



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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FILED

DATE: September 01, 2022

TIME: 1:36 PM

WSR 22-18-067

Agency: Department of Revenue

Title of rule and other identifying information: (describe subject) WAC 458-20-22802 Electronic filing and payment.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is amending WAC 458-20-22802 to align the language in subsection (2)(a) of the rule regarding when the Department of Revenue may waive the electronic filing and payment requirements with the statutory language in RCW 82.32.080(2)(b) and (3)(b). The rule is also being amended to update the name of the department's electronic filing and payment system.

Reasons supporting proposal: Amending this rule to reflect statutory requirements will provide greater clarity to taxpayers on the circumstances under which they may have their electronic filing and payment requirements waived by the department.

Statutory authority for adoption: RCW 82.32.085

Statute being implemented: RCW 82.32.080

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:

Name of proponent: (person or organization) Department of Revenue

- Private
 Public
 Governmental

Name of agency personnel responsible for:

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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): The expedited rule-making process is applicable to this rule update because the Department is amending the language to reflect statutory requirements.

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 (date) November 8, 2022

Date: September 1, 2022

Name: Atif Aziz

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Signature:



AMENDATORY SECTION (Amending WSR 16-06-040, filed 2/24/16, effective 3/26/16)

WAC 458-20-22802 Electronic filing and payment. (1) **Introduction.** The department of revenue (~~department~~) makes electronic filing (~~((also known as e-file))~~) My DOR and electronic payment available to taxpayers. The law requires (~~(certain))~~ all taxpayers to file and pay excise taxes electronically unless a specific waiver applies. RCW 82.32.080.

(a) Taxpayers (~~(who are))~~ required to electronically file and pay their excise taxes must register to use (~~(e-file))~~ My DOR. If they choose to pay using certain electronic payment methods, they must also (~~(furnish))~~ provide the department with the necessary banking information. (~~(Taxpayers who are not specifically required to file or pay taxes electronically are encouraged to voluntarily take advantage of e-file and pay electronically.))~~)

(b) Electronic filing and electronic payment are available for taxes reported on the combined excise tax return, which includes those taxes administered by the department under chapter 82.32 RCW. For purposes of the taxes under chapter 82.32 RCW, unless the context clearly requires otherwise, the term "tax" is defined under RCW 82.32.020. Electronic filing and electronic payment are not (~~(available))~~ required for city and town taxes on financial institutions (chapter 82.14A RCW), cigarette tax (chapter 82.24 RCW), leasehold excise tax (chapter 82.29A RCW), and forest tax (chapter 84.33 RCW). Taxpayers not required to file or pay taxes electronically are encouraged to voluntarily use My DOR to file and pay electronically.

(2) **Electronic filing and electronic payment.** (~~(E-file))~~ My DOR is an internet-based application (~~(that provides))~~ providing a secure and encrypted method for taxpayers to file and pay Washington state's (~~(business-related))~~ excise taxes.

(a) All taxpayers are required to (~~(use e-file))~~ electronically file using My DOR and pay electronically unless the department waives the requirement for good cause (~~(, or the taxpayer has an assigned reporting frequency that is less than quarterly))~~).

(b) If good cause exists, the department may waive the (~~(e-file and/or))~~ electronic filing and payment requirements for any taxpayer. Waiver for "good cause" is generally temporary. Reasons for good cause include, but are not limited to the following:

(i) The taxpayer does not have the necessary equipment or software;

(ii) The equipment or software necessary is not functioning properly;

(iii) The taxpayer does not have access to the internet using the (~~(taxpayers own))~~ taxpayer's equipment;

(iv) The taxpayer does not have a bank account or credit card;

(v) The taxpayer's bank is unable to send or receive electronic funds transfer transactions; or

(vi) Some other circumstance or condition exists that, in the department's judgment, prevents the taxpayer from complying.

(3) **Electronic payments.** (~~(There are))~~ Taxpayers required to use My DOR to submit their tax return must also pay the associated taxes electronically. The department accepts two electronic payment methods: Electronic funds transfer (EFT) and credit card, as described in (a) and (b) of this subsection. (~~(Those taxpayers who are required to use e-file to submit their tax return must also pay the associated taxes~~

electronically. ~~For a)) Taxpayers ((who is)) required to pay electronically ((, electronic funds transfer (EFT) must be used,)) must use EFT or credit card unless the department authorizes some other type of electronic payment for ~~((that particular))~~ a specific taxpayer.~~

(a) **Payment by electronic funds transfer (EFT).** EFT is a method of transferring funds from a taxpayer's bank account into the department's bank account.

(i) **Definitions.** For ~~((the))~~ purposes of this rule, the following terms ~~((will))~~ apply:

(A) "Electronic funds transfer" or "EFT" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit a checking or other deposit account. Electronic funds transfer includes payments made by electronic check (e-check).

(B) "ACH" or "automated clearing house" means a central distribution and settlement system for the electronic clearing of debits and credits between financial institutions.

(C) "EFT debit" means the electronic transfer of funds, cleared through the ACH system ~~((that is)),~~ generated by the taxpayer instructing the department's bank to charge the taxpayer's account and deposit the funds to the department's account. E-check is a singular payment transaction ~~((that functions))~~ functioning in the same manner as an EFT debit transaction.

(D) "EFT credit" means the electronic transfer of funds, cleared through the ACH system ~~((that is)),~~ generated by the taxpayer instructing the taxpayer's bank to charge the taxpayer's account and deposit the funds to the department's account.

(E) "Department's bank" means the bank with which the department of revenue has a contract to assist in the receipt of taxes and includes any agents of the bank.

(F) "Collectible funds" means funds that have completed the electronic funds transfer process and are available for immediate use by the state.

(G) "ACH CCD+addenda" and "ACH CCD+record" mean the information in a required ACH format ~~((that needs to be))~~ transmitted to properly identify the payment.

(ii) **EFT methods.** Taxpayers paying by EFT must use the EFT debit, EFT credit, or e-check methods. In an emergency, the taxpayer should contact the department for alternative methods of payment.

(iii) **Form and content of EFT.** The form and content of EFT will be as follows:

(A) If ~~((the))~~ a taxpayer ~~((wishes to use))~~ uses EFT debit, ~~((the taxpayer))~~ they must furnish the department with the information needed to complete the transaction by registering for electronic funds transfer on the department's website.

(B) If ~~((the))~~ a taxpayer ~~((wishes to use))~~ uses EFT credit, ~~((the taxpayer is))~~ they are responsible for ensuring ~~((that its))~~ their bank has the information necessary ~~((in order))~~ to complete the payment. The payment must be submitted using the ACH CCD+addenda format. The EFT credit payment method requires the taxpayer to complete an EFT authorization form.

(C) If the taxpayer wishes to use e-check, they must enter their bank account and routing number for each payment transaction. The e-

check transaction authorizes the department to withdraw the payment amount from the taxpayer's bank account.

(iv) **Due date of EFT payment.** The EFT payment is due on or before the next banking day following the tax return due date.

(A) An EFT payment made using the EFT debit or e-check method is timely if the payment is initiated on or before 11:59 p.m. Pacific Time on the tax return due date, and the effective date for that payment is on or before the next banking day following the tax return due date.

(B) An EFT payment made using the EFT credit method is timely when the state receives collectible U.S. funds on or before 5:00 p.m., Pacific Time, on the EFT payment due date.

(C) The ACH system, either EFT debit or EFT credit, requires ~~((that))~~ the necessary information be in the originating bank's possession on the banking day preceding the date for completion of the transaction. Each bank generally has its own transaction deadlines ~~((and)), but~~ it is the responsibility of the taxpayer to ensure timely payment.

(D) The tax return due date is the next business day after the statutory due date if the statutory due date falls on a Saturday, Sunday, or legal holiday. Legal holidays are determined under state of Washington law and banking holidays are those recognized by the Federal Reserve System.

Example. The tax return due date is Friday, December 25th, a legal and banking holiday ~~((, which, for the example, falls on a Friday))~~. The next business day is Monday, December 28th, and this is the ~~((new))~~ holiday-adjusted tax return due date. This means EFT debit and e-check users must initiate their debit payment by 11:59 p.m., Pacific Time, on December 28th, with a payment effective date of Tuesday, December 29th, ~~((in order))~~ for the payment to be considered timely. EFT credit users must contact their bank to ensure funds are deposited in the department's bank no later than 5:00 p.m., Pacific Time, on Tuesday, December 29th, ~~((in order))~~ for the payment to be considered timely.

(b) **Payment by credit card.** Payment by credit card is available using American Express, Discover, Visa, or MasterCard. Taxpayers who wish to make their payment with one of these credit cards are directed to the website of a third-party, nonstate, vendor when they submit their electronic return. Taxpayers then provide their credit card number in the same manner as with any other credit card payment transaction. A credit card payment is considered timely if the payment is completed, including the time it takes to enter the required information on the credit card vendor's website, on or before 11:59 p.m., Pacific Time, on the tax return due date. Each credit card payment may be subject to a convenience fee charged by the third-party, nonstate, vendor.

(4) **Electronic refunds.** If ~~((the))~~ a taxpayer ~~((pays taxes on the combined excise tax return by EFT debit))~~ is due a refund, the taxpayer is entitled to a refund of those taxes by EFT. If the taxpayer wishes to have the refund made by EFT, the taxpayer must provide the department with the information necessary to make an appropriate EFT transaction or the refund will be issued as a paper check. No electronic adjustments or refunds are made directly to ~~((taxpayer))~~ a taxpayer's credit card ~~((accounts or on e-check transactions))~~. Overpayments of tax will either be retained to be credited to future tax liabilities or, at the taxpayer's request, will be refunded.

(5) **Coordinating a paper return and an electronic payment.** ((When a)) To file a paper return, the taxpayer must qualify for a waiver from electronically filing. If approved, and the taxpayer ((voluntarily)) uses the EFT credit payment method but files a paper return, the department will match the payment with the return. A paper return will be considered timely filed only if it is received by the department on or before the tax return due date and the taxpayer has been waived from the electronic filing and payment requirements. The associated EFT credit payment must be received by the next banking day after the tax return due date. If both events occur, the return and payment are considered timely, and the late payment penalty does not apply. If the return is sent through the U.S. Postal Service, it will be considered received on the date shown by the post office cancellation mark stamped on the envelope. RCW 82.32.080. ((If both events occur, there is timely filing and payment and no penalties apply.))

(6) **Crediting and proof of payment.** The department will credit the taxpayer with the amount paid as of the date the payment is received by the department's bank. The proof of payment by the taxpayer will depend on the means of transmission.

(a) EFT debit and e-check transactions may be proved by use of the confirmation number received from the department that the transaction was initiated and bank statements or other evidence from the bank that the transaction was settled.

(b) An EFT credit transaction is initiated by the taxpayer through the taxpayer's bank. The taxpayer is responsible for completion of the transaction. The taxpayer generally will be given a verification number by the taxpayer's bank. This verification number with proof of the ACH CCD+record showing the department's bank and account number, plus confirmation ((that)) the transaction has been settled will constitute proof of payment.

(c) A taxpayer using any other electronic payment method is responsible for completion of the transaction. Proof of payment will include transaction initiation date and any other evidence from a financial institution or credit card company ((that)) showing the transaction was settled.

(7) **Correcting errors.** Errors in the electronic payment process may result in either an underpayment or an overpayment of the tax. In either case, the taxpayer needs to contact the department to arrange for appropriate action. Overpayments may be used as a credit, or the taxpayer may apply for a refund. The department will expedite a refund where it is caused by an error in transmission. Underpayments should be corrected by the taxpayer immediately to avoid any penalties.

(8) **Penalties.** There are no special provisions for penalties when payment is made by electronic means. WAC 458-20-228 discusses the various penalties that may apply and the limited circumstances under which they may be waived. To avoid the imposition of penalties, the taxpayer must provide correct bank account information to the department, and ensure their payment is timely.

(a) If the department finds ((that)) a taxpayer disregarded specific written instructions to file returns or remit payments electronically, as provided by RCW 82.32.080, the department will add a penalty of ((ten)) 10 percent to the amount of the tax that should have been reported and/or paid electronically or the additional tax found due if there is a deficiency because of failure to follow written instructions.

(b) A taxpayer will be considered to have willfully disregarded the requirement to file returns or remit payment electronically if the department:

(i) Has mailed or otherwise delivered the specific written instructions to the taxpayer on at least two occasions; and

(ii) Has provided the taxpayer at least ~~((forty-five))~~ 45 days after the second written notice to come into compliance with its electronic filing and/or payment obligations. ~~((WAC 458-20-228 discusses the various penalties that may apply and the limited circumstances under which they may be waived.))~~

(c) In an EFT debit and e-check transaction, the department's bank is the originating bank and is responsible for the accuracy of transmission. If the taxpayer has timely initiated the EFT debit or e-check transaction, provided accurate bank account information, received a confirmation number, and shows adequate funds were available in the account, no late payment penalties will apply with respect to those funds authorized.

(d) In an EFT credit transaction, the taxpayer's bank is the originating bank, and the taxpayer is primarily responsible for its accuracy. The taxpayer must have timely initiated the transaction, provided the correct information for the ACH CCD+record, and shown ~~((that))~~ there were sufficient funds in the account, ~~((in order))~~ to prove timely compliance. If the taxpayer can make this showing, then no late payment penalties will apply with respect to those funds authorized if the transaction is not completed.

(e) When a payment is made using an approved credit card, the credit card company acts as the taxpayer's agent and the taxpayer is primarily responsible for the accuracy of this transaction. If the taxpayer can prove the payment was initiated and submitted timely, no late payment penalties will apply to those funds authorized.