

Wyoming Administrative Rules

Equalization, Board of

General Agency, Board or Commission Rules

Chapter 3: Rules of Practice and Procedure for Appeals Before the State Board of Equalization from a County Board of Equalization

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CHAPTER 3

RULES OF PRACTICE AND PROCEDURE FOR APPEALS BEFORE THE STATE BOARD OF EQUALIZATION FROM A COUNTY BOARD OF EQUALIZATION

Section 1. Authority.

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

Section 2. Commencement of Appeal.

(a) A taxpayer or a county assessor may appeal any final decision or order of a county board of equalization to the State Board of Equalization. Appeals shall be taken by filing a notice of appeal with the State Board of Equalization, at the office of the Board, 122 West 25th Steet, Cheyenne, Wyoming or by mail c/o Executive Secretary, P.O. Box 448, Cheyenne, Wyoming 82003-0048, or received by facsimile, 307-777-6363, during regular business hours within thirty (30) days from the entry of a decision of a county board of equalization or upon the date of mailing of the decision as evidenced by a legible postmark, whichever is later. The notice shall be considered filed with the Board on mailing as evidenced by a legible postmark, or upon receipt by fax. Any facsimile received after regular business hours will be treated as received during the regular business hours of the next working day.

(b) The notice of appeal shall contain the following information:

(i) A copy of the decision appealed from;

(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 appeal is based;

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

(iv) The relief sought;

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

(c) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fifteen (15) days of the date on which the first notice of appeal was filed, or within the time otherwise

prescribed herein, whichever period last expires. The notice of appeal shall be served on all parties consistent with Section 3 of this Chapter.

(d) "Computation of Time" - In computing the time period for filing a notice of appeal, the period shall begin on the day after the date of the county board decision or upon the date of mailing of the 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.

Section 3. Service.

Any notice of appeal or motion to appear *amicus curiae* filed with the Board shall contemporaneously be served by the Petitioner or movant upon all parties entering an appearance at the county board of equalization hearing, the county assessor and local county board of equalization by depositing a true and correct copy thereof in the United States mail, postage prepaid, properly addressed to the appropriate mailing addresses.

Section 4. Designation of Parties.

In all appeals governed by this chapter, the parties shall be the taxpayer, or taxpayers, and the county assessor. Any party filing a notice of appeal shall be known as Petitioner. Any party making a response to a notice of appeal shall be designated as Respondent. The county board of equalization shall not be considered a party to an appeal.

Section 5. Motions.

(a) "In general" - An application to the Board for an order shall be by written motion, and shall state with particularity the grounds and the relief or order sought. 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 a written response shall be filed with the Board with copies served 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 any hearing.

b) "*Amicus Curiae*" - Any county board of equalization, or any interested person, may file a motion with the Board to appear *amicus curiae* within thirty (30) days from the filing of the notice of appeal, and contemporaneously serve a copy of the motion pursuant to Section 3 of this chapter. The motion shall specify in ordinary and concise language: (1) the movant's interest in the issues raised in the case; (2) the reasons an *amicus* brief is appropriate and desirable; (3) the view of the movant with respect to whether a party is not represented completely or is not represented at all; (4) the interest of the *amicus* in some other case, if any, which may be affected by the decision in the case before the Board; and (5) any unique information or perspective the *amicus* has that can be of assistance to the Board beyond that which the

parties can provide. The motion shall advise the parties that any objections to the motion shall be filed with the Board within fifteen (15) days of service of the motion. Participation in oral arguments by the *amicus curiae* shall be granted only with Board permission and consent of the party supported, and only for extraordinary reasons with the time used to be charged against the party whose contentions *amicus curiae* supports. The Board, upon its own motion, may request any county board of equalization, any party to the county board hearing, or any interested person or entity to appear *amicus curiae* pursuant to subsection (c) of this section.

(c) “Board Action on Own Motion” - 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 6. Docketing of Appeal.

When a notice of appeal has been received, the Board shall assign a docket number thereto and enter the appeal with the date of filing on the docket. The Board shall establish a separate file for each docketed appeal in which shall be placed all papers, pleadings, transcripts, evidence, and exhibits pertaining thereto and all items shall have noted thereon the docket number assigned.

Section 7. Record of Appeal.

(a) Within 60 days after a notice of appeal is filed, the county board record, including a general index identifying the documents and instruments in the record with reasonable definiteness shall be certified to the Board by the county clerk as clerk of the county board of equalization. The record shall include:

- (i) All formal or informal notices, pleadings, motions, and intermediate rulings;
- (ii) Evidence and exhibits received or considered including matters officially noticed;
- (iii) Questions and offers of proof, objections and rulings thereon;
- (iv) Any proposed findings and exceptions thereto;
- (v) Any opinions, findings, decisions or orders of the county board of equalization and any report by the officer presiding at the hearing; and
- (vi) All testimony reported verbatim steno-graphically or by any other appropriate means determined by the county board of equalization or the officer presiding at the hearing. Oral proceedings or any part thereof shall be transcribed on request of any party upon payment of the cost thereof.

(b) Contemporaneous with filing the record, the county clerk shall serve a copy of the general index on all parties to the appeal.

(c) By written stipulation of all parties to an appeal, the record may be shortened.

Section 8. Presentation of Additional Evidence.

Not later than twenty (20) days before the date set for oral argument, or twenty (20) days before the date set for filing the brief or written statement of a petitioner, an application may be made to the Board for leave to present additional evidence. If it is shown to the satisfaction of the Board the additional evidence is relevant to a material issue before the Board, and is not repetitious of evidence or testimony taken before the county board of equalization, and there was good reason for failure to present it in the proceedings before the county board of equalization, the Board shall order the additional evidence be taken before the county board upon conditions determined by the Board. The county board of equalization may adhere to or modify its findings and decision after receiving such additional evidence, and shall supplement the record to reflect the proceedings had and the decision made. Supplemental evidence may be taken by the Board in cases involving fraud or involving misconduct of some person engaged in the administration of the law affecting the decision.

Section 9. Extent of Review.

The review by the Board shall be confined to the record as supplemented pursuant to Section 8 of this chapter, oral argument and such briefs as may be filed. The Board's review shall be limited to a determination of whether the county board action is:

- (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;
- (c) Without observance of procedure required by law; or
- (d) Unsupported by substantial evidence.

Section 10. Designation of Presiding Officers.

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 11. Notice of Oral Argument.

A notice setting an appeal for oral argument shall be sent by the Board by regular mail to each party and intervenor at least thirty (30) days before the date set for oral argument unless the parties otherwise consent or the Board finds an emergency exists or it is necessary and proper that such matter be heard sooner.

Section 12. Oral Argument and Representation.

(a) At the date, time and place set for oral argument, Petitioner shall be entitled to be heard first. Respondent may then be heard. Petitioner may then conclude. Each Petitioner shall be heard in the order notice of appeal was filed if there is more than one Petitioner. Each party may not exceed 30 minutes in argument unless otherwise ordered by the Board. If more time is desired, the request must be made at or before the time for filing the party's brief. The Board may make such order as it deems proper. Participation in oral arguments by the *amicus curiae* shall be granted only with Board permission and consent of the party supported, and only for extraordinary reasons with the time used to be charged against the party whose contentions *amicus curiae* supports.

(b) A party may represent himself or may be represented by a person designated by him. 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>.

Section 13. 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 14. Briefs.

Any party who desires to submit a written brief, to the Board may do so, upon approval by the Board. An original and four copies of any brief shall be filed with the Board and a copy thereof served on every other party to the appeal. The Board may order the parties to file written briefs.

Section 15. Consideration on Brief.

(a) Any party who so desires need not personally appear at the oral argument and may upon written notice to the Board rely solely upon the information provided in the parties notice of appeal, and written briefs as submitted.

(b) The Board may order consideration of the matter on the record and written briefs. If such order is issued, the parties have ten (10) days from the date of the order to request oral argument or the same shall be deemed waived. The briefing order shall allow thirty (30) days for the filing and service of initial brief, thirty (30) days for the filing and service of the response brief and fifteen (15) days for filing and service a reply brief. An original and four copies of any brief shall be filed with the Board and a copy thereof served on every other party to the appeal. Upon expiration of the time for filing reply briefs, the matter shall be deemed closed and will be taken under advisement for rendition of a written decision.

Section 16. Continuances.

A party desiring continuance shall file with the Board at least seven (7) days before the oral argument, or the date its brief is due, a motion for continuance. The motion must show that good cause exists for continuance. Motions for continuance filed less than seven (7) days before the oral argument or brief due date will be granted only in the case of an emergency, such determination to be in the sole and absolute discretion of the Board.

Section 17. Extensions of Time.

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

Section 18. Dismissal with Prejudice Due to Settlement.

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

Section 19. Decision of Board.

(a) Following oral argument or submission on brief, the Board shall make and enter a written decision. The decision shall be filed with the Board and will, without further action, become the final decision and order of the Board. Upon filing the Board shall send a copy by mail to all parties and the county board of equalization.

(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 county board 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 20. Recusal.

Any member of the Board may, at any time while an appeal is pending and without stating a reason, recuse himself from consideration of the appeal by filing a notice of recusal with the Executive Secretary for service on all parties and filing in the appeal 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 appeal.