

State of Rhode Island - Division of Taxation

Administrative Rules of Practice and Procedure

Regulation AF 90-01

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1.0 PURPOSE, SCOPE AND AUTHORITY

1.1 Purpose. The purpose of these rules and regulations is to carry out the statutory requirements contained in Chapter 92 of Title 42 of the Rhode Island General Laws.

1.2 Scope. These rules and regulations govern the application and award of reasonable litigation expenses to prevailing parties in adjudicatory proceedings conducted by the Division of Taxation.

1.3 Authority. The rules and regulations herein contained are promulgated pursuant to R.I.G.L. 42-92-4.

2.0 DEFINITIONS

2.1 "Adjudicative Officer" means the deciding official, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication.

2.2 "Adjudicatory Proceedings" means any proceeding conducted by or on behalf of the state of Rhode Island administratively or quasi-judicially which may result in the loss of benefits, the imposition of a fine, the adjustment of a tax assessment, the suspension or revocation of a license, permit, or which may result in the compulsion or restriction of the activities of a party.

Any agency charged by statute with investigating complaints shall be deemed to have substantial justification for said investigation and for the proceedings subsequent to said investigation.

2.3 "Agency" means any state board, commission, department, or officer, other than the legislature or the courts, authorized by law to make rules or to determine contested cases, to bring any action at law or in equity, including injunctive and other relief, or to initiate criminal proceedings. This shall include contract boards of appeal, tax proceedings, and employment security administrative proceedings.

2.4 "Party" means any individual whose net worth is less than two hundred fifty thousand dollars (\$250,000) at the time the adversary adjudication was initiated; and, any individual, partnership, corporation, association, or private organization doing business and located in the state, which is independently owned and operated, not dominant in its field, and which employs one hundred (100) or fewer persons at the time the adversary adjudication was initiated.

2.5 "Reasonable Litigation Expenses" means those expenses which were reasonably incurred by a party in adjudicatory proceedings, including, but not limited to, attorney's fees, witness fees of all necessary witnesses, and other such costs and expenses as were reasonably incurred, except that:

- (1) The award of attorney's fees may not exceed seventy-five dollars (\$75) per hour;
- (2) No expert witness may be compensated at a rate in excess of the highest rate of compensation for experts paid by this state.

Legal, professional and all other reasonable expenses incurred prior to the commencement of the adjudicatory proceedings are not subject to claim or award under Chapter 92 of Title 42.

Adjudicatory proceedings are commenced when a taxpayer requests a hearing to the Tax Administrator within the time prescribed by statute.

2.6 "Substantial Justification" means that the initial position of the Division of Taxation, as well as the Division of Taxation's position in the proceedings, has a reasonable basis in law and fact.

3.0 PROCEDURES GOVERNING APPLICATIONS FOR AWARDS OR LITIGATION EXPENSES

3.1 All claims for an award of reasonable litigation expense shall be made on an application form to be supplied by the Division of Taxation, and shall be filed within thirty (30) days of mailing of final decision by the Division of Taxation. In the event a party requests a rehearing after issuance of a final decision and the request for rehearing is denied, the claim shall be filed within thirty (30) days of issuing the denial of rehearing.

3.2 All claims filed pursuant to these regulations shall be filed in duplicate and shall contain:

- A. A statement that the claimant requesting the litigation expenses qualifies as a "party" pursuant to R.I.G.L. 42-92-2(a);
- B. A summary of the legal and factual basis for filing the claim;

C. A detailed breakdown of the reasonable litigation expenses incurred by the party in the adjudicatory proceeding, including copies of invoices, bills, affidavits and other documents requested by the hearing officer subsequent to the initial filing of the claim;

D. A notarized statement swearing to the accuracy and truthfulness of the statements and information contained in the claim, and/or filed in support thereof.

3.3 Upon receipt of a properly filed claim, the Tax Administrator shall forward the claim to the adjudicative officer who presided over the adversary adjudication and shall also forward a copy of the claim to the representative of the Tax Division who litigated the matter before the adjudicative officer.

3.4 The representative of the Tax Division may file an objection to the claim for award setting forth his/her reasons therefore. Such objection must be filed with the adjudicative officer within thirty (30) days of receipt of the claim by the adjudicative officer but the period for filing such objection may be extended for good cause.

4.0 ALLOWANCE OF AWARDS

4.1 Whenever a party which has provided the Division of Taxation with timely notice of its claim of litigation expenses as provided in these rules and prevails in the contested agency action, and the adjudicative officer finds that the agency was not substantially justified in the actions leading to the proceedings and in the proceedings itself, an award shall be made of reasonable litigation expenses.

4.2 The decision of the adjudicative officer to make an award shall be made a part of the record and shall include written findings and conclusions with respect to the award including a determination as to whether the claimant seeking the award qualifies as a party under 42-92-2(a) and as to the reasonableness of the amount of the award. A copy of said fee determination shall be sent to the claimant.

4.3 The adjudicative officer may recalculate the amount to be awarded to the prevailing party, without regard to the amount claimed to be due on the application for an award.

5.0 DISALLOWANCE OF AWARDS

5.1 No award of fees or expenses may be made if the adjudicative officer finds that the Division of Taxation was substantially justified in the actions leading to the proceeding and in the proceeding itself.

5.2 The adjudicative officer may, at his/her discretion, deny fees or expenses if special circumstances make an award unjust.

5.3 Notice of the decision disallowing an application for an award of fees and expenses shall include written findings and conclusions with respect to the denial of the award and shall be sent to the party by the Division of Taxation via regular mail.

6.0 APPEALS

6.1 Any party dissatisfied with the fee determination by the adjudicatory officer may appeal to

the Sixth District Court for a de novo review of the record.

7.0 SEVERABILITY

7.1 If any provision of these Rules and Regulations or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of the rules and regulations which can be given effect, and to this end the provisions of these rules and regulations are declared to be severable.

R. GARY CLARK
TAX ADMINISTRATOR

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