Concise Explanatory Statement

FORMAL HEARINGS

WAC 456-09

The following document serves as the Board of Tax Appeals explanatory statement as required RCW 34.05.325(6).

The overarching purpose of amending the Board’s formal rules was to clarify and better define language in the rule, simplify the calculation of deadlines, and streamline the formal hearings process, including curtailing briefing and submissions.

The text of the subsequent proposed rules is limited to those portions where public comment was made. The comments denote the who made the comment, the nature of the comment, the synopsis provided of the comment, and the Board’s response to the comment, including any changes.

This document was posted to the Board’s website on February 1, 2022, and an amended version on February 8, 2022, and a copy sent to those who commented before an adopted rule is filed with the code reviser.

WAC 456-09-010 **Formal and informal hearings.**

(1) A party making an appeal may 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 choose a formal hearing in the notice of appeal will result in the proceeding being conducted as informal.

(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 of the proceedings before the board. This record includes a verbatim account of the hearing together with the evidence, pleadings, and documents submitted by the parties. In appeals from a decision of a board of equalization, the record also includes the decision of that board together with the evidence submitted to it pursuant to WAC 458-14-170.

(3) An appeal may be converted from a formal to an informal proceeding at any time up to thirty days before the date of the hearing if the parties submit a notice signed by all parties of the intent to convert the proceedings. Informal proceedings are explained in WAC 456-10.

WAC 456-09-015 **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.

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**APPEAL PROCEDURE**

WAC 456-09-220 **Rules of professional conduct.**

. . .Further, all persons are required to treat all parties, representatives, and the board's staff courteously and fairly both inside and outside of the proceedings.

WAC 456-09-300 **Initiating an appeal.**

(1) Those who wish to initiate an appeal must file an original notice of appeal and a copy of the order or determination that is being appealed.

(2) The board will acknowledge receipt of a notice of appeal in writing to all parties in excise tax appeals within 30 days of receipt. The board may acknowledge receipt of a notice of appeal in all other cases.

WAC 456-09-310 **Contents of a notice of appeal.**

(1) An appellant must submit a notice of appeal that substantially contains the following:

. . .

(d) 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, 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.

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WAC 456-09-315 **Deadlines for submitting a notice of appeal.**

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(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 will be considered timely if submitted on the next business day by 5 p.m. Pacific Time.

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WAC 456-09-335 **Response to a notice of appeal.**

(1) The respondent must submit a response to the notice of appeal within thirty 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 Department of Revenue may provide the amount of the tax in controversy and the period at issue;~~

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

(i~~ii~~) 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;

. . .

WAC 456-09-345 **Service 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 must be served on all counsel and representatives of record, and to unrepresented parties or on their designated agents, or to other persons or entities as required by law.

. . .

(b) Service by mail will be considered completed as evidenced by the postmark. Service by fax will be considered completed as evidenced by a confirmation of transmission. Service by commercial delivery will be considered completed on delivery to the parcel delivery company. Electronic service will be considered completed as evidenced by a sent receipt or the equivalent.

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**PREHEARING AND HEARING PROCEDURE**

WAC 456-09-540 **Prehearing conference**.

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

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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, replies, witness lists, stipulations, and documentary evidence must be submitted to the board by the deadlines below:

. . .

(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 submitted 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 of the board. If allowed, replies 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.

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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:
   1. 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 not excluded as outlined above that the party intends to rely on;
   2. 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 not excluded as outlined above that the party intends to rely on;
   3. 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 not excluded as outlined above that the party intends to rely on;
   4. 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 not excluded as outlined above that the party intends to rely on, if any;
   5. 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 not excluded as outlined above, 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:
   1. 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.
   2. 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, income, and capitalization rate.

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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 a 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 has made a good faith effort to meet and confer with the other party to resolve the subject matter of the motion;

(d) A statement whether oral argument is requested, and if so, how much time is desired;

(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, the hearing on a motion may be held in person, by phone, video or by other electronic means.

(4) A 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 456-09-345.

(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 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.

WAC 456-09-557 **Requirements for briefs, motions, responses, replies, memorandum, and other documentary evidence**.

(1) All briefs, motions, responses, replies, and memorandum must:

. . .

(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 identification numbers 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 12,000 words (approximately 24 pages).

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**HEARING PROCEDURE**

**WAC 456-09-743 Hearing procedure.**

(1) Unless otherwise ordered, hearings will be conducted in the following format:

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(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;

. . .

WAC 456-09-750 **Dismissal, stipulation, and withdrawal of actions.**

(1) An appeal may be dismissed for any of the following reasons:

(a) All parties stipulate to dismissal. Stipulations involving the value of real property must include the parcel number, assessment year, the agreed upon value of the subject property, and a brief statement that supports the value. The board may request additional information as to the reason for the stipulation.

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

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

(d) The parties fail to comply with applicable rules or any order of the board.

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

**DISPOSITION OF CASES**

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 or proposed decision was first issued, unless

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

(b) The alleged error is of constitutional concern.

(2) After the board issues a final decision, any party may submit a petition for reconsideration as provided by RCW 34.05.470. The petition must be submitted to the board and served upon all parties or 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 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), 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.