

## Administrative Procedures – Emergency Rule Filing

### Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” (CVR 04-000-001) adopted by the Office of the Secretary of State, this emergency filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, the Legislative Committee on Administrative Rules and a copy with the Chair of the Interagency Committee on Administrative Rules.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

This emergency rule may remain in effect for a total of 180 days from the date it first takes effect.

**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801(b)(11) for a definition), I believe there exists an imminent peril to public health, safety or welfare, requiring the adoption of this emergency rule.

The nature of the peril is as follows (*PLEASE USE ADDITIONAL SHEETS IF SPACE IS INSUFFICIENT*). Increased risk of exposure for members of the public and Vermont Department of Taxes staff to the COVID-19 virus established as a global pandemic by the World Health Organization as of March 11, 2020.

I approve the contents of this filing entitled:

Vermont Department of Taxes Emergency Rule On Hearing Procedure

/s/ Susanne R. Young , on 12/4/20  
(signature) (date)

Printed Name and Title:

Susanne R. Young, Secretary of Administration

RECEIVED BY: \_\_\_\_\_

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)

Emergency Rule Coversheet

1. TITLE OF RULE FILING:

Vermont Department of Taxes Emergency Rule On Hearing Procedure

2. ADOPTING AGENCY:

Agency of Administration, Department of Taxes

3. PRIMARY CONTACT PERSON:

*(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).*

Name: Margaret Burke

Agency: Vermont Department of Taxes

Mailing Address: 133 State Street, Montpelier, VT 05601

Telephone: 802 828 - 1355 Fax: 802 828 - 5873

E-Mail: margaret.burke@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://tax.vermont.gov/tax-law-and-guidance/regulations>

4. SECONDARY CONTACT PERSON:

*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).*

Name: Will Baker

Agency: Vermont Department of Taxes

Mailing Address: 133 State Street, Montpelier, VT 05601

Telephone: 802 828 - 2506 Fax: 802 828 - 5873

E-Mail: will.baker@vermont.gov

5. RECORDS EXEMPTION INCLUDED WITHIN RULE:

*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?)* No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

6. LEGAL AUTHORITY / ENABLING LEGISLATION:

Emergency Rule Coversheet

*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).*

32 V.S.A. section 3201(a)(1), 3 V.S.A. section 801(b)(11)

**7. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:**

Under 32 V.S.A. section 3201(a)(1), the Commissioner of Taxes may adopt, amend and enforce reasonable rules, orders, and regulations in the administration of taxes. Under 32 V.S.A. section 3101(b)(7), the Commissioner is tasked with establishing procedures for handling taxpayer appeals. 3 V.S.A. section 801(b)(11) shifts adopting authority from the Commissioner of Taxes to the Secretary of Administration.

**8. CONCISE SUMMARY (150 WORDS OR LESS):**

This emergency rule provides for remote hearings before the Commissioner of Taxes.

**9. EXPLANATION OF WHY THE RULE IS NECESSARY:**

This rule is necessary to establish a procedure for handling taxpayer appeals that reduces the risk of exposure to state employees and taxpayers by limiting contact and increasing remote participation.

**10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:**

This rule is not arbitrary because the Commissioner is specifically tasked with adopting reasonable rules and handling taxpayer appeals. The Secretary of Administration has adopting authority under Title 3.

**11. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:**

Taxpayers and Department personnel that attend Commissioner's hearings are affected by this rule.

**12. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):**

Economic impacts are difficult to quantify in monetary terms, but the Department expects a minimal positive impact from the reduction in travel costs, such as gasoline usage.

**13. A HEARING IS NOT SCHEDULED .**

**14. HEARING INFORMATION**

Emergency Rule Coversheet

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION NEEDED FOR THE NOTICE OF RULEMAKING.

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

15. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

16. EMERGENCY RULE EFFECTIVE: 12/27/2020

17. EMERGENCY RULE WILL REMAIN IN EFFECT UNTIL

*(A DATE NO LATER THAN 180 DAYS FOLLOWING ADOPTION OF THIS EMERGENCY RULE):*

06/24/2021

18. NOTICE OF THIS EMERGENCY RULE SHOULD NOT BE PUBLISHED IN THE WEEKLY NOTICES OF RULEMAKING IN THE NEWSPAPERS OF RECORD.

19. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Vermont Department of Taxes

Procedural Rules

Remote Participation

Hearings

# Administrative Procedures – Adopting Page

## Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Vermont Department of Taxes Emergency Rule On Hearing Procedure

2. ADOPTING AGENCY:

Agency of Administration, Department of Taxes

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

20-E12, Vermont Department of Taxes Emergency Rule on Hearing Procedure, effective 07/01/2020

**State of Vermont**  
**Agency of Administration**  
**Office of the Secretary**  
Pavilion Office Building  
109 State Street  
Montpelier, VT 05609-0201  
[www.aoa.vermont.gov](http://www.aoa.vermont.gov)

[phone] 802-828-3322  
[fax] 802-828-3320

*Susanne R. Young, Secretary*

**MEMORANDUM**

**TO:** Jim Condos, Secretary of State

**FROM:** Kristin L. Clouser, ICAR Chair

**DATE:** December 4, 2020

**RE:** Emergency Rule Titled 'Vermont Department of Taxes Emergency Rule on Hearing Procedure' by the Vermont Department of Taxes

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The use of rulemaking procedures under the provisions of 3 V.S.A. §844 is appropriate for this rule. I have reviewed the proposed rule titled 'Vermont Department of Taxes Emergency Rule on Hearing Procedure' provided by the Vermont Department of Taxes and agree that emergency rulemaking is necessary.

Kristin  
Clouser

Digitally signed by  
Kristin Clouser  
Date: 2020.12.08  
12:04:26 -05'00'

# Administrative Procedures – Economic Impact Analysis

## Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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### 1. TITLE OF RULE FILING:

Vermont Department of Taxes Emergency Rule On Hearing Procedure

### 2. ADOPTING AGENCY:

Agency of Administration, Department of Taxes

### 3. CATEGORY OF AFFECTED PARTIES:

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:*

Taxpayers appearing before the Commissioner in a tax appeal and Department staff that attend those hearings.

### 4. IMPACT ON SCHOOLS:

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:*

There should be no impact on schools.

Economic Impact Analysis

5. **ALTERNATIVES:** *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

No alternatives are being considered since this rule does not affect schools.

6. **IMPACT ON SMALL BUSINESSES:**

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):*

This rule may reduce costs for small businesses who appeal a tax liability, as it will enable them to participate remotely, thereby saving travel costs

7. **SMALL BUSINESS COMPLIANCE:** *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

The burden of compliance with these procedural changes is equivalent to that of current procedural requirements.

8. **COMPARISON:**

*COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:*

Though difficult to quantify, the impact of not providing alternative procedures for Commissioner's hearings could be substantial as measured by increased exposure to the COVID-19 virus. Continuing in-person contact increases the risk of exposure of COVID-19 between Department personnel and members of the public. Such exposure could result in the spread of the virus, which has both a health and economic impact.

9. **SUFFICIENCY:** *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

This economic impact analysis is limited due to the necessity to act quickly in response to the COVID-19 virus pandemic. Since the existing rules and procedures have minimal economic impacts, the emergency rulemaking regarding those and similar procedures is also expected to have a minimal impact economically.



# Administrative Procedures – Environmental Impact Analysis

## Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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### 1. TITLE OF RULE FILING:

Vermont Department of Taxes Emergency Rule On Hearing Procedure

### 2. ADOPTING AGENCY:

Agency of Administration, Department of Taxes

### 3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

A negligible reduction in greenhouse gas could be expected from the reduction in vehicular travel to appear at the Commissioner's hearing in-person.

### 4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

No impact expected.

### 5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

No impact expected.

### 6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

No impact expected.

Environmental Impact Analysis

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*  
Negligible impact expected.

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*  
Negligible impact expected from reduced travel.

9. **SUFFICIENCY:** *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*

This environmental impact analysis is limited due to the necessity to act quickly in response to the COVID-19 virus pandemic. Since the existing rules and procedure have minimal environmental impacts, the emergency rulemaking regarding those and similar procedures is also expected to have a minimal impact environmentally.

# Administrative Procedures – Public Input

## **Instructions:**

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

Vermont Department of Taxes Emergency Rule On Hearing Procedure

2. ADOPTING AGENCY:

Agency of Administration, Department of Taxes

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

Not applicable.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

The Department will notify taxpayers of this emergency rule and its contents in its hearing notice. Notice will also be posted on the Department's website where rules are posted.

5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

Not applicable.

Vermont Department of Taxes Emergency Rule on Hearing Procedure

Effective July 1, 2020 ~~December 26, 2020~~ December 27, 2020 – June 24, 2021

The purpose of this revised Emergency Rule is to establish a procedure for handling taxpayer appeals in a fair and timely manner during the increased risk of exposure from COVID-19, which was established as a global pandemic by the World Health Organization as of March 11, 2020.

In order to continue to limit in-person contact among and between members of the public and Department of Taxes personnel, this revised Emergency Rule continues to provides for Commissioner's Hearings to be held remotely. Notwithstanding any provision herein, the Commissioner retains discretion to resume in-person hearings should the public health situation surrounding COVID-19 improve significantly. This revised Emergency Rule supplants in its entirety the Department's Emergency Rule on Hearing Procedure, effective July 1, 2020, and upon becoming effective, will be referred to as the Vermont Department of Taxes Emergency Rule on Hearing Procedure.

1. Commissioner's Hearing: Notice and Participation. If the Department and taxpayer (referred to herein as the "parties") are unable to resolve all issues, the matter will be docketed for hearing before the Commissioner. The hearing is the parties' opportunity to present evidence to the Commissioner in support of their respective positions. The admissibility of evidence will be determined pursuant to 3 V.S.A. § 810(1)-(4). Notice of hearing shall be mailed to the taxpayer at the last address provided by the taxpayer to the Department no less than ~~three-four~~ weeks before the date of the hearing unless the parties agree to a shorter notice period.

- a. Except as provided under subsection (b), ~~H~~hearings shall be held by telephone. The Department Clerk shall provide a call-in phone number for a telephone conference on the notice of hearing sent to the parties. ~~Parties must call the call-in number at the time and date on which their hearing is scheduled.~~
- b. On the taxpayer's motion, ~~H~~hearings may also be held by videoconference at the taxpayer's request. Taxpayers who have video conference capability and wish to participate in the hearing in this manner may request a video conference. Such requests must be made to the Department Clerk within two weeks of the scheduled hearing. The Clerk will then set up a video conference and provide the parties with access information by secure email within one week of the hearing date.

~~b-c.~~ Appearance at Appointed Time. The parties and their respective witnesses shall appear by phone or videoconference, as the case may be, at the time and on the date provided on the notice of hearing. If either party attempts to join the phone or video conference and is unable to access the hearing, that party must immediately notify the Department of this issue by using contact information provided in the notice of hearing. If a party fails to join the phone or video conference at the

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appointed time, and does not report to the Department that it is unable to access the phone or video conference within thirty minutes of the scheduled hearing, the other party may move for dismissal of the appeal.

2. **Submission of Evidence.** Facts may be presented to the hearing officer by oral testimony over the phone, by pre-filed testimony, through documentary evidence, by written stipulation of facts, or by any combination of these four methods. Any document that must be signed by one or both parties may be signed electronically.

~~All evidence other than oral testimony must be submitted to the Department Clerk by email at least one week prior to the hearing. The Department Clerk will circulate such evidence to the parties and to the hearing officer by secure email prior to the hearing.~~

~~Any party that is unable to provide documents electronically may instead mail documents to the Department. Upon receipt, the Department Clerk will scan such evidence for circulation to the parties and hearing officer by secure email. Any party submitting evidence by mail must do so at least two weeks prior to the date of the hearing and must notify the Department Clerk at the time of the mailing.~~

~~Any party that is unable to access electronic copies of evidence may request paper copies from the Department Clerk. A request for paper copies should be submitted in writing to the Department Clerk as soon as practicable, but no later than two weeks prior to the hearing date.~~

- a. Factual Stipulation. A stipulation of facts may be submitted in lieu of, or to supplement, a Commissioner's Hearing. The stipulation must be signed by both parties.
- b. Pre-filed Testimony. Either or both parties may choose to submit testimony of a witness in writing. A witness or party submitting pre-filed testimony will be subject to the same rules of admissibility and cross-examination as oral testimony at the hearing.
- c. Documentary Evidence. Documentary evidence is subject to the same rules of admissibility as evidence that would be offered at an in-person hearing.

Parties shall submit all evidence other than oral testimony to the Department Clerk, with a copy sent to the opposing party, at least two weeks prior to the hearing date. Parties may submit evidence by email or first-class mail. If sent by first-class mail, evidence must be post-marked by the date which falls two weeks prior to the hearing. Parties are expected to be able to refer to evidence submitted prior to the hearing and should be sure to have all such evidence accessible during the hearing.

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At the end of the hearing the Commissioner's record is closed and the findings of fact made by the Commissioner shall be based exclusively on the evidence and matters officially noticed as required by the Vermont Administrative Procedure Act.

3. Appearance in Appeals. A party to an appeal before the Commissioner may appear for himself or herself, or in the case of a corporation, partnership, trust, municipality or other entity created by law, through its duly authorized agent, or the party may be represented by an attorney or a certified public accountant (CPA), if such representative is currently licensed to practice in the State of Vermont. When a taxpayer will be represented at hearing by an attorney or CPA, such representative shall submit a completed power of attorney, executed by the taxpayer, on the Department's form, found at: <https://tax.vermont.gov/sites/tax/files/documents/PA-1.pdf>

To ensure that the appropriate parties timely receive evidence submitted under the rules described in the above Paragraph 2, a representative shall submit a completed power of attorney to the Department Clerk, with a copy to the opposing party, at least three weeks prior to the date of the hearing.

3-4. Other Provisions. Any provisions from the Department's Rule of Organization and Procedure, effective January 1, 2019, that are consistent with this Emergency Rule, are hereby incorporated by reference into this Emergency Rule. Any provisions from the Department's Rule of Organization and Procedure that are inconsistent with this Emergency Rule are suspended for the duration of this Emergency Rule.

4-5. Effective Dates. This Emergency Rule shall become effective on ~~July 1, 2020~~ December 27, 2020 and shall cease to be effective on ~~December 26, 2020~~ June 24, 2021.

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Clean  
text

Vermont Department of Taxes Emergency Rule on Hearing Procedure

Effective December 27, 2020 – June 24, 2021

The purpose of this revised Emergency Rule is to establish a procedure for handling taxpayer appeals in a fair and timely manner during the increased risk of exposure from COVID-19, which was established as a global pandemic by the World Health Organization as of March 11, 2020.

In order to continue to limit in-person contact among and between members of the public and Department of Taxes personnel, this revised Emergency Rule continues to provide for Commissioner's Hearings to be held remotely. Notwithstanding any provision herein, the Commissioner retains discretion to resume in-person hearings should the public health situation surrounding COVID-19 improve significantly. This revised Emergency Rule supplants in its entirety the Department's Emergency Rule on Hearing Procedure, effective July 1, 2020, and upon becoming effective, will be referred to as the Vermont Department of Taxes Emergency Rule on Hearing Procedure.

1. Commissioner's Hearing: Notice and Participation. If the Department and taxpayer (referred to herein as the "parties") are unable to resolve all issues, the matter will be docketed for hearing before the Commissioner. The hearing is the parties' opportunity to present evidence to the Commissioner in support of their respective positions. The admissibility of evidence will be determined pursuant to 3 V.S.A. § 810(1)-(4). Notice of hearing shall be mailed to the taxpayer at the last address provided by the taxpayer to the Department no less than four weeks before the date of the hearing unless the parties agree to a shorter notice period.

- a. Except as provided under subsection (b), hearings shall be held by telephone. The Department Clerk shall provide a call-in phone number for a telephone conference on the notice of hearing sent to the parties.
- b. On the taxpayer's motion, hearings may be held by videoconference. Taxpayers who have video conference capability and wish to participate in the hearing in this manner may request a video conference. Such requests must be made to the Department Clerk within two weeks of the scheduled hearing. The Clerk will then set up a video conference and provide the parties with access information by secure email within one week of the hearing date.
- c. Appearance at Appointed Time. The parties and their respective witnesses shall appear by phone or videoconference, as the case may be, at the time and on the date provided on the notice of hearing. If either party attempts to join the phone or video conference and is unable to access the hearing, that party must immediately notify the Department of this issue by using contact information provided in the notice of hearing. If a party fails to join the phone or video conference at the appointed time, and does not report to the Department that it is unable to access

the phone or video conference within thirty minutes of the scheduled hearing, the other party may move for dismissal of the appeal.

2. Submission of Evidence. Facts may be presented to the hearing officer by oral testimony over the phone, by pre-filed testimony, through documentary evidence, by written stipulation of facts, or by any combination of these four methods. Any document that must be signed by one or both parties may be signed electronically.

- a. Factual Stipulation. A stipulation of facts may be submitted in lieu of, or to supplement, a Commissioner's Hearing. The stipulation must be signed by both parties.
- b. Pre-filed Testimony. Either or both parties may choose to submit testimony of a witness in writing. A witness or party submitting pre-filed testimony will be subject to the same rules of admissibility and cross-examination as oral testimony at the hearing.
- c. Documentary Evidence. Documentary evidence is subject to the same rules of admissibility as evidence that would be offered at an in-person hearing.

Parties shall submit all evidence other than oral testimony to the Department Clerk, with a copy sent to the opposing party, at least two weeks prior to the hearing date. Parties may submit evidence by email or first-class mail. If sent by first-class mail, evidence must be post-marked by the date which falls two weeks prior to the hearing. Parties are expected to be able to refer to evidence submitted prior to the hearing and should be sure to have all such evidence accessible during the hearing.

At the end of the hearing the Commissioner's record is closed and the findings of fact made by the Commissioner shall be based exclusively on the evidence and matters officially noticed as required by the Vermont Administrative Procedure Act.

3. Appearance in Appeals. A party to an appeal before the Commissioner may appear for himself or herself, or in the case of a corporation, partnership, trust, municipality or other entity created by law, through its duly authorized agent, or the party may be represented by an attorney or a certified public accountant (CPA), if such representative is currently licensed to practice in the State of Vermont. When a taxpayer will be represented at hearing by an attorney or CPA, such representative shall submit a completed power of attorney, executed by the taxpayer, on the Department's form, found at: <https://tax.vermont.gov/sites/tax/files/documents/PA-1.pdf>

To ensure that the appropriate parties timely receive evidence submitted under the rules described in the above Paragraph 2, a representative shall submit a completed power of attorney to the Department Clerk, with a copy to the opposing party, at least three weeks prior to the date of the hearing.



4. Other Provisions. Any provisions from the Department's Rule of Organization and Procedure, effective January 1, 2019, that are consistent with this Emergency Rule, are hereby incorporated by reference into this Emergency Rule. Any provisions from the Department's Rule of Organization and Procedure that are inconsistent with this Emergency Rule are suspended for the duration of this Emergency Rule.

5. Effective Dates. This Emergency Rule shall become effective on December 27, 2020 and shall cease to be effective on June 24, 2021.

VERMONT **GENERAL ASSEMBLY**

# The Vermont Statutes Online

## Title 32 : Taxation And Finance

### Chapter 103 : Department Of Taxes; Commissioner Of Taxes

#### Subchapter 002 : Administration

(Cite as: 32 V.S.A. § 3201)

#### § 3201. Administration of taxes

(a) Commissioner authority. In the administration of taxes, the Commissioner may:

(1) Adopt, amend, and enforce reasonable rules, orders, and regulations in administering the taxes within the Commissioner's jurisdiction.

(2) Delegate to any officer or employee in the Department powers the Commissioner deems necessary to carry out efficiently the tax provisions within the Commissioner's jurisdiction.

(3) Hold hearings, administer oaths, and examine under oath any person relating to his or her business or relating to any matter within the Commissioner's jurisdiction.

(4) For the purpose of ascertaining the correctness of any return or making a determination of the tax liability of any taxpayer, examine or cause to be examined by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda of the taxpayer bearing upon the matters required to be included in any return. The Commissioner or such designated officers may require the attendance of the taxpayer or of any other person having knowledge in the premises, at any place in the county where the taxpayer or person resides or has a place of business, or in Washington County if the taxpayer is a nonresident individual, estate, trust, or is a corporation or business entity not having a place of business in this State, and may take testimony and require proof material and may administer oaths or take acknowledgment in respect of any return or other information required by this title or the rules, regulations, and decisions of the Commissioner. If an individual, estate, trust, corporation, or other business entity fails after request to provide books, records, or memoranda at either its place of business within the State or Washington County, the Commissioner may charge the person a reasonable per diem fee and expenses for the auditor making the examination out of state. The charges shall be payable within 30 days of the date billed and may be collected in the manner provided for the collection of taxes in this title.

(5) Upon making a record of the reasons therefor, waive, reduce, or compromise any of the taxes, penalties, interest, or other charges or fees within his or her jurisdiction.

(6) Determine the form in which returns and reports shall be filed and what shall

constitute a signature on such returns and reports, including those filed in other than paper form, such as electronically or over telephone lines.

(7) Assess, determine, revise, and readjust the taxes imposed in this title.

(8) In cases in which payment of taxes is allowed or required by electronic funds transfer, allow up to six additional days for payment.

(9) Attach property pursuant to section 3207 of this title for payment of an amount collectible by the Commissioner under this title any time after 90 days have run from the end of any applicable administrative appeal period on the underlying tax liability.

(10) Garnish earnings pursuant to section 3208 of this title for payment of an amount collectible by the Commissioner under this title any time after 90 days have run from the end of any applicable administrative appeal period on the underlying tax liability.

(b) Reciprocal enforcement.

(1) At the request of the Commissioner, the Attorney General may bring suit, in the name of this State, in the appropriate court of any other state to collect any tax legally due this State.

(2) The courts of this State shall recognize and enforce liabilities for taxes lawfully imposed by any other state which extends a like comity to this State, and the duly authorized officer of that state may sue for the collection of such a tax in the courts of this State. A certificate by the Secretary of State of the other state that an officer suing for collection of such a tax is duly authorized to collect it shall be conclusive proof of this authority.

(3) As used in this section, the words "tax" and "taxes" include interest, fees, and penalties due under any taxing statute, and liability for the interest, fees, and penalties due under a taxing statute of another state shall be recognized and enforced by the courts of this State to the same extent that the laws of the other state permit the enforcement in its courts of liability for the interest, fees, and penalties due under a taxing statute of this State.

(c) Reciprocal tax agreements. The Commissioner may enter into reciprocal agreements with the taxing authorities of other states, territories, provinces of Canada, countries, or the District of Columbia regarding the administration of taxes.

(d) Tax return due dates. When the due date for the filing of a return falls on a federal or State holiday, the due date shall be the next business day after such holiday. A return that is filed by mail shall be accepted as timely filed if:

(1) it is received by the Department within three business days after the due date; or

(2) the taxpayer provides proof satisfactory to the Commissioner that the return was mailed by the due date.

(e) Agreements with certified service providers. The Commissioner may enter into agreements with certified service providers, sellers using certified automated systems, and voluntary sellers for monetary allowances. The tax required to be paid to the shall be net of monetary allowances.

(1) The allowance for a certified service provider shall be funded entirely from money collected by the provider and shall be either a base rate applied to taxable transactions processed by the provider or, for a period not to exceed 24 months following a voluntary seller's registration through the streamlined sales tax agreement central registration process, a percentage of tax revenue generated for the State for which the seller does not have a requirement to register to collect the tax, or both.

(2) The allowance for a seller using a certified automated system shall be for a period not to exceed 24 months following a seller's voluntary registration and may include a base rate applied to taxable transactions and a percentage of tax revenue generated for the State for which the seller does not have a requirement to register to collect the tax.

(3) The allowance for a voluntary seller shall be for a period not to exceed 24 months following a seller's voluntary registration and shall be based on a percentage of tax revenue generated for the State for which the seller does not have a requirement to register to collect the tax. (Added 1991, No. 186 (Adj. Sess.), § 7, eff. May 7, 1992; amended 1993, No. 49, § 2, eff. May 28, 1993; 1995, No. 169 (Adj. Sess.), §§ 1, 2, eff. May 15, 1996; 1999, No. 49, §§ 41, 43, eff. June 2, 1999; 2003, No. 152 (Adj. Sess.), § 21, eff. date, see note below; 2007, No. 81, § 3, eff. July 1, 2008; 2009, No. 160 (Adj. Sess.), § 4, eff. June 4, 2010; 2015, No. 57, § 41; 2019, No. 14, § 76, eff. April 30, 2019.)

VERMONT **GENERAL ASSEMBLY**

# The Vermont Statutes Online

## Title 3 : Executive

### Chapter 025 : Administrative Procedure

#### Subchapter 001 : General Provisions

(Cite as: 3 V.S.A. § 801)

#### § 801. Short title and definitions

(a) This chapter may be cited as the "Vermont Administrative Procedure Act."

(b) As used in this chapter:

(1) "Agency" means a State board, commission, department, agency, or other entity or officer of State government, other than the Legislature, the courts, the Commander in Chief, and the Military Department, authorized by law to make rules or to determine contested cases.

(2) "Contested case" means a proceeding, including but not restricted to rate-making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

(3) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law.

(4) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(5) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(7) "Practice" means a substantive or procedural requirement of an agency, affecting one or more persons who are not employees of the agency, that is used by the agency in the discharge of its powers and duties. The term includes all such requirements, regardless of whether they are stated in writing.

(8) "Procedure" means a practice that has been adopted in writing, either at the election of the agency or as the result of a request under subsection 831(b) of this title. The term includes any practice of any agency that has been adopted in writing, whether or not labeled as a procedure, except for each of the following:

(A) a rule adopted under sections 836-844 of this title;

(B) a written document issued in a contested case that imposes substantive or procedural requirements on the parties to the case;

(C) a statement that concerns only:

(i) the internal management of an agency and does not affect private rights or procedures available to the public;

(ii) the internal management of facilities that are secured for the safety of the public and the individuals residing within them; or

(iii) guidance regarding the safety or security of the staff of an agency or its designated service providers or of individuals being provided services by the agency or such a provider;

(D) an intergovernmental or interagency memorandum, directive, or communication that does not affect private rights or procedures available to the public;

(E) an opinion of the Attorney General; or

(F) a statement that establishes criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections, in settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if disclosure of the criteria or guidelines would compromise an investigation or the health and safety of an employee or member of the public, enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons that are in an adverse position to the State.

(9) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy and that has been adopted in the manner provided by sections 836-844 of this title.

(10) "Incorporation by reference" means the use of language in the text of a regulation that expressly refers to a document other than the regulation itself.

(11) "Adopting authority" means, for agencies that are attached to the Agencies of Administration, of Commerce and Community Development, of Natural Resources, of Human Services, and of Transportation, or any of their components, the secretaries of those agencies; for agencies attached to other departments or any of their components, the commissioners of those departments; and for other agencies, the chief officer of the agency. However, for the procedural rules of boards with quasi-judicial powers, for the Transportation Board, for the Vermont Veterans' Memorial Cemetery Advisory Board, and for the Fish and Wildlife Board, the chair or executive secretary of the board shall be the adopting authority. The Secretary of State shall be the adopting authority for the Office of Professional Regulation.

(12) "Small business" means a business employing no more than 20 full-time

employees.

(13)(A) "Arbitrary," when applied to an agency rule or action, means that one or more of the following apply:

(i) There is no factual basis for the decision made by the agency.

(ii) The decision made by the agency is not rationally connected to the factual basis asserted for the decision.

(iii) The decision made by the agency would not make sense to a reasonable person.

(B) The General Assembly intends that this definition be applied in accordance with the Vermont Supreme Court's application of "arbitrary" in *Beyers v. Water Resources Board*, 2006 VT 65, and *In re Town of Sherburne*, 154 Vt. 596 (1990).

(14) "Guidance document" means a written record that has not been adopted in accordance with sections 836-844 of this title and that is issued by an agency to assist the public by providing an agency's current approach to or interpretation of law or describing how and when an agency will exercise discretionary functions. The term does not include the documents described in subdivisions (8)(A) through (F) of this section.

(15) "Index" means a searchable list of entries that contains subjects and titles with page numbers, hyperlinks, or other connections that link each entry to the text or document to which it refers. (Added 1967, No. 360 (Adj. Sess.), § 1, eff. July 1, 1969; amended 1981, No. 82, § 1; 1983, No. 158 (Adj. Sess.), eff. April 13, 1984; 1985, No. 56, § 1; 1985, No. 269 (Adj. Sess.), § 4; 1987, No. 76, § 18; 1989, No. 69, § 2, eff. May 27, 1989; 1989, No. 250 (Adj. Sess.), § 88; 2001, No. 149 (Adj. Sess.), § 46, eff. June 27, 2002; 2017, No. 113 (Adj. Sess.), § 3; 2017, No. 156 (Adj. Sess.), § 2.)



# Proposed Rules Postings

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### Deadline For Public Comment

Deadline: Unavailable.

The deadline for public comment is unavailable for this rule. Contact the agency or primary contact person listed below for assistance.

### Rule Details

Rule Number:	20-E23
Title:	Vermont Department of Taxes Emergency Rule On Hearing Procedure.
Type:	Emergency
Status:	Adopted
Agency:	Department of Taxes; Agency of Administration
Legal Authority:	32 V.S.A. § 3201(a)(1), 3 V.S.A. § 801(b)(11)
Summary:	This emergency rule provides for remote hearings before the Commissioner of Taxes.
Persons Affected:	Taxpayers and Department personnel that attend Commissioner's hearings are affected by this rule.



Economic Impact: Economic impacts are difficult to quantify in monetary terms, but the Department expects a minimal positive impact from the reduction in travel costs, such as gasoline usage.

Posting date: Dec 04,2020

## Hearing Information


There are not Hearings scheduled for this Rule

## Contact Information

### Information for Primary Contact

**PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.**


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Website: <https://tax.vermont.gov/tax-law-and-guidance/regulations>  
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### Information for Secondary Contact

**SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON.**

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## Keyword Information

Keywords:

Vermont Department of Taxes  
Procedural Rules  
Remote Participation  
Hearings



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