



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)
(Implements RCW 34.05.310)
Do NOT use for expedited rule making

Agency: Department of Revenue

Subject of possible rule making: The Department is considering adopting a rule to explain that amounts claimed by taxpayers for any new tax preference is subject to public disclosure, with certain limitations, pursuant to RCW 82.32.808(7). The rule will also explain that the Department, under certain circumstances, may waive this public disclosure requirement.

Statutes authorizing the agency to adopt rules on this subject: RCW 82.32.300, 82.01.060(2), and 82.32.808(7).

Reasons why rules on this subject may be needed and what they might accomplish: The proposed rule is needed to explain what tax preference information is subject to public disclosure, the reporting requirements of taxpayers claiming a new tax preference, what the good cause waiver standard is, those tax preferences for which a waiver may be claimed, and the procedure for applying for a waiver.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Parties interested in this rule making may contact the individual listed below. The public may also participate by providing written comments throughout this rule making or giving oral testimony at the public meeting or public hearing.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

A preliminary draft of the proposed rule will be available via the Department's online rules agenda at dor.wa.gov prior to the CR101 public meeting.

Written comments may be submitted by mail and should be directed to Leslie Mullin at either of the following addresses: email: LeslieMu@dor.wa.gov, or mailing address: ITA Division, PO Box 47453, Olympia, WA 98504-7453.

Written and oral comments will be accepted at the public meeting.

Public meeting location:

Capital Plaza Building
4th Floor Executive Conference Rm.
1025 Union Avenue SE
Olympia, Washington

Assistance for persons with disabilities:

Contact Mary Carol LaPalm (360) 725-7499 or Renee Cosare (360) 725-7514 no later than 10 days before the meeting date. For Hearing Impaired please contact us via the Washington Relay Operator at (800) 833-6384.

Call in option can be provided upon request no later than 3 days before the meeting date.

Date: May 19, 2016 **Time:** 10:00 A.M.

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| Date April 20, 2016 |
| Name Kevin Dixon |
| Signature  |
| Title Rules Coordinator |

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| CODE REVISER USE ONLY |
| OFFICE OF THE CODE REVISER STATE OF WASHINGTON FILED |
| DATE: April 20, 2016 TIME: 8:44 AM |
| WSR 16-09-115 |

WAC 458-20-XXX Waiver of Public Disclosure of Certain Tax Preference - Reporting Information for Good Cause. (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, subject to certain limitations. The statute also explains that the department may under certain circumstances waive this public disclosure requirement for those tax preferences specifically provided in chapter 13, Laws of 2013 2nd sp. sess.

This rule identifies:

- What information is subject to public disclosure;
- When information will be disclosed to the public;
- The reporting requirements of taxpayers claiming a new tax preference;
- What the good cause waiver standard is;
- Those tax preferences for which a waiver may be claimed; and
- The procedure for applying for a waiver.

(2) **Definitions.**

(a) "Department" means the Department of Revenue.

(b) "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.

(c) "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) **What information is subject to public disclosure?**

(a) RCW 82.32.808(7) provides disclosure requirements for new tax preferences that do not require a survey under RCW 82.32.585. RCW 82.32.585 has separate disclosure and waiver requirements for certain tax information reported on surveys. Taxpayers reporting a tax preference that requires a survey should refer to RCW 82.32.585 for those requirements. For those new tax preferences that do not require a survey, RCW 82.32.808(7) provides that the amount claimed by a taxpay-

er for any new tax preference is subject to public disclosure and is not considered confidential tax information under RCW 82.32.330, if:

(i) The reporting periods subject to disclosure ended at least twenty-four months prior to the date of disclosure;

(ii) The taxpayer is required to report the amount of the tax preference claimed by the taxpayer to the department under RCW 82.32.808(6); and

(iii) The amount claimed by the taxpayer for the calendar year is equal to or greater than \$10,000.

(b) Reporting requirements RCW 82.32.808(6).

(i) Taxpayers claiming a new tax preference must report the amount of the tax preference claimed by the taxpayer to the department as otherwise required by statute or determined by the department as part of the taxpayer's regular tax reporting responsibilities.

(ii) Business & Occupation Tax and Public Utilities Tax reporting. For new tax preferences allowing certain types of gross income of the business to be excluded from business and occupation or public utility taxation, the tax return must explicitly report the amount of the exclusion, regardless of whether it is structured as an exemption or deduction, if the taxpayer is otherwise required to report taxes to the department on a monthly or quarterly basis.

(iii) Sales and Use Tax Reporting. For a new sales and use tax exemption, the total sales or use tax exemption claimed by the buyer must be reported on an addendum to the buyer's tax return if the buyer is otherwise required to report taxes to the department on a monthly or quarterly basis and the buyer is required to submit an exemption certificate, or similar document, to the seller.

(iv) Circumstances when reporting is not necessary. Reporting is not required for the following:

(A) Property tax exemptions;

(B) Tax preferences required by constitutional law;

(C) Tax preferences for which the tax benefit to the taxpayer is less than one thousand dollars per calendar year;

(D) Taxpayers who are annual filers;

(E) Taxpayers who are not required to file electronically any return, report, or survey under chapter 82.32 RCW, including taxpayers whose requirement to file electronically is waived by the department; or

(F) Individuals or businesses that are not required to obtain a tax registration endorsement with the department (See WAC 458-20-101 *Tax registration and tax reporting*).

(4) **When will the tax preference information be published?** The department will publish on its website at dor.wa.gov, on December 1 of each year, the tax preference information required to be disclosed under subsection (3) of this rule.

(5) **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 tax preference amounts for good cause. A waiver is available only for the new tax preferences created in chapter 13, Laws of 2013 2nd sp. sess.

(b) **What is good cause?** Good cause is demonstrated by a reasonable showing of economic harm (that is, a significant financial injury that is more than a de minimis injury) 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 injury is likely to occur, not merely speculative or theoretical.

(c) **How do you prove significant financial injury that is more than a de minimis injury is likely to occur?** To demonstrate that a significant financial injury that is more than a de minimis injury is likely to occur, the taxpayer must explain, using facts, how disclosure of a tax preference amount will:

(i) Result in some form of quantifiable financial loss that is more than de minimis to the taxpayer, such as decreased income, lost profits, diminished business value, or reduction in the business's goodwill, and/or

(ii) Benefit competitors at the expense of the taxpayer through a showing of actual competition in the relevant market and a likelihood of competitive injury that is more than de minimis if the information is released. An assertion that disclosure would allow competitors to learn unspecified business information is insufficient.

(d) **What are the new tax preferences provided in chapter 13, Laws of 2013 2nd sp. sess. to which the waiver applies?** The waiver applies to the following reportable new tax preferences:

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

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

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

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

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

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

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

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

(ix) Nonprofit fundraising activities use tax exemption (RCW 82.12.225); and

(x) Sales (RCW 82.08.9651) and use (82.12.9651) tax exemptions for sales of gas and chemicals used by a manufacturer or processor for hire in the production of solar grade silicon, except when RCW 82.08.9651 and RCW 82.12.9651 require a taxpayer to file an annual survey per RCW 82.32.585 (in which case the waiver does not apply).

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

(a) Taxpayers eligible to claim a waiver of disclosure under this rule may apply to the department at any time, but should note that reported tax preference amounts are no longer confidential twenty-four months after the taxpayer first claimed the new tax preference reportable under RCW 82.32.808(6) (referred to here as the "date of disclosure"). Taxpayers need not request a waiver for a new tax preference for any calendar year for which the amount claimed by the taxpayer for that new tax preference is less than \$10,000.

(b) To apply for the waiver, the taxpayer must provide the department with a sworn affidavit or declaration by a suitable person (e.g., a high level officer such as Chief Operating Officer, Vice President, etc.) in writing stating why the taxpayer meets the reasons for "good cause" (as defined in subsection (5)(b) of this rule).

(c) Taxpayers who have their waiver requests approved prior to the date of disclosure will not have their tax preference amount subject to public disclosure. A determination by the department to waive

public disclosure will remain indefinitely unless the department later determines that good cause does not exist.

(d) Taxpayers who have their requests denied may seek reconsideration by the department. Denial upon reconsideration is a final action of the department and may be appealed to the Superior Court of Thurston County.

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