H-4329.1

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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)

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

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

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

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

(b) The report must include information detailing employment, wages, and employer-provided health and retirement benefits for employment positions in Washington for the year that the tax preference was claimed. However, persons engaged in manufacturing commercial airplanes or components of such airplanes may report employment, wage, and benefit information per job at the manufacturing site for the year that the tax preference was claimed. The report must not include names of employees. The report must also detail employment by the total number of full-time, part-time, and temporary positions for the year that the tax preference was claimed.

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

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

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

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

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

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

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

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

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

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

(6) For the purposes of this section:

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

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

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

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

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

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

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

(2)(a) The survey must include the amount of the tax preference claimed for the calendar year covered by the survey. For a person that claimed an exemption provided in RCW 82.08.025651 or 82.12.025651, the survey must include the amount of tax exempted under those sections in the prior calendar year for each general area or category of research and development for which exempt machinery and equipment and labor and services were acquired in the prior calendar year.

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

(i) The number of total employment positions;

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

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

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

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

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

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

(f) If the person filing a survey under this section did not file a survey with the department in the previous calendar year, the survey filed under this section must also include the employment, wage, and benefit information required under (b)(i) through (iv) of this subsection for the calendar year immediately preceding the calendar year for which a tax preference was claimed.

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

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

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

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

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

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

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

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

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

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

(8) For the purposes of this section:

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

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

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

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

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