

**WSR 13-12-058**  
**EXPEDITED RULES**  
**DEPARTMENT OF REVENUE**

[Filed June 4, 2013, 9:13 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-22802 (Rule 22802) Electronic funds transfer. RCW 82.32.080 requires that certain taxpayers remit payment of their combined excise tax return liability via "electronic funds transfer" (EFT). RCW 82.32.085 requires that the transfer be completed so that the state receives collectible funds on or before the next banking day following the tax return due date. Rule 22802 explains the EFT process.

**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 Kristine Rompa, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail KristineR@dor.wa.gov, AND RECEIVED BY August 5, 2013.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to revise this rule to reflect the following changes in law:

- Chapter 39, Laws of 2012 (HB 2758), which prescribes how the department must apply tax payments recognizing spirits taxes and the department's new collection authority for the spirits tax;
- Chapter 24, Laws of 2011 (EHB 1357), which requires taxpayers assigned a less than quarterly reporting frequency to file and pay electronically and imposes a penalty for willful disregard of the requirement;
- Chapter 176, Laws of 2009 (SSB 5571), which provides a definition of "good cause," requires the department to notify taxpayers of tax deficiencies electronically, and requires that refunds issued by the department be paid electronically if the taxpayer is required to pay taxes electronically and the department has the necessary account information.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Statutory Authority for Adoption: RCW 82.32.085, 82.32.300, and 82.01.060(2).

Statute Being Implemented: RCW 82.32.080 and 82.32.085.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Kristine Rompa, 1025 Union Avenue S.E., Suite 544, Olym-

pia, WA, (360) 534-1524; Implementation and Enforcement: Alan R. Lynn, 1025 Union Avenue S.E., Suite 544, Olympia, WA, (360) 534-1599.

June 4, 2013

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-23-066, filed 11/9/06, effective 12/10/06)

**WAC 458-20-22802 Electronic ((~~fund~~s transfer)) filing and payment.** (1) **Introduction.** The department of revenue makes electronic filing (also known as e-file) and electronic payment available to taxpayers. The law requires certain taxpayers ((are required)) to file and pay ((the)) excise taxes ((reported on the combined excise tax return with an electronic funds transfer (EFT))) electronically. RCW 82.32.080. ((Taxpayers who are not required to pay by EFT may still use this method of payment if they notify the department of their desire to pay by EFT in advance of making their first EFT payment.))

(a) Taxpayers who are ((either)) required ((or voluntarily choose)) to electronically file and pay their excise ((tax returns by EFT)) taxes must register to use e-file. If they choose to pay using certain electronic payment methods they must also furnish the department with the necessary banking information((, as described in subsection (9) of this section)). 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. Electronic filing and electronic payment are not available 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).

(2) **Electronic filing and electronic payment.** E-file is an internet-based application that provides 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 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 payment requirement for any taxpayer. Waiver for "good cause" is generally temporary. Reasons for good cause include, but are not limited to:

(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 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 two electronic payment methods: Electronic funds transfer (EFT) and credit card.

Those taxpayers who are required to use e-file to submit their tax return must also pay the associated taxes electronically. For a taxpayer who is required to pay electronically, electronic funds transfer (EFT) must be used, unless the department authorizes some other type of electronic payment for that particular 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 section, the following terms will apply:

((a)) (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))~~ a checking or other deposit account. Electronic funds transfer includes payments made by electronic check (e-check).

((b)) (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)) (C) "~~((ACH))~~ 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 in the same manner as an EFT debit transaction.

((d)) (D) "~~((ACH))~~ 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)) (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)) (F) "Collectible funds" ~~((actually))~~ means ~~((collected))~~ funds that have completed the electronic funds transfer process and are available for immediate use by the state.

((g)) (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.

((h) "Service access key" means a unique code that allows an ACH debit transaction to occur.

(3) **Taxpayers required to pay by EFT.** Taxpayers who have taxes due of \$240,000 or more in a calendar year are required to pay by EFT. Total taxes due from the last complete calendar year will be used to determine whether a taxpayer is required to pay by EFT. When a calendar year total indicates a taxpayer is required to pay by EFT, the department will notify that taxpayer. The notification will be made

at least three months prior to the date that the first EFT payment is required.

The requirement to pay by EFT will be waived if the taxpayer reasonably shows to the department that it will not meet or exceed the EFT threshold for taxes due in the calendar year.

(4) ~~Taxes covered.~~ The taxes covered by the EFT payment are taxes reported on the combined excise tax return. The included taxes are those administered by the department under chapter 82.32 RCW except city and town taxes on financial institutions (chapter 82.14A RCW), county tax on telephone access lines (chapter 82.14B RCW), cigarette tax (chapter 82.24 RCW), enhanced food fish tax (chapter 82.27 RCW), leasehold excise tax (chapter 82.29A RCW), and forest tax (chapter 84.33 RCW).

(5) **Refunds by EFT.** Overpayments of tax will be either credited to future tax liabilities or, at the taxpayer's request, will be refunded. If the taxpayer is required to pay the taxes on the combined excise tax return by EFT, the taxpayer is entitled to a refund of those taxes by EFT. However, 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 or the refund will be issued as a warrant (check).

(6)) (ii) **EFT methods.** Taxpayers ~~((required to pay))~~ paying by EFT must ~~((do so through the))~~ use ~~((of))~~ the ~~((ACH))~~ EFT debit ~~((or ACH)), EFT credit, or e-check methods. ((All other taxpayers paying via EFT must do so through the use of ACH debit, ACH credit or other electronic payment methods approved by the department.))~~ In an emergency, the taxpayer should contact the department for alternative methods of payment. ~~((Contact information will be included in the notification materials sent to all EFT remitters.~~

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

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

(B) If the taxpayer wishes to use EFT credit, the taxpayer is responsible for ensuring that its 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. ~~((An EFT payment made using the ACH 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.))~~

(A) An EFT payment made using the ~~((ACH))~~ EFT debit or e-check method is timely if the payment is initiated on or before 11:59 p.m. Pacific Time on the ~~((EFT))~~ 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 ((ACH)) EFT debit or ((ACH)) 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 it is the responsibility of the taxpayer to ((insure)) ensure timely payment.

((a)) (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 ((in the state of Washington)).

((b)) Example. The tax return due date is 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 tax return due date. This means EFT debit and e-check users must ((be completed by 5:00 p.m., Pacific Time, Tuesday, December 29th, which is the next banking day after the new due date. For an ACH debit user, the department's bank must have the appropriate information by 5:00 p.m., Pacific Time, on Monday, December 28th)) 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.

((8)) (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 web site 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 web site, 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 taxpayer pays taxes on the combined excise tax return by EFT debit, 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 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. ((The filed return and the EFT payment will be

coordinated by the department.)) When a taxpayer voluntarily uses the EFT credit payment method but files a paper return, the department will match the payment with the return. A return will be considered timely filed only if it is received by the department on or before the tax return due date. The associated EFT credit payment must be received by the next banking day after the tax return due date. If the return is sent ((by United States mail)) 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. ((In addition, the EFT payment must be received by the next banking day after the tax return due date.)) If both events occur, there is timely filing and payment and no penalties apply.

((9) Form and contents of EFT. The form and content of EFT will be as follows:

(a) If the taxpayer wishes to use the ACH debit system of EFT, the taxpayer will furnish the department with the information needed to complete the transaction. The department's bank will provide a service access key only to the taxpayer and all transactions must be initiated by the taxpayer.

(b) If the taxpayer wishes to use the ACH credit system of the EFT, the taxpayer is responsible to see that its bank has the information necessary for timely completion. The taxpayer must provide the information necessary for its bank to complete the ACH CCD + addenda for transmittal to the department's bank.

(c) If the taxpayer is not a taxpayer that is required to pay by EFT, and wishes to use any other electronic payment method approved by the department, the taxpayer must provide the information necessary for the payment processing institution to timely process the payment.

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

(b) An ((ACH)) 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) Taxpayers using any other electronic payment method are 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 the transaction was settled.

((11)) (7) Correcting errors. Errors in the ((EFT)) electronic payment process ((will)) 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.

~~((12))~~ **(8) Penalties.** There are no special provisions for penalties when payment is made by ~~((EFT))~~ electronic means. ~~((The general provisions for all taxpayers apply.))~~ To avoid the imposition of penalties, ~~((it is necessary for))~~ the taxpayer must provide correct bank account information to the department, and ensure their payment ~~((to be))~~ 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 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 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.

~~((a))~~ (c) In an ((ACH)) 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 ((ACH)) EFT debit or e-check transaction, provided accurate bank account information, received a ((verification)) confirmation number, and shows adequate funds were available in the account, no late payment penalties will apply with respect to those funds authorized.

~~((b))~~ (d) In an ((ACH)) 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)) 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 ((as)) with respect to those funds authorized if the transaction is not completed.

~~((e))~~ With the use of other electronic payment methods, the taxpayer's financial institution is the originator of the payment transaction)) (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. ((The taxpayer must have timely initiated the transaction and shown that there were sufficient funds in the account in order to prove timely compliance.)) If the taxpayer can ((make this showing)) prove the payment was initiated and submitted timely, ((then)) no late payment penalties will apply ((as)) to those funds authorized ((if the transaction is not completed)).

**WSR 13-12-060**  
**WITHDRAWAL OF**  
**EXPEDITED RULE MAKING**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**  
 (By the Code Reviser's Office)

[Filed June 4, 2013, 9:27 a.m.]

WAC 392-191-001, 392-191-005, 392-191-007, 392-191-010, 392-191-020, 392-191-025, 392-191-030, 392-191-035, 392-191-040 and 392-191-045, proposed by the superintendent of public instruction in WSR 12-23-098 appearing in issue 12-23 of the State Register, which was distributed on December 5, 2012, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

