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Comments Due by: **December 3, 2019**

SC REVENUE PROCEDURE #19-x [DRAFT –11/07/2019]

- SUBJECT:** Department of Revenue Internal Tax Appeals Process and Procedure (All Tax Matters Administered by the Department)
- EFFECTIVE DATE:** Applies to all protests received by the Department on or after December 5, 2019 and to all appeals that are unresolved as of December 5, 2019
- SUPERSEDES:** SC Revenue Procedure #06-2¹ and all previous advisory opinions and any oral directives in conflict, except as noted in footnote 1.
- REFERENCES:** Chapter 60 of Title 12 (2014 and Supp. 2018)
- AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (Supp. 2005)
SC Revenue Procedure #09-3
- SCOPE:** A Revenue Procedure provides procedural guidance to the public and Department personnel. It is an advisory opinion issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

I. PURPOSE OF UPDATE

The purpose of this advisory opinion is to update the Department of Revenue’s (“Department”) internal appeals process for tax matters². The primary change is to revise the appeals process to include a new Appeals Section established by the Department.

¹ SC Revenue Procedure #06-2 remains effective for regulatory appeals until superseded by a new revenue procedure that addresses regulatory matters.

² This Revenue Procedure does not address the denial, suspension, cancellation, or revocation of a regulatory license, or an appeal of a regulatory violation. A regulatory license is a license issued under the South Carolina alcoholic beverage or bingo laws. A regulatory violation is a violation of a statute or regulation which controls the conduct of alcoholic beverage or bingo licenses, including a violation which may cause the assessment of a monetary penalty, or suspension or revocation of a regulatory license. It does not include taxes, interest on taxes, or monetary penalties in Chapter 54, Title 12.

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Additionally, significant changes were made to “The South Carolina Revenue Procedures Act” (Chapter 60, Title 12) by Act No. 265 of 2018. Changes to Chapter 60 addressed in this Revenue Procedure include:

1. The Department has one year from when a taxpayer files a written protest to issue a department determination. The Administrative Law Court may extend the one year period by up to six months at the request of the Department. The Department must notify the taxpayer of the right to request a contested case hearing before the Administrative Law Court if the Department does not issue a department determination timely.
2. For property tax matters administered by the Department,³ requiring the Department to:
 - a. notify each affected county⁴ if a protest is filed with the Department, unless the protest concerns a denial of an exemption involving an individual;
 - b. send a department determination to the taxpayer and any affected county and notify them of the right to appeal;
 - c. notify the taxpayer and any affected county of the right to request a contested case hearing before the Administrative Law Court if the Department does not issue a department determination timely;
 - d. notify each affected county when a taxpayer files a claim for refund; and
 - e. issue a decision on a claim for refund within six months of receipt of the claim.

This Revenue Procedure is divided into the following sections:

- I. Purpose of Update
- II. Document Overview
- III. Definitions
- IV. Prehearing Procedures for Taxes and Licenses Administered by the Department (Other than Property Taxes)
- V. Prehearing Procedures for Property Taxes Administered by the Department

³ Property tax matters administered by the Department include those property taxes the Department assesses, such as manufacturing, utilities, and business personal property as well as those that the Department both assesses and bills, such as carlines and airlines. It also includes decisions involving property tax exemptions administered by the Department.

⁴ Notification to an “affected county” means notification to the chief executive officer, auditor, assessor, and treasurer of each affected county.

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VI. Stipulation of Facts and Issues

VII. Failure to Exhaust Taxpayer's Prehearing Remedy

VIII. Settlements of an Appeal Based on Hazards of Litigation

II. DOCUMENT OVERVIEW

This Revenue Procedure contains the Department's process for handling disputed tax matters within its jurisdiction.⁵ For purposes of this Revenue Procedure, disputed tax matters include disputes involving taxes (including property tax matters administered by the Department), penalties, denials and revocations of licenses, and other matters administered by the Department, other than regulatory license and violation matters.

These procedures are designed to ensure public confidence in the integrity and fairness of the Department, and to comply with both the letter and the spirit of the South Carolina Taxpayers' Bill of Rights (Chapter 58, Title 12) and the South Carolina Revenue Procedures Act (Chapter 60, Title 12) and to resolve disputes when possible without the expense of a formal hearing or court appearance.

Unless otherwise stated, time limitations presented in this Revenue Procedure are measured in calendar days.⁶ However, if the end of a period falls on a Saturday, Sunday or legal holiday as provided in Code Section 12-60-50, the end of the period will be extended to the next business day. For example, if a protest must be filed within 90 days of the date of the proposed assessment, the taxpayer has 90 calendar days from the date of the proposed assessment to file the protest, unless extended as provided in Code Section 12-60-50. All time limits in this Revenue Procedure, except those mandated by statute, may be extended by agreement between the taxpayer and the Department. All extensions must be requested prior to the expiration of the applicable time limitation.

Throughout the internal appeals process, taxpayers may be represented by any person who may represent them during the administrative tax process in accordance with Code Section 12-60-90.

⁵ This Revenue Procedure must be read in conjunction with the South Carolina Revenue Procedures Act and the Rules of Procedure of the Administrative Law Court. The Rules of Procedure of the Administrative Law Court can be found at www.scalc.net.

⁶ To the extent that the Administrative Law Court rules provide for a different time period for filing any notice or document in a contested case hearing, the Administrative Law Court rules will apply to the applicable filing.

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III. DEFINITIONS (Arranged In Alphabetical Order)

- A. **Affected County** – For property tax purposes, a county that administers property tax collections for its own jurisdiction or for another local governing body and is in a property tax dispute with a taxpayer.⁷
- B. **Appeals Section** – The employee or employees within the Department assigned to conduct a substantive review of any tax matter and to carry out the responsibilities and duties assigned to the Appeals Section. The Appeals Section is a separate section in the General Counsel – Litigation & Appeals Division.
- C. **Contested Case Hearing** – A hearing in a “contested case” as defined in Code Section 1-23-310 and conducted under Article 3, Chapter 23 of Title 1, the South Carolina Administrative Procedures Act. For purposes of this Revenue Procedure, a contested case hearing is a hearing by the Administrative Law Court under the Revenue Procedures Act where the Department is a party.⁸
- D. **Department** – The South Carolina Department of Revenue.⁹
- E. **Department Determination** – The final written determination within the Department from which a taxpayer or local governing body, if applicable, may request a contested case hearing before the Administrative Law Court.¹⁰
- F. **Department Representative** – The person appointed by the Department to prepare the department determination and represent the Department at the contested case hearing.¹¹
- G. **Director** – The director of the Department.¹²
- H. **Division** – An organizational unit within the Department. Divisions of the Department which may be affected by this Revenue Procedure include the following: Field Operations (“Field Division”), Government Services (“Property Division”), Office of General Counsel – Litigation & Appeals (“Litigation Section” or “Appeals Section,” as applicable), and Taxpayer and Business Services (“Office Division”).
- I. **Division Decision** – A decision by a Division of the Department that affects the rights or obligations of a person for which no specific appeals rights are provided by the Revenue

⁷ See Code Section 12-60-30(31).

⁸ See Code Section 12-60-30(4).

⁹ See Code Section 12-60-30(9)

¹⁰ See Code Section 12-60-30(10).

¹¹ See Code Section 12-60-30(11).

¹² See Code Section 12-60-30(12).

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Procedures Act (Chapter 60, Title 12). Division decision includes a refusal to expunge or satisfy a lien.¹³

- J. **Division Representative** – The independent employee or employees appointed by the applicable Division to attend the division meeting and review the protest and the taxpayer’s file. The division representative may be a supervisor, manager, administrator, or any other person assigned by the applicable Division.
- K. **Exhaustion of the Taxpayer’s Prehearing Remedy** – For purposes of this Revenue Procedure, exhaustion of the taxpayer’s prehearing remedy means the taxpayer filed a written protest as required by the South Carolina Revenue Procedures Act (Chapter 60 of Title 12) and provided the facts, law, and other authority supporting the taxpayer’s position to the Department.¹⁴
- L. **Final Assessment or Assessment** – For purposes of this Revenue Procedure, except for property taxes administered by the Department, a final assessment or assessment is the determination of any tax due accomplished by the Department’s recording the liability of the taxpayer in the office of the Department, subject to the restrictions in Code Section 12-60-440. A final assessment or assessment includes the determination of any penalty or interest due and owing to the extent such amounts can be determined at the time of issuance.
- M. **Litigation Section** – The section within the Department that prepares the department determination and represents the Department before the courts.
- N. **Local Governing Body** – For property tax purposes, the governing body of a county, municipality, or other political subdivision entitled to receive any portion of the tax revenue generated from a property tax assessment.¹⁵
- O. **Property Tax Assessment** – For purposes of this Revenue Procedure and for property taxes administered by the Department, a property tax assessment includes:
 - a. A valuation or determination of property value for annual property tax purposes arrived at by multiplying the fair market value or special use value of the property by the appropriate assessment ratio for the taxable property’s classification.¹⁶
 - b. For airlines and private carlines, the determination of the equalized assessment ratio, the millage, and the tax due.
 - c. For property tax exemptions, the denial of an exemption.

¹³ See Code Section 12-60-30(13).

¹⁴ See Code Section 12-60-30(15).

¹⁵ See Code Section 12-60-30(30).

¹⁶ See Code Section 12-60-30(19).

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Property tax assessments may include the determination of any penalty or interest due and owing to the extent that such amounts can be determined at the time of issuance. If a document is consistent with the definition of a property tax assessment, the document will be deemed such for purposes of this Revenue Procedure, even if it is called something different (e.g., an assessment, notice of assessment, assessment notice and tax bill, notice of appraisal and assessment, property assessment notice, notice of adjustment, or property tax exemption denial).

- P. **Proposed Assessment** – For purposes of this Revenue Procedure, except for property taxes administered by the Department, a proposed assessment is:

The first written notice sent or given to the taxpayer stating a Division within the Department has concluded a tax is due. It does not include the auditor's work papers, draft audit reports, or a document specifically stating it is not a proposed assessment.

If a document is consistent with the definition of a proposed assessment, the document will be deemed a proposed assessment, even if it is called something different (e.g., notice of assessment, assessment notice and tax bill, notice of proposed adjustment, notice of action on license, or proposed assessment report).

- Q. **Tax or Taxes** – Unless the context requires otherwise, taxes include all taxes, licenses (except for regulatory licenses), permits, fees, or other amounts, including interest and penalties, imposed by Title 12 or subject to assessment or collection by the Department.¹⁷
- R. **Taxpayer** –The person or entity to whom a proposed assessment, a property tax assessment, a final assessment, a division decision, or a department determination has been issued or who is liable for, or required to pay any tax or fee to the Department or whose property is assessed by the Department. It also includes licensees and license applicants for those licenses issued by the Department, except for regulatory licenses.

IV. PREHEARING PROCEDURES FOR TAXES AND LICENSES ADMINISTERED BY THE DEPARTMENT (OTHER THAN PROPERTY TAXES)

A. Issuance of a Proposed Assessment, Filing and Review of a Protest, and Collection of the Tax

1. Issuance of a Proposed Assessment

Prior to the issuance of a proposed assessment, the Field Division or the Office Division of the Department may attempt to resolve the tax matter with the taxpayer. If the tax matter is unable to be resolved, the applicable Division will issue a proposed assessment indicating a tax is due or

¹⁷ See Code Section 12-60-30(27).

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another action adverse to the taxpayer has been taken. The proposed assessment will explain the basis for the proposed assessment and state that a final assessment or assessment will be made or other action will be taken unless the taxpayer pays the tax or files a protest within 90 calendar days of the date of the proposed assessment. The proposed assessment will provide sufficient information to enable the taxpayer to file a protest, including who to contact with questions, where to send the protest, and the taxpayer's rights under the Taxpayers' Bill of Rights.

2. Filing of Protest by Taxpayer

The protest must be in writing and must contain:

- a. the name, mailing address and telephone number of the taxpayer;
- b. the appropriate taxpayer identification number(s);
- c. the tax period or date for which the tax was proposed;
- d. the nature and kind of tax in dispute;
- e. a statement of facts supporting the taxpayer's position;
- f. a statement outlining the reasons for the protest, including any law or authority upon which the taxpayer relies;¹⁸ and
- g. any other relevant information the Department may reasonably prescribe.¹⁹

Taxpayers may use Form C-245, "Application for Appeal and/or Protest Pursuant to Revenue Procedures Act," to protest a proposed assessment. This form is found on the Department's website.

Taxpayers must file a written protest with the Department within 90 calendar days of the date of the proposed assessment in order to preserve their appeal rights. Protests may be hand-delivered or sent by electronic means, US mail, or private delivery service.

3. Collection Efforts

- a. Protest Filed

If the taxpayer timely files a written protest, the Department will not attempt to collect the tax or take other action until the matter is resolved within the Department or, if applicable, a contested case hearing has been held and a decision has been rendered by the Administrative Law Court.

¹⁸ The taxpayer does not need to provide legal or other authority if the total amount of the proposed assessment is less than \$2,500, unless the taxpayer is a partnership, S corporation, an exempt organization or an employee plan, and the proposed tax is imposed by Chapter 6, Chapter 11, or Chapter 13 of Title 12.

¹⁹ See Code Section 12-60-450.

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Any suspension of collection efforts does not apply to jeopardy assessments.

b. No Protest Filed

If the taxpayer does not file a written protest with the Department within 90 calendar days of the date of the proposed assessment, the Department will make a final assessment or assessment and begin collection activities if payment is not made.

A suspension of collection activities may be ordered by the Taxpayers' Rights Advocate under Code Section 12-58-30, in which event no collection will be made until the matter is resolved or the Taxpayers' Rights Advocate allows collection to proceed.

4. Division Review of Protest

If the Field or Office Division issues the proposed assessment and the taxpayer protests the proposed assessment, the Division will acknowledge receipt of the protest in writing. The acknowledgement letter will provide information about how the taxpayer can request a division meeting with a division representative if the taxpayer wishes to discuss the protest further. The taxpayer has 30 days from the date of the acknowledgement letter to request a division meeting. Every attempt should be made to hold the division meeting within 60 days of the date of the acknowledgement letter.

After the written protest is filed and the division meeting held (if applicable), the division representative will conduct a substantive review of the protest and the file and will either: (i) agree with the taxpayer's position and inform the taxpayer the tax matter has been resolved; or (ii) disagree with the taxpayer's position and inform the taxpayer the file is being forwarded to the Appeals Section.²⁰ To the extent the Division agrees with the taxpayer on some issues but disagrees with the taxpayer on others, the Division will inform the taxpayer of those issues with which it agrees and will forward the remaining issues to the Appeals Section.

B. Review of Protest by Appeals Section

The Appeals Section will conduct a substantive review of the protest and the taxpayer's file. As part of this review, the Appeals Section will offer the taxpayer a conference with the Appeals Section. The purpose of the conference is to provide an opportunity for both parties to discuss the matter, stipulate the facts and issues, and attempt to settle the matter.

Upon completion of the review, the Appeals Section will either: (i) agree with the taxpayer's position and inform the taxpayer the tax matter has been resolved; (ii) negotiate a settlement based on the hazards of litigation as provided in Section VIII below; or (iii) disagree with the taxpayer's position and inform the taxpayer the protest and the file are being forwarded to the Litigation Section. To the extent the Appeals Section agrees with the taxpayer on some issues but

²⁰ The Division does not have the authority to resolve the appeal based on hazards of litigation as described in Section VIII below.

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disagrees with the taxpayer on others, the Appeals Section will inform the taxpayer of those issues with which it agrees and will either settle or forward the remaining issues on to the Litigation Section.

C. Review of Protest by Litigation Section

1. Department Representative Review of Protest

- a. Upon receipt of the protest and file by the Litigation Section, a department representative will conduct a substantive review of the protest and the file. The Litigation Section may meet with the taxpayer or the taxpayer's representative if the department representative believes a conference would help to resolve the matter.
- b. After review, the Litigation Section will either: (i) agree with the taxpayer's position; (ii) disagree with the taxpayer's position; or (iii) negotiate a settlement based on the hazards of litigation as provided in Section VIII below. To the extent the Litigation Section agrees with taxpayer on some issues and disagrees with the taxpayer on others, the Litigation Section will inform the taxpayer of those issues with which it agrees and will either settle the remaining issues or issue a department determination on the remaining issues.

2. Issuance of the Department Determination

The Department shall make a written department determination using the information provided by the taxpayer in accordance with Code Section 12-60-30(15)(c)(iii) (i.e., taxpayer must provide facts, law and other authority to the Department). The department determination must explain the basis for the decision, inform the taxpayer of the right to request a contested case hearing and if a proposed assessment was protested, inform the taxpayer that the taxes will be assessed in 30 days (if applicable) and payment demanded or other action will be taken unless the taxpayer requests a contested case hearing.

The Department must issue a department determination within one year of the taxpayer's filing of the protest unless the Administrative Law Court grants an extension of time at the Department's request pursuant to Code Section 12-60-450(E)(3).

If the Department is unable to issue the department determination within one year of the taxpayer's written protest,²¹ the Department will notify the taxpayer in writing of the taxpayer's right to request a contested case hearing before the Administrative Law Court for a determination of the tax controversy. The notice must also inform the taxpayer that the taxes will be assessed in 30 days and payment demanded unless the taxpayer requests a contested case hearing.

²¹ See Code Section 12-60-450(E)(3).

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A taxpayer who wants to appeal to the Administrative Law Court must file a request for a contested case hearing in accordance with the Rules of Procedure of the Administrative Law Court within 30 days of the date the department determination or the notice, as applicable, is sent to the taxpayer.

D. Protests Involving Claims for Refund, Licenses, Division Decisions and Jeopardy Assessments

1. Denial of Claim for Refund

A protest of a denial of a claim for refund, other than a refund involving a property tax matter, will be treated the same as a protest of a proposed assessment.

2. Denial or Revocation of a Retail Sales License, Admissions Tax License, or other License issued by the Department

The protest of a notice of denial or revocation of a retail sales license, admissions tax license, or other license issued by the Department, other than a regulatory license, will be handled in the same manner as a protest of a proposed assessment.

3. Protest of a Division Decision

The protest of a division decision will be handled in the same manner as a protest of a proposed assessment.

4. Jeopardy Assessments

Jeopardy assessments **are not** handled under the procedures in this Revenue Procedure. Instead, jeopardy assessments will be handled under Code Sections 12-60-910 and 12-60-920. Unless specifically directed otherwise, a taxpayer subject to a jeopardy assessment will deal directly with the Department's General Counsel for Litigation.

V. PREHEARING PROCEDURES FOR PROPERTY TAXES ADMINISTERED BY THE DEPARTMENT

A. Issuance of a Property Tax Assessment, Filing and Review of Protest, and Collection of the Tax

1. Issuance of a Property Tax Assessment

The Property Division will issue a property tax assessment stating a tax is due, an assessment of property has been made, or a property tax exemption has been denied. The property tax assessment will state that the tax will be due, the assessment certified, or the exemption denied,

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unless the taxpayer files a protest within 90 calendar days after the date of the property tax assessment. After issuance of the property tax assessment, the Property Division may attempt to resolve the matter with the taxpayer through discussions with the taxpayer.

The property tax assessment will provide the taxpayer with sufficient information to enable the taxpayer to file a protest, including who to contact with questions, where to send the protest, and the taxpayer's rights under the Taxpayers' Bill of Rights. If the Department does not send the taxpayer a property tax assessment, a protest must be filed within 90 days after a tax notice is mailed to the taxpayer.

2. Filing of Protest by Taxpayer

The protest must be in writing and must contain, as applicable:

- a. the name, mailing address and telephone number of the taxpayer;
- b. the appropriate taxpayer identification number(s);
- c. the tax period or date for which the tax was proposed;
- d. the nature and kind of tax in dispute;
- e. a statement of facts supporting the taxpayer's position;
- f. a statement of the fair market value (or, if applicable, the special use value) the taxpayer believes is correct;
- g. the property tax classification of the property the taxpayer believes is correct;
- h. a statement outlining the reasons for the protest, including any law or authority upon which the taxpayer relies;
- i. if the taxpayer claims the property is exempt, the protest must state the basis on which the exemption is claimed; and
- j. any other relevant information the Department may reasonably prescribe.

Taxpayers may use Form C-245, "Application for Appeal and/or Protest Pursuant to Revenue Procedures Act," to protest a property tax assessment or tax notice. This form is found on the Department's website.

Taxpayers must file a written protest with the Department within 90 calendar days after the date of the property tax assessment or the tax notice, as applicable, in order to preserve their appeal rights. Protests may be hand-delivered or sent by electronic means, US mail, or private delivery service.

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If a taxpayer timely files a written protest, the Department must notify any affected counties of the filing of a protest, unless the protest involves the denial of an exemption for an individual. The notice of the protest from the Department to the affected county will be to the chief executive officer, auditor, assessor, and treasurer of each affected county.

3. Collection Efforts

a. Protest Filed

If the taxpayer timely files a written protest and the tax matter is unlikely to be resolved by December 31 of the same year, the Department will notify the auditor in the affected county or counties, and the account will be certified for at least 80% of the property tax assessment. The taxes owed will be calculated and a bill issued to the taxpayer based upon at least 80% of the disputed assessed value or a greater amount if the taxpayer agrees in writing. Additional taxes will be billed or a refund made consistent with Code Section 12-60-2140(C) after the tax matter is resolved.

b. No Protest Filed

If the taxpayer does not file a written protest with the Department within 90 calendar days after the date of the property tax assessment or the tax notice, as applicable, for those property taxes which the Department administers, the Department will send the taxpayer a final bill, certify the full assessment to the appropriate county or counties, or finalize the denial of the exemption, as appropriate.

With respect to any property taxes billed by, paid to, and collected by, the Department (i.e., carlines and airlines), a suspension of collection activities may be ordered by the Taxpayers' Rights Advocate under Code Section 12-58-30, in which event no collection will be made until the matter is resolved or the Taxpayers' Rights Advocate allows collection to proceed.

4. Property Division Review of Protest

If the Property Division issues the property tax assessment or taxpayer receives a tax notice for property administered by the Department, and the taxpayer protests the property tax assessment or tax notice, the Division will acknowledge receipt of the protest to the taxpayer in writing. The acknowledgement letter will provide information as to how to request a division meeting with a division representative if the taxpayer wishes to discuss the appeal further. The taxpayer has 30 days from the date of the acknowledgement letter to request a division meeting. Every attempt should be made to hold the division meeting within 60 days of the date of the acknowledgement letter.

After the protest is filed and the division meeting held (if applicable), the division representative will conduct a substantive review of the protest and file and will either: (i) agree with the taxpayer's position and inform the taxpayer the tax matter has been resolved; or (ii) disagree

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with the taxpayer's position and inform the taxpayer the file is being forwarded to the Appeals Section.²² To the extent the Division agrees with the taxpayer on some issues but disagrees with the taxpayer on others, the Division will inform the taxpayer of those issues with which it agrees and will forward the remaining issues to the Appeals Section.

B. Review of Protest by Appeals Section

The Appeals Section will conduct a substantive review of the protest and the taxpayer's file. As part of this review, the Appeals Section will offer the taxpayer a conference with the Appeals Section.²³ The purpose of the conference is to provide an opportunity for both parties to discuss the matter, stipulate the facts and issues, and attempt to settle the matter.

Upon completion of the review, the Appeals Section will either: (i) agree with the taxpayer's position and inform the taxpayer the tax matter has been resolved; (ii) negotiate a settlement based on the hazards of litigation as provided in Section VIII below; or (iii) disagree with the taxpayer's position and inform the taxpayer the protest and the file are being forwarded to the Litigation Section. To the extent the Appeals Section agrees with the taxpayer on some issues but disagrees with the taxpayer on others, the Appeals Section will inform the taxpayer of those issues with which it agrees and will either settle or forward the remaining issues on to the Litigation Section.

C. Review of Protest by Litigation Section

1. Department Representative Review of Protest

- a. Upon receipt of the protest and file by the Litigation Section, a department representative will conduct a substantive review of the protest and file. The Litigation Section may meet with the taxpayer or the taxpayer's representative if the department representative believes a conference would help to resolve the appeal.²⁴
- b. After review, the Litigation Section will either: (i) agree with the taxpayer's position; (ii) disagree with the taxpayer's position; or (iii) negotiate a settlement based on the hazards of litigation as provided in Section VIII below. To the extent the Litigation Section agrees with taxpayer on some issues and disagrees with the taxpayer on others, the Litigation Section will inform the taxpayer of those issues with which it agrees and will either settle the remaining issues or issue a department determination on the remaining issues.

²² The Division does not have the authority to resolve the appeal based on the hazards of litigation as described in Section VIII.

²³ The Appeals Section may include a licensed appraiser from the Department at any conference for any property tax matter involving valuation.

²⁴ The Litigation Section may include a licensed appraiser from the Department at any conference for any property tax matter involving valuation.

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2. Issuance of the Department Determination

The Department shall make a written department determination using the information provided by the taxpayer in accordance with Code Section 12-60-30(15)(c)(iii) (i.e., taxpayer must provide facts, law and other authority to the Department). The department determination sent to the taxpayer must explain the basis for the decision, inform the taxpayer of the right to request a contested case hearing and of a local governing body's right to request a contested case hearing and explain that the taxes will be due (if applicable), the assessment certified, or the exemption denied, unless the taxpayer requests a contested case hearing. The department determination must also be sent to any affected county who will notify any applicable local governing body.

The Department must issue a department determination within one year of the taxpayer's filing of the protest unless the Administrative Law Court grants an extension of time at the Department's request pursuant to Code Section 12-60-450(E)(3).

If the Department is unable to issue the department determination within one year of the taxpayer's written protest,²⁵ the Department will notify the taxpayer and any affected county in writing of the right to a contested case hearing before the Administrative Law Court for a determination of the tax controversy. The notice must inform the taxpayer of the right to request a contested case hearing and of a local governing body's right to request a contested case hearing and explain that the taxes will be due (if applicable), the assessment certified, or the exemption denied unless the taxpayer requests a contested case hearing. The department determination must also be sent to any affected county who will notify any applicable governing body.

The department determination or notice from the Department to any affected county must be sent to the chief executive officer, auditor, assessor, and treasurer of each affected county. The auditor of the county shall notify any applicable local governing bodies by notifying the chief administrative official of each local governing body.

A taxpayer or any local governing body who wants to appeal to the Administrative Law Court must file a request for a contested case hearing in accordance with the Rules of Procedure of the Administrative Law Court within 30 days of the date the department determination or the notice, as applicable, is sent to the taxpayer and any affected county.

D. Procedure for Property Tax Claims for Refund

1. Filing a Claim for Refund

In accordance with law and subject to applicable time limitations, a taxpayer may seek a refund of property taxes paid for taxes billed, property assessed, or exemptions administered by the Department by filing a claim for refund with the Department.

²⁵ See Code Section 12-60-450(E)(3).

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2. Notice to Affected County

Upon receipt by the Department of a claim for refund involving a property tax matter administered by the Department, the Department will notify any affected county that the Department has received the refund claim. Notification may be made by mail, hand-delivery, or electronically, as determined by the Department. The notice of the claim for refund from the Department to any affected county must be provided to the chief executive officer, auditor, assessor, and treasurer of each affected county. The auditor of the county shall notify any applicable local governing body affected by the claim for refund by notifying the chief administrative official of each local governing body.²⁶

3. Notice and Decision on Claim for Refund

For claims for refund involving property tax matters administered by the Department, the Property Division will provide taxpayers with information as to how to file a protest for the denial of a claim for refund and other information concerning deadlines and procedures involving claims for refund. Within six months from the date the claim for refund is filed with the Department, the Property Division must issue the taxpayer a written notice of its determination as to what refund, if any, is due. The written denial of any part of a claim for refund is the equivalent of a property tax assessment.

The notice of determination on the claim for refund shall explain that the taxpayer may file a written protest to the decision on the claim for refund. The protest of a claim for refund is treated the same as a protest of a property tax assessment as described above. The procedure for a protest is described in Section V.A.2. above.

Taxpayers must file a written protest with the Department within 90 calendar days of the date of the issuance of the notice of determination on the claim for refund in order to preserve their appeal rights. Protests may be hand-delivered or sent electronic means, US mail, or private delivery service.

4. Failure to Timely Issue a Decision

If a written notice of determination on the claim for refund is not made within six months of the date the claim for refund was filed with the Department, the failure to issue a written determination within the six month period is considered a deemed denial of the refund claim. A protest of the deemed denial of a refund claim is treated the same as a protest of a property tax assessment as described above. The procedure for a protest is described in Section V.A.2. above.

Taxpayers must file a written protest with the Department within 90 calendar days of the expiration of the six month period if the Department has not issued a decision on the taxpayer's claim for a refund. Protests may be hand-delivered or sent by electronic means, US mail, or private delivery service.

²⁶ See Code Section 12-60-2150.

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VI. STIPULATION OF FACTS AND ISSUES

The taxpayer and the Department shall attempt to stipulate the facts and issues upon which they agree. In addition, the taxpayer and the Department may attempt to settle the matter.

If the taxpayer fails to respond or participate with the Department in stipulating the facts or issues, the Department may view the appeal as abandoned and make a department determination. The department determination must be made using the facts, the law, and other authorities supporting the taxpayer's position provided in the taxpayer's written protest²⁷ as well as other information the Department deems applicable.

VII. FAILURE TO EXHAUST TAXPAYER'S PREHEARING REMEDY

A. Statutory Requirement to Exhaust Taxpayer's Prehearing Remedy

1. Failure to Exhaust Prehearing Remedy within the Department

Code Section 12-60-510(A) requires a taxpayer to exhaust his prehearing remedy before seeking a contested case hearing before the Administrative Law Court. A taxpayer who fails to comply with the requirements and procedures in this Revenue Procedure has failed to exhaust his prehearing remedy.

If after filing a protest the taxpayer fails to exhaust his prehearing remedy, the tax matter may be transmitted to the Litigation Section for issuing a department determination. The department determination will uphold the proposed assessment or property tax assessment on the ground the taxpayer failed to comply with the procedures in this Revenue Procedure and has failed to exhaust his prehearing remedy.

2. Appeal to the Administrative Law Court without Exhausting Prehearing Remedy

If a taxpayer requests a contested case hearing before the Administrative Law Court within 90 calendar days of the date of mailing of a proposed assessment or after the date of the property tax assessment without filing a protest and providing the facts, the law, and other authority supporting the taxpayer's position to the Department, the Department may argue that the taxpayer has failed to exhaust his prehearing remedy. The Administrative Law Judge may dismiss the action without prejudice and remand the matter to the Department and the taxpayer will be required to exhaust all his prehearing remedies. See Code Sections 12-60-510, 12-60-1330, and 12-60-2130.

Note: The election by a taxpayer to forego a division meeting or an Appeals Section conference, will not be treated as a failure to exhaust the taxpayer's prehearing remedy, so long as the taxpayer has filed a protest and has provided the facts, the law, and other authority supporting the taxpayer's position to the Department and has participated in the stipulation of facts and issues.

²⁷ Code Sections 12-60-30(15)(c)(iii) and 12-60-450(D).

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VIII. SETTLEMENT OF AN APPEAL BASED ON HAZARDS OF LITIGATION

A. Settlement by Appeals or Litigation Section

Subject to the procedures and limitations in this Revenue Procedure, the Appeals Section or the Litigation Section has the authority to settle any case based upon the hazards of litigation. Settlements based on the hazards of litigation should reflect, on an issue-by-issue basis, the probable result if litigation occurs, or mutual concessions for settlement based on the relative strength of the opposing positions where there is substantial uncertainty of the result if litigation occurs. Appeals or the Department representative should refuse to settle a case based upon the hazards of litigation if they believe that state tax policy would be better served with a judicial resolution.

B. Factors to Be Considered in Settlement Based on Hazards of Litigation

In determining whether to settle a matter, the Appeals Section or the Litigation Section will consider:

- a. the quality of the evidence likely to be presented;
- b. the credibility and availability of witnesses;
- c. depending on the issue, the ability of the taxpayer or the Department to carry the burden of going forward with the evidence;
- d. depending on the issue, the likelihood the evidence the taxpayer or the Department can present will carry the burden of proof;
- e. the doubt on an issue of fact;
- f. the doubt on a conclusion of law; and
- g. the desirability of a judicial decision.

C. Procedure for Hazard of Litigation Settlements

Because settlements based on the hazards of litigation must be uniformly made, to settle a case based on the hazards of litigation, the Appeals Section or the Department representative must send a written recommendation to the Department's General Counsel for Litigation. This recommendation must be based on the principles in this Revenue Procedure. The Department's General Counsel for Litigation or his designee will review the settlement and advise the Director who may authorize the settlement. If the settlement is rejected, the Department's General Counsel for Litigation or the Director, or their designees, may make changes which would make it acceptable.

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No settlement based on the hazards of litigation will be final until the General Counsel for Litigation or his designee, has executed a written agreement with the taxpayer and any other applicable parties. In accordance with Code Section 12-4-320(4), once a settlement agreement has been approved by the Director, it is final and conclusive and may not be reopened by administrative or judicial action or otherwise, except in cases of fraud, malfeasance, or misrepresentation.