

WAC 458-20-268 Annual surveys for certain tax preferences. (1)

Introduction. Effective for calendar years in which a taxpayer claims a tax preference beginning January 1, 2018, Washington changed its annual reporting requirements. This rule addresses how taxpayers taking certain tax preferences must file an annual survey as provided under RCW 82.32.585 with the department of revenue (department) providing information about their business for tax periods through December 31, 2017, only. See WAC 458-20-267 Annual tax performance reports for certain tax preferences for the proper way to report tax preferences for periods beginning January 1, 2018.

(a) **Definitions.** For purposes of this rule the following definitions apply:

(i) **Person.** "Person" has the meaning under RCW 82.04.030 and also includes the state and its departments and institutions.

(ii) **Tax preference.** As defined under RCW 43.136.021, "tax preference" means:

(A) An exemption, exclusion, or deduction from the base of a state tax; a credit against a state tax; a deferral of a state tax; or a preferential state tax rate; and

(B) Includes only the tax preferences requiring a survey under RCW 82.32.585.

(b) **Annual reports.** Taxpayers taking certain tax preferences may be required to complete both an annual report and an annual survey. For information on the annual report requirements, refer to RCW 82.32.534 and WAC 458-20-267.

(c) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide. The department will evaluate each case on its particular facts and circumstances.

(2) **Tax preferences requiring an annual survey.** Taxpayers may refer to the department's website at dor.wa.gov for the "Annual Tax Incentive Survey for Preferential Tax Rates/Credits/Exemptions/Deferrals Worksheet." This worksheet lists tax preferences that require an annual survey. Taxpayers may also contact the telephone information center 800-647-7706 to determine whether they must file an annual survey.

(3) **How to file annual surveys.**

(a) **Electronic filing.** Surveys must be filed electronically unless the department waives this requirement upon a showing of good cause. A survey is filed electronically when the department receives the survey in an electronic format. A person accesses electronic filing through their department "My Account" at dor.wa.gov.

(b) **Required paper form.** If the department waives the electronic filing requirement for a person that shows good cause, that person must use the annual survey form developed by the department unless that person obtains prior written approval from the department to file an annual survey in an alternative format.

(c) **How to obtain the form.** Persons who have received a waiver of the electronic filing requirement from the department or who otherwise would like a paper copy of the survey may obtain the annual survey form from the department's website at dor.wa.gov. It may also be obtained by calling the telephone information center at 800-647-7706, or by contacting the department at:

Attn: Tax Incentive Team
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476

(d) **Special requirement for persons who did not file an annual survey during the previous calendar year.** If a person is a first-time filer or otherwise did not file an annual survey with the department during the previous calendar year, the survey must include information on employment, wages, and employer-provided health and retirement benefits for the two calendar years immediately preceding the due date of the survey.

(e) **Due date of annual survey.** Every person claiming a tax preference that requires a survey under RCW 82.32.585 must file the survey annually with the department in the year following the calendar year in which the person becomes eligible to claim the tax preference. The due date for filing the survey is as follows:

(i) April 30th for surveys due prior to 2017.

(ii) May 31st for surveys due in 2017 or 2018.

(iii) If the tax preference is a deferral of tax, the first survey must be filed by April 30th (if prior to 2017) or by May 31st (if in 2017) of the calendar year following the calendar year in which the investment project is certified by the department as operationally complete. Thereafter, a survey must also be filed for each of the seven succeeding calendar years by April 30th (if prior to 2017) or by May 31st (if in 2017), or a tax performance report for tax preferences claimed in tax reporting periods in 2018 and after.

(f) **Due date extensions.** The department may extend the due date for filing annual surveys as provided in subsection (11) of this rule.

(g) **Example 1.** Advanced Computing, Inc. qualified for the B&O tax credit provided by RCW 82.04.4452 and applied it against taxes due in calendar year 2014. Advanced Computing filed an annual survey in March 2014 for credit claimed under RCW 82.04.4452 in 2013. Advanced Computing must electronically file an annual survey with the department by April 30, 2015, for credits taken in calendar year 2014. The tax preference in this example expired January 1, 2015.

(h) **Example 2.** In 2011, Biotechnology, Inc. applied for and received a sales and use tax deferral under chapter 82.63 RCW for an eligible investment project in qualified research and development. The investment project was operationally complete in 2012. Biotechnology filed an annual survey on April 30, 2013, for the sales and use tax deferral under chapter 82.63 RCW. Surveys are due from Biotechnology by April 30th each year through 2016 and by May 31st in 2017 and 2018, with tax performance reports due in 2019 through May 31, 2020.

(i) **Example 3.** Advanced Materials, Inc., a new business in 2014, has been conducting manufacturing activities in a building leased from Property Management Services. Property Management Services is a recipient of a deferral under chapter 82.60 RCW, and the department certified the building as operationally complete in 2014. To pass on the entire economic benefit of the deferral, Property Management Services charges Advanced Materials \$5,000 less in rent each year. Advanced Materials is a first-time filer of annual surveys. Advanced Materials must file its annual survey with the department covering the 2014 calendar year by April 30, 2015. Surveys are due from Advanced Materials by April 30th for 2016 and by May 31st for 2017, with annual tax performance reports due in 2018 through May 31, 2022.

(j) **Example 4.** Fruit Canning, Inc. claims the B&O tax exemption provided in RCW 82.04.4266 for the canning of fruit in 2015. Fruit Canning is a first-time filer of annual surveys. Fruit Canning must file an annual survey with the department by April 30, 2016, covering

calendar years 2014 and 2015. If Fruit Canning claims the B&O tax exemption during subsequent years, it must file an annual survey by May 31st in 2017 and 2018, and an annual tax performance report by May 31st in 2019 and each subsequent year.

(4) **What information does the annual survey require?** The annual survey requires the following:

(a) Amount of tax deferred, the amount of B&O tax exempted, the amount of B&O tax credit taken, or the amount of B&O tax reduced under the preferential rate;

(b) For taxpayers claiming the tax deferral under chapter 82.60 or 82.63 RCW:

(i) The number of new products or research projects by general classification; and

(ii) The number of trademarks, patents, and copyrights associated with activities at the investment project;

(c) For taxpayers claiming the B&O tax credit under RCW 82.04.4452:

(i) The qualified research and development expenditures during the calendar year for which the credit was claimed;

(ii) The taxable amount during the calendar year for which the credit was claimed;

(iii) The number of new products or research projects by general classification;

(iv) The number of trademarks, patents, and copyrights associated with the research and development activities for which the credit was claimed; and

(v) Whether the credit has been assigned and who assigned the credit.

The credit provided under RCW 82.04.4452 expired January 1, 2015.

(d) The following information for employment positions in Washington state:

(i) The total number of employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment. Refer to subsection (7) of this rule for information about full-time, part-time, and temporary employment positions;

(iii) The number of employment positions according to the wage bands of less than \$30,000; \$30,000 or greater, but less than \$60,000; and \$60,000 or greater. A wage band containing fewer than three individuals may be combined with the next lowest wage band; and

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

(e) Additional information the department requests that is necessary to measure the results of, or determine eligibility for the tax preferences.

(i) Prior to its repeal effective January 1, 2018, RCW 82.32.585 requires the department to report to the legislature summary descriptive statistics by category and the effectiveness of certain tax preferences, such as job creation, company growth, and such other factors as the department selects or as the statutes identify. The department has included questions related to measuring these effects.

(ii) In addition, the department has included questions related to:

(A) The taxpayer's use of the sales and use tax exemption for machinery and equipment used in manufacturing provided in RCW 82.08.025651 and 82.12.025651; and

(B) The Unified Business Identifier used with the Washington state employment security department and all employment security department reference numbers used on quarterly tax reports that cover the employment positions reported in the annual survey.

(5) **What is total employment in the annual survey?**

(a) **Employment as of December 31st.** The annual survey requires information on all full-time, part-time, and temporary employment positions located in Washington state on December 31st of the calendar year covered by the survey. Total employment includes persons who are on leaves of absence such as sick leave, vacation, disability leave, jury duty, military leave, and workers compensation leave, regardless of whether those persons are receiving wages. Total employment does not include separations from employment such as layoffs and reductions in force. Vacant positions are not included in total employment.

(b) **The following facts apply to the examples in (b) (i) through (iv) of this subsection.** National Construction Equipment (NCE) manufactures bulldozers, cranes, and other earth-moving equipment in Ridgefield and Kennewick, WA. NCE received a deferral of taxes under chapter 82.60 RCW for sales and use taxes on its new manufacturing site in Kennewick.

(i) **Example 5.** NCE employs two hundred workers in Ridgefield manufacturing construction cranes. NCE employs two hundred fifty workers in Kennewick manufacturing bulldozers and other earth-moving equipment. Although NCE's facility in Ridgefield does not qualify for any tax preferences, NCE's annual survey must report a total of four hundred fifty employment positions. The annual survey includes all Washington state employment positions, which includes employment positions engaged in activities that do not qualify for tax preferences.

(ii) **Example 6.** On November 20th, NCE lays off seventy-five workers. NCE notifies ten of the laid off workers on December 20th that they will be rehired and begin work on January 2nd. The seventy-five employment positions are excluded from NCE's annual survey, because a separation of employment has occurred. Although NCE intends to rehire ten employees, those employment positions are vacant on December 31st.

(iii) **Example 7.** On December 31st, NCE has one hundred employees on vacation leave, five employees on sick leave, two employees on military leave, one employee who is scheduled to retire as of January 1st, and three vacant employment positions. The employment positions of employees on vacation, sick leave, and military leave must be included in NCE's annual survey. The one employee scheduled to retire must be included in the annual survey because the employment position is filled on December 31st. The three vacant positions are not included in the annual survey.

(iv) **Example 8.** In June, NCE hires two employees from a local college to intern in its engineering department. When the academic year begins in September, one employee ends the internship. The other employee's internship continues until the following June. NCE must report one employment position on the annual survey, representing the intern employed on December 31st.

(6) **When is an employment position located in Washington state?**

The annual survey seeks information only about Washington employment positions. An employment position is located in Washington state if:

(a) The service of the employee is performed entirely within the state;

(b) The service of the employee is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state;

(c) The service of the employee is performed both within and without the state, and the employee's base of operations is within the state;

(d) The service of the employee is performed both within and without the state, but the service is directed or controlled in this state; or

(e) The service of the employee is performed both within and without the state and the service is not directed or controlled in this state, but the employee's individual residence is in this state.

(f) **The following facts apply to the examples in (f)(i) through (iv) of this subsection.** Acme Computer, Inc. develops computer software and receives a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in a high unemployment county. Acme Computer, headquartered in California, has employees working at four locations in Washington state. Acme Computer also has offices in Oregon and Texas.

(i) **Example 9.** Ed is a software engineer in Acme Computer's Vancouver office. Ed occasionally works at Acme Computer's Portland, Oregon office when other software engineers are on leave. Ed's position must be included in the number of total employment positions in Washington state that Acme Computer reports on the annual survey. Ed performs services both within and without the state, but the services performed without the state are incidental to the employee services within the state.

(ii) **Example 10.** John is an Acme Computer salesperson. John travels throughout Washington, Oregon, and Idaho promoting sales of new Acme Computer products. John's activities are directed by his manager in Acme Computer's Spokane office. John's position must be included in the number of total employment positions in Washington state that Acme Computer reports on the annual survey. John performs services both within and without the state, but the services are directed or controlled in Washington state.

(iii) **Example 11.** Jane, vice president for product development, works in Acme Computer's Portland, Oregon office. Jane regularly travels to Seattle to review the progress of research and development projects conducted in Washington state. Jane's position should not be included in the number of total employment positions in Washington state that Acme Computer reports on the annual survey. Although Jane regularly performs services within Washington state, her activities are directed or controlled in Oregon.

(iv) **Example 12.** Roberta, a service technician, travels throughout the United States servicing Acme Computer products. Her activities are directed from Acme Computer's corporate offices in California, but she works from her home office in Tacoma. Roberta's position must be included in the number of total employment positions in Washington state that Acme Computer reports on the annual survey. Although Roberta performs services both within and without the state and the service is not directed or controlled in this state, her residence is in Washington state.

(7) **What are full-time, part-time, and temporary employment positions?** The survey must separately identify the number of full-time, part-time, and temporary employment positions as a percent of total employment.

(a) **Full-time and part-time employment positions.** A position is considered full-time or part-time if the employer intends for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months, excluding any leaves of absence.

(i) **Full-time positions.** A full-time position is a position that requires the employee to work, excluding overtime hours, thirty-five hours per week for fifty-two consecutive weeks, four hundred fifty-five hours a quarter for four consecutive quarters, or one thousand eight hundred twenty hours during a period of twelve consecutive months.

(ii) **Part-time positions.** A part-time position is a position in which the employee may work less than the hours required for a full-time position.

(iii) **Exceptions for full-time positions.** In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements. If, in the absence of these factors, the employee would be required to work the number of hours for a full-time position to receive their current wage, the position must be reported as a full-time employment position.

(b) **Temporary positions.** There are two types of temporary positions.

(i) **Employees of the person required to complete the survey.** In the case of a temporary employee directly employed by the person required to complete the survey, a temporary position is a position intended to be filled for a period of less than fifty-two consecutive weeks or twelve consecutive months. For example, seasonal employment positions are temporary positions. These temporary positions must be included in the information required in subsections (5), (8), and (9) of this rule.

(ii) **Workers furnished by staffing companies.** A temporary position also includes a position filled by a worker furnished by a staffing company, regardless of the duration of the placement. These temporary positions must be included in the information required in subsections (5), (8), and (9) of this rule. In addition, the person filling out the annual survey must provide the following additional information:

(A) Total number of staffing company employees furnished by staffing companies;

(B) Top three occupational codes of all staffing company employees; and

(C) Average duration of all staffing company employees.

(c) **The following facts apply to the examples in (c)(i) through (vi) of this subsection.** Worldwide Materials, Inc. is a developer of materials used in manufacturing electronic devices. Worldwide Materials receives a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in a high unemployment county. Worldwide Materials has one hundred employees.

(i) **Example 13.** On December 31st, Worldwide Materials has five employees on workers' compensation leave. At the time of the work-related injuries, the employees worked forty hours a week and were expected to work for fifty-two consecutive weeks. Worldwide Materials must report these employees as being employed in a full-time position. Although the five employees are not currently working, they are on workers' compensation leave and Worldwide Materials had intended for the full-time positions to be filled for at least fifty-two consecutive weeks.

(ii) **Example 14.** In September, Worldwide Materials hires two employees on a full-time basis for a two-year project to design composite materials to be used in a new airplane model. Because the posi-

tion is intended to be filled for a period exceeding twelve consecutive months, Worldwide Materials must report these positions as full-time positions.

(iii) **Example 15.** Worldwide Materials has two employees who clean laboratories during the evenings. The employees regularly work 5:00 p.m. to 11:00 p.m., Monday through Friday, fifty-two weeks a year. Because the employees work less than thirty-five hours a week, the employment positions are reported as part-time positions.

(iv) **Example 16.** On November 1st, a Worldwide Materials engineer begins twelve weeks of family and medical leave. The engineer was expected to work forty hours a week for fifty-two consecutive weeks. While the engineer is on leave, Worldwide Materials hires a staffing company to furnish a worker to complete the engineer's projects. Worldwide Materials must report the engineer as a full-time position on the annual survey. Worldwide Materials must also report the worker furnished by the staffing company as a temporary employment position and include the information as required in (b) of this subsection.

(v) **Example 17.** Worldwide Materials allows three of its research employees to work on specific projects with a flexible schedule. These employees are not required to work a set amount of hours each week, but are expected to work twelve consecutive months. The three research employees are paid a comparable wage as other research employees who are required to work a set schedule of forty hours a week. Although the three research employees may work fewer hours, they are receiving comparable wages as other research employees working forty hours a week. Worldwide Materials must report these positions as full-time employment positions, because each position is equivalent to a full-time employment position.

(vi) **Example 18.** Worldwide Materials has a large order to fulfill and hires ten employees for the months of June and July. Five of the employees leave at the end of July. Worldwide Materials decides to have the remaining five employees work on an on-call basis for the remainder of the year. As of December 31st, three of the employees are working for Worldwide Materials on an on-call basis. Worldwide Materials must report three temporary employment positions on the annual survey and include these positions in the information required in subsections (5), (8), and (9) of this rule.

(8) **What are wages?** For the purposes of the annual survey, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, or otherwise as reported on the W-2 forms of employees. Stock options granted as compensation to employees are wages to the extent they are reported on the W-2 forms of the employees and are taken as a deduction for federal income tax purposes by the employer. The compensation of a proprietor or a partner is determined in one of two ways:

(a) If there is net income for federal income tax purposes, the amount reported subject to self-employment tax is the compensation.

(b) If there is no net income for federal income tax purposes, reasonable cash withdrawals or cash advances is the compensation.

(9) **What are employer-provided benefits?** The annual survey requires persons to report the number of employees that have employer-provided medical, dental, and retirement benefits, by each of the wage bands. An employee has employer-provided medical, dental, and retirement benefits if the employee is currently eligible to participate or receive the benefit. A benefit is "employer-provided" if the medical, dental, and retirement benefit is dependent on the employer's establishment or administration of the benefit. A benefit that is equally

available to employees and the general public is not an "employer-provided" benefit.

(a) **What are medical benefits?** "Medical benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A "health plan" means any plan, fund, or program established, maintained, or funded by an employer for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, medical and/or dental care services.

(i) Health plans include any:

(A) "Employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA);

(B) "Health plan" or "health benefit plan" as defined in RCW 48.43.005;

(C) Self-funded multiple employer welfare arrangement as defined in RCW 48.125.010;

(D) "Qualified health insurance" as defined in Section 35 of the Internal Revenue Code;

(E) "Archer MSA" as defined in Section 220 of the Internal Revenue Code;

(F) "Health savings plan" as defined in Section 223 of the Internal Revenue Code;

(G) "Health plan" qualifying under Section 213 of the Internal Revenue Code;

(H) Governmental plans; and

(I) Church plans.

(ii) "Health care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(b) **What are dental benefits?** "Dental benefits" means a dental health plan offered by an employer as a benefit to its employees. "Dental health plan" has the same meaning as "health plan" in (a) of this subsection, but is for the purpose of providing for employees or their beneficiaries, through the purchase of insurance or otherwise, dental care services. "Dental care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of human teeth, alveolar process, gums, or jaw.

(c) **What are retirement benefits?** "Retirement benefits" means compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. An employer contribution to the retirement plan is not required for a retirement plan to be employer-provided. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods after employment is terminated. The term includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code.

(d) **The following facts apply to the examples in (d)(i) through (v) of this subsection.** Medical Resource, Inc. is a pharmaceutical manufacturer that receives a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in a high

unemployment county. It employs two hundred full-time employees and fifty part-time employees. Medical Resource also hires a staffing company to furnish seventy-five workers.

(i) **Example 19.** Medical Resource offers its employees two different health plans as a medical benefit. Plan A is available at no cost to full-time employees. Employees are not eligible to participate in Plan A until completing thirty days of employment. Plan B costs employees \$200 each month. Full-time and part-time employees are eligible for Plan B after six months of employment. One hundred full-time employees are enrolled in Plan A. One hundred full-time and part-time employees are enrolled in Plan B. Forty full-time and part-time employees chose not to enroll in either plan. Ten part-time employees are not yet eligible for either Plan A or Plan B. Medical Resource must report two hundred employees as having employer-provided medical benefits, because that is the number of employees enrolled in the health plans it offers.

(ii) **Example 20.** Medical Resource does not offer medical benefits to the employees of the staffing company. However, twenty-five of these workers have enrolled in a health plan through the staffing company. Medical Resource must report these twenty-five employment positions as having employer-provided medical benefits.

(iii) **Example 21.** Medical Resource does not offer its employees dental insurance, but has arranged with a group of dental providers to provide all employees with a 30% discount on any dental care service. Medical Resource employment is the sole requirement to receive this benefit. Unlike the medical benefit, employees are eligible for the dental benefit as of the first day of employment. This benefit is not provided to the workers furnished by the staffing company. Medical Resource must report two hundred and fifty employment positions as having dental benefits, because that is the number of employees enrolled in this dental plan.

(iv) **Example 22.** Medical Resource offers a 401(k) Plan to its full-time and part-time employees after six months of employment. Medical Resource makes matching contributions to an employee's 401(k) Plan after two years of employment. On December 31st, two hundred and twenty-five workers are eligible to participate in the 401(k) Plan. Two hundred workers are enrolled in the 401(k) Plan. One hundred of these workers receive matching contributions. Medical Resource must report two hundred employment positions as having employer-provided retirement benefits, because that is the number of employees enrolled in the 401(k) Plan.

(v) **Example 23.** Medical Resource coordinates with a bank to insert information in employee paycheck envelopes on the bank's Individual Retirement Account (IRA) options offered to bank customers. Employees who open an IRA with the bank can arrange to have their contributions directly deposited from their paychecks into their accounts. Fifty employees open IRAs with the bank. Medical Resource cannot report that these fifty employees have employer-provided retirement benefits. IRAs are not an employer-provided benefit because the ability to establish the IRA is not dependent on Medical Resource's participation or sponsorship of the benefit.

(10) **Is the annual survey confidential?** The annual survey is subject to the confidentiality provisions of RCW 82.32.330. However, information on the amount of tax preference taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public, except as provided in (c) of this subsection.

(a) **Failure to timely file a complete annual survey subject to disclosure.** If a taxpayer fails to timely file a complete annual survey, then the amount required to be repaid as a result of the taxpayer's failure to file a complete annual survey is not confidential and may be disclosed to the public.

(b) **Amount reported in annual survey is different from the amount claimed or allowed.** If a taxpayer reports a tax preference amount on the annual survey that is different than the amount actually claimed on the taxpayer's tax returns or otherwise allowed by the department, then the amount actually claimed or allowed may be disclosed.

(c) **Tax preference is less than ten thousand dollars.** If the tax preference is less than ten thousand dollars during the period covered by the annual survey, the taxpayer may request that the department treat the amount of the tax preference as confidential under RCW 82.32.330.

(11) **What are the consequences for failing to timely file a complete annual survey?**

(a) **What is a "complete annual survey"?** An annual survey is complete if:

(i) The annual survey is filed on the form required by this rule or in an electronic format as required by law; and

(ii) The person makes a good faith effort to substantially respond to all survey questions required by this rule.

Responses such as "varied," "various," or "please contact for information" are not considered good faith responses to a question.

(b) **Amounts due for late filing.** Unless the tax preference is a deferral of tax, as described in (c) of this subsection, or as otherwise provided by law, if a person claims a tax preference that requires an annual survey under this rule, but fails to submit a complete survey by the due dates described in subsection (3)(e) of this rule, or any extension under RCW 82.32.590, the following amounts are immediately due and payable:

(i) For surveys due prior to July 1, 2017, one hundred percent of the amount of the tax preference claimed for the previous calendar year. Interest, but not penalties, will be assessed on the amounts due at the rate provided for under RCW 82.32.050, retroactively to the date the tax preference was claimed, and accruing until the taxes for which the tax preference was claimed are repaid.

(ii) For surveys due on or after July 1, 2017:

(A) Thirty-five percent of the amount of the tax preference claimed for the previous calendar year; and

(B) An additional fifteen percent of the amount of the tax preference claimed for the previous calendar year if the person has previously been assessed under (b)(ii) of this subsection for failure to timely submit a survey for the same tax preference.

(c) **Tax deferrals.** If the tax preference is a deferral of tax, 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.

(d) **Interest and penalties.** The department may not assess interest or penalties on amounts due under (b)(ii) and (c) of this subsection.

(e) **Extension for circumstances beyond the control of the taxpayer.** If the department finds the failure of a taxpayer to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the department will extend the time for fil-

ing the survey. The extension will be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this rule. The department may grant additional extensions as it deems proper under RCW 82.32.590.

In determining whether the failure of a taxpayer to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the department will apply the provisions in WAC 458-20-228 for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(f) **One-time only extension.** A taxpayer who fails to file an annual survey, as required under this rule, by the due date of the survey is entitled to an extension of the due date. A request for an extension under this subsection must be made in writing to the department.

(i) To qualify for an extension, a taxpayer must have filed all annual reports and surveys, if any, due in prior years by their respective due dates, beginning with annual reports and surveys due in the calendar year 2010.

(ii) The extension is for ninety days from the original due date of the annual survey.

(iii) No taxpayer may be granted more than one ninety-day extension.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.534, 82.32.585, 82.32.590, 82.32.600, 82.32.605, 82.32.607, 82.32.710, 82.32.790, 82.32.808, 82.04.240, 82.04.2404, 82.04.260, 82.04.2909, 82.04.426, 82.04.4277, 82.04.4461, 82.04.4463, 82.04.448, 82.04.4481, 82.04.4483, 82.04.449, 82.08.805, 82.08.965, 82.08.9651, 82.08.970, 82.08.980, 82.08.986, 82.12.022, 82.12.025651, 82.12.805, 82.12.965, 82.12.9651, 82.12.970, 82.12.980, 82.16.0421, 82.29A.137, 82.60.070, 82.63.020, 82.63.045, 82.74.040, 82.74.050, 82.75.040, 82.75.070, 82.82.020, 82.82.040, 84.36.645, and 84.36.655. WSR 18-13-094, § 458-20-268, filed 6/19/18, effective 7/20/18. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 17-09-086, § 458-20-268, filed 4/19/17, effective 5/20/17; WSR 16-12-072, § 458-20-268, filed 5/27/16, effective 6/27/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.585, 82.32.605, 82.32.607, 82.32.808, 43.136.057, 43.136.058, 82.04.2404, 82.04.294, 82.08.025651, 82.08.956, 82.08.9651, 82.12.025651, 82.12.956, and 82.12.9651. WSR 15-04-002, § 458-20-268, filed 1/21/15, effective 2/21/15. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.600 and 82.32.585. WSR 14-14-033, § 458-20-268, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 10-22-087, § 458-20-268, filed 11/1/10, effective 12/2/10; WSR 10-10-038, § 458-20-268, filed 4/27/10, effective 5/28/10; WSR 07-02-074, § 458-20-268, filed 12/29/06, effective 1/29/07.]