

**280-RICR-20-00-2**

## **Title 280 – DEPARTMENT OF REVENUE**

### **CHAPTER 20 – DIVISION OF TAXATION**

#### **SUBCHAPTER 00 – GENERAL ADMINISTRATION**

##### Part 2 – Administrative Hearing Procedures

### **2.1 Definitions**

- A. The words "Tax Administrator" shall mean the Tax Administrator and his or her duly authorized agents.
- B. The words "Tax Division" shall mean the Division of Taxation in the Department of Revenue.
- C. The words "Hearing Officer" shall mean the individual(s) authorized by law and duly appointed by the Tax Administrator to conduct hearings on contested matters and make written recommendations thereon to the Tax Administrator for his or her final decision and order.

### **2.2 Purpose**

This regulation implements various provisions of Title 44 of the General Laws that provide for administrative hearings before the Tax Administrator regarding contested tax matters. These rules and regulations shall be construed liberally to further the fair, prompt and orderly administration of hearings regarding contested tax matters in a manner consistent with due process and the provisions of the Rhode Island Administrative Procedures Act.

### **2.3 Authority**

These rules and regulations are promulgated pursuant to R.I. Gen. Laws § 44-1-4. These rules and regulations have been prepared in accordance with the requirements of R.I. Gen. Laws §§42-35-1 et seq.

### **2.4 Application**

These rules and regulations shall apply to all contested tax matters involving the Tax Division. A tax matter, for purposes of these rules and regulations, involves any tax, fee, penalty or surcharge that the Tax Administrator or the Tax Division are statutorily authorized to administer, collect or enforce. Such tax matters include, but are not limited to, assessments, notices of deficiency determination,

refund denials, tax credit denials, suspensions or revocations of licenses or permits, and the denial of exemption certificates.

## **2.5 Severability**

If any provision of these rules and regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations shall not be affected thereby.

## **2.6 Coordination with Other Rules of Practice and Procedure**

The hearing officer may conduct formal administrative hearings on contested tax matters pursuant to Rules of Practice and Procedure promulgated by another agency board or office. In the event, that the Tax Division's Rules of Practice and Procedure conflict with such other Rules, or such other Rules fail to address an issue set forth in the Tax Division Rules of Practice and Procedure, the hearing officer shall utilize these Rules. In the event that such other Rules of Practice and Procedure address an issue not set forth herein, the hearing officer shall utilize these Rules of Practice and Procedure.

## **2.7 Rules of Practice and Procedure**

- A. Appearance and Practice before the Tax Administrator.
1. Any attorney-at-law or any person authorized by law to practice accountancy or person who is actively enrolled to practice before the Internal Revenue Service, may represent any taxpayer in any hearings or other proceedings before the Tax Administrator. Attorneys who are not licensed to practice in Rhode Island must first obtain admission pro hac vice in accordance with Rule 9(a) of Article II of Rhode Island Supreme Court Rules. See, *In re Ferrey*, 774 A.2d 62 (RI 2001). Such person must officially enter his or her appearance with the Tax Administrator and, if not accompanied by the taxpayer, must have a properly executed power of attorney from the taxpayer.
  2. Any person may appear and act for himself or herself; or
    - a. for a partnership of which he or she is a partner; or
    - b. for a limited liability company of which he or she is a managing member; or
    - c. for a limited partnership of which he or she is a general partner or an officer of a corporate general partner; or

- d. for a corporation of which he or she is an officer; or
  - e. for an association or other organization of which he or she is a member or official, and being duly authorized by such association or organization to represent it, in any hearings or other proceedings before the Tax Administrator.
3. A family member may appear and act for another family member in any hearings provided that the person appearing before the Tax Administrator has a properly executed power of attorney. For purposes of this regulation, family member means a husband, wife, child (including foster child) mother, father, brother, sister, grandparent, or grandchild.
  4. Notice of any change of attorney, accountant, or other duly authorized representative, shall be given promptly to the Tax Administrator. Said notice of change or withdrawal must be consented to by the taxpayer in writing.
- B. Form and Style of Papers.--All papers filed with the Tax Administrator shall be either printed or typewritten, and if typewritten shall be on white paper of the usual legal size (8 1/2" x 14") or the usual letter size (8 1/2" x 11") and shall be clearly legible.
- C. Request for Hearing Procedure.— Taxpayer must request a hearing in writing. The request for hearing shall contain in substance the following:
1. A clear and concise statement of the nature of the tax or other material which is disputed, objected to, or otherwise sought to be contested and of the facts on which the taxpayer relies.
  2. A clear and concise statement of the taxpayer's objection to the assessment or determination with which he or she is aggrieved, and of contentions of law, if any, which the taxpayer desires to raise, including the application of any rule or regulation which may be involved;
  3. A prayer setting forth the relief sought; and
  4. The name and address of the taxpayer, any identifying number assigned to such taxpayer with reference to the particular tax in question, as well as the name and address of his or her attorney or accountant, if any.

- D. Filing of Request for Hearing.--The request for hearing shall be filed in writing with the Tax Administrator and be signed by the taxpayer or by his or her attorney or accountant. Such filing shall be made within the statutory time limit either by making delivery by hand, or by regular mail, postage prepaid, addressed to the Tax Administrator at One Capitol Hill, Providence, Rhode Island, 02908-5800. Failure to conform to the requirements of this Sub-part or of the preceding Sub-part C, shall be grounds, at the discretion of the Tax Administrator, for dismissal of the request for hearing.
- E. Any person aggrieved by any assessment or determination and who has requested a hearing thereon pursuant to the provisions of law, shall first be afforded an opportunity to have a preliminary conference before the Tax Administrator's designee (a/k/a a preliminary conferee) concerning said assessment or determination prior to the holding of such hearing, and for such purpose, the Tax Administrator shall designate the time and place for such conference. If there is no factual dispute, but only a question of law, such preliminary conference may be waived by either party.
1. A preliminary conference is in the nature of a settlement discussion and any evidence presented before the preliminary conferee must be resubmitted to the hearing officer if the matter goes forward to hearing.
  2. Recording by electronic equipment at any preliminary conference, pre-hearing or hearing will not be permitted.
  3. If a party fails to appear at a preliminary conference or otherwise fails to prosecute or defend a matter as provided by these Rules, the preliminary conferee, acting on his or her own initiative, may petition, in writing, the Tax Administrator for a default. The party being defaulted shall be given prior written notice of the petition and thirty (30) days therefrom to respond in writing. If default enters, the hearing request may be deemed to have been withdrawn without the issuance of a final decision and order. A defaulted party may request reinstatement of their matter pursuant to a Motion for Rehearing as set forth in Section V of this sub-part.
- F. Substitution of Parties.--In the event of the death of the taxpayer, or in the event of insolvency or other proceedings, or for other cause, the Tax Administrator may order the substitution of the proper parties. In the case of the death of the taxpayer, his or her executor or administrator may appear to prosecute the request for hearing.
- G. Continuances of Hearings and Default of Hearing Proceedings.

1. When notice of hearing has been sent to a taxpayer and his or her representative, if known, the date assigned may be postponed to an agreed upon date. Further continuances will only be granted for valid reasons, (for example, illness of an important party or witness, court appearance of an attorney with no other attorney available for the hearing, etc.)
  2. If the tax has been paid, continuances as requested will be freely made. Otherwise, inordinate delays will be cause for refusal of continuances, and the hearing will proceed as scheduled, with or without the presence of the taxpayer or his or her representative.
  3. If a party fails to appear at a hearing or a pre-hearing conference or otherwise fails to prosecute or defend a matter as provided by these Rules, the opposing party or the hearing officer, acting on his or her own initiative, may move for a default and the hearing request may be deemed to have been withdrawn without the issuance of a final decision and order. Notation of their default and the grounds therefor shall be noted in the record. The defaulted party shall be given notice by mail and may request reinstatement of the matter pursuant to a Motion for Rehearing as set forth in Section V of this Sub-part.
- H. Scope of Hearing.--The Tax Administrator will not consider, unless equity and good conscience so require, any issue of fact or contention of law not specifically set out in the request for hearing.
- I. Hearing Officers to Hear Case.--Hearings shall be conducted by a hearing officer appointed by the Tax Administrator who shall have authority to examine witnesses, to rule on motions, and to rule upon the admissibility of evidence. He or she shall have the authority to continue or recess any hearing, to keep the record open for the submission of additional evidence, and to make recommendations to the Tax Administrator. If for any reason a hearing officer cannot continue on a contested case, another hearing officer will become familiar with the record and perform any function remaining to be performed without the necessity of repeating any previous proceedings in the case.
- J. Conduct of Hearing.--The hearing shall be convened by the hearing officer, appearances shall be noted, any motions or preliminary matters shall be taken up, and then each party shall have opportunity to present its case generally on an issue by issue basis, by calling and examining witnesses and introducing documentary evidence. The Division of Taxation shall first present its case followed by presentation of the taxpayer's case. Each party shall also have opportunity to cross-examine opposing witnesses on any matter relevant to the issue. Any objection to

testimony or evidentiary offers should be made, and the basis of the objection stated. The hearing officer may question any party or witness for the purpose of clarifying his or her understanding or to clarify the record. Proceedings are not open to the public.

K. Rules of Evidence.--The rules of evidence set forth in Chapter 35, Title 42, entitled "Administrative Procedures" shall apply in all contested cases. Section 10 of that Act provides, as follows:

1. Rules of evidence. Official notice.--In contested cases:
  - a. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the Superior Courts of this State shall be followed; but, when necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under those rules may be submitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;
  - b. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;
  - c. A party may conduct cross examinations required for a full and true disclosure of the facts;
  - d. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

- L. Oral Evidence, Witnesses, and Penalty for False Statements. A hearing officer may require the parties in a case to indicate the persons they expect to call as witnesses. The testimony of witnesses shall be made under oath or affirmation and the making of false statements may subject a person to criminal prosecution under Chapter 33 of Title 11 of the Rhode Island General Laws, as amended.
- M. Requests for Subpoena Duces Tecum. Any party may request a hearing officer to issue a subpoena duces tecum or the hearing officer may do so on his or her own motion. Said request shall set forth, in detail, the information sought, the relevance thereof, and the reasonableness of the scope of the subpoena. The party requesting the issuance of said subpoena shall have the burden of showing the relevance and reasonableness of the scope of the subpoena. A subpoena duces tecum may be quashed after its issuance if it is subsequently determined that the matters sought to be adduced are not relevant or the subpoena is not reasonable in scope.
- N. Documentary Evidence.--Documentary evidence of exhibits will be marked for identification. Copies or excerpts of documents are permissible.
- O. Consolidated Hearings.--A party may file a written motion to have two or more cases consolidated for purposes of hearing, whether on written submission or oral; or the hearing officer may, on his or her own motion, consolidate two or more cases. The motion should state the basis for consolidation.
- P. Severance.--Where two or more cases have been consolidated for purposes of hearing, a party may move to sever his or her case for cause. Severance will lie within the discretion of the hearing officer.
- Q. Ex Parte Communications.--There shall be no verbal communications with the hearing officer regarding any issue of fact or law in a case, without notice and opportunity for all parties to participate. And there shall be no written communications that are not transmitted at the same time to all parties, except that an individual involved in rendering the decision in a case may communicate ex parte with employees of the agency who have not participated in any hearing in the case for the purpose of utilizing their special skills or knowledge in evaluating the evidence.
- R. Agreed Statement of Facts.--The parties may, by stipulation in writing, filed with the Tax Administrator, agree upon any facts involved in any request for hearing. Where an agreed statement of facts is contemplated, a proposed statement shall be submitted on behalf of the taxpayer well in advance of the hearing date. To the extent that all the facts are not agreed upon, testimony or exhibits may be presented at the oral proceedings. If

for any reason the parties are unable to reach agreement on the facts prior to the scheduled date of the hearing, the oral proceedings shall go forward as scheduled without further notice to the parties unless postponed in accordance with 2.7 (G) of this part heretofore stated.

- S. Transcript of Oral Proceedings. Proceedings in a pending hearing may be recorded by one of two ways:
1. The proceedings may be recorded transcribed by a stenographer at the discretion of the hearing officer or at the initiative of any party.
    - a. If stenographic recording is ordered by the hearing officer, the costs of such recording shall be charged to the Tax Division. The stenographic notes of hearings taken and transcripts thereof shall be for the ~~information~~ reference and use of the hearing officer. Copies of said transcripts may be obtained only by the taxpayer and/or his representative from the Tax Administrator at his reproduction costs or from the stenographer upon the terms and conditions fixed by the stenographer.
    - b. If a stenographic is ordered by a party, the costs of the recording shall be borne by the requesting party or upon the terms and conditions agreed upon between the parties. The hearing officer shall be provided an original copy of the transcript at no cost for his or her own reference and use.
  2. The proceedings may be recorded by audiotape, digital recorder or similar electronic device by the hearing officer. Any party may request a copy of such recordings from the hearing officer and they may convert such recordings into a written transcript at their own cost. The hearing officer may request a copy of such transcripts at no cost for his or her reference and use.
- T. Findings of Fact.--Requests for proposed findings of fact (R.I. General Laws § 42-35-12) must be submitted in a separate document and be so headlined. A statement of facts included in a brief or memorandum of law will be considered only to represent the proponent's version of the facts.
- U. Briefs.--Briefs may be filed either before or at the time of the hearing, or after the hearing within a time to be fixed by the hearing officer.
- V. Requests for Rehearing.
1. A request for rehearing which is submitted prior to the issuance of the final decision of the hearing officer and/or the Tax

Administrator, should be made in writing, setting forth the substance of the additional evidence to be offered, and the reason for failure of the party to offer it at the prior proceedings.

2. A request for rehearing which is submitted after the issuance of the final decision must be made within thirty (30) days, after such issuance, and must state the grounds for the request, setting forth the substance of the evidence to be offered, and the reason for failure of the party to offer it at the prior proceeding.
3. Rehearing will be denied if the proffered evidence does not bear on any issue in contest in the original proceedings, or if the request appears to be merely for delay. A second request for rehearing after the granting or denial of a prior request for rehearing will not be permitted.
4. Stays Pending Appeal---Judicial review of final decisions of the Tax Administrator are by trial de novo before the Sixth Division District Court pursuant to RI Gen. Law §§ 8-8-24 *et. seq.* Accordingly, a motion for a stay of a license or permit revocation or suspension pending appeal is made as a preliminary motion accompanying the complaint filed with the reviewing court.