



CITY & COUNTY OF DENVER, COLORADO

DEPARTMENT OF FINANCE

TREASURY TAX RULE 007

RULES GOVERNING HEARINGS BEFORE THE MANAGER OF FINANCE

EFFECTIVE 07/01/2012

The following Rules are promulgated in accordance with the requirements of Sections 53-23, 53-94, 53-169, 53-239, 53-294, 53-344, and 53-398 of the *Denver Revised Municipal Code* ("D.R.M.C.") and by virtue of the authority vested in the Manager of Finance by Articles II, III, IV, V, VI, VII, and VIII of Chapter 53 of the D.R.M.C.

The following rules shall govern all hearings before the Manager of Finance.

1. Definitions

As used in these Rules, the definitions in Chapter 53 of the D.R.M.C. shall apply, unless the context clearly requires a different meaning. The following terms shall have the following meanings:

- A. "Closely Held Entity" means any entity, as defined in § 7-90-102(9), C.R.S., with no more than three owners.
- B. "Hearing Officer" means the Manager of Finance or any person designated by the Manager of Finance to conduct hearings.
- C. "Manager" means the Manager of Finance of the City and County of Denver or the Manager of Finance's designee.

- D. "Person" means any natural person, corporation, partnership, limited liability company, association, or other legal entity.
- E. "Taxes" shall mean monies due from a Taxpayer under any of the following articles of Chapter 53 of the D.R.M.C: II (City Sales Tax Article), III (City Use Tax Article), IV (City Lodger's Tax Article), V (Employee Occupational Privilege Tax Article), VI (Business Occupational Privilege Tax Article), VII (Facilities Development Admission Tax Article) and VIII (Telecommunications Business Tax Article), except where the context is limited to sales and use taxes.
- F. "Taxpayer" means any person obligated to account to the Manager of Finance for taxes collected or to be collected, or from whom a tax is due, under the terms of Chapter 53 of the D.R.M.C.

2. Conduct of Hearing

All hearings shall be conducted by a Hearing Officer.

3. Form of Petition

Petitions submitted to the Manager shall be in writing, shall be clearly designated as a petition, and shall contain the following information:

- A. The amount and type of tax involved and the time during which it accrued.
- B. The date of the assessment or the date of the decision to deny or reduce a claim for refund of taxes paid.
- C. A plain, concise statement of all claims asserted by the Taxpayer as the basis of the petition.
- D. A plain, concise statement, including relevant particulars, of all facts asserted by the Taxpayer in support of each claim.
- E. A plain, concise statement of all points of law relied on by the Taxpayer in support of each claim, citing pertinent statutes, ordinances, regulations, cases and other authority.
- F. The name, address, and telephone number of the Taxpayer.

- G. The name, address, and telephone number of any attorney or legal representative representing the Taxpayer.
- H. The signature of the Taxpayer, the Taxpayer's agent, or the Taxpayer's attorney. If the petition is filed by e-mail, the signature shall be replaced by an attestation of the Taxpayer, the Taxpayer's agent, or the Taxpayer's attorney that the information contained therein is true and correct based upon the information and belief of that individual.

Compliance with the above requirements is mandatory, and in the event of noncompliance, the Manager may impose any appropriate sanction, including, but not limited to, issuing orders for more definite statement or dismissing the petition.

4. Time for Filing Petitions

Petitions shall be filed with the Manager within thirty (30) days from the date of the assessment or the date of the decision to deny or reduce a refund claim. If the last day for filing a petition day falls on a Saturday, Sunday, or legal City holiday, the petition may be filed no later than the next business day. Neither the Manager nor any of the Manager's employees or agents, including the Hearing Officer, is empowered to extend the deadline for filing a petition.

5. Methods for Filing Petitions

Petitions may be filed with the Manager as follows:

- A. Mail. A petition filed by mail shall be postmarked no later than the last day to file the petition. The petition shall be mailed to the Manager at the address provided by the Manager.
- B. Hand Delivery. A petition filed by hand delivery must be received in its entirety by the Manager during regular business hours, on or before the last day to file the petition. The petition shall be hand delivered to the Manager at the physical location designated by the Manager.
- C. Facsimile. A petition filed by facsimile must be received in its entirety by the Manager by 11:59 p.m., Colorado time, on or before the last day to file the petition. The burden is on the Taxpayer to show that the facsimile was timely received by the Manager. The Manager is not responsible for any electronic, mechanical, or telephone malfunctions of any kind which may delay or prevent the transmittal of a fax, or the transmittal of a confirmation notice. Taxpayers are encouraged to mail a copy of their petition, within

the applicable time limit for mailing petitions, in addition to the fax. The facsimile petition shall be sent to the Manager, at a facsimile number provided by the Manager.

- D. Electronic Mail (“e-mail”). A petition filed by e-mail must be received in its entirety by the Manager by 11:59 p.m., Colorado time, on or before the last day to file such petition. The burden is on the taxpayer to show that the e-mail protest was timely received by the Manager. The Manager is not responsible for any mechanical, electronic, or telephone malfunction of any kind which may delay or prevent the transmittal of an e-mail protest. Taxpayers are encouraged to mail a copy of the petition within the applicable time limit for mailing petitions, in addition to the e-mailed version. The e-mail petition shall be sent to an e-mail address provided by the Manager.

6. Procedure upon Receipt of Petition

Upon receipt of a petition, the Manager shall record the filing of the petition, assign the petition a case number, and assign the petition to a Hearing Officer.

7 Hearing Officer’s Authority

- A. Upon being assigned a petition, the Hearing Officer shall have the sole responsibility for making a final determination regarding the petition. The Hearing Officer shall be charged with performing all functions necessary and incidental to making the final determination, including, but not limited to: administering oaths; taking testimony; hearing arguments; ruling on motions, including motions for discovery; ruling on objections; and issuing subpoenas. The Hearing Officer shall generally conduct the hearing as a quasi-judicial proceeding in conformance with the procedures and time limits set forth in the particular tax ordinance involved.
- B. The Hearing Officer may, in its discretion, require the parties to furnish such additional information as the Hearing Officer determines necessary to frame the issues prior to the hearing, such as stipulated and disputed facts; lists of exhibits; lists of witnesses; and law relied upon. No *ex parte* communications with the Hearing Officer shall take place except in accordance with accepted practice in Colorado courts of general jurisdiction.

8. Service and Proof of Service of Documents

All pleadings, motions, briefs, and other documents filed with the Manager, subsequent to the petition, shall be served upon every party in the case.

9. Documents Must Be Legible

All petitions, pleadings, motions, briefs, and other documents filed with the Manager shall be legible and if Manager determines that they are not legible, the Manager may refuse to accept the filing. If the Manager refuses to accept the filing, the Manager shall promptly notify the taxpayer of such refusal and the reasons therefore. Neither the Manager nor any of the Manager's employees or agents, including the Hearing Officer, is empowered to extend the deadline for the filing which has been refused.

10. Motions

Any written motion involving a contested issue of law shall be accompanied by a statement of supporting legal authority. The responding party shall have seven (7) days, or such other time as the Hearing Officer may allow, in which to file a response.

11. Dismissal of Petition

Whenever it appears that a matter pending before the Manager involves questions over which the Manager does not have jurisdiction, the matter may be dismissed on motion of any party or on the Manager's own motion.

12. Notice of Hearing

The Hearing Officer shall notify the Taxpayer, the City Attorney's Office, and the Tax Compliance Section in writing of the time and place fixed for the hearing, at least twenty (20) calendar days prior to the hearing.

13. Requests to Continue Hearing

All requests to continue a hearing shall be for good cause, in writing, and received by the Hearing Officer not less than seven (7) days prior to the date scheduled for the hearing. A copy of the request shall be served on the opposing party.

14. **Failure to Attend Hearing**

Absent good cause, if a Taxpayer fails to attend a hearing, the Hearing Officer shall dismiss the Taxpayer's petition, award costs and such other relief as the Hearing Officer finds appropriate. The award of costs shall be collected in the same manner as the tax, penalty, and interest at issue in the case.

15. **Representation**

A Taxpayer that is a natural person may appear at the hearing on his or her behalf or be represented by an attorney admitted to practice in any of the United States. A Taxpayer that is not a natural person **must** be represented at the hearing by an attorney admitted to practice in any of the United States **unless** it is a Closely Held Entity. A Closely Held Entity may be represented at the hearing by an officer of such Closely Held Entity, if:

- A. The amount at issue in the controversy or matter before the Manager does not exceed ten thousand dollars (\$10,000.00), exclusive of costs, interest, or statutory penalties; and
- B. The officer provides the Manager, at or prior to the hearing, with evidence satisfactory to the Manager of the authority of the officer to appear on behalf of the Closely Held Entity in all matters within the jurisdiction of the Manager.

16. **Opinion Testimony**

Witnesses intended to give opinion testimony as experts must be qualified as such, and their qualifications should be submitted seven (7) days in advance of the hearing to the Hearing Officer.

17. **Order of Proceedings at Hearing**

The order of proceedings in hearings shall be as follows:

- A. Docket call by the Hearing Officer.
- B. Opening statement by the Taxpayer followed by an opening statement by the City, unless waived by either party or reserved by City until the opening of the City's case.

- C. The City may be represented either by an employee of the Tax Compliance Section or the City Attorney's Office.
- D. Presentation of evidence by the Taxpayer, allowing cross-examination by the City (exhibits shall be lettered for identification by the Hearing Officer).
- E. Presentation of evidence by the City, allowing cross-examination by the Taxpayer (exhibits shall be numbered for identification by the Hearing Officer).
- F. The Hearing Officer may at any time address questions to any witness for the purpose of clarification.
- G. Rebuttal and surrebuttal evidence, if any.
- H. Closing argument by the Taxpayer followed by closing argument from the City with the opportunity to reply by the Taxpayer. Either party may elect to submit written briefs in addition to or in lieu of closing argument. If either party elects to submit a written brief, then the other party shall be permitted to file an answer brief. The schedule for filing such briefs shall be set by the Hearing Officer.

18. Formal Rules of Procedure and Evidence Not Applicable

The conduct of the hearing and the admission of evidence shall generally be in accordance with these rules without regard to whether they conform to common-law or statutory rules of procedure or evidence or other technical rules and provided that the rules of evidence, to the extent applicable, shall conform generally with those in civil, non-jury cases in the District Court for the State of Colorado. The admissibility of evidence shall be encouraged, however, and the Hearing Officer shall be guided in receiving evidence by the provisions of the State Administrative Procedure Act.

19. Burden of Proof

In all matters, the Taxpayer shall have the burden of proof to show by a preponderance of the evidence the correctness of the position of the Taxpayer.

20. Testimony Under Oath

All testimony shall be given under oath administered by the Hearing Officer.

21. Copies

Properly authenticated copies may be admitted into evidence or substituted in evidence in place of original documents.

22. Hearing Shall Be Recorded

All hearings shall be recorded in any manner permitted by law, including but not limited to, a certified court reporter or by electronic means. A transcript need not be made unless requested by a party. Transcripts of such record shall be made at the expense of the party requesting the transcript. The non-requesting party shall pay the copy fee if a copy is requested.

23. Rule Specific to Sales and Use Tax Cases

This Rule 23 is applicable solely to petitions challenging an assessment or a decision to deny or reduce a refund claim of the taxes imposed by Article II (City Sales Tax Article) of Chapter 53 of the D.R.M.C. or Article III (City Use Tax Article) of Chapter 53 of the D.R.M.C.

- A. A hearing, if any, shall be held and a final order or decision issued within one hundred eighty (180) days from the date a petition is received by the Manager, unless the Taxpayer and the Manager agree in writing: (1) that the hearing shall be held and a final order or decision issued within such further agreed time or (2) that no hearing shall be held before the Manager, in which case, the Taxpayer may pursue further review in accordance with D.R.M.C. §§ 53-56 or 53-124.
- B. If none of the events described in Rule 23.A. of these Rules have occurred, the Manager may notify the Taxpayer in writing that the Manager does not intend to conduct a hearing, in which case, the Taxpayer may pursue further review in accordance with D.R.M.C. §§ 53-56 or 53-124.
- C. If none of the events described in Rule 23.A. or B. of these Rules have occurred, the Taxpayer may pursue further review in accordance with D.R.M.C. §§ 53-56 or 53-124 any time after one hundred eighty (180) days or such further agreed time has passed.

24. Rules Specific to Lodger's Tax, Employee Occupational Privilege Tax, Business Occupational Privilege Tax, Facilities Development Admission Tax, and Telecommunication Business Tax Cases

This Rule 24 is applicable solely to petitions challenging an assessment or a decision to deny or reduce a refund claim of the taxes imposed by Article IV (City Lodger's Tax Article), Chapter 53 of the D.R.M.C.; Article V (Employee Occupational Privilege Tax Article), Chapter 53 of the D.R.M.C.; Article VI (Business Occupational Privilege Tax Article), Chapter 53 of the D.R.M.C.; Article VII (Facilities Development Admission Tax Article), Chapter 53 of the D.R.M.C.; or Article VIII (Telecommunications Business Tax Article), Chapter 53 of the D.R.M.C.

- A. A hearing, if any, shall be held within one hundred eighty (180) days from the date a petition is received by the Manager, provided, however, that this time may be extended by written order of the Hearing Officer.
- B. The Taxpayer may pursue further review of the Manager's final order of decision in accordance with the provisions of the applicable Articles of Chapter 53 of the D.R.M.C.

25. Severability of Rules

In the event that any provision of these rules or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application, and to this end, the various provisions of these rules are declared to be, and are, severable.

26. Rules Supersede Previously Issued Rules

The above rules supersede any conflicting rules previously issued by the Manager governing hearings.

BY ORDER OF THE MANAGER OF FINANCE

CARY KENNEDY

Manager of Finance

Approved by the City Attorney this 19 day of March, 2012.

DOUGLAS J. FRIEDNASH

City Attorney

By

CHARLES T. SOLOMON

Assistant City Attorney