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# Frequently Asked Questions Related to Motions for Rehearing

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**If you have a question about the Frequently Asked Questions Related to Motions for Rehearing, then please contact:**

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**1. I disagree with the comptroller’s decision and I want to file a motion for rehearing. What determines the deadline to timely file the motion for rehearing?**

The deadline to file a motion for rehearing depends on whether the hearing before the administrative law judge was set by the State Office of Administrative Hearings (SOAH) before September 1, 2015, or on or after that date.<sup>1</sup>

**2. How will I know when SOAH set my hearing?**

The date your hearing was set is not the date(s) your hearing was conducted.<sup>2</sup> The administrative law judge assigned to your case will state in the proposal for decision whether your hearing was set on or after September 1, 2015. This date is

important because of new and amended laws relating to administrative hearings effective September 1, 2015, in the Administrative Procedure Act (APA) found in chapter 2001 of the Texas Government Code.

**3. What is my deadline to timely file a motion for rehearing?**

The comptroller follows the deadlines in the APA for all cases in which a motion for rehearing may be filed. For litigation purposes, you may follow a shorter deadline in the Tax Code. In addition to the explanation and litigation information that follows, the deadlines under both the APA and the Tax Code to file a motion for rehearing are summarized in this table:

	<b>If your hearing was set by SOAH ...</b>	<b>And if we send the decision by...</b>	<b>Then, under the Tax Code, your motion for rehearing must be filed on or before:</b>	<b>Then, under the APA, your motion for rehearing must be filed on or before:</b>
(1)	before September 1, 2015*	mail	23 calendar days	23 calendar days
(2)	before September 1, 2015*	email	20 calendar days	20 calendar days
(3)	on or after September 1, 2015**	mail	23 calendar days	25 calendar days
(4)	on or after September 1, 2015**	email	20 calendar days	25 calendar days

\* If your hearing was set by SOAH before September 1, 2015, we calculate a deadline of 20 days or 23 days for you (based on whether we send you the decision by mail or email) and write it on the first page of your decision.

\*\* If your hearing was set on or after September 1, 2015, we calculate a deadline of 25 days for you and write it on the first page of your decision.

The following is an explanation of motion for rehearing deadlines, which are summarized in the chart above:

**For a hearing set by SOAH before September 1, 2015**

If your hearing was set by SOAH before September 1, 2015, the Texas Tax Code and the APA are the same. You must file a motion for rehearing not later than the expiration of 20 days after service of the decision.<sup>3</sup> The date of “service” is presumed to occur three days after notice of a decision by mail.<sup>4</sup> The date of “service” is not the date a decision is signed.

**For a hearing set by SOAH on and after September 1, 2015**

**LITIGATION INFORMATION**

If you choose to file suit in state court to challenge the denial of a refund claim, then you must timely file a motion for rehearing.<sup>5</sup> A state court may hold that the comptroller’s decision becomes final under the Tax Code, meaning 20 days after service of the decision, and apply a shorter deadline to file a motion for rehearing than under the APA.

If your hearing was set by SOAH on or after September 1, 2015, the Tax Code and the APA are different.

**Texas Tax Code:**

A comptroller’s decision becomes final under the Tax Code 20 days after service.<sup>6</sup> As a result, the deadline to file a motion for rehearing under the Tax Code is 20 days after the date you were served with the decision. The date of “service” is not the date a decision is signed. If we send you notice of the decision by mail, the deadline to file a motion for rehearing is 23 days from the date of notice.<sup>7</sup> However, if we send notice of the decision by email, the date of service is the date of the email.

**APA:**

For hearings set by SOAH on and after September 1, 2015, the APA provides the deadline to file a motion for rehearing 25 days after the decision is signed.<sup>8</sup> The APA removed the additional calculation of 3-days of presumed “service.” The change was adopted in conjunction with an expanded time to file a motion for rehearing (regardless of the method of service) and in conjunction with other amended and new protections to enlarge the rehearing period. So, even if we send you the decision by mail, we do not add three days to the 25-day deadline.

**4. What deadline does the comptroller follow when determining when a motion for rehearing is due?**

The comptroller follows the deadlines in the APA for all cases in which a motion for rehearing may be filed. This includes following the 25-day motion for rehearing deadline and other deadlines relating to rehearing motions, replies, and agency actions.<sup>9</sup> If your hearing was set on or after September 1, 2015, we calculate a deadline of 25 days to file a motion for rehearing and write it on the first page of your decision. Comparing the Tax Code, a motion for rehearing timely-filed within 20 days or 23 days (based on

whether we send you the decision by mail or email) is also timely-filed within 25 days after the decision is signed.

**5. Can I have more time to file a motion for rehearing?**

You may follow the procedures in the APA and file a motion to extend the deadline to file a motion for rehearing if you seek additional time to file your motion for rehearing.<sup>10</sup> An order granting your motion will extend the deadline to file a motion for rehearing to a specific date, meaning it extends the **end date** of your rehearing period.<sup>11</sup>

For hearings set by SOAH on and after September 1, 2015, if you did not timely receive the comptroller’s decision, you may follow the procedures in the APA and file a sworn motion to establish a revised rehearing period.<sup>12</sup> This motion revises the **beginning date** of the rehearing period.<sup>13</sup>

**6. Do I count calendar days or business days when calculating when a motion for rehearing is due?**

As with other deadlines related to a comptroller hearing, the day of the act on which the designated period of time begins to run is not included. This makes the following day the first day of the period that you are calculating. For example, consider a comptroller’s decision that is signed on December 1. December 1 is the “day of the act.” December 1 is not considered the first day of your motion for rehearing period. To calculate your deadline, the period to file a motion for rehearing begins to run on the next calendar day, December 2. The last day of the period is included, unless it is a day on which the agency is closed, in which case the period of time ends on the next business day that the agency is open.<sup>14</sup> Thus, to calculate the deadline to file a motion for rehearing, if a comptroller’s decision is signed on December 1, then a 25-day period to file a motion for rehearing begins to run on December 2, and the deadline to file a motion for rehearing would then be December 26. If the agency is closed on December 26, the deadline to file becomes the next business day that the agency is open after December 26.<sup>15</sup>

**7. Is the deadline to file by 5 p.m. by midnight?**

A motion for rehearing filed by fax before 5 p.m. CST is considered filed on that day. If it is filed by fax on or after 5 p.m. CST, the motion is considered filed on the next business day.<sup>16</sup>

A motion for rehearing filed by regular mail is considered filed on the date the United States Postal Service or other service postmarked the envelope. We presume that we will receive a motion for rehearing sent by regular mail no later than three days after the postmark date indicated on the envelope.<sup>17</sup>

**8. Where do I file a motion for rehearing?**

File your motion for rehearing with the Deputy Comptroller through the Office of Special Counsel for Tax Hearings.

**By mail:**

Deputy Comptroller of Public Accounts  
 c/o Office of Special Counsel for Tax Hearings  
 P.O. Box 13528  
 Austin, Texas 78711-3528

**By fax:** 512-936-6190

As with other motions related to a comptroller hearing, you must send a copy of the motion on the Assistant General Counsel (AGC) who represents the agency Staff. The AGC is identified in the decision at the top of the first page.

### 9. How do I draft a motion for rehearing?

The law states: “A motion for rehearing must identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error.”<sup>18</sup>

### 10. When do I owe any money that is due?

Your liability is due and payable 20 days after the decision becomes final.<sup>19</sup>

If a motion for rehearing **is not** filed at all or not timely filed, your liability is due and payable 45 days after the date the decision is signed.<sup>20</sup>

If a motion for rehearing **is** timely filed, the decision becomes final under the APA, not the Tax Code.<sup>21</sup> If your motion for rehearing is denied, the decision is final on the date of the signed order denying the motion for rehearing.<sup>22</sup>

### 11. What happens if I do not timely pay the amount due?

If you do not pay the amount due within 20 days after the decision becomes final:

- an additional penalty of 10% of the delinquent tax, exclusive of penalties and interest, is automatically added to the amount due as a result of the comptroller’s decision;<sup>23</sup>
- interest continues to accrue based on the original due date of the tax;<sup>24</sup> and
- notwithstanding remedies available based on a jeopardy determination, the comptroller may file a lien to secure the amount due<sup>25</sup> or seize and sell certain real and personal property.<sup>26</sup>

If you are unable to pay the amount due within 20 days after the decision becomes final, you may be able to enter into a payment agreement. For details on payment agreements, contact your local Enforcement Office, which is listed at this link: <http://www.comptroller.texas.gov/taxinfo/fieldoff.html>.

## End Notes:

<sup>1</sup> See **S.B. 1267**, Acts 2015, 84th Leg., Sec. 11 and 12.

<sup>2</sup> For example, Administrative Procedure Act (APA), Tex. Gov’t Code § **2001.058**(d-1), added by **H.B. 2154**, Acts 2015, 84th Leg., effective September 1, 2015, applies only to a hearing conducted by SOAH on or after September 1, 2015, while **S.B. 1267**, Acts 2015, 84th Leg., effective September 1, 2015, applies only to a hearing set by SOAH on or after September 1, 2015.

<sup>3</sup> See Tex. Tax Code § **111.009**(d) (20 days); Tex. Tax Code § **111.105**(b) (20 days); APA, Tex. Gov’t Code § **2001.146**(a) (20 days).

<sup>4</sup> For a hearing set by SOAH before September 1, 2015, former law in the APA is continued in effect. See **S.B. 1267**, Acts 2015, 84th Leg., Sec. 11 and 12. APA, Tex. Gov’t Code § **2001.142**(c) stated that notice of a decision by mail is presumed on the third day after the date on which notice was mailed (20 days + 3 days).

<sup>5</sup> See Tex. Tax Code § **112.151**.

<sup>6</sup> See Tex. Tax Code § **111.009**(d) (final 20 days after service); Tex. Tax Code § **111.105**(b) (final 20 days after service).

<sup>7</sup> Former law in the APA is not continued in effect for a hearing set on and after September 1, 2015. See **S.B. 1267**, Acts 2015, 84th Leg., Sec. 11 and 12. APA, Tex. Gov’t Code § **2001.142**(c) stated that notice of a decision by mail is presumed on the third day after the date on which notice was mailed. By rule, the comptroller presumes receipt of notice of a decision on the third day after it is mailed. See 34 Tex. Admin. Code § **1.32**(g)(3).

<sup>8</sup> See APA, Tex. Gov’t Code §§ **2001.144**(a)(1), **.146**(a).

<sup>9</sup> See APA, Tex. Gov’t Code §§ **2001.142**(c), (d), **.146**(e)-(i).

<sup>10</sup> See APA, Tex. Gov’t Code § **2001.146**(e) “A state agency may ... extend the time for filing a motion [for rehearing] ....”

<sup>11</sup> See APA, Tex. Gov’t Code § **2001.146**(e) “A state agency may ... extend the time for filing a motion [for rehearing] ....”

<sup>12</sup> See APA, Tex. Gov’t Code § **2001.142**(d) (“To establish a revised period under subsection (c), the adversely affected party must prove, on sworn motion and notice, that the date the party received notice from the state agency or acquired actual knowledge of the signing of the decision or order was after the 14th day after the date the decision or order was signed.”).

<sup>13</sup> See APA, Tex. Gov’t Code § **2001.142**(c) (“The period may not begin earlier than the 15th day or later than the 90th day after the date the decision or order was signed.”). See also § **2001.142**(g) (“The date specified in the sworn motion shall be considered the date the decision or order was signed.”).

<sup>14</sup> See 34 Tex. Admin. Code § **1.31**(a).

<sup>15</sup> This example applies the APA filing deadline effective for hearings set by SOAH on or after September 1, 2015.

<sup>16</sup> See 34 Tex. Admin. Code § **1.32**(d).

<sup>17</sup> See 34 Tex. Admin. Code § **1.32**(d).

<sup>18</sup> See APA, Tex. Gov’t Code § **2001.146**(g).

<sup>19</sup> See Tex. Tax Code § **111.0081**(c).

<sup>20</sup> See Tex. Tax Code § **111.0081**(c) (20 days); APA, Tex. Gov’t Code §§ **2001.144**(a)(1), **.146**(a) (25 days).

<sup>21</sup> See APA, Tex. Gov’t Code §§ **2001.144**(a)(2); **.146**(h), (i).

<sup>22</sup> See APA, Tex. Gov’t Code § **2001.144**(a)(2)(A).

<sup>23</sup> See Tex. Tax Code § **111.0081**.

<sup>24</sup> See Tex. Tax Code § **111.060**(c), (d) (unless excluded, “delinquent taxes draw interest beginning 60 days after the date due”).

<sup>25</sup> See Tex. Tax Code, Chapter **113**.

<sup>26</sup> See Tex. Tax Code §§ **111.017-111.019**.