EXPEDITED RULE MAKING

CR-105 (June 2004)
(Implements RCW 34.05.353)
EXPEDITED RULE MAKING ONLY

Agency: Department of Revenue

Title of rule and other identifying information: WAC 458-20-268 (Rule 268), *Annual surveys for certain tax adjustments*, defines what a tax preference is, how to determine if a survey must be filed, how to file a survey, and what information must be included in the survey.

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

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AND RECEIVED BY: May 23, 2016

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
The Department is proposing revisions to Rule 268 to include:

- The deletion of the listing of individual tax preferences requiring an annual survey and re-directing taxpayers to the Department's website that lists which tax preferences require an annual survey;
- Added definitions for "new tax preference" and "tax preference"
- Deleted past statute information
- Updated rule title, examples
- Added subsection titles

Copies of draft rules are available for viewing and printing on our website at Rules Agenda

Reasons supporting proposal: The revisions to this rule will provide taxpayers with current information to determine whether the filing of an annual survey is required.

Statutory authority for adoption:
RCW 82.32.300 and 82.01.060(2)

Statute being implemented:
RCW 82.32.585, 82.32.590, and 82.32.805

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

Date
March 23, 2016

Name
Kevin Dixon

Signature

Title
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
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Name of proponent: Department of Revenue

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

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AMENDATORY SECTION (Amending WSR 15-04-002, filed 1/21/15, effective 2/21/15)

WAC 458-20-268 Annual surveys for certain tax ((~~adjustments~~)) preferences. (1) **Introduction.** ((~~To take certain tax credits, deferrals, and exemptions (tax adjustments),~~)) Taxpayers taking certain tax preferences must file an annual survey with the department of revenue (department) ((~~containing~~)) providing information about their business activities and employment. ((~~This rule explains the survey requirements for the various tax adjustments.~~)) This rule ((~~also explains who is required to file an annual survey,~~)) defines what a tax preference is and explains how to determine if a survey must be filed, how to file a survey, and what information must be included in the survey((~~.~~

~~Refer to WAC 458-20-267 (Annual reports for certain tax adjustments) for more information on the annual report requirements for certain tax incentive programs~~)). RCW 82.32.585.

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

(i) **New tax preference.** "New tax preference" means a tax preference 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. RCW 82.32.805.

(ii) **Tax preference.** "Tax preference" means 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 administered by the department. RCW 82.32.805.

(b) **Annual reports.** For information on the annual report requirements for certain tax incentive programs see WAC 458-20-267.

(c) **Examples.** This rule ((~~provides~~)) contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(2) ((~~**Who is required to file the annual survey?** The following persons must file a complete annual survey:~~

~~(a) Every taxpayer claiming the business and occupation (B&O) tax credit provided by RCW 82.04.4452 for engaging in qualified research and development. A separate annual survey must be filed for each tax reporting account. If the person has assigned its entire B&O tax credit provided by RCW 82.04.4452 to another person, the assignor is not required to file an annual survey. In such an instance, the assignee of the B&O tax credit is required to file an annual survey. If the person has assigned a portion of its B&O tax credit to another person, both the assignor and the assignee are required to file an annual survey. Refer to WAC 458-20-24003 (Tax incentives for high technology businesses) for more specific information.~~

~~(b) Every taxpayer receiving a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in high unemployment counties, except as provided in (g) of this subsection. Refer to WAC 458-20-24001 (Sales and use tax deferral—Manufacturing and research/development activities in high unemployment counties—Applications filed after June 30, 2010) for more specific information about this tax adjustment.~~

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~~(c) Every taxpayer receiving a deferral of taxes under chapter 82.63 RCW for sales and use taxes on an eligible investment project in high technology, except as provided in (g) of this subsection. Refer to WAC 458-20-24003 (Tax incentives for high technology businesses) for more specific information about this tax adjustment.~~

~~(d) Every taxpayer receiving a deferral of taxes under chapter 82.74 RCW for sales and use taxes on eligible investment project in certain agricultural or cold storage facilities, except as provided in (g) of this subsection.~~

~~(e) Every taxpayer receiving a deferral of taxes under chapter 82.75 RCW for sales and use taxes on an eligible investment project in biotechnology products, except as provided in (g) of this subsection.~~

~~(f) Every taxpayer receiving a deferral of taxes under chapter 82.82 RCW for sales and use taxes on a corporate headquarters, except as provided in (g) of this subsection (2).~~

~~(g) Every taxpayer that is a lessee of an eligible investment project under chapters 82.60, 82.63, 82.74 or 82.82 RCW who receives the economic benefit of the deferral. A lessor, by written contract, must agree to pass the economic benefit of the deferral to its lessee. The economic benefit of the deferral to the lessee must be no less than the amount of tax deferred by the lessor as evidenced by written documentation of any type, whether by payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee. An applicant who is a lessor of an eligible investment project that received a deferral of taxes under chapters 82.60, 82.63, 82.74 or 82.82 RCW and who meets these requirements is not required to complete and file an annual survey.~~

~~(h) Every taxpayer claiming the B&O tax deduction provided by RCW 82.04.4268 for dairy product manufacturers, and persons claiming the exemption provided by RCW 82.04.4269 for seafood product manufacturers, and RCW 82.04.4266 for fruits and vegetable manufacturers.~~

~~(i) Every taxpayer claiming the B&O tax credit provided by RCW 82.04.449 for customized employment training.~~

~~(j) Every taxpayer claiming the B&O tax rate provided by RCW 82.04.260 for timber products, unless the person is a "small harvester" as defined in RCW 84.33.035.~~

~~(k) Every taxpayer claiming an exemption from retail sales and use tax under RCW 82.08.956 or 82.12.956 for hog fuel used to generate electricity, steam, heat, or biofuel, except that the taxpayer must file a separate survey for each facility owned or operated in the state of Washington.~~

~~(l) Every taxpayer claiming an exemption from retail sales and use tax under RCW 82.08.025651 or 82.12.025651 for sales to a public research institution of machinery and equipment used greater than fifty percent of the time in a research and development operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment.~~

~~(m) Every taxpayer claiming the preferential B&O tax rate under RCW 82.04.294 for the manufacturing or sales at wholesale of solar energy systems using photovoltaic modules or stirling converters, or of solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems.~~

~~(n) Effective July 1, 2013, every taxpayer claiming the retail sales or use tax exemption provided by RCW 82.08.962 or 82.12.962 for~~

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~~machinery and equipment used directly in generating electricity from a qualifying renewable energy source.~~

~~(o) Effective June 12, 2014, every taxpayer only claiming the retail sales or use tax exemption provided by RCW 82.08.9651 or 82.12.9651 for sales of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. However, a taxpayer claiming both the retail sales or use tax exemption provided by RCW 82.08.9651 or 82.12.9651 and the preferential B&O tax rate provided by RCW 82.04.2404 does not file an annual survey, but is instead only required to file an annual report described in WAC 458-20-267 (Annual reports for certain tax adjustments).~~

~~(p) If a new tax preference taking effect after August 1, 2013, meets the requirement found in RCW 82.32.808(5), every taxpayer claiming the new preference must complete an annual survey.~~)) **Tax preferences requiring an annual survey.** Taxpayers may refer to the department's web site 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 that person's department "My Account." To file and submit electronically, go to ((~~http://dor.wa.gov.TaxIncentiveReporting~~)) the department's web site at dor.wa.gov/TaxIncentiveReporting.

(b) **Required paper form.** If the department waives the electronic filing requirement for a person ((~~upon a showing of~~)) that shows good cause, ((~~then~~)) that person must use the annual survey 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.** Taxpayers 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 survey from the department's web site ((~~(www.dor.wa.gov)~~)) at dor.wa.gov. It may also be obtained from the department's district offices, by telephoning the telephone information center (800-647-7706), or by contacting the ((~~department's taxpayer account administration division~~)) department at:

Attn: ((~~Local Finance~~)) Tax Incentive Team
((~~Department of Revenue~~))
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476
Olympia, WA 98504-7476

(d) ((~~**Due date.**~~

~~(i) **For surveys due in 2011 or later.** For taxpayers claiming any B&O tax credit, tax exemption, or tax rate listed under subsection (2) of this rule, the survey must be filed or postmarked by April 30th following any calendar year in which the person becomes eligible to claim the tax credit, tax exemption, or tax rate.~~

~~For~~)) **Surveys are due by April 30th.** RCW 82.32.585 requires recipients of ((~~any~~)) sales tax deferrals ((~~listed under subsection (2) of this rule or for~~)), or lessees required to file the annual survey

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((~~as provided in subsection (2)(g) of this rule, the survey must be filed or postmarked by April 30th of the year following the calendar year in which an eligible investment project is certified by the department as being operationally complete and each of the seven succeeding calendar years.~~

~~(ii)~~ **~~For surveys due prior to 2011.~~** ~~For taxpayers claiming any B&O tax credit, tax exemption, or tax rate listed under subsection (2) of this rule, the survey must be filed or postmarked by March 31st following any calendar year in which the taxpayer becomes eligible to claim the tax credit, tax exemption, or tax rate.~~

~~For recipients of any sales tax deferrals listed under subsection (2) of this rule or for lessees required to file the annual survey as provided in subsection (2)(g) of this rule, the survey must be filed or postmarked by March 31st of the year following the calendar year in which an eligible investment project is certified by the department as being operationally complete and each of the seven succeeding calendar years.~~

~~(iii)~~)), to file the survey every year, by April 30th for eight years following the year in which the project is operationally complete.

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

((~~(e)~~)) (f) **Special requirement for person who did not file an annual survey during the previous calendar year.** If a taxpayer is a first-time filer or otherwise did not file an annual survey with the department during the previous calendar year, the annual survey must include the information described in subsection (4) of this rule for the two calendar years immediately preceding the due date of the survey.

((~~(f)~~)) (g) **Examples.**

(i) **Example 1.** Advanced Computing, Inc. ((~~qualifies~~)) qualified for the B&O tax credit provided by RCW 82.04.4452 and applied it against taxes due in calendar year ((~~2010~~)) 2014. Advanced Computing((~~, Inc.~~)) filed an annual survey in March ((~~2010~~)) 2014 for credit claimed under RCW 82.04.4452 in ((~~2009~~)) 2013. Advanced Computing((~~, Inc.~~)) must electronically file an annual survey with the department by April 30, ((~~2011~~)) 2015, for credits taken in calendar year ((~~2010~~)) 2014. The tax preference in this example expired January 1, 2015.

(ii) **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 ((~~department certified the~~)) investment project ((~~as being~~)) was operationally complete in 2012. Biotechnology((~~, Inc.~~)) filed an annual survey on April 30, 2013, for ((~~credit claimed under RCW 82.04.4452 in 2012 for~~)) the sales and use tax deferral under chapter 82.63 RCW. ((~~A survey is~~)) Surveys are due from Biotechnology((~~, Inc.~~)) by April 30th each following year, with its last survey due April 30, 2020.

(iii) **Example 3.** Advanced Materials, Inc., a new business in 2014, has been conducting manufacturing activities in a building leased from Property Management Services ((~~since 2014~~)). 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. ((~~In order~~)) To pass on the entire economic benefit of the deferral, Property Management Services charges Advanced Materials((~~, Inc.~~)) $5,000 less in rent each year. Advanced Materials((~~, Inc.~~)) is

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a first-time filer of annual surveys. Advanced Materials((~~, Inc.~~)) must file its annual survey with the department covering the 2014 calendar year by April 30, 2015((~~, assuming all the requirements of subsection (2)(f) of this rule are met. A survey is~~)). Surveys are due from Advanced Materials((~~, Inc.~~)) by April 30th each following year, with its last survey due ((~~by~~)) April 30, 2022.

(iv) **Example 4.** Fruit Canning, Inc. claims the B&O tax exemption provided in RCW 82.04.4266 for the canning of fruit in ((~~2010~~)) 2015. Fruit Canning((~~, Inc.~~)) is a first-time filer of annual surveys. Fruit Canning((~~, Inc.~~)) must file an annual survey with the department by April 30, ((~~2011~~)) 2016, covering calendar years ((~~2009 and 2010~~)) 2014 and 2015. If Fruit Canning((~~, Inc.~~)) claims the B&O tax exemption during subsequent years, it must file an annual survey for each of those years by April 30th of each following year.

(4) **What information does the annual survey require?** The annual survey ((~~requests information about~~)) 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:

(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 ((~~adjustments~~)) preferences.

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(i) ((~~The department is required~~)) RCW 82.32.585 requires the department to report to the legislature summary descriptive statistics by category and the effectiveness of certain tax ((~~adjustments~~)) 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 82.08.02565 and 82.12.02565; 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 ((~~or~~)) and reductions in force. Vacant positions are not included in total employment.

(b) **Examples.** Assume these facts for the following examples. National Construction Equipment (NCE) manufactures bulldozers, cranes, and other earth-moving equipment in Ridgefield((~~, WA~~)) 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((~~, WA~~)).

(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 ((~~adjustments~~)) 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 ((~~adjustments~~)) 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

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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 ((~~one~~)) 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 ((~~only~~)). 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) **Examples.** Assume these facts for the following examples. Acme Computer, Inc. develops computer software and ((~~claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending~~)) 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 ((~~Washington~~)) 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

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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, ((~~but~~)) 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) **Examples.** Assume these facts for the following examples. Worldwide Materials, Inc. is a developer of materials used in manufacturing electronic devices ((~~at a facility located in Everett, WA~~)). Worldwide Materials ((~~claims the B&O tax credit provided by RCW~~

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~~82.04.4452 for its research and development spending~~)) 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 position is intended to be filled for a period exceeding twelve consecutive months, Worldwide Materials must report these positions as ((~~two~~)) 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 compen-

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sation 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

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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) **Examples.** Assume these facts for the following examples. Medical Resource, Inc. is a pharmaceutical manufacturer ((~~located in Spokane, WA. Medical Resource, Inc. claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending~~)) 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((~~, Inc.~~)) also hires a staffing company to furnish seventy-five workers.

(i) **Example 19.** Medical Resource((~~, Inc.~~)) 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((~~, Inc.~~)) must report two hundred employees as having employer-provided medical benefits, because ((~~this~~)) that is the number of employees enrolled in the health plans it offers.

(ii) **Example 20.** Medical Resource((~~, Inc.~~)) 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((~~, Inc.~~)) must report these twenty-five employment positions as having employer-provided medical benefits.

(iii) **Example 21.** Medical Resource((~~, Inc.~~)) 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. ((~~No action, other than~~)) Medical Resource((~~, Inc.~~)) employment((~~, is required by employees~~)) 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((~~, Inc.~~)) must report two hundred and fifty employment positions as having dental benefits, because ((~~this~~)) that is the number of employees enrolled in this dental plan.

(iv) **Example 22.** Medical Resource((~~, Inc.~~)) offers a 401(k) Plan to its full-time and part-time employees after six months of employment. Medical Resource((~~, Inc.~~)) 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)

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Plan. One hundred of these workers receive matching contributions. Medical Resource((~~, Inc.~~)) must report two hundred employment positions as having employer-provided retirement benefits, because ((~~this~~)) that is the number of employees enrolled in the 401(k) Plan.

(v) **Example 23.** Medical Resource((~~, Inc.~~)) 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((~~, Inc.~~)) 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, Inc.'s~~)) 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 ((~~adjustment~~)) preference taken 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 ((~~(b) and~~)) (c) of this subsection. ((~~More confidentiality provisions in regards to the annual surveys are as follows:~~))

(a) **Failure to timely file a complete annual survey subject to disclosure.** If a taxpayer fails to ((~~file a complete annual survey as required by law, then the fact that the taxpayer failed to~~)) timely file a complete annual survey ((~~and~~)), 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 upon request. RCW 82.32.585.

(b) **Amount reported in annual survey is different from the amount claimed or allowed.** If a taxpayer reports a tax ((~~adjustment~~)) 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 ((~~adjustment~~)) preference is less than ten thousand dollars.** If the tax ((~~adjustment~~)) preference is less than ten thousand dollars during the period covered by the annual survey, ((~~then~~)) the taxpayer may request that the department ((~~to~~)) treat the amount of the tax ((~~adjustment~~)) preference as confidential under RCW 82.32.330. ((~~The request must be made for each survey in writing, dated and signed by the owner, corporate officer, partner, guardian, executor, receiver, administrator, or trustee of the business, and filed with the department's taxpayer account administration division at the address provided above in subsection (3) of this rule.~~))

(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 good faith responses to a question.

(b) **When annual survey is not submitted timely.** If a person claims a tax ((~~adjustment~~)) preference that requires an annual survey

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under this rule but fails to submit a complete annual survey by the due date of the survey or any extension under RCW 82.32.590, the amount of the tax ((~~adjustment~~)) preference claimed for the previous calendar year becomes immediately due. If the tax ((~~adjustment~~)) 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. Interest, but not penalties, will be assessed on these amounts((~~. The interest will be assessed~~)) at the rate ((~~provided~~)) for delinquent taxes provided for in RCW 82.32.050, retroactively to the date the tax ((~~adjustment~~)) preference was claimed, and accrues until the taxes for which the tax ((~~adjustment~~)) preference was claimed are repaid.

(c) **Extension for circumstances beyond the control of the taxpayer.** If the department finds ((~~that~~)) 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 filing 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. 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.

(d) **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.

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