

WSR 24-21-162

PROPOSED RULES

BOARD OF TAX APPEALS

[Filed October 23, 2024, 9:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-15-136 and 24-15-135.

Title of Rule and Other Identifying Information: WAC 456-09-230 Ex parte communication, 456-09-550 Time for filing evidence, briefs, replies, witness lists, stipulations, and documentary evidence, 456-09-555 Motions, 456-09-560 Postponements, continuances, and extensions of time, 456-09-743 Hearing procedure, 456-09-745 Failure to attend and hearing on the record, 456-10-110 Definitions, 456-10-230 Ex parte communication, 456-10-310 Contents of a notice of appeal, 456-10-365 Limits on exhibits and evidence, 456-10-505 Time for filing evidence, briefs, replies, and documentary evidence, 456-10-510 Motions, 456-10-515 Postponements, continuances, and extensions of time, 456-10-540 Hearing procedure, and 456-10-550 Failure to attend and hearings on the record.

Hearing Location(s): On December 2, 2024, at 1:30 p.m., electronic meeting via Teams, information on agency website.

Date of Intended Adoption: December 24, 2024.

Submit Written Comments to: Keri Lamb, P.O. Box 40915, Olympia, WA 98504, email bta@bta.wa.gov, fax 360-586-9020, beginning October 23, 2024, by November 15, 2024.

Assistance for Persons with Disabilities: Contact Keri Lamb, phone 360-753-5446, fax 360-586-9020, email bta@bta.wa.gov, by November 15, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 456-09-230 clarification regarding contacting administrative staff or the executive director, 456-09-550 remove requirement for prior approval for reply briefs, 456-09-555 remove requirement for proposed order and allow provisions for faster responses to emergency motions, 456-09-560 remove language regarding party's first request for continuance, 456-09-743 add language to clarify procedure when the respondent has the burden of proof, 456-09-745(1) change party to appellant, 456-10-110 add clarification that filings are due by 5:00 p.m. to conform with other established deadlines, 456-10-230 clarification regarding contacting administrative staff or executive director, 456-10-310 add name of representative as required in subsection (1)(b), 456-10-365 remove requirement to specify pages of the board of equalization record, 456-10-505 clarify that the prehearing order controls where issued, 456-10-510 allow provisions for faster response time frame for responses to emergency motions, 456-10-515 remove language regarding a party's first request for continuance, 456-10-540 add language to clarify procedure when the respondent has the burden of proof, and 456-10-550(1) change party to appellant.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 82.03.090

Statute Being Implemented: Chapters 35.05 and 82.03 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 it-

self has drafted the proposed changes, and therefore recommends them in full.

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

Name of Agency Personnel Responsible for Drafting: Keri Lamb, 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. These are procedural rules regarding agency hearings.

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; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

October 23, 2024
Claire Hesselholt
Chair

OTS-5932.2

AMENDATORY SECTION (Amending WSR 22-05-051, filed 2/9/22, effective 3/12/22)

WAC 456-09-230 Ex parte communication. 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. Attempts by anyone to make such prohibited ex parte communications will be subject to the sanctions in WAC 456-09-220 and 456-09-750. Communication with the board's administrative staff or executive director are not considered ex parte communication.

AMENDATORY SECTION (Amending WSR 22-23-080, filed 11/14/22, effective 12/15/22)

WAC 456-09-745 Failure to attend and hearing on the record. (1) ~~((When a party has failed))~~ If an appellant fails to attend a hearing after receiving timely notice, the board will consider a motion for default or dismissal brought by any party to the proceedings or on its own motion. An order for default or dismissal will include the reason for the order and will be served upon all parties.

Within 14 calendar days of service of the default order or dismissal, the party against whom the order was entered may submit a written objection requesting that the order be vacated. 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 set aside a dismissal or default for good cause.

(2) If the parties agree in writing and the presiding officer approves, the board may hold an appeal on the record and the attendance of one or more parties will not be required.

OTS-5933.1

AMENDATORY SECTION (Amending WSR 22-05-051, filed 2/9/22, effective 3/12/22)

WAC 456-09-550 Time for filing evidence, briefs, replies, 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 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 to be introduced at a hearing must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Documentary evidence must be introduced at least 38 calendar days before the hearing. Each page of documentary evidence must be numbered and indicate whether it is submitted by the appellant or respondent. 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) Responses or response briefs are not required, but if submitted to the board, the responding party must include proof of service pursuant to WAC 456-09-345. Responses and response briefs must be sub-

mitted according to the timeline outlined in the prehearing order. Three copies are required if the proceeding occurs in front of the entire board.

(h) Replies to any motion or brief are (~~only permitted with written permission. If allowed, replies~~) not required but when filed 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.

(i) 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 or the prehearing order may be grounds to exclude evidence, witnesses, replies, responses, or briefs, or to dismiss the appeal in accordance with WAC 456-09-750.

OTS-5934.3

AMENDATORY SECTION (Amending WSR 22-05-051, filed 2/9/22, effective 3/12/22)

WAC 456-09-555 Motions. (1) Any request for an order or ruling or a request for relief is considered a motion. Every motion, unless made during hearing, must be in writing and include:

(a) A statement of the relief sought;

(b) The basis for the relief;

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

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

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

~~(f) A proposed order~~).

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

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

(4) A response to a motion 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.

(5) (~~Replies are not permitted absent prior permission of the board. The board will consider a request to file a reply within 24 hours of a response being filed. If granted, the~~) Any reply must be filed within five calendar days of the board's receipt of the response. A reply is limited to addressing the facts and arguments presented in the response.

(6) In cases where good cause is shown for a motion to be filed less than 14 days before a hearing or significant submission date, the board may alter the response deadline. The board will notify the parties of changes to response deadlines within one business day of the motion filing.

OTS-5935.1

AMENDATORY SECTION (Amending WSR 22-05-051, filed 2/9/22, effective 3/12/22)

- 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 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 presiding officer will decide whether to hear argument and will rule on the request.
- (5) This section does not extend any deadline to file an initial appeal.

OTS-5936.1

AMENDATORY SECTION (Amending WSR 22-05-051, filed 2/9/22, effective 3/12/22)

- 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 rebuttal, following the procedure in subsection (d) for each witness;
- (g) The appellant's closing argument;
- (h) The respondent's closing argument;
- (i) 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.
- (3) In appeals where the respondent in the party with the burden of proof, the board may permit the respondent to present their evidence and arguments first.

OTS-5937.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-110 Definitions. (1) In this chapter, the subsequent terms have the following meanings:

- (a) "Appellant" means a person or entity who appeals any order or decision.
- (b) "Board" means the board of tax appeals 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.
- (c) "Decision" means a written judgment or ruling issued by the board, designated hearing officers, tax referees or agents of the board.
- (d) "File" means to present or to 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. Documents filed with the board are considered timely if received by 5:00 p.m. Pacific time on the due date.
- (e) "Motion" means a written or oral request for the board to take action.
- (f) "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.
- (g) "Party" means any person or entity who is an appellant, respondent, or intervenor.
- (h) "Presiding officer" or "hearing officer" 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 has the authority outlined in WAC 10-08-200 and chapter 34.05 RCW.
- (i) "Respondent" means a person or entity who is listed as a responding party in any appeal.

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

(k) "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.

OTS-5938.2

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-230 Ex parte communication. Neither the board nor any person will make or attempt to make any ex parte communications with a member of the board, presiding officer, or tax referee which are prohibited by the Administrative Procedure Act in RCW 34.05.455. Attempts to make such communications will be subject to the sanctions in WAC 456-10-220 and 456-10-555. Communication with the board's administrative staff or executive director are not considered ex parte communication.

OTS-5939.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-310 Contents of a notice of appeal. (1) An appellant must submit 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) Name of the respondent together with respondent's mailing address, email address, and ~~((phone))~~ telephone number ((if known)), and that of a representative, if any.

The board may add additional respondents to ensure that all necessary entities are a party to the appeal.

(c) A copy of the order, decision, or determination appealed from.

(d) The type of tax.

(i) In excise tax cases, the amount of the tax that should be reduced or refunded and the reasons for it, as well as the tax period of time at issue;

(ii) In property tax cases, the parcel number of the property, the assessment year(s) at issue, the value determined by the local board of equalization, and the appellant'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.

(e) The relief sought.

(f) A signature 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 additional information or explanation of any matter stated in a notice of appeal.

OTS-5940.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-365 Limits on exhibits and evidence. (1) Each party (~~must~~) is encouraged to indicate the specific pages of evidence it intends to rely on, if any, from the body from which the party appeals. For property tax appeals this includes the record at the county board. For excise tax appeals, this includes audit papers, refund reviews, and exemption applications. For other appeals, this includes documents submitted by both parties to the decision maker below. The actual decision appealed from (the county board ruling, department determination, or the equivalent) is not counted within the evidence limits. (~~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) For property tax appeals, each party is strongly encouraged to submit the following exhibits or evidence in the following instances:

(a) If the party intends to rely on comparable sales, a table of comparable sales. The table should list the sales in order of most similar to least similar to the subject property, and include each sale's age, size, sales price, date of sale, and location relative to the subject property. A suggested format is available on the board's website or by contacting the board's staff.

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

(c) If the party intends to rely on a cost approach, a cost breakdown that includes the cost elements used and how the costs were determined.

(3) Each party may submit evidence and/or exhibits in support of its appeal; however, submissions are limited to the page limitations below. Excluded from these limits are the actual decisions appealed from (the county board ruling, department determination, or the equivalent) and formal appraisals from a licensed appraiser:

(a) For residential property tax appeals, each party is limited to submitting a total of 75 pages per assessment-year appealed, including the record of the county board of equalization not excluded as outlined above that the party intends to rely on;

(b) For commercial property tax appeals, each party is limited to submitting a total of 125 pages per assessment-year appealed, exclud-

ing the subject's rent roll and income statements, but including the record of the county board of equalization not excluded as outlined above that the party intends to rely on;

(c) For excise tax appeals, each party is limited to submitting a total of 250 pages, including the record of the department of revenue not excluded as outlined above that the party intends to rely on;

(d) For all other appeals, each party is limited to submitting a total of 75 pages, including the record of the body from which a decision is appealed, and which the party intends to rely on.

(4) For property tax appeals, each party should submit no more than five comparable sales. If both unimproved and improved sales are necessary, no more than five of each type should be submitted.

(5) A party may file a motion with the board to submit evidence and/or exhibits beyond the page limits up to 500 pages, which the board will grant for good cause. Exceeding the page limits without the board's permission may result in the hearing being continued, or the exclusion of evidence beyond the limits.

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

OTS-5941.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-505 Time for filing evidence, briefs, replies, and documentary evidence. The prehearing order controls the course of action in cases where one is issued. If the board does not issue a prehearing order, evidence, briefs, and other documents must be submitted to the board by the following due dates:

(1) Documentary evidence must be submitted at least 38 calendar days prior to hearing, together with proof of service according to WAC 456-10-410. Failure to comply may be grounds for exclusion of such evidence or dismissal of the appeal as outlined in WAC 456-10-555.

(2) Briefs or other supporting statements, if any, must be submitted at least 31 calendar days prior to the hearing, together with proof of service according to WAC 456-10-410.

(3) Reply briefs or other supporting statements, if any, must be submitted at least 17 calendar days prior to the hearing, together with proof of service according to WAC 456-10-410.

(4) Documentary evidence submitted to a board of equalization and forwarded to this board is exempted from these requirements.

OTS-5942.2

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-510 Motions. (1) Any request for an order, ruling, or a request for relief is considered a motion. Every motion, unless made during a hearing, must be in writing and include the following:

- (a) A statement of the relief or order sought;
- (b) The 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;
- (d) A statement whether oral argument is requested, and if so, how much time is sought. Motions for summary judgment and motions to dismiss will receive approximately 10 minutes per side; and
- (e) Proof of service according to WAC 456-10-410.

(2) All motions must be properly captioned, contain the docket number assigned by the board, and be signed by the party, their attorney or their representative.

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

(4) Any response to the motion 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 456-10-410. Responses are strongly encouraged, but not required.

(5) ~~((Replies are not permitted, absent prior permission of the board. If permitted, the))~~ Any reply must be filed within five calendar days of the board's receipt of the response. A reply is limited to addressing the facts and arguments presented in the response.

(6) In cases where good cause is shown for a motion to be filed less than 14 days before a hearing or significant submission date, the board may alter the response deadline. The board will notify the parties of changes to response deadlines within one business day of the motion filing.

OTS-5943.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-515 Postponements, continuances, 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, must be made in writing and comply with WAC 456-10-510 and 456-10-410. 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 456-10-510 and 456-10-410, and be filed 14 calendar days before the scheduled hearing. The ~~((board will freely grant a party's first re-~~

quest. 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 456-10-510 and 456-10-410. The presiding officer will decide whether to hear argument on the request.

(5) This section does not extend any deadline to file an initial appeal.

OTS-5944.1

AMENDATORY SECTION (Amending WSR 22-13-111, filed 6/15/22, effective 7/16/22)

WAC 456-10-540 Hearing procedure. Informal hearings are structured similarly to formal hearings, although more relaxed. As such, informal hearings will generally be organized as follows:

(1) All parties and witnesses will be sworn in by a hearing officer to tell the truth;

(2) Each party may then provide a short explanation of what the testimony of their witnesses and evidence will show;

(3) Next, each party may call witnesses to testify, beginning with the party that is appealing. The opposing party will have an opportunity to ask each witness questions, and the party calling the witness an opportunity to ask the witness questions to clarify the testimony; and

(4) ~~((Lastly,))~~ Each party may summarize the testimony and evidence that supports their case, beginning with the ~~((party that appealed))~~ appellant.

(5) In appeals where the respondent is the party with the burden of proof, the board may permit the respondent to present their evidence and arguments first.

The board or hearing officer may ask a party, a representative, or a witness a question at any time during the hearing.

OTS-5945.1

AMENDATORY SECTION (Amending WSR 22-23-079, filed 11/14/22, effective 12/15/22)

WAC 456-10-550 Failure to attend and hearings on the record.

(1) ~~((When a party has failed))~~ If an appellant fails to attend a hearing after receiving timely notice, the board ~~((will))~~ may consider a motion for default or dismissal brought by any party to the proceedings, or on its own motion. An order for default or dismissal will include the reason for the order and will be served upon all parties.

(2) Within 14 calendar days of service of the order, the party against whom the order was entered may submit a written objection requesting that the order be vacated. The objection must state the specific reasons why the order should be vacated, together with proof of service pursuant to WAC 456-10-410. The board may set aside a dismissal, default, or final order for good cause.

(3) If the parties agree in writing and the presiding officer approves, an appeal may be submitted to the board on the record and the attendance of one or more parties at the hearing will not be required.