

PRELIMINARY DRAFT - FOR DISCUSSION PURPOSES ONLY

New 458-57-XXX Escheat estates and absentee distributee (missing heir) property. (1)

Introduction. This rule explains the notification requirements to the department and other procedural information for potential escheat estates and the procedures for reporting absentee distributee property.

(2) **Escheat estates.** (a) Escheat of an estate means that a person dies, whether a resident of this state or not, leaving property subject to the jurisdiction of this state without being survived by any person entitled to the property under RCW 11.04.015 (Descent and Distribution) and the property reverts to the state.

(b) **Notification to the department of a potential escheat estate.** The department must be promptly notified in writing of the potential escheat on revenue form 85 0030-1 Notice of Escheat Property when a decedent dies without a will and has no known intestate heirs. This form can be found on the department's website at <http://dor.wa.gov/> under the tab titled Forms. The form can also be obtained by calling the estate tax section at (360) 570-3265.

(c) **Department may elect to serve as personal representative.** (i) The department may elect to serve as the personal representative of an escheat estate under RCW 11.28.120. The department will review the submitted Notice of Escheat Property and then elect or decline to serve as personal representative. A copy of this election is mailed to the person reporting the escheat property.

(ii) **Written notice to the department of proceedings.** If the department declines to serve as personal representative, the appointed personal representative must serve the department with written notice at least twenty days prior to any hearing on proceedings involving the valuation or sale of property, on any petition for the allowance of fees, and on all interim reports, final accounts or petitions for the determination of heirship. Failure to comply with the notice provisions of RCW 11.08.170 could result in any orders being voided.

(d) **Oversight of estate when department declines to serve as personal representative - Opposition to nonintervention powers - Review of pleadings and petitions.** The department supervises escheat property during probate. The department has the duty to protect and conserve escheat property for the benefit of the permanent common school fund until the property is forwarded to the state treasurer or the real property is deeded over to the department of natural resources. Because of the duty to protect and conserve escheat property, the department will oppose the granting of nonintervention powers to the personal representative. The department will review all pleadings and petitions to determine the progression of probate and to determine if fees and expenses charged to the estate are appropriate.

(e) **Heirs of escheat estates.** Heirs to an estate may be located after the estate escheats to the state. The personal representative of an escheat estate or a claimed heir must provide the department with all information and documentary evidence available that supports the heir's claim. All supporting documents must be in the English language when submitted to the department. The English translation of any foreign document shall be authenticated as reasonably required by the department.

(i) Under RCW 11.08.240 all claims for escheated property must be made within seven years from the date of issuance of letters testamentary or of administration. The claim is made to the court having original jurisdiction of the estate and a copy served upon the department.

(ii) In all cases where there is a court hearing or the taking of a deposition on the question of a claimed heir, the personal representative shall give the department twenty days written notice of such hearing or matter.

(iii) The personal representative must give the department at least twenty days written

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notice of the hearing on the final account and petition for distribution.

(iv) The department has no statutory authority to pay interest on escheat refunds.

(3) **Absentee distributee (missing heir).** (a) Absentee distributee means any person who is a beneficiary of a will or trust who has not been located. If a personal representative cannot locate a beneficiary of a will or trust the personal representative is required to follow the procedures outlined RCW 11.76.200 - .230.

(b) **Appointment of agent - Bond.** (i) When an estate has been or is about to be distributed by decree of the court to any person who has not been located, the personal representative must petition the court to appoint an agent for the purposes of representing the interests of the absentee distributee and to take possession and charge of the property for the benefit of the absentee person.

(ii) The agent shall make, subscribe, and file an oath for the faithful performance of his or her duties, and shall give a bond to the state, to be approved by the court before the agent receives the property.

(iii) The agent shall hold the property for three years. If the absentee distributee is not found or does not come forward to make a claim, the property must be turned over to the county treasurer. Any property not in the form of cash shall be sold under order of the court and all funds after deducting a reasonable sum for expenses and services of the agent. The expenses and the fees of the agent are fixed by the court.

(c) **County treasurer.** The county treasurer is required to issue a triplicate receipt for the funds, one to be filed with the county auditor, one with the probate court, and one with the department. If the funds remain in the county treasury unclaimed for a period of four years and ninety days, the treasure is required to remit them to the department for deposit in the permanent common school fund.

(d) **Claims made after the time limitation.** After any time limitation prescribed in RCW 11.76.220, .240 or .243 the absentee claimant may notify the department of his or her claim and file in the court which had jurisdiction of the original probate a petition claiming the assets of the estate. Upon proof being made to the court and the determination that the claimant is entitled to the property the assets shall be paid to the claimant without interest upon an appropriation made by the legislature.