

Vermont Department of Taxes Emergency Rule on Hearing Procedure

Effective December 27, 2020 – June 24, 2021

The purpose of this revised Emergency Rule is to establish a procedure for handling taxpayer appeals in a fair and timely manner during the increased risk of exposure from COVID-19, which was established as a global pandemic by the World Health Organization as of March 11, 2020.

In order to continue to limit in-person contact among and between members of the public and Department of Taxes personnel, this revised Emergency Rule continues to provide for Commissioner's Hearings to be held remotely. Notwithstanding any provision herein, the Commissioner retains discretion to resume in-person hearings should the public health situation surrounding COVID-19 improve significantly. This revised Emergency Rule supplants in its entirety the Department's Emergency Rule on Hearing Procedure, effective July 1, 2020, and upon becoming effective, will be referred to as the Vermont Department of Taxes Emergency Rule on Hearing Procedure.

1. Commissioner's Hearing: Notice and Participation. 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). Notice of hearing shall be mailed to the taxpayer at the last address provided by the taxpayer to the Department no less than four weeks before the date of the hearing unless the parties agree to a shorter notice period.

- a. Except as provided under subsection (b), hearings shall be held by telephone. The Department Clerk shall provide a call-in phone number for a telephone conference on the notice of hearing sent to the parties.
- b. On the taxpayer's motion, hearings may be held by videoconference. Taxpayers who have video conference capability and wish to participate in the hearing in this manner may request a video conference. Such requests must be made to the Department Clerk within two weeks of the scheduled hearing. The Clerk will then set up a video conference and provide the parties with access information by secure email within one week of the hearing date.
- c. Appearance at Appointed Time. The parties and their respective witnesses shall appear by phone or videoconference, as the case may be, at the time and on the date provided on the notice of hearing. If either party attempts to join the phone or video conference and is unable to access the hearing, that party must immediately notify the Department of this issue by using contact information provided in the notice of hearing. If a party fails to join the phone or video conference at the appointed time, and does not report to the Department that it is unable to access

the phone or video conference within thirty minutes of the scheduled hearing, the other party may move for dismissal of the appeal.

2. Submission of Evidence. Facts may be presented to the hearing officer by oral testimony over the phone, by pre-filed testimony, through documentary evidence, by written stipulation of facts, or by any combination of these four methods. Any document that must be signed by one or both parties may be signed electronically.

- a. Factual Stipulation. A stipulation of facts may be submitted in lieu of, or to supplement, a Commissioner's Hearing. The stipulation must be signed by both parties.
- b. Pre-filed Testimony. Either or both parties may choose to submit testimony of a witness in writing. A witness or party submitting pre-filed testimony will be subject to the same rules of admissibility and cross-examination as oral testimony at the hearing.
- c. Documentary Evidence. Documentary evidence is subject to the same rules of admissibility as evidence that would be offered at an in-person hearing.

Parties shall submit all evidence other than oral testimony to the Department Clerk, with a copy sent to the opposing party, at least two weeks prior to the hearing date. Parties may submit evidence by email or first-class mail. If sent by first-class mail, evidence must be post-marked by the date which falls two weeks prior to the hearing. Parties are expected to be able to refer to evidence submitted prior to the hearing and should be sure to have all such evidence accessible during 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.

3. Appearance in Appeals. 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 an attorney or a certified public accountant (CPA), if such representative is currently licensed to practice in the State of Vermont. When a taxpayer will be represented at hearing by an attorney or CPA, such representative shall submit a completed power of attorney, executed by the taxpayer, on the Department's form, found at: <https://tax.vermont.gov/sites/tax/files/documents/PA-1.pdf>

To ensure that the appropriate parties timely receive evidence submitted under the rules described in the above Paragraph 2, a representative shall submit a completed power of attorney to the Department Clerk, with a copy to the opposing party, at least three weeks prior to the date of the hearing.

4. Other Provisions. Any provisions from the Department's Rule of Organization and Procedure, effective January 1, 2019, that are consistent with this Emergency Rule, are hereby incorporated by reference into this Emergency Rule. Any provisions from the Department's Rule of Organization and Procedure that are inconsistent with this Emergency Rule are suspended for the duration of this Emergency Rule.

5. Effective Dates. This Emergency Rule shall become effective on December 27, 2020 and shall cease to be effective on June 24, 2021.