



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 03-040

AN ORDER to create TA 1.15 (2m), relating to petitions for review.

Submitted by **TAX APPEALS COMMISSION**

04-16-2003 RECEIVED BY LEGISLATIVE COUNCIL.

05-14-2003 REPORT SENT TO AGENCY.

RNS:WF

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



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Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section TA 1.15 (2m) would more clearly describe the situation where more than one person is allowed to file the same petition for review if it were drafted as follows:

A separate petition for review shall be filed with the commission by an aggrieved party from each notice of action of the department of revenue or the department of transportation on a petition for redetermination. No petition for review may be filed by more than one person unless each person filing the petition for review is aggrieved by the same notice of action. A separate filing fee shall accompany each petition for review.

b. If it is intended that the note will be included after the text of the rule in the Wisconsin Administrative Code, the note should follow SECTION 1 rather than SECTION 4.

DATE: August 29, 2003
TO: Vicki Halvorsen
Committee on Ways and Means
FROM: Patrick E. Fuller, Assembly Chief Clerk
RE: Clearinghouse Rules Referral

The following Clearinghouse Rule has been referred to your committee.

CLEARINGHOUSE RULE 03-040

AN ORDER to create TA 1.15 (2m), relating to petitions for review.

Submitted by **Tax Appeals Commission.**

Report received from Agency on **August 20, 2003.**

To committee on **Ways and Means.**

Referred on **Friday, August 29, 2003.**

Last day for action - **Monday, September 29, 2003.**

Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs choose to do so, you are not required by law or rule to send a copy of the text of the rule to each member at this time. Instead, your notice could state that members should contact you if they wish to receive a hard copy of the rule. Another option would be to email the rule to members. **(Please note that the text of Rules beginning with the prefix "01" is available online in the Clearinghouse Rules infobase in FOLIO.)** Please put a copy of your official notification memo in the rule jacket.

Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Ken Stigler (6-2406) or your Legislative Council attorney. If you wish to learn more on this subject, read section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.



State of Wisconsin

TAX APPEALS COMMISSION

Suite 110
5005 University Avenue
Madison, Wisconsin 53705
(608) 266-1391
Fax (608) 261-7060

August 20, 2003

Senator Allan Lasee
Senate President
c/o Senate Chief Clerk
Attn: Donna Doyle
One East Main Street, Suite 402
Madison, WI 53703

Representative John Gard
Speaker of the Assembly
c/o Assembly Chief Clerk
Attn: Ken Stigler
One East Main Street, Suite 402
Madison, WI 53703

Dear President Lasee and Speaker Gard:

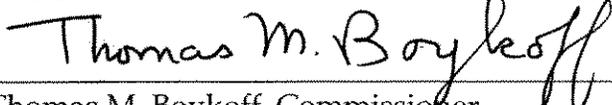
This letter serves as a Notice to you that the Tax Appeals Commission proposes adopting an administrative rule, Clearinghouse Rule No. 03-040. Pursuant to Wis. Stat. §§ 227.19(2) and (3), enclosed for each of you are 3 copies of the following:

1. The proposed rule with a plain language analysis, a reference to an applicable form, a fiscal estimate, and a regulatory flexibility analysis.
2. The "Report to the Senate and Assembly of a proposed rule of the Tax Appeals Commission (pursuant to Wis. Stat. § 227.19(2) and (3))" that contains a statement of the need for the rule; a statement that there was no public hearing; and a statement that all of the Legislative Council staff recommendations were accepted.
3. The Legislative Council staff clearinghouse report.

If you have any questions, please feel free to telephone Commissioner Thomas M. Boykoff at 266-9785. Please note our *change of address* to: 5005 University Avenue - Suite 110, Madison, Wisconsin 53705.

Sincerely,

WISCONSIN TAX APPEALS COMMISSION


Thomas M. Boykoff, Commissioner

Enclosures

cc: Gary L. Poulson, Assistant Revisor of Statutes

**TAX APPEALS COMMISSION'S
NOTICE OF INTENT TO CREATE
AN ADMINISTRATIVE RULE**

NOTICE IS HEREBY GIVEN That pursuant to ss. 73.01(5)(b) and 227.11(21), Stats., and interpreting s. 73.01(5)(b), Stats., and according to the procedure set forth in s.

227.16(2)(e), Stats., the Tax Appeals Commission will create s. TA 1.15(2m), relating to petitions for review, as proposed in this notice, without public hearing unless, within 30 days after publication of this notice (revisor to insert date), the Tax Appeals Commission is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Analysis by the Tax Appeals Commission

Statutory authority: s. 73.01(5)(b), Stats.

Statute interpreted: s. 73.01(5)(b), Stats.

An appeal to the tax appeals commission is, in most cases, preceded by either the department of revenue or department of transportation issuing an assessment to a person, or by a person filing a claim for refund of a tax or fee. If a person disagrees with the assessment, the person may ask the department to reconsider. The document requesting reconsideration is commonly in letter form and is called a "petition for redetermination."

If a department denies a claim for refund, partially or entirely, the department will issue a notice of the denial. The claimant may ask the department to reconsider the denial. The document requesting reconsideration is commonly in letter form and is called a "petition for redetermination."

If a department denies a petition for redetermination, it will issue a "notice of action." The person aggrieved by the denial may then file an appeal ("petition for review") with the tax appeals commission.

This proposed rule requires that a separate petition for review shall be filed with the commission by an aggrieved party from each notice of action by the department of revenue or the department of transportation. No petition for review may be filed by more than one person unless each person filing the petition for review is aggrieved by the same notice of action (ex., two related corporations are the subject of a single assessment; or a married couple appeal on the same issue with respect to a joint income tax return). A separate filing fee shall accompany each petition for review.

The Wisconsin tax appeals commission proposes an order to create s. TA 1.15(2m), relating to petitions for review.

SECTION 1. TA 1.15(2m) is created to read:

TA 1.15(2m) A separate petition for review shall be filed with the commission by an aggrieved party from each notice of action of the department of revenue or the

department of transportation on a petition for redetermination. No petition for review may be filed by more than one person unless each person filing the petition for review is aggrieved by the same notice of action. A separate filing fee shall accompany each petition for review.

NOTE: The format and content of a petition for review are prescribed in s. TA 1.15(1), Wis. Admin. Code, titled "Forms for appeals."

Examples of how the proposed rule will be administered follow:

(1) The department of revenue denies 5 petitions for redetermination of 5 unrelated people on a similar or the same issue. Each person must file a separate petition for review with the commission and pay a filing fee.

(2) The department of revenue denies one petition for redetermination of a corporation and its subsidiary, or a limited liability company ("LLC") and one of its members, on similar or related issues. The corporation and its subsidiary, and the LLC and its member, *may* file a single petition for review with the commission and pay a single filing fee.

(3) The department of revenue issues an assessment to a married couple with respect to a tax issue arising out of their joint income tax return, then denies the married couple's petition for redetermination. The married couple may file a single petition for review with the commission and pay a single filing fee.

SECTION 2. INITIAL APPLICABILITY. This rule first applies to a petition for review filed with the tax appeals commission on the effective date of this rule.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro), Stats.

Regulatory flexibility analysis. A "small business," as defined under s. 227.114(1), which files an appeal with the tax appeals commission will be affected by this rule. However, the statute prescribing appeal procedures (s. 73.01) does not authorize treating a small business differently from any other person filing an appeal. The impact on a small business will be negligible.

Fiscal effect. This proposed rule has no fiscal effect on the state or any county, city, village, town, school district, technical college district or sewerage district.

Contact person: Thomas M. Boykoff, Commissioner
(608)266-1391

7/24/03

REPORT TO THE SENATE AND ASSEMBLY
OF A PROPOSED RULE OF THE
TAX APPEALS COMMISSION
(pursuant to Wis. Stat. § 227.19(2) and (3))

A. The need for the proposed rule.

The objective of this rule is to clarify, for both the public and the Commission, the status of cases pending before the Commission and to alleviate the Commission's storage of non-active files.

Currently, when several petitioners appeal to the Commission from several Notices of action of the Department of Revenue or the Department of Transportation ("Departments") involving the same or similar issues, they commonly file a single Petition for Review in all of their names. The Commission assigns this single petition several docket numbers (i.e., case numbers), one for each petitioner.

This type of filing provides the eventual likelihood of antiquated and ambiguous record keeping, to the detriment of some petitioners and the Commission. When one or more of these appeals are disposed of (for ex., settled, canceled, withdrawn), the title of the case remains the same, and petitioners who no longer have disputes with the Departments continue to have their names and docket numbers on the caption of the case. This is deceptive as to who is still in litigation, and it perpetuates antiquated information being provided to the public. It also presents a storage problem for the Commission, which may not archive the non-active cases until *all* the cases are resolved.

The proposed rule requires that a separate petition for review shall be filed with the commission by an aggrieved party from each notice of action by the department of revenue or the department of transportation. No petition for review may be filed by more than one person unless each person filing the petition for review is aggrieved by the same notice of action (ex., two related corporations are the subject of a single assessment; or a married couple appeal on the same issue with respect to a joint income tax return). A separate filing fee shall accompany each petition for review.

B. Modifications to proposed rule arising out of public hearing.

There was no public hearing, so no modifications were made arising out of a hearing. The proposed rule was published in the Wisconsin Administrative Register pursuant to the 30-day provision in Wis. Stat. § 227.16(2)(e).

C. Persons who appeared at the public hearing.

There was no public hearing.

D. Response to the Legislative Council staff recommendations.

All of the recommendations were accepted and incorporated into the proposed rule.

Thomas M. Boykoff, Commissioner

July 23, 2003