



Legal Office & Administrative Hearing Office Updates

September 1, 2021



Legal Office

Legal Office

The Legal Office serves as the Department's in-house counsel and provides legal counsel on all matters affecting the Department. This includes tax litigation, tax compromises, rulings, and tax policy; the administration of motor vehicle title and registration laws; legislation; employment law matters; contracts; providing support to audit personnel preparing for informal conferences; and public records requests.

Legal Office Updates

Tax Rulings

- FY20 and FY21
 - 28 rulings issued
 - 90% published on the TDOR website
 - The 3 rulings that were not published could not be sufficiently redacted to protect the taxpayer's identity or other confidential information

Legal Office Updates

Tax Rulings

- Wide range of topics
 - Online Marketplace Facilitators & Sales Tax
 - Pre-Need Funeral Contracts & Sales Tax
 - Online Instructional Courses & Sales Tax
 - IRC Section 754 Elections & Franchise Tax Net Worth Computation
 - Franchise Tax Minimum Measure & Capitalized Costs
 - Survival of NOLs in Multi-Entity Merger & Excise Tax
 - Administrative Fees & Business Tax

Legal Office Updates

Litigation: Interesting Court Decisions

- **Redskin Café, Inc. v. Gerregano**
 - Retail Accountability Program Assessment
 - Chancery Court upheld the assessment after finding that the taxpayer did not present evidence supporting his assertions
- **Zimmer v. Gerregano**
 - Chancery Court: The form for waiver of statute of limitations for assessments of tax and refunds of overpayments did not extend statute of limitations for filing a suit to challenge a denied refund claim
- **Emerachem v. Gerregano**
 - TN Court of Appeals upheld the trial court decision finding that the taxpayer is liable for excise tax on settlement proceeds received in connection with a legal malpractice action brought against a law firm for mishandling its patents



The Administrative Hearing Office

Administrative Hearing Office

The Hearing Office's mission is to resolve tax disputes on behalf of the Commissioner of Revenue in an informal, expeditious, consistent and cost-effective manner, without litigation.

The Hearing Office also hears contested cases under the Uniform Administrative Procedures Act. The hearing officers act as administrative law judges in those cases.

Administrative Hearing Office

- The Administrative Hearing Office receives several hundred informal conference requests each year
 - Most requests are resolved without needing to hold the conference
 - About 200-250 conferences are held each year by 3 hearing officers
- Informal conferences are held over the phone, via Microsoft Teams videoconferencing, and in person (Nashville only)
- Informal conferences are provided at no charge
- The taxpayer can participate in the conference with or without representation

Updated Conference Request Form

- Requesting an informal conference is easy and can be done online at <https://www.tn.gov/revenue/tax-resources/compliance-information/request-an-informal-conference.html>
- The request form was updated in July 2021 with the goal of helping taxpayers articulate the desired outcome of the conference. The form now asks:
 - What outcome does the taxpayer want from the informal conference?
 - Why does the taxpayer believe this is the correct outcome?
 - What important facts, documents or other evidence should the hearing officer consider?
 - What questions does the taxpayer have about the proposed assessment or refund denial?

Updated Conference Request Form

- Many taxpayers who receive a NOPA do not actually need an informal conference. The online request form helps taxpayers determine whether they can get a matter resolved without a conference.
- The proposed assessment can often be resolved quickly without an informal conference if the taxpayer:
 - Failed to file a return and received an estimated assessment
 - Filed a return but did not pay all the tax reported as due on the return
 - Closed the business but has not closed the tax account
 - Was assessed only a penalty, with no additional tax due

FY21 Informal Conferences

- Informal Conferences held: 214
- Informal Conference Decisions issued: 191
- UAPA hearings: 21

- Conferences resulting in adjustments: 46%

Questions?



Tennessee Department of Revenue
Legal Office
Administrative Hearing Office

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