

831 CMR: APPELLATE TAX BOARD

831 CMR 1.00: APPELLATE TAX BOARD RULES OF PRACTICE AND PROCEDURE

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1.01: Appearance and Practice Before the Board

Persons may appear and act for themselves, or for partnerships of which they are members, or for corporations of which they are officers, or for a board of which they are members, in any proceeding before the Board.

Attorneys at law admitted to practice before the courts of the Commonwealth may practice before the Board. Attorneys shall conduct themselves in a manner conforming to the disciplinary rules of the Supreme Judicial Court of Massachusetts.

Notice of any change of attorney or representative shall be given promptly to the clerk and to the adverse party.

The Board may for cause deny or suspend the right of any person to practice before it.

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### 1.02: Form, Style and Size of Papers

All papers filed with the Board, except exhibits, and forms supplied by the Board, shall be either printed or typewritten on one side only of plain white paper measuring 8½ x 11 inches with adequate margins and shall be clearly legible, and shall be signed by the party or his or her attorney.

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1.03: Petition Under Formal Procedure

The petition shall contain all facts and dates necessary for the determination of the Board's jurisdiction and shall contain in substance the following:

- (1) A caption in the following form:

The Commonwealth of Massachusetts  
Appellate Tax Board

Docket No. \_\_\_\_\_

\_\_\_\_\_  
*Appellant*

\_\_\_\_\_  
*Appellee*

PETITION UNDER FORMAL PROCEDURE

(2) A clear and concise statement of the nature of the tax or other matter in controversy and of the facts on which the appellant relies, giving all dates on which required filings were made and the date of notice of the decision or determination from which the appeal is taken. If the appeal is from the refusal to abate a tax, describe the property or commodity taxed and state the valuation made by the taxing authority, the rate and amount of the tax, the year for which it was assessed, the date of any tax bill for local property, the amount and date of any payment made, and the date and manner of application for abatement to the taxing authority.

(3) A clear and concise statement of the appellant's objections to the decision or determination appealed from, and of the contentions of law, if any, which the appellant desires to raise.

(4) A prayer setting forth the relief sought.

(5) The name, address, and telephone number of the appellant and his or her attorney.

Appeals involving real estate or tangible personal property taxes for two or more years shall not be included in one petition.

Where two or more parcels of real estate are included in one decision of a board of assessors, the Board in its discretion may require that each parcel be the subject of a separate petition.

The Commissioner of Revenue or the board of assessors of a city or town, as the case may be, shall be designated as appellee by his, or its official title, without naming the individual or individuals holding the office, and if, while the appeal is pending, a change occurs in the individual or individuals holding the office, the appeal shall not abate, and no substitution of parties shall be necessary.

1.04: Filing of Petition Under Formal Procedure and Service Thereof

(1) The petition shall be filed with the clerk and shall be signed by the appellant or his attorney. The appellant shall forthwith serve a copy thereof, stamped with the Board's docket number, upon the appellee in hand, or by first class mail, postage prepaid, addressed to the usual place of business of the appellee.

(2) The appellant shall, not later than ten days after filing the petition, file with the clerk a

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signed acknowledgment of service or a certificate that a copy of the petition has been served upon upon the appellee in hand or mailed by first class mail, postage prepaid, to the usual place of business of the appellee, giving the address to which the copy has been mailed and the date of mailing.

(3) Failure to conform to the requirements of 831 CMR 1.04 or 831 CMR 1.03 shall be grounds, in the discretion of the Board, for dismissal of the appeal.

1.05: Petition for Late Entry

A petition for late entry of an appeal as provided in M.G.L. c. 59, § 65C, shall contain a statement of the circumstances which constitute the accident or mistake upon which the petition for late entry is based. Upon the filing of such petition the clerk shall mail a notice thereof to the appropriate assessors by registered or certified mail within five days from the date of said filing, together with a copy of said petition. Said notice shall set a date for hearing of said petition not later than 20 days from the date of filing thereof, notice of which shall be given to the appellant.

1.06: Small Claims Procedure

(1) In petitions seeking an abatement of tax from the Commissioner of Revenue related to any tax or excise specified in M.G.L. c. 62C, § 2, unless the appellant affirmatively requests that the case be heard under the formal procedure under M.G.L. c. 58A, § 7, the small claims procedure under M.G.L. c. 58A, § 7B shall govern in any case in which the amount of tax placed in dispute by the petition does not exceed:

- (a) \$25,000 for any taxable year, in the case of a tax imposed by taxable year;
- (b) \$25,000 for any calendar year, in the case of a tax imposed by calendar year;
- (c) \$25,000 for any calendar year, in the case of a tax imposed by M.G.L. chapters 64A through 64J, and M.G.L. c. 138, § 21;
- (d) \$25,000 in the case of a tax imposed by M.G.L. c. 65C; or
- (e) \$25,000 for any taxable event or transaction in the case of any other tax.
- (f) For purposes of M.G.L. c. 58A, § 7B, the amount of any tax or excise placed in dispute does not include any interest, penalty, or addition to tax imposed by M.G.L. c. 62C or any statute referred to in M.G.L. c. 62C, § 2. If, however, only the imposition or the amount of interest and/or penalties is in dispute, the interest and penalties shall not exceed \$25,000 for any period or transaction as specified in 831 CMR 1.06(1)(a) through (e).

If the amount in dispute exceeds these limitations, but not substantially, and the appellant is willing to limit his or her potential abatement to the applicable qualifying amount, the small claims procedure may be elected in accordance with M.G.L. c. 58A, § 7B(f). Amounts in dispute exceeding the qualifying limits by 10% or less shall be presumed not to be substantial for these purposes. Amounts exceeding the qualifying limits by more than 10% shall be presumed to be substantial for these purposes.

At any time at least 30 days prior to the commencement of the hearing, a party who has previously filed, after January 1, 1999, a petition under the formal procedure pursuant to M.G.L. c. 58A, § 7, but who qualifies and now wishes to elect the small claims procedure, may request by motion that the proceedings be transferred to the small claims procedure.

(2) The appellant shall file a petition containing a statement of the facts, the amount claimed in abatement and the reason or reasons the party disagrees with the Commissioner of Revenue's refusal to abate. The petition shall also include at least the following information:

- (a) the type of tax at issue and the tax periods or transaction dates involved;
- (b) the date the return at issue (if any) was filed;
- (c) the date of any assessment by the Commissioner of Revenue;
- (d) the date(s) on which the tax was paid;
- (e) the date the taxpayer filed the application for abatement;
- (f) the date of the Commissioner of Revenue's denial of the application for abatement;
- (g) an address and telephone number where the appellant may be contacted and where service of notices and other papers concerning the appeal may be made;
- (h) such other information as the Board may require; and
- (i) the signature of the taxpayer or its authorized representative.

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(3) An appellant filing a petition governed by the small claims procedure shall, at the time of filing the small claims petition or as soon thereafter as the Board may order, pay to the clerk the appropriate entry fee provided in M.G.L. c. 58A, § 7 and shall file a written waiver of the right to appeal to any court in accordance with M.G.L. c. 58A, § 7B. Petition and waiver of appeal forms will be supplied by the clerk upon request.

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1.06: continued

(4) An appellant shall file with the clerk an original and two copies of the small claims petition and the waiver. Within five business days after receipt of the petition, the clerk shall notify the parties to confirm scheduling of the case and shall serve one copy of the small claims petition on the Commissioner and return one copy to the appellant.

(5) At any time before the commencement of the hearing, the Board on its own motion or at the request of the Commissioner of Revenue, in accordance with M.G.L. c. 58A, § 7B(e), order the small claims designation removed and the proceedings transferred to the formal procedure. In appeals where the Commissioner establishes that there is a recurring issue of law and the aggregate tax at issue, taking into account other similarly situated taxpayers, is over \$250,000, or the Board determines that the issue to be addressed is not suitable for small-claims resolution, the appeal will be transferred to the formal procedure.

(6) Within 25 days of the service of the small claims petition or at such other time as the Board may order, the Commissioner shall file with the Board and serve upon the appellant an Answer, similar to that required under the formal procedure provided in M.L. c. c. 58A, § 7, to the allegations contained in the small claims petition. The failure of the Commissioner to specifically admit or deny an allegation concerning which he does not have sufficient information at the time of filing of the Answer shall not constitute a deemed admission of the allegation.

(7) Procedural and non-dispositive motions in small claims cases may be filed only with leave of the Board and, where such leave is granted, shall be filed and heard in the regular motion session in accordance with the provisions of 831 CMR 1.16. Leave is not required to file a motion to remove the small claims designation and transfer the appeal to the formal procedure or to file a motion to transfer an appeal from the formal to the small claims docket.

(8) Dispositive motions in small claims cases shall be filed in writing and served upon the opposing party not later than seven days prior to the hearing of the case. Dispositive motions shall be heard at the hearing of the small claims case and not separately at the regular or a special motion session.

(9) All forms of pre-trial discovery will not be permitted in small claims cases except upon prior motion and a showing that the information sought is essential to the moving party's case, the information is not available from other sources, and the method of seeking the information is the least expensive and intrusive available.

(10) Hearings of small claims cases will be conducted as informally as possible consistent with orderly procedure and any evidence deemed by the Board to have probative value shall be admissible. Hearings of small claims cases shall not be stenographically recorded, except that the Board may have stenographic notes of hearings taken for its own information only which will not be open to the inspection or available for the use of the parties. A hearing on a motion to remove the small claims designation of any appeal may be stenographically recorded at the request of any party following the procedures in 831 CMR 1.28.

(11) Neither briefs nor oral arguments will be required in small claims cases, but the Board on its own motion or upon motion of either party may permit the filing of briefs.

(12) The small claims procedure is available in all appeals in which the petition initiating the

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appeal is filed with the Board on or after January 1, 1999.

(13) Each small claims case will be automatically advanced for speedy hearing by the Board.

(14) In appeals pending under the small claims procedure, the appellant may be represented by a person of appellant's choosing upon written authorization of the appellant and leave of the Board. The other non-conflicting provisions of 831 CMR 1.01 shall remain in effect under the small claims procedure.

(15) The provisions of 831 CMR 1.24 regarding subpoenas and the summoning of witnesses shall be applicable under the small claims procedure.

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### 1.06: continued

(16) No requests for findings of fact and rulings of law shall be allowed under the small claims procedure.

(17) The Board will issue a brief written summary of the reasons for its decision in each case decided under the small claims procedure. The Board shall not issue findings of fact and reports in cases decided under the small claims procedure.

(18) Decisions issued under the small claims procedure shall not be reviewed by any court and shall not be used as precedent in any other case.

### 1.07: Informal Procedure: Statement and Waiver of Appeal

(1) A party may elect to file an appeal under the informal procedure in accordance with M.G.L. c. 58A, § 7A. A party electing the informal procedure shall file a written statement of the facts in the case and of the amount claimed in abatement, as well as the following:

- (a) dates necessary to establish jurisdiction.
- (b) the assessed value of the real or personal property.
- (c) the tax rate.
- (d) the tax assessed.
- (e) an address and telephone number where service of notices and other papers concerning the appeal may be made.
- (f) such further information as the clerk may require.

(2) A party electing the informal procedure shall, at the time of filing the statement under the informal procedure, file a written waiver of the right of appeal in accordance with M.G.L. c. 58A, § 7A. Forms on which statements may be made and the waiver of appeal forms will be supplied by the clerk.

(3) No statement shall relate to an assessment on more than one parcel of real estate, unless the Board specifically permits it. If the assessed value of the property does not exceed \$20,000, the statement will be made out for the appellant, on request, by the clerk or an assistant clerk.

### 1.08: Filing of Statement under the Informal Procedure and Service Thereof

The appellant shall file with the clerk an original and two copies of the statement under informal procedure together with the waiver. The clerk shall promptly serve one copy of the statement upon the appellee and return one copy to the appellant.

### 1.09: Transfer Procedure

If the assessed value of the property exceeds \$20,000, the appellee, within 30 days of the date of service of such statement, may elect to have the appeal heard under the formal procedure by so notifying the clerk in writing and by paying to the clerk the transfer fee provided by statute. The clerk shall thereupon transfer the appeal to the formal procedure, and shall give notice of the transfer promptly to both parties. If so transferred, the statement shall be considered to be a petition and service thereof to be service of the petition, and the waiver of the right of appeal shall be void; otherwise the informal procedure shall be deemed to have been accepted and all right of appeal waived by the appellee, except as provided under the informal procedure.

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1.10: Fees

The appellant shall at the time of filing the petition or statement pay to the clerk an entry fee in accordance with the following schedule:

- |  |         |
|--|---------|
| A. Appeals from Board of Assessors;<br>1, 2, 3 family owner-occupied<br>dwelling, Informal Procedure with<br>assessed value \$20,000 or less | \$10.00 |
|--|---------|

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### 1.10: continued

B. Appeals from Board of Assessors; all property with assessed value \$100,000 or less	\$20.00
C. Appeals from Board of Assessors; all property with assessed value over \$100,000 and not in excess of \$650,000	\$65.00
D. Appeals from Board of Assessors; all property with assessed value over \$650,000 with a maximum fee of \$5,000	10¢ per \$1,000 (assessed value)
E. Appeals from Commissioner of Revenue; Minimum fee of \$65.00 Maximum fee of \$5,000	10¢ per \$100 of tax abatement requested
F. Transfer by municipality from Informal to Formal Procedure	\$65.00

### 1.11: Dockets

The clerk shall assign to each appeal a docket number and shall notify the parties thereof. The docket number assigned to each appeal entered under the informal procedure shall be preceded by the letter X and a separate numerical order shall be maintained for each procedure.

### 1.12: Answers, Responsive Pleadings and Service Thereof

(1) The appellee shall file an answer with the clerk within thirty days of the service of the petition or statement or within such further time as the Board may allow. If a party files an amended petition pursuant to 831 CMR 1.14, the appellee shall file an answer or amended answer within 30 days of service of the amended petition or such other time as the Board may allow.

(2) In *lieu* of filing an answer, the appellee may file a motion to dismiss the appeal or other motions identified in 831 CMR 1.16(6). If the motion to dismiss or other motion identified in 831 CMR 1.16(6) is denied, the appellee shall file the answer within ten days of the denial of the motion or within such further time as the Board may allow.

(3) Pursuant to M.G.L. c. 58A, § 7, in an appeal under M.G.L. c. 59, §§ 64 or 65, no answer need be filed where the appellee contests no allegation of the appellant other than overvaluation or improper classification of the property at issue.

(4) The appellee shall serve a copy of the answer upon the appellant or his or her attorney or agent of record, by first class mail, postage prepaid. The answer shall contain in substance the following:

- (a) A specific admission or denial of each allegation of fact contained in the petition.
- (b) A clear and concise statement of any other facts or rulings of law upon which the

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appellee relies.

(c) An address and phone number where service of notices and other papers concerning the appeal may be made.

1.13: Alternative Delivery Services and Substantiating Marks

(1) Generally, a document is considered filed when it is received by the Board. However, if a document is delivered by the United States mail after the due date in a postage prepaid, properly addressed envelope, then the date of the United States postmark is deemed to be the date of delivery if the date of the postmark is on or before the due date (the “postmark rule”). Pursuant to the authority granted by M.G.L. c. 58A, § 7, M.G.L. c. 59, § 64, and M.G.L. c. 62C, § 39, the Board hereby designates the following alternative delivery services and substantiating marks which the Board will recognize in applying the postmark rule:

(a) Registered Mail: The date of registration is treated as the postmark date for purposes of the postmark rule.

(b) Certified Mail: The date of the postmark on the sender’s receipt is treated as the postmark date for purposes of the postmark rule.

(c) Certificate of Mailing: The date produced or affixed by the United States Post Office on a Certificate of Mailing is treated as the postmark date for purposes of the postmark rule.

(d) With respect to the following alternative delivery services, only a substantiating mark produced or affixed by the delivery service, and not by the party relying on the mark, will be treated as the postmark for purposes of the postmark rule:

1. Airborne Express (Airborne), including Overnight Air Express Service, Next Afternoon Service, and Second Day Service;
2. DHL Worldwide Express (DHL), including DHL “Same Day” service and DHL USA Overnight;
3. Federal Express (FedEx), including FedEx Priority Overnight, FedEx Standard Overnight, and FedEx 2Day; and
4. United Parcel Service (UPS), including UPS Next Day Air, UPS Next Day Air Saver, UPS 2<sup>nd</sup> Day Air A.M., and UPS 2<sup>nd</sup> Day Air;
5. The Board may determine, on a case-by-case basis, whether any other private delivery service may qualify as an alternative delivery service for purposes of applying the postmark rule. The Board will consider the criteria enumerated in Rev. Proc. 97-19 of the Internal Revenue Service in making this determination. *See* 1997-1 C.B. 644.

(2) In the event that a postmark or other authorized substantiating mark is illegible, the Board may make such inferences concerning the date of mailing or delivery to an alternative delivery service as are consistent with the purposes of the foregoing statutes and 831 CMR 1.13.

1.14: Amended and Supplemental Pleadings

Parties may amend their pleadings at any time before the decision of the Board, by consent of the adverse party or by leave of the Board.

A further and better statement of the nature of the claim or defense, or of any matter stated in any pleading, may be ordered by the Board in its discretion.

1.15: Substitution of Parties

(1) In the event of the death of the appellant, or for other cause, the Board may order the substitution of the proper parties.

In case of the death of the appellant the executor/trix or administrator/trix may appear to prosecute the petition or appeal.

(2) All motions for substitution of a party shall be filed with the Board and served upon all parties to the appeal in accordance with the provisions of 831 CMR 1.16 and M.G.L. c. 58A, § 9.

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The Board may order further service in its discretion.

1.16: Motions

(1) Motions must be in writing and a copy served upon the adverse party or his or her attorney. However, motions also may be made orally but must be reduced to writing within such time as the Board shall order.

(2) Motions will be heard on Mondays at 10:00 A.M. If a holiday falls on a Monday, motions will be heard on Tuesday.

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### 1.16: continued

(3) The moving party shall file a written motion, and notice of the hearing thereof, with the Board and shall serve a copy on the adverse party or his or her attorney not less than seven days before the date specified for the hearing, unless a different period is fixed by the Board. A Notice of Motion and Certificate of Service must accompany the motion when filed with the Board. When a motion is supported by affidavit, the moving party shall serve the affidavit with the motion and opposing affidavits may be filed and served not later than one day before the hearing, unless the Board permits them to be filed and served at some other time.

(4) Motions may be heard by telephone on Mondays at 11:00 A.M. upon request of a party with approval of the Board. The notice and service requirements are the same as provided in 831 CMR 1.16(3). The clerk shall initiate all such telephonic motions unless other arrangements have been made and approved by the Board.

(5) If a party fails to appear at the time set for hearing, the Board may proceed *ex parte*.

(6) Objections to the form of pleadings shall be made by motion to require the pleadings to be amended, specifically pointing out the matter objected to. If granted, the pleading shall be amended within such time as the Board may order, and if not so amended, the Board will make such order, or dispose of the case in such manner as justice shall require.

(7) Objections to the sufficiency of pleadings or to the jurisdiction of the Board shall be made by motion to dismiss, or to strike, or to take the petition as confessed, or by other appropriate motion stating specifically the ground of objection.

### 1.18: Answer and Hearing of Appeals Under M.G.L. c. 58, § 14

When a board of assessors appeals to the Board from a determination of the Commissioner, under M.G.L. c. 58, § 14, the answer of the Commissioner shall be filed within five days of the filing of the petition and the board may give a hearing to the assessors not later than July 15<sup>th</sup> following such determination, as provided by M.G.L. c. 58, § 14.

### 1.19: Hearing List

(1) The clerk shall place appeals on the hearing list in their numerical order, unless the Board otherwise directs.

(2) The clerk shall send notices of hearing dates to the parties or to their attorneys.

(3) The chairman will provide for the speedy hearing of all appeals to be heard under the informal procedure.

(4) Appeals may, in the discretion of the Board, be assigned for hearing outside the city of Boston, or be placed on a reserve list for good cause shown, as, for example, to await the decision in some other case.

(5) In the discretion of the Board, petitions for abatement of taxes assessed upon real estate situated in the same general locality of the same town may be heard together, irrespective of the identity of the appellants.

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(6) Continuances and postponements may be ordered by the Board on its own motion, or may be granted by it in its discretion on motion of either party.

(7) If any party fails to appear at the time set for hearing, the Board may proceed *ex parte*.

1.20: Decisions by a Single Member

(1) A single member of the Board may decide the following types of cases:

(a) Any appeal from a decision of a board of assessors in which the assessed value of the property involved does not exceed \$500,000 may be decided by the member hearing the appeal.

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### 1.20: continued

(b) Any appeal from a decision of a board of assessors in which the value of the property involved exceeds \$500,000 but does not exceed \$750,000 may be decided by the member hearing the appeal if both the appellant and the appellee give written consent to a decision by a single member.

(c) Any appeal filed under the informal procedure pursuant to M.G.L. c. 58A, § 7A in which the assessed value is less than \$1,000,000.

(d) Any appeal filed under the small-claims procedure pursuant to M.G.L. c. 58A, § 7B.

(2) In any such appeal, upon request and upon the filing of such written consent, when required, the appeal shall be advanced for speedy hearing.

(3) In the discretion of the member hearing the appeal, the appeal may be submitted to the full board for decision.

### 1.21: Dismissal of Settled and Old Appeals

(1) When notice of the settlement of a pending appeal is received by the clerk from either party, unless a withdrawal of the petition or agreement for decision is filed forthwith, the clerk shall inform both parties or their attorneys by mail that the appeal should be disposed of by filing a withdrawal of the petition or agreement for decision according to the terms of the settlement. Unless within 30 days thereafter such a withdrawal of the petition or agreement for decision is filed with the clerk, or unless notice is received from the other party that the appeal has not been settled, the appeal shall be marked inactive by the clerk, who shall inform both parties by mail of such marking.

(2) Any appeal which has remained on the docket for three years preceding, without action shown upon the docket, other than placing on the hearing list or the filing or withdrawal of an appearance, or the filing of interrogatories, shall, unless the appeal has been placed on a reserve list, be marked inactive, and the clerk shall inform both parties by mail of such marking.

Upon motion of either party the Board may restore to the active list any appeal marked inactive.

If within one year after an appeal has been marked inactive it has not been heard or disposed of, it shall, unless the Board shall otherwise order, be dismissed, and entry of such dismissal shall be made on the docket by the clerk without further notice or order.

### 1.22: Scope of Hearing

(1) The Board will not consider, unless equity and good conscience so require, any issue of fact or contention of law not specifically set out in the petition or raised in the answer, except as otherwise provided by M.G.L. c. 58A, § 12C.

Issues sufficient in themselves to determine the decision of the Board or to narrow the scope of the hearing may be separately heard and disposed of in the discretion of the Board.

(2) The originals or, upon leave of the Board, photostatic copies of the following documents should be introduced in evidence:

(a) The tax return or list, if any, filed by the taxpayer, with the date of filing.

(b) The notice of intention to assess by the Commissioner, if any, with the date of notice.

(c) The original assessment, or other determination in issue, with the date of notice.

(d) The tax bill or notice of tax, with date of payment, if paid, and the amount of interest

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paid.

(e) The application for abatement, or other petition filed with the Commissioner, or with the board of assessors, with the date of filing.

(f) The notice from the Commissioner or from the board of assessors of the decision or determination on the application or other petition, with the date when the notice was given, or the fact that no decision was made.

(g) On appeals for exemption under M.G.L. c. 59, § 5, clause third, all forms required under clause third with the date of filing.

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### 1.23: Agreed Statement of Facts

The parties may, by stipulation in writing filed with the Board, agree upon any facts involved in the appeal.

### 1.24: Subpoenas

(1) Either party may summon witnesses or may require the production of papers in the same manner in which witnesses may be summoned and papers may be required to be produced for the purpose of trial in the courts.

(2) Any member of the Board may summon and examine witnesses and require, by subpoena signed by the member, the production of all returns, books, papers, documents, correspondence and other evidence pertinent to the matter under inquiry, at any designated place of hearing.

### 1.25: Interrogatories to a Party

Either party, except in appeals under the informal procedure, may interrogate the adverse party for the discovery of facts and documents admissible in evidence at the hearing. Interrogatories and answers shall be filed with the clerk and orders with respect thereto may be made by the Board in the manner provided by and according to the requirements and limitations of M.G.L. c. 231, §§ 61 to 67, inclusive.

### 1.26: Depositions

(1) When either party proposes to take a deposition, such party shall file a motion with the Board requesting permission to do so. The motion shall set forth the following:

- (a) The name, residence and post office address of each witness whose deposition is proposed to be taken.
- (b) The matters concerning which the witnesses are to testify, together with a statement of the reasons why it is desired to take the depositions.
- (c) The time and place of taking the proposed depositions.

(2) The motion shall be served and marked in accordance with 831 CMR 1.16 or the Board.

(3) Approval to take a deposition, either within or without the Commonwealth, may be granted in the sole discretion of the Board.

(4) If permission to take a deposition is granted, the procedures set forth in Rule 30 of the *Massachusetts Rules of Civil Procedure* will be followed by the parties.

### 1.27: Documentary Evidence and Other Public Records

(1) Evidence as to the contents of books, documents, records and other papers may, in the discretion of the Board, be given by oral testimony.

(2) When books, documents, records and other papers have been received in evidence, a clear and legible copy thereof or of so much thereof as may be material or relevant, may, in the discretion of the Board, be substituted therefore.

(3) The originals of books, documents, records, models, diagrams and other exhibits introduced

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in evidence before the Board may be withdrawn from the custody of the Board in such manner and upon such terms as the Board in its discretion may prescribe.

(4) All “public records” as defined in M.G.L. c. 4, § 7, cl. 26, and all documents and other materials referred to in M.G.L. c. 58A, § 13, shall be available for public inspection at reasonable times and shall not be subject to protective orders.

1.27: continued

(5) The Board may take judicial notice of matters of law and fact to the same extent that such matters may be the subject of judicial notice in Massachusetts courts. Such matters include federal and state statutes and cases and regulations of the Internal Revenue Service and Commissioner of Revenue. However, proof of municipal law, including bylaws, ordinances, regulations, and adoption of state local option statutes must be made by testimony of a municipal official or by certified copy of the municipal law or action in question.

1.28: Stenographic Report of Evidence

(1) At the request of any party, made before any evidence is offered, the Board will order that all proceedings in a pending appeal be officially reported by a stenographer. Notice of such request shall be given to the clerk at least one day before the appeal is reached for hearing, but the Board in its discretion may permit later notice. The cost of reporting a proceeding officially shall include in every case the cost of one transcript for the Board, and additional transcripts may be obtained by any party from the stenographer upon the terms and conditions fixed by the contract of the Board with the stenographer. The party or parties requesting such report shall deposit with the clerk an amount equal to the cost thereof, as estimated by the clerk, at the time of making such request, and shall from time to time thereafter, on demand therefor, deposit with him such further amounts as in his judgment may be necessary to meet such cost. As soon after the hearing as the clerk shall ascertain the actual cost of such report, he shall refund to the depositor any excess deposit over the actual cost thereof, and he shall require the deposit of any deficit from the party or parties requesting the report. No proceeding shall be reported officially unless the amounts required have been deposited as herein provided. Unless so reported no portion of the evidence will be included in the record in an appeal to the Appeals Court or the Supreme Judicial Court.

(2) Where any proceeding has been ordered officially reported and the cost of reporting thereof shall not be deposited by either party at any time with the clerk as required by the Board, the order for an official report shall become ineffective and no part of said proceeding shall be regarded as officially reported, but the stenographer shall furnish to the Board, without cost to the Commonwealth, a transcribed copy of so much of the proceeding as has already been taken.

(3) Stenographic notes of hearings taken and transcripts thereof prepared in proceedings which are not officially reported at the request of a party shall be for the information of the Board only, and will not be open to the inspection or available for the use of the parties.

1.29: Requests for Findings and Rulings

Requests for findings of fact and rulings of law, if any are made, shall be filed under separate headings, and a copy given to the adverse party either before or at the time of the hearing, or after the hearing within a time to be fixed by the Board.

1.30: Briefs

Briefs may be filed either before or at the time of the hearing, or after the hearing within a time to be fixed by the Board. Three copies of each brief shall be furnished to the Board and one copy shall be served on the adverse party.

1.31: Submission Without Oral Argument

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An appeal in which no issue of fact is raised, or in which the parties file an agreed statement of facts or in which evidence of contested facts has been introduced otherwise than by oral hearing before the Board, may be submitted to the Board for decision, by either or both parties on briefs without oral argument, but the Board may, in its discretion, require appearance for argument.

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### 1.32: Request for Report

After the promulgation of a decision under the formal procedure without findings of fact, the Board will make such findings and report thereon when a request therefor is filed by either party with the clerk within ten days of the date of the decision as prescribed by M.G.L. c. 58A, § 13. The requesting party shall send a copy of the request to the adverse party.

### 1.33: Computation for Final Determination

When the Board makes a determination in any appeal and withholds final decision of the amount entered, the parties shall, if they are in agreement as to that amount, file with the clerk a computation showing the amount to be entered. If the parties do not agree as to the amount, either of them may file with the clerk a computation thereof. The matter shall be placed upon the motion list for hearing in due course and the Board shall determine the correct amount and enter final decision. 831 CMR 1.33 is not to be regarded as affording an opportunity for rehearing or reconsideration.

### 1.34: Costs

Costs may be taxed against a party to the appeal as provided in M.G.L. c. 58A, §§ 12 and 12A and M.G.L. c. 59, § 64, in the discretion of the Board.

### 1.35: Claim of Appeal

A claim of appeal shall be filed with the clerk of the Board in accordance with the *Massachusetts Rules of Appellate Procedure*, which rules shall govern such appeal. For the purposes of Rule 4 of the *Massachusetts Rules of Appellate Procedure*, the date the Board's decision is promulgated shall be the date of the entry of judgment unless a timely request for findings of fact and report is made, in which case, the date of promulgation of the Board's findings of fact and report shall be the date of the entry of judgment.

The record on appeal will be prepared in accordance with the relevant provisions of Rules 8 and 9 of the *Massachusetts Rules of the Appellate Procedure*.

### 1.37: Practice and Procedure

(1) Except as provided for in 831 CMR 1.37, the practice and procedure before the Board shall conform to that heretofore prevailing in equity causes in the courts of the Commonwealth prior to the adoption of the Massachusetts Rules of Civil Procedure; but the Board reserves the right to make hearings and proceedings as informal as possible, to the end that substance and not form shall govern, and that a final determination of all matters before it may be promptly reached.

(2) In proceedings under the informal procedure, all formal rules of pleadings, practice and evidence will be eliminated to the extent that the Board member or members holding the hearing may consider practicable.

## REGULATORY AUTHORITY

831 CMR 1.00: M.G.L. c. 58A, § 8.