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Comments Due by: **July 28, 2015**

SC REVENUE PROCEDURE #15-X (July 6, 2016)

SUBJECT: Department of Revenue Internal Appeals Process and Procedure

EFFECTIVE DATE: Applies to all protests received by the Department on or after August 1, 2015 and to all protests that are unresolved as of August 1, 2015.

SUPERSEDES: SC Revenue Procedure #06-2 and all previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: Chapter 60 of Title 12

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2014)
S. C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Procedure is to provide procedural guidance to the public. 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 It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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. INTRODUCTION

This document contains the Department of Revenue's ("Department") internal procedures for handling disputed matters within the jurisdiction of the Department. Disputed matters include disputes involving taxes and penalties (including property tax assessments issued by the Department); denials, suspensions and revocations of licenses; and other matters handled by the Department.

These procedures are intended to ensure public confidence in the integrity and fairness of the Department, to comply with both the letter and the spirit of the South Carolina Taxpayers Bill of Rights and the Revenue Procedures Act, and to resolve disputes where possible without the expense of going to a formal hearing or court.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **July 28, 2015**

All time limits contained in this Revenue Procedure and within the jurisdiction of the Department,¹ except those mandated by statute or regulation, may be extended (provided the time has not already expired) by mutual agreement of the taxpayer appealing and the appropriate Department employee. To the extent that the taxpayer requests an extension of time to file a document or submit additional information, the Department may require as a condition of granting the extension, that the taxpayer agree to an equal time extension for the Department to prepare or issue any document or determination it is required to issue.

To understand the appeals process, this Revenue Procedure must be read in conjunction with the South Carolina Revenue Procedures Act, Chapter 60, Title 12 of the S. C. Code of Laws, and the Rules of Procedure of the Administrative Law Court. The Rules of Procedure are available from the South Carolina Administrative Law Court, Edgar A. Brown Building, Second Floor, 1205 Pendleton Street, Suite 224, Columbia, SC 29201, or on its website at www.scalc.net.

If the taxpayer fails to make a timely response or fails to comply with the procedures outlined in this Revenue Procedure, the Department may decide the appeal against the taxpayer and immediately issue a Department Determination. If an appeal is filed with the Administrative Law Court, the Department may argue that the taxpayer failed to “exhaust his pre-hearing remedy.” See Section 12-60-30(15) of the South Carolina Code of Laws (“Code”) for a definition of “exhaustion of a taxpayer’s pre-hearing remedy.”

II. DEFINITIONS

A. Contested Case Hearing - A hearing defined in Code Section 1-23-310, and conducted pursuant to the South Carolina Administrative Procedures Act - Article 3, Chapter 23, Title 1 of the South Carolina Code of Laws. For purposes of this Revenue Procedure, it involves hearings by the Administrative Law Court where the Department is a party.

B. Department Determination - The final determination of an appeal approved by the Director or his designee made in accordance with this Revenue Procedure. This determination may be appealed to the Administrative Law Court. If a document is consistent with this definition, it will be deemed to be the Department Determination even though it may be entitled a final agency determination or some other name.

C. Department Representative - The person(s) appointed by the Department to prepare the Department Determination and represent the Department at the contested case hearing.

¹ Under Code Section 12-60-460, a taxpayer has 30 days to submit to the Administrative Law Court a request for a contested case hearing before the Administrative Law Court. Only the Administrative Law Court has the authority to extend this 30 day time period.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **July 28, 2015**

D. Deputy Director – The person who manages one of the operating divisions of the Department.

E. Director - The director of the Department.

F. 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 SC Revenue Procedures Act. A Division Decision includes the refusal to expunge or satisfy a lien.

G. Final Assessment or Assessment - For the purpose of this Revenue Procedure:

1. Except for property taxes, the final assessment or assessment is the determination by the Department of any tax due. In accordance with the requirements of Code Section 12-60-440, this is either the assessment made after the taxpayer has filed with the Department a timely written protest to a proposed assessment and the taxpayer's appeal has been finally decided or the assessment made after the taxpayer has failed to file with the Department a timely written protest to the proposed assessment.
2. For property tax purposes, for those property tax assessments issued by the Department, an assessment is the determination of the value of the property multiplied by the assessment ratio. The property tax due is later determined by multiplying the assessment by the millage rate levied by the applicable taxing authority. In the case of the motor carrier property tax, the final notice that a property tax is due in accordance with Code Section 12-37-2850 is considered the assessment. An assessment for property taxes of airlines and private car lines will include determination of the equalized assessment ratio, the millage, and the tax due. For property tax exemptions, it is the denial of an exemption.
3. Assessments 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 of the assessment.

H. Proposed assessment - The first written notice sent or given to a person stating that a section within the Department has concluded that a tax is due or an exemption has been denied or a license is to be suspended or revoked, or an application for a license is denied. In addition, a proposed assessment also includes a Division Decision. For property tax purposes, it includes the first notice stating the value and/or assessment ratio of certain property as determined by the appropriate section within the Department. The term proposed assessment does not include an auditor's work papers or draft audit reports, or any document that specifically states it is not intended as a proposed assessment.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **July 28, 2015**

If a document is consistent with this definition, it will be deemed to be a proposed assessment for purposes of this Revenue Procedure, even if it is called something else. For example, even if it is called an assessment, notice of assessment, assessment notice and tax bill, notice of appraisal and assessment, property assessment notice, notice of adjustment, notice of action on license, regulatory violation and proposed assessment report, or if it looks like an invoice, it will be deemed to be a proposed assessment.

I. Protest – A written appeal of a proposed assessment or a division decision made in accordance with the South Carolina Revenue Procedures Act (Chapter 60 of Title 12 of the S.C. Code of Laws.)

J. Regulatory License - A license that is issued under the South Carolina alcoholic beverage laws or the South Carolina bingo laws.

K. Regulatory Violation - A violation of a statute or regulation which controls the conduct of alcoholic beverage licensees or bingo licensees, including a violation which may result in the assessment of a monetary penalty, the suspension of a license, or the revocation of a license. It does not include taxes, interest on taxes, or monetary penalties in Chapter 54 of Title 12.

L. Section – An organizational unit within one of the operating divisions of the Department.²

M. Tax or Taxes - Unless the context clearly requires otherwise, taxes include all taxes, licenses, permits, fees, or other amounts, including interest and penalties, imposed by Title 12 or Title 61 of the S.C. Code of Laws, or subject to assessment or collection by the Department.

N. Taxpayer - Any person or entity liable for, or required to pay, any tax or fee to the Department who has been issued a proposed assessment or a Department Determination. It also includes licensees and license applicants for those licenses issued by the Department.

O. Waiver of Restrictions on Assessments - Waiver of restrictions on assessments is achieved through the filing of a Form SC870 or SC870AD.

1. Form SC870 – A taxpayer may sign this form if he or she wants the Department to generate a final assessment showing the total tax, interest, and penalty (if any) due so the taxpayer can pay the proposed assessment and stop the accumulation of interest.

² With respect to references to the Litigation Section in this Revenue Procedure, the term “section” may also mean a division within the Department.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **July 28, 2015**

2. Form SC870AD – A taxpayer may sign this form when he wants to resolve a dispute. It is not effective until it is accepted by a deputy director or his designee. If accepted by the Department, the taxpayer cannot file or prosecute a claim for refund or credit and the Department will not reopen the case, except for fraud, malfeasance, concealment, misrepresentation of material fact, or an important mistake in mathematical calculation.

III. PRE-HEARING PROCEDURES FOR TAXES AND LICENSES ADMINISTERED BY THE DEPARTMENT OTHER THAN REGULATORY LICENSES AND REGULATORY VIOLATIONS

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

1. *Issuance of Proposed Assessment* – Either an auditor, tax technician, examiner or analyst (hereinafter referred to as “auditor”) in the appropriate section of the Department will issue a proposed assessment. The proposed assessment will explain the basis for the proposed assessment and state that a final assessment will be made or other appropriate action will be taken unless the taxpayer pays the tax or files a protest within 90 days of the date of the issuance of the proposed assessment. The proposed assessment will also provide the taxpayer with sufficient information to enable the taxpayer to file a protest.

2. *Filing of Protest by Taxpayer* - In order to protest a proposed assessment, the taxpayer must file a written protest within 90 days of the date of the issuance of the proposed assessment. The written protest must contain:

- (a) the name, address, and telephone number of the taxpayer;
- (b) the appropriate taxpayer identification number(s);
- (c) if relevant, the tax period or date for which the tax was proposed;
- (d) if relevant, 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 appeal, including any law or authority upon which the taxpayer relies; and
- (g) any other relevant information the Department may reasonably prescribe.

See Code Sections 12-60-450 and 12-60-1310 for further information as to the rules regarding the filing of a protest.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **July 28, 2015**

3. *Suspension of Collection Efforts when a Protest is Filed* - If the taxpayer files a written protest for a tax which has not been assessed, the Department will not make any effort to collect the tax or take other action with respect to the proposed assessment until the matter is resolved within the Department or, if appropriate, a contested case hearing has been held and a decision has been rendered by an administrative law judge.

If the matter involves property taxes assessed by the Department and is unlikely to be resolved by December 31 of the same year, the amount of tax owed will be calculated and the taxpayer will receive a tax bill, and must remit the tax, based upon 80% of the disputed assessed value, or a greater amount if the taxpayer agrees in writing. Additional taxes will be billed or a refund will be made after the matter is resolved.

Any suspension of collection efforts with respect to the proposed assessment does not apply to taxes due that are not a part of the proposed assessment, or a jeopardy assessment. However, if the Department determines that public safety or health requires emergency action, the Department may seek an emergency revocation (if authorized under the law) of the taxpayer's license in accordance with Code Section 12-60-1340.

4. *Collection Efforts when a Protest is Not Filed* - If the taxpayer does not file a written protest with the Department within 90 days of the date of the issuance of the proposed assessment, the Department will make a final assessment and begin collection activities if payment is not made. If the matter involves property taxes (except for those which the Department administers and bills), the Department will certify its assessment to the appropriate county or counties who will issue the tax bill. A suspension of collection activities for this assessed liability may be ordered by the Taxpayers' Rights Advocate pursuant to 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.

5. *Protest Filed – Review of Protest* – If the taxpayer submits a letter protesting a proposed assessment, the appropriate area within the Department will review the letter to determine if it is a protest of the proposed assessment³ and to determine if it meets the statutory requirements of a protest. (See Item 2 above.)

If it is determined that the taxpayer has not filed a protest of the proposed assessment or that the protest does not meet the statutory requirements of a written protest, the taxpayer will be informed of the available options (if any) under the law as well as any time limitations that may apply for submitting a corrected or proper protest.⁴

³ For example, a letter from a taxpayer agreeing with the proposed assessment but stating an inability to pay is not a protest.

⁴ If it is determined that the taxpayer has not filed a protest of the proposed assessment or the protest does not meet the statutory requirements of a written protest, any corrected or proper protest still must be filed within 90 days of the date of the issuance of the proposed assessment, unless extended by mutual agreement before the expiration of the 90 days.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **July 28, 2015**

If it is determined that a taxpayer has filed a protest, additional information may be requested from the taxpayer in an attempt to resolve the issues raised by the proposed assessment. In connection with trying to resolve the issues, the taxpayer may be offered a conference.

If the matter cannot be resolved, the file will be forwarded to the Department's Litigation Section for further review. To the extent there is agreement with the taxpayer as to some issues and disagreement as to other issues, the taxpayer will be informed of those issues on which there is agreement and that the remaining issues will be forwarded to the Department's Litigation Section.

B. The Department Representative (Litigation Section)

Receipt of the Protest by the Department's Litigation Section - Upon receipt of the file by the Department's Litigation Section, a Department representative will be assigned to review the file. As part of this review, the Department representative may contact and meet with the taxpayer, the taxpayer's representative, or any appropriate person within the Department to obtain additional information.

The Department representative may then:

- (a) agree with the taxpayer, close the file, and notify all pertinent parties that the file has been closed; or,
- (b) issue a Department Determination setting forth the facts, issues, and support for the position of the Department. If the Department representative agrees with the taxpayer on some issues, the Department representative may consider the file closed with respect to those issues and issue a Department Determination with respect to the remaining unresolved issues. The Department Determination must also contain a statement explaining that a request for a contested case hearing must be made to the Administrative Law Court within 30 days of the date the Department Determination is sent to the taxpayer, and an explanation of how to request a hearing.

C. Settling of a Case Based on Hazards of Litigation

1. *Conditions of Settlement* - Subject to the procedures and limitations set forth in this Revenue Procedure, only the Department's Litigation Section has the authority to settle cases based upon the hazards of litigation. The Department's Litigation Section should refuse to settle a case based upon the hazards of litigation if it believes that state tax policy would be better served with a judicial resolution. Settlements based on the hazards of litigation should reflect, on an issue by issue basis, the probable result in the event of litigation, or mutual concessions for the purpose of settlement based on the relative

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **July 28, 2015**

strength of the opposing positions where there is substantial uncertainty of the result in the event of litigation.

2. *Factors to be Considered in Settlement Based on Hazards of Litigation* - The Department's Litigation Section will consider:

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

3. *Procedure for Hazard of Litigation Settlements* - If the settlement is based on the hazards of litigation, it must be approved in the manner described herein. Because settlements based on the hazards of litigation must be uniformly made, to settle a case based on the hazards of litigation, the Department representative must send a recommendation to the Litigation Section's General Counsel or his designee. This recommendation must be based on the principles in this Revenue Procedure. The Litigation Section's General Counsel 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 Litigation Section's General Counsel, or his designee, the Director, or his designee, may make changes which would make it acceptable. If appropriate, the taxpayer will sign a Waiver of Restriction on Assessments to complete the settlement.

D. *Miscellaneous Appeals*

1. *Procedure for Claims for Refunds* - The denial of a claim for refund by the Department will be treated the same as a proposed assessment and the taxpayer's appeal is handled in a matter identical to a proposed assessment.

2. *Procedure for Denial, Suspension or Revocation of a Retail Sales License or other License issued by the Department other than a Regulatory License* - The appeal of the notice of denial, suspension or revocation of a retail sales license or other license issued by the Department, other than a regulatory license, will be handled in the same manner as a proposed assessment.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **July 28, 2015**

3. *Procedure for Jeopardy Assessments* - Jeopardy assessments will not be handled in accordance with the procedures set forth in this Revenue Procedure, rather the appeal of jeopardy assessments will be handled in accordance with Code Sections 12-60-910 and 12-60-920. Unless specifically directed otherwise, a taxpayer subject to a jeopardy assessment should deal directly with the Litigation Section's General Counsel.

IV. PRE-HEARING PROCEDURE FOR A REGULATORY VIOLATION OR THE DENIAL OF A REGULATORY LICENSE

If a regulatory violation may result in the suspension or revocation of the taxpayer's regulatory license, or if the taxpayer's application for a regulatory license results in the denial of a regulatory license, the appeal will be treated as an appeal of the "Denial, Suspension, or Revocation of a Regulatory License" as provided in Part IV.A. below.

A. Protests of Denials, Suspensions or Revocations of Regulatory Licenses (Whether or not a Monetary Penalty is also Imposed)

1. *Issuance of a Proposed Assessment* - An employee within the appropriate section of the Department will issue a proposed assessment setting forth information containing the basis for the denial, suspension or revocation of the license, and providing that the matter will be considered closed and the regulatory license will not be issued, or will be suspended or revoked, unless the taxpayer files a written protest within 90 days of the date of the proposed assessment. If a proposed assessment includes a regulatory violation that may result in a monetary penalty being imposed as well as the regulatory license being suspended or revoked, the regulatory violation will be handled under this section. The proposed assessment will also provide sufficient information to enable the taxpayer to file a protest with the Department.

2. *Filing of Protest by Taxpayer* - The taxpayer may file a written protest within 90 days of the date of the proposed assessment appealing the proposed assessment. The written protest must contain:

- (a) the name, address, and telephone number of the taxpayer;
- (b) the appropriate taxpayer identification number or numbers, if any;
- (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 appeal, including any law or authority upon which the taxpayer relies; and
- (f) any other relevant information the Department may reasonably prescribe.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **July 28, 2015**

See Code Section 12-60-1310 for further information as to the rules regarding the filing of a protest.

3. Denial, Suspension or Revocation of License - Protest Filed – If the taxpayer submits a letter protesting a proposed assessment, the appropriate area within the Department will review the letter to determine if it meets the statutory requirements of a protest. (See Item 2 above.)

If it is determined the taxpayer's protest does not meet the statutory requirements of a written protest, the taxpayer will be informed of the available options (if any) under the law as well as any time limitations that may apply for submitting a corrected or proper protest.⁵

If it is determined that a taxpayer has filed a protest, the Department will not make any effort to revoke or suspend the taxpayer's regulatory license or to impose any penalty resulting from a regulatory violation that is appealed pursuant to this section, until the matter is resolved within the Department or a contested case hearing has been held and a decision has been rendered by an administrative law judge. However, the Department is not restricted, if warranted, from seeking an emergency revocation pursuant to Code Section 12-60-1340.

If a written protest is filed, the file will be forwarded to the Department's Litigation Section.

Note: Generally, protests of regulatory violations, or the denial of a regulatory license, are forwarded directly to the Department's Litigation Section for review. However, before forwarding the file to Litigation, the section within the Department receiving the protest may request additional information from the taxpayer in an attempt to resolve the issues raised by the proposed assessment. In connection with trying to resolve the issues, the taxpayer may be offered a conference.

4. Denial, Suspension or Revocation of License - No Protest Filed - If the taxpayer does not file a written protest with the Department within 90 days of the date of the issuance of the proposed assessment, the Department will deny, suspend, or revoke the taxpayer's regulatory license and will impose any penalty that has been proposed. A stay of the revocation or suspension of a regulatory license, or the imposition of the penalty, or both, may be ordered by the Taxpayers' Rights Advocate pursuant to Code Section 12-58-30, in which event no action will be taken until the matter is resolved or the Taxpayers' Rights Advocate lifts any stay on suspension or revocation of the license.

⁵ If it is determined that the taxpayer's protest does not meet the statutory requirements of a written protest, any corrected or proper protest still must be filed within 90 days of the date of the issuance of the proposed assessment, unless extended by mutual agreement before the expiration of the 90 days.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **July 28, 2015**

5. *Receipt of the Protest by the Department's Litigation Section* - Upon receipt by the Department's Litigation Section of a file in which a taxpayer has filed a protest within 90 days of the notice to deny, suspend or revoke a regulatory license or permit, a Department representative will be assigned to review the file. As part of this review, the Department representative may contact and meet with the taxpayer, the taxpayer's representative, or any appropriate person within the Department to obtain additional information.

The Department representative may then:

(a) agree with the taxpayer, close the file, and notify all pertinent parties that the file has been closed; or

(b) issue a Department Determination. If the Department representative agrees with the taxpayer on some issues, the Department representative may consider the file closed with respect to those issues and issue a Department Determination with respect to the remaining unresolved issues. In the event a Department Determination is issued, the Department representative will inform the taxpayer that if the taxpayer does not request a contested case hearing within 30 days of the date of the Department Determination, the regulatory license will not be issued or the existing license will be suspended or revoked and any applicable penalty will be imposed.

B. Protests of Regulatory Violations which do not Involve the Denial, Suspension or Revocation of a Regulatory License

1. *Determination of a Regulatory Violation* - Either a section within the Department or the State Law Enforcement Division ("SLED") will cite the taxpayer for a regulatory violation. The citation of the violation will be forwarded to the appropriate section within the Department for processing. The section will issue the taxpayer a proposed assessment setting forth the information containing the basis for the violation and indicate that the violation will become final and nonappealable unless the taxpayer files a written protest within 90 days of the date of the issuance of the proposed assessment. The taxpayer will also be provided sufficient information to enable the taxpayer to file a protest with the Department.

2. *Filing of Protest by Taxpayer* - The taxpayer may file a written protest within 90 days of the date of the issuance of the proposed assessment. The written protest must contain:

(a) the name, address, and telephone number of the taxpayer;

(b) the appropriate taxpayer identification number or numbers;

(c) if relevant, the nature and kind of issue in dispute;

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **July 28, 2015**

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

See Code Section 12-60-450 for further information as to the rules regarding the filing of a protest.

3. Regulatory Violation - Protest Filed – If the taxpayer submits a letter protesting a proposed assessment, the appropriate area within the Department will review the letter to determine if it meets the statutory requirements of a protest. (See Item 2 above.)

If it is determined the taxpayer's protest does not meet the statutory requirements of a written protest, the taxpayer will be informed of the available options (if any) under the law as well as any time limitations that may apply for submitting a corrected or proper protest.⁶

If it is determined that a taxpayer has filed a protest, the Department will not assess any penalty until the matter is resolved within the Department or a contested case hearing has been held and a decision has been rendered by an administrative law judge.

If a written protest is filed, the file will be forwarded to the Department's Litigation Section.

Note: Generally, protests of regulatory violations are forwarded directly to the Department's Litigation Section for review. However, before forwarding the file to Litigation, the section within the Department receiving the protest may request additional information from the taxpayer in an attempt to resolve the issues raised by the proposed assessment. In connection with trying to resolve the issues, the taxpayer may be offered a conference.

4. Regulatory Violation - No Protest Filed - If the taxpayer does not file a written protest with the Department within 90 days of the date of the issuance of the proposed assessment, the Department will assess any monetary penalty associated with the violation. A suspension of such action may be ordered by the Taxpayer's Rights Advocate pursuant to Code Section 12-58-30, in which event no action will be taken until the matter is resolved or the Taxpayers' Rights Advocate lifts the suspension.

5. Receipt of the Protest by the Department's Litigation Section - Upon receipt of the file by the Department's Litigation Section, a Department representative will be assigned to

⁶ If it is determined that the taxpayer's protest does not meet the statutory requirements of a written protest, any corrected or proper protest still must be filed within 90 days of the date of the issuance of the proposed assessment, unless extended by mutual agreement before the expiration of the 90 days.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **July 28, 2015**

review the file. As part of this review, the Department representative may contact and meet with the taxpayer, the taxpayer's representative, or any appropriate person within the Department to obtain additional information.

The Department representative may then:

(a) agree with the taxpayer, close the file, and notify all pertinent parties that the file has been closed; or

(b) issue a Department Determination. If the Department representative agrees with the taxpayer on some issues, the Department representative may consider the file closed with respect to those issues and issue a Department Determination with respect to the remaining unresolved issues. In the event a Department Determination is issued, the Department representative will inform the taxpayer that if the taxpayer does not request a contested case hearing within 30 days of the date of the Department Determination, the violation will be nonappealable and any penalties associated with the regulatory violation will be considered immediately due and owing. Such penalties, with interest if applicable, shall then be immediately assessed against the taxpayer.

C. Emergency Suspension or Revocation of a Regulatory License

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 in accordance with the provisions set forth in Code Section 12-60-1340.