



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)
(Implements RCW 34.05.310)
Do NOT use for expedited rule making

Agency: Department of Revenue

Subject of possible rule making: WAC 458-20-22802 Electronic funds transfer.

Statutes authorizing the agency to adopt rules on this subject: RCW 82.32.300 and 82.01.060(2).

Reasons why rules on this subject may be needed and what they might accomplish:

The Department is considering a revision to this rule to reflect changes in the law resulting from Substitute Senate Bill 5571 as passed by the Legislature during the 2009 regular session (Chapter 176, Laws of 2009). The legislation requires taxpayers with a monthly tax reporting frequency to file and pay their excise taxes to the Department electronically. The legislation also requires that refunds issued by the Department be paid electronically if the taxpayer is required to pay taxes electronically and the Department has the necessary account information.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Parties interested in this rule making may contact the individual listed below. The public may also participate by providing written comments throughout this rule making or giving oral testimony at the public meeting or public hearing.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

Written comments may be submitted by mail, fax, or at the public meeting. Oral comments will be accepted at the public meeting. A preliminary draft of possible rule changes is available for viewing and printing on our website at: <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>. Written comments on and/or requests for copies of the rule may be directed to: Kristine Rompa, Interpretations and Technical Advice Division, P. O. Box 47453, Olympia, WA 98504-7453; e-mail: KristineR@dor.wa.gov; phone: (360) 570-6134.

Public meeting location:

Capitol Plaza Building
4th Floor – L&P Large Conference Room
1025 Union Avenue SE
Olympia, Washington

Assistance for persons with disabilities:

Contact Martha Thomas no later than 10 days before the meeting date. TTY 1-800-451-7985 or (360) 725-7497.

Date: September 23, 2010 **Time:** 10:00 a.m.

Date August 16, 2010

Name (type or print)

Alan R. Lynn

Signature

Title

Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 16, 2010

TIME: 1:05 PM

WSR 10-17-085

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

AMENDATORY SECTION (Amending WSR 06-23-066, filed 11/9/06, effective 12/10/06)

WAC 458-20-22802 Electronic (~~funds transfer~~) filing and payment. (1) **Introduction.** The department of revenue makes electronic filing (also known as e-file) and electronic payment (also known as e-pay) available to taxpayers. Chapter 176, Laws of 2009 (Substitute Senate Bill No. 5571) requires certain taxpayers (~~are required~~) to file and pay (~~the~~) excise taxes (~~reported on the combined excise tax return with an electronic funds transfer (EFT). RCW 82.32.080~~) electronically. Taxpayers who are not specifically required to file or pay (~~by EFT may still use this method of payment if they notify the department of their desire to pay by EFT in advance of making their first EFT payment~~) taxes electronically are encouraged to voluntarily take advantage of e-file and e-pay. Taxpayers who are (~~either~~) required (~~or voluntarily choose~~) to electronically file or pay their excise tax returns (~~by EFT~~) must furnish the department with the necessary information (~~, as described in subsection (9) of this section~~) by creating an on-line account with the department before attempting to send their first electronic filing or payment (see subsection (2)(b) of this section).

Electronic filing (e-file) and electronic payment (e-pay) are available for taxes reported on the combined excise tax return, which includes those taxes administered by the department under chapter 82.32 RCW. That does not include city and town taxes on financial institutions (chapter 82.14A RCW), county tax on telephone access lines (chapter 82.14B RCW), cigarette tax (chapter 82.24 RCW), leasehold excise tax (chapter 82.29A RCW), and forest tax (chapter 84.33 RCW).

(2) (~~**Definitions.** For the purposes of this section, the following terms will apply:~~

(a) ~~"Electronic funds transfer" or "EFT" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.~~

(b) ~~"ACH" or "automated clearing house" means a central distribution and settlement system for the electronic clearing~~

~~of debits and credits between financial institutions.~~

~~(c) "ACH debit" means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the department's bank to charge the taxpayer's account and deposit the funds to the department's account.~~

~~(d) "ACH credit" means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the taxpayer's bank to charge the taxpayer's account and deposit the funds to the department's account.~~

~~(e) "Department's bank" means the bank with which the department of revenue has a contract to assist in the receipt of taxes and includes any agents of the bank.~~

~~(f) "Collectible funds" actually means collected funds that have completed the electronic funds transfer process and are available for immediate use by the state.~~

~~(g) "ACH CCD + addenda" and "ACH CCD + record" mean the information in a required ACH format that needs to be transmitted to properly identify the payment.~~

~~(h) "Service access key" means a unique code that allows an ACH debit transaction to occur.))~~

Filing tax returns electronically using e-file. Many common reporting errors are preventable when taxpayers take advantage of the department's electronic filing (e-file) system. E-file is an internet-based application that provides a secure and encrypted way for taxpayers to file and pay many of Washington state's business related excise taxes on-line. The e-file system helps taxpayers by automatically performing math calculations and checking for other types of reporting errors. Using e-file helps taxpayers avoid penalties and interest related to unintentional underpayments and delinquencies.

(a) Taxpayers who are assigned a monthly reporting frequency by the department, and those taxpayers who volunteer to report on a monthly basis, are required to use e-file (and e-pay). Those same taxpayers must continue to use e-file (and e-pay) even if they are subsequently assigned some other reporting frequency. If good cause exists, the department may waive the e-file (and e-pay) requirement for any taxpayer. The department may choose to make that waiver either temporary or permanent.

(b) In order to use e-file (or e-pay), a taxpayer must first go to the department's internet site (<http://dor.wa.gov>) home page, click the link for filing taxes on-line, and follow the instructions for setting up an on-line "My Account." Help setting up an on-line account is available toll-free at 1-877-345-3353 during regular business hours.

~~(3) ((**Taxpayers required to pay by EFT.** Taxpayers who have taxes due of \$240,000 or more in a calendar year are required to pay by EFT. Total taxes due from the last complete calendar year will be used to determine whether a taxpayer is required to pay by EFT. When a calendar year total indicates a taxpayer is~~

~~required to pay by EFT, the department will notify that taxpayer. The notification will be made at least three months prior to the date that the first EFT payment is required.~~

~~The requirement to pay by EFT will be waived if the taxpayer reasonably shows to the department that it will not meet or exceed the EFT threshold for taxes due in the calendar year.))~~ **Paying taxes electronically using e-pay.** E-pay is an electronic alternative to making tax payments with a paper check. Those taxpayers who are required to use e-file to submit their tax return (see subsection (2) of this section) must also use e-pay to pay the associated taxes. For a taxpayer who is required to use e-pay, electronic funds transfer (or EFT) must be used, unless the department specifically authorizes some other type of electronic payment for that particular taxpayer.

(a) Payment by e-check. Taxpayers who wish to make their payment by e-check are redirected to the web site of the department's bank when they submit their electronic return. Taxpayers provide their checking account number as a way of authorizing a one-time payment transaction. The department's bank charges a nominal convenience fee for using the service.

(b) Payment by credit card. Payment by credit card is available using American Express, Discover, Visa, or MasterCard. Taxpayers who wish to make their payment with one of these credit cards are directed to the web site of a third-party, nonstate vendor when they submit their electronic return. Taxpayers then provide their credit card number in the same manner as with any other credit card payment transaction. Each credit card company imposes a service fee, to be paid by the taxpayers.

(c) Payment by electronic funds transfer (EFT). EFT is a method of transferring funds from a taxpayer's bank account into the department's bank account.

(i) EFT definitions. For the purposes of this section, the following terms and definitions will apply:

(A) "Electronic funds transfer" or "EFT" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(B) "Automated clearing house" or "ACH" means a central distribution and settlement system for the electronic clearing of debits and credits between financial institutions.

(C) "EFT debit" means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the department's bank to charge the taxpayer's account and deposit the funds to the department's account.

(D) "EFT credit" means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer

instructing the taxpayer's bank to charge the taxpayer's account and deposit the funds to the department's account.

(E) "Department's bank" means the bank with which the department of revenue has a contract to assist in the receipt of taxes and includes any agents of the bank.

(F) "Collectible funds" actually means collected funds that have completed the electronic funds transfer process and are available for immediate use by the state.

(G) "ACH CCD + addenda" and "ACH CCD + record" mean the information in a required ACH format that needs to be transmitted to properly identify the payment.

(H) "Service access key" means a unique code that allows an EFT debit transaction to occur.

(ii) **EFT methods.** Taxpayers required to pay by EFT must do so through the use of the EFT debit or EFT credit methods. In an emergency, the taxpayer should contact the department for alternative methods of payment. Contact information will be included in the notification materials sent to all EFT remitters.

(iii) **Form and contents of EFT.** The form and content of EFT will be as follows:

(A) If the taxpayer wishes to use the EFT debit system, the taxpayer will furnish the department with the information needed to complete the transaction. The department's bank will provide a service access key only to the taxpayer and all transactions must be initiated by the taxpayer. A service access key is not required when the taxpayer also uses e-file.

(B) If the taxpayer wishes to use the EFT credit system, the taxpayer is responsible to see that its bank has the information necessary for timely completion. The taxpayer must provide the information necessary for its bank to complete the ACH CCD + addenda for transmittal to the department's bank.

(C) If the taxpayer is not a taxpayer that is required to e-file and e-pay, and wishes to use an electronic payment method other than EFT, the taxpayer must obtain the approval of the department for the desired method of payment and must provide any information necessary for timely processing of the payment.

(iv) **Due date of EFT payment.** The EFT payment is due on or before the next banking day following the tax return due date. An EFT payment made using the EFT credit method is timely when the state receives collectible U.S. funds on or before 5:00 p.m., Pacific Time, on the EFT payment due date. An EFT payment made using the EFT debit method is timely if the payment is initiated on or before 11:59 p.m. Pacific Time on the tax return due date, and the effective date for that payment is on or before the next banking day following the tax return due date. The ACH system, either with an EFT debit or EFT credit method payment, requires that the necessary information be in the originating bank's possession on the banking day preceding the

date for completion of the transaction. Each bank generally has its own transaction deadlines and it is the responsibility of the taxpayer to insure timely payment.

(A) The tax return due date is the next business day after the statutory due date if the statutory due date falls on a Saturday, Sunday, or legal holiday. Legal holidays are determined under state of Washington law and banking holidays are those recognized by the Federal Reserve System in the state of Washington.

(B) Example. The tax return due date is December 25th, a legal and banking holiday, which, for the example, falls on a Friday. The next business day is Monday, December 28th, and this is the new tax return due date. Any EFT must be completed by 5:00 p.m., Pacific Time, Tuesday, December 29th, which is the next banking day after the new due date. For an EFT debit user, this means the department's bank must have the appropriate information by 5:00 p.m., Pacific Time, on Monday, December 28th.

(4) (~~Taxes covered.~~ The taxes covered by the EFT payment are taxes reported on the combined excise tax return. The included taxes are those administered by the department under chapter 82.32 RCW except city and town taxes on financial institutions (chapter 82.14A RCW), county tax on telephone access lines (chapter 82.14B RCW), cigarette tax (chapter 82.24 RCW), enhanced food fish tax (chapter 82.27 RCW), leasehold excise tax (chapter 82.29A RCW), and forest tax (chapter 84.33 RCW).

(5)) Electronic refunds ((~~by EFT~~)). No electronic adjustments, reversals, or refunds are made directly against taxpayer credit card accounts or on e-check transactions. Overpayments of tax will be either retained by the department to be credited to future tax liabilities or, at the taxpayer's request, will be refunded. If the taxpayer ((~~is required to pay the~~)) pays taxes on the combined excise tax return by EFT, the taxpayer is entitled to a refund of those taxes by EFT. However, if the taxpayer wishes to have the refund made by EFT, the taxpayer must provide the department with the information necessary to make an appropriate EFT or the refund will be issued as a ((~~warrant (-)~~) paper check((+))).

((~~6~~) ~~EFT methods.~~ Taxpayers required to pay by EFT must do so through the use of the ACH debit or ACH credit methods. All other taxpayers paying via EFT must do so through the use of ACH debit, ACH credit or other electronic payment methods approved by the department. In an emergency, the taxpayer should contact the department for alternative methods of payment. Contact information will be included in the notification materials sent to all EFT remitters.

(7) ~~Due date of EFT payment.~~ The EFT payment is due on or before the banking day following the tax return due date. An

~~EFT payment made using the ACH credit method is timely when the state receives collectible U.S. funds on or before 5:00 p.m., Pacific Time, on the EFT payment due date. An EFT payment made using the ACH debit method is timely if the payment is initiated on or before 11:59 p.m. Pacific Time on the EFT return due date, and the effective date for that payment is on or before the next banking day following the tax return due date. The ACH system, either ACH debit or ACH credit, requires that the necessary information be in the originating bank's possession on the banking day preceding the date for completion of the transaction. Each bank generally has its own transaction deadlines and it is the responsibility of the taxpayer to insure timely payment.~~

~~(a) The tax return due date is the next business day after the statutory due date if the statutory due date falls on a Saturday, Sunday, or legal holiday. Legal holidays are determined under state of Washington law and banking holidays are those recognized by the Federal Reserve System in the state of Washington.~~

~~(b) Example. The tax return due date is December 25th, a legal and banking holiday, which, for the example, falls on a Friday. The next business day is Monday, December 28th, and this is the new tax return due date. EFT must be completed by 5:00 p.m., Pacific Time, Tuesday, December 29th, which is the next banking day after the new due date. For an ACH debit user, the department's bank must have the appropriate information by 5:00 p.m., Pacific Time, on Monday, December 28th.~~

~~(8)) (5) Coordinating a paper return and an electronic payment. ((The filed)) Unless a taxpayer is required to use e-file and e-pay, a taxpayer can in some cases file a paper return with the department while at the same time voluntarily making the associated payment electronically.~~

~~(a) When a taxpayer (who is not already required to e-file and e-pay) receives approval from the department to voluntarily use EFT as a payment method, the return, when submitted in paper format, and the EFT payment will be coordinated by the department. A return will be considered timely filed only if it is received by the department on or before the due date. If the return is sent by United States mail, it will be considered received on the date shown by the post office cancellation mark stamped on the envelope. RCW 82.32.080. ((In addition,)) If the return is submitted to one of the department's field offices, it will be considered received on the date shown by the date stamp applied at the field office. The associated EFT payment must be received by the next banking day after the tax return due date. If both events occur, there is timely filing and payment and no penalties apply.~~

~~((9) Form and contents of EFT. The form and content of EFT will be as follows:~~

~~(a) If the taxpayer wishes to use the ACH debit system of EFT, the taxpayer will furnish the department with the information needed to complete the transaction. The department's bank will provide a service access key only to the taxpayer and all transactions must be initiated by the taxpayer.~~

~~(b) If the taxpayer wishes to use the ACH credit system of the EFT, the taxpayer is responsible to see that its bank has the information necessary for timely completion. The taxpayer must provide the information necessary for its bank to complete the ACH CCD + addenda for transmittal to the department's bank.~~

~~(c) If the taxpayer is not a taxpayer that is required to pay by EFT, and wishes to use any other electronic payment method approved by the department, the taxpayer must provide the information necessary for the payment processing institution to timely process the payment.~~

~~(10)) (b) When a taxpayer (who is not already required to e-file and e-pay) is approved by the department to use a credit card or e-check as a payment method, a return submitted in paper format and the electronic payment will be coordinated by the department. The return will be considered timely as described in (a) of this subsection. The electronic payment is considered timely as long as the payment is initiated and submitted sometime before the end of the due date.~~

(6) Crediting and proof of payment. The department will credit the taxpayer with the amount paid as of the date the payment is received by the department's bank. The proof of payment by the taxpayer will depend on the means of transmission.

(a) An ACH debit transaction may be proved by use of the verification number received from the department's bank that the transaction was initiated and bank statements or other evidence from the bank that the transaction was settled.

(b) An ACH credit transaction is initiated by the taxpayer through the taxpayer's bank. The taxpayer is responsible for completion of the transaction. The taxpayer generally will be given a verification number by the taxpayer's bank. This verification number with proof of the ACH CCD + record showing the department's bank and account number, plus confirmation that the transaction has been settled will constitute proof of payment.

(c) Taxpayers using any other electronic payment method are responsible for completion of the transaction. Proof of payment will include transaction initiation date and any other evidence from a financial institution or creditor that the transaction was settled.

~~((11))~~ **(7) Correcting errors.** Errors in the ~~((EFT))~~ electronic payment process will result in either an underpayment or an overpayment of the tax. In either case, the taxpayer needs to contact the department to arrange for appropriate

action. Overpayments may be used as a credit or the taxpayer may apply for a refund. The department will expedite a refund where it is caused by an error in transmission. Underpayments should be corrected by the taxpayer immediately to avoid any penalties.

~~((12))~~ (8) Penalties. There are no special provisions for penalties when payment is made by ~~((EFF))~~ electronic means. The general provisions for all taxpayers apply. To avoid the imposition of penalties, it is necessary for the payment to be timely. WAC 458-20-228 discusses the various penalties that may apply and the limited circumstances under which they may be waived.

(a) In an ACH debit transaction, the department's bank is the originating bank and is responsible for the accuracy of transmission. If the taxpayer has timely initiated the ACH debit, received a verification number, and shows adequate funds were available in the account, no late payment penalties will apply with respect to those funds authorized.

(b) In an ACH credit transaction, the taxpayer's bank is the originating bank and the taxpayer is primarily responsible for its accuracy. The taxpayer must have timely initiated the transaction, provided the correct information for the ACH CCD + record, and shown that there were sufficient funds in the account, in order to prove timely compliance. If the taxpayer can make this showing, then no late payment penalties will apply ~~((as))~~ with respect to those funds authorized if the transaction is not completed.

(c) ~~((With the use of other electronic payment methods, the taxpayer's financial institution is the originator of the payment transaction))~~ When a payment is made using e-check, the department's bank is the originating bank and is responsible for the accuracy of transmission. If the taxpayer has timely initiated and submitted the e-check payment while there were sufficient funds in the account, no late payment penalties will apply to those funds authorized.

(d) When a payment is made using an approved credit card, the credit card company acts as the taxpayer's payment agent and the taxpayer is primarily responsible for the accuracy of ~~((this))~~ the transaction. ~~((The taxpayer must have timely initiated the transaction and shown that there were sufficient funds in the account in order to prove timely compliance.))~~ If the taxpayer can ~~((make this showing, then))~~ prove the payment was initiated and submitted timely, no late payment penalties will apply ~~((as))~~ to those funds authorized ~~((if the transaction is not completed))~~.