

PUBLIC PROTECTION CABINET
Office of Claims and Appeals
Board of Tax Appeals
(Amendment)

802 KAR 1:010. Tax appeal procedures.

RELATES TO: KRS ~~[2.027,]~~Chapter 13B, 49.220, 49.230, 49.240, 49.250~~[, EO 2020-708]~~

STATUTORY AUTHORITY: KRS 49.010, 49.020, 49.220(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.010(4)(b) authorizes the Office of Claims and Appeals to promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of the office's statutory authority. KRS 49.020(7)(a) grants the board the authority to promulgate, amend and repeal administrative regulations to carry out the provisions and purposes of the boards' statutory authority. [Executive Order 2020-708 ("Order") requires that the Kentucky Claims Commission be abolished and the Office of Claims and Appeals be immediately established within the Public Protection Cabinet, and to include the Board of Tax Appeals. The Order also sets forth the powers and duties of the Board of Tax Appeals, and authorizes the board to promulgate regulations necessary to immediately carry out the provisions and purposes of the Order and the board's statutory authority. KRS 49.020(5) authorizes the board to promulgate administrative regulations that are necessary to carry out the provisions and purposes of the board's statutory authority.] KRS 49.220(1) authorizes the board, with exclusive jurisdiction, to hear and determine appeals from final rulings, orders, and determinations of any agency of state or county government affecting revenue and taxation. This administrative regulation establishes the procedures governing the processing of appeals of taxes imposed by governmental entities[tax appeals].

Section 1. Definitions.

- (1) "Board" means the Board of Tax Appeals.
- (2) "Office" means the Office of Claims and Appeals.

Section 2. Rules for Filing Tax Appeals with the board.

- (1) Initiation of tax appeal. A party wishing to appeal a final ruling, order, or determination of any agency of state or county government affecting revenue or taxation shall file a petition with the board for a formal hearing in accordance with KRS Chapter 13B.
- (2) Timing. The initial petition of appeal shall be received by the board within thirty (30) days of the date of mailing of the final ruling, order, or determination of the agency of state or county government that is the subject of the appeal. If the determination is not mailed, then the initial petition shall be considered timely [as received] if received by the board within thirty (30) days of the date of issuance.
 - (a) An untimely appeal shall be dismissed.
 - (b) To dispute a finding by the board or its staff that a petition was untimely filed, a party may:
 1. Provide evidence of when the envelope containing the mailing was entered into the postal service by providing the cancelled postmarked envelope or may provide information from the postal service concerning the date of the introduction of the envelope containing the mailing into the system; or
 2. Provide any other evidence concerning when the final ruling, order, or determination was issued.
 - (c) ~~[(b)]~~ If the appeal is timely filed, but is otherwise deficient, the board, office, or hearing officer shall notify the petitioner of deficiencies and allow fifteen (15) business days to amend the petition.
- (3) Format and content. A petition of appeal shall be legibly written, typed, or printed and contain:
 - (a) A statement of all relevant issues of fact and law;
 - (b) A statement certifying that the information contained in the petition of appeal is true and correct to the best knowledge of the petitioner or counsel, if represented by an attorney;
 - (c) The signature of the petitioner or the signature of counsel, if represented by an attorney;
 - (d) The petitioner's mailing address, telephone number, and email address;
 - (e) If represented by an attorney, the petitioner's attorney's name, mailing address, telephone number, and email address; and
 - (f) A copy of the final ruling, order, or determination to be reviewed.
- (4) Upon receiving a petition of appeal, the board shall provide notice to:
 - (a) The appellee that an action has been filed;
 - (b) The petitioner that the petition of appeal has been received; and
 - (c) The petitioner's counsel, if represented by an attorney.
- (5) Upon receiving a Petition of Appeal, the appellee or the appellee's attorney shall file an entry of appearance within thirty (30) days of the date of the notice of appeal provided by the board. The entry of appearance shall contain the mailing address, telephone number, and email address of the appellee and the appellee's attorney, if applicable.

Section 3. Rules Applicable to All Filings.

- (1) Filings. All documents ~~shall [may]~~ be filed either:
 - (a) In person or by private delivery to Board of Tax Appeals, 500 Mero Street, 2 SC1, Frankfort, Kentucky 40601;
 - (b) By mail to the address listed above; or
 - (c) By electronic mail to taxappeals@ky.gov if the document can be sent in one (1) electronic message.
- (2) Service.
 - (a) Any party who files a pleading or motion with the board ~~and [or]~~ hearing officer shall notify all other parties to the appeal by serving upon each party a copy of the pleading or motion filed. A filed pleading or motion shall be accompanied by a certification stating:
 1. That a copy has been served on each party, or if the party is represented by counsel, on the party's counsel; and
 2. The method of service used.
 - (b) Service upon a party shall be made by delivering a copy to the attorney or party, by electronic mail, or by mailing it to the attorney or party at the last known address. Service is complete upon mailing, unless the serving party learns or has reason to know that it did not reach the person to be served. Service by electronic mail shall be considered complete when sent if properly addressed. Documents filed by electronic mail shall be considered received when sent if properly addressed.

Section 4. Representation in Proceedings before the board.

- (1) If the appeal is by an individual, the individual may proceed without an attorney or engage counsel to provide representation.
- (2) An individual who is not an attorney shall not be permitted to represent any other individual or legal entity who is a party to an appeal.
- (3) In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, joint venture, partnership, LLC, estate, or any entity other than an individual as identified in subsection (1) of this section, the entity shall be represented by an attorney on all matters before the board, including the filing of the appeal.

(4) An attorney licensed to practice in another state, but not the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule 3.030(2).

Section 5. Discovery.

- (1) Discovery may be obtained without prior order of the board or hearing officer. Except to the extent the provisions of this section differ, the Kentucky Rules of Civil Procedure (CR) governing depositions and discovery shall apply.
- (2) In addition to the provisions of CR 26 addressing opinions and use of expert witnesses:
 - (a) Absent a stipulation between the parties or an order issued by the board or hearing officer providing otherwise, and at least ninety (90) days before the date set for the hearing, a party shall disclose to the other party or parties the identity of any witness qualified as an expert by knowledge, skill, experience, training, or education the party may use at the hearing to provide expert testimony; or
 - (b) If the evidence is intended solely to contradict or rebut evidence on the same subject matter of a witness identified by another party, within thirty (30) days after the other party's disclosure.
- (3) The board or hearing officer may deny, limit, or require discovery.
- (4) If a party fails to comply with an order regarding discovery, the board or hearing officer may order that the:
 - (a) Matters that the requesting party was seeking to establish through discovery shall be taken as having been established for the purposes of the hearing;
 - (b) Noncomplying party shall be prohibited from introducing related documents or testimony at the hearing;
 - (c) Appeal be dismissed or relief be granted as requested by the opposing party;
 - (d) Appeal be stayed until the order is obeyed; or
 - (e) Noncomplying party, the advising attorney, or both pay the reasonable costs, including attorney's fees, caused by the failure to comply.
- (5) A response to discovery under subsection (1) of this section shall not be filed with the board unless required by order of the board or hearing officer.

Section 6. Prehearing or Status Conference and Hearing Schedule.

- (1) In any appeal assigned to a board member or hearing officer, the board or hearing officer may schedule a prehearing or status conference. The prehearing or status conference may be conducted by telephone or other electronic means upon reasonable notice to all parties, which consists of prior notice of not less than five (5) days, unless otherwise agreed to by the parties.
- (2) A prehearing or status conference may be used to set a hearing date, discuss jurisdictional matters, settlement possibilities, discovery, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas, mediation, and other matters that will promote the orderly and prompt conduct of the hearing.
- (3) If the board member or hearing officer and parties cannot agree upon a hearing date, the board member or hearing officer shall set the matter for hearing no later than six (6) months from the date of the conference.
- (4) Upon conclusion of the prehearing or status conference, the board member or hearing officer shall issue an order including all matters determined at the prehearing or status conference.

Section 7. Prehearing Filings.

- (1) At least thirty (30) days prior to the hearing, a party shall file with the board or hearing officer a:
 - (a) Prehearing summary that contains a:
 1. Summary of the party's position on any issue of fact in dispute;
 2. Summary of the party's position on any issue of law raised by the appeal; and
 3. Written statement of facts to which the party agrees and any facts which a party does not dispute;
 - (b) List of the names, addresses, and phone numbers (if known) of all witnesses the party expects to call to testify as a witness at the hearing;
 - (c) Copy of all exhibits that the party intends to introduce at the hearing;
 - (d) Proposed findings of fact and conclusions of law; and
 - (e) Proposed final order if the appeal is heard by the board, or a proposed recommended order if the appeal is heard by a hearing officer.
- (2) The prehearing filings required by this section shall satisfy the requirements under KRS 13B.090(3) establishing a party's right to inspect a list of witnesses and documentary or tangible evidence at least five (5) days prior to the hearing. The board may issue a prehearing order modifying discovery procedures or deadlines, or mandating additional requirements for prehearing filings.
- ~~(3) The parties may file proposed findings of fact and conclusions of law.~~

Section 8. Motion Practice.

- (1) Any party may file a motion. Any party affected by a motion or pleading may file a response to the motion or pleading within twenty ~~(20) thirty (30)~~ days from the date on which the motion or pleading was served.
- (2) A moving party may file a reply to another party's response. The reply shall be filed within fifteen (15) days from the date the response was served. Other replies or responses shall not be filed, unless prior approval is granted by the board or hearing officer.

Section 9. Briefs.

- (1) A party shall file with the board ~~and for~~ hearing officer any brief required by order of the board or hearing officer.
- (2) The board or hearing officer may require a party to file a post-hearing brief or to supplement at any time a brief already filed to assist in adjudicating the hearing. A brief shall include the signature of the party, or the party's counsel.

Section 10. Summary Disposition.

- (1) At any time after the commencement of an appeal, a party may move for a summary disposition of the whole or a part of the appeal by filing a motion that:
 - (a) Asserts that there are no disputed material facts as to one (1) or more of the issues before the board or hearing officer;
 - (b) Includes a statement specifying which material facts are undisputed. Assertions of a material undisputed fact or facts may be submitted to the board or hearing officer through affidavits or responses made by another party to any discovery request, including answers to interrogatories, admissions, and depositions. Facts stated in the petition of appeal, including exhibits attached to the petition, may be relied upon as undisputed material facts by the appellee; and
 - (c) States that any issue before the board or hearing officer for which summary disposition is sought is a matter of legal, and not factual, interpretation.
- (2) Response.
 - (a) Within twenty (20) days after a party moves for summary disposition, any other party may file a response presenting the party's position on issues of law and fact, which shall include any affidavit, written response to discovery requests, deposition testimony, or statements in the Petition of Appeal, demonstrating the party's assertion that a material fact or facts are disputed.
 - (b) Failure of a nonmoving party to respond within twenty (20) days to the motion for summary disposition or to request additional time to respond to the motion may result in the board or hearing officer finding there are no disputed factual issues to be considered in deciding the legal issues.

(3) If the nonmoving party files a response to the motion for summary disposition, the moving party shall have ten (10) days to file a reply to the response.

(4) The board or hearing officer may grant a motion for summary disposition in whole or in part. If the board or hearing officer grants a summary disposition as to one (1) or more issues, but not all issues, then the remaining issues shall be heard by the board or hearing officer in accordance with this administrative regulation and KRS Chapter 13B.

(5) When a hearing officer rules on a dispositive motion but such ruling does not dispose of the appeal, a party aggrieved by the determination of the hearing officer may request the board review the ruling within twenty (20) days of the issuance of the determination by the hearing officer. The non-moving party shall have a right to respond to the motion for board review and such shall be filed no later than fifteen (15) days following the filing of the motion for board review. The moving party shall have no right to reply.

Section 11. Other. Except as otherwise stated in KRS Chapter 49 or this administrative regulation, the conduct of hearings shall be governed by the procedures established in KRS Chapter 13B.

Section 12. The Certified Record of Proceedings. The official record of a matter before the board shall be forwarded by the clerk of the board to the Circuit Court, or other reviewing court, within twenty (20) days of the filing of a petition for judicial review, as provided in KRS 13B.140(3) and KRS 49.250. The record may be filed with the clerk of the court on an electronic storage device, including CD or USB flash drive.

Section 13. Subpoenas. The board, hearing officers, and parties shall use the form adopted by the board for the issuance of subpoenas, both in personam and duces tecum, and said form is herein incorporated by reference.

(1) Subpoenas may be issued by any person over the age of eighteen (18) and execution of service shall be attested to by completion of the "Proof of Service" portion of the form.

(2) Copies of any documents received in response to the issuance of a subpoena shall be furnished to all parties to the action.

(3) Prior to the issuance of a subpoena by a party or its counsel, such party shall request approval of the board or hearing officer for such issuance. The party shall not issue or serve the subpoena until approve by the board or hearing officer.

Section 14. Incorporation by Reference.

(1) "Subpoena", January 2025, is incorporated by reference;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Claims and Appeals, 500 Mero Street, 2 SC 1, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. and is available online at: https://kycc.ky.gov/Newstatic_info.aspx?static_id=161.

FREDERICK HIGDON, Chairperson

JOHN HARDESTY, Executive Director

APPROVED BY AGENCY: January 14, 2025

FILED WITH LRC: January 15, 2025 at 10:32 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 am on March 27, 2025, in Room 247 CE of the Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. This hearing shall be conducted both in-person and virtually via Microsoft Teams videoconferencing. Individuals interested in attending the public hearing virtually may access the hearing at: https://teams.microsoft.com/join/19%3ameeting_ZmM3NGRiODYtYjBmYi00ZWE4LTg1OWQtN2JjNjFkYzgZjcw%40thread.v2?context=%7b%22Tid%22%3a%22d77c7f4d-d767-461f-b625-0628792e9e2a%22%2c%22Oid%22%3a%22636ef07a-f33f-4378-b8ae-79c6f05a1438%22%7d. The Meeting ID is: 237 908 005 529. The Passcode is: 48N9bQ2U. For phone access, please dial +1 502-632-6289, 867966031# and enter the following Phone Conference ID: 867 966 031#. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM EST on March 31, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Linda Roberts Horsman, Staff Attorney, 500 Mero Street 2 SC 1, Frankfort, Kentucky 40601. Phone: 502-782-4644. Fax: 502-573-4817. Email: linda.horsman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Linda Roberts Horsman

(1) Provide a brief summary of:

(a) What this administrative regulation does:

The regulation establishes guidance and procedures for persons appealing assessments of taxes from various levying agencies. The regulation also establishes procedures for the board in handling appeals which come before it.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to comply with KRS 49.020, requiring the board to promulgate, amend, and repeal administrative regulations to carry out the purposes of the board's statutory authority, found in KRS 49.190-KRS 49.250. It also is necessary in order to incorporate by reference new forms for use by the agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The proposed regulatory language conforms with KRS 49.010(4)(b) and 49.020(7)(a), which authorizes the promulgation of regulations to carry out the duties of the Board of Tax Appeals. KRS 49.020(7) authorizes the Board of Tax Appeals to issue subpoenas.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

The proposed regulation will assist the Board of Tax Appeals, its staff, and those appearing before it in understanding the procedures employed by the board in hearing and adjudicating the appeals which come before it.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendments clarify the procedures for filing and the processing of matters filed before the board, makes motion practice deadlines uniform, and establishes procedures for issuance of subpoenas.

(b) The necessity of the amendment to this administrative regulation:

The amendment is necessary to clarify and improve procedures regarding filing and distribution of pleadings; reduce the time to file some responsive motions leading to quicker resolution of appeals; encourage filing of proposed findings of fact and conclusions of law, which will result in quicker resolution of appeals; provide for the filing of certified records on flash drives which is more efficient; and provide a subpoena form in line with subpoenas issued within the Court of Justice.

(c) How the amendment conforms to the content of the authorizing statutes:

See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes:

See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The Public Protection Cabinet, the Office of Claims and Appeals, the Board of Tax Appeals, taxpayers, and taxing entities.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

None known, the changes made herein attempt to simplify or clarify processes and do not add any additional steps or procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There are no expected expenditures because of this administrative regulation. Current staff will implement the provisions once promulgated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The cabinet, office and board will have better oversight and control of appeal procedures as they are clearly more delineated; taxpayers and representatives of taxing entities will have more insight into the appellate procedures.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

None. Current staff and agency funds will provide implementation.

(b) On a continuing basis:

None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Current agency budgetary funding will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied?

Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 49.010(4)(b), KRS 49.020(7), KRS 49.220, KRS 13B.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The promulgating agency is the Office of Claims and Appeals. The amendment will affect the Public Protection Cabinet, Office of Claims and Appeals, the Board of Tax Appeals, the Department of Revenue, county Property Valuation Administrators, and other state or local taxing agencies.

(a) Estimate the following for the first year:

Expenditures:None.

Revenues:None.

Cost Savings:There will be minor cost savings for the Office of Claims and Appeals through filing administrative records via thumb drive or CD, thereby avoiding the cost of printing large administrative records.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

See 2(a).

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

County and local taxing agencies.

(a) Estimate the following for the first year:

Expenditures:None.

Revenues:None.

Cost Savings:None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

See answer to (3)(a).

(4) Identify additional regulated entities not listed in questions (2) or (3):

Individuals and businesses filing claims with the Kentucky Board of Tax Appeals.

(a) Estimate the following for the first year:

Expenditures:None.

Revenues:None.

Cost Savings:None other than the cost of postage due to the ability to file claims through the online portal.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

See 4(a).

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

This regulation will have a negligible fiscal impact. It may result in small cost savings for the Office of Claims and Appeals through eliminating the need to print and mail voluminous administrative records to the Circuit Court Clerk.

(b) Methodology and resources used to determine the fiscal impact:

The agency estimated the fiscal impact using cost projections and calculations for expenditures under the existing regulation compared to this amendment.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

. It will not have a negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion:

See 5(b).