal district court abused its discretion in failing to provide State of Washington adequate opportunity to be heard when contemplating granting unrequested declaratory ruling on constitutionality of Washington State statute); *see also Clark v. Seiber*, 49

¹² While failing to serve the Attorney General deprives the Superior Court of jurisdiction to grant declaratory relief, the Superior Court does have sufficient jurisdiction to dismiss the complaint on that basis. *Kendall*, 118 Wn.2d at 11-12; *Roehl*, 43 Wn.2d at 245.

Wn.2d 502, 503, 304 P.2d 708 (1956) (“The purpose of this provision [requiring service on the Attorney General] is to protect the public, should the parties be indifferent to the result. The state is interested in the constitutionality of its statutes as they affect the public welfare.”) (citation omitted).

Mr. Scheidler attempts to evade these twin jurisdictional requirements – naming the State as a party and serving the Attorney General – by claiming that his complaint does not allege that state property tax exemption law is unconstitutional, only that the Assessor’s interpretation of it is. Appellant’s Brief at 18-19. This is a distortion of his complaint. While Mr. Scheidler’s complaint certainly alleges (falsely) that the Assessor has violated a variety of federal constitutional and statutory provisions, CP 7-9, he directly alleges that provisions of state law are unconstitutional.

As explained earlier (Section IV(B)(2)), eligibility for the disabled-person property tax exemption depends in part on the taxpayer’s “disposal income,” as defined by state law. As also explained earlier, state law expressly specifies what documentation a county assessor must obtain and analyze to determine whether or not a taxpayer qualifies for exemption. In particular, RCW 84.36.387(3) provides: “All claims for exemption and renewal applications shall be accompanied by such documented

verification of income as shall be prescribed by rule adopted by the department of revenue.” Pursuant to this statutory provision, the Department of Revenue has promulgated detailed administrative regulations specifying what documentation a taxpayer is required to submit with his or her application.¹³

In cases where the taxpayer has filed a federal income tax return, the county assessor is required by law to obtain a copy of the tax return and analyze the return for property tax exemption eligibility. *See* WAC 458-16A-115(1)(a) (“In most cases, the claimant presents copies of federal income tax returns to demonstrate adjusted gross income amount(s) for the claimant, the claimant’s spouse or domestic partner, and any cotenants. The assessor then determines the disposable income for each person based upon that person’s income tax return and other information supplied by the claimant.”), 458-16A-120(2) (“The assessor must determine the disposable income of the claimant, the claimant’s spouse or domestic partner, and all cotenants. The assessor begins by obtaining a copy of the claimant’s, the claimant’s spouse’s or domestic partner’s, and any cotenant’s federal income tax return.”).

Mr. Scheidler’s complaint directly challenges the constitutionality

¹³ For ease of reference, Department of Revenue’s relevant property tax exemption regulations, along with applicable constitutional and statutory provisions, are set forth in the Appendix to this brief.

of these provisions of state law as follows:

**Violation of the Right to Be Free from Unreasonable
Searches and Seizures in Violation of the Fourth
Amendment of the United States Constitution**

....

Defendant, in an unlawful scheme that deprives a person of their constitutional and statutory benefit, demands personal documents that would not be necessary absent the scheme. IRS code determines, via forms, schedules and worksheets, what constitutes a loss, a gain, capital gain... The WA State Legislature via RCW 84.36.389 limits the DEFENDANT to “implement” the Exemption statute, not to redefine, audit, recalculate IRS terms, procedures or taxpayer entries upon IRS forms.

Request for Federal Tax information is a search subject to Fourth Amendment limitations. A government or county official demanding Federal Tax information is state action.

The Scheme employs a coercive search of every applicant who must produce the documents demanded or be denied their statutory relief. However the Constitution outlaws general warrants. Suspicionless searches are not allowed for general administrative enforcement purposes, and absent the Defendant’s scheme there is no essential purpose in having the documents demanded.

In addition, Plaintiff believes that his Federal Tax information has been placed inside a state database and commingled with other data, without the permission or the consent of the Plaintiff, which constitutes an unconstitutional seizure.

....

REQUEST FOR RELIEF

....

Declare that requiring an individual to supply Federal Income Tax forms and schedules violates the First, Fourth, and Fifth Amendments of the United States Constitution;

Enjoin the Defendant, and all persons acting in concert with them, from demanding they supply Federal Income Tax forms and schedules as a condition of application;

Enjoin the Defendant, and all persons acting in concert with them, from discriminating in any fashion against individuals who do not voluntarily supply Federal Income Tax forms and schedules.

Enjoin Defendant from issuing any future regulation that conditions an individual within the United States to supply Federal Income Tax forms and schedules

CP 8-9, 10 (typographical errors in original).

Clearly, Mr. Scheidler's complaint alleges that the provisions of state law requiring him to submit documentation of his disposable income are unconstitutional. Therefore, he is required to name the State of Washington as a party and serve his action on the Attorney General. His failure to do so deprived the Superior Court of jurisdiction and therefore his case was properly dismissed. *See, e.g., Kendall*, 118 Wn.2d at 10-11 (trial court lacked jurisdiction where complaining taxpayers failed to serve Attorney General with complaint challenging constitutionality of Public Hospital Districts Act); *Roehl*, 43 Wn.2d at 245-46 (trial court lacked jurisdiction where plaintiff failed to serve Attorney General with complaint alleging that statute under which defendant public utility districts purported to act was unconstitutional).

3. The Superior Court Lacked Jurisdiction Because CR 19(a) Required Mr. Scheidler to Name the State as a Party

For similar reasons, the case was independently properly dismissable under Superior Court Civil Rules 12(b)(7) and 19(a) because Mr. Scheidler failed to name the State of Washington, which was a necessary party to the action.

The Civil Rules provide:

Persons to Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action *shall* be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (A) as a practical matter impair or impede his ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. . . .

CR 19(a) (emphasis added).

As with RCW 7.24.110, Civil Rule 19(a) mandates the joinder of necessary parties. In the context of CR 19(a), a party is necessary if the person has sufficient interest in the litigation such that the judgment cannot be determined without affecting that interest or leaving it unresolved. *Henry v. Town of Oakville*, 30 Wn. App. 240, 245, 633 P.2d 892 (1981). Failure to join a necessary party, whether under RCW 7.24.100 or under CR 19(a), deprives the Superior Court of jurisdiction.

Henry, 30 Wn. App. at 243-45.

For the same reasons discussed in the context of RCW 7.24.110, the State of Washington was a necessary party to Mr. Scheidler's action. His failure to join the State in the action deprived the Superior Court of jurisdiction. Therefore, his case was properly dismissed pursuant to CR 12(b)(7) (failure to join a party under CR 19).

F. The Superior Court Properly Awarded the Assessor His Costs

Lastly, Mr. Scheidler claims as error the Superior Court's awarding of statutory costs to the Assessor. Appellant's Brief at 2. Although he does not make any argument on this issue, his assertion of error appears to be premised on this Court's reversal of the Superior Court's dismissal of his action. *See* Appellant's Brief at 19 (Conclusion). The Superior Court properly awarded the Assessor his costs and the award should be sustained by this Court.

In its December 29, 2008 memorandum opinion, the Superior Court determined that Mr. Scheidler was not entitled to a preliminary injunction and that the Assessor was entitled to dismissal of the action. CP 104-05. Accordingly, final orders were entered on February 27, 2009 denying the injunction and dismissing the action. CP 108-11. The dismissal included a \$250 award to the Assessor for statutory costs. CP 110-11. The \$250 consisted of a \$200 statutory attorney fee and \$50 fee

for serving papers, and was supported by a proper statement of costs. CP 110, 159-60.

In any action in the Superior Court, the prevailing party is entitled to its costs and disbursements. RCW 4.84.030. In all cases where costs and disbursements are not allowed to the plaintiff, the defendant is entitled to have judgment in its favor for them. RCW 4.84.060. Proper costs include a statutory attorney fee of \$200 and service-of-process fees. RCW 4.84.010, 4.84.080.

Therefore, the costs were properly awarded. Because there is no valid basis for reversing the dismissal of Mr. Scheidler's case, there is no basis for vacating the award of costs.

V. CONCLUSION

For the foregoing reasons, the dismissal of Mr. Scheidler's case should be affirmed.

DATED: July 6, 2009.

Respectfully submitted,

RUSSELL D. HAUGE
Kitsap County Prosecuting Attorney



ALAN L. MILES, WSBA No. 26961
Senior Deputy Prosecuting Attorney

Attorneys for Respondent Kitsap
County Assessor Jim Avery

APPENDIX – STATE PROPERTY TAX EXEMPTION LAW

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TEXT

State Constitution

Const. art. 7, § 10. Retired Persons Property Tax Exemption

Notwithstanding the provisions of Article 7, section 1 (Amendment 14) and Article 7, section 2 (Amendment 17), the following tax exemption shall be allowed as to real property:

The legislature shall have the power, by appropriate legislation, to grant to retired property owners relief from the property tax on the real property occupied as a residence by those owners. The legislature may place such restrictions and conditions upon the granting of such relief as it shall deem proper. Such restrictions and conditions may include, but are not limited to, the limiting of the relief to those property owners below a specific level of income and those fulfilling certain minimum residential requirements.

State Statutes

RCW 84.36.379. Residences — Property tax exemption — Findings.

The legislature finds that the property tax exemption authorized by Article VII, section 10 of the state Constitution should be made available on the basis of a retired person's ability to pay property taxes and that the best measure of a retired person's ability to pay taxes is that person's disposable income as defined in RCW 84.36.383. The legislature further finds that veterans with one hundred percent service-connected disabilities have given so much to our country that they deserve property tax relief.

RCW 84.36.381. Residences — Property tax exemptions — Qualifications.

A person shall be exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

- (1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of the time of filing: PROVIDED, That any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant shall receive an exemption on more than one residence in any year: PROVIDED FURTHER, That confinement of the person to a hospital, nursing home, boarding home, or adult family home shall not disqualify the claim of exemption if:
 - (a) The residence is temporarily unoccupied;
 - (b) The residence is occupied by a spouse or a domestic partner and/or a person financially dependent on the claimant for support; or
 - (c) The residence is rented for the purpose of paying nursing home, hospital, boarding home, or adult family home costs;
- (2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or state registered domestic partnership or owned by cotenants shall be deemed to be owned by each spouse or each domestic partner or each cotenant, and any lease for life shall be deemed a life estate;
- (3) The person claiming the exemption must be (a) sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of disability, or (b) a veteran of the armed forces of the United States with one hundred percent service-connected disability as provided in 42 U.S.C. Sec. 423 (d)(1)(A) as amended prior to January 1, 2005. However, any surviving spouse or surviving domestic partner of a person who was receiving an exemption at the time of

the person's death shall qualify if the surviving spouse or surviving domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person shall be exempt from an obligation to pay shall be calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the assessment year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person claiming exemption is reduced for two or more months of the assessment year by reason of the death of the person's spouse or the person's domestic partner, or when other substantial changes occur in disposable income that are likely to continue for an indefinite period of time, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person after such occurrences by twelve. If it is necessary to estimate income to comply with this subsection, the assessor may require confirming documentation of such income prior to May 31 of the year following application;

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less shall be exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of thirty thousand dollars or less but greater than twenty-five thousand dollars shall be exempt from all regular property taxes on the greater of fifty thousand dollars or thirty-five percent of the valuation of his or her residence, but not to exceed seventy thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of twenty-five thousand dollars or less shall be exempt from all regular property taxes on the greater of sixty thousand dollars or sixty percent of the valuation of his or her residence;

(6) For a person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less, the valuation of the residence shall be the assessed value of the residence on the later of January 1, 1995, or January 1st of the assessment year the person first qualifies under this section. If the person subsequently fails to qualify under this section only for one year because of high income, this same valuation shall be used upon requalification. If the person fails to qualify for more than one year in succession because of high income or fails to qualify for any other reason, the valuation upon requalification shall be the assessed value on January 1st of the assessment year in which the person requalifies. If the person transfers the exemption under this section to a different residence, the valuation of the different residence shall be the assessed value of the different residence on January 1st of the assessment year in which the person transfers the exemption.

In no event may the valuation under this subsection be greater than the true and fair value of the residence on January 1st of the assessment year.

This subsection does not apply to subsequent improvements to the property in the year in which the improvements are made. Subsequent improvements to the property shall be added to the

value otherwise determined under this subsection at their true and fair value in the year in which they are made.

RCW 84.36.383. Residences — Definitions.

As used in RCW 84.36.381 through 84.36.389, except where the context clearly indicates a different meaning:

(1) The term "residence" means a single family dwelling unit whether such unit be separate or part of a multiunit dwelling, including the land on which such dwelling stands not to exceed one acre, except that a residence includes any additional property up to a total of five acres that comprises the residential parcel if this larger parcel size is required under land use regulations. The term shall also include a share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides. The term shall also include a single family dwelling situated upon lands the fee of which is vested in the United States or any instrumentality thereof including an Indian tribe or in the state of Washington, and notwithstanding the provisions of RCW 84.04.080 and 84.04.090, such a residence shall be deemed real property.

(2) The term "real property" shall also include a mobile home which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe, connections with sewer, water, or other utilities. A mobile home located on land leased by the owner of the mobile home is subject, for tax billing, payment, and collection purposes, only to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

(3) "Department" means the state department of revenue.

(4) "Combined disposable income" means the disposable income of the person claiming the exemption, plus the disposable income of his or her spouse or domestic partner, and the disposable income of each cotenant occupying the residence for the assessment year, less amounts paid by the person claiming the exemption or his or her spouse or domestic partner during the assessment year for:

(a) Drugs supplied by prescription of a medical practitioner authorized by the laws of this state or another jurisdiction to issue prescriptions;

(b) The treatment or care of either person received in the home or in a nursing home, boarding home, or adult family home; and

(c) Health care insurance premiums for medicare under Title XVIII of the social security act.

(5) "Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purpose of this section, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

- (a) 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;
 - (b) Amounts deducted for loss;
 - (c) Amounts deducted for depreciation;
 - (d) Pension and annuity receipts;
 - (e) Military pay and benefits other than attendant-care and medical-aid payments;
 - (f) Veterans benefits, other than:
 - (i) Attendant-care payments;
 - (ii) Medical-aid payments;
 - (iii) Disability compensation, as defined in Title 38, part 3, section 3.4 of the code of federal regulations, as of January 1, 2008; and
 - (iv) Dependency and indemnity compensation, as defined in Title 38, part 3, section 3.5 of the code of federal regulations, as of January 1, 2008;
 - (g) Federal social security act and railroad retirement benefits;
 - (h) Dividend receipts; and
 - (i) Interest received on state and municipal bonds.
- (6) "Cotenant" means a person who resides with the person claiming the exemption and who has an ownership interest in the residence.
- (7) "Disability" has the same meaning as provided in 42 U.S.C. Sec. 423(d)(1)(A) as amended prior to January 1, 2004, or such subsequent date as the director may provide by rule consistent with the purpose of this section.

RCW 84.36.385. Residences — Claim for exemption — Forms — Change of status — Publication and notice of qualifications and manner of making claims.

(1) A claim for exemption under RCW 84.36.381 as now or hereafter amended, shall be made and filed at any time during the year for exemption from taxes payable the following year and thereafter and solely upon forms as prescribed and furnished by the department of revenue. However, an exemption from tax under RCW 84.36.381 shall continue for no more than four years unless a renewal application is filed as provided in subsection (3) of this section. The county assessor may also require, by written notice, a renewal application following an amendment of the income requirements set forth in RCW 84.36.381. Renewal applications shall be on forms prescribed and furnished by the department of revenue.

(2) A person granted an exemption under RCW 84.36.381 shall inform the county assessor of any change in status affecting the person's entitlement to the exemption on forms prescribed and furnished by the department of revenue.

(3) Each person exempt from taxes under RCW 84.36.381 in 1993 and thereafter, shall file with the county assessor a renewal application not later than December 31 of the year the assessor notifies such person of the requirement to file the renewal application.

(4) Beginning in 1992 and in each of the three succeeding years, the county assessor shall notify approximately one-fourth of those persons exempt from taxes under RCW 84.36.381 in the current year who have not filed a renewal application within the previous four years, of the requirement to file a renewal application.

(5) If the assessor finds that the applicant does not meet the qualifications as set forth in RCW 84.36.381, as now or hereafter amended, the claim or exemption shall be denied but such denial shall be subject to appeal under the provisions of RCW 84.48.010(5) and in accordance with the provisions of RCW 84.40.038. If the applicant had received exemption in prior years based on erroneous information, the taxes shall be collected subject to penalties as provided in RCW 84.40.130 for a period of not to exceed three years.

(6) The department and each local assessor is hereby directed to publicize the qualifications and manner of making claims under RCW 84.36.381 through 84.36.389, through communications media, including such paid advertisements or notices as it deems appropriate. Notice of the qualifications, method of making applications, the penalties for not reporting a change in status, and availability of further information shall be included on or with property tax statements and revaluation notices for all residential property including mobile homes, except rental properties.

RCW 84.36.387. Residences — Claimants — Penalty for falsification — Reduction by remainderman.

(1) All claims for exemption shall be made and signed by the person entitled to the exemption, by his or her attorney-in-fact or in the event the residence of such person is under mortgage or purchase contract requiring accumulation of reserves out of which the holder of the mortgage or contract is required to pay real estate taxes, by such holder or by the owner, either before two witnesses or the county assessor or his or her deputy in the county where the real property is located: PROVIDED, That if a claim for exemption is made by a person living in a cooperative housing association, corporation, or partnership, such claim shall be made and signed by the person entitled to the exemption and by the authorized agent of such cooperative.

(2) If the taxpayer is unable to submit his or her own claim, the claim shall be submitted by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(3) All claims for exemption and renewal applications shall be accompanied by such documented verification of income as shall be prescribed by rule adopted by the department of revenue.

(4) 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.

(5) The tax liability of a cooperative housing association, corporation, or partnership shall be reduced by the amount of tax exemption to which a claimant residing therein is entitled and such cooperative shall reduce any amount owed by the claimant to the cooperative by such exact amount of tax exemption or, if no amount be owed, the cooperative shall make payment to the claimant of such exact amount of exemption.

(6) A remainderman or other person who would have otherwise paid the tax on real property that is the subject of an exemption granted under RCW 84.36.381 for an estate for life shall reduce the amount which would have been payable by the life tenant to the remainderman or other person to the extent of the exemption. If no amount is owed or separately stated as an obligation between these persons, the remainderman or other person shall make payment to the life tenant in the exact amount of the exemption.

RCW 84.36.389. Residences — Rules and regulations — Audits — Confidentiality — Criminal penalty.

(1) The director of the department of revenue shall adopt such rules and regulations and prescribe such forms as may be necessary and appropriate for implementation and administration of this chapter subject to chapter 34.05 RCW, the administrative procedure act.

(2) The department may conduct such audits of the administration of RCW 84.36.381 through 84.36.389 and the claims for exemption filed thereunder as it considers necessary. The powers of the department under chapter 84.08 RCW apply to these audits.

(3) Any information or facts concerning confidential income data obtained by the assessor or the department, or their agents or employees, under subsection (2) of this section shall be used only to administer RCW 84.36.381 through 84.36.389. Notwithstanding any provision of law to the contrary, absent written consent by the person about whom the information or facts have been obtained, the confidential income data shall not be disclosed by the assessor or the assessor's agents or employees to anyone other than the department or the department's agents or employees nor by the department or the department's agents or employees to anyone other than the assessor or the assessor's agents or employees except in a judicial proceeding pertaining to the taxpayer's entitlement to the tax exemption under RCW 84.36.381 through 84.36.389. Any violation of this subsection is a misdemeanor.

State Regulations

WAC 458-16A-100

Senior citizen, disabled person, and one hundred percent disabled veteran exemption — Definitions.

(1) **Introduction.** This rule contains definitions of the terms used for the senior citizen, disabled person, and one hundred percent disabled veteran exemption from property taxes. The definitions apply to the senior citizen, disabled person, and one hundred percent disabled veteran exemption contained in sections RCW 84.36.381 through 84.36.389 unless the context clearly requires otherwise.

(2) **Annuity.** "Annuity" means a series of payments under a contract. Annuity contracts pay a fixed sum of money at regular intervals for more than one full year. An annuity may be paid as the proceeds of a life insurance contract (other than as a lump sum payment), unemployment compensation, disability payments, or even welfare receipts. It does not include payments for the care of dependent children.

(3) **Assessment year.** "Assessment year" means the year when the assessor lists and values the principal residence for property taxes. The assessment year is the calendar year prior to the year the taxes become due and payable. It is always the year before the claimant receives a reduction in his or her property taxes because of the senior citizen, disabled person, and one hundred percent disabled veteran exemption.

(4) **Capital gain.** "Capital gain" means the amount the seller receives for property (other than inventory) over that seller's adjusted basis in the property. The seller's initial basis in the property is the property's cost plus taxes, freight charges, and installation fees. In determining the capital gain, the seller's costs of transferring the property to a new owner are also added onto the adjusted basis of the property. If the property is acquired in some other manner than by purchase, the seller's initial basis in the property is determined by the way the seller received the property (e.g., property exchange, payment for services, gift, or inheritance). The seller adjusts (increases and decreases) the initial basis of the property for events occurring between the time the property is acquired and when it is sold (e.g., increased by the cost of improvements made later to the property).

(5) **Claimant.** "Claimant" means a person claiming the senior citizen, disabled person, and one hundred percent disabled veteran exemption by filing an application with the county assessor in the county where the property is located.

(6) **Combined disposable income.** "Combined disposable income" means the annual disposable income of the claimant, the claimant's spouse or domestic partner, and any cotenant reduced by amounts paid by the claimant or the claimant's spouse or domestic partner for their:

- (a) Legally prescribed drugs;
- (b) Home health care;

(c) Nursing home, boarding home, or adult family home expenses; and

(d) Health care insurance premiums for medicare under Title XVIII of the Social Security Act.

Disposable income is not reduced by these amounts if payments are reimbursed by insurance or a government program (e.g., medicare or medicaid). When the application is made, the combined disposable income is calculated for the assessment year.

(7) **Cotenant.** "Cotenant" means a person who resides with the claimant and who has an ownership interest in the residence.

(8) **Department.** "Department" means the state department of revenue.

(9) **Depreciation.** "Depreciation" means the annual deduction allowed to recover the cost of business or investment property having a useful life of more than one year. In limited circumstances, this cost, or a part of this cost, may be taken as a section 179 expense on the federal income tax return in the year business property is purchased.

(10) **Disability.** "Disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. (RCW 84.36.383(7); 42 U.S.C. Sec. 423 (d)(1)(A).)

(11) **Disabled veteran.** "Disabled veteran" means a veteran of the armed forces of the United States with a one hundred percent disability rating that is service-connected (RCW 84.36.381 (3)(b)).

(12) **Disposable income.** "Disposable income" means the adjusted gross income as defined in the Federal Internal Revenue Code of 2001, and as amended after that date, plus all the other items described below to the extent they are not included in or have been deducted from adjusted gross income. (RCW 84.36.383)

(a) Capital gains, other than gain excluded from the sale of a principal residence that is reinvested prior to the sale or within the same calendar year in a different principal residence;

(b) Losses. Amounts deducted for loss;

(c) Depreciation. Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the military;

(f) Veterans benefits other than:

(i) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(ii) Disability compensation, defined as payments made by the VA to a veteran because of service-connected disability;

(iii) Dependency and indemnity compensation, defined as payments made by the VA to a surviving spouse, child, or parent because of a service-connected death.

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

(h) Dividend receipts;

(i) Interest received on state and municipal bonds.

(13) Domestic partner. "Domestic partner" means a person 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.

(14) Domestic partnership. "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.

(15) Excess levies. "Excess levies" means voter-approved levies by taxing districts, other than port or public utility districts, of additional taxes in excess of the statutory aggregate dollar rate limit, the statutory dollar rate limit, or the constitutional one percent levy limit. It does not include regular levies allowed to exceed a statutory limit with voter approval or voted regular levies.

(16) Excluded military pay or benefits. "Excluded military pay or benefits" means military pay or benefits excluded from a person's federal gross income, other than those amounts excluded from that person's federal gross income for attendant-care and medical-aid payments. Members of the armed forces receive many different types of pay and allowances. Some payments or allowances are included in their gross income for the federal income tax while others are excluded from their gross income. Excluded military pay or benefits include:

(a) Compensation for active service while in a combat zone or a qualified hazardous duty area;

(b) Death allowances for burial services, gratuity payment to a survivor, or travel of dependents to the burial site;

(c) Moving allowances;

(d) Travel allowances;

(e) Uniform allowances;

(f) Group term life insurance payments made by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant; and

(g) Survivor and retirement protection plan premiums paid by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant.

(17) Family dwelling unit. "Family dwelling unit" means the dwelling unit occupied by a single person, any number of related persons, or a group not exceeding a total of eight related and unrelated nontransient persons living as a single noncommercial housekeeping unit. The term does not include a boarding or rooming house.

(18) Home health care. "Home health care" means the treatment or care of either the claimant or the claimant's spouse or domestic partner received in the home. It must be similar to the type of care provided in the normal course of treatment or care in a nursing home, although the person providing the home health care services need not be specially licensed. The treatment and care must meet at least one of the following criteria. It must be for:

(a) Medical treatment or care received in the home;

(b) Physical therapy received in the home;

(c) Food, oxygen, lawful substances taken internally or applied externally, necessary medical supplies, or special needs furniture or equipment (such as wheel chairs, hospital beds, or therapy equipment), brought into the home as part of a necessary or appropriate in-home service that is being rendered (such as a meals on wheels type program); or

(d) Attendant care to assist the claimant, or the claimant's spouse or domestic partner, with household tasks, and such personal care tasks as meal preparation, eating, dressing, personal hygiene, specialized body care, transfer, positioning, ambulation, bathing, toileting, self-medication a person provides for himself or herself, or such other tasks as may be necessary to maintain a person in his or her own home, but shall not include improvements or repair of the home itself.

(19) Lease for life. "Lease for life" means a lease that terminates upon the demise of the lessee.

(20) Legally prescribed drugs. "Legally prescribed drugs" means drugs supplied by prescription of a medical practitioner authorized to issue prescriptions by the laws of this state or another jurisdiction.

(21) **Life estate.** "Life estate" means an estate whose duration is limited to the life of the party holding it or of some other person.

(a) Reservation of a life estate upon a principal residence placed in trust or transferred to another is a life estate.

(b) Beneficial interest in a trust is considered a life estate for the settlor of a revocable or irrevocable trust who grants to himself or herself the beneficial interest directly in his or her principal residence, or the part of the trust containing his or her personal residence, for at least the period of his or her life.

(c) Beneficial interest in an irrevocable trust is considered a life estate, or a lease for life, for the beneficiary who is granted the beneficial interest representing his or her principal residence held in an irrevocable trust, if the beneficial interest is granted under the trust instrument for a period that is not less than the beneficiary's life.

(22) **Owned.** "Owned" includes "contract purchase" as well as "in fee," a "life estate," and any "lease for life." A residence owned by a marital community or domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant.

(23) **Ownership by a marital community or domestic partnership.** "Ownership by a marital community or domestic partnership" means property owned in common by both spouses or domestic partners. Property held in separate ownership by one spouse or domestic partner is not owned by the marital community or domestic partnership. The person claiming the exemption must own the property for which the exemption is claimed. Example: A person qualifying for the exemption by virtue of age, disability, or one hundred percent disabled veteran status cannot claim exemption on a residence owned by the person's spouse or domestic partner as a separate estate outside the marital community or domestic partnership unless the claimant has a life estate therein.

(24) **Pension.** "Pension" means an agreement to provide for payments, not wages, to a person (or to that person's family) who has fulfilled certain conditions of service or reached a certain age. A pension may allow payment of all or a part of the entire pension benefit, in lieu of regular periodic payments.

(25) **Principal residence.** "Principal residence" means the claimant owns and occupies the residence as his or her principal or main residence. It does not include a residence used merely as a vacation home. For purposes of this exemption:

(a) Principal or main residence means the claimant occupies the residence for more than six months each year.

(b) Confinement of the claimant to a hospital or nursing home does not disqualify the claim for exemption if:

(i) The residence is temporarily unoccupied;

(ii) The residence is occupied by the claimant's spouse or domestic partner or a person financially dependent on the claimant for support;

(iii) The residence is occupied by a caretaker who is not paid for watching the house;

(iv) The residence is rented for the purpose of paying nursing home, hospital, boarding home or adult family home costs.

(26) Regular gainful employment. "Regular gainful employment" means consistent or habitual labor or service which results in an increase in wealth or earnings.

(27) Replacement residence. "Replacement residence" means a residence that qualifies for the senior citizen, disabled person, and one hundred percent disabled veteran exemption and replaces the prior residence of the person receiving the exemption.

(28) Residence. "Residence" means a single-family dwelling unit whether such unit be separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands, and it includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size. The term also includes:

(a) A share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides.

(b) A single-family dwelling situated upon leased lands and upon lands the fee of which is vested in the United States, any instrumentality thereof including an Indian tribe, the state of Washington, or its political subdivisions.

(c) A mobile home which has substantially lost its identity as a mobile unit by being fixed in location upon land owned or rented by the owner of said mobile home and placed on a foundation, posts, or blocks with fixed pipe connections for sewer, water or other utilities even though it may be listed and assessed by the county assessor as personal property. It includes up to one acre of the parcel of land on which a mobile home is located if both the land and mobile home are owned by the same qualified claimant.

(29) Veteran. "Veteran" means a veteran of the armed forces of the United States.

(30) Veterans benefits. "Veterans benefits" means benefits paid or provided under any law, regulation, or administrative practice administered by the VA. Federal law excludes from gross income any veterans' benefits payments, paid under any law, regulation, or administrative practice administered by the VA.

WAC 458-16A-110

Senior citizen, disabled person, and one hundred percent disabled veteran exemption — Gross income.

(1) **Introduction.** This rule explains the definition of gross income used for federal income tax. In order to meet the income requirements for the senior citizen, disabled person, and one hundred percent disabled veteran exemption program, the claimant must provide supporting documents verifying combined disposable income. The gross income for federal income tax purposes of the claimant, the claimant's spouse or domestic partner, and any cotenants represents a part of the claimant's combined disposable income.

(a) **Income tax return.** In most cases, the claimant presents copies of federal income tax returns to demonstrate both gross income and adjusted gross income amount(s) for the claimant, the claimant's spouse or domestic partner, and any cotenants. The assessor then determines the disposable income for each person based upon that person's income tax return and the other information supplied by the claimant.

(b) **No income tax return.** When the claimant does not present federal income tax returns, the assessor must determine what constitutes gross income for the nonfiler and obtain copies of income documents to determine that person's gross income. This rule provides the assessor with some guidance in determining the gross income for a nonfiler.

(c) **Verifying the gross income amount.** In some cases, the assessor may choose to verify income amount(s). The rule provides the assessor some guidance in verifying all or part of the gross income for the claimant, the claimant's spouse or domestic partner, or any of the cotenants.

(2) **Gross income determined.** Internal Revenue Code section 61 defines "gross income," generally, as all income from whatever source derived. WAC 458-16A-135 lists the documentation used to determine the income of the claimant.

(3) **Exclusions from the federal definition of gross income.** A claimant may provide documentation or information about amounts received during the year that are excluded from gross income. These amounts should not be taken into account when determining gross income. The federal definition of gross income, generally, does not include:

(a) Gifts, inheritance amounts, or life insurance proceeds;

(b) Up to two hundred fifty thousand dollars (five hundred thousand dollars for a married couple) gain from the sale of a principal residence that meets the requirements of Internal Revenue Code section 121, see also WAC 458-16A-100 (definition of disposable income);

(c) Amounts received for illness or injury when received from workmen's compensation, a legal settlement, a legal judgment, a Medicare+Choice MSA, a federal employer under the federal Employees Compensation Act, accident insurance, or health insurance. If the amount received is from an employer directly for illness or injury or from employer-provided accident or

health insurance, the amount is excluded only if it is paid to reimburse medical expenses, for the loss of limb, or for permanent disfigurement to the employee, the employee's spouse, or the employee's dependents;

(d) Contributions or payments made by an employer to accident and health plans, the employer's qualified transportation plan, a cafeteria plan, a dependent care assistance program, educational assistance programs, or for certain fringe benefits for employees described by Internal Revenue Code section 132. If the claimant earns wages as an employee, he or she should receive a W-2 form from the employer reporting those wages. This W-2 form should have already excluded the described contributions or payments provided for the employee's benefit in the above list. If a question arises about whether or not an employer adjusted the employee's gross income for these exclusions, the claimant should contact their employer and have the employer provide the county with a correct or corrected copy of the W-2 form to verify the correct wages paid to the employee;

(e) Income from discharge of indebtedness under certain limited circumstances, such as insolvency. These circumstances are outlined in Internal Revenue Code section 108;

(f) Improvements by a lessee left upon the lessor's property at the termination of a lease;

(g) Recovery of an amount deducted in a prior tax year that did not reduce federal income taxes paid in that prior year. For example, a person that itemized deductions may get a refund of property taxes or a stolen uninsured item will be returned. This refund or recovery is included in income unless the deduction did not result in a reduction of tax. It may not result in a reduction of tax because the person had to pay alternative minimum tax or taking away that deduction drops that person below the standard deduction amount. When the deduction did not reduce taxes, the recovery amount that did not reduce taxes is excluded. The assessor may request the claimant excluding such a recovery to present prior returns and worksheets such as the worksheets provided in Publication 525, *Taxable and Nontaxable Income*, to demonstrate how the exclusion was calculated;

(h) Qualified scholarships and fellowship grants provided for certain educational expenses (e.g., tuition and books). Internal Revenue Code section 117 provides a complete description of qualified scholarship and fellowship grant amounts excluded from gross income;

(i) Meals or lodging furnished to an employee for the convenience of the employer;

(j) Excluded military pay and benefits. These exclusions are defined in WAC 458-16A-100. A discussion of how to determine and calculate these benefits is found in WAC 458-16A-120;

(k) Amounts received under insurance contracts for certain living expenses: As a general rule, when an individual's principal residence is damaged or destroyed by fire, storm, or other casualty, or who is denied access to his principal residence by governmental authorities because of the occurrence or the threat of such a casualty, gross income does not include amounts received by such individual under an insurance contract which are paid to compensate or reimburse such individual for living expenses incurred for himself and members of his household

resulting from the loss of use or occupancy of such residence;

(l) Certain cost-sharing payments made for conservation purposes on land owned by the claimant: Payments received from federal or state funds primarily to conserve soil, protect or restore the environment, improve forests, or provide a habitat for wildlife are excluded from gross income. In addition, the claimant may exclude energy conservation subsidies provided by public utilities from gross income. If the claimant indicates that he or she has received payments from the government or had improvements made to his or her residence or land by the government for conservation purposes, the assessor may ask for verification of the amount excluded (if any) from gross income and the information received by the claimant supporting this exclusion. See Internal Revenue Code sections 126 and 136;

(m) Child support payments;

(n) Qualified foster care payments made from the government or a qualified nonprofit to a foster parent or guardian. See Internal Revenue Code section 131;

(o) Income from United States savings bonds used to pay higher education tuition and fees. See Internal Revenue Code section 135;

(p) Distributions from a qualified state tuition program or a Coverdell Education Savings Account used to pay for higher education expenses. Distributions from a Coverdell Education Savings Account used to pay for elementary or secondary education expenses. See Internal Revenue Code sections 529 and 530.

WAC 458-16A-115

Senior citizen, disabled person, and one hundred percent disabled veteran exemption — Adjusted gross income.

(1) **Introduction.** This rule explains how an assessor determines the adjusted gross income for the claimant, the claimant's spouse or domestic partner, and any cotenants. In order to meet the income requirements for the senior citizen, disabled person, and one hundred percent disabled veteran exemption program, the claimant must provide supporting documents verifying combined disposable income. The adjusted gross income for federal income tax purposes of the claimant, the claimant's spouse or domestic partner, and any cotenants represents a part of the claimant's combined disposable income.

(a) **Income tax return.** In most cases, the claimant presents copies of federal income tax returns to demonstrate adjusted gross income amount(s) for the claimant, the claimant's spouse or domestic partner, and any cotenants. The assessor then determines the disposable income for each person based upon that person's income tax return and other information supplied by the claimant.

(b) **No income tax return.** When the claimant does not present federal income tax return(s), the assessor must determine what constitutes the gross income and the adjusted gross income of the nonfiler and obtain copies of income documents to determine that person's income amounts. This rule provides the assessor with some guidance in determining the adjusted gross income for

a nonfiler.

(c) **Verifying the adjusted gross income amount.** In some cases, the assessor may choose to verify income amount(s). The rule provides the assessor some guidance in verifying all or part of the adjusted gross income for the claimant, the claimant's spouse or domestic partner, or any of the cotenants.

(2) **Adjusted gross income.** Internal Revenue Code section 62 defines "adjusted gross income" as gross income minus the following deductions:

(a) **Trade and business deductions.** Business owners may deduct from gross income trade or business expenses. If the claimant submits a copy of a Form 1040 federal income tax return, these deductions will be taken on the Schedule C, the Schedule C-EZ, or, for a farm, the Schedule F. If the business owned is a partnership, limited partnership, S Corporation, or Limited Liability Company (LLC), the deduction is taken on the return submitted by the partnership, limited partnership, S Corporation, or LLC (Tax Return Forms 1065 and 1120S) and passed through to the individual on a Schedule K-1. A claimant, spouse, domestic partner, or cotenant that does not file a federal income tax return, but claims to have trade or business deductions should provide documentation of income and expenses from the business to allow the assessor to determine the amount of trade or business expenses to be deducted.

(b) **Unreimbursed expenses paid or incurred by an elementary or secondary school teacher for educational materials and equipment, an employee who is a qualified performing artist, or a state or local government official paid on a fee basis.** From 2002 until 2010, an elementary or secondary school teacher may deduct from gross income up to two hundred fifty dollars of unreimbursed amounts that the teacher pays for educational materials and equipment used in the teacher's classroom. A teacher may take this deduction on a Form 1040 or a 1040A. A qualified performing artist, defined by Internal Revenue Code section 62(b), or a state or local government official paid on a fee basis may deduct from gross income any unreimbursed trade or business expenses incurred for that employer as an employee. If the claimant submits a copy of a Form 1040 federal income tax return, the deduction will be taken on the dotted line before the final line for determining adjusted gross income with a designation of "QPA" or "FBO." A claimant, spouse, domestic partner, or cotenant that does not file a tax return, but claims to have unreimbursed expenses for this deduction, should provide documentation to demonstrate his or her status as an elementary or secondary school teacher, a qualified performing artist, or a government employee paid on a fee basis and documentation of the unreimbursed educational materials and equipment or trade or business amounts spent as an employee for his or her employer.

(c) **Losses from sale or exchange of property.** A property owner may deduct from gross income losses from the sale or exchange of property for federal income tax purposes. If the claimant submits a copy of a Form 1040 federal income tax return, the deduction is generally determined on a Schedule D. For purposes of this program, losses cannot be deducted from income. Any losses taken must be added onto adjusted gross income. An assessor may refuse documentation of losses from a claimant, spouse, domestic partner, or cotenant that does not file a tax return as these losses do not result in any change to the claimant's final combined

claimant, spouse, domestic partner, or cotenant that does not file a tax return, but claims to have made qualifying contributions to an IRA, should provide documentation of these contributions. The assessor may request the claimant to submit a copy of the IRA deduction worksheet provided in the instructions for Form 1040 and Form 1040A to calculate this deduction whether or not the person filed a tax return.

(j) Penalties on early withdrawal of savings. A person may deduct from gross income for purposes of federal income tax penalties paid because of an early withdrawal of savings. This deduction is claimed on the Form 1040 federal income tax return. The IRS classifies these penalties as losses. For purposes of this program, losses may not be deducted from income. Any deduction taken on this line must be added to adjusted gross income. An assessor may refuse documentation about these penalties from a claimant, spouse, domestic partner, or cotenant that does not file a tax return as these losses do not result in any change to the claimant's final combined disposable income.

(k) Alimony. A person may deduct from gross income alimony paid in cash to a previous spouse. This deduction is claimed on the Form 1040 federal income tax return. A person that does not file a tax return, but made alimony payments, should provide copies of documentation showing alimony payments were made in cash to a prior spouse. The documents should include a copy of the divorce or separation instrument providing for the alimony payments and the amount of the alimony payments made during the year.

(l) Reforestation costs. A landowner may deduct from gross income for purposes of federal income tax the amortized reforestation costs for qualified timber property over a period of eighty-four months. If the property is held as business property, the deduction will appear with the trade and business expenses. If the property is not held as business property and the claimant submits a copy of a Form 1040 federal income tax return, this deduction is claimed on the dotted line before the final line for determining adjusted gross income on the Form 1040 federal income tax return and identified as "RFST." An assessor may refuse documentation of the amortization of reforestation costs from a claimant, spouse, domestic partner, or cotenant that does not file a tax return as these amortized costs are depreciation expenses. These expenses would be added onto adjusted gross income for purposes of this program and do not result in any change to the claimant's final combined disposable income.

(m) Required repayment of supplemental unemployment compensation. A person may deduct from gross income required repayments of supplemental unemployment compensation benefits. If the claimant submits a Form 1040 federal income tax return, the deduction may show on the return in one of two ways. If the repayment is made in the same year the benefits are received, the taxpayer reduces the total unemployment compensation reported on the return by the amount of repayment. If the repayment is made in a later year, the taxpayer deducts the repayment on the dotted line before the final line for determining adjusted gross income on the return and identifies it as "Sub-Pay TRA." A person that does not file a tax return, but claims to have repaid supplemental unemployment compensation, should provide documentation of these repayments.

(n) Jury duty pay given to employer. An employee may deduct from gross income jury duty

pay given to his or her employer. An employee deducts the jury pay given to the employer on the dotted line before the final line for determining adjusted gross income on the Form 1040 federal income tax return and identifies it as "Jury Pay." A person that does not file a tax return, but claims to have given jury pay received during the year to their employer, should provide documentation of the amount of jury pay given over to the employer.

(o) Clean-fuel vehicles and certain refueling property. A person may deduct from gross income a portion of the cost for a qualified clean-fuel vehicle and certain refueling property until the end of calendar year 2004. This deduction may show on the Form 1040 federal income tax return in one of two ways. If the property is held as business property, the deduction will appear with the trade and business expenses. If a clean-fuel vehicle is not held as business property, or is claimed by an employee who used it in whole or part for business, this deduction is claimed on the dotted line before the final line for determining adjusted gross income on the return and identified as "Clean Fuel." A purchaser that does not file a tax return, but purchased clean-fuel property, should provide documentation about the qualifying clean-fuel vehicle or the refueling property, the amount paid for the clean-fuel property, and a calculation of the deduction amount allowed.

(p) Unreimbursed moving expenses. If the claimant, spouse, domestic partner, or cotenant had to move a significant distance for a job or business, he or she may deduct from gross income the unreimbursed moving costs. This deduction is claimed on the Form 1040 federal income tax return. If the claimant, spouse, domestic partner, or cotenant does not file a tax return, the claimant should provide documentation of the distance moved, the reason for the move, and the moving expenses. The assessor may request a copy of Form 3903, Moving Expenses, and the distance test worksheet on that form to prove the amount of the person's adjusted gross income whether or not the claimant, spouse, domestic partner, or cotenant filed a federal income tax return.

(q) Archer MSAs (medical savings accounts). A person may deduct from gross income a qualifying contribution to an Archer MSA. An MSA is an account set up exclusively for paying the qualified medical expenses of the account holder or the account holder's spouse or dependent(s) in conjunction with a high deductible health plan (HDHP). To be eligible for an MSA, the person must work as an employee for a small employer or be self-employed. The person must also have an HDHP, and have no other health insurance coverage except permitted coverage. The calculation of the deduction is performed on a Form 8853. This deduction is claimed on the Form 1040 federal income tax return. If the person does not file a tax return, but claims to have made a qualifying contribution to an Archer MSA, the claimant should provide copies of documentation as to that person's qualifications for the deduction and how the deduction was calculated. If this deduction is claimed, the assessor may ask the claimant to submit a copy of Form 8853, Archer MSAs and Long Term Care Insurance Contracts, whether or not the claimant, spouse, domestic partner, or cotenant filed a federal income tax return.

(r) Interest on student loans. A person may deduct from gross income some or all student loan interest paid on his or her student loan(s) during the first sixty months of the loan repayment period. The deduction may not be claimed by a taxpayer claimed as a dependent, a taxpayer filing as married filing separately, or when the taxpayer has an adjusted gross income amount

over fifty-five thousand dollars (seventy-five thousand dollars if married filing jointly). This deduction is claimed on either the Form 1040 or Form 1040A federal income tax return. A person that does not file a tax return, but claims to have paid student loan interest, should provide copies of documentation of that person's qualification for the deduction and how the deduction was calculated. For 2002 and after, a person may deduct some or all of this student loan interest (not over two thousand five hundred dollars) repaid for any repayment period (the sixty-month limit is gone), provided the taxpayer does not have adjusted gross income above sixty-five thousand dollars (one hundred thirty thousand dollars if married filing jointly). The two thousand five hundred dollar limit on the interest gets reduced for taxpayers with adjusted gross income over fifty thousand dollars (one hundred thousand dollars if married filing jointly). See Internal Revenue Code section 221.

(s) **Higher education expenses.** From 2002 to 2005, an individual with adjusted gross income below a set amount (generally sixty-five thousand dollars) may take a deduction for qualified tuition and related expenses paid by that person for that person, that person's spouse, or a dependent of that person. Depending on the individual's gross income, the deduction cannot exceed three thousand dollars (four thousand dollars in 2004 and 2005). The deduction is claimed on either the Form 1040 or Form 1040A federal income tax return. A person that does not file a tax return, but claims to have paid higher education expenses, should provide copies of documentation of that person's qualification for the deduction and how the deduction was calculated. This deduction may only be taken if the income was not excluded from gross income. See WAC 458-16A-110 (savings bonds, qualified state tuition programs, and Coverdell Education Savings Accounts).

WAC 458-16A-120

Senior citizen, disabled person, and one hundred percent disabled veteran exemption — Determining combined disposable income.

(1) **Introduction.** This rule describes how an assessor determines a claimant's combined disposable income.

(2) **Begin by calculating disposable income.** The assessor must determine the disposable income of the claimant, the claimant's spouse or domestic partner, and all cotenants. The assessor begins by obtaining a copy of the claimant's, the claimant's spouse's or domestic partner's, and any cotenant's federal income tax return. If the claimant, the claimant's spouse or domestic partner, or a cotenant does not provide a federal income tax return, the assessor must calculate disposable income from copies of other income documents (e.g., W-2, 1099-R, 1099-INT, etc.). The assessor may want to review the definitions of gross income, WAC 458-16A-110, and adjusted gross income, WAC 458-16A-115, to help calculate the combined disposable income for a claimant. These rules provide some guidance on how to determine adjusted gross income without copies of a federal income tax return. On the federal income tax return, the adjusted gross income is found on the front pages of Form 1040, Form 1040A, and Form 1040EZ. Even when a return is provided, an assessor may request copies of supporting documents to verify the amount of the claimant's combined disposable income.

(a) **Absent spouse or domestic partner.** When a spouse or domestic partner has been absent for over a year and the claimant has no knowledge of his/her spouse's or domestic partner's

whereabouts or whether the spouse or domestic partner has any income or not, and the claimant has not received anything of value from the spouse or domestic partner or anyone acting on behalf of the spouse or domestic partner, the disposable income of the spouse or domestic partner is deemed to be zero for purposes of this exemption. The claimant must submit with the application a dated statement signed by the applicant under the penalty of perjury. This statement must state that more than one year prior to filing this application:

(i) The claimant's spouse or domestic partner has been absent;

(ii) The claimant has not and does not know the whereabouts of the claimant's spouse or domestic partner;

(iii) The claimant has not had any communication with the claimant's spouse or domestic partner;

(iv) The claimant has not received anything of value from the claimant's spouse or domestic partner or anyone acting on behalf of the claimant's spouse or domestic partner.

The statement must also agree to provide this income information if the claimant is able to obtain it anytime in the next four years.

(b) **Form 1040EZ.** Generally, the adjusted gross income on Form 1040EZ represents the disposable income for the person or couple filing the return. However, that person's or couple's adjusted gross income as shown on the Form 1040EZ must be increased by the following amounts that are excluded from their adjusted gross income.

(i) **Gain from a sold residence.** Under certain circumstances, gain from a sold residence is added onto the seller's adjusted gross income. Since there is no federal form used for reporting the exclusion of capital gains from the sale of a principal residence, the exemption application asks if a home has been sold, whether the sale proceeds were reinvested in new principal residence, and the amount of capital gain from the sale.

(A) If the proceeds were reinvested in a new principal residence, the excluded capital gain reinvested in the new residence is ignored. The adjusted gross income on Form 1040EZ is not adjusted for any part of the excluded capital gain reinvested in the new residence.

(B) If the proceeds were not reinvested in a new principal residence or only a part of the proceeds were reinvested in a new principal residence, the amount of excluded capital gain that is not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The assessor may accept the excluded capital gain amount claimed upon the application or request a copy of documents demonstrating the seller's basis in the property and the capital gain earned upon the sale.

(ii) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. This tax exempt interest is marked "TEI" and reported on the Form 1040EZ. The tax-exempt interest is added onto the bond

owner's federal adjusted gross income to determine the bond owner's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse or domestic partner, or any cotenants own state or local government bonds. If the return does not show the tax exempt amount from the bond, the assessor may ask to see a copy of the Form 1099-INT (Interest Income).

(B) If the claimant does not have this form, the bond issuer should be able to tell the owner whether the interest is taxable. The issuer should also give the owner a periodic (or year-end) statement showing the tax treatment of the bond. If the income recipient invested in the bond through a trust, a fund, or other organization, that organization should give the recipient this information.

(iii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added onto the adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed in more detail below in paragraph (c)(vii).

(iv) **Veterans benefits.** Veterans benefits are added onto the veteran's adjusted gross income to determine the veteran's disposable income, except for:

(A) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(B) Disability compensation, defined as payments made by the Department of Veterans Affairs (VA) to a veteran because of service-connected disability. (RCW 84.36.383 (5)(f)(iii).)

(C) Dependency and indemnity compensation, defined as payments made by the Department of Veterans Affairs (VA) to a surviving spouse, child, or parent. (RCW 84.36.383 (5)(f)(iv).)

Veterans benefits are discussed in more detail below in paragraph (c)(viii).

(c) **Form 1040A.** If a claimant provides a copy of a Form 1040A, the assessor calculates the disposable income for the person or couple filing the return by adding onto the adjusted gross income reported the items described below to the extent these items were excluded or deducted from gross income:

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The amount is reported on the exemption application. Refer to paragraph (a)(i) above for a more complete discussion of excluded capital gain upon a sold residence.

(ii) **Interest received on state and municipal bonds.** Interest received on state or local

government bonds is generally not subject to federal income tax. The tax-exempt interest reported on Form 1040A is added back onto the bond owner's adjusted gross income to determine the bond owner's disposable income. Refer to paragraph (a)(ii) above for a more complete discussion of tax-exempt interest on state and municipal bonds.

(iii) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference in the total pension and annuity amounts reported from the taxable amounts reported. If the total amount of the pension and annuity amounts are not reported on the return, the assessor may use a copy of the Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the total amount of pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account; and

(iv) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on Form 1040A is added onto the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference in the total Social Security benefits or equivalent railroad retirement amounts reported from the taxable amount reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the return, the assessor may use a copy of the Form SSA-1099 or Form RRB-1099 issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the Social Security benefits or the railroad retirement benefits received.

(v) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added onto adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed below in paragraph (c)(vii).

(vi) **Veterans benefits.** Veterans benefits are added back onto the veteran's adjusted gross income to determine the veteran's disposable income, except for:

(A) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(B) Disability compensation, defined as payments made by the Department of Veterans Affairs (VA) to a veteran because of service-connected disability. (RCW 84.36.383 (5)(f)(iii).)

(C) Dependency and indemnity compensation, defined as payments made by the Department of Veterans Affairs (VA) to a surviving spouse, child, or parent. (RCW 84.36.383 (5)(f)(iv).)

Veterans benefits are discussed below in paragraph (c)(viii).

(d) **Form 1040.** If a claimant provides a copy of a Form 1040, the assessor calculates the disposable income for the person or couple filing the return by adding onto the reported adjusted gross income all the items described below to the extent these items were excluded or deducted from gross income:

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The excluded capital gain amount is reported on the exemption application.

(ii) **Capital gains.** If the return shows capital gains or losses, the assessor examines a copy of the following schedule or forms, if any, that were filed with the return. The assessor should examine the capital gains reported on Schedule D (Capital Gains and Losses) and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), and 8829 (Business Use of Home).

The assessor adds onto the adjusted gross income any amount of capital gains reduced by losses or deductions on the schedules or forms listed above to determine the total capital gains. The amount of capital gains that were excluded or deducted from adjusted gross income must be added onto that adjusted gross income to determine disposable income.

(iii) **Losses.** Amounts deducted for loss are added onto the adjusted gross income to determine the disposable income. Most losses are reported on the return in parentheses to reflect that these loss amounts are to be deducted. The net losses are reported on Form 1040 as business losses, as capital losses, as other losses, as rental or partnership-type losses, and as farm losses. Add these amounts in parentheses onto the adjusted gross income. In addition, the assessor adds to adjusted gross income the amount reported as a penalty on early withdrawal of savings because the amount represents a loss under section 62 of the Internal Revenue Code.

(A) The taxpayer only reports the net amount of losses on the front page of the Form 1040 federal income tax return. A loss may be used on other schedules or forms to reduce income before being transferred to the front page of the return to calculate adjusted gross income. The assessor adds onto the adjusted gross income the amount of losses used to reduce income on these other schedules and forms. If the assessor has already added capital gains reduced by losses, the assessor does not add this amount onto adjusted gross income as it has already been accounted for. The amount of losses that were used to reduce adjusted gross income must be added onto that adjusted gross income to determine disposable income. For example, the claimant reports on the front page of the 1040 a capital loss of (five thousand dollars). The assessor examines the Schedule D. On the Schedule D, the claimant reports two thousand dollars in long-term capital gains from the sale of Company X stock and seven thousand dollars in long-term capital losses from the sale of an interest in the Y limited partnership. The assessor has already reduced the claimant's adjusted gross income by five thousand dollars from the capital loss reported on the front page of the return. The assessor would add onto adjusted gross income only the additional two thousand dollars in losses from this Schedule D that was used to offset the capital gain the claimant earned from the sale of Company X stock.

(B) The assessor should examine losses reported on Schedules C (Profit or Loss from Business), D (Capital Gains and Losses), E (Supplemental Income and Loss), F (Profit or Loss from Farming), and K-1 (Shareholder's Share of Income, Credits, Deductions, etc.), and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), 8582 (Passive Activity Loss Limitations), and 8829 (Business Use of Home) to determine the total amount of losses claimed.

(iv) **Depreciation.** Amounts deducted for the depreciation, depletion, or amortization of an asset's costs are added onto the adjusted gross income to determine the disposable income. This includes section 179 expenses, as an expense in lieu of depreciation. Amounts deducted for depreciation, depletion, amortization, and 179 expenses may be found on Schedules C, C-EZ, E, F, K and K-1, and on Form 4835 (Farm Rental Income and Expenses). If the schedule or form results in a loss transferred to the front of the Form 1040 federal income tax return, the depreciation deduction to the extent it is represented in that loss amount should not be added onto the adjusted gross income (as this would result in it being added back twice);

(v) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference in the total pension and annuity amounts reported from the taxable amount reported. If the total amount of the pension and annuity amounts are not reported on the return, the assessor may use a copy of the Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the total amount of pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account.

(vi) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on the Form 1040 federal income tax return is added onto the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference in the total Social Security benefits or equivalent railroad retirement amounts reported from the taxable amount reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the return, the assessor may use a copy of the Form SSA-1099 or Form RRB-1099 issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the Social Security benefits or the railroad retirement benefits received.

(vii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than pay or benefits for attendant care or medical aid, are added onto the adjusted gross income of the military personnel receiving the military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are not reported on the Form 1040. Excluded military pay and benefits such as pay earned in a combat zone, basic allowance for subsistence (BAS), basic allowance for housing (BAH), and certain in-kind allowances, are reported in box 12 of the Form W-2. The claimant should disclose when excluded military pay and benefits were received and provide copies of the Form W-2 or other documents that verify the amounts received.

(viii) **Veterans benefits.** Federal law excludes from gross income any veterans benefits payments, paid under any law, regulation, or administrative practice administered by the Department of Veterans Affairs (VA). To determine disposable income, allowances or payments made from the VA must be added on the veteran's adjusted gross income, except for:

(A) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(B) Disability compensation, defined as payments made by the Department of Veterans Affairs (VA) to a veteran because of service-connected disability. (RCW 84.36.383 (5)(f)(iii).)

(C) Dependency and indemnity compensation, defined as payments made by the Department of Veterans Affairs (VA) to a surviving spouse, child, or parent. (RCW 84.36.383 (5)(f)(iv).)

VA benefits are not reported on the Form 1040. The claimant should disclose when excluded veterans benefits were received and provide copies of documents that verify the amount received. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the VA;

(ix) **Dividend receipts.** Exempt-interest dividends received from a regulated investment company (mutual fund) are reported on the tax-exempt interest line of the Form 1040 and added onto the recipient's adjusted gross income to determine that recipient's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse or domestic partner, or any cotenants have received exempt-interest dividends.

(B) Generally, the mutual fund owner will receive a notice from the mutual fund telling him or her the amount of the exempt-interest dividends received. These exempt-interest dividends are not shown on Form 1099-DIV or Form 1099-INT. Although exempt-interest dividends are not taxable, the owner must report them on the Form 1040 tax return if he or she has to file; and

(x) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. This tax-exempt interest is reported on the Form 1040 and added onto the bond owner's adjusted gross income to determine the bond owner's disposable income.

(3) **Calculate the combined disposable income.** When the assessor has calculated the disposable income for the claimant, the claimant's spouse or domestic partner, and any cotenants, the assessor combines the disposable income of these people together. The assessor reduces this combined income by the amount paid by the claimant or the claimant's spouse or domestic partner during that calendar year for their legally prescribed drugs, home health care; nursing home, boarding home, or adult family home expenses; and health care insurance premiums for medicare under Title XVIII of the Social Security Act to calculate the claimant's combined

disposable income.

WAC 458-16A-130

Senior citizen, disabled person, and one hundred percent disabled veteran exemption — Qualifications for exemption.

(1) **Introduction.** This rule describes the qualifications a claimant must meet for the senior citizen, disabled person, and one hundred percent disabled veteran property tax exemption. In order to qualify for the exemption, the claimant:

(a) Must meet age or disability requirements;

(b) Must have a combined disposable income below the statutory limit amount provided in RCW 84.36.381; and

(c) Must own the property and occupy it as his or her principal residence.

(2) **Age, retirement, and disability requirements.** In order to qualify for the exemption:

(a) The senior citizen claiming the exemption must be age sixty-one or older on December 31st of the year in which the claim is filed. No proof is required concerning a senior citizen's employment status to claim the exemption.

(b) The disabled person claiming the exemption must be at the time of filing retired from regular gainful employment and unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (42 U.S.C. Sec. 423 (d)(1)(A)).

(c) The veteran claiming the exemption must at the time of filing be a veteran of the armed forces of the United States with one hundred percent service-connected disability.

(d) The surviving spouse or domestic partner of a claimant, who applies to continue their spouse's or domestic partner's exemption, must be age fifty-seven or older in the calendar year the claimant dies.

(3) **Income requirements.** In order to qualify for the exemption, the claimant's combined disposable income, as defined in RCW 84.36.383 and WAC 458-16A-120, must be below the statutory limit amount provided in RCW 84.36.381.

(4) **Principal residence requirements.** In order to qualify for the exemption, the claimant must own the property and occupy it as his or her principal residence. The claimant must occupy the principal residence at the time of filing for each year the exemption is claimed. See WAC 458-16A-100 (definitions of principal residence and residence), and WAC 458-16A-135 (supporting documents required to demonstrate the property is owned and occupied as a claimant's principal residence).

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 paid 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 three 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 three 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 with one hundred percent service-connected disability as provided in 42 U.S.C. Sec. 423 (d)(1)(A) as amended prior to January 1, 2005;

(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, boarding home, 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.

WAC 458-16A-140

Senior citizen, disabled person, and one hundred percent disabled veteran exemption — Exemption described — Exemption granted — Exemption denied — Freezing property values.

(1) **Introduction.** This rule explains how county assessors process a claimant's application form for the senior citizen, disabled person, or one hundred percent disabled veteran property tax exemption. The rule describes the exemption and what happens when the exemption is granted or denied by the assessor.

(2) **The exemption described.** This property tax exemption reduces or eliminates property taxes on a senior citizen's, disabled person's, or one hundred percent disabled veteran's principal residence. Except for benefit charges made by a fire protection district, this exemption does not reduce or exempt an owner's payments for special assessments against the property. Local governments impose special assessments on real property because the real property is specially benefitted by improvements made in that area (e.g., local improvement district assessments for roads or curbs, surface water management fees, diking/drainage fees, weed control fees, etc.). All the property owners in that area share in paying for these improvements. The only exception related to this program is for benefit charges made by a fire protection district. Fire protection district benefit charges are reduced twenty-five, fifty, or seventy-five percent depending upon the combined disposable income of the claimant. RCW 52.18.090.

(a) **Excess levies.** A qualifying claimant receives an exemption from excess levies on his or her principal residence.

(b) **Regular levies.** Depending upon the claimant's combined disposable income, the exemption may also apply to all or a portion of the regular levies on the claimant's principal residence. Both the level of the claimant's combined disposable income and the assessed value of the home determine the amount of the regular levy exempted from property taxes. The exemption applies to all the regular and excess levies when the assessed value of the claimant's principal residence falls below the amount of exempt assessed value identified in RCW 84.36.381 (5)(b) and the claimant's combined disposable income is also below the levels set in

that section.

(c) **Property taxes due.** Generally the owner pays the property taxes on the principal residence and obtains directly the benefit of this exemption. If the claimant is not the property's owner, or is not otherwise obligated to pay the property taxes on the principal residence, but "owned" the principal residence for purposes of this exemption, the property owner that owes the tax must reduce any amounts owed to them by the claimant up to the amount of the tax exemption. If the amounts owed by the claimant to this property owner are less than the tax exemption, the owner must pay to the claimant in cash any amount of the tax exemption remaining after this offsetting reduction. RCW 84.36.387(6).

(3) **Processing exemption applications.** County assessors process applications for the senior citizen, disabled person, or one hundred percent disabled veteran exemption. The assessors grant or deny the exemption based upon these completed applications.

(a) **Application review.** The county assessor reviews a completed application and its supporting documents.

The assessor:

(i) Notes on a checklist for the claimant's file the supporting documents received;

(ii) Reviews the supporting documents;

(iii) Records relevant information from the supporting documents into the claimant's file. In particular, the assessor records into the file the claimant's age and a summary of the income information received; and

(iv) After reviewing the supporting documents, must either destroy or return the supporting documents used to verify the claimant's age and income.

(b) **Incomplete applications.** A county assessor may return an incomplete application or a duplicate application. An incomplete application may be missing:

(i) Signatures;

(ii) Information upon the form; or

(iii) Supporting documents.

Upon returning an incomplete application, the assessor should provide the claimant with a dated denial form listing the signatures, information, or documents needed to complete the application. The denial of an incomplete application may be appealed in the same manner as a denial of the exemption.

(c) The assessor may accept any late filings for the exemption even after the taxes have been

levied, paid, or become delinquent. An application filed for the exemption in previous years constitutes a claim for a refund under WAC 458-18-210.

(4) Exemption timing if approved. Property taxes are reduced or eliminated on the claimant's principal residence for the year following the year the claimant became eligible for the program. When a late application is filed, the exemption may only result in:

- (a) A property tax refund for taxes paid within three years of the payment date; and
- (b) Relief from unpaid property taxes for previous years.

(5) Exemption procedure when claim granted. When the exemption is granted, the county assessor:

- (a) Freezes the assessed value of the principal residence upon the assessment roll;
- (b) Determines the level of exemption the claimant qualifies for;
- (c) Notifies the claimant that the exemption has been granted;
- (d) Notifies the claimant of his or her duty to file timely renewal applications;
- (e) Notifies the claimant of his or her duty to file change of status forms when necessary;
- (f) Notifies the claimant of the need to reapply for the exemption if the claimant moves to a replacement residence;
- (g) Notifies the claimant that has supplied estimated income information whether or not follow-up income information is needed;
- (h) Places the claimant on a notification list for renewal of the exemption;
- (i) Places the claimant on a notification list if supporting documents are needed to confirm estimated income information prior to May 31st of the following year;
- (j) Exempts the residence from all or part of its property taxes; and
- (k) Provides the department with a recomputation of the assessed values for the immediately preceding year as a part of the annual recomputation process.

(6) Exemption procedure when claim denied. The assessor denies the exemption when the claimant does not qualify. The assessor provides a dated denial form listing his or her reasons for this denial. A claimant may appeal the exemption's denial to the county board of equalization as provided for in WAC 458-14-056.

(7) Freezing the property value. The assessor freezes the assessed value of the principal

residence either on the latter of January 1, 1995, or January 1st of the year when a claimant first qualifies for the exemption. The assessor then tracks both the market value of the principal residence and its frozen value. The assessor provides both the principal residence's market value and its frozen value in the valuation notices sent to the owner.

(a) Frozen values in counties using a cyclical revaluation plan. In counties using a cyclical revaluation plan, the assessor:

(i) Revalues the principal residence, for property revalued in that assessment year, before the assessed value is frozen; or

(ii) Freezes the principal residence's value at the most recent assessed value for property that is not revalued in that assessment year.

The assessor continues to revalue the principal residence during the regular revaluation cycles to track the market value for the property.

(b) Adding on improvement costs. The assessor adds onto the frozen assessed value the cost of any improvements made to the principal residence.

(c) One-year gaps in qualification. If a claimant receiving the exemption fails to qualify for only one year because of high income, the previous frozen property value must be reinstated on January 1st of the following year when the claimant again qualifies for the program.

(d) Moving to a new residence. If an eligible claimant moves, the county assessor freezes the assessed value of the new principal residence on January 1st of the assessment year in which the claimant transfers the exemption to the replacement residence.

WAC 458-16A-150

Senior citizen, disabled person, and one hundred percent disabled veteran exemption — Requirements for keeping the exemption.

(1) **Introduction.** This rule explains how and when a senior citizen, disabled person, or one hundred percent disabled veteran must file additional reports with the county assessor to keep the senior citizen, disabled person, or one hundred percent disabled veteran property tax exemption. The rule also explains what happens when the claimant or the property no longer qualifies for the full exemption.

(2) **Continuing the exemption.** The claimant must keep the assessor up to date on the claimant's continued qualification for the senior citizen, disabled person, or one hundred percent disabled veteran property tax exemption. The claimant keeps the assessor up to date in three ways. First, the claimant submits a change in status form when any change affects his or her exemption. In some circumstances, the change in status form may be submitted by an executor, a surviving spouse, a surviving domestic partner, or a purchaser to notify the county of a change in status affecting the exemption. Second, the claimant submits a renewal application for the exemption either upon the assessor's request following an amendment of the income requirement, or every four years. Third, the claimant applies to transfer the exemption when

moving to a new principal residence.

(3) **Change in status.** When a claimant's circumstances change in a way that affects his or her qualification for the senior citizen, disabled person, or one hundred percent disabled veteran property tax exemption, the claimant must submit a completed change in status form to notify the county of this change.

(a) **When to submit form.** The claimant must submit a change in status form to the county assessor for any change affecting that person's qualification for the exemption within thirty days of such change in status. If the claimant is unable or fails to submit a change in status form, any subsequent property owner, including a claimant's estate or surviving spouse or surviving domestic partner, should submit a change in status form to avoid interest and in some cases the penalty for willfully claiming the exemption based upon erroneous information.

(b) **Changes in status described.** Changes in status include:

(i) Changes that affect the property (i.e., changes in land use regulations, new construction, boundary line changes, rentals, ownership changes, etc.);

(ii) Changes to the property owner's annual income that increase or decrease property taxes due under the program; or

(iii) Changes that affect the property owner's eligibility for the exemption (i.e., death, moving to a replacement residence, moving to another residence the claimant does not own, moving into a hospice, a nursing home, or any other long-term care facility, marriage, registration in a state registered domestic partnership, improvement of a disability for a disabled person's claim, or a disabled person entering into gainful employment).

(c) **Change in status form.** The county assessor designs the change in status 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. The claimant, the claimant's agent, or a subsequent owner of the residence must use a change in status form from the county where the principal residence is located. The person filing the form must provide true and accurate information on the change in status form.

(d) **Obtaining the form.** The claimant or subsequent property owner may obtain the form from the county assessor where his or her principal residence is located.

(e) **Failure to submit the form after a change in status occurs.** If the claimant fails to submit the change in status form, the application information relied upon becomes erroneous for the period following the change in status. Upon discovery of the erroneous information, the assessor determines the status of the exemption, and notifies the county treasurer to collect any unpaid property taxes and interest from the claimant, the claimant's estate, or if the property has been transferred, from the subsequent property owner. The treasurer may collect any unpaid property taxes, interest, and penalties for a period not to exceed three years as provided for under RCW 84.40.380. In addition, if a person willfully fails to submit the form or provides erroneous

information, that person is liable for an additional penalty equal to one hundred percent of the unpaid taxes. RCW 84.36.385. If the change in status results in a refund of property taxes, the treasurer may refund property taxes and interest for up to the most recent three years after the taxes were paid as provided in chapter 84.69 RCW.

(f) Loss of the exemption. If the change in status disqualifies the applicant for the exemption, property taxes must be recalculated based upon the current full assessed value of the property and paid from the date the change in status occurred. RCW 84.40.360. For example, the exemption is lost when the claimant dies (unless the spouse or domestic partner is also qualified). The property taxes are recalculated to the full assessed amount of the principal residence on a pro rata basis beginning the day following the date of the claimant's death for the remainder of the year.

(g) Loss of exemption on part of the property. If the change in status removes a portion of the property from the exemption, property taxes in their full amount on that portion of the property that is no longer exempt must be recalculated based upon the current full assessed value of that portion of the property and paid from the date the change in status occurred. For example, a property owner subdivides his or her one-acre lot into two parcels. The parcel that does not have the principal residence built upon it no longer qualifies for the exemption. The property taxes are recalculated to the full assessed amount of that parcel on a pro rata basis for the remainder of the year beginning the day following the date the subdivision was given final approval.

(h) Exemption reduced. If the change in status reduces the exemption amount, the increased property taxes are due in the year following the change in income. For example, a claimant's income rises so that only excess levies on her principal residence are exempt. The claimant's income is based upon the assessment year. The following year when the taxes are collected, the property taxes due are calculated with only an exemption for excess levies.

(4) Renewal application. The county assessor must notify claimants when to file a renewal application with updated supporting documentation.

(a) Notice to renew. Written notice must be sent by the assessor in the year the renewal application is requested. Notice must be sent no later than December 10th, three weeks before the December 31st filing requirement.

(b) When to renew. The assessor must request a renewal application at least once every four years. The assessor may request a renewal application for any year the income requirements are amended in the statute after the exemption is granted. Once notified, the claimant must file the renewal application by December 31st of that year.

(c) Processing renewal applications. Renewal applications are processed in the same manner as the initial application.

(d) The renewal application form. The county assessor may design the renewal application form or adapt either its own application form or the application master form obtained from the

department. The county must obtain approval of the final renewal application form from the department before it may be distributed. The property owner must use a renewal form from the county where the principal residence is located. The claimant must provide true and accurate information on the renewal application form.

(e) **Obtaining the form.** The assessor provides this form to senior citizens, disabled persons, or one hundred percent disabled veterans claiming the exemption when requesting renewal.

(f) **Failure to submit the renewal application.** If the property owner fails to submit the renewal application form, the exemption is discontinued until the claimant reapplies for the program. The assessor may postpone collection activities and continue to work with an eligible claimant to complete an application for a missed period.

(5) **Transfer of the exemption.** When a claimant moves to a replacement residence, the claimant must file a change in status form with the county where his or her former principal residence was located. No claimant may receive an exemption on more than the equivalent of one residence in any year.

(a) **Exemption on the former residence.** The exemption on the former residence applies to the closing date on the sale of the former residence, provided the claimant lived in the residence for most of the portion of that year prior to the date of closing. Property taxes in their full amount must be recalculated based upon the current full assessed value of the property and paid from the day following the date the sale closed. The taxes are paid for the remaining portion of the year. RCW 84.40.360.

(b) **Exemption upon the replacement residence.** Upon moving, the claimant must reapply for the exemption in the county where the replacement residence is located if the claimant wants to continue in the exemption program. The same application, supporting documents, and application process is used for the exemption on the replacement residence as when a claimant first applies. See WAC 458-16A-135. The exemption on the replacement residence applies on a pro rata basis in the year he or she moves, but only from the latter of the date the claimant moves into the new principal residence or the day following the date the sale closes on his or her previous residence.