

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

WAC 456-10-001 Purpose and application of chapter. (1) This chapter explains how informal hearings are conducted before the board of tax appeals (board). ~~((Although informal hearings are available to all parties,))~~ The informal process is helpful for ((persons)) those who are not represented by ((counsel. In the informal process a taxpayer does not need to possess)) an attorney or other representative, or do not have legal expertise ((in order to pursue an appeal)). These rules of practice and procedure will be liberally construed to secure the just, speedy, and ~~((economical))~~ efficient determination of every ~~((action))~~ appeal.

(2) Where procedures are not ~~((covered))~~ addressed by this chapter, the board may, upon its own motion or upon written ~~((application by))~~ motion of any party, refer to and apply any rule provided for in chapter 456-09 WAC - Formal hearings—Practice and procedure, chapter 10-08 ~~((Washington Administrative Code ()))~~ WAC(()) - Model rules of procedure, or the superior court civil rules. This chapter ~~((augmentments))~~ adds but does not ~~((supplant))~~ replace the provisions of chapter 82.03 RCW.

(3) The superior court civil rules, rules of professional conduct, the Washington Administrative Code (WAC), and the Revised Code of Washington (RCW) referred to ~~((herein))~~ in this chapter are available in public libraries and online ~~((at various websites)).~~

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

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

(a) ~~((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 like formal decisions. Proposed and initial de-

cision in informal cases, however, can be internally appealed to the board members by filing an exception as outlined in WAC 456-10-730.

((e) Aggrieved)) (b) The parties may have (avenues of further appeal) additional avenues to challenge allowed by law ((which are not pertinent to the statutory authority granted to the board and)), but which the board does not have legal authority to grant, and therefore, are not discussed ((herein)) in this chapter.

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

(a) ((The)) A respondent ((, as a party to an appeal)) in an appeal from a decision by a board of equalization 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) submit a notice of intention that the hearing be ((a formal hearing)) formal, if made within 20 calendar days of the date the board transmits the acknowledgment of the notice of appeal.

(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)), in appeals under RCW 82.03.130 (1)(e), may submit a notice of its intention that the hearing be ((a) formal ((hearing)), if made within 30 calendar days of the date the board transmits the acknowledgment of the notice of appeal.

(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)), in appeals under RCW 82.03.130 (1)(e), may submit a notice of its intention that ((the)) a hearing be ((a formal hearing)) formal, if made within 10 calendar days from the date the board transmits the acknowledgment of the notice of appeal.

(d) At any time up to ((thirty)) 30 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.

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

WAC 456-10-110 Definitions. ((As used)) (1) In this chapter, the ((following terms shall)) subsequent terms 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.

(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 electronic transmission as provided in these rules. The terms "to file" and "to submit" are used interchangeably.

(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" ((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)) (i) "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 chapter 456-09 WAC.~~

~~(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 or respondent.~~

~~(9) "To submit" means to present or to deliver. Submissions to 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 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) "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.

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

WAC 456-10-120 Alternative procedures. The board may ~~((, from time to time,))~~ offer expedited or abbreviated procedures for certain informal hearings ~~((in order))~~ to resolve appeals in an ~~((economic and))~~ efficient manner.

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

WAC 456-10-210 Appearance and practice before the board. Practice before the board in informal 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~~) authorized to practice in the highest court of any state;
- (3) Public officials (~~in their official capacity~~), county assessors, or their authorized representatives;
- (4) Certified public accountants (~~licensed in the state of Washington~~) currently licensed in any state;
- (5) (~~A duly authorized director,~~) An authorized officer, partner, trustee 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, or trust;
- (6) (~~Partners, joint venturers, or trustees representing their respective partnerships, joint venturers, or trusts; and~~
~~(7)~~) Other persons designated by a taxpayer (~~with approval of~~) and approved by the board.

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

WAC 456-10-220 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 the rules of professional conduct (RPC) required of attorneys before the courts of Washington~~) 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 rules, the hearing officer has the discretion, depending on the circumstances, to admonish or reprimand such person, exclude such person from further participation in the proceedings, adjourn the hearing, or report the matter to the board. Further, all persons are required to treat all parties, representatives, and the board's staff courteously and fairly both inside and outside the proceedings.

(2) The board in its discretion, either upon referral by a hearings officer or on its own motion, may consider information that establishes to the board a question regarding a person's ethical conduct and fitness to practice before the board. This information will be considered at a hearing after notice to all parties. If the person's conduct is found to be unethical or unfit, the board 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.

AMENDATORY SECTION (Amending WSR 89-10-057, filed 5/2/89)

WAC 456-10-230 Ex parte communication. ~~((No one may))~~ Neither the board nor any person will make or attempt to make any ex parte ((contact)) communication with a member of the board ((or)), presiding officer ((except upon notice and opportunity for all parties to be present or to the extent required for the disposition of ex parte matters as authorized by law)), or tax referee which are prohibited by the Administrative Procedure Act in RCW 34.05.455. Attempts ((by anyone)) to make such ((prohibited ex parte)) communications ((shall)) will be subject ((such person)) to the sanctions ((of)) in WAC 456-10-220 and 456-10-555.

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

WAC 456-10-300 ((Commencing the)) Initiating an appeal. (1) ~~((Persons))~~ Those wishing to ~~((make))~~ initiate an appeal must ~~((submit to the board an original))~~ file a 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 excise tax appeals and provide a copy to the department of revenue within 30 days of receipt. The board may acknowledge receipt of a notice of appeal in all other cases.

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

WAC 456-10-310 Contents of a notice of appeal. (1) ~~((For informal appeals, an appellant may submit a notice of appeal using forms provided by the board.~~

~~(2) In the alternative,))~~ An appellant ((may)) 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 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))~~ A copy of the order, decision, or determination ((from which the appeal is taken, together with a copy of the order, decision, or application)) appealed from.

(d) ~~The ((nature of the))~~ type of 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~~) assessment year(s) at issue, the (~~full~~) value (~~(as)~~) 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)) The relief sought.~~

(~~(h) The~~) (f) A signature (of the appellant or the appellant's representative) 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.

(~~(3)~~) (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.

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

WAC 456-10-315 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)~~) or by the statute governing the respective agency or proceeding involved. (~~All time periods set forth below are expressed in calendar days.~~)

(a) (~~Appeals~~) For appeals of a denial of petition or notice of determination for a reduction or refund taken by the department of revenue pursuant to RCW 82.03.190, ((thirty)) 30 days from the ((mailing of)) 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 determination 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)) 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 determination was mailed or transmitted.

(e) For appeals by an assessor, landowner, or owner of an inter-county 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 days after the mailing of the certification))~~ 15 days from the date the certification was mailed or transmitted.

(f) For appeals from the decisions of a 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 certification 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))~~ 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 denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850, ~~((thirty))~~ 30 days from the ~~((mailing of))~~ 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 1.16.020, the submission ~~((shall))~~ will be considered timely if ~~((performed))~~ submitted on the next business day by 5:00 p.m. Pacific 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.

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

WAC 456-10-325 Date and manner of submitting ~~((the))~~ a notice of appeal. (1) ~~((The date of submitting))~~ A notice of appeal ~~((shall be the))~~ is considered submitted on the date of ~~((actual))~~ receipt by the board at its Olympia office if the 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 will ~~((control and shall))~~ be evidence of the date of submission.

(2) ~~((All documents may))~~ A notice of appeal may also be submitted to the board ~~((via fax or))~~ by fax, electronic mail ~~((transmission. However,))~~, or uploaded through the board's website. A submission will not be ~~((deemed complete and the board will not acknowledge receipt of the notice of appeal as provided in WAC 456-10-300 unless the following procedures are strictly observed:~~

~~(a) Documents received by fax 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 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)) considered complete 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.~~

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

WAC 456-10-335 Response. The respondent may submit a response to the notice of appeal (~~with the board~~). The response, if any, must be submitted to the board at least (~~ten business~~) 30 calendar days (~~prior to hearing~~) after the date the board acknowledged receipt of the notice of appeal, unless otherwise ordered (~~by the board~~), together with proof of service pursuant to WAC 456-10-410.

NEW SECTION

WAC 456-10-365 Limits on exhibits and evidence. (1) Each party must indicate the specific pages of evidence it intends to rely upon, 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) For property tax appeals, each party is strongly encouraged 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 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) 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.

(3) 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 do not include the findings or determination of the body from which the decision or finding is appealed:

(a) For residential property tax appeals, each party is limited to submitting a total of 30 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 40 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;

(c) For DOR 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 is limited to submitting five comparable sales.

(5) A party may file a motion with the board to submit evidence and/or exhibits beyond the page limits up to 500 pages, or comparable sales limits listed, which the board will grant for good cause. Exceeding the page or comparable sales 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.

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

WAC 456-10-410 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 ~~((upon))~~ on unrepresented parties or ~~((upon))~~ on their agents designated by them, 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 completed upon deposit in the United States mail,))~~ will be considered complete as evidenced by the postmark ~~((, properly stamped and addressed))~~. Service by fax ~~((shall be regarded as completed upon production by the fax machine ef))~~ will be considered complete on a confirmation of transmission ~~((and deposit on the same day in the United States mail))~~. Service by commercial delivery ~~((shall be regarded as))~~ will be considered completed ~~((upon))~~ on delivery to the 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) Proof of service. (~~Where proof of service is required by statute or rule,~~) Receipt (of the papers) by the board, together with one of the following, (shall constitute) will serve as proof of service:

(a) (~~An acknowledgement~~) A written acknowledgment of service by all parties of record.

(b) A (~~certificate that the person signing the certificate served the papers upon~~) written declaration of service indicating service on 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 pre-paid, 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) was made. The declaration must include language that:~~

(i) A copy was mailed to each party or his or her attorney or representative; or

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

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

(iv) 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.

NEW SECTION

WAC 456-10-415 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 x 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 typed in 12-point or larger type in one of the following fonts or their equivalent: Times New Roman, courier, CG Times, or Arial. They must also be double-spaced and printed only on one side of the page. Footnotes may be single spaced in 10-point or larger type. If it is not possible to type a document, it may be legibly handwritten in blue or black ink. 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 account number information - Redact to the last four digits; and

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

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

(a) Trial briefs may not exceed 6,000 words (approximately 12 pages).

(b) Motions in limine and any brief in opposition may not exceed 4,500 words (approximately nine pages).

(c) Dispositive motions; including motions for summary judgment and motions to dismiss, must not exceed 6,000 words, and replies 3,000 words (approximately six 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;

(b) The motion must clearly explain why the party requesting the over-length brief cannot comply with the board's word limit; and

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

If the board allows a party 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 456-10-500 Prehearing conference. (~~The board, upon its own motion or upon request of a party, may conduct a prehearing conference or conferences. Such prehearing conference will be conducted in accordance with the provisions of WAC 456-09-540.~~) (1) The board may conduct a prehearing conference to consider:

- (a) Whether pleadings or other documents need to be amended;
 - (b) Whether the parties can agree to any facts or procedures;
 - (c) Deadlines for exchanging evidence, witness lists, exhibit lists, and filing briefs;
 - (d) How to label exhibits and attachments to briefs, motions, and other pleadings; and
 - (e) Other matters that may help to clarify or streamline the proceeding.
- (2) After the prehearing conference, the board or hearing officer will issue an order outlining what occurred at the prehearing conference, including any agreements made by the parties.
- (3) Documents or evidence that are submitted after the deadlines or not in a manner outlined in these rules or in the prehearing conference order will not be considered unless the party offering the evidence can make a clear showing that there was good cause for not following the order.
- (4) Nothing in this rule will be interpreted to keep the parties from settling the appeal at any times.
- (5) The board or a hearing officer can issue a prehearing order even if a prehearing conference has not been held.

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

WAC 456-10-501 Limitation on discovery. (1) ~~((Insofar as))~~ If applicable and not in conflict with this chapter, the statutes and court rules regarding pretrial procedures in civil cases in the superior courts of the state of Washington ~~((shall))~~ will be used. ~~((Such))~~ These statutes and rules ~~((shall))~~ include, but ~~((shall not be))~~ are not limited to, those rules ~~((pertaining to))~~ about the discovery of evidence ~~((by parties to civil actions))~~.

(2) The board may limit discovery ~~((upon motion by))~~ on its own motion, or by motion of any party.

(3) The board may decide whether to ~~((permit the taking of depositions, the requesting of))~~ allow depositions, requests for admissions, and ~~((all other procedures authorized by rules 26 through 37 of the superior court civil rules))~~ any other discovery procedure. The board may condition the use of discovery on a party showing ~~((of necessity and unavailability of))~~ that discovery is necessary and that other means of obtaining such information are not available. In exercising such discretion, the board will consider the criteria ~~((set forth))~~ outlined in RCW 34.05.446.

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

WAC 456-10-503 Summary judgment. A motion for summary judgment may be granted ~~((and an order issued))~~ if the written record shows that, in 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 456-10-510.

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

WAC 456-10-505 Time ((in which)) for filing evidence, briefs, ((and)) replies ((must be submitted)), and documentary evidence. In the absence of a prehearing order, evidence, briefs, and other documents must be submitted to the board ((within the times stated below)) by the following due dates:

(1) Documentary evidence ((which is to be introduced at hearing shall)) must be submitted ((to the board)) at least 10 calendar days prior to hearing, together with proof of service pursuant to WAC 456-10-410 ((at least ten business days prior to hearing)). Failure to comply may be grounds for exclusion of such evidence or dismissal in accordance with WAC 456-10-555.

(2) Briefs or other supporting statements, if any, ((shall)) must be submitted ((to the board)) at least 15 calendar days prior to hearing, together with proof of service pursuant to WAC 456-10-410 ((at least fifteen calendar days prior to hearing)).

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

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

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

WAC 456-10-510 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 a 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;

(d) ((The amount of time needed for argument)) 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 20 minutes per side; and

(e) ((Shall include)) Proof of service pursuant to WAC 456-10-410.

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

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

(4) A response to the motion ~~((shall))~~ must be submitted to the board ~~((together with proof of service pursuant to WAC 456-10-410 within ten business days following the date of service of the motion))~~ and opposing parties 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.

(5) Replies are not permitted, absent proper permission of the board. If permitted, 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.

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

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, ~~((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 456-10-510 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 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.

~~((3))~~ (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 board shall promptly schedule a conference to hear argument and to 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 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.

AMENDATORY SECTION (Amending WSR 89-10-057, filed 5/2/89)

WAC 456-10-520 ((Teleconference proceeding.)) Telephonic, video, and electronic proceedings. ~~((1) At the discretion of the board, and~~

~~where the rights of the parties will not be prejudiced thereby,))~~ All or part of the 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 ((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))~~ hear and effectively participate in the proceeding.

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

WAC 456-10-530 Requirements for a notice of hearing. (1) A notice of a hearing ((shall)) will be mailed or transmitted to all parties ((not less than twenty)) at least 20 calendar days before the hearing date. The ((twenty-day)) 20-day notice provision may be waived ((by agreement of all)) if the parties agree.

(2) ~~((Contents.))~~ The notice ((shall)) must contain:

(a) The names and mailing and email addresses of the parties and their representatives, if any;

(b) The docket number or numbers and the name of the proceeding;

(c) ~~((The name, official title, mailing address, and telephone number of the presiding officer, if known;~~

~~(d-))~~ A statement of the ~~((time, place, date, and))~~ general nature of the proceeding (e.g., excise, property, etc.);

~~((e-))~~ (d) A statement that the hearing is held pursuant to this chapter and chapter 82.03 RCW;

~~((f-))~~ (e) A statement that ~~((, if a limited-English-speaking or hearing-impaired party or witness needs an interpreter,))~~ a qualified interpreter will be appointed at no cost to the party or witness, if a limited-English speaking or hearing-impaired party or witness needs an interpreter. The notice ((shall)) must also state that persons with disabilities may request reasonable accommodations to allow their participation in the hearing. The notice ((shall)) must include a form for a party to indicate if an interpreter is needed and ~~((identification of the primary))~~ in what language, or if a participant is hearing impaired ~~((?))~~, or to describe the reasonable accommodations requested.

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

WAC 456-10-540 Hearing procedure. ~~((Unless otherwise ordered by the board, hearings will be conducted in accordance with the following format:~~

~~(1) Administering of oath;~~

~~(2) Appellant's opening statement;~~

~~(3) Respondent's opening statement;~~

~~(4) Appellant's case in chief;~~

~~(a) Direct examination of witness;~~

~~(b) Cross-examination by respondent;
(c) Redirect examination by appellant;
(d) Recross examination;
(e) The above procedure is followed for each witness.
(5) Respondent's case in chief:
(a) Direct examination of witness;
(b) Cross-examination by appellant;
(c) Redirect examination by respondent;
(d) Recross examination;
(e) The above procedure is followed for each witness.
(6) Appellant's closing argument;
(7) Respondent's closing argument;
(8) Appellant's closing rebuttal;
(9) The board may pose questions to the parties, their representatives, and any witness at any time during the hearing.))~~ Hearings will generally be organized as follows:
(1) All parties and witnesses will be sworn in by a hearings 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
(4) Lastly, each party may summarize the testimony and evidence that supports their case, beginning with the party that appealed.
The board or hearing officer may ask a party, a representative, or a witness a question at any time during the hearing.

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

WAC 456-10-545 Testimony under oath. (1) ~~((All testimony to be considered by the board shall be sworn, and each))~~ Every person ((shall)) testifying before the board must swear or affirm in any manner allowed in chapter 5.28 RCW that the person's testimony ((to be given shall be the truth, the whole truth, and nothing but the truth)) will be truthful.

(2) ~~Every interpreter ((shall, before beginning to interpret,)) will take an oath that he or she will make a true interpretation ((will be made to)) of 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)) in English ((language,)) to the best of the interpreter's skill and judgment.~~

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

WAC 456-10-547 Recording ((devices)) of hearings. (1) All hearings ~~((shall)) will~~ be recorded by manual, electronic, or other ~~((type of))~~ recording device.

(2) Photographic and recording equipment (~~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.

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

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

(1) When a party (~~to these proceedings has, after notice,~~) has failed to attend a hearing (and has not notified the board and the opposing party of the intention to not attend,) 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 days after~~) 14 calendar days of service of the (default order or dismissal under subsection (1) of this section) order, the party against whom the order was entered may submit (~~to the board together with proof of service pursuant to WAC 458-10-410 [456-10-410]~~) a written objection requesting that the order be vacated (~~and stating~~). The objection must state the specific (grounds relied upon) reasons why the order should be vacated, together with proof of service pursuant to WAC 458-10-410. The board may(~~, for good cause,~~) set aside (~~an entry of~~) a dismissal, default, or final order for good cause.

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

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

WAC 456-10-555 Dismissal, stipulations, and withdrawal of actions. (~~Any action~~) An appeal may be dismissed (~~by the board~~) for any of the following reasons.

(1) (~~When~~) All parties (so) stipulate. Stipulations (on the value of) that involve the value of real property (shall contain) must include the parcel number, assessment year(s), the agreed upon value (~~of the subject property~~), and a brief statement (~~supporting the agreed upon~~) that supports the value.

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

(3) (~~Upon motion of~~) The appellant makes a motion at the hearing (~~prior to the presentation of the respondent's case~~) before the respondent presents his or her case.

(4) (~~Upon motion by the respondent alleging~~) 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.

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

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

WAC 456-10-560 Rules of evidence and criteria for 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~~) relying on in the conduct of (~~their~~) his or her business affairs. The board may exclude evidence (~~that is excludable on~~) for constitutional or statutory grounds, or (~~on the basis of~~) for evidentiary 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) Documentary evidence may be submitted in the form of copies or excerpts.

(4) If not inconsistent with subsection (1) of this section, the board may refer to, but (~~shall~~) is not (~~be~~) bound by, the Washington state court rules of evidence.

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

WAC 456-10-565 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 to which the parties have not had a prior opportunity to controvert,~~) Any party may (~~controvert~~) challenge such a fact by filing an exception to a proposed or initial decision pursuant to WAC 456-10-730 (~~if such notice is taken in a proposed decision~~), or by a petition for reconsideration (~~if notice of such fact is taken in~~) of a final decision pursuant to WAC 456-10-755. Such (~~controversion shall~~) a challenge must concisely and clearly set forth the sources, authority, and other data relied (~~upon~~) on 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.

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

WAC 456-10-710 Assistance to the board. (1) The board may obtain assistance (~~(concerning the)~~) with an 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)~~) allowed by RCW 82.03.150. If the board intends to see 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 reasons for seeking assistance. Once notified, the parties may recommend an alternative to the board to achieve the same objectives (~~(without contacting the department of revenue)~~).

(2) If the department of revenue supplies the requested assistance, the parties will be apprised of any information provided (~~(by the department of revenue)~~) and (~~(will be)~~) given an opportunity to respond.

AMENDATORY SECTION (Amending WSR 89-10-057, filed 5/2/89)

WAC 456-10-715 Presentation of (~~(posthearing)~~) evidence after the hearing. (~~(No posthearing evidence will be accepted unless requested by the board.)~~) Unless requested, the board will not accept any evidence after a hearing unless it determines such evidence could not reasonably have been anticipated or discovered before the hearing. All parties (~~(shall)~~) will have an opportunity to respond to such evidence.

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

WAC 456-10-725 Proposed decision. (1) A proposed decision (~~(shall be prepared)~~) will be issued 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 (~~(and the two members)~~) who cannot agree on a conclusion;
- (c) An appeal has been heard by a hearing officer, tax referee, or other individual assigned by the board; or
- (d) The board (~~(shall otherwise)~~) elects to do so.

(2) If an exception (~~as provided in WAC 456-10-730~~) is not timely submitted to the board (~~within twenty calendar days of the date of mailing of the proposed decision~~) as provided in WAC 456-10-730, the proposed decision (~~shall be deemed the~~) will be considered the board's final decision (~~of the board~~), unless the decision specifies otherwise.

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

WAC 456-10-730 Exceptions to proposed decisions(~~, replies, and disposition~~). (1) Any party may (~~make, by mail or otherwise, a written exception with the board~~) petition for review of a proposed decision. A petition for review of a proposed decision is referred to as an exception.

(2) An exception must be transmitted to the board and served on all parties within (~~twenty~~) 20 calendar days (~~from~~) of the date (~~of mailing of~~) the proposed decision (~~or, upon timely application, within such further time as the board may allow. The statement of exceptions shall be served on all other parties pursuant to~~) was transmitted, unless otherwise specified. Proof of service must be filed with the board as outlined in WAC 456-10-410.

(~~2~~) ~~Exceptions shall contain the specific factual and legal grounds upon which the exception is based.~~) (3) An exception must indicate which portions of or what evidence in the record supports the exception. No new evidence or arguments may be (~~introduced in the written exception; nor may the party or parties raise an argument in the exception that was not raised at the hearing. The party or parties making the exception shall be deemed to have waived all objections or irregularities not specifically set forth~~) presented or raised.

(~~3~~) (4) Any party may (~~make a reply~~) respond to a written exception. The (~~reply, together with proof of service pursuant to WAC 456-10-410, shall be submitted~~) response must be sent or transmitted to the board within (~~ten business~~) 14 calendar days of the date (~~of the letter acknowledging receipt by the board of the written exception~~) the board acknowledged receipt of the petition, together with proof of service outlined in WAC 456-10-410.

(~~4~~) ~~The disposition may be in the form of~~) (5) The board will address an exception in a written order (~~denying the exception and adopting the proposed decision as the final decision, granting the exception and issuing a final decision, or granting the exception 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 exceptions were taken, within such time and on such terms as may be prescribed~~) on the exception.

WAC 456-10-755 Petition for reconsideration of a final decision.

(1) A petition for reconsideration of a final decision is not available where a proposed decision was first issued.

(2) Where a final decision has been issued and no proposed decision was first issued, any party may submit a petition for reconsideration ~~((with the board))~~ within 20 calendar days from the transmittal of the final decision together with proof of service ~~((pursuant to))~~ as outlined in WAC 456-10-410 ~~((within ten business days from the mailing of the final decision))~~. The board may require or any 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))~~ submit within 14 calendar days of the date of the letter acknowledging receipt by the board of the petition, a response together with proof of service pursuant to WAC 456-10-410.

(3) ~~((The))~~ Submitting ~~((of))~~ a petition for reconsideration ~~((shall))~~ suspends the final decision until further action by the board. The board may deny the petition, modify its decision, or reopen the hearing.

((SEPA))

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|----------------|--|
| WAC 456-10-140 | Organization and office. |
| WAC 456-10-150 | Quorum. |
| WAC 456-10-160 | Meetings of the board. |
| WAC 456-10-215 | Notice of appearance by representatives. |
| WAC 456-10-330 | Amendments to notice of appeal. |
| WAC 456-10-507 | Amicus. |
| WAC 456-10-970 | Applicability of SEPA guidelines. |