

WSR 21-24-067

PROPOSED RULES

BOARD OF TAX APPEALS

[Filed November 30, 2021, 8:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-076.

Title of Rule and Other Identifying Information: Chapter 456-09 WAC, Formal hearings—Practice and procedure.

Hearing Location(s): On January 7, 2022, at 10:00 a.m., electronic meeting via Teams information on agency website.

Date of Intended Adoption: January 31, 2022.

Submit Written Comments to: Keri Lamb, email bta@bta.wa.gov, fax 360-586-9020, by December 30, 2021.

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 December 30, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these changes is to clarify statutory language, simplify the calculation of deadlines, and streamline the formal hearings process.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 82.03.170.

Statute Being Implemented: Chapters 34.05 RCW and 10-08 WAC.

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 substantive changes in the board's administrative process.

November 29, 2021
Andrea Vingo
Tax Referee

OTS-3504.1

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-001 Purpose and application of chapter. (1) This chapter ~~((concerns administrative matters of))~~ explains the practice and procedure of formal hearings conducted before the board of tax appeals (board) ~~((and explains how adjudicative proceedings are conducted before the board))~~ in accordance with the Administrative Procedure Act, chapter 34.05 RCW. This chapter ~~((augments))~~ adds to but does not ~~((supplant))~~ replace the provisions ~~((of))~~ in chapter 82.03 RCW.

(2) The rules of practice and procedure contained in this chapter ~~((govern the conduct of formal hearings before the board and))~~ will be construed to secure the just, speedy, and ~~((economical))~~ efficient determination of every ~~((action))~~ appeal.

(3) To the extent these rules of practice and procedure differ from the model rules adopted by the chief administrative law judge pursuant to RCW 34.05.250 and ~~((found in))~~ chapter 10-08 WAC, these rules ~~((shall))~~ will prevail.

(4) Where procedures are not ~~((covered))~~ addressed by this chapter ~~((and))~~ or chapter 10-08 WAC, the board may, upon its own motion or upon written ~~((application))~~ motion by any party, refer to and apply any rule provided for in the Washington state superior court civil rules, including the rules of evidence.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-001, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-010 ((Distinction between)) Formal and informal hearings ((and converting an appeal)). (1) ~~((In all appeals over which the board has jurisdiction,))~~ A party making an appeal may ~~((elect in writing, with its notice of appeal,))~~ choose either a formal or informal hearing in its written notice of appeal. Formal hearings are conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW, and the rules of practice and procedure of this chapter. Informal hearings are conducted pursuant to chapter 456-10 WAC. Failure to ~~((elect in writing))~~ choose a formal ~~((or informal))~~ hearing ~~((at the time of submitting the notice of appeal shall))~~ will result in the proceeding being conducted as informal.

~~((a))~~ (2) A formal decision of the board is subject to judicial review pursuant to RCW 34.05.570. Judicial review is limited to the record made of the proceedings before the board. The record ~~((made of the proceedings))~~ includes a verbatim account of the hearings together with the evidence, pleadings, and documents submitted ~~((to the board))~~ by the parties. In appeals from a decision of a board of equalization, the record includes the decision of that board together with the evidence submitted ~~((thereto.~~

~~((b))~~ Decisions entered in an informal appeal are not subject to judicial review as authorized under the Administrative Procedure Act, chapter 34.05 RCW.

~~((c))~~ Aggrieved parties may have avenues of further appeal allowed by law which are not pertinent to the statutory authority granted to the board and are not discussed herein.

~~(2) The)) to it pursuant to WAC 458-14-170.~~

~~(3) An appeal may be converted from a formal to an informal proceeding ((as provided below.~~

~~(a) The respondent, as a party to an appeal pursuant to RCW 84.08.130 (appeal from a decision by a board of equalization) may, within twenty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of intention that the hearing be a formal hearing.~~

~~(b) In appeals under RCW 82.03.190, the department of revenue may, within thirty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of its intention that the hearing be a formal hearing.~~

~~(c) In appeals under RCW 82.03.130 (1)(e), the department of revenue may, within ten calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of its intention that the hearing be a formal hearing.~~

~~(d) At any time up to thirty days prior to the date of the hearing, the parties may submit to the clerk of the board a notice signed by all parties of intention to convert the proceedings to either a formal or informal hearing)) at any time up to 30 calendar days before the date of the hearing as long as the parties submit a notice signed by all parties of the intent to convert the proceedings.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-010, filed 6/21/05, effective 8/1/05; WSR 94-07-044, § 456-09-010, filed 3/10/94, effective 4/10/94; WSR 89-10-056 (Order 89-02), § 456-09-010, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-110 Definitions. ((As used)) (1) In this chapter, the ((following)) subsequent terms ((shall)) have the following meanings:

~~((1))~~ (a) "Appellant" means a person or entity who appeals any order or decision.

(b) "Board" means the board of tax appeals as described in chapter 82.03 RCW, and chapters 456-09 and 456-10 WAC. Where appropriate, the term "board" also refers to the designated hearing officers, tax referees, or agents of the board of tax appeals.

~~((2))~~ (c) "Decision" means a written judgment or ruling issued by the board, designated hearing officers, tax referees, or agents of the board of tax appeals.

(d) "File" means to present or deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, by fax, or by electronic transmission as provided in these rules. The terms "to file" and "to submit" are used interchangeably.

(e) "Order" means a written direction given by the board instructing that some act be done or that some act is prohibited. Orders are not appealable unless otherwise provided by law.

(f) "Party" means any person or entity who is an appellant, respondent, or intervenor.

(g) "Presiding officer" or "hearing officer" ((shall)) means any member of the board, tax referee, or any person who is assigned to conduct a conference or hearing by the board. The presiding officer ((shall have)) has the authority ((as provided by)) outlined in WAC 10-08-200 and chapter 34.05 RCW.

~~((3) "Appellant" means a person, natural or otherwise, who appeals any order or decision to the board of tax appeals.~~

~~(4)) (h) "Respondent" means a person ((, natural or otherwise,)) or entity who is ((named)) listed as a responding party in any appeal ((before the board of tax appeals.~~

~~(5) "Formal hearing" means a proceeding conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW and this chapter.~~

~~(6) "Informal hearing" means a proceeding governed by those rules specified in chapter 456-10 WAC.~~

~~(7) "Decision" means a written judgment or ruling, including orders, issued by the board of tax appeals or the designated hearing officers or agents of the board of tax appeals.~~

~~(8) "Party" means any person who in a proceeding before the board is an appellant, respondent, or an intervenor as allowed in WAC 456-09-340.~~

~~(9) "To submit") .~~

(i) "Submit" means to present or to deliver to the board. Submissions ((to the board)) may be delivered personally, by mail, by commercial delivery service, ((or)) by fax or by electronic transmission as provided in these rules. ~~((As used herein,))~~ The terms "to submit" and "to file" are used interchangeably.

~~((10) "To file" means to present or to deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to file" and "to submit" are used interchangeably.)~~ (j) "Transmit" means to deliver electronically.

(2) If a term has not been defined in this section, the board will interpret the term as having its ordinary meaning.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-110, filed 6/21/05, effective 8/1/05; WSR 95-05-033 (Order 95-01), § 456-09-110, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-110, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-110, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-210 Appearance and practice before the board. Practice before the board in formal proceedings ((shall be)) is limited to the following:

- (1) Taxpayers who are natural persons representing themselves;
- (2) Attorneys at law duly qualified and entitled to practice in the ~~((courts of the state of Washington))~~ highest court of any state;
- (3) An authorized officer, partner, or full-time employee of an individual firm, association, partnership, or corporation who appears ~~((for))~~ with the permission of such firm, association, partnership, or corporation;
- (4) County assessors or their duly authorized representatives;

- (5) Certified public accountants currently licensed in ((Washington)) any state; and
- (6) Other persons permitted by law.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-210, filed 6/21/05, effective 8/1/05; WSR 91-07-038 (Order 91-01), § 456-09-210, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-210, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-210, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-220 Rules of professional conduct. (1) All persons appearing in proceedings before the board ((, whether on their own behalf or in a representative capacity, shall conform to)) are required to follow the rules of professional conduct (RPC) required of attorneys before the courts of Washington. If any such person does not follow these standards, the hearing officer may, in his/her discretion and depending on the circumstances, admonish or reprimand such person, exclude such person from further participation in the proceedings, adjourn the hearing, or report the matter to the board. Outside of the proceedings, all persons are required to treat all parties, representatives, and the board's staff courteously and fairly.

(2) The board in its discretion, either upon referral by a hearings officer or on its own motion, after information comes to light that establishes to the board a question regarding a person's ethical conduct and fitness to practice before the board, and after notice and hearing, may take appropriate disciplinary action including, but not limited to, refusal to permit such person to appear or appear in a representative capacity in any proceeding before the board.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-220, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-220, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 95-05-033, filed 2/8/95, effective 3/11/95)

WAC 456-09-230 Ex parte communication. ((1) No one shall) Neither the board nor any person may make or attempt to make any ex parte communications with a member of the board, presiding officer, or tax referee which is prohibited by the Administrative Procedure Act. ((The board, in conducting a formal proceeding governed by the Administrative Procedure Act, may not make or attempt to make ex parte communications prohibited by such act.)) Attempts by anyone to make such prohibited ex parte communications ((shall)) will be subject ((such person)) to the sanctions ((of)) in WAC 456-09-220 and 456-09-750.

((2) The requirements and procedures of RCW 34.05.455 apply to ex parte communications.))

[Statutory Authority: RCW 82.03.170. WSR 95-05-033 (Order 95-01), § 456-09-230, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-230, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-230, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-300 ((Commencing the)) Initiating an appeal. (1)

~~((Persons wishing to make))~~ Those who wish to initiate an appeal must ~~((submit to the board))~~ file an original notice of appeal and a copy of the order or determination that is being appealed. ~~((The board will transmit a copy of the notice of appeal and a copy of the order or determination that is being appealed to the respondent(s) within thirty days of its receipt by the board.))~~

(2) The board will acknowledge ~~((to the appellant in writing))~~ receipt of a notice of appeal in writing to all parties in a timely fashion.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-300, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-310 Contents of notice of appeal. (1) ~~((For all appeals,))~~ An appellant must submit ~~((to the board))~~ a notice of appeal that substantially contains the following:

(a) The appellant's name, mailing address, telephone number, email address, and that of the representative, if any.

(b) The name of the respondent together with the respondent's mailing and email address, and phone number, if known.

~~((When the respondent is a government agency or agencies,))~~ The board may add additional respondents in order to ensure that all necessary ~~((persons))~~ entities are a party to the appeal.

(c) ~~((The date of the order or determination from which the appeal is taken together with))~~ A copy of the order, decision, or ~~((application))~~ determination appealed from.

(d) The ~~((nature))~~ type of ~~((the))~~ tax.

(i) In excise tax cases, the amount of the tax in controversy and the period ~~((covered thereby))~~ at issue;

(ii) In property tax cases, the parcel number of the property ~~((under appeal, the year for which the valuation has been determined, the full value as)),~~ the assessment-year at issue, the value determined by the local board of equalization, and ~~((a declaration of true and fair value as alleged by the appellant))~~ the appellant's contended value; and

(iii) In property tax exemption cases, the parcel number of the property ~~((under appeal)),~~ and the year(s) for which the exemption is at issue ~~((, the basis under which exempt status should be granted or denied, and the use of the property)).~~

- (e) ~~((Specification of the issue to be decided by the board.~~
- ~~(f) A clear, separate, and concise assignment of each error alleged and a short statement of facts upon which the appellant relies to sustain each contention.~~
- ~~(g)) A notice of ((intention)) intent that the hearing be formal and held pursuant to the Administrative Procedure Act.~~
- ~~((h)) (f) The relief sought.~~
- ~~((i)) (g) The signature ((of)) or acknowledgment, electronic or otherwise, by the appellant or the appellant's representative that all the information contained in the notice of appeal is true and correct to the best of his or her knowledge, and that he or she will comply with the rules of conduct in this chapter.~~
- (2) The board may, upon motion of a party or upon its own motion, require ~~((a more complete statement of the claim or defense or)) additional information or explanation of any matter stated in ((any)) a notice of appeal.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-310, filed 6/21/05, effective 8/1/05; WSR 98-22-039, § 456-09-310, filed 10/29/98, effective 11/29/98. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-310, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-310, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

- WAC 456-09-315 Deadlines for submitting ((the)) a notice of appeal.** (1) The jurisdiction of the board ~~((to hear an appeal))~~ is limited to those appeals ~~((submitted within))~~ that comply with and are filed by the deadlines stated in this section~~((Any appeal to the board shall be submitted within the time required by the statute governing the respective agency or proceeding involved. All time periods set forth below are expressed in calendar days including, but not limited to the following:))~~ or the statute governing the respective agency or proceeding involved.
- (a) ~~((Appeals))~~ For appeals of a denial of petition or notice of determination for a reduction or refund taken pursuant to RCW 82.03.190, ((thirty)) 30 days from the ((mailing of the determination)) date the determination was mailed or transmitted.
- (b) For appeals from a county board of equalization pursuant to RCW 84.08.130, ((thirty)) 30 days from the ((mailing of the decision)) date the decision was mailed or transmitted.
- (c) For appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, ((thirty)) 30 days from the ((mailing of the determination)) date the determination was mailed or transmitted.
- (d) For appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and ((the)) its apportionment ((thereof to a county)) made pursuant to chapters 84.12 and 84.16 RCW, ((thirty)) 30 days from the ((mailing of the order)) date the order was mailed or transmitted.
- (e) For appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of

any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075, ~~((fifteen))~~ 15 days ~~((after the mailing of the certification))~~ from the date the certification was mailed or transmitted.

(f) For appeals from the decisions of sale price of second class shorelands on navigable lakes by the department of natural resources pursuant to RCW 79.94.210, ~~((thirty))~~ 30 days from the ~~((mailing of the notification))~~ date the notification was mailed or transmitted.

(g) For appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060, ~~((thirty))~~ 30 days from the ~~((mailing of the ordinance))~~ date the ordinance was mailed or transmitted.

(h) For appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065, ~~((thirty))~~ 30 days after the ~~((publication of the))~~ rate was published.

(i) For appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091, on or before the ~~((sixtieth))~~ 60th day after the date of final adoption.

(j) For appeals from the denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850, ~~((thirty))~~ 30 days from the ~~((mailing of the determination))~~ date the determination was mailed or transmitted.

(2) All time periods set forth in this section are expressed in calendar days unless otherwise noted. If the last date for submitting the notice of appeal falls upon a Saturday, Sunday or legal holiday as defined in RCW 1.16.050(1), the submission ~~((shall))~~ will be considered timely if ~~((performed))~~ submitted on the next business day by 5:00 p.m. Pacific Standard Time.

(3) Any party may ~~((, by motion,))~~ file a written motion to challenge the jurisdiction of the board ((in any appeal)). The board may, upon its own motion, raise ~~((such jurisdictional issues))~~ a question about jurisdiction.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-315, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-315, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-315, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-325 Date and manner of submitting ((the)) a notice of appeal. (1) ~~((The date of submitting))~~ A notice of appeal ~~((shall be))~~ is considered submitted on the date of ~~((actual))~~ receipt by the board at its Olympia office if the notice of appeal is hand delivered. The board's date stamp ~~((placed thereon shall))~~ will be evidence of the date of receipt. If the notice of appeal is mailed, the postmark ~~((control and shall))~~ be evidence of the date of submission.

(2) ~~((All documents may be submitted with the board via fax machine or electronic mail transmission. However, the submission will not be deemed complete and the board will not acknowledge receipt of~~

~~the notice of appeal as provided in WAC 456-09-300 unless the following procedures are strictly observed:~~

~~(a) Documents received by fax machine or electronic mail will be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped "received" on the following business day. The date and time indicated by the board's fax machine or computer shall be evidence of the date and time of receipt of transmission.~~

~~(b) The original notice of appeal must be mailed and postmarked or otherwise submitted to the board on or before the date of fax or electronic transmission.~~

~~(c) All fax or electronic transmissions are sent at the risk of the sender.) A notice of appeal may be submitted by fax, electronic mail, or uploaded through the board's website. A submission will not be considered timely unless received by 5:00 p.m. Pacific Time on the date due. The date and time indicated by the board's fax or computer will be evidence of the date and time of receipt.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-325, filed 6/21/05, effective 8/1/05; WSR 98-22-039, § 456-09-325, filed 10/29/98, effective 11/29/98; WSR 95-05-033 (Order 95-01), § 456-09-325, filed 2/8/95, effective 3/11/95; WSR 94-07-044, § 456-09-325, filed 3/10/94, effective 4/10/94; WSR 91-07-038 (Order 91-01), § 456-09-325, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-325, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-325, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-335 Response to a notice of appeal. (1) The respondent ((may submit an original and three copies of a response to the notice of appeal with the board at least ten business days prior to hearing, unless otherwise ordered by the board, together with proof of service pursuant to WAC 456-09-345)) must submit a response to the notice of appeal within 30 calendar days of the board acknowledging receipt of the notice of appeal, unless otherwise ordered, together with proof of service pursuant to WAC 456-09-345.

(2) The response must include:

(a) The respondent's name, mailing address, telephone number, email address, and that of the representative, if any;

(b) The type of tax.

(i) In excise tax cases, the amount of the tax in controversy and the period at issue;

(ii) In property tax cases, the parcel number of the property, the assessment year at issue, and the respondent's contended value; and

(iii) In property tax exemption cases, the parcel number of the property, and the year(s) for which the exemption is at issue.

(c) A notice of intent that the hearing be formal and held pursuant to the Administrative Procedure Act;

(d) The relief sought; and

(e) A signature or acknowledgment, electronic or otherwise, by the respondent or the respondent's representative that all the information contained in the response is true and correct to the best of his or her knowledge, and that he or she will comply with the rules of conduct in this chapter.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-335, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-335, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-340 Intervention. (1) Any person or ~~((agency))~~ entity whose interest may be substantially affected by an appeal may petition the board to be granted status as an intervenor ~~((in the appeal))~~.

(2) In determining whether a petitioner qualifies as an intervenor, the presiding officer ~~((shall))~~ will apply the rules of the superior courts of this state.

(3) If the ~~((petitioner qualifies for))~~ presiding officer grants intervention, ~~((the presiding officer))~~ he or she may impose conditions upon the intervenor's participation ~~((in the proceedings))~~, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting ~~((the intervenor's))~~ participation to designated issues in which the intervenor has a particular ~~((interest as))~~ and demonstrated ~~((by the petition))~~ interest;

(b) Limiting the ~~((intervenor's))~~ use of discovery, cross-examination, and other procedures ~~((so as))~~ to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence ~~((and))~~ argument, cross-examination, discovery, and other participation in the proceedings.

~~((4) The presiding officer may timely grant or deny each petition and specify conditions, if any.)~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-340, filed 6/21/05, effective 8/1/05; WSR 95-05-033 (Order 95-01), § 456-09-340, filed 2/8/95, effective 3/11/95; WSR 89-10-056 (Order 89-02), § 456-09-340, filed 5/2/89.]

SERVICE OF ((PAPERS)) DOCUMENTS

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-345 Service ((of papers on parties)) and filing of documents and proof of service. (1) All notices, pleadings, exhibits, correspondence specific to an appeal, and other papers submitted to the board ((shall)) must be served ((upon)) on all counsel and representatives of record, and to unrepresented parties or ((upon)) on their designated agents ((designated by them or)), or to other persons or entities as required by law.

(a) Service ((shall)) must be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by fax ((and same-day mailing of copies)); ((or)) by commercial delivery company; or electronically.

(b) Service by mail ((shall be regarded as)) will be considered completed ((upon deposit in the United States mail,)) as evidenced by the postmark((, properly stamped and addressed)). Service by fax ((shall be regarded as)) will be considered completed ((upon production by the fax machine of)) as evidenced by a confirmation of transmission ((and deposit on the same day in United States mail)). Service by commercial ((parcel)) delivery ((shall be regarded as)) will be considered completed ((upon)) on delivery to the ((parcel)) delivery company((, properly addressed with charges prepaid)). Electronic service will be considered completed as evidenced by a sent receipt or the equivalent.

(c) Service must be completed by 5:00 p.m. Pacific Time on the date due.

(2) ((Where proof of service is required by statute or rule, receipt of the papers)) Receipt by the board, together with one of the following, ((shall constitute)) will serve as proof of service:

(a) ((An acknowledgment of service.

(b) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names).

(c) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Transmitting a copy thereof by fax, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

(iii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial delivery company.) A copy was mailed to each party or his or her attorney or representative;

(b) A copy was faxed, to each party to the proceeding or his or her attorney or representative;

(c) A copy was delivered to a commercial delivery company; or

(d) A copy was electronically transmitted to each party or his or her attorney or representative.

(3) All notices, pleadings, exhibits, correspondence specific to an appeal, and other papers are considered filed with the board:

(a) On the date of receipt by the board at its Olympia office if the document is hand delivered, commercially delivered, or mailed. The board's date stamp will be evidence of the date of receipt; or

(b) On the date and time indicated by the board's fax or computer, if the document is submitted by fax, electronic mail, or uploaded

through the board's website as long as the document shows it was received by 5:00 p.m. Pacific Time on the date due.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-345, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-345, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-510 Limitations on discovery. (1) ~~((Insofar as))~~ If applicable and not in conflict with this chapter, the board will apply the statutes and court rules regarding pretrial procedures and discovery used in civil cases in the state of Washington's superior courts ~~((of the state of Washington shall be used. Such statutes and rules shall include but shall not be limited to those rules pertaining to discovery of evidence by parties to civil actions))~~.

(2) The board may limit or prohibit discovery ~~((upon))~~ on its own motion or on a motion made by any party ~~((-~~

~~(3) The board may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 37 of the superior court civil rules))~~. The board may also condition the use of discovery on a showing of necessity and the unavailability of other means. In exercising such discretion, the board will consider the criteria set forth in RCW 34.05.446.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-510, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-510, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-520 Subpoena. Subpoenas ~~((shall))~~ will be issued and enforced, and witness fees paid, as provided in RCW 34.05.446. Parties ~~((wishing))~~ who wish to issue a subpoena must comply with the ~~((rules))~~ requirements in WAC 10-08-120.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-520, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-520, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-520, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-530 Settlement conference. (1) At any time prior to a hearing, the board may, ~~((upon))~~ on its own motion or ~~((upon))~~ a written ~~((application by))~~ request of a party, order a settlement conference. The conference ~~((shall))~~ will be scheduled with ~~((not less~~

than fourteen)) at least 14 calendar days' notice to each party, and occur at a time and place ((fixed)) determined by the board ((and conducted in a form and manner prescribed by the board with notice to the parties))).

(2) In the event ~~((the appeal does not settle,))~~ a settlement conference is unsuccessful, a hearing ((on the matter shall)) will be set. The presiding officer of the hearing will not be the person who ~~((conducts))~~ conducted the settlement conference.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-530, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-530, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-530, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-540 Prehearing conference. (1) The board, ~~((upon))~~ on its own motion or ~~((upon))~~ a request of a party, may conduct a prehearing conference ~~((or conferences))~~ to consider:

- (a) Simplification of issues;
- (b) The necessity or desirability of ~~((amendments to))~~ amending the pleadings or other documents;
- (c) The possibility of obtaining stipulations~~((,))~~ or admissions ~~((of fact and admissions of the genuineness of documents which will avoid unnecessary proof))~~;
- (d) Limitations on the number and consolidation of ~~((the))~~ wit-
ness examinations ~~((of witnesses))~~;
- (e) Procedural matters;
- (f) ~~((Dates by which the parties must provide documentary evi-~~
~~dence to the board and to other parties,))~~ Deadlines for completing
discovery, disclosures of fact and expert witnesses, submissions of
stipulations of facts and exhibit lists, and filing of briefs;
- (g) The ~~((method for))~~ manner of identifying exhibits and ~~((oth-~~
~~er))~~ attachments to briefs, motions, and other pleadings;
- (h) The number of copies ~~((of documentary evidence, briefs, mo-~~
~~tions and other pleadings))~~ to be submitted ~~((to the board))~~; and
- (i) ~~((Such))~~ Other matters ~~((as may aid in the disposition or~~
~~settlement of))~~ that may help to dispose of the case in whole or in
part, or streamline the proceeding.

(2) Prehearing conferences may be held by ~~((teleconference or at~~
~~a time and place))~~ phone, video, or other electronic means, or in-per-
son as specified by the presiding officer.

(3) Following the prehearing conference, the board ~~((shall))~~ will issue an order ~~((reciting))~~ outlining the action taken at the prehear-
ing conference, and ((the)) any agreements made by the parties ~~((con-~~
~~cerning all of the matters considered))~~. The order ~~((shall))~~ will control the ~~((subsequent))~~ course of the proceeding unless modified for good cause by a subsequent order.

(4) Documentary evidence that is not submitted ~~((in accordance~~
~~with))~~ as outlined in the prehearing conference order ~~((may))~~ will not be ~~((received in))~~ allowed into evidence ~~((in the absence of))~~ absent a clear showing that the ~~((offering))~~ party offering the evidence had good cause for ~~((the failure))~~ failing to comply with the order.

(5) Nothing in this rule ((shall)) will be construed to limit the right of the parties to ((attempt settlement)) settle the appeal at any time.

(6) The board has authority to issue a prehearing order even if a prehearing conference has not been held.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-540, filed 6/21/05, effective 8/1/05; WSR 95-05-033 (Order 95-01), § 456-09-540, filed 2/8/95, effective 3/11/95; WSR 89-10-056 (Order 89-02), § 456-09-540, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-545 Summary judgment. A motion for summary judgment may be granted ((and an order issued)) if the written record shows that, viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue as to any material fact and that ((the moving)) a party is entitled to judgment as a matter of law. Motions for summary judgment must comply with WAC 456-09-555.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-545, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-550 Time ((in which)) for filing evidence, briefs, ((and)) replies ((must be submitted)), witness lists, stipulations, and documentary evidence. (1) In the absence of a prehearing order, evidence, briefs, and other documents must be submitted to the board ((within the times stated below.

~~(1))~~ by the following deadlines:

(a) A list of fact or expert witnesses who will testify at the hearing must be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least 100 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(b) Any factual stipulations must be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least 55 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(c) Documentary evidence ((which is)) to be introduced at a hearing ((shall)) must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Documentary evidence must be introduced at least ((ten business)) 38 calendar days ((prior to)) before the hearing. Each page of documentary evidence ((shall)) must be numbered and indicate whether it is submitted by the appellant or respondent ((and shall be numbered)). ((Failure to comply may be grounds for exclusion of such evidence or dismissal in accordance with WAC 456-09-750.

~~(2) An original and three copies of briefs, if any, shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least fifteen calendar days prior to hearing.~~

~~(3) An original and three copies of reply briefs, if any, shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least ten calendar days prior to hearing.~~

~~(4) Documentary evidence submitted to a board of equalization and forwarded to this board is excepted from the requirements of this provision.) A list of the documentary evidence submitted must be filed at the same time.~~

(d) Pretrial motions, if any, must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Pretrial motions must be submitted at least 38 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(e) Summary judgment motions, if any, must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Summary judgment motions must be submitted at least 38 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(f) Trial briefs are required and must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Trial briefs must be submitted at least 31 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(g) Replies to any motion or brief are optional, but if filed they must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Replies must be submitted at least 17 calendar days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(h) Posthearing briefing and proposed findings of fact and conclusions of law may be required by the board. If so, this document must be submitted together with proof of service pursuant to WAC 456-09-345. Proposed findings of fact and conclusions of law must be received by the board no later than the date specified by the board, or if no date is specified, no later than 21 calendar days after a hearing. Three copies are required if the proceeding occurs in front of the entire board.

(2) Failure to comply with these requirements may be grounds to exclude the evidence, witness, reply, or brief, or to dismiss the appeal in accordance with WAC 456-09-750.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-550, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-550, filed 5/2/89.]

NEW SECTION

WAC 456-09-551 Limits on exhibits and evidence. (1) Each party must indicate the specific pages it intends to rely on, if any, from the body from which the party appeals. Failure to indicate specific page numbers will result in the presumption that the party does not intend to rely on the underlying record, and instead intends to submit and rely only on new evidence.

(2) Each party may submit evidence and/or exhibits in support of its appeal; however, submissions are limited to the page limitations below. These page limitations exclude the findings or determination of the body from which the decision or finding is appealed, audit documents, property tax assessments, and formal appraisals from a licensed appraiser:

(a) For residential property tax appeals, each party is limited to submitting a total of 175 pages per assessment-year appealed, including any evidence from the record of the county board of equalization that the party intends to rely on;

(b) For commercial property tax appeals, each party is limited to submitting a total of 275 pages per assessment-year appealed, including any evidence from the record of the county board of equalization that the party intends to rely on;

(c) For property tax exemption appeals, each party is limited to submitting a total of 375 pages, including any evidence from the record of the department of revenue that the party intends to rely on;

(d) For department of revenue excise tax appeals, each party is limited to submitting a total of 500 pages, including any evidence from the record of the department of revenue that the party intends to rely on, if any;

(e) For all other appeals, including appeals to reconvene a county board of equalization, each party is limited to submitting a total of 175 pages, including any evidence from the record of the body from which a decision is appealed, and which the party intends to rely on.

(3) A party may file a motion with the board to submit evidence and/or exhibits up to 1,000 pages, which the board will grant for good cause. Requests for submissions beyond 1,000 pages are strongly discouraged, and will only be granted if justice so requires. Exceeding the page limits without the board's advance, written permission may result in the hearing being continued, or the exclusion of evidence beyond the page limits.

(4) For property tax appeals, the board strongly encourages each party to submit the following exhibits or evidence in the following instances:

(a) A table of comparable sales if the party intends to rely on such evidence. The table should include at least the age, size, sales price, date of sale, and location relative to the subject property of each comparable sale. A suggested table is available on the board's website or by contacting the board's staff.

(b) An income approach to valuation outline if the party intends to rely on such evidence. The outline should include at least the subject property's square footage, contended price per square foot, vacancy rate, operating expenses, and capitalization rate.

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AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-552 Amicus. (1) Any person or entity whose interest may be substantially affected by a proceeding before the board may ~~((by motion))~~ request status as an amicus ~~((in the case))~~. ~~The ((motion))~~ request must be made by written motion, and must comply with WAC 456-09-555 and 456-09-345.

(2) The motion requesting amicus status must include ~~((a state-ment of the following))~~:

(a) The applicant's interest, or the interest of the person or group represented by applicant, in the proceeding before the board;

(b) The applicant's familiarity with the issues ~~((involved))~~ in the proceeding before the board, and with the scope of the arguments presented or to be presented by the parties;

(c) The specific issues to which the ~~((amicus curiae))~~ brief will be directed; and

(d) The applicant's reason ~~((for believing that))~~ as to why additional argument is necessary on ~~((these specific))~~ the issues identified.

(3) ~~The ~~((brief of))~~ deadline for filing an amicus ~~((curiae may be filed with the motion but must be filed no later than the time set))~~ brief is the same as the deadline for the filing of the brief for the party whose position the amicus supports.~~

(4) The board, on its own motion and with notice to the parties, may request a brief of amicus ~~((curiae))~~ from any person or entity deemed to be substantially affected by a proceeding ~~((before the board))~~.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-552, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-555 Motions. (1) Any ~~((application))~~ request for an order or ruling or a request for relief ~~((from any provision of this chapter))~~ is considered a motion. Every motion, unless made during hearing, ~~((shall))~~ must be in writing and ~~((shall))~~ include ~~((the following))~~:

(a) A statement of the relief ~~((or order))~~ sought;

(b) The ~~((reason))~~ basis for the relief ~~((or order))~~;

(c) A statement that the moving party ~~((has))~~ made a good faith effort to meet and confer with the other party or parties to resolve the subject ~~((matter))~~ of the motion;

~~((The amount of time needed for argument;~~

~~Whether court reporting services are requested; and~~

~~((Shall include))~~ A request for oral argument, if any, and if so, how much time the party desires;

(e) Proof of service pursuant to WAC 456-09-345; and

(f) A proposed order.

(2) All motions ~~((shall))~~ must be properly captioned and signed by the party, their attorney, or their representative.

(3) At the discretion of the board, ~~((the))~~ a hearing on a motion may be ~~((by teleconference or in person))~~ held in person, by phone, by video, or by other electronic means.

(4) A response to ~~((the))~~ a motion ~~((shall))~~ must be submitted to the board and opposing parties within 14 calendar days of the date the motion was served on the responding party together with proof of service pursuant to WAC 456-09-345 ~~((within ten business days following the date of service of the motion))~~.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-555, filed 6/21/05, effective 8/1/05.]

NEW SECTION

WAC 456-09-557 Requirements for briefs, motions, responses, replies, memorandum, and other documentary evidence. (1) All briefs, motions, responses, replies, and memorandum must:

(a) Be legibly printed on letter-size paper (8-1/2 by 11 inches). All margins must be a minimum of one inch. This rule also applies to attachments unless the nature of the attachment makes compliance impractical.

(b) Be double spaced and in 12 point or larger type in one of the following fonts or their equivalent: Times New Roman, Courier, CG Times, or Arial. Footnotes may be single spaced in 10 point or larger type. This rule also applies to attachments unless the nature of the attachment makes compliance impractical.

(c) Include a signature block that the signer certifies the number of words in the brief, motion, or memorandum that substantially states: "I certify that this memorandum contains words, in compliance with the board's rules."

(d) Refrain from including, or partially redact where inclusion is necessary, the following personal data identifiers from all documents filed or used as exhibits, unless otherwise ordered by the board:

(i) Dates of birth - Redact to the year of birth, unless deceased;

(ii) Social Security numbers and taxpayer-identification numbers - Redact in their entirety;

(iii) Financial accounting information - Redact to the last four digits; and

(iv) Driver license numbers - Redact in their entirety.

(2) In the absence of a prehearing order, the following word limits will apply:

(a) Trial briefs may not exceed 5,000 words (approximately 10 pages).

(b) Motions *in limine* and any brief in opposition may not exceed 9,000 words (approximately 18 pages).

(c) Dispositive motions, including motions for summary judgment and motions to dismiss, must not exceed 12,000 words (approximately 24 pages). Responses must not exceed 12,000 words, and replies 6,000 words (approximately 12 pages).

(d) Exceptions and motions for reconsideration and any responses must not exceed 3,000 words (approximately six pages).

(e) All other motions must not exceed 3,000 words (approximately six pages), and responses 1,500 words (approximately three pages).

(3) The board may refuse to consider any text, including footnotes, which is beyond the word limit. Captions, tables of contents, tables of authorities, signature blocks, and certificates of service need not be included within the word limit.

(4) Motions to file over-length motions or briefs are disfavored, but may be filed subject to the following:

(a) The motion must be no more than 1,000 words (approximately two pages) in length, and must request a specific number of additional words; and

(b) No opposition to the motion may be filed unless requested by the board.

If the board grants leave to file an over-length motion, the brief in opposition will automatically be allowed an equal number of additional words. In all cases, the reply brief cannot exceed one-half the total length of the brief filed in opposition.

[]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-560 Postponement, continuance, and extensions of time. (1) Postponements, continuances, and extensions of time may be ordered by the board on its own motion.

(2) Requests to postpone, continue, extend the time, or reschedule the prehearing conference (, if any, and the initially scheduled hearing date of an appeal will be freely granted provided such request is made within the time specified in the board's letter setting the prehearing conference, if any, and the initial hearing date) must be made in writing and comply with WAC 456-09-555 and 456-09-345. The board will freely grant a party's first request. For second and subsequent requests, the moving party must show good cause as to why a new date and time is needed.

(3) Requests to postpone, continue, extend the time, or reschedule the hearing date must be made in writing, comply with WAC 456-09-555 and 456-09-345, and be filed 30 calendar days before the scheduled hearing. The board will freely grant a party's first request. For second and subsequent requests, the moving party must show good cause as to why a new date and time is needed. The presiding officer will decide whether to hear argument and will rule on the request.

(4) Other requests for a postponement, continuance, or extension of time must be timely, in writing, and comply with WAC 456-09-555 and 456-09-345. ((The board shall promptly schedule a conference to hear argument and rule on the request. Requests for continuance will not be granted absent a showing of good cause)) The presiding officer will decide whether to hear argument and will rule on the request.

((4)) (5) This section ((shall)) does not extend any ((applicable time for appeal to this board)) deadline to file an initial appeal.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-560, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-560, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-565 Teleconference proceeding. ~~((1) At the discretion of the board, and where the rights of the parties will not be prejudiced thereby,)) All or part of ((the)) a hearing, prehearing, or settlement conference may be conducted by ((telephone, television)) phone, video, or other electronic means. Each party and participant in the proceeding ((must)) will have an opportunity to hear and effectively participate ((effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.~~

~~(2) The board may require documentary evidence to be submitted sufficiently in advance of)) in the proceeding.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-565, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-570 Requirements for a notice of hearing. (1) A notice of a hearing will be ((mailed)) sent or transmitted to all parties and to ((all persons having submitted written petitions to intervene not less than twenty)) those granted intervention or amicus status at least 20 calendar days before the hearing date unless a different period is required by law. The notice ((shall)) will include the information specified in RCW 34.05.434, and ((if)) whether the hearing ((is to)) will be conducted by ((teleconference call the notice shall so state)) phone, video or other electronic means.

(2) The notice ((shall)) will state that if a limited-English speaking or hearing-impaired party or witness needs an interpreter, a qualified interpreter will be appointed ((and that there will be)) at no cost ((to the party or witness)). The notice will include a form to indicate whether an interpreter is needed and in what language and dialect.

(3) The notice ((shall)) will also state that ((persons)) a party or witness with disabilities may request reasonable accommodations to allow ((their participation in the hearing)) for effective participation in the proceedings. The notice ((shall)) will include a form ((for a party to indicate if an interpreter is needed and identification of the primary language, or if a participant is hearing impaired, or)) to describe the reasonable accommodations requested.

~~((3) Defects in notice)) (4) Notice of the requirements listed in this section may be waived if the waiver is knowing and voluntary.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-570, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-570, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-575 (~~(Notice of)~~) Hearing (~~(to)~~) notices for limited-English speaking parties. (~~((1) When an agency))~~ If the board is notified or otherwise made aware that a limited-English-speaking person as defined in RCW 2.43.020 is a party, all notices (~~((concerning))~~) about the hearing, including (~~((notices of hearing,))~~) continuances (~~((,))~~) and dismissals (~~((, either))~~):

(~~((a) Shall))~~) (1) Must be written in the primary language of the party; or

(~~((b) Shall))~~) (2) Must include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and responding to the notice.

(~~((2) For purposes of this chapter, the term "limited-English-speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the English language. The term has the same meaning as "non-English-speaking person" as defined in RCW 2.43.020.))~~)

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-575, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-740 Testimony under oath. (1) (~~((All testimony to be considered by the board shall be sworn, and each person shall swear or affirm that the testimony to be given shall be the truth, the whole truth, and nothing but the truth, or according to the provisions of chapter 5.28 RCW.))~~) Every person testifying before the board must swear or affirm in any manner allowed in chapter 5.28 RCW that the person's testimony will be truthful.

(2) Every interpreter (~~((shall, before beginning to interpret,))~~) will take an oath affirming that the interpreter will make a true interpretation (~~((will be made))~~) to the person being examined (~~((of all the proceedings))~~) in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the board, in the English language, to the best of the interpreter's skill and judgment.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-740, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-740, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-740, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-742 Recording devices. (1) All hearings (~~((shall))~~) will be (~~((officially))~~) recorded by manual, electronic, or other (~~((type of))~~) recording device.

(2) Photographic and recording equipment of others (~~((shall))~~) will be permitted at hearings; however, the presiding officer may impose such conditions upon their use as deemed necessary to prevent disruption of the hearing, or when a statute or law limits such use.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-742, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-742, filed 5/22/90, effective 6/22/90.]

NEW SECTION

WAC 456-09-743 Hearing procedure. (1) Unless otherwise ordered, hearings will be conducted in the following format:

- (a) Administration of an oath to all persons testifying;
- (b) The appellant's opening statement;
- (c) The respondent's opening statement;
- (d) The appellant's case in chief:
 - (i) Direct examination of witness;
 - (ii) Cross-examination by the respondent;
 - (iii) Redirect examination by the appellant;
 - (iv) Recross examination;
 - (v) The above procedure is followed for each witness.
- (e) The respondent's case in chief:
 - (i) Direct examination of witness;
 - (ii) Cross-examination by the appellant;
 - (iii) Redirect examination by the respondent;
 - (iv) Recross examination;
 - (v) The above procedure is followed for each witness.
- (f) The appellant's closing argument;
- (g) The respondent's closing argument;
- (h) The appellant's closing rebuttal;

(2) The board may pose questions to the parties, their representatives, and any witnesses at any time during the hearing.

[]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-745 Failure to attend and hearing on the record. (1) When a party (~~((to these proceedings))~~) has (~~((, after notice,))~~) failed to attend a hearing after receiving timely notice, the board will consider a motion for default or dismissal (~~((may be sought))~~) brought by any party to the proceedings or (~~((raised by the board upon))~~) on its own motion. (~~((Any such order shall))~~) An order for default or dismissal

will include ~~((a statement of the grounds))~~ the reason for the order and ~~((shall))~~ will be served upon all parties ~~((to the proceeding))~~.

Within ~~((ten business))~~ 10 calendar days ~~((after))~~ of service of the default order or dismissal ~~((under this section))~~, the party against whom the order was entered may submit ~~((to the board together with proof of service pursuant to WAC 456-09-345))~~ a written objection requesting that the order be vacated ~~((and stating the specific grounds relied upon))~~. The objection must state the specific reasons why the order should be vacated together with proof of service pursuant to WAC 456-09-345. The board may ~~((, for good cause,))~~ set aside ~~((an entry of))~~ a dismissal ~~((,))~~ or default ~~((, or final order))~~ for good cause.

~~((2))~~ ~~((Upon stipulation by both parties, an appeal may be submitted to the board))~~ If the parties agree in writing and the presiding officer approves, the board may hold an appeal on the record and the attendance of ~~((a party may be excused. However, the board in its discretion may require attendance for argument))~~ one or more parties will not be required.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-745, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-745, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-750 Dismissal, stipulation, and withdrawal of actions. ~~((Any action))~~ (1) An appeal may be dismissed ~~((by the board))~~ for any of the following reasons ~~((-~~

~~((1-When))~~ :

~~((a))~~ (a) All parties ~~((se))~~ stipulate to dismissal. Stipulations ~~((on))~~ of the value of real property ~~((shall contain))~~ must include the parcel number, assessment year(s), the agreed upon value(s) of the subject property, and a brief statement supporting the agreed upon value(s). The board may request additional information as to the reason or reasons for the stipulation.

~~((2))~~ As a matter of right when the appellant requests in writing to withdraw the appeal prior to the scheduled hearing.

~~((3))~~ Upon motion of the appellant at the hearing prior to the presentation of the respondent's case.

~~((4))~~ (b) The appellant makes a motion to dismiss or withdraw the appeal any time before the respondent presents his or her case.

(c) Upon motion by the respondent alleging that the appellant has failed to prosecute the case, failed to comply with this chapter, or failed to follow any order of the board.

~~((5))~~ (d) Upon the board's own motion for failure by the parties to comply with applicable rules or any order of the board.

(2) An appeal will be dismissed when the appellant requests in writing to withdraw the appeal before the scheduled hearing.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-750, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-750, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-755 Rules of evidence and admissibility criteria.

(1) All relevant evidence, including hearsay (~~(evidence)~~), is admissible if, in the opinion of the board, (~~(the offered evidence)~~) it is the kind of evidence (~~(on which)~~) that a reasonably prudent person (~~(s are)~~) is accustomed to (~~(rely in the conduct of their)~~) relying on his or her business affairs. The board may exclude evidence (~~(that is excludable on)~~) for constitutional or statutory (~~(grounds or on the basis of evidentiary)~~) reasons or for a privilege recognized in the courts of this state. The board may also exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) The board's experience, technical knowledge, competency, and specialized knowledge may be used (~~(in evaluation of)~~) to evaluate evidence.

(3) If not inconsistent with subsection (1) of this section, the board may (~~(refer to)~~) rely on, but (~~(shall)~~) will not be bound by, the Washington rules of evidence.

(4) Copies or excerpts of documentary evidence may be submitted (~~(in the form of copies or excerpts, or by incorporation by reference)~~) instead of the original evidence.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-755, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-755, filed 5/2/89.]

NEW SECTION

WAC 456-09-763 Record evidence. (1) A board of equalization or other tribunal should submit their record in a numbered format specified by the board. If the record is not properly numbered, the board will number the record.

(2) Parties relying on evidence from a board of equalization or other tribunal must indicate which pages they intend to rely on. Failure to do so will be considered by the board to indicate that the party does not want the record considered and will instead submit other evidence.

(3) The board will not review the record of a county board of equalization or any other tribunal that is unduly large or disorganized.

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AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-765 Official notice. (1) The board may take official notice of the following:

- (a) Any judicially cognizable facts;
- (b) Any matter of public record;
- (c) Technical or scientific facts within the agency's specialized knowledge; and

(d) Codes or standards that have been adopted by ~~((an agency of the United States, of this state or of another state,))~~ any state or federal agency or by a nationally recognized organization or association.

(2) ~~((If any decision is stated to rest in whole or in part upon official notice of a fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by petition for review if such notice is taken in an initial decision pursuant to WAC 456-09-930 or by a petition for reconsideration if notice of such fact is taken in a final decision pursuant to WAC 456-09-955. Such controversion shall))~~ Any party may controvert such a fact by filing a petition for review of an initial decision pursuant to WAC 456-09-930 or by a petition for reconsideration of a final decision pursuant to WAC 456-09-955. The petition must concisely and clearly set forth the sources, authority, and other data relied upon to show the existence or nonexistence of the fact assumed or denied in the decision.

(3) A party ~~((proposing that))~~ asking the board to take official notice ~~((be taken))~~ may be required to produce a copy of the material to be noticed.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-765, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-765, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-910 Assistance to the board. (1) The board may obtain assistance ~~((concerning the appeal of any case within the scope of))~~ from a county board of equalization as allowed by RCW 82.03.130 (1) (b) ~~((appeals from a county board of equalization))~~, or from the staff of the department of revenue as provided by RCW 82.03.160. If the board intends to seek assistance, the board will notify the parties ~~((of its intent to seek such assistance and the matters sought to be investigated before contacting the department of revenue.))~~ and indicate the reason or reasons for seeking such assistance. Once notified, the parties may recommend an alternative to the board to achieve the same objectives ~~((without contacting the department of revenue.)).~~

(2) Any evidence from the department of revenue ~~((concerning assistance requested))~~ about requested assistance under this section ~~((shall))~~ will only be presented in an open hearing after notice to all parties.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-910, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-910, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-915 ((Presentation of)) Posthearing evidence. Unless requested ~~((by the board, no posthearing))~~, the board will not accept

any evidence ((will be accepted)) after a hearing unless such evidence could not reasonably have been anticipated ((or discovered prior to hearing. The board may request that the parties submit posthearing briefing or proposed findings of fact and conclusions of law)) before the hearing.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-915, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-915, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-920 ((Initial or final)) Contents of a decision. Every decision, whether initial or final, ((shall)) will:

(1) Be ((correctly)) captioned ((as to the name of the board and)) to include the name of the proceeding;

(2) Designate all parties and representatives participating in the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) Contain ((appropriate numbered)) findings of fact ((meeting the requirements)) in a manner outlined in RCW 34.05.461;

(5) Contain ((appropriate numbered)) conclusions of law, including citations of statutes and rules relied upon in a manner outlined in RCW 34.05.461;

(6) ((Contain)) Indicate whether it is an initial or final decision ((disposing of all contested issues)), and whether all contested issues have been resolved; and

(7) Contain a ((statement describing the)) description of available posthearing remedies.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-920, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-920, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-925 Initial decision. (1) ((An initial decision shall be prepared)) The board will issue an initial decision when:

(a) An appeal has been heard by only one member of the board;

(b) An appeal has been heard by only two members of the board ((at a time)) when there is no vacancy ((on the board)) and the two members cannot agree on ((a conclusion;)) an outcome. In such instances, the third member of the board will review the decision; or

(c) An appeal has been heard by a hearing officer((; or

~~(d) The board shall otherwise elect to do so).~~

(2) ((If a petition for review as provided in WAC 456-09-930 is not submitted to the board within twenty calendar days of the date of mailing of the initial decision, the initial decision shall be deemed the final decision of the board unless the decision specifies otherwise.)) An initial decision will be considered a final decision 20

calendar days after transmission to or service on the parties unless a petition for review is timely filed and served as provided in WAC 456-09-930.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-925, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-925, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-925, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-930 Petition for review of an initial decision, replies, and disposition. (1) ~~((Any party to an adjudicative proceeding may make a))~~ A party may petition for review of an initial decision. A petition for review of an initial decision is also referred to as an exception.

(2) ~~((The))~~ A petition for review ((shall be made, by mail or otherwise, with)) must be sent or transmitted to the board within ((twenty)) 20 calendar days of the date ((of mailing of)) the initial decision was transmitted unless ((the decision specifies)) specified otherwise ((together with)). Proof of service must be filed with the board pursuant to WAC 456-09-345.

(3) ~~((The))~~ A petition for review ((shall specify the)) must indicate which portions of the initial decision ((to which exception is taken and shall refer to the evidence of record which is relied upon to)) or what evidence in the record supports the petition.

(4) Any party may make a reply to a petition for review within 10 calendar days of the date the petition is served on the opposing party or parties. The ((reply shall be made, by mail or otherwise, with the board together with proof of service pursuant to WAC 456-09-345 within ten business days of the date of the letter acknowledging receipt by the board of the petition for review)) response, if any, must be sent or transmitted to the board together with proof of service pursuant to WAC 456-09-345.

(5) ~~((The disposition may be in the form of a written order denying the petition and adopting the initial decision as the final decision, granting the petition and issuing a final decision, or granting the petition and setting the matter for further hearing. The board may require the parties to submit written briefs or statements of position or to appear and present oral argument regarding the matters on which review was sought, within such time and on such terms as may be prescribed.))~~ The board will address a petition for review in a written order. The board may require the parties to submit briefs or to appear and present oral argument on the petition.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-930, filed 6/21/05, effective 8/1/05; WSR 95-05-033 (Order 95-01), § 456-09-930, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-930, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-930, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-955 Petition for reconsideration of a final decision.

(1) A petition for reconsideration of a final decision is not available where an initial decision was first issued, unless:

(a) The alleged error or errors could not have been previously addressed in an exception to the initial decision; or

(b) The alleged error or errors are of constitutional concern.

(2) After ~~((a final decision has been issued))~~ the board issues a final decision, any party may submit a petition for reconsideration ~~((with the board))~~ as provided ~~((by))~~ in RCW 34.05.470. ~~((Such))~~ The petition must be ~~((made, by mail or otherwise, within ten business days from the mailing of the final decision, and shall state the specific grounds upon which relief is requested. The petition for reconsideration shall be submitted to the board and served upon all parties and representatives of record in compliance with WAC 456-09-345. The board may require or a party may at its own option, within ten business days of the date of the letter acknowledging receipt by the board of the petition for reconsideration, submit to the board a response together with proof of service pursuant to WAC 456-09-345.~~

~~(2) The petition shall be deemed denied if, within twenty calendar days from the date the petition is received by the board, the board does not either dispose of the petition; or provide the parties with a written notice specifying the date by which it will act on the petition.~~

~~(3) The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final decision, or granting the petition and setting the matter for further hearing. The board may require the parties to submit written briefs or statements of position or to appear and present oral argument within such time and on such terms as may be prescribed.)~~ submitted to the board and served on all parties or their representatives within 14 calendar days from the date the final decision was sent or transmitted to the parties together with proof of service as outlined in WAC 456-09-345. The petition must also state the specific grounds for relief.

(3) The party opposing a petition for reconsideration must submit a response together with proof of service pursuant to WAC 456-09-345. The response must be filed within 10 calendar days of the date the petition for reconsideration was served on the responding party.

(4) The board must accept or deny a petition within 30 calendar days from the date a petition is served on the opposing party. If the board does not act within this time period, the petition is deemed to be denied.

(5) Except as outlined in subsection (4) of this section, the board will address a petition by written order. The board may also require the parties to submit briefs or to appear and present oral argument on a petition.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-955, filed 6/21/05, effective 8/1/05; WSR 95-05-033 (Order 95-01), § 456-09-955, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-955, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-955, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-960 Record on appeal. ~~((1))~~ When an appeal is ~~((taken))~~ made to superior court ~~((from a decision of the board rendered in a formal proceeding, the appealing party is responsible for ordering and paying for the transcript of the testimony from the court reporter.~~

~~(2) If a petition for judicial review of a final order is made, by stipulation the parties may agree to shorten the record to be filed with the court. Either party unreasonably refusing to stipulate to such a limitation, including shortening or selecting only portions of a transcript, may be ordered to pay the additional costs involved as allowed in RCW 34.05.566), the appealing party is responsible for ordering and paying for a transcript of the board's hearing.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-960, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-960, filed 5/22/90, effective 6/22/90.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 456-09-120	Organization and office.
WAC 456-09-130	Quorum.
WAC 456-09-140	Meetings of the board.
WAC 456-09-215	Notice of appearance by representatives.
WAC 456-09-330	Amendments to notice of appeal.
WAC 456-09-762	Hearings—Interpreters.
WAC 456-09-970	Applicability of SEPA guidelines.