

WSR 23-01-094

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed December 16, 2022, 3:02 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: The department of revenue is amending WAC 458-65A-10001 to incorporate the changes under the Revised Uniform Unclaimed Property Act enacted in 2022 legislation, chapter 63, Laws of 2022 (ESSB 5531).

Citation of Rules Affected by this Order: Amending WAC 458-65A-10001.

Statutory Authority for Adoption: RCW 63.30.030.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The public may be unclear about the status of brief adjudicative proceedings concerning interest and penalties because the rule currently cites to statutory references that will not be in effect as of January 1, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 16, 2022.

Atif Aziz
Rules Coordinator

OTS-4260.1

AMENDATORY SECTION (Amending WSR 18-11-103, filed 5/21/18, effective 6/21/18)

WAC 458-65A-10001 Brief adjudicative proceedings for matters related to penalties and interest imposed under the Revised Uniform Unclaimed Property Act, chapter ((63-29)) 63.30 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)~~) 10 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)~~) 10 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))~~ **(2) Waivers.**

~~((a))~~ (a) For subsection (1)(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))~~) 63.30.690.

~~((ii))~~ (b) For subsection (1) (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)~~) for circumstances sufficient for waiver or cancellation of penalties under RCW (~~(82.32.105 and WAC 458-20-228(9)(a))~~) 63.30.690.

~~((iii))~~ (c) For subsection (1)(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))~~) the department may relieve any holder from the electronic filing requirement for good cause as determined by the department. "Good cause" means:

(i) A circumstance or condition exists that, in the department's judgment, prevents the holder from electronically filing the report due under RCW 62.30.220; or

(ii) The department determines that relief from the electronic filing requirement supports the efficient or effective administration of chapter 63.30 RCW.

~~((2))~~ **(3) 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))~~ **(4) Holder defined.** Holder, as applied throughout this rule means a person obligated to (~~(report, or to deliver)~~) hold for the account of, or to deliver or pay to, the owner, property that is subject to chapter (~~(63.29)~~) 63.30 RCW, the Revised Uniform Unclaimed Property Act (~~(of 1983)~~).

~~((4))~~ **(5) Record in brief adjudicative proceedings.** The record with respect to a holder's petition for review (~~(per)~~) under 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))~~), if any; and

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

~~((5))~~ **(6) Conduct of brief adjudicative proceedings.**

(a) If the department assesses penalties and interest under chapter ~~((63.29))~~ 63.30 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))~~ 90 days after the holder receives the determination from the administrator pursuant to RCW 63.30.680 or from any extension of the due date granted by the department, or in the case of a refund or return application, 30 days after the department rejects the application in writing, regardless of any subsequent action by the department to reconsider its initial decision. The period for filing a petition for review under this section may be extended upon a written agreement signed by the holder and the department. See RCW 63.30.730.

(b) A form notice of petition for review is available at dor.wa.gov or by calling ~~((1-800-647-7706))~~ 360-534-1502. 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))~~ claims and outreach manager of the ~~((special programs division))~~ unclaimed property section 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))~~ 21 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))~~ (7) of this rule.

~~((6))~~ (7) **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))~~ (6) of this rule by filing a written petition for review with the department's administrative review and hearings division within ~~((twenty-one))~~ 21 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))~~ (6) of this rule is available at dor.wa.gov. ~~((The petition must be sent to one of the following:))~~ The completed petition must be mailed, emailed, or faxed to the department at:

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: DORARHAdmin@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))~~ (6) of this rule was ~~((correctly))~~ correct based on the criteria set forth in RCW ~~((63.29.340))~~ 63.30.690. The reviewing officer will review the record and, if needed, convert the proceeding to a formal adjudicative proceeding in accordance with subsection ~~((7))~~ (8) 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))~~ 20 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))~~ 20 days after the petition for review is filed, unless a continuance is issued under subsection ~~((11))~~ (12) of this rule. See RCW 34.05.491(5).

~~((7))~~ (8) **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 is-

sues 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))~~ (9) **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))~~ (7) 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))~~ 63.30.740.

~~((9))~~ (10) **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))~~ (11) of this rule is deemed complete upon mailing.

~~((10))~~ (11) **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))~~ (6) 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))~~ (7) 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))~~ (12) **Continuance.** The presiding officer or reviewing officer may ~~((grant a request for a continuance))~~ extend any filing deadline or move the date of any hearing by motion of the holder, the department, or on its own motion.

[Statutory Authority: RCW 63.29.370. WSR 18-11-103, § 458-65A-10001, filed 5/21/18, effective 6/21/18.]