

Organization and Rules of Procedure

Rule 1. Organization and Operation

(a) Organization.

The Department of Taxes is established by 3 V.S.A. § 212. 32 V.S.A. § 3101 provides that the Department shall be administered by a Commissioner of Taxes, who is appointed biennially by the Governor with the advice and consent of the Senate.

3 V.S.A. § 253 provides that the Commissioner may appoint a Deputy, with approval of the Governor, who shall perform such duties as the Commissioner shall direct.

There is a Division of Property Valuation and Review which, through its Director, shall assist listing officials, conduct the equalization study of municipalities grand lists, set education tax rates and assist the Commissioner in administration of various property related programs and taxes.

The Commissioner shall organize the Department into such other divisions and appoint such other directors as in the Commissioner's judgment promote the fair and efficient administration of taxes within the Commissioner's jurisdiction.

(b) Location and Assistance to the Public.

The main office of the Department of Taxes is located at 133 State Street, Montpelier, immediately west of the State House. The telephone number is (802) 828-2505. The hours of work are 8:00 a.m. to 4:30 p.m., Monday through Friday. Persons having business with the Department or requesting assistance may write or call the Department or may come to the main office during working hours.

(c) Tax Department Forms.

The Department utilizes a wide variety of forms in the administration of the tax laws. The forms are changed frequently to reflect changes in law and for administrative reasons. Forms are available on the Department's website, www.state.vt.us/tax and at the main office of the Tax Department. Commonly used forms, such as income tax returns, are also available at Post Offices and Town Offices across Vermont. In most cases, Department forms must be used to accomplish the transaction in question, such as when reporting income, transferring property or claiming exemption from sales tax. Many tax forms may be completed and filed electronically and in some cases, electronic filing is required.

(d) Tax Department Guidance.

The Department issues formal regulations interpreting the tax laws and establishing procedures. From time to time it issues technical bulletins and other notices which are a less formal way of providing information to taxpayers. Instructions also accompany tax forms.

Rule 2. Definitions

The definitions set forth in 3 V.S.A. § 801 are hereby adopted and made applicable to these Rules.

Rule 3. Formal and Informal Proceedings

The following types of proceedings will be treated as formal proceedings that are governed by the provisions of Chapter 25 of Title 3, the Vermont Administrative Procedure Act:

- (a) Proceedings wherein a determination by the Commissioner of Taxes is required by statute to be made after an opportunity for hearing. These proceedings are referred to as appeals.
- (b) Rule-making proceedings under the Vermont Administrative Procedures Act.
- (c) Requests for declaratory rulings.

All other petitions, applications, submissions, requests, charges, etc. will be treated as informal proceedings.

Rule 4. Appeals

(a) Right to Appeal. A taxpayer or claimant (hereinafter in this rule references to taxpayer includes claimant) may appeal to the Commissioner any action of the Department for which appeal is provided by law including assessment, denial in part or whole of a refund claim, denial or reduction of a property tax adjustment or renter rebate, suspension or revocation of a license or certificate, requirement of a bond and notice of development or discontinuance, by filing a written notice of appeal as provided by Rule 6(a) herein within the time allowed by statute for appeal. The notice of appeal should advise the Department of the reason for the appeal.

(b) Prehearing Meeting. Prior to hearing, the taxpayer may elect to meet informally with the Department's representative. The purpose of such a meeting is to resolve or narrow the issues in dispute to the extent consistent with law. In evaluating any settlement proposal or resolution of the appeal, the Department shall consider evidence and arguments that support the taxpayer's position, hazards of litigation, factors affecting collectability of an assessment, equity among taxpayers and the requirements of law. A taxpayer is not required to meet prior to the hearing. At the taxpayer's option, the prehearing meeting may be conducted by telephone.

(c) Right to a Hearing. A taxpayer who appeals as provided above has the right to a hearing before the Commissioner or at the Commissioner's discretion, the Commissioner's designated hearing officer (hereinafter in this rule references to Commissioner includes the Commissioner's designated hearing officer).

(d) Commissioner's Hearing. If the Department and taxpayer (referred to herein as the "parties") are unable to resolve all issues, the matter will be docketed for hearing before the

Commissioner. The hearing is the parties' opportunity to present evidence to the Commissioner in support of their respective positions. The admissibility of evidence will be determined pursuant to 3 V.S.A. § 810(1)-(4) which is attached hereto as Appendix A. Notice of hearing shall be mailed to the taxpayer at the last address provided by the taxpayer to the Department no less than three weeks before the date of the hearing unless the parties agree to a shorter notice period. The parties and witnesses shall be present at the hearing except as follows:

(1) the facts may be presented to the Commissioner by written stipulation of the parties at any time prior to the hearing.

(2) upon the Commissioner's grant of a taxpayer's motion supported by good cause, a hearing may be conducted over the telephone.

The testimony of a witness on direct examination may be offered in written form, either by having it read into the record or by offering it for incorporation in the record without reading, provided that a copy of the testimony shall be supplied to the opposing party no less than two weeks in advance of the hearing at which testimony will be offered. Written testimony shall be subject to the same rules of admissibility and cross-examination as oral testimony at the hearing.

At the end of the hearing the Commissioner's record is closed and the findings of fact made by the Commissioner shall be based exclusively on the evidence and matters officially noticed as required by the Vermont Administrative Procedure Act.

(e) Continuance of Hearing. A hearing will be continued only by leave of the Commissioner which may be granted upon motion showing just cause, such as, but not limited to:

- (1) complexity of legal or factual issues;
- (2) newly discovered evidence which by due diligence could not have been discovered in time for the hearing;
- (3) illness;
- (4) a scheduling conflict;
- (5) stipulation of the parties.

(f) Post Hearing Filings. Following the hearing and within the time prescribed by the Commissioner, the parties may file proposed findings of fact and/or memoranda of law. The Commissioner may request the parties to file proposed findings of fact and /or memoranda of law. The time for filing may be extended only upon motion granted by the Commissioner.

(g) Transcript. Hearings shall be recorded by the Commissioner and shall be transcribed on the request of any party to a pending appeal and upon payment by the requesting party of the reasonable costs thereof.

Rule 5. Appearances in Appeals

(a) A party to an appeal before the Commissioner may appear for himself or herself or in the case of a corporation, partnership, trust, municipality or other entity created by law, through its duly authorized agent, or the party may be represented by either an attorney or a certified public accountant, if such representative is currently licensed to practice in the State of Vermont. The name of the attorney or certified public accountant or person who has signed the appeal letter or a subsequent notice of appearance will be entered in the Department's records.

(b) All notice given to or by a party's representative of record shall be considered in all respects as notice to or from the party until such time as the represented party notifies the Department that the representative of record is no longer authorized as the party's representative.

(c) An attorney or certified public accountant not residing or not licensed to practice in the State of Vermont may appear for a party if he or she is associated with a resident and licensed attorney or certified public accountant who has entered his or her appearance for the same party.

Rule 6. Filing and Service of Documents in Formal Proceedings

(a) Notices of appeal, requests for formal ruling under 3 V.S.A. § 802 and requests for rulemaking under 3 V.S.A. §831(c) shall be signed by the taxpayer or the taxpayer's representative and mailed or delivered to the Vermont Department of Taxes, 133 State Street, Montpelier, VT 05633-1401. Other methods of transmission do not constitute filing. Filing with the Department shall be deemed to occur when a mailed document is marked as received by the Department and when a document is delivered to the Department in person.

(b) Every document filed by a party subsequent to the initial notice or request in a formal proceeding shall be served upon the attorney of record if there is one and if not, upon the other party. Service upon an attorney or upon a party shall be made by delivering a copy to him or her or by mailing it to him or her at the last known address. Delivery of a copy means handing it to his or her representative or to the party, or leaving it at his office with the person in charge thereof or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place or abode with some person of suitable age and discretion then residing therein. Service by mail shall mean first-class mail, in a sealed and properly stamped envelope. Service by mail is deemed complete upon posting the mail in a proper United States Post Office receptacle.

Rule 7. Requests for Rule-Making and Declaratory Rulings

(a) The Department shall initiate rulemaking to adopt as rule an existing practice or procedure when so requested by 25 or more persons or by the Legislative Committee on Administrative Rules.

(b) Upon request of a taxpayer, the Department will issue a declaratory ruling as to the applicability of any statutory provision or of any rule or practice of the Department. Declaratory rulings may be obtained only for actual, not hypothetical or possible, fact situations. If the applicability of a Vermont statute depends upon the how federal law applies to the facts, the Department may require the taxpayer to have obtained a letter ruling from the Internal Revenue Service prior to obtaining a declaratory ruling on the application of Vermont law. A written ruling will be made within sixty days of receipt of the facts involved and the point of interpretation as to which the ruling is requested, unless additional time is required due to the complexity of the request. If additional time is needed, the requester shall be notified within the original sixty days of the date by which the ruling is expected to be issued.

Rule 8. Licenses and Certificates

An application for a license or certificate shall be submitted on a completed official application form. The Commissioner may consider any credible information in the application or exhibits filed therewith or otherwise available to the Department in determining whether to impose a bond requirement with respect to the applicant or a related business. If a bond is required, that requirement may be appealed as provided in Rule 4 herein.

Appendix A. Rules of Evidence, Official Notice

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