

Clearinghouse Rule 07-113

PROPOSED RULE-MAKING ORDER WISCONSIN TAX APPEALS COMMISSION

The Tax Appeals Commission proposes an order to create TA 1.001, TA 1.05, TA 1.23, TA 1.29, TA 1.32, and TA 1.34; to amend TA 1.01, TA 1.03, TA 1.11, TA 1.13, TA 1.15, TA 1.17, TA 1.19, TA 1.21, TA 1.31, TA 1.33, TA 1.35, TA 1.37, TA 1.51, TA 1.53, TA 1.55, TA 1.57 and TA 1.63; to repeal and recreate TA 1.39; and to repeal TA 1.61; relating to the rules of practice and procedure before the commission.

RULE SUMMARY

Statutes Interpreted: Wis. Stat. § 73.01(5) allows parties to file petitions for review by the Tax Appeals Commission and describes the process by which the commission conducts such review. The proposed rule changes relate to the procedures for such review.

Statutory Authority: Wis. Stat. § 73.01(4)(b) gives the commission authority to promulgate its rules of procedure.

Explanation of Agency Authority: Pursuant to Wis. State. § 73.01(4) and subject to judicial review, the Tax Appeals Commission is the final authority for the hearing and determination of all appeals arising in the following areas of state taxation: individual income, corporation franchise/income, fiduciary, withholding, gift, sales and use, recycling surcharge, county sales tax, car line, cigarette use, controlled substances, metalliferous minerals occupation, motor fuel and alternative fuel, International Registration Plan fees, intoxicating liquor, cigarettes and tobacco products, homestead credit, farmland preservation credit, assessments of manufacturing property, pollution abatement, taxation district appeals regarding the relative value of taxable property in taxation districts of a county, real estate transfer fees, telephone license fees, and electric cooperative association license fees. The commission's rules govern procedures in such appeals.

Related Statute or Rule: Statutes that provide for appeals of state taxation assessments to the commission are Wis. Stats. §§ 70.38(4)(a), 70.397, 70.64, 70.995(8), 71.07(9e), 71.55(6m), 71.61, 71.88, , s. 76.38 (12) (a), 76.39(4)(c), 76.48(6),

76.91, 77.26(3), 77.59(5m) and (6)(b), 78.01, 78.22, 78.40, 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 341.45, and 341.45.

Plain Language Analysis: Section by section details of this rule order are outlined as follows:

Section 1: TA 1.001 is created to provide definitions for terms used in this chapter. The definition of “participant” is added for references relating to persons other than parties. Where appropriate, “party” has been replaced in the rules with “participant.” The definition of “working day” is found in Wis. Stat. § 227.01(14). Legal holidays are designated in Wis. Stat. § 230.35(4)(a). The definition of “small claims” is found in Wis. Stat. § 73.01(1)(b).

Section 2: TA 1.01(1), (2) and (3) are amended to show a preference for documents to be printed by a computer printer, to replace the term “party” with the more inclusive term of “participant” and to remove the requirement of filing additional copies of papers in consolidated proceeding.

Section 3: TA 1.01(4) and (5) are created to make the prescribed form of pleading mandatory and to make the mandatory use of a caption consistent with the change in TA 1.15(2). Sub. (4) is added to clarify that this rule does not apply to exhibits. Sub. (5) provides a method for dealing with violations of these sections.

Section 4: TA 1.03 is renumbered to 1.03(1) and amended to replace the term “party” with the more inclusive term “participant.”

Section 5: TA 1.03(2) is created to codify the commission’s current practice of requiring the filing of a written notice of appearance by a participant’s representative.

Section 6: TA 1.05 is created to codify the current business hours of the commission.

Section 7: TA 1.11 is amended to remove references to statutory authority from the text of the rule. Throughout the rules the references have been updated and moved to a note that follows each section. Here, reference to TA 1.15 (forms for appeals) is also added.

Section 8: TA 1.13(1) and (2) are amended to codify the practice of the commission to treat petitions filed after business hours as filed on the next working day, and to clarify that the filing fee is not required to be paid on the date of filing of the petition. *See, Kuntz v. Wis. Dep’t of Revenue*, 149 Wis. 2d 399, 439 N.W.2d 644 (Ct. App. 1989) (unpublished).

Section 9: TA 1.13(3) is created to reflect the commission's practice of requiring the filing fee to be paid in a prompt manner, consistent with Wis. Stat. §§ 70.995(8)(a) and 73.01(5)(a).

Section 10: TA 1.15(1), (2), (3) and (4) are amended to change the reference to "respondent" in sub. (1) to "department" for consistency. With regard to existing sub. (2), many of the suggested elements of the model petition for review are actually mandated by Wis. Stats. §§ 70.995(8)(c) and (d) and 73.01(5). For example (2)(c) and (d) are largely mandated by Wis. State. § 73.01(5)(b). The amendment makes the elements specified in sub. (2) mandatory. The number of copies of each petition for review is reduced from four to two in sub. (3) to reflect the current practice of the commission.

Section 11: TA 1.15(5) is created to incorporate the practice of the commission to permit a petitioner to file an amended petition for review if the initial petition for review lacks information required by statute.

Section 12: TA 1.17 is renumbered to TA 1.17(1) and amended to refer to the newly created subsection 2 and replace the term "party" with the more inclusive term "participant."

Section 13: TA 1.17(2) is created to incorporate the policy of the commission adopted in *Niagara v. Department of Revenue*, Docket Nos. 97-M-22 and 97-M-23 (WTAC Nov. 25, 1997), to assign the same docket number to a cross-appeal as was assigned to the petition for review to which the cross-appeal relates.

Section 14: TA 1.19 is amended to change "attorney or agent" to "representative" for consistency.

Section 15: TA 1.21 is amended to make the amendment of pleadings more consistent with the rules of civil procedure and Wis. Stat. § 802.09(1).

Section 16: TA 1.23 is added to allow certain filings of documents by electronic transmission consistent with Commission practice.

Section 17: Subchapter III name is changed from Procedures Prior to Hearing to Practice and Procedures because this chapter covers practice and procedures prior to, during and after a hearing.

Section 18: TA 1.29 is added to codify the current commission practice of generally following the rules of civil procedure to govern practice before the commission, as authorized by Wis. Stat. § 73.01(b). This rule takes the place of TA 1.30 and

specifies the rules of civil procedure that the commission has adopted. The enumeration of statutes in the note is intended to assist non-lawyer representatives and pro se litigants. Placing TA 1.29 at the beginning of subchapter III is logical. The change in the title of subchapter III reflects this subchapter's application to matters other than pre-hearing practice.

Section 19: TA 1.31(1) and (2) are renumbered to TA 1.31(4) and (5) and amended to eliminate superfluous language in sub. (2) in light of the newly created TA 1.29. The amended rule clarifies the current commission practice that only the commission issues notices of hearings.

Section 20: TA 1.31(1), (2) and (3) are created to describe what types of motions may be made before the commission, when those motions may be made and that sufficient copies of motions and supporting papers are provided in cases where all three commissioners must render a decision. Sub. 2 makes it clear that the commission need not hold hearings on every motion that is filed.

Section 21: TA 1.32 is created to codify the commission's current practices concerning intervenors and consolidation of matters before the commission.

Section 22: TA 1.33(1) and (2) are amended to replace the term "parties" with the more inclusive term "participants" and to remove unnecessary language.

Section 23: TA 1.34 is created to clarify that attorneys authorized to practice law in Wisconsin may issue subpoenas in proceedings before the Commission, just as in civil proceedings, as authorized by Wis. Stat. § 227.45(6m), and provides a framework for exercise of the Commission's authority to issue subpoenas and subpoenas duces tecum.

Section 24: TA 1.35(1) and (2) are amended to move statutory references to the appended Note and to replace the term "counsel" with the more inclusive term "party."

Section 25: TA 1.37 is amended to make it clear that the commission's authority to grant extensions is limited.

Section 26: TA 1.39 is repealed in favor of TA 1.30 and recreated to codify the commission's practice of permitting amicus curiae briefs as a matter of discretion.

Section 27: The title of TA Subchapter IV is amended from "Hearings" to "Conduct of Hearings."

Section 28: TA 1.51(1) and (2) are amended to place the statutory reference in the appended Note, to replace the term “party(ies)” with the more inclusive term “participant(s)” and to require a longer notice period for a hearing.

Section 29: TA 1.51(3), (4) and (5) are created to codify the commission’s practice for exchanging witness names and exhibits prior to a hearing, to provide a penalty for unreasonable conduct by a participant in a hearing and to codify the commission’s practice in allowing telephonic testimony as allowed by Wis. Stat. § 807.13.

Section 30: TA 1.53 is amended to reflect the correct statutory authority for admission of evidence in a contested hearing pursuant to Wis. Stat. 227.45(1) through (7).

Section 31: TA 1.55 is amended to note the correct statutory authority for recording contested hearings in Wis. Stat. § 227.44(8), to remove the word “tape” to reflect that recordings are not necessarily recorded on “tape,” and to remove the term “party(ies)” and replace it with the more inclusive term “participant(s).”

Section 32: TA 1.57(1) and (2) are amended to remove unnecessary language and to provide the method for disregarding briefs that are filed after the time designated by the commission.

Section 33: TA 1.57(3), (4), (5) and (6) are created to provide specific guidelines for filing briefs with the commission.

Section 34: TA 1.59 is not amended.

Section 35: TA 1.61 is repealed because the newly created TA 1.001, Definitions, makes this section redundant.

Section 36: TA 1.63 is amended to remove unnecessary language in making a finding of a frivolous appeal that is not required by Wis. Stat. § 73.01(4)(am).

Summary of, and comparison with, existing or proposed federal regulations:

There are no federal regulations governing practice and procedure before the commission. The commission’s rules are analogous to the rules of the U. S. Tax Court; however, as a state administrative agency, the commission’s rules of practice are much less restrictive than the Tax Court’s rules.

Comparison with rules in adjacent states: Adjacent states have various entities that review state tax appeals that range from a state tax court in Minnesota to a

hearing division within the Departments of Revenue in Iowa and Illinois. These entities have procedures for hearings that are generally comparable to those of the commission.

Summary of factual data and analytical methodologies: The commission has not collected any data nor adopted a methodology in connection with its development of these proposed rule changes. The proposed changes generally update the rules to reflect the commission's current practices.

Analysis and documentation used in support of the agency's determination under Wis. Stat. § 227.114 (Small Business Impact): The commission has not collected any data in connection with its determination of the impact of these proposed rule changes on small business.

Effect on small business: The commission's rules of procedure affect small businesses in that they may become parties to cases pending before the commission. The proposed rule changes primarily serve to clarify existing procedural rules. These changes are not anticipated to have any significant effect on small businesses.

Agency contact person: Diane E. Norman, Acting Chairperson, Tax Appeals Commission, Suite 110, 5005 University Avenue, Madison, WI 53605; telephone: 608-266-1391; email: diane.norman@wisconsin.gov.

Place where comments are to be submitted and deadline for submission: Mail: Wisconsin Tax Appeals Commission, Suite 110, 5005 University Avenue, Madison, WI 53705; Facsimile: 608-261-7060. Deadline for submission: _____, 2008

TAX APPEALS COMMISSION

Chapter TA 1 PRACTICE AND PROCEDURES BEFORE THE TAX APPEALS COMMISSION

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TA 1.31 Motions.

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~~TA 1.39 Practice and procedures.~~

TA 1.39 Amicus curiae briefs.

SUBCHAPTER IV: HEARINGS

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TA 1.53 Evidence.

TA 1.55 Transcripts.

TA 1.57 Briefs.

TA 1.59 Proposed findings of fact and conclusions of law.

~~TA 1.61 Determination of Parties.~~

TA 1.63 Frivolous appeals.

SUBCHAPTER I GENERAL PROVISIONS

SECTION 1. TA 1.001 is created to read:

TA 1.001 Definitions. In this chapter:

- (1) “Commission” means the tax appeals commission.
- (2) “Department” means the department of revenue.
- (3) “Participant” means any party, intervenor, or amicus curiae in a case before the commission.

- (4) "Party" means petitioner or respondent in a case before the commission.
- (5) "Petitioner" means any party that has filed a petition for review with the commission.
- (6) "Respondent" means the Department of Revenue or the Department of Transportation.
- (7) "Small claims" means a matter in which the amount in controversy, including any penalty, after the department of revenue takes its final action on the petition for redetermination, is less than \$2,500, unless the commission, on its own motion determines that the case not be heard as a small claims case or unless the department of revenue determines that the case has statewide significance.
- (8) "Working day" means any day except Saturday, Sunday and holidays designated by state statute.

Note: Statutory references: ss. 73.0 (1) (b), 227.01 (14) and 230.35 (4) (a), Stats.

SECTION 2. TA 1.01 is amended to read:

TA 1.01 Form and style of papers.

- (1) Papers filed with the ~~tax appeals~~ commission shall be legible and, if possible, typewritten typed or printed by a computer printer. ~~They should be on one side of 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. See TA 1.57 for additional requirements for briefs.~~
- (2) Each ~~party~~ participant shall 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 participant shall~~ 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, 1.31(1), and 1.57(3),~~ each participant 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.~~

SECTION 3. TA 1.01(4) and (5) are created to read:

- (4) This section shall not apply to exhibits offered by a participant or attached to a paper filed with the commission.

(5) If a paper is filed that does not comply with this section, the commission, on its own motion or on the motion of a party, may order the participant filing the paper to comply with this section and provide for further relief as is just and equitable.

SECTION 4. TA 1.03 is renumbered TA 1.03(1) and amended to read:

TA 1.03 Appearance and practice.

(1) Any ~~party participant before this commission~~ may ~~select~~ designate a representative. This section does not constitute a waiver of ~~any~~ the requirement of personal appearance of a petitioner at a commission hearing.

SECTION 5. TA 1.03(2) is created to read:

(2) Representatives of a participant shall be designated in a written document signed either by a participant or a representative. This designation of a representative may be made in a party's petition for review or in a notice of appearance. Any notice of appearance shall include the name, address, daytime telephone number, facsimile number, if any, and e-mail address, if any, of the representative.

SECTION 6. TA 1.05 is created to read:

TA 1.05 Business hours. The commission's business hours are from 7:45 a.m. to 4:30 p.m. (Central Standard Time) on working days.

SECTION 7. TA 1.11 is amended to read:

**Subchapter II
Filing an appeal**

TA 1.11 Time for filing An appeal to the commission shall be filed in writing in accordance with TA 1.15 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. Statutory references: The statutory period for filing an appeal with the commission is found in s. 73.01 (5), Stats.

SECTION 8. TA 1.13(1) and (2) are amended to read:

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~~ is received in the commission's office in Madison during the commission's business hours. A petition for review received after the commission's business hours is considered filed on the next working day that is not a legal holiday.

(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.~~

SECTION 9. TA 1.13(3) is created to read:

(3) If a petition for review is timely filed and is not accompanied by the required filing fee, the commission shall promptly notify the petitioner of the requirement to pay the proper filing fee. Failure of the petitioner to pay the fee within 30 days of receipt of notice from the commission shall result in the dismissal of the petition for review.

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

Note: Statutory references: ss. 70.995 (8) (a) and 73.01 (5) (a), Stats.

SECTION 10. TA 1.15(1) and (2) are amended to read:

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 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) shall contain the following:

(a) A caption substantially in the following form:

WISCONSIN TAX APPEALS COMMISSION

(Name of petitioner(s))

Petitioner(s)

vs.

Docket No. _____

Wisconsin Department of (Revenue) (Transportation),

Respondent.

To the Wisconsin Tax Appeals Commission:

(b) The full name and address of each petitioner, and if no representative is designated, the daytime telephone number 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 the 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, daytime telephone number, facsimile number and e-mail address, if any, 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.

(h) An attached copy of the notice of action or determination being appealed.

(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 ~~four~~ two 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 shall 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.~~

SECTION 11. TA 1.15(5) is created to read:

(5) If a petition for review is filed that does not comply with this section, the commission, on its own motion or the motion of a party, may order the petitioner to file an amended petition for review that complies with this section and may provide for further relief as is just and equitable.

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 telephoning the commission at (608)266-1391, by writing to the commission at its mailing address or by downloading the forms at www.wisbar.org.

Note: Statutory references: ss. 70.995 (8) (c) and (d) and 73.01 (5), Stats.

SECTION 12. TA 1.17 is renumbered to TA 1.17(1) and amended to read:

TA 1.17 Docket. ~~Upon (1) Except as provided in sub. (2), upon~~ receipt of a petition for review, the commission shall docket and assign a number to the petition and notify the petitioner. Each ~~party~~ participant shall place this number on all papers

subsequently filed by that ~~party~~ participant in the proceeding before the commission.

SECTION 13. TA 1.17(2) is created to read:

(2) Upon receipt of a cross-appeal, the commission shall assign it the same docket number as was assigned to the petition for review to which the cross-appeal relates.

Note: Statutory reference: s. 70.995 (8) (a), Stats.

SECTION 14. TA 1.19 is amended to read:

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, if any, except the petitioner. Within 30 days after ~~such~~ this transmission, the department shall file an original ~~and three copies of an~~ its answer to the petition with the commission and shall serve ~~one~~ a copy on the petitioner or the petitioner's ~~attorney or agent~~ representative. 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 1.19 interprets~~ Statutory reference: s. 73.01 (5) (a), Stats.

SECTION 15. TA 1.21 is amended to read:

TA 1.21 Amendments of documents filed. ~~A petitioner or respondent participant~~ 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 a motion duly made. Each ~~party~~ participant shall file the proposed amendments with all motions to amend. Leave to amend a petition, answer or reply may be requested at any stage of the proceeding. A participant shall plead in response to an amended petition for review as provided by TA 1.19.

Note: ~~Section 1.21 interprets~~ Statutory reference: s. 73.01 (5) (b), Stat.

SECTION 16. TA 1.23 is created to read:

TA 1.23 Filing documents by electronic transmission. Except for a petition for review, participants may file papers with the commission by facsimile transmission or e-mail. Papers filed by facsimile or e-mail shall be considered filed when a complete printable copy is received by the commission, except that papers

so filed after the commission's normal business hours are considered filed on the next working day. Papers received by facsimile or e-mail shall be considered original filed documents. The signed document transmitted electronically must be sent to the commission by the close of the next working day with any copies required by these rules.

Note: The Commission's facsimile number is (608) 261-7060 and its e-mail address is TAC@wisconsin.gov.

SECTION 17. TA Subchapter III is amended to read:

Subchapter III
Practice and Procedures Prior to a Hearing

SECTION 18. TA 1.29 is created to read:

TA 1.29 Rules of Practice. Unless otherwise provided in ch. 73, ch. 227 or these rules, the procedure governing civil actions in the circuit courts of this state shall substantially apply to procedures before the commission.

Note: Statutory reference: s. 73.01(4)(b), Stats.; See also, ss. 801.14, 801.15, 802.01, 802.02, 802.03, 802.04, 802.05, 802.06, 802.08, 802.09, 802.10, ch. 804, 805.03, 805.07, 805.10, 805.17, 805.18, 807.03, 807.05, 807.06, 807.13, 807.14, and 814.245, Stats.

SECTION 19. TA 1.31(1) and (2) are renumbered to TA 1.31 (4) and (5) and amended to read:

TA 1.31 Motions. (4) ~~(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~~ If the commission schedules a hearing on a motion, the commission shall ~~may~~ issue a notices of the dates, time and location of for the hearings on the motions.

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

SECTION 20. TA 1.31 (1), (2) and (3) are created to read:

TA 1.31 Motions. (1) A participant requesting an order from the commission shall make the request in the form of a motion which clearly describes the order sought and the grounds for granting it. A participant may move the commission for any

substantive or procedural order authorized by law, including any of the following:

- (a) An order dismissing a participant or petition for lack of personal or subject matter jurisdiction. A motion to dismiss for lack of jurisdiction may be made at any point in the proceeding, but shall be made as soon as the basis for the motion becomes apparent to the moving party.
- (b) An order dismissing a petition before a hearing for failure to state a claim on which relief can be granted.
- (c) An order granting summary judgment as to any issue or the entire matter under consideration. A motion for summary judgment shall be brought and decided in accordance with civil procedure statutes governing motions for summary judgment.

Note: Statutory reference: s. 802.08, Stats.

(2) Except in small claims cases, each participant shall file an original and three copies of all motions and supporting papers and affidavits. In small claims cases, each participant shall file an original and one copy of all motions and supporting papers and affidavits.

(3) Upon the filing of a motion, the commission may set a briefing schedule.

SECTION 21. TA 1.32(1) and (2) are created to read:

TA 1.32 Consolidation and intervention. (1) Matters before the commission that involve the same parties or that arise from the same transaction or transactions or assessment or assessments may be consolidated by stipulation of the parties or upon the motion of a party or of the commission. In determining whether to consolidate one or more matters, the commission shall consider the convenience and resources of the parties and the commission, and the possible prejudice to any party.

(2) Only persons authorized by statute may be a party in a proceeding before the commission. However, the commission, on the motion of a proposed intervenor, may allow a non-party to participate in proceedings before the commission as provided by order of the commission. The commission may enter orders based upon stipulation of the parties regardless of the assent or objection of an intervenor. In deciding whether to permit a prospective intervenor to intervene in a matter, the commission shall consider the ability of the parties to fully present the merits of the issues and the effect intervention will have on the prosecution of the matter. An order allowing intervention shall specify the extent of the intervenor's authorized participation in proceedings.

SECTION 22. TA 1.33 (1), (2) and (3) are amended to read:

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~~ participants 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 provide 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~~ Statutory references: ss. 227.07 (4), ~~ss.~~ 227.44 (4), Stats.

SECTION 23. TA 1.34 is created to read:

TA 1.34 Subpoenas. (1) Attorneys licensed to practice law in Wisconsin may issue and serve subpoenas and subpoenas duces tecum as provided by statute in proceedings before the commission.

(2) Parties not represented by an attorney licensed to practice law in Wisconsin may apply in writing to request that the commission issue a subpoena or subpoena duces tecum. Except as provided in a scheduling order, every application for a subpoena or subpoena duces tecum shall be filed at least 30 days prior to the hearing date or the date sought for examination or production and shall be served by the requesting party on all parties to the proceeding. A party opposing the issuance of a subpoena or subpoena duces tecum shall file a written objection with the commission not later than seven days after receipt of the application and shall serve a copy of its objection on all other parties to the proceeding.

(3) An application for a subpoena shall contain the name of the person to be examined and the time, date and location of the examination.

(4) An application for a subpoena duces tecum shall include the information described in sub. (3) and a detailed description of the documents to be produced at the examination.

(5) The party applying for a subpoena or a subpoena duces tecum shall be responsible for serving the subpoena or subpoena duces tecum and for paying any related costs and fees.

Note: Statutory references: ss. 227.45 (6m), 805.07 and 885.01 (4), Stats.

SECTION 24. TA 1.35(1) and (2) are amended to read:

TA 1.35 Discovery. (1) Parties may obtain discovery before the commission in the same manner and by the same methods as provided under the statutes governing discovery 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 a statute governing discovery ch. 804, Stats., the parties shall first resort shall be had to the commission.

(2) The commission shall ~~refuse to not~~ hear ~~any and all~~ a motions concerning discovery ~~under ch. 804, Stats.~~, unless the moving counsel party shall first advises the commission in writing that after serious effort to resolve differences, ~~counsel the parties~~ 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~~ Statutory references: s. ss. 73.01 (4) (d) and ch. 804, Stats.

SECTION 25. TA 1.37 is amended to read:

TA 1.37 Extensions. Unless prohibited by law, the ~~The~~ commission may grant continuances, extensions of time, postponements or adjournments upon a showing of good and sufficient cause.

SECTION 26. TA 1.39 is repealed and recreated to read:

TA 1.39 Amicus curiae briefs. Upon the stipulation of the parties or upon the motion of one party or a proposed amicus curiae, the commission may permit a non-party to file an amicus curiae brief in any proceeding. The commission has the discretion to grant or deny such a motion and, in determining whether to grant or deny the motion, the commission may consider any relevant factor, including the ability of the parties to present the merits of the case, any delay that may be caused by the filing of an amicus curiae brief and the request of any party to respond to an amicus curiae brief.

SECTION 27. TA Subchapter IV is amended to read:.

Subchapter IV **Conduct of Hearings**

SECTION 28. TA 1.51(1) and (2) are amended to read:

TA 1.51 Hearings. (1) When a proceeding is placed on the commission's calendar for a hearing, the commission shall notify the ~~parties~~ participants of the time and place of the hearing not less than ~~40~~ 30 days prior to the hearing, except as otherwise provided by statute or by agreement of the participants.

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

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

SECTION 29. TA 1.51(3), (4) and (5) are created to read:

TA 1.51(3) Exchange of Names of Witnesses and Copies of Exhibits. No later than 5 working days prior to the day of the hearing, each participant shall file with the commission and serve upon all other participants a written list of the names of witnesses and copies of the exhibits that the participant intends to offer at the hearing. For purposes of this section, service is complete upon mailing rather than upon receipt. Witnesses and exhibits not identified in this manner may be excluded from the hearing at the discretion of the presiding commissioner. This section does not apply to witnesses and exhibits offered in rebuttal which the participant could not reasonably have anticipated offering prior to the hearing.

(4) Contempt. Conduct that unreasonably impedes the orderly progress of a hearing or contemptuous conduct at a hearing shall be grounds for exclusion from the hearing. The presiding commissioner may take other actions that are authorized by statute and are appropriate under the circumstances.

(5) Telephonic Hearings. The presiding commissioner may permit oral arguments and oral testimony to be communicated on the record by telephone as allowed by statute.

Note: Statutory reference: s. 807.13, Stats.

SECTION 30. TA 1.53 is amended to read:

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 at the commission's discretion.

Note: ~~Section TA 1.53 interprets~~ Statutory reference: s. 227.45 (1)-(7), Stats.

SECTION 31. TA 1.55 is amended to read:

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

Note: See Statutory references: ss. 73.01 (4) (c) and ~~227.07(8)~~ 227.44(8), Stats.

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

(3) Upon request of a ~~party~~ participant, the commission may order preparation of a written transcript of a hearing. The ~~party~~ participant 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~~ participants if more than one ~~party~~ participant makes the request. The original of the transcript shall be retained by the commission. If the commission has a transcript prepared on its own motion, a copy shall be provided to each participant at no charge.

(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~~ participant without cost.

SECTION 32. TA 1.57(1) and (2) are amended to read:

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 upon its own motion or the motion of a party, ~~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.

SECTION 33. TA 1.57(3) and (4) are created to read:

TA 1.57. (3) Unless otherwise ordered by the commission, a participant filing a brief shall file the original and three copies of the brief with the commission and serve one copy on each other participant to the proceeding.

(4) Unless ordered otherwise by the commission, typed initial and response briefs shall include the caption described in TA 1.15(2)(a) and shall be formatted as follows:

(a) No more than forty (40) pages in length, not including the table of contents, table of authorities, and any appendices, exhibits or attachments;

(b) Each page shall have one inch top and bottom margins and one-inch side margins;

(c) Text shall be double-spaced and quotations in excess of five lines shall be single-spaced and indented; and,

(d) The type size/font used shall be no smaller than 12 characters per inch or 12-point nonproportional print (e.g., Courier).

(5) Hand-written initial and/or response briefs of a participant shall not exceed 20,000 words, unless ordered otherwise by the commission.

(6) Reply briefs shall be limited to 20 pages formatted pursuant to this section and hand-written reply briefs shall not exceed 10,000 words, unless ordered otherwise by the commission.

SECTION 34. TA 1.59 is not amended and reads as follows:

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.

SECTION 35. TA 1.61 is repealed.

~~**TA 1.61 Determination of parties.** (s. 227.10, Stats.) 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. 227.16 (1) (a), Stats., to serve the commission.~~

SECTION 36. TA 1.63 is amended to read:

TA 1.63 Frivolous appeals. (1) Whenever it appears to the commission or to a presiding 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: Statutory reference: ~~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 commissioners 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.~~

[END]