

RULES AND PROCEDURES FOR ADMINISTRATIVE APPEALS

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1.801. TITLE

This chapter is called the Rules and Procedures for Administrative Appeals.

1.802. AUTHORITY

The Navajo Tax Commission promulgates this chapter pursuant to 2 N.N.C §3353 and 24 N.N.C. §103.

1.803. SCOPE AND APPLICATION

The regulations contained in this chapter apply to disputes between the Office of the Navajo Tax Commission and taxpayers concerning taxes imposed by operation of Title 24 of the Navajo Nation Code and relevant regulations. The regulations contained in this chapter do not apply to the Commission's rule-making power.

1.804. REPRESENTATION

Subject to applicable laws of the Navajo Nation, a taxpayer may be represented in any proceeding conducted under this chapter by any person the taxpayer authorizes.

1.805. PRESUMPTIONS AND BURDEN OF PROOF

In all administrative and judicial proceedings governed by this chapter, the orders, assessments, factual findings, and legal conclusions of the Office of the Navajo Tax Commission or its officers are presumed correct unless the taxpayer demonstrates otherwise. In all factual hearings, the taxpayer has the burden of proving by a preponderance of the evidence the existence of an asserted fact, except where another standard is provided by statute.

1.806. STAY OF PAYMENT OF TAXES

Except as otherwise provided in this paragraph, the taxpayer must pay all taxes on or before the due date prescribed.

- A. Request for and expiration of stay. The taxpayer may, however, request a stay of payment of taxes during the period that it seeks review of a notice under Parts II or IV of this chapter. Such a request for stay must be made in writing prior to the time payment is due. The conferee may grant a stay of payment of taxes for good cause shown. A stay of payment shall expire pursuant to the terms of a notice lifting the stay, or upon entry of an order pursuant to Paragraph 1.836 of this chapter. Payment is due within ten days after the expiration of the stay.
- B. No stay of payment under Part VII. There shall be no stay of payment in connection with proceedings under Part VII of this chapter. The taxpayer must pay the taxes in accordance with the hearing officer's order entered under Paragraph 1.836 of this chapter. See Paragraphs 1.842 and 1.870(B) of this chapter.
- C. Other requirements. Under appropriate circumstances, a stay of payment granted under this paragraph may be conditioned on the posting of a bond or provision of other security, or on the creation of a lien.

1.807. PREREQUISITES TO SEEKING REVIEW UNDER THIS CHAPTER

Before pursuing any administrative or judicial review granted under this chapter, the taxpayer must be in good standing. For purposes of this paragraph, good standing means that the taxpayer has filed all appropriate forms required under the Code and accompanying regulations.

1.808. EFFECTIVE DATE OF CHAPTER

This chapter shall be effective upon adoption by the Commission.

1.810. CONFERENCE

Upon notice of assessment, or notice of denial of a claim for refund, or notice of other adverse action by the Office of the Navajo Tax Commission, the taxpayer may request a conference with the Office of the Navajo Tax Commission to consider the basis for an abatement, to seek redetermination of an assessment or review of a denial or a claim for refund or any other adverse action, or to clarify issues that may form the basis of an appeal under this chapter.

1.811. TIME AND MANNER FOR REQUESTING CONFERENCE

To be entitled to a conference, the taxpayer must make a written request within the time prescribed by the notice of assessment or the notice of denial of refund or the notice of other adverse action.

1.812. TIME AND PLACE OF CONFERENCE

The Office of the Navajo Tax Commission, after receiving a timely request and within a reasonable period of time, shall confer with the taxpayer. The conferee and the taxpayer may agree on a suitable location for the conference or may agree to hold the conference by telephone and to exchange written documentation by mail. The conferee and taxpayer may agree to confer more than once.

1.813. CONTENTS OF REQUEST

The request for a conference must identify the disputed notice of assessment or notice of denial of refund or notice of other adverse action, state the determination sought, and contain a short and plain statement of the relevant facts and law.

1.814. ACTION BY CONFEREE

If the conferee and the taxpayer resolve any disputed factual or legal issue, then the conferee shall secure a written waiver from the taxpayer stating the basis of the agreement and stating that the taxpayer waives its right to further administrative or judicial review of that issue. No formal record of the conference need be maintained.

1.815. RESERVED

1.816. ISSUANCE OF WRITTEN DECISION

Within 60 days following the conclusion of the conference, the conferee will issue a written conference decision. If the conferee denies in whole or in part the relief that the taxpayer requests, then the decision shall state the basis for the denial of relief.

1.817. REQUEST FOR A HEARING

Within 30 days after the issuance of the decision of the conferee, the taxpayer may appeal the decision to a hearing office in accordance with the procedures provided in Part IV of this chapter.

1.818. FINALITY OF DECISION

If the taxpayer fails to make a timely appeal in accordance with Paragraph 1.817 of this part, then the decision of the conferee is final and not subject to review by appeal to a hearing officer or to any court.

1.819. STAY OF PAYMENT OF TAXES

The taxpayer may request a stay of payment of taxes only in accordance with Paragraph 1.806 of this chapter.

1.830. HEARING BODY

Hearings shall be conducted by the Office of Hearings and Appeals.

1.831. CONDITIONS NECESSARY FOR APPEAL

Before a taxpayer files an appeal to a hearing officer, the following conditions must be met:

- A. Timely request for conference. The taxpayer must have previously requested a conference in accordance with Paragraphs 1.810 and 1.811 of Part II of this chapter.
- B. Conference action. The taxpayer's request for relief was denied under Paragraph 1.816 of Part II.
- C. Payment of taxes. In the case of a taxpayer's appeal involving a request for abatement of an assessment, the taxpayer must pay the taxes, unless a stay of payment was granted and remains in effect in accordance with Paragraph 1.806 of this chapter.

1.832. FILING OF APPEAL

Appeal to a hearing officer commences upon the timely filing of the appeal.

- A. Time for request. The taxpayer must file a request for a hearing before a hearing officer within 30 days of the issuance of a conference decision (see Paragraph 1.817 of Part II).
- B. Form and content of request. A request for a hearing before a hearing officer must be in writing and contain a short and plain statement of the facts and law forming the basis for the relief sought. The taxpayer, or its authorized representative, must sign the request for hearing.
- C. Endorsement and schedule. The hearing officer, after receiving the request for a hearing, will endorse the request with the date of filing and proceed to set a time for entry of prehearing orders.

1.833. PREHEARING ORDERS

The hearing officer has the authority to enter prehearing orders. Where necessary, the hearing officer may confer with the parties before entering prehearing orders. Such orders may, for example, eliminate or narrow disputes concerning questions of fact or law, establish identities and subject matter of testimony of witnesses, require the identification and disclosure of documents, or provide for the time, place, and duration of hearings. Prehearing orders will control the course of the hearing.

1.834. ADMINISTRATIVE SUBPOENAS

At the request of the parties, the hearing officer shall issue subpoenas for the attendance of witnesses at hearings and for production of books, records, maps, documents, or physical evidence.

- A. Action to quash. Any witness subject to a subpoena may petition the hearing officer to vacate or modify the subpoena served on the witness. The hearing officer shall promptly notify the party who requested the subpoena and proceed to rule on the petition. The hearing officer may investigate the grounds of the petition or, upon the petition itself, may deny or grant the petition, in whole or in part. The hearing officer's rulings on petitions to quash subpoenas are not subject to interlocutory appeal to any court.
- B. Non-compliance. Failure to comply with a subpoena issued by the Commission constitutes a violation of 24 N.N.C. §116 and shall subject the noncomplying witness to the sanctions imposed by that section.

1.835. CONDUCT OF HEARINGS

The hearing officer shall preside over these hearings and shall conduct them according to the following provisions.

- A. Service of documents. All documents filed by any party at a hearing shall be served personally or by first-class mail, postage prepaid, at the last known address, on all parties, including the Office of the Navajo Tax Commission, and proof of service must be filed on record.
- B. Evidence, witnesses, and record.
 - 1. Sworn testimony. Oral evidence shall be taken only on oath or affirmation.
 - 2. Witnesses. Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach any witness regardless of which party first called the witness to testify, and may rebut any evidence presented. A party, a party's employee, or a party's agent, may be called by the opposing party and be examined as if under cross-examination. The hearing officer may question any witness, may call the taxpayer as a witness, or may call as a witness any person who is present at the hearing.
 - 3. Privilege. Any privileges that apply in civil actions before Navajo courts shall be followed.
 - 4. Admissibility. Any relevant evidence, including affidavits and other forms of hearsay, shall be admitted if such evidence is of the sort upon which responsible persons are accustomed to rely in the conduct of serious affairs. The hearing officer shall be liberal in admitting evidence, but objections to its admission, and comments or observations of its weight, are relevant in weighing the evidence. The hearing officer may deny admission of evidence that is irrelevant, untrustworthy, or unduly repetitious.
 - 5. The record. All evidence will be offered and made part of the record and the hearing officer shall not consider any other factual information, except for matters officially noticed.
- C. Failure to appear. Where after proper notice a taxpayer or its authorized representative fails to appear, the hearing officer may proceed with the hearing, dispose of the issues raised, and enter a final order.
- D. Continuances. Reasonable continuances may be granted for good cause.
- E. Proposed findings and conclusions. Prior to entering an order, the hearing officer will afford the parties a reasonable time in which to submit any post-hearing memoranda, proposed findings of fact, and proposed conclusions of law.

1.836. FINAL ORDER

- A. The hearing conducted under this part concludes when the hearing officer enters findings of fact, conclusions of law, and a final order.
- B. The final order issued by the hearing officer shall be a matter of public record, and all final orders issued shall be available for public inspection.

1.837. RESERVED

1.838. RESERVED

1.839. RESERVED

1.840. PETITION FOR REHEARING

A party may file a petition for rehearing. Such petition will be filed in the same manner as described in Part IV of this chapter and will allege as grounds for rehearing either a mistake of law or fact, or the discovery of new evidence which by due diligence could not have been discovered by the party at the time of the hearing.

The petition must set out in some detail the mistake in law or fact claimed, or summarize the new evidence that has become available, specifically mentioning the source of such evidence and what it would tend to establish. The hearing officer will have wide discretion in accepting or rejecting such petitions.

1.841. EFFECT OF ORDER

The decision of the hearing officer entered under this part may be appealed within 30 days in accordance with Part VII of this chapter. If not timely appealed, the hearing officer's order is binding on the parties and may not be appealed to any court.

1.842. PAYMENT OF TAXES

Notwithstanding any stay of payment granted under Paragraph 1.806 of this chapter, the taxpayer shall pay the taxes in accordance with the decision of the hearing officer no later than ten days after the entry of the order.

1.850. RECORD OF PROCEEDINGS

The Office of the Navajo Tax Commission shall cause a record to be made of proceedings conducted under Part IV of this chapter. The record will be maintained at the Office of the Navajo Tax Commission. Except for those portions of the record that are sealed or deemed confidential, the record will be open for public inspection during reasonable business hours.

1.851. INCLUSIONS IN THE RECORD

The record of proceedings shall include the following:

- A. Pleadings and other papers. The taxpayer's request for an appeal before a hearing officer, prehearing orders, stipulations of facts, motions, memoranda, rulings, parties' proposed findings of fact and proposed conclusions of law.
- B. Evidence. All evidence received or considered and a statement of any matters officially noticed.
- C. Oral record. The oral record of proceedings, whether in shorthand or electronic form.
- D. Order. The hearing officer's findings of fact, conclusions of law, and final order.

1.852. MAKING THE RECORD

The record of the proceedings conducted under Part IV of this chapter shall be produced, certified, and maintained according to the following criteria:

- A. Oral record. Oral testimony and statements will be kept in shorthand or electronic form.
- B. Certification. Any transcript will be certified by a court reporter authorized to transcribe by the Office of the Navajo Tax Commission.
- C. Documents. Documents will be endorsed for entry into the record.
- D. Interpretation. Where the record contains material in Navajo, transcription into English will be made and certified correct by an interpreter authorized to do so by the Office of the Navajo Tax Commission.
- E. Sealed record. For good cause shown, the hearing officer may order the record to be sealed in whole or in part.

1.853. PRESUMPTION

The record kept according to this part is presumed correct in all subsequent proceedings.

1.854. COSTS

The Office of the Navajo Tax Commission will bear the usual costs of making the record of proceedings conducted before the hearing officer, except that:

- A. Stipulations. If the taxpayer unreasonably fails to stipulate to the record, the taxpayer may be charged costs.
- B. Interpretation. The Office of the Navajo Tax Commission will bear the cost for interpreting Navajo into English.
- C. Appeal to the Court. The taxpayer will bear all the costs of preparing the record to be forwarded to the Navajo Supreme Court when the taxpayer pursues an appeal under Part VII of this chapter.

1.870. NAVAJO SUPREME COURT

A party receiving an adverse decision from the hearing officer in a proceeding conducted under Part IV of this chapter may appeal the order to the Navajo Supreme Court, subject to the following conditions:

- A. Time for making appeal. The appealing party must file a notice of appeal with the court within 30 days after the hearing officer enters the order under Paragraph 1.836 of Part IV.
- B. Payment required. The taxpayer shall not be entitled to an appeal under this part unless the taxpayer pays the contested taxes in accordance with the order of the hearing officer.

1.871. APPELLATE PROCEDURE

The rules of Appellate Procedure of the Navajo Supreme Court shall govern the conduct of appeals from orders of the hearing officer rendered under Part IV of this chapter.

1.872. APPEAL NOT DE NOVO

Appeal to the Navajo Supreme Court shall be limited to the record on appeal. However, where an affirmation of the hearing officer's action would suspend a right of an appellant to engage in productive activity within the Navajo Nation, the appellant shall on request be entitled to a hearing *de novo* on any material question of fact and the Court may stay the effect of an order suspending a right to engage in productive activity, pending appeal.

1.873. RECORD ON APPEAL

The record on appeal will be based on the provisions contained in Part V of this chapter and on the findings, conclusions, and order of the hearing officer.

1.874. CERTIFICATION

The Office of the Navajo Tax Commission will obtain for its record a certified copy of the decision of the Navajo Supreme Court.