

RULES OF PROCEDURE BEFORE THE SALES TAX BOARD OF APPEALS

APPEAL DEADLINE: The statement of appeal should be filed on forms provided by the Municipal Clerk's Office and shall be served **within 20 calendar days** from either the date the decision or action was mailed to the aggrieved taxpayer or seller (hereinafter "appellant") by the City and Borough of Juneau.

The Sales Tax Board of Appeals ("the Board") may, in its discretion, accept an appeal filed later than the deadline prescribed above upon good cause being shown by the appellant. In such an instance the appeal will be accepted only after the Chair or their designee agrees to accept the appeal. For purposes of this section, good cause does not include the appellant's failure to notify the Sales Tax Office of a change of address.

STATEMENT OF APPEAL AND REQUEST FOR HEARING: The statement on appeal shall state or have attached to it:

1. A copy of all relevant sales tax ordinance sections, or a statement of relevant sales tax ordinance sections;
2. If taxes are being disputed, a written statement in ordinary and concise language of how the position taken by the Sales Tax Office does not comply with the ordinance, including the particular circumstances, events, or occurrences which show the appellant has complied with the ordinance;
3. If penalties and/or interest are being disputed, a written statement in ordinary and concise language explaining why penalties and/or interest are inappropriate.
4. Any documents supporting the appellant's position; and
5. The signature of the appellant.

WHERE TO FILE APPEAL: An appellant initiates an appeal by serving the statement of appeal, by personal service with receipt acknowledged or by certified mail return receipt requested, on the City & Borough Clerk located at 155 S. Seward St. #202, Juneau, AK 99801

BURDEN OF PROOF: The appellant bears the burden of proof in all appeals.

RESPONSE BY THE SALES TAX OFFICE: The Sales Tax Office shall file a response with the Clerk within 20 days from the time it receives the appellant's statement from the Clerk. The response shall answer the appeal sufficiently to present the Sales Tax Office's position. The response shall be served on the Clerk who shall distribute it by personal service or by certified mail to the appellant within 10 days of receipt.

The Board may, in its discretion, extend the deadline for the response to be filed later than the deadline prescribed above upon good cause being shown by the Sales Tax Administrator. In such an instance the response deadline will be extended only after the Chair or their designee agrees to the extension.

REQUEST FOR PRE-HEARING CONFERENCE: The appellant, Sales Tax Office or the Board may request a pre-hearing conference to consider the following:

1. Simplification or settlement of the issues;
2. Preparation and distribution of the record;

3. Briefing schedule;
4. The date for the hearing;
5. The order and time limits for presentation of the appeal;
6. Any other matter that may assist in the disposition of the appeal.

The Board may dismiss an appeal if the appellant does not state the grounds upon which relief is requested or provide sufficient supportive documentation. An appeal may also be dismissed if the Board determines that the matter falls outside the scope of the Board's authority.

The Chairman shall issue a pre-hearing order and calendar setting forth the action taken at the conference.

NOTICE OF HEARING: The Clerk shall contact the Board, appellant, and Sales Tax Office to determine the date and time of the hearing. If requested by any party, the Clerk shall deliver or mail by certified mail a notice of hearing to all parties at least 10 days before the hearing, provided the request is received in a timely manner. The notice of hearing shall be in substantially the following form:

You are notified that a hearing will be held before the Sales Tax Board of Appeals at (place of hearing) upon the _____ day of _____, 20____, at the hour of _____ o'clock ____m. You may be present at the hearing but need not be. You may present any relevant evidence, and will have an opportunity to cross-examine all witnesses. You may have subpoenas issued to compel the attendance of witnesses and for the production of books, documents or other things by applying to the Sales Tax Appeals Board prior to the hearing. The Board has the authority to subpoena both individuals and information under the Alaska Rules of Civil Procedure and may authorize deposition to be taken for witnesses who are not able to attend the hearing.

CONDUCT OF THE BOARD: The members of the Board shall act in an impartial manner, and shall not discuss the case with any of the parties involved except at the hearing.

ADMISSIBILITY OF EVIDENCE: The hearing shall be informal and shall not be conducted according to formal rules of civil procedures relating to the introduction of evidence and the testimony of witnesses. Relevant evidence shall be admitted if it is that upon which reasonable persons are accustomed to rely in the conduct of their serious affairs. Hearsay evidence may be used to supplement or explain direct evidence but shall not be sufficient by itself. *[Irrelevant or repetitious evidence or testimony shall be excluded¹.]* Affidavits shall be considered oral testimony and a "Notice of Affidavit" shall be served on the opposing party, and the Clerk's Office for service upon the Board not less than 10 days before the hearing. The opposing party shall have 7 days from receiving the affidavit to request cross-examination of the affiant at the hearing. If the affidavit is not served on the opposing party in the time required, or if an opportunity to cross-examine an affiant under oath at the hearing is not given after it has been requested, the affidavit shall not be entered as evidence.

The form of the notice of affidavit shall be available at the Sales Tax Office and shall be in a form similar to:

The accompanying affidavit of (name of affiant) will be introduced as evidence at the hearing before the Sales Tax Board of Appeals. (Name of affiant) will not be called to testify orally and you may not question the affiant at the hearing unless you notify the opposing party in writing that you wish to cross examine the affiant under oath at the time of the hearing.

¹ The board is requesting the Law Department review this procedure.

CONDUCT OF HEARING: The hearing shall be conducted by the Chairman who shall rule on the admissibility of evidence. Three members of the Board must be present to hear an appeal. A recording capable of transcription shall be kept of all proceedings. Evidence may be taken only upon oath or affirmation. Each party may:

1. Call and examine witnesses,
2. Introduce exhibits,
3. Cross examine opposing witnesses on any relevant matters, and
4. Testify upon their own behalf.

The appellant's case shall be presented first, with the Sales Tax Office's case to follow. Rebuttal evidence may be presented by either party if the Board so allows. Members of the Board may ask questions of any witness at any time. The Board may impose time limits, as it deems necessary. Unless otherwise extended by the board, the record shall be closed following the end of the hearing.

DECISION BY BOARD: Once a decision is reached by a majority vote of the Board the board may elect to render an oral decision, however, it is not compelled to do so. The final decision of the Board will be in writing, signed by at least a majority of the board. The decision becomes effective on the thirtieth day after delivery to either the appellant or the appellant's attorney or accountant, unless

1. Reconsideration is granted by the Board, on or before the date the decision becomes effective;
2. The Board orders the decision to be effective sooner, or
3. A stay of execution is granted for a particular purpose within the time allowed.

All decisions of the Sales Tax Board of Appeals shall be presented in the following form:

1. **Overview:** This section shall provide the basic information pertaining to the appeal to include (1) the identity of the taxpayer; (2) a general synopsis of the issue(s) in the appeal; (3) the tax period(s) included in the appeal; and (4) the date the appeal was heard by the Sales Tax Board of Appeals.
2. **Facts and Applicable Law:** This section shall clearly set forth the facts relating to the appeal and pertinent portions of the sales tax ordinance as presented, first, by the appellant and, second, by the Sales Tax Administrator.
3. **Arguments:** This section shall clearly set forth all of the arguments presented by the appellant and the Sales Tax Administrator, to include any rebuttal arguments. All arguments shall be included in the order they were presented.
4. **Board Decision:** This section shall clearly set forth the decision of the board to include the basis for said decision.

Any references above to the taxpayer, appellant or Sales Tax Administrator, shall include all individuals who speak on behalf of either the taxpayer or the Sales Tax Administrator.

RECONSIDERATION: Reconsideration of any part or all of the decision may be requested by any party in writing to the Clerk within 20 days of the delivery of the final written decision, but in no event later than the date on which the decision otherwise becomes effective. The Clerk will distribute the request for reconsideration to all parties and Board members by personal service or by certified mail, return receipt requested, within three days of receipt. If a majority of Board members notify the Clerk of their desire to reconsider the decision before the decision otherwise becomes final, reconsideration will be granted. If the required number of board members fails to notify the Clerk of their desire to reconsider the decision before the decision otherwise becomes final, the request is deemed denied. If the request is granted, the matter shall be reconsidered by the Board following the same notification and time schedules for the initial hearing.

A party requesting reconsideration must set out one or more of the following grounds and demonstrate:

1. newly discovered evidence or newly available evidence relevant to the issues;
2. a need for additional evidence to develop the facts essential to a proper decision; or
3. probable error committed in the proceeding or in the decision of the board that would be grounds for reversal on judicial review

If an appeal to the Assembly or a motion for reconsideration is not timely made to the Board the decision becomes effective and no further appeal will be allowed. Failure to exhaust these administrative remedies in a timely manner, may result in a denial of all further administrative or judicial review.

CONTINUANCES: A hearing may be continued for good cause shown as determined by the Board.

RULES AND REGULATIONS: The Board may adopt such rules and regulations it deems appropriate to efficiently and expeditiously further its operations, purposes and goals.

COSTS & ATTORNEY FEES: Each party shall bear their own costs and attorney's fees.

FURTHER QUESTIONS: Please contact the City and Borough Clerk if you have any questions regarding this procedure.

As presented to Assembly HRC March 8, 2004; bjm
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