



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Revenue

- Preproposal Statement of Inquiry was filed as WSR 12-14-042; 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).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: WAC 458-20-10003 Brief adjudicative proceedings for matters related to suspension, non-renewal, and non-issuance of licenses to sell spirits.

Hearing location(s):
 Capitol Plaza Building
 4th Floor L&P Conference Room
 1025 Union Avenue SE
 Olympia, Washington

Copies of draft rules are available for viewing and printing on our website at [Rules Agenda](#)

Date: September 25, 2012 Time: 10:00 a.m.

Date of intended adoption:
October 5, 2012

Submit written comments to:

Name: Tim Jennrich

Address: Post Office Box 47453
Olympia, Washington 98504-7453

E-mail: timje@dor.wa.gov
by (date) September 25, 2012

Assistance for persons with disabilities: Contact Mary Carol LaPalm (360) 725-7499 or Renee Cosare (360) 725-7514 no later than 10 days before the hearing date. For Hearing Impaired please contact us via the Washington Relay Operator at (800) 833-6384.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Chapter 39, Laws of 2012, (HB 2758) changed the Department of Revenue's (Department) ability to collect spirits taxes imposed under RCW 82.08.150 by authorizing it to request that the Washington State Liquor Control Board suspend, not renew, or not issue licenses to sell spirits in Washington for delinquency in reporting or remitting spirits taxes after Department notice to a taxpayer. The Department is proposing a new rule, WAC 458-20-10003, to establish brief adjudicative proceedings for review of the Department's notice prior to any Department request for suspension, nonrenewal, or non-issuance consistent with HB 2758.

Reasons supporting proposal: To explain the process by which a taxpayer may seek administrative review of the Department's notice to the taxpayer that the Department intends to request that the Board suspend, refuse to renew, or refuse to issue a spirits license.

Statutory authority for adoption: RCW 82.32.300 and 82.01.060(2)

Statute being implemented:
Chapter 39, Laws of 2012, (HB 2758)

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 21, 2012

TIME: 1:15 PM

WSR 12-17-128

DATE August 21, 2012

NAME Alan R. Lynn

SIGNATURE

TITLE Rules Coordinator

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent:
Department of Revenue

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Tim Jennrich	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360)534-1578
Implementation.... Alan Lynn	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1599
Enforcement..... Russ Brubaker	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360)534-1505

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ()

e-mail

No. Explain why no statement was prepared.

This rule does not impose any new performance requirements or administrative burden on any small business not required by statute.

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 ()

e-mail

No: Please explain:

This is not a significant legislative rule as defined in RCW 34.05.328.

THIS PROPOSED RULE IS SUBMITTED FOR PUBLIC COMMENTS AFTER INPUT FROM INTERESTED PARTIES AND IS TO BE USED SOLELY FOR DISCUSSION PURPOSES AT THE PUBLIC HEARING ON THE PROPOSED RULE. UNDER NO CIRCUMSTANCES IS THIS PROPOSED RULE TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.

NEW SECTION

WAC 458-20-10003 Brief adjudicative proceedings for matters related to suspension, nonrenewal, and nonissuance of licenses to sell spirits. (1) **Introduction.** The department of revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). The department adopts in this section, the procedures as provided in RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings to review the department notice explained in subsection (2) of this section. The department must provide the notice before it may proceed in requesting that the Washington liquor control board (board) suspend, not renew, or not issue a taxpayer's spirits license(s) as defined in RCW 66.24.010 (3)(c), referred to in this section as "agency action."

This section explains the procedure pertaining to the adopted brief adjudicative proceedings.

(2) **Department notice.** If a taxpayer is more than thirty days delinquent in reporting or remitting spirits taxes on a tax return or assessed by the department, including applicable penalties and interest, the department may request that the board suspend the taxpayer's spirits license or licenses and refuse to renew any existing spirits license held by the taxpayer or issue any new spirits license to the taxpayer. Before the department may take agency action, the department must provide the taxpayer with at least seven calendar days prior written notice of the delinquency and inform the taxpayer that the department intends to make the request to the board. The department notice must include:

- (a) A listing of any unfiled tax returns;
 - (b) The amount of unpaid spirits taxes as applicable, including any applicable penalties and interest;
 - (c) Who to contact to inquire about payment arrangements;
- and
- (d) Information that the taxpayer may seek administrative review of the department notice, including the deadline for seeking such review.

A taxpayer may seek an administrative review of the department notice as explained under subsection (3) of this section. Brief adjudicative proceedings under this section do not include the right to challenge the amount of any spirits taxes assessed by the department.

(3) **Conduct of brief adjudicative proceedings.** To initiate

an appeal of a department notice, the taxpayer has seven calendar days from the date on the department notice to request a review of that notice. The taxpayer must file a written notice of appeal explaining why the taxpayer disagrees with the notice of delinquency.

A form notice of appeal is available at <http://dor.wa.gov> or by calling 1-800-647-7706. The completed form should be mailed or faxed to the department at:

Department of Revenue
Compliance Administration
Spirits License Suspension Petition
P.O. Box 47473
Olympia, WA 98504-7473
Fax: 360-586-8816

(a) A presiding officer, who will be either the assistant director of the compliance division or such other person as designated by the director of the department (director), will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in the specific matter. The presiding officer's review is limited to the written record.

(b) As part of the notice of appeal, the taxpayer or the taxpayer's representative may include written documentation explaining the taxpayer's view of the matter. The presiding officer may also request additional documentation from the taxpayer or the department and will designate the date by which the documents must be submitted.

(c) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(d) Within ten days of receipt of the taxpayer's notice of appeal, the presiding officer will enter an initial order including a brief explanation of the decision under RCW 34.05.485. All orders in these brief adjudicative proceedings will be in writing. The initial order will become the department's final order unless a petition for review is made to the department's appeals division under subsection (4) of this section. If the presiding officer's order invalidates the department notice, the department may in its discretion start new proceedings by sending a new department notice.

(4) Review of initial order from brief adjudicative proceeding. A taxpayer that has received an initial order upholding a department notice under subsection (3) of this section may request a review by the department by filing a written petition for review or by making an oral request for review with the department's appeals division within twenty-one

days after the service of the initial order on the taxpayer as described in subsection (8) of this section.

A form petition of review is available at <http://dor.wa.gov>. A request for review should state the reasons for the review.

The address, telephone number, and fax number of the appeals division are:

Appeals Division "Spirits License Petition for
Review/Spirits Taxes"
Department of Revenue
P.O. Box 47460
Olympia, WA 98504-7460
Telephone Number: 360-534-1335
Fax: 360-534-1340

(a) A reviewing officer, who will be either the assistant director of the appeals division or such other person as designated by the director, will conduct a brief adjudicative proceeding and determine whether the initial order was correctly decided. The reviewing officer's review is limited to the written record.

(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(c) The order of the reviewing officer will be in writing and include a brief statement of the reasons for the decision, and it must be entered within twenty days of the petition for review. The order will include a notice that judicial review may be available. The order of the reviewing officer represents a final order of the department. If a final order invalidates the department notice, the department may in its discretion start new proceedings by sending a new department notice.

(d) A request for review is deemed denied if the department does not issue an order on review within twenty days after the petition for review is filed.

(5) **Record in brief adjudicative proceedings.** The record with respect to the brief adjudicative proceedings under RCW 34.05.482 through 34.05.485 related to department notice will consist of:

(a) *The record before the presiding officer:* The record before the presiding officer consists of the department notice; the taxpayer's appeal of the department notice; all records relied upon by the department or submitted by the taxpayer related to the department notice; and all correspondence between the taxpayer and the department regarding the department notice.

(b) *The record before the reviewing officer:* The record before the reviewing officer consists of all documents included in the record before the presiding officer; the taxpayer's

petition for review; and all correspondence between the taxpayer and the department regarding the taxpayer's petition for review.

(6) **Court appeal.** Court appeal from the final order of the department is available pursuant to Part V, chapter 34.05 RCW. However, court appeal may be available only if a review of the initial decision has been requested under subsection (4) of this section and all other administrative remedies have been exhausted. See RCW 34.05.534.

(7) **Computation of time.** In computing any period of time prescribed by this section or by the presiding officer or reviewing officer, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday or legal holiday. This subsection does not apply with respect to computation of the seven calendar days required for the department notice.

(8) **Service.** All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the taxpayer, their representatives/agents of record, and the department.

(a) Service is made by one of the following methods:

(i) In person;

(ii) By first-class, registered or certified mail;

(iii) By fax and same-day mailing of copies;

(iv) By commercial parcel delivery company; or

(v) By electronic delivery pursuant to RCW 82.32.135.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a taxpayer, their representative/agent of record, the department, and presiding officer must be to the address shown on the notice described in subsection (3)(a) of this section.

(g) Service to the reviewing officer must be to the appeals division at the address shown in subsection (4) of this section.

(h) Where proof of service is required, the proofs of service must include:

(i) An acknowledgment of service;

(ii) A certificate, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names); and that the service was accomplished by a method of service as provided in this subsection.

(9) **Continuance.** The presiding officer or reviewing officer may grant, in their sole discretion, a request for a continuance by motion of the taxpayer, the department, or on its own motion.

(10) **Conversion of a brief adjudicative proceeding to a formal proceeding.** The presiding officer or reviewing officer, in their sole discretion, may convert a brief adjudicative proceeding to a formal proceeding at any time on motion of the taxpayer, the department, or the presiding/reviewing officer's own motion.

(a) The presiding/reviewing officer will convert the proceeding when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties, and when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05.479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director may become the presiding officer or may designate a replacement presiding officer to conduct the formal proceedings upon notice to the taxpayer and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002 will apply to the proceedings.

(11) **Taking agency action.** The department may initiate agency action as follows:

(a) If the taxpayer does not file a timely appeal under subsection (3) of this section, the department may proceed with agency action the day following the end of the period for requesting such appeal;

(b) If the taxpayer does not make a petition of review consistent with subsection (4) of this section, the department may proceed with agency action the day following the end of the period for making such petition of review;

(c) If the department makes a final order adverse to the taxpayer under subsection (4) of this section, the department may proceed with agency action the day following the date the department issues its final order.

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