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## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Department of Taxation ("TAX")
<b>Virginia Administrative Code (VAC) citation</b>	23VAC10-20-160, 23VAC10-20-165, 23VAC10-20-170, 23VAC10-20-180 and 23VAC10-20-190
<b>Regulation title</b>	General Provisions Applicable to All Taxes Administered by the Department of Taxation
<b>Action title</b>	Promulgation of an Administrative Appeals regulation section and amendment of existing regulation sections to be consistent with the new section.
<b>Date this document prepared</b>	July 30, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

This regulatory action will promulgate a new regulation section, 23VAC10-20-165, setting forth TAX's administrative appeals process and procedures as outlined in Public Document 06-140 issued by TAX on November 29, 2006. This regulatory action will also repeal 23VAC10-20-170, which is superceded by the new regulation section. 23VAC10-20-165 will turn the current process as detailed by PD 06-140 into a regulation section.

Additionally, this regulatory action will amend 23VAC10-20-160 to reference the new regulation section and remove overlapping information about administrative appeals. TAX will also move some language from 23VAC10-20-160, which will be placed in 23VAC10-20-165, 23VAC10-20-180, and 23VAC10-20-190, which TAX believes are more useful and appropriate sections for the content.

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

The Tax Commissioner approved the promulgation of Administrative Appeals Guidelines as a regulation section on November 29, 2006.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

Code of Virginia § 58.1-203 provides that the “Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department.” The authority for the current regulatory action is discretionary.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of this regulatory action is to create a new regulation section, 23VAC10-20-165, concerning administrative appeals that will give TAX’s current policy the authority of a regulation. This regulatory action will also repeal 23VAC10-20-170, which is being superceded by the new regulation section. Additionally, this regulatory action will amend 23VAC10-20-160 to reference the new regulation section and remove overlapping information about administrative appeals. TAX will also move some language from 23VAC10-20-160, which will be placed in 23VAC10-20-165, 23VAC10-20-180 and 23VAC10-20-190.

A regulation section on administrative appeals will facilitate a predictable and adequate revenue stream for the government to provide for the health, safety, and welfare of its citizens by clearly stating TAX’s policy concerning administrative appeals.

**Rationale for using fast track process**

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii)*

*proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

As the new regulation section will not make any substantive changes to TAX’s current administrative appeals process and existing policies related to the process, this action is not expected to be controversial.

When the Administrative Appeals Guidelines set forth in PD 06-140 were created, TAX met with the Virginia Society of Certified Public Accountants (VSCPA). TAX and VSCPA both agreed on the guidelines before completion. The Virginia Bar Association Tax Section was also given access to the document for review.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.)*

This action will codify in the Virginia Administrative Code TAX’s current policy on appeals as set forth in Public Document 06-140. Creating a new regulation section on administrative appeals will help maximize knowledge of the process among taxpayers.

23VAC10-20-160 will be amended to reference the new regulation section and remove overlap information about administrative appeals. TAX will also remove some language from 23VAC10-20-160, which will be placed in 23VAC10-20-165, 23VAC10-20-180 and 23VAC10-20-190. 23VAC10-20-170 will be repealed because it is superseded by the new regulation section, 23VAC10-20-165.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
*1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*  
*2) the primary advantages and disadvantages to the agency or the Commonwealth; and*  
*3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The regulatory action poses no disadvantages to the public or the Commonwealth. The primary advantage to the public and to the Commonwealth is that by detailing the administrative appeals process, the public will better understand the process and the options available to them. The regulation section will facilitate the appeals process for both the agency and the taxpayer.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no federal requirements applicable to this regulatory action.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

No localities are particularly affected by this regulatory action.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

Since there will be no change to TAX’s policy and the regulation section will merely document the process as is, the only alternative option is to not do anything. By creating the regulation section, taxpayers are given easier access to the information to facilitate the process.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>As this regulation section is reflective of TAX’s current policy on administrative appeals, there should be no impact. The amendment of 23VAC10-20-160, 23VAC10-20-180 and 23VAC10-20-190 and the repeal of 23VAC10-20-170 are non-substantive changes and should also produce no impact.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>As this regulation section is reflective of TAX’s current policy on administrative appeals, there should be no impact. The amendment of 23VAC10-20-160, 23VAC10-20-180 and 23VAC10-20-190 and the repeal of 23VAC10-20-170 are non-substantive changes and should also produce no impact.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the</b></p>	<p>As this regulation section is reflective of TAX’s current policy on administrative appeals, there</p>

<p><b>regulation</b></p>	<p>should be no impact. The amendment of 23VAC10-20-160, 23VAC10-20-180 and 23VAC10-20-190 and the repeal of 23VAC10-20-170 are non-substantive changes and should also produce no impact.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>As this regulation section is reflective of TAX’s current policy on administrative appeals, there should be no impact. The amendment of 23VAC10-20-160, 23VAC10-20-180 and 23VAC10-20-190 and the repeal of 23VAC10-20-170 are non-substantive changes and should also produce no impact.</p>
<p><b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b></p>	<p>As this regulation section is reflective of TAX’s current policy on administrative appeals, there should be no impact. The amendment of 23VAC10-20-160, 23VAC10-20-180 and 23VAC10-20-190 and the repeal of 23VAC10-20-170 are non-substantive changes and should also produce no impact.</p>

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

TAX considered alternatives to the proposed regulatory action. Doing nothing would leave the TAX’s policy on administrative appeals in the form of guidelines, which do not have the authority of a regulation.

Since 1980, administrative interpretations of the tax laws that are not in the form of published rulings or a regulation have not been admissible as evidence in court. Code of Virginia § 58.1-205. Even published “rulings and policies themselves are not entitled to great weight, unless expressed in regulations.” *Chesapeake Hospital Authority v. Commonwealth*, 262 Va. 551, 554 S.E.2d 55 (2001). Therefore, to ensure enforcement, it is necessary to promulgate regulations containing the Tax Commissioner’s interpretations of the tax laws.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This regulatory action is not expected to have an impact on family formation, stability and autonomy.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
23VAC10-20-160		Outlines administrative remedies.	The regulation section will be amended to reference the new regulation section, 23VAC10-20-165, remove overlapping information about administrative appeals and move some content to other sections.
	23VAC10-20-165	Appeals process set forth in PD 06-140.	This action will give the appeals process set forth in PD 06-140 the authority of a regulation.
23VAC10-20-170		Application for correction before payment.	This action will repeal this regulation section. The subject of this repealed section will be addressed on detail in the new 23VAC10-20-165.
23VAC10-20-180		Amended return claiming a refund.	The regulation section will have some language added from 23VAC10-20-160, which TAX believes is a more useful and appropriate location for the content.
23VAC10-20-180		Protective claims (after payment).	The regulation section will have some language added from 23VAC10-20-160, which TAX believes is a more useful and appropriate location for the content.