

The Comptroller of Public Accounts proposes new §1.22, concerning docketing oral and written submission hearings. Existing §1.22 is proposed for repeal concurrently with this proposed new section. The new section explains the procedures used to select either an oral hearing or a written submission hearing, the procedures used to docket the case at the State Office of Administrative Hearings (SOAH), and the service and filing of the notice of hearing and relevant pleadings and exhibits.

Subsection (a) provides that a hearing before the administrative law judge will be conducted either orally or by written submission. The subsection provides that the Assistant General Counsel assigned to the case will request all parties to select either an oral hearing or a written submission hearing. Any party, including the agency, may select an oral hearing, which otherwise will be by written submission. If an oral hearing is selected by any party, the parties must agree to three potential hearing dates, from which SOAH will select a date according to SOAH's availability.

Subsection (b) explains the procedure by which the Administrative Hearings Section files a Request to Docket Case form at SOAH, under the SOAH Rules of Procedure. The Request to Docket Form must state whether the hearing is to be conducted orally or by written submission. If an oral hearing has been selected, the Administrative Hearings Section will provide with the Request to Docket Case form the agreed potential oral hearing dates to allow SOAH to schedule the oral hearing consistent with the availability of the administrative law judge and the parties.

Subsection (c) refers to 1 TAC §155.51, which provides that SOAH acquires jurisdiction after the Request to Docket Case form has been filed.

Subsection (d) describes the preparation, filing, and service of the Notice of Hearing. This subsection refers to the applicable provisions of the Government Code, §2001.051 and §2001.052, and the SOAH Rules of Procedure, 1 TAC §155.401, concerning the requirements for a Notice of Hearing. The subsection provides that the Administrative Hearings Section will include in the Notice of Hearing the SOAH hearing number and the date of the hearing scheduled by SOAH if an oral hearing was selected. The subsection further provides that the Administrative Hearings Section will file with SOAH and serve on the parties the Notice of Hearing together with all pleadings served on and by the agency, along with their attachments, including the Statement of Grounds, Position Letter, Reply, and Response. The Administrative Hearings Section may also file and serve any other documents it intends to offer at the hearing along with the Notice of Hearing.

Subsection (e) provides that additional pleadings, exhibits, and other documents the parties may offer must be filed and served in accordance with SOAH Rules of Procedure and any orders issued by the administrative law judge.

Subsection (f) provides that after SOAH acquires jurisdiction, any party may file a motion to convert a written submission hearing to an oral hearing, or an oral hearing to a written submission hearing, consistent with the SOAH Rules of Procedure.

Public Benefit/Cost; Fiscal Implications for state or local government, small businesses, and individuals.

Comments on the proposal may be submitted to Gina Calviño, Legal Assistant, Office of Special Counsel for Tax Hearings, P.O. Box 13528, Austin, Texas 78711-3528, or SpecialCounsel.Filings@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

The new section is proposed under Government Code, §2001.004 (Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions), which requires state agencies to adopt rules of practice, and Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, as well as taxes, fees, or other charges which the comptroller administers under other law.

The new section implements Government Code, §2001.004 (Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions), which requires state agencies to adopt rules of practice, Government Code, §2001.051 (Opportunity for Hearing and Participation; Notice of Hearing), Government Code §2001.052 (Contents of Notice), Tax Code, §111.009 (Redetermination), and Tax Code §111.105 (Tax Refund: Hearing).

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§1.22. Docketing Oral and Written Submission Hearings.

(a) Selecting oral or written submission hearings. A hearing at SOAH may be conducted orally or by written submission. Before docketing the case at SOAH, the Assistant General Counsel assigned to the case will request each party to select either an oral hearing or a written submission hearing. If any party selects an oral hearing, the parties must agree to at least three potential oral hearing dates before the case is docketed at SOAH. If no party selects an oral hearing, the hearing will be by written submission.

(b) Docketing. After the type of hearing has been determined pursuant to subsection (a) of this section, the Administrative Hearings Section will file a Request to Docket Case form with SOAH that conforms to the SOAH Rules of Procedure (see 1 TAC §155.53). The form shall state whether the hearing is to be conducted orally or by written submission. If the hearing is to be conducted orally, the Administrative Hearings Section will provide the agreed potential oral hearing dates with the Request to Docket Case form.

(c) SOAH jurisdiction. SOAH acquires jurisdiction after the Request to Docket Case form has been filed (see 1 TAC §155.51).

(d) Notice of hearing. After SOAH has docketed a case, the Administrative Hearings Section will prepare a Notice of Hearing to all parties in accordance with Government Code, §2001.051 and §2001.052, and 1 TAC §155.401. The Notice of Hearing will incorporate the SOAH hearing number and, if the hearing is to be conducted orally, the date and time of the oral hearing. The Administrative Hearings Section will file with SOAH and serve on all parties the Notice of Hearing and copies of all pleadings served on the agency by the taxpayer and on the taxpayer by the agency, including, but not limited to, the Statement of Grounds, Position Letter, Reply, any Response, and any exhibits or attachments to those pleadings. The Administrative Hearings Section may also file and serve with the Notice of Hearing any additional exhibits that it intends to offer at the hearing.

(e) Additional filings. Additional pleadings, exhibits, and other documents offered by any party must be filed and served in accordance with the SOAH Rules of Procedure and any orders issued by the administrative law judge.

(f) Motions to convert. After SOAH acquires jurisdiction, any party may file a motion to convert an oral hearing to a written submission hearing, or convert a written submission hearing to an oral hearing, according to the SOAH Rules of Procedure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on

LITA GONZALEZ
General Counsel
Comptroller of Public Accounts
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