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## **RULES GOVERNING PETITIONS AND HEARINGS**

*EFFECTIVE 1/31/2023*

The following rules are promulgated in accordance with the requirements of Chapter 25 of the Code of the City of Fort Collins (“the Code”) and by virtue of the authority vested in the Financial Officer by Articles III, IV, V, and VI of Chapter 25 of the Code.

### **1. Definitions**

As used in these Rules, the definitions in Chapter 25 of the Code shall apply, unless the context clearly requires a different meaning. For the purposes of these Rules, the following terms shall have the following meanings:

- A. *Financial Officer* shall mean the Financial Officer of the City of Fort Collins or such other person designated by the Financial Officer, including a hearing officer who is authorized to conduct hearings and issues decisions on behalf of the Financial Officer.
- B. *Person* shall mean an individual, firm, partnership, joint venture, corporation, limited liability company, other business entity, association, estate, trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any group or combination acting as a unit.
- C. *Taxes* shall mean monies due to the City from a Taxpayer under any of the following articles of Chapter 3 and Chapter 25 of the Code: Ch.3 Art. III (Licenses, taxes, regulations and procedures), Ch. 25 Art. III (Sales and Use Tax), Ch. 25 Art. IV (Lodging Tax), Ch. 25 Art. V (Utility Tax), and Ch. 25 Art. VI (Gas Company Occupation Tax).
- D. *Taxpayer* shall mean any person obligated to collect and/or pay tax under the terms of Chapter 25 of the Code.

### **2. Burden of Proof**

Except where otherwise stated in an applicable provision of the Code, the Taxpayer will have the burden of proof to prove the Taxpayer’s position. The Taxpayer’s representative must present sufficient evidence to establish each essential element of the case.

### **3. Form of Petitions**

Petitions filed with the Financial Officer shall be in writing and be clearly designated as a petition.

Petitions shall contain the following information:

- A. The amount and type of tax involved and the time during which it accrued.
- B. The date of the assessment or the date of the decision to deny or reduce a claim for refund of taxes paid.
- C. A plain, concise statement of all claims asserted by the Taxpayer as the basis of the petition.
- D. A plain, concise statement of all facts asserted by the Taxpayer in support of each claim.
- E. A plain, concise statement of all points of law relied on by the Taxpayer in support of each claim, citing pertinent statutes, ordinances, regulations, cases and other authority.
- F. The name, mailing address, telephone number, and e-mail address for the Taxpayer; and, if applicable, the Taxpayer's agent and/or attorney representing the Taxpayer regarding the petition.
- G. If the Taxpayer desires a hearing, a clear statement that the Taxpayer requests a hearing.
- H. A signed statement or attestation by the person filing the petition that the information contained in the petition is true and correct based upon the information and belief of that person.

Compliance with the above requirements is mandatory, and in the event of noncompliance, the Financial Officer may impose any appropriate sanction, including, but not limited to, issuing orders for a more definite statement or dismissing the petition.

#### **4. Time for Filing Petitions**

Petitions shall be filed with the Financial Officer within the time period prescribed in the applicable Code section. If the due date falls on a Saturday, Sunday, legal holiday, or any other day the City is lawfully closed, the due date shall be extended to 5:00 p.m. MST on the next business day.

#### **5. Methods for Filing Petitions**

Petitions may be filed with the Financial Officer by mail to 215 N. Mason St. 2<sup>nd</sup> Floor, Fort Collins, CO 80522 or by e-mail to [salestax@fcgov.com](mailto:salestax@fcgov.com).

Filings made by United States Mail shall be deemed to be filed on the date of the postmark stamped on the envelope in which the document was mailed.

#### **6. Service of Documents**

All pleadings, motions, briefs, or documents filed with the Financial Officer shall be served upon every party in the case. The filing party may serve other parties by email, mail, or hand delivery to the parties' last known address, or if represented, to their tax agent's and/or attorney's last known address. All filings with the Financial Officer shall include a certificate of service, which shall create a rebuttable presumption that the matter was served.

## **7. Documents Must Be Legible**

All petitions, pleadings, motions, briefs, and other documents filed with the Financial Officer shall be legible and if the Financial Officer determines that they are not legible, the Financial Officer may refuse to accept the filing. If the Financial Officer refuses to accept the filing, the Financial Officer shall promptly notify the Taxpayer of such refusal and the reasons therefore.

## **8. Representation Before the Financial Officer**

A Taxpayer that is a natural person or sole proprietorship may appear at the hearing on his or her own behalf or be represented by an attorney.

A Taxpayer that is a limited liability company, partnership, or corporate taxpayer must be represented at the hearing by an attorney.

## **9. Petition Review by Financial Officer**

The Financial Officer will perform all functions necessary and incidental to resolving the matter petitioned, including but not limited to, reviewing all evidence and making a final determination on the matter. The Financial Officer shall be unbiased and independent from the petition under review.

The Financial Officer shall be charged with performing all functions necessary and incidental to making the final determination, including but not limited to: administering oaths; taking testimony; hearing arguments; ruling on motions, including motions for discovery; ruling on objections; and issuing subpoenas.

The Financial Officer should have full working knowledge of all local tax ordinances, rules and regulations and should also be familiar with general laws, constitutional principles and court decisions pertaining to local taxation. The Financial Officer should follow established legal precedent in rendering all decisions. The Financial Officer should also give weight to the decisions of past Financial Officers with respect to issues which may arise during the course of a hearing.

## **10. Hearing Officer**

- A. The Financial Officer may delegate certain responsibilities to an employee of the City or an independent third-party, who, in the opinion of the Financial Officer, possesses the qualifications necessary to assist in rendering a decision in such matters. Nothing herein will be deemed to waive the right of the Financial Officer to seek the advice of legal counsel in performing such functions. The hearing officer shall have the authority granted to the Financial Officer regarding conducting hearings and making determinations on petitions.
- B. The primary role of the hearing officer is to determine whether the taxpayer has presented a valid reason for reducing or eliminating the tax assessment or decision regarding a request for refund or credit. In making this determination, the hearing officer is expected to examine all relevant issues and require the parties to present sufficient evidence upon which to base a decision. In asking questions, the hearing officer is not to be constrained to the evidence presented by the parties and is expected to explore further if necessary to elicit additional information which may be pertinent to the decision.

- C. The individual who is retained to assist the hearing officer should have full working knowledge of all local tax ordinances, rules and regulations and should also be familiar with general laws, constitutional principles and court decisions pertaining to local taxation. The hearing officer should follow established legal precedent in rendering all decisions.

## **11. Hearings**

- A. The Financial Officer shall generally conduct the hearing as a quasi-judicial proceeding in conformance with the procedures and time limits set forth in the particular tax ordinance involved. The Financial Officer may, in their discretion, require the parties to furnish such additional information as the Financial Officer determines necessary to frame the issues prior to the hearing, such as stipulated and disputed facts; lists of exhibits; lists of witnesses; and law relied upon.
- B. No *ex parte* communications with the Financial Officer shall take place except in accordance with generally accepted practice in Colorado courts of general jurisdiction.
- C. All hearings shall be conducted at City offices at 215 N. Mason Street, Fort Collins, CO, unless the Financial Officer orders otherwise, including conducting hearings by telephone, video, or other means of communication.
- D. The Financial Officer shall notify the Taxpayer, the City Attorney's Office, and the Sales Tax Department (or other applicable City employee) in writing of the time and place and/or manner fixed for the hearing at least thirty (30) calendar days prior to the hearing.
- E. All requests to continue a hearing shall be for good cause, in writing, and received by the Financial Officer not less than ten (10) days prior to the date scheduled for the hearing.
- F. Unless the Financial Officer orders otherwise, all parties shall file with the Financial Officer a witness list and copies of all exhibits to be used at the hearing at least seven (7) days prior to the hearing date. All exhibits shall be paginated. The Taxpayer's exhibits shall be identified by letters and the City's exhibits shall be identified by numbers. The Financial Officer shall not accept any information (testimony or exhibits) not filed by the due date, except as the interests of justice and fairness dictate in the Financial Officer's discretion.
- G. Properly authenticated copies may be admitted into evidence or substituted in evidence in place of original documents.
- H. The Financial Officer will issue a written decision no later than thirty (30) business days after the conclusion of the hearing, unless the hearing is continued or the Financial Officer has requested additional information or briefs from either party. In that event, the written decision will be no later than thirty (30) days following the Financial Officer's receipt of the additional information or briefs or the conclusion of the continued hearing.
- I. The order of proceedings at hearings shall be as follows:
- Docket call by the Financial Officer.
  - Opening statement by the Taxpayer followed by opening statement by the City, unless waived by either party or reserved by the City until the opening of the City's case.

- The City may be represented either by an employee of the Sales Tax Department or the City Attorney's Office.
- Presentation of evidence by the Taxpayer, allowing cross-examination by the City.
- Presentation of evidence by the City, allowing cross-examination by the Taxpayer.
- The Financial Officer may at any time ask questions of any witness.
- Rebuttal and surrebuttal evidence, if any.
- Closing argument by the Taxpayer followed by closing argument by the City with the opportunity to reply by the Taxpayer. Either party may elect to submit written briefs in addition to, or in lieu of, closing argument. If either party elects to submit a written brief, then the other party shall be permitted to file an answer brief. The schedule for filing such briefs shall be set by the Financial Officer.

J. All testimony at a hearing shall be given under oath administered by the Financial Officer.

K. Absent good cause, if a Taxpayer fails to attend a hearing, the Financial Officer shall dismiss the Taxpayer's petition.

L. All hearings shall be recorded in any manner permitted by law, including but not limited to, a certified court reporter or by electronic means. A transcript need not be made unless requested by a party. Transcripts of such record shall be made at the expense of the party requesting the transcript. The non-requesting party shall pay the copy fee if a copy is requested.

M. The conduct of the hearing and the admission of evidence shall generally be in accordance with these rules without regard to whether they conform to common-law or statutory rules of procedure or evidence or other technical rules and provided that the rules of evidence, to the extent applicable, shall conform generally with those in civil, non-jury cases in the District Court for the State of Colorado.

## **12. Motions**

Written motions involving a contested issue of law shall be accompanied by a statement of supporting legal authority. The responding party shall have seven (7) days, or such other time as the Financial Officer may allow, in which to file a response.

## **13. Dismissal of Petition.**

Whenever it appears that a matter pending before the Financial Officer involves a question over which the Financial Officer does not have jurisdiction, the matter may be dismissed on the Financial Officer's own motion or on a motion of any party.

## **14. Written Decision**

For petitions that do not request a hearing, the Financial Officer will issue a written decision after the filing of the petition, unless the Financial Officer has requested additional information from either party.

## **15. Rules Specific to Petitions Involving Sales Tax and Use Tax**

The following is applicable solely to petitions challenging an assessment of tax owed or a decision to deny or reduce a refund or credit claim of the taxes imposed by Article III (City Sales and Use Tax Article) of

Chapter 25 of the Code.

- A. A hearing, if any, shall be held and a final order or decision issued within one hundred eighty (180) days from the date a petition is received by the Financial Officer, unless the Taxpayer and the Financial Officer agree in writing: (1) that the hearing shall be held and a final order or decision issued within such further agreed time or (2) that no hearing shall be held before the Financial Officer, in which case, the Taxpayer may pursue further review in accordance with the Code § 25-216 or applicable state law.
- B. If none of the events described here has occurred, the Financial Officer may notify the Taxpayer in writing that the Financial Officer does not intend to conduct a hearing, in which case, the Taxpayer may pursue further review in accordance with the Code § 25-216 or applicable state law.
- C. If none of the events described in Rule 15 A or B has occurred, the Taxpayer may pursue further review in accordance with the Code § 25-216 or applicable state law any time after one hundred eighty (180) days or such further agreed time has passed.