

## Wyoming Administrative Rules

# Equalization, Board of

## General Agency, Board or Commission Rules

### Chapter 2: Practice & Procedure for Cases Before the WY Board of Equalization

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## CHAPTER 2

### RULES OF PRACTICE AND PROCEDURE FOR CASES BEFORE THE WYOMING STATE BOARD OF EQUALIZATION

#### Section 1. Authority.

These rules of practice and procedure are promulgated by authority of W.S. 16-3-102 and W.S. 39-11-102.1.

#### Section 2. Purpose of Rules.

These rules are intended to provide a uniform and understandable process for contested cases affording de novo review of administrative decisions of the Department of Revenue and of a county assessor for certified cases accepted by the Board.

#### Section 3. Application of Rules.

These rules shall apply to contested cases authorized in Title 39 of the Wyoming Statutes and brought before the Board from any final administrative decision of the Department of Revenue or a county assessor for certified cases accepted by the Board.

#### Section 4. Definitions.

For the purposes of contested cases brought before the Board under these rules, the following definitions shall apply:

- (a) "Board" - the Wyoming State Board of Equalization as set forth in W.S. 39-11-102.1.
- (b) "Case" - a proceeding before the Board in which the legal rights, duties or privileges of a party are to be determined by the Board after an opportunity for hearing as provided by W.S. 16-3-107.
- (c) "Certified Case" - a case proceeding before the Board pursuant to Section 36 of this Chapter.
- (d) "Department" - the Wyoming Department of Revenue as created by W.S. 39-11-102.
- (e) "Party" - the Petitioner who is seeking relief before the Board, each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, including a board of county commissioners, and the Department.

(f) "Petitioner" - Any person, firm, corporation, partnership, association, or board of county commissioners who files a case notice.

Section 5. Commencement of Case.

(a) Cases shall be instituted by any Petitioner filing a case notice for review of any final administrative decision of the Department with the Board c/o Executive Secretary at the office of the Board or by mail sent to P.O. Box 448, Cheyenne, Wyoming 82003-0448 or received by facsimile, 307-777-6363, during regular business hours. Any facsimile received after regular business hours will be treated as received during the regular business hours of the next working day.

(b) The case notice shall be served on the Department and other parties consistent with Section 8 of this Chapter.

(c) The case notice shall contain the following information:

(i) A copy of the decision at issue;

(ii) A statement in ordinary and concise language of the facts and of the errors alleged to have been committed and issues upon which the case is based;

(iii) The amount of the tax assessment or refund denial, and the amount of tax in controversy;

(iv) The relief sought; and

(v) Whether or not a hearing is desired.

(d) The case notice shall be signed by the Petitioner or his representative or attorney and shall contain the telephone number, fax number, if available, and mailing address of the Petitioner and his representative or attorney.

(e) The case notice shall be filed with the Board within thirty (30) days of the date of the final administrative decision at issue or of the date of mailing of the final administrative decision as evidenced by a postmark, whichever is later.

(f) "Computation of Time" - In computing the time period for filing a case notice, the period shall begin on the day after the date of the final administrative decision or upon the date of mailing of the final administrative decision as evidenced by a legible postmark, whichever is later and shall conclude on the last day of such computed period, unless such day is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.

(g)"Filed with the Board" - The case shall be considered filed with the Board upon mailing of the case notice as evidenced by a legible postmark, or upon receipt by fax as provided in Section 5(a) or upon hand delivery as evidenced by the Board's file stamp. Any case notice not timely filed shall be dismissed.

Section 6. Processing of Case.

(a) The Executive Secretary shall examine the case notice, request the Board to dismiss the appeal if untimely, notify the Petitioner of any apparent errors or omissions, and request any additional information the Board wishes to obtain and is permitted by law to require, including whether the Petitioner wishes the matter to be considered as an expedited case. If the notice is timely filed the executive secretary shall either:

(i) Docket for commencement of formal contested case procedures in accordance with W.S. 16-3-107, et seq., and these rules; or

(ii) Docket as an expedited case for consideration pursuant to Section 15 of this chapter.

(b) The Board shall establish a separate file for each docketed case in which shall be placed all papers, pleadings, documents, transcripts, evidence and exhibits pertaining thereto, and all items shall have noted thereon the docket number assigned.

Section 7. Record.

(a) Within 60 days after a case notice is filed, the Department shall transmit to the State Board a certified copy of the complete record of the final administrative decision from which the appeal is taken, including a general index identifying the documents and instruments in the record with reasonable definiteness. Contemporaneous with filing the record, the Department shall serve a copy of the general index on all parties to the appeal; or

(b) At the option of the Board, the Department may be directed to segregate and retain the complete record of the final administrative decision. The Department shall prepare and file with the Board a general index, certified as true and accurate, identifying the documents and instruments in the record with reasonable definiteness. A copy of the general index shall be served on all parties to the appeal. In the event the record is not filed with the Board, the Department shall make the record available to the Board and all parties during regular business hours for inspection and copying. Upon order of the Board the Department shall file a certified copy of the complete record with the Board.

Section 8. Service of Case Notice and Other Pleadings.

A case notice and any other pleadings filed with the Board by Petitioner or any other party shall be sent by mail or personally delivered to the Director of the Department. Any pleadings filed by the Department shall be served on Petitioner by mail addressed to Petitioner's last known address, and on any other party at the address indicated on his pleadings. If any party is represented by counsel or other designated person, any pleadings by the Department shall be served by mail on the counsel or representative at their indicated address.

Section 9. Designation of Presiding Officer.

The Board may designate a presiding officer by assigning an appeal to one (1) or more member(s) of the Board, the Executive Secretary of the Board, the Staff Attorney of the Board, or a licensed attorney employed by or on contract with the State of Wyoming who is knowledgeable of and qualified in the particular areas of taxation which are the subject of the appeal. The functions of the presiding officer shall be conducted in an impartial manner. Presiding officers shall have the full authority provided by W. S. 16-3-112(b).

Section 10. Preliminary Statement.

Each party may be ordered to file with the Board and serve upon the other parties a preliminary statement or joint preliminary statement. The parties shall be afforded at least thirty (30) days for the preparation and filing of any statement. Following receipt of the preliminary statement, the proceeding may be converted to an expedited case pursuant to Section 15 of this chapter. Unless otherwise ordered, the statement shall set forth:

- (a) A brief summary of the contentions of the party.
- (b) Significant uncontroverted facts about which there is no genuine issue (these may be established by admissions or by stipulation).
- (c) Contested issues of fact remaining for decision.
- (d) Contested issues of law to be determined at the hearing. The parties may include memorandums of law on significant legal issues the parties wish to call to the attention of the Board.
- (e) The names, addresses, and a brief description of the testimony of each witness the party intends to present at the hearing.
- (f) A list and copies of all exhibits to be introduced (this does not foreclose the introduction of other exhibits which become available or are discovered later).

- (g) Any request to convert the case to an expedited case pursuant to Section 15 of this chapter.
- (h) Estimated time required for the hearing.
- (j) An assessment of the probability of settlement.
- (k) Other matters directed by the Board.

Section 11. Prehearing Conference.

(a) The Board or the presiding officer may order a prehearing conference. If so ordered, each party may be required to file a prehearing statement or a joint prehearing statement no later than five (5) days before the conference. The statement shall contain such items, information, and directions as deemed necessary to conduct a useful conference. The prehearing conference shall be an informal proceeding conducted expeditiously by the presiding officer, Executive Secretary to the Board, or one (1) or more member(s) of the Board, and may be held by telephone conference call. The results of the conference may be made the subject of an order which shall be provided to all parties to the appeal. At or following the conference, the case may be designated an expedited case for proceedings pursuant to Section 15 of this chapter.

(b) Upon request to the Board, or upon the Board's own motion, a Petitioner shall be relieved of the duty to provide prehearing submissions if:

- (i) The total amount of taxes, interest, and penalty in controversy is two thousand dollars (\$2,000) or less; and
- (ii) The Petitioner is not represented by counsel; and
- (iii) The individual who signed Petitioner's Notice of Appeal will be Petitioner's only witness; and
- (iv) The Petitioner will introduce no documentary evidence at the hearing other than those documents contained in the Record certified by the Department and filed with the Board pursuant to Chapter 2, Section 7(a) of these Rules.

A Petitioner who makes no prehearing submission under this Rule 11(b) must otherwise attend any prehearing conference ordered by the Board.

## Section 12. Motions.

(a) An application to the Board for an order shall be by motion which, unless made during a hearing, shall be in writing and shall state with particularity the grounds and the relief or order sought. The Board will not entertain any motion pertaining to dismissal, default, or compliance with discovery procedures unless counsel for the moving party, or the moving party if *pro se*, has conferred orally, in person or by telephone, and has made reasonable good faith efforts to discuss the content and purpose of the motion with opposing counsel, or the non-moving party if *pro se*, prior to filing the motion. Counsel for the moving party, or the moving party if *pro se*, shall set forth in writing all good faith efforts undertaken to discuss the motion, and the Board will not consider the motion until this information is provided. Written motions shall be filed with the Board and served on all parties. The motion shall advise the parties that should they wish to contest the motion they must file a written response with the Board and serve a copy on all parties within fifteen (15) days of service of the motion. The response shall set forth the party's objections to the motion. No motions shall be filed within twenty (20) days of a hearing.

(b) For good cause, the Board may take action on its own motion by providing notice of its intent to take the action and the reasons therefore to all parties. The notice of intent shall advise the parties they may file written objections within fifteen (15) days of service of the notice.

## Section 13. Joinder of Persons.

(a) Any party may move for the joinder of persons to a case when necessary to accord complete relief to the parties. A motion for joinder shall be filed with the Board within the time limits of these rules, and served by certified mail on the proposed parties. The motion shall set forth the names and addresses of the proposed parties, state why the proposed parties are necessary for just adjudication, and notify the proposed parties as well as all other parties that a response to the motion must shall be filed with the Board within fifteen (15) days of service of the motion.

(b) Upon motion, the Board may order joinder if complete relief to the parties cannot otherwise be provided. The order shall be served by certified mail on the joined party. The Board in its discretion may proceed with a hearing without requiring joinder if its jurisdiction over the proposed parties can be acquired only by their consent or voluntary appearance; however, any order rendered therein does not affect the rights or liabilities of absent persons.

## Section 14. Intervention.

(a) As authorized by the Wyoming Administrative Procedure Act, any person or agency may be admitted as a party to a proceeding before the Board if entitled as of right to do so. Upon timely application, any applicant, may be permitted to intervene in a case: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the matter or transaction which is the subject of the case and is so situated that the disposition of the case may as a

practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Any applicant, desiring to intervene shall file an application to intervene with the Board and serve a copy on all parties in the case. The application shall state the grounds therefore, set forth the position for which intervention is sought, and advise the parties that should they wish to contest the application they must file with the Board and serve on all parties and the applicant a written response within fifteen (15) days of service of the application. No application to intervene shall be filed within twenty (20) days of a hearing.

#### Section 15. Expedited Contested Case.

(a) A contested case may be expedited if the case is:

(i) A matter in which there are no disputed issues of material fact; or

(ii) A matter in which the parties agree to an expedited proceeding, provided the Board retains the authority to convert at any time the proceeding to a regular contested case when it appears essential facts must be determined in order to permit adequate presentation and disposition of the case.

(b) Any party shall have fifteen (15) days from the date of the Board order scheduling a matter as an expedited case to request reconsideration.

(c) An expedited contested case shall consist of review of any written argument and evidence. Limited oral argument to the Board after submission of all written material shall be permitted upon written request of a party.

#### Section 16. Notice of Hearing.

The Board shall by notice set a time and place for the hearing of the case. The notice shall set forth the date, time, place and nature of the hearing. Unless the Board finds an emergency exists or it is necessary and proper for the matter to be heard sooner, the notice shall be delivered by mail or personally to all parties at least thirty (30) days before the date set for hearing.

#### Section 17. Hearing and Representation.

(a) At the date, time and place of the hearing, the Board or presiding officer shall hear all matters presented. For expedited cases, the hearing shall be limited to oral argument. The Board or presiding officer has full authority to limit time for the conduct of a hearing.

(b) Any party may represent himself at such a hearing, or may be represented by a person designated by the party. The Department may be represented by any of its employees or by its attorney.

(c) It shall be the responsibility of every party to be familiar with and comply with the Board's Rules. The Board's Rules are available at the office of the Board and on the Board's web site at <http://taxappeals.state.wy.us>.

(d) The hearing is open to attendance by the public, except for such portions closed by the Board pursuant to any statute expressly authorizing closure. To the extent a hearing is conducted by telephone and not closed, public attendance is satisfied by allowing members of the public, at reasonable times, to hear or inspect the Board record.

#### Section 18. Order of Procedure at Hearing.

(a) For purposes of this section, the functions of the Chairman of the Board and the Board may be exercised by a presiding officer appointed pursuant to Section 9 of this Chapter. Where oral arguments are ordered, the time for the presentation of the oral arguments may be limited. As nearly as possible, where evidence is presented, hearings shall be conducted in accordance with the following order of procedure:

(i) The Chairman of the Board shall conduct the hearing, shall announce that the hearing is convened and shall indicate the docket number and title of the appeal to be heard. The Chairman shall then read or summarize the case notice and shall note for the record all subpoenas issued and all appearances of record;

(ii) The Chairman of the Board shall then take up any motions or preliminary matters to be heard;

(iii) Opening statements will be heard at the discretion of the Board;

(iv) Unless otherwise directed by the Chairman or hearing officer, the Petitioner, or his designated agent, or his attorney, then shall present his evidence after which the Director of the Department, or his designee or attorney, shall present his evidence. Evidentiary issues shall be governed by W.S. 16-3-108. All testimony shall be under oath or affirmation. Any part of the evidence may be received in written form if doing so will facilitate the hearing without substantial prejudice to the interests of any party. Parties shall make every effort to disclose to the opposing party within a reasonable time before the hearing any intention to introduce and rely upon written evidence. Documentary evidence may be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original if available. The members of the Board may ask questions of any party or any witness for the purpose of clarifying their understanding of the case;

(v) Closing statements may be made at the conclusion of the presentation of evidence by the parties. These statements may include summaries of the evidence and legal arguments.

(b) The Board may order the parties to submit proposed findings of fact and conclusions of law at a time and in a format specified by the Board.

(c) After all proceedings have been concluded, the Board shall dismiss and excuse all parties and declare the hearing closed. The Board may announce a tentative decision prior to taking the case under advisement. The Board shall advise the parties that the final decision of the Board shall be announced within due and proper time following consideration of all matters presented at the hearing. The Board may request parties to submit supplemental briefs after the hearing is closed and during consideration of the case.

#### Section 19. Briefs.

Any party desiring to submit a written brief to the Board may do so, at his option, before or during the hearing. If the party desires to submit a brief after the hearing, a written motion shall be filed with the Board. If approved, the Board shall set a date by which such brief is due. The briefs may set forth the factual and legal position of the party submitting it. An original and four copies of any brief and proposed findings shall be filed with the Board and a copy thereof served on every other party to the case.

#### Section 20. Burden of Going Forward; Burden of Persuasion.

Except as specifically provided by law or in this section, the Petitioner shall have the burden of going forward and the ultimate burden of persuasion, which burden shall be met by a preponderance of the evidence. If Petitioner provides sufficient evidence to suggest the Department determination is incorrect, the burden shifts to the Department to defend its action. For all cases involving a claim for exemption, the Petitioner shall clearly establish the facts supporting an exemption. In proceedings involving the question of whether or not there is a taxable event under Wyoming law, the Petitioner shall have the burden of going forward and the Department shall have the ultimate burden of persuasion.

#### Section 21. Default Order.

(a) If a party fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case proceeding, or otherwise fails to comply with any valid order of the Board, the Board may serve upon all parties written notice of intent to issue a proposed default order, including a statement of the grounds.

(b) Within fifteen (15) days after service of a proposed default order, the party against whom it is to be issued may file a written objection requesting the proposed order not be entered and stating the grounds therefore. During the time within which a party may file a written objection under this subsection, the Board may adjourn the proceedings or conduct the proceeding without the participation of the party

against whom the notice of intent to enter a proposed default order has been issued, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

(c) The Board shall make a determination with regard to the default order promptly after expiration of the time within which the party may file a written objection under subsection (b) of this section.

(d) Upon issuance of a default order, the Board shall conduct, without the participation of the party in default, any further proceedings necessary to complete the contested case and determine all issues in the proceeding, including those affecting the defaulted party.

Section 22. Record of Proceedings.

(a) The hearing proceedings including all testimony shall be reported verbatim stenographically or by any other appropriate means determined by the Board. A copy of such proceedings will be furnished to any party upon written request to the Board and the payment of a reasonable fee.

(b) If one or more parties desire the hearing transcribed by a certified court reporter, they must make the necessary arrangements and bear the cost thereof. The original transcript of the hearing shall be filed with the Board.

Section 23. Filing of Exhibits.

All exhibits submitted in a contested case shall be filed with the Board at 122 West 25th Street, Cheyenne, Wyoming 82002-0110, or mailed to the Executive Secretary, P.O. Box 448, Cheyenne, Wyoming 82003-0448.

Section 24. Inspection of File.

Each party, or his authorized representative, shall be permitted to inspect and copy, at their own expense at the offices of the Board, all documents regarding the case contained in the Board files permitted by law to be inspected and copied.

Section 25. Routine Discovery Exchange.

(a) It is the policy of the Board that discovery shall be open, full and as complete as possible. As ordered by the Board, all parties are required to submit to opposing parties "routine" discovery as follows:

(i) Petitioner shall submit routine discovery to opposing parties no later than 90 days after entry of an order by the Board, or no later than 20 days after a party is joined;

(ii) The Department shall submit routine discovery to Petitioner within 90 days after entry of an order by the Board;

(iii) Any party joined or permitted to intervene shall submit routine discovery to Petitioner and the Department within 60 days after service of the order of joinder and entry of an order by the Board;

(iv) The obligation to exchange "routine" discovery is continuing, and all parties shall immediately submit routine discovery to the opposing party when obtained.

(b) "Routine" discovery is defined as:

(i) The name and, if known, the address and telephone number of each individual likely to have discoverable information relating to facts alleged to be in dispute, identification of the subjects of the information, together with a summary of their expected testimony;

(ii) A copy of all documents, data compilations and tangible items in possession, custody or control of the party which are relevant to or likely to bear significantly upon disputed facts. In cases where it is impractical due to the volume or nature of the documentation to produce such copies, parties shall provide a complete description of the documentation by category and location.

(c) A party shall make initial disclosures based on the information then reasonably available to it, and is not excused from making its disclosures because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures.

Section 26. Depositions and Discovery: Limitations.

(a) In all cases coming before the Board, the taking of depositions and discovery shall be available to the parties in accordance with the provisions of W.S. 16-3-107(g) and the applicable Wyoming Rules of Civil Procedure. The Board may issue discovery and protective orders in accordance with the Wyoming Rules of Civil Procedure. Time limits for the completion of all discovery may be established as a part of any prehearing order. Unless otherwise ordered or stipulated, no party may serve on any other party more than thirty (30) interrogatories in the aggregate. Each subpart shall be counted as a separate interrogatory. Interrogatories shall be arranged so that after each question there shall be left a blank space reasonably calculated to allow the answering party to answer. For consolidated cases involving multiple parties the Board may impose further limits on the number of allowed interrogatories. Unless otherwise ordered, discovery documents shall not be filed with the Board except in support of a motion to compel or as evidence.

(b) Board orders may be enforced pursuant to W.S. 16-3-107(c).

Section 27. Subpoenas.

(a) Subpoenas for appearance and to produce books, papers, documents or exhibits may be issued by the Board, upon written request of any party, or on the Board's own motion, pursuant to W.S. 16-3-107(c).

(b) Subpoenas may be enforced pursuant to W.S. 16-3-107(c).

Section 28. Documentary Evidence.

(a) Documentary evidence or exhibits shall be marked for identification as directed by the Board.

(b) Documentary evidence claimed to be confidential by any party shall be marked "CONFIDENTIAL" by any party desiring to use the documentary evidence, segregated from the other documentary evidence and submitted in such a manner that the confidential nature of the documentary evidence is protected. The party submitting documentary evidence claimed to be confidential shall submit an index generally identifying the documents and stating the basis for the claim of confidentiality.

Section 29. Continuances.

A party desiring continuance of a case set for hearing shall file a motion for continuance with the Board at least twenty (20) days before the hearing date. The motion must show that good cause exists for the continuance. Motions for continuance filed less than twenty (20) days before the hearing will be granted only in case of an emergency, which the Board will determine.

Section 30. Extension of Time.

Unless otherwise provided by statute, the time for doing any act prescribed or allowed by these rules may be extended by order of the Board upon written motion filed prior to the expiration of the applicable time period. The motion must show good cause for such extension and that the need therefor is not caused by the party's neglect or lack of diligence.

Section 31. Dismissal with Prejudice Due to Settlement.

Resolution of any pending case may be made by agreed settlement. Upon filing of a stipulated motion to dismiss with prejudice signed by all parties to the case, the Board shall dismiss the case with prejudice.

Section 32. Telephone Conferences.

At the discretion of the Board or presiding officer, telephone conference calls may be used to conduct any proceeding subject to such terms and conditions as the Board may order.

Section 33. Post-hearing Supplementation.

After a hearing and before a Board decision has been issued, any party may file a motion for post-hearing supplementation of the record to submit additional, newly discovered evidence on material issues. If such motion is granted, all other parties are entitled to at least one response to the new evidence as may be ordered by the Board, with the record to be closed on a date set by the Board order allowing supplementation of the record. All evidence submitted contrary to Board order shall be returned.

Section 34. Decision of the Board.

(a) The Board shall make and enter a written decision and order containing findings of fact and conclusions of law. The findings of fact shall be derived from the evidence of record in a proceeding, matters officially noticed in that proceeding, and matters within the Board's knowledge as acquired through performing its functions and duties. Such findings shall be based on the kind of evidence which reasonably prudent persons are accustomed to rely in the conduct of their serious affairs, even if such evidence would be inadmissible in a civil trial. The Board's experience, technical competence, and specialized knowledge may be utilized in evaluating the evidence. The written decision shall be filed with the Board and will, without further action, become the decision and order as a result of the hearing. Upon filing, the Board shall mail a copy to the parties.

(b) Any party may petition the Board, within ten (10) days of the date of a decision and order, for reconsideration of the decision and order by filing a motion with the Board. The Board shall issue a written order denying the motion, granting the motion and dissolving or modifying the decision and order, or granting the motion and setting the matter for further proceedings. A motion for reconsideration does not affect the finality of the decision and order and is not a prerequisite for judicial review. A motion for reconsideration may be granted by the Board on any of the following grounds:

- (i) Irregularity in the proceedings;
- (ii) Fraud, misrepresentation, or other misconduct of an adverse party;
- (iii) Error in the valuation, assessment or other calculation within the order;
- (iv) Newly discovered evidence, material as to the party applying, which the party could not, with reasonable diligence, have discovered and produced at the hearing; or

(v) An error of law contained within the decision.

(c) Clerical mistakes in decisions and orders or other parts of the record may be corrected by the Board at any time on its own initiative, or on the motion of any party. During the pendency of a judicial appeal, clerical mistakes may be corrected with leave of the court.

Section 35. Appeals to District Court.

Any party aggrieved or adversely affected by a final decision of the Board in a case is entitled to judicial review in the appropriate district court pursuant to W.S. 16-3-114 and W.S. 39-11-109(b)(ii), 39-13-109(b)(iv), 39-14-109(b)(v), 39-14-209(b)(ii), 39-14-309(b)(v), 39-14-409(b)(v), 39-14-509(b)(v), 39-14-609(b)(v), 39-14-709(b)(v) and 39-19-109(b).

Section 36. Certification to the State Board of Case Originally Brought Before A County Board of Equalization.

If a county board of equalization concludes a case before it concerning locally-assessed property may be appropriate for consideration by the Board, it may request, in writing, stating the reasons therefore, certification to the Board. The Board shall expeditiously decide whether certification is appropriate. If certification is granted, the case shall be docketed by the Board and considered pursuant to this chapter. If certification is not granted, the matter shall remain with the county board of equalization for disposition.

Section 37. Recusal.

Any member of the Board may, at any time while a case is pending and without stating a reason, recuse himself from consideration of the case by filing a notice of recusal with the executive secretary for service on all parties and filing in the case record. From and after the date of the notice of recusal, the member shall not participate in any Board decisions or orders with regard to the case.