

DRAFT

R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63G-4-204 through 63G-4-209.

(1) A scheduling or status conference may be held.

(a) At the conference, the parties and the presiding officer may:

(i) establish deadlines and procedures for discovery;

(ii) discuss scheduling;

(iii) clarify other issues;

(iv) determine whether to refer the action to a mediation process; and

(v) determine whether the initial hearing will be waived.

(b) The scheduling or status conference may be converted to an initial hearing upon agreement of the parties.

(2) Notice of Hearing. At least ten days prior to a hearing date, the commission shall notify the petitioning party or the petitioning party's representative by mail, or e-mail~~, or facsimile~~ of the date, time and place of any hearing or proceeding.

~~[(3) Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.]~~

(3) Proceeding Attendance.

(a) Except as otherwise provided in this Subsection (3), a presiding officer shall hold a proceeding associated with an appeal as a proceeding by electronic video, audio, or both video and audio connection.

(b)(i) Except as provided in Subsection (3)(b)(ii) through (iv), a party may request an in-person hearing no later than two weeks before the day on which the hearing is scheduled.

(ii) A party to an expedited hearing may request an in-person hearing no later than three business days before the day on which the hearing is scheduled.

(iii) The presiding officer may waive the requirements described in Subsection (3)(b)(i) or (ii) for good cause.

(iv) A party may not request a telephone status conference to be conducted in person.

(c) A petition form shall allow a petitioner to request an in-person hearing at the time of filing.

(d) Each party to a proceeding or the party's representative shall notify the presiding officer of the party's contact information for purposes of attending the proceeding.

(4) Representation.

(a) A party may pursue an appeal before the commission without assistance of legal counsel or other representation. However, a party may be represented by legal counsel or other

representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

(i) An attorney licensed in a jurisdiction outside Utah may represent a taxpayer before the commission without being admitted pro hac vice in Utah.

(ii) For appeals concerning Utah corporate franchise and income taxes or Utah individual income taxes, legal counsel must file a power of attorney or the taxpayer must submit a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized legal counsel to represent him or her in the appeal. For all other appeals, legal counsel may, as an alternative, submit an entry of appearance.

(iii) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action, unless the taxpayer submits a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized the representative to represent him or her in the appeal.

(iv) If a party is represented by legal counsel or other representation, all documents will be directed to the party's representative. Documents will be mailed to the representative's street or other address as shown in documents submitted by the representative. Documents may also be transmitted by facsimile number, e-mail address or other electronic means.

(b) Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office upon an attorney of that office submitting an entry of appearance.

(5) Subpoena Power.

(a) Issuance. Subpoenas may be issued to secure the attendance of witnesses or the production of evidence.

(i) If all parties are represented by counsel, an attorney admitted to practice law in Utah may issue and sign the subpoena.

(ii) In all other cases, the party requesting the subpoena must prepare it and submit it to the presiding officer for review and, if appropriate, signature. The presiding officer may inform a party of its rights under the Utah Rules of Civil Procedure.

(b) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

(6) Motions.

(a) Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

~~[(b) Continuance. A continuance may be granted at the discretion of the presiding officer.~~

~~—— (i) In the absence of a scheduling order:~~

~~—— (A) Each party to an appeal may receive one continuance, upon request, prior to the initial hearing.~~

~~—— (B) If the initial hearing is waived or a formal hearing is timely requested after an initial hearing decision is issued, each party may receive one continuance, upon request, prior to the formal hearing.~~

~~— (C) A request must be submitted no later than ten days prior to the proceeding for which the continuance is requested and may be denied if a party is prejudiced by the continuance.~~

~~— (ii) If a scheduling order has been issued or the requesting party has already been granted a continuance, a continuance request must be submitted in writing to the presiding officer. The request must set forth specific reasons for the continuance. After reviewing the request with one or more commissioners, the presiding officer shall grant the request only if the presiding officer determines that adequate cause has been shown and that no other party or parties will be unduly prejudiced.]~~

(b) Continuance.

(i)(A) The presiding officer may grant a continuance for a proceeding in accordance with this Subsection (b) if the presiding officer determines that adequate cause has been shown and no other party will be unduly prejudiced.

(B) A nonmoving party may show undue prejudice no later than three days after the day on which a party requests a continuance.

(C) A continuance may not be granted for a formal hearing unless one or more commissioners approve the continuance.

(ii) A party shall request a continuance for a proceeding at least two weeks before the day on which the proceeding is scheduled.

(iii) If another party demonstrates that granting a continuance for a proceeding would prejudice that party, the presiding officer may deny the continuance.

(iv) A party may be subject to default if the presiding officer denies a continuance for a proceeding and the party fails to participate in the proceeding as originally scheduled.

(c) Default. The presiding officer may enter an order of default against a party in accordance with Section 63G-4-209.

(i) The default order shall include a statement of the grounds for default and shall be delivered to all parties.

(ii) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

(d) Ruling on Motions. Motions may be made during the hearing or by written motion.

(i) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

(ii) Upon the filing of any motion, the presiding officer may:

(A) grant or deny the motion; or

(B) set the matter for briefing, hearing, or further proceedings.

(iii) If a hearing on a motion is held that may dispose of all or a portion of the appeal or any claim or defense in the appeal, the commission shall make a record of the proceeding, which may include a written record or an audio recording of the proceeding.

(e) Requests to Withdraw Locally-Assessed Property Tax Appeals.

(i) A party who appeals a county board of equalization decision to the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw the appeal 20 or more days prior to:

(I) the initial hearing; or

(II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and

(B) no other party has filed a timely appeal of the county board of equalization decision.

(ii) A party who appeals an initial hearing decision issued by the commission may unilaterally withdraw its appeal if:

(A) it submits a written request to withdraw 20 or more days prior to the formal hearing, regardless of whether the party who appealed the initial hearing order is also the party who appealed the county board of equalization decision; and

(B) no other party has filed a timely appeal of the initial hearing decision.