

WSR 23-04-098

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed January 31, 2023, 3:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-18-088.

Title of Rule and Other Identifying Information: WAC 458-20-10005

Written determinations as precedents—Criteria for publication.

Hearing Location(s): On March 15, 2023, at 10:00 a.m. This meeting will be conducted over the internet/telephone. In-person option also available. Please contact Atif Aziz at AtifA@dor.wa.gov for login/dial-in information. If you would like to attend in person, please RSVP by emailing AtifA@dor.wa.gov by February 22, 2023.

Date of Intended Adoption: March 31, 2023.

Submit Written Comments to: Adam Becker, P.O. Box 47453, Olympia, WA 98504-7453, email adamb@dor.wa.gov, fax 360-534-1606, 360-534-1574, by March 17, 2023.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 82.32.410 (1)(a) provides that the director shall adopt a rule identifying the criteria to be used to decide whether a determination is precedential.

Reasons Supporting Proposal: RCW 82.32.410 authorizes the director to designate certain written determinations as precedents.

Statutory Authority for Adoption: RCW 82.32.410, 84.32.300.

Statute Being Implemented: RCW 82.32.410.

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: Adam Becker, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1574; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose more-than-minor costs on businesses, as it does not propose any new requirements not already provided for in statute. The proposed rule does not impose fees, filing requirements, or recordkeeping guidelines that are not already established in statute.

January 31, 2023
Atif Aziz
Rules Coordinator

OTS-4076.2

NEW SECTION

WAC 458-20-10005 Written determinations as precedents—Criteria for publication. (1) **Introduction.** A determination, which is authorized by RCW 82.32.170 and issued pursuant to WAC 458-20-100, is a written response by the department to a taxpayer's petition to correct an assessment of tax, penalties, or interest. This rule provides criteria the department uses to decide whether a determination is precedential, as required by RCW 82.32.410.

(2) **Criteria.** The department may publish a determination, and therefore designate the determination as precedential, when all of the following criteria are met:

(a) The determination is a well-reasoned application of the law to a specific set of facts.

(b) The determination addresses only the law and facts necessary to resolve the case.

(c) The determination is needed to:

(i) Provide guidance on a previously unaddressed area of the law and articulate the department's current policy;

(ii) Apply the law to a significantly different set of facts;

(iii) Overrule a published determination; or

(iv) Provide a better or more current articulation on how the law should be interpreted.

(d) The determination can be effectively sanitized, or the taxpayer has granted a waiver of the secrecy clause. For purposes of this subsection, "effectively sanitized" means that information that could identify the taxpayer is removed without affecting the analysis or precedential value of the determination.

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