



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Tax

RULE TYPE: Legislative

TITLE-SERIES: 110-10G

RULE NAME: ALTERNATIVE RESOLUTION OF TAX
DISPUTES

CITE AUTHORITY: W. Va. Code §11-10-23

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Anoop Bhasin -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 110
LEGISLATIVE RULE
STATE TAX ~~DEPARTMENT~~DIVISION

SERIES 10G
ALTERNATIVE RESOLUTION OF TAX DISPUTES

§110-10G-1. General.

1.1. Scope -- This rule adopts and implements alternative dispute resolution mechanisms in order to encourage taxpayers to resolve tax disputes through voluntary settlements rather than litigation. If there is a conflict between this rule and other rules which have been previously promulgated, this rule governs.

1.2. Authority -- W. Va. Code §11-10-23.

1.3. Filing Date -- ~~May 7, 2004.~~

1.4. Effective Date -- ~~June 15, 2004.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2035.

§110-10G-2. Definitions.

For the purposes of this rule, the following terms used in this rule have the meanings set forth in this section, unless a different meaning is clearly indicated in the context in which the term is used.

2.1. "Alternative dispute resolution" means an alternative to courtroom litigation or agency adjudication, including conciliation with the Tax ~~Department~~DIVISION ~~and mediation~~ and hearings before the Office of Tax Appeals.

2.2. "Commissioner" or "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or his or her delegate.

2.3. "Code" or "this Code" means the Code of West Virginia, 1931, as amended.

2.4. "Conciliation" means a method of dispute settlement in which parties clarify issues and narrow differences through the aid of an individual called a "conciliator".

2.5. ~~"Department"~~"Division" or "Tax ~~Department~~DIVISION" means the West Virginia State Tax ~~Department~~Division.

2.6. "Financial hardship claim" means a financial inability to pay due to factors including, but not limited to: the amount of the debt; sudden or unforeseen illness or accident; or loss of income or property, beyond control of the taxpayer.

~~2.6. "Mediation" means a method of dispute resolution in which parties use an impartial third person called a "mediator" to assist the parties to negotiate a settlement.~~

2.7. "Office of Tax Appeals" means the West Virginia Office of Tax Appeals created by W. Va. Code §11-10A-1 *et seq.* as an independent, quasi-judicial agency that is in the Department

of Tax and Revenue for administrative purposes only.

2.8. "Party" means the Tax ~~Department~~Division or the taxpayer seeking to resolve a tax dispute through alternative dispute resolution.

2.9. "Tax" means any tax administered by the Tax ~~Department~~Division to which the alternative dispute resolution mechanisms set forth in this rule applies, and includes within its meaning any applicable interest, additions to tax and penalties.

2.10. "Taxpayer" means any person liable for payment of, or required to file a return for, any tax administered under W. Va. Code §11-10-1 *et. seq.*

§110-10G-3. Jurisdiction and Scope of Alternative Dispute Resolution.

3.1 A taxpayer may request alternative dispute resolution ~~after receipt~~prior to issuance of a finalized notice of ~~proposed~~assessment. A taxpayer for whom alternative dispute resolution has been unsuccessful may appeal to the Office of Tax Appeals upon finalization of their assessment.

3.1.1. Conciliation resulting in a final agreement is conclusive and binding on both parties and unless there is fraud, malfeasance or misrepresentation of a material fact, the agreement precludes any subsequent appeal of the matters agreed to in the final agreement and the matters agreed upon shall not be reopened or the agreement modified.

3.2. A taxpayer may petition the Tax ~~Department~~Division for conciliation, ~~or if conciliation does not resolve the dispute, the Office of Tax Appeals for mediation.~~

~~3.2.1. The mediation program of the Office of Tax Appeals is set forth in the procedural rule for the Rules of Practice and Procedure Before the West Virginia Office of Tax Appeals, §§121-CSR1§1 et seq.~~

~~3.2.2.~~3.2.1. The Tax ~~Department~~Division shall promulgate any procedural rules, forms, instructions, and publications necessary or useful to implement the conciliation program adopted in this rule.

3.3. Alternative dispute resolution shall not apply to financial hardship claims, collection cases, disputes already in litigation, constitutional issues, licensing laws administered by the Commissioner, jeopardy assessments or assessments made pursuant to interstate taxing agreements. However, participation in alternative dispute resolution shall not prevent the Commissioner from making jeopardy assessments in accordance with W. Va. Code §11-10-7(b).

3.4. Alternative dispute resolution shall not be available if authoritative resolution of an issue is needed for precedential value, if formal resolution is needed to avoid variation in treatment of taxpayers, or if a formal proceeding before the Office of Tax Appeals is otherwise in the public interest or sound tax administration.

3.5. When alternative dispute resolution is applicable and available, the ~~Department~~Division shall send a taxpayer to whom a notice of assessment would otherwise be sent a notice of proposed assessment. A taxpayer ~~shall~~must file the request for the alternative dispute resolution ~~within thirty calendar days after the date the taxpayer received the written~~prior to issuance of a finalized notice of proposed assessment. If the request is not timely received, the ~~Department~~Division shall send the taxpayer a statement of account, and a notice of assessment and the time limitations set forth in the Code for filing a petition for hearing in the Office of Tax

Appeals shall commence to run.

~~3.5.1. A notice of proposed assessment shall be served in the same manner that a notice of assessment is served under W. Va. Code §11-10-5e.~~

3.6. Conciliation shall not suspend the accrual of any amount which may be due for interest, additions to tax and penalties.

§110-10G-4. Conciliation.

4.1. The Tax Commissioner shall appoint a conciliation coordinator, an assistant conciliation coordinator and conciliators from available staff of the Tax ~~Department~~Division.

4.1.1. If funds are available, the Tax Commissioner may enter into contracts with individuals and organizations to conduct conciliation.

4.2. A taxpayer who has received a notice of proposed assessment pursuant to a field or internal desk audit may request conciliation by filing a written request with the conciliation coordinator. The notice shall inform the taxpayer of the right to request conciliation ~~or mediation~~ and the requirements that must be met by the taxpayer in order to file a request.

4.2.1. The conciliation coordinator or assistant conciliation coordinator shall assign a date, time and place for a conciliation conference when a request for conciliation is approved, and shall notify the parties by written notice at least twenty calendar days in advance of the conference date, which shall be within forty-five calendar days after the request is received, unless continued for good cause.

4.3. A conciliator assigned to a particular case may have no financial or personal conflict of interest with respect to the taxpayer or issue in controversy in that case.

4.4. A conciliator shall conduct conciliation impartially and informally, without regard to the rules of evidence, in a conference where the parties are afforded the opportunity to resolve their disagreements on the facts and issues in dispute. The conciliator's role is to guide the parties to mutual agreement, rather than imposing an agreement on the parties. The goal of the conciliator shall be, where possible, in whole or in part, to eliminate the need for a hearing at the Office of Tax Appeals or to narrow the scope of the facts and issues in dispute if there is a hearing.

4.5. The Tax ~~Department~~Division shall develop a form requesting the following information and any other information considered relevant.

4.5.1. The name and address of the taxpayer;

4.5.2. The name and address of the taxpayer's representative, if any;

4.5.3. The type and amount of tax in controversy and all applicable taxable periods involved;

4.5.4. The action or decision being protested and the operating unit or division taking that action or making that decision;

~~4.5.5. The facts and law which the taxpayer believes to be relevant to the controversy;~~

~~4.5.6. The signature of the taxpayer or the taxpayer's representative, beneath statements to the effect that the facts set forth in the request are truthful and accurate; that no~~

~~relief has previously been granted for the same controversy; that the running of time limitations on making assessments is suspended during conciliation; and that the taxpayer acknowledges and waives any potential conflict of interest the conciliator may have as an employee of the Department~~Division;

~~4.5.7-4.5.5.~~ A legible copy of the notice of proposed assessment that is at issue; and

~~4.5.8-4.5.6.~~ An original copy of a power of attorney, if applicable.

4.6. The Tax ~~Department~~Division may at any time prior to or during conciliation request that the taxpayer supply additional information in order to process the request for conciliation or resolve the issues in the request.

4.7. Taxpayers requesting conciliation may represent themselves, or may be represented by an attorney, accountant, enrolled agent or any other person.

4.7.1. A partnership may act through one of its general partners without filing a power of attorney, and may act through one of its limited partners or employees if a power of attorney is filed.

4.7.2. A corporation may act through one of its officers without filing a power of attorney, and may act through one of its employees if a power of attorney is filed.

4.7.3. A limited liability company may act through one of its officers or managers without filing a power of attorney, and may act through one of its employees if a power of attorney is filed.

4.7.4. An individual requesting conciliation may be represented by a friend or member of the family who is not an attorney only if a power of attorney is filed, unless the individual is present during conciliation or permission is received by the individual from the conciliation coordinator or assistant conciliation coordinator.

4.8. The conciliation coordinator may reject a request for conciliation that is frivolous or that is filed for the purpose of delaying the collection of tax.

4.9. Because conciliation is a voluntary process, both parties are required to agree in order to reach a settlement or other agreement. Either party may withdraw from conciliation for any reason at any time prior to the termination of conciliation by notifying the conciliator and the other party in writing.

4.10. In order to expedite the prompt resolution of disputes, the Tax Commissioner may delegate to the conciliator in advance of the conciliation conference the right to waive or modify interest, penalties, additions to tax and any other matters the Commissioner considers appropriate, in accordance with the Commissioner's authority under the Code.

4.11. If the parties reach an agreement, one of the parties or the conciliator shall memorialize the agreement in writing, and the taxpayer shall sign, date and return it.

4.11.1. The agreement shall include a waiver of the right to petition for a hearing before the Office of Tax Appeals.

4.11.2. The agreement shall have no precedential value or estoppel effect in any other proceeding.

4.12. The conciliator may not be called as a witness in any litigation or mediation involving the parties in any way relating to the dispute that is the subject of conciliation.

§110-10G-5. Confidentiality.

5.1. The provisions of W. Va. Code §11-10-5d, concerning confidentiality and disclosure of tax returns and information are applicable to all aspects of conciliation.

5.2. Confidentiality shall not be interpreted to require the exclusion at a subsequent hearing of any information otherwise available or discoverable merely because the information was presented in the course of conciliation.

5.3. All aspects of conciliation are exempt from the requirements of W. Va. Code §§ 6-9A-1 *et seq.* "Open Government Proceedings" and 29B-1-1 *et seq.* "Freedom of Information."