

SUBCHAPTER 24F – BOARD OF REVIEW

SECTION .0100 – GENERAL

04 NCAC 24F .0100 RESERVED FOR FUTURE CODIFICATION

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04 NCAC 24F .0101 OFFICE LOCATION FOR BOARD OF REVIEW

The administrative office of the North Carolina Department of Commerce, Board of Review is located at 700 Wade Avenue, in Raleigh, North Carolina. The mailing address is Post Office Box 28263, Raleigh, NC 27611. The office is open to the public during business hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for State holidays as set forth in 25 NCAC 01E .0901, including subsequent amendments and editions.

History Note: Authority G.S. 96-4; 96-15.3;
Eff. July 1, 2018.

04 NCAC 24F .0102 ADDRESSES FOR NOTICE AND ELECTRONIC NOTICE

Rule 04 NCAC 24A .0103 shall apply for notice sent by the Board of Review.

History Note: Authority G.S. 96-4; 96-15; 96-15.3;
Eff. July 1, 2018.

04 NCAC 24F .0103 ADDRESSES FOR FILING APPEALS, EXCEPTIONS, OR REQUESTS

Appeals, exceptions, and requests shall be filed with the Board of Review in accordance with 04 NCAC 24A .0104(1), (r), and (v).

History Note: Authority G.S. 96-4; 96-15; 96-15.3;
Eff. July 1, 2018.

04 NCAC 24F .0104 FILING/MAILING DATES AND USE OF FORMS

Rule 04 NCAC 24A .0106 shall apply in determining the timeliness of appeals, exceptions, and requests filed with the Board of Review.

History Note: Authority G.S. 96-4; 96-15; 96-15.3;
Eff. July 1, 2018.

04 NCAC 24F .0105 SIGNATURES

- (a) Rule 04 NCAC 24A .0107 shall apply in authenticating a digital signature.
- (b) Rule 04 NCAC 24A .0108 shall apply in determining signatures on reports and forms.

History Note: Authority G.S. 96-4; 96-9.15; 96-15; 96-15.3;
Eff. July 1, 2018.

04 NCAC 24F .0106 APPEAL DATE

- (a) A party shall be allowed to establish an appeal date earlier than a postal meter date, or the date of a document by presenting clear and convincing evidence.
- (b) When a party alleges that it filed an appeal that the Board of Review never received, the party shall present clear and convincing evidence of a timely filing, which may be corroborated by testimony or physical evidence linked to the appeal in question.
- (c) The Board of Review shall allow cross-examination in de novo hearings to establish the timeliness of an appeal, using the criteria set forth in 04 NCAC 24A .0106.

History Note: Authority G.S. 96-4; 96-15; 96-15.3;

Eff. July 1, 2018.

04 NCAC 24F .0107 TIMELINESS EXCEPTION

Timeliness sanctions shall be waived by the Board of Review or its designee when the Board of Review, DES, or an agent state representative gives misleading information on appeal rights to a party, if the party:

- (1) establishes what he or she was told was misleading and how he or she was misled, using the criteria set forth in 04 NCAC 24F .0106;
- (2) identifies, if possible, the individual who misled him or her; and
- (3) establishes that the Board of Review or DES did not provide the party with any written instructions contrary to the misleading information with service of the decision being appealed.

*History Note: Authority G.S. 96-4; 96-15; 96-15.3;
Eff. July 1, 2018.*

SECTION .0200 – HIGHER AUTHORITY REVIEW OF APPEALS DECISION

04 NCAC 24F .0201 REQUIREMENTS FOR APPEAL STATEMENT TO BOARD OF REVIEW

A written statement of appeal from an Appeals Decision to the Board of Review shall comply with 04 NCAC 24A .0104(1)(5).

*History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015;
Recodified from 04 NCAC 24C .0501 Eff. October 1, 2017;
Amended Eff. July 1, 2018.*

04 NCAC 24F .0202 ACKNOWLEDGMENT OF APPEAL

- (a) The receipt of a party's appeal from an Appeals Decision shall be acknowledged in writing by the Board of Review or its designee and sent to all parties of record.
- (b) The notice acknowledging receipt of an appeal shall inform each party of the following:
 - (1) the right to request oral arguments;
 - (2) the deadline to request oral arguments;
 - (3) the right to submit written arguments regarding the appeal;
 - (4) the deadline for submitting written arguments;
 - (5) that the party may submit a written request for a record of the hearing proceeding pursuant to G.S. 96-15(f); and
 - (6) the procedures for obtaining a record of the hearing, including recordings or transcripts.
- (c) Records shall be provided in accordance with G.S. 96-4(x) and Section .0200 of 04 NCAC 24A.

*History Note: Authority G.S. 96-4; 96-15; 20 CFR 603;
Eff. July 1, 2015;
Recodified from 04 NCAC 24C .0502 Eff. October 1, 2017;
Amended Eff. July 1, 2018.*

04 NCAC 24F .0203 ORAL ARGUMENTS

- (a) Oral arguments before the Board of Review shall be granted at the discretion of the Board of Review.
- (b) A written request for oral arguments shall:
 - (1) be directed to the Board of Review pursuant to 04 NCAC 24A .0104(v).
 - (2) be received within 15 days of the date on the notice acknowledging receipt of an appeal from the Appeals Decision; and
 - (3) contain a statement that a copy of the request was mailed or personally delivered to the opposing party, if one exists.
- (c) If the request is granted, the Board of Review shall give written notice to each interested party to appear for oral arguments.
- (d) Notice to appear before the Board of Review to present oral arguments shall contain:
 - (1) the Higher Authority Decision docket number;
 - (2) the issue identification or Appeals Decision docket number;

- (3) the identity of the party requesting oral arguments;
 - (4) the right of the non-requesting party to appear and present oral arguments;
 - (5) the date and time for oral arguments;
 - (6) the physical address of the location where oral arguments are scheduled to be held; and
 - (7) each party's right to legal representation.
- (e) The notice to appear for oral arguments shall be provided to each party by mail or electronic transmission at least 14 calendar days before the date scheduled for arguments in accordance with 04 NCAC 24A .0103.
- (f) Any request to reschedule oral arguments shall be for good cause as defined in 04 NCAC 24A .0105, and sent to the Board of Review pursuant to 04 NCAC 24A .0104(v), and to each party to the proceeding by personal service, mail, electronic transmission, or delivery service as defined under 04 NCAC 24A .0105. A request to reschedule oral arguments shall state each reason for the request.

History Note: Authority G.S. 96-4; 96-15;
Eff. July 1, 2015;
Recodified from 04 NCAC 24C .0503 Eff. October 1, 2017;
Amended Eff. July 1, 2018.

04 NCAC 24F .0204 LEGAL REPRESENTATION OR SUPERVISION BY NORTH CAROLINA ATTORNEY BEFORE THE BOARD OF REVIEW

- (a) An individual who is a party to a proceeding may represent himself or herself before the Board of Review.
- (b) A partnership or association may be represented by any of its members.
- (c) A corporation may be represented by an officer.
- (d) Any party may be represented by a legal representative as defined in 04 NCAC 24A .0105.
- (e) Notices or certification of legal representation by an attorney licensed to practice law in this State shall be in writing and presented to the Board of Review to become part of the official record.
- (f) Notices or certification of legal representation by an individual who is supervised by an attorney licensed to practice law in this State shall be in writing and presented to the Board of Review to become part of the official record, and shall contain:
 - (1) the name, business address, and telephone number of the supervising attorney;
 - (2) the supervising attorney's active North Carolina State Bar number; and
 - (3) the name, address, and telephone number of the person being supervised.
- (g) When a party has a legal representative, all documents or information required to be provided to the party shall be provided only to the legal representative, unless otherwise requested in writing to the Board of Review.
- (h) An address provided to the Board of Review for mailing or electronic transmission in a specific case shall not constitute a change of address with DES for purposes of 04 NCAC 24A .0102.
- (i) Any information provided to a party's legal representative shall have the same force and effect as if it had been sent to the party.

History Note: Authority G.S. 96-4; 96-15; 96-17;
Eff. July 1, 2015;
Recodified from 04 NCAC 24C .0504 Eff. October 1, 2017;
Amended Eff. July 1, 2018.

04 NCAC 24F .0205 INTRODUCTION OF EVIDENCE IN HIGHER AUTHORITY HEARINGS

- (a) The Board of Review shall allow each party 10 minutes from the time of the scheduled hearing to appear for the hearing.
- (b) If the appealing party fails to appear for the hearing and a continuance had not been previously granted, the Board of Review shall issue a Higher Authority Decision dismissing the appeal.
- (c) A party desiring to introduce documents or other non-testimonial evidence at a de novo hearing shall provide an authenticated copy plus one copy for the Board of Review to include in the official record of the hearing. A copy of any document or other evidence provided to the Board of Review shall be provided to the opposing party prior to the hearing.
- (d) A party offering 20 or more documents into evidence shall prepare a list of the documents in the order of their presentation. The list shall be provided to the Board of Review and to each party before the hearing to become part of the official hearing record.

(e) If the Board of Review takes official notice of facts, whether under judicial notice or within the Board's specialized knowledge, the official notice and its source shall be stated on the record and noticed to the parties. Each party shall be given an opportunity to dispute the noticed fact by argument and submission of evidence.

History Note: Authority G.S. 96-4; 96-15; 96-15.3;
Eff. July 1, 2015;
Recodified from 04 NCAC 24C .0505 Eff. October 1, 2017;
Amended Eff. July 1, 2018.

04 NCAC 24F .0206 CONTENT OF HIGHER AUTHORITY DECISION

The Board of Review shall issue a written Higher Authority Decision that includes the following:

- (1) the names of the members of the Board of Review who participated in the review;
- (2) findings of fact, conclusions of law, and the decision of the Board of Review;
- (3) instructions for filing an appeal of the Higher Authority Decision to the superior court and the date the Higher Authority Decision was mailed; and
- (4) notice that claims filed on or after June 30, 2013 shall be subject to repayment of overpayment of benefits resulting from any decision that is later reversed on appeal.

History Note: Authority G.S. 96-4; 96-11.4; 96-15;
Eff. July 1, 2015;
Temporary Amendment Eff. March 1, 2016;
Temporary Amendment Expired December 10, 2016;
Amended Eff. April 1, 2017;
Recodified from 04 NCAC 24C .0506 Eff. October 1, 2017.

SECTION .0300 – TAX LIABILITY HEARINGS

04 NCAC 24F .0301 APPEALING A TAX MATTER

- (a) A written appeal regarding monetary eligibility denying a protest to a Wage Transcript and Monetary Determination shall be filed with DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(e).
- (b) A written appeal of a Tax Liability Determination shall be filed with DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(n).
- (c) A written appeal of a Tax Rate Assignment shall be filed with DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(o).
- (d) A written appeal of an Audit Result shall be filed with DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(p).
- (e) A written appeal of a Tax Assessment shall be filed with DES's Tax Administration Section pursuant to 04 NCAC 24A .0104(q).
- (f) Written Exceptions to a Tax Opinion shall be filed with the Board of Review pursuant to 04 NCAC 24A .0104(r).

History Note: Authority G.S. 96-4;
Eff. July 1, 2015;
Recodified from 04 NCAC 24D .1101 Eff. October 1, 2017;
Amended Eff. July 1, 2018.

04 NCAC 24F .0302 SCHEDULING TAX HEARINGS

- (a) A notice of the hearing shall be mailed to each party at least 14 days before the hearing date.
- (b) The hearing notice shall include the following:
 - (1) identify the determination, decision, or result being appealed;
 - (2) the name of the appealing party;
 - (3) the date and time of the hearing;
 - (4) if requested at the time of the filing of the appeal, the physical location of an in-person hearing;
 - (5) the telephone number at which each party will be called for a telephone hearing;
 - (6) each issue, with statutory reference, to be heard and decided;
 - (7) the name and contact information for the Board of Review or designated Hearing Officer;

- (8) the manner in which witnesses may offer evidence and participate in the hearing;
- (9) each party's right to obtain a legal representative as defined in 04 NCAC 24A .0105;
- (10) instructions for requesting a rescheduling of the hearing;
- (11) notice that a party may object to a telephone hearing and request an in-person hearing; and
- (12) a statement of each party's right to request the issuance of a subpoena for the production of records or individuals to appear to testify, and instructions for how to do so.

History Note: Authority G.S. 96-4;
Eff. July 1, 2015;
Recodified from 04 NCAC 24D .1102 Eff. October 1, 2017;
Amended Eff. July 1, 2018.

04 NCAC 24F .0303 TELEPHONE HEARINGS BEFORE THE BOARD OF REVIEW

History Note: Authority G.S. 96-4;
Eff. July 1, 2015;
Recodified from 04 NCAC 24D .1103 Eff. October 1, 2017;
Amended Eff. July 1, 2018;
Repealed Eff. May 1, 2021.

04 NCAC 24F .0304 IN-PERSON HEARINGS

- (a) Hearings shall be conducted in-person by the Board of Review, or a Board designee, as required by G.S. 96-4(q).
- (b) Upon good cause, as defined in 04 NCAC 24A .0105(28), the Board of Review, upon its own accord, may designate alternate means of hearing, for example, by telephone, video, or web conferencing
- (c) A party may object to the venue of hearing or alternate means of hearing designated by the Board. The Board will consider such objection if it is filed with the Board within 10 days of the issuance of a notice of hearing. The objection shall be in writing and provide good cause as to the reason for a request in a change of venue.

History Note: Authority G.S. 96-4;
Eff. July 1, 2015;
Recodified from 04 NCAC 24D .1104 Eff. October 1, 2017;
Amended Eff. May 1, 2021.

04 NCAC 24F .0305 COMBINATION TELEPHONE AND IN-PERSON HEARINGS BEFORE THE BOARD OF REVIEW

- (a) The Board of Review or designated Hearing Officer may conduct an in-person/telephone hearing to avoid prejudice, to ensure security, to comply with standards for appeal promptness, or to expedite an appeal.
- (b) A party may obtain an in-person/telephone hearing by filing a written objection to a telephone conference call hearing notice pursuant to 04 NCAC 24F .0303, or to an in-person hearing notice pursuant to 04 NCAC 24F .0304.
 - (1) The objection shall state each reason that the party objects to appearing in the manner listed in the hearing notice.
 - (2) The objecting party shall state the manner in which it, or its witnesses, request to appear for the hearing.
 - (3) This request shall be directed to the Board of Review or Hearing Officer designated in the hearing notice.
- (c) The Board of Review or Hearing Officer shall consider a party's request to change its witnesses' appearance from a telephone or in-person hearing, and shall make a determination of whether the substantial rights of each party would be preserved by granting the party's request.
- (d) The Board of Review or Hearing Officer may grant a request to change an appearance by telephone or in-person for good cause as defined in 04 NCAC 24A .0105. If the request is granted, the official hearing record shall include the written request for the change, reflect the Board of Review's or Hearing Officer's determination that the substantial rights of each party would be preserved by granting the request, and each reason for the determination.
- (e) The objecting party shall appear in-person or by telephone as requested by the objecting party if the Board of Review or Hearing Officer grants the request.

(f) The Board of Review or Hearing Officer may deny a request to change a party's appearance at a telephone or in-person hearing if:

- (1) the Board of Review or Hearing Officer believes that the requesting party's intent is to inconvenience the opposing party or delay the proceedings;
- (2) the party or witnesses request to appear by telephone, and are less than 40 miles away from an in-person hearing location; or
- (3) the request is made less than 24 hours before the hearing is scheduled to begin.

(g) If a party's request for a change to a telephone or in-person hearing is denied, the Board of Review or Hearing Officer shall state the grounds for denial on the record, include the written request in the official records, and state the reasons for the denial in the written decision.

(h) The Board of Review or Hearing Officer shall notify each party of the change prior to the hearing.

History Note: Authority G.S. 96-4; 96-15.3;
Eff. July 1, 2018.

04 NCAC 24F .0306 RESCHEDULING A TAX HEARING

(a) The Board of Review may continue or adjourn a hearing at any time.

(b) A request for a continuance of a hearing made prior to the hearing date shall be in writing and shall specify the reasons for the request.

History Note: Authority G.S. 96-4;
Eff. July 1, 2015;
Recodified from 04 NCAC 24D .1105 Eff. October 1, 2017.

04 NCAC 24F .0307 SUBPOENAS

(a) Subpoenas to compel the attendance of witnesses and the production of records for any tax hearing may be issued by the Board of Review or its designated Hearing Officer.

- (1) A subpoena may be issued at the request of a party or on the Board of Review's or Hearing Officer's own motion.
- (2) Any documentation showing service of the subpoena shall become part of the official hearing record.

(b) Any party's request for a subpoena to be issued by the Board of Review or Hearing Officer shall be in writing, sent to the Board of Review or Hearing Officer, and shall include:

- (1) the name of the party requesting the subpoena;
- (2) the claimant's name, if applicable;
- (3) the employer's name, if applicable;
- (4) the docket number of the case;
- (5) the name, address, and telephone number of each person sought for appearance at the hearing;
- (6) the specific identification of any document, recording, or item sought, including a detailed description of where the item is located;
- (7) the name and address of the individual or party in possession of any item sought; and
- (8) a statement of why the testimony or evidence to be subpoenaed is necessary for a proper presentation of the case.

(c) The request shall be granted only to the extent that the items or testimony sought appears relevant to the issues on appeal.

(d) Legal representatives shall issue subpoenas at their own expense and discretion.

(e) Subpoenas shall be issued at least five business days before the date of the scheduled hearing.

(f) Service of a subpoena shall be made by delivering a copy to the person, or by registered or certified mail, return receipt requested, unless a party or witness consents to service of the subpoena by other means, including electronic transmission.

(g) Any party or person receiving a subpoena may serve a written objection to the issuance of the subpoena.

- (1) The objection shall be directed to the Board of Review or Hearing Officer prior to the commencement of the hearing and provide reasons for the objection and the relief sought by the objecting party.

- (2) The Board of Review or Hearing Officer shall rule on the objection and notify the parties before the hearing. The reasons for the ruling shall be in writing or stated on the record during the hearing.

History Note: Authority G.S. 96-4;
Eff. July 1, 2015;
Recodified from 04 NCAC 24D .1106 Eff. October 1, 2017;
Amended Eff. July 1, 2018.

04 NCAC 24F .0308 THE TAX OPINION

- (a) Following the conclusion of a tax hearing, the Board of Review shall issue a tax opinion with respect to the appeal filed.
- (b) The tax opinion shall set forth:
 - (1) a statement of the case;
 - (2) any findings of fact;
 - (3) conclusions of law;
 - (4) the final order with regard to the opinion rendered;
 - (5) the date the opinion was mailed;
 - (6) instructions for filing an appeal; and
 - (7) the time period within which an appeal shall be filed.
- (c) The Board of Review shall mail a copy of the tax opinion to each party to the appeal.

History Note: Authority G.S. 96-4;
Eff. July 1, 2015;
Recodified from 04 NCAC 24D .1107 Eff. October 1, 2017.

04 NCAC 24F .0309 CONDUCT OF TAX HEARINGS BY THE BOARD OF REVIEW

- (a) The Board of Review shall allow each party 10 minutes from the time of the scheduled hearing to appear for the hearing.
- (b) If the appealing party fails to appear for the hearing and a continuance had not been previously granted, the Board of Review shall issue a Tax Opinion dismissing the appeal.
- (c) A party desiring to introduce documents or other non-testimonial evidence at a de novo hearing shall provide an authenticated copy plus one copy for the Board of Review to include in the official record of the hearing. A copy of any document or other evidence provided to the Board of Review shall be provided to the opposing party prior to the hearing.
- (d) A party offering 30 or more documents into evidence shall prepare a list of documents in the order of their presentation. The list shall be provided to the Board of Review and to each party before the hearing to become part of the official hearing record.
- (e) If the Board of Review takes official notice of facts, whether under judicial notice or within the Board's specialized knowledge, the official notice and its source shall be stated on the record and noticed to the parties. Each party shall be given an opportunity to dispute the noticed fact by argument and submission of evidence.

History Note: Authority G.S. 96-4; 96-15.3;
Eff. July 1, 2018.

04 NCAC 24F .0310 BURDEN OF PROOF IN HEARINGS BEFORE THE BOARD OF REVIEW

The burden of proof shall rest with the appealing party in any hearing on an appeal set forth in 04 NCAC 24F .0301.

History Note: Authority G.S. 96-4; 96-15.3;
Eff. July 1, 2018.

04 NCAC 24F .0311 ADMISSION OF OUT-OF-STATE ATTORNEY TO APPEAR BEFORE BOARD OF REVIEW

- (a) Pursuant to G.S. 84-4.1, attorneys residing in and licensed to practice law in another state may seek to be admitted to practice before the Board of Review to represent a client. Attorneys admitted pursuant to 04 NCAC 24C .0303 for the same matter are not required to seek admission pursuant to this Rule.

- (b) An out-of-state attorney seeking to practice before the Board of Review, or the North Carolina attorney with whom the out-of-state attorney associates pursuant to G.S. 84-4.1(5), shall file a motion with the Board of Review that complies with the requirements of G.S. 84-4.1.
- (c) A proposed Order Permitting Out-Of-State Attorney to Appear Pro Hac Vice shall be provided to the Board of Review with the motion.
- (d) Following review of the motion, the Board of Review shall issue an order granting or denying the motion.
- (e) Pro hac vice admission granted to practice before the Board of Review shall allow continued representation before the Board of Review in all administrative proceedings regarding the same matter. The Board of Review has the discretionary authority to deny a motion for pro hac vice admission even if the motion complies with the requirements of G.S. 84-4.1.
- (f) Upon receipt of an order granting a motion for pro hac vice admission to practice before the Board of Review, the admitted out-of-state attorney or the associated North Carolina attorney shall pay the fees required by G.S. 84-4.1 to the North Carolina State Bar and General Court of Justice, and file a statement with the Board of Review documenting payment of the fees and the submission of any pro hac vice admission registration statement required by the North Carolina State Bar. A copy of the motion, Order, registration statement, and documentation reflecting payment of the fees shall be provided to the Board of Review to be included in the official hearing record.

History Note: Authority G.S. 84-4.1; 96-4; 96-17;
Eff. July 1, 2018.