

PRELIMINARY DRAFT—FOR DISCUSSION PURPOSES ONLY. THIS DRAFT IS NOT TO BE CONSIDERED A PROPOSED RULE AND IS ONLY PROVIDED FOR DISCUSSION PURPOSES TO DETERMINE WHAT TOPICS A LATER PROPOSED RULE MIGHT ADDRESS. UNDER NO CIRCUMSTANCES IS THIS DISCUSSION DRAFT TO BE USED TO DETERMINE TAX LIABILITY, QUALIFICATION FOR EXEMPTIONS, OR COMPLIANCE WITH ANY REQUIREMENT IMPOSED BY LAW.

AMENDATORY SECTION: (Amending Order PT 68-6, filed 4/29/68.)

WAC 458-12-110 (~~(Listing of personalty --- Estimate listing penalty))~~Listing of personal property by the assessor--Penalties for failing to list personal property and for making a false or fraudulent listing. (~~(If a personal property statement or list is not submitted within the time allowed either by law or by the assessor where an extension has been granted, the assessor shall ascertain the amount and value of the property which should have been reported. (RCW 84.40.200) When such a listing is made by the assessor, he shall deliver or mail a copy to the person for whom the listing is made. The copy delivered must show the valuation of the property listed, and must be signed by the assessor. On the copy of the listing delivered or mailed, the assessor shall notify the person for whom the listing is made of his possible liability for penalties for his failure to make the list himself.~~

~~The listing made by the assessor shall be used by him for all purposes in the same manner as though it was submitted by the person required to list, until such person does submit the required statement.~~

~~When a statement of personal property subject to taxation is not submitted by the date prescribed, the taxpayer becomes liable to a penalty of 5% of the total tax determined to be due, for each month or fraction thereof from the date that the listing was due to the date that it is actually received, in acceptable form, by the assessor. The performance by the assessor of his duty to ascertain the amount and value of taxable property in the event of the failure of the person required to do so shall not be taken to be such a report as would terminate the accrual of this penalty.~~

~~The penalty provided for by this rule shall actually be assessed at the time that taxes are spread on the rolls, to a maximum of 25% of the tax found to be due, and shall then be added to the tax assessed, and collected in the same manner as such taxes. If the person required to list property can show, to the satisfaction of the assessor, that his failure to report is due to a reasonable cause, no late filing penalty shall be assessed.)~~

(1) Introduction. This rule explains the process of listing and

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assessing taxable personal property by the assessor when the taxpayer fails to make a listing as required by chapter 84.40 RCW. This rule also provides information about the penalties imposed by RCW 84.40.130 for persons who fail or refuse to make a timely listing of their taxable personal property or who wilfully provide the assessor a false or fraudulent listing of their taxable personal property. For detailed information about the listing of personal property, refer to WAC 458-12-060.

(2) **Failure to provide a listing of taxable personal property to the assessor.** If a person who is required under chapter 84.40 RCW to make a listing of taxable personal property with the county assessor fails to do so by the time allowed by law, it is the duty of the assessor under RCW 84.40.200 to ascertain the amount and value of the taxable personal property that should have been listed. When such a listing is made by the assessor, he or she must deliver or mail a copy of the listing, showing the valuation of the property so listed, to the person for whom the listing is made. The provisions of RCW 84.40.200 do not apply to the listing of ships and vessels required under RCW 84.40.065.

(3) **Penalty for failing or refusing to make a listing of taxable personal property.** A person who fails or refuses to provide the assessor with a listing of their taxable personal property by the due date specified in RCW 84.40.040 (April 30th) is subject to a mandatory penalty. The amount of the penalty is provided below in subsection (3)(a).

(a) **Amount of penalty.** The amount of the penalty is five percent of the amount of tax assessed against the taxpayer, not to exceed fifty dollars per calendar day if the delinquency is for not more than one month. If the delinquency is for more than one month, an additional five percent of the amount of tax assessed against the taxpayer is added to the penalty for each additional month or fraction of a month that the listing is delinquent, to a maximum of twenty-five percent. The penalty provided in this subsection (3) will be collected in the same manner as the tax to which it is added.

(b) **How does the penalty apply when a listing is made by the assessor?** When the assessor makes a listing of taxable personal property under the provisions of RCW 84.40.200 and subsection (2)

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of this rule, the penalty provided in this subsection (3) continues to accrue until the taxpayer provides a listing to the assessor as required by chapter 84.40 RCW.

(c) **Can the penalty be waived?** If a person can establish to the satisfaction of the assessor that the failure to provide a listing of taxable personal property was due to reasonable cause and not due to wilful neglect, no penalty will be imposed.

Whether reasonable cause exists depends upon the facts of each case. Reasonable cause may be shown by one or more of the following events or circumstances. These examples do not encompass all of the possible events or circumstances that could constitute reasonable cause for failing to make a listing of taxable personal property with the assessor by the due date.

(i) The taxpayer was unable to make a listing by the due date because of a death or serious illness of the taxpayer or of a member of the taxpayer's immediate family occurring at or shortly before the due date. For purposes of this subsection, the term "immediate family" includes, but is not limited to, a grandparent, parent, brother, sister, spouse, child, or grandchild.

(ii) The taxpayer was unable to make a listing by the due date because the taxpayer reasonably relied upon incorrect, ambiguous, or misleading written advice as to the proper listing requirements by either the assessor or assessor's staff, or the property tax advisor designated under RCW 84.48.140, or his or her staff.

(iii) The taxpayer was unable to make a listing by the due date because of a natural disaster such as a flood or earthquake occurring at or shortly before the due date.

(iv) The taxpayer was unable to make a listing by the due date because of a delay or loss related to the delivery of the listing form by the postal service. The taxpayer must be able to provide documentation from the postal service of such a delay or loss.

(v) The failure of the assessor to mail a notice and listing form as required by RCW 84.40.040 to a taxpayer may be considered in determining whether the taxpayer's failure to provide a listing was due to reasonable cause.

(d) **How are the penalties distributed?** When collected, the penalties provided for in this subsection (3) are distributed to the taxing districts along with the taxes upon which the penalties were added.

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(e) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(i) Due to an oversight, Company A makes its listing of taxable personal property on October 6th of the assessment year, over five months after the deadline provided in RCW 84.40.040. The amount of tax imposed against Company A on its personal property in the following year is \$600.00. Company A is subject to a penalty of \$150.00, twenty-five percent of the amount of its tax liability.

(ii) Due to an oversight, Company B makes its listing of taxable personal property on May 2nd of the assessment year, two days after the deadline provided in RCW 84.40.040. The amount of tax imposed against Company B on its personal property in the following year is \$2,250.00. The amount of the penalty assessed against Company B is \$100.00. Five percent of \$2,250.00 is \$112.50. However, the penalty is limited to \$50.00 per calendar day when the delinquency does not exceed one month.

(iii) Due to an oversight, Company C fails to make a listing of its taxable personal property by April 30th, the deadline provided in RCW 84.40.040. On August 24th of the assessment year, the assessor lists and values the taxable personal property of Company C and mails a copy of the listing to Company C. At this time, Company C would be subject to a penalty of twenty percent of the tax imposed against it on its personal property in the following year. After receiving the assessor's listing, Company C makes its own listing with the assessor on September 7th of the assessment year. The amount of penalty imposed is twenty-five percent of the tax imposed against Company C on its personal property in the following year. The listing by the assessor has no effect on the amount of the penalty Company C is subject to.

(iv) Due to an oversight, Company D fails to make a listing of its taxable personal property for assessment years 2001, 2002, and 2003. In May of 2003, the assessor learns of Company D's failure to list its taxable personal property for the 2001, 2002, and 2003 assessment years. After being notified by the assessor of its failure to make a listing, Company D makes a listing for assessment years 2001, 2002, and 2003 with the assessor on May 20,

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2003. The assessor adds the taxable personal property for 2003 to the assessment roll. The assessor also adds the taxable personal property for 2001 and 2002 to the assessment roll as omitted property under the provisions of RCW 84.40.080. The penalties assessed against Company D include a penalty of 25% of the amount of tax imposed on Company D resulting from the omitted property assessment. In addition, Company D is subject to a penalty for the delinquent 2003 listing in the amount of 5% of the amount of tax imposed on Company D resulting from the listing for the 2003 assessment year or \$1,000, whichever is lesser. The amount of \$1,000 represents \$50 per calendar day of delinquency. For additional information about omitted property, refer to WAC 458-12-050.

(4) Penalty for wilfully providing a false or fraudulent listing of taxable personal property. If a person wilfully provides the assessor with a false or fraudulent listing of taxable personal property, or, with the intent to defraud, fails or refuses to provide a listing of taxable personal property as required by chapter 84.40 RCW, the person is subject to a penalty of one hundred percent of the tax properly due. A false or fraudulent listing may arise because it does not include all of the taxable personal property in the ownership, possession, or control of the person making the listing, or because it contains false information relating to the proper value of the personal property listed. A person is not liable for the penalty provided in this subsection (4) if the failure to list or the false listing was the result of negligence, inadvertence, accident, or simple oversight rather than wilfullness or an intent to defraud. Likewise, a person making a false listing will not be subject to the penalty provided in this subsection (4) if it is shown that the misrepresentations made by the person are entirely attributable to reasonable cause. The penalty imposed under this subsection (4) is in lieu of the penalty imposed under subsection (3) of this rule.

(a) How is the penalty imposed? The assessor does not impose the penalty provided in this subsection (4). Rather, the penalty provided for in this subsection along with any tax properly due are to be recovered in a lawsuit brought in the name of the state of Washington on the complaint of the county assessor or the county

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legislative authority. The provisions of this subsection (4) are in addition to any other provisions of law relating to the recovery of property taxes.

(b) **How is the penalty distributed?** When collected, the penalty imposed under this subsection (4) and the tax to which it was added must be paid into the county treasury to the credit of the current expense fund.