

WSR 23-11-008

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed May 4, 2023, 12:17 p.m., effective June 4, 2023]

Effective Date of Rule: Thirty-one days after filing.

Purpose: 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. This rule making incorporates the criteria into a rule.

Citation of Rules Affected by this Order: New WAC 458-20-10005.

Statutory Authority for Adoption: RCW 82.32.410, 82.32.300.

Adopted under notice filed as WSR 23-04-098 on January 31, 2023.

Changes Other than Editing from Proposed to Adopted Version:

Changed the description of "determination" in the introduction; retained reference to WAC 458-20-100, consistent with proposed draft; and removed extraneous language.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 4, 2023.

Atif Aziz  
Rules Coordinator

**OTS-4076.3**

NEW SECTION

**WAC 458-20-10005 Written determinations as precedents—Criteria for publication.** (1) **Introduction.** A determination is a department decision issued pursuant to WAC 458-20-100. 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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