

## Wyoming Administrative Rules

# Equalization, Board of

## General Agency, Board or Commission Rules

Chapter 2: Rules of Practice and Procedure for Cases Before the Wyoming State Board of Equalization from the Wyoming Departments of Revenue or Transportation or Certified from a County Assessor and Accepted by the Board

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## CHAPTER 2

### **RULES OF PRACTICE AND PROCEDURE FOR CASES BEFORE THE WYOMING STATE BOARD OF EQUALIZATION FROM THE WYOMING DEPARTMENTS OF REVENUE OR TRANSPORTATION OR CERTIFIED FROM A COUNTY ASSESSOR AND ACCEPTED BY THE BOARD**

**Section 1. Authority.** These rules are promulgated by authority of Wyoming Statutes 16-3-102 and 39-11-102.1.

**Section 2. Purpose and Application 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 Departments of Revenue or Transportation, and of a county assessor for certified cases accepted by the Board. These rules shall apply to contested cases authorized in the Wyoming Statutes and brought before the Board from any final administrative decision of the Department of Revenue, Department of Transportation, or a county assessor (for certified cases accepted by the Board).

#### **Section 3. Incorporation by Reference.**

(a) The rules listed below are incorporated by reference and can be found at: <http://www.courts.state.wy.us/WSC/CourtRule?RuleNumber=48>:

(i) Rule 12(b)(6), Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on March 1, 2017, except the Board shall not treat any proceeding as one for summary judgment;

(ii) Rule 24, Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on March 1, 2017;

(iii) Rule 45, Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on March 1, 2017;

(iv) Rule 52, Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on March 1, 2017.

(b) No later amendments to a rule listed in Subsection (a) of this section are incorporated by reference.

**Section 4. Definitions.** For the purposes of contested cases brought before the Board under these rules:

(a) “Board” means the Wyoming State Board of Equalization as set forth in W.S. 39-11-102.1.

(b) “Case” means 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” means a case proceeding before the Board pursuant to Section 35 of this Chapter.

(d) “Department” means the Wyoming Department of Revenue as created by W.S. 39-11-102 or the Wyoming Department of Transportation as created by W.S. 24-2-101.

(e) “Party” means 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” means any person, firm, corporation, partnership, association, government official, or governmental agency who files a case notice.

(g) “Case notice” means a notice of appeal or a filing specified in Subsection 5(a) of this chapter requesting a contested case hearing.

(h) “Legal holiday” means any day officially recognized as a legal holiday in Wyoming by designation of the legislature or appointment as a holiday by the governor.

(i) “Representative” means an individual who is authorized to act in a representative capacity on behalf of a party to a contested case.

#### **Section 5. Commencement of Case.**

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

(b) The Petitioner shall serve the case notice 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 concise statement in ordinary 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 a hearing is desired.

(d) The Petitioner or the Petitioner's representative shall sign the case notice, which shall contain the telephone number, fax number, if available, and mailing address of the Petitioner or representative.

(e) The case notice shall be filed with the Board within 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 postmark, whichever is later.

(f) Computation of Time - The time period for filing a case notice 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. If the last day of the computed period is a Saturday, Sunday, or legal holiday, the period runs until the end of the next day that 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, upon receipt by fax as provided in Section 5(a), or upon hand delivery as evidenced by the Board's file stamp.

#### **Section 6. Processing of Case.**

(a) The Board shall dismiss the appeal if it is 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 Board 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 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. The Department shall also serve a copy of the general index on all parties to the appeal; or

(b) The Board may direct the Department 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, and also serve a copy of the general index on all parties to the appeal. If 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.** Petitioner shall mail or personally deliver to the Director of the Department a case notice and any other pleadings that Petitioner filed with the Board. The Department shall serve any pleadings it filed on Petitioner by mail and on any other party. If any party is represented, the Department shall serve its pleadings by mail on the representative.

**Section 9. Designation of Presiding Officer.** The Board may designate as presiding officer one 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 that are the subject of the appeal. The presiding officer shall act impartially and have the authority provided by W. S. 16-3-112(b).

**Section 10. Preliminary Statement.** The Board may order each party 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 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 (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;
- (e) The name, address, 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 that 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) An estimate of the time required for the hearing;
- (j) An assessment of the probability of settlement; and
- (k) Any other information 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 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 or more member(s) of the Board, and may be held by conference call or similar technology. 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. A Petitioner relieved, under Subsection (b) of this section, of the duty to provide a prehearing submission must nonetheless attend any prehearing conference ordered by the Board.

(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 in controversy is \$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.

**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, filed with the Board, and served on all parties 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 the moving party or its representative has tried in good faith to resolve the issue with the non-moving party or its representative before filing the motion. The motion shall set forth all good faith efforts undertaken to resolve the issue, and the Board will not consider the motion until this information is provided. The motion shall advise the parties that they may file a written response stating their objections to the motion with the Board and serve a copy on all parties within 15 days of service of the motion. No motions shall be filed within 20 days of a hearing.

(b) For good cause, the Board may act on its own motion by providing notice of its intent to act and the reasons therefore to all parties. The notice of intent shall advise the parties they may file written objections within 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 may be filed with the Board within 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 they may file with the Board and serve on all parties and the applicant a written response within 15 days of service of the application. No application to intervene shall be filed within 20 days of a hearing.

**Section 15. Expedited Contested Case.**

- (a) A contested case may be expedited if:
  - (i) there are no disputed issues of material fact; or
  - (ii) The parties agree to an expedited proceeding, provided the Board retains the authority to convert the proceeding to a regular contested case if essential facts must be determined in order to permit adequate presentation and disposition of the case.
- (b) Any party shall have 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. The Board may permit limited oral argument after submission of all written material upon written request of a party or on the Board's own motion.

**Section 16. Notice of Hearing.** The Board shall by notice set a date, time, and place for the hearing of the case. The notice shall also set forth the 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 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 may limit time for the conduct of a hearing.
- (b) Any party may represent himself or herself 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 Board's office and on the Board's web site at <http://taxappeals.state.wy.us>.
- (d) The hearing is open to the public, except for such portions closed by the Board pursuant to any statute expressly authorizing closure. If 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 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 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, the Petitioner shall present his or her evidence after which the Department shall present its 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 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 Board may ask questions of any party or witness;

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

(b) The Board may order the parties to submit supplemental briefs or proposed findings of fact and conclusions of law.

(c) After all proceedings have been concluded, the Board shall dismiss and excuse all parties and declare the hearing closed. The Board shall advise the parties that its final decision shall be announced following consideration of all matters presented at the hearing.

**Section 19. Briefs.** Any party may submit a written brief to the Board before or during the hearing. A party desiring to submit a brief after the hearing may move the Board for leave to do so. If the Board grants that motion, it shall set a date by which such brief is due. The brief 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 show 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 issues of whether 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 a written notice of intent to issue a default order, including a statement of the grounds.

(b) Within 15 days after service of notice under Subsection (a) of this section, the party against whom it is issued may file a written objection requesting the default order not be entered and stating the grounds therefore. During that 15-day period, 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 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 prescribed in Subsection (b) of this section.

(d) Upon issuance of a default order, the Board shall conduct, without the participation of the defaulted party, 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 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) Parties desiring to have the hearing transcribed by a certified court reporter 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 2300 Capitol Avenue, Cheyenne, Wyoming, or mailed to 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. 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 part of any prehearing order. Unless otherwise ordered or stipulated, no party may serve on any other party more than 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 26. Subpoenas.**

(a) The Board may issue subpoenas for appearance and to produce books, papers, documents, or exhibits, 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 27. 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 28. Continuances.** A party may move for a continuance of a case at least 20 days before the hearing date. The motion must show good cause for the continuance. The Board will not entertain a motion for a continuance unless the movant has tried in good faith to confer with the non-moving party or its representative to learn whether the non-moving party opposes the motion. The motion shall set forth all good faith efforts to confer. If the movant succeeded in contacting the non-moving party or its representative, the motion shall state whether the non-moving party opposes the motion. Motions for continuance filed fewer than 20 days before the hearing will be granted only in case of an emergency, which the Board will determine.

**Section 29. 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. The Board will not entertain a motion for an extension unless the movant has tried in good faith to confer with the non-moving party or its representative to learn whether the non-moving party opposes the motion. The motion shall set forth all good faith efforts to confer. If the movant succeeded in contacting the non-moving party or its representative, the motion shall state whether the non-moving party opposes the motion.

**Section 30. Dismissal with Prejudice Due to Settlement.** Any pending case may be resolved by 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 31. Telephone Conferences.** At the discretion of the Board or presiding officer, conference calls or similar technology may be used to conduct any proceeding subject to such terms and conditions as the Board may order.

**Section 32. Post-hearing Supplementation.** After a hearing and before the Board issues its decision, 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 33. Decision of the Board.**

(a) The Board shall issue a written decision and order containing findings of fact and conclusions of law. The findings of fact shall be derived from the evidence, matters officially noticed, 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 may use its experience, technical competence, and specialized knowledge 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 each party.

(b) Any party may petition the Board, within 10 days of the date of a decision and order, for reconsideration of the decision and order by filing a motion with the Board and serving that motion on all other parties or their representatives. 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. The Board may grant a motion for reconsideration on any of the following grounds:

- (i) Irregularity in the proceedings;

- (ii) Fraud, misrepresentation, or other misconduct of a party;
  - (iii) Error in the valuation, assessment or other calculation within the order;
  - (iv) Newly discovered evidence that could not, with reasonable diligence, have been discovered and produced at the hearing; or
  - (v) An error of law contained within the decision.
- (c) The Board may correct clerical mistakes in decisions and orders or other parts of the record 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. Certification to the State Board of a Case Originally Brought Before A County Board of Equalization.** If a county board of equalization concludes that 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. 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 36. Recusal.** Any member of the Board may, at any time while a case is pending and without stating a reason, recuse himself or herself from consideration of the case by filing a notice of recusal with the Board 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.