

SC TEMPORARY REVENUE PROCEDURE #06-2

SUBJECT: Department of Revenue Internal Appeals Process and Procedure

EFFECTIVE DATE: Applies to all appeals received by the Department on or after December 6, 2006 and to all appeals that are unresolved as of December 6, 2006.

SUPERSEDES: SC Revenue Procedure #04-1, SC Revenue Procedure #95-6, SC Revenue Procedure #95-3, SC Revenue Procedure #92-1 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 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2005)
SC Revenue Procedure #05-2

SCOPE: The purpose of a Temporary Revenue Procedure is to provide immediate 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 It is temporary, and is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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.

All time limits contained in this Revenue Procedure, except those mandated by statute or regulation, may be extended 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, and the Rules of Procedure of the Administrative Law Court. The Rules of Procedure are available from the Administrative Law Court, Edgar A. Brown Building, Second Floor, 1205 Pendleton Street, 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 the 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 Section 1-23-310 of the Code, and conducted pursuant to Article 3, Chapter 23 of Title 1, the South Carolina Administrative Procedures Act. 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 appointed by the Department to prepare the Department determination and represent the Department at the contested case hearing.

D. Director - The director of the Department.

E. Division - An organizational unit within the Department.

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

1. Except for property taxes, an assessment is the determination of any tax due.

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 Section 12-37-2850 of the Code 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.

G. Proposed assessment - The first written notice sent or given to a person stating that a division within the Department has concluded that any tax is due or an exemption has been denied or any 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 which is an action or finding adverse to the taxpayer other than an assessment of taxes, a regulatory violation, or the denial, suspension, or revocation of a regulatory license. For property tax purposes, it includes the first notice stating the value and/or assessment ratio of certain property as determined by the Property Division. 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.

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.

H. Regulatory License - Means a license that is issued under the South Carolina alcoholic beverage laws or the South Carolina bingo laws.

I. 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, or suspension or revocation of a license. It does not include taxes, interest on taxes, or monetary penalties in Chapter 54 of Title 12.

J. 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 of the Code, or subject to assessment or collection by the Department.

K. Taxpayer - Means 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 licenses and license applicants for those licenses issued by the Department.

L. 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. 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 division administrator 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, or 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 Division Review

1. *Issuance of Proposed Assessment* – Either an auditor, tax technician, examiner or analyst (hereinafter referred to as auditor) in the appropriate division of the Department will issue a proposed assessment indicating that a tax is due, an assessment of property has been made, a property tax exemption has been denied, or another action adverse to the taxpayer has been taken. The proposed assessment will explain the basis for the proposed assessment and state that a final assessment 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 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 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) 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 appeal, including any law or authority upon which the taxpayer relies; and
- (g) any other relevant information the Department may reasonably prescribe.

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

3. Collection Efforts - Protest Filed - If the taxpayer does file 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 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 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 made after the matter is resolved.

Any suspension of collection efforts does not apply to jeopardy assessments or termination assessments, or if the Department determines that public safety or health requires emergency action, in which case the Department may seek an emergency revocation of the taxpayer's license in accordance with Section 12-60-1340 of the Code.

4. Collection Efforts - No Protest Filed - If the taxpayer does not file a written protest with the Department within 90 days 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 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 - If the taxpayer protests, the auditor will send notice to the taxpayer offering a conference. This notice may also request any additional information that might be needed from the taxpayer, and will advise the taxpayer that if the taxpayer fails to respond or to request a conference within 30 days, the matter will be forwarded to the Office of General Counsel for Litigation for the issuance of a Final Agency Determination.

6. *Conference not requested* – Within 30 days, if the taxpayer does not respond or request a conference, the auditor’s supervisor will review the file for correctness and forward the file to the Office of General Counsel for Litigation.

7. *Conference requested* – If the taxpayer requests a conference, the conference should be conducted within thirty days of the request. If due to workload it cannot be conducted within thirty days of the request, it must be conducted within ninety days of the request. If the taxpayer will not agree to a conference within ninety days of the request, the taxpayer will have waived the conference, and the file will be reviewed for correctness by the auditor’s supervisor, and will be forwarded to the Office of General Counsel for Litigation. The conference may be conducted telephonically at either the auditor’s or taxpayer’s request. The auditor’s supervisor or his or her designee will participate in the conference.

8. *Protest not resolved* - If the conference does not resolve the protest, the auditor will so notify the taxpayer, and the matter will be forwarded to the Office of General Counsel for Litigation. Prior to forwarding the file, the auditor’s supervisor will review the file for correctness.

B. The Department Representative

1. *Receipt of the Appeal by the Department’s Office of General Counsel for Litigation* - Upon receipt of the file by the Office of General Counsel for Litigation, a Department representative will be assigned. The Department representative will review the file and either:

- (a) Prepare the Department’s determination and submit it for approval to the General Counsel for Litigation or his designee and the Director or his designee;
- (b) Discuss the file with the auditor, auditor’s supervisor, or the audits administrator, and, if necessary, return the file for further development; or
- (c) Meet with the taxpayer or the taxpayer’s representative if the Department’s representative believes such a meeting would assist in the resolution of the dispute.

2. *Department Representative Review of the File* - The Department representative will review the file and either agree with the taxpayer and close the case file, or agree with all or part of the proposed assessment in which case the Department representative will draft a Department determination setting forth the facts, issues and support for the position of the Department. At any time, the Department representative may request additional information from the taxpayer if he believes it would be helpful in resolving the appeal. As part of its review of the file, the Department representative may choose to meet with the taxpayer.

3. *Issuance of the Department Determination* - If the Department representative determines that the proposed assessment was correct or determines a matter adverse to the taxpayer, a Department determination will be issued. The Department determination must 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, the Department representative has the authority to settle cases based upon the hazards of litigation. The Department representative should refuse to settle a case based upon the hazards of litigation if he or she 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 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 representative 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 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's General Counsel for Litigation, 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 of an Installment Agreement* - The appeal of a denial to pay a tax in installments will be treated in the same manner as a proposed assessment.

3. *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.

4. *Procedure for Appeal of a Denial to Release a Lien* - If a division of the Department denies a request to release a lien, the appeal of the denial of such a request will be handled in the same manner as a proposed assessment.

5. *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 Sections 12-60-910 and 12-60-920 of the Code. Unless specifically directed otherwise, a taxpayer subject to a jeopardy assessment should deal directly with the Department's Chief Counsel for Litigation.

IV. PRE-HEARING PROCEDURE FOR THE DENIAL, SUSPENSION, OR REVOCATION OF A REGULATORY LICENSE OR HANDLING OF A REGULATORY VIOLATION

If a regulatory violation may result in the suspension or revocation of the taxpayer's 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. Appeal of a Denial, Suspension or Revocation of a Regulatory License (Whether or not a Monetary Penalty is also Imposed)

1. *Issuance of a Proposed Assessment* - An employee within the Division 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 penalty being imposed as well as the regulatory license being suspended or revoked, the regulatory violation will be handled under this section IV.A. The employee will provide sufficient information so as to inform the taxpayer as to how 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 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(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 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 12-60-1310 for further information as to the rules regarding the filing of a protest.

3. *Suspension or Revocation of License - Protest Filed* - If the taxpayer does file a written 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 IV.A, 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 from seeking an emergency revocation pursuant to Section 12-60-1340 of the Code. If a written protest is filed, the Division will forward the file on to the Department representative.

4. *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 proposed assessment, the Department will suspend or revoke the taxpayer's regulatory license and if applicable, 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. *Department Representative Receipt of File* - If a written protest is filed, a Department representative will receive the file and may contact the taxpayer to request additional information. The Department representative may then:

- (a) agree with the taxpayer and close the file and notify all pertinent parties that the file has been closed; or,
- (b) issue a Department determination. 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 Department's 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. Appeals of Regulatory Violations Which Do not Involve the Denial, Suspension or Revocation of a Regulatory License

1. *Determination of a Regulatory Violation* - Either the Division or the State Law Enforcement Division ("SLED") will cite taxpayer for a regulatory violation. The citation of the violation will be forwarded on to the Division for processing. The Division will issue 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 protesting the violation within 90 days of the date of the proposed assessment. An employee of the Division will provide sufficient information informing the taxpayer how 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 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(s);
- (c) the nature and kind of issue 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.

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

3. *Regulatory Violation - No Protest Filed* - If the taxpayer does not file a written protest with the Department within 90 days 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.

4. *Regulatory Violation - Protest Filed* - If the taxpayer does file a written 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 Division employee will forward the file on to the Department Representative.

5. *Department Representative Review of File* - If a written protest is filed, a Department representative will receive the file and may contact the taxpayer to request any additional information. The Department may then:

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

(b) issue a Department determination. 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 Department's 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.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens
Ray N. Stevens, Director

December 6 _____, 2006
Columbia, South Carolina