REG-33-003 PETITIONS FOR REDETERMINATION

003.01 These rules shall be followed when filing a petition for redetermination in response to a notice and demand for payment issued pursuant to ~~section~~ Neb. Rev. Stat. § 77-1783.01~~, R.S. Supp. 2008~~ or a notice of proposed deficiency determination.

003.01A Content. This information shall be supplied by the petitioner when filing a petition for redetermination with the Tax Commissioner. The petition shall:

003.01A(1) Identify the petitioner;

003.01A(2) Identify the notice of proposed deficiency determination or the notice and demand for payment the petitioner is requesting be redetermined;

003.01A(3) State all material factual allegations;

003.01A(4) State concisely the action the Department is being requested to take;

003.01A(5) Be in writing and signed by or on behalf of the petitioner; and

003.01A(6) Include a request for hearing if one is desired.

003.01B All petitions shall be made on white, letter sized (8½ x 11) paper and shall be legibly typewritten, photostatically reproduced, printed or handwritten. If handwritten, a petition must be written in ink.

003.01B(1) All petitions shall be filed with the Department at its office. Filing may be accomplished by personal delivery or mail and will be received during regular office hours of the Department.

003.01B(2) When the Tax Commissioner approves and implements an electronic form or method for filing a petition, any ~~such~~ petition for redetermination may be filed electronically with the Department if it contains all the information required by subsection 003.01A of these regulations. The petition may be filed using the website of the Department (www.revenue.ne.gov).

003.01C Filing ~~date~~ Date. Except as provided in subdivisions 003.01C(1) or 003.01C(2) of this subsection, a petition for redetermination of a notice of proposed deficiency determination must be filed with the Tax Commissioner on or before the 60th day following the ~~mailing of~~ date the notice was mailed by the Tax Commissioner.

003.01C(1) A petition for the redetermination of a notice of proposed deficiency determination for drug tax or for a notice of jeopardy determination must be filed with the Tax Commissioner on or before the 10th day following the ~~mailing of~~ date the notice was mailed.

003.01C(2) A petition for the redetermination of a notice of proposed deficiency determination for income tax, if the petitioner was outside the United States as of the date

~~of the mailing of~~ the notice was mailed, must be filed with the Tax Commissioner on or before the 150th day following the ~~mailing of~~ date the notice was mailed.

003.01C(3) A petition for the redetermination of a notice and demand for payment issued to any officer or employee of a corporation or any member, manager, or employee of a limited liability company with the duty to collect, account for, or pay over any taxes imposed upon a corporation, or with the authority to decide whether the corporation will pay taxes imposed upon a corporation, must be filed with the Tax Commissioner on or before the 60th day following the ~~mailing of~~ date the notice was mailed by the Tax Commissioner.

003.01D When specifically provided by law, the Tax Commissioner may require the posting of security during the pendency of a contested case. This security must be maintained during the course of the proceeding before the Tax Commissioner. If the security is withdrawn during the course of any proceeding before the Tax Commissioner ~~the security so provided is withdrawn~~, the petition will not be considered to be in proper form and will be subject to dismissal by the Tax Commissioner.

003.02 These rules shall be followed when filing a petition for a redetermination of a disapproved tax application.

003.02A Content. This information shall be supplied by petitioner when filing a petition for redetermination of a disapproved tax application. The request shall:

003.02A(1) Identify the petitioner;

003.02A(2) Identify the disapproved application;

003.02A(3) State all material factual allegations;

003.02A(4) State concisely the action the Department is being requested to take;

003.02A(5) Be in writing and signed by or on behalf of the person making the request; and

003.02A(6) Include a request for hearing if one is desired.

003.02B All petitions shall be made on white, letter sized (8½ x 11) paper and shall be legibly typewritten, photostatically reproduced, printed or handwritten. If handwritten, a petition must be written in ink.

003.02B(1) All petitions shall be filed with the Department at its office. Filing may be accomplished by personal delivery or mail and will be received during regular office hours of the Department.

003.02B(2) When the Tax Commissioner approves and implements an electronic form or method for filing a petition, any ~~such~~ petition for redetermination of a disapproved tax application may be filed electronically with the Department if it contains all the

information required by subsection 003.02A of these regulations. The petition may be filed using the website of the Department (www.revenue.ne.gov).

003.02C Filing ~~date~~ Date. Petitioner must file a written request for redetermination of a disapproved tax application with the Tax Commissioner on or before the 30th day following the date of disapproval unless a shorter time period has been provided for by statute.

003.03 The Department may deny a license or permit application under the Charitable Gaming Law. These rules shall be followed when any license or permit application is subject to denial.

003.03A Cause for ~~denial~~ Denial. Upon receipt of a license or permit application, the Department shall review the application to determine whether or not a license or permit should be issued. A license or permit application or renewal application may be denied for cause.

003.03B Notice of ~~intended license~~ Intended License or ~~permit denial~~ Permit Denial. If the Department determines that a license or permit application should be denied, it shall give notice to the applicant of its intention. Notice shall be given in writing by ~~certified~~ mail~~, return receipt requested~~, to the license or permit applicant or his or her authorized representative. The notice of intended denial shall:

003.03B(1) Identify the applicant and the license or permit to be denied;

003.03B(2) State all legal or factual reasons why the application is to be denied, sufficient to allow the applicant to know the exact basis for the denial; and

003.03B(3) Inform the applicant that a written petition requesting a redetermination of the intended license or permit application denial through a hearing may be filed with the Department on or before the 30th day following the ~~mailing~~ date ~~of~~ the notice was mailed to the applicant of the Department's intent to deny the license or permit application.

003.03C If the applicant does not file a written petition with the Department on or before the 30th day following the mailing date of the Department's notice to the applicant of its intent to deny the license or permit application, the Department's action denying the application shall be considered final.

003.04 These rules shall be followed when filing a petition for a redetermination of an intended license or permit application denial.

003.04A Content. This information shall be supplied by petitioner when filing a petition for redetermination of an intended license or permit application denial. The request shall:

003.04A(1) Identify the petitioner;

003.04A(2) Identify the license or permit application;

003.04A(3) State all material factual allegations;

003.04A(4) State concisely the action the Department is being requested to take; and

003.04A(5) Be in writing and signed by or on behalf of the petitioner.

003.04B All petitions shall be made on white, letter sized (8½ x 11) paper and shall be legibly typewritten, photostatically reproduced, printed or handwritten. If handwritten, a petition must be written in ink.

003.04B(1) All petitions shall be filed with the Department at its office. Filing may be accomplished by personal delivery or mail and will be received during regular office hours of the Department.

003.04B(2) When the Tax Commissioner approves and implements an electronic form or method for filing a petition, any ~~such~~ petition for redetermination of an intended denial of a license or permit application may be filed electronically with the Department if it contains all the information required by subsection 003.04A of these regulations. The petition may be filed using the website of the Department (www.revenue.ne.gov).

003.04C Filing ~~date~~ Date. Petitioner must file a written request for redetermination of an intended denial of a license or permit application with the Department on or before the 30th day following the ~~mailing~~ date ~~of~~ the notice was mailed to the applicant of the Department's intent to deny the license or permit application.

003.05 Request for ~~hearing~~ Hearing. A petition for redetermination of a notice of proposed deficiency determination, request for redetermination of a disapproved tax application, or a request for a redetermination of an intended Charitable Gaming license or permit application denial shall not be presumed to be a request for a hearing. The Tax Commissioner shall grant a petitioner an opportunity for a hearing if the petitioner so requests in his or her petition or if the petitioner amends his or her petition and requests a hearing. A petition for redetermination of a notice and demand for payment issued pursuant to ~~section~~ Neb. Rev. Stat. § 77-1783.01~~, R.S. Supp, 2008~~ is presumed to be a request for hearing.

003.06 Joinder of ~~parties~~ Parties. If multiple notices of proposed deficiency determination are mailed to a number of persons based on similar or identical grounds, they may not join in filing one protest petition, except where a joint notice of proposed deficiency determination is sent to parties who filed a joint return; however, a motion for consolidation may be considered after the individual protest petitions have been filed. Parties may be joined with the approval of the Tax Commissioner under any of the other types of proceedings.

003.07 Filing ~~date~~ Date. A petition is considered filed with the Tax Commissioner on the date that it is received by the Tax Commissioner, or if delivered by the United States mail, the petition is considered filed with the Tax Commissioner on the date of the postmark of the United States post office stamped on the envelope. Postmarks made by other than the United States post office will not be accepted as evidence of the filing date of any petition received after the due date. When the last day for filing falls on Saturday, Sunday, or an approved holiday, the filing will be considered timely if received or postmarked on the next succeeding day which is not a Saturday, Sunday, or an approved holiday. The period fixed by statute within which to file a petition cannot be extended. If a petition is not filed within the statutory period, it will not be considered by the Tax Commissioner but will be returned to the petitioner by ~~certified~~ mail~~, return receipt requested~~.

(Neb. Rev. Stat. §§ 3-149, 9-226, 9-226.01, 9-226.02, 9-240, 9-322, 9-322.02, 9-344, 9-418, 9-418.01, 9-429, 9-620, 9-622, 9-648, 57-717 and 57-718, 66-4,117, ~~66-695,~~ 77-369, 77-375, 77-612, 77-1783.01,

77-2105, 77-2612, 77-2709, 77-2710, 77-2711(1)(a), 77-2776, 77-2777, 77-2778, 77-2785, 77-2786, 77-27,119, 77-27,125, 77-3006, 84-909 and 84-909.01. ~~January 30, 2010~~_____.)

REG-33-004 PROCEEDINGS INITIATED BY THE NEBRASKA DEPARTMENT OF REVENUE

004.01 The Department may initiate a proceeding against a person who has failed to comply with the tax laws that are administered by the Department.

004.02 **Revocation of a** ~~sales and use tax permit, lodging tax permit, litter fee license, or mechanical amusement device license~~ **Sales and Use Tax Permit, Lodging Tax Permit, Litter Fee License, or Mechanical Amusement Device License.** Whenever the holder of a sales and use tax permit, lodging tax permit, litter fee license, or mechanical amusement device license fails to comply with any provision of the sales and use tax portion of the Revenue Act, the Nebraska Visitor's Development Act, the Nebraska Litter Reduction and Recycling Act, or the Mechanical Amusement Device Tax Act, or with any rule or regulation of the Department with regard to ~~such~~ these acts, the Department may initiate a hearing to require the permitholder or licensee to show cause why his or her permit or license should not be revoked.

> 004.02A The Department must give the permitholder or licensee at least 20 days notice prior to the show cause hearing. The notice shall be in writing, specifying the time and place of the hearing, and shall be sent by ~~certified~~ mail~~, return receipt requested~~.
>
> 004.02B The Tax Commissioner or any Hearing Officer designated by the Tax Commissioner, may examine any books, papers, or memoranda bearing upon the matter at issue and require the attendance of any permitholder, licensee, or employee of the permitholder or licensee having knowledge pertinent to the issue.
>
> 004.02C The Tax Commissioner shall make a final decision or determination within a reasonable time after the hearing and notify the permitholder or licensee of the decision or determination by ~~registered or certified~~ mail ~~of the decision or determination~~.

004.03 **Suspension or** ~~revocation~~ **Revocation of a License to Transport Unstamped Cigarettes, License to Sell Tobacco, Tobacco Products Tax Act License, Wholesale Cigarette Dealer's Permit or** ~~discount privileges~~ **Discount Privileges.** The Tax Commissioner may revoke or suspend the license, permit or discount privileges granted under ~~sections~~ Neb. Rev. Stat. §§ 28-1420 to 28-1429, ~~R.R.S. 2008,~~ or ~~sections~~ Neb. Rev. Stat. §§ 77-2601 to 77-2622~~, R.R.S. 2009~~, of any person who violates any of the provisions of ~~sections~~ Neb. Rev. Stat. §§ 77-2601 through 77-2622~~, R.R.S. 2009~~, any stamping agent who violates any provisions of ~~section~~ Neb. Rev. Stat. § 69-2706(3)~~, R.R.S. 2009~~, or any rules and regulations adopted by the Department, including failure to timely file the required reports by giving notice by ~~certified~~ mail~~, return receipt requested~~, to the licensee. The Tax Commissioner may revoke, cancel, or suspend any license for a violation of the Tobacco Products Tax Act or any rule or regulation adopted and promulgated by the Tax Commissioner in administering the act by giving notice by ~~certified~~ mail~~, return receipt requested~~, to the licensee.

004.04 **Notice of** ~~proposed deficiency~~ **Proposed Deficiency** of Tobacco Products Tax. If, after examination of any tobacco products tax return, the Tax Commissioner finds that the return is incorrect, and any amount of tax due from the tobacco products tax licensee is unpaid, the Tax Commissioner shall notify the licensee, by ~~registered or certified~~ mail, of the proposed deficiency.

004.05 **Procedures.** The following procedures apply to suspension or revocation of any of the licenses mentioned in Reg 004.03 or a notice of proposed deficiency of tobacco products tax as mentioned in Reg 004.04.

004.05A The permitholder or licensee may file a written petition with the Department within 20 days after receipt of the notice of intent to cancel, revoke or suspend or within 20 days after the receipt of the notice of proposed deficiency requesting an oral hearing. The form, content, and service of the petition shall be similar to that found in subsection 33-003.01A and 33-003.01B of these regulations.

004.05B At the hearing, the Tax Commissioner, or any Hearing Officer designated by the Tax Commissioner, may examine any books, papers, or memoranda bearing upon the matter at issue and require the attendance of any permitholder or licensee or any officer or employee of the permitholder or licensee having knowledge pertinent to the issue.

004.05C During the hearing, the Tax Commissioner or his or her designee, shall not be bound by the rules of evidence, and no informality in any proceeding or in the manner of taking testimony shall invalidate any order or decision made or approved by the Tax Commissioner.

004.05D The Tax Commissioner shall make a final decision or final determination within a reasonable time after the hearing and notify the permitholder or licensee by ~~registered or certified~~ mail of ~~such~~ the decision or determination.

004.06 ~~Collection of delinquent taxes from a responsible corporate officer or employee, or any member, manager, or employee of a limited liability company~~ **Collection of Delinquent Taxes from a Responsible Corporate Officer or Employee, or any Member, Manager, or Employee of a Limited Liability Company.** Any corporate officer or employee, or any member, manager, or employee of a limited liability company, with the duty to collect, account for, or pay over any taxes imposed upon a corporation or limited liability company or with the authority to decide whether the corporation or limited liability company will pay taxes imposed upon a corporation or limited liability company, shall be personally liable for the payment of taxes in the event of willful failure on his or her part to have a corporation or limited liability company perform ~~such~~ this act.

004.06A Before collection from a responsible corporate officer or employee or a member, manager, or employee of a limited liability company, a written notice and demand for payment must be mailed to the responsible corporate officer or employee, or the member, manager, or employee of the limited liability company by ~~certified~~ mail~~, return receipt requested~~.

004.06B Any corporate officer or employee, or a member, manager or employee may challenge the Tax Commissioner's determination by filing a petition for the redetermination of the corporate officer's or employees, or a member's, manager's, or employee's personal liability, the amount of the corporation's or limited liability company's unpaid taxes or both within 60 days following the ~~mailing of~~ date the notice and demand for payment was mailed. If a petition for redetermination is not filed within the 60-day period, the determination becomes final.

004.06C If the Department determines that further delay in collection of the delinquent taxes from the corporate officer or employee, or the member, manager, or employee of a limited liability company will jeopardize collection proceedings, nothing in this regulation will prevent the immediate collection of the taxes.

004.07 The Department may initiate a proceeding against a person who has failed to comply with the provisions of the Charitable Gaming Law or any regulations adopted pursuant to these acts.

004.07A Whenever the holder of a license or permit under the Charitable Gaming Law fails to comply with any provision of the Charitable Gaming Law or any regulation adopted pursuant to these acts, the Department may suspend, cancel, or revoke for cause all rights and privileges granted to a licensee or permitholder.

004.07B Order of ~~suspension~~ Suspension.

004.07B(1) The Tax Commissioner may enter an order of suspension to a permitholder or licensee if the Department determines that the permitholder or licensee is in noncompliance with the provisions of the Charitable Gaming Law, or regulations adopted pursuant to these acts.

004.07B(2) Before any license or permit is suspended prior to a hearing, notice of an order to suspend a license or permit must be mailed to or personally served upon the permitholder or licensee at least 15 days before the order of suspension takes effect. The order of suspension must be in writing and be personally served or sent by ~~certified~~ mail~~, return receipt requested~~.

004.07B(3) No ~~such~~ suspension shall be issued prior to a hearing to any nonprofit organization or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad licensed to conduct a lottery by sale of pickle cards pursuant to ~~section~~ Neb. Rev. Stat § 9-326 ~~R.R.S. 2007~~ of the Nebraska Pickle Card Lottery Act or any person licensed pursuant to the Nebraska County and City Lottery Act.

004.07B(4) An order of suspension pursuant to subdivisions 004.07B (1) and (2) may be issued when an action for suspension, cancellation, or revocation is pending.

004.07B(5) The permitholder or licensee may file a written petition with the Department within 15 days after the ~~mailing~~ date ~~of~~ the order of suspension was mailed, requesting reconsideration of ~~such~~ the suspension.

004.07B(6) The form, content, and service of the petition shall be similar to that found in subsection 33-003.01A and 33-001B of these regulations, except that the petitioner may request that the hearing for suspension be held after 20 days from when the suspension takes effect.

004.07B(7) A hearing for suspension shall be held within 20 days of the date the suspension takes effect whether or not a permitholder or licensee files a petition for reconsideration of the suspension except that a request by the licensee or permitholder to hold the hearing after the end of the 20-day period shall extend the suspension up to the time of hearing. Any ~~such~~ request must be contained in the petition.

004.07B(8) The Department shall serve notice upon the permitholder or licensee by ~~certified~~ mail, ~~return receipt requested,~~ of the time, date, and place of a hearing at least ten days before the hearing is to be held.

004.07B(9) At the redetermination hearing, the permitholder or licensee may present evidence that the violations for which the suspension has been imposed have been

corrected and that the licensee is currently in compliance with the law. Upon ~~such~~ this showing, the Tax Commissioner may lift the suspension.

004.07B(10) The decision of the Department shall be made within 20 days after the conclusion of the hearing. The suspension shall continue in effect until the decision is issued. If the decision is that an order of suspension, revocation, or cancellation is not appropriate, the suspension shall terminate immediately by order of the Tax Commissioner. If the decision is an order for the suspension, revocation, or cancellation of the license or permit, the suspension shall continue pending an appeal of the decision of the Department.

004.07C Suspension, ~~cancellation, or revocation of a license or permit~~ Cancellation, or Revocation of a License or Permit.

004.07C(1) Cause for suspension, cancellation, or revocation. Cause shall generally mean any noncompliance with the provisions of the Charitable Gaming Law, or any regulation adopted pursuant to these acts.

004.07C(2) Notice of suspension, cancellation, or revocation proceeding shall be served upon the licensee or permitholder by personal service or ~~certified~~ mail, ~~return receipt requested,~~ at least ten days prior to the hearing. This notice shall inform the licensee of the time, date, and place of hearing.

004.07C(3) The procedures for suspension, cancellation, or revocation of a license or permit shall be considered separate from an order of suspension under subsection 004.07B.

004.08 **Cease and** ~~desist orders~~ **Desist Orders**. The Department may issue a cease and desist order to any person, permitholder or licensee under the Charitable Gaming Law if the Department determines that a practice engaged in by the person, permitholder or licensee is not in compliance with the acts or regulations adopted pursuant to ~~such~~ these acts. This order shall take effect upon issuance by the Department.

004.08A Cease and desist orders shall contain:

004.08A(1) A statement of the violation of the Charitable Gaming Law constituting the reasons for the entry of ~~such~~ an order;

004.08A(2) A statement of the practice or practices engaged in by the person, permitholder or licensee which are to be discontinued; and

004.08A(3) A statement of the rights of the person, permitholder or licensee to request a hearing for review of the cease and desist order entered by the Tax Commissioner.

004.08B The notice of order shall be in writing and personally served or mailed to the person, permitholder or licensee ~~by certified mail, return receipt requested~~. If the notice of order is mailed, the date ~~of mailing shall be deemed~~ the notice was mailed is the date of service of notice to the person, permitholder, or licensee.

004.08C The person, permitholder, or licensee receiving a cease and desist order may file a petition requesting reconsideration of such order.

004.08D The form, content, and service of the petition shall be similar to that found in subsection 33-003.01A and 33-003.01B of these regulations.

004.08E A petition for reconsideration by the person, permitholder or licensee shall be made in writing and filed with the Department within 30 days after service of the cease and desist order. If the notice of order is mailed ~~by certified mail~~, the date the notice is mailed shall be deemed to be the date of service. If a request for hearing is not filed within the 30-day period, the cease and desist order becomes permanent at the expiration of ~~such~~ this period.

004.08F If a hearing is requested, the hearing shall be held within 30 days after the request for hearing is received by the Department.

004.08G Within 20 days of the date of the hearing, the Tax Commissioner shall issue an order vacating the order or making it permanent as the facts require.

004.08H The person, permitholder, or licensee receiving a cease and desist order shall be deemed to be in default if he or she fails to appear at the hearing and the allegations contained in the order shall be deemed to be true.

004.08I A cease and desist order issued to a person, permitholder, or licensee shall not affect the validity of the license or permit held by the person, permitholder, or licensee and shall only affect the practice or practices alleged to be in violation of the Charitable Gaming Law.

004.09 **Administrative** ~~fines~~ **Fines**. The Department may institute a proceeding to levy an administrative fine against any person, permitholder, or licensee for violations of the Charitable Gaming Law and any regulations adopted pursuant to ~~such~~ these acts.

004.09A The notice of a proceeding to levy an administrative fine shall be served upon the person, licensee, or permitholder, by personal service or ~~certified~~ mail, ~~return receipt requested,~~ at least ten days prior to the proceeding. The notice shall inform the alleged violator of the time, date, and place of hearing.

004.09B For every violation of the Charitable Gaming Law or any regulation adopted pursuant to ~~such~~ these acts, the Tax Commissioner may impose the maximum fine authorized by law. Each violation may be the subject of ~~such~~ a fine.

004.09C Any administrative fines levied pursuant to the Charitable Gaming Law and regulations adopted pursuant to these acts shall be subject to all collection measures available to the Department on behalf of the State.

004.10 The administrative remedies provided in sections 004.07 through 004.09 of these regulations, are not exclusive and may be imposed in combination as the result of a single proceeding. For example, a cease and desist order may also be accompanied by a proceeding to levy an administrative fine.

(Neb. Rev. Stat. §§ 9-226, 9-226.01, 9-226.02, 9-228, 9-229, 9-322, 9-322.01, 9-322.02, 9-418.01, 9-418.02, 9-419, 9-420, 9-421, 9-620, 9-621, 9-622, 9-623, 77-1783.01, 21-2612, 77-2615.01, 77-2622, 77-2705, 77-27,111, 77-27,118, 77-27,135, 77-3003, 77-4001 through 77-4025, ~~81-1260,~~ 81-1560.01, and 81-3722, and *Jones v. State*, 248 Neb. 158, 532 N.W.2d 636 (1995) ~~January 30, 2010~~_____.)

REG-33-005 CONTESTED CASES: GENERAL

005.01 A contested case begins with the filing of a petition or claim and request for hearing, if applicable, with the Department. The petition or claim is the initial document filed by or with the Department that sets forth a request for Department action.

005.02 The pleadings in a contested case may include a petition, claim, notice, motion, stipulation, objection or order or other formal written document filed in a proceeding before the Department. Any pleading filed in a contested case shall meet the following requirements.

> 005.02A The pleading shall contain a heading specifying the Department and the title or nature of the pleading, shall state material factual allegations and state concisely the action the Department is being requested to take, shall contain the name and address of the petitioner or claimant, and shall be signed by the party filing the pleading or the party's authorized representative. If applicable, the pleading shall include the address, telephone number of the party's authorized representative, and, if the representative is an attorney, the representative's bar number.
>
> 005.02B All pleadings shall be made on ~~while~~ white, letter sized (8½ x 11) paper and shall be legibly typewritten, photostatically reproduced, printed, or handwritten. If handwritten, a pleading must be written in ink.

005.03 All pleadings shall be filed with the Department at its office. Filing may be accomplished by personal delivery, United States mail, or by the method established by the parties at the preliminary conference as provided in section 011.03B of these regulations, and will be received during the Department's regular office hours.

005.04 All pleadings subsequent to the initial petition or claim shall be served by the party filing the pleading upon all attorneys of record or other representatives of record and upon all unrepresented parties. Service shall only be made personally, by ~~first-class or certified~~ mail, or by the method established by the parties at the preliminary conference as provided in section 011.03B of these regulations. Written proof of ~~such~~ service shall be filed with the Department.

005.05 Unless state law provides that a hearing is not required, a hearing date shall be set by the Hearing Officer in accordance with statutory requirements. A written notice of the time and place of hearing and the name of the Hearing Officer, if known, shall be served by the Department upon all attorneys of record or other representatives of record and upon all unrepresented parties. The notice must include proof of ~~such~~ service and will be filed with the Department.

005.06 In computing time prescribed or allowed by Chapter 33 or by any applicable statute in which the method of computing time is not specifically provided, days will be computed by excluding the day of the act or event and including the last day of the period. If the last day falls on a Saturday, Sunday, or ~~state~~ approved holiday, the period shall include the next business day.

(Neb. Rev. Stat. §§ 3-149, 57-717, 57-718, 66-4,117, ~~66-695,~~ 77-369, 77-375, 77-612, 77-1777, 77-1778, 77-1779, 77-1780, 77-1783.01, sections 77-2709, 77-2711(1)(a), 77-2793, 77-2794, and 77-27,119, 84-909(1) and 84-909.01. ~~January 30, 2010~~_____.)

REG-33-014 DETERMINATION BY THE TAX COMMISSIONER

014.01 The Tax Commissioner may utilize the Department's experience, technical competence and specialized knowledge in the evaluation of the evidence presented to him or her.

014.02 Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.

014.03 The Tax Commissioner's decision and order should include:

014.03A The Department's name and the name of the proceeding;

014.03B The time and place of the hearing;

014.03C The names of all parties and any representative who entered an appearance on behalf of a party at the hearing;

014.03D The findings of fact, consisting of a concise statement of the conclusions upon each contested issue of fact;

014.03E The conclusions of law consisting of the applications of the controlling law to the facts found and the legal results arising from the law and facts; and

014.03F The order consisting of the action taken by the Department as a result of the facts found and the legal conclusions arising from the law and facts.

014.04 Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record. If service is by ~~certified~~ mail, ~~return receipt requested,~~ service upon the petitioner will be considered to have been completed as of the date ~~of deposit in the United States mail~~ the decision was mailed. If notice is served personally, service upon the petitioner will be considered to have been completed as of the date of delivery.

(Neb. Rev. Stat. §§ 77-1780, 77-2796, 77-27,126, 84-915, 84-917. ~~January 30, 2010~~_____.)