

Sellers of Travel

Accounting and Record Keeping Procedures

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**SELLERS OF TRAVEL
ACCOUNTING and RECORD KEEPING PROCEDURES**

This guide is written to aid the licensee, auditor and/or bookkeeper in a better understanding of the sellers of travel business operations in the state of Washington. It is to be used in conjunction with a copy of “**The Law Relating to Sellers of Travel Registration Act RCW [19.138](#) and WAC [308-129](#)” dated January 2002.**

This guide is not the law, and should be used only as a source of reference. Laws and interpretations are not static, and every licensee is encouraged to consult their own legal counsel.

Definitions

A seller of travel is defined as”....a person, firm, or corporation both inside and outside the state of Washington, who transacts business with Washington consumers for travel services.” **RCW [19.138.021\(3\)](#)**

“Seller of travel” includes a travel agent and any person who is an independent contractor or outside agent for a travel agency or other seller of travel whose principal duties include consulting with and advising persons concerning travel arrangements or accommodations in the conduct or administration of its business.....**RCW [19.138.021\(3\)\(a\)](#)**

Minimum Required Records and Records Procedures

- 1) A registered seller of travel must conspicuously post their registration number in their place of business.
- 2) A seller of travel must maintain the required records at the location where the seller of travel is registered for a period of two years after completion of the travel unless a different period is specified by statute or rule. The seller of travel must make the required records available for inspection by representatives of the department.
- 3) All money received for travel services by the registered seller of travel, their employees, independent contractors, or outside agents (if they are conducting business as a seller of travel in the name of, and under the registration of the registered seller of travel) are to be collected in the name of the registered seller of travel, and processed by the registered seller of travel.
- 4) At or prior to the time full or partial payment is made by the client/customer for any travel services, the seller of travel must furnish that client/customer a written statement providing the following information: the name, business address, and telephone number of the seller of travel, the amount paid, the date of such payment, the purpose of the payment made, and an itemized statement of any balance due, the registration number of the seller of travel, and the name of the vendor with whom the seller of travel has contracted to provide travel arrangements for the consumer. All pertinent information relating to the travel as known by the seller of travel at the time of the booking must be provided. The seller of travel will make known further details as soon as they are received from the vendor. All information will be provided with final documentation.
- 5) If payment is made other than in person, the seller of travel will transmit to the person making the payment the written statement required within three business days of receipt of processing of the payment.

- 6) The seller of travel must provide an advisory regarding the penalties that would be charged in the event of cancellation or change by the client/customer.
- 7) A seller of travel must maintain client/customer account information including the name of the client/customer, the amount of payment (s) received from that client/customer, the date these payment (s) were received, and the date these payment (s) were disbursed.
- 8) At the time of registration with the state, a seller of travel must provide the department with the account number for the trust bank account and the name of the financial institution where the trust bank account funds will be held. Should the location of the trust bank account or the account number be changed, the registered seller of travel must notify the department of these changes within one business day of the occurrence of the change.
- 9) A **trust bank account** must be established for all moneys received from customers as payment for retail travel services when these funds are held for more than **five (5) business days**. The trust bank account must be identified as “trust”, and must include the name of the seller of travel as registered. Trust bank accounts must be maintained in a federally insured financial institution located in Washington State, and the director must approve all other alternative accounts.

A “**trust account**” is simply a bank account into which trust funds (and only trust funds) are deposited. It must be a separate, custodial account that provides for withdrawal of funds without delay.

By depositing trust funds in trust bank account and keeping accurate records that identify each client or customer, the funds are protected from being frozen, attached, liened, or levied should the licensee become involved in IRS, estate, legal action, become incapacitated, or die. Furthermore, by placing these funds in a separate (trust bank account), licensees are less likely to confuse the trust funds with their personal or business funds, and inadvertently use these funds belonging to clients or customers for personal or business purposes.

Terminology for the handling of trust funds

Commingling Trust Funds

The first is the term **commingling funds**. This term is defined as mixing the licensee or firm funds with those he/she holds in trust for another. Commingling funds may nullify the protection afforded depositors of a trust account. The licensee or firm’s funds must not be placed in his/her client’s trust account. Funds that are already in a trust account and consequently become the licensee’s or firm’s funds should be removed immediately.

Conversion of Trust Funds

Another term that applies to trust account handling is **conversion**. Conversion is defined as a change of character or use to another; an appropriation of something exercising dominion and control over it inconsistent with the true owner’s interest in it.

Conversion occurs whenever one client’s trust funds are used for any purpose other than for which they are being held. This might involve the licensee converting the funds for his personal or business use or it might involve the use of the client’s funds for another client’s use.

The latter is referred to as a “technical conversion.” An example of what a technical conversion might be is the use of one client’s trust funds to pay another client’s expenses. This is commonly referred to as a “disbursement in excess.” If a licensee maintains a trust account holding funds for several clients, and spends more money than a client has in his/her funds, the licensee is now utilizing one client’s moneys for the benefit of others, and that is considered conversion of trust funds.

- 10) If the financial institution charges service fees, the seller of travel must reimburse the trust account or other approved account within 10 banking days after the receipt of the monthly bank statement.
- 11) Trust bank account records to be maintained by the registered seller of travel would include: a check register showing deposits made, and checks written, a monthly bank statement, all canceled and voided checks for each month, and deposit slips (records) for each month for that trust bank account.
- 12) All disbursements from the trust bank account or other approved account must be identified to a specific transaction.
- 13) The seller of travel may deposit non-customer funds into their trust account as needed in the amount equal to a deficiency resulting from dishonored customer payments made by check, draft, credit card, debit card, or other negotiable instrument. Documentation is required to support these deposits.
- 14) The seller of travel may not encumber the funds held in trust, and may not withdraw any of the funds being held in trust. All funds received by the seller of travel from client/customers, as payment for travel services must be deposited into the trust bank account, and referenced to a specific client/customer.

The following are the only ***exceptions*** that allow the seller of travel not to deposit client/customer funds, or to withdraw client/customer funds, or to make withdrawals from the trust bank account:

- a. partial or full payment for travel services to the entity directly providing the travel service
- b. refunds as required by chapter
- c. the amount of the sales commission
- d. interest earned and credited to the trust bank account or other approved account
- e. funds belonging to a purchaser remaining in the trust bank account once all travel services have been provided or when tickets or other similar binding documentation binding the ultimate provider of the travel services has been provided
- f. reimbursement to the seller of travel for agency operating funds that are *advanced* for a customer’s travel services
- g. travel services sold by a seller of travel when payments for the travel services are made through ARC, the Airline Reporting Corporation.

When A Complaint Is Made

When a complaint is made against a registered seller of travel, the director or the authorized representative of the director has the powers and duties to inspect, and audit the books and records of a seller of travel. The seller of travel will immediately make available to the director or the authorized representative of the director those books and records as may be requested. The records are to be made available at the seller of travel’s place of business or at a location designated by the director or the authorized representative of the director. For that purpose, the director or the

authorized representative of the director shall have full and free access to the office, and places of business of the seller of travel during regular business hours.

When ten or more complaints have been received by either the department or the attorney general on a seller of travel within a period of ninety days, the department will inspect, and audit the books and records of the seller of travel.

Documentation supporting the non-deposit of client/customer funds, the withdrawal of client/customer funds, and any other withdrawals made from the trust bank account by the seller of travel are to be maintained.

Documentation – Audit Trail

Records should provide an adequate audit trail. An audit trail is a paper trail that can easily be followed by an auditor or bookkeeper who is analyzing the sources and uses of funds. An auditor should be able to enter a licensee's office, examine the trust account records and be able to see where, to whom, when, and for what purpose funds have been received. The auditor should then be able to discern when and where funds were deposited. When funds are disbursed (withdrawn from the trust account), the auditor should be able to find to whom, when, and for what reason those funds have been disbursed including all necessary authorizations, and source documents.

Audit trails are easily provided, if the minimum trust account records are maintained. Remember to post all required information on checks, deposit slips, receipts, checkbook register and client/customer invoices—the next person reviewing those records may not have the benefit of your familiarity with those records. Records should be able to be understood by anyone—should they be familiar or unfamiliar with your office.

Exceptions allowing a seller of travel to *not* maintain a trust account are listed under **RCW [19.138.140](#) Trust account—Filing—Notice of change—Other funds or accounts—Rules—Exceptions.**

Common Complaints Received by the Department

- ü Seller of travel is not registered do to business in the state of Washington.
- ü Seller of travel is not maintaining a trust bank account when holding client/customer funds for more than five days.
- ü Client/customer is dissatisfied with the travel services promised by the seller of travel.
- ü Seller of travel accepted the client/customer's payment for specified travel services, and did not provide the travel service.
- ü Seller of travel did not refund client/customer's funds in accordance with a refund policy or within the time frame specified by statute or rule.
- ü Seller of travel has co-mingled client/customer trust funds with seller of travel's business operating account funds.
- ü Seller of travel is not maintaining required books and records.

- ü Seller of travel is not maintaining required books and records at the location where they are registered to do business.

FAQ – Frequently Asked Questions

How long must a seller of travel keep their records?

- Required records must be maintained at the location where the seller of travel is registered for a period of two years after the completion of the travel unless a different period is specified by licensing law.
- However, the period of record retention for the IRS is five years, and records must be maintained for a period of seven years for any potential litigation issues.

What constitutes a bank account becoming a trust account?

A bank account becomes a trust bank account when that account is identified as trust on the bank statement, checks, deposit slips, and on the signature card.

Why should I open and/or maintain a trust account?

The benefits to a licensee opening or maintaining a trust bank account are:

- Client/customer funds are clearly separated from the licensee's funds
- Records for client/customer funds are easy to maintain once a record keeping system has been out into place, and should a licensee need to refund client/customer moneys this can be accomplished quickly, and with ease.
- As mentioned previously in this guide, trust bank account funds are protected from being frozen, attached, liened, or levied should the licensee become involved in IRS, estate or legal action. The trust bank account funds are also protected should the licensee become incapacitated or die.
- ***Most major banks usually do not assess bank fees against a trust bank account. This represents an overall savings for the seller of travel because:*** For a licensee to maintain a trust bank account he/she saves their business the cost of purchasing a surety bond in an amount of not less than \$10,000.00 based on the gross income of the business of the seller of travel during the prior year. The licensee also has the option, with the approval of director, of filing a certificate of deposit or an irrevocable letter of credit or other such instrument as approved by the director by rule, and drawn in favor of the director for an amount equal to the required bond. The licensee saves their business money by not having to arrange with the bank to draw up a letter of credit, or deposit funds and provide proof of the certificate of deposit, or the fees associated with having an attorney prepare some other acceptable instrument. A seller of travel may also elect to become a member in good standing in a professional association or national tour association, with approval of the director, that provides or requires a member to provide a minimum of one million dollars in errors and professional liability insurance, and provides a surety bond or equivalent protection in an amount of at least \$250,000.00 for its member companies. The licensee would save the cost of membership in such organizations, if they elect to do so, by simply opening, and maintaining a trust bank account. **RCW 19.138.140** enumerates the exceptions a licensee may employ if they choose not to maintain a trust bank account, and these exceptions come with a price tag. A trust bank account usually costs very little or costs nothing.
- Improved customer relations – The licensee could advise their customers/clients that moneys deposited with that seller of travel are held in trust. The consuming public would welcome the peace of mind knowing that the licensee had taken all precautions to safeguard their money, and therefore their travel plans as well.

Why am I being audited?

The Department of Licensing currently audits sellers of travel at the request of the sellers of travel program or at the request of the Attorney General's Office.

Will I be charged for an audit?

No.

Do I have to provide the auditor with confidential information about my business operating bank accounts or about customers/clients or vendors?

Yes. WAC [308-129-300](#)

Appendix Containing RCW'S and WAC'S Applicable to Required Records*

*It is the responsibility of each licensee to obtain a copy of, and to be knowledgeable of, and to keep current with the rules, the Washington Administrative Code (WAC), implementing Chapter 19.138 RCW

RCW [19.138.040](#) Written statement by seller of travel - Contents.

At or prior to the time of full or partial payment for any travel services, the seller of travel shall furnish to the person making the payment a written statement conspicuously setting forth the information contained in subsections (1) through (6) of this section. However, if payment is made other than in person, the seller of travel shall submit to the person making the payment the written statement required by this section within **three** business days of receipt or processing of the payment. The written statement shall contain the following information:

- (1) The name and business address and telephone number of the seller of travel.
- (2) The amount paid, the date of such payment, the purpose of the payment made, and an itemized statement of the balance due, if any.
- (3) The registration number of the seller of travel required by this chapter.
- (4) The name of the vendor with whom the seller of travel had contracted to provide travel arrangements for a consumer and all pertinent information relating to the travel as known by the seller of travel at the time of the booking. The seller of travel will make known further details as soon as received from the vendor. All information will be provided with final documentation.
- (5) An advisory regarding the penalties that would be charged in the event of a cancellation or change by the customer. This may contain either: (a) The specific amount of cancellation and change penalties; or (b) the following statement: "Cancellation and change penalties apply to these arrangements. Details provided upon request."
- (6) A statement in eight-point boldface type in substantially the following form:

"If transportation or other services are canceled by the seller of travel, all sums paid to the seller of travel for services not performed in accordance with the contract between the seller of travel and the purchaser will be refunded within *thirty days* of receiving the funds from the vendor with whom the services were arranged, or if the funds were not sent to the vendor, the funds shall be

returned within *fourteen days* after cancellation by the seller of travel to the purchaser unless the purchaser requests the seller of travel apply the money to another travel product and/or date.””

RCW [19.138.050](#) Cancellation—Refund—Material misrepresentation—Exception.

- 1) If the transportation or other services contracted for are canceled, or if the money is to be refunded for any reason, the seller of travel shall refund to the person with whom it contracts for travel services, the money due the person within *thirty days* of receiving the funds from the vendor with whom the services were arranged. If the funds *were not* sent to the vendor and remain in the possession of the seller of travel, the funds shall be refunded within *fourteen days*.
- 2) Any material misrepresentation with regard to the transportation and other services offered shall be deemed to be a cancellation necessitating the refund required by this section.
- 3) When travel services are paid to a vendor and charged to a consumer’s credit card by the seller of travel, and the arrangements are subsequently canceled by the consumer, the vendor, or the seller of travel, any refunds to the consumer’s credit card must be applied within *ten days* from the date of cancellation.
- 4) The seller of travel shall not be obligated to refund any cancellation penalties imposed by the vendor with whom the services were arranged if these penalties were disclosed in the statement required under RCW [19.138.040](#).

RCW [19.138.140](#) Trust account—Filing—Notice of change—Other funds or accounts—Rules—Exceptions.

- 1) A seller of travel shall deposit in a trust account maintained in a federally insured financial institution located in Washington state, or other account approved by the director, all sums held for more than *five business days* that are received from a person or entity, for retail travel services offered by the seller of travel.
- 2) The trust account or other approved account required by this section shall be established and maintained for the benefit of any person or entity paying money to the seller of travel. The seller of travel *shall not* in any manner encumber the amounts in trust and *shall not* withdraw money from the account except the following amounts may be withdrawn at any time:
 - (a) Partial or full payment for travel services to the entity directly providing the travel service;
 - (b) Refunds as required by this chapter;
 - (c) The amount of the sales commission;
 - (d) Interest earned and credited to the trust account or other approved account;
 - (e) Remaining funds of a purchaser once all travel services have been provided or once tickets or other similar documentation binding upon the ultimate provider of the travel services have been provided; or
 - (f) Reimbursement to the seller of travel for agency operating funds that are advanced for a customer’s travel services.
- 3) The seller of travel may deposit noncustomer funds into the trust account as needed in the account equal to a deficiency resulting from dishonored customer payments made by check, draft, credit card, debit card, or other negotiable instrument.
- 4) At the time of registration, the seller of travel shall file with the department the account number and the name of the financial institution at which the trust account or other approved account is held as set forth in RCW [19.138.110](#). The seller of travel shall notify the department of any change in the account number or location within one business day of the change.
- 5) The director, by rule, may allow for the use of other types of funds or accounts only if the protection for consumers is no less than that provided by this section.
- 6) The seller of travel need not comply with the requirements of this section if all of the following apply, except as exempted in subsection (1) of this section:
 - (a) The payment is made by credit card;

- (b) The seller of travel does not deposit, negotiate, or factor the credit card charge or otherwise seek to obtain payment of the credit card to any account over which the seller of travel has any control; and
 - (c) If the charge includes transportation, the carrier that is to provide the transportation processes the credit card charge, or if the charge is only for services, the provider of services processes the credit card charges.
- 7) The seller of travel need not maintain a trust account nor comply with the trust account provisions of this section if the seller of travel:
- (a)(i) Files and maintains a surety bond approved by the director in an amount not less than ten thousand dollars, as determined by rule by the director based on the gross income of business conducted by the seller of travel during the prior year. The bond shall be executed by the applicant as obligor by a surety company authorized to transact business in this state naming the state of Washington as obligee for the benefit of any person or persons who have suffered monetary loss by reason of the seller of travel's violation of this chapter or rule adopted under this chapter. The bond shall be conditioned that the seller of travel will conform to and abide by this chapter and all rules under this chapter, and shall reimburse any person or persons who suffer monetary loss by reason of a violation of this chapter or rule adopted under this chapter.
 - (ii) The bond must be continuous and may be canceled by the surety upon the surety giving written notice to the director of the surety's intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the director.
 - (iii) The applicant may obtain the bond directly from the surety or through other bonding arrangement as approved by the director.
 - (iv) In lieu of a surety bond, the applicant may, upon approval of the director, file with the director a certificate of deposit, an irrevocable letter of credit, or such other instrument as is approved by the director by rule, drawn in favor of the director for an amount equal to the required bond.
 - (v) Any person or persons who have suffered monetary loss by any act which constitutes a violation of this chapter or rule adopted under this chapter may bring a civil action in court against the seller of travel and the surety upon such bond or approved alternate security of the seller of travel who committed the violation of this chapter or who employed the seller of travel who committed such violation. A civil action brought in court pursuant to the provisions of this section must be filed no later than one year following the later of the alleged violation of this chapter or a rule adopted under this chapter or completion of the travel by the customer; or
- (b) Is a member in good standing in a professional association, such as the United States tour operators association or national tour association, that is approved by the director and that provides or requires a member to provide a minimum of one million dollars in errors and professional liability insurance and provides a surety bond or equivalent protection in an amount of at least two hundred fifty thousand dollars for its member companies.
- 8) If the seller of travel maintains its principal place of business in another state and maintains a trust account or other approved account in that state consistent with the requirement of this section, and if that seller of travel has transacted business within the state of Washington in an amount exceeding five million dollars for the preceding year, the out-of-state trust account or other approved account may be substituted for the in-state account required under this section

WAC [308-129-300](#) Required records

The minimum records a seller of travel shall be required to keep are:

- 1) Bank trust account or other approved account records (unless exempt);
- 2) Client account information, which includes the client's name, amount and date payment was received and disbursed;
- 3) Unless a different period is specified by statute or rule, the required records shall be maintained and available for inspection by representatives of the department for a period of *two years after completion of the travel*.

WAC 308-129-310 Administration of non-exempt funds and records procedure

Any seller of travel shall distribute non-exempt funds as authorized by statute and these regulations:

- 1) The trust account or other approved account shall be in the firm name of the seller of travel as registered;
- 2) All disbursements from the trust account or other approved account shall be identified to a specific transaction
- 3) If the financial institution charges service fees, the seller of travel shall reimburse the trust account or other approved account with *10 banking days* after receipt of the monthly statement.

RCW 19.138.021 (3)(b)(i)(ii)(iii)(iv)(v)(vi)(vii)(viii)(ix)(4) Exceptions for registering as a seller of travel would include:

- 1) An air carrier
- 2) An owner or operator of a vessel, including an ocean common carrier, an owner or charterer of a vessel that is required to establish its financial responsibility in accordance with the requirements of the federal maritime commission, and a steamboat company, defined by statute, whether or not operating over and upon the waters of this state.
- 3) A motor carrier
- 4) A rail carrier
- 5) A charter party carrier of passengers as defined by statute
- 6) An auto transportation company as defined by statute
- 7) A hotel or other lodging accommodation
- 8) An affiliate of any person or entity. Affiliate would mean a person or entity owning, owned by, or under common ownership with equity holdings of a least eighty percent
- 9) Direct providers of transportation by air, sea, or ground, hotel or any lodging accommodations, package tours, or vouchers or coupons to be redeemed for future travel of accommodations for a fee, commission, or other valuable consideration

