

Legislative proposal related to the Working Families Tax Exemption under RCW 82.08.0206

Background

In 2021, the Legislature passed and the Governor signed Engrossed Substitute House Bill 1297 ([Chapter 195, Laws of 2021](#)). The legislation made several significant changes to the Working Families Tax Exemption (WFTE) under [RCW 82.08.0206](#), including expanding who is eligible and changing how the amount of the payment is calculated.

After the bill's passage, the Department of Revenue (Department) began the implementation process. During that process, the Department identified several provisions that created ambiguity and inefficiencies in the administration of the WFTE. The Department's proposed amendments to the law resolve these issues.

Current Law

Beginning in 2023, the WFTE provides a remittance (refund) to individuals who qualify for the federal Earned Income Tax Credit (EITC) and to individuals who would otherwise qualify for the EITC but filed their federal tax return using an Individual Taxpayer Identification Number (ITIN) instead of a Social Security Number (SSN). In addition, the individual must have:

- Properly filed their federal income tax return as a Washington resident: and
- Been a resident in the state of Washington for more than 180 days in the year for which the exemption is claimed.

The refund amount for the prior tax year is:

- \$300 for eligible persons with no qualifying children.
- \$600 for eligible persons with one qualifying child.
- \$900 for eligible persons with two qualifying children.
- \$1200 for eligible persons with three or more qualifying children.

The refund amount is reduced as follows:

- For eligible persons with no qualifying children, beginning at \$2,500 of income below the federal phase-out income for the prior year, by 18% per additional dollar of income until the minimum credit amount is reached.
- For eligible persons with one qualifying child, beginning at \$5,000 of income below the federal phase-out income for the prior federal tax year, by 12% per additional dollar of income until the minimum credit amount is reached.

For eligible persons with two qualifying children, beginning at \$5,000 of income below the federal phase-out income for the prior federal tax year, by 15% per additional dollar of income until the minimum credit amount is reached.

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- For eligible persons with three or more qualifying children, beginning at \$5,000 of income below the federal phase-out income for the prior federal tax year, by 18% per additional dollar of income until the minimum credit amount is reached.

If the credit is calculated to be greater than one cent, but less than \$50, the minimum refund amount is \$50.

The refund amounts will be adjusted for inflation every year beginning July 1, 2024, based upon changes in the consumer price index during the previous calendar year.

Individuals must apply to the Department in a form and manner determined by the Department. The application must be made in the year following the year for which a federal tax return was filed but no refund will be provided for any period before January 1, 2022.

- A person may not apply for a refund on behalf of a deceased individual or for any year or period the individual was disallowed or ineligible under the EITC.
- If the department finds that an individual was paid:
 - More than the amount in which they were entitled, the department may assess interest and penalties on the amount of the overpayment, or
 - Less than the amount in which they were entitled, the department must pay the person the additional amount due.
- Interest does not apply to amounts paid to individuals under this program.

Summary of Proposed Legislation

This proposal seeks to modify certain administrative provisions of the 2021 legislation to ease administration of the program and to clarify certain ambiguities. Specifically, the proposal:

- Replaces the term “exemption” with “credit” throughout Section 1. The tax preference functions more like a refundable credit than an exemption and aligns with how the Department refers to the program.
- Replaces the term “remittance” with “refund” throughout Section 1. The use of the term “refund” instead of “remittance” is more consistent with Plain Language principles.
- Clarifies the meaning of the term “prior federal tax year” in Section 1 to make this term consistent and unambiguous.
- Removes the requirement that the individual file their federal tax return as a Washington resident. This is redundant, as there is an explicit requirement for Washington residency. Also, there is no precise method to determine state residency from a federal income tax return. **Sec. 1(2)(a)(i)(B).**

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- Clarifies that an individual's spouse (if a joint federal tax return is filed) and qualifying children must have a social security number (SSN) or a valid individual taxpayer identification number (ITIN). The legislative intent, as we understand it, is that for ITIN filers, their spouse and qualifying children must possess an SSN or valid ITIN. **Sec. 1(2)(a)(ii)(B).**
- Replaces the term "dependent" with "qualifying child." The use of the term "dependent" is ambiguous as the term is not defined, and refunds are based on the number of qualifying children. **Sec. 1(2)(a)(ii)(B).**
- Clarifies that for refunds calculated between \$0.01 and \$50, the refund amount is \$50. Current law provides a refund of \$50 for amounts calculated at *greater* than one cent, but *less than* \$50. **Sec. 1(3)(c).**
- **Sec. 1(2)(d).** To address a delegation of legislative authority issue, we have added a definition of "internal revenue code" (IRC) and defined that term to mean the version of the IRC in effect as of the date that this bill takes effect. We've also added the term "internal revenue code" to all federal statutory citations in Section 1.
- Clarifies that the Department will use the most current Consumer Price Index (CPI) data available by January 1 of each year, beginning in 2024, when adjusting maximum refunds for inflation. Current law requires the Department to adjust refunds January 1 every year for inflation based on changes in the CPI during the previous calendar year. However, CPI data ending in each calendar year will not be published and available until mid-January. **Sec. 1(3)(d).**
- Makes conforming amendments to the definition of "consumer price index," consistent with the amendments to Sec. 1(3)(d). **Sec. 1(3)(e).**
- Adds that maximum refunds adjusted for inflation will be rounded to the nearest five dollars. **Sec. 1(3)(d).**
- Clarifies the Department will use the most recent federal tax filing for the tax year for which the refund is being claimed to calculate the refund. **Sec. 1(4)(a)(ii).**
- Removes redundant language. **Sec. 1(6).**
- Clarifies that assessment penalties are not due until six months after the Department issues an assessment. **Sec. 1(8)(b).**
- Amends [RCW 82.32.050](#) by expanding the definition of "return" to ensure the department has sufficient authority to assess interest and additional amounts due against individuals who received more than the amount in which they were entitled. **Sec. 2(5).**

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- Amends [RCW 82.32.290](#) to ensure tax preparers and individuals can be charged and prosecuted for filing false or fraudulent claims for refunds. **Sec. 4(5).**

Benefits of the Proposal

- Eases the administration of the program (for the applicants and Department) by clarifying ambiguities and making terms and definitions consistent.
 - Creates deterrent for individuals and tax preparers attempting to make fraudulent refunds.
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