

Concise Explanatory Statement

ADMINISTRATIVE RULES

WAC 456-12

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 administrative rules was to clarify and better define language, incorporate a section on pro tems, and to update the public records section to mirror current law.

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 May 5, 2022, and a copy sent to those who commented before an adopted rule is filed with the code reviser.

WAC 456-12-015 Purpose of this chapter.

The purpose of this chapter is to outline the organization and administration of the Board of Tax Appeals (board), and to set forth rules that comply with the Open Public Meetings Act, chapter 42.30 RCW, and the Public Records Act, chapter 42.56 RCW. **WAC 456-12-035 Description of the board.**

(1) The board is an independent state agency that reviews, holds hearings on, and decides state tax appeals filed by taxpayers and taxing authorities. The board consists of three members, an executive director, tax referees, and staff. The three members of the board serve on a full-time basis, and are appointed by the governor, with the consent of the senate, for a term of six years.

(2) The executive director is the board's chief executive officer and is responsible for implementing board directions and for directing the board's staff.

NEW SECTION

WAC 456-12-03X Communication and contact with the board.

(1) The board's office is located at 1110 Capitol Way South, Suite 307, Olympia, WA 98501. The board's mailing address is Post Office Box 40915, Olympia, WA 98504-0915. The board's telephone number is (360) 753-5446. The board's fax number is (360) 586-9020. The board's email address is bta@bta.wa.gov, and the board's web site is bta.wa.gov.

(2) The board's primary method of communication is by electronic mail.

(3) Decisions and other correspondence will be sent by electronic mail unless an individual or party has made prior arrangements with the board.

NEW SECTION

PUBLIC MEETINGS

WAC 456-12-036 **Meetings and quorums.**

(1) The board holds regular meetings at 9:30 a.m. on the third Friday of each month. The meetings are held at the board's office.

(2) All meetings of the board are open to the public. Anyone is allowed to attend except as limited by the Open Public Meetings Act, chapter 42.30 RCW.

(3) Two members of the board constitute a quorum for the purpose of making orders or decisions, or for promulgating rules and regulations relating to the board's procedures. A quorum of the board may act even though one position is vacant.

NEW SECTION

WAC 456-12-038 **Meeting agendas and minutes.**

(1) The agenda for a board meeting is available at least 24 hours in advance of the meeting, and is posted on the board's web site at bta.wa.gov.

(2) The minutes of any meeting are available for public inspection as provided in RCW 42.30.035. Meeting minutes are available by emailing the clerk of the board at bta@bta.wa.gov.

NEW SECTION

WAC 456-12-039 Pro Tem

The chair, or the vice chair, in the chair's absence, may select one of the board's tax referees to serve pro tem when a member of the board is recused or otherwise cannot hear and consider a particular case set for full board review. If the parties do not consent in writing to the selection of the tax referee, the matter will be decided by the members available to hear it.

NEW SECTION

PUBLIC RECORDS

WAC 456-12-043 **Purpose and intent.**

(1) These rules provide information to those who want to request access to public records of the board, and to establish processes for both requestors and the board. They are designed to best assist members of the public in obtaining such access.

(2) The board will respond promptly to requests for records made under chapter 42.56 RCW, the Public Records Act.

WAC 456-12-045 Hours for inspection and copying.

(1) Public records of the board are available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays and the days the board is closed.

WAC 456-12-055 Public records officer.

(1) The board's executive director is the board's public records officer and is responsible for reviewing requests for public records.

(2) The public records officer will oversee compliance with the Act, but a designee may process a request. The public records officer or designee and the board will provide the fullest assistance to requestors; ensure that public records are protected from damage or disorganization; and prevent the fulfilling of public records requests to cause excessive interference with the essential functions of the board.

(3) The board encourages communication with the public records officer if a requestor has not received a response in writing or has questions or concerns about a records request.

NEW SECTION

WAC 456-12-070 Public Records Act requests to the board.

(1) **Website records.** Before submitting a records request, those seeking public records of the board are strongly encouraged to first review the board's website at bta.wa.gov. This website includes the board's decisions from 1967 to the present, board policies, and public meeting schedules, and agendas. These are free for viewing and downloading at any time, and are accessible without making a Public Records Act request.

(2) **Public Records Act requests.** Public Records Act requests must be sent or submitted to the public records officer in one of the following ways:

(a) Online: <http://www.bta.wa.gov>

- (b) Email: bta@bta.wa.gov with subject line indicating “public records request”
- (c) U.S. Mail or Delivery: Public Records Officer
Washington State Board of Tax Appeals
Post Office Box 40915,
Olympia, WA 98504-0915
- d) In person: 1110 Capitol Way South, Suite 307
Olympia, WA 98501

Communications that seek the board’s records, but which are sent or provided to unauthorized addresses or staff, will not be accepted or processed as Public Records Act requests. The Board will instead process such communications as general informal inquiries, general correspondence, or general requests for information.

(3) **Manner of requests.** Requestors are strongly encouraged to make requests in writing. If the board receives an oral request, the board will reduce the request to writing and verify with the requestor in writing that it correctly memorializes the request. Requestors are also urged to include a description of the records requested by docket number, appellant name, subject matter, suggested search terms, or other means that will allow the public records officer or designee to identify the requested records. The board accepts in-person requests at its office during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and days the board’s office is closed.

NEW SECTION

WAC 456-12-078 **Response to Public Records Act requests.**

(1) Within five business days of receiving a Public Records Act request, the Board will assign the request a tracking number and log it. The public records officer or designee will evaluate the request according to the nature of the request, clarity, volume, and availability of requested records.

(2) Following the initial evaluation of the request, and within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying including:

(i) Providing an internet address and link on the website to specific records requested if copies are available on the office’s website;



(ii) Sending copies to the requestor, if requested and where a payment or a deposit has been made, if any, or other terms of payment are agreed upon and have been satisfied.

(b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available. The public records officer or designee may revise the estimate.

(c) Acknowledge receipt of the request and ask the requestor to provide clarification for all or part of a request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of time the board will need to respond to the unclear request or unclear part of a request if it is not clarified.

(i) Clarification may be requested and provided by phone and memorialized in writing, or by email or letter;

(ii) If the requestor fails to respond to a request for clarification within 30 calendar days and the entire request is unclear, the office need not respond to it. The board will only respond to those portions of a request that are clear.

(d) Deny the request.

(3) The board may request additional time to respond to a request because of the need to clarify the request, locate and assemble the records requested, notify third persons or agencies affected by the request, or determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(4) The board will provide an estimate of the time required to respond to a request, and may provide an estimate of copying costs specific to a request seeking an estimate of cost. If the requestor believes the amount of time or estimated costs are not reasonable, the requestor may petition the board for review as outlined in WAC 456-12-115(2).

NEW SECTION

WAC 456-12-080 **Providing responsive records to a Public Records Act request.**

(1) **Inspecting Records.** Consistent with other demands, the board will provide space to inspect public records at a designated location. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor must indicate which documents he or she wishes the office to copy.

(a) The requestor must claim or review the assembled records within thirty days of the board's notification that the records are available for inspection or copying. The board will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the board to make arrangements to claim or review the records.

(b) If the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the board may close the request and refile the assembled records.

(2) **Providing copies of records.** After inspection is complete and the requestor asks for copies of some or all of the inspected records, or where copies are otherwise requested, the public records officer or designee will make the requested copies or arrange for copying.

(a) If the board charges for copies, the requestor must pay for the copies before the copies are provided.

(b) Electronic records will be provided as a link to the records if the records are located on the website, or in a format used by the board which is generally commercially available to the public. Records will generally not be provided by email for records responses with multiple records, or where records may not be successfully delivered or received via the board's or the requestor's email systems.

(3) **Providing records in installments.** When a request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect or pay for the entire set of records or for one or more of the installments, the public records officer or designee may stop searching for or producing the remaining records and close the request.

(4) **Multiple Requests.** Multiple public records requests from the same requestor will be processed in a manner so as not to interfere with essential agency functions including processing records requests from other requestors. The board may process such requests in the order received, and may complete one request before searching for records for a subsequent request.

(5) **Completion of inspection.** When the review of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the board has completed a reasonable search for the requested records and made any located nonexempt records available for inspection.

WAC 456-12-085 **Costs and fees.**

(1) No fee will be charged for inspecting the board's public records.

(2) The board does not calculate all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(i) The board does not have the resources to conduct a study to determine all its actual copying costs; and

(ii) Conducting such a study would interfere with other essential agency functions.

(3) The board will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The board may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The board may enter into an alternative fee agreement with a requester under RCW 42.56.120(4).

(4) The board requires requestors to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests. The public record's officer has the discretion to waive fees when:

(a) All of the records responsive to an entire request are paper copies and are twenty-five or fewer pages; or

(b) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of 100 printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requester will be charged in accordance with this rule.

(c) Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The board will notify the requester of when payment is due.

(7) Payment should be made by check or money order to the board. The board prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The board will close a request when a requester fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

WAC 456-12-105 Exemptions and denying requests for public records.

(1) The board may determine that all or part of a requested public record is exempt under the Public Records Act, chapter 42.17 RCW, or other law and may not be inspected or copied.

(2) If the board believes that a record or part of a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief written explanation as to why it is being withheld. If only a portion of a record is exempt from disclosure, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(3) If the requested records contain information that may affect the rights of others, the public records officer or designee may give notice to those whose rights may be affected by the disclosure under RCW 42.56.540 before providing the records. Notice should be given to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) The board is prohibited by statute from disclosing lists of individuals for commercial purposes.

NEW SECTION

WAC 456-12-110 Closing a Request for Public Records.

(1) When the requestor either withdraws a request, or fails to clarify an entirely unclear request, or fails to fulfill his or her obligations to inspect the records, pay the deposit, pay the required fees for an installment, or make a final payment for the requested copies, the public records officer or designee will close the request and, unless the board has already indicated in previous correspondence that the request would be closed under the above circumstances, indicate to the requestor that the board has closed the request.

(2) If, after the board has informed the requestor that it has provided all available records, the board becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor.

WAC 456-12-115 Reviewing denials of requests for public records, estimates of time, and estimates of cost.

(1) Requestors are encouraged to communicate with the public records officer or assigned designee about denials of public records requests, estimates of time, or estimates of costs. If unsatisfied, a requestor may seek review of the issue.

(2) Any person who objects to the board's denial or partial denial of a request for public records or contends an estimate of time to provide records or copying costs to provide

records is not reasonable, may petition for prompt review of the decision by submitting a written request to the executive director for a review by the board.

(3) The written request for review must specifically refer to the written statement by the public records officer or designee which accompanied the denial or estimate.

(4) Within two business days of receiving a written request for review, the executive director will schedule a meeting of the board to review the denial.

(5) The board will issue a written decision or order within two business days of the board's meeting where the request for review is considered. The board will affirm, reverse, or amend the denial or estimate.

(6) The board's written decision regarding a request for review will be the final action by the board.

(7) The board will have concluded a public record is exempt from disclosure for purposes of WAC 44-06-160 only after the review conducted under this section has been completed.

