

Chapter 01 Administrative Practices and Procedures for the Department of Revenue

100 Statutory Authority

This Regulation is promulgated pursuant to the authority and requirements of the Mississippi Administrative Procedures Law.

101 Applicability

This Regulation shall be applicable to all matters falling within the jurisdiction of the Mississippi Department of Revenue and the Commissioner except to the extent the laws of the State of Mississippi provide otherwise. This Regulation is in addition to and supplements those statutory provisions which may be applicable.

102 General Purpose

The Department of Revenue regulates most tax matters in the State of Mississippi. The Department's responsibilities also include the regulation of alcoholic beverages, property taxes, motor vehicle tags and titles, issuing permits and certain business registrations. The Department and Commissioner interpret the statutes that they are charged to administer and enforce.

103 Definitions

When used in this Regulation:

1. "Agency", "Department" or "Department of Revenue" means the various offices, bureaus, and divisions of the Mississippi Department of Revenue that carry out the functional duties and responsibilities of the Commissioner as authorized by law.
2. "Board of Tax Appeals" means the three-member appellate body as legally constituted and authorized by statute to hear appeals of Review Board decisions and certain other decisions and actions by the Agency.
3. "Commissioner" means the Commissioner of the Department of Revenue.
4. "Denial" means the final decision of the Agency staff to deny the claim, request for waiver or application being considered. In this context, the Review Board staff is not included in the Agency staff. Denial does not mean the act of returning or refusing to consider a claim, request for waiver, or application for permit, title or tag by the Agency staff due to a lack of information and/or documentation, unless the return or refusal is in response to a representation by the person who filed the claim, request for waiver, or application in issue that the missing information and/or documentation cannot or will not be provided.
5. "Executive Director" means the Executive Director of the Board of Tax Appeals.
6. "Hearing Officer" means an individual selected by the Chairman of the Review Board from a pool of qualified individuals designated by the Commissioner to serve as administrative hearing officers to conduct a hearing on an appeal of a notice of intent to suspend, surrender, seize or revoke a permit, tag, title, IFTA license or IRP registration.
7. "IFTA License" means a permit, license or decal that the Agency is authorized to issue or revoke under the Interstate Commercial Carriers Motor Fuel Tax Law or the International Fuel Tax Agreement.

8. "IFTA Licensee" means a person holding the IFTA license, applying for an IFTA license or renewing an IFTA license.
9. "IRP Registration" means the registration of a vehicle under the provisions of the International Registration Plan.
10. "IRP Registrant" means a person in whose name a vehicle or vehicles are registered under the provisions of the International Registration Plan.
11. "IRP Credentials" means the cab card and license plate issued by the Commissioner or Agency in accordance with the International Registration Plan.
12. "Last known address," when referring to the mailing of a notice of intent to suspend, revoke or order the surrender and/or seizure of the permit, IFTA license, IRP registration, IRP credentials, tag or title, or to the mailing of a denial of a permit, IFTA license, IRP registration, tag or title, means the official mailing address of the person to whom the notice is being sent as the address appears in the record of the Agency. "Last known address," when referring to the mailing of an assessment, warrant, offset notice, statement of account and other tax notices and letters, means the official mailing address of the taxpayer to whom the notice is being sent as the address appears in the record of the Agency. The official mailing address is typically the address from the taxpayer's most recently filed and properly processed tax return, unless the Agency has received clear and concise notification of a different address. All other references to last known address mean the official mailing address that a hearing officer or the Review Board has on file for the addressee in connection with -their appeal. The addressee is presumed to have received any document or item mailed to -their last known address. It is the responsibility of the addressee to make sure that the last known address or official mailing address on file with the Agency and the Review Board is correct.
13. "Mail", "mailed" or "mailing" means placing a document or item in First Class United States Mail, postage prepaid, addressed to the person to whom the document or item is to be delivered at the last known address of that person. Where a person is represented by a representative in an administrative appeal before a hearing officer or the Review Board, the terms "mail", "mailed" or "mailing" shall also mean placing the document or item referred to in First Class United States Mail, postage prepaid, to the last known address of that person's representative. Mailing to the representative of a taxpayer, permittee, IFTA licensee, IRP registrant tag holder or title interest holder shall constitute mailing and notice to the taxpayer, permittee, IFTA licensee, IRP registrant, tag holder or title interest holder.
14. "Permit" means a type of license or permit that the Agency is authorized to issue, suspend or revoke, such as a sales tax permit, a beer permit, a tobacco permit, a dealer license, or designated agent status, but does not include: (i) any type of permit issued under the Local Option Alcoholic Beverage Control Law, Miss. Code Ann. Section 67-1-1, et seq. or under the Mississippi Native Wine Law of 1976, Miss. Code Ann. Section 67-5-1, et seq.; (ii) an IFTA license; or (iii) an IRP registration, including the IRP credential issued as a result of IRP registration.
15. "Permittee" means a person holding a permit, applying for a permit or renewing a permit.
16. "Person" means a natural person, partnership, limited partnership, corporation, limited liability company, estate, trust, association, joint venture, other legal entity or

other group or combination acting as a unit, and includes the plural as well as the singular in number. Person includes the state, counties, municipalities, other political subdivisions and any agencies, institutions or instrumentalities thereof, but only when used in the context of a taxpayer, permittee, IFTA licensee, IRP registrant, tag holder, or title interest holder, or in the context of a person requesting guidance, oral advice, a letter ruling or a declaratory opinion.

17. "Refund Claim" means a claim made in writing by a taxpayer and received by the Agency, wherein the taxpayer indicates that he overpaid taxes to the Agency and requests a refund of the overpayment and/or a credit against current or future taxes.
18. "Representative" or "designated representative" means an individual who represents a person in an administrative appeal before a hearing officer of the Agency or before the Review Board. The representative must obtain from the person being represented a written Power of Attorney authorizing the representative to appear on that person's behalf, unless that person is also present.
19. "Resident", when used to describe a taxpayer or petitioner, means a natural person whose residence and place of abode are within the State of Mississippi.
20. "Review Board" means the Board of Review as legally constituted and authorized by statute and comprised of those qualified employees appointed by the Commissioner of the Department of Revenue.
21. "Tag" means a type of license tag or plate for a motor vehicle or trailer that the Agency is authorized to issue or approve for issuance under the Mississippi Motor Vehicle Privilege Tax Law, Miss. Code Ann. Sections 27-19-1, et seq., or under the Motor Vehicle Dealer Tag Permit Law, Miss. Code Ann. Sections 27-19-301, et seq. The term "tag" includes personalized license tags. "Tag" does not include other types of license tags or plates issued by county tax collectors.
22. "Tag holder" means the person in whose name a tag is registered or the person applying for a tag.
23. "Tag penalty" means any of the penalties imposed under Miss. Code Ann. Sections 27-19-63 and 27-51-43 for any delinquency in the payment of motor vehicle privilege tax and ad valorem tax on a motor vehicle, and can be waived by the Agency for good reason shown. Pursuant to Miss. Code Ann. Section 27-51-103, the imposition of the ad valorem tag penalty at the maximum rate of twenty-five percent (25%) also results in ineligibility for the credit against motor vehicle ad valorem taxes. Waiver of the twenty-five percent (25%) delinquency penalty by the Agency under Miss. Code Ann. Section 27-51-43 shall reinstate credit eligibility.
24. "Tax" means any tax, fee, penalty and/or interest that the Agency is required or authorized by general law or by local and private law to administer, assess, and collect.
25. "Taxpayer" means any person or fiduciary liable for or having paid any tax to the Agency.
26. "Title" means a title to a motor vehicle or manufactured housing issued by the Agency under the Mississippi Motor Vehicle Title Law, Miss. Code Ann. Section 63-21-1 et seq.
27. "Title interest holder" means the owner of or lienholder on a motor vehicle or manufactured home as indicated on a title issued by the Agency, or as indicated on an application to the Agency for the issuance of a title.

104 Functional Duties of the Agency

The Mississippi Department of Revenue is statutorily responsible for the majority of revenue collection activities for the State. The core functional duties of the Agency are identified as follows:

1. Tax Administration;
2. Compliance enforcement;
3. Wholesale distribution of alcoholic beverages;
4. Enforcement of local option and prohibition laws;
5. Ensuring equalization of statewide property appraisal; and
6. Administration of motor vehicle and title laws.

105 Obtaining Information

The purpose of this section is to describe how a taxpayer or an interested person may obtain available information, other than information concerning proposed rules, from the Agency. Copies will be \$2.50 for the first page and \$0.50 for each additional page per document. Additional research and mailing charges may apply.

1. Compliance with Mississippi Public Records Act of 1983.
 - a. Any person who wishes to inspect or obtain a copy of any public record in the possession of the Agency must make a written request to the Legal Division of the Agency. The request must describe the record sought and whether it is to be provided through personal inspection or reproduction. However, all requests for copies of returns and reports should be made to the Office that administers the tax in the manner described in paragraph 2 below.
 - b. Upon receipt of the request, the Agency shall notify the requesting party of the cost or the time and place of access to the public record. The requesting party must then forward payment for the costs of producing the records. Every reasonable effort will be made to respond to the request within seven (7) working days from the receipt of the request if the fee to produce such records has been paid. If the Agency is unable to produce a public record by the seventh (7th) working day from the date the request was received, the agency will contact the requesting party with an explanation of the delay and a notice that the record will be produced within fourteen (14) working days from the receipt of the request. By mutual agreement of the parties the records may be supplied after fourteen (14) working days. Records may not be removed from the Agency for reproduction purposes.
 - c. If the Commissioner denies the requesting party access to any record, the requesting party will be notified in writing of the basis of the denial within seven (7) working days from the receipt of the request.
2. Obtaining copies of tax returns or applications filed with the Agency.
 - a. All tax returns, including documents supporting those returns and other tax forms required to be filed with the Agency, are confidential and specific information relating to a particular taxpayer is not public information. The Agency may not release confidential information to anyone other than the taxpayer to whom that information pertains unless specifically authorized by

the taxpayer, specifically authorized by statute, or directed to do so by a proper judicial order.

- b. A taxpayer may request a copy of his personal filings by submitting a written request. The request must be signed by the taxpayer. In the case of a return of an individual, this request must be signed by that individual. In the case of an income tax return filed jointly, this request must be signed by either of the individuals who filed the return. In the case of a partnership, this request must be signed by a partner who was a member of the partnership during the period of time covered by the return requested. In the case of a return filed by a member-managed limited liability company, this request must be signed by a person who is a member of the limited liability company. In the case of a return filed by a manager-managed limited liability company, this request must be signed by a manager of the limited liability company. In the case of a return of a corporation, this request must be signed by a principal officer of the corporation and attested to by the corporation's secretary or another officer.
 - c. A taxpayer may request copies of his return or information to be released to other persons by providing the Agency a signed document authorizing the release of the returns.
 - d. The request for copies of returns should be submitted to the Department in writing. The written request must include the type of tax return, the tax period(s) requested, taxpayer name, and the tax account and/or taxpayer identification number. All information contained in any written request for copies of returns is submitted under penalty of perjury.
3. Title and Motor Vehicle Tag Information
- a. In order to obtain information from an individual motor vehicle record maintained by the Agency, the person requesting the information must qualify under the guidelines set by federal statute. The Agency has promulgated Title 35, Part VII, Subpart 1, Chapter 01 of the Mississippi Administrative Code in accordance with the Federal Driver's Privacy Protection Act, which protects certain information contained on motor vehicle records and lists permitted uses for which records may be obtained. In order to request information, the appropriate form must be completed and forwarded to the Agency for processing along with the appropriate fees. The information request form and all other applicable information are available on the Agency's website.
 - b. Any title and motor vehicle tag information received by the requesting party is privileged and may not be disclosed to anyone else unless that disclosure is a permitted use. Please note that using the information acquired from motor vehicle records for any use other than a permitted use may subject the offender to criminal fines and other damages.
4. Publications
- a. Persons may receive information through instructions included with forms, notices written concerning law changes or procedural changes, booklets, and other publications of the Agency. This information is provided to answer frequently asked questions but is not intended to be all-inclusive. In any situation where the information provided does not adequately address the person's particular circumstances, it is advisable to seek additional guidance.

- b. Interested parties may, for a fee, order a copy of these publications by sending a request to the Communications Director, however, much of this information may be found free of charge on the Agency's website.
5. Website
- a. Statistical information may be obtained from the Agency's website. Many forms are available online and may be printed for use.
 - b. The website also contains links to other websites, including links operated by other government agencies, tax related organizations, and tax software providers. The Agency has no control over the content included on websites other than its own.
 - c. An individual may check the status of his individual income tax refund online. Persons may also check the validity of certain tax permits or licenses on the website.

106 Adoption of Rules and Regulations

106.01 Authority to Adopt Rules and Regulations

The Commissioner is authorized by statute to promulgate rules and regulations consistent with and complementary to the law in order to enforce the laws administered by the Agency. A rule or regulation is a statement of general applicability that implements, interprets, or prescribes policy, or describes a procedure or practice of the Agency and may include responsibilities that are not specifically required by statute or by an existing rule or regulation. Rules and regulations do not include those items excluded in Miss. Code Ann. Section 25-43-1.102(i) from the definition of a rule. The terms rule and regulation are synonymous with each other and the Commissioner uses both terms in referring to the rules promulgated and adopted. The following discussion of the rule-making process applies not only to rules but also to regulations.

106.02 Rule Adoption Process

With the exception of emergency rules as outlined herein below, the adoption of a new rule or the amendment of an existing rule is a multi-step process including the following:

1. Drafting the rule or rule amendment.
When the need for a rule or rule amendment is determined, a proposed rule is drafted by Agency personnel for review and discussion with the Commissioner.
2. Preparing an economic impact statement.
 - a. An estimate of the costs and benefits of implementing and enforcing the proposed rule to the public, the Agency, or any other government entity; an analysis of the effect of the new or amended rule on small businesses and on public health, safety and welfare; an estimate of the anticipated effect on state or local revenues; and a description of any alternative methods that might achieve the same purpose as the new or amended rule will be prepared by the Agency when required and as provided by Miss. Code Ann. Section 25-43-3.105. A concise summary and the full text of the economic impact statement, if required, will be filed with the Secretary of State for publication along with the Commissioner's notice of intent to adopt a rule or rule amendment. Any

- additional information that the Agency determines may be useful will be included in the statement.
- b. If the economic impact statement reflects that a proposed rule may have an economic effect on small business, the Agency shall submit a copy of the proposed rule and economic impact statement to the Small Business Regulatory Review Committee for review and comment.
 - c. During the public comment period, any interested party may submit to the Agency contact person identified in the notice of intent to adopt a rule, in writing, any specific concerns about the economic impact statement.
3. Notice of intent to adopt a rule or rule amendment.
 - a. A notice of intent to adopt a rule or rule amendment will be prepared, which will include information on how interested persons may comment on the proposal. The notice of intent to adopt a rule will include a statement of the purpose and effect of the rule, a summary of the rule, opportunities for public comment and the text of the rule. A copy of an economic impact statement, along with a concise summary of the statement, will be attached to the notice when required.
 - b. The notice will be sent to the Secretary of State and to interested parties who are on the Agency Rule Notification Register.
 4. Providing an opportunity for interested parties to comment.
 - a. The notice of intent to adopt a rule or rule amendment will advise the public of its right to comment and provide information concerning how, when, and where to respond. The Agency must provide no less than twenty (20) days from the date the notice of intent to adopt a rule or rule amendment and economic impact statement are filed during which persons may submit written comments.
 - b. Interested or affected individuals or entities may comment in writing at any time during the public comment period. All written comments should be mailed or delivered to the Office of Tax Policy within the provided time period for public comment.
 - c. The Commissioner, at his discretion, may hold an oral proceeding prior to the final adoption of a proposed rule or amended rule. An oral proceeding may be demanded by a political subdivision, an agency, or ten (10) or more persons if the Commissioner does not provide a time for an oral proceeding on the proposed rule or amendment. Public comment will be accepted at the hearing as provided in this section. Written comments received or comments made at the hearing are not required to be incorporated into the final rule but will be considered by the Commissioner in drafting the final rule or rule amendment.
 - d. The Commissioner may designate an officer to preside over the hearing on the proposed new or amended rule and to document attendance and comments made. The presiding officer will be an employee of the Agency.
 - e. The hearing date will be scheduled for a date that is at the minimum twenty (20) days after the notice of the proposed rule is filed with the Secretary of State. The hearing will be open to the public. Anyone wishing to make a presentation at the hearing should notify, in writing, the Office of Tax Policy no less than seventy-two (72) hours prior to the scheduled hearing time. The written request

- to speak must include a brief description of what the speaker plans to present at the hearing and the position the speaker plans to take on the proposed rule.
- f. The presiding officer may limit the time allotted to each speaker. The number of speakers addressing a specific position on an issue may be limited by the presiding officer to prevent undue repetition at the hearing. In the event the number of speakers representing a specific position is limited, the speakers selected to speak to their position will be determined based upon the order in which their requests were received. The speaker will be notified of the time he is allotted to speak, or will be notified that he has been denied the opportunity to speak to prevent undue repetition or for failure to timely request the opportunity to speak at the hearing.
 - g. A record of all persons requesting the opportunity to speak will be maintained. This record will include the written requests to speak at the public hearing and any denials for untimely filing of a request to participate in the public hearing or to prevent repetition. All persons participating or unable to participate in the hearing may submit written comments at any time during the public comment period.
 - h. All persons in attendance will be requested to sign a register to document their presence at the hearing. A printed agenda including the names of all speakers and their positions on issues concerning the proposed rule may be provided to those in attendance.
5. Filing the rule for adoption
The Commissioner may change, alter or delete any provisions of the proposed rule after the public comment period unless such change, alteration, or deletion would prevent the rule from being finally adopted per Miss. Code Ann. Section 25-43-3.107. The Commissioner will file the final form of the rule or rule amendment with the Secretary of State. The effective date is thirty (30) days after filing with Secretary of State unless another later date is specified in the law or rule.
6. Obtaining information on a proposed rule
- a. The Agency will maintain the Agency Rule Notification Register listing the persons who have requested notice of all proposed rule changes. The Agency will send notice of all proposed rules or rule amendments to these persons by mail. A *minimum* fee of \$25 will be charged for each notice that is mailed, and a bill for the fee will accompany all notices. Failure to remit the fee as billed will result in the forfeiture of any future mailings until the fee has been paid. Any interested person may be included on the mailing register for all proposed notices pursuant to a written request to the Office of Tax Policy. It is the requestor's responsibility to provide and keep a correct address on file with the Agency.
 - b. If a person desires notice of all proposed rules and agrees to receive the notices by e-mail, there will be no charge for this service. Any interested person may be included in the register of persons to be notified by email by written request to the Office of Tax Policy. If email preference is not specified, notice will be sent by mail, which will include the fee.

- c. A person may also request a copy of a proposed rule or rule amendment on a one-time basis by contacting the Office of Tax Policy. For any mailed document, the minimum fee is still applicable.
 - d. Additional information regarding the adoption of rules and regulations may be obtained on the Agency's website.
7. Rulemaking record
- a. The Agency will maintain a current rulemaking docket that contains the subject matter of rules under active consideration within the Agency.
 - b. The rulemaking docket shall include all information related to the rule in progress, including:
 - i. The subject matter of the proposed rule;
 - ii. Reference to all published notices relating to the proceeding;
 - iii. Where a written submission or a written request for an opportunity to make an oral presentation on the proposed rule may be inspected;
 - iv. The time during which written submissions may be made;
 - v. Where and when oral presentations may be made;
 - vi. Where any economic impact statement and written requests for the issuance of other information concerning an economic impact statement may be personally inspected;
 - vii. The current status of the proposed rule; and
 - viii. The date of each rule's adoption and when the rule becomes effective.
 - c. All materials, submissions, reports and other information relating to each rule adoption process and procedure will be maintained at the main office of the Mississippi Department of Revenue and will be available for public inspection by contacting the Office of Tax Policy.
8. Repeal of a rule
- If the Commissioner determines that an existing rule should be repealed, the process followed will be the same as for the adoption of a new rule or an amendment to a rule.
9. Termination of the proceeding
- The Commissioner may determine that the rule or rule amendment should not be adopted after the notice of proposed rule but prior to adoption of the rule. In such event, a notice of termination will be filed with the Secretary of State and notice will be provided to those persons listed on the Agency Rule Notification Register.
10. Emergency rules
- a. The Commissioner may determine that an imminent peril to the public health, safety or welfare requires adoption of a rule with less than twenty-five (25) days notice as normally provided.
 - b. In such event, the Commissioner will notify the Secretary of State of the need for an emergency rule, the form of the rule, and the effective dates of the rule. There will be no public hearing or public comment period provided.
 - c. The Commissioner will determine if the need for the emergency rule continues, and if so, will begin the process to adopt the rule permanently as provided in this section.

This section describes the administrative appeal process to be followed when a person is aggrieved by certain actions of the Agency, and includes a description of the types of actions that may be appealed, how to file appeals, the scheduling and conduct of administrative hearings, time limits for filing appeals and withdrawals of appeals. The intent of the administrative appeal process is to secure a just resolution or decision.

107.01 Administrative Appeal Process

With the exception of an appeal of a tag penalty, this section does not describe the administrative appeal process relating to actions of the Agency regarding ad valorem taxes and homestead exemptions. An administrative appeal from these actions shall be as prescribed by statute. This section also does not describe the administrative appeal process for actions taken by the Agency under the Local Option Alcoholic Beverage Control Law or under the Mississippi Native Wine Act of 1976. The administrative appeal process for such ABC actions is described in the ABC Regulations of the Agency.

1. Informal Review

- a. A person may seek an informal review of any assessment or other action believed to be incorrectly issued or any refund believed to be improperly denied.
- b. When an auditor or examiner determines additional tax is due, the person assessed with the tax should first attempt to resolve any questions with the auditor or examiner. If unable to reach an agreement with the auditor regarding the audit results, a conference with the auditor's supervisor or the supervisor's designee may be arranged. This conference should provide opportunity to both parties to gain a thorough understanding of the basis of the assessment and to make sure that the underlying facts are correct and complete.
- c. An informal review may be granted for any situation, but is not required before seeking an administrative appeal. The person may continue to attempt to resolve an issue informally with Agency staff once the formal appeal process has begun but the informal review does not toll the time limit to appeal to the Review Board.

2. Representation

A person may represent himself or may choose to have a representative at any point throughout the appeal process. Hearings before the Review Board or a hearing officer are considered confidential and are not open to the public; however, the appellant may permit another person or persons to attend the hearing and to participate as deemed appropriate or necessary.

3. Interest and penalties will continue to accrue on unpaid balances.

Filing an appeal does not stop interest charges from accruing on any unpaid tax liability. In some situations, penalties may also continue to accrue.

4. Written requests for administrative appeals

- a. The taxpayer or person appealing must request a hearing in writing. A Review Board Appeal Petition Form, which can be found on the Agency's website, may be used to make the hearing request. The written request must include the following information:

- i. All requested information about the taxpayer or person appealing including name, address, contact phone number, amount of assessment, period, and account number;
 - ii. The issue being appealed;
 - iii. An explanation of the reason for the appeal;
 - iv. The amount of tax, fees, interest and/or penalty being contested, if any;
 - v. The decision that the person appealing would like the Review Board to make;
 - vi. All requested information about the person's representative, if applicable, including the representative's name, address, contact phone number, and relationship to taxpayer, accompanied by a Power of Attorney authorizing the representative to act on the person's behalf;
 - vii. The mailing address at which the person appealing wishes to receive correspondence from the Review Board; and
 - viii. A copy of what is being appeal.
 - b. The Petition must be signed and dated by the taxpayer or person appealing. The appeal must be received within the time period prescribed for the appeal. If the appeal is postmarked by the deadline for the appeal but not received by that date, it cannot be considered due to untimeliness.
 - c. It is the responsibility of the person appealing to provide and maintain an official mailing address on file with the Review Board. Any change of address during the appeal process must be made known in writing and addressed to the Review Board. This notice of address change is for the appeal process only and does not make any address change to tax account information maintained by the Agency.
 - d. The timeline for appeals is explained further in this section. A request for appeal not received within the time periods provided below will be considered untimely and returned to the taxpayer or person appealing.
5. Notice of hearing
- a. A person or his authorized representative will be notified of the hearing by mail at his last known address. The last known address will be the mailing address provided in the written request for appeal or any subsequent address change notification to the Review Board.
 - b. The hearing notice will contain the time, place and date of the hearing. Notice to the person's or taxpayer's authorized representative constitutes notice to the person or taxpayer.
6. Continuance of hearing
- a. A request for a continuance of the hearing will be routinely granted if the request is received within ten (10) days after the notice of the hearing is mailed. If the request for continuance is received beyond ten (10) days from the date the notice of hearing is mailed, then the determination whether to continue the hearing will be made by the Chairman of the Review Board.
 - b. The Department of Revenue will not be responsible for delay in the delivery of mail.
7. Confidential hearings

All hearings are closed to the public due to the confidential nature of the subject matter. However, through written authorization, the person appealing may waive the right to a closed hearing.

8. Items subject to administrative appeal are:
 - a. Assessment of tax;
 - b. Denial of refund claim;
 - c. Denial of waiver of tag penalty;
 - d. Denial of a claim to tax credits or incentives;
 - e. Suspension, surrender, seizure or revocation of permit, tag or title;
 - f. Denial of application for a permit, IFTA license, IRP registration, tag or title;
 - g. Suspension or revocation of IFTA license or IRP registration.
9. Items not subject to administrative appeal include but are not limited to:
 - a. Bond amounts;
 - b. Declaratory Opinions;
 - c. Letter rulings;
 - d. Oral or written advice;
 - e. Collection actions including but not limited to liens and garnishments;
 - f. Diversions or distributions of tax revenue;
 - g. Refund offsets used to pay debts owed to other government agencies.
10. Request for removal of voting member of Review Board
 - a. Any person may request that a member of the voting panel of the Review Board be replaced or that a member not participate in a hearing if it appears that member's impartiality might be questioned by a reasonable person knowing all the circumstances, or for other reasonable grounds.
 - b. A written or verbal request for removal of a voting member from the decision-making process stating the reason the member's impartiality is questioned must be made by the taxpayer or person appealing before the commencement of a Review Board hearing. Such request should be made to the Chairman or the presiding member of the Review Board. Any denial of the request is not subject to appeal.
11. Timeline for filing appeals
 - a. Assessment of tax, denial of refund or denial of a waiver of tag penalty:
 - i. A taxpayer, aggrieved by an assessment of tax, penalty or interest, a denial of a refund or a denial of a waiver of tag penalty, may apply for a hearing before the Review Board. The taxpayer must submit a request in writing to the Chairman of the Review Board within sixty (60) days from the date of mailing. The matter will become final after this sixty (60) day period if it is not appealed.
 - ii. If the Review Board determines that the assessed tax, penalty or interest is due, the taxpayer must pay the assessment or appeal to the Board of Tax Appeals within sixty (60) days from the mailing date of the order of the Review Board. A taxpayer wishing to appeal an order of the Review Board must submit the request for appeal in writing to the Executive Director of the Board of Tax Appeals. At the time of filing his appeal with the Executive Director, the taxpayer shall also file a copy of his written

- appeal with the Chief Counsel of the Legal Division. The matter will become final after this sixty (60) day period if it is not appealed.
- b. Suspension, surrender, seizure or revocation of a permit, tag, or title:
 - i. If the Agency determines that action against a permit, IFTA license, IRP registration, tag or title is necessary, the permittee, tag holder or title interest holder will be notified by mail of the Agency's intention to revoke, suspend or order the surrender or seizure of the permit, tag or title. The notice will advise that the permit, IFTA license, IRP registration, tag or title will be revoked or suspended unless the permittee, licensee, registrant, tag holder or title interest holder files with the Review Board a written request for a hearing on the intended action within thirty (30) days from the mailing date of the notice. The matter will become final after thirty (30) days if it is not appealed.
 - ii. If the permittee, IFTA licensee, IRP registrant, tag holder or title interest holder is aggrieved by the determination of the Review Board or hearing officer, the aggrieved party may appeal in writing to the Board of Tax Appeals within thirty (30) days of the mailing date of the order. At the time of filing his appeal with the executive director, the permittee, IFTA licensee, IRP registrant, tag holder or title interest holder shall also file a copy of his written appeal with the Chief Counsel of the Legal Division. The matter will become final after this thirty (30) day period if it is not appealed.
 - c. Denial of an application for a permit, tag, or title
 - i. If the Agency determines that an application for a permit, IFTA license, IRP registration, tag or title should be denied, the applicant will be notified either by mail or in person of the Agency's intention to deny the permit, IFTA license, IRP registration, tag or title. If the denial involves an application for a title, the notice will also be mailed to the designated agent who submitted the title application and any other alleged title interest holders shown on the application. If the applicant or any title interest holder appearing on the application is aggrieved by the denial of application, the aggrieved party shall file a written appeal with the Review Board within thirty (30) days of the mailing date of the notice. The matter will become final after this thirty (30) day period if it is not appealed.
 - ii. If the applicant or the title interest holder remains aggrieved by the determination of the Review Board, the aggrieved party may appeal in writing to the Board of Tax Appeals within thirty (30) days of the mailing date of the order. The matter will become final after this thirty (30) day period if it is not appealed.
 - d. When an appeal, objection or other document is required by statute, regulation or the Agency to be filed with the Review Board within any number of days, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, legal holiday or any other day when the offices of the Agency are in fact closed, with or without legal authority, in which event the period runs until the end of the next day which is

not a Saturday, a Sunday, a legal holiday or any other day when the office of the Agency is closed. Legal holidays for the Agency are found at Miss. Code Ann. § 3-3-7(1). *When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. Mailing does not constitute filing, and the time period within which the appeal, objection or other document has to be filed is not extended because of mailing.*

12. Review Board hearing
 - a. With the exception of matters regarding alcoholic beverage control and Agency actions related to Ad Valorem Tax, a taxpayer or person in disagreement with an assessment, refund or other appealable action of the Agency may request a hearing before the Review Board. Three members of the Review Board shall constitute a quorum and may hear any matter before the Review Board; however, an appeal of the intent to revoke, suspend, or order for seizure or surrender of a permit, tag, or title may be heard by a panel of the Review Board or by a hearing officer.
 - b. Upon timely receipt of a written request from the person appealing or his authorized representative, the Review Board shall promptly schedule a hearing for consideration of the appeal. At the hearing, the Review Board shall decide the issues presented according to the applicable law and the facts.
 - c. A decision in favor of the person appealing may be made without a hearing when the facts are not in dispute, the issues are clearly identified, or the law has been applied in the same manner in similar situations in previous decisions.
 - d. There will be no official transcript or recording made of a Review Board hearing. The official record of the hearing will be the minutes and orders of the Review Board, which are confidential for all tax matters. Review Board hearings shall be informal and the rules of evidence shall be relaxed.
 - e. In any appeal covered by this Chapter, the burden of proof shall be on the appellant to prove that the action of the Agency is incorrect.
 - f. The person requesting the hearing or the person's authorized representative will be asked to discuss the facts supporting the person's claim and to provide an explanation of how the law supports that claim. Representatives of the Agency may also be asked to discuss the facts in support of the Agency's action or cause.
 - g. The Review Board may request the person appealing the matter or Agency staff to provide additional information and/or documents during the course of its review. Time limits for submission of the additional information or documents will be established by the Chairman of the Review Board. If the person from whom information or documents are requested fails to respond to the request in the time provided, the Review Board may decide the appeal without the supplemental documents or information.
 - h. An order will be issued after the Review Board has fully considered the information provided at the hearing, any post-hearing information submitted to the Review Board and the laws specific to the case. The Chairman of the Review Board will prepare the order and mail it to the person or authorized

representative. Notice to the authorized representative constitutes notice to the person appealing.

- i. The Review Board may elect to uphold the assessment, to amend the assessment, to issue a revised assessment, to issue a refund or credit, to remand the issue to the originating division for further review or to take any other action it deems appropriate. If the person remains aggrieved by the decision of the Review Board, the action may be appealed to the Board of Tax Appeals within the time limits set forth above.
13. Withdrawal of an appeal
- a. An appeal before a hearing officer or the Review Board may be withdrawn at any time by the taxpayer or person filing the appeal. The withdrawal may be made voluntarily by the person or may occur involuntarily under the conditions listed below.
 - b. An involuntary withdrawal of an appeal may occur as result of the person's failure to appear at a scheduled hearing, failure to timely provide a written appeal in lieu of attendance at a hearing or by any other act or failure that the body hearing the appeal determines is a failure on the part of the person to prosecute his appeal. An involuntary withdrawal will be documented in the minutes providing the basis of the withdrawal.
 - c. A voluntary withdrawal of an appeal must be delivered in writing by the person or authorized representative to the Chairman of the Review Board prior to the scheduled time of the hearing on the appeal.
 - d. Following the withdrawal of an appeal, the action shall become final and not subject to further review by the Review Board, Board of Tax Appeals or a court. The Agency shall then proceed with any action in accordance with the law.
14. Board of Tax Appeals Hearing
- a. Any person aggrieved by a final Order of the Review Board may seek an administrative review of that decision by the Board of Tax Appeals by filing a written appeal with the Executive Director of the Board of Tax Appeals as provided by law.
 - b. The person filing the appeal with the executive director shall also file a copy of his written appeal with the Chief Counsel of the Legal Division.

108 Requests for Guidance

1. Any taxpayer or person seeking information concerning their responsibilities and requirements under the laws administered by the Agency may request advice and guidance concerning those obligations. The requests may be through an informal means such as oral advice or letter rulings, or formally through a declaratory opinion.
2. Taxpayers or other persons may also obtain publications of the Agency that provide information useful in complying with the laws administered by the Agency. Most printed publications of the Agency may also be found on the Agency's website.

108.01 Oral Advice

1. Many questions may be answered easily over the telephone or in person by an agent of the Commissioner. Oral advice is considered advisory only and is non-binding.

2. Taxpayers or persons who have complicated questions or issues centered on their own particular facts and circumstances should seek a letter ruling on the matter or request further advice from the Agency as provided below.

108.02 Letter Rulings

1. Taxpayers or other persons may seek guidance by submitting a written request for a letter ruling to the Office of Tax Policy.
2. When asking for instruction on a specific issue, it is necessary to provide adequate information in order to accurately answer the question. Because a request is based on one person's specific facts and circumstances, the response is restricted to the taxpayer or person making the request for information and the specific facts involved.
3. Letter rulings are considered informal guidance; however, the taxpayer or person requesting the letter ruling may rely on the response absent a subsequent law or regulation change or written retraction and provided that the information presented is factual and complete with no material omissions and that no changes have been made with regard to the information provided.
4. The Agency will refuse to issue a letter ruling under the following circumstances:
 - a. The matter is outside the primary jurisdiction of the Agency.
 - b. The question presented lacks clarity, has insufficient facts to provide a conclusive determination or is too vague or too broad to be answered.
 - c. A pending or active audit, criminal tax investigation, anticipated litigation, administrative action or other determination before the Agency, Board of Tax Appeals or a court of law which may either answer the question presented or otherwise make an answer unnecessary.
 - d. The question presented in the request concerns the legal validity of a statute or rule.
 - e. No clear answer is determinable.
 - f. The question presented involves the application of a criminal statute or facts that may constitute a crime.
 - g. The answer to the question presented would require the disclosure of information that is privileged or otherwise protected by law from disclosure.
 - h. The request involves an issue that may adversely affect the interests of the State, the Agency or any of the Agency's officers or employees in any litigation that is pending or may reasonably be expected to arise.
5. If the Agency should at a later date determine that its response was incorrect, the letter ruling will be retracted in writing and the effect of the retraction will be prospective from the date of the retraction letter.
6. Absent a written retraction of the letter ruling, a law or rule change or a change in the person's particular circumstances that affects the issue being addressed, a letter ruling will be valid for a period of seven (7) years from the date of its issuance. At the end of the seven (7) year period, the person should review and update the information in his original request for information and re-submit the question to the Agency.
7. Any letter rulings written by the Agency prior to June 30, 2005 are no longer valid. A recipient of a ruling issued prior to that date should review their letter ruling to determine if an update is necessary.

8. The Agency will accept an anonymous request for a letter ruling, but the response will not be binding until the identity of the person to whom the request pertains has been disclosed to the Agency. The name and other identifying information of the anonymous person should be provided within ninety (90) days of the date of the letter ruling. The letter ruling will be considered non-binding if the identity of the person is not provided within the time period specified.
9. A response to a person's authorized representative constitutes notice to that person. It is the person's continuing obligation to inform the Agency of the identity and address of its representative.

108.03 Declaratory Opinions

1. Scope of the rules
These sections set forth the Agency's rules governing the form and content of requests for declaratory opinions, and the Agency's procedures regarding the requests, under Mississippi Code Ann. Section 25-43-2.103.
2. Persons who may request declaratory opinions
Any person with a substantial interest in the subject matter on which he is requesting information may submit a written request to the Agency for a declaratory opinion by following the procedures specified below. Substantial interest in the subject matter means that the interest must be direct, immediate, not remote in consequence, and must surpass the common interest of all citizens.
3. Subjects that may be addressed in declaratory opinions
The Agency will issue declaratory opinions regarding subject matters that are within the primary administrative responsibilities of the Agency. Subject matters within the oversight of the Agency include the applicability of specified facts to a statute administered or enforced by the Agency, or a rule promulgated by the Commissioner. The Agency will not issue a declaratory opinion regarding a statute or rule beyond the administrative responsibility of the Agency.
4. Circumstances in which declaratory opinions will not be issued
The Agency may, for good cause, refuse to issue a declaratory opinion. Without limiting the generality of the foregoing sentence, the circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:
 - a. The matter is outside the primary jurisdiction of the Agency.
 - b. The question presented lacks clarity, the facts provided are insufficient to provide a conclusive determination, or the information is too vague or too broad to provide an answer.
 - c. A pending or active audit, criminal tax investigation, anticipated litigation, administrative action, or other determination before the Agency, Board of Tax Appeals or a court of law, which may either answer the question presented or otherwise make an answer unnecessary.
 - d. The statute, rule or order on which a declaratory opinion is sought is clear and does not require interpretation in order to answer the question presented.
 - e. The confidentiality waiver on the Declaratory Opinion Transmittal Form is not signed and provided to the Agency with the request for a declaratory opinion.
 - f. The request fails to contain the information required by these rules, or the requestor failed to follow the procedure set forth in these rules.

- g. The request seeks to resolve issues that have become moot, are abstract or involve multiple hypotheticals such that the requestor is not substantially affected by the rule or statute on which a declaratory opinion is sought.
 - h. The request pertains to a hypothetical situation, the underlying facts of which do not, and are not anticipated to, affect or pertain to the requesting party.
 - i. The question presented concerns the legal validity of a statute or rule.
 - j. The requesting party is not directly affected by the application of the statute, rule or regulation.
 - k. No clear answer is determinable.
 - l. The question presented involves the application of a criminal statute or facts that may constitute a crime.
 - m. The answer to the question presented would require the disclosure of information that is privileged or otherwise protected by law from disclosure.
 - n. The request involves an issue that may adversely affect the interests of the State, the Agency or any of the Agency's officers or employees in any litigation that is pending or may reasonably be expected to arise.
5. Form of the request for a declaratory opinion
- a. A written request for a Declaratory Opinion, including a completed Declaratory Opinion Transmittal Form, is required. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper. Requests may be in the form of a letter addressed to the Office of Tax Policy or in the form of a pleading as might be addressed to a court.
 - b. All requests must be mailed or delivered to the Office of Tax Policy. The request and the envelope in which it is delivered shall clearly state that it is a request for declaratory opinion. Oral, telephonic, or facsimiled requests are not acceptable. The request must include a completed transmittal form as prescribed by the Commissioner and an executed confidentiality waiver signed by the taxpayer or person requesting the declaratory opinion.
 - c. Each request must include the full name, telephone number and mailing address of the requestor. Each request shall be signed by the person filing the request or a duly authorized representative. The signing party shall attest that the request complies with the requirements set forth in these rules. A declaratory opinion will have no effect if it is later determined the request did not comply with the requirements of this rule.
 - d. A request must be limited to a single set of facts and each request shall contain the following:
 - i. Clear identification of the statute, rule or order at issue;
 - ii. A concise statement of the issue or question presented for the declaratory opinion;
 - iii. A complete and accurate statement of all facts relevant to a resolution of the question presented;
 - iv. The identity of all known persons involved or impacted by the factual situation described in the request, including their relationship to the facts, their names, their mailing addresses, and their telephone numbers;

- v. A statement sufficient to show that the person making the request is substantially affected by the statute, rule, or regulation.
 - e. A request may contain relevant information to support a position or proposed opinion suggested by the requestor. The argument may be submitted in the form of a brief containing a full discussion of the basis for the request, including any legal authorities in support of the position of the requestor.
 - f. The Agency may request that additional information be submitted by any interested party.
6. Time for Mississippi Department of Revenue's response
- a. Within forty-five (45) days after the receipt of a request for a declaratory opinion that complies with the requirements of these rules, the Agency will respond in writing by one of the following methods:
 - i. Issue an opinion declaring the applicability of the specified statute, rule, or order to the specified circumstances;
 - ii. Decline to issue a declaratory opinion, stating the reasons for its action;
 - iii. Agree to issue a declaratory opinion or a written decision by a specified time later than forty-five (45) days but no later than ninety (90) days after receipt of the written request.
 - b. The forty-five (45) day period will begin on the first business day after the request is received by the Agency.
 - c. The response may be sent to the authorized representative in lieu of the requesting party or the person signing the request.
7. Public availability of requests and declaratory opinions.
Declaratory opinions and requests for declaratory opinions are available for public inspection. The taxpayer must sign a confidentiality waiver to authorize the Agency to disclose the contents of a declaratory opinion.

109 **Qualified Accountant to Perform Third-Party Audit**
All notices under Section 30 of Senate Bill 2971 of the 2021 Regular Session must be sent to Incentives@dor.ms.gov.

110 **Contacting the Agency**
The Department of Revenue may be contacted in person or by telephone during regular business hours, or by U.S. Mail, electronic mail or facsimile. A current listing of contact information for the Department of Revenue may be found at www.dor.ms.gov or obtained by calling (601) 923-7700.

111 (Reserved)

35.I.01 revised effective June 24, 2021