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Texas Comptroller of Public Accounts

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The Rules *of* Practice *&* Procedure

Title 34, Texas Administrative Code §§ 1.1-1.42



Table of Contents

Rule 1.1.	Intent, Scope, and Construction of Rules.	1
Rule 1.2.	Settlement in a Contested Case Based on Insolvency.	1
Rule 1.4.	Representation and Participation.	3
Rule 1.5.	Initiation of a Hearing.	3
Rule 1.6.	Extensions of Time for Initiating Hearing Process.	4
Rule 1.7.	Content of Statement of Grounds; Preliminary Conference.	4
Rule 1.8.	Resolution Prior to Issuance of a Position Letter.	5
Rule 1.9.	Position Letter.	5
Rule 1.10.	Acceptance or Rejection of Position Letter.	6
Rule 1.11.	Modification of the Position Letter.	6
Rule 1.14.	Notice of Setting for Certain Cigarette, Cigar, and Tobacco Tax Cases.	6
Rule 1.15.	Reply to the Position Letter.	7
Rule 1.16.	Response of the Administrative Hearings Section.	7
Rule 1.18.	Filing of Documents.	8
Rule 1.20.	Continuances.	8
Rule 1.22.	Oral and Written Submission Hearings.	8
Rule 1.27.	Proposal for Decision.	9
Rule 1.28.	Comptroller's Decision.	9
Rule 1.29.	Motion for Rehearing.	10
Rule 1.31.	Computation of Time.	10
Rule 1.32.	Service.	11
Rule 1.33.	Discovery.	12
Rule 1.35.	Nonbinding Nature of Agreed Facts.	12
Rule 1.36.	Interested Parties.	13
Rule 1.37.	Joint Hearings; Severance.	13
Rule 1.39.	Dismissal of Case.	13
Rule 1.40.	Burden of Proof.	13
Rule 1.41.	Ex Parte Communications.	14
Rule 1.42.	Definitions.	14

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 sec. 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 taxpayer may represent himself at any stage of a contested case or he may be represented by an authorized representative, such as an attorney, accountant, or other person of his choice. 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: April 18, 2007

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 sec. 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 sec. 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 sec. 1.7 of this title and Tax Code, sec. 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 sec. 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, sec. 154.1142 or sec. 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, sec. 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 sec. 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, sec. 154.1142 or sec. 155.0592.

Effective Date: April 18, 2007

Rule 1.8. Resolution Prior to Issuance of a Position Letter.

- (a) If the taxpayer's contentions are fully accepted or if the parties agree on a resolution of all contentions, the agency may elect to amend the determination, to issue an amended billing, or agree to a refund or credit request rather than issue a Position Letter.
- (b) If the determination or billing is amended, or a refund or credit is issued, the action will become final 20 days after notification. An amended billing or determination is payable 20 days after it becomes final unless otherwise specified. Pursuant to APA, Government Code, sec. 2001.142, notification is presumed to occur on the third day after the date of mailing.

Effective Date: April 18, 2007

Rule 1.9. Position Letter.

- (a) If the taxpayer's contentions have not been resolved pursuant to sec. 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, sec. 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, sec. 154.1142 or sec. 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, sec. 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, sec. 1.13 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, sec. 2001.142, notification is presumed to occur on the third day after the date of mailing. See, sec. 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, sec. 154.1142 or sec. 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, secs. 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, sec. 154.1142 or sec. 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 sec. 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, sec. 154.1142 or sec. 155.0592, a Reply may be filed pursuant to sec. 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, sec. 154.1142 or sec. 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 of Documents.

All documents submitted with or after the Position Letter selection form must be filed with the assistant general counsel. See sec. 1.32 of this title (relating to Service) for the manner in which these filings may be made. Note that rules of service governing filing documents at SOAH will vary. See SOAH, Rules of Procedure, 1 TAC sec. 155.101..

Effective Date: September 1, 2009

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, sec. 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, sec. 154.1142 or sec. 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 Decision.

- (a) Upon receipt of the proposal for decision from SOAH and review of any exceptions filed by the taxpayer and the assistant general counsel, the comptroller shall issue a final decision. Notification of the comptroller's decision will be mailed to the taxpayer and any authorized representative. The taxpayer and any authorized representative are presumed to have been notified of the comptroller's decision on the third day after notice of the decision is mailed. The comptroller's decision is final

20 days from the date of notification, unless a motion for rehearing is filed with the comptroller on or before the 20th day. If the motion for rehearing is granted, the decision is vacated pending a subsequent decision upon rehearing. If the motion for rehearing is overruled, whether by order or operation of law, the decision is final on the date it is overruled.

- (b) The agency may issue a comptroller's decision without the issuance of a proposal for decision if the parties are in agreement on all contested issues or if the parties agree to waive issuance of a proposal for decision.
- (c) The agency may issue a comptroller's decision without the issuance of a proposal for decision if a hearing is dismissed for a taxpayer's failure to respond to the Position Letter, as set forth in sec. 1.10(c) of this title (relating to Acceptance or Rejection of Position Letter), failure to state a claim upon which relief can be brought, as set forth in sec. 1.7(c) of this title (relating to Content of Statement of Grounds; Preliminary Conference), or for want of prosecution.

Effective Date: April 18, 2007

Rule 1.29. Motion for Rehearing.

- (a) A motion for rehearing may be filed with the comptroller by any party no later than 20 days after the date notification of the comptroller's decision is provided to the parties. The motion must state each specific ground upon which the party believes the comptroller's decision is erroneous. In addition, a motion for rehearing on a refund claim must state the amount of the refund sought. Any reply to a motion for rehearing must be filed no later than 30 days after the date notification of the decision is provided to the parties. The motion must be acted on no later than 45 days after the date notification of the decision is provided to the parties, or the motion will be overruled by operation of law. These times may be varied as provided by APA, sec. 2001.146(e). Pursuant to APA, sec. 2001.142, notification is presumed to occur on the third day after the date of mailing.
- (b) If a rehearing is granted, a notice will be issued to the parties setting out all pertinent information.

Effective Date: April 18, 2007

Rule 1.31. Computation of Time.

- (a) Unless otherwise required by statute, in computing time periods prescribed by applicable statute or these rules, the day of the act, event, or default on which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, an official state holiday, or another day on which the agency is closed, in which case the time period will be deemed to end on the next day that the agency is open. When these rules specify a deadline or set a number of days for filing documents or taking other actions, the computation of time shall be by calendar days rather than business days, unless otherwise provided by applicable law or these rules. However, if the period specified is five days or less, the intervening Saturdays, Sundays, and legal holidays are not counted, except for purposes of sec. 1.32 of this title (related to Service).

- (b) Disputes regarding computation of time for periods not specified in these rules will be resolved by reference to applicable law and upon consideration of agency policy.
- (c) When by these rules an act is required or allowed to be done at or within a specified time, the agency may for cause shown, if allowed by applicable statute, order the period enlarged if application therefore is made before the expiration of the specified period. In addition, where good cause is shown for the failure to act within the specified period, the agency may permit the act to be done after the expiration of the specified period, if allowed by applicable statute.

Effective Date: April 18, 2007

Rule 1.32. Service.

- (a) Service may be made by hand-delivery; by regular (United States Postal Service or private mail service), certified or registered mail; by electronic mail, upon agreement of the parties; or by facsimile transmission.
- (b) Service on parties. Any person filing any document required to be served on other parties in a case shall, on the same date as the document is filed, provide a copy to each party or the party's authorized representative by hand-delivery; by regular, certified or registered mail; by electronic mail, upon agreement of the parties; or by facsimile transmission; provided however, when a party files a business record affidavit, pursuant to Supreme Court of Texas, Texas Rules of Evidence, Article IV, sec. 902(10), or a transcript, the party may give notice of the filing without the necessity of providing a copy to each party.
- (c) In the event that, pursuant to sec. 1.36 of this title (relating to Interested Parties), a third party has been admitted as a party to the contested case, that interested party must also be served.
- (d) The file stamp affixed by the agency will be the date of service for hand-delivered documents. The postmark, shipping, or transmission date indicated on other documents is presumed to be the date of service, but this is a rebuttable presumption. However, if a document was served by facsimile transmission or by electronic mail before 5:00 p.m. on a business day, it is presumed that the document was received on that day; otherwise, it is presumed that the document was received on the next business day.
- (e) Certificate of service. The person filing or serving the document shall include a certificate of service that certifies compliance with this section.
- (f) Service of notice of hearing. Unless otherwise required by law, service of notice of hearing shall be made by the agency in the manner required by the APA.
- (g) Presumed time of receipt of served documents. The following rebuttable presumptions shall apply regarding a party's receipt of documents served by another party:
 - (1) If a document was hand-delivered to a party in person or by agent, it is presumed that the document was received on the date of filing at the agency.

- (2) If a document was served by courier-receipted delivery, it is presumed that the document was received no later than the day after filing at the agency.
 - (3) If a document was sent by regular mail, certified mail, or registered mail, it is presumed that it was received no later than three days after mailing.
 - (4) If a document was served by facsimile transmission or by electronic mail before 5:00 p.m. on a business day, it is presumed that the document was received on that day; otherwise, it is presumed that the document was received on the next business day.
- (h) Electronically transmitted documents. Documents may be served on parties by electronic mail according to the following requirements.
- (1) With the exception of documents produced pursuant to a discovery request, the sender shall also file the original of the document with the agency.
 - (2) The sender has the burden of proving date and time of receipt of the document.

Effective Date: April 18, 2007

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 sec. 155.251. Discovery while a hearing is docketed at SOAH will be conducted under SOAH Rule of Procedure, 1 TAC sec. 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.

If a motion to dismiss is filed by a taxpayer based upon agreement reached among the parties as reflected in the Position Letter or any supplement to it, or upon the taxpayer's decision to abandon the case, a decision will be issued which conforms with the Position Letter or the agreement reached among the parties. All agreements to dismiss a contested case, on the basis that all issues have been settled, shall be in writing and signed by both parties or their authorized representatives.

Effective Date: April 18, 2007

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.

There may be no verbal communications with the administrative law judge regarding any issue of fact or law in a case without notice and opportunity for all parties to participate, and there may 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 did not participate in the hearing in the case for the purpose of utilizing their special skills or knowledge in evaluating the evidence.

Effective Date: September 1, 1983

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 sec. 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, sec. 151.7031, the refusal or failure to settle under Tax Code, sec. 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 sec. 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

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