

WSR 21-22-059

PROPOSED RULES

BOARD OF TAX APPEALS

[Filed October 28, 2021, 2:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17 [21-17-074].

Title of Rule and Other Identifying Information: Chapter 456-12 WAC, Administrative processes.

Hearing Location(s): On December 10, 2021, at 10:00 a.m., electronic meeting via Teams information on agency website.

Date of Intended Adoption: December 31, 2021.

Submit Written Comments to: Keri Lamb, 360-586-9020, email bta@bta.wa.gov, fax 360-586-9020, by hearing date minus seven calendar days.

Assistance for Persons with Disabilities: Contact Keri Lamb, phone 360-753-5446, fax 360-586-9020, TTY 360-753-5446, email bta@bta.wa.gov, by hearing date minus seven calendar days.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose if [is] threefold. First, this section was edited for clarity and flow. Second, provisions from other of the board's WAC sections have been relocated here if they pertain to the board's administrative functions. Third, the sections pertaining to the Public Records Act have been expanded and edited to reflect current law. These changes are anticipated to improve the public's comprehension of the rules, and to outline a detailed process for public records requests.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 82.03.170.

Statute Being Implemented: Chapters 42.30 and 42.56 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board itself has drafted the proposed changes, and therefore recommends them in full. The board implements and enforces its own rules, so the proposed changes have no fiscal impact.

Name of Proponent: Washington state board of tax appeals, governmental.

Name of Agency Personnel Responsible for Drafting: Andrea Vingo, Board of Tax Appeals, 360-753-5446; Implementation and Enforcement: Board of Tax Appeals, 360-753-5446.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Changes have no fiscal impact.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No changes in the board's administrative process.

October 4, 2021

OTS-3408.1

AMENDATORY SECTION (Amending WSR 19-21-045, filed 10/9/19, effective 11/9/19)

WAC 456-12-015 Purpose of this chapter. The purpose of this chapter is to ~~((set forth rules on))~~ outline the organization and administration of the board of tax appeals (board), and to set forth rules that comply with the Open Public Meetings Act, chapter 42.30 RCW, ((regarding open public meetings,)) and the Public Records Act, chapter 42.56 RCW((, regarding public records)).

[Statutory Authority: RCW 82.03.170. WSR 19-21-045, § 456-12-015, filed 10/9/19, effective 11/9/19; WSR 99-13-098, § 456-12-015, filed 6/15/99, effective 7/16/99.]

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-035 Description of the board. (1) ~~((As an independent state agency,))~~ The board is an independent state agency that reviews, holds hearings on, and decides state tax appeals filed by taxpayers and taxing authorities. The board consists of three members, an executive director, tax referees, and staff ~~((hired by the board))~~. The three members of the board serve on a full-time basis, and are appointed by the governor, with the consent of the senate, for a term of six years.

(2) The executive director is the board's chief executive officer and is responsible for implementing board directions and for directing the board's staff.

~~((3) The board holds regular meetings at 10:00 a.m. on the second Thursday of each March, June, September, and December. The meetings are held at the board's office at 910 5th Avenue S.E., Olympia, WA 98504-0915.))~~

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-035, filed 6/15/99, effective 7/16/99.]

NEW SECTION

WAC 456-12-037 Communication and contact with the board. (1) The board's office is located at 1110 Capitol Way South, Suite 307, Olympia, WA 98501. The board's mailing address is P.O. Box 40915, Olympia, WA 98504-0915. The board's telephone number is 360-753-5446. The board's fax number is 360-586-9020. The board's email address is bta@bta.wa.gov, and the board's website is bta.wa.gov.

(2) The board's primary method of communication is by electronic mail.

(3) Decisions and other correspondence will be sent by electronic mail unless an individual or party has made prior arrangements with the board.

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PUBLIC MEETINGS

NEW SECTION

WAC 456-12-039 Meetings and quorums. (1) The board holds regular meetings at 9:30 a.m. on the third Friday of each month. The meetings are held at the board's office.

(2) All meetings of the board are open to the public. Anyone is allowed to attend except as limited by the Open Public Meetings Act, chapter 42.30 RCW.

(3) Two members of the board constitute a quorum for the purpose of making orders or decisions, or for promulgating rules and regulations relating to the board's procedures. A quorum of the board may act even though one position is vacant.

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NEW SECTION

WAC 456-12-041 Meeting agendas and minutes. (1) The agenda for a board meeting is available at least 24 hours in advance of the meeting, and is posted on the board's website at bta.wa.gov.

(2) The minutes of any meeting are available for public inspection as provided in RCW 42.30.035. Meeting minutes are available by emailing the clerk of the board at bta@bta.wa.gov.

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PUBLIC RECORDS

NEW SECTION

WAC 456-12-043 Purpose and intent. (1) These rules provide information to those who want to request access to public records of the board, and to establish processes for both requestors and the board. They are designed to best assist members of the public in obtaining such access.

(2) The board will respond promptly to requests for records made under chapter 42.56 RCW, Public Records Act.

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AMENDATORY SECTION (Amending WSR 19-17-042, filed 8/15/19, effective 9/15/19)

WAC 456-12-045 (~~Public records available.~~) Hours for inspection and copying. (~~Unless exempt under chapter 42.17 RCW or other law, all public records and indexes of the board are available for public inspection and copying at the board's main office during customary office hours.~~) Public records of the board are available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays and the days the board is closed.

[Statutory Authority: RCW 82.03.170. WSR 19-17-042, § 456-12-045, filed 8/15/19, effective 9/15/19. Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-045, filed 6/15/99, effective 7/16/99.]

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-055 Public records officer. (1) The board's executive director is (~~identified as~~) the board's public records officer and is responsible for reviewing requests for public records.

(2) The public records officer will oversee compliance with the act, but a designee may process a request. The public records officer or designee and the board will provide the fullest assistance to requestors; ensure that public records are protected from damage or disorganization; and prevent the fulfilling of public records requests to cause excessive interference with the essential functions of the board.

(3) The board encourages communication with the public records officer if a requestor has not received a response in writing or has questions or concerns about a records request.

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-055, filed 6/15/99, effective 7/16/99.]

NEW SECTION**WAC 456-12-073 Public Records Act requests to the board.** (1)

Website records. Before submitting a records request, those seeking public records of the board are strongly encouraged to first review the board's website at bta.wa.gov. This website includes the board's decisions from 1967 to the present, board policies, and public meeting schedules, and agendas. These are free for viewing and downloading at any time, and are accessible without making a Public Records Act request.

(2) **Public Records Act requests.** Public Records Act requests must be sent or submitted to the public records officer in one of the following ways:

(a) Online: <http://www.bta.wa.gov>

(b) Email: bta@bta.wa.gov with subject line indicating "public records request"

(c) U.S. Mail or Delivery: Public Records Officer
Washington State Board of Tax Appeals
P.O. Box 40915

Olympia, WA 98504-0915

(d) In person: 1110 Capitol Way South, Suite 307

Olympia, WA 98501

Communications that seek the board's records, but which are sent or provided to unauthorized addresses or staff, will not be accepted or processed as Public Records Act requests. The board will instead process such communications as general informal inquiries, general correspondence, or general requests for information.

(3) **Manner of requests.** Requestors are strongly encouraged to make requests in writing. If the board receives an oral request, the board will reduce the request to writing and verify with the requestor in writing that it correctly memorializes the request. Requestors are also urged to include a description of the records requested by docket number, appellant name, subject matter, suggested search terms, or other means that will allow the public records officer or designee to identify the requested records. The board accepts in-person requests at its office during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and days the board's office is closed.

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NEW SECTION**WAC 456-12-078 Response to Public Records Act requests.**

(1) Within five business days of receiving a Public Records Act request, the board will assign the request a tracking number and log it. The public records officer or designee will evaluate the request according to the nature of the request, clarity, volume, and availability of requested records.

(2) Following the initial evaluation of the request, and within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying including:

(i) Providing an internet address and link on the website to specific records requested if copies are available on the office's website;

(ii) Sending copies to the requestor, if requested and where a payment or a deposit has been made, if any, or other terms of payment are agreed upon and have been satisfied.

(b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available. The public records officer or designee may revise the estimate.

(c) Acknowledge receipt of the request and ask the requestor to provide clarification for all or part of a request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of time the board will need to respond to the unclear request or unclear part of a request if it is not clarified.

(i) Clarification may be requested and provided by phone and memorialized in writing, or by email or letter;

(ii) If the requestor fails to respond to a request for clarification within 30 calendar days and the entire request is unclear, the office need not respond to it. The board will only respond to those portions of a request that are clear.

(d) Deny the request.

(3) The board may request additional time to respond to a request because of the need to clarify the request, locate and assemble the records requested, notify third persons or agencies affected by the request, or determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(4) The board will provide an estimate of the time required to respond to a request, and may provide an estimate of copying costs specific to a request seeking an estimate of cost. If the requestor believes the amount of time or estimated costs are not reasonable, the requestor may petition the board for review as outlined in WAC 456-12-115(2).

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NEW SECTION

WAC 456-12-083 Providing responsive records to a Public Records Act request. (1) **Inspecting records.** Consistent with other demands, the board will provide space to inspect public records at a designated location. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor must indicate which documents he or she wishes the office to copy.

(a) The requestor must claim or review the assembled records within 30 days of the board's notification that the records are available for inspection or copying. The board will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the board to make arrangements to claim or review the records.

(b) If the requestor fails to claim or review the records within the 30-day period or make other arrangements, the board may close the request and refile the assembled records.

(2) **Providing copies of records.** After inspection is complete and the requestor asks for copies of some or all of the inspected records,

or where copies are otherwise requested, the public records officer or designee will make the requested copies or arrange for copying.

(a) If the board charges for copies, the requestor must pay for the copies before the copies are provided.

(b) Electronic records will be provided as a link to the records if the records are located on the website, or in a format used by the board which is generally commercially available to the public. Records will generally not be provided by email for records responses with multiple records, or where records may not be successfully delivered or received via the board's or the requestor's email systems.

(3) **Providing records in installments.** When a request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within 30 days, the requestor fails to inspect or pay for the entire set of records or for one or more of the installments, the public records officer or designee may stop searching for or producing the remaining records and close the request.

(4) **Multiple requests.** Multiple public records requests from the same requestor will be processed in a manner so as not to interfere with essential agency functions including processing records requests from other requestors. The board may process such requests in the order received, and may complete one request before searching for records for a subsequent request.

(5) **Completion of inspection.** When the review of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the board has completed a reasonable search for the requested records and made any located nonexempt records available for inspection.

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AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-085 Costs and fees. (1) No fee will be charged for inspecting the board's public records.

(2) ~~The board ((will charge ten cents per page for copies of requested public records. Payment will be made by check payable to the board. The board may require that all charges be paid before the copies are released. The executive director may decide that no fee will be charged for the copies if the expense of processing the payment is greater than the cost of providing the copies.))~~ does not calculate all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The board does not have the resources to conduct a study to determine all its actual copying costs; and

(b) Conducting such a study would interfere with other essential agency functions.

(3) The board will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2) (b) and (c). The board may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The board may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4).

(4) The board requires requestors to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests. The public records officer has the discretion to waive fees when:

(a) All of the records responsive to an entire request are paper copies and are 25 or fewer pages; or

(b) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of 100 printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

(c) Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of 10 percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds \$25.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The board will notify the requestor of when payment is due.

(7) Payment should be made by check or money order to the board. The board prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The board will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-085, filed 6/15/99, effective 7/16/99.]

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-105 Exemptions and denying requests for public records. (1) The board may determine that all or part of a requested public record is exempt under the Public Records Act, chapter 42.17 RCW, or other law and may not be inspected or copied.

(2) ~~((All denials of a request for public records will contain a written statement from the executive director stating the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.))~~ If the board believes that a record or part of a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief written explanation as to why it is being withheld. If only a portion of a record is exempt from disclosure, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(3) ~~((The board may remove identifying details when it makes available or publishes any public record when there is reason to believe that revealing such details would be an invasion of personal privacy protected by chapter 42.17 RCW.))~~ If the requested records contain information that may affect the rights of others, the public

records officer or designee may give notice to those whose rights may be affected by the disclosure under RCW 42.56.540 before providing the records. Notice should be given to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) The board is prohibited by statute from disclosing lists of individuals for commercial purposes.

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-105, filed 6/15/99, effective 7/16/99.]

NEW SECTION

WAC 456-12-112 Closing a request for public records. (1) When the requestor either withdraws a request, or fails to clarify an entirely unclear request, or fails to fulfill his or her obligations to inspect the records, pay the deposit, pay the required fees for an installment, or make a final payment for the requested copies, the public records officer or designee will close the request and, unless the board has already indicated in previous correspondence that the request would be closed under the above circumstances, indicate to the requestor that the office has closed the request.

(2) If, after the board has informed the requestor that it has provided all available records, the board becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor.

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AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-115 Reviewing denials of requests for public records, estimates of time, and estimates of cost. ~~((1) Any person objecting to a denial of a request for public records may submit a written request for review to the board.~~

~~(2) Upon receiving the written request for review, the executive director will call a meeting of the board to review the denial.~~

~~(3) The board will issue a written decision within two business days of receiving the request for review.~~

~~(4) The board's written decision regarding the request for review will be the final action by the agency.)~~ (1) Requestors are encouraged to communicate with the public records officer or assigned designee about denials of public records requests, estimates of time, or estimates of costs. If unsatisfied, a requestor may seek review of the issue.

(2) Any person who objects to the board's denial or partial denial of a request for public records or contends an estimate of time to provide records or copying costs to provide records is not reasonable, may petition for prompt review of the decision by submitting a written request to the executive director for a review by the board.

(3) The written request for review must specifically refer to the written statement by the public records officer or designee which accompanied the denial or estimate.

(4) Within two business days of receiving a written request for review, the executive director will schedule a meeting of the board to review the denial.

(5) The board will issue a written decision or order within two business days of the board's meeting where the request for review is considered. The board will affirm, reverse, or amend the denial or estimate.

(6) The board's written decision regarding a request for review will be the final action by the board.

(7) The board will have concluded a public record is exempt from disclosure for purposes of WAC 44-06-160 only after the review conducted under this section has been completed.

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-115, filed 6/15/99, effective 7/16/99.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 456-12-025	Definitions.
WAC 456-12-065	Communications with the board.
WAC 456-12-075	Records indexes.
WAC 456-12-095	Requesting public records.
WAC 456-12-125	Electronic correspondence.