

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

**§1-07 Requests for admissions; production; depositions.**

(a) *Request for admissions.* At any time after service of the answer and not later than 20 days before the hearing, a party may serve upon any other party a written request for admission of the following:

- (1) the genuineness of any papers or documents;
- (2) the correctness or fairness of representation of any photographs described in and served with the request; or
- (3) the truth of any matters of fact set forth in the request. The request shall include a statement that it pertains to matters as to which the party making such request reasonably believes there can be no substantial dispute at the hearing. Copies of any relevant papers, documents or photographs shall be served with the request unless copies have already been furnished.

(b) *Response to request for admissions.* The party to whom the request to admit is directed may choose to respond by serving a statement expressly admitting the matters in question. However, such party is deemed to admit each of the matters as to which an admission was properly requested unless, within 20 days of service of the request, or within such further time as the chief administrative law judge may allow, such party to whom the request is directed serves upon the party requesting the admission a verified statement:

- (1) denying specifically the matters as to which an admission is requested;
- (2) setting forth in detail the reasons that those matters cannot be truthfully admitted or denied; or
- (3) setting forth a claim in detail that the matters as to which an admission is requested cannot be fairly admitted without some material qualification or explanation, that the matters constitute a trade secret or are privileged, or that such party would be disqualified from testifying concerning them. Where the claim is that the matters cannot be fairly admitted without some material qualification or explanation, the party must admit the matters with such qualification or explanation.

(c) *Effect of admissions.* Any admission made, or deemed to be made, by a party pursuant to a request made under this section shall be binding and have effect only in the pending proceeding and not for any other purpose, and it shall not be used against the party making the admission in any other proceeding in the tribunal. The administrative law judge designated by the tribunal may, at any time, allow a party to amend or withdraw any admission on such terms as may be just. Any admission shall be subject to all pertinent objections to admissibility that may be interposed at a hearing.

(d) *Requests to produce and motions to compel production.* (1) Written requests for production of documents and witnesses and for inspection of real evidence to be introduced at the hearing may be directed by any party to any other party.

(2) The party upon whom the request is served shall, within 30 days of service of the request, produce each item requested or indicate the availability of the witnesses except for those items for which a written objection is served on the requestor. Upon application to the administrative law judge, the party upon whom the request is served shall be granted additional time to respond to such request upon good cause shown.

(3) To obtain a ruling on an objection by the responding party, on a failure to respond or on a failure to produce requested information, the requesting party shall file an appropriate motion with the administrative law judge and shall annex thereto its request, with proof of service on the other party, together with the response and objections, if any.

(4) The administrative law judge may deny the motion to produce, order compliance with the production request, or take other appropriate action. Failure to comply with an order compelling production may result in imposition of appropriate sanctions upon the noncomplying party or attorney, such as preclusion of witnesses or evidence, drawing of adverse inferences, or, under exceptional circumstances, removal of the case from the calendar, dismissal of the petition, or determination of default.

(5) Production pursuant to this subdivision shall be completed no later than 15 days prior to the date of the hearing, unless otherwise authorized by the administrative law judge.

(e) *Depositions to perpetuate testimony.* A party to a case pending in the tribunal, who wishes to perpetuate his or her own testimony or that of any other person or to preserve any document or thing, shall file an application pursuant to this section for an order of an administrative law judge authorizing such party to take a deposition for such purpose. Such depositions shall be taken only where there is a substantial risk that the person or document or thing

involved will not be available at the hearing of the case, and shall relate only to testimony or a document or thing which is not privileged and is material to a matter in controversy.

(1) Content of application. The application to take a deposition shall be signed by the party seeking the deposition or its representative and shall show the following:

- (i) the names and addresses of the persons to be examined;
- (ii) the reasons for deposing those persons rather than waiting to call them as witnesses at the hearing;
- (iii) the substance of the testimony which the party expects to elicit from each of those persons;
- (iv) a statement showing how the proposed testimony or document or thing is material to a matter in controversy;
- (v) a statement describing any books, papers, documents, or tangible things to be produced at the deposition by the persons to be examined;
- (vi) the time and place proposed for the deposition;
- (vii) the officer before whom the deposition is to be taken;
- (viii) the date on which the petition was filed with the tribunal;
- (ix) any provision desired with respect to payment of costs, charges, or expenses relating to the deposition (see subdivision (6) of this section); and,
- (x) if the applicant proposes to videotape the deposition, the application shall so state and shall show the names and addresses of the videotape operator and his or her employer.

(2) *Filing and disposition of application.* The application may be filed with the tribunal at any time after the petition is filed. The application shall be made to the administrative law judge assigned to the case or, if no administrative law judge has yet been assigned, to the chief administrative law judge. The applicant shall serve a copy of the application on each of the other parties to the case, as well as on such other persons as are to be examined pursuant to the application, and shall file with the application a certificate showing such service. Such other parties or persons shall file their objections or other response, with a certificate of service thereof on the other parties and such other persons, within

15 days of such service of the application. A hearing on the application will be held only if directed by the administrative law judge. Unless the administrative law judge determines otherwise for good cause shown, an application to take a deposition shall not be regarded as sufficient ground for granting an adjournment from a date of hearing theretofore set. If the administrative law judge approves the taking of a deposition, he will issue an order which will include in its terms the name of the person to be examined, the time and place of the deposition, and the officer before whom it is to be taken. If the deposition is to be videotaped, the administrative law judge's order will so state.

(3) *Use of stipulation.* The parties or their counsel may execute and file a stipulation to take a deposition by agreement instead of filing an application as hereinabove provided. Such a stipulation shall be filed with the chief administrative law judge in duplicate and shall contain the same information as is required in subparagraphs (i), (vi), (vii), (ix), and (x) of paragraph (1) of this subdivision, but shall not require the approval or an order of the administrative law judge unless the effect would be to delay the hearing of the case. A deposition taken pursuant to a stipulation shall in all respects conform to the requirements of this section.

(4) *Person before whom deposition taken.* Depositions shall be taken before an officer, other than a party, or the attorney or employee of a party, authorized to administer oaths by the laws of the place where the examination is held.

(5) *Arrangements.* All arrangements necessary for the taking of the deposition shall be made by the party filing the application or, in the case of a stipulation, by such other persons as may be agreed upon by the parties.

(6) *Expenses.* The party taking the deposition shall pay all the costs, charges, or expenses of the witness whose deposition is taken by him or her, any charges of the officer presiding at or recording the deposition other than for copies of the deposition, and any expenses involved in providing a place for the deposition. The party taking the deposition shall pay for the original of the deposition and also furnish a copy of the deposition to any party or the deponent. By stipulation between the parties, provision may be made for any costs, charges or expenses relating to the deposition. Except under extraordinary circumstances, an administrative law judge shall not order a deposition to be held outside of the City of New York unless the expenses of the commissioner of finance are paid by the party requesting the deposition.

(7) *Use of deposition.* At the hearing or in any other proceeding in the case, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(i) The deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(ii) The deposition of a party may be used by an adverse party for any purpose.

(iii) The deposition may be used for any purpose if the parties have stipulated to the use of a deposition or if the administrative law judge finds: (A) that the witness is dead; or (B) that the witness is at such distance from the place of trial that it is not practicable for him to attend, unless it appears that the absence of the witness was procured by the party seeking to use the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been so unable to obtain attendance of the witness at the hearing as to make it desirable, in the interests of justice, to allow the deposition to be used; or (E) that such exceptional circumstances exist, in regard to the absence of the witness at the hearing, as to make it desirable, in the interests of justice, to allow the deposition to be used.

(iv) If only part of a deposition is offered in evidence by a party, an adverse party may require him or her to introduce any other part which in fairness ought to be considered with the evidence the party introduced, and any party may introduce any other parts.

(8) *Depositions on written questions.*

(i) A deposition may be taken on written questions when the parties so stipulate or when the administrative law judge so orders because the testimony is to be taken outside New York State.

(ii) The party seeking the deposition shall serve the written questions upon each party. Within 10 days thereafter, a party so served may serve written cross questions upon each party. Within five days thereafter, the original party may serve written redirect questions upon each party. Within three days after being served

with written redirect questions, a party may serve written recross questions upon each party.

(iii) Copies of all written questions served shall be delivered by the party seeking the deposition to the office designated in the administrative law judge's order.

(f) *Disclosure of evidence prior to a license revocation hearing.* When the commissioner of finance seeks the revocation of a license or permit, as such terms are used in section 1041 of the City Administrative Procedure Act, either party shall, upon demand and at least seven days prior to the hearing, disclose the evidence that the party intends to introduce at the hearing, including documentary evidence and the identification of witnesses. The provisions of this subdivision shall not be deemed to require the disclosure of information or material otherwise protected by law from disclosure, including information and material protected because of privilege, the secrecy provisions of the Administrative Code, or confidentiality. If, after such disclosure, a party determines to rely upon other witnesses or information, the party shall, as soon as practicable, supplement its disclosure by providing the names of such witnesses or the additional documents.