

**THE CITY OF NEW YORK  
DEPARTMENT OF FINANCE**

**NOTICE OF RULEMAKING**

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b) and 1043 of the New York City Charter, I hereby promulgate the within amendments to the Rules Relating to Practice and Procedure before the New York City Department of Finance.

Andrew S. Eristoff  
Commissioner of Finance

## AMENDMENT TO RULES PRACTICE AND PROCEDURE

Section 1. Sections 27-01 and 27-02 of title 19 of the Rules of the City of New York, containing rules of practice and procedure, including prompt hearings procedures for pre-decision warrants, before the now defunct Bureau of Hearings of the New York City Department of Finance, are repealed and the following new section 27-01 is added:

**§27-01 Representation of Taxpayers.** *(a) Scope.* This rule concerns representation of taxpayers before the Commissioner of Finance with respect to matters arising under chapters 12, 13, 10, 24, 9, 21, 15, 8, 7, 22, 11, 6, 5, 25, 14 and 27 of title 11 of the New York City Administrative Code, and any other tax laws requiring administration and collection by the commissioner. It does not apply to matters arising under chapter 39 of title 19 of the Rules of the City of New York (parking violation rules) or to proceedings before the New York City Tax Appeals Tribunal. This rule does not apply to proceedings before the Conciliation Bureau of the New York City Department of Finance, which are governed by the rules in chapter 38 of this title.

*(b) Definitions.* Unless the context requires otherwise, the definitions contained in this section apply.

**Commissioner.** The term "commissioner" means the New York City Commissioner of Finance.

**Department.** The term "department" means the New York City Department of Finance.

**Power of attorney.** The term "power of attorney" means a document meeting the requirements of subdivision (e) of this section.

**Practice before the commissioner.** The term "practice before the commissioner" means all activities connected with presentation to the department or any of its personnel relating to a taxpayer's rights, privileges, or liabilities with respect to matters falling within the scope of this rule (see subdivision (a) of this section). Such presentation includes the preparation and filing of necessary documents, correspondence with and communications to the department, and the representation of a taxpayer at conferences and meetings. Practice before the commissioner does not include merely furnishing information to the department or preparing a report or return as a preparer for the taxpayer.

**Principal.** The term "principal" means an individual authorized to sign a power of attorney on behalf of a taxpayer (see paragraph (2) of subdivision (e) of this section).

**Represent and representative.** The term "represent" means to act on behalf of a taxpayer with the authority to bind or obligate the taxpayer. A "representative" is an individual, other than a principal, able to act with that authority.

(c) Situations where a power of attorney is required. The department requires a power of attorney when the taxpayer wishes to have a representative perform one or more of the following acts:

(1) Practice before the commissioner, unless the taxpayer is accompanied by a principal or another individual permitted, under this rule, to act as a representative in the same matter;

(2) Offer and/or execution of either (A) a waiver of restriction on assessment or collection of a deficiency in tax; or (B) a waiver of notice of disallowance of a claim for credit or refund;

(3) Execution of a consent to extend the statutory period for assessment or collection of a tax;

(4) Execution of an agreement to settle or adjust claims under sec. 1504.2 of the Charter of the City of New York;

(5) The receipt (but not endorsement or collection) of a check drawn on the department (see subparagraph (4)(ii) of subdivision (e) of this section);

(6) Signing tax returns. A tax return may be signed by a representative only if the taxpayer, or the taxpayer's court appointed representative, requests permission in writing and the commissioner or his or her delegate determines that good cause exists for granting such permission and a properly executed power of attorney specifically granting such authority is submitted. (see subparagraph (4)(ii) of subdivision (e) of this section);

(7) Discussing or receiving information that is subject to applicable federal, state, or city confidentiality or secrecy laws, unless subdivision (f) of this section applies; and

(8) Such other acts where the department deems it necessary to protect the interests of the city or a taxpayer.

(d) Individuals who may be representatives. Any of the following who is not otherwise a principal of a taxpayer may be a representative of that taxpayer provided that a power of attorney is completed and filed in accordance with these rules: \_\_\_\_\_

(1) an attorney-at-law licensed to practice in any jurisdiction in the United States;

(2) a certified public accountant duly qualified to practice in any jurisdiction in the United States;

(3) a public accountant duly qualified in any jurisdiction in the United States;

- (4) an agent enrolled to practice before the Internal Revenue Service;
- (5) the taxpayer's husband, wife, adult child or parent;
- (6) an officer or a regular full-time employee of the taxpayer;
- (7) the taxpayer's court appointed representative; and
- (8) any other individual with the special permission of the commissioner, or his designee.

*(e) Requirements of power of attorney.*

*(1) Information required.* A taxpayer may file a power of attorney in a form prescribed by the commissioner. However, a taxpayer may also elect to submit a power of attorney in a different form but such power of attorney shall include the following information:

- (i) the name and mailing address of the taxpayer;
- (ii) the taxpayer's social security or taxpayer identification number;
- (iii) the name and mailing address of the representative(s);
- (iv) a description of the matters as to which the representative is authorized to act, including the type of tax or taxes and taxable period or periods; and
- (v) if applicable, a clear expression of the taxpayer's intent to limit the authority conveyed.

*(2) Signing.* A power of attorney must be signed as follows:

- (i) In the case of an individual taxpayer, by the individual.
- (ii) In the case of a joint return, by both husband and wife, except that either spouse may sign for the other if such signature is duly authorized in writing.
- (iii) In the case of a sole proprietorship, by the proprietor.
- (iv) In the case of a partnership, either by all members or in the name of the partnership by one of the partners duly authorized to act.
- (v) In the case of a dissolved partnership, by each of the former partners or, in case some of the partners are dead, by their legal representatives. If, however, the

surviving partners at the time of the execution of the power of attorney have exclusive right to the control and possession of the firm's assets for the purpose of winding up its affairs, their signatures alone will be sufficient.

(vi) In the case of a deceased taxpayer, by the executor or administrator. A power of attorney submitted by an administrator or executor must be accompanied by proof of his authority.

(vii) In the case of guardians and other fiduciaries appointed by a court of record, by the fiduciary. In such instance the power of attorney must be accompanied by a court certificate or court order showing that such fiduciary has been appointed and that his appointment has not been terminated.

(viii) In the case of a trustee under an agreement or declaration, by the trustee. In such instance the power of attorney must be accompanied by documentary evidence of the authority of the trustee to act.

(ix) In the case of a corporation, by an officer duly authorized by the board of directors to act.

(x) In the case of a limited liability company, by all the members or by a member or manager duly authorized to act on behalf of the company.

(xi) Under subparagraphs (vi) to (viii) of this paragraph (2), inclusive, proof of authority will be waived if the person signing the power of attorney is the same person who signed the tax return involved.

(3) Acknowledgement. The power of attorney must be either acknowledged before a notary public or witnessed by a disinterested individual. However, neither that acknowledgment nor witnessing is required if the designated representative is an attorney-at-law, certified public accountant, or public accountant licensed to practice in New York State, or a New York resident enrolled as an agent to practice before the Internal Revenue Service.

(4) Scope of authority.

(i) If a power of attorney designates only a specific tax or taxes and no specific period, then the power of attorney may be accepted by the department as including representation for the specified tax or taxes for all periods. If a power of attorney designates only a specified period or periods and no particular tax, then the power of attorney may be accepted as including representation for the specified period or periods for all taxes. If a power of attorney does not designate any specific tax or tax period, then the power of attorney may be accepted as including representation for all taxes and all periods.

(ii) A representative may sign tax returns only if the power of attorney expressly authorizes the representative to sign tax returns and only where written permission to do so has been granted by the commissioner or his or her delegate.

(iii) Any recognized representative appointed in a power of attorney may substitute or delegate authority under the power of attorney to another representative if substitution or delegation is specifically permitted under the power of attorney and the recognized representative files with the department in the manner provided in subparagraph 5(i) of this subdivision a statement signed by the recognized representative appointed under the power of attorney containing the name and mailing address of the new representative.

*(5) Filing.*

(i) A power of attorney must be filed and received in the office of the department in which the matter is pending. The power of attorney must be filed with the department in a conspicuous manner. Accordingly, a power of attorney should not be attached to, or incorporated in, any return, report or other document that is routinely filed with the department, unless the return, report, or other document specifically provides for such attachment or incorporation.

(ii) The department may, in its discretion, accept a copy or facsimile transmission (FAX) of a power of attorney. The department may also require proof of the existence and validity of the original power of attorney.

*(6) Modification and revocation.*

(i) In any case in which a power of attorney has been filed and thereafter the taxpayer desires to authorize an additional or a different representative in the same matter, except as provided in subparagraph (4)(iii) of this subdivision, a new power of attorney must be filed in the office of the department in which the previous power of attorney is filed. Unless otherwise expressly stated, a new power of attorney when received in the office of the department in which the matter is pending revokes any and all powers of attorney previously filed with respect to the same matter in any office of the department in the same matter.

(ii) A taxpayer may revoke a power of attorney without authorizing a new representative by filing a statement of revocation with the office of the department in which the taxpayer has filed the power of attorney to be revoked. The statement must indicate that the authority of the first power was revoked and be signed by a principal, and a copy of the power to be revoked must be attached.

(iii) A representative may withdraw from representation in a matter in which a power of attorney has been filed by filing a statement with the office of the department in which the power of attorney has been filed. The statement must be signed by the representative and must identify the name and address of the taxpayer and the matter from which the representative is withdrawing.

*(f) Tax information authorization.*

(1) The department may establish a procedure under which a taxpayer may authorize in writing an individual to discuss and receive confidential tax information relating to the taxpayer's tax return without submitting a power of attorney. The tax information authorization shall apply only to inquiries relating to information contained in the tax return with which such authorization is filed. The individual designated must be an employee of the taxpayer or the person, or an employee of the person, signing the return as a paid preparer. The authorization statement must be filed with the taxpayer's tax return and signed by the taxpayer or an individual permitted to sign a tax return on behalf of the taxpayer.

(2) Any such procedure may provide that a tax authorization statement will go into effect immediately upon receipt by the department.

(3) Any such procedure may provide that receipt of a new tax authorization statement revokes all previous designations with respect to the tax and period to which it relates. The taxpayer may also revoke an authorization statement without submitting a new statement by notifying the department in writing of the revocation.

(4) Any such procedure may provide that an individual designated in a tax authorization form does not have the authority to represent the taxpayer, except as provided in paragraph (1).

*(g) Other matters.*

(1) The department may refuse to accept a power of attorney where there is doubt about the ability or right of the appointed representative to act for the taxpayer.

(2) The commissioner may modify or waive any of the requirements of this section for good cause and may prescribe special limited powers of attorney as may be necessary for the proper administration by the department of title 11 of the New York City Administrative Code and other tax statutes, and regulations adopted thereunder.

## **BASIS AND PURPOSE OF AMENDMENT**

This amendment affects the portion of the Rules relating to Practice and Procedure before the New York City Department of Finance. On June 28, 1992, the New York State legislature amended the New York City Charter and Administrative Code to authorize the New York City Tax Appeals Tribunal to review all disputes brought by taxpayers relating to taxes administered by the Department of Finance beginning on October 1, 1992. Before those amendments to the Charter and Code, taxpayers sought review of those disputes in the Department's former Bureau of Hearings. In light of that change, this amendment repeals the rules of practice and procedure, including the prompt hearing procedures for jeopardy assessments, before the now defunct Bureau of Hearings of the Department of Finance. Title 20 of the Rules governs practice and procedure before the New York City Tax Appeals Tribunal.

This amendment replaces the repealed rules of practice and procedure before the Hearings Bureau with rules governing practice before the Department of Finance. This amendment is intended to provide guidance to taxpayers concerning their representation before the Department with respect to matters arising under the tax laws administered and collected by the Department. That guidance includes guidance concerning when a power of attorney is required, who may act as a representative, and the requirements of a power of attorney, such as the information required, and its signing, acknowledgement, scope of authority, filing, and modification and revision. The amendment also provides guidance concerning tax information authorization statements.

This amendment does not apply to matters arising under chapter 39 of title 19 of the Rules of the City of New York (parking violation rules), to proceedings before the New York City Tax Appeals Tribunal or to proceedings before the Conciliations Bureau of the Department of Finance.

Andrew S. Eristoff /S/  
Commissioner of Finance