



SC REVENUE PROCEDURE #92-1

- SUBJECT:** Appeals Process and Procedures
- EFFECTIVE DATE:** This document will be effective for Assessments or Proposed Assessments mailed and other Division decisions made after March 1, 1992.
- SUPERSEDES:** All previous documents and any oral directives in conflict herewith.
- AUTHORITY:** S.C. Code Ann. Section 12-4-320 (1976) S.C. Revenue Procedure #87-3
- SCOPE:** A Revenue Procedure is a statement describing agency procedures.
- PURPOSE:** To provide procedures for handling disputed tax matters in a fair and equitable manner consistent with the Code of Laws of South Carolina.

Introduction

This document contains procedures for handling disputed tax matters, including disputes concerning penalties, from the audit through the Commission Conference. These procedures are intended to ensure public confidence in the integrity and fairness of the Commission and to comply with both the letter and the spirit of the South Carolina Taxpayers' Bill of Rights.

These procedures are intended to resolve tax disputes where possible without the expense of going to court. In order to assure fair treatment, these procedures give the taxpayer the right to present his views to many different Commission employees. Taxpayers are encouraged to take advantage of all of these opportunities. It is important to note, however, that the taxpayer is not required to discuss his case with Review or Appeals. He is also not required to present his views in writing except for the requirement of a written protest and his written disagreement to any of the proposed facts and issues sent to him by Appeals. In other words, a taxpayer who wishes to go to court only has to make a complete and timely written protest to the Proposed Assessment, indicate his disagreement with Appeals' proposed facts and issues and present all of his facts and arguments in the Commission Conference to exhaust his administrative remedies. Taxpayers should be aware, however, that the Commission Conference rules, procedures and preconference procedures (see items IV D and E below) will apply to them and these rules and procedures may limit the facts and issues a taxpayer can raise at a Commission Conference.

All time limits contained in this Revenue Procedure, except those mandated by statute or regulation, may be extended by mutual agreement of the taxpayer and the appropriate Commission employee.

To understand the dispute handling process this Revenue Procedure must be read in conjunction with the statutory law and regulations regarding disputed tax matters.

Claims for refund will be handled pursuant to this Revenue Procedure. Taxpayers should note, however, that the South Carolina Supreme Court in *Bass v. State of Carolina*, 395 S.E.2d 171 (1990), pet. for cert. filed October 24, 1990, held that suits for refunds under Code Section 12-47-440 are only permissible for claims for refunds of license fees and license taxes. Therefore taxpayers should consider using Code Sections 12-47-210 and 12-47-220 (payment under protest) for paying taxes, other than license fees and license taxes, which they deem to illegal. Taxpayers should consult with their tax advisors before paying any tax with which they may disagree. For a more complete discussion, see SC Revenue Ruling 91-10.

This Revenue Procedure is being issued with the knowledge that a comprehensive tax procedures act has been drafted and may be considered by the South Carolina legislature. If and when that bill is enacted, this Revenue Procedure will amended to make the changes necessity by the bill.

After a number of appeals have been handled under this Revenue Procedure, it will likely revised to correct any problems which come to light. Please address your comments and suggestions to Rick Handel, Chief, Tax Policy and Appeals, S.C. Tax Commission, P.O. Box 125, Columbia, South Carolina 29214-0702.

- II. **Definitions** - The first letter of defined words are capitalized throughout this Revenue Procedure as a reminder that the term is defined.
- A. **Appeals** - The employees of the Tax Policy and Appeals Department of the Policy and Special Procedures Division who are designated to carry out the responsibilities and duties assigned to Appeals in this Revenue Procedure.
- B. **Audit Review or Review** - The employees designated by Field Services, Office Services and Property Divisions to carry out the responsibilities and duties assigned to Audit Review in this Revenue Procedure.
- C. **Commission Conference** - For property tax purposes, the Commission Conference is a hearing governed by the Administrative Procedures Act as well as the rules and procedures in this Revenue Procedure. For all other taxes, the Commission Conference is a conference conducted in accordance with the rules and procedures contained in this Revenue Procedure.

- D. **Division** - The appropriate division or divisions of the Commission. Divisions of the Commission which are affected by this Revenue Procedure are the Field Services Division, the Office Services Division, the Property Division and the Policy and Special Procedures Division.
- E. **Final Assessment or Assessment** - Except for property taxes, an Assessment is the determination of any tax due. For property tax purposes (other than the property taxes of airlines and private car lines) an Assessment is the determination of the value of the property multiplied by the assessment ratio. The property tax due is later determined by multiplying the Assessment by the millage levied by the taxing authority. An Assessment for property taxes of airlines and private car lines is the determination the value of the property, the assessment ratio, the equalized assessment ratio, the millage and the tax due.

Assessments include the determination of any penalty or interest due and owing.

Final Assessments are generally noted on Commission form C-133.

- F. **Proposed Assessment** - The first written notice sent or given to the taxpayer stating that the Commission has determined that any tax, interest or penalty is due and owing. For property tax purposes, it includes the first notice stating the value and/or assessment ratio of certain property as determined by the Commission. The term Proposed Assessment does not include the auditor's work papers or draft audit reports.

If a document is consistent with this definition, it will be deemed to be a Proposed Assessment for the purposes of this Revenue Procedure even if it is called something else; for example, even if it is called an assessment, notice of assessment, assessment notice, assessment notice and tax bill, notice of appraisal and assessment, proposed notice of assessment, notice of adjustment, or if it looks like an invoice,

G. Waiver of Restrictions on Assessments, Forms SC870 and SC870AD

1. Form SC870 - A taxpayer may sign this form if he wants to have the Commission generate a Final Assessment showing the total tax, interest and penalty (if any) due so that the taxpayer can pay the Proposed Assessment and stop the accumulation of interest. This form does not prevent the Commission from assessing additional taxes or the taxpayer from filing a claim for refund. See Revenue Ruling 9140 regarding limitations on obtaining judicial review of the denial of claims for refunds.
2. Form SC870AD - A taxpayer may sign this form when he wants to resolve the dispute. It is not effective until it is accepted by a Division Director of the Commission or his designee. If accepted by the Commission, the taxpayer cannot file or prosecute a claim for refund or credit and the Commission will not reopen the case except for fraud, malfeasance, concealment or misrepresentation of material fact, or important mistake in mathematical calculation.

III. Assessments and Proposed Assessments

A. Taxes other than property taxes

1. If the taxpayer files a written protest with the Commission within thirty (30) days of the date of the Proposed Assessment, the Commission will suspend its efforts to collect the tax until the matter is resolved or a Commission Conference decision is rendered in accordance with this Revenue Procedure. This suspension of collection efforts does not apply to jeopardy or termination assessments or if paragraph C below is applicable.
2. If the Proposed Assessment is not the Final Assessment, these procedures will not prevent Review from making a Final Assessment, but enforcement will be suspended during the administrative appeals process. If the Commission issues a Final Assessment and then pursuant to these procedures determines that the Assessment was in error or partly in error, the Assessment or the portion of the Assessment which was made in error will be abated.
3. If the taxpayer does not file a written protest with the Commission within thirty (30) days of the date of the Proposed Assessment, the Commission will issue a Final Assessment and begin collection activities if payment is not made.
4. If a protest is made late and the Division making the Assessment determines that the taxpayer is likely to prevail, it may suspend the collection of the tax until the protest is determined. The Taxpayers' Rights Advocate may suspend the Commission's collection efforts at any time the Advocate determines that those efforts will cause the taxpayer to suffer an irreparable loss.

B. Property Taxes

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1. If the taxpayer files a written protest with the Commission within twenty (20) days of the date of the Proposed Assessment and the matter is unlikely to be resolved prior to December 31, the taxpayer will receive a tax bill based upon 80% of the disputed assessed value. Additional taxes will be billed or a refund made after the matter is resolved.
2. If the taxpayer does not file a written protest with the Commission within twenty (20) days of the date of the Proposed Assessment, then (except for airlines and private car lines) the Commission will certify its Assessment to the appropriate county or counties and the counties will issue their tax bills.

For airlines and private car lines, if a protest is not filed within twenty (20) days and payment is not made when due, the Commission will begin collection activities.

3. If a protest of a Proposed Assessment is made late, the tax must be paid.

C. All Taxes

If the taxpayer fails to make a timely response or fails to cooperate with the procedures outlined in this Revenue Procedure, a demand for payment will be sent to the taxpayer. If payment is not made, enforced collection procedures will be begun. After payment, the taxpayer can file a claim for a refund. See Revenue Ruling 91-10 regarding limitations on obtaining judicial review of the denial of claims for refunds.

IV. Procedure for Taxes, other than Property Taxes, where Dispute Arises from an Audit

A. Audit (other than Office Audits)

1. After the auditor completes a draft audit report and discusses it with the audit supervisor, the auditor will meet with the taxpayer to review the report. At the meeting, the auditor will give the draft report to the taxpayer, determine with what, if anything, the taxpayer disagrees, and strive to resolve all issues. If it is not possible to resolve all initial disagreements, the auditor will, to the extent possible, determine the facts and the issues with which the taxpayer agrees and disagrees. In cases where it is not practical to meet with the taxpayer in person, the auditor will send the draft audit report to the taxpayer, and give the taxpayer the opportunity to agree or to call (or write, if the taxpayer prefers) and explain his disagreement. If the taxpayer calls or writes, the auditor or audit supervisor will try to resolve disagreements with the taxpayer. Resolutions made at the audit level must be consistent with Commission policy and may not be based upon the hazards of litigation.
2. If the auditor resolves all the issues with the taxpayer, the auditor should ask the taxpayer to execute a Waiver of Restrictions on Assessments (Form SC870 or SC870AD.) If the taxpayer signs the waiver, the file will be forwarded to the District Manager. The matter will also be forwarded to the District Manager if the taxpayer refuses to sign the waiver but tenders payment of the full amount determined to be due. If the taxpayer indicates that the waiver has to be reviewed by others, whether officers of the taxpayer or tax advisors, the auditor will hold the file for a reasonable period of time to allow the taxpayer and his advisors to consider their options. If the taxpayer does not pay and refuses to sign or if the taxpayer fails to respond after the auditor in his professional judgment believes that the taxpayer has had sufficient time to consider his options and respond, the auditor will treat the file as unagreed and forward it to the District Manager. If the taxpayer signs the waiver after the file is no longer with the auditor, the auditor will request the file be returned for processing.

3. If the auditor cannot resolve all of the issues with the taxpayer, then
 - a) The taxpayer will be offered the opportunity to talk with the audit supervisor, if he has not already done so.
 - b) If the taxpayer chooses not to meet with the audit supervisor or has already done so, the audit report will be revised, if necessary, and sent to the audit supervisor for review and approval.
4. Each audit file must contain an audit report, the contents of which are set forth in Exhibit B.
5. Whether or not the taxpayer pays an amount agreed to by the auditor (without a Proposed Assessment being sent), the supervisor will forward the file to his District Manager. The District Manager will review the file and make changes or approve it. The file will then be forwarded to the Manager of Audits who will forward it to Review.
6. If the file is not resolved before it reaches Appeals, Appeals may ask the auditor and other Division personnel for assistance.

B. Audit Review

1. **Purpose.** The primary purpose of Review is to facilitate administration of the State's tax laws by establishing, and ensuring adherence to, uniform auditing and enforcement standards. When Review disagrees with a taxpayer, it will prepare a complete summary of the facts and law supporting its position.
2. **Organization.** The Field Services, Office Services and Property Divisions will each designate at least one person to carry out the responsibilities and duties of Review.
3. **Procedures** - Except for Proposed Assessments arising from office audits. Review will follow procedures below:
 - a) Review will examine the files it receives from the Manager of Audits.
 - b) If a file is not complete or requires additional development, Review may refer the file back to the responsible audit department or perform the work itself.
 - c) If Review agrees with the position of the taxpayer on all issues, the file will be referred to the auditor for adjustment with a brief explanation of Review's position. The auditor will notify the taxpayer and close the file.

- d) If Review does not agree with the taxpayer on all issues, it may attempt to resolve the unagreed issues consistent with current Commission policy. If a settlement is reached, the taxpayer should be asked to execute a Waiver of Restrictions on Assessments (Form SC870 or SC870AD) or tender payment.
- e) If Review determines that additional tax is due, it will supervise the preparation of a Proposed Assessment (30-day letter) and have it sent to the taxpayer. The Proposed Assessment will contain the following:
 - (1) Instructions explaining how a taxpayer can file a written protest if he disagrees with the notice, and an explanation of the taxpayer's further appeal rights.
 - (2) A standard form to be used at the taxpayer's option for filing a "written protest."
 - (3) A copy of Review's report supporting the Proposed Assessment. See Exhibit D for the contents of the Review's report.
- f) Upon receipt of a written protest from the taxpayer, Review will
 - (1) Determine whether the written protest was timely filed.
 - (2) Examine the written protest for completeness. See Exhibit A for the required contents of the written protest. If the protest comes from a representative, a power of attorney must be included.
 - (3) If the protest is incomplete, Review will contact the taxpayer or his representative and explain the problem and how to correct it. If correction is not possible, Review will send the taxpayer a demand for payment, an explanation of why the protest was not acceptable, and an explanation of the refund procedure.
 - (4) Review the merits of the protest
 - (a) If Review agrees with the taxpayer, it will notify the taxpayer and send a copy of its Resolution Report to the auditor. See Exhibit G for the contents of the Resolution Report. This report will end the matter.
 - (b) If Review does not agree with the taxpayer, it will review the protest for additional facts or legal issues or both, which were not dealt with in Review's report. Review will investigate or have the auditor investigate any new factual assertions and Review will prepare a statement supporting or disagreeing with any new legal issues raised by the taxpayer. This discussion of legal issues will apply relevant statutes, regulations, cases and rulings to the taxpayer's facts and explain why this law and these facts support Review's position.

This information must be forwarded to Appeals within one month of receipt of the protest.

(5) If Review does not agree with the taxpayer, it will forward the file with a completed "Appeals Transmittal" form to Appeals within a week of receiving the protest. See Exhibit E for the contents of the Appeals Transmittal form.

g) If necessary, Appeals may ask Review and other Division personnel for assistance.

4. **Procedures - For Proposed Assessments arising from office audits (including office audits arising from Internal Revenue Service Agent's Reports)**. The following procedures are to be followed by the audit sections and Review:

a) The supervisor of the appropriate section of the Office Services Division of the Commission will prepare or have prepared a Proposed Assessment (30-day letter) and forward it to the taxpayer. The Proposed Assessment will contain the following:

(1) Instructions explaining how a taxpayer can file a written protest if he disagrees with the notice.

(2) A copy of the section's report supporting the Proposed Assessment, See Exhibit C for the contents of the audit section's report.

Review will be responsible for supervising the preparation and content of these notices.

b) The supervisor of the section which sent the Proposed Assessment will receive the protest. The supervisor or his designee will also try to resolve the matter. If he cannot resolve the matter within twenty-one (21) days of the receipt of the protest, he will notify Review and work with Review to complete the steps which follow.

c) Within sixty (60) days of the original receipt of the protest Review will:

(1) Determine whether the written protest was timely filed.

(2) Examine the written protest for completeness; see Exhibit A for the required contents of the written protest. If the protest comes from a representative, a power of attorney must be included.

(3) If the protest is incomplete, Review will contact the taxpayer or his representative and explain the problem and how to correct it. If correction is not possible, Review will send the taxpayer a demand for payment, an explanation of why the protest was not acceptable, and an explanation of the refund procedure.

(4) Review the merits of the protest.

(a) If Review agrees with the taxpayer on all issues, it will prepare a Resolution Report and send a copy to the audit section. See Exhibit G for the contents of the Resolution Report. The auditor will notify the taxpayer and close the file.

(b) If Review does not agree with the taxpayer, it may attempt to resolve all unagreed issues consistent with current Commission policy. If a settlement is reached, the taxpayer should be asked to execute a Waiver of Restrictions on Assessments (Form SC870 or SC870AD) or tender payment.

(c) If Review does not agree with the taxpayer on all issues, it will adjust the file for any issues with which it does agree and forward its report and the file with a completed "Appeals Transmittal" form to Appeals.

i) See Exhibit D for the contents of the Review's report.

ii) See Exhibit E for the contents of the Appeals Transmittal form.

d) If necessary, Appeals may ask Review and other Division personnel for assistance.

5. **Protest File.** If the matter is not resolved by Review, the file should be forwarded to Appeals. The original file with its original papers must be sent. If the file is a result of an audit, the audit report and all work papers must be included. The Appeals Transmittal Form should be placed on top. See Exhibit H regarding the arrangement and contents of the file.

6. **Assessments issued and payments made after the file is transferred to Appeals.** a protest has been made to a Proposed Assessment, Review will issue a Final Assessment if necessary to prevent the running of the statute of limitations. The issuance of the Final Assessment (other than a jeopardy or termination assessment) will not affect an ongoing appeal. Enforcement will continue to be suspended during the administrative appeals process. If a settlement is made at the informal conference with Appeals or the Commission issues its Conference decision, the file will be returned to Review. The Division of the Commission from which the appeal taken will verify the computation of the tax, interest and penalties the taxpayer owes pursuant to the settlement or Commission Conference and make the demand for payment.

C. Appeals

1. Purpose, Organization and Procedures

- a) Purpose. Appeals' purpose is to resolve tax controversies where possible without litigation on a basis which is fair and impartial to both the taxpayer and the State in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Commission.

In those instances where a matter cannot be resolved without a Commission Conference, Appeals is to present its position at the Commission Conference.

- b) Function. Taxpayers may appeal any dispute with the Field Services, Office Services or Property Divisions to Appeals except for denial of a ninety day installment payment agreements, revocation of retail licenses, school district appeals of their index of taxpaying ability pursuant to section 59-20-20 of the South Carolina Code, and jeopardy and termination assessments. Because time is of the essence in these disputes, appeals of installment agreements will be made directly to the Taxpayers' Rights Advocate; and appeals of license revocations, index of taxpaying ability, and jeopardy and to °nation assessments will be made directly to the Commission. The respective Divisions will represent themselves in these matters to the Taxpayers' Rights Advocate and the Commission. Unless otherwise provided by this Revenue Procedure, an appeal cannot be forwarded to Appeals until the Division resolves an issue against the taxpayer.

- c) Preliminary Procedures. The following procedures are to be followed by Appeals upon receipt of a file from Review:

(1) The Tax Analyst will review the file.

(2) If the file is not complete, Appeals may do the additional work or return the file to Review with a memorandum stating what additional work or information is needed.

(3) The Tax Analyst will advise the taxpayer or the taxpayer's representative by letter, that the file is in Appeals. This letter will also:

(a) Include a copy of Review's report unless it was sent to the taxpayer with the Proposed Assessment;

(b) Offer the taxpayer an optional informal conference with Appeals;

(c) Explain the purpose and procedures involved in an optional informal conference with Appeals (see below), and the procedure if the optional informal conference with Appeals is refused;

- (d) Contain a list of proposed facts and a statement of the issues in controversy. Inform the taxpayer that for the purpose of Appeals' review and the Commission Conference the taxpayer will be deemed to agree with those proposed facts to which he does not object, unless he requests the optional informal conference with Appeals and elects to stipulate the facts and designate the issues at the informal conference.

2, Optional Informal Conference with Appeals

- a) Optional Informal Conference with Appeals: Purpose. The purpose of the optional informal conference with Appeals ("informal conference" or "conference") is to attempt to resolve any and all disputed matters prior to a Commission Conference, to reconcile any differences concerning the facts or legal principles, to provide an opportunity for the taxpayer to submit any new arguments and/or information, and to stipulate the facts and issues which are agreed and those which are unagreed, if any.
- b) Optional Informal Conference with Appeals: Procedures. If the taxpayer requests an optional informal conference, the following procedures will be followed:
 - (1) A letter will be sent to the taxpayer, or the taxpayer's representative, setting the date, time and place of the informal conference. The informal conference should be scheduled to accommodate the taxpayer and to ensure compliance with statutorily imposed time limitations. This letter will also inform the taxpayer of the following:
 - (a) The conference will be held in an informal manner.
 - (b) The taxpayer is entitled to have his or her attorney, accountant and others present at the conference.
 - (c) The taxpayer may record the conference if the taxpayer informs Appeals that he will record it at least five (5) days prior to the conference. If the taxpayer does not record the conference, Appeals will not record it without the consent of the taxpayer. If either the taxpayer or Appeals records the conference, the party recording the conference will provide the other party with a copy of the tape and any transcript made from the tape.
 - (d) At the conference, Appeals and the taxpayer will stipulate the facts and issues upon which they agree and those upon which they disagree;
 - (e) Unless Appeals has reason to believe that the taxpayer is hiding information from the auditor, it will not reopen an issue upon which the taxpayer and the Division have agreed, nor raise new issues. Even if the taxpayer is suspected of hiding information from the auditor, Appeals will not generally reopen an issue unless the grounds for the action are substantial and the potential effect upon tax liability is material.

- (f) The taxpayer may raise any new issues at this conference.
 - (g) If possible, the taxpayer and Appeals will settle the case at the conference. (See Section 4, "Settlements.")
 - i) If Appeals and the taxpayer agree, Appeals will return the file to Review for adjustment with a brief explanation. Review will have the adjustments made and close the file.
 - ii) If Appeals and the taxpayer do not agree, the matter will be considered by the Tax Commissioners at a Commission Conference.
 - (h) If the taxpayer does not wish to take advantage of the informal conference with Appeals, the letter will inform the taxpayer of the last date the taxpayer may submit new information for Appeals to consider. The taxpayer may send an amended protest or brief and respond to any assertions, arguments or conclusions in Review's report. Appeals' report will be based upon the taxpayer's protest and any additional information received by Appeals through this last date to submit new information.
 - (i) If the taxpayer does not accept the informal conference with Appeals, the taxpayer's case at the Commission Conference will be limited to the facts and issues presented in the taxpayer's protest and any further information sent by the taxpayer and received by Appeals through the last date to submit new information. The taxpayer will be deemed to agree with any factual assertions and legal conclusions in Review's report to which the taxpayer does not object.
- (2) Appeals will discuss the appeal with the auditor, Review, or both to the extent necessary to fully understand the legal and factual arguments in the appeal. The auditor, Review, or both will be present if requested by Appeals.
 - (3) If the taxpayer raises new facts or legal issues at the informal conference with Appeals, Appeals may ask Review to investigate those facts and research and prepare a response to those issues.
3. **After the Optional Informal Conference with Appeals.** The following procedures followed upon completion of the optional informal conference with Appeals.
- a) If Appeals Agrees with the Taxpayer or All Issues are Settled. If Appeals agrees with the taxpayer or all issues are settled at the informal conference, Appeals will prepare and send a Resolution Report to the taxpayer, or the taxpayer's representative, and send a copy to Review. See Exhibit G for the contents of the Resolution Report.

If not signed at the informal conference, then a Waiver of Restrictions on Assessments (Form SC870 or SC870AD) will be sent to the taxpayer with the Resolution Report for the taxpayer to sign and return.

Appeals will return the file to Review. The Division of the Commission from which the appeal was taken will verify the computation of the tax, interest and penalties, make any necessary adjustments, and close the file.

- b) All Issues Not Settled At Informal Conference with Appeals. If all issues are not settled at, or soon after, the informal conference with Appeals, then Appeals will issue its report explaining its position. Appeals will send the original of its report to the taxpayer or the taxpayer's representative.
 - (1) See Exhibit F for the contents of the Appeal's report.
 - (2) With its report, Appeals will provide the taxpayer with
 - (a) the choice to pay any tax, penalties and interest due, or go forward with a Commission Conference; and
 - (b) an explanation of the Commission Conference process and procedures.
(See Sections IV D, E and F.)
- 4. **Settlements** - Appeals will attempt to settle the case in a fair and impartial manner; i.e. one which reflects the probable result in the event of litigation.
 - a) Appeals will have the authority to settle any case based upon its findings of the facts and its determination of the law.
 - b) Subject to the following procedures and limitations, Appeals will have that authority to settle cases based upon the hazards of litigation. Appeals may refuse to settle a case based upon the hazards of litigation if it believes that State tax policy would be better served with a judicial resolution. Such settlements should reflect, on an issue by issue basis, the probable result in the event of litigation, or mutual concessions for the purpose of settlement based on the relative strength of the opposing positions where there is a substantial uncertainty of the result in the event of litigation.

Appeals will consider:

- (1) The quality of the evidence likely to be presented,
- (2) The credibility of witnesses,
- (3) The availability of witnesses,

- (4) The ability of the taxpayer to carry his burden of going forward with the evidence,
 - (5) The likelihood that the evidence the taxpayer can present will carry his burden of proof,
 - (6) The doubt as to an issue of fact, and
 - (7) The doubt as to a conclusion of law.
- c) If the case is settled, Appeals will prepare a Resolution Report. See Exhibit G for the contents of the Resolution Report.
 - d) No settlement is binding unless and until it is approved by the Chief of Tax Policy and Appeals Department or the Director of the Policy and Special Procedures Division. If the settlement is based on the hazards of litigation, it must be approved in the manner described below.
5. **Hazards of Litigation.** Settlements based upon the hazards of litigation must be approved as follows:
- a) If Appeals recommends a settlement reducing the amount in the Proposed Assessment by up to \$25,000, the settlement must be agreed to by a majority of the following individuals:
 - (1) The Appeals' Tax Analyst (if assigned to an Analyst),
 - (2) Manager of Appeals,
 - (3) Chief of Tax Policy and Appeals, and
 - (4) Director of the Policy and Special Procedures Division.
 - b) If Appeals recommends a settlement reducing the amount in the Proposed Assessment by more than \$25,000 but not more than \$100,000, the settlement must be unanimously agreed to by:
 - (1) The Appeals' Tax Analyst (if assigned to an Analyst),
 - (2) Manager of Appeals,
 - (3) Chief of Tax Policy and Appeals, and
 - (4) Director of the Policy and Special Procedures Division.

If the above cannot unanimously agree, but a majority supports the settlement, then the Executive Director will review the settlement agreement. If the Executive Director supports the majority, then the settlement will be adopted.

- c) If Appeals recommends a settlement reducing the amount in the Proposed Assessment by more than \$100,000, then Appeals will schedule a preconference meeting with the taxpayer and the Commissioners. At this meeting Appeals will set forth its reasons for recommending the settlement and the Commissioners can approve or refuse to approve it. If the Commissioners do not approve, there will be no settlement.

D. Preconference Procedures.

1. Appeals will notify the Commissioners if a Commission Conference is necessary.
2. At least forty-five (45) days before the Commission Conference, the Commissioners will notify the taxpayer, or the taxpayer's representative, and Appeals of the date, time and place of the Commission Conference. This notice will be in writing and the taxpayer's copy will contain a copy of the preconference procedures and the Commission Conference rules and procedures (see below.)
3. No later than twenty-one (21) days before the scheduled Commission Conference date, both parties (Appeals and the taxpayer) are to exchange copies of all documents to be presented to the Commissioners, including Appeals' report, any brief prepared by or for the taxpayer, and all relevant reports and documents prepared by any expert witness who will testify, unless previously provided.
4. Also, no later than twenty-one (21) days before the scheduled Commission Conference date, both parties (Appeals and the taxpayer) are to exchange lists of witnesses to be called, the purpose for calling each witness, including a summary of the facts about which each witness is expected to testify. In addition, if the taxpayer wishes to change the order of presentation before the Commissioners (see the Commission Conference procedures below), Appeals must be notified at this time.
5. No later than seven (7) days before the scheduled Commission Conference date, Appeals is to furnish the Commissioners with its report, a list of witnesses, the taxpayer's protest and any supplemental protest, brief or other information that the taxpayer filed with Appeals.
6. Except as necessary to schedule the Commission Conference, neither the Commissioners nor the Attorney General's Office will consult with the auditor, Review, the Division or Appeals, without the taxpayer (or his representative) being offered the opportunity to be present. Neither the Commissioners nor the Attorney General's Office will consult with the taxpayer (or his representative) without Appeals being offered the opportunity to be present.

7. The Commissioners may consult with the Attorney General's office without notifying any party.

E. **Commission Conference**. The following rules and procedures are applicable to Commission Conferences:

1. **Commission Conference Rules**:

- a) Commission Conferences, other than property tax Conferences, will not be open to the public, but the taxpayer may have anyone present he chooses. Property tax Conferences will be open to the public.
- b) The taxpayer will bear the burden of proof for all facts, except fraud.
- c) If the taxpayer attempts to raise issues not raised in the optional informal conference with Appeals (or, if the informal conference with Appeals is rejected then by the last date for new information contained in the letter from Appeals), or if the taxpayer attempts to introduce documents or witnesses not provided to Appeals at least twenty-one (21) days prior to the Commission Conference, the Commissioners will give the taxpayer the option of:

- (1) waiving any applicable statutes of limitation and allowing Appeals adequate time to consider the new issue(s), documents or witnesses (Appeals may waive the extra time), or

- (2) proceeding without considering the new issue(s), documents or witnesses.

If the Commission Conference is adjourned to allow Appeals adequate time to consider new issues, and when the Conference is reconvened the taxpayer attempts to raise additional new issues or introduce documents or witnesses not provided to Appeals at or before the initial Commission Conference, the Commissioners will give Appeals the option of:

- (1) having the taxpayer, if he agrees, waive any applicable statutes of limitation and allowing Appeals adequate time to consider the new issue(s), documents or witnesses (Appeals may waive the extra time), or

- (2) proceeding without considering the new issue(s), documents or witnesses.

- d) If Appeals attempts to raise new issues not provided in its report, or introduce documents or witnesses not provided to the taxpayer at least twenty-one (21) days prior to the Commission Conference, the Commissioners will give the taxpayer the option of:

- (1) allowing the taxpayer adequate time to consider the new issue(s), documents or witnesses (the taxpayer may waive the extra time), or
 - (2) proceeding without considering the new issue(s), documents or witnesses.
- e) Commission Conferences will be recorded, with a copy being furnished to the taxpayer upon request.

2. **Commission Conference Procedures:**

- a) Commission Conferences will be conducted by the Commissioners, with the assistance and advice of the Attorney General's Office.
 - b) Commission Conferences are to be attended by at least two (2) Commissioners.
 - c) The Chairman of the Commission, or the Chairman's designee, will open the Commission Conference with a brief statement as to the parties involved, the participants, the type of tax(es) and a brief statement of the issue(s) at hand.
 - d) The Chairman, or the Chairman's designee, will administer an oath to witnesses.
 - e) Appeals will present its case and witnesses first.
 - f) The taxpayer will then present its case and witnesses.
 - g) The order of presentations of the case will be reversed if the taxpayer elects by notifying Appeals of his election twenty-one (21) or more days before the Commission Conference.
 - h) Time will be allowed for the taxpayer, or the taxpayer's representative, and Appeals to cross examine witnesses, ask questions of each other, offer rebuttal witnesses, and rebut any arguments and statements made by the other party.
 - i) The Commissioners and representative(s) of the Attorney General's Office may ask questions of any witness, representative or party.
 - j) The taxpayer or the taxpayer's representative, and Appeals will be allowed opportunity to make a closing statement. The taxpayer or taxpayer's representative, will be given the opportunity to make his closing statement last.
- F. **Post-Commission Conference Procedures.** The following procedures are applicable upon completion of a Commission Conference:

1. Prior to issuing its decision, neither the Commissioners nor the Attorney General's Office will consult with the auditor, Review, the Division, or Appeals, without the taxpayer (or his representative) being offered the opportunity to be present. Neither the Commissioners nor the Attorney General's Office will consult with the taxpayer (or his representative) without Appeals being offered the opportunity to be present.
2. The Commissioners will receive advice from the Attorney General's office and may consult with it without notifying any party.
3. The Commissioners will render their decision within two months after the Commission Conference or as soon thereafter as possible.
4. Copies of the decision are to be forwarded to the taxpayer, the taxpayer's representative, Appeals, Review, the auditor (if case was the result of an audit), the Executive Director and the director of the Division from which the case originated.
5. Appeals will return the file to Review. The Division of the Commission from which the appeal taken will verify the computation of the tax, interest and penalties, make any necessary adjustments, and send a demand for payment to the taxpayer. For property taxes collected by a political subdivision, the Property Division will verify the assessed valuation and notify the appropriate county or counties.
6. The Commissioners' office will have a "sanitized" version of the decision prepared. It will be sent to the taxpayer. A sanitized version of a property tax case is one with the name of the taxpayer removed. A sanitized version for other taxes is one with all references identifying the taxpayer removed. The taxpayer will be given fifteen (15) days to review the sanitized version and suggest additional deletions. If the taxpayer does not respond within the fifteen (15) day period, the sanitized version will be published.
7. If requested by the taxpayer, a copy of the Commission Conference tape will be provided to the taxpayer.
8. If the Attorney General's office requests a transcript of the Commission Conference, it will be prepared by the reporter making the tape recording of the Conference. The reporter will notify the taxpayer that a transcript has been prepared and give the taxpayer the option of purchasing a copy.
9. If the decision is not in complete agreement with the taxpayer, an explanation of the taxpayer's further appeal rights is to be forwarded to the taxpayer or the taxpayer's representative with the decision.

V. Procedure for Property Taxes where the Commission is the Assessor

- A. Except to the extent different rules are provided, property tax procedures are the same as the procedures provided for other taxes. The Property Division will designate one of its

employees to perform the functions of the auditor in the rules provided for other taxes. Although this person may have different titles depending upon the type of property tax, the type of taxpayer involved, or whether an exemption is at issue, for purposes of this Revenue Procedure this person will be referred to as the "appropriate Property Division employee."

- B. Unlike protests for other taxes, protests of property taxes assessed by the Commission must be filed within twenty (20) days of the Proposed Assessment. See Regulation 117-11
- C. Protests of property tax Proposed Assessments must contain all grounds for the appeal. Any ground that is not contained in the protest will not be given any consideration by the Commission. The protest must also contain the valuation and Assessment which the owner deems to be the fair market value and Assessment of the property. See Regulation 117-111.
- D. Commission Conferences and appeals from Commission Conferences for property tax matters are governed by the Administrative Procedures Act as well as the procedures contained in this Revenue Procedure.
- E. Certain Business Personal Property. Audits and appeals of any business personal property audited by the Field Services Division of the Commission will be handled in the same manner as audits and appeals for taxes other than property taxes, except that protests of business personal property taxes (like other property taxes) must be filed within twenty (20) days of the Proposed Assessment. See Regulation 117-111.
- F. **Property other than the Business Personal Property described above.**
 - 1. The appropriate Property Division employee will review the property tax returns and, when he deems necessary, issue Proposed Assessments.
 - 2. If the taxpayer files a protest, the appropriate Property Division employee will
 - a) Determine whether the written protest was timely filed.
 - b) Examine the written protest for completeness. See Exhibit A for the required contents of the written protest.
 - c) If the protest is incomplete, he will contact the taxpayer or his representative and explain the deficiency and how to correct it. If correction is not possible, he will send an explanation of why the protest was not acceptable, and an explanation of the refund procedure.
 - d) Review the substance of the protest

- (1) If, based on the letter of protest and other information, the appropriate Property Division employee agrees with the taxpayer, he will prepare a Resolution Report and send a copy to the taxpayer. See Exhibit G for the contents of the Resolution Report. This report will end the matter.
 - (2) If the appropriate Property Division employee does not agree with the taxpayer, he will meet with the taxpayer and strive to resolve all issues. If it is not possible to resolve all issues, the appropriate Property Division employee will, to the extent possible, determine the facts and issues with which the taxpayer agrees and disagrees. Resolutions must be consistent with Commission policy. Settlements based upon the hazards of litigation may not be made at this level.
3. If the appropriate Property Division employee cannot resolve the matter within two months of receiving the protest, he will schedule a conference for the taxpayer with Review.

The Property Division will appoint one or more persons to be Review. It may appoint different persons to perform the Review function depending upon the type or location of the property being taxed.

4. If Review cannot settle the matter within three months of the receipt of the protest, the appropriate Property Division employee will prepare a formal appraisal. This appraisal will be completed within four months of receiving the protest.
 5. Review and its Report
 - a) If Review resolves the case, it will prepare a corrected property tax Assessment and send it to the auditor of the county where the property is located.
 - b) If Review cannot resolve the case, it will issue its report to Appeals. Review's report, responsibilities and duties will be the same as Review's report, responsibilities and duties for Proposed Assessments arising from an office audit, except the file which is forwarded will also contain the Division's appraisal, any appraisals submitted by the taxpayer or others, and a copy of the Field Report, Form PT-330. See Exhibit D for the contents of the Review's Report.
 6. If the appropriate Property Division employee or Review determines that the matter is not reasonably expected to be resolved by December 31 of the tax year, then the Property Division will notify the auditor of the county where the property is located to adjust the property tax Assessment of the property under protest to 80% of the Assessment.
 7. The remainder of the procedure will be the same as for non-property tax cases.
- G. Request for abatement of erroneously, improperly or illegally assessed property. In addition to appeals from assessments made by the Commission, Code Section 12-47-410 allows the Commission abates a property tax that has been erroneously, improperly or illegally assessed.

Requests for abatement under section 12-47-410 must be made in writing to the Commission. The request for abatement of property assessed by the Commission will be referred to the appropriate Property Division employee, who will review the request. If the request is denied and a protest is received, the Property Division will treat the matter as a protest of a Proposed Assessment sent to the Property Division and follow the procedures outlined above.

- H. The Property Division will send one or more employees to each property tax Commission Conference and will make its employees available to serve as witnesses at the Conference.
- I. For property taxes collected by political subdivisions, settlements entered into by Appeals based upon the hazards of litigation must be approved as follows:
 - 1. If Appeals recommends a settlement reducing the value determined by the Property Division by up to \$250,000, the settlement must be agreed to by a majority of the following individuals:
 - a) The Appeals' Tax Analyst (if assigned to an Analyst),
 - b) Manager of Appeals,
 - c) Chief of Tax Policy and Appeals, and
 - d) Director of the Policy and Special Procedures Division.
 - 2. If Appeals recommends a settlement reducing value determined by the Property Division by more than \$250,000 but not more than \$1,000,000, the settlement must be unanimously agreed to by:
 - a) The Tax Analyst (if assigned to an Analyst),
 - b) Manager of Appeals,
 - c) Chief of Tax Policy and Appeals, and
 - d) Director of the Policy and Special Procedures Division.

If the above cannot unanimously agree, but a majority supports the settlement, then the Executive Director will review the settlement agreement. If the Executive Director supports the majority, then the settlement will be adopted.

- 3. If Appeals recommends a settlement reducing the value determined by the Property Division by more than \$1,000,000, then Appeals will schedule a preconference meeting with the Commissioners. At this meeting Appeals will set forth its reasons for recommending the settlement and the Commissioners can approve or refuse to approve it. If they do not approve it, there will be no settlement.

VI. Procedure for Appeal of Property Tax Exemptions

- A. The appropriate section of the Property Division will review and make a determination on all claims for property tax exemptions. If the exemption is denied or a previously granted exemption is revoked, and a protest is received, the Property Division will treat the matter as a protest of a Proposed Assessment and follow the procedures outlined above.
- B. Commission Conferences and appeals from Commission Conferences for property tax matters are governed by the Administrative Procedures Act as well as the procedures contained in this Revenue Procedure.

VII. Procedure for Property Taxes where the County Auditor or County Assessor is the Assessor

- A. Appeals will be received by the Chairman of the Commission or his designee. The Chairman's secretary will schedule the Commission Conference and notify:
 - 1. The taxpayer,
 - 2. The Property Division,
 - 3. The Attorney General's office, and
 - 4. The appropriate auditor or assessor
- B. Commission Conferences and appeals from Commission Conferences for property tax matters are governed by the Administrative Procedures Act as well as the procedures contained in this Revenue Procedure.
- C. Appeals will not be part of the proceedings or take any further action unless the Commissioners, or the Attorney General's office in its capacity as advisor to the Commissioners, asks for its advice.
- D. Request for abatement of erroneously, improperly or illegally assessed property. In addition to appeals from assessments made by the County Auditor or County Assessor, Code Section 12-47-410 allows the Commission abate a property tax that has been erroneously, improperly or illegally assessed. Requests for abatement under section 12-47-410 must be made in writing to the Commission. The request for abatement of property assessed by the County Auditor or County Assessor will be referred to the appropriate County official. If the County does not agree with the request, the matter will be treated as an appeal to the Commission concerning property assessed by the County Auditor or County Assessor and follow the procedures outlined above.

VIII. Procedure for Jeopardy and Termination Assessments

Jeopardy and termination assessments will be handled in accordance with the statutes relating to them. To the extent a procedure is not provided by statute, an appeal of a jeopardy or termination assessment will be set for a Commission Conference as soon as possible. The Commission Division making the assessment will represent itself in this Commission Conference.

IX. Procedure for Claims for Refund

- A. For matters other than property tax matters, the section of Office Services with the responsibility for claims for refund will consider the claim or, if appropriate, refer it to Field Services. If Office Services denies the refund and a protest is received, it will be treated as a protest of a Proposed Assessment sent to Office Services and the procedures outlined above will be followed. If Field Services denies the refund and a protest is received, it will be treated as a protest of a Proposed Assessment coming to Field Services and the procedures outlined above will be followed.
- B. For property tax matters, appropriate Property Division employee will review and strive to resolve the claim for refund. If the claim for refund is denied and a protest is received, the Property Division will treat the matter as a protest of a Proposed Assessment sent to the Property Division and follow the procedures outlined above.
- c. For property tax matters where the property is not assessed by the Commission, in general refund claims must be made with the auditor or assessor who assessed the property. The procedures for these claims are statutory and not addressed in this document. However, Code Section 12-47-420 allows the Commission to order a refund of any property tax erroneously, improperly or illegally collected. Claims for refund under section 12-47-420 must be made in writing to the Commission. The claim will be referred to the appropriate County official. If the County does not agree with the request, the matter will be treated as an appeal to the Commission concerning property assessed by the County Auditor or County Assessor and follow the procedures outlined above.

X. Procedure for Release of Liens

If the Division denies a request for the release of a lien, the taxpayer will be given the opportunity to protest the denial. Review will treat the taxpayer's protest as a protest of a Proposed Assessment coming to it and follow the procedures outlined above.

If the Division is preparing to sell the property, the taxpayer can request a stay from the Taxpayers' Rights Advocate.

XI. Procedure when a Case is Returned from Court for Failure to Exhaust Administrative Remedies

The case will be sent to Review of the appropriate Division. Review will treat the matter in the same manner as a protest of a Proposed Assessment and follow the procedures outlined above.

Exhibit A - Taxpayer's Written Protest

A taxpayer's written protest should contain:

1. The name of the taxpayer;
2. The appropriate taxpayer identification number or numbers;
3. The period(s) for which the tax was proposed;
4. The nature and kind of tax in dispute; and
5. All of the reasons why the taxpayer disagrees with the Proposed Assessment.
6. Protests of property tax Proposed Assessments must also include the valuation and Assessment which the owner deems to be the fair market value and Assessment of the property. See Regulation 117-111.

Exhibit B - Audit Report

The audit report will contain the following information:

1. The taxpayer's name, address, and other identifying numbers (i.e., single identification number, social security number, FEI number, Commission file number, retail license number, etc.),
2. The periods) involved,
3. The type of tax(es) involved,
4. The identification and amount of the tax, interest and penalty (if any) determined to be due,
5. A statement applying the law to the facts and explaining why it gives rise to additional tax and penalties, including applicable state and federal statutes, and
6. A statement of the taxpayer's reasons for disagreeing with the audit and, to the extent possible, a statement of the facts and issues with which the taxpayer agrees and disagrees.

Exhibit C - Audit Section's Report

The Audit Section's report will contain the following information:

1. The taxpayer's name, address, and other identifying numbers (i.e. single identification number, social security number, FEI number, Commission file number, retail license number, etc.);
2. The period(s) involved;
3. The type of tax(es) involved;
4. The identification and amount of the tax, interest and penalty (if any) determined to be due;
5. A description of the reasons for determining that the tax, interest and penalty (if any) are due; and
6. Any other information deemed important by the Section.

Exhibit D - Review's Report

Review's reports will contain the following:

1. The taxpayer's name, address, and other identifying numbers (i.e. single identification number, social security number, FEI number, Commission file number, retail license number, etc.);
2. The period(s) involved;
3. The type of m(es) involved;
4. Facts
 - a) A numbered list of all facts Review believes are relevant to resolve the contested issues.
 - b) To the extent Review is aware that the taxpayer disagrees with any of these facts, a statement concerning the taxpayer's view and why Review did not adopt the taxpayer's view of the facts .
5. Legal issues
 - a) A statement as to each legal issue Review believes is relevant to resolve the contested issues and the reasons for Review's beliefs. If Review disagrees with the auditors, Review's decisions will control.
 - b) To the extent Review is aware that the taxpayer disagrees with any of these issues, an argument supporting Review's view, a statement concerning the taxpayer's view, and why Review did not adopt the taxpayer's view of the issue .
 - c) This discussion of legal issues will apply relevant statutes, regulations, cases and rulings to the taxpayer's facts and explain why this law and these facts support the additional taxes in the Proposed Assessment.
6. Any other information deemed important by Review, including items the taxpayer considers relevant which Review considers irrelevant with an explanation of Review's determination that these facts or issues were irrelevant.

Exhibit E - Appeals Transmittal Form

The Appeals Transmittal Form will contain the following information:

1. The taxpayer's name, address, and other identifying numbers (i.e. single identification number, social security number, FEI number, Commission file number, retail license number, etc.);
2. The periods) involved;
3. The type of tax(es) involved;
4. The original and extended expiration dates of all relevant statutes of limitation, and a summary of any executed waivers;
5. The date the Proposed Assessment was sent to the taxpayer;
6. The date the written protest was received from the taxpayer;
7. The names, addresses and telephone numbers for all representatives and whether powers of attorney have been received;
8. The name and telephone number of the person responsible for the preparation of Review's report; and
9. A statement summarizing any facts or legal issues raised in the protest which Review is continuing to investigate or on which it is writing its position, and the name and telephone number of the person or persons responsible for this additional work.

Exhibit F - Appeal's Report

Appeals' report will contain the following information:

1. The taxpayer's name, address, and other identifying numbers (i.e. single identification number, social security number, FEI number, Commission file number, retail license number, etc.);
2. The periods) involved;
3. The type of taxes) involved;
4. Facts
 - a) A numbered list of all facts Appeals believes are relevant to resolve the contested issues.
 - b) To the extent Appeals is aware that the taxpayer disagrees with any of these facts, a statement concerning the taxpayer's view and why Appeals did not adopt the taxpayer's view of the facts
5. Legal issues
 - a) A statement as to each legal issue Appeals believes is relevant to resolve the contested issues. If Appeals disagrees with Review, Appeals' decisions will control.
 - b) To the extent Appeals is aware that the taxpayer disagrees with any of these issues, an argument supporting Appeals' view, a statement concerning the taxpayer's view, and why Appeals did not adopt the taxpayer's view of the issue .
 - c) This discussion of legal issues will apply relevant statutes, regulations, cases and rulings to the taxpayer's facts and explain why this law and these facts support additional taxes.
6. Any other information deemed important by Appeals, including items the taxpayer considers relevant which Appeals considers irrelevant with an explanation of Appeals' determination that these facts or issues were irrelevant.

Exhibit G - Resolution Report

The Resolution Report will contain the following information:

1. The taxpayer's name, address, and other identifying numbers (i.e. single identification number, social security number, FEI number, Commission file number, retail license number, audit number etc.);
2. The period(s) involved;
3. The type of =(es) involved;
4. The amount of the tax, interest and penalty (if any) the taxpayer agrees to pay; and
5. A brief statement of the issues and facts upon which the issues were resolved and the reasons for the resolution.

Exhibit H - Protest File

Review should index and cross reference the protest file with the following items tabbed:

1. Review's report
2. A copy of the Proposed Assessment
3. Power(s) of Attorney
4. All waivers of Statute of Limitations
5. Correspondence and summaries of telephone conferences between Commission personnel and the taxpayer or the taxpayer's representative. These documents should be filed in reverse chronological order (most recent on top).
6. Copies of pertinent documents, such as contracts, lease agreements, appraisals, wills, etc. These documents will be indexed, numbered and tabbed.
7. Copies of relevant legal authority which support either side's arguments, such as statutes, court cases, regulations, rulings, etc. Current South Carolina statutes, regulations and rulings, current Internal Revenue Code sections, and South Carolina cases available in the Southeastern Reporter series are not required to be included.
8. Copies of relevant tax returns - may include returns for taxes not in dispute as evidence of facts in contention.
9. Any other documents deemed necessary. These documents will be indexed, numbered and tabbed.
10. Extra copies of documents and miscellaneous notes.
11. Computer disks containing audit files, if any.