



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: May 21, 2018

TIME: 12:44 PM

WSR 18-11-103

Agency: Department of Revenue

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 458-65A-10001, titled *Brief adjudicated proceedings for matter related to penalties and interest imposed under the Uniform Unclaimed Property Act, chapter 63.29 RCW* will provide an expedited process under a BAP for the following issues:

- Provide a brief adjudicative proceeding for matters related to whether a holder is subject to penalties and interest under chapter 63.29 RCW;
- Provide the process for the brief adjudicative proceeding; and
- Provide the appeals process from a brief adjudicative proceeding.

Citation of rules affected by this order:

New: WAC 458-65A-10001
 Repealed:
 Amended:
 Suspended:

Statutory authority for adoption: RCW 63.29.370

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 18-07-104 on March 21, 2018 (date).
 Describe any changes other than editing from proposed to adopted version: The rule was amended to allow the waiver of interest and penalties for circumstances beyond a holder's control per WAC 458-20-228 as reflected in WAC 458-20-228(1)(f).

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:
 Address:
 Phone:
 Fax:
 TTY:
 Email:
 Web site:

Other: This rule is not a significant legislative rule as defined by RCW 34.05.328

**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Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___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	<u>1</u>	Amended	___	Repealed	___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 on the agency's own initiative:

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	Amended	___	Repealed	___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

New	<u>1</u>	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	<u>1</u>	Amended	___	Repealed	___

Date Adopted: May 21, 2018

Name: Erin T. Lopez

Title: Rules Coordinator

Signature:



**Chapter 458-65A WAC
UNCLAIMED PROPERTY**

NEW SECTION

WAC 458-65A-10001 Brief adjudicative proceedings for matters related to penalties and interest imposed under the Uniform Unclaimed Property Act, chapter 63.29 RCW. (1) **Introduction.** The department of revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 Revised Code of Washington (RCW), the Administrative Procedure Act (APA). The department will use a brief adjudicative proceeding as provided in RCW 34.05.482 through 34.05.494 to determine the following issues:

(a) Whether a holder is liable for accrued interest for failure to pay or deliver property to the department (RCW 63.29.340(1));

(b) Whether a holder is subject to the ten percent penalty for failure to timely file a report or pay or deliver any amounts or property due under a report (RCW 63.29.340(2));

(c) Whether a holder is subject to the ten percent penalty for an assessment following an examination, of amounts unpaid or property not delivered (RCW 63.29.340(3));

(d) Whether a holder is subject to the five percent penalty for failure to timely pay or deliver property due under an assessment (RCW 63.29.340(4)); and

(e) Whether a holder is subject to the five percent penalty for failing to electronically file a report or pay electronically (RCW 63.29.340(7)).

(i) For (a) of this rule, interest may be waived for circumstances beyond the person's control sufficient for waiver or cancellation of interest under RCW 82.32.105 and WAC 458-20-228(10);

(ii) For (b) through (d) of this rule, penalties may be waived if the penalty or penalties was the result of circumstances beyond the person's control sufficient for waiver or cancellation of penalties under RCW 82.32.105 and WAC 458-20-228 (9)(a);

(iii) For (e) of this rule, whether good cause exists to relieve a holder from the electronic filing or payment requirement under RCW 63.29.170(5) and 63.29.190(1). "Good cause" includes, but is not limited to, a circumstance beyond a person's control sufficient for waiver or cancellation of penalties under RCW 82.32.105 and WAC 458-20-228(9).

(2) **Multiple penalties.** The assessment of more than one type of penalty against a holder will be determined in a single brief adjudicative proceeding if those penalties were assessed in the same notice of assessment.

(3) **Holder defined.** Holder, as applied throughout this rule means a person obligated to report, or to deliver, property that is subject to chapter 63.29 RCW, the Uniform Unclaimed Property Act of 1983.

(4) **Record in brief adjudicative proceedings.** The record with respect to a holder's petition for review per RCW 34.05.482 through 34.05.485 will consist of:

(a) The holder's unclaimed property report and electronic confirmation of report (RCW 63.29.170);

(b) Application for penalty and interest waiver (RCW 63.29.340 and 63.29.191);

(c) Application for refund of property, interest, or penalty (RCW 63.29.192);

(d) The holder's unclaimed property petition for review (RCW 63.29.193);

(e) Request for relief from electronic filing and payment requirements (RCW 63.29.170 (5)(a) and 63.29.190 (1)(a));

(f) Department's letter of denial for refund or return of property (RCW 63.29.193); and

(g) All correspondence between the holder and the department regarding the penalty, interest, or refund in question.

(5) Conduct of brief adjudicative proceedings.

(a) If the department assesses penalties and interest under chapter 63.29 RCW, it will notify the holder of the penalties and interest in writing and state the reason for the penalties and interest. To initiate a review of the department's assessment of penalties and interest, the holder must file a written petition for review no later than thirty days after service of the department's written notice that the holder has been assessed penalties and interest. See RCW 63.29.193.

(b) A form notice of petition for review is available at dor.wa.gov or by calling 1-800-647-7706. The completed form must be mailed, emailed, or faxed to the department at:

Mail:

Washington State Department of Revenue
Special Programs, Unclaimed Property Section
P.O. Box 47477
Olympia, WA 98504-7477

Email: UCP@dor.wa.gov

Fax: 360-534-1498

(c) At the time the petition is filed, the holder must submit to the special programs, unclaimed property section, all arguments and any evidence or written material relevant to the matter that the party wishes the presiding officer to consider. No witnesses may offer testimony.

(d) A presiding officer, who will be the unclaimed property operations manager of the special programs division or such other person as designated by the director of the department, will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in the assessment of penalties on the holder.

(e) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis in making a decision.

(f) Within twenty-one days of receipt of the holder's petition for review, the presiding officer will enter an initial order, including a brief explanation of the decision per RCW 34.05.485. All orders will be in writing. The initial order will become the department's final order unless a timely petition for review is filed with the department's administrative review and hearings division as provided in subsection (6) of this rule.

(6) Review of initial orders from brief adjudicative proceeding.

(a) A holder may request a review by the department of an initial order issued per subsection (5) of this rule by filing a written petition for review with the department's administrative review and hear-

ings division within twenty-one days of service of the initial order on the holder. See RCW 34.05.488. At the time the petition is filed, the holder must submit to the administrative review and hearings division all arguments and any evidence or written material relevant to the matter that the party wishes the reviewing officer to consider.

(b) An unclaimed property petition for review of an initial order per subsection (5) of this rule is available at dor.wa.gov. The petition must be sent to one of the following:

Mail:

Washington State Department of Revenue
Administrative Review and Hearings Division
P.O. Box 47460
6400 Linderson Way S.W.
Olympia, WA 98504-7460

Email: DORARHDadmin@dor.wa.gov

Fax: 360-534-1340

(c) A reviewing officer, who will be either the assistant director of the administrative review and hearings division or such other person as designated by the director, will conduct a brief adjudicative proceeding and determine whether the department's initial order issued per subsection (5) of this rule was correctly based on the criteria set forth in RCW 63.29.340. The reviewing officer will review the record and, if needed, convert the proceeding to a formal adjudicative proceeding in accordance with subsection (7) of this rule.

(d) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(e) The reviewing officer will issue a written order that includes a brief statement of the reasons for the decision, within twenty days of the date the petition for review was filed. The order will include a notice that judicial review may be available. The order of the reviewing officer represents the final decision of the department.

(f) A request for review is deemed denied if the department does not issue an order on review within twenty days after the petition for review is filed, unless a continuance is issued under subsection (11) of this rule. See RCW 34.05.491(5).

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

(a) The presiding or reviewing officer will convert the proceeding when it finds that the 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 holder and department, or when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05.479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director may become the reviewing officer or may designate a replacement reviewing officer to conduct the formal proceedings upon notice to the holder and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002(2) will apply to the proceedings.

(8) Court appeal.

(a) A holder may appeal a final order of the department under Part V, chapter 34.05 RCW, when a review of the initial decision has been requested under subsection (6) of this rule and all other administrative remedies have been exhausted. See RCW 34.05.534.

(b) A holder who has already paid or delivered property to the department may appeal directly to the superior court of Thurston County for a refund of such payment or property instead of appealing to the department. See RCW 63.29.194.

(9) **Computation of time.** In computing any period of time prescribed by this rule, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in the computation. Service as discussed in subsection (10) of this rule is deemed complete upon mailing.

(10) **Service.** All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the holder, their representatives/agents of record, and the department's representative.

(a) Service is made by one of the following methods:

(i) In person;

(ii) By first-class, registered or certified mail;

(iii) By fax and same-day mailing of copies;

(iv) By commercial parcel delivery company; or

(v) By electronic delivery.

(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 holder and to their representative/agent of record must be to the address(es) shown on the petition for review.

(g) Service to the department's representative and to the presiding officer must be to the special programs division unclaimed property section at the address shown in subsection (5) of this rule.

(h) Service to the reviewing officer must be to the administrative review and hearings division at the address shown in subsection (6) of this rule.

(i) Where proof of service is required, the proof of service must include a certificate, 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 to (names); and that the service was accomplished by a method of service as provided in this subsection.

(j) Failure to serve documents on all parties of record in the proceeding in a manner prescribed by this subsection will result in an unlawful ex parte contact. An ex parte contact cannot constitute evidence of any fact at issue in the matter unless the party complies with RCW 34.05.455(5).

(11) **Continuance.** The presiding officer or reviewing officer may grant a request for a continuance by motion of the holder, the department, or on its own motion.