

CHAPTER Rev 200 PROCEDURAL RULES

Amend Rev 201.02, effective 9-20-16 (Document #11185-A), by inserting a new paragraph (b), and renumbering the remaining paragraphs, so that Rev 201.02(b) is cited and reads as follows:

PART Rev 201 GENERAL INFORMATION AND DEFINITIONS

Rev 201.02 Definitions.

(b) "Applicant" means a person or entity applying for a license issued by the department. The term includes a person or entity that owns or has a right to control any interest in the applicant.

Amend Rev 201.02(i), effective 9-20-16 (Document #11185-A), and renumber as Rev 201.02(j) to read as follows:

(j) "Licensee" means a person or entity that:

(1) Holds a license:

a. Issued by the department; or

b. Issued by the New Hampshire liquor commission under RSA 178, if a tobacco tax retailer or sampler; or

(2) Owns or has a right to control any interest in the person or entity holding a license pursuant to (j)(1) above.

Amend Rev 206.02(a), effective 9-20-16 (Document #11185-A), cited and to read as follows:

PART Rev 206 FINAL ORDERS, RECONSIDERATION, CONTINUANCE, AND APPEAL

Rev 206.02 Motions for Reconsideration or Petitions for Rehearing.

(a) Except as provided in Rev 207.01, within 15 days of service of a final decision or order, any party may file a motion for reconsideration or rehearing.

Amend Rev 207.05, effective 9-20-16 (Document #11185-B), by amending Rev207.05 intro and (g), inserting new paragraph (h), and amending and renumbering existing (h) and (i) as (i) and (j), so that Rev 207.05 intro and (g)-(j) are cited and read as follows:

PART Rev 207 SPECIFIC RULES OF PRACTICE AND PROCEDURE

Rev 207.05 Hearings on the Suspension or Revocation of a Tobacco Tax License. In proceedings involving the suspension or revocation of tobacco tax licenses issued by the department, or the New Hampshire liquor commission under RSA 178 for the retail sale or sampling of tobacco products, the following rules shall apply:

(g) A license shall be suspended for a period of time not to exceed 90 days upon the presiding officer's determination that the license holder has neglected or willfully violated the statute or rules administering the tobacco tax by actions such as, but not limited to:

- (1) Failure to file a tobacco tax return or report;
 - (2) Filing a tobacco tax return, report, or affidavit, which is false;
 - (3) Failure to collect, truthfully account for, or remit tobacco taxes to the department;
 - (4) Making a payment that is rejected by the licensee's financial institution for insufficient funds;
 - (5) Violating the provisions of RSA 78:10, RSA 78:11, RSA 78:13, RSA 78:14, or Rev 1000, regarding the purchase or sale of tobacco products without evidence of tax paid;
 - (6) Failure to keep a sufficient number of recently purchased stamps on hand pursuant to RSA 78:11, II, or file the accounting required by RSA 78:13, III;
 - (7) A conviction, or admission to sufficient facts to support a finding of guilt, for a crime arising from any:
 - a. Violation of RSA 78;
 - b. Violation of federal or any state law where the underlying conduct relates to tobacco products; or
 - c. Violation of law involving dishonesty or fraud in this state or any other state:
 1. For a misdemeanor, if within the 5-year period immediately preceding the date of the service of the notice of intent to suspend or revoke; or
 2. For a felony, if within the 10-year period immediately preceding the date of the service of the notice of intent to suspend or revoke;
 - (8) Having had tobacco products that were seized from the licensee's business premises and held by the department as contraband on at least one occasion during a 5-year period; or
 - (9) Having refused to permit, hindered, or obstructed an examination, investigation, or search authorized under RSA 78:16;
- (h) Pursuant to RSA 78:21, II, the department shall assess an administrative fine in addition to, or in lieu of, a period of suspension, pursuant to Rev 1008.07 and in accordance with the procedures for suspension provided in (a)-(g) above;
- (i) A license shall be revoked upon the presiding officer's determination that the license holder has repeatedly neglected or willfully violated the statute or rules administering the tobacco tax by actions such as, but not limited to:
- (1) The licensee's actions as described in (g)(1)-(9) above; or
 - (2) Failure to cure the cause of a suspension; and

(j) As provided in RSA 78:19, IV, within 30 days of the notice of a final order by the presiding officer, an aggrieved licensee may appeal any adverse order by written application to the board of tax and land appeals.

Adopt Rev 207.051 to read as follows:

Rev 207.051 Hearings on the Denial of a Tobacco Tax License Application. In proceedings involving the denial to issue or renew a manufacturer's or wholesaler's tobacco tax license, the following rules shall apply:

(a) If the department finds that there is cause to refuse to issue or renew a tobacco tax license pursuant to RSA 78:9, it shall notify the applicant of the denial in writing;

(b) Pursuant to RSA 78:9, III, an applicant aggrieved by the denial of a license may petition for reconsideration within 60 days after the department issues the notice of denial in accordance with the procedures provided in RSA 21-J:28-b and this chapter; and

(c) After a hearing, the denial shall be upheld upon the presiding officer's determination that:

(1) The applicant is not in good standing with the department as described in RSA 78:8, III;

(2) There is reason to believe that the application was filed by a person or entity as a subterfuge for the real person or entity in interest whose license was revoked;

(3) Within a 2-year period prior to the date on which the application was filed, the applicant has been convicted of a crime arising from any:

a. Violation of RSA 78;

b. Violation of federal or any state law where the underlying conduct relates to tobacco products; or

c. Violation of law involving dishonesty or fraud in this state or any other state; or

(4) The applicant has, with respect to the current license or a previous license, repeatedly violated the statute or rules administering the tobacco tax by actions such as, but not limited to:

a. Failure to submit a complete Form DP-31, "Application for Tobacco Tax License";

b. The applicant's license has previously been revoked, suspended, or not renewed for cause; or

c. The licensee's actions as described in Rev 207.05(g)(1)-(6), (8), and (9) above.

Amend Rev 207.06, effective 9-20-16 (Document #11185-B), as amended effective 5-24-17 (Document #12183), by amending (g)-(i) to read as follows:

(g) A license shall be suspended upon the presiding officer's determination that the license holder has neglected or willfully violated the statute or rules administering the meals and rentals tax by actions such as, but not limited to:

- (1) Failure to file a meals and rentals tax return;
 - (2) Failure to remit taxes collected to the department;
 - (3) Failure to make tax payments with meals and rentals returns at the time required by law;
 - (4) Making a payment that is rejected by the licensee's financial institution for insufficient funds;
 - (5) Failure to comply with electronic data submission requirements contained in RSA 78-A:8;
 - (6) Failure to comply with the record keeping requirements of RSA 78-A:7, II; or
 - (7) Failure to post a bond imposed pursuant to Rev 207.10 and RSA 78-A:8-b;
 - (8) Failure to conspicuously post the license for public view on the premises pursuant to Rev 705.01(h), or include the license number in any advertisement for a short-term rental pursuant to Rev 705.01(i), after receiving a warning from the department;
 - (9) A conviction, or admission to sufficient facts to support a finding of guilt, for a crime arising from any:
 - a. Violation of RSA 78-A; or
 - b. Violation of federal or any state law involving dishonesty or fraud:
 1. For a misdemeanor, if within the 5-year period immediately preceding the date of the service of the notice of intent to suspend or revoke; or
 2. For a felony, if within the 10-year period immediately preceding the date of the service of the notice of intent to suspend or revoke; or
 - (10) Having refused to permit, hindered, or obstructed an inspection or examination authorized under RSA 78-A:19;
- (h) A license shall be revoked upon the presiding officer's determination that the license holder has repeatedly neglected or willfully violated the statute or rules administering the meals and rentals tax by actions such as, but not limited to:
- (1) The actions set forth in (g)(1)-(10) above; or
 - (2) Failure to cure the cause of a suspension of a license within 30 days; and
- (i) As provided in RSA 78-A:5, II, the aggrieved licensee may appeal any adverse order either by written application to the board of tax and land appeals or by petition to the superior court of the county in which the licensee resides or conducts his or her operation within 15 days of the date the notice was mailed, pursuant to RSA 78-A:15, II.

Amend Rev 207.08(a)-(d), (i), (k), and (l), effective 9-20-16 (Document #11185-B), to read as follows:

(a) “Contraband” means tobacco products without the indicia required under RSA 78:10, RSA 78:11, RSA 78:13, RSA 78:14, or Rev 1000 to evidence the payment of the tax imposed by RSA 78;

(b) “Owner” means a person with legal title to the tobacco product seized pursuant to RSA 78:18;

(c) “Tobacco products” means “tobacco products” as defined in RSA 78:1, XIII;

(d) If the department finds any tobacco product at any place in this state without the indicia required under RSA 78:10, RSA 78:11, RSA 78:13, RSA 78:14, or Rev 1000 to evidence the payment of the tax imposed by RSA 78, the department shall seize such tobacco product and shall commence an emergency action to determine whether the tobacco product that has been seized is contraband and shall be subject to forfeiture and destruction under RSA 78:18 by serving a notice of the hearing within 10 days after the seizure;

(i) A failure by an owner, or the owner’s designated representative, to appear at a scheduled hearing shall result in a finding by the presiding officer that the seized tobacco product is contraband and is subject to forfeiture and destruction under RSA 78:18, unless within 5 business days of the failure to appear, the licensee or the licensee’s designated representative, files written notification to the hearing officer evidencing reasonable cause as to the failure to appear at the scheduled hearing. Reasonable cause shall include accident, mistake, or misfortune or other reason beyond control of the licensees;

(k) The final decision or order of the presiding officer on any seizure hearing shall be final, except that petitions for reconsideration or motions for rehearing shall be permitted if filed within 15 business days of service of the final decision or order;

(l) Pursuant to RSA 78:19, IV, an aggrieved owner may appeal any adverse final decision or order of the presiding officer by filing such appeal with the board of tax and land appeals within 30 days of the issuance of the final decision or order; and

Amend Rev 207.09, effective 9-20-16 (Document #11185-B), as amended effective 5-24-17 (Document #12183), by amending (f)(3) and (g) so that Rev 207.09(f) intro, (f)(3), and (g) read as follows:

(f) After a hearing a license shall not be issued or shall not be renewed upon the presiding officer’s determination that:

(3) The operator has, with respect to the current license or a previous license, repeatedly violated the statute or rules administering the meals and rentals tax by actions such as, but not limited to:

- a. Failure to submit a complete form CD-3 “Application For Meals & Rentals Tax Operators License”;
- b. Failure to file meals and rentals tax returns;
- c. Failure to remit taxes collected to the department;
- d. Failure to make tax payments with meals and rentals returns at the time required by law;
- e. Making a payment that is rejected by the operator’s financial institution for insufficient funds;

- f. Failure to comply with electronic data submission requirements contained in RSA 78-A:8;
- g. Failure to comply with the record keeping requirements of RSA 78-A:7, II;
- h. Failure to post a bond imposed pursuant to Rev 207.10 and RSA 78-A:8-b; and
- i. Failure to cure the cause of a suspension of a license within 30 days;
- j. Failure to conspicuously post the license for public view on the premises pursuant to Rev 705.01(h), or include the license number in any advertisement for a short-term rental pursuant to Rev 705.01(i), after receiving a warning from the department;
- k. A conviction, or admission to sufficient facts to support a finding of guilt, for a crime arising from any:
 - 1. Violation of RSA 78-A; or
 - 2. Violation of federal or any state law involving dishonesty or fraud:
 - A. For a misdemeanor, if within the 5-year period immediately preceding the date of the service of the notice of intent to refuse to issue or renew; or
 - B. For a felony, if within the 10-year period immediately preceding the date of the service of the notice of intent to refuse to issue or renew; or
- l. Having refused to permit, hindered, or obstructed an inspection or examination authorized under RSA 78-A:19; and

(g) As provided in RSA 78-A:5, II, the aggrieved operator may appeal any adverse order either by application to the board of tax and land appeals or by petition to the superior court in the county in which the operator resides or conducts his or her operation, within 15 days of the date the notice was mailed, pursuant to RSA 78-A:15, II.

Readopt with amendments Rev 207.10, effective 9-20-16 (Document #11185-B), to read as follows:

Rev 207.10 Hearings Involving Meals and Rentals Tax Bonds.

(a) In proceedings involving the suspension or revocation of a meals and rentals tax operator's license, or the refusal to issue or renew such a license, in which the operator's failure to post a bond pursuant to RSA 78-A:8-b is conduct upon which the department bases its action, the operator shall, in accordance with (b) below, have an opportunity to show cause why the operator's situation did not permit the imposition of the bond.

(b) The imposition of a bond may be required to secure the payment of any tax, interest or penalties due, or which may become due, in situations such as, but not limited to:

- (1) Failure to file meals and rentals tax returns;

- (2) Failure to remit taxes collected to the department;
- (3) Failure to make tax payments with meals and rentals returns at the time required by law;
- (4) Making a payment that is rejected by the licensee's financial institution for insufficient funds;
- (5) Failure to pay interest and penalties assessed;
- (6) The licensee is itinerant, transient or temporary; or
- (7) Any other situation which renders the collection of the tax in jeopardy.

APPENDIX

Rule	Statute
Rev 201.02(b), (j)	RSA 78:20; RSA 78:27; RSA 78-A:2, II; RSA 541-A:16, I(b)(2)
Rev 206.02(a)	RSA 78:27; RSA 78-A:2, II; RSA 78-A:8-b; RSA 541-A:16, I(b)(2)
Rev 207.05 intro and (g)-(j)	RSA 78:19; RSA 78:20; RSA 78:21, II; RSA 78:27; RSA 541-A:16, I(b)(2)
Rev 207.051	RSA 78:9; RSA 78:20; RSA 78:27; RSA 541-A:16, I(b)(2)
Rev 207.06(g)-(i)	RSA 78-A:2, II; RSA 78-A:4, I-a; RSA 78-A:5; RSA 541-A:16, I(b)(2)
Rev 207.08(a)-(d), (i), (k), and (l)	RSA 78:18; RSA 78:19; RSA 78:27; RSA 541-A:16, I(b)(2)
Rev 207.09(f) intro, (f)(3), and (g)	RSA 78-A:2, II; RSA 78-A:4, I-a; RSA 78-A:5; RSA 78-A:8-b; RSA 541-A:16, I(b)(2)
Rev 207.10	RSA 78-A:2, II; RSA 78-A:8-b; RSA 541-A:16, I(b)(2)