

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **February 11, 2020**

## SC REVENUE PROCEDURE #20-x [DRAFT –1/22/2020]

**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 January **XXX**, 2020 and to all appeals that are unresolved as of January **XXX**, 2020.

**SUPERSEDES:** SC Revenue Procedure #06-2<sup>1</sup> 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 It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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 matters.<sup>2</sup> The primary change is to revise the appeals process to include a new Appeals Section established by the Department.

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 SC Revenue Procedure #06-2 remains effective for regulatory appeals until superseded by a new revenue procedure that addresses regulatory matters.

<sup>2</sup> 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 timely issue a department determination.
2. For property tax matters administered by the Department,<sup>3</sup> requiring the Department to:
  - a. notify each affected county<sup>4</sup> 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 timely issue a department determination;
  - 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 for refund.

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

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<sup>3</sup> 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.

<sup>4</sup> 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.<sup>5</sup> 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); 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. 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.

For information about when the Department will consider a return or other document timely, see South Carolina Revenue Procedural Bulletin #00-2 or any subsequent document updating that revenue procedural bulletin.<sup>6</sup>

All time limits in this Revenue Procedure 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.

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<sup>5</sup> 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](http://www.scalc.net).

<sup>6</sup> If a document is revised or withdrawn, it will be listed in the most recent citator published by the Policy Division of the Department. The most recent citator can be found at <https://dor.sc.gov/policy/advisory-opinions-administrative>.

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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.<sup>7</sup>
- 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 (Chapter 60, Title 12) where the Department is a party.<sup>8</sup>
- D. **Department** – The South Carolina Department of Revenue.<sup>9</sup>
- 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.<sup>10</sup>
- F. **Department Representative** – The person appointed by the Department to prepare the department determination and represent the Department at the contested case hearing.<sup>11</sup>
- G. **Director** – The director of the Department.<sup>12</sup>
- 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”).

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<sup>7</sup> See Code Section 12-60-30(31).

<sup>8</sup> See Code Section 12-60-30(4).

<sup>9</sup> See Code Section 12-60-30(9).

<sup>10</sup> See Code Section 12-60-30(10).

<sup>11</sup> See Code Section 12-60-30(11).

<sup>12</sup> See Code Section 12-60-30(12).

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- 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 Procedures Act. Division decision includes a refusal to expunge or satisfy a lien.<sup>13</sup>
- 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.<sup>14</sup>
- 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.
- 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.<sup>15</sup>
- 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.<sup>16</sup>
  - b. For airlines and private carlines, the determination of the equalized assessment ratio, millage, and tax due.
  - c. For property tax exemptions, the denial of an exemption.

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<sup>13</sup> See Code Section 12-60-30(13).

<sup>14</sup> See Code Section 12-60-30(15).

<sup>15</sup> See Code Section 12-60-30(30).

<sup>16</sup> See Code Section 12-60-30(19).

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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.<sup>17</sup>
- R. **Taxpayer** – The person or entity to whom a proposed assessment, a property tax assessment, a final assessment or 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 Protest, and Collection of the Tax

#### 1. Issuance of a Proposed Assessment

Prior to the issuance of a proposed assessment, the Field or 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 another action adverse to the taxpayer will be taken. The proposed assessment will explain the basis for the

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<sup>17</sup> See Code Section 12-60-30(27).

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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 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.

## 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;<sup>18</sup> and
- g. any other relevant information the Department may reasonably prescribe.<sup>19</sup>

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.<sup>20</sup>

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<sup>18</sup> 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.

<sup>19</sup> See Code Section 12-60-450.

<sup>20</sup> If mailed, the protest should be sent to the address provided in the proposed assessment. For hand-delivery or delivery by private delivery service, the taxpayer may deliver the protest to the Department's main office in Columbia, South Carolina or the applicable district office. If the taxpayer chooses to file a protest electronically, it may do so by filing it online through the Department's free tax portal, MyDORWAY, or using an email address provided by the Department.

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## 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. 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 the final assessment and begin collection activities if payment is not made.**

### c. Taxpayers' Rights Advocate

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.<sup>21</sup>

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 protest and the file are being forwarded to the Appeals Section.<sup>22</sup> 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.

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<sup>21</sup> If the parties agree, the meeting may be held telephonically.

<sup>22</sup> 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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## **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, agree on a preliminary stipulation of 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 and File by Litigation Section**

### **1. Department Representative Review**

- a. Upon receipt of the protest and file, a department representative will conduct a substantive review of the protest and the file. The department representative will meet with the taxpayer or the taxpayer's representative if the taxpayer or their representative or the department representative believes a conference would help resolve the matter.<sup>23</sup>
- 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 will make a written department determination considering the information provided by the taxpayer in accordance with Code Section 12-60-30(15)(c)(iii) (taxpayer must provide facts, law, and other authority to the Department) and any additional relevant law and any other information the Department has available. 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 if a proposed assessment was protested, inform the taxpayer that the

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<sup>23</sup> If the parties agree, meetings may be held telephonically. The Appeals Section and the Litigation Section may include an expert at any conference. The taxpayer may also include an expert or other representative, or both, at any conference.

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taxes will be assessed in 30 days 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).<sup>24</sup>

If the Department does not issue the department determination timely,<sup>25</sup> 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.

**A taxpayer who wants to appeal to the Administrative Law Court must file the 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 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 Licenses issued by the Department (Other than a Regulatory License)**

The protest of a notice of denial, suspension, or revocation of a retail sales license, admissions tax license, or other licenses 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-

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<sup>24</sup> The Administrative Law Court may grant up to a six-month extension.

<sup>25</sup> See Code Section 12-60-450(E)(3).

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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<sup>26</sup>**

### **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, unless the taxpayer files a protest within 90 calendar days after the date of the property tax assessment. Before the issuance of the property tax assessment, the Property Division may attempt to resolve matters 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. A tax notice is a demand for payment of property taxes. See, Code Section 12-60-30(28).

#### **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, the valuation determined, or the applicable exemption is to apply;
- d. the nature and kind of tax in dispute;

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<sup>26</sup> If the Department directs a county to take action with respect to the valuation, assessment, or taxation of property and the county disagrees with the Department, the county may contest the action of the Department to the Administrative Law Court by following the procedures contained in Code Section 12-4-535.

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- 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. if the taxpayer claims the property is exempt, the protest must state the basis on which the exemption is claimed;
- i. a statement outlining the reasons for the protest, including any law or authority upon which the taxpayer relies; 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.<sup>27</sup>

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 without a request for refund. 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 tax year, the Department will notify the auditor in the affected county or counties, to adjust the proposed assessment to 80% of the protested property tax assessment, or any valuation greater than 80% that is agreed to in writing by the taxpayer. The taxes owed will

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<sup>27</sup> If mailed, the protest should be sent to the address provided in the property tax assessment or notice. For hand-delivery or delivery by private delivery service, the taxpayer may deliver the protest to the Department's main office in Columbia, South Carolina or the applicable district office. If the taxpayer chooses to file a protest electronically, it may do so by filing it online through the Department's free tax portal, MyDORWAY, or using an email address provided by the Department.

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be calculated and a bill issued to the taxpayer based on this amount. Additional taxes will be billed, or a refund made, to the taxpayer consistent with Code Section 12-60-2140 after the property 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.**

c. Taxpayers' Rights Advocate

Under Code Section 12-58-30, the Taxpayers' Rights Advocate may stay any actions by the Department where a taxpayer has suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation are suspended during the pendency of a stay. The Taxpayers' Rights Advocate may not stay any action of a county.

## 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 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.<sup>28</sup>

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 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 protest and the file is being forwarded to the Appeals Section.<sup>29</sup> 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.

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<sup>28</sup> If the parties agree, the meeting may be held telephonically.

<sup>29</sup> The Division does not have the authority to resolve the appeal based on the hazards of litigation as described in Section VIII below.

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## **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, agree on a preliminary stipulation of 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;<sup>30</sup> 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 and File**

- 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 department representative will meet with the taxpayer or the taxpayer's representative if the taxpayer, the taxpayer's representative, or the department representative believes a conference would help to resolve the matter.<sup>31</sup>
- 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 and approve a settlement based on the hazards of litigation as provided in Section VIII below.<sup>32</sup> To the extent the Litigation Section agrees with the 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**

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<sup>30</sup> The Appeals Section may discuss proposed settlements with any applicable local governing body.

<sup>31</sup> If all parties agree, meetings may be held telephonically. The Appeals Section and the Litigation Section may include a licensed appraiser from the Department or expert at any conference for any property tax matter involving valuation. The taxpayer may also include a licensed appraiser or expert, or any other representative at any conference for any property tax matter involving valuation.

<sup>32</sup> The Litigation Section may discuss proposed settlements with any applicable local governing body.

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The Department will make a written department determination considering the information provided by the taxpayer in accordance with Code Section 12-60-30(15)(c)(iii) (taxpayer must provide facts, law, and other authority to the Department) and any additional relevant law and any other information the Department has available. 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).<sup>33</sup>

If the Department does not issue the department determination timely,<sup>34</sup> the Department will notify the taxpayer and any affected county in writing of the right to request a contested case hearing before the Administrative Law Court for a determination of the tax controversy.

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 the 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 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.

### **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

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<sup>33</sup> The Administrative Law Court may grant up to a six-month extension.

<sup>34</sup> See Code Section 12-60-450(E)(3).



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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.<sup>35</sup>

### 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 of any claim for refund in order to preserve their appeal rights.** Protests may be hand-delivered or sent by electronic means, US mail, or private delivery service.<sup>36</sup>

### 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 determination on the**

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<sup>35</sup> See Code Section 12-60-2150.

<sup>36</sup> If mailed, the protest should be sent to the address provided in the notice of determination of refund. For hand-delivery or delivery by private delivery service, the taxpayer may deliver the protest to the Department's main office in Columbia, South Carolina or the applicable district office. If the taxpayer chooses to file a protest electronically, it may do so by filing it online through the Department's free tax portal, MyDORWAY, or using an email address provided by the Department.



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**taxpayer's claim for a refund.** Protests may be hand-delivered or sent by electronic means, US mail, or private delivery service.<sup>37</sup>

## VI. STIPULATION OF FACTS AND ISSUES

The taxpayer and the Department will 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 protest<sup>38</sup> as well as other applicable information and law.

## 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.

If after filing a protest the taxpayer fails to exhaust his prehearing remedy, the tax matter may be transmitted to the Litigation Section for a department determination. Because the taxpayer failed to exhaust his prehearing remedy, if the taxpayer failed to provide all relevant facts, the department determination may, to the extent reasonable, determine unknown facts in the Department's favor.

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

Except as otherwise provided in Code Section 12-60-450(E)(3), if a taxpayer requests a contested case hearing before the Administrative Law Court before the department determination is issued, the Department may argue that the taxpayer has failed to exhaust his prehearing

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<sup>37</sup> If mailed, the protest should be sent to the address provided by the Division on the Department's website or the address where the taxpayer originally sent the request for refund. For hand-delivery or delivery by private delivery service, the taxpayer may deliver the protest to the Department's main office in Columbia, SC or the applicable district office. If the taxpayer chooses to file a protest electronically it may do so by filing it online through the Department's free tax portal, MyDORWAY or using an email address provided by the Department.

<sup>38</sup> Code Sections 12-60-30(15)(c)(iii) and 12-60-450(D).

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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.

## **VIII. SETTLEMENT OF AN APPEAL BASED ON HAZARDS OF LITIGATION**

### **A. Settlement by the Appeals Section or Litigation Section**

Subject to the procedures and limitations in this Revenue Procedure, the Appeals Section or the department representative has the authority to recommend the settlement of any matter 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. The Appeals Section 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 department representative 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.

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### **C. Procedure for Hazards of Litigation Settlements**

Because settlements based on the hazards of litigation must be uniformly made, to settle a matter based on the hazards of litigation, the Appeals Section or the department representative must send a settlement recommendation to the Department's General Counsel for Litigation, or his designee. 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, or his designee, who may authorize the settlement. If the settlement is rejected, the Appeals Section, the department representative, the Department's General Counsel for Litigation, or his designee, or the Director, or his designee, may make changes that would make it acceptable.<sup>39</sup>

No settlement based on the hazards of litigation will be final until a written agreement has been executed with the taxpayer and any other applicable parties, including any affected local governing bodies. In accordance with Code Section 12-4-320(4), if 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.

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<sup>39</sup> A taxpayer may refuse to agree to the revised settlement.