Alaska Department of Labor and Workforce Development
Employment Security Tax
P.O. Box 115509
Juneau, AK 99811-5509

EMPLOYMENT SECURITY TAX APPEALS

This pamphlet provides information and requirements for an employer filing an Employment Security Tax (ES Tax) appeal. The explanations of your appeal rights and the appeals process can help you obtain a fair and timely decision. We encourage you to contact the ES Tax staff at the Alaska Department of Labor and Workforce Development, (refer to directory at the end of this brochure), any time to review your ES Tax adjustment, issue, or rate. Issues can usually be resolved by working together to ensure ES Tax has all the necessary information so that your appeal is fairly and efficiently processed.

THE APPEAL PROCESS

There are three levels of appeals. Two are within the Alaska Department of Labor and Workforce Development, at the Tribunal and the Commissioner levels. The third is outside the Alaska Department of Labor and Workforce Development with the Alaska Superior Court. The entry level of an appeal is defined by statute and by the issue(s) being appealed.

- *Tribunal Level.* The Tribunal level is a lower level appeal, and is staffed as a separate and independent unit of the Alaska Department of Labor and Workforce Development, with hearing officers who hear and decide appeals. If disagreement occurs at this level, an employer may appeal to the Commissioner level.

- *Commissioner Level.* The Commissioner level is an upper level appeal, and the decision is made by the Commissioner of Labor. If an employer disagrees with the Commissioner's decision, further appeal must be made to Superior Court.

Filing an Appeal. All appeals on ES Tax issues *must be filed in writing.* Your appeal can be filed with your auditor, with other ES Tax representatives, or at any Appeal Tribunal office. The addresses, telephone numbers, and fax numbers of the Field Tax Offices and the Appeal Tribunal are listed on the back of this brochure.

Time Limit. After the notice under appeal is issued, the time limit for filing an appeal is 30 days.

Late Appeals. If your appeal is filed after 30 days, reasons for the delay must be stated. In some cases, late appeals may be accepted if delayed for reasons beyond your control.

Bond or Security Requirements. A bond or other security is a requirement of your appeal of a Notice of Assessment, and the requirements are listed under "Types of Tax Appeals."

Acknowledgment of Your Appeal Request. You will be mailed a letter acknowledging receipt of your hearing request. Copies of the documents that ES Tax will be presenting in the hearing will be enclosed with your acknowledgment letter. Additional documents may be presented to the Hearing Officer for introduction into the appeal process at later dates. This additional documentation should be received by all parties at least 10 days prior to the hearing date.

Withdrawing your Appeal. If you are the person or the employer's representative who appealed, you may request in writing that your appeal be withdrawn. Your request should include an explanation of why you are withdrawing your appeal. Your withdrawal request should be addressed to the Hearing Officer.

TYPES OF TAX APPEALS

There are four kinds of tax appeals. The specific requirements for each appeal are listed below along with their statutory references.

Notice of Assessment Appeal. When an employer owes delinquent taxes, interest, and/or penalties, a Notice of Assessment is sent by certified mail to the employer. A Notice of Assessment may also be issued to an officer or employee of a corporation; a member or employee of a partnership; limited liability company; or an individual who is determined to be a responsible party under a duty to pay the contributions. AS 23.20.220, AS 23.20.240, AS 23.20.242.

Appeal Level. A Notice of Assessment appeal is heard at the Commissioner level.

Employer's Notice of Appeal to the Department. The employer has 30 days from the receipt of the Notice of Assessment to file a petition for a hearing. The hearing request must be in writing, must set out the reasons the assessment is objected to, and must list any amount of contributions that the employer admits are due.

Bond or Security Requirements. The employer's hearing request must be accompanied by a bond or deposit of other security in the amount of the assessment to ensure future collection if necessary. The security requirement may be waived if the employer submits proof of solvency or reasonable assurance that contributions, interest, and penalties due are not in jeopardy. If the employer fails to provide the required security, collection is not stayed. The filing of an appeal does not affect the right of ES Tax to file/perfect a tax lien under AS 23.20.200 for the amount owed.

Coverage Determination Appeal. Coverage determination issues consist of whether the employing unit is an employer and/or whether service performed for the employer constitutes employment. A coverage determination issue also applies to a nonprofit organization and the effective date of the type of payment option it elects to make or terminate. AS 23.20.315, AS 23.20.276, AS 23.20.277

ES Tax will mail a coverage determination notice or letter to the last address of record of the employer. The notice will include a statement of the supporting facts. If the employer disagrees, an informal reconsideration review or appeal can be filed.

Reconsideration Review. Within 30 days, the employer may ask for a reconsideration of the ES Tax determination in light of additional facts or evidence. This initial examination is *not* an appeal, but an opportunity for the employer to present facts and information to ES Tax staff that may have been missed initially. Staff will review the information provided, make a redetermination, and mail the employer a second notice of determination, including a statement of the supporting facts. If the employer disagrees with this second determination notice, the employer may file an appeal.

Appeal Level. A coverage determination issue, either after the reconsideration review mentioned above, or instead of the reconsideration review, is heard at the Appeal Tribunal level.

Employer's Notice of Appeal. The employer has 30 days from receipt of the notice of coverage determination letter to file a petition for a hearing. The petition must be in writing.

Employer's Tax Rate Appeal. Each Alaska employer is assigned a rate and mailed a Contribution Rate Notice. The rate determination becomes conclusive for an employer unless the employer files an application for review and redetermination. AS 23.20.305

Appeal Level. A rate appeal is heard at the Commissioner level.

Employer's Notice of Appeal. The employer has 30 days after the rate notice is mailed to the employer's last address of record to file a written petition for a hearing. Reasons for the appeal must be provided in the written application for review and redetermination.

Adjustment or Refund Appeal. If contributions or interest have been erroneously paid by an employer, a written petition for an adjustment or refund may be filed *within two years after the payment is made.* An adjustment of the payment can be used to offset future contribution payments. If ES Tax determines that an adjustment or refund should not be allowed, the application will be denied and the employer will be notified in writing. AS 23.20.225

Appeal Level. An adjustment or refund appeal is heard at the Commissioner level.

Employer's Notice of Appeal. The employer has 30 days after notification of a denial of an adjustment or refund to file a written petition for a hearing. The petition should give the reasons for requesting the hearing and the amount to be adjusted or refunded.

Audits. If your business has been audited by an ES Tax Field Auditor and the audit resulted in an appealable determination, your auditor will either issue a Notice of Assessment, or mail a letter of determination, and refer you to the applicable section above. You are encouraged to discuss any differences with your auditor to try to resolve the issue(s).

HEARING & PREHEARING CONFERENCE NOTICES

After receiving your request for a hearing, the Appeal Tribunal will schedule a *pre-hearing conference* with you and the ES Tax representative and mail a notice to all parties. After the pre-hearing conference, the Appeal Tribunal will schedule the hearing and mail a notice to all parties. Both notices for the pre-hearing or hearing will contain the following information:

- the date, time, and place of the pre-hearing/hearing
- whether the pre-hearing/hearing is in person or by telephone
- the issue or issues that will be addressed at the pre-hearing/hearing
- instructions for participating in the pre-hearing/hearing

Read your notice carefully. Check to make sure all issues are listed. Also check to see whether your pre hearing/hearing is by telephone or in person. Follow all instructions on the pre-hearing/hearing notice.

Be sure to call the Appeal Tribunal if:

- the notice does not list the issues you expect to be covered at the pre-hearing/hearing, or

- you have a problem with the date, time, or place of the pre-hearing/hearing.

Telephone Pre-hearing/Hearing. If your pre-hearing/hearing is by telephone, you must call the Appeal Tribunal at 1-800-232-4762 when you receive the notice. Give the telephone number(s) where you and your witnesses can be reached at the time of the pre-hearing/hearing. If you do not call and provide your

telephone number(s), the Hearing Officer cannot contact you for the pre-hearing/hearing, and you will likely receive an unfavorable decision.

THE PREHEARING CONFERENCE

The pre-hearing conference is scheduled for both sides to meet and agree on the issue(s) under appeal, to exchange any documentation or other proposed exhibits not previously exchanged, to set a date and time for the hearing, and go over the hearing procedures. Evidence is not presented at the pre-hearing conference. The pre-hearing conference may be recorded.

PREPARING FOR THE HEARING

Gathering the evidence. You should begin to gather the evidence necessary to present your case as soon as you file your appeal. You will usually not get another chance to present evidence after the hearing. You may want to make notes to help you remember important facts.

The first place to start is with the appeal file that contains the documents in the case, including the written evidence used by ES Tax in making its determination. A copy of the appeal file is mailed to you with your letter of acknowledgment of receipt of your hearing request. After reading this material, you should have an idea of what facts you need to challenge or to support. If you do not understand the ES Tax determination, discuss the case with an ES Tax representative. The Hearing Officer cannot discuss the issues of the case with any of the parties before the hearing.

Interpreters. If you need an interpreter and cannot provide your own, please contact the Appeal Tribunal office.

Witnesses. You have the right to present witnesses for testimony. The Hearing Officer, however, will not allow repetitive evidence or evidence that is not relevant to the case. There is no need to bring several witnesses to testify to the *same* occurrence or facts. One credible witness may be enough; however, you may need more than one witness to cover *different* occurrences or facts.

You must notify your witnesses of the hearing and provide their telephone numbers if the hearing is by telephone. If your witness(es) will not agree to testify, contact the Hearing Officer immediately. If the witness(es) are necessary to your case, the Hearing Officer may, at your request, issue a subpoena that will compel the witness(es) to testify. You must provide the name(s) and current address(es) of the witness(es).

Written evidence. You may submit and the Hearing Officer will only take those records, letters, and other documents for the hearing that are relevant and necessary to decide the case. Your written documentation should be sent to the Appeal Tribunal as requested, and should be received by both the Hearing Officer and ES Tax at least 10 days prior to the hearing date. Copies should be brought to the hearing, or should be immediately on hand with you if your hearing is by telephone.

Researching the law. The Hearing Officer is knowledgeable of unemployment insurance law and will summarize the law at the hearing. If you wish to familiarize yourself with the law before the hearing, you may review the Alaska Employment Security Act (AS 23.20) and the regulations governing the UI program (8 AAC 85).

You may also review the statutes and past Department and Superior Court decisions to determine how

cases similar to yours have been decided.

The law, precedent decisions, and the Tax Policy Manual are available at the following locations:

- Employment Security Tax Offices
- Local Employment Service Offices
- Appeal Tribunal Offices
- Anchorage Law Library, 303 K Street, Anchorage

The Alaska Statutes may also be accessed through the Internet at the following address:

http://www.legis.state.ak.us/default.htm

THE HEARING

Be Prompt. Be sure you understand when and where your hearing is to be held. If your hearing is by telephone, you must be at your contact telephone number for the call.

Tardiness. If you filed the appeal, and *you do not appear at the time of the hearing or are not available to take the call,* the Hearing Officer will allow the other parties and witnesses to leave. The hearing cannot be held if either side is not present.

If you do not attend. If you do not participate in the hearing, the Hearing Officer may dismiss the appeal or uphold ES Tax's decision.

Representation. Parties may appear with or without an attorney or other representative. The Hearing Officer will explain the hearing procedures and safeguard the rights of all parties during the hearing. You may be represented, at your own expense, by an attorney or any other representative of your choice. You must provide the Appeal Tribunal with the name and telephone number of your representative.

ES Tax is generally represented by a staff member. ES Tax has the right to legal representation, and would, if necessary, be represented by the Attorney General's Office.

Postponement. If it is impossible for you to participate in the hearing, call the Hearing Officer immediately at 1-800-232-4762 to request a postponement. Hearings will be postponed only for good cause.

Confidentiality. Your unemployment tax records are confidential and may be released only for specific purposes spelled out in AS 23.20.110. The confidentiality rules do not apply to appeal hearings. These hearings are open to the public, and the record of the hearing is a public record. This includes both testimony and written evidence introduced at the hearing. If you can show that an open record would cause potential damage to your property or reputation, the Hearing Officer may close a portion of the hearing record.

Hearing Procedure. At the time of the hearing, all the interested parties will be together, either by telephone or in person. The Hearing Officer will explain the hearing procedures and issues to be decided. Each person who gives testimony will be under an oath, and all the testimony will be recorded. You will have the opportunity to testify, and to ask questions of witnesses who testify.

The Hearing Officer will introduce documents or other material evidence, in addition to the testimony. You may offer additional documents for the record at any time in the hearing. Please remember, however, that the Hearing Officer must exclude evidence that is repetitious or not relevant. At the end of the hearing, the Hearing Officer will allow you to make a closing statement to summarize your position.

Assistance at the hearing. The Hearing Officer has a duty to provide a full, fair, and courteous hearing

for all parties. The Hearing Officer will control the hearing to prevent intimidation or discourtesy, and will assist you when necessary in presenting your case. If you are taken by surprise or confused about what to do next, ask the Hearing Officer for help.

If you disagree with a ruling by the Hearing Officer, make a brief statement informing the Hearing Officer why you disagree. Even if the Hearing Officer does not change the ruling at the hearing, your objection or request is on the record. The Hearing Officer's ruling may be reversed on appeal.

THE DECISION

After the hearing, a written decision stating the facts, law, and reasons for the decision will be mailed to you. The decision will explain your right to further appeal.

FURTHER APPEAL

From Appeal Tribunal decisions to the Commissioner level. If you disagree with the Hearing Officer's decision at the Tribunal level, you can file an appeal to the Commissioner of Labor.

From Commissioner level to Superior Court. A decision of the Commissioner will include information on your right to further appeal in Superior Court.

Alaska Department of Labor and Workforce Development
Employment Security Division
TDD/TTY Relay Alaska Telephone No. 1-800-770-8973

Appeals Tribunal *(Juneau)*
P.O. Box 115509
Juneau, AK 99811-5509
Phone: 907-465-2775 or
Toll Free 1-800-232-4762
Fax: 907-465-3374

Appeals Tribunal *(Anchorage)*
3301 Eagle Street, Room 206
Anchorage, AK 99503
Phone: 907-269-4890 or
Toll Free 1-800-232-4762
Fax: 907-269-4840

Fairbanks Employment Security Tax
675 Seventh Ave, Station L
Fairbanks, AK 99701-4596
Phone: 907-451-2876
Fax: 907-451-2883

Kenai Employment Security Tax
11312 Kenai Spur Highway, Suite. 2
Kenai, AK 99611-7716
Phone: 907-283-2920
Fax: 907-283-5152

Anchorage Employment Security Tax
3301 Eagle Street, Room 106
P.O. Box 241767
Anchorage, AK 99524-1767
Phone: 907-269-4850
Fax: 907-269-4845

Juneau Employment Security Tax
1111 West Eighth Street, Room 203
P.O. Box 115509
Juneau, AK 99811-5509
Phone: 907-465-2787
Fax: 907-465-2374

Wasilla Employment Security Tax
877 Commercial Drive
Wasilla, AK 99654-6937
Phone: (907) 352-2535
Fax: (907) 352-2581