



Glenn Hegar Texas Comptroller of Public Accounts

July 2017

The Rules of Practice & Procedure

Title 34, Texas Administrative Code §1.1-1.42

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State of Texas

Texas Comptroller of Public Accounts

PRACTICE AND PROCEDURE

Rule 1.1. Intent, Scope, and Construction of Rules.

- (a) The Rules of Practice and Procedure are intended to provide fair methods for hearing and resolving a taxpayer's disagreements with certain official actions of the Comptroller of Public Accounts. These rules govern all contested case proceedings within the agency.
- (b) These rules address those parts of the administrative process during which the parties attempt to resolve a case by agreement as well as those parts of the administrative process of an appellate nature subsequent to the receipt of a proposal for decision from an administrative law judge.
- (c) After a determination has been made that a case cannot be resolved without a hearing or when prehearing matters cannot be resolved, the agency will docket the case with SOAH for a hearing or resolution of any such prehearing matters. These rules will not apply to any matters before SOAH. Instead, SOAH Rules of Procedure (1 TAC Chapter 155) will apply to those aspects of the case.
- (d) These rules will be given their most reasonable meaning taken in their total context, and will be construed to secure a just resolution or decision for every controversy. They will not be construed to limit or repeal rights afforded or requirements imposed by law. Unless otherwise expressly provided, the past, present, or future tense each includes the other; the masculine, feminine, or neuter gender each includes the other; and the singular and plural number each includes the other. Definitions of some of the words used in these rules are contained in §1.42 of this title (relating to Definitions).

Effective Date: April 18, 2007

Rule 1.2. Settlement in a Contested Case Based on Insolvency.

- (a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
 - (1) Insolvent--The taxpayer's liabilities exceed the taxpayer's assets or the taxpayer is unable to pay the taxpayer's debts as they become due.
 - (2) Insolvency settlement--Settlement based on Tax Code, §111.102 made in the contested case process and included in a redetermination order with a Comptroller's Decision.

- (b) Eligibility for Insolvency Settlement. The comptroller may settle a claim for a tax, penalty, or interest imposed by Tax Code, Title 2, State Taxation, only if the taxpayer proved by a preponderance of evidence that:
 - (1) collection of the total amount due would make the taxpayer insolvent and the taxpayer has submitted all financial records including income tax reports and an inventory of all property owned, wherever located; or
 - (2) the taxpayer has no property that may be seized by the courts of this or another state or the value of the taxpayer's property is less than the total amount due and the amount of debts against the property; and the taxpayer:
 - (A) is insolvent;
 - (B) is in liquidation; or
 - (C) has ceased to do business.
- (c) An insolvency settlement request must be submitted in a contested case after a hearing number is assigned to the matter and before a notice of hearing is issued.
- (d) The insolvency settlement request must specify the basis of eligibility for an insolvency settlement and the specific terms the taxpayer is offering.
- (e) The insolvency settlement request must include copies of the taxpayer's:
 - (1) federal income tax returns for the three years immediately prior to the date of the insolvency settlement request;
 - (2) financial statements for the three years immediately prior to the date of the insolvency settlement request and year-to-date financial statements for the period following the taxpayer's last federal income tax return filing;
 - (3) bank statements for the six months immediately prior to the date of the insolvency settlement request, and
 - (4) documentation of assets (including inventory of all property owned, wherever located), liabilities, ongoing financial obligations of the taxpayer, and proof of any claimed insolvency, liquidation, or business cessation.
- (f) A settlement request that is not timely filed under subsection (c) of this section or does not include the records required by subsection (e) of this section will not be included in a notice of hearing.

Effective Date August 10, 2014

Rule 1.4. Representation and Participation.

- (a) Authorized representatives.
 - (1) A taxpayer who is an individual may represent himself or herself at any stage of a contested case. A taxpayer who is an individual may have one or more authorized representatives and must identify an authorized representative, if any, in writing.
 - (2) A taxpayer that is an entity must have at least one authorized representative. A taxpayer that is an entity must identify its authorized representative(s) in writing.
 - (3) Unless express written authorization is submitted before a contested case begins, when a representative appears for the first time in a contested case, a pleading submitted on behalf of a taxpayer must be accompanied by the express written authorization of the taxpayer in whose name or on whose behalf it is submitted, in accordance with Tax Code §111.023. For example, a written authorization submitted to an auditor before a determination is issued satisfies this requirement.
 - (4) An authorized representative may be an attorney, an accountant, or any other person of a taxpayer's choice.

- (b) Designated representative for notice.
 - (1) Although a taxpayer may have more than one authorized representative, the taxpayer shall designate a single representative for notice of contested case documents. The designated representative for notice is responsible for the receipt of contested case documents, such as for the purpose of §1.32 of this title (relating to Service of Documents on Parties), §1.28 of this title (relating to Comptroller's Decisions and Orders), and §1.29 of this title (relating to Motion for Rehearing).
 - (2) A taxpayer's designated representative for notice shall be the individual signing the original Statement of Grounds, until changed in accordance with this subsection. A taxpayer may continue to use the same representative for matters before a contested case begins by authorizing the same representative to sign the Statement of Grounds.
 - (3) The designation must include a single person's name and a single mail address. The designation may include a single email address for the purpose of §1.32 of this title.
 - (4) A taxpayer may change its designated representative for notice by submitting the information required in this subsection to Audit Processing by email to: Audit.Processing@cpa.texas.gov or by contacting the assigned Assistant General Counsel. The effective date will be the date of receipt of the notice.
 - (5) When an attorney licensed to practice law in Texas files a motion for rehearing in accordance with §1.18 of this title (relating to Filing Documents), the motion is considered to be a taxpayer's express written authorization to change its designated representative for notice to the filing attorney. When more than one attorney appears

in a motion for rehearing, the attorney whose signature first appears on the motion shall be the designated representative for notice unless the motion designates another attorney.

- (c) Hearings at SOAH on contested cases are not open to the public. Any person desiring to observe or participate at any stage of a contested case who is not a party, not employed by a party, or not called as a witness, must obtain the agreement of all parties.

Effective Date: July 13, 2017

Rule 1.5. Initiation of a Hearing.

- (a) Redetermination hearing. If a taxpayer disagrees with the agency's deficiency or jeopardy determination, the taxpayer may request a redetermination hearing by timely submitting to the agency a written request for redetermination. This written request must include a Statement of Grounds that complies with the requirements set forth by §1.7 of this title (relating to Content of Statement of Grounds; Preliminary Conference). To be considered timely, the request for a hearing must be filed within 30 days from the date of the deficiency determination or within 20 days from the date of the jeopardy determination. If the written request with the Statement of Grounds cannot be submitted within the applicable time limit, the taxpayer may request an extension as provided by §1.6 of this title (relating to Extensions of Time for Initiating Hearing Process). A request for a redetermination hearing that is not submitted within the original time limit or before the expiration of an extended time limit will not be granted. A taxpayer who cannot obtain a redetermination hearing may pay the determination and request a refund in order to raise any objection to the determination.
- (b) Required documentary evidence at the audit conference. When a taxpayer timely requests a redetermination hearing, the agency may request in writing that the taxpayer produce documentary evidence for inspection that would support the taxpayer's Statement of Grounds. The written request may specify that resale or exemption certificates to support tax-free sales must be submitted within 60 days from the date of the request. Resale or exemption certificates that are not submitted within the 60-day time limit will not be accepted as evidence to support a claim of tax-free sales.
- (c) Refund hearing. If a taxpayer disagrees with the agency's denial of a refund claim, the taxpayer may request a refund hearing by timely submitting to the agency a written request for a refund hearing. This written request must include a Statement of Grounds that complies with the requirements set forth by §1.7 of this title and Tax Code, §111.104. To be considered timely, the request for a hearing must be filed within 30 days from the date of the denial. If the written request with the Statement of Grounds cannot be submitted within the applicable time limit, the taxpayer may request an extension as provided by §1.6 of this title. A request for a refund hearing that is not submitted within the original time limit or before the expiration of an extended time limit will not be granted. If no grounds are stated as a basis for the claim, a hearing will not be granted and the claim will be denied. If the claim is granted for any tax amount, any corresponding penalty and interest amount previously paid will be refunded.
- (d) Hearings involving licenses and permits. The agency will initiate hearings concerning the denial, suspension, or revocation of licenses or permits by sending written notice to the taxpayer, which notice will include a statement of the matters asserted and procedures to be followed.

- (e) An oral hearing under Tax Code, §154.1142 or §155.0592, will be set if requested by the permit holder within 15 calendar days of the receipt of the notice of violation(s). See, §1.14 of this title (relating to Notice of Setting for Certain Cigarette, Cigar, and Tobacco Tax Cases).

Effective Date: April 18, 2007

Rule 1.6. Extensions of Time for Initiating Hearing Process.

Requests for extension of the due date for submitting a request for redetermination and Statement of Grounds may be granted in case of emergency or extraordinary circumstances. Requests for extension will not be routinely granted and each request will be closely scrutinized to insure that the taxpayer has made every effort to comply with the original deadline. Requests received after the expiration of the original due date will not be considered. The comptroller's office will not be responsible for delay in delivery of mail, messenger service, or other carriers. Requests must be directed to the general counsel or his designee, who will grant or deny the extension.

Effective Date: April 18, 2007

Rule 1.7. Content of Statement of Grounds; Preliminary Conference.

- (a) The Statement of Grounds must contain the reasons the taxpayer disagrees with the action of the agency. The taxpayer must list and number the items or transactions, individually or by category, with which he disagrees. For each contested item or category of items, the taxpayer must also state the factual basis and the legal grounds to support why the taxpayer argues that the tax should not be assessed or the tax should be refunded. If the taxpayer disagrees with the agency's interpretation of the law, specific legal authority must be cited in support of the taxpayer's arguments.
- (b) If an item or transaction, or category thereof, is not listed in the Statement of Grounds, it may be barred from consideration in a hearing.
- (c) In the event that the taxpayer's Statement of Grounds fails to list and number items or transactions, individually or by category, or fails to state the factual basis and legal grounds upon which relief is sought, the case may be dismissed.
- (d) If a taxpayer's Statement of Grounds raises issues that cannot be resolved from the material contained in the audit or Statement of Grounds, additional evidence may be obtained through:
 - (1) a preliminary conference;
 - (2) discovery as described in §1.33 of this title (relating to Discovery);
 - (3) written or oral requests for additional evidence; and
 - (4) an audit amendment.

- (e) The Statement of Grounds may be amended up to the time that a reply to the Position Letter is required. All evidence on which the proving party intends to rely must be filed with the proposed amendment.
- (f) This section does not apply to hearings pursuant to Tax Code, §154.1142 or §155.0592.

Effective Date: April 18, 2007

Rule 1.8. Resolution Agreements.

- (a) If the parties agree on a resolution of all contentions, the agency may agree to sign a resolution agreement.
- (b) A resolution agreement is an agreement between all parties to adjust, or compromise and settle, a taxpayer's tax, credit, refund, penalties, interest, or any other issue in a contested case. The resolution agreement:
 - (1) must be in writing and signed by all parties;
 - (2) must either specify any agreed tax adjustments, if specific adjustments are agreed, or state the amount of tax due or the amount of refund due as a result of the agreement;
 - (3) must either specify any waivers of applicable penalty or interest, if specific adjustments are agreed, or state the amount of penalty or interest due as a result of the agreement; and
 - (4) must include the taxpayer's withdrawal of hearing request, an acknowledgment that the contested case is resolved, and a statement that no Comptroller's Decision will issue.
- (c) The following procedures will be used to document the resolution agreement and end the contested case.
 - (1) Based on standard resolution agreement forms approved by the agency, agency staff will draft the resolution agreements to include all agreed terms and provide a copy to all parties for signature.
 - (2) The resolution agreement may refer to and incorporate one or more exhibits showing the specific adjustments to be made to the taxpayer's account.
 - (3) The resolution agreement will be effective and binding on the parties on the date it has been signed by all parties, subject to any amendments pursuant to paragraph (7) of this subsection. The comptroller may delegate signature authority to appropriate agency staff for the purpose of signing resolution agreements.
 - (4) After the resolution agreement is signed by all parties, agency staff will adjust the liability, credit, or refund as required by the resolution agreement.

- (5) After adjustments required by the resolution agreement are made, agency staff will provide to all parties a copy of the signed agreement and a statement of account reflecting the adjustments made.
 - (6) The resolution agreement will either provide a specific due date to remit any amounts due from the taxpayer, as required by the agreement, or provide that the remittal due date is no later than 30 days after the date of the statement of account.
 - (7) If, after the resolution agreement is signed by all parties, the parties determine and agree that the adjusted tax, credit, refund, penalties, or interest as stated in the resolution agreement was calculated in error or contrary to the parties' intent, the parties may sign an amendment to the resolution agreement. The Assistant General Counsel assigned to the case will prepare an amendment that correctly effectuates the parties' intent and will provide it to the taxpayer for approval and signature.
- (d) After a contested case has been assigned a hearing number, a taxpayer may request that the case be referred to the Tax Dispute Division or any successor office for potential resolution. The request should be made to the Assistant General Counsel assigned to the case. The agency retains sole discretion to grant or refuse the request. While a case is under review by the Tax Dispute Division, all deadlines under the comptroller's rules of practice and procedure are suspended.

Effective Date: July 13, 2017

Rule 1.9. Position Letter.

- (a) If the taxpayer's contentions have not been resolved pursuant to §1.8 of this title (relating to Resolution Prior to Issuance of a Position Letter), the assistant general counsel will review the Statement of Grounds, documentary evidence, and any additional evidence received from the taxpayer and a Position Letter will be sent to the taxpayer. The Position Letter will accept or reject, in whole or in part, each contention of the taxpayer, and set forth what the assistant general counsel finds is properly subject to or exempt from taxation.
- (b) Pursuant to Tax Code, §111.105(e), the assistant general counsel may issue a written demand notice to the taxpayer requesting that all documentary evidence that would support facts or contentions raised by the taxpayer in connection with a refund claim be produced within a specified time. The time period specified in the written demand notice may not be less than 180 days from the date of the original refund claim, and not less than 60 days from the date of the notice. A taxpayer who fails to produce the requested documents within the specified time period may not introduce in evidence any of the documents that were not timely produced. The assigned administrative law judge cannot consider documents that were not produced within the specified deadline. This section is only applicable to the administrative hearing and has no effect on a judicial proceeding pending under Tax Code, Chapter 112.
- (c) This section does not apply to hearings pursuant to Tax Code, §154.1142 or §155.0592.

Effective Date: April 18, 2007

Rule 1.10. Acceptance or Rejection of Position Letter.

- (a) The taxpayer must accept or reject the Tax Division's Position Letter, in whole or in part, within 45 days after the day the Position Letter is dated; unless an extension of the deadline is granted. A selection form for accepting or rejecting the Position Letter will be enclosed as an attachment.
- (b) The selection form enclosed with the Position Letter will offer the taxpayer two options.
 - (1) Agree with the Position Letter. The tax liability or refund will be calculated accordingly. The taxpayer will not be required to respond to the amended determination or final billing, other than by payment, unless the taxpayer disagrees with the amount of the amended determination or final billing. An amended final determination or final billing concludes the administrative proceeding unless the taxpayer notifies the agency within 20 days of the date of notification that he disagrees with the amount by filing a motion for rehearing. Pursuant to APA, Government Code, §2001.142, notification is presumed to occur on the third day after the date of mailing.
 - (2) Disagree with the Position Letter. The taxpayer may reject some or all of the conclusions of the Position Letter and request that the contested issues be decided in a hearing. If the taxpayer chooses this option the taxpayer must return the selection form along with two copies of its Reply setting forth all of its arguments in support of its position and all supportive documents, affidavits, and other evidence. See, §1.15 of this title (relating to Reply to the Position Letter).
- (c) If the taxpayer fails to timely respond to the Tax Division's Position Letter, the comptroller may dismiss the contested case. In such case an amended final determination or final billing in accordance with the positions set forth in the Position Letter will be sent to the taxpayer. The administrative proceeding will be concluded unless the taxpayer notifies the agency within 20 days of the date of notification that he disagrees with the amount by filing a motion for rehearing. Pursuant to APA, Government Code, §2001.142, notification is presumed to occur on the third day after the date of mailing. See, §1.29 of this title (relating to Motion for Rehearing).

Effective Date: April 18, 2007

Rule 1.11. Modification of the Position Letter.

The Position Letter may be modified. A new 45-day period for acceptance or rejection by the taxpayer begins on the day the modified Position Letter is dated.

Effective Date: April 18, 2007

Rule 1.14. Notice of Setting for Certain Cigarette, Cigar, and Tobacco Tax Cases.

- (a) Hearings pursuant to Tax Code, §154.1142 or §155.0592, will receive a notice of setting from the agency that will include:

- (1) the date, time, and place of the oral hearing;
 - (2) the legal authority and jurisdiction under which the hearing is to be held;
 - (3) the asserted factual basis for the alleged violation(s); and
 - (4) the date any legal brief or additional facts in reply to the notice of setting is due.
- (b) All notices of setting issued by the agency pursuant to subsection (a) of this section, will be sent certified mail, return receipt requested. Notices of setting issued pursuant to Tax Code, §§154.114(c), 154.309(d), 155.059(c) or 155.186(d), will be sent by first class mail.
- (c) After reviewing a notice of setting issued for hearings under Tax Code, §154.1142 or §155.0592, a permit holder may present facts or legal arguments for consideration by filing a Reply to the notice of setting within the specified due date. The notice of setting may not set the due date for the Reply earlier than 20 days from the date the notice of setting is issued.

Effective Date: April 18, 2007

Rule 1.15. Reply to the Position Letter.

- (a) If after reviewing the Position Letter, a taxpayer requests a hearing he should present any additional facts, legal arguments, or documents for consideration by filing a Reply to the Position Letter within the due date specified in §1.10 of this title (relating to Acceptance or Rejection of Position Letter).
- (b) The Reply should address all unresolved contentions and provide legal and factual support for the taxpayer's position. All factual allegations should be supported by sworn affidavits, certified business records or otherwise admissible evidence.
- (c) In the case of hearings pursuant to Tax Code, §154.1142 or §155.0592, a Reply may be filed pursuant to §1.14 of this title (relating to Notice of Setting for Certain Cigarette, Cigar, and Tobacco Tax Cases).

Effective Date: April 18, 2007

Rule 1.16. Response of the Administrative Hearings Section.

- (a) If the taxpayer presents additional facts or legal arguments in a Reply to the Position Letter, the assistant general counsel shall issue, within 45 days, a Response to the taxpayer stating the legal position of the Tax Division, and any factual disagreement, on each issue or argument raised by the taxpayer. If the assistant general counsel is unable to respond within 45 days, the taxpayer will be notified of the delay and informed of the revised response date.
- (b) If the taxpayer fails to submit a Reply to the Position Letter, or if the Reply does not contain any additional facts or legal arguments, the assistant general counsel is not required to issue a Response.

- (c) For hearings pursuant to Tax Code, §154.1142 or §155.0592, the Tax Division is not required to file a response. However, if the permit holder presents additional facts or legal arguments in its Reply, the Tax Division may file a Response no later than seven calendar days prior to the oral hearing.

Effective Date: April 18, 2007

Rule 1.18. Filing Documents.

- (a) Filing requirement with SOAH. A party shall file documents that are required to be filed with SOAH in accordance with SOAH Rules of Procedure. The date of filing is determined by SOAH Rules of Procedure. The parties should refer to SOAH Rules of Procedure, 1 TAC §§155.51 (Jurisdiction); 155.53 (Request to Docket Case); and 155.101 (Filing Documents).
- (b) Filing requirement with the comptroller. Contested case documents required to be filed with the comptroller must be filed through the Office of Special Counsel for Tax Hearings. In accordance with this subchapter, a document filed with the comptroller is:
 - (1) a motion to dismiss under Government Code, §2001.056 (Informal Disposition of Contested Case);
 - (2) a motion for rehearing and related motion under Government Code, §§2001.141 - 2001.147 (Contested Cases: Final Decisions and Orders; Motions for Rehearing); and
 - (3) a reply to a motion filed with the comptroller.
- (c) Contact information for the Office of Special Counsel for Tax Hearings. Contested case documents required to be filed with the comptroller may be filed by fax to (512) 936-6190; by hand-delivery addressed to Office of Special Counsel for Tax Hearings, 111 E. 17th Street, Austin, Texas 78774; by mail addressed to Office of Special Counsel for Tax Hearings, P.O. Box 13025, Austin, Texas 78711-3025; or by email to SpecialCounsel.Filings@cpa.texas.gov.
- (d) Date of filing with the comptroller.
 - (1) A document filed by mail is considered filed by the date-stamp affixed by the agency mail room.
 - (2) A document filed by hand-delivery is considered filed on the date received by staff at the agency's security desk.
 - (3) A document that is filed electronically is considered filed on a date when it is received at any time during the 24-hour period from 12:00 a.m. (midnight) through 11:59 p.m. on that date, and a document received on a day on which the agency is closed is considered filed on the next calendar day on which the agency is open. The date of receipt shall be determined by the time and date stamp recorded on the electronic transmission by the agency's system.

- (4) Non-conforming documents. The Office of Special Counsel for Tax Hearings may notify a filing party about a filing error when a filed document fails to conform to this title. To preserve the filing date when a filed document fails to include a certificate of service required by §1.32 of this title (relating to Service of Documents on Parties), the Office of Special Counsel for Tax Hearings may identify the error and request the filing party to resubmit the document in a conforming format by a deadline.
- (e) Upon a taxpayer's request, the Office of Special Counsel for Tax Hearings will provide documentation demonstrating the actual date a document is filed with the comptroller.
- (f) If the Office of Special Counsel for Tax Hearings provides no document to demonstrate the actual date of receipt of a document properly filed in accordance with this section, then other relevant and reliable documents are acceptable proof of date of receipt. A certificate of service under §1.32 of this title is not acceptable proof that a document was filed or the date it was received in accordance with this section.
- (g) Settlement documents. The parties should refer to §1.8 of this title (relating to Resolution Agreements) and §1.28 of this title (relating to Comptroller's Decisions and Orders), for guidance regarding the process for resolving a contested case by agreement and, if applicable, guidance on when to file a motion to dismiss after a resolution agreement.
- (h) Service required. On the same date that a document is filed, it must also be served as described in §1.32 of this title.

Effective Date: July 13, 2017

Rule 1.20. Continuances.

- (a) If, prior to the time a contested case is brought under the jurisdiction of SOAH, a taxpayer needs an extension on a deadline he should request a continuance in writing from the assistant general counsel at least seven days prior to the deadline. If an emergency occurs less than seven days prior to the deadline, a motion for continuance may be filed.
- (b) The request for continuance must show that there is good cause for the continuance and that the need is not caused by neglect, indifference, or lack of diligence. A copy of the request must be served upon all other parties of record.
- (c) If the Tax Division increases the amount of tax deficiency at or before the time of hearing, the taxpayer is entitled to a 30-day continuance to obtain and produce further evidence applicable to the items upon which the increase is based.
- (d) After a hearing is set by SOAH, a motion for an extension of filing deadlines must be filed with SOAH in accordance with SOAH's Rules of Practice.
- (e) Notwithstanding any other section, if a procedural dispute arises at any time subsequent to the issuance of the Position Letter, at taxpayer's request or on its own motion, the Tax

Division shall file a Request to Docket Case form with SOAH. SOAH's Rules of Procedure will apply at that point.

Effective Date: April 18, 2007

Rule 1.22. Oral and Written Submission Hearings.

- (a) It is the agency's policy to encourage resolution and early settlement of all contested matters.
- (b) If, after reviewing a taxpayer's Reply to the Tax Division's Position Letter, as well as all other available evidence, and conducting any mediation requested by a taxpayer, the parties are unable to resolve or settle all contested matters, the Tax Division will, at a taxpayer's request or on its own motion, file a Request to Docket Case form with SOAH. Such Request to Docket Case form will be filed promptly following taxpayer's request, but in no case shall it be filed more than 30 days after such request, unless the parties agree otherwise.
- (c) At the time the Request to Docket Case form is filed with SOAH, the agency shall file with SOAH a copy of all pleadings served on the agency by the taxpayer and on the taxpayer by the agency, including but not limited to the Statement of Grounds, Position Letter, Reply and Response along with any exhibits or attachments thereto in accordance with the provisions of SOAH Rules of Procedure, §155.53.
- (d) If the parties are unable to resolve or settle all contested matters, and resolution requires a hearing, then, except as otherwise noted or required, the taxpayer will be given the option of selecting:
 - (1) A written submission hearing before a SOAH administrative law judge, or
 - (2) An oral hearing before a SOAH administrative law judge.
- (e) If the taxpayer fails to make a selection, the case may be dismissed for want of prosecution without the issuance of a proposal for decision, or may be docketed as a written submission hearing, subject to subsection (f) of this section.
- (f) A taxpayer may change the selection of oral or written submission hearing made in subsection (d) of this section, by filing a motion with SOAH. Such a motion would be filed according to SOAH Rules of Procedure.
- (g) The Tax Division has the option of requesting an oral hearing in any case in which it has the burden of proof.
- (h) All hearings held pursuant to Tax Code, §154.1142 or §155.0592, will be oral hearings.

Effective Date: September 1, 2009

Rule 1.27. Proposal for Decision.

The assigned administrative law judge will issue a proposal for decision in accordance with SOAH's Rules of Procedure. Any party may file exceptions and responses in accordance with those rules.

Effective Date: April 18, 2007

Rule 1.28. Comptroller's Decisions and Orders.

- (a) The comptroller will review the record, the proposal for decision, and any exceptions and replies, and will issue a decision on the proposal for decision, unless the proposal for decision is disposed as provided in §1.39 of this title (relating to Dismissal of Case).
- (b) The Office of Special Counsel for Tax Hearings will send each decision and order to the taxpayer's designated representative for notice and the Assistant General Counsel assigned to the hearing. Refer to §1.4 of this title (relating to Representation and Participation) for additional guidance.
- (c) A decision or order is final:
 - (1) if a motion for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing;
 - (2) if a motion for rehearing is filed on time, on the date:
 - (A) the order overruling the motion for rehearing is signed; or
 - (B) the motion is overruled by operation of law; or
 - (3) if all parties agree to a specified date in writing or on the record, on the agreed date. The agreed date may be the date the decision or order is signed or the specified date in the decision or order. A decision or order will state if it is final in accordance with the parties' agreement.
- (d) A party may file a statement that it waives its right to file a motion for rehearing. Refer to §1.18 of this title (relating to Filing Documents).
- (e) If the comptroller grants a motion for rehearing, the decision or order is vacated and the comptroller will issue a new decision or order on rehearing.

Effective Date: July 13, 2017

Rule 1.29. Motion for Rehearing.

- (a) **Definition.** A motion for rehearing is a request to the comptroller from a party in a contested case to reconsider part or all of a decision or order. The motion may or may not result in an additional hearing. A motion for rehearing is a prerequisite for a tax refund lawsuit.

- (b) Contents of a motion for rehearing.
 - (1) Government Code, §2001.146(g) provides that a motion for rehearing must identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous.
 - (2) Government Code, §2001.146(g) further provides that a motion for rehearing must also state the legal and factual basis for the claimed error.
 - (3) Tax Code, §111.105(d) further provides that a motion for rehearing on a tax refund claim must assert each specific ground of error and state the amount of the refund sought.
- (c) Deadline to file a motion for rehearing. A motion for rehearing must be filed no later than 25 days after the comptroller's decision is signed. The comptroller will state the 25-day deadline to file a motion for rehearing on the first page of the comptroller's decision. For contested case purposes, the comptroller will consider a motion for rehearing timely if it is filed by the motion for rehearing deadline stated on the comptroller's decision.
- (d) Additional time to file a motion for rehearing.
 - (1) Motion for extension of time. A motion to extend the time to file a motion for rehearing or reply must be filed with the comptroller in accordance with §1.18 of this title (relating to Filing Documents). Government Code, §2001.146(e) gives the comptroller the authority to act on the motion not later than the 10th day after the original deadline. If a motion is timely and properly filed, the comptroller shall issue an order granting or denying the motion. If the comptroller has not timely acted on the motion, the motion is considered overruled.
 - (2) Failure to receive notice. Government Code, §2001.142 establishes a procedure to revise the motion for rehearing period if a party did not receive notice or acquire actual knowledge of a signed decision before the 15th day after the date the decision is signed. A party may file a sworn motion to revise the period for filing a motion for rehearing. The motion must be filed with the comptroller in accordance with §1.18 of this title. If the comptroller does not issue an order granting or denying the motion by the 10th day after the motion is received, the motion is considered granted by operation of law.
- (e) Calculation of due dates. Refer to §1.31 of this title (relating to Computation of Time) for guidance related to the calculation of due dates.
- (f) Determining the date that a document is filed. Refer to §1.18 of this title for guidance related to determining the date a document is filed.
- (g) Filing information for the Office of Special Counsel for Tax Hearings. The motions and replies described in this section must be filed with the Office of Special Counsel for Tax Hearings, in accordance with the requirements set out in §1.18 of this title.

- (h) Requirement to serve other parties. A copy of the motion or reply must be sent to other parties on the same date the motion or reply is filed with the Office of Special Counsel for Tax Hearings. Refer to §1.32 of this title (relating to Service of Documents on Parties) for additional guidance.
- (i) Reply to a motion for rehearing. A party may file a reply to a motion for rehearing, but a reply is not required. The reply must be filed no later than the 40th day after the date the decision is signed.
- (j) Action on a motion for rehearing.
 - (1) The comptroller is not required to act on a motion for rehearing. If the comptroller does not timely act to grant the motion for rehearing, the motion for rehearing is overruled by operation of law the 55th day after the decision was signed. If the comptroller grants an extension to file a motion for rehearing and does not timely act to grant the motion for rehearing, the motion for rehearing is overruled by operation of law the 100th day after the decision was signed.
 - (2) If the comptroller acts on a motion for rehearing, the comptroller will send a written order granting or denying a rehearing to each party's designated representative for notice. An order granting a motion for rehearing may or may not include the comptroller's decision upon rehearing.
- (k) Finality. If a motion for rehearing is overruled, whether by order or operation of law, the comptroller's decision is final on the date the motion is overruled.

Effective Date: July 13, 2017

Rule 1.31. Computation of Time.

- (a) Computing time periods.
 - (1) When computing periods of time prescribed or allowed in this subchapter:
 - (A) the day of the act, event, or default from which the designated time period begins to run is not counted; and
 - (B) the last day of the time period is counted, unless it is a day on which the agency's offices are closed, in which case the time period will end on the next day the agency's offices are open.
 - (2) Example. If a comptroller's decision is signed on December 1, December 1 is the day of the act, event, or default. December 1 is not considered the first day of the motion for rehearing period. The period to file a motion for rehearing begins to run on the next calendar day, December 2. Thus, if a comptroller's decision is signed on December 1, then the 25-day period to file a motion for rehearing begins to run on

December 2, and the deadline to file a motion for rehearing is December 26. If the agency is closed on December 26, the deadline to file becomes the next calendar day that the agency is open after December 26.

- (b) Calendar days. Time limits shall be computed using calendar days rather than business days.

Effective Date: July 13, 2017

Rule 1.32. Service of Documents on Parties.

- (a) Service required. A party filing a contested case document shall also serve a copy on each party in accordance with §1.4 of this title (relating to Representation and Participation). When SOAH has jurisdiction, a party shall follow the SOAH Rules of Procedure. A party filing a document that is required to be served must include a certificate of service as described in this section. The sender has the burden of proving the date and time of service of a document.
- (b) Methods of service. Service generally means sending or delivering a contested case document in order to charge a party with receipt of it and subject a party to its legal effect. Service may be made by the following methods:
 - (1) hand-delivery;
 - (2) regular (United States Postal Service or private mail service), certified, or registered mail;
 - (3) email, upon agreement of the parties; or
 - (4) if sent by a taxpayer or representative, fax.
- (c) Service on interested parties. Interested parties admitted to a contested case pursuant to §1.36 of this title (relating to Interested Parties) shall also be served.
- (d) Determining when service on the Administrative Hearings Section is complete. Service on the Administrative Hearings Section must be through the assigned Assistant General Counsel in the Administrative Hearings Section. Service may be made as provided in paragraphs (1) and (2) of this subsection.
 - (1) Hand-delivery. The file stamp affixed by the Administrative Hearings Section will be the date of service for hand-delivered documents. Hand-delivered documents must be addressed to Administrative Hearings Section, Texas Comptroller of Public Accounts, 1700 N. Congress Avenue, Suite 320, Austin, Texas 78701.
 - (2) Delivery by methods other than hand-delivery. The postmark, shipping, or transmission date indicated on documents is presumed to be the date of service, but this is a rebuttable presumption. Documents served by fax or email are considered served on

a date when they are received at any time during the 24-hour period from 12:00 a.m. (midnight) through 11:59 p.m. on that date, and documents received on a day on which the agency is closed are considered filed on the next calendar day on which the agency is open.

- (e) Certificate of service. A party filing a document that must be served shall include a signed certificate of service with the filed document that certifies compliance with this section. A form for a certificate of service shall be sufficient if it substantially complies with the following example: “Certificate of Service: I certify that on (date), a true and correct copy of this (name of document) has been sent to (name of taxpayer’s designated representative for notice or assigned Assistant General Counsel) by (specify method of delivery and delivery address). (Signature).”
- (f) Service of notice of hearing. Unless otherwise required by law, service of notice of hearing shall be made in the manner required by Government Code, Chapter 2001.

Effective Date: July 13, 2017

Rule 1.33. Discovery.

- (a) Discovery. The APA applies to matters of discovery.
- (b) Discovery at the agency will be conducted under the same guidelines as set out in SOAH Rule of Procedure, 1 TAC §155.251. Discovery while a hearing is docketed at SOAH will be conducted under SOAH Rule of Procedure, 1 TAC §155.251.

Effective Date: September 1, 2009

Rule 1.35. Nonbinding Nature of Agreed Facts.

By use of the position letter and the reply to it, or by means of agreed facts or stipulated facts, the parties are encouraged to narrow their disagreements prior to hearing. Stipulated facts are for purposes of resolution of the contested case before the agency only, and no party is bound by them thereafter.

Effective Date: September 1, 1983

Rule 1.36. Interested Parties.

Any person who has a direct pecuniary interest in the resolution of a contested case may be admitted as an interested party at the discretion of the agency. If admitted, the interested party’s participation will be limited to the extent of the party’s interest.

Effective Date: April 18, 2007

Rule 1.37. Joint Hearings; Severance.

- (a) A party may request to have two or more cases joined for purposes of hearing. Proceedings involving more than one taxpayer may not be joined if any party objects.
- (b) Where two or more cases have been joined for purposes of hearing, a party may request to sever. Severance should be allowed unless the hearing involves an issue which cannot be fully determined in the absence of one or more of the parties.

Effective Date: April 18, 2007

Rule 1.39. Dismissal of Case.

- (a) Grounds. The grounds for a motion to dismiss include, but are not limited to:
 - (1) a resolution agreement under §1.8 of this title (relating to Resolution Agreements);
 - (2) a taxpayer's failure to respond to the Position Letter;
 - (3) a taxpayer's want of prosecution;
 - (4) a taxpayer's failure to state a contested case issue for which relief can be granted;
 - (5) a taxpayer's claims are moot because the comptroller has granted the relief requested;
 - (6) a taxpayer's claims are moot because a bankruptcy court has issued a judgment or order disposing of the claims; and
 - (7) a taxpayer's claims for the same tax and the same period are pending in a court.
- (b) Procedure for filing a motion to dismiss.
 - (1) A motion to dismiss must be filed with the Office of Special Counsel for Tax Hearings, in accordance with §1.18 of this title (relating to Filing Documents), if:
 - (A) the comptroller has not docketed the case with SOAH; or
 - (B) the administrative law judge has issued a proposal for decision and the exceptions period has ended.
 - (2) A motion to dismiss must be filed with SOAH, in accordance with SOAH Rules of Procedure, if SOAH has docketed the case and the case is under the jurisdiction of SOAH. Refer to SOAH Rules of Procedure, 1 TAC §155.51 (Jurisdiction) for additional guidance.

- (3) The comptroller shall act on a motion to dismiss filed under paragraph (1) of this subsection by issuing a decision or order. Refer to §1.28 of this title (relating to Comptroller's Decisions and Orders) for additional guidance.
- (c) Reply to a motion to dismiss.
- (1) A reply, if any, to a motion to dismiss filed under subsection (b)(1) of this section must be filed with the comptroller no later than 14 days after the date the motion is served on the taxpayer.
 - (2) A reply, if any, to a motion to dismiss filed under subsection (b)(2) of this section must be filed with SOAH in accordance with SOAH Rules of Procedure.

Effective Date: July 13, 2017

Rule 1.40. Burden of Proof.

In a contested case:

- (1) the burden of proof is on the Administrative Hearings Section:
 - (A) by a preponderance of the evidence, if the issue is whether the suspension or revocation of a license is warranted; or
 - (B) by clear and convincing evidence, if the issue is whether the imposition of additional penalty for willful or fraudulent failure to pay tax is warranted;
- (2) the burden of proof is on the taxpayer:
 - (A) by clear and convincing evidence, if he claims a transaction is exempt from taxation; or
 - (B) by a preponderance of the evidence, if he contends that an action, or proposed action, of the Administrative Hearings Section is otherwise unwarranted.

Effective Date: September 4, 2001

Rule 1.41. Ex Parte Communications.

- (a) Prohibited ex parte communications.
 - (1) Government Code, §2001.061(a) states, "Unless required for the disposition of an ex parte matter authorized by law, a member or employee of a state agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not directly or indirectly communicate in connection with an issue of fact or law with a state agency, person, party, or a representative of those entities, except on notice and opportunity for each party to participate."

- (2) The prohibition on ex parte communications includes oral and written communications.
 - (3) The prohibition on ex parte communications applies for the duration of a contested case. A contested case generally begins with a request for redetermination of a deficiency or jeopardy determination, or a request for hearing following denial of a request for refund. A contested case generally ends when a decision is final.
 - (4) The prohibition on ex parte communications includes communications with the following persons who participate in rendering decisions:
 - (A) the comptroller of public accounts;
 - (B) the deputy comptroller;
 - (C) staff of the Office of Special Counsel for Tax Hearings; and
 - (D) any administrative law judge assigned to the contested case.
- (b) Permitted ex parte communications. Government Code, §2001.061(c) allows a decision maker to communicate ex parte with an agency employee who has not participated in a hearing in the case for the purpose of using the special skills or knowledge of the agency and its staff in evaluating evidence. For example, the deputy comptroller may communicate with an employee of the Tax Policy Division who has not participated in the hearing.
- (c) The recipient of a prohibited ex parte communication may notify the other parties of the content of the communication and provide an opportunity for the other parties to respond. For purposes of this subsection, a “recipient” is one or more of the individuals identified in subsection (a)(4) of this section.

Effective Date: July 13, 2017

Rule 1.42. Definitions.

The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) **Administrative law judge** – An individual appointed to conduct hearings, as defined by SOAH, Rules of Procedure, 1 TAC §155.5(1).
- (2) **Agency** – The Office of the Comptroller of Public Accounts.
- (3) **APA** – The Administrative Procedure Act (Government Code, Title 10, Chapter 2001).
- (4) **Applicant** – A party seeking a license or permit from the agency, or seeking an exemption.

- (5) **Authorized representative** – An individual who represents a party in a contested case and may be any individual other than the party.
- (6) **Contested case or case** – A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the agency after an opportunity for adjudicative hearing. It includes a request for redetermination or refund, as well as actions initiated by the agency to revoke or suspend permits or licenses administered by the agency on grounds other than failure to pay a final tax deficiency or failure to file a tax security. Contested cases are within the jurisdiction of the comptroller or the final decision maker by law or delegation. Forfeitures of rights to do business, of certificates of authority, of articles of incorporation, penalties imposed under Tax Code, §151.7031, the refusal or failure to settle under Tax Code, §111.101 or requests for or revocation of exemptions from taxation are not contested cases.
- (7) **Determination** – A written notice from the agency that a person is required to pay to the State of Texas a tax, fee, penalty, or interest.
- (8) **Assistant General Counsel** – An attorney from the Administrative Hearings Section who is assigned to present the agency's position in a contested case.
- (9) **Licensing** – The agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a permit.
- (10) **Party** – Any person filing a petition or claim with the agency or asked by the agency to respond; the agency, acting through its Administrative Hearings Section; and any other person admitted as a party under §1.36 of this title (relating to Interested Parties).
- (11) **Permit** – The whole or any part of a license, certificate, approval, registration, or similar form of permission, the issuance, renewal, amendment, suspension or revocation of which is within the jurisdiction of the agency.
- (12) **Permit holder** – Includes a bonded agent, distributor, wholesaler, or retailer required to obtain a permit under Tax Code, Chapters 154 or 155.
- (13) **Person** – Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character. It may also include an estate, trust, receiver, assignee for benefit of creditors, trustee, trustee in bankruptcy, assignee, or any other group or combination acting as a unit.
- (14) **Petition** – A request for official action by the agency regarding the rights, duties or privileges accorded to the person making the request under a statute administered or enforced by the agency. If the request is made orally, it must subsequently be reduced to writing.
- (15) **Petitioner, claimant, or taxpayer** – Any person who files a petition seeking redetermination of a liability, a refund of monies paid, or determination of rights under any license or permit granted by the agency.

- (16) **Pleading** – Any document filed by a party concerning the position or assertions in a contested case.
- (17) **Respondent or taxpayer** – Any person to whom a notice of a show cause hearing for the suspension or revocation of a license has been issued.
- (18) **Rules** – The Texas Comptroller of Public Accounts Practice and Procedure Rules set forth in 34 TAC Chapter 1.
- (19) **SOAH** – The State Office of Administrative Hearings.
- (20) **SOAH Rules of Procedure** – The State Office of Administrative Hearings Rules set forth in 1 TAC Chapter 155.
- (21) **Tax Division** – The divisions within the agency responsible for the particular action or actions that are the subject of the contested case.

Effective Date: April 18, 2007

Administrative Hearings Section

Texas Comptroller of Public Accounts
1700 N. Congress Avenue, Suite 320
Austin, Texas 78701

Mailing Address

P.O. Box 13528
Austin, Texas 78711-3528

512-463-3830

512-463-4617 (fax)

ahs.service@cpa.texas.gov

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Texas Comptroller of Public Accounts
111 E. 17th Street
Austin, Texas 78711-1440



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