The Appeals Process

Thinking It Through

VALTA 2024

Virginia Tax

Disclaimer

The following materials and accompanying discussions are for informational purposes only, and they should not be considered a formal opinion of the Department of Taxation (“Virginia Tax”).

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The Appeals Process

Appeals Process Goals

- **Good Service:**

  Did the Taxpayer have a good customer service experience?

- **Get it Right:**

  Was the correct substantive outcome reached?

- **Educate:**

  Did the taxpayer learn things that will aid in future compliance?

Appealable Actions

- Assessments
- Refund Denials

Local Appeal

1. Taxpayer Applies for Correction
2. Locality Reviews
3. Assessing Officer Issues a Final Determination

Appeal to the Department

Taxpayer Applies for Correction → Department of Taxation Reviews → The Tax Commissioner Issues a Final Determination

When should you start being mindful of the Appeals process?

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A. The day before you will have had the case for a year

B. When someone important calls about it

C. When you realize it involves a lot of money

D. When you're first considering taking an action that is appealable

When should you start being mindful of the Appeals process?

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Appeals Process Considerations

Pre-Appeal

- Any and all adjustments should be explained to the taxpayer – be specific!
- What was the change?
- What was the basis for making the change?
- If the taxpayer provided information to support their position, why was that information not sufficient?
- If the taxpayer made legal arguments to support their position, why did their arguments not win out?
- Has the taxpayer been informed of their remedial rights in the event they disagree with any action taken?

Taxpayer’s Appeal Letter

- One might be inclined to think the Taxpayer’s appeal letter is wholly their responsibility.

WRONG!

- If the taxpayer does not understand what happened, it will be difficult, if not impossible, to write a good appeal letter.

Reviewing an Appeal

- Does the reviewer understand the issue being presented by the taxpayer?
- Can the issues be narrowed down at all?
- What further information, if any, is required in order to resolve the matter?
- Are further requests for information tailored to the issues at hand?
- Is your policy research sound?
- Are you straining the policy to get to a particular conclusion?
- What are the strengths and weaknesses of your position?

Final Determination

Organization

- Is a clear purpose for the determination established?
- Are the issues clearly identified and explained?
- Does the analysis fit logically together and is it placed in understandable order?

Content

- Are the relevant facts identified?
- Are supporting sources used sufficiently, effectively, and appropriately?
- Is the determination supported by clear reasoning?
- Is the argument convincing?

Final Determination

Correctness

- Does the determination contain grammatical errors?
- Does the determination contain punctuation errors?
- Does the determination contain spelling errors?
- Does the determination use appropriate technical and legal terms?
- Are supporting sources cited in the proper format?

A Note on Advisory Opinions

- By statute, the Department has authority to issue advisory opinions regarding the BPOL tax and local business taxes over which it has appeal jurisdiction. Either a taxpayer or locality may request one.
- While no specific form is required, starting templates are available in the BPOL regulations (23 VAC 10-500-633) and Guidelines for Appealing Local Business Taxes (P.D. 04-28).
- NOTE: Requests for advisory opinions must include Form Rulings – Fee, available under the Forms and Filings tab of the Department's website at tax.virginia.gov. Localities are exempt from the $275 administrative filing fee but should still include the form.

A Note on Advisory Opinions, cont'd.

- In practice, the Department will not normally issue an advisory opinion when there is an active dispute ongoing, unless both taxpayer and locality consent.
- It is crucial that the request frames the issues clearly and describes the facts thoroughly.

Discussion Exercises

Discussion Exercises: #1

Dear Tax Manager,

Recently you filed a return of business tangible personal property tax, reporting a liability of $5,000 for the 2023 tax year, which you paid. However, our records indicate the correct liability is $5,500. You will be receiving a bill from the Treasurer’s Office for the additional $500 tax due, plus interest. If you have any questions, you may call our Business Taxes unit at ---.---.----.

Sincerely,

Auditor Andrea

Discussion Exercises: #2

Dear Tax Manager,

We are in receipt of your application of correction regarding the assessment of BPOL tax issued to you for the 2023 tax year. While we agree that your business is permitted to situs gross receipts by payroll apportionment, more information is required in order to compute the tax. In addition to providing your federal and all state income tax returns, please forward us the following information within 14 days of the date of this letter, with regard to each employee who you claim was employed during the tax year at issue:

1) Offer and termination letters;
2) W-4s;
3) Employment contracts;
4) Job descriptions;
5) W-2s.

Sincerely,

Audit Supervisor Suzanne

Discussion Exercises: #3

Dear Taxpayer,

This final determination is issued in response to your application for correction of an assessment of machinery and tools (M&T) tax issued to you for the 2022 tax year. This office conducted a site visit in November 2023 in which we observed the machinery in question operating.

Although manufacturers are not subject to the BTPP tax, they are subject to the M&T tax on machinery and tools used directly in the manufacturing process. See *Virginia Code* § 58.1-3507 A. As we have maintained since the beginning, it is apparent that all of the equipment in question is used directly in the manufacturing process, and therefore subject to the M&T tax. Therefore, your appeal is denied.

If you wish to pursue this matter further, you may write to the Tax Commissioner within 90 days of the date of this letter.

Sincerely,

Commissioner Charles

Discussion Exercises: #4

To: Mr. Taxpayer
From: Audit Supervisor Amelia
Re: Your complaint

Taxpayer – I see below that you reached out to us through the web portal with a complaint you had regarding getting an unexpected BPOL bill you received for the 2022 tax year. As we explained to you, we believe you should be considered a retailer, not a wholesaler, and we adjusted your bill accordingly. I have reviewed the email chain below where members of my staff explained all of this, and I find no issues with their conclusions. As such, we consider this matter closed.

Discussion Exercises: #5

Dear Taxpayer,

It was a pleasure meeting you last month, and we appreciate the opportunity to review your business records with you. As we discussed at the meeting, some of the records you had regarding asset disposals for the 2021 tax year were unclear as to either what property was being disposed, when exactly it was disposed, or both. You stated that you believed you had better records you could provide to us, and we agreed to extend the deadline to provide documentation by an additional 30 days. This deadline has passed, and we have not heard from you.

Unfortunately, this means that the property for which we do not have sufficient evidence of disposals remains taxable for that year. An assessment will be issued accordingly for the additional tax due and any applicable interest. Should you wish to appeal this decision, you may do so by submitting an application for correction [*explains the timeframe*] to our Commissioner of the Revenue at [*provides the contact information*]. If you have any further questions about the audit or the appeals process, you may contact me at - - -. - - -.- - - - .

Sincerely,

Audit Supervisor Sheila

Discussion Exercises: #6

Dear Taxpayer,

We have completed our review of your amended return of business tangible personal property tax, wherein you removed certain items from the list of taxable assets on the basis that they were fixtures to realty. Unfortunately, we must deny your refund claim because the very fact that you have always reported them as taxable sheds doubt as to whether you had the requisite intent to make them fixtures. This is our final determination. If you wish to appeal this decision, you must file an application for correction within 90 days to the state Department of Taxation at [provides address].

Sincerely,

Deputy Commissioner Dave

Special Topic

Remote Workers

- An independent contractor who performed field work for another company and filed her own Schedule C was a sole proprietor whose residence would automatically be considered a definite place of business by statute because she did not maintain a DPOB elsewhere. P.D. 15-16.

- An employee's home could itself be a definite place of business even if another definite place of business is maintained elsewhere. The six characteristics taken from P.D. 97-201 do not have to be met in every case. What is important is whether the statutory standard of "an office or location at which occurs a regular and continuous course of dealing for 30 consecutive days or more" is satisfied with reference to all of the relevant facts and circumstances. P.D. 14-121.

Remote Workers, cont'd.

- The use of remote workers does not alter the statutory situs rules. If gross receipts are sitused using payroll apportionment, the numerator of a locality's apportionment factor cannot include remote workers who do not actually work out of a definite place of business in that locality. P.D. 21-131.
- Reporting of positive payroll factors in other states could be consistent with a claim that a taxpayer had employees working remotely from their homes in those states. Those homes could be DPOBs. Such reporting, however, is not determinative, and each potential DPOB must be evaluated based on all the relevant facts and circumstances. P.D. 23-113.

Thank You

Timothy Mucha

Lead Tax Analyst

timothy.mucha@tax.virginia.gov

Chantel Buchin

Tax Analyst

chantel.buchin@tax.virginia.gov