

.04 Hearings and Appeals.

A. Definitions. In this regulation, the following terms have the meanings indicated:

(1) "Comptroller" includes any employee of the Comptroller's Office designated as a hearing officer to conduct informal hearings in contested cases.

(2) "Person" means an individual or entity that, as a result of action taken by the Comptroller's Office, is entitled to an informal hearing by law or regulation.

(3) "Written application" means a written request for a hearing that is submitted to the Hearings and Appeals Section of the Comptroller's office via U.S. Mail, facsimile, email, or online appeal, or is delivered in person.

B. Hearings — Assessments and Refunds.

(1) Assessments.

(a) General.

(i) A person may request a revision of an assessment by submitting a written application for a hearing to the Hearings and Appeals Section of the Comptroller's Office within 30 days of the date of the notice of assessment.

(ii) If a person does not submit an application within the 30-day period, the assessment becomes final and not subject to appeal.

(b) If an assessment is paid by a taxpayer, an application for refund may not be considered unless the application was made within 30 days of the mailing of the notice of assessment.

(2) Refunds.

(a) If the Comptroller denies any portion of a claim for refund, a person may appeal the denial by submitting a written application for a hearing within 30 days of the Comptroller's determination on the refund claim.

(b) If a person does not submit an application within the 30-day period, the determination becomes final and nonappealable.

(c) The withholding of a portion of an approved refund under COMAR 03.04.05 or 03.04.06 is not a denial of the claim for refund from which an appeal may be taken under this regulation. A person who disagrees with the interception of a tax refund may apply for relief as provided in COMAR 03.04.05 and 03.04.06.

(d) In the event the Comptroller withholds a portion of an approved refund pursuant to Tax-General Article, §§13-921 and 13-922, Annotated Code of Maryland, a person who disagrees with the interception of a tax refund for a liability certified by the taxing official of another state may:

(i) Submit a written application for a hearing to appeal the certification to the Hearings and Appeals Section of the Comptroller's Office within 30 days of the date of the notice of intercept; or

(ii) Request a hearing with the taxing official of the certifying state, in accordance with the laws of the state that certified the liability.

(3) A particular form is not required for the written application for a hearing.

B-1. Correction of Erroneous Assessments.

(1) A person who fails to file a timely appeal under Tax-General Article, §13-508(a), Annotated Code of Maryland, may request a correction of an erroneous assessment under Tax-General Article, §13-509, Annotated Code of Maryland.

(2) A person requesting a correction of an assessment shall provide written documentation that is relevant and responsive to the assessment, within the time period designated by the hearing officer.

(3) After reviewing the provided documentation, the hearing officer shall:

(a) Issue an order stating clearly the reasons for decreasing or abating the assessment; or

(b) Send written notice of the Comptroller's refusal to enter an order.

(4) An order issued by the hearing officer is final and not subject to appeal.

(5) The Comptroller's refusal to issue an order is final and not subject to appeal.

C. Hearings — Licenses.

(1) The appropriate unit of the Comptroller's Office shall schedule a hearing before the denial, suspension, or revocation of a license issued under Tax-General Article, Annotated Code of Maryland.

(2) In the case of an alcoholic beverage license or a tobacco license issued by the Comptroller's Office, a hearing shall be held by the division responsible for issuing the license.

(3) In the case of all other licenses issued by the Comptroller, a hearing shall be held by the Hearings and Appeals Section of the Comptroller's Office.

(4) An appeal from a license hearing shall be under Regulation .05 of this chapter.

D. Scheduling and Attendance.

(1) After receipt of a timely application for a hearing or after having issued a notice of proposed action on a license or license application, the Comptroller shall schedule a hearing.

(2) The Comptroller shall notify the person:

(a) Of the date, time, and place of the hearing;

(b) Of the statutory or regulatory authority for the Comptroller's action or proposed action;

(c) In the case of a proposed action on a license or license application, of the facts which may warrant the action;

(d) That the person may present witnesses and documents at the hearing; and

(e) That failure to appear for the scheduled hearing shall be treated as a withdrawal of the request for a hearing.

(3) Postponements.

(a) The hearing officer shall consider a request for postponement only if the person establishes good cause for the postponement.

(b) Except as provided in §D(3)(d) of this regulation, a request for postponement shall be made in writing and be received by the Comptroller not less than 5 business days before the scheduled hearing.

(c) The hearing officer may require documentation of the reasons for the postponement request from the person.

(d) Emergency Request for Postponement.

(i) For purposes of this paragraph, "emergency" means a sudden, unforeseen occurrence requiring immediate attention which arises within 5 business days of the hearing.

(ii) In an emergency, a request for postponement may be made by telephone.

(iii) The hearing officer may require documentation of the reasons for the emergency postponement request from the person.

(4) Failure to Attend Hearing.

(a) If a person fails to attend a scheduled hearing, the assessment or denial of the application for refund is final and nonappealable.

(b) If a person fails to attend a scheduled hearing on a proposed action on a license or application for license, the proposed action becomes effective as of the date of the scheduled hearing.

(c) If a person fails to attend a scheduled hearing to challenge the certification of a liability owed to another state which resulted in the withholding of a portion of refund, the certification is deemed correct and the intercept is final and nonappealable.

E. Prehearing Procedure.

(1) Before a hearing, the hearing officer may:

(a) Review or request materials relevant to the proceedings; and

(b) Hold a prehearing conference.

(2) If all parties agree at a prehearing conference, a hearing officer may dispose of an issue by stipulation or settlement.

F. Hearings.

(1) Procedures.

(a) The Comptroller shall record all hearings.

(b) A person may produce witnesses and documents in support of the person's position.

(c) Subpoenas.

(i) A person may request that the hearing officer subpoena witnesses.

(ii) A person shall make the request in writing, not later than 10 days before the hearing, explaining why the subpoena is necessary.

(iii) The hearing officer may decline to issue the subpoena.

(d) The hearing officer may question any witnesses and may produce, by subpoena or otherwise, additional witnesses. A person may question any witnesses called by the hearing officer.

(e) The hearing officer may allow a person time to provide additional evidence or written arguments, and may reconvene the hearing if the hearing officer considers it necessary.

(f) The hearing officer may consult with any employee of the Comptroller and with the person before making a decision in a case.

(2) Evidence.

(a) The hearing officer shall consider probative evidence without regard to any technical rules, but may reject evidence which is incompetent, irrelevant, immaterial, unduly repetitious, or not responsive.

(b) Copies of documents may be admitted, although the hearing officer may require production of originals.

(c) The Comptroller shall retain documentary or other evidence for at least 60 days after the case is finally resolved. The evidence may then be destroyed unless the owner or person producing it makes a written request for its return.

(3) Witnesses shall be under oath or affirmation.

(4) Burden of Proof.

(a) An assessment or denial of refund is presumed to be correct, and a person has the burden of proving that an error has been made.

(b) In a hearing on a license suspension, revocation, or denial, the Comptroller has the burden of proof.

(c) In a hearing on the certification of a liability owed to another state which resulted in the withholding of a portion of refund, the certification of the taxing official of the other state is presumed to be correct, and a person has the burden of proving that an error has been made.

(5) Hearings Conducted by Electronic Means.

(a) A hearing officer may conduct all or part of a hearing by telephone, video conferencing, or other electronic means, by the consent of all parties.

(b) All substantive and procedural rights applicable to hearings described in this regulation apply to telephone, video, or other electronic hearings, subject only to the limitations of the physical arrangement.

(c) Documentary Evidence. For a telephone, video, or other electronic hearing, a party shall provide documentary evidence to be offered to all parties so that it is received by each party and the hearing officer at least 5 days before the scheduled hearing.

(d) Default. For a telephone hearing, the following may be considered a failure to appear resulting in the assessment or denial of the application for refund becoming final and nonappealable:

- (i) Failure to answer the telephone for 15 minutes;
- (ii) Failure to free the telephone for a hearing; or
- (iii) Any other failure without good cause to be ready to proceed with the hearing as scheduled.

G. Final Determinations.

(1) The hearing officer shall issue a written final determination on behalf of the Comptroller.

(2) The notice of final determination shall summarize:

(a) Any adjustments to the assessment or refund denial and the reasons for the Comptroller's action;

(b) In the case of an action on a license or application for a license, the reasons for the Comptroller's action;
or

(c) In the case of the withholding of a portion of a refund for a liability certified by the taxing official of another state, any adjustment to the amount of the intercepted refund and the reasons for the Comptroller's action.

H. Appeals.

(1) A person dissatisfied with the final determination may appeal to the Maryland Tax Court for a de novo review within 30 days from the date of the notice of final determination.

(2) If the Comptroller does not issue a final determination with respect to a claim for refund within 6 months from the date of the filing of the claim, the person may elect to consider the claim disallowed and appeal to the Maryland Tax Court.

(3) Effect of Appeals.

(a) Assessments.

(i) Proceedings for the review of assessments do not stay the accumulation of statutory interest charges.

(ii) A person may pay an assessment under protest to avoid incurring additional interest charges during the appeal process.

(iii) If a person pays an assessment under protest, and it is subsequently determined that all or a portion of the tax is not owed to the Comptroller, the Comptroller shall pay interest as provided in Tax-General Article, §13-603, Annotated Code of Maryland.

(b) Licenses. The filing of a petition of appeal from a final determination does not, of itself, stay the enforcement of the Comptroller's proposed action.