

ADMINISTRATIVE APPEAL GUIDELINES FOR TAX ASSESSMENTS ISSUED BY THE VIRGINIA DEPARTMENT OF TAXATION

§ 1. Introduction.

These Administrative Appeal Guidelines for Tax Assessments Issued by the Virginia Department of Taxation (“Guidelines”) provide information to taxpayers and tax practitioners about the process for appealing tax assessments issued by the Department of Taxation (the “Department”). The Guidelines are intended to supplement *Va. Code* § 58.1-1821, Title 23 of the Virginia Administrative Code 10-20-160 and 10-20-170, Tax Bulletin 03-8 (7/15/03) and the administrative appeal information found in the Taxpayer Bill of Rights. The Guidelines were developed in collaboration with tax practitioners to clarify and facilitate the administrative appeal process and establish a framework for appeal conferences between taxpayers and the Department. The Guidelines will be formally adopted by the Department of Taxation as a regulation through procedures established under the Administrative Process Act (APA).

The sections that follow define important terms related to the administrative appeal process, explain how to determine filing deadlines and provide an overview of the administrative appeal process. The Guidelines discuss what constitutes a complete appeal, when and where to file an administrative appeal, a taxpayer’s conference rights and the procedures for requesting and conducting a conference. The Guidelines also provide information for filing a request for reconsideration of a determination issued by the Tax Commissioner.

§ 2. Definitions.

The following definitions of words and terms control the meanings of the words and terms in these Guidelines.

“Administrative appeal” means an application for correction of an assessment filed with the Tax Commissioner pursuant to *Va. Code* § 58.1-1821.

“Assessment” means a determination of the amount of tax, including additional or omitted tax, that is due. An assessment includes a written assessment made pursuant to a notice by the Department or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. A return filed or tax paid before the last day prescribed by law for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

The denial of a refund claim is deemed to be an assessment, and a taxpayer may file an administrative appeal in response to the denial of a refund claim.

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“Collection action” means the use of any means permitted by law, direct or indirect, by the Department, or collection agencies authorized by the Department, to obtain payment on an assessment.

“Complete appeal” means an administrative appeal containing sufficient information, as prescribed in § 4.2 A of these Guidelines, so that the grounds upon which the taxpayer relies in contesting an assessment are fully set forth to allow the Tax Commissioner to make an informed final determination.

“Date of assessment” means, for purposes of filing an administrative appeal, the date stated on the notice of assessment.

In the case of a denial of a refund claim, the date of assessment is the date of the Department’s correspondence informing the taxpayer that the refund claim is denied. If the Department fails to act within three months on an amended return claiming a refund, the date of assessment is the day following the expiration of the three-month period for the purpose of permitting the taxpayer to pursue an administrative appeal under *Va. Code* § 58.1-1821.

“Department” means the Virginia Department of Taxation and its employees.

“Determination” means the Tax Commissioner’s written final determination issued pursuant to *Va. Code* § 58.1-1822 to a taxpayer’s administrative appeal. A determination also includes the Tax Commissioner’s written response to a request for reconsideration pursuant to § 6 of these Guidelines, except as provided in § 6 E.

“Notice of assessment” means the Department’s official form, labeled “Notice of Assessment,” that contains written information that sets out the date of the assessment, amount of assessment, the tax type, taxable period, account number, bill number and name of the taxpayer.

A subsequent statement of balance due the Department does not constitute a new notice of assessment. Such subsequent statements include reports of payments applied to assessments, updated bills reflecting additional accrued interest, or other changes to an assessment.

A notice of assessment may be preceded by correspondence proposing adjustments to a filed return based on an audit or other information received by the Department. Such correspondence is not a notice of assessment but is intended to provide taxpayers an opportunity to correct any errors before an assessment is made.

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“Notice of intent to appeal” means a taxpayer’s written statement filed with the Department that informs the Department of a taxpayer’s intent to file an administrative appeal of an assessment to the Tax Commissioner.

“Tax Commissioner” means the chief executive officer of the Department of Taxation.

“Taxpayer” means a person, corporation, partnership, limited liability company, organization, trust or estate or other entity subject to the taxes administered by the Department of Taxation.

§ 3. Time for Filing an Administrative Appeal.

Virginia Code § 58.1-1821 provides that a taxpayer assessed with any tax administered by the Department may, within 90 calendar days after the date of such assessment, file an administrative appeal with the Tax Commissioner.

- A. The 90-day limitations period begins on the calendar day after the date of assessment and continues for 90 consecutive calendar days (including weekends and holidays).
- B. Regardless of the delivery method used, if the 90th calendar day after the date of assessment is a Saturday, Sunday, federal holiday or Virginia state holiday, the administrative appeal will be considered timely if filed on the Commonwealth’s next business day.
- C. An administrative appeal that is delivered to the Department using the United States mail must be postmarked or have a metered date that is on or before the 90th calendar day after the date of assessment to be considered timely filed.

The Department will use the United States mail postmark in cases where there is both a postmark date and a metered date on the administrative appeal.

In the case of metered mail not bearing a United States mail postmark, an appeal or a request for redetermination will be deemed to be filed untimely if:

- 1. the metered date is missing from the metered imprint and the item is received by the Department more than three business days after the last day for filing the appeal or a request for redetermination; or

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2. the metered date is present bearing a timely date for the filing, but the filing is received by the Department more than ten business days after the last day for filing, in which case it is presumed that the metered date does not accurately reflect the date on which the filing was deposited with the United States Postal Service.
- D. An administrative appeal that is delivered to the Department by hand, by common carrier or delivery service, facsimile transmission, electronic mail ("e-mail") or any means of delivery other than by United States mail, must be dated and received on or before the 90th calendar day after the date of assessment to be considered timely filed, except as noted below.
1. An administrative appeal delivered by hand will be date-stamped by an employee of the Department on the day received. This date will be the filing date for purposes of determining if the administrative appeal is filed within the 90-day limitations period.
 2. The date of receipt by the carrier or delivery service shown on the shipping or address label or elsewhere on the envelope or package delivered to the Department by common carrier or delivery service will be the filing date of the administrative appeal for purposes of determining if the administrative appeal is filed within the 90-day limitations period.
 3. The most recent date printed on a facsimile transmission or shown on an e-mail transmission will be the filing date of the administrative appeal for purposes of determining if the administrative appeal is filed within the 90-day limitations period unless, for whatever reason, that date is patently inconsistent with the date actually received by the Department.
 4. An administrative appeal received by the Department via hand delivery, in an envelope or package, by facsimile transmission, by e-mail, or by any other means of delivery bearing no legible date will be considered filed on the date of actual receipt by the Department.
- E. The following examples illustrate the application of the 90-day limitations period for administrative appeals.
1. The Department issues Taxpayer A a notice of assessment with an assessment date of February 28, 2006. Taxpayer A files an administrative appeal with the Tax Commissioner by United States mail. The 90-day limitations period to file an administrative appeal starts on March 1, 2006, the first calendar day after the date of assessment. The 90th day after the

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date of assessment falls on May 29, 2006, which is a state holiday. Taxpayer A's administrative appeal will be considered timely filed if postmarked on or before May 30, 2006, the next business day following a state holiday.

2. The Department issues Taxpayer B a notice of assessment with an assessment date of March 13, 2006. The 90-day limitations period to file an administrative appeal starts on March 14, 2006. The 90th day after the date of assessment falls on June 11, 2006, which is a Sunday. Taxpayer B's administrative appeal will be considered timely filed if it is e-mailed to the Department on or before June 12, 2006.
3. The Department issues Taxpayer C a notice of assessment with an assessment date of May 2, 2006. The Department later sends Taxpayer C a statement dated June 5, 2006, showing that the original assessment remains outstanding and that additional interest has accrued on the assessment. The 90-day limitations period to file an administrative appeal begins on May 3, 2006, the first calendar day after the date of assessment. The 90th day after the date of assessment falls on August 1, 2006, which is a regular business day. Taxpayer C's administrative appeal will be considered timely filed if the envelope is postmarked or dated by a delivery service on or before August 1, 2006. The 90-day limitations period is not extended by the Department's issuance of the statement dated June 5, 2006 to Taxpayer C.

§ 4. Overview of the Administrative Appeal Process.

§ 4.1. Taxpayer Appeal Rights.

- A. *Virginia Code* § 58.1-1821 gives a taxpayer the right to an administrative appeal of an assessment issued by the Department of Taxation, if the taxpayer believes that the Department has incorrectly assessed tax, penalty or interest. The administrative appeal must include all elements listed in § 4.2 A of these Guidelines.
- B. The Department strictly enforces the 90-day limitations period for filing a timely administrative appeal. A taxpayer must file a complete appeal within 90 calendar days after the date of assessment. See § 3 of these Guidelines for computing the 90-day limitations period.

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- C. A taxpayer is not required to pay the portion of an assessment that is the subject of an administrative appeal until the Tax Commissioner has issued a determination that requires such payment, unless the Tax Commissioner determines collection is in jeopardy.
- D. An administrative appeal may be filed with the Department by hand delivery, e-mail, common carrier, delivery service, United States mail, facsimile transmission or by any other means that ensures the filing of a complete appeal to the Department within the 90-day limitations period.
- E. The Department will determine the manner best suited to resolve an appeal, which may include submission of additional documents and memoranda, further audit, holding a conference with the taxpayer or the taking of testimony.
- F. An administrative appeal of an assessment filed pursuant to *Va. Code* § 58.1-1821 is not subject to the Administrative Process Act (*Va. Code* § 2.2-4000, *et seq.*)

§ 4.2. Complete Administrative Appeal.

- A. In order to be complete, an administrative appeal shall contain the following:
 - 1. Identification of the taxpayer (to include mailing address, federal tax identification number or social security number);
 - 2. Type of tax;
 - 3. Taxable period;
 - 4. Date of assessment (if paid, include date of payment);
 - 5. Remedy sought;
 - 6. A statement signed by the taxpayer or duly appointed or authorized agent or attorney setting forth each alleged error in the assessment, the grounds upon which the taxpayer relies and all facts relevant to the taxpayer's contention; and
 - 7. Controlling legal authority (statutes, regulations, rulings of the Tax Commissioner, court decisions, etc.) upon which the taxpayer's position is based.
- B. Administrative Appeal Form
 - 1. The Department has available an Administrative Appeal Form that can be used to file an administrative appeal with the Tax Commissioner. While use of this form is not mandatory, the information required on the form must be included in the administrative appeal.

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2. The form can be found on the Department's website at www.tax.virginia.gov.

C. Supporting Documentation

1. The taxpayer should include with the administrative appeal all the essential documentation that supports its contentions. If the supporting documentation cannot be provided at the time of filing the administrative appeal, the taxpayer should state the reasons why.
2. The Department may allow the taxpayer up to 60 additional days from the date the Department acknowledges receipt of the administrative appeal to submit the necessary documents. It will be within the Department's discretion to allow any additional time beyond the 60 additional days.
3. In some instances, the taxpayer may be permitted to submit a sample of the supporting documents. The taxpayer must agree to make the remainder of the documents available for review by the Department.
4. During the course of the administrative appeal process, the Department may request additional information from the taxpayer to facilitate rendering a determination of the taxpayer's administrative appeal.

D. Incomplete Appeal/Notice of Intent to Appeal

1. An incomplete appeal or notice of intent to appeal does not satisfy or extend the 90-day limitations period. Informal contact made by a taxpayer with the Department after an assessment has been issued does not constitute a complete appeal or a notice of intent to file an administrative appeal.
2. Examples of informal contact include a phone call to an auditor or other Department personnel or a meeting with Department personnel to discuss the assessment.
3. Examples
 - a. Complete Administrative Appeal

An administrative appeal is filed within the 90-day limitations period and includes the relevant facts, the basis for the appeal and the legal authority that support the taxpayer's position. A sample of the documentation that supports the taxpayer's position is also

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included. The taxpayer notes that the remainder of the documentation is available for review.

b. Incomplete Administrative Appeal

- (1) The taxpayer's representative files a notice of intent letter with the Department within the 90-day limitations period, indicating that it will supplement the letter of intent with the complete grounds for appeal and documentation. The 90-day limitations period expires before the Department receives the supplement.
- (2) A taxpayer submits a written request for a conference to discuss an assessment. This action, by itself, does not constitute a complete appeal.

E. Collection Action

1. Upon receipt of a complete appeal or a notice of intent to appeal within the 90-day limitations period, the Department will suspend collection action on the contested assessment, unless the Tax Commissioner determines collection of the assessment is in jeopardy.
2. When a notice of intent to appeal is filed and a complete appeal is not filed within the 90-day limitations period, the suspension of collection will be released, and collection action will resume.

F. Accrual of Interest

1. While the taxpayer's administrative appeal is pending, interest will accrue on any outstanding balance. To avoid the accrual of additional interest, the taxpayer may choose to make full payment of the assessment. Payment of any disputed tax, penalty, or interest shall not be construed to mean that the taxpayer is in agreement with the assessment.
2. If the taxpayer decides to make full payment and the final determination results in a refund, the taxpayer will be paid interest on the overpayment of the erroneously assessed tax, pursuant to *Va. Code* § 58.1-1833.

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G. Acknowledgement Letter

1. The taxpayer will receive an acknowledgement letter from the Department once the administrative appeal or a notice of intent to appeal has been received. The acknowledgement letter sent by the Department after an appeal is filed will provide the taxpayer with the name and phone number of the analyst assigned to review the appeal.
2. The acknowledgement letter serves only to indicate receipt of the taxpayer's administrative appeal by the Department. It does not acknowledge whether the administrative appeal is complete or whether the appeal was timely filed.
3. If it is determined that the taxpayer has not filed a complete appeal, the analyst assigned to the appeal will notify the taxpayer in separate correspondence.

H. Power of Attorney

1. An administrative appeal filed on behalf of a taxpayer by an attorney, accountant, tax preparer, or other representative of the taxpayer should be accompanied by a properly executed Power of Attorney. The Power of Attorney must be signed and dated by both the taxpayer and the taxpayer's representative(s).
2. A Power of Attorney must be filed if the taxpayer will be represented in a taxpayer conference with the Department by an attorney, accountant, tax preparer, or other representative, and a Power of Attorney has not been previously filed with the Department with regard to the administrative appeal.
3. Form PAR 101, Power of Attorney and Declaration of Representative can be found on the Department's website. Form PAR 101 or any other Power of Attorney form that includes the same information will be accepted by the Department.
4. Failure to provide a Power of Attorney within the 90-day limitations period does not preclude consideration of the administrative appeal; however, it may delay the issuance of the final determination.

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I. Tax Commissioner's Determination

The Tax Commissioner will issue a determination letter in response to the taxpayer's administrative appeal. The determination will be based on the issues raised in the taxpayer's administrative appeal.

§ 5. Appeal Conference.

Any taxpayer assessed with any tax administered by the Department as stated in Title 58.1 of the *Code of Virginia*, and any person assessed a penalty pursuant to *Va. Code* § 58.1-1813, and who has filed a complete appeal is entitled to a conference, if requested, prior to the Tax Commissioner issuing a determination.

A. Purpose of Conference

1. The appeal conference is an informal means by which a taxpayer can present legal arguments and factual documentation to the Department concerning the protested issue(s) in its administrative appeal.
2. A conference to resolve an administrative appeal is not subject to the Administrative Process Act (*Va. Code* § 2.2-4000, *et seq.*).

B. Taxes Discussed in the Conference

1. Any tax administered and assessed by the Department as stated in Title 58.1 of the *Code of Virginia* may be discussed in the conference.
2. The taxes in Subtitle II of Title 58.1 of the *Code of Virginia* are administered by other state agencies. Administrative issues related to these taxes should be resolved through the appropriate agency.

C. Requesting a Conference

1. A taxpayer may request a conference at the time a complete appeal is filed with the Tax Commissioner. The conference request must be related to an audit assessment being addressed in the appeal.
2. A taxpayer may also request a conference in a separate letter while the administrative appeal is pending. The taxpayer may mail, fax or e-mail a written request for a conference to the Department using the contact information located in § 7 of these Guidelines.

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3. The taxpayer may also request a conference by telephoning the analyst assigned to the administrative appeal.

D. Granting a Conference

1. A taxpayer will be granted a conference provided a complete appeal has been filed within the 90-day limitations period.
2. The Department will not grant a conference for an administrative appeal deemed frivolous or for cases in which a taxpayer requests a conference for the purpose of delaying collection action on a valid assessment.

E. Scheduling a Conference

Every attempt will be made to schedule a date and time that is mutually convenient for both the taxpayer and the Department. The Department will notify the taxpayer by a confirmation letter of the date and time for the conference.

F. Location of Conference

1. A conference will normally be held in the Department's main office in Richmond, Virginia. As a convenience for taxpayers, a conference may be held by telephone.
2. A conference may also be held, upon request and at the Department's discretion, at other locations. A taxpayer should provide the Department sufficient information to support requests for conferences at other sites.

G. Conference Attendees

1. The conference will be conducted by the Tax Commissioner or a designee(s) of the Tax Commissioner. The analyst assigned to the taxpayer's administrative appeal will also attend the conference.
2. The taxpayer and the taxpayer's representative(s) may attend the conference. The taxpayer is not required to attend. See § 4.2 H of these Guidelines for information regarding a Power of Attorney.

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H. Documentation

1. The taxpayer should be prepared to submit documentation that supports or validates the issues raised in the administrative appeal, as appropriate.
2. A sample of documentation is acceptable, provided the taxpayer agrees to give the Department access to the remainder of the documentation for review.

I. After the Conference

1. The Tax Commissioner or his or her designee will not issue a determination at the conference. The information and supporting documentation presented will be considered as part of the administrative appeal.
2. The Tax Commissioner will issue a determination to the taxpayer's administrative appeal after careful consideration of all information provided, applicable statutes and regulations.

§ 6. Request for Reconsideration.

A taxpayer that disagrees with the Tax Commissioner's final determination issued pursuant to *Va. Code* § 58.1-1822 may request a reconsideration of the determination.

A. Requirements

In order for the Tax Commissioner to grant a request for reconsideration, the request must be received by the Department not later than 45 days after the final determination and the taxpayer must demonstrate one of the following:

1. The facts upon which the original determination is based are misstated by the Tax Commissioner or are inaccurate, and the determination would have a different result based on a correction of the Tax Commissioner's misstatement of the facts presented or a clarification of the original facts presented in the taxpayer's administrative appeal;
2. The law upon which the original determination is based has been changed by legislation, court decision or other authority effective for the tax period(s) at issue;

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3. The policy upon which the original determination is based is misapplied, and the determination would have a different result based on the application of the proper policy; or
4. The taxpayer has discovered additional evidence or documentation that was not available to the taxpayer at the time the original administrative appeal was filed with the Department, and the additional evidence or documentation could produce a result different from the original determination.

In addition, a taxpayer's request for reconsideration must include the information required for a complete appeal. The taxpayer's request should also include the appropriate documentation (if applicable) to support the taxpayer's position. A sample of the documentation is acceptable, provided the taxpayer agrees to give the Department access to the remainder of the documentation for review. Documentation provided with the original administrative appeal does not need to be resubmitted.

If at least one of the four requirements listed above is satisfied, and the request for reconsideration includes the information required for a complete appeal, the Tax Commissioner will grant a taxpayer's request for reconsideration.

B. Collection Action

1. Collection action will be suspended on the portion of the assessment related to the contested issues while the request for reconsideration is pending with the Department.
2. Collection action will not be suspended on any portion of the contested assessment if the request for reconsideration fails to satisfy the requirements in subsection A. For example, a notice of intent to file a request for reconsideration or a request for a conference without any other information does not meet the requirements specified in subsection A and is not sufficient to suspend collection action.
3. Collection action will not be suspended on the assessed amount attributable to any uncontested issues.

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C. Conference

1. A conference to discuss the issues raised in the request for reconsideration may be granted at the discretion of the Department. In the event a conference is granted, it will be scheduled at a date and time that is mutually convenient for both the taxpayer and the Department.
2. If appropriate and agreed to by both the taxpayer and the Department, the conference may be held by telephone.

D. Denial of Request for Reconsideration

A request for reconsideration will not be granted if the Tax Commissioner determines the request is:

1. Frivolous or intended to delay collection action on an assessment ruled to be proper in a determination issued pursuant to *Va. Code* § 58.1-1822.
 - a. A request for reconsideration will be deemed frivolous if it is based on arguments that are not grounded in law or fact.
 - b. A request for reconsideration will be deemed as intending to delay collection action if it repeats the same information contained in the taxpayer's original administrative appeal letter and offers no new information or new legal arguments.
2. Received by the Department more than 45 days after the final determination.

- E. The Tax Commissioner's written response denying a request for reconsideration based on a finding that (1) the request fails to meet the requirements in subsection A, or (2) one of the conditions specified in subsection D exists is not a final determination pursuant to *Va. Code* § 58.1-1822 for purposes of filing an application for correction with the circuit court pursuant to *Va. Code* § 58.1-1825.

§ 7. Contact Information to File Appeals and Reconsiderations.

Please use the following contact information to file an administrative appeal or request for reconsideration with the Department. This information can also be used to request a conference. The forms mentioned in these Guidelines can be found at the Department's website.

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A. Department Address

1. For regular mail delivery:
Tax Commissioner
Virginia Department of Taxation
Post Office Box 27203
Richmond, Virginia 23261-7203
2. For certified mail delivery:
Tax Commissioner
Virginia Department of Taxation
3600 West Broad Street
Richmond, Virginia 23230-4915
3. For overnight express mail delivery:
Tax Commissioner
Virginia Department of Taxation
Main Street Centre
600 East Main Street, 15th Floor Security
Richmond, Virginia 23219

B. Facsimile Phone Number for Appeals and Rulings Unit

(804) 371-7179

C. Department Website

www.tax.virginia.gov

**Virginia Department Of Taxation
Administrative Appeal Pursuant To Virginia Code § 58.1-1821**

Taxpayer Information

Name of Taxpayer _____

Mailing Address _____

Administrative Appeal Information

Tax Contested (Check All That Apply)

Tax Type

- Individual Income Tax
- Corporate Income Tax
- Retail Sales And Use Tax
- Other (Specify) _____

Tax Period(s) or Taxable Year(s)

Virginia Department Of Taxation Account Number _____

FEIN Or SSN _____

Date(s) Of Assessment(s)

Bill Number(s)

Issue(s) - State In As Few Words As Possible The Issue(s) You Are Contesting

Controlling Legal Authority (Please Cite Specific Relevant Authorities)

Virginia Code _____

Regulations (Virginia Administrative Code) _____

Prior Ruling Of The Tax Commissioner (Public Documents) _____

Other _____

On attached sheets, please fully describe the issue(s) contested. Please note that this appeal will be decided based on the facts before the Department of Taxation. If additional information is needed or requested, it must be furnished with in the prescribed time period or the case will be decided based on the available facts.

Submitted By*

*A Power of Attorney must be provided authorizing representation of the Taxpayer.

Address _____

Telephone _____

Date _____

Fax Number _____

E-mail Address _____