



GLENN HEGAR

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

The Rules of Practice & Procedure

JUNE 2022

TITLE 34, TEXAS ADMINISTRATIVE CODE §§1.1-1.35

TABLE OF CONTENTS

Rule 1.1.	Scope and Construction of Rules	1
Rule 1.2.	Definitions	3
Rule 1.3.	Representation and Participation	4
Rule 1.4.	Computation of Time	6
Rule 1.5.	Filing Documents with SOAH or the Office of Special Counsel for Tax Hearings ...	6
Rule 1.6.	Service of Documents on Parties	8
Rule 1.7.	Ex Parte Communications	10
Rule 1.8.	Deadline Extensions	11
Rule 1.10.	Requesting a Hearing	11
Rule 1.11.	Statement of Grounds; Preliminary Conference	14
Rule 1.12.	Position Letter	16
Rule 1.13.	Taxpayer’s Acceptance or Rejection of Position Letter, and Reply to Position Letter	17
Rule 1.14.	The Administrative Hearings Section’s Response to the Reply to the Position Letter	18
Rule 1.20.	Docketing Oral and Written Submission Hearings	19
Rule 1.21.	Cigarette, E-cigarette, Cigar, and Tobacco Tax Cases	20
Rule 1.22.	Discovery	20
Rule 1.23.	Consolidated and Joint Hearings; Severance	21
Rule 1.24.	Interested Parties	22
Rule 1.25.	Nonbinding Nature of Agreed Facts	22
Rule 1.26.	Burden and Standard of Proof in Contested Cases	22
Rule 1.30.	Settlement in a Contested Case Based on Insolvency	23
Rule 1.31.	Resolution Agreements	25
Rule 1.32.	Dismissal of Case	27
Rule 1.33.	Proposal for Decision and Exceptions	28
Rule 1.34.	Comptroller’s Decisions and Orders	28
Rule 1.35.	Motion for Rehearing	29

State of Texas
Texas Comptroller of Public Accounts

PRACTICE AND PROCEDURE

Rule 1.1. Scope and Construction of Rules.

- (a) Matters subject to these rules. These rules apply to all phases of contested case proceedings that may be referred to the jurisdiction of SOAH as provided by Tax Code, §111.00455 and Government Code, §2003.101. Contested cases under those sections relate to the collection, receipt, administration, and enforcement of a tax imposed under Tax Code, Title 2 and any other tax, fee, or other amount that the comptroller is required to collect, receive, administer, or enforce under a law not included under Tax Code, Title 2. Contested cases within the scope of these rules include disputed deficiency determinations, disputed jeopardy determinations, and disputed denials of refund claims. Pursuant to Tax Code, §111.1042(b), an informal review of a claim for refund is not a contested case.
- (1) Deficiency determinations. Tax Code, §111.008 provides that if the comptroller is not satisfied with a tax report or the amount of the tax required to be paid to the state, the comptroller may compute and determine the amount of tax to be paid from information contained in the report or from any other information available to the comptroller. Tax Code, §111.009 provides that a person having a direct interest in a deficiency may petition the comptroller for a redetermination.
- (2) Jeopardy determinations. Tax Code, §111.022 provides that if the comptroller believes that the collection of a tax required to be paid to the state or the amount due for a tax period is jeopardized by delay, the comptroller shall issue a determination stating the amount and that the tax collection is in jeopardy. The amount is due and payable immediately unless the taxpayer timely files a request for redetermination.
- (3) Denial of refund claims. Tax Code, §111.105 provides that if the comptroller denies a refund claim filed pursuant to Tax Code, §111.104, the person claiming a refund may request a refund hearing.

- (b) Matters not subject to these rules. These rules do not apply to hearings on the following matters that are not conducted by SOAH pursuant to Tax Code, §111.00455(b) and Government Code, §2003.101:
 - (1) a show cause hearing or any hearing not related to the collection, receipt, administration, or enforcement of the amount of tax or fee imposed, or the penalty or interest associated with that amount, except for a hearing under Tax Code, §§151.157(f), 151.1575(c), or 151.712(g), or Health and Safety Code, §161.0901;
 - (2) a property value study hearing under Government Code, Chapter 403, Subchapter M, which is conducted pursuant to Chapter 9, Subchapter A of this title (relating to Practice and Procedure);
 - (3) a hearing in which the issue relates to:
 - (A) Property Code, Chapters 72-75;
 - (B) forfeiture of a right to do business;
 - (C) a certificate of authority;
 - (D) articles of incorporation;
 - (E) a penalty imposed under Tax Code, §151.703(d);
 - (F) the refusal or failure to settle under Tax Code, §111.101; or
 - (G) a request for or revocation of an exemption from taxation; and
 - (4) any other hearing not related to the collection, receipt, administration, or enforcement of the amount of a tax or fee imposed, or the penalty or interest associated with that amount.
- (c) Application of SOAH Rules of Procedure. The SOAH Rules of Procedure, 1 TAC Chapter 155, govern contested cases while SOAH has jurisdiction. SOAH has jurisdiction of a contested case from the time the case is docketed at SOAH until the case is returned to the agency following the issuance of a proposal for decision or remanded to the agency for any reason.
- (d) Construction. The principles of statutory construction and of Code Construction Act, Government Code, Chapter 311, apply to these rules.

Effective Date: June 8, 2022

Rule 1.2. Definitions.

- (a) The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) Agency—The Comptroller of Public Accounts.
 - (2) AHS—The Administrative Hearings Section of the Hearings and Tax Litigation Division of the comptroller, which represents the agency in contested cases under these rules.
 - (3) ALJ—Administrative law judge, who is the presiding officer at a SOAH contested case hearing.
 - (4) APA—The Administrative Procedure Act (Government Code, Chapter 2001).
 - (5) Authorized representative—A person designated to represent the taxpayer, who may be an attorney licensed to practice law in this state, a certified public accountant, or any other person designated by the taxpayer who is not otherwise prohibited from appearing in the hearing.
 - (6) Claimant—A person claiming a refund.
 - (7) Comptroller—The Comptroller of Public Accounts.
 - (8) Contested case—A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the agency after an opportunity for an adjudicative hearing.
 - (9) Determination—A written notice from the agency that a person is required to pay to the State of Texas a tax, fee, penalty, or interest.
 - (10) Office of Special Counsel for Tax Hearings—Agency staff who assist the comptroller in rendering contested case orders and decisions.
 - (11) Party—Any person who has requested a redetermination hearing or a refund hearing; agency staff, acting through the AHS; and any other person admitted as a party under §1.24 of this title (relating to Interested Parties).
 - (12) Person—Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character. It may also include an estate, trust, receiver, assignee for benefit of creditors, trustee, trustee in bankruptcy, assignee, or any other group or combination acting as a unit.

- (13) (13) Petition—A written request for official action by the agency regarding the rights, duties, or privileges accorded to the person making the request under a statute administered or enforced by the agency.
- (14) (14) Petitioner—A person petitioning for a redetermination.
- (15) (15) Pleading—Any document filed by a party concerning the position or assertions in a contested case.
- (16) (16) Rules—The comptroller's rules of practice & procedure, set forth in Chapter 1, Subchapter A, Division 1 of this title.
- (17) (17) SOAH—The State Office of Administrative Hearings, which is the state agency that has jurisdiction to preside over hearings on the contested cases subject to these rules.
- (18) (18) Tax Hearings Attorney—An attorney from the AHS assigned to represent agency staff in a contested case under these rules.

Effective Date: January 1, 2019

Rule 1.3. Representation and Participation.

- (a) Authorized representatives.
 - (1) A taxpayer who is an individual may represent himself or herself at any stage of a contested case. A taxpayer who is an individual may have one or more authorized representative.
 - (2) A taxpayer that is an entity must have at least one authorized representative.
 - (3) To represent a taxpayer, a representative must have on file with the comptroller a written authorization. The authorization may be satisfied by submitting the comptroller's Limited Power of Attorney form (Form 01-137), or by authorization on a document that complies with the requirements of Tax Code, §111.023.
 - (4) An authorized representative may be an attorney, an accountant, or any other person of a taxpayer's choice.

- (b) Designated representative for notice.
- (1) Although a taxpayer may have more than one authorized representative, the taxpayer shall designate a single representative for notice of contested case documents. The designated representative for notice is responsible for the receipt of contested case documents, such as for the purpose of §1.6 of this title (relating to Service of Documents on Parties), §1.34 of this title (relating to Comptroller's Decisions and Orders), and §1.35 of this title (relating to Motion for Rehearing).
 - (2) A taxpayer's designated representative for notice shall be the individual signing the original Statement of Grounds, until changed in accordance with this subsection. A taxpayer may continue to use the same representative for matters before a contested case begins by authorizing the same representative to sign the Statement of Grounds.
 - (3) The designation must include a single person's name and a single mail address. The designation may include a single email address for the purpose of §1.6 of this title.
 - (4) A taxpayer may change its designated representative for notice by submitting the information required in this subsection to Audit Processing by email to: audit.processing@cpa.texas.gov, or by contacting the assigned Tax Hearings Attorney. The effective date will be the date of receipt of the notice.
 - (5) When an attorney licensed to practice law in Texas files a motion for rehearing in accordance with §1.5 of this title (relating to Filing Documents with SOAH or the Office of Special Counsel for Tax Hearings), the motion is considered to be a taxpayer's express written authorization to change its designated representative for notice to the filing attorney. When more than one attorney appears in a motion for rehearing, the attorney whose signature first appears on the motion shall be the designated representative for notice unless the motion designates another attorney.
- (c) Hearings at SOAH on contested cases are not open to the public. Any person desiring to observe or participate at any stage of a contested case who is not a party, not employed by a party, or not called as a witness, must obtain the agreement of all parties

Effective Date: January 1, 2019

Rule 1.4. Computation of Time.

- (a) Computing time periods.
 - (1) When computing periods of time prescribed or allowed in this subchapter:
 - (A) the day of the act, event, or default from which the designated time period begins to run is not counted; and
 - (B) the last day of the time period is counted, unless it is a day on which the agency's offices are closed, in which case the time period will end on the next day the agency's offices are open.
 - (2) Example. If a comptroller's decision is signed on December 1, December 1 is the day of the act, event, or default. December 1 is not considered the first day of the motion for rehearing period. The period to file a motion for rehearing begins to run on the next calendar day, December 2. Thus, if a comptroller's decision is signed on December 1, then the 25-day period to file a motion for rehearing begins to run on December 2, and the deadline to file a motion for rehearing is December 26. If the agency is closed on December 26, the deadline to file becomes the next calendar day that the agency is open after December 26.
- (b) Calendar days. Time limits shall be computed using calendar days rather than business days.

Effective Date: January 1, 2019

Rule 1.5. Filing Documents with SOAH or the Office of Special Counsel for Tax Hearings.

- (a) Filing requirement with SOAH. A party shall file documents that are required to be filed with SOAH in accordance with SOAH Rules of Procedure. The date of filing is determined by SOAH Rules of Procedure. The parties should refer to SOAH Rules of Procedure, 1 TAC §§155.51 (Jurisdiction); 155.53 (Request to Docket Case); and 155.101 (Filing Documents).
- (b) Filing requirement with the Office of Special Counsel for Tax Hearings. Contested case documents required to be filed with the Office of Special Counsel for Tax Hearings are:
 - (1) a motion to dismiss under Government Code, §2001.056 (Informal Disposition of Contested Case);

- (2) a motion for rehearing and related motions under Government Code, §§2001.141 - 2001.147 (Contested Cases: Final Decisions and Orders; Motions for Rehearing);
 - (3) a reply to a motion filed with the Office of Special Counsel for Tax Hearings; and
 - (4) a brief or reply brief under §1.34 of this title (relating to Comptroller's Decisions and Orders).
- (c) Contact information for the Office of Special Counsel for Tax Hearings. Contested case documents required to be filed with the Office of Special Counsel for Tax Hearings may be filed by email to specialcounsel.filings@cpa.texas.gov; by fax to (512) 936-6190; by mail addressed to Office of Special Counsel for Tax Hearings, P.O. Box 13528, Austin, Texas 78711-3528; or by hand-delivery addressed to Office of Special Counsel for Tax Hearings, 111 E. 17th Street, Austin, Texas 78774.
- (d) Date of filing with the Office of Special Counsel for Tax Hearings.
- (1) The filing date of a document filed by mail is determined by the date-stamp affixed by the comptroller's mail room.
 - (2) The filing date of a document filed by hand-delivery is determined by the date recorded by staff at the comptroller's security desk at 111 E. 17th Street, Austin, Texas 78774.
 - (3) The filing date of a document filed electronically is determined by the date stamp recorded on the electronic transmission received by the comptroller. The date will be based on the 24-hour period from 12:00 a.m. (midnight) through 11:59 p.m. The filing date of an electronic document received on a date that the comptroller's office is closed will be the next date that the comptroller's office is open.
 - (4) Non-conforming documents. The Office of Special Counsel for Tax Hearings may notify a filing party about a filing error when a filed document fails to conform to this title. To preserve the filing date when a filed document fails to include a certificate of service required by §1.6 of this title (relating to Service of Documents on Parties), the Office of Special Counsel for Tax Hearings may identify the error and request the filing party to resubmit the document in a conforming format by a deadline.

- (e) Upon a taxpayer's request, the Office of Special Counsel for Tax Hearings will provide documentation demonstrating the actual date a document is filed with the Office of Special Counsel for Tax Hearings.
- (f) If the Office of Special Counsel for Tax Hearings provides no document to demonstrate the actual date of receipt of a document properly filed in accordance with this section, then other relevant and reliable documents are acceptable proof of date of receipt. A certificate of service under §1.6 of this title is not acceptable proof that a document was filed or the date it was received in accordance with this section.
- (g) Settlement documents. The parties should refer to §1.31 of this title (relating to Resolution Agreements) and §1.32 of this title (relating to Dismissal of Case), for guidance regarding the process for resolving a contested case by agreement and, if applicable, guidance on when to file a motion to dismiss after a resolution agreement.
- (h) Service required. On the same date that a document is filed, it must also be served as described in §1.6 of this title.

Effective Date: June 8, 2022

Rule 1.6. Service of Documents on Parties.

- (a) Service required. A party filing a contested case document shall also serve a copy on each party in accordance with §1.3 of this title (relating to Representation and Participation). When SOAH has jurisdiction, a party shall follow the SOAH Rules of Procedure. A party filing a document that is required to be served must include a certificate of service as described in this section. The sender has the burden of proving the date and time of service of a document.
- (b) Methods of service. Service generally means sending or delivering a contested case document in order to charge a party with receipt of it and subject a party to its legal effect. Service may be made by the following methods:
 - (1) hand-delivery;
 - (2) regular (United States Postal Service or private mail service), certified, or registered mail;
 - (3) email, upon agreement of the parties; or
 - (4) if sent by a taxpayer or representative, fax.

- (c) Service on interested parties. Interested parties admitted to a contested case pursuant to §1.24 of this title (relating to Interested Parties) shall also be served.
- (d) Service on the AHS. Service on the AHS must be through the assigned Tax Hearings Attorney in the AHS. Service may be made as provided in paragraphs (1) and (2) of this subsection.
 - (1) Hand-delivery. The file stamp affixed by the AHS will be the date of service for hand-delivered documents. Hand-delivered documents must be addressed to Texas Comptroller of Public Accounts, Administrative Hearings Section, 1700 N. Congress Avenue, Suite 320, Austin, Texas 78701-1436.
 - (2) Delivery by methods other than hand-delivery. The service date of a document filed by mail is determined by the date-stamp affixed by the comptroller's mail room. Documents served by fax or email are considered served on a date when they are received at any time during the 24-hour period from 12:00 a.m. (midnight) through 11:59 p.m. on that date, and documents received on a day on which the agency is closed are considered filed on the next calendar day on which the agency is open.
- (e) Certificate of service. A party filing a document that must be served shall include a signed certificate of service with the filed document that certifies compliance with this section. A form for a certificate of service shall be sufficient if it substantially complies with the following example: "Certificate of Service: I certify that on (date), a true and correct copy of this (name of document) has been sent to (name of taxpayer's designated representative for notice or assigned Tax Hearings Attorney) by (specify method of delivery and delivery address). (Signature)."
- (f) Service of notice of hearing. Unless otherwise required by law, service of notice of hearing shall be made in the manner required by Government Code, Chapter 2001.

Effective Date: January 1, 2019

Rule 1.7. Ex Parte Communications.

- (a) Prohibited ex parte communications.
 - (1) Government Code, §2001.061(a) states, “Unless required for the disposition of an ex parte matter authorized by law, a member or employee of a state agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not directly or indirectly communicate in connection with an issue of fact or law with a state agency, person, party, or a representative of those entities, except on notice and opportunity for each party to participate.”
 - (2) The prohibition on ex parte communications includes oral and written communications.
 - (3) The prohibition on ex parte communications applies for the duration of a contested case. A contested case generally begins with a request for redetermination of a deficiency or jeopardy determination, or a request for hearing following denial of a request for refund. A contested case generally ends when a decision is final.
 - (4) The prohibition on ex parte communications includes communications with the following persons who participate in rendering decisions:
 - (A) the comptroller of public accounts;
 - (B) the deputy comptroller;
 - (C) staff of the Office of Special Counsel for Tax Hearings; and
 - (D) any ALJ assigned to the contested case.
- (b) Permitted ex parte communications. Government Code, §2001.061(c) allows a decision-maker to communicate ex parte with an agency employee who has not participated in a hearing in the case for the purpose of using the special skills or knowledge of the agency and its staff in evaluating evidence. For example, the deputy comptroller may communicate with an employee of the Tax Policy Division who has not participated in the hearing.
- (c) The recipient of a prohibited ex parte communication may notify the other parties of the content of the communication and provide an opportunity for the other parties to respond. For purposes of this subsection, a “recipient” is one or more of the individuals identified in subsection (a)(4) of this section.

Effective Date: January 1, 2019

Rule 1.8. Deadline Extensions.

- (a) Before SOAH acquires jurisdiction over a contested case (see 1 TAC §155.51), taxpayers' requests to extend any deadlines imposed by this subchapter must be submitted to the Tax Hearings Attorney assigned to the case. A request will be granted if it shows good cause and the need is not caused by neglect, indifference, or lack of diligence. Requests must be served upon other parties of record.
- (b) After SOAH acquires jurisdiction over a contested case (see 1 TAC §155.51), motions to extend filing deadlines and motions for continuance must be filed with SOAH pursuant to 1 TAC §155.307 and any applicable orders of the ALJ assigned to the case. If the agency increases the amount of tax deficiency at or before the time of hearing, the taxpayer is entitled to a 30-day continuance of the hearing to obtain and present evidence applicable to the items on which the additional claim is based.
- (c) For extensions of the deadline to file a motion for rehearing of a decision or order, or a reply to a motion for rehearing, refer to §1.35(d) of this title (concerning Motion for Rehearing).

Effective Date: January 1, 2019

Rule 1.10. Requesting a Hearing.

- (a) Requesting a redetermination hearing.
 - (1) If a taxpayer disagrees with a deficiency or jeopardy determination, the taxpayer may request a redetermination hearing by timely submitting a written request for redetermination. This written request must include a Statement of Grounds that complies with the requirements set forth by §1.11 of this title (relating to Statement of Grounds; Preliminary Conference).
 - (2) The request for a redetermination hearing must be submitted before the expiration of 60 days after the date the notice of determination is issued, or before the expiration of 20 days after the statement date on the notification of a jeopardy determination. A request for a redetermination hearing that is not timely submitted will not be granted. An extension of time for initiating a redetermination hearing may be requested subject to the requirements of subsection (c) of this section. A taxpayer who cannot obtain a redetermination hearing may pay the determination and request a refund in order to raise any objection to the determination.

- (3) The request for redetermination and Statement of Grounds must be timely submitted to the agency's Audit Processing Section by one of the following methods:
 - (A) by regular (United States Postal Service or private mail service), certified, or registered mail, or by hand-delivery, to the following address: Texas Comptroller of Public Accounts, Audit Processing Section, 111 E. 17th Street, Austin, Texas 78774-0100;
 - (B) by email to audit.processing@cpa.texas.gov; or
 - (C) by fax to (512) 463-2274.
 - (4) Required documentary evidence following request for redetermination hearing. After a taxpayer timely requests a redetermination hearing, the agency may request in writing that the taxpayer produce documentary evidence for inspection that would support the taxpayer's Statement of Grounds. The written request may specify that resale or exemption certificates to support tax-free sales must be submitted within 90 days from the date of the request, or by the date agreed to by the comptroller and the seller. Pursuant to Tax Code, §151.054 and §151.104, resale or exemption certificates that are not submitted within the time limit will not be accepted as evidence to support a claim of tax-free sales by the ALJ in SOAH proceedings.
- (b) Requesting a refund hearing.
- (1) If a taxpayer disagrees with the agency's denial of a refund claim, the taxpayer may request a refund hearing by timely submitting to the agency a written request for a refund hearing. This written request must include a Statement of Grounds that complies with the requirements set forth by §1.11 of this title and Tax Code, §111.104 and §111.105.
 - (2) The request for a refund hearing must be filed on or before the 60th day after the date the comptroller issues a letter denying the claim for refund. A request for a refund hearing that is not timely submitted will not be granted. An extension of time for initiating a refund hearing may be requested subject to the requirements of subsection (c) of this section.
 - (3) The request for a refund hearing and Statement of Grounds must be timely submitted to the agency's Audit Processing Section by one of the following methods:

- (A) by regular (United States Postal Service or private mail service), certified, or registered mail, or by hand-delivery, to the following address: Texas Comptroller of Public Accounts, Audit Processing Section, 111 E. 17th Street, Austin, Texas 78774-0100;
 - (B) by email to audit.processing@cpa.texas.gov; or
 - (C) by fax to (512) 463-2274.
- (4) A refund hearing will not be granted if neither the original request for a refund, nor the Statement of Grounds accompanying a request for a refund hearing, state grounds on which a refund may be granted.
- (5) A taxpayer may not subsequently maintain a suit for refund if a refund claim is denied and the taxpayer does not timely request a hearing. See Tax Code, §111.104 and §112.151.
- (c) Timely submission of the hearing request.
- (1) A hearing request submitted by mail is considered submitted by the date-stamp affixed by the agency mail room.
 - (2) A hearing request submitted by hand-delivery is considered submitted on the date received by agency staff.
 - (3) A hearing request that is submitted electronically is considered submitted on a date when it is received at any time during the 24-hour period from 12:00 a.m. (midnight) through 11:59 p.m. on that date, and a hearing request received on a day the agency is closed is considered filed on the next calendar day on which the agency is open. The date of receipt shall be determined by the time and date stamp recorded on the electronic transmission by the agency's system.
- (d) Extensions of time for initiating hearing process. Requests to extend the due date for requesting a hearing under this section may be granted in case of emergency or extraordinary circumstances. Requests for extension will not be routinely granted. Requests received after the expiration of the original due date will not be considered. Requests will be granted or denied by the General Counsel of the Hearings and Tax Litigation Division of the agency, and must be submitted by one of the following methods:
- (1) by regular (United States Postal Service or private mail service), certified, or registered mail, or by hand-delivery, to the following address: Texas Comptroller of Public Accounts, Administrative Hearings Section, 1700 N. Congress Ave., Suite 320, Austin, Texas 78701-1436;

- (2) by email to ahs.service@cpa.texas.gov; or
- (3) by fax to (512) 463-4617.

Effective Date: June 8, 2022

Rule 1.11. Statement of Grounds; Preliminary Conference.

- (a) Content of Statement of Grounds. The Statement of Grounds must contain the reasons the taxpayer disagrees, in whole or in part, with the agency's determination, refund denial, or other action. The taxpayer must list and number the contested items or transactions, individually, or state one or more general contentions that identify a category or categories of contested items or transactions. For each contested item, transaction, or general contention, the taxpayer must also state the factual basis and the legal grounds that the tax should not be assessed or the tax should be refunded. If the taxpayer disagrees with the agency's interpretation of the law, specific legal authority must be cited in support of the taxpayer's arguments.
- (b) Signature requirement.
 - (1) The Statement of Grounds must be signed by the taxpayer or by the authorized representative of the taxpayer. The individual signing the Statement of Grounds will be the taxpayer's designated representative for notice pursuant to §1.3 of this title (relating to Representation and Participation).
 - (2) A Statement of Grounds that is filed by e-mail or other electronic means complies with the signature requirement under paragraph (1) of this subsection if the Statement of Grounds identifies the individual who is the taxpayer's designated representative for notice pursuant to §1.3 of this title.
- (c) Defective Statement of Grounds. If the Statement of Grounds or the power of attorney authorizing an individual to sign the Statement of Grounds is defective, the agency will notify the taxpayer of the actions required to correct the defect. Defects in the Statement of Grounds include, but are not limited to, a failure to state any contested items or contentions under subsection (a) of this section, or a failure to include a signature as required by subsection (b) of this section. If the taxpayer does not correct the defect by the deadline specified by the agency, the hearing request may not be granted.

- (d) Contested items or contentions not included in Statement of Grounds. If an item, transaction, or contention is not listed in the Statement of Grounds or otherwise provided consistent with this subchapter, it may be excluded from the Notice of Hearing.
- (e) Motion to dismiss for failure to state a contested case issue in the Statement of Grounds. If the taxpayer's Statement of Grounds fails to list and number items or transactions, individually or by category, or fails to state the factual basis and legal grounds upon which relief is sought, the contested case may be dismissed for failure to state a contested case issue for which relief can be granted. For the procedures by which the AHS may move for dismissal based on a Statement of Ground's failure to state a contested case issue for which relief may be granted, see §1.32 of this title (relating to Dismissal of Case).
- (f) Preliminary conference and request to provide additional information. If a taxpayer's Statement of Grounds raises issues that cannot be resolved from the material contained in the audit or Statement of Grounds, the agency may ask the taxpayer to participate in a preliminary conference or to provide additional evidence. The preliminary conference or request for additional information is intended to encourage an early resolution of the contested case before it is assigned to a Tax Hearings Attorney. A request for additional information may include a written request that resale or exemption certificates to support tax-free sales must be submitted within 90 days from the date of the request, or by the date agreed to by the comptroller and the seller. Pursuant to Tax Code, §151.054 and §151.104, resale or exemption certificates that are not submitted within the time limit will not be accepted as evidence to support a claim of tax-free sales by the ALJ in SOAH proceedings.
- (g) The Statement of Grounds may be amended up to the time that a Reply to the Position Letter is due, subject to any applicable limitations periods. The Statement of Grounds does not toll the limitations period for any additional contested items, transactions, or general contentions related to refund claims. See §1.13 of this title (relating to Taxpayer's Acceptance or Rejection of Position Letter, and Reply to Position Letter) for more information about the Reply to the Position Letter.

Effective Date: June 8, 2022

Rule 1.12. Position Letter.

- (a) Contents of Position Letter. The Tax Hearings Attorney will review the Statement of Grounds, documentary evidence, and any additional evidence received from the taxpayer and issue a Position Letter to the taxpayer. The Position Letter will accept or reject, in whole or in part, each contention of the taxpayer, and state the AHS's position on all disputed issues raised by the taxpayer, such as taxability, penalty and interest waiver, and whether the taxpayer is an individual or entity liable for the assessment of tax at issue.
- (b) Selection form. The Position Letter will include a selection form for the taxpayer to accept or reject the Position Letter. See §1.13 of this title (relating to Taxpayer's Acceptance or Rejection of Position Letter, and Reply to Position Letter).
- (c) Notice of demand. Pursuant to Tax Code, §111.105(e), the Tax Hearings Attorney may issue with the Position Letter a written notice of demand that all documentary evidence to support facts or contentions related to a taxpayer's claim for refund be produced before the expiration of a specified date in the notice. The specified date may not be less than 180 days from the date of the original refund claim, and not less than 60 days from the date of the notice. The deadline to respond to the notice of demand may be extended by the Tax Hearings Attorney. A taxpayer who fails to produce the requested documents by the specified date may not introduce in evidence any of the documents that were not timely produced. The assigned ALJ cannot consider in SOAH proceedings documents that were not timely produced. This section is only applicable to the administrative hearing and has no effect on a judicial proceeding pending under Tax Code, Chapter 112. See Tax Code, §111.105(e). The agency may also issue a notice of demand pursuant to Tax Code, §111.105(e) at other stages of the contested case process before or after the issuance of a Position Letter.
- (d) Taxpayer's option to set a Position Letter deadline. After a contested case is assigned, the Tax Hearings Attorney will issue an introductory letter providing contact information and other information concerning the hearings process. If the Tax Hearings Attorney does not issue the Position Letter within 60 days after the date of the introductory letter, the taxpayer may submit a written request to the Tax Hearings Attorney to issue a Position Letter within 45 days of the receipt of the request. The Tax Hearings Attorney will issue a Position Letter within the 45-day deadline, obtain an agreed extension of the deadline to issue the Position Letter, or confer with the taxpayer concerning the docketing of the case at SOAH consistent with §1.20 of this title (relating to Docketing Oral and Written Submission Hearings).

- (e) Modification or amendment of the Position Letter. If the Position Letter is modified or amended, the taxpayer must accept or reject the modified or amended Position Letter, in whole or in part, within 45 days after the day the modified or amended Position Letter is dated, unless an extension is granted. If the Position Letter includes a Notice of Demand consistent with subsection (c) of this section, the date to respond to the Notice of Demand will correspond to the date, including any extension thereof, by which the taxpayer must accept or reject the modified or amended Position Letter.

Effective Date: January 1, 2019

Rule 1.13. Taxpayer's Acceptance or Rejection of Position Letter, and Reply to Position Letter.

- (a) Due date to accept or reject the Position Letter; extensions. The taxpayer must accept or reject the Position Letter, in whole or in part, within 45 days after the day the Position Letter is dated. The taxpayer may request an extension of this deadline from the assigned Tax Hearings Attorney. The first request to extend the deadline up to an additional 45 days will be granted by the assigned Tax Hearings Attorney. Additional extensions of the deadline to accept or reject the Position Letter will not be granted unless the taxpayer demonstrates there is good cause for the extension and that the need is not caused by neglect, indifference, or lack of diligence.
- (b) Selection form. The taxpayer must sign and return to the assigned Tax Hearings Attorney the selection form provided as an attachment to the Position Letter. The taxpayer must select one of the following options.
 - (1) Option One: Agree with the Position Letter. If the taxpayer selects this option, the General Counsel of the Hearings and Tax Litigation Section will also sign the form, which will then be considered a resolution agreement under §1.31 of this title (relating to Resolution Agreements). The tax liability or refund will be calculated consistent with the Position Letter, including any applicable penalty or interest, and a final billing will be sent to the taxpayer. The taxpayer will not be required to respond to the amended determination and final billing, other than by payment, unless the taxpayer disagrees with the amount of the amended determination or final billing.
 - (2) Option Two: Disagree with the Position Letter. The taxpayer may reject some or all of the conclusions of the Position Letter by selecting this option and may include a Reply to the Position Letter as provided in subsection (c) of this section.

- (c) Reply to the Position Letter. At the time the taxpayer submits the selection form described in subsection (b)(2) of this section, the taxpayer may also submit a Reply to the Position Letter. The Reply to the Position Letter should address all unresolved contentions and provide legal and factual support for the taxpayer's position. If the Position Letter does not address specific contentions or contested items that the taxpayer believes should be included as part of the contested case, the Reply to the Position Letter should state those contentions or contested items so that they may be included in the Notice of Hearing for consideration by the ALJ. If the taxpayer has previously provided the facts, legal arguments, information, and documents it intends to submit for consideration at the time the Reply to the Position Letter is due, the taxpayer may return the selection form indicating disagreement with the Position Letter without a Reply to the Position Letter.
- (d) If the taxpayer fails to timely respond to the Position Letter, the comptroller may dismiss the contested case. See §1.32 of this title (relating to Dismissal of Case). In such case, an amended final determination or final billing in accordance with the positions set forth in the Position Letter will be sent to the taxpayer. The contested case will be concluded unless the taxpayer files a motion for rehearing following the procedures stated in §1.35 of this title (relating to Motion for Rehearing).

Effective Date: June 8, 2022

Rule 1.14. The Administrative Hearings Section's Response to the Reply to the Position Letter.

- (a) If the taxpayer presents additional facts, information, documents, or legal arguments in a Reply to the Position Letter, the Tax Hearings Attorney may issue, within 90 days after receipt of the Reply, a Response stating the legal position of the AHS, and any factual disagreement, on each additional issue or argument raised by the taxpayer. The Tax Hearings Attorney may request an extension of the 90-day deadline. If the taxpayer does not agree to extend the 90-day deadline, the Tax Hearings Attorney will prepare a Notice of Hearing and docket the contested case at SOAH pursuant to §1.20 of this title (relating to Docketing Oral and Written Submission Hearings).
- (b) If the taxpayer fails to submit a Reply to the Position Letter, or if the Reply to the Position Letter does not contain any additional facts or legal arguments warranting a written response, the assigned Tax Hearings Attorney is not required to issue a Response. In such cases, the Tax Hearings Attorney may prepare a Notice of Hearing and docket the contested case at SOAH pursuant to §1.20 of this title.

Effective Date: January 1, 2019

Rule 1.20. Docketing Oral and Written Submission Hearings.

- (a) Selecting oral or written submission hearings. A hearing at SOAH may be conducted orally or by written submission. Before docketing the case at SOAH, the Tax Hearings Attorney assigned to the case will request that each party select either an oral hearing or a written submission hearing. If any party selects an oral hearing, the parties must agree to at least three potential oral hearing dates before the case is docketed at SOAH. If no party selects an oral hearing, the hearing will be by written submission.
- (b) Docketing. After the type of hearing has been determined pursuant to subsection (a) of this section, the AHS will file a Request to Docket Case form with SOAH that conforms to the SOAH Rules of Procedure (see 1 TAC §155.53). The form shall state whether the hearing is to be conducted orally or by written submission. If the hearing is to be conducted orally, the AHS will provide the agreed potential oral hearing dates with the Request to Docket Case form.
- (c) SOAH jurisdiction. SOAH acquires jurisdiction after the Request to Docket Case form has been filed (see 1 TAC §155.51).
- (d) Notice of hearing. After SOAH has docketed a case, the AHS will prepare a Notice of Hearing to all parties in accordance with Government Code, §2001.051 and §2001.052, and 1 TAC §155.401. The Notice of Hearing will incorporate the SOAH hearing number and, if the hearing is to be conducted orally, the date and time of the oral hearing. The AHS will file with SOAH and serve on all parties the Notice of Hearing and copies of all pleadings served on the agency by the taxpayer and on the taxpayer by the agency, including, but not limited to, the Statement of Grounds, Position Letter, Reply, any Response, and any exhibits or attachments to those pleadings. The AHS may also file and serve with the Notice of Hearing any additional exhibits that it intends to offer at the hearing.
- (e) Additional filings. Additional pleadings, exhibits, and other documents offered by any party must be filed and served in accordance with the SOAH Rules of Procedure and any orders issued by the ALJ.
- (f) Motions to convert. After SOAH acquires jurisdiction, any party may file a motion to convert an oral hearing to a written submission hearing, or convert a written submission hearing to an oral hearing, according to the SOAH Rules of Procedure.

Effective Date: January 1, 2019

Rule 1.21. Cigarette, E-cigarette, Cigar, and Tobacco Tax Cases.

- (a) Initiating a hearing. A permit holder that receives a written notice of a violation of Health and Safety Code, §161.0901, as provided in §3.1204 of this title (relating to Administrative Remedies for Violations of Health and Safety Code, Chapter 161, Subchapter H or K), may file a written request for a hearing on or before the 20th day after the date on the written notice of violation. A hearing request must be sent by mail to the address shown on the notice of violation. A hearing request is considered submitted by the date-stamp affixed by the agency mail room.
- (b) A hearing pursuant to Health and Safety Code, §161.0901 shall be conducted in accordance with the relevant portions of §§1.1 - 1.35 of this title (relating to Rules of Practice and Procedure), except that §§1.10 – 1.14 of this title (relating to Requesting a Hearing; Statement of Grounds; Preliminary Conference; Position Letter; Taxpayer’s Acceptance or Rejection of Position Letter, and Reply to Position Letter; and The Administrative Hearings Section’s Response to the Reply to the Position Letter) shall not apply. After a hearing is requested, AHS will file a Request to Docket Case form with SOAH, as provided in §1.20 of this title (relating to Docketing Oral and Written Submission Hearings). Unless otherwise required by law, service of the Notice of Hearing shall be made in the manner required by Government Code, Chapter 2001.

Effective Date: June 8, 2022

Rule 1.22. Discovery.

- (a) Discovery conducted during a contested case does not modify Tax Code recordkeeping or disclosure requirements. The Tax Code requires a taxpayer to maintain and produce contemporaneous records and supporting documents appropriate to the tax or fee for which the taxpayer is responsible. A taxpayer is required to produce documents and information concerning the transactions in question to substantiate and enable verification of the taxpayer’s contentions concerning the amount of tax, penalty, or interest to be assessed, collected, or refunded in a contested case. Nothing in this section modifies any statute or any section of this title requiring a taxpayer to keep records and documentation, or to provide information to the comptroller. General Tax Code sections governing a taxpayer’s obligations to maintain or produce records and documents include, but are not limited to, Tax Code, §111.0041 (“Records; Burden to Produce and Substantiate Claims”) and Tax Code, §111.105 (“Tax Refund; Hearing”). The Tax Code may also impose a duty to keep records or provide information specific to a

certain tax or fee; see, for example, Tax Code, §171.205 (“Additional Information Required by Comptroller,” relating to franchise tax) and Tax Code, §151.025 (“Records Required to Be Kept,” relating to sales tax).

- (b) Informal exchange of information encouraged. Before SOAH acquires jurisdiction over a contested case (see 1 TAC §155.51), the parties are encouraged to informally request and exchange documents and other information to narrow and define the disputed issues and reach an agreed resolution of the contested case before the case is docketed at SOAH. See §1.31 of this title (relating to Resolution Agreements).
- (c) Formal discovery. Discovery in a contested case may begin when SOAH acquires jurisdiction. See 1 TAC §155.251(a) and §1.20 of this title (relating to Docketing Oral and Written Submission Hearings). Discovery shall be conducted under the SOAH Rules of Procedure governing discovery. See 1 TAC §§155.251, 155.253, 155.255, 155.257, and 155.259.

Effective Date: January 1, 2019

Rule 1.23. Consolidated and Joint Hearings; Severance.

- (a) A party may request that the ALJ consolidate or join two or more cases docketed at SOAH. See §1.20 of this title (relating to Docketing Oral and Written Submission Hearings). Hearings may be consolidated or joined if they involve the same taxpayer, or if they involve more than one taxpayer with common issues of law or fact, when a consolidated or joint hearing will promote the fair and efficient handling of the matters. See 1 TAC §155.155(c). The ALJ may issue an order consolidating or joining the cases absent a request by a party and without prior notice to the parties. Consolidation or joinder may not be ordered where the result would be the release of confidential taxpayer information to another taxpayer who is not otherwise entitled to the information in violation of Government Code, §2003.104 (Confidentiality of Tax Hearing Information), Tax Code, §111.006 (Confidentiality of Information), or any other statutory provision protecting confidential taxpayer information.
- (b) Where two or more cases have been consolidated or joined for purposes of hearing, a party may request that the ALJ sever the cases. The ALJ may issue an order severing the cases if separate hearings will promote the fair and efficient handling of the matters.

Effective Date: January 1, 2019

Rule 1.24. Interested Parties.

Any person who has a direct pecuniary interest in the resolution of a contested case may request to be admitted as an interested party with the agreement of all parties. Such persons must submit the request to the Tax Hearings Attorney assigned to the case. The Tax Hearings Attorney will transmit the request to the parties of record, and if the case is docketed at SOAH, to the assigned ALJ. If admitted, the interested party's participation will be limited to the extent of the party's interest.

Effective Date: January 1, 2019

Rule 1.25. Nonbinding Nature of Agreed Facts.

By the use of the Position Letter and the Reply to it, or by means of agreed facts or stipulated facts, the parties are encouraged to narrow their disagreements prior to hearing. Stipulated facts are for purposes of resolution of the contested case before the agency only, and no party is bound by them thereafter.

Effective Date: January 1, 2019

Rule 1.26. Burden and Standard of Proof in Contested Cases.

- (a) General rule. Pursuant to Tax Code, §111.0041, the taxpayer must produce contemporaneous records and supporting documentation appropriate to the tax or fee for the transactions in question to substantiate and enable verification of the taxpayer's claim related to the amount of tax, penalty, or interest to be assessed, collected, or refunded.
- (b) The AHS has the burden to prove by clear and convincing evidence:
 - (1) liability for the additional penalty under Tax Code, §111.061(b); and
 - (2) personal liability for fraudulent tax evasion under Tax Code, §111.0611.
- (c) The taxpayer has the burden to prove by clear and convincing evidence that the taxpayer or a transaction qualifies for an exemption or a deduction tantamount to an exemption.

- (d) The AHS has the burden to prove by a preponderance of the evidence that an exclusion from an exemption applies.
- (e) In all other cases, the taxpayer has the burden of proof by a preponderance of the evidence.

Effective Date: January 1, 2019

Rule 1.30. Settlement in a Contested Case Based on Insolvency.

- (a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
 - (1) Insolvent—The taxpayer’s liabilities exceed the taxpayer’s assets or the taxpayer is unable to pay the taxpayer’s debts as they become due.
 - (2) Insolvency settlement—Settlement based on Tax Code, §111.102 made in the contested case process.
- (b) Eligibility for insolvency settlement. The comptroller may settle a claim for a tax, penalty, or interest imposed by Tax Code, Title 2, State Taxation, only if the taxpayer proved by a preponderance of evidence that:
 - (1) collection of the total amount due would make the taxpayer insolvent and the taxpayer has submitted all financial records including income tax reports and an inventory of all property owned, wherever located; or
 - (2) the taxpayer has no property that may be seized by the courts of this or another state or the value of the taxpayer’s property is less than the total amount due and the amount of debts against the property; and the taxpayer:
 - (A) is insolvent;
 - (B) is in liquidation; or
 - (C) has ceased to do business.
- (c) An insolvency settlement proposal must be submitted in a redetermination proceeding after a hearing number has been assigned and before a notice of hearing has been issued.

- (d) The insolvency settlement proposal must specify the basis of eligibility for an insolvency settlement and propose specific settlement terms, including the total amount to be paid and the terms of any payment plan.
- (e) The insolvency settlement proposal must include copies of the following documents, which will be treated as confidential taxpayer information pursuant to Tax Code, §111.006:
 - (1) all federal income tax returns from the year immediately prior to the date of assessment to the most recent federal income tax return;
 - (2) financial statements from the year immediately prior to the date of assessment to the year of the most recent federal income tax return, and year-to-date financial statements for the period following the taxpayer's most recent federal income tax return;
 - (3) bank statements for the six months immediately prior to the date of the insolvency settlement request; and
 - (4) documentation of assets (including inventory of all property owned, wherever located), liabilities, ongoing financial obligations, and proof of any claimed insolvency, liquidation, or business cessation.
- (f) If the comptroller does not accept a taxpayer's insolvency settlement proposal, the taxpayer may request that the comptroller refer the matter to SOAH. The comptroller will refer to SOAH only factual disputes regarding whether the taxpayer met the insolvency requirements stated in subsection (b) of this section, whether the settlement request met the specificity of offer requirements of subsection (d) of this section, and whether the settlement request met the documentation requirements of subsection (e) of this section. The comptroller will not include the amount, payment schedule, or other terms of a proposed settlement agreement in a Notice of Hearing. The parties retain discretion to reach agreement on the specific terms of a proposed settlement agreement, and discretion to decline to enter into a proposed settlement agreement, notwithstanding any recommendations on settlement contained in a proposal for decision.
- (g) The comptroller may consider all relevant factors in determining whether to enter into an insolvency settlement agreement, including but not limited to:
 - (1) whether an additional penalty has been assessed under Tax Code, §111.061(b);
 - (2) whether the taxpayer is liable for outstanding amounts in other periods or in other taxes;

- (3) whether the taxpayer has complied with the terms of previous resolution agreements;
- (4) whether the assessment includes tax collected but not remitted;
- (5) whether the settlement may hinder collection of the amounts owed from other parties who may also be liable for the amounts owed pursuant to Tax Code, §§111.016, 111.0611, 111.020, 111.024, and 171.255, or other law;
- (6) whether the taxpayer is out of business;
- (7) whether the taxpayer has started a new business; and
- (8) whether the taxpayer has previously entered into an insolvency settlement.

Effective Date: January 1, 2019

Rule 1.31. Resolution Agreements.

- (a) If the parties agree on a resolution of all contentions, the agency may agree to sign a resolution agreement.
- (b) A resolution agreement is an agreement between all parties to adjust, or compromise and settle, a taxpayer's tax, credit, refund, penalties, interest, or any other issue in a contested case. The resolution agreement:
 - (1) must be in writing and signed by all parties;
 - (2) must either specify any agreed tax adjustments, if specific adjustments are agreed, or state the amount of tax due or the amount of refund due as a result of the agreement;
 - (3) must either specify any waivers of applicable penalty or interest, if specific adjustments are agreed, or state the amount of penalty or interest due as a result of the agreement; and
 - (4) must include the taxpayer's withdrawal of hearing request, an acknowledgment that the contested case is resolved, and a statement that no comptroller's decision will issue.
- (c) The following procedures will be used to document the resolution agreement and end the contested case.

- (1) Based on standard resolution agreement forms approved by the agency, agency staff will draft the resolution agreements to include all agreed terms and provide a copy to all parties for signature.
 - (2) The resolution agreement may refer to and incorporate one or more exhibits showing the specific adjustments to be made to the taxpayer's account.
 - (3) The resolution agreement will be effective and binding on the parties on the date it has been signed by all parties, subject to any amendments pursuant to paragraph (7) of this subsection. The comptroller may delegate signature authority to appropriate agency staff for the purpose of signing resolution agreements.
 - (4) After the resolution agreement is signed by all parties, agency staff will adjust the liability, credit, or refund as required by the resolution agreement.
 - (5) After adjustments required by the resolution agreement are made, agency staff will provide to all parties a copy of the signed agreement and a statement of account reflecting the adjustments made.
 - (6) The resolution agreement will either provide a specific due date to remit any amounts due from the taxpayer, as required by the agreement, or provide that the remittal due date is no later than 30 days after the date of the statement of account.
 - (7) If, after the resolution agreement is signed by all parties, the parties determine and agree that the adjusted tax, credit, refund, penalties, or interest as stated in the resolution agreement was calculated in error or contrary to the parties' intent, the parties may sign an amendment to the resolution agreement. The Tax Hearings Attorney assigned to the case will prepare an amendment that correctly effectuates the parties' intent and will provide it to the taxpayer for approval and signature.
- (d) After a contested case has been assigned a hearing number, a taxpayer may request the assigned Tax Hearings Attorney refer the contested case to appropriate comptroller personnel for potential resolution. The agency retains sole discretion to grant or refuse the request. While a case is under consideration for potential resolution, all deadlines under the comptroller's rules of practice and procedure may be suspended.

Effective Date: January 1, 2019

Rule 1.32. Dismissal of Case.

- (a) Grounds. The grounds for a motion to dismiss include, but are not limited to:
- (1) a resolution agreement under §1.31 of this title (relating to Resolution Agreements);
 - (2) a taxpayer's failure to respond to the Position Letter;
 - (3) a taxpayer's want of prosecution;
 - (4) a taxpayer's failure to state a contested case issue for which relief can be granted;
 - (5) a taxpayer's claims are moot because the comptroller has granted the relief requested;
 - (6) a taxpayer's claims are moot because a bankruptcy court has issued a judgment or order disposing of the claims; and
 - (7) a taxpayer's claims for the same tax and the same period are pending in a court.
- (b) Procedure for filing a motion to dismiss.
- (1) A motion to dismiss must be filed with the Office of Special Counsel for Tax Hearings, in accordance with §1.5 of this title (relating to Filing Documents with SOAH or the Office of Special Counsel for Tax Hearings), if:
 - (A) the comptroller has not docketed the case with SOAH; or
 - (B) the ALJ has issued a proposal for decision and the exceptions period has ended.
 - (2) A motion to dismiss must be filed with SOAH, in accordance with SOAH Rules of Procedure, if SOAH has docketed the case and the case is under the jurisdiction of SOAH. Refer to SOAH Rules of Procedure, 1 TAC §155.51 (Jurisdiction) for additional guidance.
 - (3) The comptroller will act on a motion to dismiss filed under paragraph (1) of this subsection by issuing a decision or order. Refer to §1.34 of this title (relating to Comptroller's Decisions and Orders) for additional guidance.

- (c) Reply to a motion to dismiss.
 - (1) A reply, if any, to a motion to dismiss filed under subsection (b)(1) of this section must be filed with the Office of Special Counsel for Tax Hearings no later than 14 days after the date the motion is served on the taxpayer.
 - (2) A reply, if any, to a motion to dismiss filed under subsection (b)(2) of this section must be filed with SOAH in accordance with SOAH Rules of Procedure.

Effective Date: January 1, 2019

Rule 1.33. Proposal for Decision and Exceptions.

After the ALJ closes the record, the ALJ will issue a proposal for decision. Any party may file exceptions to the proposal for decision within 15 days after the date the proposal for decision is issued. A reply to the exceptions may be filed no later than 15 days after the filing of the exceptions. The ALJ will review exceptions and replies and notify the comptroller and parties whether any changes to the proposal for decision are recommended. For additional information concerning the proposal for decision and exceptions, see 1 TAC §155.507 (relating to Proposals for Decision; Exceptions and Replies).

Effective Date: January 1, 2019

Rule 1.34. Comptroller's Decisions and Orders.

- (a) After SOAH returns jurisdiction of a contested case to the agency, the comptroller will review the record, the proposal for decision, and any exceptions and replies, and will issue a decision on the proposal for decision, unless the case is dismissed under §1.32 of this title (relating to Dismissal of Case).
- (b) If the comptroller determines that additional argument from the parties will be helpful before making a final decision in a contested case, the comptroller will issue an order requesting that the parties submit written briefs on specified contested case issues. Briefs will be limited to the issues identified in the order and arguments addressing any issues not identified in the order will not be considered.
- (c) The Office of Special Counsel for Tax Hearings will send decisions and orders to the taxpayer's designated representative for notice and the Tax Hearings Attorney assigned to the hearing. Refer to §1.3 of this title (relating to Representation and Participation) for additional guidance.

- (d) A decision or order is final:
 - (1) if a motion for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing;
 - (2) if a motion for rehearing is filed on time, on the date:
 - (A) the order overruling the motion for rehearing is signed;
 - (B) the motion is overruled by operation of law; or
 - (3) on the date specified in the decision or order if all parties have agreed in writing or on the record. The agreed date may not be before the date the decision or order is signed.
- (e) A party may file a statement that it waives its right to file a motion for rehearing. Refer to §1.5 of this title (relating to Filing Documents with SOAH or the Office of Special Counsel for Tax Hearings).
- (f) If the comptroller grants a motion for rehearing, the decision or order is vacated and the comptroller will issue a new decision or order on rehearing.

Effective Date: January 1, 2019

Rule 1.35. Motion for Rehearing.

- (a) Definition. A motion for rehearing is a request to the comptroller from a party in a contested case to reconsider part or all of a decision or order. The motion may or may not result in an additional hearing. A motion for rehearing is a prerequisite for a tax refund lawsuit.
- (b) Contents of a motion for rehearing.
 - (1) Government Code, §2001.146(g) provides that a motion for rehearing must identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous.
 - (2) Government Code, §2001.146(g) further provides that a motion for rehearing must also state the legal and factual basis for the claimed error.
 - (3) Tax Code, §111.105(d) further provides that a motion for rehearing on a tax refund claim must assert each specific ground of error and state the amount of the refund sought.

- (c) Deadline to file a motion for rehearing. A motion for rehearing must be filed no later than 25 days after the comptroller's decision is signed. The comptroller will state the 25-day deadline to file a motion for rehearing on the first page of the comptroller's decision. For contested case purposes, the comptroller will consider a motion for rehearing timely if it is filed by the motion for rehearing deadline stated on the comptroller's decision.
- (d) Additional time to file a motion for rehearing.
 - (1) Motion for extension of time. A motion to extend the time to file a motion for rehearing or reply must be filed with the Office of Special Counsel for Tax Hearings in accordance with §1.5 of this title (relating to Filing Documents with SOAH or the Office of Special Counsel for Tax Hearings) no later than five days after the deadline to file the motion or reply. Government Code, §2001.146(e) gives the comptroller the authority to act on the motion not later than the 10th day after the original deadline. If a motion is timely and properly filed, the comptroller shall issue an order granting or denying the motion. If the comptroller has not timely acted on the motion, the motion is considered overruled.
 - (2) Failure to receive notice. Government Code, §2001.142 establishes a procedure to revise the motion for rehearing period if a party did not receive notice or acquire actual knowledge of a signed decision before the 15th day after the date the decision is signed. A party may file a sworn motion to revise the period for filing a motion for rehearing. The motion must be filed with the Office of Special Counsel for Tax Hearings in accordance with §1.5 of this title. If the comptroller does not issue an order granting or denying the motion by the 10th day after the motion is received, the motion is considered granted by operation of law.
- (e) Calculation of due dates. Refer to §1.4 of this title (relating to Computation of Time) for guidance related to the calculation of due dates.
- (f) Determining the date that a document is filed. Refer to §1.5 of this title for guidance related to determining the date a document is filed.
- (g) Filing information for the Office of Special Counsel for Tax Hearings. The motions and replies described in this section must be filed with the Office of Special Counsel for Tax Hearings, in accordance with the requirements set out in §1.5 of this title.

- (h) Requirement to serve other parties. A copy of the motion or reply must be sent to other parties on the same date the motion or reply is filed with the Office of Special Counsel for Tax Hearings. Refer to §1.6 of this title (relating to Service of Documents on Parties) for additional guidance.
- (i) Reply to a motion for rehearing. A party may file a reply to a motion for rehearing, but a reply is not required. The reply must be filed no later than the 40th day after the date the decision is signed.
- (j) Action on a motion for rehearing.
 - (1) The comptroller is not required to act on a motion for rehearing. If the comptroller does not timely act to grant the motion for rehearing, the motion for rehearing is overruled by operation of law the 55th day after the decision was signed. If the comptroller grants an extension to file a motion for rehearing and does not timely act to grant the motion for rehearing, the motion for rehearing is overruled by operation of law the 100th day after the decision was signed.
 - (2) If the comptroller acts on a motion for rehearing, the comptroller will send a written order granting or denying a rehearing to each party's designated representative for notice. An order granting a motion for rehearing may or may not include the comptroller's decision upon rehearing.
- (k) Finality. If a motion for rehearing is overruled, whether by order or operation of law, the comptroller's decision is final on the date the motion is overruled.

Effective Date: January 1, 2019

ADMINISTRATIVE HEARINGS SECTION

Texas Comptroller of Public Accounts
P.O. Box 13528 · Austin, Texas 78711-3528

512-463-3830 · 512-463-4617 (fax)
ahs.service@cpa.texas.gov

We're here to help!

IF YOU HAVE QUESTIONS OR NEED INFORMATION, CONTACT US:

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS:

COMPTROLLER.TEXAS.GOV · 111 East 17th Street, Austin, Texas 78774



Sign up to receive email updates on the Comptroller topics
of your choice at comptroller.texas.gov/subscribe/.

800-252-5555

911 Emergency Service/
Equalization Surcharge
Automotive Oil Fee
Battery Fee
Boat and Boat Motor Sales Tax
Customs Broker
Mixed Beverage Taxes
Off-Road, Heavy-Duty Diesel
Equipment Surcharge
Oyster Fee
Sales and Use Taxes

800-531-5441

Cement Tax
Inheritance Tax
Local Revenue
Miscellaneous Gross
Receipts Taxes
Oil Well Servicing Tax
Sulphur Tax

800-442-3453

WebFile Help

800-252-1381

Bank Franchise
Franchise Tax

800-252-7875

Spanish

800-531-1441

Fax on Demand (most
frequently requested Sales
and Franchise tax forms)

800-252-1382

Clean Vehicle Incentive Program
Manufactured Housing Tax
Motor Vehicle Sales Surcharge,
Rental and Seller Financed
Sales Tax
Motor Vehicle
Registration Surcharge

800-252-1383

Fuels Tax
IFTA
LG Decals
Petroleum Products Delivery Fee
School Fund Benefit Fee

800-252-1384

Coastal Protection
Crude Oil Production Tax
Natural Gas Production Tax

800-252-1387

Insurance Tax

800-252-1385

Coin-Operated Machines Tax
Hotel Occupancy Tax

800-252-1386

Account Status
Officer and Director Information

800-862-2260

Cigarette and Tobacco

888-4-FILING (888-434-5464)

TELEFILE: To File by Phone

800-252-1389

GETPUB: To Order Forms
and Publications

800-654-FIND (800-654-3463)

Treasury Find

800-321-2274

Unclaimed Property Claimants
Unclaimed Property Holders

Unclaimed Property
Name Searches

512-463-3120 in Austin

877-44RATE4 (877-447-2834)

Interest Rate

In compliance with the Americans with Disabilities Act, this document may be requested in alternative formats by calling the appropriate toll free number listed or by sending a fax to 512-475-0900.