



## **City of Commerce City Finance Department, Tax Division**

### **Rules Governing Hearings Before the City Manager or Designee**

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The following procedural rules shall govern all hearings held pursuant to Chapter 20 of the Commerce City Revised Municipal Code ("Tax Code") specifically Section 20-11, before the City Manager or designee and are promulgated in accordance with the requirements of the Tax Code.

The City Manager hereby adopts these Rules Governing Hearings ("Rules") and, pursuant to Tax Code Section 20-11-4, may appoint a Hearing Officer delegating power to such Hearing Officer to conduct a Hearing and to enforce these Rules.

These rules are available on the City's website. A copy of these Rules shall be made available on request to those persons who, pursuant to a Notice of Final Determination - Assessment - Demand for Payment ("Assessment") or denial of a Claim for Refund ("Refund Denial"), timely file a Protest to either.

#### **1. Definitions**

As used in these Rules, unless the context otherwise clearly requires, the following terms shall have the following meanings:

- a. "Assessment" means a Notice of Final Determination - Assessment - Demand for Payment issued pursuant to the Tax Code.
- b. "City" means the City of Commerce City, County of Adams, State of Colorado.
- c. "City Manager" means City Manager of the City of Commerce City, or any duly authorized agent or representative acting in his/her stead or behalf.
- d. "Determination Notice" means a final determination notice issued by the Hearing Officer under Tax Code Section 20-11-8 upon completion of the Hearing, which sets forth the amount found still due and owing or the amount of the refund that is owed to the taxpayer, and states the grounds for such determination.
- e. "Hearing" means the hearing held pursuant to the Protest as provided in Tax Code Section 20-11.
- f. "Hearing Officer" means the City Manager or any person appointed by the City Manager to conduct hearings.
- g. "Protest" means a formal written request for a Hearing to contest an Assessment or Refund Denial.
- h. "Refund Denial" means any Claim for Refund that is denied, in whole or in part, by the City under Tax Code Section 20-10-5.

- i. "Tax Code" means Commerce City Sales and Use Tax Code and regulations, Chapter 20, as amended.
- j. "Taxes" means monies due under any of the articles contained in the Tax Code.
- k. "Taxpayer" means any person or entity requesting a Hearing before the City Manager.

2. Time Limits

- a. The Tax Code requires that Protests must be received by the City within thirty (30) days of the date of the Assessment or Refund Denial.
- b. In accordance with Colorado Revised Statute (C.R.S.) § 29-2-106.1, "Deficiency notice – dispute resolution" a hearing date shall be set usually within ninety (90) to one hundred twenty (120) days after the City's receipt of a valid Protest and the Taxpayer shall be notified of such Hearing date at least thirty (30) days before the Hearing.
- c. Unless the City and Taxpayer agree in writing to forego a local hearing or agree to extend the time for holding a hearing and/or time for issuing a Determination Notice, the hearing must be held and a Determination Notice shall be issued by the Hearing Officer in writing within one hundred and eighty (180) days after the date the City receives a Protest and request for hearing.
- d. The Hearing Officer shall mail copies of the Determination Notice to the Taxpayer and the City Manager by USPS certified mail, unless the Taxpayer has consented to receive the Notice by electronic mail, and the date of the mailing shall constitute the notice date for purposes of determining the period for initiating further review.
- e. Unless an appeal is taken as provided in Tax Code Section 20-11, the Taxes, together with applicable interest and penalties shall be paid on or before thirty (30) days after the date of the Determination Notice.

3. Filing of a Protest

- a. All Protests of Assessments or Denials of Refund shall be denoted as such and shall be filed in writing. To be considered timely filed, protests must be actually received by the City within the thirty (30) calendar day limit provided in the Tax Code, whether mailed, submitted by facsimile, sent by electronic mail or hand delivered. The burden is on the Taxpayer to show that the Protest was timely filed. If the last day for filing a Protest falls on a Saturday, Sunday or legal City holiday, the Protest may be filed on the next business day.
- b. The City Manager or designee shall assign the date and time for the Hearing and shall provide the Taxpayer, Hearing Officer and the City Attorney notice of such date and time.
- c. In accordance with Commerce City Tax Regulation 20-11-1, Taxpayer shall provide the following information in its Protest;

The applicant must set forth the facts on which they rely, together with a statement of the law under which they claim the relief requested, but in all cases, the request for hearing shall include the following information:

- (1) Taxpayer's name, address and account number (if any).
- (2) The Taxpayer's copy of the Notice of Final Determination – Assessment – Demand for Payment (if the claim arises upon such notice).
- (3) The taxable period(s) involved.
- (4) Taxpayer's assertion of the amount of tax and/or interest and penalties, in dispute.
- (5) An itemized list of the specific transactions that are being protested, or a copy of the original audit work paper file identifying the specific transactions with which the taxpayer asserts are not taxable.
- (6) A specific statement in response to the City's findings and determinations with which the Taxpayer does not agree. The Taxpayer must set forth the facts relied upon, together with a statement of the law in support of their position on all protested issues.
- (7) All documentation relied upon by the vendor or taxpayer in support of the appeal and which establishes the basis for the appeal.
- (8) The signature of the Taxpayer or a Corporate Officer.
- (9) The name, address and telephone number of the legal representative of the Taxpayer who is authorized to present the case; If this person is a third party, an executed power of attorney must be provided to the City prior to the hearing. Taxpayer may contact the City to obtain a power of attorney form.

#### 4. Hearing Procedures

- a. The Hearing Officer has discretion to require or permit the City to file a response to the Protest. The Hearing Officer may require or permit the parties to furnish or accept from either party any additional information relevant, as necessary, to frame the issues prior to the Hearing, such as but not limited to opening arguments, stipulated facts and disputed facts, lists of exhibits, witnesses and law relied upon.
- b. Either the City or the Taxpayer may request the Hearing be vacated and the Protest decided by written brief; however, the parties must both agree to submitting briefs in lieu of a Hearing. The Hearing shall be held at the City, with the date and time to be designated by the City Manager in the notice of hearing. Except in accordance with the procedures set forth in subsection O below, the Hearing may not be conducted via teleconference. Teleconference testimony is allowed at the discretion of the Hearing Officer upon good cause shown.
- c. The order of proceedings in the Hearing shall be as follows:

- Docket call by the Hearing Officer.
  - Chronology of the case by the City.
  - Opening remarks by Taxpayer and by the representatives of the City unless waived by either party or reserved by the City until the opening of the City's case.
  - Presentation of evidence by the Taxpayer (exhibits shall be lettered for identification).
  - Presentation of evidence by the City (exhibits shall be numbered for identification).
  - The Hearing Officer may at any time address questions to any witness for the purpose of clarification.
  - Closing argument by Taxpayer followed by answering argument from the City with opportunity to reply to answering argument by Taxpayer. At the discretion of the Hearing Officer, the Taxpayer or the City may submit written briefs in addition to or in lieu of closing argument. If the Taxpayer elects to submit a brief, then the City shall be permitted to file an answer brief. No reply brief shall be accepted. The schedule for filing such briefs shall be set by the Hearing Officer.
- d. The City may be represented by employees and/or by an attorney assigned or appointed by the City Attorney's Office.
- e. The Taxpayer may appear in person with or without an attorney or other representatives and present their entire case in support of their position, including the filing of any brief or affidavits deemed pertinent to their cause. A corporate Taxpayer must be represented by either an attorney admitted to practice in any of the United States or by a corporate officer or similar representative authorized to act on behalf of the corporation for all City tax purposes.
- f. The Hearing shall be informal and shall generally be in accordance with Tax Code Section 20-11-4 and these Rules. The Hearing Officer may consider the Colorado Rules of Evidence as a guide. The Taxpayer shall have the burden of proof to show by clear and convincing evidence the correctness of the position of the Taxpayer.
- g. Carbon copies, photographic copies, and copies made by duplicating machines, all properly authenticated, may be admitted into evidence or substituted in evidence in place of original documents.
- h. All requests for a continuance must be for cause, in writing, and received by the Hearing Officer not less than ten (10) days prior to the date scheduled for the Hearing.
- i. No *ex parte* communications with an appointed Hearing Officer shall take place

except in accordance with accepted practice in Colorado courts of general jurisdiction.

- j. Based on the evidence presented at the Hearing, the Hearing Officer shall issue a Determination Notice which may uphold the Assessment or Refund Denial, modify or abate the tax, penalties and interest protested, or approve a refund.
- k. After the Hearing, the Taxpayer shall not be entitled to a second hearing on the same Assessment or Refund Denial.
- l. The Taxpayer's participation in the Hearing shall be an exhaustion of local remedies pursuant to Tax Code Section 20-11-1(C). If a Taxpayer fails to participate in the Hearing, the Taxpayer will have failed to exhaust local remedies and the Hearing Officer shall dismiss the case.
- m. The Taxpayer and City may agree in writing that no hearing before the local government will be held, or that no final decision will issue from the local government. Such written agreement shall state that the taxpayer exhausted local remedies.
- n. If the City and Taxpayer agree, one hundred eighty days or more after the date of the taxpayer's request for a hearing, the City may notify the taxpayer in writing that the City does not intend to conduct a hearing. In such instance, the written notification shall also state that the taxpayer exhausted local remedies in accordance with C.R.S. § 29-2-106.1.
- o. During a declared emergency or disaster in the City relating to an epidemic or other incident where the nature of the physical environment presents a risk to public health, as a result of the emergency or disaster, the Hearing Officer is authorized to hold the Hearing as an electronic Hearing if the capacity for such meetings is available, subject to the provisions of this Rule. Taxpayers and the City shall be allowed to attend and participate in an electronic hearing by such telephonic, video conferencing, or other electronic means as are made available by the City Manager or his designee(s) that allow for real-time participation and visibility (audio or video) by the public ("Electronic Means"), as provided herein. Electronic Means shall include telephone, video, or web-based conferencing means that:
  - 1. Allows all participants to see (to the extent possible), hear and communicate with each other;
  - 2. Each party will be responsible for testing the videoconferencing system with each of their witnesses, including any third-party witnesses the party plans to have testify at the Hearing, who will be attending virtually. Each party also is responsible for ensuring that all logistical requirements of this Rule are satisfied.
  - 3. The parties and their witnesses shall appear by video with audio unless only an audio connection is viable and the Hearing Officer consents to an audio-only appearance. The Hearing should be continued in the absence of such consent or if either party's connection does not allow any participant to hear or respond to questions or if the Hearing Officer cannot hear any participant.
  - 4. Except for rebuttal materials, the Taxpayer and the City must submit all written documents or other presentation materials to the Hearing Officer at least 2 business days before the Hearing, unless excused by the Hearing Officer or

consented to by the opposing party.

5. All presented exhibits and all testimony and questions must be clearly audible and visible (for those using video connections) to the Hearing Officer, the Taxpayer and the City.

## 5. General Provisions

- a. Mailings, notices, computations of time, time limitations, service, and filings shall conform to the requirements of the Tax Code, and in any instance where these Rules are inconsistent or alleged to be inconsistent with the provisions in the Tax Code, the provisions of the Tax Code shall govern as determined by the Hearing Officer, subject to judicial review as provided under the Colorado Rules of Civil Procedure.
- b. In the event that any provision of these Rules or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application, and to this end, the various provisions of these Rules are declared to be, and are, severable.
- c. Compliance with these Rules is mandatory for all Protests. In the event of noncompliance, except where there has been a failure to exhaust local remedies, the Hearing Officer may impose any appropriate sanction therefore at the Hearing.
- d. The Hearings are informal but are not open to the public. The City may record an audio version of the Hearing and may provide a copy of the recording to the Hearing Officer. The Hearing Officer may record the Hearing to assist in preparation of the Determination Notice.

APPROVED AND EFFECTIVE on and after February 11, 2022.

**BY THE ORDER OF THE CITY MANAGER**

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*Roger Tinklenberg*  
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Roger Tinklenberg, City Manager