

CHAPTER 1

ADMINISTRATIVE APPEALS RULES OF THE COMANCHE TAX COMMISSION

CHAPTER 1 ADMINISTRATIVE APPEALS

Rule 1.1: Appeal of Staff Actions

- (a) Generally, the initial determination of liability for tribal taxes, penalties, or interest or the revocation of a license will be made by the staff of the Tax Commission. When such determination is made by any staff person subordinate to the Administrator of the Tax Commission, an appeal of such determination shall be first referred to the Administrator of the Tax Commission. Such referral shall be informal and shall be taken as follows:
- (1) Within thirty days after the initial determination by the staff, the taxpayer shall submit, in writing, a statement containing his name and taxpayer identification number, a description of the type of tax and the taxable period at issue, if applicable, a description of the license, if applicable, the relief to which he believes he is entitled, and the reasons he believes he is entitled to such relief.
 - (2) The Administrator of the Tax Commission may set an appointment to discuss the case with the taxpayer or may determine the matter from the written request for relief and the Tax Commission files.
 - (3) In any case, the Administrator shall issue his decision in writing within sixty days of receipt of the written request for relief. This decision shall be the final assessment of the Tax Commission as contemplated by Section 219 of the

General Revenue and Taxation Act of 1995 (the "Act") for purposes of administrative appeal to the Tax Commission. If the Administrator should fail to issue his written determination within sixty days, except with the approval of the taxpayer, the taxpayer may consider the failure to act as a denial of his request for relief for purposes of administrative appeal to the Tax Commission.

- (4) No formal pleadings are required in such cases, and a simple letter complying with subparagraph (1) will be sufficient.
- (b) In the event that the Administrator of the Tax Commission makes or signs the initial determination of taxes, penalties, or interest or the revocation of a license, that determination shall be the final assessment of the Tax Commission as contemplated by Section 219 of the Act for purposes of administrative appeal to the Tax Commission.
- (c) The taxpayer may request reconsideration of the assessment or revocation by the Administrator, but such request or agreement to reconsider shall not toll the running of the ninety day period for appeal to the Tax Commission.

Rule 1.2: Who May Appeal

The following persons shall have a right to appeal to the Tax Commission:

- (a) Any person against whom a final assessment of taxes, penalties, or interest or revocation of his license has been entered by the Administrator of the Tax Commission.
- (b) Any person who has requested relief from an initial assessment of taxes, penalties, or interest or revocation of his license which request has not been determined by the Administrator within sixty days of the receipt of his request for relief, provided, that in the event the person requests additional time or otherwise consents to an extension of the sixty day period, the period shall be tolled to the extent of the extension of time granted.

- (c) Any person who has paid under written protest any taxes, penalties, or interest.

Rule 1.3: Administrative Appeals, How Taken

- (a) Within ninety days of the final assessment of taxes, penalties, or interest or the revocation of a license by the Administrator of the Tax Commission or of the payment under written protest of any taxes, penalties, or interest, any person desiring to appeal such assessment or payment shall file a written application for hearing, signed by himself or his duly authorized agent, setting out therein:
 - (1) A statement of the nature of the tax or license, the amount thereof in controversy, if applicable, and the action of the Administrator complained of with the date of such action;
 - (2) A clear and concise assignment of each error alleged to have been committed by the Administrator. The taxpayer shall be limited to the assignments of error stated, provided that, in the interest of justice, the Commission may allow amendment of the application to include additional assignments of error;
 - (3) The argument and legal authority upon which each assignment of error is made; provided, that the applicant shall not be bound or restricted in such hearing, or on appeal, to the argument and legal authorities contained and cited in said application;
 - (4) A statement of the relief sought by the taxpayer;
 - (5) A statement of the witnesses, so far as such witnesses are then known to the taxpayer, showing their names and addresses, and, if the taxpayer so desires, a request that such witnesses be subpoenaed;

- (6) A verification by such person, or his duly authorized agent, that the statements and facts therein contained are true;
 - (7) The taxpayer's full name, his taxpayer number, if any, and the complete address at which he may be served documents on the appeal with his telephone number or the telephone number of his attorney or advocate. All papers mailed to the address supplied by the taxpayer in his application for hearing, or supplied by him later in writing, shall be deemed served at the time of mailing.
- (b) If the application for hearing is filed later than ninety days after the date of the final assessment, the date of the revocation of the license, or the date of payment of taxes, penalty or interest under written protest, the Tax Commission will dismiss the appeal.

Rule 1.4: Setting Appeal For Hearing

If, in any proper application for a hearing, the taxpayer shall request an oral hearing, the Tax Commission shall grant such hearing, and shall advise the taxpayer by written notice of the date, time, and place of the oral hearing. At least fifteen days notice of the oral hearing shall be given to the taxpayer by certified mail, return receipt requested. In the event that the taxpayer does not request an oral hearing, the Tax Commission may set the matter for oral hearing or may decide the appeal on the application for hearing as it deems appropriate.

Rule 1.5: Evidence

- (a) Form and Admissibility. At all hearings the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these regulations. All evidence admissible under the Tribal Code shall be admissible and the competency of witnesses to testify shall be similarly determined, provided, that in its discretion, the Tax Commission may allow

the introduction of any relevant evidence even though such evidence may generally be subject to some exclusionary rule if the introduction of such evidence may, in the opinion of the Tax Commission, be in the interest of justice and fairness.

(b) Examination and Cross-Examination.

(1) The taxpayer may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from a witness of tender years or poor ability to communicate.

(2) The taxpayer may call any person to be a witness and examine any witness so called on any matter relevant to the appeal. The taxpayer may impeach his own witness.

(c) A record of each appeal shall be made that includes testimony presented at the hearing, each exhibit introduced as evidence at the hearing, all written documents filed in the appeal by the Tax Commission or the taxpayer, and the final written order of the Tax Commission. Such record shall be maintained indefinitely as a permanent record of the Tax Commission, and in the event of an appeal to the Court of Indian Offenses, such record will be certified as to authenticity for filing with the Court.

Rule 1.6: Subpoenas

(a) Issuance. Subpoenas for attendance of witnesses or production of documents or things shall be issued by any Commissioner on motion of the taxpayer. This motion may not be denied, provided that the taxpayer, if he wishes for a record of the services thereof to be maintained, shall prepay:

(1) The certified mailing fees for such subpoena if he wishes for the subpoena to be served by certified mail, or

- (2) A deposit against the total cost of service mileage charged by the Tribal Police for service of subpoenas in the amount of not less than Ten Dollars for each subpoena, which deposit shall be credited against any service fees earned by the Tribal Police and the balance, if any, returned to the taxpayer, or;

Service of such subpoenas may be made by any person authorized to serve process in the Court of Indian Offenses, or a person appointed by one of the Tax Commissioners for that purpose at the request of a party, and the taxpayer requesting service of the subpoena in such manner shall pay the process server in such manner as they may mutually determine. In all such cases, the person serving the subpoena shall make due return of the subpoena within ten days of service thereof.

- (b) Service. Subpoenas may be served in any manner in which a civil complaint and summons, or subpoena may be served in the Court of Indian Offenses.
- (c) Failure to Appear. A person who has been properly served with a subpoena and fails to appear or produce, without lawful cause, such documents as may be listed in the subpoena, may be deemed to be in contempt of the Tax Commission, and the Tax Commission in such cases shall, at the request of the taxpayer on whose behalf the subpoena was issued, file an application with the Court of Indian Offenses for an order of the court enforcing such subpoena. If the taxpayer requests enforcement thereof, he may be required, as a condition thereto, to waive in writing his right to a speedy hearing and/or speedy determination of appeal.
- (d) Subpoena Unnecessary. A person present at any hearing on a taxpayer appeal may be required to testify in the same manner as if he were in attendance upon a subpoena.

Rule 1.7: Form of Subpoenas

All subpoenas shall be in substantially the following form:

**BEFORE THE TAX COMMISSION
COMANCHE NATION OF OKLAHOMA**

IN THE MATTER OF THE)
ADMINISTRATIVE APPEAL OF)
(Name of Taxpayer)) Tax Appeal No. _____)

SUBPOENA

THE COMANCHE NATION OF OKLAHOMA TO:

(Insert Name and Address of Witness)

You are hereby commanded to appear at a hearing before the Tax Commission of the Comanche Nation of Oklahoma in the above entitled matter at the hour of ___ o'clock __.m. on the ___ day of _____, 20____, at the Comanche Tribal Complex, Lawton, Oklahoma, and to remain in attendance thereafter until released by the Commission so that you may present testimony in this action as requested by _____.

You are further ordered to bring to this hearing the following books, records, documents, or things in your possession or under your control: _____ (Identify evidence subpoenaed)

IF YOU FAIL TO APPEAR AS REQUIRED YOU MAY BE PUNISHED OR PENALIZED BY LAW.

Tax Commissioner

RETURN OF SERVICE

I certify that on the _____ day of _____, 20 _____, at the hour of _____ o'clock __.m., I served the above named _____, with a copy of this subpoena at _____ (describe the place of service) by _____ (describe manner of service).

Title or Other Authority to Serve

Rule 1.8: Role of the Tax Commissioners at the Hearing

The role of the Tax Commissioners in all hearings of the Tax Commission shall be that of finders of fact and interpreters of the law. As such, they should hear the evidence submitted by the taxpayer, review the record, and decide from the evidence and the record submitted to them all questions of fact and law presented. It is improper for a Commissioner to participate or assist the taxpayer in presenting his case before the Commission. However, it is proper for a Commissioner to question any witness, the taxpayer, or the taxpayer's counsel, in order to clarify any questions that Commissioners may have. A Commissioner should not discuss the case with the taxpayer unless the Administrator is also there to participate in the discussion..

Rule 1.9: Quorum

The Tax Commission shall conduct hearings on the merits of the complaint only if at least three Commissioners are actually in physical attendance at the hearing. A record shall be made of Commissioners present and absent.

Rule 1.10: General Order of Hearing

- (a) At the time, date, and place specified in the notice of hearing and upon readiness of the Tax Commission, the hearing on the appeal shall be called to order by the Chairman of the Tax Commission, or in his absence, by the ranking Commissioner.
- (b) The Chairman should ask the taxpayer if there are any preliminary matters to be considered and if he is ready to proceed. Preliminary issues should be considered first, and determined or taken under consideration to be determined at the time the decision is rendered as may be appropriate. Upon the taxpayer announcing he is ready to proceed, or

upon overruling, if appropriate, a motion to continue the hearing until another time, the Commission shall order the hearing to begin. Due to the time limits imposed by the Act upon holding the hearing and rendering a decision, a motion to continue or otherwise delay the matter will only be granted in exceptional circumstances unless the taxpayer agrees in writing to waive the time limitation imposed by the Act.

- (c) The taxpayer may then make his opening statement, call his witnesses, and offer his evidence in support of his appeal.
- (d) The hearing may then be adjourned, and the Commissioners participating in the hearing shall render their written decision on the matter within thirty days and mail a copy thereof to the taxpayer.

Rule 1.11: Questions Not Addressed By Rules

All matters of procedure not addressed by these rules shall be subject to order of the Tax Commission entered upon request of a taxpayer in a particular appeal. In all cases wherein the procedure is not governed by the Act or these rules, the Tax Commission may proceed in any lawful manner.

Rule 1.12: Compilation of Decisions

The Administrator, at least once each year, shall cause all of the decisions of the Tax Commission on appeals to be compiled into a document and made available to the public in the same manner and under the same conditions as the Tax Commission rules are made available for the public.