EXPEDITED RULE MAKING

CR-105 (June 2004)
(Implements RCW 34.05.353)
EXPEDITED RULE MAKING ONLY

Agency: Department of Revenue

Title of rule and other identifying information: WAC 458-20-101 (Rule 101) ***Tax registration and reporting.*** This rule explains tax registration and tax reporting requirements, and discusses who is required to be registered and file excise tax returns. It also discusses requirements when there is a change in business ownership, when an account may be administratively closed, and the process of revocation and reinstatement of a tax reporting account.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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AND RECEIVED BY: November 22, 2010

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
The Department is proposing to amend Rule 101 to recognize changes made in 2ESSB 6143 Part XI (Chapter 23, Laws of 2010, 1st Special Session). This legislation increased the "active non-reporting status" threshold for taxpayers affected by the legislation's temporary increase of the business B&O tax rate for certain taxpayers. These are taxpayers whose B&O taxable amounts from activities taxable under RCW 82.04.255 (Real estate brokers), 82.04.290(2)(a) (Service and other activities tax classification), and 82.04.285 (Contests of chance) add up to 50% or more of the total of all B&O taxable amounts reported on the return.

Subsection of current Rule 101 identifies the criteria under which the Department may grant an "active non-reporting" status. The proposed rule refers the reader to the statute for the current active non-reporting criteria, and the Department's internet site for more information about the active non-reporting status. Editing and formatting changes are also proposed to provide the information in a clearer and more useful manner.

Copies of draft rules are available for viewing and printing on our website at:
http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx

Reasons supporting proposal: To recognize 2010 legislation.

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

Statute being implemented:
RCW 82.04.030 and 82.32.045

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

Date
September 21, 2010

Name
Alan R. Lynn

Signature Alan R Lynn

Title Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
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Name of proponent: (person or organization)
Department of Revenue

☐ Private
☐ Public
☒ Governmental

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

This rule draft is being proposed under an expedited rule-making process that does not require the agency to hold public hearings. Under no circumstances is this proposed rule to be used as a basis for determining tax liability or eligibility for a tax deduction, exemption, or credit.

AMENDATORY SECTION (Amending WSR 08-16-073, filed 7/31/08, effective 8/31/08)

WAC 458-20-101 Tax registration and tax reporting. (1) **Introduction.** This section explains tax registration and tax reporting requirements for the Washington state department of revenue as established in RCW 82.32.030 and 82.32.045. This section discusses who is required to be registered, and who must file excise tax returns. This section also discusses changes in ownership requiring a new registration, the administrative closure of taxpayer accounts, and the revocation and reinstatement of a tax reporting account with the department of revenue. Persons required to file tax returns should also refer to WAC 458-20-104 (Small business tax relief based on volume of business).

(2) **Persons required to obtain tax registration endorsements.** Except as provided in (a) of this subsection, every person who is engaged in any business activity for which the department of revenue is responsible for administering and/or collecting a tax or fee, shall apply for and obtain a tax registration endorsement with the department of revenue. (See RCW 82.32.030.) This endorsement shall be reflected on the face of the business person's registrations and licenses document. The tax registration endorsement is nontransferable, and valid for as long as that person continues in business.

(a) Registration under this section is not required if all of the following conditions are met:

(i) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW (business and occupation tax), is less than twelve thousand dollars per year;

(ii) A person's gross income from all business activities taxable under chapter 82.16 RCW (public utility tax), is less than twelve thousand dollars per year;

(iii) The person is not required to collect or pay to the department of revenue retail sales tax or any other tax or fee which the department is authorized to administer and/or collect; and

(iv) The person is not otherwise required to obtain a license or registration subject to the master application procedure provided in chapter 19.02 RCW. For the purposes of this section, the term "license or registration" means any agency permit, license, certificate, approval, registration,

charter, or any form or permission required by law, including agency rule, to engage in any activity.

(b) The term "tax registration endorsement," as used in this section, has the same meaning as the term "tax registration" or "certificate of registration" used in Title 82 RCW and other sections in chapter 458-20 WAC.

(c) The term "person" has the meaning given in RCW 82.04.030.

(d) The term "tax ((~~reporting account~~)) registration number" as used in this section, is the number used to identify persons registered with the department of revenue.

(3) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all facts and circumstances.

(a) Bob Brown is starting a bookkeeping service. The gross income of the business is expected to be less than twelve thousand dollars per year. Due to the nature of the business activities, Bob is not required to pay or collect any other tax which the department is authorized to collect.

Bob Brown is not required to apply for and obtain a tax registration endorsement with the department of revenue. The conditions under which a business person may engage in business activities without obtaining the tax registration endorsement have been met. However, if Bob Brown in some future period has gross income exceeding twelve thousand dollars per year, he will be required to obtain a tax registration endorsement.

(b) Cindy Smith is opening a business to sell books written for children to local customers at retail. The gross proceeds of sales are expected to be less than twelve thousand dollars per year.

Cindy Smith must apply for and obtain a tax registration endorsement with the department of revenue. While gross income is expected to be less than twelve thousand dollars per year, Cindy Smith is required to collect and remit retail sales tax.

(4) **Requirement to file tax returns.** Persons registered with the department must file tax returns and remit the appropriate taxes to the department. A return must be filed even if no tax liability was incurred during the reporting period, unless ((~~they are~~)) the person was placed on an "active nonreporting" status by the department.

((~~(a)~~)) (5) **Active nonreporting status.** The department may relieve any person of the requirement to file returns by placing the person in an active nonreporting status if ((~~all of~~)) the ((~~following conditions~~)) criteria found in RCW 82.32.045 are met((~~:~~

~~(i) The person's value of products (RCW 82.04.450), gross proceeds of sales (RCW 82.04.070), or gross income of the business (RCW 82.04.080), from all business activities taxable~~

~~under chapter 82.04 RCW (business and occupation tax), is:~~

~~(A) Beginning July 1, 1999, less than twenty-eight thousand dollars per year (chapter 357, Laws of 1999); or~~

~~(B) Prior to July 1, 1999, less than twenty-four thousand dollars per year;~~

~~(ii) The person's gross income (RCW 82.16.010) from all business activities taxable under chapter 82.16 RCW (public utility tax) is less than twenty-four thousand dollars per year; and~~

~~(iii) The person is not required to collect or pay to the department retail sales tax or any other tax or fee the department is authorized to collect.~~

~~(b) The department will notify those persons it places on an active nonreporting status. (A person may request to be placed on an active nonreporting status if the conditions of (a) of this subsection are met.)~~)).

The department will notify all persons placed in an active nonreporting status.

(a) **Requesting active nonreporting status.** A person not previously placed in an active nonreporting status may request to be placed in this status if the criteria are met.

(b) **Want more information about active nonreporting status?** More information regarding active nonreporting status can be found on the department's internet site at http://www.dor.wa.gov.

(c) **Responsibility of persons to notify department if they no longer qualify for active nonreporting status.** Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities do not meet any of the ((~~conditions explained in (a) of this subsection~~)) criteria outlined in RCW 82.32.045. These persons ((~~will be removed from an active nonreporting status, and~~)) must file tax returns and remit appropriate taxes to the department, beginning with the first period in which they do not qualify for an active nonreporting status.

((~~(d) Persons that have not been placed on an active nonreporting status by the department must continue to file tax returns and remit the appropriate taxes.~~

~~(4) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all facts and circumstances.~~

~~(a) Bob Brown is starting a bookkeeping service. The gross income of the business is expected to be less than twelve thousand dollars per year. Due to the nature of the business activities, Bob is not required to pay or collect any other tax which the department is authorized to collect.~~

~~Bob Brown is not required to apply for and obtain a tax registration endorsement with the department of revenue. The~~

~~conditions under which a business person may engage in business activities without obtaining the tax registration endorsement have been met. However, if Bob Brown in some future period has gross income exceeding twelve thousand dollars per year, he will be required to obtain a tax registration endorsement. If Bob's gross income exceeds twenty-eight thousand dollars per year, he will be required to file tax returns and remit the appropriate taxes.~~

~~(b) Cindy Smith is opening a business to sell books written for children to local customers at retail. The gross proceeds of sales are expected to be less than twelve thousand dollars per year.~~

~~Cindy Smith must apply for and obtain a tax registration endorsement with the department of revenue. While gross income is expected to be less than twelve thousand dollars per year, Cindy Smith is required to collect and remit retail sales tax.~~

~~(c) Alice Smith operates a taxicab service with an average gross income of eighteen thousand dollars per year. She also owns a management consulting service with an average gross income of fifteen thousand dollars per year. Assume that Alice is not required to collect or pay to the department any other tax or fee the department is authorized to collect. Alice qualifies for an active nonreporting status because her taxicab income is less than the twenty-four thousand dollar threshold for the public utility tax, and her consulting income is less than the twenty-four thousand dollar threshold for the business and occupation (B&O) tax. If the department of revenue does not first place her on an active nonreporting status, she may request the department to do so.~~

~~(5)~~)) (6) **Out-of-state businesses.** The B&O and public utility taxes are imposed on the act or privilege of engaging in business activity within Washington. RCW 82.04.220 and 82.16.020. Out-of-state persons who have established sufficient nexus in Washington to be subject to Washington's B&O or public utility taxes must obtain a tax registration endorsement with this department if they do not satisfy the conditions expressed in subsection (2)(a) of this section. Out-of-state persons required to collect Washington's retail sales or use tax, or who have elected to collect Washington's use tax, even though not statutorily required to do so, must obtain a tax registration endorsement.

(a) Persons with out-of-state business locations should not include income that is disassociated from their instate activities in their computations for determining whether the gross income thresholds provided in subsection (2)(a)(i) and (ii) of this section are satisfied.

(b) Out-of-state persons making sales into or doing business within Washington should also refer to the following rules in chapter 458-20 WAC for a discussion of their tax

reporting responsibilities:

(i) WAC 458-20-103 (Time and place of sale);

(ii) WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property);

(iii) WAC 458-20-193D (Transportation, communication, public utility activities, or other services in interstate or foreign commerce);

(iv) WAC 458-20-194 (Doing business inside and outside the state); and

(v) WAC 458-20-221 (Collection of use tax by retailers and selling agents).

((~~(6)~~)) (7) **Registration procedure.** The state of Washington initiated the unified business identifier (UBI) program to simplify the registration and licensing requirements imposed on the state's business community. Completion of the master application enables a person to register or license with several state agencies, including the department of revenue, using a single form. The person will be assigned one unified business identifier number, which will be used for all state agencies participating in the UBI program. The department may assign the unified business identifier number as the taxpayer's revenue tax reporting account number, or it may assign a different or additional number as the revenue tax reporting account number.

(a) Persons completing the master application will be issued a registrations and licenses document. The face of this document will list the registrations and licenses (endorsements) which have been obtained.

(b) The department of revenue does not charge a registration fee for issuing a tax registration endorsement. Persons required to complete a master application may, however, be subject to other fees.

(c) While the UBI program is administered by the department of licensing, master applications are available at any participating UBI service provider location. The following agencies of the state of Washington participate in the UBI program (see RCW 19.02.050 for a more complete listing of participating agencies):

(i) The office of the secretary of state;

(ii) The department of licensing;

(iii) The department of employment security;

(iv) The department of labor and industries;

(v) The department of revenue.

((~~(7)~~)) (8) **Temporary revenue registration certificate.** A temporary revenue registration certificate may be issued to any person who operates a business of a temporary nature.

(a) Temporary businesses, for the purposes of registration, are those with:

(i) Definite, predetermined dates of operation for no more

than two events each year with each event lasting no longer than one month; or

(ii) Seasonal dates of operation lasting no longer than three months. However, persons engaging in business activities on a seasonal basis every year should refer to subsection (8) of this section.

(b) Each temporary registration certificate is valid for a single event. Persons that subsequently make sales into Washington may incur additional tax liability. Refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) for additional information on tax reporting requirements. It may be required that a tax registration endorsement be obtained, in lieu of a temporary registration certificate. See subsection (2) of this section.

(c) Temporary revenue registration certificates may be obtained by making application at any participating UBI agency office, or by completing a seasonal registration form.

((~~(8)~~)) (9) **Seasonal revenue tax reporting accounts.** Persons engaging in seasonal business activities which do not exceed two quarterly reporting periods each calendar year may be eligible for a tax reporting account with a seasonal reporting status. Persons engaging in seasonal business activities that meet the criteria outlined in subsection (2) of this section must apply for and obtain a tax registration endorsement with the department of revenue. This is a permanent account until closed by the taxpayer or administratively closed by the department. The taxpayer must specify in which quarterly reporting periods he or she will be engaging in taxable business activities. The quarterly reporting periods in which the taxpayer is engaging in taxable business activities may or may not be consecutive, but the same quarterly period or periods must apply each year. The taxpayer is not required to be engaging in taxable business activities during the entire period.

The ((~~department will provide and the~~)) taxpayer will be required to file tax returns only for the quarterly reporting periods specified by the taxpayer. Examples of persons which may be eligible for the seasonal reporting status include persons operating Christmas tree and/or fireworks stands. Persons engaging in taxable business activities in more than two quarterly reporting periods in a calendar year will not qualify for the seasonal reporting status.

((~~(9)~~)) (10) **Display of registrations and licenses document.** The taxpayer is required to display the registrations and licenses document in a conspicuous place at the business location for which it is issued.

((~~(10)~~)) (11) **Multiple locations.** A registrations and licenses document is required for each place of business at which a taxpayer engages in business activities for which the

department of revenue is responsible for administering and/or collecting a tax or fee, and any main office or principal place of business from which excise tax returns are to be filed. This requirement applies to locations both within and without the state of Washington.

(a) For the purposes of this subsection, the term "place of business" means:

(i) Any separate establishment, office, stand, cigarette vending machine, or other fixed location; or

(ii) Any vessel, train, or the like, at any of which the taxpayer solicits or makes sales of tangible personal property, or contracts for or renders services in this state or otherwise transacts business with customers.

(b) A taxpayer wishing to report all tax liability on a single excise tax return may request a separate registrations and licenses document for each location. The original registrations and licenses document shall be retained for the main office or principal place of business from which the returns are to be filed, with additional documents obtained for all branch locations. All registrations and licenses documents will reflect the same tax reporting account number.

(c) A taxpayer desiring to file a separate excise tax return covering a branch location, or a specific construction contract, may apply for and receive a separate revenue tax reporting account number. A registrations and licenses document will be issued for each tax reporting account number and will represent a separate account.

(d) A master application must be completed to obtain a separate registrations and licenses document, or revenue tax reporting account number, for a new location.

((~~(11)~~)) (12) **Change in ownership.** When a change in ownership of a business occurs, the new owner must apply for and obtain a new registrations and licenses document. The original document must be destroyed, and any further use of the tax reporting account number for tax purposes is prohibited.

(a) A "change in ownership," for purposes of registration, occurs upon but is not limited to:

(i) The sale of a business by one individual, firm or corporation to another individual, firm or corporation;

(ii) The dissolution of a partnership;

(iii) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the composition of the partners is equal to or greater than fifty percent;

(iv) Incorporation of a business previously operated as a partnership or sole proprietorship;

(v) Changing from a corporation to a partnership or sole proprietorship; or

(vi) Changing from a corporation, partnership or sole

proprietorship to a limited liability company or a limited liability partnership.

(b) For the purposes of registration, a "change in ownership" does not occur upon:

(i) The sale of all or part of the common stock of a corporation;

(ii) The transfer of assets to an assignee for the benefit of creditors or upon the appointment of a receiver or trustee in bankruptcy;

(iii) The death of a sole proprietor where there will be a continuous operation of the business by the executor, administrator, or trustee of the estate or, where the business was owned by a marital community or registered domestic partnership, by the surviving spouse or surviving domestic partner of the deceased owner;

(iv) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the composition of the partners is less than fifty percent; or

(v) A change in the trade name under which the business is conducted.

(c) While changes in a business entity may not result in a "change in ownership," the completion of a new master application may be required to reflect the changes in the registered account.

((~~(12)~~)) (13) **Change in location.** Whenever the place of business is moved to a new location, the taxpayer must ((~~notify the department of the change~~)) complete a new master application. A new registrations and licenses document will be issued to reflect the change in location.

((~~(13)~~)) (14) **Lost registrations and licenses documents.** If any registrations and licenses document is lost, destroyed or defaced as a result of accident or of natural wear and tear, a new document will be issued upon request.

((~~(14)~~)) (15) **Administrative closure of taxpayer accounts.** The department may, upon written notification to the taxpayer, close the taxpayer's tax reporting account and rescind its tax registration endorsement whenever the taxpayer has reported no gross income and there is no indication of taxable activity for two consecutive years.

The taxpayer may request, within thirty days of notification of closure, that the account remain open. A taxpayer may also request that the account remain open on an "active nonreporting" status if the requirements of subsection (3)(a) of this section are met. The request shall be reviewed by the department and if found to be warranted, the department will immediately reopen the account. The following are acceptable reasons for continuing as an active account:

(a) The taxpayer is engaging in business activities in

Washington which may result in tax liability.

(b) The taxpayer is required to collect or pay to the department of revenue a tax or fee which the department is authorized to administer and/or collect.

(c) The taxpayer has in fact been liable for excise taxes during the previous two years.

((~~(15)~~)) (16) **Reopening of taxpayer accounts.** A business person choosing to resume business activities for which the department of revenue is responsible for administering and/or collecting a tax or fee, may request a previously closed account be reopened. The business person must complete a new master application. When an account is reopened a new registrations and licenses document, reflecting a current tax registration endorsement, shall be issued. Persons requesting the reopening of an account which had previously been closed due to a revocation action should refer to subsection (16) of this section.

((~~(16)~~)) (17) **Revocation and reinstatement of tax registration endorsements.** Actions to revoke tax registration endorsements must be conducted by the department pursuant to the provisions of chapter 34.05 RCW, the Administrative Procedure Act, and the taxpayers bill of rights of chapter 82.32A RCW. Persons should refer to WAC 458-20-10001, Adjudicative proceedings--Brief adjudicative proceedings--Wholesale and retail cigarette license revocation/suspension--Certificate of registration (tax registration endorsement) revocation, for an explanation of the procedures and processes pertaining to the revocation of tax registration endorsements.

(a) The department of revenue may, by order, revoke a tax registration endorsement if any tax warrant issued under the provisions of RCW 82.32.210 is not paid within thirty days after it has been filed with the clerk of the superior court, or for any other reason expressly provided by law.

(b) The revocation order will be posted in a conspicuous place at the main entrance to the taxpayer's place of business and must remain posted until the tax registration endorsement has been reinstated. A revoked endorsement will not be reinstated until:

(i) The amount due on the warrant has been paid, or satisfactory arrangements for payment have been approved by the department; and

(ii) The taxpayer has posted with the department a bond or other security in an amount not exceeding one-half the estimated average annual liability of the taxpayer.

(c) It is unlawful for any taxpayer to engage in business after its tax registration endorsement has been revoked.

((~~(17)~~)) (18) **Penalties for noncompliance.** The law provides that any person engaging in any business activity, for which registration with the department of revenue is required,

shall obtain a tax registration endorsement.

(a) The failure to obtain a tax registration endorsement prior to engaging in any taxable business activity constitutes a gross misdemeanor.

(b) Engaging in business after a tax registration endorsement has been revoked by the department constitutes a Class C felony.

(c) Any tax found to have been due, but delinquent, and any tax unreported as a result of fraud or misrepresentation, may be subject to penalty as provided in chapter 82.32 RCW, WAC 458-20-228 and 458-20-230.