

**MEMORANDUM**

TO: Rhode Island Medical Society Surcharge Committee

FROM: Donoghue Barrett & Singal, P.C.

DATE: August 21, 2007

RE: Surcharge Appeal Process

The purpose of this memorandum is to provide a brief overview of the process for challenging the assessment of the Outpatient Health Care Facility Surcharge and the Imaging Services Surcharge (collectively the "Surcharge Statutes"). This memorandum also contains some specific language that each individual and entity affected by the Surcharge Statutes should include in a refund request letter.

**Administrative Process**

Rhode Island General Laws and Regulations set out certain procedural requirements for challenging the assessment of a tax. See Surcharge Statutes; Rhode Island Administrative Procedure Act, Gen. Laws § 42-35-15; R.I. Gen. Laws §§ 8-8-24 to 8-8-32; Administrative Hearing Procedures 97-91.<sup>1</sup>

The first step in initiating a challenge is to file a claim for a refund with the Division of Taxation. This claim for a refund can be filed at any time within two (2) years after the surcharge has been paid.

If the tax administrator denies the request for a refund, the taxpayer must then request an administrative hearing before the tax administrator. The taxpayer has thirty (30) days after notice of the tax administrator's denial of the refund to request an administrative hearing. The request for an administrative hearing must include a statement explaining the taxpayer's position and legal basis for the position. Upon completion of the administrative hearing, the hearing officer is required to issue a written decision which is submitted to the tax administrator. The tax administrator then reviews the hearing officer's decision and issues a final decision and order.

Please note that for both of the above processes, the General Laws and Regulations do not impose any time limits on the actions of the tax administrator.

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<sup>1</sup> The Federal Court does not have jurisdiction to entertain a lawsuit challenging the assessment of a state tax. The Federal Tax Injunction Act, 28 U.S.C. § 1341, divests the federal court of subject matter jurisdiction as long as there is "a plain, speedy and efficient remedy . . . in the courts of such State." The Rhode Island Federal District Court has held, as recently as June 6, 2006, that "Rhode Island's procedures for challenging state taxes meet the . . . requirements of [the Tax Injunction Act]." Black v. Lafevvre, 2006 WL 1582395 (D.R.I. June 6, 2006).

Any taxpayer aggrieved by the decision of the tax administrator is entitled to an original and independent proceeding in the Sixth Division District Court. The taxpayer must file a complaint in the District Court within thirty (30) days after the tax administrator's decision.

Finally, a party aggrieved by the decision of the District Court may seek review by the Rhode Island Supreme Court by filing a petition for the issuance of a writ of certiorari within twenty days (20) from the date of entry of the District Court judgment.

**Refund Request**

As an initial step, each affected party should include the language quoted below in a letter addressed to:

State of Rhode Island Department of Revenue  
Division of Taxation  
One Capitol Hill  
Providence, R.I. 02908-5811.

**In order to begin the administrative process, this refund request letter should be submitted along with the first payment of the surcharge on August 25, 2007.**

Before the next surcharge payment is due on September 25, 2007, we will distribute a Request for Administrative Hearing which will articulate our legal challenges to the Surcharge Statutes.

**Language for Refund Letter**

Please be advised that, in accordance with the provisions of [Title 44, Chapter 64, Section 7 (for Outpatient Health Care Facilities)] [Title 44, Chapter 65, Section 7 (for Imaging Services)] of the Rhode Island General Laws, the undersigned protests the payment of the surcharge. The surcharge is, *inter alia*, unconstitutional and in violation of federal and state law.

The undersigned formally requests, pursuant to [Title 44, Chapter 64, § 7 (for Outpatient Health Care Facilities)] [Title 44, Chapter 65, § 7 (for Imaging Services)], that the entire amount of any payment of the surcharge be refunded in full with all applicable interest.

The foregoing protest and request for a refund is made without prejudice to any or all other rights that the undersigned may have to seek a refund of all amounts paid or to have the surcharge declared unconstitutional or in violation of federal or state law.