

This rule was adopted on November 1, 2005, and becomes effective December 2, 2005. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

AMENDATORY SECTION (Amending WSR 01-05-022, filed 2/9/01, effective 3/12/01)

WAC 458-20-228 Returns, ~~((remittances))~~ payments, penalties, extensions, interest, stay of collection. (1)

**Introduction.** This ~~((rule))~~ section discusses the responsibility of taxpayers to ~~((timely))~~ pay their tax ~~((liabilities))~~ by the appropriate due date, and the acceptable methods of payment. It discusses the interest and penalties that are imposed by law when a taxpayer fails to ~~((correctly or timely pay a tax liability))~~ pay the correct amount of tax by the due date. It also discusses the circumstances under which the law allows the department of revenue (department) to waive interest or penalties.

**(a) Where can I get my questions answered, or learn more about what I owe and how to report it?** Washington's tax system is based largely on voluntary compliance. Taxpayer~~((s))~~s have a legal responsibility to become informed about applicable tax laws, to register with the department, to seek instruction from the department, to file accurate returns, and to pay their tax liability in a timely manner (chapter 82.32A RCW, Taxpayer rights and responsibilities). The department has ~~((instituted))~~ a taxpayer services program to provide taxpayers with accurate tax-reporting assistance and instructions. The department staffs local district offices, maintains a toll-free question and information phone line (1-800-647-7706), provides information and forms on the internet (<http://dor.wa.gov>), and conducts free public workshops on tax reporting. The department also publishes notices, interpretive statements, and ~~((rules))~~ sections discussing important tax issues and changes. It's all friendly, free, and easy to access.

**(b) I can avoid some penalties and interest if I file my returns electronically (by e-file)?** It's true! Many common reporting errors are preventable when taxpayers take advantage of the department's electronic filing (e-file) system. E-file is an internet-based application that provides a secure and encrypted way for taxpayers to file and pay many of Washington state's business related excise taxes online. The e-file system helps taxpayers by performing all the math calculations and checking for other types of reporting errors. **Using e-file to file electronically will help taxpayers avoid penalties and interest related to unintentional underpayments and delinquencies.** Persons who wish to use e-file should access the department's internet site (<http://dor.wa.gov>) and open the page for electronic filing, which has additional links to pages

answering frequently asked questions, and explaining the registration process for e-file. Taxpayers may also call the department's toll-free electronic filing help desk for more information, during regular business hours.

**(c) Index of subjects addressed in this section:**

<b><u>Topic--Description</u></b>	<b><u>See subsection</u></b>
<b><u>Where can I get my questions answered, or learn more about what I owe and how to report it? - By phone or on-line, the department provides a number of free and easy resources to help you find answers. One of them is right for you.</u></b>	(1)(a) of this section. (see above)
<b><u>I can avoid some penalties and interest if I file my returns electronically (by e-file)? - It's true! E-filing guides you through the return and helps you avoid many common mistakes.</u></b>	(1)(b) of this section. (see above)
<b><u>Do I need to file a return? - How do I get returns and file them? Can I file my returns electronically?</u></b>	(2) of this section
<b><u>What methods of payment can I use? - What can I use to pay my taxes? Some taxpayers are required to pay electronically.</u></b>	(3) of this section
<b><u>When is my tax payment due? - Different reporting frequencies can have different due dates. What if the due date is a weekend or a holiday? If my payment is in the mail on the due date, am I late or on time?</u></b>	(4) of this section
<b><u>Penalties - What types of penalty exist? How big are they? When do they apply?</u></b>	(5) of this section
<b><u>Statutory restrictions on imposing penalties - More than one penalty can apply at the same time, but there are restrictions. Which penalties can be combined?</u></b>	(6) of this section
<b><u>Interest - In most cases interest is required. What interest rates apply? How is interest applied?</u></b>	(7) of this section
<b><u>Application of payment towards liability - Interest, penalties, and taxes are paid in a particular order. If my payment doesn't pay the entire liability, how can I determine what parts have been paid?</u></b>	(8) of this section
<b><u>Waiver or cancellation of penalties - I think I was on time, or I had a good reason for not paying the tax when I should have. What reasons qualify me for a waiver of penalty? How can I get a penalty removed?</u></b>	(9) of this section
<b><u>Waiver or cancellation of interest - Interest will only be waived in two limited situations. What are they?</u></b>	(10) of this section

<u>Stay of collection - Revenue will sometimes temporarily delay collection action on unpaid taxes. When can this happen? Can I request that revenue delay collection?</u>	<u>(11) of this section</u>
<u>Extensions - Can I get an extension of my due date? How long does an extension last?</u>	<u>(12) of this section</u>

(2) (~~(Returns-)~~) Do I need to file a return? A "return" is defined as any paper or electronic document a person is required to file by the state of Washington in order to satisfy or establish a tax or fee obligation which is administered or collected by the department, and that has a statutorily defined due date. RCW 82.32.090(8).

(a) Returns and payments are to be filed with the department by every person liable for any tax which the department administers and/or collects, except for the taxes imposed under chapter 82.24 RCW (Tax on cigarettes), which are collected through sales of revenue stamps. Returns must be made upon forms, (~~(copies of forms)~~) through the electronic filing (e-file) system (see subsection (1)(b) of this section), or by other means, provided or accepted by the department. The department provides tax returns upon request or when a taxpayer opens an active tax reporting account. Tax returns are generally mailed to all registered taxpayers prior to the due date of the tax. However, it remains the responsibility of (~~(the)~~) taxpayers to timely request a return if one is not received, or to otherwise insure that their return is filed in a timely manner. E-file taxpayers do not receive paper returns. However, if an e-file taxpayer specifically requests it, the department will send an electronic reminder for each upcoming return as the time to file approaches.

(b) Taxpayers whose accounts are placed on an "active nonreporting" status do not automatically receive a tax return and must request a return, or register to file by e-file, if they no longer qualify for this reporting status. (See WAC 458-20-101, Tax registration, for an explanation of the active nonreporting status.)

(c) Some consumers (~~(that are)~~) may not be required to register with the department and obtain a tax registration endorsement (~~((see subsection (2)(a)))~~). (Refer to WAC 458-20-101 for detailed information about tax registration and when it is required.) But even if they do not have to be registered, consumers may be required to pay use tax directly to the department if they have purchased items without paying Washington's sales tax. An unregistered consumer must report and pay their use tax liability directly to the department on a "Consumer Use Tax Return." Consumer use tax returns are available from the department at any of the local district

offices(~~(, by fax, or through the internet)~~). A consumer may also call the department's toll free number 1-800-647-7706 to request a consumer use tax return by fax or mail. Finally, the consumer use tax return is available for download from the department's internet site at <http://dor.wa.gov>, along with a number of other returns and forms which are available there.

The interest and penalty provisions of this rule may apply (~~(to delinquent)~~) if use tax (~~(liabilities, and)~~) is not paid on time. Unregistered consumers should refer to WAC 458-20-178 (Use tax) for an explanation of their tax reporting responsibilities.

(3) What methods of payment(~~(-)~~) can I use? Payment may be made by cash, check, cashier's check, money order, and in certain cases by electronic funds transfers, or other electronic means approved by the department.

(a) Payment by cash should only be made at an office of the department to ensure that the payment is safely received and properly credited.

(b) Payment may be made by uncertified bank check, but if the check is not honored by the financial institution on which it is drawn, the taxpayer remains liable for the payment of the tax, as well as any applicable interest and penalties. RCW 82.32.080. The department may refuse to accept any check which, in its opinion, would not be honored by the financial institution on which that check is drawn. If the department refuses a check for this reason the taxpayer remains liable for the tax due, as well as any applicable interest and penalties.

(c) The law requires that certain taxpayers pay their taxes through electronic funds transfers. The department notifies taxpayers who are required to pay their taxes in this manner, and can explain how to set up the electronic funds transfer process. (See WAC 458-20-22802 on electronic funds transfers.)

(4) (~~(Due dates.)~~) When is my tax payment due? RCW 82.32.045 provides that payment of the taxes due with the (~~(combined)~~) excise tax return must be made monthly and within (~~(twenty-five)~~) twenty days after the end of the month in which taxable activities occur, unless the department assigns the taxpayer a longer reporting frequency. Payment of taxes due with returns covering a longer reporting frequency are due on or before the last day of the month following the period covered by the return. (For example, payment of the tax liability for a first quarter tax return is due on April 30th.) WAC 458-20-22801 (Tax reporting frequency--Forms) explains the department's procedure for assigning a quarterly or annual reporting frequency.

(a) If the date for payment of the tax due on a tax return falls upon a Saturday, Sunday, or legal holiday, the filing shall be considered timely if performed on the next business day. RCW 1.12.070 and 1.16.050.

(b) The postmark date as shown by the post office cancellation mark stamped on the envelope will be considered conclusive evidence by the department in determining if a tax return or payment was timely filed or received. RCW 82.32.080. It is the responsibility of the taxpayer to mail the tax return or payment sufficiently in advance of the due date to assure that the postmark date is timely.

Refer to WAC 458-20-22802 (Electronic funds transfer) for more information regarding the electronic funds transfer process, due dates, and requirements.

(c) If a taxpayer suspects that it will not be able to file and pay by the coming due date, it may be able to obtain an extension of the due date to temporarily avoid additional penalties. Refer to subsection (12) of this section for details on requesting an extension.

(5) Penalties. Various penalties may apply as a result of the failure to correctly or accurately compute the proper tax liability, or to timely pay the tax. Separate penalties may apply and be cumulative for the same tax. Interest may also apply if any tax has not been paid when it is due, as explained in subsection (7) of this ~~((rule))~~ section. ~~((Penalties apply as follows.))~~ (The department's electronic filing system (e-file) can help taxpayers avoid additional penalties and interest. See subsection (1)(b) of this section for more information.)

The penalty types and rates addressed in this subsection are:

<u>Penalty Type--Description</u>	<u>Penalty Rate</u>	<u>See subsection</u>
<u>Late payment of a return - Five percent added when payment is not received by the due date, and increases if the tax due remains unpaid.</u>	<u>5/15/25%</u>	<u>(5)(a) of this section</u>
<u>Unregistered taxpayer - Five percent added against unpaid tax when revenue discovers a taxpayer who has taxable activity but is not registered.</u>	<u>5%</u>	<u>(5)(b) of this section</u>
<u>Assessment - Five percent added when a tax assessment is issued, and increases if the tax due remains unpaid.</u>	<u>5/15/25%</u>	<u>(5)(c) of this section</u>
<u>Issuance of a warrant - Ten percent added when a warrant is issued to collect unpaid tax, and does not require actual filing of a lien.</u>	<u>10%</u>	<u>(5)(d) of this section</u>

<u><b>Disregard of specific written instructions</b> - Ten percent added when the department has provided specific, written reporting instructions and tax is underpaid because the instructions are not followed.</u>	<u>10%</u>	<u>(5)(e) of this section</u>
<u><b>Evasion</b> - Fifty percent added when tax is underpaid and there is an intentional effort to hide that fact.</u>	<u>50%</u>	<u>(5)(f) of this section</u>
<u><b>Misuse of resale certificates</b> - Fifty percent added against unpaid sales tax when a buyer uses a resale certificate but should not have.</u>	<u>50%</u>	<u>(5)(g) of this section</u>
<u><b>Failure to remit sales tax to seller</b> - Ten percent added against sales tax when the department proceeds directly against a buyer who fails to pay sales tax to the seller as part of a sales taxable retail purchase.</u>	<u>10%</u>	<u>(5)(h) of this section</u>
<u><b>Failure to obtain the contractor's unified business identifier (UBI) number</b> - A flat two hundred fifty dollar maximum penalty (does not require any tax liability) when specified businesses hire certain contractors but do not obtain and keep the contractor's UBI number.</u>	<u>\$250 max</u>	<u>(5)(i) of this section</u>

(a) **Late payment of a return.** RCW 82.32.090(1) imposes a five percent penalty if the tax due on a taxpayer's return (~~to be filed by a taxpayer~~) is not paid by the due date. A (~~ten~~) fifteen percent penalty is imposed if the tax due is not paid on or before the last day of the month following the due date, and a (~~twenty~~) twenty-five percent penalty is imposed if the tax due is still not paid on or before the last day of the second month following the due date. The minimum penalty for late payment is five dollars.

Various sets of circumstances can affect how the late payment of a return penalty is applied. See (a)(i) through (iii) of this subsection for some of the most common circumstances.

(i) Will I avoid the penalty if I file my return without the payment? The department may refuse to accept any return which is not accompanied by payment of the tax shown to be due on the return. If the return is not accepted, the taxpayer is considered to have failed or refused to file the return. RCW

82.32.080. Failure to file the return can result in the issuance of an assessment for the actual, or an estimated, amount of unpaid tax. Any assessment issued will include an assessment penalty starting at five percent, which will increase the longer tax remains unpaid. See RCW 82.32.100 and (c) of this subsection. If the tax return is accepted without payment and payment is not made by the due date, the late ((penalties)) payment of return penalty will apply.

((i)) (ii) **What if my account is given an active nonreporting status, but I later have taxes I need to report and pay?** WAC 458-20-101 provides information about the active nonreporting status available for tax reporting accounts. In general, the active nonreporting status allows persons, under certain circumstances, to engage in business activities subject to the Revenue Act without filing excise tax returns. Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities no longer meet the conditions to be in active nonreporting status. One of the conditions is that the person is not required to collect or pay a tax the department is authorized to collect. The late payment of return penalty will be imposed if a person on active nonreporting status incurs a tax liability that is not paid by the due date for taxpayers that are on an annual reporting basis (i.e., the last day of January next succeeding the year in which the tax liability accrued).

(iii) **I didn't register my business with the department when I started it, and now I think I was supposed to be paying taxes! What should I do?** You should fill out and send in a Master Application to get your business registered. It is important for you to register before the department identifies you as an unregistered taxpayer and contacts you about your business activities. (WAC 458-20-101 provides information about registering your business.) Except as noted below, if a person engages in taxable activities while unregistered, but then registers prior to being contacted by the department, the registration is considered voluntary. When a person voluntarily registers, the late payment of return penalty does not apply to those specific tax-reporting periods representing the time during which the person was unregistered.

(A) However, even if the person has voluntarily registered as explained above, the late payment of return penalty will apply if the person:

(I) Collected retail sales tax from customers and failed to remit it to the department; or

(II) Engaged in evasion or misrepresentation with respect to reporting tax liabilities or other tax requirements; or

(III) Engaged in taxable business activities during a period of time in which the person's previously open tax

reporting account had been closed.

(B) Even though other circumstances may warrant retention of the late payment of return penalty, if a person has voluntarily registered, the unregistered taxpayer penalty (see (b) of this subsection) will not be due.

(b) Unregistered taxpayer. ~~((Except as noted below, the late payment of return penalty does not apply to those tax-reporting periods during which a person is unregistered if the person))~~ RCW 82.32.090(4) imposes a five percent penalty on the tax due for any period of time where a person engages in a taxable activity and does not voluntarily register(~~(s)~~) prior to being contacted by the department. "Voluntarily register(~~(s)~~)" means to properly ((completing)) complete and ((submitting)) submit a master application to any agency or entity participating in the unified business identifier (UBI) program for the purpose of obtaining a UBI number, all of which is done before any contact from the department. For example, ~~((the department will consider))~~ if a person properly ((completing)) completes and ((submitting)) submits a master application to the department of labor and industries for the purpose of obtaining a UBI number, and this is done prior to any contact from the department of revenue, the department considers that person to have voluntarily registered. A person has not voluntarily registered if a UBI number is obtained by any means other than submitting a properly completed master application. WAC 458-20-101 (Tax registration and tax reporting) provides additional information regarding the UBI program.

~~((The late payment of return penalty will apply, even if the person has voluntarily registered as explained above, if the person:~~

~~(A) Collected retail sales tax from customers and failed to remit it to the department; or~~

~~(B) Engaged in evasion or misrepresentation with respect to reporting tax liabilities or other tax requirements; or~~

~~(C) Engaged in taxable business activities during a period of time in which the persons's previously open tax reporting account has been closed.~~

~~(ii) **Active-nonreporting status taxpayer.** The active-nonreporting status allows persons, under certain conditions, to engage in business activities subject to the Revenue Act without having to file combined excise tax returns with the department. Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities no longer meet the conditions for active-nonreporting status. One of the conditions is that the person is not required to collect or pay a tax the department is authorized to collect. The late payment of return penalty will be imposed if any tax due from unreported business activities while on active nonreporting status is not paid by the due dates~~

used for taxpayers that are on an annual reporting basis. Refer to WAC 458 20 101 for more information regarding the active-nonreporting status.

~~(b) Late payment of an assessment.~~ An additional penalty of ten percent of the tax due will be added to any taxes assessed by the department if payment of the taxes assessed is not received by the due date specified in the notice, or any extension of that due date.)) (c) **Assessment.** If the department issues an assessment for unpaid tax, a five percent penalty will be added to the assessment when it is issued. If any tax included in the assessment is not paid by the due date, or by any extended due date, the penalty will increase to a total of fifteen percent against the amount of tax that remains unpaid. If any tax included in the assessment is not paid within thirty days of the original or extended due date, the penalty will further increase to a total of twenty-five percent against the amount of tax that remains unpaid. The minimum for this penalty is five dollars. RCW 82.32.090(2).

~~((e))~~ The initial five percent assessment penalty is included with an assessment when it is issued. The penalty is calculated against the total amount of tax that was not paid when originally due and payable (see RCW 82.32.045). Audit payments made prior to issuance of an assessment will be applied to the assessment after calculation of the initial five percent assessment penalty. At the discretion of the department, preexisting credits or amendments paid prior to an audit or unrelated to the scope of the assessment may be applied before the five percent assessment penalty is calculated, reducing the amount of the penalty. Additional assessment penalty (plus ten percent increments at thirty and sixty days from issuance) is assessed against the amount of tax that remains unpaid at that particular time, after payments are applied to the assessment.

(d) Issuance of a warrant. If the department issues a tax warrant for the collection of any fee, tax, increase, or penalty, an additional penalty will immediately be added in the amount of ~~((five))~~ ten percent of the amount of the tax due, but not less than ten dollars. RCW 82.32.090(3). Refer to WAC 458-20-217 for additional information on the application of warrants and tax liens.

~~((d))~~ (e) Disregard of specific written instructions. If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting of tax liabilities, an additional penalty of ten percent of the additional tax found due will be imposed because of the failure to follow the instructions. RCW 82.32.090~~((4))~~ (5).

(i) ~~((The))~~ What is "disregard of specific written instructions"? A taxpayer ~~((will be))~~ is considered to have ~~((disregarded))~~ received specific written instructions when the

department has informed the taxpayer in writing of its tax obligations and specifically advised the taxpayer that failure to act in accordance with those instructions may result in this penalty being imposed. The specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement. The penalty applies when a taxpayer does not follow the specific written instructions, resulting in underpayment of the tax due. The penalty may be applied only against the taxpayer given the specific written instructions. However, the taxpayer will not be considered to have disregarded the instructions if the taxpayer has appealed the subject matter of the instructions and the department has not issued its final instructions or decision.

(ii) What if I try to follow the written instructions, but I still don't get it quite right? The penalty will not be applied if the taxpayer has made a good faith effort to comply with specific written instructions.

~~((e))~~ (f) **Evasion.** If the department finds that all or any part of the deficiency resulted from an intent to evade the tax due, a penalty of fifty percent of the additional tax found to be due ~~((shall))~~ will be added. RCW 82.32.090~~((+5))~~ (6). The evasion penalty is imposed when a taxpayer knows a tax liability is due but attempts to escape detection or payment of the tax liability through deceit, fraud, or other intentional wrongdoing. An intent to evade does not exist where a deficiency is the result of an honest mistake, miscommunication, or the lack of knowledge regarding proper accounting methods. The department has the burden of showing the existence of an intent to evade a tax liability through clear, cogent and convincing evidence.

(i) Evasion penalty only applies to the specific taxes that a taxpayer intended to evade. To the extent that the evasion involved only specific taxes, the evasion penalty will be added only to those taxes. The evasion penalty will not be applied to those taxes which were inadvertently underpaid. For example, if the department finds that the taxpayer intentionally understated the purchase price of equipment in reporting use tax and also inadvertently failed to collect or remit the sales tax at the correct rate on retail sales of merchandise, the evasion penalty will be added only to the use tax deficiency and not the sales tax.

(ii) What actions may establish an intent to evade? The following is a nonexclusive list of actions that are generally considered to establish an intent to evade a tax liability. This list should only be used as a general guide. A determination of whether an intent to evade exists may be ascertained only after a review of all the facts and circumstances.

(A) The use of an out-of-state address by a Washington

resident to register property to avoid a Washington excise or use tax, when at the time of registration the taxpayer does not reside at the out-of-state address on a more than temporary basis. Examples of such an address include, but are not limited to, the residence of a relative, mail forwarding or post office box location, motel, campground, or vacation property;

(B) The willful failure of a seller to remit retail sales taxes collected from customers to the department (~~(of revenue)~~); and

(C) The alteration of a purchase invoice or misrepresentation of the price paid for property (e.g., a used vehicle) to reduce the amount of tax owing.

~~((f))~~ (g) **Misuse of resale certificates.** Any buyer who uses a resale certificate to purchase items or retail services without payment of sales tax, and who is not entitled to use the certificate for the purchase, will be assessed a penalty of fifty percent of the tax due. RCW 82.32.291. The penalty can apply even if there was no intent to evade the payment of the tax. For more information concerning this penalty or the proper use of a resale certificate, refer to WAC 458-20-102 (Resale certificates).

~~((g))~~ (h) **Failure to remit sales tax to seller.** The department may assert an additional ten percent penalty against a buyer who has failed to pay the seller the retail sales tax on taxable purchases, if the department proceeds directly against the buyer for the payment of the tax. This penalty is in addition to any other penalties or interest prescribed by law. RCW 82.08.050.

~~((h))~~ (i) **Failure to obtain the contractor's unified business identifier (UBI) number.** If a person who is liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW contracts with another person or entity for work subject to chapter 18.27 RCW (Registration of contractors) or chapter 19.28 RCW (Electricians and electrical installations), that person must obtain and preserve a record of the UBI number of the person or entity performing the work. A person failing to do so is subject to the public works contracting restrictions in RCW 39.06.010 (Contracts with unregistered or unlicensed contractors prohibited), and a penalty determined by the director, but not to exceed two hundred and fifty dollars. RCW 82.32.070 ~~((1)(b))~~ (2).

(6) **Statutory restrictions on imposing penalties.** Depending on the circumstances, the law may impose more than one type of penalty on the same tax liability. However, those penalties are subject to the following restrictions:

(a) The ~~(aggregate of the)~~ penalties imposed for the late payment of a return, ~~(the late payment of an)~~ unregistered taxpayer, assessment, and issuance of a warrant (see subsection (5)(a) through ~~((e))~~ (d) of this ~~(rule)~~ section) may be

applied against the same tax(~~(, but may not exceed a total of thirty five percent of the tax due, or twenty dollars, whichever is greater. This thirty five percent penalty limitation)~~) concurrently, each unaffected by the others, up to their combined maximum rates. Application of one or any combination of these penalties does not prohibit or restrict full application of other penalties authorized by law, even when they are applied against the same tax. RCW 82.32.090(~~(+6)~~) (7).

(b) The department may impose either the evasion penalty (subsection 5)(~~(+e)~~) (f) of this section) or the penalty for disregarding specific written instructions (subsection 5)(~~(+d)~~) (e) of this section), but may not impose both penalties on the same tax. RCW 82.32.090(~~(+7)~~) (8). The department also will not impose the penalty for the misuse of a resale certificate (subsection 5)(~~(+f)~~) (g) of this section) in combination with either the evasion penalty or the penalty for disregarding specific written instructions on the same tax.

(7) **Interest.** The department is required by law to add interest to assessments for tax deficiencies and overpayments. RCW 82.32.050 and 82.32.060. Interest applies to taxes only. (Refer to WAC 458-20-229 for a discussion of interest as it relates to refunds and WAC 458-20-230 for a discussion of the statute of limitations as applied to interest.)

(a) For tax liabilities arising before January 1, 1992, interest will be added at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the date of payment, or December 31, 1998, whichever comes first. Any interest accrued on these liabilities after December 31, 1998, will be added at the annual variable interest rates described below in (~~(subsection (7))~~)(e) of this subsection. RCW 82.32.050.

(b) For tax liabilities arising after December 31, 1991, and before January 1, 1998, interest will be added at the annual variable interest rates described below in (~~(subsection (7))~~)(e) of this subsection, from the last day of the year in which the deficiency is incurred until the date of payment.

(c) For interest imposed after December 31, 1998, interest will be added from the last day of the month following each calendar year included in a notice, or the last day of the month following the final month included in a notice if not the end of the calendar year, until the due date of the notice. However, for 1998 taxes only, interest may not begin to accrue any earlier than February 1, 1999, even if the last period included in the notice is not at the end of calendar year 1998. If payment in full is not made by the due date of the notice, additional interest will be due until the date of payment. The rate of interest continues at the annual variable interest rates described below in (~~(subsection (7))~~)(e) of this subsection. RCW 82.32.050.

(d) **How is interest applied to an assessment that includes underpaid tax from multiple years?** The following is an example of how the interest provisions apply. Assume that a tax assessment is issued with a due date of June 30, 2000. The assessment includes periods from January 1, 1997, through September 30, 1999.

(i) For calendar year 1997 tax, interest begins January 1, 1998, (from the last day of the year). When the assessment is issued the interest is computed through June 30, 2000, (the due date of the assessment).

(ii) For calendar year 1998 tax, interest begins February 1, 1999, (from the last day of the month following the end of the calendar year). When the assessment is issued interest is computed through June 30, 2000, (the due date).

(iii) For the 1999 tax period ending with September 30, 1999, interest begins November 1, 1999, (from the last day of the month following the last month included in the assessment period). When the assessment is issued interest is computed through June 30, 2000, (the due date).

(iv) Interest will continue to accrue on any portion of the assessed taxes which remain unpaid after the due date, until the date those taxes are paid.

(e) **How is each year's interest rate determined?** The annual variable interest rate will be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate for each new year will be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually(~~(, for the months of January, April, July, and October of the immediately preceding calendar)~~). The average is calculated using the federal short-term rates from January, April, July of the calendar year immediately preceding the new year, and October of the previous preceding year, as published by the United States Secretary of the Treasury. The interest rate will be adjusted on the first day of January of each year.

(f) **How is the interest applied if an assessment includes some years that are underpaid and some that are overpaid?** If the assessment contains tax deficiencies in some years and overpayments in other years with the net difference being a tax deficiency, the interest rate for tax deficiencies will also be applied to the overpayments. (Refer to WAC 458-20-229 for interest on refunds.)

(8) **Application of payment towards liability.** The department will apply taxpayer payments first to interest, next to penalties, and then to the tax, without regard to any direction of the taxpayer. RCW 82.32.080.

~~((a))~~ In applying a partial payment to a tax assessment, the payment will first be applied against the oldest tax liability. For purposes of RCW 82.32.145 (Termination,

dissolution, or abandonment of corporate business--Personal liability of person in control of collected sales tax funds), it will be assumed that any payments applied to the tax liability will be first applied against any retail sales tax liability. For example, an audit assessment is issued covering a period of two years, which will be referred to as "YEAR 1" (the earlier year) and "YEAR 2" (the most recent year). The tax assessment includes total interest and penalties for YEAR 1 and YEAR 2 of five hundred dollars, retail sales tax of four hundred dollars for YEAR 1, six hundred dollars retail sales tax for YEAR 2, two thousand dollars of other taxes for YEAR 1, and seven thousand dollars of other taxes for YEAR 2. The order of application of any payments will be first against the five hundred dollars of total interest and penalties, second against the four hundred dollars retail sales tax in YEAR 1, third against the two thousand dollars of other taxes in YEAR 1, fourth against the six hundred dollars retail sales tax of YEAR 2, and finally against the seven thousand dollars of other taxes in YEAR 2.

(9) **Waiver or cancellation of penalties.** RCW 82.32.105 authorizes the department to waive or cancel penalties under limited circumstances.

(a) **Circumstances beyond the control of the taxpayer.** The department will waive or cancel the penalties imposed under chapter 82.32 RCW upon finding that the underpayment of the tax, or the failure to pay any tax by the due date, was the result of circumstances beyond the control of the taxpayer. It is possible that a taxpayer will qualify for a waiver of one type of penalty, without obtaining a waiver for all penalties associated with a particular tax liability. Circumstances determined to be beyond the control of the taxpayer when considering a waiver of one type of penalty are not necessarily pertinent when considering a waiver of a different penalty type. For example, circumstances that qualify for waiver of a late payment of return penalty do not necessarily also justify waiver of the assessment penalty or the penalty for misuse of a resale certificate. Refer to WAC 458-20-102 (Resale certificates) for examples of circumstances which are beyond the control of the taxpayer specifically regarding the penalty for misuse of resale certificates found in RCW 82.32.291.

(i) A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The taxpayer bears the burden of establishing that the circumstances were beyond its control and directly caused the late payment. The request should be made in the form of a letter; however, verbal requests may be accepted and considered at the discretion of the department. Any petition for correction of assessment submitted to the department's appeals division for waiver of penalties must be made within the period for filing under RCW 82.32.160 (within

thirty days after the issuance of the original notice of the amount owed or within the period covered by any extension of the due date granted by the department), and must be in writing, as explained in WAC 458-20-100 (Appeals, small claims and settlements). Refund requests must be made within the statutory limitation period.

(ii) The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay. Circumstances beyond the control of the taxpayer include, but are not necessarily limited to, the following.

(A) The return payment was mailed on time but inadvertently sent to another agency.

(B) Erroneous written information given to the taxpayer by a department officer or employee caused the delinquency. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not cancelling the penalty in cases of oral information is because of the uncertainty of the facts presented, the uncertainty of the instructions or information imparted by the department employee, and the uncertainty that the taxpayer fully understood the information given. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.

(C) The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's immediate family. The same circumstances apply to the taxpayer's accountant or other tax preparer, or their immediate family. This situation is not intended to have an indefinite application. A death or serious illness which denies a taxpayer reasonable time or opportunity to obtain an extension or to otherwise arrange timely filing and payment is a circumstance eligible for penalty waiver.

(D) The delinquency was caused by the unavoidable absence of the taxpayer or key employee, prior to the filing date. "Unavoidable absence of the taxpayer" does not include absences because of business trips, vacations, personnel turnover, or terminations.

(E) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

(F) The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the taxpayer's employee or other persons contracted with the taxpayer, which

the taxpayer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place. See ~~((subsection (9))~~(a)(iii)(E) of this subsection.

~~(G) ((The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office for proper forms and the forms were not furnished in sufficient time to permit the completed return to be paid before its due date. In this circumstance, the taxpayer kept track of pending due dates and reasonably fulfilled its responsibility by timely requesting replacement returns from the department.))~~ The department does not respond to the taxpayer's request for a tax return (or other forms necessary to compute the tax) within a reasonable period of time, which directly causes delinquent filing and payment on the part of the taxpayer. This assumes that, given the same situation, if the department had provided the requested form(s) within a reasonable period of time, the taxpayer would have been able to meet its obligation for timely payment of the tax. In any case, the taxpayer has responsibility to insure that its return is filed in a timely manner (e.g., by keeping track of pending due dates) and must anticipatively request a return for that purpose, if one is not received. (Note: Tax returns and other forms are immediately available to download at no cost from the department's internet site, <http://dor.wa.gov>. When good cause exists, taxpayers are advised to contact the department and request an extension of the due date for filing, before the due date of concern has passed. See subsection (12) of this section. Taxpayers who have registered to file electronically with e-file will avoid potential penalties relating to unreceived paper returns. See subsection (1)(b) of this section.)

(iii) The following are examples of circumstances that are generally not considered to be beyond the control of the taxpayer and will not qualify for a waiver or cancellation of penalty:

(A) Financial hardship;

(B) A misunderstanding or lack of knowledge of a tax liability;

(C) The failure of the taxpayer to receive a tax return form, EXCEPT where the taxpayer timely requested the form and it was still not furnished in reasonable time to mail the return and payment by the due date, as described in ~~((subsection (9))~~(a)(ii)(G)~~((, above))~~ of this subsection;

(D) Registration of an account that is not considered a voluntary registration, as described in subsection (5)(a)~~((ii))~~ (iii) and (b) of this section;

(E) Mistakes or misconduct on the part of employees or other persons contracted with the taxpayer (not including conduct covered in ~~((subsection (9))~~(a)(ii)(F)~~((, above))~~ of this subsection); and

(F) Reliance upon unpublished, written information from the department that was issued to and specifically addresses the circumstances of some other taxpayer.

(b) **Waiver of the late payment of return penalty.** The late payment of return penalty (see subsection (5)(a) (~~above~~) of this section) may be waived either as a result of circumstances beyond the control of the taxpayer (RCW 82.32.105(1) and (~~subsection (9)~~)(a) of this (~~rule~~) subsection) or after a twenty-four month review of the taxpayer's reporting history, as described below.

(i) If the late payment of return penalty is assessed on a return but is not the result of circumstances beyond the control of the taxpayer, the penalty will still be waived or canceled if the following two circumstances are satisfied:

(A) The taxpayer requests the penalty waiver for a tax return which was required to be filed under RCW 82.32.045 (taxes reported on the combined excise tax return), RCW 82.23B.020 (oil spill response tax), RCW 82.27.060 (tax on enhanced food fish), RCW 82.29A.050 (leasehold excise tax), RCW 84.33.086 (timber and forest lands), RCW 82.14B.030 (tax on telephone access line use); and

(B) The taxpayer has timely filed and paid all tax returns due for that specific tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested. RCW 82.32.105(2).

If a taxpayer has obtained a tax registration endorsement with the department and has engaged in business activities for a period less than twenty-four months, the taxpayer is eligible for the waiver if the taxpayer had no delinquent tax returns for periods prior to the period covered by the return for which the waiver is being requested. (See also WAC 458-20-101 for more information regarding the tax registration and tax reporting requirements.) This is the only situation under which the department will consider a waiver when the taxpayer has not timely filed and paid tax returns covering an immediately preceding twenty-four month period.

(ii) A return will be considered timely for purpose of the waiver if there is no tax liability on it when it is filed. Also, a return will be considered timely if any late payment penalties assessed on it were waived or canceled due to circumstances beyond the control of the taxpayer (see (~~subsection (9)~~)(a) of this subsection). The number of times penalty has been waived due to circumstances beyond the control of the taxpayer does not influence whether the waiver in this subsection will be granted. A taxpayer may receive more than one of the waivers in this subsection within a twenty-four month period if returns for more than one of the listed tax programs are filed, but no more than one waiver can be applied to any one tax program in a twenty-four month period.

For example, a taxpayer files combined excise tax returns as required under RCW 82.32.045, and timber tax returns as required under RCW 84.33.086. This taxpayer may qualify for two waivers of the late payment of return penalty during the same twenty-four month period, one for each tax program. If this taxpayer had an unwaived late payment of return penalty for the combined excise tax return during the previous twenty-four month period, the taxpayer may still qualify for a penalty waiver for the timber tax program.

(iii) The twenty-four month period reviewed for this waiver is not affected by the due date of the return for which the penalty waiver is requested, even if that due date has been extended beyond the original due date.

For example, assume a taxpayer's ~~((January 1999))~~ September 2003 return has had the original due date of ~~((March 1st))~~ October 20th extended to ~~((April 30th))~~ November 20th. The return and payment are received after the ~~((April 30th))~~ November 20th extended due date. A penalty waiver is requested. Since the delinquent return represented the month of ~~((January, 1999))~~ September 2003, the twenty-four months which will be reviewed begin on ~~((January 1, 1997))~~ September 1, 2001, and end with ~~((December 31, 1998))~~ August 31, 2003, (the twenty-four months prior to ~~((January, 1999))~~ September 2003). All of the returns representing that period of time will be included in the review. The extension of the original due date has no effect on the twenty-four month period under review.

(iv) A twenty-four month review is only valid when considering waiver of the late payment of return penalty described in subsection (5)(a) of this section. The twenty-four month review process cannot be used as justification for a waiver of interest, assessment penalty, or any penalty other than the late payment of return penalty.

(10) **Waiver or cancellation of interest.** The department will waive or cancel interest imposed under chapter 82.32 RCW only in the following situations:

(a) The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department. RCW 82.32.105(3).

(11) **Stay of collection.** RCW 82.32.190 allows the department to initiate a stay of collection, without the request of the taxpayer and without requiring any bond, for certain tax liabilities when they may be affected by the outcome of a question pending before the courts (see ~~((subsection (11))~~(a) of this ~~((rule))~~ subsection). RCW 82.32.200 provides conditions under which the department, at its discretion, may allow a taxpayer to file a bond in order to obtain a stay of collection

on a tax assessment (see (~~subsection (11)~~)(b) of this (~~rule~~) subsection). The department will grant a taxpayer's stay of collection request, as described in RCW 82.32.200, only when the department determines that a stay is in the best interests of the state.

(a) Circumstances under which the department may consider initiating a stay of collection without requiring a bond (RCW 82.32.190) include, but are not necessarily limited to, the existence of the following:

(i) A constitutional issue to be litigated by the taxpayer, the resolution of which is uncertain;

(ii) A matter of first impression for which the department has little precedent in administrative practice; or

(iii) An issue affecting other similarly situated taxpayers for whom the department would be willing to stay collection of the tax.

(b) The department will give consideration to a request for a stay of collection of an assessment (RCW 82.32.200) if:

(i) A written request for the stay is made prior to the due date for payment of the assessment; and

(ii) Payment of any unprotested portion of the assessment and other taxes due is made timely; and

(iii) The request is accompanied by an offer of a cash bond, or a security bond that is guaranteed by a specified authorized surety insurer. The amount of the bond will generally be equal to the total amount of the assessment, including any penalties and interest. However, where appropriate, the department may require a bond in an increased amount not to exceed twice the amount for which the stay is requested.

(c) Claims of financial hardship or threat of litigation are not grounds that justify the granting of a stay of collection. However, the department will consider a claim of significant financial hardship as grounds for staying collection procedures, but this will be done only if a partial payment agreement is executed and kept in accordance with the department's procedures and with such security as the department deems necessary.

(d) If the department grants a stay of collection, the stay will be for a period of no longer than two calendar years from the date of acceptance of the taxpayer request, or thirty days following a decision not appealed from by a tribunal or court of competent jurisdiction upholding the validity of the tax assessed, whichever date occurs first. The department may extend the period of a stay originally granted, but only for good cause shown.

(e) Interest will continue to accrue against the unpaid tax portion of a liability under stay of collection. Effective January 1, 1997, the interest rates prescribed by RCW 82.32.190

and 82.32.200 changed from nine percent and twelve percent per annum, respectively, to the same predetermined annual variable rates as are described in subsection (7)(e)(~~(7—above)~~) of this section.

(12) **Extensions.** The department, for good cause, may extend the due date for filing any return. Any permanent extension more than ten days beyond the due date, and any temporary extension in excess of thirty days, must be conditional upon deposit by the taxpayer with the department of an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit is credited to the taxpayer's account and may be applied to the taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where a temporary extension of more than thirty days has been granted.

The amount of the deposit is subject to departmental approval. The amount will be reviewed from time to time, and a change may be required at any time that the department concludes that such amount does not approximate the tax liability for the reporting period or periods for which the extension was granted.