



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) **April 1, 2016** (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 *Informal administrative reviews*. This rule, previously titled "Appeals," explains the procedures for administrative review of actions of the Department or of its officers and employees in the assessment or collection of taxes. The Department is amending this rule to clarify that the Department's administrative review is an informal review by the Department, and not an independent review such as that conducted by the Board of Tax Appeals or the Thurston County Superior Court. In addition, the amended rule describes a more streamlined and efficient administrative review process.

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 458-20-100 *Informal administrative reviews*

Suspended:

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

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR **15-24-116** on **December 1, 2015**.

Describe any changes other than editing from proposed to adopted version: Please see attachment for listing of changes made.

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

Date adopted:

February 18, 2016

NAME

Kevin Dixon

SIGNATURE

TITLE

Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 18, 2016

TIME: 1:16 PM

WSR 16-06-013

**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Federal statute:	New	Amended	Repealed
Federal rules or standards:	New	Amended	Repealed
Recently enacted state statutes:	New	Amended	Repealed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New	Amended	Repealed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	1	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	1	Repealed



STATE OF WASHINGTON
DEPARTMENT OF REVENUE

PERMANENT RULE

WAC 458-20-100

Adopted under notice filed as **WSR 15-24-116** on December 1, 2015.

The following describes changes made, other than editing, from proposed to adopted version:

Subsection (1) – RCW 82.01.060(4) is now quoted in its entirety instead of the partial quotation included in the proposed rule. In addition, references to RCW 82.32.160 and 82.32.170 were also added.

Subsection (2) –

- References to RCW 82.32.160 and 82.32.170 were removed and the statutes are now recognized in subsection (1).
- The email address to which written petitions may be sent has been changed from AdministrativeReviews@dor.wa.gov to DORARHDadmin@dor.wa.gov.
- The street address of “1025 Union Avenue SE, Suite 101” has been added.

Subsection (2)(a)(iv) – Language was added to explain that if the amount of penalties and interest isn’t known in the case of a denied refund request, the taxpayer need provide only the amount of tax in controversy.

Subsection (2)(a)(vii) – The phrase “all documents” was changed to “documents supporting the taxpayer’s position.”

Subsection (3)(a) – The language now clearly explains that a taxpayer may request a written extension of time for filing a petition by either email or standard mail.

Subsection (3)(b) – The language now clearly explains that the subject is a petition for the review of a denied refund (as opposed to a petition for a refund).

Subsection (5) – The subsection title was changed from “How are reviews scheduled and decided?” to “The review process.”

Subsection (5)(a) – The second sentence was changed from “...to determine *that* the appropriate departmental procedures...” to read “...to determine *whether* the appropriate departmental procedures...”

Subsection (5)(b) – The last sentence, “This may be scheduled as a status conference or direct discussions” was removed.

Subsection (5)(c) – The phrase in the third sentence, “...unless good cause is shown for additional time.” was removed. In addition, the fourth sentence in this subsection was clarified to state that the tax review officer has discretion to allow additional time for submitting additional documents.

Subsection (5)(g) – A reference to the Thurston County Superior Court was added to recognize that a determinations issued by the Department may be appealed to either the Board of Tax Appeals or the Thurston County Superior Court.

AMENDATORY SECTION (Amending WSR 05-20-036, filed 9/29/05, effective 11/1/05)

WAC 458-20-100 ((Appeals.)) Informal administrative reviews.

((1) Introduction.

(a) This rule explains the procedures for administrative review of actions of the department or of its officers and employees in the assessment or collection of taxes, as provided in RCW 82.01.060(4), including, but 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 section.

(b) Persons seeking administrative review of a business license revocation, a cigarette license revocation or suspension, a log export enforcement action, or orders to county officials under Title 84 RCW should refer to the following rules:

(i) WAC 458-20-10001 for information on the revocation of a certificate of registration or the revocation or suspension of a cigarette license; or

(ii) WAC 458-20-10002 for information on log export enforcement actions and orders to county officials issued under RCW 84.08.120 and 84.41.120.

(2) Preappeal supervisor's conference and preappeal rulings on future liability.

(a) **Supervisor's conferences.** 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 provide an opportunity to resolve issues prior to the review provided in this rule.

(b) **Rulings.** Taxpayers may request an opinion on future reporting instructions and tax liability from the department's taxpayer information and education section of the taxpayer services division. The request must be in writing, contain all pertinent facts concerning the question presented, and may contain a statement of the taxpayer's views concerning the correct application of the law. The department will advise the taxpayer in writing of its opinion in a tax ruling. The tax ruling must state all pertinent facts upon which the opinion is based and, if the taxpayer's name has been disclosed, is binding upon both the taxpayer and the department under the facts stated. It will remain binding until the facts change, the applicable statute or rule changes, a published appellate court decision not subject to review changes a prior interpretation of law, the department publicly announces a change in the policy upon which this ruling is based, or the taxpayer is notified in writing that the ruling is no longer valid. Any change in the ruling will have prospective application only. Rulings on future tax liability are subject to review as provided in this rule.

(3) **How are appeals started?** A taxpayer starts a review of a departmental action by filing a written petition. Petitions should be addressed to:

Appeals Division
Washington State Department of Revenue
P.O. Box 47460
Olympia, Washington 98504-7460

A form petition is available on the department's web site at <http://dor.wa.gov> or upon request from the appeals 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:

- (a) The taxpayer's name, address, registration/UBI number, telephone number, fax number, e-mail address, and contact person;
- (b) If represented, the representative's name, address, telephone number, fax number, and e-mail address;
- (c) Identifying information from the assessment notice, balance due notice, or other document being appealed;
- (d) The amount of tax, interest, or penalties in controversy, and the time period at issue;
- (e) The type of appeal requested (see subsection (6) of this section);
- (f) Whether an in-person hearing in Olympia or Seattle, a telephone hearing, or no hearing is requested; and
- (g) A brief explanation of each issue or area of dispute and an explanation why each issue or area of dispute should be decided in the taxpayer's favor. To the extent known or available, taxpayers should cite applicable rules, statutes, or supporting case law and provide copies of records that support the taxpayer's position.

If a petition does not provide the required information, the department will notify the taxpayer in writing that the petition is not accepted for review. The notice will provide a period of time for the taxpayer to cure the defects in the petition. If a taxpayer is represented, the taxpayer should also have on file with the department a confidential tax information authorization.

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

(a) The appeals division 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 may be in writing or by telephone, and must be directed to the department's appeals division.

(b) A petition or request for extension is timely if it is post-marked or received within the thirty day filing period.

(c) The appeals division may not grant an extension of time to file a petition for refund that would exceed the time limits in WAC 458-20-229 (Refunds). A request for a refund of taxes paid must be filed within four years after the close of the tax year in which the taxes were paid. See WAC 458-20-229 for procedures on seeking a refund.

(d) The appeals division will notify taxpayers in writing when a petition is rejected as not timely.

(5) How are appeals scheduled, heard, and decided? The appeals division will acknowledge receipt of the petition and identify the administrative law judge (ALJ) assigned to the appeal. ALJs are attorneys trained in the interpretation of the Revenue Act and precedents established by prior rulings and court decisions. They are employed by the department to provide an informal, final review of agency actions.

(a) **Scheduling.** The ALJ will notify parties of the time when any additional documents or arguments must be submitted. If a party fails to comply with a scheduling letter or established timelines, the ALJ may decline to consider arguments or documents submitted after the scheduled timelines. A status conference in complex cases may be scheduled to provide for the orderly resolution of the case and to narrow issues and arguments for hearing.

(b) **Hearings.** Hearings may be by telephone or in person. The ALJ may decide the case without a hearing if legal or factual issues are not in dispute, the taxpayer does not request a hearing, or the taxpayer fails to appear at a scheduled hearing or otherwise fails to respond to inquiries from the department. The appeals division will notify the taxpayer by mail whether a hearing will be held, whether the hearing will be in person or by telephone, the location of any in person hearing, and the date and time for any hearing in the case. The date and time for a hearing may be continued at the ALJ's discretion. Other departmental employees may attend a hearing, and the ALJ will notify the taxpayer when other departmental employees are attending. The taxpayer may appear personally or may be represented by an attorney, accountant, or any other authorized person. All hearings before an ALJ are conducted informally and in a nonadversarial, uncontested manner.

(c) **Hearing and posthearing submissions.** If a taxpayer asks to submit additional records or documents at a hearing, the taxpayer must explain why they were not submitted under the deadlines established in the scheduling letter. The ALJ has the discretion to allow late submissions by the taxpayer or the department and, if allowed, will provide the other party with additional time to respond. If additional document production or additional briefing is allowed by the ALJ, posthearing, such briefing or documents usually must be submitted within thirty days after the hearing, unless good cause is shown for additional time. ALJs have the discretion to allow additional time for further fact finding, including scheduling an additional hearing, as necessary in a particular case.

(d) **Determinations.** Following the hearing, if any, and review of all submissions, the ALJ will issue a determination consistent with the applicable statutes, rules, case law, and department precedents. The appeals division will notify the taxpayer in writing of the decision. The determination of the ALJ 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.

(6) **Are all appeals the same?** No, in addition to regular appeals, called mainstream appeals, an appeal may also be assigned as a small claims or executive level appeal based on the amount at issue or the complexity of the issues. In addition, an appeal may be expedited under certain urgent circumstances.

(a) **Small claims appeals.** Except as set forth in (a)(i), (ii), or (iii) of this subsection, when the tax at issue in the appeal is twenty five thousand dollars or less and the total amount of the tax plus penalties and interest at issue in the appeal is fifty thousand dollars or less, the appeal will be heard as a small claims appeal.

(i) The department may decline to hear an appeal as a small claims appeal if the department finds the appeal is not suitable for small claims resolution. Appeals with multiple or complex issues, issues of first impression, issues of industry wide application, or con-

~~stitutional issues are generally not suitable for small claims resolution.~~

~~(ii) The appeals division will notify the taxpayer in writing when an appeal is to be heard as a small claims appeal. The taxpayer may request in writing that the matter not be heard as a small claims appeal. Such requests will be granted if received or postmarked within fifteen days following the date of the notice.~~

~~(iii) In the petition the taxpayer may affirmatively request that the petition not be heard as a small claims appeal. Such requests will be granted.~~

~~Taxpayers should provide all evidence and supporting authority prior to or during the small claims hearing. Within ten working days of a small claims hearing, the department will issue an abbreviated written decision (determination) containing only the department's conclusions. The determination in a small claims appeal is the final action of the department.~~

~~(b) **Executive level appeals.** If an appeal 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 petition be heard at the executive level. The request must specify the reasons why an executive level appeal is appropriate. The appeals division 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 an ALJ will hear the matter. The appeals division, on its own initiative, may also choose to hear an appeal at the executive level. The appeals division will notify the taxpayer if the department chooses to hear an appeal at the executive level.~~

~~Following the executive level hearing, the appeals division will issue a proposed determination, which becomes final thirty days from the date of issuance unless the taxpayer or another division of the department timely files an objection to the proposed determination. Objections must identify specific errors of law or fact. Unless an extension is granted, objections must be postmarked or received by the appeals division within thirty days from the date the proposed determination was issued. The taxpayer or operating division filing objections must also provide the other party with a copy of its objections. The ALJ will issue the final determination, which may or may not reflect changes based on the objections. Although rare, the ALJ and the director's designee, in consultation with the director, may grant a second hearing to hear argument on the objections. The determination in an executive level appeal is the final action of the department.~~

~~(c) **Expedited appeals.** On a very limited basis it may be necessary to expedite the review of a petition. Taxpayers or other divisions in the department requesting expedited review must make the request in writing to the appeals division, with a copy supplied to the other party. The appeals division will grant or deny such requests solely at its discretion. The appeals division will advise the taxpayer and the affected division of its decision pertaining to the expedited review request. This decision is not subject to appeal. Expedited review will be limited to appeals where it is clear that:~~

- ~~(i) There is a particular and extraordinary business necessity;~~
- ~~(ii) Document review is the only issue;~~
- ~~(iii) Only a legal issue remains in an appeal following a remand to an operating division;~~
- ~~(iv) A jeopardy warrant or bankruptcy is likely; or~~
- ~~(v) Urgent review is necessary within the department.~~

If expedited review is at the taxpayer's request, the determination in an expedited appeal is the final action of the department. If expedited review is requested by the department, the taxpayer may petition for reconsideration as provided in subsection (7) of this section.

~~(7) **Request for reconsideration.** If a taxpayer believes that an error has been made in a determination, the taxpayer may, within thirty days of the issuance of the determination, petition in writing for reconsideration of the decision. Small claim appeals, executive appeals, and appeals expedited at the request of the taxpayer are not 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. 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.~~

~~The appeals division may, without a hearing, grant or deny the request for reconsideration. If the request is denied, the department will mail 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, a hearing on reconsideration may be conducted or a determination may be issued without a hearing. A reconsideration determination is the final action of the department.~~

~~(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 board of tax appeals 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 82.49.060 (relating to watercraft excise tax). The board of tax appeals does not have jurisdiction to hear appeals from determinations involving rulings of future tax liability issued by the taxpayer information and education section. See RCW 82.03.130 (1)(a) and 82.03.190. A taxpayer filing an appeal with the board of tax appeals must pay the tax by the due date, unless arrangements are made with the department for 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.~~

~~(10) **Settlements.** At any time during the appeal process, the taxpayer or the department may propose to compromise the matter by settlement. Taxpayers interested in settling a dispute should submit a written offer to the ALJ. The offer should identify the amount in dispute, why the dispute should be settled, the amount offered in settlement, and why the amount being offered is reasonable.~~

~~(a) 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, excise tax bulletins, 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 of the appeal if it were presented to a court. Factors to be considered include the relative degrees of certainty and the costs for both the taxpayer and the state. This category includes cases which involve factual issues that might require extensive expert testimony to resolve.~~

~~(b) Settlement is not appropriate when:~~

~~(i) The same issue in the taxpayer's appeal is being litigated by the department;~~

~~(ii) The taxpayer challenges a long standing departmental policy or a rule that the department will not change unless the policy or rule is declared invalid by a court of record;~~

~~(iii) 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;~~

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

~~(v) The taxpayer's only argument is financial hardship. Financial hardship issues are properly discussed with the department's compliance division.~~

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

DORARHDadmin@dor.wa.gov

or

Administrative Review and Hearings Division

Washington State Department of Revenue

1025 Union Avenue S.E., Suite 101

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, e-mail address, and contact person;

(ii) If represented, the representative's name, address, telephone number, fax number, and e-mail 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 e-mail 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 hearing, 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 included 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 elim-

inate 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 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.