

## **CHAPTER 81-01.1-02 ADMINISTRATIVE HEARINGS**

### Section

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### **81-01.1-02-01. Formal hearing before tax commissioner.**

When provided by statute, a taxpayer may request a formal hearing before the tax commissioner.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 57-01-02

### **81-01.1-02-02. Taxpayer right to administrative hearing on refund issue.**

If the tax commissioner denies any portion of a taxpayer's request for a refund, the taxpayer has the right to protest and the right to administrative review only when such protest or review is specifically provided by the statutes governing the specific tax type. When there is no specific statutory provision giving a taxpayer the right of administrative review, the decision by the tax commissioner is final and irrevocable.

**History:** Effective July 1, 1985.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 57-01-02

### **81-01.1-02-02.1. Complaint - Time for filing - Extensions granted.**

1. When a taxpayer is required to file an administrative complaint in response to a notice of reconsideration, the taxpayer shall file the complaint within thirty days of the notice. The taxpayer will be granted an automatic extension of thirty days to file a complaint, provided the taxpayer makes a request for extension within thirty days of the notice. Further extensions are available at the discretion of the tax commissioner.
2. When a representative of the tax commissioner files an administrative complaint pursuant to North Dakota Century Code section 57-39.2-15, the administrative complaint must be filed within nine months of the statement of grounds, plus mutually agreed extensions.

**History:** Effective May 1, 1991; amended effective November 1, 1991.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-05

### **81-01.1-02-03. Notice of intent to proceed to hearing - Answer - Time for filing.**

1. When a taxpayer files a complaint and requests a hearing, the tax commissioner must serve a notice of intent to proceed to hearing upon the taxpayer and upon a designated representative of the tax commissioner within thirty days from the date of service of the complaint. The designated representative of the tax commissioner must file an answer to the complaint within twenty days of receipt of the complaint and the notice.

2. When a representative of the tax commissioner elects to file a complaint and requests a hearing, the tax commissioner must serve a notice of intent to proceed to hearing together with a copy of the complaint upon the taxpayer. The taxpayer must file an answer to the complaint within twenty days of service of the notice and complaint.

**History:** Effective July 1, 1985; amended effective May 1, 1991; November 1, 1991.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-05, 57-01-02

#### **81-01.1-02-03.1. Rules governing administrative proceedings.**

The North Dakota Rules of Civil Procedure apply to all proceedings before the commissioner unless otherwise provided by a specific statute.

**History:** Effective November 1, 1991.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 57-01-02

#### **81-01.1-02-04. Place of formal hearing.**

All formal hearings, regardless of the taxpayer's residence, must be held at the office of the tax commissioner or any other location in the State Capitol, Bismarck, North Dakota, as designated by the hearing officer.

**History:** Effective July 1, 1985; amended effective November 1, 1991.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 57-01-02

#### **81-01.1-02-05. Appointment of hearing officer - Powers.**

1. If a taxpayer requests an independent hearing officer within thirty days of the filing of a complaint, the tax commissioner shall appoint an independent hearing officer and shall notify the taxpayer and a representative of the tax commissioner. If no answer is filed, the tax commissioner may appoint an independent hearing officer or consider the matter a default matter and proceed accordingly. After the filing of a complaint, the service of a notice of intent to proceed to hearing, and the filing of an answer, the tax commissioner shall appoint an independent hearing officer no later than forty-five days before the hearing and shall notify the taxpayer and representative of the tax commissioner.
2. A person appointed as a hearing officer may:
  - a. Issue subpoenas.
  - b. Administer oaths.
  - c. Regulate the course of the hearing to assure that it proceeds in an orderly fashion.
  - d. Rule on offers of proof and receive relevant evidence.
  - e. Elicit all facts necessary to clearly present the issues. The hearing officer may examine or cross-examine witnesses in order to develop and clarify the facts and issues.
  - f. Exclude evidence which is cumulative or repetitious.
  - g. Order or allow discovery proceedings and set and regulate time limits for obtaining and exchanging information.

- h. Hold appropriate conferences before or during hearing. A summary of the conference must be made by the hearing officer either in writing or orally as part of the hearing record.
  - i. Dispose of procedural matters and rule upon procedural motions.
  - j. Authorize any party to furnish and serve designated late filed exhibits within thirty days after the hearing is adjourned.
  - k. Request or allow the filing of briefs by the parties and set a time limit during which the briefs must be filed.
    - (1) The hearing officer, at that officer's discretion, may extend the due date of the briefs for good cause. An extension must be requested and responded to in writing.
    - (2) Any party who does not file a brief on or before the initial or extended due date forfeits the right to do so.
  - l. Allow any party to the proceedings to file proposed findings of fact, conclusions of law, and decision. The proposal must be filed with the tax commissioner within a reasonable time after the date of the formal hearing.
  - m. Grant or deny continuances or postponements.
  - n. Take any other action necessary to discharge the duties vested in the tax commissioner and the appointed hearing officer and which is consistent with the statutes and rules under which the tax commissioner operates.
3. A person appointed as a hearing officer shall:
- a. Issue a notice of hearing and specification of issues. If the tax commissioner has already issued a specification of issues, the hearing officer may amend it.
  - b. Issue recommended findings of fact and conclusions of law, and a recommended order.

**History:** Effective July 1, 1985; amended effective May 1, 1991; November 1, 1991.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 57-01-02

**81-01.1-02-06. Time for hearing.**

A hearing date must be scheduled for not more than eighteen months from receipt of the complaint. However, reasonable extensions shall be available from the hearing officer.

**History:** Effective May 1, 1991.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 57-01-02

**81-01.1-02-07. Persons authorized to represent taxpayer.**

1. **Taxpayer in own interest.** An individual taxpayer may appear before the hearing officer in the taxpayer's own interest. A corporate taxpayer may be represented by a corporate officer or any other duly authorized corporate employee. A partnership may be represented by any general partner.
2. **Attorneys.** An attorney admitted and licensed to practice law in North Dakota may represent a taxpayer before the hearing officer. An attorney, admitted and licensed to practice law in a foreign state or country, but not licensed to practice law in North Dakota, may represent a

taxpayer before the hearing officer if that attorney first designates as an associate a resident attorney admitted and licensed to practice law in this state. The name and address of the associate must appear on all documents filed with the office of state tax commissioner. The associate shall appear personally and, unless excused by the hearing officer, shall remain in attendance with the nonresident attorney in all appearances before the hearing officer.

3. **Rules of conduct.** All persons appearing before the hearing officer shall conform to the standard of ethical conduct required of practitioners before the courts of the state of North Dakota.

**History:** Effective May 1, 1991; amended effective November 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 57-01-02