



# PROPOSED RULE MAKING

## CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: January 31, 2023  
TIME: 3:18 PM

WSR 23-04-098

**Agency:** Department of Revenue

**Original Notice**  
 **Supplemental Notice to WSR** \_\_\_\_\_  
 **Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR 22-18-088 ; 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 458-20-10005 titled Written determinations as precedents—Criteria for publication.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
March 15, 2023	10:00am	This meeting will be conducted over the internet/telephone. In-person option also available.	Please contact Atif Aziz at AtifA@dor.wa.gov for login/dial-in information. If you would like to attend in person, please RSVP by emailing AtifA@dor.wa.gov by 2/22/23.

**Date of intended adoption:** March 31, 2023 (Note: This is **NOT** the **effective** date)

<b>Submit written comments to:</b> Name: Adam Becker Address: PO Box 47453, Olympia, WA 98504-7453 Email: adamb@dor.wa.gov Fax: 360-534-1606 Other: (360) 534-1574 By (date) <u>March 17, 2023</u>	<b>Assistance for persons with disabilities:</b> Contact <u>Julie King</u> Phone: (360)704-5733 Fax: TTY: 800-833-6384 Email: Other: By (date) _____
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**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** RCW 82.32.410(1)(a) provides that the director shall adopt a rule identifying the criteria to be used to decide whether a determination is precedential.

**Reasons supporting proposal:** RCW 82.32.410 authorizes the director to designate certain written determinations as precedents.

**Statutory authority for adoption:** RCW 82.32.410; RCW 84.32.300

**Statute being implemented:** RCW 82.32.410

**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:** None

**Type of proponent:**  Private  Public  Governmental

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

Name of agency personnel responsible for:			
	Name	Office Location	Phone
Drafting:	Adam Becker	6400 Linderson Way SW, Tumwater, WA	(360) 534-1574
Implementation:	Heidi Geathers	6400 Linderson Way SW, Tumwater, WA	(360) 534-1615
Enforcement:	Heidi Geathers	6400 Linderson Way SW, Tumwater, WA	(360) 534-1615

**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 RCW 34.05.328

**Regulatory Fairness Act and Small Business Economic Impact Statement**  
Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**  
This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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:

<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b) (Internal government operations)	<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e) (Dictated by statute)
<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c) (Incorporation by reference)	<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f) (Set or adjust fees)
<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d) (Correct or clarify language)	<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (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 19.85.025\(4\)](#) (does not affect small businesses).

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

Explanation of how the above exemption(s) applies to the proposed rule:

**(2) Scope of exemptions:** *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. The proposed rule does not impose more than minor costs on businesses, as it does not propose any new requirements not already provided for in statute. The proposed rule does not impose fees, filing requirements, or recordkeeping guidelines that are not already established in statute.
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact 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:** January 31, 2023

**Name:** Atif Aziz

**Title:** Rules Coordinator

**Signature:**



NEW SECTION

**WAC 458-20-10005 Written determinations as precedents—Criteria for publication.** (1) **Introduction.** A determination, which is authorized by RCW 82.32.170 and issued pursuant to WAC 458-20-100, is a written response by the department to a taxpayer's petition to correct an assessment of tax, penalties, or interest. This rule provides criteria the department uses to decide whether a determination is precedential, as required by RCW 82.32.410.

(2) **Criteria.** The department may publish a determination, and therefore designate the determination as precedential, when all of the following criteria are met:

(a) The determination is a well-reasoned application of the law to a specific set of facts.

(b) The determination addresses only the law and facts necessary to resolve the case.

(c) The determination is needed to:

(i) Provide guidance on a previously unaddressed area of the law and articulate the department's current policy;

(ii) Apply the law to a significantly different set of facts;

(iii) Overrule a published determination; or

(iv) Provide a better or more current articulation on how the law should be interpreted.

(d) The determination can be effectively sanitized, or the taxpayer has granted a waiver of the secrecy clause. For purposes of this subsection, "effectively sanitized" means that information that could identify the taxpayer is removed without affecting the analysis or precedential value of the determination.