**Section 5000.315 Motion Practice**

a) Form and Contents. A motion shall be in writing and must specify the supporting papers (e.g., affidavits, admissions, etc.) upon which the motion is based, in separate numbered paragraphs, the relief requested and the grounds for the relief. Any brief shall be filed with the motion and a copy served on the adverse party.

b) Notice of Motion*.* A Notice of Motion shall accompany each motion. The Notice of Motion shall specify whether or not the motion is agreed to by the adverse party. The Notice of Motion shall also specify whether the moving party desires an oral argument on the motion.

c) Response to Motions. If a motion is not an agreed motion, the adverse party shall notify the clerk for the Tribunal within five business days after receipt of a Notice of Motion whether the adverse party desires to file a response to the motion and a proposed briefing schedule. The time for filing a response shall not exceed 28 days without the permission of the Tribunal. The time for filing a reply, if a reply is requested, shall not exceed 14 days without the permission of the Tribunal. The adverse party shall also indicate whether it desires an oral argument. Upon approval by the Tribunal, the clerk will schedule an oral argument and send notice of the date and time to the parties**.**

d) Hearings on Motions. All motions will be decided on the moving papers and answers submitted without oral argument, unless a specific request for oral argument is made by a party and granted by the Tribunal.

e) Finality of Orders. An order by an administrative law judge on any motion that does not finally determine all matters and issues contained in the petition, for purposes of review by the Appellate Court, shall not be deemed final and conclusive until the administrative law judge shall have rendered a determination on the remaining matters and issues.

f) Motion to Transfer. The Tribunal may on its own motion and on notice to the parties, or either party may by filing a motion, transfer the case to the Office of Administrative Hearings if the petition has been timely but erroneously filed with the clerk of the Tribunal. If such a motion is granted, the clerk of the Tribunal shall certify and transmit all papers filed with the Tribunal to the Office of Administrative Hearings of the Department of Revenue.

g) Motion to Dismiss. A motion to dismiss must be filed before the answer is due or the grounds for dismissal may be raised as an affirmative defense in the answer. In no event shall a failure by a party to make such a motion be deemed a waiver of any defense. Only one such motion shall be made.

h) Dismissal by the Administrative Law Judge on His/Her Own Motion.

1) The administrative law judge may, on his or her own motion and on notice to the parties, issue a determination or decision dismissing a petition on the ground that:

A) the Tribunal lacks jurisdiction over the subject matter of the petition;

B) the Tribunal lacks jurisdiction over the taxpayer; or

C) the petition has not been timely filed or served.

2) If the basis for the administrative law judge's dismissal is that the Office of Administrative Hearings of the Department of Revenue has jurisdiction over the subject matter of the petition, the petition shall be transferred to the Office of Administrative Hearings.

i) Motion to Recuse Administrative Law Judge.

1) A Tribunal administrative law judge assigned to the case may, on his or her own motion, or either party may, by motion before the Chief Administrative Law Judge, move to recuse the administrative law judge assigned to its case on the basis that the administrative law judge has a personal bias with respect to the case or that the administrative law judge is otherwise disqualified to hear and decide the case.

2) The party's motion to recuse the administrative law judge must be accompanied by an affidavit setting forth the facts upon which the assertion of bias or other disqualification is based.

3) The motion to recuse must be made at least 30 days prior to the scheduled hearing date and shall comply with all procedural provisions relating to form as described in subsection (a).

4) The adverse party may respond to the motion to recuse by serving its response on the Chief Administrative Law Judge and the moving party not later than 10 days from the date the motion to recuse was served on such adverse party.

5) In response to the motion to recuse, the Chief Administrative Law Judge shall assign a different administrative law judge to the case or deny the motion by written order. The order shall be issued not later than 10 days prior to the scheduled hearing date. A party may not file an exception to an order until the administrative law judge renders a determination on the remaining matters and issues.