

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE HOUSE BILL 2540**

Chapter 175, Laws of 2016

64th Legislature  
2016 Regular Session

TAX PREFERENCE SURVEYS AND REPORTS--FAILURE TO SUBMIT--PENALTY

EFFECTIVE DATE: 7/1/2016

Passed by the House February 16, 2016  
Yeas 98 Nays 0

FRANK CHOPP

**Speaker of the House of Representatives**

Passed by the Senate March 2, 2016  
Yeas 47 Nays 0

BRAD OWEN

**President of the Senate**

Approved April 1, 2016 3:31 PM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2540** as passed by House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

**Chief Clerk**

FILED

April 4, 2016

**Secretary of State  
State of Washington**

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ENGROSSED SUBSTITUTE HOUSE BILL 2540

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Passed Legislature - 2016 Regular Session

State of Washington

64th Legislature

2016 Regular Session

By House Finance (originally sponsored by Representatives Nealey, Tharinger, Harris, Walsh, Ryu, Griffey, Hayes, Manweller, Pike, Smith, Stokesbary, MacEwen, Van De Wege, Johnson, Magendanz, Wilson, McBride, Hargrove, Schmick, Pollet, and Van Werven)

READ FIRST TIME 02/09/16.

1 AN ACT Relating to modifying the penalty for taxpayers that do  
2 not submit an annual survey or report; amending RCW 82.32.534 and  
3 82.32.585; creating a new section; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 82.32.534 and 2014 c 97 s 102 are each amended to  
6 read as follows:

7 (1)(a) Every person claiming a tax preference that requires a  
8 report under this section must file a complete annual report with the  
9 department. The report is due by (~~April 30th~~) May 31st of the year  
10 following any calendar year in which a person becomes eligible to  
11 claim the tax preference that requires a report under this section.  
12 The department may extend the due date for timely filing of annual  
13 reports under this section as provided in RCW 82.32.590.

14 (b) The report must include information detailing employment,  
15 wages, and employer-provided health and retirement benefits for  
16 employment positions in Washington for the year that the tax  
17 preference was claimed. However, persons engaged in manufacturing  
18 commercial airplanes or components of such airplanes may report  
19 employment, wage, and benefit information per job at the  
20 manufacturing site for the year that the tax preference was claimed.  
21 The report must not include names of employees. The report must also

1 detail employment by the total number of full-time, part-time, and  
2 temporary positions for the year that the tax preference was claimed.

3 (c) Persons receiving the benefit of the tax preference provided  
4 by RCW 82.16.0421 or claiming any of the tax preferences provided by  
5 RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5)  
6 must indicate on the annual report the quantity of product produced  
7 in this state during the time period covered by the report.

8 (d) If a person filing a report under this section did not file a  
9 report with the department in the previous calendar year, the report  
10 filed under this section must also include employment, wage, and  
11 benefit information for the calendar year immediately preceding the  
12 calendar year for which a tax preference was claimed.

13 (2) As part of the annual report, the department may request  
14 additional information necessary to measure the results of, or  
15 determine eligibility for, the tax preference.

16 (3) Other than information requested under subsection (2) of this  
17 section, the information contained in an annual report filed under  
18 this section is not subject to the confidentiality provisions of RCW  
19 82.32.330 and may be disclosed to the public upon request.

20 (4)(a) Except as otherwise provided by law, if a person claims a  
21 tax preference that requires an annual report under this section but  
22 fails to submit a complete report by the due date or any extension  
23 under RCW 82.32.590, the department must declare:

24 (i) Thirty-five percent of the amount of the tax preference  
25 claimed for the previous calendar year to be immediately due and  
26 payable; and

27 (ii) An additional fifteen percent of the amount of the tax  
28 preference claimed for the previous calendar year to be immediately  
29 due and payable if the person has previously been assessed under this  
30 subsection (4) for failure to submit a report under this section for  
31 the same tax preference.

32 (b) The department ((must assess interest, but not penalties, on  
33 the amounts due under this subsection. The interest must be assessed  
34 at the rate provided for delinquent taxes under this chapter,  
35 retroactively to the date the tax preference was claimed, and accrues  
36 until the taxes for which the tax preference was claimed are repaid.  
37 Amounts due under this subsection are not subject to the  
38 confidentiality provisions of RCW 82.32.330 and may be disclosed to  
39 the public upon request)) may not assess interest or penalties on  
40 amounts due under this subsection.

1 (5) The department must use the information from this section to  
2 prepare summary descriptive statistics by category. No fewer than  
3 three taxpayers may be included in any category. The department must  
4 report these statistics to the legislature each year by December  
5 (~~1st~~) 31st.

6 (6) For the purposes of this section:

7 (a) "Person" has the meaning provided in RCW 82.04.030 and also  
8 includes the state and its departments and institutions.

9 (b) "Tax preference" has the meaning provided in RCW 43.136.021  
10 and includes only the tax preferences requiring a survey under this  
11 section.

12 **Sec. 2.** RCW 82.32.585 and 2014 c 97 s 103 are each amended to  
13 read as follows:

14 (1)(a) Every person claiming a tax preference that requires a  
15 survey under this section must file a complete annual survey with the  
16 department.

17 (i) Except as provided in (a)(ii) of this subsection, the survey  
18 is due by (~~April 30th~~) May 31st of the year following any calendar  
19 year in which a person becomes eligible to claim the tax preference  
20 that requires a survey under this section.

21 (ii) If the tax preference is a deferral of tax, the first survey  
22 must be filed by (~~April 30th~~) May 31st of the calendar year  
23 following the calendar year in which the investment project is  
24 certified by the department as operationally complete, and a survey  
25 must be filed by (~~April 30th~~) May 31st of each of the seven  
26 succeeding calendar years.

27 (b) The department may extend the due date for timely filing of  
28 annual surveys under this section as provided in RCW 82.32.590.

29 (2)(a) The survey must include the amount of the tax preference  
30 claimed for the calendar year covered by the survey. For a person  
31 that claimed an exemption provided in RCW 82.08.025651 or  
32 82.12.025651, the survey must include the amount of tax exempted  
33 under those sections in the prior calendar year for each general area  
34 or category of research and development for which exempt machinery  
35 and equipment and labor and services were acquired in the prior  
36 calendar year.

37 (b) The survey must also include the following information for  
38 employment positions in Washington, not to include names of  
39 employees, for the year that the tax preference was claimed:

1 (i) The number of total employment positions;  
2 (ii) Full-time, part-time, and temporary employment positions as  
3 a percent of total employment;  
4 (iii) The number of employment positions according to the  
5 following wage bands: Less than thirty thousand dollars; thirty  
6 thousand dollars or greater, but less than sixty thousand dollars;  
7 and sixty thousand dollars or greater. A wage band containing fewer  
8 than three individuals may be combined with another wage band; and  
9 (iv) The number of employment positions that have  
10 employer-provided medical, dental, and retirement benefits, by each  
11 of the wage bands.  
12 (c) For persons claiming the tax preference provided under  
13 chapter 82.60 or 82.63 RCW, the survey must also include the number  
14 of new products or research projects by general classification, and  
15 the number of trademarks, patents, and copyrights associated with  
16 activities at the investment project.  
17 (d) For persons claiming the credit provided under RCW  
18 82.04.4452, the survey must also include the qualified research and  
19 development expenditures during the calendar year for which the  
20 credit was claimed, the taxable amount during the calendar year for  
21 which the credit was claimed, the number of new products or research  
22 projects by general classification, the number of trademarks,  
23 patents, and copyrights associated with the research and development  
24 activities for which the credit was claimed, and whether the tax  
25 preference has been assigned, and who assigned the credit. The  
26 definitions in RCW 82.04.4452 apply to this subsection (2)(d).  
27 (e) For persons claiming the tax exemption in RCW 82.08.025651 or  
28 82.12.025651, the survey must also include the general areas or  
29 categories of research and development for which machinery and  
30 equipment and labor and services were acquired, exempt from tax under  
31 RCW 82.08.025651 or 82.12.025651, in the prior calendar year.  
32 (f) If the person filing a survey under this section did not file  
33 a survey with the department in the previous calendar year, the  
34 survey filed under this section must also include the employment,  
35 wage, and benefit information required under (b)(i) through (iv) of  
36 this subsection for the calendar year immediately preceding the  
37 calendar year for which a tax preference was claimed.  
38 (3) As part of the annual survey, the department may request  
39 additional information necessary to measure the results of, or  
40 determine eligibility for, the tax preference.

1 (4) All information collected under this section, except the  
2 information required in subsection (2)(a) of this section, is deemed  
3 taxpayer information under RCW 82.32.330. Information required in  
4 subsection (2)(a) of this section is not subject to the  
5 confidentiality provisions of RCW 82.32.330 and may be disclosed to  
6 the public upon request, except as provided in subsection (5) of this  
7 section. If the amount of the tax preference claimed as reported on  
8 the survey is different than the amount actually claimed or otherwise  
9 allowed by the department based on the taxpayer's excise tax returns  
10 or other information known to the department, the amount actually  
11 claimed or allowed may be disclosed.

12 (5) Persons for whom the actual amount of the tax reduced or  
13 saved is less than ten thousand dollars during the period covered by  
14 the survey may request the department to treat the amount of the tax  
15 reduction or savings as confidential under RCW 82.32.330.

16 (6)(a) Except as provided in (b) of this subsection or as  
17 otherwise provided by law, if a person claims a tax preference that  
18 requires an annual survey under this section but fails to submit a  
19 complete annual survey by the due date of the survey or any extension  
20 under RCW 82.32.590, the department must declare:

21 (i) Thirty-five percent of the amount of the tax preference  
22 claimed for the previous calendar year to be immediately due; and

23 (ii) An additional fifteen percent of the amount of the tax  
24 preference claimed for the previous calendar year to be immediately  
25 due and payable, if the person has previously been assessed under  
26 this subsection (6) for failure to submit a survey under this section  
27 for the same tax preference.

28 (b) If the tax preference is a deferral of tax, the amount  
29 immediately due under this subsection is twelve and one-half percent  
30 of the deferred tax (~~is immediately due~~). If the economic benefits  
31 of the deferral are passed to a lessee, the lessee is responsible for  
32 payment to the extent the lessee has received the economic benefit.

33 ~~((b)) (c) The department (~~must assess interest, but not~~~~  
34 ~~penalties, on the amounts due under this subsection. The interest~~  
35 ~~must be assessed at the rate provided for delinquent taxes under this~~  
36 ~~chapter, retroactively to the date the tax preference was claimed,~~  
37 ~~and accrues until the taxes for which the tax preference was claimed~~  
38 ~~are repaid. Amounts due under this subsection are not subject to the~~  
39 ~~confidentiality provisions of RCW 82.32.330 and may be disclosed to~~

1 ~~the public upon request))~~ may not assess interest or penalties on  
2 amounts due under this subsection.

3 (7) The department must use the information from this section to  
4 prepare summary descriptive statistics by category. No fewer than  
5 three taxpayers may be included in any category. The department must  
6 report these statistics to the legislature each year by December  
7 (~~1st~~) 31st.

8 (8) For the purposes of this section:

9 (a) "Person" has the meaning provided in RCW 82.04.030 and also  
10 includes the state and its departments and institutions.

11 (b) "Tax preference" has the meaning provided in RCW 43.136.021  
12 and includes only the tax preferences requiring a survey under this  
13 section.

14 NEW SECTION. Sec. 3. (1) In addition to applying prospectively,  
15 sections 1(4) and 2(6) of this act apply retroactively for a taxpayer  
16 who has filed an appeal regarding taxes, penalties, and interest owed  
17 under RCW 82.32.534 or 82.32.585 before January 1, 2016, and the  
18 appeal is pending before the department of revenue or the board of  
19 tax appeals as of the effective date of this section.

20 (2) Except for taxpayers described in subsection (1) of this  
21 section, sections 1(4) and 2(6) of this act apply to amounts due and  
22 payable under sections 1(4) and 2(6) of this act on or after July 1,  
23 2017.

24 NEW SECTION. Sec. 4. This act takes effect July 1, 2016.

Passed by the House February 16, 2016.

Passed by the Senate March 2, 2016.

Approved by the Governor April 1, 2016.

Filed in Office of Secretary of State April 4, 2016.

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