



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

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FILED

DATE: May 18, 2022

TIME: 9:34 AM

WSR 22-11-090

Agency: Department of Revenue

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 21-22-033 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) WAC 458-20-285, Working Families Tax Credit

Hearing location(s):

| Date: | Time: | Location: (be specific) | Comment: |
|---------------|--------|--|---|
| June 21, 2022 | 2:00pm | This meeting will be conducted over the internet/telephone | Contact Atif Aziz at AtifA@dor.wa.gov for login/dial-in information |

Date of intended adoption: July 19, 2022 (Note: This is NOT the effective date)

Submit written comments to:

Name: Chelsea Brenegan
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Email: ChelseaB@dor.wa.gov
Fax: 360-534-1606
Other: 360-534-1530
By (date) July 5, 2022

Assistance for persons with disabilities:

Contact Julie King or Renee Cosare
Phone: (360)704-5733 or (360) 704-5734
Fax:
TTY: 800-833-6384
Email:
Other:
By (date) _____

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Department intends to create a rule to clarify eligibility requirements and program administration standards, including application submission procedures for the Working Families Tax Credit (WFTC). The rule is to explain the statutory requirements for eligibility and to explain Department processes for application, how the refund is to be calculated, and how the program will be administered.

Reasons supporting proposal: The WFTC is a new program by the Department and this rule will assist eligible low-income persons to better understand whether they qualify and their responsibilities under the 2021 and 2022 legislation.

Statutory authority for adoption: RCW 82.08.0206; RCW 84.32.300

Statute being implemented: RCW 82.08.0206

Is rule necessary because of a:

| | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: How should Community-Based Organization (CBO) be defined, and should this definition be incorporated into the rule?

Name of proponent: (person or organization) Department of Revenue

| |
|--|
| <input type="checkbox"/> Private |
| <input type="checkbox"/> Public |
| <input checked="" type="checkbox"/> Governmental |

Name of agency personnel responsible for:

| | Name | Office Location | Phone |
|-----------------|------------------|-------------------------------------|----------------|
| Drafting: | Chelsea Brenegan | 6400 Linderson Way SW, Tumwater, WA | (360) 534-1530 |
| Implementation: | John Ryser | 6400 Linderson Way SW, Tumwater, WA | (360) 534-1605 |
| Enforcement: | John Ryser | 6400 Linderson Way SW, Tumwater, WA | (360) 534-1605 |

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain: This rule is not a significant legislative rule as defined by 34.05.328

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. The proposed rule language for WAC 458-20-285 provides clarification regarding the Working Families Tax Credit (WFTC) and how eligible low-income persons may apply to receive a WFTC refund in accordance with RCW 82.06.0206. The WFTC program targets individuals rather than businesses, so the proposed rule does not impose more than minor costs on businesses as defined by RCW 19.85.020(2).

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: May 18, 2022

Name: Atif Aziz

Title: Rule Coordinator

Signature:



NEW SECTION

WAC 458-20-285 Working families tax credit. This rule provides information on the working families tax credit (WFTC). The WFTC is a credit in the form of a refund of retail sales and use tax due provided to eligible low-income persons (referred to as "refund" in this rule). Starting February 1, 2023, applicants may apply to the department to receive a refund of sales or use tax paid during the period for which they are claiming the refund. The refund amount is based upon the applicant's income (including the applicant spouse's income, if the applicant is filing married filing jointly on their federal income tax return) and the number of qualifying children the applicant (and the applicant's spouse, if applicable) have.

To qualify for a refund, applicants must meet the eligibility requirements provided in RCW 82.08.0206 and complete a WFTC application in the form and manner provided by the department.

This rule is organized into four parts. Each part addresses a question or topic relevant to the application for and administration of the WFTC program as follows:

1. Part 1: Eligibility Requirements
2. Part 2: Application Process
3. Part 3: Refund Amount
4. Part 4: General Administration and Review

Examples included in this rule identify a number of facts and then state a general conclusion; they should be used only as a general guide. The tax consequences of all situations must be determined after a review of all the facts and circumstances.

References in this rule to "I," "my," "you," "your," "we," or "our" are intended to refer to the individual applying for the WFTC (i.e., the applicant).

Part 1: Eligibility Requirements

(1) **Am I eligible to receive a WFTC refund?** To be eligible for a refund under the working families tax credit (WFTC), you must be an "eligible low-income person." An "eligible low-income person" is an "individual" who meets all of the requirements in (a) through (e) of this subsection. An "individual" means any natural person who files a federal income tax return under the single, head of household, qualifying widow/widower, and married filing separately (only if they meet the "unmarried" requirements per answer 1A of this rule) filing statuses. The term "individual" **also** means to an individual natural person and that individual's spouse if they file a federal joint income tax return with the married filing status. Accordingly, if you file a federal income tax return with your spouse under the married filing jointly filing status, you and your spouse are each considered to be a single "individual" for the purposes of WFTC eligibility with the exception of determining residency.

(a) **Valid SSN or ITIN:** You (and your spouse if you are filing married filing jointly on your federal income tax return) must have a valid Social Security number (SSN) or individual taxpayer identification number (ITIN);

(b) **Properly file a federal income tax return:** You (and your spouse if you are filing married filing jointly) must properly file a federal income tax return for the tax year for which the refund is being claimed;

(c) **EITC eligible:** You must generally be eligible for the federal Earned Income Tax Credit (EITC), including meeting the federal income

thresholds; however, the one exception is that you, your spouse (if you are filing married filing jointly on your federal income tax return), and/or your qualifying children may have a valid ITIN instead of a SSN, which is not permitted under federal EITC eligibility requirements;

(d) **Residency:** You (or your spouse, if you are filing married filing jointly on your federal income tax return) must be a resident of Washington at least 183 days during the tax year for which the refund is being claimed; and

(e) **Sales or use tax paid:** You (and/or your spouse if you are filing married filing jointly on your federal income tax return) paid Washington sales or use tax on taxable purchases you made during the period for which the refund is being claimed.

Question 1A: What if I am still married to my spouse, but we are separated, and I file a separate federal income tax return. Am I still eligible for the WFTC?

Answer 1A: Yes, you are eligible if certain conditions are met. If you are still married to your spouse, but you do not file a federal income tax return under the married filing jointly status and you are considered "unmarried" per Internal Revenue Code section 32(d), then you may still be eligible for the federal EITC, and this in turn would make you an individual eligible for a WFTC refund.

If you are filing "married filing separately" on your federal income tax return, then the department will require you to provide additional information to confirm your "unmarried" status. "Unmarried," as used in Internal Revenue Code section 32(d) requires the following:

(a) You are married, but you did not file a federal income tax return under the married filing jointly status.

(b) You lived with your qualifying child for more than half of the year. You may prove this by providing:

(i) School records that match your place of residence;

(ii) Rental application or lease with child/children listed;

(iii) Landlord statement regarding child/children;

(iv) Public benefits verification letters or statements;

(v) Community-based organization letters of recommendation, or vouchers; or

(vi) Any other records that establish that your qualifying child lived with you for more than half of the year.

(c) You must either be able to show:

(i) You did not have the same principal place of abode as your spouse during the last six months of the tax year; or

(ii) You have a decree, instrument, or agreement (other than a divorce decree) described in IRC 121(d)(3)(C) (e.g., a written separation agreement, alimony, or spousal maintenance decree, etc.) with your spouse concerning marital separation and you and your spouse are not members of the same household by the end of the tax year.

Question 1B: I am still legally married and I meet the "unmarried" requirements in Answer 1A. If my spouse is not eligible for a WFTC refund, does that disqualify me from receiving the WFTC refund?

Answer 1B: No. If you are filing a separate federal income tax return from your spouse, you will not be disqualified from receiving the WFTC refund solely because your spouse does not meet the WFTC requirements as you are considered to be a separate individual from your spouse in this situation. If you are filing your federal income tax return under the married filing separately status, the department will require additional documentation to establish your "unmarried" status as indicated in Answer 1A.

The following subsections (xx) through (xx) of this rule describe these eligibility requirements in subsection (1)(a) through (e) of this rule.

(2) **Valid SSN or ITIN** - To be eligible for the WFTC, you must have a valid Social Security number (SSN) or a valid individual taxpayer identification number (ITIN).

Question 2A: What is a valid SSN?

Answer 2A: An SSN is a number issued by the Social Security Administration to identify and record an individual's wages or self-employment earnings. Your SSN must be valid for employment and issued before the due date of the federal income tax return you plan to claim the federal EITC (including extensions). A Social Security number on a Social Security card that provides, "Valid for work with DHS authorization," will be accepted as a valid SSN.

However, if your Social Security card has the words, "Not valid for employment," your SSN is not valid.

Question 2B: What is a valid ITIN?

Answer 2B: An ITIN is a tax processing number issued by the Internal Revenue Service (IRS). A valid ITIN for WFTC eligibility purposes is one that is not expired.

An ITIN must be applied for and renewed periodically pursuant to federal requirements. If you, your spouse, or any of your qualifying children do not have a valid ITIN and are waiting for an ITIN or an ITIN renewal from the IRS, provide proof to the department that you have applied for and are waiting to receive an ITIN or an ITIN renewal from the IRS when you submit your WFTC application. If the department does not receive documentation confirming that you, your spouse, or your qualifying children have received a valid ITIN by December 31st, then your application may be denied.

(3) **Properly file a federal income tax return** - To be eligible for the WFTC, you (and your spouse, if filing married filing jointly on your federal income tax return) must properly file a federal income tax return for the tax year for which you are claiming the refund.

Question 3A: What does it mean to "properly file" a federal income tax return?

Answer 3A: The federal income tax return you and your spouse (if you are filing married filing jointly on your federal income tax return) file must fulfill the statutory and regulatory requirements for the federal government to process your return. For example, if you wish to claim the WFTC refund for the 2022 tax period, you must properly file your 2022 federal tax return and include all information required on the return for the federal government to be able to process it.

Question 3B: Do I have to claim the EITC to be eligible for the WFTC refund?

Answer 3B: No. You are not required to claim or to actually receive the federal EITC to be eligible to receive the WFTC refund. So long as you and your spouse (if you are filing married filing jointly on your federal income tax return) and your qualifying children have valid SSNs or ITINs, and otherwise meet all other requirements to be eligible for the federal EITC, you may be eligible to receive the WFTC refund.

(4) **Federal earned Income Tax Credit eligible** - To be eligible for the WFTC, you must first be eligible for the federal Earned Income Tax Credit (EITC), except for the requirement to have a valid SSN. This includes meeting the federal income thresholds for your federal adjusted gross income (AGI). If your AGI is at or above the federal

income threshold, you will not be eligible for the EITC. The department will calculate the WFTC refund based on the earned income you reported on your properly filed federal income tax return. For more information on how the WFTC refund is determined, see Part 3 of this rule.

Question 4A: What does earned income mean?

Answer 4A: "Earned income" means earned income as defined by the Internal Revenue Code (IRC or Title 26 U.S.C.) section 32. RCW 82.08.0206 (2)(b).

Question 4B: Is "combat pay" considered earned income for purposes of the WFTC refund?

Answer 4B: IRC section 32 allows those who have combat pay to elect whether to include their combat pay as earned income for the purposes of calculating their federal EITC amount. Regardless of whether you elect to include your combat pay as earned income for federal purposes, you can make a separate election of whether to include your combat pay as earned income for WFTC refund calculation purposes.

Question 4C: What are the federal income thresholds?

Answer 4C: The federal income thresholds are income limits the federal government applies to determine eligibility for the EITC. The federal income thresholds for the federal EITC generally changes on an annual basis. These thresholds vary depending on your filing status and how many qualifying children you have. Eligibility for the federal EITC is based on your adjusted gross income (AGI). If your AGI is equal to or more than the federal income threshold, then you are not eligible for the federal EITC and, as such, you are not eligible for the WFTC. The department will use the federal income thresholds applicable for the tax period for which the refund is being claimed. For more information about these federal income thresholds, please see Part 3 of this rule.

Question 4D: Not all members of my family have a valid SSN, but I am otherwise eligible for the federal EITC. Am I still eligible for the WFTC?

Answer 4D: Yes, unlike the federal EITC, the WFTC does not require that all claimed individuals must have a valid SSN to be eligible. To be eligible for the WFTC, you, your spouse (if you are married and filing married filing jointly on your federal income tax return), and your qualifying children (if applicable), may either have a valid SSN or a valid ITIN.

Question 4E: Are there any other federal EITC requirements that could potentially disqualify me from receiving the WFTC?

Answer 4E: Yes. To be eligible for the federal EITC, you cannot file Form 2555, Foreign Earned Income and your investment income (income you receive from interest, dividends, capital gains, royalties, rental income, or other passive activities) cannot exceed \$10,000 (based on 2021 figures, indexed by the federal government for inflation in later years). Additionally, nonresident aliens are ineligible to receive the federal EITC, even if they have a valid SSN. If you are not eligible to receive the federal EITC for these reasons, then you are not eligible to receive the WFTC.

Question 4F: What if I am prohibited from claiming the federal EITC? Can I still qualify to receive the WFTC refund?

Answer 4F: If the federal government has prohibited you from claiming the EITC due to reckless or intentional disregard or due to fraud and you are currently within the disallowance period during which you are not allowed to claim the federal EITC, then you are ineligible to receive the WFTC refund.

(5) **Residency** - To be eligible for the WFTC, you must be a resident of Washington. The term resident means that you were physically present and resided in Washington for at least 183 days during the year for which you are claiming the refund.

Question 5A: What does it mean to be "physically present" and "reside" in Washington?

Answer 5A: To be "physically present" means that you are in or located within the state of Washington. To "reside" in Washington means that you have your home or residence in the state. Individuals who commute to Washington (e.g., for work) do not "reside" in Washington.

Example 1:

Facts: Doug lives in an apartment in Tacoma, Washington. Doug is located in Washington for 300 days during calendar year 2022. Doug is placed on a job assignment in Utah for the remaining 65 days of the same year.

Conclusion: Doug was "physically present" and "resided" in Washington for at least 183 days in 2022. Doug meets the definition of a resident of Washington for the 2022 calendar year and would be eligible for a WFTC refund during the year if all other statutory requirements are met.

Example 2:

Facts: Sally lives in Oregon but works in Washington. Sally drives to her work in Washington every morning and drives back to her home in Oregon every evening. She does this for 300 days during the 2022 calendar year.

Conclusion: While Sally might be "physically present" in Washington for at least 183 days, she did not "reside" in Washington as she resided in Oregon and simply commuted to Washington. Sally does not meet the definition of a resident of Washington for the 2022 calendar year and, accordingly, would not be eligible for a WFTC refund.

Question 5B: What if I am in Washington for at least 183 days for work or for school without commuting back to my state of residence, do I meet the WFTC residency requirement?

Answer 5B: Yes. An individual who is physically present in Washington for at least 183 days and does not commute back to their state of residence will generally be considered to "reside" in Washington and is a Washington resident for WFTC residency purposes.

Question 5C: What if I work or attend school out-of-state and was not physically present in Washington for at least 183 days, can I still qualify if I consider Washington to be my home?

Answer 5C: No. Even if you consider Washington to be your home and your state of residence, you must still be physically present in Washington for at least 183 days to meet the WFTC residency requirement.

Question 5D: What if my spouse is not a Washington resident but I am and we file under the married filing jointly status on our federal income tax return, are we eligible for the WFTC refund?

Answer 5D: Yes. If you and your spouse are filing married filing jointly on your federal income tax return and your spouse does not meet the definition of a Washington resident, you may both still qualify to receive a joint refund so long as one of you meets the definition of a Washington resident.

Question 5E: What if I am experiencing homelessness, can I still qualify for the WFTC refund?

Answer 5E: Yes. The term "reside" does not require that an individual have a physical dwelling in Washington, just that Washington is

the place they reside for the required period of time. Individuals or their families who are experiencing homelessness may demonstrate that they "reside" in Washington by providing proof of their residency via a letter from a community-based organization, shelter, public benefits caseworker, or from any other organizations or programs that interact with the individual or their families that states the following:

(a) They know and can identify the individual;

(b) The individual has resided in a particular area in Washington (which the organization or shelter will describe); and

(c) The individual has resided in this area at least 183 days during the period for which the credit is being claimed. If an individual or their families are experiencing homelessness and move frequently as a result, the letter or affidavit may attest that the individual has resided within a general geographic area or areas (i.e., town, city, county, etc.) within the state of Washington for at least 183 days during the period for which the refund is being claimed.

Question 5F: What if I am not a United States citizen or what if I am in the United States on a visa, can I still qualify as a Washington resident for WFTC purposes?

Answer 5F: Yes, if you can demonstrate you resided in Washington and were physically present in Washington for at least 183 days during the year for which you are claiming the credit. Generally, an individual's citizenship or visa status is not considered for WFTC residency purposes.

Question 5G: What if the department has questions and needs additional documentation?

Answer 5G: If you are asked to confirm your status as a Washington resident, you must provide the department with documentation which proves that you were physically present and resided in Washington for at least 183 days during the year for which you are claiming the refund.

(a) Documents that may help you to prove you are a Washington resident include, but are not limited to, the following:

(i) Washington driver's license;

(ii) Washington ID card;

(iii) Utility bills;

(iv) Landlord statements;

(v) Rental agreement or lease;

(vi) Mortgage statements;

(vii) Public benefits verification letters from state or federal agencies or case worker statements;

(viii) Community-based organization letters or statements; or

(ix) School records.

(b) If you are unable to provide documentation that proves your Washington resident status, you will need to contact the department to determine if there are other methods by which you can prove you meet the residency requirement, which the department may allow at its discretion.

(6) **Sales or use tax paid** - The department will generally presume that if you and/or your spouse (if you are filing married filing jointly on your federal income tax return) lived in the state of Washington for at least 183 days, that you paid Washington sales or use tax on the taxable purchases you made during that period. You will need to attest to this fact on the WFTC application under penalties of perjury.

Part 2: Application Process

(7) **How do I file a WFTC application with the department?** To receive a refund, you must file an application with the department. The department will accept either a paper or electronic application. The department will begin accepting WFTC applications on February 1st of each year or, if the 1st falls on a Saturday, Sunday, or legal holiday, the next business day. RCW 1.12.070(3).

The WFTC application, along with the required attachments, must be received by the department no later than December 31st in the calendar year following the tax year for which you file your federal income tax return. If December 31st falls on a Saturday or Sunday, then the application will be due the next business day. For example, if you are requesting a WFTC refund based on your 2022 tax year information, the WFTC application, along with all required attachments, are due on or before January 2, 2024. This is because December 31, 2023, falls on a Sunday and January 1, 2024, is a holiday, so the WFTC application deadline would fall on the next business day which is January 2, 2024.

(a) If you are submitting your application electronically: To be considered timely, your WFTC application, along with all required attachments, must be received by the department on or before December 31st.

(b) If you are submitting your application by mail: To be considered timely, your WFTC application, along with all required attachments, must be sent by the United States mail and postmarked on or before the December 31st deadline.

(c) For information on how to file an application, refer to the department's website.

(8) **What additional items do I need to include for the department to process my WFTC application?** In addition to the WFTC application, you must also provide the following items as attachments to your WFTC application in order for the department to process and remit your WFTC refund:

(a) Federal income tax return: Applicants must include a copy of their complete federal income tax return, including all applicable schedules that they filed for the period for which they are claiming the WFTC refund. For example, if you are claiming a WFTC refund for the 2022 tax year, you must submit a full and complete copy of your 2022 federal income tax return that you filed with the federal government.

(b) Proof of identity: You must provide proof of your identity.

(i) A government or tribal-issued photo identification of the applicant to establish your identity.

(ii) Examples of acceptable identification include, but are not limited to, the following:

(A) Washington driver's license (preferred);

(B) Passport (U.S. or foreign) or passport card;

(C) Permanent resident card (Form I-551) or alien registration receipt card;

(D) Employee authorization document card (Form I-766);

(E) U.S. visa with picture; or

(F) Other verifiable identification card issued by a federal, state, tribal, or local government agency or entity which has a picture.

(iii) If you are filing with a third-party preparer or with tax preparation software, you must include a copy of your picture identification with your WFTC application at the time of filing.

(iv) Only applicants must provide a copy of their identification. If you are married and filing married filing jointly on your federal

income tax return, you do not need to provide photo identification for your spouse with the WFTC application. If you have qualifying children, you do not need to provide photo identification for your children with the WFTC application.

(v) If you are unable to provide proof of your identity, you will need to contact the department to determine if there are other methods by which you can prove your identity, which the department may allow at its discretion.

Question 8A: What happens if I do not provide the additional required documents with my WFTC application?

Answer 8A: Your application will not be considered "complete" and the department will not be able to process your WFTC refund.

Question 8B: What does it mean to have a "complete" WFTC application?

Answer 8B: To process your WFTC refund, you must provide a "complete" WFTC application to the department on or before the filing deadline, which includes the following items:

(a) A filled-out and signed WFTC application (your spouse must also sign the WFTC application if you are filing married filing jointly on your federal income tax return);

(b) Your federal income tax return; and

(c) Proof of your identity.

(9) **What if I did not file my WFTC application by December 31st, is it too late to file?** If you do not apply to receive the refund before the December 31st deadline, then you cannot apply for it later. For example, if you wish to request a WFTC refund based on your 2022 tax year information, the department will not accept WFTC applications that were filed or postmarked after January 2, 2024 (December 31, 2023, falls on a Sunday and January 1, 2024, is a holiday, so the deadline would fall on the next business day which is January 2, 2024).

However, the department, for good cause, may extend the due date for filing your WFTC application.

Part 3: Refund amount

(10) **How much of a refund can I receive?** WFTC refunds will be paid to individuals who file a timely completed application and who meet the eligibility requirements. The refund amount you can receive is based on your income, your spouse's income (if you are filing married filing jointly on your federal income tax return), and how many qualifying children you have.

Question 10A: What is the maximum refund amount that I can receive?

Answer 10A: The maximum refund amount depends on how many qualifying children you have, but only your first three qualifying children are considered for payment purposes.

(a) If you have no qualifying children, your maximum refund amount is \$300;

(b) If you have one qualifying child, your maximum refund amount is \$600;

(c) If you have two qualifying children, your maximum refund amount is \$900; and

(d) If you have three or more qualifying children, your maximum refund amount is \$1,200.

The maximum refund amount will be reduced in cases where your income is greater than what is referred to in this rule as the "reduced federal income threshold." See answer 9D for more information on this reduction.

Question 10B: What is the minimum refund amount that I can receive?

Answer 10B: So long as you meet all eligibility requirements and you are entitled to receive one cent or more under the WFTC, you will receive a minimum refund of \$50. RCW 82.08.0206 (3)(c).

Question 10C: What information does the department use to calculate my WFTC refund?

Answer 10C: The department calculates your WFTC refund based on your properly filed federal income tax return for the period for which you are claiming the refund.

Question 10D: What is the reduced federal income threshold and how does it affect my WFTC refund amount?

Answer 10D: To be eligible for the WFTC refund, you must generally be eligible for the federal EITC, including satisfying the federal income thresholds for that program; however, in determining the amount of the WFTC refund, the department must first calculate the reduced federal income threshold. The department determines the reduced federal income thresholds as provided in RCW 82.08.0206 (3)(b). If your income exceeds the reduced federal income threshold, but is still below the federal income thresholds, your maximum refund will be decreased, but not below \$50, as follows:

(a) If you have no qualifying children, then the department will reduce the federal income threshold by \$2,500 for the prior federal tax year. Then, for every additional dollar of income you have over the reduced federal income threshold, the department will reduce the amount of refund received by \$0.18 (i.e., the WFTC remittance reduction).

(b) If you have one qualifying child, then the department will reduce the federal income threshold by \$5,000 for the prior federal tax year. Then, for every additional dollar of income you have over the reduced federal income threshold, the department will reduce the amount of refund by \$0.12.

(c) If you have two qualifying children, then the department will reduce the federal income threshold by \$5,000 for the prior federal tax year. Then, for every additional dollar of income you have over the reduced federal income threshold, the department will reduce the amount of refund by \$0.15.

(d) If you have three or more qualifying children, then the department will reduce the federal income threshold by \$5,000 for the prior federal tax year. Then, for every additional dollar of income you have over the reduced federal income threshold, the department will reduce the amount of refund by \$0.18.

The department will adjust the WFTC remittance reduction amounts on an annual basis beginning in 2023 in order to align the WFTC program with the federal EITC program. These adjustments will be published in an *Excise Tax Advisory* separate from this rule on the department's website located here XX.

Question 10E: How does the department calculate my WFTC refund?

Answer 10E: Below is an example of how the WFTC refund is calculated based on the federal income threshold amounts for the 2021 tax year.

Note: This is an example of the calculation only. The earliest that the WFTC may be claimed is January 1, 2023, which would rely on the maximum qualifying income for tax year 2022 rather than tax year 2021 as demonstrated in the example below. Please refer to the department's website here XX for updated calculation tables for tax year 2022 and beyond.

Table A
For those filing as Single, Head of Household, Widowed, or Married
Filing Separately*

| Number of Qualifying Children | Federal Income Thresholds | Federal Income Threshold Reduction Amount | Reduced Federal Income Threshold |
|-------------------------------|---------------------------|---|----------------------------------|
| 0 | \$21,430 | \$2,500 | \$18,930 |
| 1 | \$42,158 | \$5,000 | \$37,158 |
| 2 | \$47,915 | \$5,000 | \$42,915 |
| 3 or more | \$51,464 | \$5,000 | \$46,464 |

*Those filing married filing separately must meet the "unmarried" requirement to qualify.

Table B
For those filing as married filing jointly

| Number of Qualifying Children | Federal Income Thresholds | Federal Income Threshold Reduction Amount | Reduced Federal Income Threshold |
|-------------------------------|---------------------------|---|----------------------------------|
| 0 | \$27,380 | \$2,500 | \$24,880 |
| 1 | \$48,108 | \$5,000 | \$43,108 |
| 2 | \$53,865 | \$5,000 | \$48,865 |
| 3 or more | \$57,414 | \$5,000 | \$52,414 |

Example 3:

Facts: John and Mary are married and filed their 2021 federal income tax return as married filing jointly. John and Mary have one qualifying child. On their federal income tax return, John and Mary's combined earned income was \$43,200 and they meet all of the requirements in subsection (1)(a) through (e) of this rule to qualify for the WFTC refund.

Conclusion: The applicable federal income threshold for a couple that is married filing jointly with one qualifying child is \$48,108. See Table B. This amount must be reduced by \$5,000 (the federal income threshold reduction amount), which results in a reduced federal income threshold amount of \$43,108. See Table B. John and Mary's earned income for WFTC purposes is \$92 higher than the reduced federal income threshold ($\$43,200 - \$43,108 = \$92$). The department must reduce the couple's maximum refund by \$0.12 for every dollar above the \$43,108 reduced federal income threshold (or 12 percent for each dollar).

Because they have one qualifying child, the maximum refund amount that John and Mary could receive is \$600. Because their earned income is \$92 above the reduced federal income threshold, their refund will be reduced by \$11.04 ($\$92 \times \$0.12 = \11.04). John and Mary's refund amount is \$588.96.

Question 10F: What is a "qualifying child" for WFTC purposes?

Answer 10F: To be eligible under the WFTC, a "qualifying child" must meet the federal tax requirements under Internal Revenue Code section 32. The only exception to this is that children who do not meet the valid SSN requirements for federal EITC purposes will still be considered "qualifying children" for WFTC purposes so long as they have a valid ITIN and meet all other federal requirements.

Question 10G: How do I determine whether a person is a "qualifying child"?

Answer 10G: A qualifying child must meet the following requirements per IRC section 32:

- (a) The child must be:
 - (i) Your child or grandchild; or
 - (ii) Your brother, sister, stepbrother, stepsister, or any descendant of such relative;

(b) The child must have shared the same principal place of abode with you in the United States for more than one-half of the tax year;

(c) The child has not filed a joint tax return with their spouse;

(d) The child must be younger than you (and your spouse, if you are filing married filing jointly on your federal income tax return) and:

(i) Is not yet 19 years old at the end of the year for which you are claiming the refund; or

(ii) Is a student no older than 24 years old at the end of the year for which you are claiming the refund; or

(iii) Permanently and totally disabled during the tax year, regardless of age.

Question 10H: For circumstances where several people could potentially claim the same qualifying child, how does the department decide who can claim the qualifying child for WFTC purposes?

Answer 10H: If there is a question of who may claim the child, the department will determine who can claim based on the following hierarchy of rules:

(a) If only one person is the child's legal parent ("parent"): The parent may claim the child;

(b) If both parents file a joint tax return with each other: They may claim the child;

(c) If both parents claim the child on separate tax returns: The parent with whom the child lived with the longest during the year may claim the child;

(d) If the child lived with each parent for the same amount of time: The parent with the higher adjusted gross income (AGI) for the year may claim the child;

(e) If neither parent can claim the child: The person who had the highest AGI for the year may claim the child; and

(f) If a parent can claim the child but does not: The person who had the highest AGI for the year may claim the child, but only if that person's AGI is greater than the AGI of any of the child's parents who can claim the child.

Example 4:

Facts: Tina and her five year old son, Anthony, live with Tina's parents (Anthony's grandparents), Jordan and Alex. Both Tina and Jordan and Alex provide more than half of their own support and cannot be claimed as dependents by anyone else. Tina's federal AGI is \$16,000 while Jordan and Alex's federal AGI is \$15,000. Tina and Jordan and Alex otherwise qualify for the federal EITC and fulfill all other WFTC eligibility requirements. Anthony meets the requirements of a qualifying child with respect to Tina, and Jordan and Alex and no one else is able to claim Anthony as a qualifying child.

Conclusion: In this situation, there is a question of whether Tina or Jordan and Alex may claim Anthony as a qualifying child for WFTC purposes. In applying the rules above, Tina would be the one eligible to claim Anthony as a qualifying child for WFTC purposes for 2022 as she is Anthony's legal parent and her federal AGI is greater than Jordan and Alex's.

Example 5:

Facts: Lucas is 25 years old and lives in the same home with his mother, Betty, and his eight year old niece, Tabatha, for all of 2022. Tabatha's parents do not live in the same principal place of abode as Lucas, Betty, and Tabatha. Both Lucas and Betty provide more than half of their own support and cannot be claimed as dependents by anyone else. In completing their 2022 federal income tax returns, Lucas's

federal AGI is \$15,000 and Betty's federal AGI is \$9,300. Tabatha's parents file married filing jointly on their federal income tax return and their federal AGI is \$9,000. Lucas and his mother otherwise qualify for the federal EITC and fulfill all other WFTC eligibility requirements. There are no other persons who would be able to claim Tabatha as a qualifying child.

Conclusion: Lucas is eligible to claim the WFTC with his niece as his qualifying child. Tabatha's parents are not eligible to claim Tabatha as a qualifying child as she did not share the same principal place of abode with them for at least 183 days during 2022. Lucas and Betty both otherwise meet the relationship, age, residency, and joint return requirements to treat Tabatha as a qualifying child, but because Lucas's federal AGI is higher, he would be able to claim Tabatha as a qualifying child for WFTC purposes.

Question 10I: What if I am the noncustodial parent of my child? Can I still receive the WFTC refund if my spouse does not claim our child?

Answer 10I: You may still qualify to receive the WFTC if you meet the requirements for an individual without children, but you cannot claim the child as a qualifying child on your WFTC application. A custodial parent is the parent with whom the child lived for the greater number of nights during the year. The other parent is the noncustodial parent. While it may be possible for you to claim the child as your qualifying child for other federal tax benefits, the child must still live with you for more than half the year to be considered a qualifying child for federal EITC purposes. As you are the noncustodial parent, and therefore the child did not live with you for the required period of time during the year, you cannot claim this child for federal EITC purposes and, as such, you cannot claim this child for WFTC purposes.

Question 10J: What if my qualifying child lives with my spouse outside of Washington? If I am a Washington resident, can I claim my qualifying child for WFTC purposes?

Answer 10J: Yes, but only if you and your spouse are filing married filing jointly on your federal income tax return and you or your spouse are considered to be a Washington resident for the year for which you are claiming the refund. The child claimed must also meet all WFTC requirements for a qualifying child. The department may request additional information from you and your spouse to confirm that these requirements have been met.

Question 10K: Will the WFTC refunds be adjusted for inflation?

Answer 10K: Yes, the refund amounts will be adjusted for inflation each year beginning January 1, 2024, based on changes to the consumer price index that are published by November 15th of the previous year for the most recent 12-month period. "Consumer price index" means, for any 12-month period, the average consumer price index for the Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor Statistics, United States Department of Labor. RCW 82.08.0206 (3)(d) and (e).

Credit amounts that are adjusted due to inflation must be rounded to the nearest \$5. Updated credit amounts will be published in an *Excise Tax Advisory* on the department's website here XX.

(11) **What if I made a mistake?** If you realize that you have made a mistake on your WFTC application, then you must correct the mistake by updating or amending your WFTC application.

Question 11A: When do I need to amend my WFTC application?

Answer 11A: You must amend your WFTC application when you realize the information submitted on your application is not accurate. This allows the department to make sure that it has accurate records and that it can process your refund without additional delay. If you have questions about amending your application, please contact the department for additional information.

Question 11B: What if the Internal Revenue Service (IRS) makes changes to my federal income tax return? Do I need to amend my WFTC application?

Answer 11B: Yes, if the IRS makes changes to your federal income tax return, then the amount of refund that you are eligible to receive may be different than what the department provided to you. Accordingly, you will need to amend your WFTC application. If the department finds that the IRS has made changes to the federal income tax return that would increase or decrease the amount of the WFTC refund you are entitled to receive, then the department may make changes to your WFTC refund amount. This may mean that you will be required to pay back some of the refund that you received. If you know that the IRS has made changes to your federal tax return, you should alert the department of these changes as soon as possible by amending your WFTC application.

Question 11C: How long do I have to amend my WFTC application?

Answer 11C: If you timely filed your WFTC application, along with all required attachments, you may amend your application at any point within the statutory nonclaim period provided in RCW 82.32.060. The statutory nonclaim period is four years beginning with the calendar year for which the refund is being claimed. For example, if an applicant wishes to amend their 2022 WFTC application, they may do so at any point during the shaded years below:

| Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|---------------------------|--|--------|--------|---|
| 2022 - Sales/use tax paid | 2023 - Applicant files 2022 WFTC application | | | 2026 - Final year to submit amended application |

Question 11D: If I should have received a larger WFTC refund than I got, can I still receive the additional amount?

Answer 11D: Yes, if you alert the department that you should have been paid a larger refund than you received, or if the department finds that you should have been paid a larger refund than you received, then the department will pay the additional amount; however, the department may only do so if it discovers or is notified of the error before the end of the four-year statutory nonclaim period. The department encourages you to submit an amended application as soon as possible to avoid being time barred. Interest is not paid on any additional WFTC amounts that you are entitled to receive. See RCW 82.08.0206(10).

Part 4: General Administration and Review

(12) **How is the WFTC program administered?** The department is responsible for administering the WFTC program. The department administers the application process described in Part 2 of this rule, by providing refunds to applicants who meet the eligibility requirements in Part 1 of this rule. As part of this administration, the department has the authority to review all WFTC applications and determine the amount the applicant is legally entitled to receive. If the department determines that a refund was overpaid, it may issue an assessment within four years after the close of the calendar year for which the WFTC refund is being claimed. For example, if you file your 2022 WFTC

application on December 1, 2023, the department has until the end of 2026 to issue an assessment for the overpaid refund amount. If the department finds that you have received less than you were legally entitled to receive, then the department must adjust your WFTC refund amount and pay you the additional refund owed to you.

(13) **What if I disagree with the department's decision?** If you disagree with the department's decision concerning your WFTC refund amount or assessment of WFTC overpayment, you may seek administrative review of that decision. To have this decision reviewed, you must seek an informal review under WAC 458-20-100. Additional information and details regarding the process in WAC 458-20-100 is available on the department's website at <https://dor.wa.gov/file-pay-taxes/reviews-and-appeals>.

Question 13A: For what types of issues may I seek informal review?

Answer 13A: You may seek administrative review of the following actions taken by the department regarding the WFTC:

(a) You received an assessment for overpayment of the WFTC refund amounts;

(b) The department denied all or part of your request for a WFTC refund;

(c) You received an adverse letter ruling from the department.

You may find additional details regarding letter rulings on the department's website here.

Question 13B: How do I request an informal review?

Answer 13B: All informal review requests must be submitted in writing to the department within 30 days of the date the preliminary decision was issued. Information about how to seek review, including filing your petition, is available on the department's website.

Question 13C: What is the informal review process?

Answer 13C: WFTC reviews are subject to small claims review as described in WAC 458-20-100 as the amount at issue is below \$25,000. This process provides petitioners with a simplified review that includes an abbreviated written determination, which becomes the final action of the department. If you do not want your case heard as a small claims review, you may request a longer mainstream review at the department. Once the petition for informal review is received, the department will acknowledge receipt with a letter. You will have the opportunity to provide additional records and explain your position in an informal hearing. After the department has reviewed your claim, a tax review officer assigned to your case will issue a final agency determination. A determination concerning the review of an assessment or refund denial may be appealed to the board of tax appeals. A determination concerning the review of a letter ruling is not subject to further appeal beyond the department.

(14) **What if I owe money to the department?** If you receive a WFTC refund amount that is larger than you were entitled to receive, the department may assess the overpaid amount.

Question 14A: Do the WFTC overpayments accrue interest?

Answer 14A: Yes. However, interest will not begin to accrue on the amount assessed for the first six months from the date the department issued the assessment. After this initial six-month period, interest will accrue on the amount due and owing at the rates specified under RCW 82.32.050 until the total amount due has been paid in full.

Question 14B: Can the department assess penalties on WFTC overpayments?

Answer 14B: Yes. If overpayment due is not paid in full by the date due, or the department issues a warrant for the collection of amounts due under this subsection, the department may assess applicable penalties under RCW 82.32.090; however, these penalties are not due until six months after the date the assessment has been issued. The department will take appropriate steps to work with you to establish a payment plan or other means to resolve the liability.

If the department finds, by clear, cogent, and convincing evidence, that an individual knowingly submitted, caused to be submitted, or consented to the submission of, a fraudulent WFTC claim for refund, the department must assess a penalty of 50 percent of the overpaid amount in addition to any other applicable penalties.

Below is an example of how interest and penalties may be assessed if you received a larger WFTC refund than you were entitled to receive and are required to pay the overpayment back:

| | |
|--------------------------------------|--|
| January 1st | WFTC overpayment amount is assessed and issued. The issued notice requires full payment of the WFTC overpayment amount that is due and owing on or before June 30th. |
| January 1st through June 30th | Six-month period in which no penalties are assessed and interest does not accrue. |
| June 30th | Due date of WFTC overpayment amount per notice issued January 1st. |
| July 1st | If the WFTC overpayment amount is not fully paid, the department assesses a 15 percent penalty on the WFTC overpayment amount that is still due and owing. Interest begins to accrue on the WFTC overpayment amount that is still due and owing. |
| July 15th | If the WFTC overpayment amount is not fully paid, the department may issue a warrant for any WFTC overpayment amount that is still due and owing. If a warrant is issued, the department will also assess an additional 10 percent warrant penalty to the WFTC overpayment amount that is still due and owing. Interest continues to accrue until the WFTC overpayment amount is fully paid. |
| July 31st | If the WFTC overpayment amount is not fully paid, the department may assess an additional 10 percent penalty on the WFTC overpayment amount that is still due and owing for a total of 25 percent penalty (excluding warrant penalty if warrant is issued). Interest continues to accrue until the WFTC overpayment amount is fully paid. |