

This rule was adopted on an emergency basis effective May 10, 2005. It may be used to determine tax liability until September 7, 2005, unless the Department adopts a permanent rule prior to this date.

NEW SECTION

WAC 458-20-268 Annual surveys for certain tax adjustments.

(1) **Introduction.** In order to take certain tax credits and deferrals ("tax adjustments"), taxpayers must file an annual survey with the department of revenue (the "department") containing certain information about their business activities and employment. This rule explains the survey requirements for tax adjustments provided to the high technology industry and the manufacturing industry located in rural areas. This rule explains who is required to file an annual survey, how to file a survey, and what information must be included in the surveys.

This rule provides 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?**

(a) A person claiming the B&O tax credit provided by RCW 82.04.4452 for persons engaged in qualified research and development is required to file an annual survey. If the person has assigned its entire B&O tax credit provided by RCW 82.04.4452 to another person, the person/assignor is not required to file an annual survey. In such an instance, the assignee of a B&O tax credit provided by RCW 82.04.4452 is required to file an annual survey. If the person has assigned a portion of its B&O tax credit provided by RCW 82.04.4452 to another person, both the assignor and the assignee is required to file an annual survey. A separate annual survey must be filed for each tax reporting account that claims the B&O tax credit provided by RCW 82.04.4452.

(b) An applicant for deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project is required to file an annual survey. A separate annual survey must be filed for each deferral certificate issued.

(c) An applicant for deferral of taxes under chapter 82.63 RCW for sales and use taxes on an eligible investment project is required to file an annual survey. A separate annual survey must be filed for each deferral certificate issued.

(d) A lessee of an eligible investment project under chapters 82.60 and 82.63 RCW (as defined in RCW 82.60.020 (4)(b)(ii) or 82.63.010 (7)(b)) who receives the economic benefit of the deferral and agrees in writing with the department to complete the annual survey is required to file an

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annual survey. 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 lessors and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between lessors or owners of the qualified building and lessees. An applicant who is a lessor of an eligible investment project that received a deferral of taxes under chapters 82.60 and 82.63 RCW and who meets these requirements is not required to complete and file an annual survey.

(3) How to file annual surveys.

(a) Forms. The department has developed a survey form that taxpayers must use to complete the annual survey unless a person obtains prior written approval from the department to file the annual survey in an alternative format. Contact the special programs division at the address below to request the use of an alternative format. The form may be obtained by downloading from the department's website (www.dor.wa.gov). The form may also be obtained at department district offices, by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:

Department of Revenue
Special Programs Division
Post Office Box 47477
Olympia, WA 98504-7477
Fax: 360-586-2163

(b) Due date. For persons taking the B&O tax credit provided by RCW 82.04.4452, the survey must be filed or postmarked by March 31st following any calendar year in which the credit is taken against taxes due. For applicants of sales tax deferrals issued under chapters 82.60 and 82.63 RCW, 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 the seven succeeding calendar years.

(c) Examples.

(i) Advanced Computing, Inc. qualifies for the B&O tax credit provided by RCW 82.04.4452 and applied it against taxes due in calendar year 2004. Advanced Computing, Inc. must file an annual survey with the department by March 31, 2005.

(ii) In 1999, 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 eligible investment project was certified by the department as being operationally complete in 2001. Biotechnology, Inc. must file its annual survey with the department for the 2004 calendar year by March 31, 2005. A

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survey is due from Biotechnology, Inc. by March 31st each following year, with its last survey due March 31, 2009.

(iii) Advanced Materials, Inc. is a manufacturer located in Walla Walla, WA. Since 2002, manufacturing activities have been conducted in a building leased from Property Management Services. Property Management Services is a recipient of a deferral under chapter 82.60 RCW, and the building has been operationally complete since 2002. 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. Assuming all the requirements of RCW 82.60.020 (4)(b)(ii) are met, Advanced Materials, Inc. must file its annual survey with the department for the 2004 calendar by March 31, 2005. A survey is due from Advanced Materials, Inc. by March 31st each following year, with its last survey due by March 31, 2010.

(4) What information is required to be completed in the annual survey? The annual survey requests information about the following:

(a) Amount of tax deferred under chapter 82.60 or 82.63 RCW, or the amount of B&O tax credit taken under RCW 82.04.4452;

(b) The number of new products or research projects by general classification;

(c) The number of trademarks, patents, and copyrights associated with activities at the investment project.

(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 the tax adjustments as provided in RCW 82.04.4452 (7)(c), 82.60.070 (1)(c), and 82.63.020 (2)(c).

(5) What is total employment in the annual survey?

(a) The annual survey covers all full-time, part-time, and temporary employment positions located in Washington state on December 31st of the calendar year covered by the report. Total

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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. Leaves of absence do not include separations of employment such as layoffs or reductions in force. Vacant positions are also 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. In 2003, 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) NCE's Ridgefield, WA location employs two hundred workers manufacturing construction cranes. NCE's Kennewick, WA location employs two hundred fifty workers manufacturing bulldozers and other earth-moving equipment. Although NCE's Ridgefield, WA location does not qualify for any tax adjustments, 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.

(ii) On November 20th, seventy-five NCE workers are laid off due to slow sales. NCE has informed the workers that they will be rehired in the spring once the construction season begins. 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 in 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) On December 31st, NCE has one hundred workers on vacation leave, five employees on sick leave, one employee on military leave, one employee who is scheduled to retire as of January 1st, and three vacant employment positions. The employment positions of workers on leave are included in NCE's annual survey. The worker scheduled to retire is included in the annual survey because the employment position is filled on December 31st. The vacant positions are not included in the annual survey.

(iv) In June, NCE hires two individuals from a local college to intern in its engineering department. When the academic year begins in September, one individual ends the internship. NCE allows the other individual to continue the internship until the following June. NCE should report one employment position on the annual survey, representing the one intern employed on December 31st.

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(6) **When is an employment position located in Washington state?** 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. Acme Computer claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. Acme Computer employs one thousand people in a variety of activities at four locations in Washington state. Acme Computer's headquarters are located in California. Acme Computer also has offices in Oregon and Texas.

(i) 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 is included in the amount of total employment 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 service within Washington state.

(ii) John is an Acme Computer salesperson. John travels throughout the states of Washington, Oregon, and Idaho introducing new Acme Computer products to retailers. John's activities are controlled by Acme Computer's Spokane office. John is included in the amount of total employment 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) Jane works in Acme Computer's Portland, Oregon office. Jane is Acme Computer's vice-president for product development. Jane regularly often travels to Seattle, WA to review the progress of research and development projects conducted in Washington state. Jane is not included in the amount of total employment in Washington state that Acme

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Computers reports on the annual survey. Although Jane regularly performs services within Washington state, her services are directed or controlled in Oregon.

(iv) Roberta is an Acme Computer service technician and travels throughout the United States servicing Acme Computer products. Roberta's activities are directed from Acme Computer's corporate offices in California. Roberta works out of a home office in Tacoma, WA. Roberta is included in the amount of total employment in Washington state that Acme Computer reports on the annual survey. Roberta performs services 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 Washington state.

(7) What are full-time, part-time and temporary employment positions? The survey must state 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.** In order for a position to be treated as full-time or part-time, the employer must intend for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months, excluding any leaves of absence. 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, or one thousand eight hundred twenty hours during a period of twelve consecutive months. A part-time position is a position in which the employee may work less than the hours required for a full-time position. 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 should be reported as a full-time employment position.

(b) **Temporary positions.** A temporary position is a position that is intended to be filled for a period of less than fifty-two consecutive weeks or twelve consecutive months. Positions in seasonal employment are temporary positions. Temporary positions include persons obtained through temporary agencies.

(c) **Examples.** Assume these facts for the following examples. Worldwide Materials, Inc. develops materials used in the aerospace manufacturing industry at a facility located in Everett, WA. Worldwide Materials claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. Worldwide Materials employs one hundred individuals.

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(i) On December 31st, Worldwide Materials has five employees on workers compensation leave. At the time of work-related injury, the employees worked forty hours a week and were expected to work for fifty-two consecutive weeks. Worldwide Materials should report these employees as being employed in a full-time position. Although the employees are not currently working, Worldwide Materials intended for the full-time positions to be filled for at least fifty-two consecutive weeks.

(ii) In September, Worldwide Materials hires two individuals 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 should report these positions as two full-time positions.

(iii) 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) 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 an individual through a temporary staffing business to complete the engineer's projects. Worldwide Materials should report the engineer as a full-time position on the annual report. Worldwide Materials should also report the engineer hired through the temporary staffing business as a temporary employment position on the annual survey.

(v) 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 the same 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 identical wages as other research employees working forty hours a week. Worldwide Materials should report these positions as full-time employment positions, because the position is equivalent to a full-time employment position.

(vi) 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-

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call basis. Worldwide Materials should report three temporary employment positions on the annual survey.

(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 compensation 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 enrolled in or currently receiving 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" mean 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, health care services. Health plans include any "employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA), any "health plan" or "health benefit plan" as defined in RCW 48.43.005, any self-funded multiple employer welfare arrangement as defined in RCW 48.125.010, any "qualified health insurance" as defined in Section 35 of the Internal Revenue Code, an "Archer MSA" as defined in Section 220 of the Internal Revenue Code, a "health savings plan" as defined in Section 223 of the Internal Revenue Code, any "health plan" qualifying under Section 213 of the Internal Revenue Code, governmental plans, and church plans. "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.

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(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 subsection (9)(a) of this rule, but is for the purpose of providing for its 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" mean compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. 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 extending to the termination of employment or beyond. 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. Medical Resource, Inc. employs two hundred full-time employees, fifty part-time employees, and fifty temporary employees in research and manufacturing of pharmaceutical products.

(i) Medical Resource, Inc. offers its employees two different health plans. Health Plan A is available at no cost to full-time employees. Employees are not eligible to participate in Health Plan A until they have worked thirty days with the company. Health Plan B costs employees \$200 each month. Full-time and part-time employees are eligible for Health Plan B after they have worked thirty days with the company. All Medical Resource's full-time and part-time employees are eligible for Health Plans A or B. Two hundred thirty employees are enrolled in Health Plans A or B. Medical Resource, Inc. must report two hundred thirty employees as having employer-provided health benefits, because this is the number of employees enrolled in the health plans it offers.

(ii) Medical Resource, Inc. does not offer a health plan to

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its temporary employees. However, twenty-five of the temporary employees have enrolled in a health plan through the temporary agency that Medical Resource, Inc. used to acquire the employees. Medical Resource, Inc. must report these twenty five-employment positions as having employer-provided medical benefits.

(iii) Medical Resource, Inc. does not offer its employees dental insurance, but has arranged with a group of dental providers to provide all Medical Resource, Inc. employees with a 30% discount on any dental care service. No action, other than Medical Resource, Inc. employment, is required by employees to receive this benefit. Medical Resource, Inc. must report three hundred employment positions as having dental benefits, because this is the number of employees enrolled in this dental plan.

(iv) Medical Resource, Inc. offers a 401(k) Plan to its full-time and part-time employees after the employee has worked for the company for six months. Medical Resource, Inc. makes matching contributions to an employee's 401(k) Plan when an employee has worked for the company two years. 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) Plan, with one hundred workers receiving matching contributions. Medical Resource, Inc. must report two hundred employment positions as having employer-provided retirement benefits, because this is the number of employees enrolled in the 401(k) Plan. An employer contribution to the retirement plan is not required for a retirement plan to be employer provided.

(v) 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. The establishment of the IRAs offered by the bank was not dependent on Medical Resource, Inc.'s participation or sponsorship of the benefit.

(10) **What additional information is the department requesting?** The department is required to provide two reports to the legislature measuring the effect of the tax adjustments on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects. See RCW 82.04.4452(9),

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82.60.020 (1)(f), and 82.63.020(4). The department has included additional questions related to measuring these effects. In addition, the department has included questions related to a person'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. Lastly, the department is requiring persons to report 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.

(11) **Is the annual survey confidential?** Yes, the annual survey is subject to the confidentiality provisions of RCW 82.32.330. However, information on the amount of tax adjustment taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request. In the case of a person taking less than \$10,000 of the B&O tax credit under RCW 82.04.4452 during the period covered by the survey, the person may request the department to treat the tax credit amount 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 special programs division at the address provided above in subsection (3) of this rule.

(12) **What are the consequences for failing to file a complete annual survey?**

(a) **High technology business and occupation (B&O) tax credit.** If a person claiming the B&O tax credit provided by RCW 82.04.4452 for persons engaged in qualified research and development fails to file a complete annual survey by the date due, the person entitled to the credit is not eligible to take or assign the credit in the year the person failed to complete the annual survey. See RCW 82.04.4452. If a person claims the B&O tax credit during this period of ineligibility, the department shall declare the amount of taxes for which the credit was claimed during the period of ineligibility to be immediately due and payable with interest and penalties, as provided in chapter 82.32 RCW.

(b) **Tax deferrals for investment projects in rural counties.** If a recipient of the deferral fails to file a complete annual survey required under RCW 82.60.070 by the date due, 12.5% of the total deferred tax shall be immediately due and payable with interest and penalties, as provided in chapter 82.32 RCW. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee shall be responsible for payment to the extent the lessee has received the economic benefit. See RCW 82.60.070.

(c) **Tax deferrals for investment projects for high**

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technology businesses. If a recipient of the deferral fails to file a complete annual survey required under RCW 82.63.020 by the date due, 12.5% of the total deferred tax shall be immediately due with interest and penalties, as provided in chapter 82.32 RCW. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee shall be responsible for payment to the extent the lessee has received the economic benefit. See RCW 82.63.045.