



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Revenue

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: WAC 458-20-100 (Rule 100) describes the general guidelines the Department of Revenue uses to conduct informal administrative reviews. Rule 100 is being amended to reflect the change in the physical address of the division that conducts the informal administrative reviews.

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 458-20-100 Informal administrative reviews

Suspended:

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

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 17-03-055 on January 10, 2017.

Describe any changes other than editing from proposed to adopted version:

None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: A preliminary cost-benefit analysis was not prepared.

Date adopted:

March 22, 2017

NAME

Kevin Dixon

SIGNATURE

TITLE

Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 22, 2017

TIME: 1:39 PM

WSR 17-08-002

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	Amended	Repealed
Federal rules or standards:	New	Amended	Repealed
Recently enacted state statutes:	New	Amended	Repealed

The number of sections adopted at the request of a nongovernmental entity:

New	Amended	Repealed
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The number of sections adopted in the agency's own initiative:

New	Amended	1	Repealed
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	Amended	Repealed
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The number of sections adopted using:

Negotiated rule making:	New	Amended	Repealed
Pilot rule making:	New	Amended	Repealed
Other alternative rule making:	New	Amended	Repealed

AMENDATORY SECTION (Amending WSR 16-06-013, filed 2/18/16, effective 4/1/16)

WAC 458-20-100 Informal administrative reviews. (1) **Introduction.** RCW 82.01.060(4) requires that the department "provide by general regulations for an adequate system of departmental review of the actions of the department or of its officers and employees in the assessment or collection of taxes." RCW 82.32.160 allows taxpayers to petition for correction of taxes, interest, or penalties assessed by the department. RCW 82.32.170 allows taxpayers to petition for a determination as to whether a refund request was properly denied. Under authority of these statutes, the department provides an informal, non-adversarial administrative review of these actions. The department will make such determination and resolve matters as may appear to the department to be just and lawful under its statutory authority. The department's administrative review is designed to be an expeditious and less costly means of review as compared to the costs of an independent review by the board of tax appeals (BTA) or a refund action in superior court.

Before requesting review, taxpayers are encouraged to request a supervisor's conference when they disagree with an action proposed by the department. Taxpayers should make their request for the conference with the division of the department that proposes to issue an assessment or take some other action in dispute. Supervisor's conferences can frequently resolve issues prior to the informal administrative review explained in this rule.

(a) **Departmental actions subject to informal administrative review under this rule.** Actions subject to the department's informal administrative review include, but are not limited to:

- (i) An assessment of tax, interest, or penalties;
- (ii) The denial of a refund, credit, or deferral request;
- (iii) The issuance of a balance due notice or a notice of delinquent taxes, including a notice of collection action; and
- (iv) The issuance of an adverse ruling on future liability from the taxpayer information and education (TI&E) section.

(b) **Departmental actions subject to formal administrative appeal.** The informal review provided under this rule should be distinguished from a formal administrative appeal subject to the Administrative Procedure Act (chapter 34.05 RCW). A person may submit a formal administrative appeal of certain actions by the department. Refer to the following rules for information regarding the actions for which the department conducts formal administrative appeal proceedings:

- (i) WAC 458-20-10001 for information regarding an appeal of:
 - A revocation of a certificate of registration (tax registration endorsement) under RCW 82.32.215;
- (ii) WAC 458-20-10002 for information regarding an appeal of:
 - Log export enforcement actions pursuant to chapter 240-15 WAC;or
 - Orders to county officials issued under RCW 84.08.120 and 84.41.120;
- (iii) WAC 458-20-10003 for information regarding an appeal of:
 - A departmental request to the liquor and cannabis board to suspend, not renew, or not issue a spirits license as defined in RCW 66.24.010 (3)(c);
- (iv) WAC 458-20-10004 for information regarding an appeal of the assessment of:

- The one-time business license application fee or annual renewal application fee in RCW 59.30.050 (3)(a);
 - The annual registration assessment fee in RCW 59.30.050 (3)(b);
- or
- The delinquency fee in RCW 59.30.050(4);
 - (v) WAC 458-20-10202 for information regarding an appeal of:
 - Matters relating to the denial or revocation of reseller permits; or
 - (vi) WAC 458-20-273 for information regarding an appeal of:
 - The denial or revocation of a renewable energy system certification; or
 - The denial or revocation of a manufacturer's certification of a solar inverter, solar module, wind generator blade, or stirling converter qualifying as made in Washington state.

(2) **How are informal reviews started?** A taxpayer starts a review of a departmental action by filing a written petition. A petition must be sent to one of the following:

DORARHAdmin@dor.wa.gov

or

Administrative Review and Hearings Division
Washington State Department of Revenue
(~~(1025 Union Avenue S.E., Suite 101)~~) 6400 Linderson Way S.W.
P.O. Box 47460
Olympia, Washington 98504-7460

or

Fax: 360-534-1340

(a) **Information required in a petition.** A form petition is available on the department's web site at <http://dor.wa.gov> or upon request from the administrative review and hearings division. Taxpayers may use the form petition or prepare one of their own. The taxpayer or its authorized representative must sign the petition, which must contain the following information:

(i) The taxpayer's name, address, registration/UBI number, telephone number, fax number, email address, and contact person;

(ii) If represented, the representative's name, address, telephone number, fax number, and email address;

(iii) Identifying information from the assessment notice, balance due notice, or other document related to the action being reviewed;

(iv) The amount of tax, interest, or penalties in controversy, and the time period at issue, however, if, in the case of a denied refund request, the amount of interest or penalties is not known, the amount of the tax in controversy;

(v) The type of review requested (see subsection (4) of this rule);

(vi) Whether the taxpayer requests an in-person hearing in Olympia or Seattle, a telephone hearing, or no hearing; and

(vii) A description of each issue or area of dispute and an explanation why each issue or area of dispute should be resolved as the taxpayer requests. To the extent known or available, a taxpayer should cite applicable statutes, rules, other public guidance issued by the department, and case law that support the taxpayer's position. The taxpayer should also submit with the petition documents supporting the taxpayer's position, including:

- Contracts and invoices previously requested and not provided;
- or
- Documents not previously provided that the taxpayer believes substantiate the taxpayer's claims.

(b) **Incomplete petition.** If a petition does not provide the required information identified in subsection (2)(a) of this rule, the department will notify the taxpayer in writing that the petition is incomplete and not accepted for review. The notice will provide a period of time for the taxpayer to provide the required petition information. If the requested information is timely provided, the petition will be treated as timely filed and accepted for review.

(c) **Authorization required for taxpayer's representative.** If a taxpayer is represented, the taxpayer must have on file with the department a confidential tax information authorization (CTIA) for that representative. Without a CTIA on file, the department cannot share confidential taxpayer information with the representative.

(3) **To be timely, when must a petition be filed or an extension requested?** A taxpayer must file a petition with the department within thirty days after the date the departmental action has occurred.

(a) The department may grant an extension of time to file a petition if the taxpayer's request is made within the thirty-day filing period. Requests for extensions must be in writing. A petition or request for extension is timely if it is postmarked or received within the thirty-day period.

Requests must be in writing to either the email or mailing address noted in subsection (2) of this rule.

(b) The department will not grant an extension of time to file a petition for review of a denied refund that would exceed the time limits in WAC 458-20-229 (Refunds). As explained in WAC 458-20-229, a request for a refund of taxes paid must be filed within four years after the close of the calendar year in which the taxes were paid.

(c) The department will notify taxpayers in writing when a petition is rejected as not timely.

(4) **What are the different types of informal reviews?** The agency conducts four different types of informal reviews.

(a) **Mainstream review.** This is the most common type of review. A review is treated as a mainstream review unless it fits within (b) through (d) of this subsection.

(b) **Small claims review.** When the tax at issue in the review is twenty-five thousand dollars or less and the total amount of the tax plus penalties and interest at issue is fifty thousand dollars or less, the review will normally be assigned as a small claims review, unless the complexity of the issues requires assignment to another category.

The department will issue an abbreviated written determination in a small claims review. This determination is the final action of the department.

(c) **Executive level review.**

(i) If a review involves an issue of first impression (one for which no agency precedent has been established) or an issue that has industry-wide significance or impact, a taxpayer may request that the review be considered at the executive level. The request must specify the reasons why an executive level review is appropriate. The department will grant or deny the request and will notify the taxpayer of that decision in writing. If granted, the director or the director's designee and a tax review officer will conduct an executive level

hearing. The department, on its own initiative, may also choose to consider a review at the executive level.

(ii) Following the executive level hearing, the department will issue a proposed determination, which becomes final thirty days from the date of issuance unless the taxpayer files an objection to the proposed determination within that thirty-day period. Objections must specify mistakes in law or fact contained in the proposed determination, and should also provide legal authority as to why those mistakes necessitate a change to the proposed determination. Unless an extension is granted, objections must be postmarked or received by the department within thirty days from the date the proposed determination was issued. The department will issue the final determination, which may or may not reflect changes based on the objections. Although rare, the tax review officer and the director's designee, in consultation with the director, may grant a second executive level hearing on the objections. The determination in an executive level review is the final action of the department.

(d) **Tax rulings issued by TI&E section.** Review of a tax ruling is limited to the documents and records reviewed by TI&E and any written statements included with the petition. This review is limited to correcting an error that occurred in the course of the tax ruling process. A written determination will be issued following review of all timely submissions without a hearing. The determination is the final decision of the department. It is not eligible for reconsideration and not appealable to the board of tax appeals under RCW 82.03.130 (1)(a) or 82.03.190.

(5) **The review process.** The department will acknowledge receipt of the petition and identify the tax review officer assigned to the review.

(a) **Role and responsibility of tax review officers.** Tax review officers are attorneys trained in the interpretation of the Revenue Act, public guidance issued by the department, and precedents established by prior rulings and court decisions. The department's tax review officers are employed by the department to determine whether the appropriate departmental procedures and interpretations of law have been correctly applied to the issue(s). They are responsible for providing a departmental (not independent) review. This responsibility includes additional research about the taxpayer's activities related to the tax issue under review when necessary.

(b) **Scheduling.** The department will notify the taxpayer or taxpayer's representative of the time and place for the review hearing, if any, and establish timelines for the submission of additional documents and written arguments. Before a submission date has passed, the taxpayer may request an extension, which the tax review officer may grant at the tax review officer's discretion. If a taxpayer fails to comply with a scheduling letter or any extension, the tax review officer may dismiss the petition or decline to consider arguments or documents submitted after the scheduled timelines. A tax review officer may also contact the taxpayer to clarify or narrow issues or request more information as needed for the orderly resolution of the case.

(c) **Taxpayer requests to provide additional materials.** If a taxpayer asks to submit additional documents or written arguments after the deadlines established in the scheduling letter, or any extension thereof, the taxpayer must explain why they could not have been submitted in a timely manner. The tax review officer has the discretion to allow late submissions by the taxpayer. If additional documents or written argument is allowed by the tax review officer after the hear-

ing, they must be submitted within thirty days of the hearing. The tax review officer has the discretion to allow additional time for submitting additional documents or further fact-finding, including scheduling an additional hearing, as necessary in a particular case.

(d) **Informal review hearings.** The hearing is an opportunity to discuss the documents and arguments submitted and to clarify the reasons why the taxpayer believes it is entitled to receive the requested relief. No record is made of the hearing. The hearing is not open to the general public. Any person attending the hearing is not placed under oath. The tax review officer has the discretion to decide the case without a hearing if legal or factual issues are not in dispute, or the taxpayer fails to appear at a scheduled hearing or otherwise fails to respond to inquiries from the department. The taxpayer may appear personally or may be represented by an attorney, accountant, or any other authorized person. All hearings before a tax review officer are conducted informally and in a nonadversarial manner.

(e) **Issuing a determination.** Following the hearing, if any, and review of all materials, the department will issue a determination consistent with the applicable statutes, rules, other public guidance issued by the department, case law, and department precedents. The tax review officer will notify the taxpayer of this decision in writing.

(f) **Additional information or research identified by the department.** The tax review officer may identify additional facts or novel legal arguments not previously communicated to the taxpayer. In this event, the tax review officer will provide the taxpayer with an opportunity to respond.

(g) **Determination is final decision by the department.** The determination is the final decision of the department and is binding upon the taxpayer unless a petition for reconsideration is timely filed by the taxpayer and accepted by the department. All determinations issued by the department, except those issued for a review of a TI&E tax ruling (subsection (4)(d) of this rule), are appealable to the board of tax appeals (BTA) or, alternatively, the Thurston County superior court. See subsections (8) and (9) of this rule for additional information.

(6) **Request for reconsideration.** If a taxpayer believes that an error has been made in a mainstream determination, the taxpayer may, within thirty days of the issuance of the determination, petition in writing for reconsideration of the decision. Only determinations issued from mainstream reviews are subject to reconsideration. The request for reconsideration must specify mistakes in law or fact contained in the determination and should also provide legal authority as to why those mistakes necessitate the reconsideration of the determination. Any new documents and explanations must be included with the petition.

The department may grant or deny the request for reconsideration. If the request is denied, the department will send to the taxpayer written notice of the denial and the reason for the denial. The denial is then the final action of the department. If the request is granted, although rare, the tax review officer may hold a reconsideration hearing or a determination may be issued without a hearing. A reconsideration determination is the final action of the department.

A taxpayer may request an executive level reconsideration when the determination decided an issue of first impression or an issue that has industry-wide impact or significance. The request for executive reconsideration must also specify the reasons why executive level review is appropriate. Any new documents and explanations must be in-

cluded with the petition. The department will grant or deny the request and will notify the taxpayer of that decision in writing.

(7) **Settlements.** At any time during the department's review process, the taxpayer or the department may propose to compromise the matter by settlement. A taxpayer interested in proposing settlement of a dispute must submit a written offer to the department to the address noted in subsection (2) of this rule. The taxpayer or its authorized representative must sign the offer. A settlement offer may be made with the review petition or at any time during the review process. All documents needed to evaluate the offer must be submitted with the offer.

(a) **When will the department consider an offer?** Settlement may be appropriate when:

(i) The issue is nonrecurring. An issue is nonrecurring when the law has changed so future periods are treated differently than the periods under appeal; or the taxpayer's position or business activity has changed so that in future periods the issue under consideration is changed or does not exist; or the taxpayer agrees to a prospective change;

(ii) A conflict exists between precedents, such as statutes, rules, other public guidance issued by the department, or specific written instructions to the taxpayer;

(iii) A strict application of the law would have unduly harsh consequences which may be only relieved by an equitable doctrine; or

(iv) There is uncertainty of the outcome if the matter were presented to a court.

(b) **When will the department not consider an offer?** Settlement is not appropriate when:

(i) The same issue raised by the taxpayer is being litigated by the department;

(ii) The taxpayer presents issues that have no basis upon which relief for the taxpayer can be granted or given. Settlement will not be considered if the taxpayer's offer of settlement is simply to eliminate the inconvenience or cost of further negotiation or litigation, and is not based upon the merits of the case;

(iii) The taxpayer's only argument is that a statute is unconstitutional; or

(iv) The taxpayer's only argument is financial hardship. If a taxpayer claims financial hardship, the tax review officer may refer the matter to the department's compliance division.

(c) **The closing agreement.** If the taxpayer and the department reach agreement, a settlement is concluded by a closing agreement signed by both the department and the taxpayer as provided by RCW 82.32.350. A closing agreement is binding on both parties as provided in RCW 82.32.360. A closing agreement has no precedential value.

(8) **Appeals to board of tax appeals.** A taxpayer may appeal a denial of a petition for correction of an assessment under RCW 82.32.160 or a denial of a petition for refund under RCW 82.32.170 to the board of tax appeals. The BTA also has jurisdiction to hear appeals taken from department decisions rendered under RCW 82.34.110 (relating to pollution control facilities tax exemptions and credits) and RCW 82.49.060 (relating to watercraft excise tax). The BTA does not have jurisdiction to hear appeals from determinations involving rulings of future tax liability issued by TI&E. See RCW 82.03.130 (1)(a) and 82.03.190. A taxpayer filing an appeal with the BTA must pay the tax by the due date, unless arrangements are made with the department for

This rule was adopted March 22, 2017 and becomes effective April 22, 2017. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

a stay of collection under RCW 82.32.200. See WAC 458-20-228 (Returns, remittances, penalties, extensions, interest, stay of collection).

(9) **Thurston County superior court.** A taxpayer may also pay the tax in dispute and petition for a refund in Thurston County superior court. The taxpayer must comply with the requirements of RCW 82.32.180.