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**SUBSTITUTE HOUSE BILL 2540**

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**State of Washington**

**64th Legislature**

**2016 Regular Session**

**By** House Finance (originally sponsored by Representatives Nealey, Tharinger, Harris, Walsh, Ryu, Griffey, Hayes, Manweller, Pike, Smith, Stokesbary, MacEwen, Van De Wege, Johnson, Magendanz, Wilson, McBride, Hargrove, Schmick, Pollet, and Van Werven)

READ FIRST TIME 02/09/16.

1 AN ACT Relating to modifying the penalty for taxpayers that do  
2 not submit an annual survey or report; amending RCW 82.32.534 and  
3 82.32.585; creating a new section; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 82.32.534 and 2014 c 97 s 102 are each amended to  
6 read as follows:

7 (1)(a) Every person claiming a tax preference that requires a  
8 report under this section must file a complete annual report with the  
9 department. The report is due by (~~April 30th~~) May 31st of the year  
10 following any calendar year in which a person becomes eligible to  
11 claim the tax preference that requires a report under this section.  
12 The department may extend the due date for timely filing of annual  
13 reports under this section as provided in RCW 82.32.590.

14 (b) The report must include information detailing employment,  
15 wages, and employer-provided health and retirement benefits for  
16 employment positions in Washington for the year that the tax  
17 preference was claimed. However, persons engaged in manufacturing  
18 commercial airplanes or components of such airplanes may report  
19 employment, wage, and benefit information per job at the  
20 manufacturing site for the year that the tax preference was claimed.  
21 The report must not include names of employees. The report must also

1 detail employment by the total number of full-time, part-time, and  
2 temporary positions for the year that the tax preference was claimed.

3 (c) Persons receiving the benefit of the tax preference provided  
4 by RCW 82.16.0421 or claiming any of the tax preferences provided by  
5 RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5)  
6 must indicate on the annual report the quantity of product produced  
7 in this state during the time period covered by the report.

8 (d) If a person filing a report under this section did not file a  
9 report with the department in the previous calendar year, the report  
10 filed under this section must also include employment, wage, and  
11 benefit information for the calendar year immediately preceding the  
12 calendar year for which a tax preference was claimed.

13 (2) As part of the annual report, the department may request  
14 additional information necessary to measure the results of, or  
15 determine eligibility for, the tax preference.

16 (3) Other than information requested under subsection (2) of this  
17 section, the information contained in an annual report filed under  
18 this section is not subject to the confidentiality provisions of RCW  
19 82.32.330 and may be disclosed to the public upon request.

20 (4)(a) Except as provided by (b) and (c) of this subsection or as  
21 otherwise provided by law, if a person claims a tax preference that  
22 requires an annual report under this section but fails to submit a  
23 complete report by the due date or any extension under RCW 82.32.590,  
24 the department must declare:

25 (i) Ten percent of the amount of the tax preference claimed for  
26 the previous calendar year to be immediately due and payable; and

27 (ii) An additional fifty percent of the amount of the tax  
28 preference claimed for the previous calendar year to be immediately  
29 due and payable if the person fails to submit a complete annual  
30 report with the department on or before the last day of the third  
31 month following the due date of the report or any extension under RCW  
32 82.32.590.

33 (b) The department must assess interest, but not penalties, on  
34 the amounts due under this subsection. The interest must be assessed  
35 at the rate provided for delinquent taxes under this chapter,  
36 retroactively to the date the tax preference was claimed, and accrues  
37 until the taxes (~~for which the tax preference was claimed~~) due  
38 under this subsection are repaid. Amounts due under this subsection  
39 are not subject to the confidentiality provisions of RCW 82.32.330  
40 and may be disclosed to the public upon request.

1 (c) For a taxpayer who has filed an appeal regarding taxes,  
2 penalties, and interest owed under RCW 82.32.585 before January 1,  
3 2016, and the appeal is pending before the department or the board of  
4 tax appeals as of the effective date of this section, the department  
5 must declare ten percent of the amount of the tax preference claimed,  
6 for any calendar year in which an annual survey was not submitted,  
7 immediately due and payable.

8 (5) The department must use the information from this section to  
9 prepare summary descriptive statistics by category. No fewer than  
10 three taxpayers may be included in any category. The department must  
11 report these statistics to the legislature each year by December 1st.

12 (6) For the purposes of this section:

13 (a) "Person" has the meaning provided in RCW 82.04.030 and also  
14 includes the state and its departments and institutions.

15 (b) "Tax preference" has the meaning provided in RCW 43.136.021  
16 and includes only the tax preferences requiring a survey under this  
17 section.

18 **Sec. 2.** RCW 82.32.585 and 2014 c 97 s 103 are each amended to  
19 read as follows:

20 (1)(a) Every person claiming a tax preference that requires a  
21 survey under this section must file a complete annual survey with the  
22 department.

23 (i) Except as provided in (a)(ii) of this subsection, the survey  
24 is due by ~~((April 30th))~~ May 31st of the year following any calendar  
25 year in which a person becomes eligible to claim the tax preference  
26 that requires a survey under this section.

27 (ii) If the tax preference is a deferral of tax, the first survey  
28 must be filed by ~~((April 30th))~~ May 31st of the calendar year  
29 following the calendar year in which the investment project is  
30 certified by the department as operationally complete, and a survey  
31 must be filed by ~~((April 30th))~~ May 31st of each of the seven  
32 succeeding calendar years.

33 (b) The department may extend the due date for timely filing of  
34 annual surveys under this section as provided in RCW 82.32.590.

35 (2)(a) The survey must include the amount of the tax preference  
36 claimed for the calendar year covered by the survey. For a person  
37 that claimed an exemption provided in RCW 82.08.025651 or  
38 82.12.025651, the survey must include the amount of tax exempted  
39 under those sections in the prior calendar year for each general area

1 or category of research and development for which exempt machinery  
2 and equipment and labor and services were acquired in the prior  
3 calendar year.

4 (b) The survey must also include the following information for  
5 employment positions in Washington, not to include names of  
6 employees, for the year that the tax preference was claimed:

7 (i) The number of total employment positions;

8 (ii) Full-time, part-time, and temporary employment positions as  
9 a percent of total employment;

10 (iii) The number of employment positions according to the  
11 following wage bands: Less than thirty thousand dollars; thirty  
12 thousand dollars or greater, but less than sixty thousand dollars;  
13 and sixty thousand dollars or greater. A wage band containing fewer  
14 than three individuals may be combined with another wage band; and

15 (iv) The number of employment positions that have  
16 employer-provided medical, dental, and retirement benefits, by each  
17 of the wage bands.

18 (c) For persons claiming the tax preference provided under  
19 chapter 82.60 or 82.63 RCW, the survey must also include the number  
20 of new products or research projects by general classification, and  
21 the number of trademarks, patents, and copyrights associated with  
22 activities at the investment project.

23 (d) For persons claiming the credit provided under RCW  
24 82.04.4452, the survey must also include the qualified research and  
25 development expenditures during the calendar year for which the  
26 credit was claimed, the taxable amount during the calendar year for  
27 which the credit was claimed, the number of new products or research  
28 projects by general classification, the number of trademarks,  
29 patents, and copyrights associated with the research and development  
30 activities for which the credit was claimed, and whether the tax  
31 preference has been assigned, and who assigned the credit. The  
32 definitions in RCW 82.04.4452 apply to this subsection (2)(d).

33 (e) For persons claiming the tax exemption in RCW 82.08.025651 or  
34 82.12.025651, the survey must also include the general areas or  
35 categories of research and development for which machinery and  
36 equipment and labor and services were acquired, exempt from tax under  
37 RCW 82.08.025651 or 82.12.025651, in the prior calendar year.

38 (f) If the person filing a survey under this section did not file  
39 a survey with the department in the previous calendar year, the  
40 survey filed under this section must also include the employment,

1 wage, and benefit information required under (b)(i) through (iv) of  
2 this subsection for the calendar year immediately preceding the  
3 calendar year for which a tax preference was claimed.

4 (3) As part of the annual survey, the department may request  
5 additional information necessary to measure the results of, or  
6 determine eligibility for, the tax preference.

7 (4) All information collected under this section, except the  
8 information required in subsection (2)(a) of this section, is deemed  
9 taxpayer information under RCW 82.32.330. Information required in  
10 subsection (2)(a) of this section is not subject to the  
11 confidentiality provisions of RCW 82.32.330 and may be disclosed to  
12 the public upon request, except as provided in subsection (5) of this  
13 section. If the amount of the tax preference claimed as reported on  
14 the survey is different than the amount actually claimed or otherwise  
15 allowed by the department based on the taxpayer's excise tax returns  
16 or other information known to the department, the amount actually  
17 claimed or allowed may be disclosed.

18 (5) Persons for whom the actual amount of the tax reduced or  
19 saved is less than ten thousand dollars during the period covered by  
20 the survey may request the department to treat the amount of the tax  
21 reduction or savings as confidential under RCW 82.32.330.

22 (6)(a) Except as provided in (b) through (d) of this subsection  
23 or as otherwise provided by law, if a person claims a tax preference  
24 that requires an annual survey under this section but fails to submit  
25 a complete annual survey by the due date of the survey or any  
26 extension under RCW 82.32.590, the department must declare:

27 (i) Ten percent of the amount of the tax preference claimed for  
28 the previous calendar year to be immediately due; and

29 (ii) An additional fifty percent of the amount of the tax  
30 preference claimed for the previous calendar year to be immediately  
31 due, if the person fails to submit a complete annual survey with the  
32 department on or before the last day of the third month following the  
33 due date of the survey or any extension under RCW 82.32.590.

34 (b) If the tax preference is a deferral of tax, the amount  
35 immediately due under this subsection is twelve and one-half percent  
36 of the deferred tax ((is immediately due)). If the economic benefits  
37 of the deferral are passed to a lessee, the lessee is responsible for  
38 payment to the extent the lessee has received the economic benefit.

39 ~~((b))~~ (c) The department must assess interest, but not  
40 penalties, on the amounts due under this subsection. The interest

1 must be assessed at the rate provided for delinquent taxes under this  
2 chapter, retroactively to the date the tax preference was claimed,  
3 and accrues until the taxes (~~for which the tax preference was~~  
4 ~~claimed~~) due under this subsection are repaid. Amounts due under  
5 this subsection are not subject to the confidentiality provisions of  
6 RCW 82.32.330 and may be disclosed to the public upon request.

7 (d) For a taxpayer who has filed an appeal regarding taxes,  
8 penalties, and interest owed under RCW 82.32.585 before January 1,  
9 2016, and the appeal is pending before the department or the board of  
10 tax appeals as of the effective date of this section, the department  
11 must declare ten percent of the amount of the tax preference claimed,  
12 for any calendar year in which an annual survey was not submitted,  
13 immediately due and payable.

14 (7) The department must use the information from this section to  
15 prepare summary descriptive statistics by category. No fewer than  
16 three taxpayers may be included in any category. The department must  
17 report these statistics to the legislature each year by December 1st.

18 (8) For the purposes of this section:

19 (a) "Person" has the meaning provided in RCW 82.04.030 and also  
20 includes the state and its departments and institutions.

21 (b) "Tax preference" has the meaning provided in RCW 43.136.021  
22 and includes only the tax preferences requiring a survey under this  
23 section.

24 NEW SECTION. Sec. 3. In addition to applying prospectively,  
25 this act applies retroactively for a taxpayer who has filed an appeal  
26 regarding taxes, penalties, and interest owed under RCW 82.32.585  
27 before January 1, 2016, and the appeal is pending before the  
28 department of revenue or the board of tax appeals as of the effective  
29 date of this section.

30 NEW SECTION. Sec. 4. This act takes effect July 1, 2016.

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