

WSR 23-20-092

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed October 2, 2023, 12:14 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-269 Waiver of public disclosure of certain new tax preferences.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue intends to update and amend WAC 458-20-269 to remove a reference to repealed statute RCW 82.04.43394 and to recognize 2023 legislation (SB 5166) and new RCW 82.04.4276, which reinstates a deduction for certain amounts received by cooperative finance organizations.

Reasons Supporting Proposal: The rule is being updated to reinstate a deduction under SB 5166 and increase clarity.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060.

Statute Being Implemented: RCW 82.04.4276.

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: Melinda Mandell, 6400 Linderson Way S.W., Tumwater, WA 360-534-1584; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

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.

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 Melinda Mandell, Department of Revenue, P.O. Box 47453, phone 360-534-1584, fax 360-534-1606, email MelindaM@dor.wa.gov, AND RECEIVED BY December 4, 2023.

October 2, 2023
Atif Aziz
Rules Coordinator

OTS-4996.1

AMENDATORY SECTION (Amending WSR 17-09-068, filed 4/18/17, effective 5/19/17)

WAC 458-20-269 Waiver of public disclosure of certain new tax preferences. (1) **Introduction.** RCW 82.32.808(7) explains that the amount claimed by a taxpayer for any new tax preference is subject to public disclosure, with certain limitations. Under certain circumstances, the department may waive this public disclosure requirement for those new tax preferences specifically provided in chapter 13, Laws of 2013 2nd sp. sess.

(2) **Definitions.**

(a) **"New tax preference"** means a "tax preference" as defined in (b) of this subsection that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013, even if the expanding or extending amendment includes any other change to the tax preference.

(b) **"Tax preference"** means, with respect to any state tax administered by the department (except for the Washington estate and transfer tax in chapter 83.100 RCW and chapter 458-57 WAC), 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.

(3) **When will the department disclose new tax preference amounts?**

(a) New tax preference amounts claimed by a taxpayer that do not require a survey under RCW 82.32.585 are subject to public disclosure, upon request, (~~(twenty-four)~~) 24 months after the taxpayer first claimed the new tax preference reportable under RCW 82.32.808(6). Taxpayers reporting a tax preference requiring a survey should refer to RCW 82.32.585 and WAC 458-20-268 Annual surveys for certain tax preferences, for those requirements.

(b) Any new tax preference, other than a tax preference requiring a survey under RCW 82.32.585, claimed by a taxpayer in a calendar year for which the amount of the tax reduced or saved is less than (~~ten thousand dollars~~) \$10,000 is not subject to public disclosure.

(4) **When may the department waive public disclosure of new tax preference amounts?**

(a) **Good cause waiver.** RCW 82.32.808 (7)(b) provides that the department may waive public disclosure of new tax preference amounts for good cause. A waiver is available only for the following new tax preferences:

(i) Paymaster services business and occupation (B&O) tax deduction (RCW 82.04.43393);

(ii) Clay targets retail sales (RCW 82.08.205) and use (RCW 82.12.205) tax exemptions;

(iii) Food flavoring products retail sales (RCW 82.08.210) and use (RCW 82.12.210) tax exemptions;

(iv) Cooperative finance organizations B&O tax deduction (~~(RCW 82.04.43394)~~) in RCW 82.04.4276;

(v) Investment data for investment firms retail sales (RCW 82.08.207) and use (RCW 82.12.207) tax exemptions;

(vi) Large private airplane retail sales (RCW 82.08.215) and use (RCW 82.12.215) tax exemptions;

(vii) Blood banks B&O tax exemption (RCW 82.04.324); and

(viii) Mint growers retail sales (RCW 82.08.220) and use (RCW 82.12.220) tax exemptions.

(b) **What is good cause?** Good cause is demonstrated by a reasonable showing of economic harm to a taxpayer if public disclosure of the

new tax preference amount were to occur. To make a reasonable showing of economic harm, the taxpayer must provide facts that demonstrate that economic harm is likely to occur, and not merely speculative or theoretical. Economic harm may include, but is not limited to, a quantifiable financial loss such as decreased income, lost profits, and diminished business value. It may also include a reduction in a business's goodwill or an unfair competitive advantage to the taxpayer's competitors if the tax preference information is released.

(5) What is the process for applying for the waiver?

(a) Taxpayers do not need to request a waiver for a new tax preference for any calendar year for which the amount of tax reduced or saved for that new tax preference is less than (~~ten thousand dollars~~) \$10,000. Such amounts are not subject to public disclosure as described in subsection (3)(b) of this rule.

(b) Taxpayers eligible to claim a waiver of disclosure under subsection (4) of this rule may apply to the department at any time, but should note that any reported new tax preference amount is no longer confidential (~~twenty-four~~) 24 months after the tax preference is first claimed as described in subsection (3)(a) of this rule.

(c) To apply for the waiver, the taxpayer must provide the department with a completed waiver request form and include a detailed explanation describing how disclosure of the new tax preference information will cause economic harm. The required waiver request form can be found on the department's website at dor.wa.gov.

(d) Taxpayers who have their waiver requests approved prior to the date of disclosure, as described in subsection (3)(a) of this rule, will not have their new tax preference amount subject to public disclosure.

(e) An approval by the department to waive public disclosure of new tax preference information will remain in effect indefinitely unless the department has reason to believe that good cause no longer exists. If this occurs, the department will contact the taxpayer for additional information prior to any public disclosure of new tax preference information.

(6) Denial of good cause waiver request.

(a) Taxpayers who have their waiver requests denied may submit additional documentation to the department to support their eligibility for the waiver within (~~thirty~~) 30 days of the postmark date of the department's determination. Upon receiving the additional information from the taxpayer, the department will conduct a second review and notify the taxpayer whether good cause exists. If additional documentation is not submitted, then the initial determination is considered the final determination.

(b) A final determination by the department to deny a waiver request is considered a final agency action for purposes of review under RCW 34.05.570(4) and may be appealed to superior court as provided in RCW 34.05.514.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 17-09-068, § 458-20-269, filed 4/18/17, effective 5/19/17.]