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Comments Due by: **August 25, 2020**

REVENUE PROCEDURE #20-x [DRAFT – 8/04/2020]

- SUBJECT:** Department of Revenue Internal Regulatory Appeals Process and Procedure
(Regulatory Matters Administered by the Department)
- EFFECTIVE DATE:** Applies to all protests received by the Department on or after [insert date of issuance] and all regulatory appeals that are unresolved as of [insert date of issuance].
- SUPERSEDES:** SC Revenue Procedure #06-2 and all previous advisory opinions and any oral directives in conflict.
- REFERENCES:** Chapter 60, Title 12 (2014 and Supp. 2019)
S.C. Code Ann. Reg. 7-201 (2011)
- 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 help administer laws and regulations by providing guidance that may be followed 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 It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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 DOCUMENT

The purpose of this advisory opinion is to set forth the Department of Revenue’s (“Department”) internal appeals process for regulatory matters administered by the Department. This document only addresses regulatory matters administered by the Department and does not include the internal appeals process for tax matters administered by the Department. Tax matters are addressed in South Carolina Revenue Procedure #20-1. 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 Revenue Procedures Act (Chapter 60, Title 12).

This Revenue Procedure is divided into the following sections:

- I. Purpose of Document
- II. Document Overview
- III. Definitions

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- IV. Prehearing Procedures for Appeal of the Denial, Cancellation, Suspension, or Revocation of a Regulatory License (With or Without a Regulatory Violation)
- V. Prehearing Procedures for Appeal of a Regulatory Violation Which Does Not Involve the Cancellation, Suspension, or Revocation of a Regulatory License
- VI. Failure to Exhaust Taxpayer's Prehearing Remedy
- VII. Settlement of a Regulatory Appeal Based on Hazards of Litigation
- VIII. Emergency Cancellation, Suspension, or Revocation of a Regulatory License

II. DOCUMENT OVERVIEW

This Revenue Procedure contains the Department's process for handling the denial, cancellation, suspension, or revocation of a regulatory license. It also addresses how a challenge by a third party protestant to the issuance or renewal of a regulatory license involving alcoholic beverages (beer, wine, and/or liquor) and an appeal of a regulatory violation which does not involve the cancellation, suspension, or revocation of a regulatory license are handled.¹ A regulatory license is a license issued by the Department 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 licensees, including a violation which may cause the assessment of a monetary penalty, or cancellation, suspension, or revocation of a regulatory license. It does not include taxes, interest on taxes, or monetary tax penalties in Chapter 54, Title 12.

Unless otherwise stated, time limits 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 regulatory notice, the taxpayer has 90 calendar days from the date of the regulatory notice to file the protest, unless extended as provided in Code Section 12-60-50.

For information about when the Department will consider a document timely, see South Carolina Revenue Procedural Bulletin #00-2 or any subsequent document updating that Revenue Procedural Bulletin.²

¹ This Revenue Procedure must be read in conjunction with the South Carolina Revenue Procedures Act and the Rules of Procedure for the Administrative Law Court. The Rules of Procedure for the Administrative Law Court can be found at www.scalc.net.

² 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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For purposes of this Revenue Procedure, the term “taxpayer” means a regulatory license applicant or the current or former holder of a regulatory license.

All time limits in this Revenue Procedure may be extended by agreement between the taxpayer and the Department. All extensions must be done prior to the expiration of the applicable time limitation.

Throughout the Department’s internal appeals process, taxpayers may be represented by the same persons who may represent them during the administrative tax process in accordance with Code Section 12-60-90.

III. DEFINITIONS (in alphabetical order)

- A. **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, 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.³
- B. **Department** – The South Carolina Department of Revenue.
- C. **Department Determination** – The final written determination within the Department from which a taxpayer may request a contested case hearing before the Administrative Law Court.⁴
- D. **Regulatory Notice** – For purposes of this Revenue Procedure, a regulatory notice is:

The first written notice sent or given to the taxpayer stating the Division has concluded:

1. a regulatory license is to be cancelled, revoked, or suspended or an application for, or renewal of, a regulatory license will be denied; or
2. there has been a regulatory violation of an applicable bingo or alcoholic beverage licensing law or regulation that will result in a monetary penalty (which may or may not also result in the cancellation, suspension, or revocation of a taxpayer’s applicable regulatory license).

If a document is consistent with the definition of a regulatory notice, the document will be deemed a regulatory notice, even if it is called something different (e.g., notice of

³ See Code Section 12-60-30(4).

⁴ See Code Section 12-60-30(10).

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intent to revoke, notice of intent to suspend, violation regulatory notice, denial letter, or notice of action on license).

- E. **Department Representative** – The person appointed by the Department to prepare the department determination and represent the Department at the contested case hearing.⁵
- F. **Director** – The director of the Department.⁶
- G. **Division** – For purposes of this Revenue Procedure, a Division is an organizational unit within the Department that is authorized to handle regulatory matters. Division includes the Field Operations Division and any subsequent division authorized to handle regulatory matters. The term, as used in this Revenue Procedure, does not include the General Counsel – Litigation and Appeals, Litigation Section (“Litigation Section”) or the State Law Enforcement Division (“SLED”).
- H. **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 and provided the facts, law, and other authority supporting the taxpayer’s position to the department representative.⁷
- I. **Litigation Section** – The section within the Department that prepares the department determination and represents the Department before the courts.
- J. **Regulatory License** – A license or permit that is issued under the South Carolina alcoholic beverage laws (beer, wine, and/or liquor) or the South Carolina bingo laws.
- K. **Regulatory Violation** – A violation of a statute or regulation which controls the conduct of taxpayers including a violation which may result in the assessment of a monetary penalty, or cancellation, suspension, or revocation of a regulatory license, or both. It does not include taxes, interest on taxes, or monetary tax penalties in Chapter 54, Title 12.
- L. **Taxpayer** – A regulatory license applicant or the current or former holder of a regulatory license.⁸

⁵ See Code Section 12-60-30(11).

⁶ See Code Section 12-60-30(12).

⁷ See Code Section 12-60-30(15).

⁸ Throughout this Revenue Procedure, the current or former holder of a regulatory license or an applicant for a regulatory license is referred to as the “taxpayer” even though the Revenue Procedures Act often refers to them as a “person.”

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IV. PREHEARING PROCEDURES FOR APPEAL OF THE DENIAL, CANCELLATION, SUSPENSION, OR REVOCATION OF A REGULATORY LICENSE (WITH OR WITHOUT A REGULATORY VIOLATION)

Regulatory violations that may result in the cancellation, suspension, or revocation of the taxpayer's regulatory license, will be treated as an appeal of the "Denial, Cancellation, Suspension, or Revocation of a Regulatory License" under this Section IV, even if a monetary penalty may be imposed, as well as the cancellation, suspension, or revocation of the regulatory license.

A. Issuance of a Regulatory Notice, Filing and Review of the Protest, and Action on a Regulatory License

1. Issuance of a Regulatory Notice

An employee in the Division will issue a regulatory notice setting forth information containing the basis for the denial, cancellation, suspension, or revocation of the regulatory license, and indicating the regulatory matter may be closed and the regulatory license will not be issued or renewed, or will be cancelled, suspended, or revoked, unless the taxpayer files a written protest within 90 days of the date of the regulatory notice. The regulatory notice will provide the taxpayer with sufficient information to enable the taxpayer to file a protest, including who to contact with questions, and where to send the protest.

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 kind of license in dispute;
- d. a statement of facts supporting the taxpayer's position;
- e. a statement outlining the reasons for the protest, including any law or authority upon which the taxpayer relies; and
- f. any other relevant information the Department may reasonably prescribe.⁹

⁹ See Code Sections 12-60-450 and 12-60-1310 concerning the filing of protests.

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Taxpayers may use Form C-245 “Application for Appeal and/or Protest Pursuant to Revenue Procedures Act” to protest a regulatory notice.¹⁰

Taxpayers must file a written protest with the Department within 90 calendar days of the date of the regulatory notice in order to preserve their appeal rights. Protests may be hand-delivered, sent by US mail, private delivery service, or in some instances, by electronic means.¹¹

Notwithstanding the above, an employee within the Division may attempt to resolve any matter involving the denial, cancellation, suspension, or revocation of a regulatory license prior to issuing the regulatory notice.

3. Protest Filed

- a. *Cancellation, Suspension, or Revocation of Regulatory License* - If the taxpayer timely files a written protest, the Department will not make any effort to cancel, suspend, or revoke the taxpayer’s regulatory license or to impose a penalty resulting from any regulatory violation associated with the cancellation, suspension or revocation of the regulatory license until the matter is resolved within the Department or a contested case hearing has been held and a decision has been rendered by the Administrative Law Court. However, this section does not prevent the Department from seeking an emergency cancellation, suspension, or revocation of a regulatory license as discussed in Section VIII below or from issuing a regulatory notice for a subsequent regulatory violation.
- b. *Denial of Regulatory License or Renewal of Regulatory License* – If the taxpayer files a written protest, the Department will not issue the regulatory license until the regulatory matter is resolved within the Department or a contested case hearing has been held and a decision rendered by the Administrative Law Court.¹² In addition, if upon initiating an application for a biennial regulatory license for alcoholic beverages, the taxpayer has applied for and been issued a 120-day temporary

¹⁰ This form may be found on the Department’s website at <https://dor.sc.gov/forms-site/Forms/C245.pdf>.

¹¹ If mailed, the protest should be sent to the address provided in the regulatory 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. A taxpayer may submit his appeal electronically by using the email address provided by the Department in the regulatory notice.

¹² If the regulatory notice concerns the renewal of an existing regulatory license, the Litigation Section or the Administrative Law Court may issue a “letter to operate” permitting the taxpayer to operate while the regulatory matter is being appealed, if warranted. Code Section 1-23-370(b) provides “When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.”

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regulatory license under Code Section 61-4-210 (beer and wine) or Code Section 61-6-505 (liquor), this temporary regulatory license will expire no later than the end of the 120-day period regardless of whether or not the denial of the biennial regulatory license for alcoholic beverages has been resolved within the Department or a contested case hearing has been requested with respect to the biennial regulatory license. However, this section does not prevent the Department from seeking an emergency cancellation, suspension, or revocation of a 120-day temporary regulatory license as discussed in Section VIII below.

- c. *Forward of File to Litigation Section* – If a written protest is filed, the Division will forward the file to the Litigation Section.

4. No Protest Filed

- a. *Cancellation, Suspension, or Revocation of License* - If the taxpayer does not file a written protest with the Department within 90 days of the date of the regulatory notice, the Department will cancel, suspend, or revoke the taxpayer's regulatory license and if applicable, will impose any monetary penalty that has been proposed.
- b. *Denial of Regulatory License or Renewal of Regulatory License* – If the taxpayer does not file a written protest, the Department will not issue or renew the regulatory license. In addition, if upon initiating an application for a biennial regulatory license for alcoholic beverages the taxpayer has applied for and been issued a 120-day temporary regulatory license under the provisions of Code Sections 61-4-210 (beer and wine) or 61-6-505 (liquor), this temporary regulatory license will expire no later than at the end of the 120-day period and the taxpayer may no longer sell beer, wine or liquor, as applicable, since the biennial regulatory license for alcoholic beverages has been denied and the taxpayer failed to file a timely protest. However, this section does not prevent the Department from seeking an emergency cancellation, suspension, or revocation of a 120-day temporary regulatory license as discussed in Section VIII below.

B. Review of Protest and File by Litigation Section

1. Department Representative Review

If a taxpayer files a protest, the protest and the file will be forwarded to the Litigation Section and a department representative will conduct a substantive review of the protest and the file. The department representative will meet with the taxpayer or a representative of the taxpayer if the taxpayer or the department's representative believe a conference would help resolve the matter.¹³

¹³ The meeting may be held telephonically.

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After review, the Litigation Section will either: (a) agree with the taxpayer's position; (b) disagree with the taxpayer's position; or (c) settle the matter based on the hazards of litigation as provided in Section VII below. 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 issue a department determination on the remaining issues or settle the remaining issues.

2. Issuance of the Department Determination

If the Department disagrees with the taxpayer, the Department will make a written department determination using 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 representative) 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, inform the taxpayer that the regulatory license will be denied, cancelled, suspended, or revoked and, if applicable, the regulatory violation will be finalized and any applicable monetary penalty imposed, unless the taxpayer requests a contested case hearing within 30 days of the date the department determination was sent by first class mail or delivered to the taxpayer.

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).¹⁴

If the Department does not issue the department determination timely,¹⁵ 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 controversy.

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 is sent to the taxpayer or the date the Department notifies the taxpayer of the right to request a contested case hearing if the department determination is not issued timely.

C. Third Party Protestants of Alcoholic Beverage Licenses

A third party protestant who meets the requirements of South Carolina Regulation 7-201 may contest the issuance or renewal of an alcoholic beverage (beer, wine, and/or liquor) license by following the procedures contained in South Carolina Regulation 7-201. The third party protestant may use Form ABL-20, "Beer, Wine, and/or Liquor Protest Form" to contest the

¹⁴ The Administrative Law Court may grant up to a six-month extension.

¹⁵ See Code Section 12-60-450(E)(3).

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issuance or renewal of an alcoholic beverage license.¹⁶ If the third party protestant correctly follows the procedures set forth in South Carolina Regulation 7-201, the Department will deny the issuance or renewal of the regulatory license. The taxpayer may then protest the denial by filing a protest with the Department. If the taxpayer files a protest, the Division will forward the protest and the file on to the Litigation Section. The Litigation Section will then issue a department determination affirming the denial of the issuance or renewal of the regulatory license. The taxpayer may contest the department determination by filing a request for a contested case hearing in accordance with the Rules of Procedure of the Administrative Law Court and this Revenue Procedure.

V. PREHEARING PROCEDURES FOR APPEAL OF A REGULATORY VIOLATION WHICH DOES NOT INVOLVE THE CANCELLATION, SUSPENSION, OR REVOCATION OF A REGULATORY LICENSE

A. Issuance of a Regulatory Notice, Filing and Review of Protest, and Imposition of a Monetary Penalty

1. Issuance of a Regulatory Notice

Either the Department¹⁷ or the State Law Enforcement Division (“SLED”) will cite the taxpayer for a regulatory violation. If the regulatory violation is issued by SLED, the citation of the regulatory violation will be forwarded to the Department for processing. The Department will issue a regulatory notice setting forth the regulatory violation and indicating the regulatory violation will become final and nonappealable unless the taxpayer files a written protest within 90 days of the date of the regulatory notice. The regulatory notice will explain the basis for the regulatory notice and will provide the taxpayer with sufficient information to enable the taxpayer to file a protest, including who to contact with questions, and where to send the protest.

Notwithstanding the above, an employee within the Division of the Department may attempt to resolve any regulatory violation matter prior to issuance of the regulatory notice.

2. Filing of Protest by Taxpayer

The taxpayer must file a protest within 90 days of the issuance of the regulatory notice to preserve appeal rights. The protest must be in writing and must contain:

- a. the name, mailing address, and telephone number of the taxpayer;

¹⁶ This form may be found on the Department’s website at <https://dor.sc.gov/forms-ite/Forms/ABL20.pdf>.

¹⁷ The Department generally handles all bingo violations. Additionally, the Department may issue a violation for a dishonored check on an alcoholic beverage matter following the procedures set forth in SC Revenue Procedure #12-1 (beer and wine) or SC Revenue Procedure #12-2 (liquor).

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- b. the appropriate taxpayer identification number(s);
- c. the kind of license and issue in dispute;
- d. a statement of facts supporting the taxpayer's position;
- e. a statement outlining the reasons for the protest, including any law or authority upon which the taxpayer relies; and
- f. any other relevant information the Department may reasonably prescribe.¹⁸

Taxpayers may use Form C-245 “Application for Appeal and/or Protest Pursuant to Revenue Procedures Act” to protest a regulatory notice. This form may be found on the Department’s website.¹⁹

Taxpayers must file a written protest with the Department within 90 calendar days of the date of the regulatory notice in order to preserve their appeal rights. Protests may be hand-delivered, sent by US mail, or private delivery service, or in certain instances, may be sent by electronic means.²⁰

3. Protest Filed

- a. *Imposition of Monetary Penalty* - If the taxpayer timely files a written protest, the Department will not assess any monetary penalty until the matter is resolved within the Department or a contested case hearing has been held and a decision has been rendered by the Administrative Law Court.

Forward of File to Litigation Section – If a written protest is filed, the Division will forward the file on to the Litigation Section.

4. No Protest Filed

Imposition of Monetary Penalty - If the taxpayer does not file a written protest with the Department within 90 days of the regulatory notice, the Department will assess any monetary penalty associated with the violation.

¹⁸ See Code Sections 12-60-450 and 12-60-1310 concerning the filing of protests.

¹⁹ This form may be found on the Department’s website at <https://dor.sc.gov/forms-site/Forms/C245.pdf>.

²⁰ If mailed, the protest should be sent to the address provided in the regulatory 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. A taxpayer may submit his appeal electronically by using the email address provided by the Department in the regulatory notice.

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B. Review of Protest and File by Litigation Section

1. Department Representative Review

Upon receipt of the protest and the file, a department representative will conduct a substantive review of the protest and the file. The department representative will meet with the taxpayer or a representative of the taxpayer if the taxpayer or the department's representative believe a conference would help resolve the matter.²¹

After review, the Litigation Section will either: (a) agree with the taxpayer's position; (b) disagree with the taxpayer's position; or (c) settle the matter based on the hazards of litigation as provided in Section VII below. 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 issue a department determination on the remaining issues or settle the remaining issues.

2. Issuance of the Department Determination

If the Department disagrees with the taxpayer, the Department will make a written department determination using 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 representative) 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 inform the taxpayer that the regulatory violation will be finalized and any monetary penalty imposed in 30 days, unless the taxpayer requests a contested case hearing within 30 days the department determination was sent by first class mail or delivered to the taxpayer.

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).²²

If the Department does not issue the department determination timely,²³ 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 controversy.

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 is sent to the taxpayer or the date the Department notifies the taxpayer of the right to request a contested case hearing if the department determination was not issued timely.

²¹ The meeting may be held telephonically.

²² The Administrative Law Court may grant up to a six-month extension.

²³ See Code Section 12-60-450(E)(3).

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VI. FAILURE TO EXHAUST TAXPAYER'S PREHEARING REMEDY

A. Statutory Requirement to Exhaust Taxpayer's Prehearing Remedy

1. Failure to Exhaust Prehearing Remedy with the Department

If after filing a protest the taxpayer fails to exhaust his prehearing remedy (failed to provide all relevant facts and law to the department representative), the department determination, to the extent reasonable, may determine unknown facts in the Department's favor.

Code Sections 12-60-510(A) and 12-60-1330 require a taxpayer to exhaust his prehearing remedy before seeking a contested case hearing before the Administrative Law Court.

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 within 90 days of the regulatory notice without exhausting his pre-hearing remedy because he failed to file a protest, the Administrative Law Judge shall dismiss the action without prejudice.

If the taxpayer failed to provide the department representative with facts, law and other authority supporting his position within the 90-day period, the Administrative Law Judge shall remand the matter to the Department for reconsideration in light of the new facts or issues, unless the Department elects to forego the remand. See Code Sections 12-60-510 and 12-60-1330.

Upon remand, the Department has 30 days, or a longer period ordered by the Administrative Law Judge, to consider the new facts and issues and amend its department determination.

VII. SETTLEMENT OF A REGULATORY APPEAL BASED ON HAZARDS OF LITIGATION

A. Settlement by the Litigation Section

Subject to the procedures and limitations in this Revenue Procedure, the department representative has the authority to recommend the settlement of any regulatory matter based on 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 department representative should refuse to settle a case based upon the hazards of litigation if he believes that policy would be better served with a judicial resolution.

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

In determining whether to settle a regulatory matter, 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.

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 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 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.²⁴

No settlement based on the hazards of litigation will be final until a written agreement has been executed with the taxpayer. 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.

²⁴ A taxpayer may refuse to agree to the revised settlement.

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VIII. EMERGENCY CANCELLATION, SUSPENSION, OR REVOCATION OF A REGULATORY LICENSE

Notwithstanding any other provision in this Revenue Procedure, if the Department determines that public health, safety, or welfare requires emergency action, the appeal provisions set forth in this Revenue Procedure will be bypassed and the Department will seek an emergency revocation order from the Administrative Law Court as provided in Code Section 12-60-1340.

If a regulatory license is revoked as a result of emergency action, a taxpayer will have the same right to appeal the determination as any other taxpayer and the taxpayer may appeal such revocation by following the same procedures as provided in this Revenue Procedure, with the exception that the taxpayer will have 90 days from the issuance of the revocation order to file his protest.