

THE REVENUE APPEALS DIVISION ACT

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## THE REVENUE APPEALS ACT

Act  
10 of 2015.

[4th August, 2015.]

*Preliminary*

1. This Act may be cited as the Revenue Appeals Division Act, 2015. Short title.

2.—(1) In this Act, unless the context otherwise requires— Inter-pretation.

“appeal” means an appeal under this Act made by a taxpayer against the decision of a Revenue Commissioner in relation to the revenue liability of the taxpayer;

“appellant” means a taxpayer who appeals against the decision of a Revenue Commissioner made in relation to the revenue liability of the taxpayer;

“authorized officer” means—

- (a) the Commissioner;
- (b) any officer of the Division who is designated as such by the Commissioner for the purposes of this Act;
- (c) any Revenue Commissioner or any other officer of a revenue department;
- (d) an officer of the Financial Investigations Division;
- (e) any member of the Jamaica Constabulary Force so designated by the Commissioner of Police for the purposes of this Act,

and includes any person acting in aid of the Commissioner, any Revenue Commissioner, such other officer, member or person;

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“authorized representative” in relation to a taxpayer means an agent, accountant, attorney-at-law, customs broker or other person acting under the authority of and on behalf of a taxpayer;

“Commissioner” means the Chief Technical Director appointed as such under section 5 and designated as the Commissioner of Revenue Appeals;

“Division” means the Revenue Appeals Division established by section 3;

“document” means anything in which information of any description is recorded;

“Financial Investigations Division” means the body of that name established by the Financial Investigations Divisions Act;

“party” shall be construed in accordance with section 4 (2);

“prescribed appeal rules” means rules for the conduct of appeals made or having effect under section 19;

“responsible officer” has the meaning assigned to it under section 10;

“revenue” or “tax” includes any duty, fee, levy, fine and other charge payable under any revenue law;

“Revenue Commissioner” means—

- (a) the Commissioner General of Tax Administration Jamaica
- (b) the Commissioner of Customs;
- (c) the Commissioner of Land Valuations;
- (d) the Commissioner of Revenue Protection;

“revenue department” means—

- (a) Tax Administration Jamaica;
- (b) the Jamaica Customs Agency;

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(c) the Land Valuation Department;

(d) the Revenue Protection Department;

“revenue law” means any law relating to revenue;

“taxpayer” includes any person who a Revenue Commissioner is satisfied is liable to pay revenue pursuant to a revenue law and whose liability to make payment of revenue is in question, whether or not, in the event, the payment is waived or remitted or no amount is found to be payable;

“taxpayer entity” shall be construed in accordance with section 10 (1).

*Revenue Appeals Division*

*Establishment and Functions*

3. There is established, for the purposes of this Act, a division of the Ministry with responsibility for finance to be known as the Revenue Appeals Division.

Establishment of Revenue Appeals Division.

4.—(1) Subject to the provisions of this Act, the principal function of the Division is to facilitate the determination of appeals by taxpayers against the decisions of Revenue Commissioners, regarding their revenue liability under the revenue laws.

Principal function of Division.

(2) In the case of appeals relating to revenue liability, the parties to the proceedings under this Act shall be the relevant Revenue Commissioner and the relevant taxpayer.

(3) Subject to the provisions of this Act, the Division may, for the purpose carrying out its functions, consult with and seek assistance from such technical experts or other persons as the Commissioner considers appropriate.

*Administration*

5.—(1) For the due administration of the Division, the Governor-General may appoint—

Appointment of Commissioner of Revenue Appeals.

## REVENUE APPEALS DIVISION

- (a) a Chief Technical Director, who shall be known as the Commissioner of Revenue Appeals and who shall be responsible for the day-to-day administration and operation of the Division;
- (b) Deputy Commissioners of Revenue Appeals not being less than two;
- (c) Assistant Commissioners of Revenue Appeals;
- (d) a Head of Legal Services; and
- (e) such other officers and agents as may be necessary for the efficient operation of the Division.

(2) The Commissioner and each Deputy Commissioner of Revenue Appeals shall be a person who has not less than three years of experience in tax administration.

(3) The Commissioner shall be under the operational superintendence of and report directly to the Financial Secretary in all matters relating to the functions of the Commissioner under this Act.

Delegation of functions.

6.—(1) The Commissioner may delegate, in writing, the exercise of any function conferred upon him by or under this Act to such person as he thinks fit, but such delegation shall not affect the exercise of such function by the Commissioner.

(2) Any act done pursuant to a function delegated under subsection (1) shall have the same effect as if done by the Commissioner.

Obligation for secrecy.

7.—(1) Every person having an official duty or being employed in the administration of this Act shall—

- (a) regard and deal with as secret and confidential, all information, books, records or other documents relating to the functions of the Division; and
- (b) upon assuming such duty or employment, make and subscribe a declaration to that effect before a Justice of the Peace.

(2) Every person who had an official duty or was employed in the administration of this Act shall maintain, after such duty or employment is terminated, the confidentiality of all information, books, records or other documents relating to the functions of the Division.

(3) Any person to whom information is communicated pursuant to this Act shall regard and deal with such information as secret and confidential.

(4) A person referred to in subsection (1), (2) or (3) who has possession of or control over any information, book, record or other document so referred to commits an offence if at any time he communicates or attempts to communicate any such information or anything contained in such book, record or document to any person, otherwise than pursuant to—

- (a) powers under this Act or any other enactment;
- (b) a court order.

(5) A person who commits an offence under subsection (4) is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding nine months or both such fine and imprisonment.

8.—(1) No obligation as to secrecy or other restriction upon the disclosure of information, imposed by any law or otherwise, shall prevent the disclosure of information or supply of documentation between the Commissioner and, as the case may be—

Disclosure  
of  
information.

- (a) any Revenue Commissioner; or
- (b) an officer of a revenue department who has, in any particular case, been authorized by the Revenue Commissioner of that department,

for the purpose of assisting the Commissioner in the performance of his duties under this Act.

(2) Information obtained pursuant to this section shall not be disclosed except—

- (a) to the Commissioner, a Revenue Commissioner or the officer of a revenue department on whose behalf it was obtained; or
- (b) for the purpose of any proceedings connected with a matter in relation to which the Commissioner or another authorized officer performs duties.

Protection of persons exercising functions under this Act.

9.—(1) No civil or criminal action, suit or other proceedings for breach of confidentiality may be brought, nor any professional sanction for such breach may be taken, against any person, who under this Act or any other enactment, in good faith provides or transmits information requested by the Division or submits a report to the Division.

(2) No civil or criminal action, suit or other proceedings may be brought or instituted personally against the Commissioner or any other officer of the Division in respect of any act done or omission made in good faith, in the course of carrying out the provisions of this Act.

### *Appeals*

Designation of responsible officer by entity.

10.—(1) Subject to subsection (3), where a taxpayer is an entity (whether an unincorporated body of persons or a body corporate, hereinafter in this Act referred to as a “taxpayer entity”), the taxpayer shall designate an officer of that entity (hereinafter in this Act referred to as the “responsible officer”), who shall be answerable for doing all such acts and things required, by virtue of any provision of or under this Act, to be done in relation to appeals which involve the taxpayer entity.

(2) The taxpayer entity shall give written notice to the Commissioner of any designation made pursuant to subsection (1) and shall also notify the Commissioner of any change in that designation.

(3) Where the taxpayer entity has had a person designated as its responsible officer under the Tax Collection Act or the Income Tax Act, then that person shall, for the purposes of this section, be deemed to be the responsible officer.



(4) In the absence of any designation pursuant to subsection (1) or (3), the person who is the managing director of the taxpayer entity or, as the case may be, the person (by whatever name called) who performs the duties normally carried out by a managing director, or, if there is no such person, the person in Jamaica appearing to the Commissioner to be primarily in charge of the entity's affairs, shall for the purposes of this section be deemed to be the responsible officer.

(5) In this section—

“body corporate” includes—

- (a) a statutory body or authority, including a local authority;
- (b) a company registered under the Companies Act;

“local authority” means a Parish Council, the Council of the Kingston and St. Andrew Corporation or a Municipal Council.

**11.**—(1) A taxpayer that is aggrieved by a decision of a Revenue Commissioner regarding the liability of the taxpayer under any revenue law (hereinafter called an “aggrieved taxpayer”) may, appeal to the Commissioner in accordance with the prescribed appeal rules. Appeal by taxpayer.

(2) Nothing in subsection (1) is to be regarded as precluding an aggrieved taxpayer from appealing directly to the Revenue Court, on the same grounds of appeal that the taxpayer would have submitted to the Commissioner, in which case, the provisions of section 14 shall, with such modifications as the circumstances require, apply as to the aggrieved taxpayer, as they apply to an appellant referred to in that section.

**12.** Every taxpayer who is appealing a decision of a Revenue Commissioner and every authorized representative of the taxpayer shall retain and maintain for a period of not less than the duration of the appeal proceedings the books, records and other documents that are relevant to the revenue liability being appealed. Retention of records.

Power to  
determine  
appeal  
forthwith.

13. The Commissioner may forthwith determine an appeal in relation to which a person (whether or not the person is a party) —

- (a) wilfully delays or obstructs an authorized officer acting in the execution of his functions under this Act;
- (b) without reasonable excuse, refuses or neglects to answer any question or to furnish any information or to produce any book, record or other document required by this Act or any rules or regulations made under this Act; or
- (c) without reasonable excuse, fails to keep any book, record or other document required by this Act or any rules or regulations made under this Act.

Appeal to  
Revenue  
Court.

14.—(1) Subject to subsection (3), an appellant who is aggrieved with the decision of the Commissioner on an appeal may appeal to the Revenue Court within thirty days of the date of receiving that decision or within such longer period of time as may be permitted by or pursuant to rules of court.

(2) The Revenue Court may, on an application by the relevant Revenue Commissioner, order that the amount assessed or such portion thereof as the Court may specify, be paid or security be given therefor in such form and amount as may be approved by the Court, as a condition precedent to the hearing of an appeal under this section.

(3) An appeal shall be limited to the grounds stated in the Notice of Appeal submitted to the Commissioner under the prescribed appeal rules, and the Court may, in its discretion, permit the grounds of appeal to be amended.

(4) Tax shall be payable or refundable, as the case may be, in accordance with a determination of the Revenue Court unless, in the event of an appeal being made to the Court of Appeal, the Court of Appeal otherwise orders.

*Miscellaneous*

15. Where under this Act a notice or other document in writing is required to be issued or submitted to, served upon or otherwise given or delivered to any person, the document may be recorded and transmitted on paper or other physical medium or by electronic means.

Form of notice, etc. for delivery or other transmission.

16.—(1) A person Commits an offence if that person—

Offences and penalties generally.

(a) by himself or through any person in his employ, obstructs, molests or hinders—

(i) an authorized officer or any other person having any official duty or who is otherwise employed in the administration of this Act; or

(ii) any person acting in the aid of an authorized officer or any person so employed;

(b) knowingly makes any false declaration or false statement of a material nature in any information provided under this Act or any rules or regulations made under this Act;

(c) knowingly furnishes to an authorized officer or other person performing any duty in relation to this Act or any rules or regulations made under this Act, any article that to the knowledge of the authorized officer or other person contains information which is false or misleading in any material particular; or

(d) without reasonable excuse, refuses or neglects to attend or give evidence in response to a summons issued by the Commissioner.

(2) A person who commits an offence under subsection (1) is liable—

- (a) on summary conviction in a Resident Magistrate's Court—
- (i) in the case of a first offence, to a fine not exceeding one million dollars and, in default of payment thereof, to imprisonment for a term not exceeding one year; and
  - (ii) in the case of a second or subsequent offence, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment; and
- (b) on conviction on indictment in a Circuit Court, to a fine and, in default of payment thereof, to imprisonment for a term not exceeding ten years.

(2) Subject to subsection (6), a responsible officer who fails or neglects to carry out his duties in accordance with this Act shall be jointly and severally liable together with the taxpayer entity for any penalties under this Act, unless he satisfies the Commissioner that—

- (a) there were *bona fide* reasons for the failure or neglect and that his duties under this Act could not have been carried out in the circumstances; or
- (b) he was overruled by the board of directors or other body of persons (by whatever name called and herein-after referred to as "the board") that directs the affairs of the entity or was otherwise prevented by the board or by any member of the board from carrying out his duties in accordance with this Act.

(4) If the Commissioner is not satisfied as to the matters referred to in subsection (3)(a) or (b), as the case may be, he shall advise the responsible officer concerned of his decision in writing.

(5) Where the responsible officer satisfies the Commissioner pursuant to subsection (3)(b) that he was overruled or prevented as mentioned in that subsection, each director shall be jointly and severally liable (together with the taxpayer entity) for the penalties in relation thereto unless any such director proves that—

- (a) there were *bona fide* reasons for overruling the responsible officer or preventing the responsible officer from carrying out his duties in accordance with this Act; or
- (b) he was neither a party to the decision of the board to overrule the responsible officer nor a party to any action by the board or any other director which prevented the duties of the responsible officer being carried out.

(6) Subsection (3) shall not apply in any case where an act, matter, thing or failure that would have constituted a contravention under that subsection has already been proceeded with as a contravention under a revenue law.

17.—(1) The Minister shall cause to be prepared a report dealing generally with the activities of the Division during each financial year.

Annual  
report of  
Division.

(2) A copy of the report referred to in subsection (1) shall be laid on the Table of the House of Representatives and the Senate within thirty days after the end of the reporting year.

18.—(1) Subject to the provisions of this Act and any rules or regulations made under this Act, the Commissioner may—

Power to  
prescribe  
forms and  
issue practice  
notes.

- (a) prescribe forms to be used for the purposes of this Act;
- (b) issue guidance notes specifying the internal procedure to be applied by the Division in the appeals process.

(2) Guidance notes are binding on the Commissioner, Revenue Commissioners, officers of revenue departments and persons affected by the revenue laws, until revoked.

Rules, made by  
Minister after  
consultation  
with the  
Commissioner.

**19.—**(1) The Minister may, after consultation with the Commissioner, make rules in relation to the conduct of appeals under this Act.

(2) Rules made under this section shall be subject to negative resolution.

(3) Until varied or revoked by rules made under this section the rules set out in the First Schedule shall have effect.

First Schedule.

Regulations.

**20.—**(1) The Minister may make regulations generally for the proper administration of and giving effect to the provisions of this Act.

(2) Notwithstanding section 29(b) of the Interpretation Act, regulations made under this Act may provide for the imposition of penalties, on summary conviction in a Resident Magistrate's Court—

- (i) in the case of a first offence, to a fine not exceeding one million dollars and, in default of payment thereof, to imprisonment for a term not exceeding one year; and
- (ii) in the case of a second or subsequent offence, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(3) Regulations made under this section shall be subject to affirmation resolution.

Power of  
Minister to  
amend  
penalties.

**21.** The Minister may, by order, subject to affirmative resolution, amend any monetary penalty prescribed by or under this Act.

FIRST SCHEDULE

(Section 19)

THE REVENUE APPEALS DIVISION ACT

*The Revenue Appeals Division Rules, 2015*

1. These Rules may be cited as the Revenue Appeals Division Rules, 2015 Citation.
2. In these Rules— Interpretation.
  - “relevant decision” means the decision of a Revenue Commissioner which is the subject of an appeal;
  - “relevant Revenue Commissioner” means the Revenue Commissioner whose decision is the subject of an appeal.
3. An appeal to the Commissioner from an aggrieved taxpayer shall be brought by a Notice of Appeal submitted to the Commissioner within— Notice of Appeal.
  - (a) ninety days of the date of the notification in writing to the taxpayer of the relevant decision or thirty days of receipt of the relevant decision by the taxpayer, whichever is later; or
  - (b) such longer time period which in the circumstances the Commissioner considers reasonable.
4. A Notice of Appeal shall be in writing in the prescribed form and shall include— Form of Notice of Appeal.
  - (a) the name, address and taxpayer registration number of the appellant;
  - (b) the grounds of appeal;
  - (c) a copy of the relevant decision;
  - (d) where the appellant so indicates, a schedule of the evidence to be relied on by the appellant; and
  - (e) any other information that the Commissioner may from time to time consider necessary.
5. The Commissioner shall immediately cause a copy of the Notice of Appeal to be served on the relevant Revenue Commissioner. Service.
6. The relevant Revenue Commissioner shall within twenty-one days of being served with a copy of the relevant Notice of Appeal furnish— Documents for conduct of appeal.
  - (a) to the Commissioner all files relating to the relevant decision; and
  - (b) to the Commissioner and the appellant a written statement of the reasons for the relevant decision.

FIRST SCHEDULE, *cont'd.*

Investigations and related notifications by Commissioner to parties.

7.—(1) In accordance with paragraph (2), the Commissioner or the authorized officer shall collect all necessary information to facilitate a determination of the appeal including new and additional information, being information that had not been made available to the relevant Revenue Commissioner at the time of the relevant decision.

(2) For the purposes of paragraph (1) the Commissioner may—

- (a) contact the appellant or relevant Revenue Commissioner by any means of communication;
- (b) invite either or both of the parties to an informal meeting;
- (c) subject to paragraph (3), give any party from whom further information is required fourteen days notice, or notice for a shorter period with the agreement of all parties in writing, specifying what further information is required;
- (d) use any other lawful means that the Commissioner considers to be suitable to collect the relevant information.

(3) The Commissioner may, where any party has not complied with any requirement in a notice under paragraph (2) within the specified time, determine whether or not the party's reasons for not complying within the specified time are reasonable, and if the Commissioner so determines he may extend the time for compliance.

(4) The Commissioner shall notify the parties in writing forthwith upon his having completed collection of all necessary information to facilitate his determination of an appeal.

(5) The Commissioner shall determine what information received under rule 6(a) and this rule shall be disclosed by the Commissioner to any party.

Onus of proof on appellant.

8. The onus of proving that the relevant decision is not properly founded or is otherwise without merit shall be on the appellant.

Methods of determination of appeal.

9. The Commissioner may determine an appeal by—

- (a) convening a formal hearing;
- (b) accepting a settlement agreement; or
- (c) otherwise arriving at a decision based on all the relevant information gathered, in accordance with rule 7.

Conduct of formal hearing.

10.—(1) The Commissioner may conduct a formal hearing, if the Commissioner considers it necessary or upon the request of any party, to decide on the appeal, whether or not efforts at resolution by settlement agreement under rule 11 have been made.



FIRST SCHEDULE, *cont'd.*

(2) In the case of a formal hearing under paragraph (1), the Commissioner—

- (a) shall fix a date, time and place for the hearing and shall give to each party, not less than fourteen days notice in writing thereof;
- (b) may hear on oath or otherwise the appellant, the relevant Revenue Commissioner or any other person; and
- (c) shall give to each party an opportunity to—
  - (i) make oral or written submissions;
  - (ii) give evidence including, where the Commissioner considers it just and reasonable in the circumstances, evidence that had not been made available to the relevant Revenue Commissioner at the time of the relevant decision;
  - (iii) call witnesses and put questions to any witness called to give evidence.

11.—(1) Where the Commissioner determines that an appeal may be resolved by way of a settlement agreement then the Commissioner shall direct the parties to enter into negotiations in accordance with paragraph (3) in order to arrive at such an agreement.

Resolution by  
settlement  
agreement.

(2) Where the parties so determine, they may enter into negotiations in accordance with paragraph (3) in order to arrive at a settlement agreement for resolution of the appeal.

(3) The following process applies, without limiting the effects of any other requirement under the Act, in relation to negotiations under paragraph (1) or (2) for a settlement agreement—

- (a) negotiations shall be conducted between the parties in an effort to arrive at an agreement;
- (b) where an agreement is reached between the parties—
  - (i) they shall jointly agree on the preparation of a document reflecting the terms of the agreement;
  - (ii) the agreement shall stipulate obligations of the parties and other details;
  - (iii) each party shall sign the agreement, and forthwith transmit a copy of the signed agreement to the Commissioner;

FIRST SCHEDULE, *cont'd.*

- (iv) where the Commissioner determines that there is nothing in the circumstances of the negotiations that would make it contrary to the interest of justice for him to accept the settlement agreement between the parties, he shall do so and forthwith notify the parties in writing of his acceptance of the agreement and that the matter in dispute shall thereby be treated as finally determined and any right of further appeal waived,

and thereafter the Commissioner shall amend the appellant's revenue liability accordingly, and any amount agreed to be outstanding shall become due and payable in accordance with the terms of the agreement.

(4) Where no agreement is arrived at then the matter may be determined in accordance with rule 9(a) (formal hearing) or 9(c) (resolution by other means).

Decision of the Commissioner of formal hearing or other determination of appeal.

12.—(1) The Commissioner may, in respect of a relevant decision, whether determined in accordance with rule 9(a) (formal hearing) or 9(c) (resolution by other means)—

- (a) dismiss the appeal and confirm the decision;
- (b) allow the appeal and set aside the decision;
- (c) reduce the amount determined under the decision;
- (d) vary the decision other than in relation to the amount determined; or
- (e) remit the matter to the relevant Revenue Commissioner in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1)(e) are that the parties have been given an opportunity to be heard, the appellant has been notified in writing that the matter has been remitted, and—

- (a) new or additional information has been brought, which may affect the revenue liability of the appellant;
- (b) the evidence provided to the relevant Revenue Commissioner was not properly taken into account or the evidence provided by the appellant was not given due consideration by the relevant Revenue Commissioner; or
- (c) the Commissioner, having regard to all available information and evidence, considers it necessary to remit the matter.

(3) Where a matter is remitted under this rule—

FIRST SCHEDULE, *cont'd.*

- (a) the relevant Revenue Commissioner shall review the matter having regard to the circumstances communicated by the Commissioner as the basis for the Commissioner's decision to remit;
- (b) the Commissioner shall, in writing, specify the time within which the relevant Revenue Commissioner shall complete the review;
- (c) the remission does not preclude any further appeal arising from a revised decision of the relevant Revenue Commissioner.

13. If one party fails or both parties fail to attend at the time and place fixed for the hearing, the Commissioner—

Failure of party to attend.

- (a) may adjourn the hearing to a later date, having regard to any explanatory reasons submitted by any absent party or parties (whether orally, by an authorized representative, or in writing);
- (b) shall, in the case of the first hearing date, whether or not explanatory reasons have been supplied by any absent party, adjourn the hearing to a later date, in the interests of justice and equity;
- (c) may determine the appeal after considering submissions made by the party who is present and considering all the evidence and any written submissions from the absent party.

14. The Commissioner may on his own motion or upon the application of either party, summon to attend before him for examination on oath or otherwise, any person who he believes is able to give evidence in relation to the relevant decision.

Summons to attend.

15. The appellant may, for the purposes of any appeal, be represented by a person authorized in writing by the appellant.

Representation.

16. The Commissioner shall—

Notification of decision and reasons.

- (a) in the case of an appeal conducted by him in accordance with rule 9(a) (formal hearing), determine the appeal within sixty days after conclusion of the formal hearing;
- (b) in the case of an appeal conducted by him in accordance with rule 9(c) (resolution by other means), determine the appeal within sixty days after he notifies the parties pursuant to rule 7(4) of his collection of all necessary information,

and he shall in each case notify his determination forthwith to each party in writing setting out reasons for the decision.

17.—(1) An appellant may withdraw an appeal at any time by filing written notice in the prescribed form with the Commissioner.

Withdrawal of appeal.

*REVENUE APPEALS DIVISION*FIRST SCHEDULE, *cont'd.*

(2) Where an individual appellant dies before his appeal has been determined, the Commissioner may direct that—

- (a) the appeal shall be treated as withdrawn;
- (b) where the Commissioner considers it necessary, the legal personal representative of the appellant may continue in the proceedings in the place of the appellant.

(3) If an appeal is withdrawn or treated as withdrawn, the Commissioner shall serve on the relevant Revenue Commissioner a notice that the appeal has been recorded as having been withdrawn, and no further appeal of the relevant decision may be submitted to the Commissioner.