



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 458-20-10001 (Rule 101) *Adjudicative proceedings--Brief adjudicative proceedings--Certificate of registration (tax registration endorsement) revocation.* Rule 10001 explains the Department's adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act, for actions involving revocation of a certificate of registration (tax registration endorsement).

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: June 20, 2011

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The Department proposes to update the telephone phone and fax numbers provided in this rule as the means by which a person may file a petition for review of an initial order. This petition must be made within 21 days after service of the initial order is received by the person.

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: The telephone and fax numbers need to be current so that taxpayers do not inadvertently miss the 21-day filing requirement.

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

Statute being implemented: RCW 34.05.482 through 34.05.494, except for 34.05.491(5) and 82.32.215

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 20, 2011

TIME: 9:27 AM

WSR 11-09-083

Date
April 20, 2011

Name
Alan R. Lynn

Signature

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Name of proponent: (person or organization) The 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 11-04-056, filed 1/26/11, effective 2/26/11)

WAC 458-20-10001 Adjudicative proceedings--Brief adjudicative proceedings--Certificate of registration (tax registration endorsement) revocation. (1) Introduction. The department of revenue (department) has adopted the procedure for brief adjudicative proceedings provided in RCW 34.05.482 through 34.05.494, except for 34.05.491(5), for actions involving revocation of a certificate of registration (tax registration endorsement) pursuant to RCW 82.32.215. This section explains the procedure for these brief adjudicative proceedings. This section does not apply to the following:

✎ Adjudicative proceedings under WAC 458-20-10002, which addresses converted brief adjudicative proceedings and formal adjudicative proceedings relating to log export enforcements;

✎ Nonadjudicative proceedings under RCW 82.32.160 and 82.32.170, and WAC 458-20-100;

✎ Enforcement proceedings under RCW 82.24.550 and 82.26.220; and

✎ Brief adjudicative proceedings for matters relating to the revocation of reseller permits under WAC 458-20-102.

The department has not adopted RCW 34.05.491(5), which provides that a request for administrative review is deemed to have been denied if the agency does not make a disposition of the matter within twenty days after the request is submitted.

(2) **Brief adjudicative proceedings - procedure.** The following procedure applies to the department's brief adjudicative proceedings for actions involving revocation of a certificate of registration, unless the matter is converted to a formal proceeding as provided in subsection (8) of this section.

(a) **Notice.** The department will set the time and place of the hearing. Written notice shall be served upon the taxpayer(s) at least seven days before the date of the hearing. Service is to be made pursuant to subsection (5)(a) of this section. The notice must include:

(i) The names and addresses of each taxpayer to whom the proceedings apply and, if known, the names and addresses of the taxpayer's representative(s), if any;

(ii) The mailing address and the telephone number of the person or office designated to represent the department in the proceeding;

(iii) The official file or other reference number and the

name of the proceeding;

(iv) The name, official title, mailing address and telephone number of the presiding officer, if known;

(v) A statement of the time, place and nature of the proceeding;

(vi) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(vii) A reference to the particular sections of the statutes and/or rules involved;

(viii) A short and plain statement of the matters asserted by the department against the taxpayer and the potential action to be taken; and

(ix) A statement that if the taxpayer fails to attend or participate in a hearing, the hearing can proceed and that adverse action may be taken against the taxpayer.

(x) When the department is notified or otherwise made aware that a limited-English-speaking person is a person to whom the proceedings apply, all notices, including the notice of hearing, continuance and dismissal, must either be in the primary language of that person or must include a notice in the primary language of the person which describes the significance of the notice and how the person may receive assistance in understanding and responding to the notice. In addition, the notice must state that if a party or witness needs an interpreter, a qualified interpreter will be appointed at no cost to the party or witness. The notice must include a form to be returned to the department to indicate whether such person, or a witness, needs an interpreter and to identify the primary language or hearing impaired status of the person.

(b) **Appearance and practice at a brief adjudicative proceeding.** The right to practice before the department in a brief adjudicative proceeding is limited to:

(i) Persons who are natural persons representing themselves;

(ii) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(iii) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(iv) Public officials in their official capacity;

(v) Certified public accountants entitled to practice in the state of Washington;

(vi) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(vii) Partners, joint venturers or trustees representing

their respective partnerships, joint ventures, or trusts; and

(viii) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(c) **Hearings by telephone.** With the concurrence of the presiding officer and all persons involved in the proceedings, a hearing may be conducted telephonically. The conversation will be recorded and will be made a part of the record of the hearing.

(d) **Presiding officer.**

(i) The presiding officer must be an assistant director of the department's compliance division, or such other person as the director of the department may designate.

(ii) The presiding officer shall conduct the proceeding in a just and fair manner and before taking action, the presiding officer shall provide the taxpayer an opportunity to be informed of the department's position on the pending matter.

(iii) The presiding officer has all authority granted under chapter 34.05 RCW.

(e) **Entry of orders.**

(i) When the presiding officer issues a decision, the presiding officer shall briefly state the basis and legal authority for the decision. Within ten days of issuing the decision, the presiding officer shall serve upon the parties, the initial order and information regarding any departmental administrative review that may be available.

(ii) The decision and the brief written statement of the basis and legal authority for it is an initial order. The initial order will become a final order if no review is requested as provided in subsection (3) of this section.

(3) **Review of initial orders from brief adjudicative proceeding.** The following procedure applies to the department's review of a brief adjudicative proceeding conducted pursuant to subsection (2) of this section, unless the matter is converted to a formal proceeding as provided in subsection (8) of this section.

(a) **Request for review of the initial order.** A party to a brief adjudicative proceeding under subsection (2) of this section may request review of the initial order by filing a written petition for review, or making an oral request for review, with the department's appeals division within twenty-one days after service of the initial order is received or deemed to be received by the party. The address and telephone number of the appeals division is:

Appeals Division
Department of Revenue

P.O. Box 47460
Olympia, Washington 98504-7460
Telephone Number - 360-((570-6140)) 534-1335
Fax - 360-((664-2729)) 534-1340

(i) When a petition of review of the initial order is made, the taxpayer must submit to the appeals division at the time the petition is filed any evidence or written material relevant to the matter that the party wishes the reviewing officer to consider. If the petition for review is made by oral request, the taxpayer must also submit any evidence or written material to the appeals division on the same day that the oral request is made.

(ii) The department may, on its own motion, conduct an administrative review of the initial order as provided for in RCW 34.05.491.

(b) **Reviewing officer.** The appeals division shall appoint a reviewing officer who shall make such determination as may appear to be just and lawful. The reviewing officer shall provide the taxpayer and the department an opportunity to explain their positions on the matter and shall make any inquiries necessary to ascertain whether the proceeding should be converted to a formal adjudicative proceeding. The review by the appeals division shall be governed by the brief adjudicative procedures of chapter 34.05 RCW and this section; or WAC 458-20-1002 in the event a brief adjudicative hearing is converted to a formal adjudicative proceeding, and not by the processes and procedures of WAC 458-20-100. The reviewing officer shall have the authority of a presiding officer as provided in this section.

(c) **Record review.** Review of an initial order is limited to the evidence considered by the presiding officer, the initial order, the recording of the initial proceeding, and any records and written evidence submitted by the parties to the reviewing officer. However, the agency record need not constitute the exclusive basis for the reviewing officer's decision.

(i) The reviewing officer may request additional evidence from either party at any time during its review of the initial order. Once the reviewing officer requests evidence from a party, that party has seven days after service of the request to supply the evidence to the reviewing officer, unless the reviewing officer, in his or her discretion, allows additional time to submit the evidence.

(ii) In addition to requesting additional evidence, the reviewing officer may review any records of the department necessary to confirm that the tax warrant upon which the initial order of revocation was based remains unpaid. In the event that the tax warrant has been satisfied subsequent to the entry of the initial order, but before the issuance of the final order,

the reviewing officer shall reinstate the taxpayer's certificate of registration.

(iii) If the reviewing officer determines that oral testimony is needed, he/she may schedule a time for both parties to present oral testimony. Notice of the oral testimony must be given to the parties in the same manner as the notice provided in subsection (2)(a) of this section. Oral statements before the reviewing officer shall be by telephone, unless specifically scheduled by the reviewing officer in his or her discretion to be in person.

(iv) The department will have an opportunity to respond to the taxpayer's request for review and may also submit any other relevant evidence and written material to the reviewing officer. The department must submit its material within seven days of service of the material submitted by the party requesting review of the initial order. The department must also serve a copy of all evidence and written material provided to the reviewing officer to the taxpayer requesting review according to subsection (5) of this section. Proof of service is required under subsection (5)(h) of this section when the department submits material to the taxpayer under this subsection.

(d) **Failure to participate.** If a party requesting review of an initial order under this subsection fails to participate in the proceeding or fails to provide documentation to the reviewing officer upon his or her request, the reviewing officer may uphold the initial order based upon the record.

(e) **The final orders.**

(i) The reviewing officer may issue two final orders. The first final order (the "final order") must include the decision of the reviewing officer and a brief statement of the basis and legal authority for the decision. This order may contain confidential taxpayer information under RCW 82.32.330, and, therefore, cannot be disclosed by the department, except to the taxpayer.

(ii) The reviewing officer may issue a second final order (the "posting order"). The posting order will be issued when the reviewing officer has ordered the revocation of the tax registration certificate. The posting order will state what certificate of registration is being revoked, the listing of the tax warrants involved, and what jurisdictions the tax warrants were filed in.

(iii) Unless specifically indicated otherwise, the term "final order" as used throughout this section shall refer to both the final order and the posting order.

(iv) The parties can expect that, absent continuances, the final order and posting order will be entered within twenty days of the petition for review.

(f) **Reconsideration.** Unless otherwise provided in the reviewing officer's order, the reviewing officer's order

represents the final position of the department. A reconsideration of the reviewing officer's order may be sought only if the right to a reconsideration is contained in the final order.

(g) **Judicial review.** Judicial review of the final order of the department is available under Part V, chapter 34.05 RCW. However, judicial review may be available only if a review of the initial decision has been requested under this subsection and all other administrative remedies have been exhausted. See RCW 34.05.534.

(4) **Rules of evidence - record of the proceeding.**

(a) Evidence is admissible if in the judgment of the presiding or reviewing officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely on in conducting their affairs. The presiding and reviewing officer should apply RCW 34.05.452 when ruling on evidentiary issues in the proceeding.

(b) All oral testimony must be recorded manually, electronically, or by another type of recording device. The agency record must consist of the documents regarding the matters that were considered or prepared by the presiding officer, or by the reviewing officer in any review, and the recording of the hearing. These records must be maintained by the department as its official record.

(5) **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:

- ✍ In person;
- ✍ By first-class, registered, or certified mail;
- ✍ By fax and same-day mailing of copies;
- ✍ By commercial parcel delivery company; or
- ✍ 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 (3) of this section.

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

✍ An acknowledgment of service;

✍ A certification, 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.

(6) **Interpreters.** When a party or witness requires an interpreter, chapters 2.42 and 2.43 RCW will apply. When those statutes are silent on an issue before the presiding or reviewing officer, the provisions regarding interpreters in WAC 10-08-150 apply.

(7) **Informal settlements.** The department encourages informal settlement of issues in proceedings under its jurisdiction. The presiding or reviewing officer may not order settlement of the proceedings. Settlement is at the discretion of the parties. Settlement of a proceeding may be concluded by:

(a) A stipulation signed by the taxpayer and the department, or their respective representatives, and/or recited into the record of the proceedings. If the stipulation provides for a payment agreement, the presiding or reviewing officer may order a continuance of the proceedings during the period of repayment and dismissal when all payments have been made. An order providing for the reconvening of the proceedings if the payment agreement is breached is allowed so long as the proceeding is not held less than seven days after notice of the reconvening is provided. Except as provided in this subsection, the presiding or reviewing officer must enter an order in conformity with the terms of the stipulation; or

(b) The entry of an order dismissing the proceedings if the department withdraws the revocation of the certificate of registration.

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

(a) The presiding or reviewing officer may convert the proceeding if the officer finds that use of the brief adjudicative proceeding:

✍ Violates any provision of law,

✍ The protection of the public interest requires the agency

to give notice to and an opportunity to participate to persons other than the parties, or

✍ The issues and interests involved warrant the use of procedures governed by RCW 34.05.413 through 34.05.476 or 34.05.479.

(b) WAC 458-20-10002 applies to formal proceedings. In proceedings to revoke a taxpayer's certificate of registration, the converted proceeding is itself the independent administrative review by the department of revenue as provided in RCW 82.32A.020(6).

(9) **Computation of time.** In computing any period of time prescribed by this section, the day of the act or event after which the designated period is to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, or a state legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or state legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and holidays will be excluded in the computation.

(10) **Posting of a final order of revoking a tax registration endorsement - revocation not a substitute for other collection methods or processes available to the department.** When an order revoking a tax registration endorsement is a final order of the department, the department shall post a copy of the posting order in a conspicuous place at the main entrance to the taxpayer's place of business and it must remain posted until such time as the warrant amount has been paid.

(a) It is unlawful to engage in business after the revocation of a tax registration endorsement. A person engaging in the business after a revocation may be subject to criminal sanctions as provided in RCW 82.32.290. RCW 82.32.290(2) provides that a person violating the prohibition against such engaging in business is guilty of a Class C felony in accordance with chapter 9A.20 RCW.

(b) Any certificate of registration revoked shall not be reinstated, nor a new certificate of registration issued until:

(i) The amount due on the warrant has been paid, or provisions for payment satisfactory to the department of revenue have been entered; and

(ii) The taxpayer has deposited with the department of revenue as security for taxes, increases and penalties due or which may become due under such terms and conditions as the department of revenue may require, but the amount of the security may not be greater than one-half the estimated average annual tax liability of the taxpayer.

(c) Revocation proceedings will not substitute for, or in any way curtail, other collection methods or processes available to the department.