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AMENDATORY SECTION: (Amending 93-04-077, filed 2/1/93)

WAC 458-20-229 Refunds.

~~(1) Introduction. This section explains the procedures relating to refunds or credits for overpayment of taxes, and penalties or interest. It indicates the statutory period for refunds and the interest rate which applies to those refunds.~~

~~(2) Statute of limitations for refunds or credits.~~

~~(a) With the exception of (b) of this subsection, no refund or credit may be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which a refund or credit application is made or examination of records by the department is completed.~~

~~(b) Where a taxpayer has executed a written waiver of the limitations governing assessment under RCW 82.32.050 or 82.32.100, a refund or credit may be granted for taxes, penalties, or interest paid during, or attributable to, the years covered by such waiver if, prior to expiration of the waiver period, an application for a refund or credit of such taxes, penalties, or interest is made by the taxpayer or the department discovers a refund or credit is due. (Refer to WAC 458-20-230 for the circumstances under which the department may request a taxpayer to execute a statute of limitations waiver.)~~

~~(3) Refund/credit procedures. Refunds are initiated in the following ways:~~

~~(a) Departmental review. When the department audits or examines the taxpayer's records and determines the taxpayer has overpaid its taxes, penalties, or interest, the department will issue a refund or a credit, at the taxpayer's option. When overpayments are discovered by the department within the statute of limitations, the taxpayer does not need to file a petition or request for a refund or credit.~~

~~(b) Taxpayer request. When a taxpayer discovers that it has overpaid taxes, penalties, or interest, it may file an amended return or a petition for refund or credit with the department. The petition or amended tax return must be submitted within the statute of limitations. Refund or credit requests should generally be made to the division of the department to which payment of the tax, penalty, or interest was originally made. The amended tax returns or petitions are subject to future verification or examination of the taxpayer's records. If it is later determined that the refund or credit exceeded the amount properly due the taxpayer, an assessment may be issued to recover the excess amount, provided the assessment is made within four years of the close of the tax year in which the~~

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~~taxes were due or prior to the expiration of a statute of limitations waiver. The following are examples of refund or credit requests:~~

~~(i) A taxpayer discovers in January 1992 that the June 1991 combined excise tax return was prepared using incorrect figures which overstated its sales resulting in an overpayment of tax. The taxpayer files an amended June 1991 tax return with the department's taxpayer account administration division. The department treats the taxpayer's amended June 1991 tax return as a petition for refund or credit of the amounts overpaid during that tax period and may take whatever action it considers appropriate under the circumstances to verify the overpayment.~~

~~(ii) A customer of a seller pays retail sales tax on a transaction which the customer later believes was not taxable. The customer should request a refund or credit directly from the seller from whom the purchase was made. If the seller determines the tax was not due and issues a refund or credit to the customer, the seller may request a refund or credit from the department. It is generally to the advantage of a consumer to seek a refund directly from the seller for retail sales tax believed to have been paid in error. This is because the seller has the source records to know if retail sales tax was collected on the original sale, knows the customer, knows the circumstances surrounding the original sale, is aware of any disputes between itself and the customer concerning the product, may already be aware of the circumstances as to why a refund of sales tax is appropriate such as the return of the merchandise. When in doubt as to whether sales tax should be refunded, a seller may contact the department and request advice. However, in certain situations, upon presentation of acceptable proof of payment of retail sales tax, the department will consider making refunds of retail sales tax directly to consumers. These situations are as follows:~~

~~(A) The seller is no longer engaged in business.~~

~~(B) The seller has moved and the consumer can not locate the seller.~~

~~(C) The seller is insolvent and is financially unable to make the refund.~~

~~(D) The consumer has attempted to obtain a refund from the seller and can document that the seller refuses to refund the retail sales tax. However, the department will not consider making refunds directly to consumers when the law leaves it at the discretion of the seller to collect the tax. See, for example, RCW 82.08.0273.~~

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~~(iii) The department completes an audit of the taxpayer's records relating to taxes reported on combined excise tax returns and an assessment is issued. After the assessment is paid, but within the statute of limitations for refund or credit, the taxpayer locates additional records which would have reduced the tax, penalties, or interest liability if these records had been available in the audit. The taxpayer contacts the department's audit division, requests that a reexamination of the appropriate records be performed, and files a petition for a refund or credit of overpaid amounts. The statute of limitations will be determined based on the date the assessment was paid for an adjustment of taxes, penalties, or interest assessed in the audit. For taxes, penalties, or interest paid through the filing of combined excise tax returns by the taxpayer, the statute of limitations will be based on the date the amounts were paid without regard to when the audit was completed or the assessment was issued.~~

~~(c) Taxpayer appeal. If the taxpayer believes that the tax, penalties, or interest overpayment is the result of a difference of legal opinion with the department as to the taxability of a transaction, the application of penalties or the inclusion of interest, the taxpayer may appeal to the department as provided in WAC 458-20-100 or directly to Thurston County superior court.~~

~~(d) Court decision. Refunds or credits will be made by the department as required by decisions of any court of competent jurisdiction when the decision of the court is not being appealed.~~

~~(i) In the case of court actions regarding refund or credit of retail sales taxes, the department will not require that consumers obtain a refund of retail sales tax directly from the seller if it would be unreasonable and an undue burden on the person seeking the refund to obtain the refund from the seller. In this case the department may make the refunds directly to the claimant and may use the public media to attempt to notify all persons who may be entitled to refunds or credits.~~

~~(ii) Forms for applications for refunds for these situations will be available either by mail or at the department's offices and the claimant will need to file an application for refund. The application will request the appropriate information needed to identify the claimant, item purchased, amount of sales tax to be refunded, and the seller. The department may at its discretion request additional documentation which the claimant could reasonably be expected to retain, based on the particular circumstances and value of the transaction. Such refund requests shall be approved or denied~~

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~~within thirty days after all documentation has been submitted by the claimant and legal questions have been resolved. If approved for refund, such refunds shall be made within sixty days after all documentation has been submitted.~~

~~(4) **Prompt refunds.** Taxpayers may expect refund requests to be processed promptly by the department. Refunds can generally be processed faster if the taxpayer provides the following information at the time a refund application is made:~~

~~(a) The taxpayer should include its registration number on all documents.~~

~~(b) The taxpayer should include the telephone number and name of the person the department should contact in case the department needs additional information or has questions.~~

~~(c) The taxpayer should include a detailed description or explanation of the claimed overpayment.~~

~~(d) Amended tax returns or worksheets should be attached to the refund or credit application and clearly identify the tax reporting periods involved.~~

~~(e) If the refund or credit request involves a situation where a seller has refunded retail sales tax to a customer and the seller is now seeking a refund or credit of the tax from the department, proof of refund to the customer should be attached.~~

~~(f) Generally, refund or credit requests require verification by the department through a review of specific taxpayer records which have a bearing on the refund or credit request. If the refund or credit request relates to a year for which the statute of limitations will expire within a short period, the department may be able to more promptly issue a refund by delaying the verification process until it is more convenient to the taxpayer and/or the department if the taxpayer will execute a statute of limitations waiver.~~

~~(5) **Interest on refunds or credits.** Interest will be allowed on credits or refunds.~~

~~(a) Interest is paid at the rate of three percent per annum for refunds and credits of taxes or penalties which were paid by the taxpayer prior to January 1, 1992.~~

~~(b) For amounts overpaid by a taxpayer after December 31, 1991, the rate of interest on refunds and credits is the average of the federal short term rate as defined in 26 U.S.C. Sec. 1274(d) plus one percentage point. The rate will be adjusted on the first day of January of each year by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April, July, and October of the immediately preceding calendar year as published by the United States Secretary of Treasury.~~

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~~(c) The department will include interest on credit notices with the interest computed to the date the taxpayer could reasonably be expected to use the credit notice, generally the due date of the next tax return.~~

~~(d) If a taxpayer requests that a credit notice be converted to a refund, interest will be recomputed to the date the refund (warrant) is issued, but not to exceed the interest which would have been granted through the credit notice.~~

~~(6) **Offsetting overpayments against deficiencies.** The department may apply overpayments against existing deficiencies/assessments for the same legal entity. However, a potential deficiency which is yet to be determined will not be reason to delay the processing of an overpayment where an overpayment has been conclusively determined. The following examples illustrate the use of offsets:~~

~~(a) The taxpayer's records are audited for the period 1988 through 1991. The audit disclosed underpayments in 1989 and overpayments in 1991. The department will apply the overpayments in 1991 to the deficiencies in 1989. The resulting amount will indicate whether a refund or credit is owed the taxpayer or whether the taxpayer owes additional amounts.~~

~~(b) The department has determined that the taxpayer has overpaid its real estate excise tax in 1991. The department believes that the taxpayer may owe additional B&O taxes, but this has yet to be established. The department will not delay the processing of the refund of the real estate excise tax while it proceeds with scheduling and performing of an audit for the B&O taxes.~~

~~(c) The department simultaneously performed a timber tax audit and a B&O tax audit of a taxpayer. The department determined that the taxpayer underpaid its B&O tax and overpaid its timber tax. Separate assessments were issued on the same date, one showing additional taxes due and the other overpayments. The department may offset the overpayment against the tax deficiency assessment since both the underpayment and overpayment have been established. This rule explains the procedures relating to refunds or credits for the overpayment of taxes, penalties, or interest. It describes the statutory time limits for refunds and the interest rates that apply to those refunds.~~

References to a "refund application" in this rule also include a request for a credit against future tax liability instead of a refund to the taxpayer.

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Examples provided in this rule should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) What are the time limits for a tax refund or credit?

(a) Time limits. No refund or credit may be made for taxes, penalties, or interest paid more than four years before the beginning of the calendar year in which a refund application is made or examination of records by the department is completed. See RCW 82.32.060.

For example, a refund or credit may be granted for any overpayment made in a shaded year in the following chart.

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Year 6</u>
					<u>Refund application is filed no later than December 31st</u>

(b) Relation back to date paid. Because the time limits relate to the date the taxes, penalties, or interest is paid, a refund application can be timely even though the payment concerned liabilities for a tax year normally outside the time limits. For example, Taxpayer P owes \$1,000 in B&O tax for activity undertaken in December, 2000. In January, 2001, Taxpayer P makes an arithmetic error and submits a payment of \$1,500 with its December, 2000 tax return. In December, 2005, Taxpayer P requests a refund of \$500 for the overpayment of taxes for the December, 2000 period. This request is timely, even though it relates to a period (December 2000) more than four years before the beginning of the calendar year in which the refund application is made. It is timely because the overpayment occurred within the time limits, even though the payment concerned tax liabilities incurred outside the time limits.

Some fact situations can become quite complicated in this area. For example, Taxpayer P pays B&O taxes in Years 1 through 4. The department subsequently conducts an audit of Taxpayer P that includes Years 1-4. The audit is completed in year 5. As a result of the audit, the department issues an assessment in Year 5 for \$50,000 in additional retail sales taxes that were due from Years 1-4. Taxpayer P pays the assessment in full in Year 6. In year 10, Taxpayer P files an application requesting a refund of B&O taxes. Taxpayer P's application is timely because it relates to a payment (payment of the assessment in Year 6) made no more than four years before the year in which the application is filed.

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It does not matter that the taxes relate to years outside the time limits; the actual payment occurred within four years before the refund application. Nor does it matter that the refund is based on an overpayment of B&O taxes while the assessment involved retail sales taxes, because both taxes relate to the same tax years. However, the amount of any refund is limited to \$50,000 - the amount of the payment that occurred within the time limits.

Assume the same facts as described above. When the department reviews Taxpayer P's refund application, it determines that the refund request is valid. After reviewing the new information, however, the department also determines that Taxpayer P should have paid \$20,000 in additional B&O taxes during Years 1-4. Because Taxpayer P paid \$30,000 more than the amount properly due (\$50,000 overpayment less \$20,000 underpayment), the amount of the refund will be \$30,000.

(c) **Waiver.** Under RCW 82.32.050 or 82.32.100, a taxpayer may agree to waive the time limits and extend the time for the assessment of taxes, penalties and interest. If the taxpayer executes such a waiver, the time limits for a refund or credit are extended for the same period. Refer to WAC 458-20-230 (Statutory limitations on assessments) for the circumstances under which the department may ask a taxpayer to execute a waiver.

(3) **How do I get a refund or credit?**

(a) **Departmental review.** If the department audits or examines the taxpayer's records and determines the taxpayer has overpaid taxes, penalties, or interest, the department will issue a refund or a credit, at the taxpayer's option. The taxpayer does not need to apply for a refund.

(b) **Taxpayer application.**

(i) If a taxpayer discovers that it has overpaid taxes, penalties, or interest, it may apply for a refund or credit. Refund application forms are available from the following sources:

- The department's Internet website at <http://dor.wa.gov>
- By facsimile by calling Fast Fax at (360) 705-6705 or (800) 647-7706 (using menu options)
- By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478.

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(ii) A taxpayer must submit a complete refund application within the time limits described in subsection (2). An application is complete when it specifically identifies the basis for the refund or credit and contains sufficient documentation to support the claim for refund or credit. No basis for a refund or credit may be considered except those specifically identified in the application; however, an application may be amended at any time before the time limits in subsection (2) expire. Taxpayers are encouraged to use the department's refund application form to ensure that all necessary information is provided in a timely manner.

(iii) Taxpayers may expect the department to respond to refund applications promptly. If the department notifies the taxpayer that additional documentation is required, the taxpayer must provide the necessary supporting documentation within 30 days after the notice is sent. If the department fails to receive the necessary documentation within 30 days, the application is automatically denied. In the notice sent to the taxpayer, the department must state the deadline for providing the necessary supporting documentation and notify the taxpayer that the application will be automatically denied if the documentation is not received within this period. Any application automatically denied for lack of supporting documentation may be refiled at any time before the time limits in subsection (2) expire.

(iv) The department, in its discretion, may extend the 30-day period for providing supporting documentation. The department may extend the 30-day period on its own motion or at the Taxpayer's request.

(v) The following examples illustrate the refund application process.

(A) A taxpayer discovers in January 2005 that its June 2004 excise tax return was prepared using incorrect figures that overstated its sales, resulting in an overpayment of tax. The taxpayer files an amended June 2004 tax return with the department's taxpayer account administration division. The department will treat the taxpayer's amended June 2004 tax return as a request for a refund or credit of the amounts overpaid during that tax period. The taxpayer must specifically identify the basis for the refund or credit and provide sufficient documentation to support the claim for refund or credit. The taxpayer may satisfy this obligation by submitting a completed application form with its amended return or providing the necessary information by other means.

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(B) On December 31, 2005, a taxpayer files an amended return for the 2001 calendar year. The return includes changed figures indicating that an overpayment occurred, but does not provide any supporting documentation. No written waiver of the time limits for this time period exists. The department sends a letter notifying the taxpayer that the taxpayer's application is not complete and supporting documentation must be provided within 30 days or the application will be automatically denied and cannot be refiled after the time limits expire. If the taxpayer does not provide the necessary documentation by the stated date, the claim is automatically denied and cannot be resubmitted as it is now past the time limits of the statute.

(C) Taxpayer submits a refund application on December 31, 2004, claiming that taxpayer overpaid use tax in 2000 on certain machinery & equipment obtained by the taxpayer at that time. No supporting documentation is provided with the application and no written waiver of the time limits for this time period exists. The department sends a letter notifying the taxpayer that the taxpayer's application is not complete and supporting documentation must be provided within 30 days or the application will be automatically denied and cannot be refiled after the time limits expire. The taxpayer does not respond by the stated date. The claim is automatically denied and cannot be resubmitted as it is now past the time limits of the statute.

(D) Assume the same facts as in (C) above, except that the Taxpayer submits sufficient supporting documentation within 30 days after the department sends the letter. The Taxpayer's application is considered timely, notwithstanding that it was not complete when the time limits expired, as long as the Taxpayer provides the supporting documentation within the 30-day period.

(E) Assume the same facts as in (C) above, except that before the 30-day period expires, the Taxpayer requests an additional 15 days in which to respond, explaining why the documentation will require the additional time to assemble. The department agrees to the extended deadline. If Taxpayer submits the requested information within the resulting 45-day period, the application is considered timely.

(F) Assume the same facts as in (C) above, except that the Taxpayer submits supporting documentation within 30 days. The Department reviews the supporting documentation and finds that it is still insufficient. The Department, in its discretion, may extend the deadline and request additional documentation from the Taxpayer or may deny the refund claim as untimely.

(4) **Can I get a refund of retail sales tax paid in error?**

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(a) Refund from seller. If a customer pays retail sales tax on a transaction that the customer later believes was not taxable, the customer should request a refund or credit directly from the seller from whom the purchase was made. If the seller determines the tax was not due and issues a refund or credit to the customer, the seller may seek its own refund from the department. It is better for a customer to seek a retail sales tax refund directly from the seller. This is because the seller has the records to know if retail sales tax was collected on the original sale, knows the customer, knows the circumstances surrounding the original sale, is aware of any disputes between itself and the customer concerning the product, and may already be aware of the circumstances as to why a refund of sales tax is appropriate. If a seller questions whether he or she should refund sales tax to a customer, the seller may request advice from the department's telephone information center at 1-800-647-7706.

(b) Refund from department. However, in certain situations where the customer has not received a refund from the seller, the department will refund retail sales tax directly to a customer. The customer must file a complete refund application as described in subsection (3)(b) and either a seller's affidavit or a claimant/consumer affidavit.

(i) If the customer is able to obtain a waiver from the seller of the seller's right to claim the refund, the customer should file a seller's affidavit with the refund application. A seller's affidavit documents that: (A) retail sales tax was collected and paid to the department on the purchase for which a refund is sought; (B) the seller has not refunded the retail sales tax to the buyer or claimed a refund from the department; and (C) the seller will not seek a refund of the sales tax from the department.

(ii) If the seller no longer exists, the seller refuses to sign the affidavit, or the buyer is unable to locate the seller, the customer should file a claimant/consumer affidavit with the refund application. The claimant/consumer affidavit explains why the claimant is unable to obtain a seller's affidavit and provides information about the seller.

(iii) Seller's affidavit and claimant/consumer affidavit forms are available from the following sources:

- The department's Internet website at <http://dor.wa.gov>
- By facsimile by calling Fast Fax at (360) 705-6705 or (800) 647-7706 (using menu options)
- By writing to:

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(iv) The department will not make refunds directly to customers for sales where the seller had discretion to collect the tax. For example, RCW 82.08.0273 permits -- but does not require -- a retailer to make sales to certain nonresidents without collecting retail sales tax. If a retailer opts to charge sales tax on a purchase made by a qualifying nonresident, the nonresident purchaser may not seek a refund from the department.

(5) **Is my refund final?** The department may review a refund or credit provided on the basis of a taxpayer application. If the department subsequently determines that the refund or credit exceeded the amount properly due the taxpayer, the department may issue an assessment to recover the excess amount. This assessment must be made within the time limits of RCW 82.32.050. See WAC 458-20-230, Statutory limitations on assessments, for more information on the time limits for imposing assessments.

(6) **Refunds made as a result of a court decision.** The department will grant refunds or credits required by a court decision, if the decision is not being appealed.

If the court action requires the refund or credit of retail sales taxes, the department will not require that consumers attempt to obtain a refund directly from the seller if it would be unreasonable and an undue burden on the consumer. In such a case, the department may refund the retail sales tax directly to the claimant and may use the public media to notify persons that they may be entitled to refunds or credits. The department will make available special refund application forms that claimants must use for these situations. The application will request the appropriate information needed to identify the claimant, item purchased, amount of sales tax to be refunded, and the seller. The department may, at its discretion, request additional documentation that the claimant could reasonably be expected to retain, based on the particular circumstances and value of the transaction. The department will approve or deny such refund requests within thirty days after the claimant has submitted all documentation and legal questions have been resolved. If approved for refund, the department will provide the refund within sixty days after all documentation has been submitted.

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(7) **What interest is due on my refund?** Interest is due on a refund or credit granted to a taxpayer as provided in this subsection.

(a) **Rate for overpayments made between 1992 and 1998.** For amounts overpaid by a taxpayer between January 31, 1991 and December 31, 1998, the rate of interest on refunds and credits is:

(i) Computed the same way as the rate provided under subsection (7)(b) minus one percent, for interest allowed through December 31, 1998; and

(ii) Computed the same way as the rate provided under subsection (7)(b), for interest allowed after December 31, 1998.

(b) **Rate for overpayments after 1998.** For amounts overpaid by a taxpayer after December 31, 1998, the rate of interest on refunds and credits is the average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate is adjusted on the first day of January of each year by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April and July of the immediately preceding calendar year and October of the previous preceding year, as published by the United States Secretary of Treasury.

(c) **Start date for the calculation of interest.** If the taxpayer made all overpayments for each calendar year and all reporting periods ending with the final month included in a credit notice or refund on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund, interest is computed from either:

(i) January 31st following each calendar year included in a notice or refund; or

(ii) The last day of the month following the final month included in a notice or refund.

If the taxpayer did not make all overpayments for each calendar year and all reporting periods ending with the final month included in the notice or refund, interest is computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(d) **Calculation of interest on credits.** The department will include interest on credit notices with the interest

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computed to the date the taxpayer could reasonably be expected to use the credit notice, generally the due date of the next tax return. If a taxpayer requests that a credit notice be converted to a refund, interest is recomputed to the date the refund (warrant) is issued, but not to exceed the interest that would have been granted through the credit notice.

(8) Can the department apply my refund against other taxes I owe? The department may apply overpayments against existing deficiencies/assessments for the same legal entity. However, the existence of a potential deficiency that has not yet been determined may not delay the refund of an overpayment that has been conclusively determined. The following examples illustrate the application of overpayments against existing deficiencies.

(a) The taxpayer's records are audited for the period Year 1 through Year 4. The audit disclosed underpayments in Year 2 and overpayments in Year 4. The department will apply the overpayments in Year 4 to the deficiencies in Year 2. The resulting amount will indicate whether a refund or credit is owed the taxpayer or whether the taxpayer owes additional tax.

(b) The department has determined that the taxpayer has overpaid its real estate excise tax. The department believes that the taxpayer may owe additional B&O taxes, but this has yet to be established. The department will not delay the refund of the real estate excise tax while it schedules and performs an audit for the B&O taxes.

(c) The department simultaneously performed a timber tax audit and a B&O tax audit of a taxpayer. The audit disclosed underpayments of B&O tax and overpayments of timber tax. Separate assessments were issued on the same date, one showing additional taxes due and the other overpayments. The department may apply the overpayment against the tax deficiency assessment since both the underpayment and overpayment have been established.

(9) How do I appeal the department's decision? If the taxpayer believes that the tax, penalties, or interest overpayment results from a difference of legal opinion with the department as to the taxability of a transaction; the application of penalties; or the inclusion of interest, the taxpayer may appeal:

(a) To the department as provided in WAC 458-20-100, Appeals, small claims and settlements; or

(b) Directly to Thurston County superior court.

(10) When is a mailed document "received" for purposes of this rule? The postmark date of a mailed application or other document is conclusive evidence of the date that the material was received by the department.