



MARCH 2019

Frequently Asked Questions Related to Motions for Rehearing

Glenn Hegar

Texas Comptroller of
Public Accounts

1. I disagree with the comptroller's decision and I want to file a motion for rehearing. What is the deadline to timely file the motion for rehearing?

The deadline to file a motion for rehearing is 25 days after the decision is signed.¹

2. Can I have more time to file a motion for rehearing?

You may file a motion to extend the deadline to file a motion for rehearing if you seek additional time to file your motion for rehearing.² An order granting your motion will extend the deadline to file a motion for rehearing to a specific date, meaning it extends the **end date** of your rehearing period.³

[Form 89-234, Motion for Extension of Time to File Motion for Rehearing](#), may also be used to file the motion.

If you did not timely receive the comptroller's decision, you may follow the procedures in the APA and file a sworn motion to establish a revised rehearing period.⁴ This motion revises the **beginning date** of the rehearing period.⁵

3. Do I count calendar days or business days when calculating when a motion for rehearing is due?

As with other deadlines related to a comptroller hearing, the day of the act on which the designated period of time begins to run is not included. This makes the following day the first day of the period that you are calculating. For example, consider a comptroller's decision that is signed on December 1. December 1 is the "day of the act." December 1 is not considered the first day of your motion for rehearing period. To calculate your deadline, the period to file a motion for rehearing begins to run on the next calendar day, December 2. The last day of the period is included, unless it is a day on which the agency is closed, in which case the period of time ends on the next business day that the agency is open.⁶ Thus, to calculate the deadline to file a motion for rehearing, if a comptroller's decision is signed on December 1, then a 25-day period to file a motion for rehearing begins to run on December 2, and the deadline to file a motion

for rehearing would then be December 26. If the agency is closed on December 26, the deadline to file becomes the next business day that the agency is open after December 26.

4. When is the motion for rehearing considered filed?

A motion for rehearing filed by fax or email before 11:59 p.m. CST is considered filed on that day. If it is filed by fax or email on or after 11:59 p.m. CST, the motion is considered filed on the next business day.⁷ A motion for rehearing filed by mail is considered filed by the date-stamp affixed by the agency mailroom.⁸

5. Where do I file a motion for rehearing?

File your motion for rehearing with the Deputy Comptroller through the Office of Special Counsel for Tax Hearings. Filing via email is preferred, but documents may also be filed via fax or mail.

By email: SpecialCounsel.Filings@cpa.texas.gov

By fax: 512-936-6190

By mail:

Deputy Comptroller of Public Accounts
c/o Office of Special Counsel for Tax Hearings
P.O. Box 13528
Austin, Texas 78711-3528

As with other motions related to a comptroller hearing, you must send a copy of the motion to the Tax Hearings Attorney (THA) who represents the agency Staff. The THA is identified in the decision at the top of the first page.

6. How do I draft a motion for rehearing?

The law states: "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. The motion must also state the legal and factual basis for the claimed error."⁹

[Form 89-233, Motion for Rehearing](#), may be used for submitting the motion for rehearing.

7. When do I owe any money that is due?

Your liability is due and payable 20 days after the decision becomes final.¹⁰

If a motion for rehearing **is not** filed at all or not timely filed, the decision becomes final 25 days after it is signed.¹¹

If a motion for rehearing **is** timely filed and is denied, the decision is final on the date of the signed order denying the motion for rehearing.¹²

8. What happens if I do not timely pay the amount due?

If you do not pay the amount due within 20 days after the decision becomes final:

- an additional penalty of 10% of the delinquent tax, exclusive of penalties and interest, is automatically added to the amount due as a result of the comptroller's decision;¹³
- interest continues to accrue based on the original due date of the tax¹⁴ and,
- notwithstanding remedies available based on a jeopardy determination, the comptroller may file a lien to secure the amount due¹⁵ or seize and sell certain real and personal property.¹⁶

If you are unable to pay the amount due within 20 days after the decision becomes final, you may be able to enter into a payment agreement. For details on payment agreements, contact your local Enforcement Office, which is listed at this link: comptroller.texas.gov/about/contact/locations.php.

End Notes:

¹ See Tex. Tax Code §§ **111.009, 105**; APA, Tex. Gov't Code § **2001.146**; S.B. **1095**, 85th Leg., 2017; 34 Tex. Admin. Code § **1.35**.

² See APA, Tex. Gov't Code § **2001.146** "A state agency may ... extend the time for filing a motion [for rehearing]"; see also 34 Tex. Admin. Code **1.35**.

³ See APA, Tex. Gov't Code § **2001.146(e)** "A state agency may ... extend the time for filing a motion [for rehearing]"

⁴ See APA, Tex. Gov't Code § **2001.142(d)** ("To establish a revised period under subsection (c), the adversely affected party must prove, on sworn motion and notice, that the date the party or the party's attorney of record first received notice from the state agency or acquired actual knowledge of the signing of the decision or order was after the 14th day after the date the decision or order was signed; the adversely affected party exercised due diligence by keeping the state agency and all other parties to the contested case apprised of the current mailing address and any electronic contact information for the adversely affected party or the adversely affected party's attorney of record; and the adversely affected party and the party's attorney of record did not take any action that impeded or prevented receipt of notice of the signing of the decision or order.")

⁵ See APA, Tex. Gov't Code § **2001.142(c)** ("The period may not begin earlier than the 15th day or later than the 45th day after the date the decision or order was signed."). See also § **2001.142(g)** ("The date specified in the sworn motion shall be considered the date the decision or order was signed for the movant.")

⁶ See 34 Tex. Admin. Code § **1.4**.

⁷ See 34 Tex. Admin. Code § **1.5**.

⁸ See 34 Tex. Admin. Code § **1.5**.

⁹ See APA, Tex. Gov't Code § **2001.146(g)**.

¹⁰ See Tex. Tax Code § **111.0081(c)**.

¹¹ See Tex. Tax Code § **111.0081(c)** (20 days); APA, Tex. Gov't Code §§ **2001.144(a)(1), .146(a)** (25 days).

¹² See APA, Tex. Gov't Code § **2001.144(a)(2)(A)**.

¹³ See Tex. Tax Code § **111.0081**.

¹⁴ See Tex. Tax Code § **111.060(c), (d)** (unless excluded, "delinquent taxes draw interest beginning 60 days after the date due").

¹⁵ See Tex. Tax Code, Chapter **113**.

¹⁶ See Tex. Tax Code §§ **111.017-111.019**.