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SENT BY EMAIL: bta@bta.wa.gov

Keri Lamb
Board of Tax Appeals
PO Box 40915
Olympia, WA 98504-0915

Re: CR-102 Comment on Proposed WAC 456-09-743

Dear Ms. Lamb:

This letter is to request a change to the proposed WAC 456-09-743 to ensure its compliance with RCW 34.05.449(2) and standard practice in adjudicative hearings. RCW 34.05.449(2) provides that “the presiding officer shall afford all parties the opportunity to respond . . . and submit rebuttal evidence” to the “extent necessary for full disclosure of all relevant facts and issues.” As a lawyer representing the King County Assessor correctly noted in a recent brief before the Board that agreed that both the appellant and respondent in formal proceedings should have the opportunity to present rebuttal testimony under this statute, the purpose is “to prevent sandbagging of evidence.” Rebuttal testimony allows an appellant to answer any new matters presented in the respondent’s case in chief, and surrebuttal allows the respondent to answer any new matters presented in the appellant’s rebuttal. The scope of the rebuttal and surrebuttal thus successively narrow and should not duplicate either party’s previous evidence in the hearing.¹

As proposed, WAC 456-09-743 does not afford the opportunity to present rebuttal testimony in formal evidentiary hearings before the Board. To rectify this, I request that the Board consider an amendment along the lines of the underlined text below:

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

¹ See, e.g., *State v. Swan*, 114 Wn.2d 613, 652, 790 P.2d 610 (1990) (quoting *State v. White*, 74 Wn.2d 386, 394-95, 444 P.2d 661 (1968)).



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- (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 above procedure for each rebuttal witness;
- (g) The respondent's surrebuttal, following the above procedure for each rebuttal witness;
- (h) The appellant's closing argument;
- (i) The respondent's closing argument;
- (j) 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.

Thank you for considering this small but important amendment to align the hearing procedure with the requirements under the Administrative Procedure Act.

Respectfully submitted,


Michelle DeLappe