

## RULES OF PRACTICE AND PROCEDURE OF THE NEW YORK CITY TAX APPEALS TRIBUNAL

### §1-04 Pleadings.

(a) *Petition.* All proceedings in the tribunal must be commenced by the filing of a petition with the tribunal and the service of a copy thereof upon the commissioner of finance. A form of petition is available from the tribunal upon written request.

(1) *Form of petition.* The petition shall contain or identify:

- (i) the name, address, and telephone number of the petitioner;
- (ii) the name, address, and telephone number of the petitioner's representative, if any;
- (iii) an identifying number or numbers as prescribed by the commissioner of finance in the form of social security numbers, employer identification numbers, or other numeric designations suitable for proper identification of the petitioner, which numbers shall be used by the tribunal for administrative purposes only;
- (iv) the date of the statutory notice and the tax or annual vault charge involved, identifying the relevant sections, chapter, and title of the Administrative Code;
- (v) if applicable, the years or periods involved, or the date of the transaction, and the amount in controversy, separately stating the principal, interest, and penalty, if any;
- (vi) separately numbered paragraphs stating, in clear and concise terms, each and every error of fact or law which the petitioner alleges has been made by the commissioner of finance (e.g., in issuing a notice of determination or in denying a refund application), together with a statement of the facts or law upon which the petitioner relies to establish each said error;
- (vii) the relief sought by the petitioner;
- (viii) where the amount in controversy is \$10,000 or less, exclusive of interest and penalties, whether the petitioner wishes that the proceeding be conducted as a small claims proceeding;

(ix) in the case of a petitioner entitled to an expedited proceeding, whether the petitioner waives such expedited proceeding;

(x) the signature of the petitioner or the petitioner's representative, if any, beneath a statement that the petition is made with knowledge that a willfully false representation is a misdemeanor punishable under section 210.45 of the New York State Penal Law;

(xi) a copy of the statutory notice being protested; and

(xii) a power of attorney, if any.

(2) *Filing and service of petition.* The petition and 2 conformed copies thereof (together with an affidavit of service or other proof of service of a copy of the petition on the commissioner of finance) shall be filed with the tribunal and a copy thereof served upon the commissioner of finance within the time limitations prescribed by the applicable statutory sections, including, but not limited to, section 170 of the New York City Charter and sections 11-529(c) and 11-680(3) of the Administrative Code, and there can be no extension of those time limitations. If filing is made by mail, it shall be made by certified or registered mail. In no event shall the tribunal extend the time limitation for filing and serving a petition.

Where the chief administrative law judge determines that the petition is in proper form, he or she shall send to the petitioner a written, dated acknowledgment of receipt of the petition and immediately forward the petition and a copy of the acknowledgment to the commissioner of finance for preparation of the answer. The time within which the commissioner of finance must answer the petition shall start to run from the date the chief administrative law judge acknowledges receipt of a petition in proper form.

(3) *Corrected petitions.*

(i) Where the petition filed by a petitioner is not in the form required by this section, the chief administrative law judge shall promptly return it to the petitioner together with a statement indicating the requirements with which the petition does not comply, and extend to the petitioner an additional 30 days within which to file a corrected petition with the chief administrative law judge. Where the chief administrative law judge determines that the corrected petition is in proper form, the chief administrative law judge shall then acknowledge receipt of the corrected petition and forward the acknowledgment and the corrected petition to the commissioner of finance pursuant to paragraph (2) of this

subdivision. For purposes of the time limitations for filing and service of a petition, a corrected petition is deemed to have been filed and served at the time the original petition was filed and served.

(ii) Where the petitioner fails to file a corrected petition within the time prescribed in subparagraph (i) of this paragraph, the chief administrative law judge may issue a determination dismissing the petition.

(4) *Reference to conciliation.* Where a conciliation conference has not been conducted, the tribunal may, at the request of the petitioner and subject to the consent of the commissioner of finance, suspend action on the petition and refer the matter to the bureau of conciliation.

(b) *Answer.* (1) *Filing and service of answer.* The commissioner of finance shall file an answer and 2 conformed copies with the tribunal and serve a copy thereof on the petitioner, if appearing pro se, or the petitioner's representative, within 60 days of the date the chief administrative law judge acknowledges receipt of a petition in proper form, except that, where a petition for a hearing before the department was filed prior to October 1, 1992, for which the commissioner of finance did not issue a final decision or determination, the commissioner of finance shall not be required to file an answer unless directed to do so by the chief administrative law judge.

(2) The answer as filed shall contain numbered paragraphs corresponding to the petition and shall fully and completely advise the petitioner and the tribunal of the defense. It shall contain:

(i) a specific admission or denial of each material allegation of fact contained in the petition;

(ii) a statement of any additional facts to be proven by the commissioner of finance either as a defense, or for affirmative relief, or to sustain any issue raised in the petition upon which the commissioner of finance has the burden of proof; and

(iii) the relief sought by the commissioner of finance.

(3) *Allegations deemed admitted.* Material allegations of fact set forth in the petition that are not expressly admitted or denied in the answer shall be deemed to be admitted.

(4) *Failure of commissioner of finance to answer.* Where the commissioner of finance fails to answer within the prescribed time, the petitioner may make a motion, on notice to the commissioner of finance, for a determination of default. The administrative law judge designated by the chief administrative law judge to review the motion shall either grant the motion and issue a default determination, or grant such other relief as is warranted.

(c) *Reply.* The petitioner may file a reply and 2 conformed copies with the chief administrative law judge, and serve such reply on the attorney of record for the commissioner of finance, in response to the answer, within 20 days of service of the answer.

When a reply has been filed, or after expiration of the 20 days, the controversy shall be deemed to be at issue and will be scheduled for a pre-hearing conference as provided in subdivision (d) of this section.

(d) *Pre-hearing conference.* (1) A pre-hearing conference shall be scheduled before an administrative law judge not less than 30 days before the first hearing date. The parties shall be given at least 30 days' notice of the conference. At the conference, settlement will be encouraged. If they are unable to settle the case at the conference, the parties may:

- (i) attempt to narrow disagreements as to facts or issues;
- (ii) report on the witnesses each party expects to call at the hearing;
- (iii) report on the documents each party expects to submit into evidence;
- (iv) estimate the amount of time each party expects will be required for the presentation of its direct case;
- (v) request documents and/or witnesses; and
- (vi) indicate any other matter(s) relevant to the hearing.

A party's case shall not be limited to the estimated time reported; a party's right to call witnesses on such party's behalf or submit documents shall not be limited to the witnesses and/or documents reported; and this conference shall not preclude any additional requests for witnesses and/or documents during the course of the hearing. Notwithstanding the foregoing, the administrative law judge may set a date certain (which date shall be not less than 30 days after the conference) at which time the parties' lists of witnesses and exhibits shall be regarded as final, subject to an application for leave to amend, for good cause shown.

- (2) At the pre-hearing conference, the administrative law judge may:
- (i) strike either party's pleading for such party's failure to appear at the conference; and
  - (ii) take such other action as is necessary to expedite the case, including, but not limited to, the scheduling of the petition for a hearing.

(e) *Amended pleadings.* Either party may amend a pleading, including the assertion of an additional deficiency by the commissioner of finance under the provisions of the Administrative Code, once without leave, within 20 days of its service, or at any time before the period for responding to it expires, or within 20 days of service of a pleading responding to it. After such time, a pleading may be amended only by consent of the chief administrative law judge or the administrative law judge or presiding officer assigned to the case. Leave shall be freely given upon such terms as may be just, including the granting of continuances. The administrative law judge or presiding officer may permit pleadings to be amended before the hearing is concluded to conform them to the evidence, upon such terms as may be just, including the granting of continuances. Except as may otherwise be ordered by the chief administrative law judge or the administrative law judge or presiding officer assigned to the case, there shall be an answer or reply to an amended pleading if an answer or reply to the pleading being amended is required. Service of such answer or reply shall be made within 20 days of service of the amended pleading to which it responds.

(f) *Stay of collection or payment of refund.* The filing of a petition with the tribunal shall stay (1) the collection of any taxes or annual vault charges and (2) the payment of any refund of taxes or annual vault charges, together with interest and penalties, which are the subject of the petition; provided, however, that, if the commissioner of finance finds that the assessment or collection of a tax, charge, penalty or interest will be jeopardized by delay, such assessment or collection shall not be stayed. The filing of a petition does not stay the accrual of interest.