

WSR 23-21-088

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed October 17, 2023, 12:38 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-285 Working families tax credit.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue (department) intends to amend WAC 458-20-285 to incorporate the changes made to RCW 82.08.0206 due to 2023 legislation, 2SHB 1477 and SSB 5565.

Reasons Supporting Proposal: The department intends to update WAC 458-20-285 to reflect the changes made by the Washington legislature updating RCW 82.08.0206, including changes for those filing under the "married filing separately" federal income tax filing status, extending the nonclaim period to file for and claim the working families tax credit refund, and clarifying eligibility requirements for the \$50 minimum credit amount. The department also made updates to correct minor typographical errors.

Statutory Authority for Adoption: RCW 82.08.0206, 82.32.300, 82.01.060.

Statute Being Implemented: RCW 82.08.0206.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Chelsea Brenegan, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1530; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is appropriate for this rule because the department is incorporating the changes resulting from 2023 legislation and fixing typographical errors that do not change the effect of the rule.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Chelsea Brenegan, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453,

phone 360-534-1530, fax 360-534-1606, email ChelseaB@dor.wa.gov, AND
RECEIVED BY December 18, 2023.

October 17, 2023
Atif Aziz
Rules Coordinator

OTS-5029.1

AMENDATORY SECTION (Amending WSR 22-23-137, filed 11/21/22, effective 12/22/22)

WAC 458-20-285 Working families tax credit. This rule provides information on the working families tax credit (WFTC). The WFTC is a credit in the form of a refund of retail sales and use tax provided to eligible low-income persons (referred to as "refund" in this rule). Starting February 1, 2023, applicants may apply to the department to receive a refund of sales or use tax paid during the period for which they are claiming the refund. The refund amount is based upon the applicant's income (including the applicant spouse's income, if the applicant is filing married filing jointly on their federal income tax return) and the number of qualifying children the applicant (and the applicant's spouse, if applicable) have.

To qualify for a refund, applicants must meet the eligibility requirements provided in RCW 82.08.0206 and complete a WFTC application in the form and manner provided by the department.

This rule is organized into four parts. Each part addresses a question or topic relevant to the application for and administration of the WFTC program as follows:

1. Part 1: Eligibility Requirements
2. Part 2: Application Process
3. Part 3: Refund Amount
4. Part 4: General Administration and Review

Examples included in this rule identify a number of facts and then state a general conclusion; they should be used only as a general guide. The tax consequences of all situations must be determined after a review of all the facts and circumstances.

References in this rule to "I," "my," "you," "your," "we," or "our" are intended to refer to the individual applying for the WFTC (i.e., the applicant). For additional information, please visit the department's website at WorkingFamiliesCredit.wa.gov or call the department at 360-763-7300.

Part 1: Eligibility Requirements

(1) **Am I eligible to receive a WFTC refund?** To be eligible for a refund under the WFTC, you must be an "eligible low-income person." An "eligible low-income person" is an "individual" who meets all of the requirements in (a) through (e) of this subsection. An "individual" means any natural person who files a federal income tax return under the single, head of household, qualifying surviving spouse, or married filing separately (~~((but only if they meet the "unmarried" requirements per answer 1A of this rule-))~~) (although you must be "unmarried" per Answer 1A of this rule for tax year 2022) filing statuses. The

term "individual" **also** means an individual natural person and that individual's spouse if they file a federal joint income tax return with the married filing jointly status. Accordingly, if you file a federal income tax return with your spouse under the married filing jointly filing status, you and your spouse are each considered to be a single "individual" for the purposes of WFTC eligibility with the exception of determining residency.

(a) **Valid SSN or ITIN:** You (and your spouse if you are filing married filing jointly on your federal income tax return) must have a valid Social Security number (SSN) or individual taxpayer identification number (ITIN);

(b) **Properly file a federal income tax return:** You (and your spouse if you are filing married filing jointly) must properly file a federal income tax return for the tax year for which the refund is being claimed;

(c) **EITC eligible:** You must generally be eligible for the federal Earned Income Tax Credit (EITC), including meeting the federal income thresholds (~~;~~ however, the one exception is that) with the following exceptions:

(i) You, your spouse (if you are filing married filing jointly on your federal income tax return), and/or your qualifying children may have a valid ITIN instead of a SSN, which is not permitted under federal EITC eligibility requirements; and

(ii) For tax years 2023 and beyond, if you file your federal income tax return under the "married filing separately" status, you are no longer required to fulfill the conditions of Internal Revenue Code section 32 (d) (2) (B) to qualify for a WFTC refund and you are no longer required to provide the additional documentation as described in Answer 1A of this rule.

(d) **Residency:** The applicant on the WFTC application (which may be either you or your spouse, if you are filing married filing jointly on your federal income tax return) must be a resident of Washington for at least 183 days during the tax year for which the refund is being claimed; and

(e) **Sales or use tax paid:** You (and/or your spouse if you are filing married filing jointly on your federal income tax return) paid Washington sales or use tax on taxable purchases you made during the tax year for which the refund is being claimed.

Question 1A: What if I am still married to my spouse, but we are separated, and I file a separate federal income tax return. Am I still eligible for the WFTC?

Answer 1A: (~~Yes, you are eligible if certain conditions are met.~~) For applicants claiming a WFTC refund for the tax year 2023 and beyond: If you file your federal income tax return under the "married filing separately" status, you are eligible to claim the WFTC refund. You do not need to fulfill the conditions under Internal Revenue Code section 32 (d) (2) (B) to qualify for a WFTC refund or provide additional documentation.

For applicants claiming a WFTC refund for the 2022 tax year: If you are still married to your spouse, but you do not file a federal income tax return under the married filing jointly status and you are considered "unmarried" per Internal Revenue Code section 32(d), then you may still be eligible for the federal EITC, and this in turn would make you an individual eligible for a WFTC refund.

If you are filing "married filing separately" on your federal income tax return, then the department will require you to provide addi-

tional information to confirm your "unmarried" status. "Unmarried," as used in Internal Revenue Code section 32(d) requires the following:

(a) You are married, but you did not file a federal income tax return under the married filing jointly status.

(b) You lived with your qualifying child for more than half of the year. You may demonstrate this by providing:

(i) School records that match your place of residence;

(ii) Rental application or lease with child/children listed;

(iii) Landlord statement regarding child/children;

(iv) Public benefits verification letters or statements;

(v) Community-based organization letters of recommendation, or vouchers; or

(vi) Any other records that establish that your qualifying child lived with you for more than half of the year.

(c) You must be able to show either:

(i) You did not have the same principal place of abode as your spouse during the last six months of the tax year; or

(ii) You have a decree, instrument, or agreement (other than a divorce decree) described in IRC 121 (d) (3) (C) (e.g., a written separation agreement, alimony, or spousal maintenance decree, etc.) with your spouse concerning marital separation and you and your spouse are not members of the same household by the end of the tax year.

Question 1B: I am still legally married and I meet the "unmarried" requirements in Answer 1A. If my spouse is not eligible for a WFTC refund, does that disqualify me from receiving the WFTC refund?

Answer 1B: No. If you are filing a separate federal income tax return from your spouse, you will not be disqualified from receiving the WFTC refund solely because your spouse does not meet the WFTC requirements as you are considered to be a separate individual from your spouse (~~in this situation~~). If you are filing your federal income tax return under the "married filing separately" status for the 2023 tax year and beyond, the department will not require documentation to establish your "unmarried" status or that you meet the "unmarried" requirements as indicated in Answer 1A. If you are filing your federal income tax return under the "married filing separately" status for the 2022 tax year, the department will require additional documentation to establish your "unmarried" status as indicated in Answer 1A.

The following subsections (2) through (6) of this rule describe these eligibility requirements in subsection (1)(a) through (e) of this rule.

(2) **Valid SSN or ITIN** - Unlike the EITC, to be eligible for the WFTC (~~(7)~~) you must have either a valid Social Security number (SSN) or a valid individual taxpayer identification number (ITIN).

Question 2A: What is a valid SSN?

Answer 2A: An SSN is a number issued by the Social Security Administration to identify and record an individual's wages or self-employment earnings. Your SSN must be valid for employment and issued before the due date of the federal income tax return you plan to claim the federal EITC (including extensions). A Social Security number on a Social Security card that provides, "Valid for work with DHS authorization," will be accepted as a valid SSN.

However, if your Social Security card has the words, "Not valid for employment," your SSN is not valid.

Question 2B: What is a valid ITIN?

Answer 2B: An ITIN is a tax processing number issued by the Internal Revenue Service (IRS). A valid ITIN for WFTC eligibility purposes is one that is not expired or revoked.

(a) Generally. An ITIN must be applied for and renewed periodically pursuant to federal requirements.

(b) WFTC application requirements - Notify department. If you, your spouse, or any of your qualifying children do not have a valid ITIN and are waiting for an ITIN or an ITIN renewal from the IRS, you must notify the department that you have applied for and are waiting to receive an ITIN or an ITIN renewal from the IRS when you submit your WFTC application.

(c) WFTC application requirements - Application submission. If the department does not receive documentation confirming that you, your spouse, or your qualifying children have received a valid ITIN by or before the December 31st application deadline, then your application may be denied. The department will consider a new or renewed ITIN to be valid as of its issuance date, even if the department receives notification of issuance after the December 31st application deadline.

(d) ITIN issuance date. The department will use the IRS issuance date for processing the WFTC application, but the department will not complete processing of the WFTC application until the ITIN application has been fully processed and is either issued or renewed by the IRS. If your ITIN status is pending, you must still provide your complete WFTC application to the department before the December 31st application deadline. A valid ITIN must have an issuance date prior to the December 31st application deadline.

(i) For new ITINs, the IRS back-dates the issuance date of the ITIN to the date the Form W-7 application was received by the IRS.

(ii) For renewed ITINs, the IRS back-dates the issuance date of the ITIN to the original issuance date of that ITIN.

(3) **Properly file a federal income tax return** - To be eligible for the WFTC, you (and your spouse, if filing married filing jointly on your federal income tax return) must properly file a federal income tax return for the tax year for which you are claiming the refund.

Question 3A: What does it mean to "properly file" a federal income tax return?

Answer 3A: The federal income tax return you and your spouse (if you are filing married filing jointly on your federal income tax return) file must fulfill the statutory and regulatory requirements for the federal government to process your return. For example, if you wish to claim the WFTC refund for the 2022 tax period, you must properly file your 2022 federal tax return and include all information required on the return for the federal government to be able to process it.

Question 3B: Do I have to claim the EITC to be eligible for the WFTC refund?

Answer 3B: No. You are not required to claim or to actually receive the federal EITC to be eligible to receive the WFTC refund. (~~So long as you and your spouse (if you are filing married filing jointly on your federal income tax return) and your qualifying children have valid SSNs or ITINs, and otherwise meet all other requirements to be eligible for the federal EITC, you may be eligible to receive the WFTC refund.~~)

(4) **Federal Earned Income Tax Credit eligible** - You must first be eligible for the federal EITC, except (~~for the requirement to have a valid SSN~~) as stated in this rule, in order to be eligible for the WFTC refund. This includes meeting the federal income thresholds for your federal adjusted gross income (AGI). If your AGI is at or above the federal income threshold, you are not eligible for the EITC. The department will calculate the WFTC refund based on the earned income

you reported on your properly filed federal income tax return. For more information on how the WFTC refund is determined, see Part 3 of this rule.

Question 4A: What does earned income mean?

Answer 4A: "Earned income" means earned income as defined by the Internal Revenue Code (IRC or Title 26 U.S.C.) section 32. RCW 82.08.0206 (2) (b).

Question 4B: Is "combat pay" considered earned income for purposes of the WFTC refund?

Answer 4B: IRC section 32 allows those who have combat pay to elect whether to include their combat pay as earned income for the purposes of calculating their federal EITC amount. Regardless of whether you elect to include your combat pay as earned income for federal purposes, you can make a separate election of whether to include your combat pay as earned income for WFTC refund calculation purposes.

Question 4C: What are the federal income thresholds?

Answer 4C: The federal income thresholds are income limits the federal government applies to determine eligibility for the EITC. The federal income thresholds for the federal EITC generally change on an annual basis. These thresholds vary depending on your filing status and how many qualifying children you have. Eligibility for the federal EITC is based on your AGI. If your AGI is equal to or more than the federal income threshold, then you are not eligible for the federal EITC and, as such, you are not eligible for the WFTC. The department will use the federal income thresholds applicable for the tax period for which the refund is being claimed. For more information about these federal income thresholds, please see Part 3 of this rule.

Question 4D: Not all members of my family have a valid SSN, but I am otherwise eligible for the federal EITC. Am I still eligible for the WFTC?

Answer 4D: Yes, unlike the federal EITC, the WFTC does not require that all claimed individuals must have a valid SSN to be eligible. To be eligible for the WFTC, you, your spouse (if you are married and filing married filing jointly on your federal income tax return), and your qualifying children (if applicable), must have either a valid SSN or a valid ITIN.

Question 4E: Are there any other federal EITC requirements that could potentially disqualify me from receiving the WFTC?

Answer 4E: Yes. To be eligible for the federal EITC, you cannot file Form 2555, Foreign Earned Income and your investment income (income you receive from interest, dividends, capital gains, royalties, rental income, or other passive activities) cannot exceed \$10,300 (based on 2022 figures, adjusted by the federal government for inflation in later years). Additionally, nonresident aliens are ineligible to receive the federal EITC, even if they have a valid SSN. If you are not eligible to receive the federal EITC for these reasons, then you are not eligible to receive the WFTC.

Question 4F: What if I am prohibited from claiming the federal EITC? Can I still qualify to receive the WFTC refund?

Answer 4F: If the federal government has prohibited you from claiming the EITC due to reckless or intentional disregard or due to fraud and you are currently within the disallowance period during which you are not allowed to claim the federal EITC, then you are not eligible to receive the WFTC refund.

(5) **Residency** - To be eligible for the WFTC, you must be a resident of Washington. The term resident means that you were physically

present and resided in Washington for at least 183 days during the year for which you are claiming the refund.

Question 5A: What does it mean to be "physically present" and "reside" in Washington?

Answer 5A: To be "physically present" means that you are in or located within the state of Washington. To "reside" in Washington means that you have your home or residence in the state. Individuals who commute to Washington (e.g., for work) do not "reside" in Washington.

Example 1:

Facts: Doug lives in an apartment in Tacoma, Washington. Doug is located in Washington for 300 days during calendar year 2022. Doug is placed on a job assignment in Utah for the remaining 65 days of the same year.

Conclusion: Doug was "physically present" and "resided" in Washington for at least 183 days in 2022. Doug meets the definition of a resident of Washington for the 2022 calendar year and would be eligible for a WFTC refund during the year if all other statutory requirements are met.

Example 2:

Facts: Sally lives in Oregon but works in Washington. Sally drives to her work in Washington every morning and drives back to her home in Oregon every evening. She does this for 300 days during the 2022 calendar year.

Conclusion: While Sally might be "physically present" in Washington for at least 183 days, she did not "reside" in Washington because she resided in Oregon and simply commuted to Washington. Sally does not meet the definition of a resident of Washington for the 2022 calendar year and, accordingly, would not be eligible for a WFTC refund.

Question 5B: What if I am in Washington for at least 183 days for work or for school without commuting back to my state of residence, do I meet the WFTC residency requirement?

Answer 5B: Yes. An individual who is physically present in Washington for at least 183 days and does not commute back to their state of residence will generally be considered to "reside" in Washington and is a Washington resident for WFTC residency purposes.

Question 5C: What if I work or attend school out-of-state and was not physically present in Washington for at least 183 days, can I still qualify if I consider Washington to be my home?

Answer 5C: No. Even if you consider Washington to be your home and your state of residence, you must still be physically present in Washington for at least 183 days to meet the WFTC residency requirement.

Question 5D: What if my spouse is not a Washington resident but I am and we file under the married filing jointly status on our federal income tax return, are we eligible for the WFTC refund?

Answer 5D: Yes. If you and your spouse are filing married filing jointly on your federal income tax return and your spouse does not meet the definition of a Washington resident, you may both still qualify to receive a joint refund so long as the applicant on the WFTC application meets the definition of a Washington resident.

Question 5E: What if I am experiencing homelessness, can I still qualify for the WFTC refund?

Answer 5E: Yes. The term "reside" does not require that an individual have a physical dwelling in Washington, just that Washington is the place they reside for at least 183 days. Individuals or their families who are experiencing homelessness may demonstrate that they "re-

side" in Washington by providing proof of their residency via a letter from a community-based organization, shelter, public benefits case-worker, or from any other organizations or programs that interact with the individual or their family that states the following:

(a) They know and can identify the individual;

(b) The individual has resided in a particular area in Washington (which the organization or shelter must describe); and

(c) (i) The individual has resided in this area at least 183 days during the period for which the credit is being claimed; or

(ii) Alternatively, if the individual or their family are experiencing homelessness and move frequently as a result, the individual has resided within a general geographic area or areas (i.e., town, city, county, etc.) within the state of Washington for at least 183 days during the period for which the refund is being claimed.

Question 5F: What if I am not a United States citizen or what if I am in the United States on a visa, can I still qualify as a Washington resident for WFTC purposes?

Answer 5F: Yes, if you can demonstrate you resided in Washington and were physically present in Washington for at least 183 days during the year for which you are claiming the credit. Generally, an individual's citizenship or visa status is not considered for WFTC residency purposes.

Question 5G: What if the department has questions and needs additional documentation?

Answer 5G: If you are asked to confirm your status as a Washington resident, you must provide the department with documentation that demonstrates that you were physically present and resided in Washington for at least 183 days during the year for which you are claiming the refund.

(a) Documents that may help you to demonstrate you are a Washington resident include, but are not limited to, the following:

(i) Washington driver's license;

(ii) Washington ID card;

(iii) Utility bills;

(iv) Landlord statements;

(v) Rental agreement or lease;

(vi) Mortgage statements;

(vii) Public benefits verification letters from state or federal agencies or case worker statements;

(viii) Community-based organization letters or statements; or

(ix) School records.

(b) If you are unable to provide documentation that demonstrates your Washington resident status, you will need to contact the department to determine if there are other methods by which you can demonstrate you meet the residency requirement, which the department may allow at its discretion.

(6) **Sales or use tax paid** - The department will generally presume that if you and/or your spouse (if you are filing married filing jointly on your federal income tax return) lived in the state of Washington for at least 183 days, that you paid Washington sales or use tax on the taxable purchases you made during that period. You will need to attest to this fact on the WFTC application under penalty of perjury.

Part 2: Application Process

(7) **How do I file a WFTC application with the department?** To receive a refund, you must file an application with the department. The

department will accept either a paper or electronic application. The department will begin accepting WFTC applications on February 1st of each year or, if the 1st falls on a Saturday, Sunday, or legal holiday, the next business day. RCW 1.12.070(3).

The WFTC application, along with the required attachments, must be received by the department no later than December 31st in the calendar year following the tax year for which you file your federal income tax return. If December 31st falls on a Saturday or Sunday, then the application will be due the next business day. For example, if you are requesting a WFTC refund based on your 2022 tax year information, the WFTC application, along with all required attachments, are due on or before January 2, 2024. This is because December 31, 2023 falls on a Sunday and January 1, 2024 is a holiday, so the WFTC application deadline would fall on the next business day which is January 2, 2024. RCW 1.16.050.

(a) If you are submitting your application electronically: To be considered timely, your WFTC application, along with all required attachments, must be received by the department on or before December 31st.

(b) If you are submitting your application by mail: To be considered timely, your WFTC application, along with all required attachments, must be sent by United States mail and postmarked on or before the December 31st deadline.

(c) For more information on how to file an application, refer to the department's website at WorkingFamiliesCredit.wa.gov.

(8) What additional items do I need to include for the department to process my WFTC application? In addition to the WFTC application, you must also attach a copy of your filed federal income tax return to your WFTC application. The attached copy of your federal income tax return must be complete, meaning that it must include all applicable schedules filed with the federal government for the period for which you are claiming the WFTC refund. For example, if you are claiming a WFTC refund for the 2022 tax year, you must submit a full and complete copy of your 2022 federal income tax return that you filed with the federal government.

Question 8A: What happens if I do not provide my complete federal income tax return with my WFTC application?

Answer 8A: Your application will not be considered "complete" and the department will not be able to process your WFTC refund.

Question 8B: What does it mean to have a "complete" WFTC application?

Answer 8B: To process your WFTC refund, you must provide a "complete" WFTC application to the department on or before the filing deadline, which includes the following items:

(a) A filled-out and signed WFTC application (your spouse must also sign the WFTC application if you are filing married filing jointly on your federal income tax return); and

(b) A copy of your complete federal income tax return that was filed with the federal government.

(9) What if I did not file my WFTC application by December 31st, is it too late to file? No, it is not too late. If you do not apply to receive the refund before the December 31st deadline, then you ~~((cannot apply for it later))~~ may still apply to receive the refund up to three years after the calendar year in which your federal income tax return was originally due, without regard to any federal extensions. For example, if you wish to request a WFTC refund based on your 2022 tax year information, the department will ~~((not accept WFTC applica-~~

tions that were filed or postmarked after January 2, 2024 (December 31, 2023 falls on a Sunday and January 1, 2024 is a holiday, so the deadline would fall on the next business day which is January 2, 2024)) accept your 2022 WFTC application through December 31, 2026 (because your 2022 federal income tax return is due in 2023).

However, the department, for good cause, may extend the due date for filing your WFTC application.

Part 3: Refund amount

(10) **How much of a refund can I receive?** WFTC refunds will be paid to individuals who file a timely completed application and who meet the eligibility requirements. The refund amount you can receive is based on your income, your spouse's income (if you are filing married filing jointly on your federal income tax return), and how many qualifying children you have.

Question 10A: What is the maximum refund amount that I can receive?

Answer 10A: The maximum refund amount depends on how many qualifying children you have, but only your first three qualifying children are considered for payment purposes. The maximum refund amounts are as follows, subject to the annual adjustments described in 10K of this rule:

(a) If you have no qualifying children, your maximum refund amount is \$300;

(b) If you have one qualifying child, your maximum refund amount is \$600;

(c) If you have two qualifying children, your maximum refund amount is \$900; and

(d) If you have three or more qualifying children, your maximum refund amount is \$1,200.

The maximum refund amount will be reduced in cases where your income is greater than what is referred to in this rule as the "reduced federal income threshold." See answer 10D for more information on this reduction.

Question 10B: What is the minimum refund amount that I can receive?

Answer 10B: So long as you meet all eligibility requirements and you are entitled to receive (~~one cent or~~) more than zero cents under the WFTC, you will receive a minimum refund of \$50. RCW 82.08.0206 (3)(c).

Question 10C: What information does the department use to calculate my WFTC refund?

Answer 10C: The department calculates your WFTC refund based on your earned income as reported on your properly filed federal income tax return for the period for which you are claiming the refund.

Question 10D: What is the reduced federal income threshold and how does it affect my WFTC refund amount?

Answer 10D: To be eligible for the WFTC refund, you must generally be eligible for the federal EITC, including satisfying the federal income thresholds for that program. In determining the amount of the WFTC refund, however the department must first calculate the reduced federal income threshold. The department determines the reduced federal income thresholds as provided in RCW 82.08.0206 (3)(b). If your income exceeds the reduced federal income threshold, but is still below the federal income thresholds, your maximum refund will be decreased, but not below \$50, as follows (the below figures reflect the 2022 tax year adjustments to the original statutory amounts):

(a) If you have no qualifying children, then the department will reduce the federal income threshold by \$2,500 for the prior federal tax year. Then, for every additional dollar of income you have over the reduced federal income threshold, the department will reduce the amount of refund received by \$0.12 (i.e., the WFTC remittance reduction).

(b) If you have one qualifying child, then the department will reduce the federal income threshold by \$5,000 for the prior federal tax year. Then, for every additional dollar of income you have over the reduced federal income threshold, the department will reduce the amount of refund by \$0.12.

(c) If you have two qualifying children, then the department will reduce the federal income threshold by \$5,000 for the prior federal tax year. Then, for every additional dollar of income you have over the reduced federal income threshold, the department will reduce the amount of refund by \$0.18.

(d) If you have three or more qualifying children, then the department will reduce the federal income threshold by \$5,000 for the prior federal tax year. Then, for every additional dollar of income you have over the reduced federal income threshold, the department will reduce the amount of refund by \$0.24.

The department will adjust the WFTC refund reduction amounts on an annual basis beginning in 2023 to align the WFTC program with the federal EITC program.

Question 10E: How does the department calculate my WFTC refund?

Answer 10E: Below is an example of how the WFTC refund is calculated based on the federal income threshold amounts for the 2022 tax year.

Table A
For Those Filing as Single, Head of Household, Surviving Spouse, or Married Filing Separately*

Number of Qualifying Children	Federal Income Thresholds	Federal Income Threshold Reduction Amount	Reduced Federal Income Threshold
0	\$16,480	\$2,500	\$13,980
1	\$43,492	\$5,000	\$38,492
2	\$49,399	\$5,000	\$44,399
3 or more	\$53,057	\$5,000	\$48,057

*Those filing married filing separately for the 2022 tax year must meet the "unmarried" requirement as outlined in Answer 1A to qualify.

Table B
For Those Filing as Married Filing Jointly

Number of Qualifying Children	Federal Income Thresholds	Federal Income Threshold Reduction Amount	Reduced Federal Income Threshold
0	\$22,610	\$2,500	(\$20,100) \$20,110
1	\$49,622	\$5,000	\$44,622
2	\$55,529	\$5,000	\$50,529
3 or more	\$59,187	\$5,000	\$54,187

Example 3:

Facts: John and Mary are married and filed their 2022 federal income tax return as married filing jointly. John and Mary have one qualifying child. On their federal income tax return, John and Mary's combined earned income was \$44,700 and they meet all of the require-

ments in subsection (1)(a) through (e) of this rule to qualify for the WFTC refund.

Conclusion: The applicable federal income threshold for a couple that is married filing jointly with one qualifying child is \$49,622. See Table B. This amount must be reduced by \$5,000 (the federal income threshold reduction amount), which results in a reduced federal income threshold amount of \$44,622. See Table B. John and Mary's earned income for WFTC purposes is \$78 higher than the reduced federal income threshold (\$44,700 - \$44,622 = \$78). The department must reduce the couple's maximum refund by \$0.12 for every dollar above the \$44,622 reduced federal income threshold (or 12 percent for each dollar).

Because they have one qualifying child, the maximum refund amount that John and Mary could receive is \$600. Because their earned income is \$78 above the reduced federal income threshold, their refund will be reduced by \$9.36 ($\$78 \times \$0.12 = \9.36). John and Mary's WFTC refund amount is \$590.64, which will be rounded to \$591.

Question 10F: What is a "qualifying child" for WFTC purposes?

Answer 10F: To be eligible under the WFTC, a "qualifying child" must meet the federal tax requirements under Internal Revenue Code section 32. The only exception to this is that children who do not meet the valid SSN requirements for federal EITC purposes will still be considered "qualifying children" for WFTC purposes so long as they have a valid ITIN and meet all other federal requirements.

Question 10G: How do I determine whether a person is a "qualifying child"?

Answer 10G: A qualifying child must meet the following requirements per IRC section 32:

- (a) The child must be:
 - (i) Your child or grandchild; or
 - (ii) Your brother, sister, stepbrother, stepsister, or any descendant of such relative;
- (b) The child must have shared the same principal place of abode with you in the United States for more than one-half of the tax year;
- (c) The child has not filed a joint tax return with their spouse;
- (d) The child must be younger than you (and your spouse, if you are filing married filing jointly on your federal income tax return) and:

- (i) Is not yet 19 years old at the end of the year for which you are claiming the refund; or
- (ii) Is a student who is not yet 24 years old at the end of the year for which you are claiming the refund; or
- (iii) Permanently and totally disabled during the tax year, regardless of age.

Question 10H: For circumstances where several people could potentially claim the same qualifying child, how does the department decide who can claim the qualifying child for WFTC purposes?

Answer 10H: If there is a question of who may claim the child, the department will determine who can claim based on the following hierarchy of rules:

- (a) If only one person is the child's legal parent ("parent"): The parent may claim the child;
- (b) If both parents file a joint tax return with each other: They may claim the child;
- (c) If both parents claim the child on separate tax returns: The parent with whom the child lived with the longest during the year may claim the child;

(d) If the child lived with each parent for the same amount of time: The parent with the higher AGI for the year may claim the child;

(e) If neither parent can claim the child: The person who had the highest AGI for the year may claim the child; and

(f) If a parent can claim the child but does not: The person who had the highest AGI for the year may claim the child, but only if that person's AGI is greater than the AGI of any of the child's parents who can claim the child.

Example 4:

Facts: Tina and her five-year-old son, Anthony, live with Tina's parents (Anthony's grandparents), Jordan and Alex. Both Tina and Jordan and Alex provide more than half of their own support and cannot be claimed as dependents by anyone else. Tina's federal AGI is \$16,000 while Jordan and Alex's federal AGI is \$15,000. Tina and Jordan and Alex otherwise qualify for the federal EITC and fulfill all other WFTC eligibility requirements. Anthony meets the requirements of a qualifying child with respect to Tina, and Jordan and Alex and no one else is able to claim Anthony as a qualifying child.

Conclusion: In this situation, there is a question of whether Tina or Jordan and Alex may claim Anthony as a qualifying child for WFTC purposes. In applying the rules above, Tina would be the one eligible to claim Anthony as a qualifying child for WFTC purposes for 2022 as she is Anthony's legal parent and her federal AGI is greater than Jordan and Alex's.

Example 5:

Facts: Lucas is 25 years old and lives in the same home with his mother, Betty, and his eight-year-old niece, Tabatha, for all of 2022. Tabatha's parents do not live in the same principal place of abode as Lucas, Betty, and Tabatha. Lucas and Betty each provide more than half of their own support and cannot be claimed as dependents by anyone else. In completing their 2022 federal income tax returns, Lucas's federal AGI is \$15,000 and Betty's federal AGI is \$9,300. Tabatha's parents file married filing jointly on their federal income tax return and their federal AGI is \$9,000. Lucas and his mother otherwise qualify for the federal EITC and fulfill all other WFTC eligibility requirements. There are no other persons who would be able to claim Tabatha as a qualifying child.

Conclusion: Lucas is eligible to claim the WFTC with his niece as his qualifying child. Tabatha's parents are not eligible to claim Tabatha as a qualifying child as she did not share the same principal place of abode with them for at least 183 days during 2022. Lucas and Betty both otherwise meet the relationship, age, residency, and joint return requirements to treat Tabatha as a qualifying child, but because Lucas's federal AGI is higher, he would be able to claim Tabatha as a qualifying child for WFTC purposes.

Question 10I: What if I am the noncustodial parent of my child?

Can I still receive the WFTC refund if my spouse does not claim our child?

Answer 10I: You may still qualify to receive the WFTC if you meet the requirements for an individual without children, but you cannot claim the child as a qualifying child on your WFTC application. A custodial parent is the parent with whom the child lived for the greater number of nights during the year. The other parent is the noncustodial parent. While it may be possible for you to claim the child as your qualifying child for other federal tax benefits, the child must still live with you for more than half the year to be considered a qualifying child for federal EITC purposes. As you are the noncustodial pa-

rent, and therefore the child did not live with you for the required period of time during the year, you cannot claim this child for federal EITC purposes and, as such, you cannot claim this child for WFTC purposes.

Question 10J: What if my qualifying child lives with my spouse outside of Washington? If I am a Washington resident, can I claim my qualifying child for WFTC purposes?

Answer 10J: Yes, but only if you and your spouse are filing married filing jointly on your federal income tax return and you or your spouse are considered to be a Washington resident for the year for which you are claiming the refund. The child claimed must also meet all WFTC requirements for a qualifying child. The department may request additional information from you and your spouse to confirm that these requirements have been met.

Question 10K: Will the WFTC refunds be adjusted for inflation?

Answer 10K: Yes, the refund amounts will be adjusted for inflation each year beginning January 1, 2024, based on changes to the consumer price index that are published by November 15th of the previous year for the most recent 12-month period. "Consumer price index" means, for any 12-month period, the average consumer price index for the Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor Statistics, United States Department of Labor. RCW 82.08.0206 (3)(d) and (e).

Refund amounts that are adjusted due to inflation must be rounded to the nearest \$5.

(11) **What if I made a mistake?** If you realize that you have made a mistake on your WFTC application, then you must correct the mistake by updating or amending your WFTC application.

Question 11A: When do I need to amend my WFTC application?

Answer 11A: You must amend your WFTC application when you realize the information submitted on your application is not accurate. This allows the department to make sure that it has accurate records and that it can process your refund without additional delay. If you have questions about amending your application, please contact the department for additional information by calling 360-763-7300 or go to the department's website at WorkingFamiliesCredit.wa.gov.

Question 11B: What if the Internal Revenue Service (IRS) makes changes to my federal income tax return? Do I need to amend my WFTC application?

Answer 11B: Yes, if the IRS makes changes to your federal income tax return, then the amount of refund that you are eligible to receive may be different than what the department provided to you. Accordingly, you will need to amend your WFTC application. If the department finds that the IRS has made changes to the federal income tax return that would increase or decrease the amount of the WFTC refund you are entitled to receive, then the department may make changes to your WFTC refund amount. This may mean that you will receive an additional payment or you will be required to pay back some of the refund that you received. If you know that the IRS has made changes to your federal tax return, you should alert the department of these changes as soon as possible by amending your WFTC application.

Question 11C: How long do I have to amend my WFTC application?

Answer 11C: If you timely filed your WFTC application, along with all required attachments, you may amend your application at any point within the statutory nonclaim period provided in RCW 82.32.060. The statutory nonclaim period is four years beginning with the calendar year for which the refund is being claimed. For example, if an appli-

cant wishes to amend their 2022 WFTC application, they may do so at any point during the indicated years below:

Year 1	Year 2	Year 3	Year 4	Year 5
2022 - Sales/use tax paid	2023 - Applicant files WFTC application for 2022			2026 - Final year to submit amended application
<div style="border: 1px solid black; width: 100%; height: 15px; margin-bottom: 5px;"></div> Period you may amend your WFTC application				

Question 11D: If I should have received a larger WFTC refund than I got, can I still receive the additional amount?

Answer 11D: Yes, if you notify the department that you should have been paid a larger refund than you received, or if the department finds that you should have been paid a larger refund than you received, then the department will pay the additional amount; however, the department may only do so if it discovers or is notified of the error before the end of the four-year statutory nonclaim period. The department encourages you to submit an amended application as soon as possible before the time limit runs out. Interest is not paid on any additional WFTC amounts that you are entitled to receive. See RCW 82.08.0206(10).

Part 4: General Administration and Review

(12) **How is the WFTC program administered?** The department is responsible for administering the WFTC program. The department administers the application process described in Part 2 of this rule, by providing refunds to applicants who meet the eligibility requirements in Part 1 of this rule. As part of this administration, the department has the authority to review all WFTC applications and determine the amount the applicant is legally entitled to receive. If the department determines that a refund was overpaid, it may issue an assessment within four years after the close of the calendar year for which the WFTC refund is being claimed. For example, if you file your 2022 WFTC application on December 1, 2023, the department has until the end of 2026 to issue an assessment for the overpaid refund amount. If the department finds that you have received less than you were legally entitled to receive, then the department must adjust your WFTC refund amount and pay you the additional refund owed to you.

(13) **What if I disagree with the department's decision?** If you disagree with the department's decision concerning your WFTC refund amount or assessment of WFTC overpayment, you may seek administrative review of that decision. To have this decision reviewed, you must seek an informal review under WAC 458-20-100. Additional information and details regarding the process in WAC 458-20-100 is available on the department's website at <https://dor.wa.gov/file-pay-taxes/reviews-and-appeals>.

Question 13A: For what types of issues may I seek informal review?

Answer 13A: You may seek administrative review of the following actions taken by the department regarding the WFTC:

- (a) You received an assessment for overpayment of the WFTC refund amounts;
- (b) The department denied all or part of your request for a WFTC refund;
- (c) You received a letter ruling from the department.

You may find additional details regarding letter rulings on the department's website at WorkingFamiliesCredit.wa.gov.

Question 13B: How do I request an informal review?

Answer 13B: All informal review requests must be submitted in writing to the department within 30 days of the date the department issues a decision on one of the actions listed under Answer 13A. Information about how to seek review, including filing your petition, is available on the department's website.

Question 13C: What is the informal review process?

Answer 13C: WFTC reviews are subject to small claims review as described in WAC 458-20-100 as the amount at issue is below \$25,000. This process provides petitioners with a simplified review that includes an abbreviated written determination, which becomes the final action of the department. If you do not want your case heard as a small claims review, you may request a longer, more in-depth main-stream review with the department. Once the petition for informal review is received, the department will acknowledge receipt with a letter. You will have the opportunity to provide additional records and explain your position in an informal hearing. After the department has reviewed your claim, a tax review officer assigned to your case will issue a final agency determination. A determination concerning the review of an assessment or refund denial may be appealed to the board of tax appeals. A determination concerning the review of a letter ruling is not subject to further appeal beyond the department. Additional information on further appeal rights may be found at <https://dor.wa.gov/file-pay-taxes/reviews-and-appeals/rule-100-further-appeal-rights>.

(14) **What if I owe money to the department?** If you receive a WFTC refund amount that is larger than you were entitled to receive, the department may issue an assessment for the overpaid amount.

Question 14A: Do the WFTC overpayments accrue interest?

Answer 14A: Yes. However, interest will not begin to accrue on the amount assessed for the first six months from the date the department issued the assessment. After this initial six-month period, interest will accrue on the amount due and owing at the rates specified under RCW 82.32.050 until the total amount due has been paid in full.

Question 14B: Can the department assess penalties on WFTC overpayments?

Answer 14B: Yes. If overpayment due is not paid in full by the date due, or the department issues a warrant for the collection of amounts due under this subsection, the department may assess applicable penalties under RCW 82.32.090; however, these penalties are not due until six months after the date the assessment has been issued. The department will take appropriate steps to work with you to establish a payment plan or other means to resolve the liability.

If the department finds, by clear, cogent, and convincing evidence, that an individual knowingly submitted, caused to be submitted, or consented to the submission of, a fraudulent WFTC claim for refund, the department must assess a penalty of 50 percent of the overpaid amount in addition to any other applicable penalties.

Below is an example of how interest and penalties may be assessed if you received a larger WFTC refund than you were entitled to receive and are required to pay the overpayment back. This example is to only demonstrate when interest and penalties may be first assessed and is not reflective of all potential assessment situations or circumstances:

January 1st	WFTC overpayment amount is assessed and issued. The issued notice requires full payment of the WFTC overpayment amount that is due and owing on or before June 30th.
January 1st through June 30th	Six-month period in which no penalties are assessed and interest does not accrue.
June 30th	Due date of WFTC overpayment amount per notice issued January 1st.
July 1st	If the WFTC overpayment amount is not fully paid, the department assesses a 15 percent penalty on the WFTC overpayment amount that is still due and owing. Interest begins to accrue on the WFTC overpayment amount that is still due and owing.
July 15th	If the WFTC overpayment amount is not fully paid, the department may issue a warrant for any WFTC overpayment amount that is still due and owing. If a warrant is issued, the department will also assess an additional 10 percent warrant penalty to the WFTC overpayment amount that is still due and owing. Interest continues to accrue until the WFTC overpayment amount is fully paid.
July 31st	If the WFTC overpayment amount is not fully paid, the department may assess an additional 10 percent penalty on the WFTC overpayment amount that is still due and owing for a total of 25 percent penalty (excluding warrant penalty if warrant is issued). Interest continues to accrue until the WFTC overpayment amount is fully paid.

[Statutory Authority: RCW 82.08.0206 and 84.32.300. WSR 22-23-137, § 458-20-285, filed 11/21/22, effective 12/22/22.]