

Chapter TA 1

PRACTICE AND PROCEDURES BEFORE THE TAX APPEALS COMMISSION

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Subchapter I — General Provisions

TA 1.01 Form and style of papers. (1) Papers filed with the tax appeals commission shall be legible and, if possible, typewritten. They should be on plain white paper not more than 8.5 inches wide and 11 inches long. A party should write on only one side of a paper.

(2) Each party should place the proper caption on all papers filed with the commission. See s. TA 1.15 (2) (a) for a sample caption. Each petitioner should state its full and complete name in the caption of all papers filed.

(3) Except as provided in ss. TA 1.15 (3) and 1.19, each party shall file a signed original and one copy of all papers. Each party shall file one additional copy of motions to consolidate proceedings and of all papers filed in proceedings that are consolidated.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81; am. (3), Register, January, 1982, No. 313, eff. 2-1-82.

TA 1.03 Appearance and practice. Any party before this commission may select a representative. This section does not constitute a waiver of any requirement of personal appearance of a petitioner at a commission hearing.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

Subchapter II — Filing an Appeal

TA 1.11 Time for filing. An appeal to the commission must be filed in writing during the period prescribed by statute.

Note: Section TA 1.11 interprets ss. 70.38 (4), 70.64 (3), 70.995 (8), 71.09 (13) (d), 71.12 (1) (a), 72.86 (4), 73.01 (5) (a), 76.38 (12) (a), 76.39 (4) (c), 76.48 (6), 77.59 (6) (b) and 139.33 (5), Stats.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

TA 1.13 When an appeal is filed. (1) Except as provided in sub. (2), a petition for review is filed on the date on which the petition for review and proper filing fee are received in the commission's office in Madison.

(2) A petition for review is considered timely filed if it is accompanied by the required filing fee and it is mailed by certified mail in a properly addressed envelope with postage duly prepaid, which envelope is postmarked before midnight of the last day for filing.

Note: The proper address of the commission is 5005 University Avenue., Suite 110, Madison, Wisconsin 53705.

Note: Section TA 1.13 interprets ss. 70.995 (8) (a), 73.01 (5) (a), Stats.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81; am. Register, January, 1982, No. 313, eff. 2-1-82.

TA 1.15 Forms for appeals. (1) A petition for review shall be in writing. Except as provided in sub. (4) for appeals of assessments of manufacturing property and appeals of penalties imposed by the department of revenue for the late submission of

manufacturing forms, the petition may be in letter form and shall clearly inform the commission that a decision or determination of the respondent is being appealed.

(2) A petition for review filed under sub. (1) may contain the following:

- (a) A caption substantially in the following form:

WISCONSIN TAX APPEALS COMMISSION

_____,
Petitioner(s)

vs.

_____ Docket No.

_____,
Respondent(s)

To the Wisconsin Tax Appeals Commission:

- (b) The full name of each petitioner.

(c) A clear and concise statement of the facts or other matter in controversy upon which the petitioner relies, giving the date of notice of the decision or determination appealed and, if possible, attaching a copy.

(d) A clear and concise statement of the petitioner's objections to the decision or determination appealed from and of the contentions of law, if any, upon which the petitioner relies.

(e) The name and address of the petitioner's representative, if any, together with a statement that the representative is authorized to appear and act for the petitioner. If the representative is a business organization, the business organization's name may be used. The petitioner or the petitioner's representative shall sign the petition.

(f) A statement of the portion, if any, of the tax which is admitted by the petitioner to be correct.

- (g) A statement of the relief sought.

(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. Adm. Code, titled "Forms for appeals."

Examples of how sub. (2m) 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.

(3) A petitioner shall file with the commission the original copy of a petition for review and 4 additional copies.

(4) A petition for review appealing either an assessment of manufacturing property or a penalty imposed by the department of revenue for late submission of the standard manufacturing property report form should be on forms provided by the commission.

Note: Forms for appealing either an assessment of manufacturing property or a penalty for late submission of the standard manufacturing property report form may be obtained by writing to: Tax Appeals Commission, 5005 University Avenue., Suite 110, Madison, Wisconsin 53705.

Note: Section TA 1.15 interprets ss. 70.995 (8) (c) and (d) and 73.01 (5), Stats.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81; am. (1) and (3), r. and recr. (4), Register, January, 1982, No. 313, eff. 2-1-82; CR 03-040: cr. (2m) Register November 2003 No. 575, eff. 12-1-03.

TA 1.17 Docket. Upon receipt of a petition for review with the required filing fee, the commission shall docket and assign a number to the petition and notify the petitioner. Each party shall place this number on all papers subsequently filed by that party in the proceeding before the commission.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81; am. Register, January, 1982, No. 313, eff. 2-1-82.

TA 1.19 Answer and reply to petitions for review. After receiving and docketing a petition for review, the commission shall transmit one copy to the department of revenue and to each other party to the proceeding except the petitioner. Within 30 days after such transmission, the department shall file an original and 3 copies of an answer to the petition with the commission and shall serve one copy on the petitioner or the petitioner's attorney or agent. Within 30 days after service of the answer, the petitioner may file and serve a reply in the same manner as the petition is filed.

Note: Section TA 1.19 interprets s. 73.01 (5) (a), Stats.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81; am. Register, January, 1982, No. 313, eff. 2-1-82.

TA 1.21 Amendments of documents filed. A petitioner or respondent may amend its petition, answer or reply at any time before the commission's hearing with the consent of the adverse party or by leave of the commission upon motion duly made. Each party shall file the proposed amendments with all motions to amend.

Note: Section TA 1.21 interprets s. 73.01 (5) (b), Stats.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

Subchapter III — Procedures Prior to a Hearing

TA 1.31 Motions. (1) Motions shall be brought in the manner provided under the rules of civil procedure in force in the circuit courts of this state except that the commission may issue notices of the dates for hearings on motions.

(2) The commission or the presiding commissioner may rule on any motion at the time set for the hearing on it after hearing the arguments of the party or parties present. The commission or presiding commissioner may rule on any motion if any party fails to appear at the time set for a hearing.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

TA 1.33 Prehearing conferences. (1) Upon its own motion or upon the request of a party to a proceeding, the commission may direct the parties to appear before it at a prehearing conference.

(2) A commissioner shall preside at each prehearing conference.

(3) The presiding commissioner or another commissioner designated by the presiding commissioner shall prepare and pro-

vide each party with a copy of a written memorandum summarizing the prehearing conference and stating all orders issued at the conference.

Note: Section TA 1.33 interprets s. 227.44 (4), Stats.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

TA 1.35 Discovery. (1) Parties may obtain discovery before the commission in the same manner and by the same methods as provided under ch. 804, Stats., unless inconsistent with or prohibited by statute, or as otherwise determined by the commission. When resort would normally be had to a circuit court under ch. 804, Stats., resort shall be had to the commission.

(2) The commission shall refuse to hear any and all motions concerning discovery under ch. 804, Stats., unless moving counsel shall first advise the commission in writing that after serious effort to resolve differences, counsel are unable to reach an accord. This statement shall further recite the circumstances of such efforts to resolve differences and the names of all persons participating therein.

Note: Section TA 1.35 interprets s. 73.01 (4) (d), Stats.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

TA 1.37 Extensions. The commission may grant continuances, extensions of time, postponements or adjournments upon a showing of good and sufficient cause.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

TA 1.39 Practice and procedures. Except as provided in s. TA 1.53, the practice and procedures before the commission shall substantially follow the practice and procedures before the circuit courts of this state.

Note: Section TA 1.39 interprets s. 73.01 (4) (d), Stats.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

Subchapter IV — Hearings

TA 1.51 Hearings. (1) When a proceeding is placed on the commission's calendar for hearing, the commission shall notify the parties of the time and place of hearing not less than 10 days prior to the hearing, except as otherwise provided by statute.

(2) A party shall arrange to have witnesses in attendance and exhibits ready for presentation at the time and place designated in the notice of hearing.

Note: Section TA 1.51 interprets ss. 71.12 (3) and 73.01 (5) (b), Stats.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

TA 1.53 Evidence. The commission is not bound by common law or statutory rules of evidence. Irrelevant, immaterial or unduly repetitious testimony shall be excluded.

Note: Section TA 1.53 interprets s. 227.45, Stats.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

TA 1.55 Transcripts. (1) The commission shall make either a stenographic, electronic or other record of all commission hearings.

Note: See ss. 73.01 (4) (c) and 227.07 (8), Stats.

(2) If the hearing has been electronically tape recorded, copies of tapes will be provided upon request at a cost of \$10 per tape, paid in advance.

(3) Upon request of a party, the commission may order preparation of a written transcript of a hearing. The party making the request shall be responsible for all reasonable costs incurred by the commission in transcribing the record and in preparation of the transcript. Costs may be prorated among the parties if more than one party makes the request. The original of the transcript shall be retained by the commission.

(4) Upon proper showing of financial inability to pay for a copy of the transcript, the commission may furnish a copy of a tape recording or transcript to a party without cost.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81; emerg. am. (1), r. and recr. (2), renum. (3) to be (4) and am., cr. (3), eff. 9-10-85; am. (1), r. and recr. (2), renum. (3) to be (4) and am., cr. (3), Register, January, 1986, No. 361, eff. 2-1-86.

TA 1.57 Briefs. (1) The commission may require that briefs be submitted either before or after the hearing and may designate the time and the manner of filing and serving briefs. When briefs are required, the party bearing the burden of proof on the issue shall file the initial and final briefs unless otherwise ordered by the commission.

(2) The commission may strike and disregard briefs that are filed with the commission or served after the time designated unless an application for extension of time under s. TA 1.37 is made and granted.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

TA 1.59 Proposed findings of fact and conclusions of law. The commission may require any party to submit proposed findings of fact or conclusions of law or both.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

TA 1.61 Determination of parties. The parties to proceedings before the commission shall be designated as follows: a person filing a petition for review shall be called the petitioner; a person required to respond to that petition for review shall be called the respondent.

Note: Any person appealing a decision of the tax appeals commission, in addition to serving the appeal petition on each adverse party, is required by s. 227.53 (1) (a), Stats., to serve the commission.

History: Cr. Register, October, 1983, No. 334, eff. 11-1-83.

TA 1.63 Frivolous appeals. (1) Whenever it appears to the commission or to a commissioner in respect to hearings decided by one commissioner, that an appeal has been instituted or maintained primarily for delay or is frivolous or groundless, the commission or commissioner, at the time the decision in the matter is issued, may assess damages against the taxpayer in an amount not to exceed \$1,000.

Note: See s. 73.01 (4) (am), Stats.

(2) In order to assess such damages, the commission or commissioner must find one or more of the following:

(a) The appeal was instituted or maintained primarily for delay.

(b) The appeal was filed, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

(c) The petitioner or petitioner's representative knew, or should have known, that the appeal was without reasonable basis in law or equity or could not be supported by a good faith argument for an extension, modification or reversal of existing law.

(3) In any matter in which the commission or commissioner has ordered an assessment of damages as provided in sub. (1), the commission or commissioner shall notify the department of revenue in writing within 10 days after the assessment.

History: Emerg. cr. eff. 9-10-85; cr. Register, January, 1986, No. 361, eff. 2-1-86.