ALABAMA TAX TRIBUNAL
ADMINISTRATIVE CODE

CHAPTER 887-X-1
GENERAL INSTRUCTIONS

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887-X-1-.01 Scope And Intent Of Rules Governing The Alabama Tax Tribunal.

In accordance with Section 40-2B-1, Code of Ala. 1975, the Alabama Tax Tribunal hereby sets out the rules governing the Alabama Tax Tribunal. These regulations shall govern the procedures to be followed in all appeals filed with the Alabama Tax Tribunal. If there is no regulation applicable in a given circumstance and no controlling statutory provision or precedent, the Tax Tribunal Judge hearing the case shall prescribe the procedure or procedures to be followed. These regulations shall be liberally construed to allow substantial justice and a fair and complete resolution of all matters in dispute. All references herein to a particular "§" or "Section" shall mean and refer to the Code of Ala. 1975, as amended, and all references to "Title 40" shall mean and refer to Title 40 of the Code of Ala. 1975, as amended.

Author: William L. Thompson

Statutory Authority: Code of Ala. 1975, §40-2B-1

History: New Rule: Filed September 9, 2014 effective October 14, 2014.

887-X-1-.02 Definitions.

The definitions set forth in Section 40-2A-3 shall apply to these regulations and generally to appeals before the Tax Tribunal. In addition, the following words and phrases shall have the following meanings:

(1) Answer. A document required to be filed by the Department or a self-administered county or municipality in response to an appeal filed by a taxpayer or petitioner.

(2) Designee. An agent of one or more self-administered taxing jurisdictions authorized to administer or collect, or both, the jurisdiction's sales, use, rental or lodging taxes, which may include another self-administered taxing jurisdiction or a "private auditing or collecting firm," as defined in Section 40-2A-3.

(3) Formal Discovery. Any form of discovery allowed by these regulations that is approved and ordered by a Tax Tribunal Judge.

(4) Tax Tribunal. The Alabama Tax Tribunal.

(5) Tax Tribunal Judge. The chief or an associate judge of the Tax Tribunal.

(6) Taxing Authority. The Department of Revenue or a self-administered county or municipality that is a party in a case before the Tax Tribunal.

(7) Regulation. A rule governing the Department issued under the Alabama Administrative Procedure Act.

Author: William L. Thompson
Statutory Authority: Code of Ala. 1975, §40-2B-1
History: New Rule: Filed September 9, 2014 effective October 14, 2014.

887-X-1-.03 Appeals.

(1) Any taxpayer may appeal to the Tax Tribunal from any refund denied by the Department or final assessment entered by the Department concerning a state tax or a county or municipal tax being administered by the Department, the cancellation, revocation, or denial of any license, permit, or registration administered by the Department, or any other act or proposed act

or refusal to act by the Department. A taxpayer may also appeal to the Tax Tribunal from a refund denied by or on behalf of a self-administered county or municipality or a final assessment entered by or on behalf of a self-administered county or municipality concerning a sales, use, rental, or lodgings tax levied by the county or municipality; provided, the self-administered county or municipality has not duly elected to opt-out and divest the Tax Tribunal of jurisdiction to hear such appeals. A taxpayer may also appeal to the Tax Tribunal (1) to determine the propriety of any retroactive revocation of a Department revenue ruling, (2) to challenge the Department's proposed adjustment to a taxpayer's net operating loss or carryback, and (3) to dispute a preliminary assessment entered by the Department or a self-administered county or municipality that has not been made final or withdrawn within 5 years from the date of entry; provided, the self-administered county or municipality has not duly elected to opt-out and divest the Tax Tribunal of jurisdiction to hear such appeals.

(2) The Tax Tribunal shall not have jurisdiction to hear appeals of assessments of ad valorem taxes of real or personal property administered by the various counties in Alabama, except concerning the determination and assessment of public utility property under Chapter 21 of Title 40. The Tax Tribunal also shall not have jurisdiction to hear Department personnel actions, any issue that is the subject of an action pending in state or federal court, or any action concerning the collection of any final tax liability owed the State; nor shall the Tax Tribunal have jurisdiction to hear appeals of refunds denied by or final assessments entered by a self-administered county or municipality filed after the self-administered county or municipality has duly opted-out and divested the Tax Tribunal of jurisdiction to hear such appeals.

(3) Any taxpayer entitled to appeal to the Tax Tribunal pursuant to subsection (a) above shall commence an appeal by filing a notice of appeal with the Tax Tribunal. The Tax Tribunal is located at 2 North Jackson Street, Suite 301, Montgomery, AL 36104. Appeals should be mailed to the Tax Tribunal at P.O. Box 327130, Montgomery, AL 36132-7130:

(a) within 30 days from the date on which a final assessment is mailed as provided in Section 40-2A-7(b)(4)d. or delivered by personal service, whichever occurs earlier;

(b) within two years from the date on which a petition for refund is denied or deemed denied;

(c) within 30 days after the date on which the Department mails notice of any act or proposed act or refusal to act from which the taxpayer is entitled to appeal pursuant to Section 40-2A-8. If a taxpayer that is detrimentally affected by an act or proposed act or refusal to act by the Department is not mailed notice of such act, proposed act, or refusal to act under Section 40-2A-8, the taxpayer may appeal to the Tax

Tribunal within 30 days from receiving actual notice of the act, proposed act, or refusal to act; provided, however, the burden is on the taxpayer to show that the appeal was filed within 30 days of actual notice;

(d) within 30 days after the date on which the Department mails notice of a proposed adjustment to a taxpayer's net operating loss deduction or carryover concerning the taxes imposed by Chapters 16 or 18 of Title 40; and

(e) within 30 days after 5 years from the date a preliminary assessment was entered by the Department or a self-administered county or municipality within the jurisdiction of the Tax Tribunal that has not been withdrawn or made final by the Department or the self-administered county or municipality.

(4)(a) An appeal to the Tax Tribunal may be filed using the following forms: (i) Form ATT-1 concerning appeals involving final assessments, denied refunds, proposed adjustments to a net operating loss or carryover, or challenges to a preliminary assessment that has not been made final or withdrawn within 5 years from the date of entry; (ii) Form ATT-2 concerning appeals involving self-administered counties or municipalities; and (iii) Form ATT-3 concerning appeals involving motor vehicle license, registration, or title disputes, or any act or proposed act or refusal to act by the Department. A taxpayer may also use any other form of notice of appeal that includes the information in subsection (d)(2).

(b) The notice of appeal shall identify or include: (i) the final assessment, denied refund, proposed adjustment by the Department to a net operating loss, or other act, proposed act, or refusal to act by the Department from which the taxpayer is appealing; (ii) the position of the appealing party; (iii) the relief sought; and (iv) the legal or other basis on which relief should be granted. Failure to include the above information shall not, by itself, be grounds for dismissal of the appeal. The Tax Tribunal Judge may require the taxpayer to file an amended notice of appeal if additional information is deemed necessary.

(5)(a) Upon receipt of a timely filed notice of appeal involving the Department and/or a county or municipality whose local taxes are administered by the Department, the Tax Tribunal shall submit a copy of the appeal, with attachments, if any, to the Department's Legal Division, with a Notice to Legal Division directing the Legal Division to file an Answer in the case within 45 days after receipt of the Notice. The Tax Tribunal shall also notify the taxpayer or the taxpayer's representative that it has received the appeal, and the date on which the Notice to Legal Division was transmitted to the Legal Division. A Notice to Legal Division shall be deemed received by the Legal Division 3 business

days from the date on which the Tax Tribunal transmits the Notice to Legal Division to the Legal Division, or the date on which the notice is file-stamped as received by the Legal Division, whichever occurs first. The Legal Division may be allowed up to a 45 day extension to file its Answer, but only if the Legal Division files a written extension request with the Tax Tribunal before the initial 45 day period has expired and specifies in the request why an extension is necessary and should be granted. The Tax Tribunal may in its discretion grant the requested extension for any period it deems appropriate, up to 45 days. If an extension request is granted for a period less than 45 days, no additional extension will be allowed absent extraordinary circumstances.

(b) If an appeal involves a self-administered county or municipality, the Tax Tribunal shall mail a copy of the appeal, with attachments, if any, by U.S. mail with delivery confirmation or certified U.S. mail, to the administrator or clerk of the subject self-administered county or municipality with a Notice to County or Notice to Municipality or its designee, if any, directing the county, municipality, or designee to file an Answer within 45 days after receipt of the Notice. The Tax Tribunal shall also notify the taxpayer or the taxpayer's representative that the Tax Tribunal has received the appeal, and the date on which the Notice to County or Notice to Municipality was transmitted to the county, municipality, or designee. A Notice to County or Notice to Municipality shall be deemed received by the county, municipality, or designee 3 business days from when the Tax Tribunal transmits the Notice to County or Notice to Municipality to the county, municipality, or designee, or the date on which it is received by the county, municipality, or designee, whichever occurs first. The county, municipality, or designee may be allowed up to a 45 day extension to file its Answer, but only if the county, municipality, or designee files a written extension request with the Tax Tribunal before the initial 45 day period has expired, and specifies in the request why an extension is necessary and should be granted. The Tax Tribunal may in its discretion grant the requested extension for any period it deems appropriate, up to 45 days. If an extension request is granted for a period less than 45 days, no additional extension will be granted absent extraordinary circumstances. If the Answer is filed by a designee representing a self-administered county or municipality or multiple self-administered counties and municipalities, the timely filing of the Answer by the designee shall constitute the timely filing of an Answer by all self-administered jurisdictions represented in the appeal.

(c) If the Department's Legal Division or a self-administered county or municipality fails to file its Answer or file a written extension request with the Tax Tribunal within the 45 day period, or, if an extension is requested and granted,

within the extended period, the Tax Tribunal shall grant the relief requested by the taxpayer. As a courtesy, the Tax Tribunal shall within 10 days before the Answer due date provide the Legal Division or the self-administered county or municipality or designee required to file the Answer with notice by electronic transmission that the Answer is due; provided, however, the Tax Tribunal's failure to transmit the notice and/or the failure of the Legal Division or self-administered county or municipality or designee to receive the notice shall not relieve the Legal Division or self-administered county or municipality or designee of the duty to timely file the Answer.

(6)(a) Upon the timely filing of an Answer with the Tax Tribunal, the Tribunal may, at the discretion of the Tax Tribunal Judge, enter a preliminary or other order: (i) directing one or more parties to take such action as deemed appropriate by the Tax Tribunal Judge under the circumstances; (ii) referring any disputed issue or issues in a case involving the Department or a county or municipality whose taxes are administered by the Department to the Department's Office of Taxpayer Advocacy for review; (iii) holding the appeal in abeyance if agreed by the parties or deemed appropriate and necessary by the Tax Tribunal Judge; or (iv) setting the case for hearing. A copy of the Answer shall be submitted to the taxpayer or taxpayer's representative after the Answer is filed with the Tax Tribunal.

(b) The taxpayer may, but is not required to, file a reply to the Answer with the Tax Tribunal within 30 days after receipt of the Answer. The Legal Division or a self-administered county, municipality, or designee may, but is not required to, file an amended Answer, from which the taxpayer may, but is not required to, file a response.

(c) The notice of appeal and any subsequent pleadings submitted by the parties shall be deemed to conform to the evidence submitted by the parties. If an issue is raised or evidence is presented at a hearing that was not previously pled or raised, the opposing party may, at the discretion of the Tax Tribunal Judge, be allowed time to address the issue or evidence, either through brief, or at a subsequent hearing in the case, as fairness dictates.

Author: William L. Thompson
Statutory Authority: Code of Ala. 1975, §40-2B-1
History: New Rule: Filed September 9, 2014 effective October 14, 2014.

887-X-1-.04 Hearings.

(1) An appeal before the Tax Tribunal may be held in abeyance by agreement of the parties or at the discretion of the Tax Tribunal

Judge, or an appeal may be submitted without a hearing on a joint stipulation of facts or otherwise as agreed by the parties. The Tax Tribunal may also, with or without a hearing, dismiss any appeal or grant appropriate relief to any party if a party fails to comply with any regulation or statute governing appeals before the Tax Tribunal, or with any preliminary order or opinion and preliminary order entered by the Tax Tribunal. The Tax Tribunal may also decide a case without a hearing if a party submits information or evidence that is, in the discretion of the Tax Tribunal Judge, sufficient to warrant a final decision in the case.

(2) If a hearing is conducted in a case, the Tax Tribunal Judge shall conduct the hearing substantially as follows:

(a) Open the record and receive appearances.

(b) Receive testimony and exhibits presented by the parties. All testimony shall be under oath.

(c) Interrogate witnesses if deemed necessary for a full and fair adjudication of the case.

(d) Allow direct and cross-examination of any witnesses.

(e) Require the submission of briefs.

(f) Continue or reopen the hearing to take additional evidence as deemed necessary by the Tax Tribunal Judge for a fair, efficient, and complete resolution of all factual and legal issues in dispute.

(3) Hearings before the Tax Tribunal shall be open to the public; provided, however, the Tax Tribunal Judge has discretion to order a hearing closed as necessary to protect confidential information or for other good cause. The Tax Tribunal may also issue a protective order on motion by a party if the party shows good cause why certain information should not be publicly disclosed.

(4)(a) The Tax Tribunal may conduct hearings at its principal office in Montgomery, or, at the discretion of the Tax Tribunal Judge or as provided below, elsewhere in Alabama to give taxpayers a reasonable opportunity to attend a hearing with as little inconvenience and expense as practicable.

(b) If the appeal involves only one self-administered county or municipality, the Tax Tribunal shall, upon request, conduct the hearing in the county seat of the subject county or the county seat of the county in which the subject municipality is located, or, at the discretion of the Tax Tribunal Judge, at the nearest Department Taxpayer Service Center. If an appeal involves more than one self-administered county or municipality, the Tax Tribunal shall conduct the hearing at a

Department Taxpayer Service Center or other location that is, in the Tax Tribunal Judge's discretion, most convenient to the counties and/or municipalities involved in the case.

(5) Hearings involving taxpayers that appear pro se or that are represented by an authorized representative who is not an attorney shall be informal in nature. To ensure a fair hearing in such cases, the Tax Tribunal Judge may explain to the pro se taxpayer or the taxpayer's non-attorney authorized representative the general procedures to be followed in the hearing, the legal issue or issues involved in the case, and the facts that are generally relevant in deciding the legal issue or issues. The intent of this subsection is to ensure that all taxpayers will receive a fair hearing, and that taxpayers and their non-attorney representative fully understand the legal issue or issues and the relevant facts involved in the case.
Author: William L. Thompson
Statutory Authority: Code of Ala. 1975, §40-2B-1
History: **New Rule:** Filed September 9, 2014 effective October 14, 2014.

887-X-1-.05 Rules Of Evidence.

The Tax Tribunal is not bound by the rules of evidence applicable in civil cases in circuit court. The Tax Tribunal may, at the discretion of the Tax Tribunal Judge, admit any evidence, including hearsay, that is probative and relevant to a material fact in issue. The Tax Tribunal Judge also has discretion to allow sworn affidavits in lieu of testimony if, in the Tax Tribunal Judge's discretion, the sworn affidavit is sufficiently reliable to prove the fact or facts asserted. Notwithstanding the foregoing, the affidavit of a party to the appeal, a party's agent, employee, family member, or any other individual whose interests appear to be aligned with the party, will be admissible in lieu of testimony only upon a showing that (1) the affiant is unavailable due to death or then existing physical or mental illness or infirmity, or (2) requiring the affiant's presence at a hearing would be unduly burdensome and that the inability to cross examine the affiant will not unduly prejudice another party to the appeal. Any party that intends to submit a sworn affidavit in lieu of testimony must attest that the affiant is unavailable or that the affiant's presence would be unduly burdensome, and also submit a copy of the affidavit to the Tax Tribunal at least 30 days before the date set for the hearing. The Tax Tribunal shall provide the opposing party with a copy of the affidavit, and allow that party 10 days to object to the affidavit. If the opposing party timely objects, the Tax Tribunal Judge shall thereafter have discretion to allow or disallow the affidavit, or to take such other action as deemed appropriate under the circumstances. If deemed appropriate by the Tax Tribunal Judge, a sworn affidavit may be allowed without the affidavit being submitted for prior

review, but only if, in the discretion of the Tax Tribunal Judge, the opposing party is not unduly or unfairly harmed or prejudiced by allowing the affidavit.
Author: William L. Thompson
Statutory Authority: Code of Ala. 1975, §40-2B-1
History: **New Rule:** Filed September 9, 2014 effective October 14, 2014.

887-X-1-.06 Orders Of The Tax Tribunal.

(1) The Tax Tribunal shall issue written decisions, which shall contain findings of fact and conclusions of law.

(a) A Tax Tribunal Judge may issue a preliminary order for any reason specified in Reg. 3(f)(1).

(b) A Tax Tribunal Judge may issue an opinion and preliminary order after a hearing in the case or otherwise, as deemed appropriate by the Tax Tribunal Judge. The opinion and preliminary order may direct the Department to recompute the taxpayer's liability or the amount of refund due, or for any party to take such action as deemed appropriate by the Tax Tribunal Judge.

(c) A Tax Tribunal Judge shall issue a final order in all cases. The final order may dismiss an appeal for lack of jurisdiction or other cause, or grant such relief and invoke such remedies as deemed necessary by the Tax Tribunal Judge for a fair and complete resolution of all matters in dispute.
Author: William L. Thompson
Statutory Authority: Code of Ala. 1975, §40-2B-1
History: **New Rule:** Filed September 9, 2014 effective October 14, 2014.

887-X-1-.07 Application For Rehearing.

(1) Any party may apply for a rehearing from any final order or opinion and preliminary order entered by the Tax Tribunal within 15 days from the date such order was entered. The application must specify the reasons and supporting arguments why such order is incorrect and should be reconsidered. The Tax Tribunal shall serve a copy of a timely-filed application for rehearing on the opposing party, and may allow the opposing party time to respond to the application. The Tax Tribunal Judge shall thereafter, with or without a hearing, issue a final or other order on rehearing, as appropriate under the circumstances.

(2) The timely filing of an application for rehearing shall suspend the time for filing an appeal to circuit court. The time

for filing a notice of appeal to circuit court shall begin anew on the date the final order on rehearing is entered.
Author: William L. Thompson
Statutory Authority: Code of Ala. 1975, §40-2B-1
History: **New Rule:** Filed September 9, 2014 effective October 14, 2014.

887-X-1-.08 Appeals To Circuit Court.

(1) A taxpayer, a self-administered county or municipality whose tax appeals are within the jurisdiction of the Tax Tribunal, or the Department, may appeal from a final or other appealable order issued by the Tax Tribunal by filing a notice of appeal to the appropriate circuit court within 30 days from the date of entry of the order, as follows:

(a) An appeal by the Department or any self-administered county or municipality shall be filed with the circuit court of the county where the taxpayer resides or has a principal place of business;

(b) If the taxpayer does not reside or have a principal place of business in Alabama, an appeal by any party shall be filed in Montgomery County Circuit Court;

(c) An appeal by the taxpayer shall be filed in Montgomery County Circuit Court, or in the circuit court in the county where the taxpayer resides or has a principal place of business;

(2) If a taxpayer appeals from a final order involving a final assessment, the taxpayer shall, within the 30 day appeal period, satisfy one of the security requirements under Section 40-2A-7(b)(5)b.2.

(3) A copy of the notice of appeal filed in circuit court shall be filed with the Tax Tribunal within the 30 day appeal period.
Author: William L. Thompson
Statutory Authority: Code of Ala. 1975, §40-2B-1
History: **New Rule:** Filed September 9, 2014 effective October 14, 2014.

887-X-1-.09 Jurisdiction Of The Tax Tribunal To Hear Appeals Involving Self-Administered Counties And Municipalities.

(1) The Tax Tribunal shall have jurisdiction to hear appeals of any final assessment or denied refund of any sales, use, rental, or lodgings tax levied or collected by or on behalf of any self-

administered county or municipality, unless the self-administered county or municipality has duly opted-out and thereby divested the Tax Tribunal of jurisdiction over such appeals. If a self-administered county or municipality has not duly opted-out and divested the Tax Tribunal of jurisdiction, such appeals to the Tax Tribunal shall be governed by the procedures in these regulations and Section 40-2A-7.

(2) A self-administered county or municipality may opt-out and divest the Tax Tribunal of jurisdiction by delivering to the Tax Tribunal a copy of the ordinance or resolution of its governing body evidencing the election to opt-out. The Tax Tribunal shall publish notice of the opt-out on its website within 7 days from the date it receives the ordinance or resolution, except that any ordinance or resolution evidencing an election to opt-out that is received by the Tax Tribunal before October 1, 2014 shall be published on such website on October 1, 2014. The election shall be effective on the date the notice is published. Any appeal involving a self-administered county or municipality that was pending in the Tax Tribunal before notice of the opt-out election was published shall be heard and finally decided by the Tax Tribunal.

(3) A self-administered county or municipality may revoke its election to opt-out and prospectively confer jurisdiction on the Tax Tribunal by delivery to the Tax Tribunal a copy of the ordinance or resolution of its governing body evidencing the revocation of the opt-out. The Tax Tribunal shall promptly publish notice of the revocation of the opt-out on its website within 7 days from the date it receives the ordinance or resolution, and the revocation shall be effective on the date the notice is published. The Tax Tribunal shall thereafter have jurisdiction to hear appeals of final assessments or denied refunds of the county's or municipality's sales, use, rental, or lodging taxes that are entered or denied after the date of publication of the notice.

(4) A self-administered county or municipality may opt-out or revoke an opt-out election only once during a calendar year. If an appeal is timely filed with the Tax Tribunal after a self-administered county or municipality has properly opted-out, the appeal shall be transferred to and deemed as timely filed with the county or municipality. Likewise, if an appeal is timely filed with a self-administered county, municipality, or designee after the county or municipality has revoked the election to opt-out, the appeal shall be transferred to and deemed as timely filed with the Tax Tribunal.

Author: William L. Thompson
Statutory Authority: Code of Ala. 1975, §40-2B-1
History: **New Rule:** Filed September 9, 2014 effective October 14, 2014.

887-X-1-.10 Representation Before The Tax Tribunal.

(1) The Department shall be represented at any appeal or other proceeding before the Tax Tribunal by its legal counsel, assistant counsel, or special counsel acting in accordance with the authority and duties imposed under Sections 40-2-60 through 40-2-66. Any self-administered county or municipality that has not opted-out and divested the Tax Tribunal of jurisdiction to hear its appeals shall be represented at any appeal or other proceeding before the Tax Tribunal by an attorney employed with or contracted for by the county or municipality, or any other authorized representative or designee of the county or municipality.

(2) Taxpayers or other parties in an appeal or other proceeding before the Tax Tribunal may represent themselves, or be represented by an authorized representative who is an attorney licensed to practice in Alabama or any other state, or an attorney employed by or a member or partner in an accounting or professional services firm, or by a CPA or accountant licensed in Alabama or any other state, or by any duly authorized officer, employee, partner or member of the taxpayer, or by any other duly authorized representative.
Author: William L. Thompson
Statutory Authority: Code of Ala. 1975, §40-2B-1
History: New Rule: Filed September 9, 2014 effective October 14, 2014.

887-X-1-.11 Publication Of Orders And Pending Cases.

Final Orders and Opinion and Preliminary Orders that contain substantive information of public interest shall be published on the Tax Tribunal's website. The Tax Tribunal shall also publish on its website every January and July a list of all cases currently pending before the Tax Tribunal and the type or types of tax involved.
Author: William L. Thompson
Statutory Authority: Code of Ala. 1975, §40-2B-1
History: New Rule: Filed September 9, 2014 effective October 14, 2014.

887-X-1-.12 Constitutional Issues.

(1) The Tax Tribunal may decide the constitutionality of the Department's application of a statute or regulation to a particular taxpayer or a self-administered county or municipality's application of a statute, regulation, ordinance, or

resolution to a particular taxpayer, but shall not have the authority to declare a statute, ordinance, or regulation unconstitutional on its face.

(2) If a taxpayer intends to challenge the constitutionality of a statute, ordinance, regulation, or resolution, the taxpayer may:

(a) File a declaratory judgment action in the appropriate circuit court concerning the constitutional issue, and also appeal to the Tax Tribunal on the remaining non-constitutional issues, and request therein that the appeal before the Tax Tribunal should be held in abeyance until the constitutional issue is finally resolved; or

(b) Appeal to the Tax Tribunal concerning the non-constitutional issues, and preserve in the notice of appeal the constitutional challenge until the case is appealed to circuit court; or

(c) Appeal to the Tax Tribunal concerning the non-constitutional issues, and simultaneously file a declaratory action in circuit court concerning the constitutional challenge.

Author: William L. Thompson
Statutory Authority: Code of Ala. 1975, §40-2B-1
History: New Rule: Filed September 9, 2014 effective October 14, 2014.

887-X-1-.13 Stipulations.

The parties to a proceeding before the Tax Tribunal shall stipulate all relevant and non-privileged facts to the fullest extent practicable and to which complete or qualified agreement can or fairly should be reached.

Author: William L. Thompson
Statutory Authority: Code of Ala. 1975, §40-2B-1
History: New Rule: Filed September 9, 2014 effective October 14, 2014.

887-X-1-.14 Discovery.

(1) Parties to a proceeding before the Tax Tribunal may use the discovery methods authorized herein to obtain non-privileged information that is relevant to the subject matter involved in the pending appeal; provided, except as specified below, discovery can only be used with the prior approval of the Tax Tribunal Judge. Before requesting formal discovery, however, the parties to an appeal shall make every reasonable effort to voluntarily and informally exchange information and evidence regarding any matter,

not privileged, which is relevant to the subject matter involved in the appeal. Such voluntary exchange of information and evidence may include a request for production of documents and the submission of written questions in the nature of interrogatories to the opposing party without the prior approval of the Tax Tribunal Judge; the intent being that the parties should make every reasonable effort to voluntarily exchange information before petitioning the Tax Tribunal for formal discovery. If voluntary written questions are proffered by a party, the opposing party shall affirmatively respond to all questions that are relevant to the issue or issues involved in the case. The opposing party may also object in writing and refuse, without prejudice, to answer or affirmatively respond to any questions that the party deems to be not relevant to the issue or issues involved in the case or privileged. Questions propounded pursuant to this paragraph shall be limited in number in accordance with the provisions of the Alabama Rules of Civil Procedure 33, and responses shall be executed under oath and in accordance with Alabama Rules of Civil Procedure 33(a) and (d).

(2) If a party cannot obtain relevant information or evidence by voluntary and informal exchange, the party may petition the Tax Tribunal to allow formal discovery. The petition shall (1) explain why the information could not be obtained by voluntary and informal exchange, and (2) identify the type or types of formal discovery requested. The requesting party shall also serve a copy of the petition on the opposing party or the opposing party's authorized representative, who may file a written objection to the requested discovery within 14 days of the date of receipt of the petition requesting discovery. The Tax Tribunal may thereafter allow discovery by the following means: written interrogatories; requests for production and inspection of tax returns, books, papers, documents, and other evidence; depositions of parties, non-party witnesses, and experts; requests for admission; or other forms of discovery authorized by the Tax Tribunal. It is not grounds for objection that the information sought to be discovered is not relevant to the issue or issues involved in the appeal before the Tax Tribunal if the information sought appears reasonably calculated to lead to the discovery of relevant evidence.

(3) Formal discovery authorized by subsection (b) of this regulation shall be allowed only in the discretion of the Tax Tribunal Judge, and only upon a showing that informal consultation and other communications, conducted in good faith, have failed to result in the voluntary exchange of information, documents, and other relevant and non-privileged evidence necessary to the resolution of the issue or issues in dispute in the appeal. The Tax Tribunal Judge shall determine the type of discovery to be allowed, if any, after considering whether the discovery would be unduly burdensome or expensive, and in consideration of the amount in controversy, the extent of the parties' resources, and the necessity and relevance of the information requested.

(4) If discovery is allowed by the Tax Tribunal Judge, discovery requests propounded to a pro se party or to an authorized representative not authorized to practice law in this state or another jurisdiction, shall, at a minimum, include the following information: the deadline for responding to the request; a brief description of the form in which a response or responses should be provided; notice that the response must be signed under penalty of perjury; notice of the right to object to a particular request or seek a protective order, as the case may be; and, with regard to requests for admissions, notice that the matter will be deemed admitted unless the pro se party or the authorized representative answers or objects to the requested admissions within 30 days after the request is served on the pro se party or authorized representative.

(5) If discovery is allowed by the Tax Tribunal Judge, the Tax Tribunal Judge shall issue an order granting discovery which, after consulting with the parties, shall specify therein a date on which discovery shall be completed. A party or parties may petition the Tax Tribunal for additional time within which discovery may be completed. Such petition shall explain the reason why such additional time is required or necessary. The Tax Tribunal Judge may grant such additional time as deemed appropriate by the Tax Tribunal Judge.

(6) Except as ordered by the Tax Tribunal Judge, the methods of discovery allowed by this regulation shall be conducted in accordance with Alabama Rules of Civil Procedure Rule 26 (general provisions governing discovery), Rule 28 (persons before whom depositions may be taken), Rule 29 (authorizing modification of discovery procedures by written stipulation of the parties), Rule 30 (depositions), Rule 33 (interrogatories), Rule 34 (production of documents), and Rule 36 (requests for admissions).

(7) If a party or other person or entity fails or refuses to cooperate or comply with formal discovery allowed by the Tax Tribunal, the discovering party may petition the Tax Tribunal for an order requiring the party, person, or entity to fully cooperate and comply with the discovery request. If the Tax Tribunal issues an order to compel, and the party, person, or entity fails to fully comply with discovery or the order to compel, the Tax Tribunal Judge may grant the discovering party such relief or take such other action as deemed appropriate, fair, and reasonable by the Tax Tribunal Judge under the circumstances.
Author: William L. Thompson
Statutory Authority: Code of Ala. 1975, §40-2B-1
History: New Rule: Filed September 9, 2014 effective October 14, 2014.

887-X-1-.15 Subpoenas.

A Tax Tribunal Judge may, on his or her own motion or at the written request of a party, also issue subpoenas requiring witnesses to attend and testify at a hearing, or subpoenas duces tecum for the production of any tangible evidence. The discretion to issue subpoenas or subpoenas duces tecum shall rest solely with the Tax Tribunal Judge. Any witness subpoenaed to testify or produce records, or whose deposition is taken, shall be paid by the requesting party the same fees and mileage as paid to individuals subpoenaed in a circuit court action in Alabama.
Author: William L. Thompson
Statutory Authority: Code of Ala. 1975, §40-2B-1
History: New Rule: Filed September 9, 2014 effective October 14, 2014.

887-X-1-.16 Joinder Of Persons Needed For Just Adjudication.

The Tax Tribunal Judge, on his or her own motion or at the request of a party, may join a person in the appeal, but only if (1) it appears that in the person's absence, complete relief cannot be accorded among those already parties in the appeal, or (2) it appears that the party has an interest relating to the subject of the appeal and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest, or (ii) leave any of the persons already parties to the appeal subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. A request for joinder shall be in writing, and shall be served upon all parties to the appeal and the person or persons sought to be joined.
Author: William L. Thompson
Statutory Authority: Code of Ala. 1975, §40-2B-1
History: New Rule: Filed September 9, 2014 effective October 14, 2014.

887-X-1-.17 Amicus Briefs.

An individual or entity may, with the approval of the Tax Tribunal Judge, submit an amicus curiae brief in a case pending before the Tax Tribunal.
Author: William L. Thompson
Statutory Authority: Code of Ala. 1975, §40-2B-1
History: New Rule: Filed September 9, 2014 effective October 14, 2014.