

831 CMR: APPELLATE TAX BOARD

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

Section

General Matters

- 1.01: Rule-Making Authority, Scope of Rules, and Definitions
- 1.02: Appearance and Practice Before the Board
- 1.03: Form of Documents Filed with the Board
- 1.04: Jurisdiction

Commencement of an Appeal and Responsive Pleadings

- 1.05: Content of Petition Under Formal Procedure
- 1.06: Filing and Service of Petition Under Formal Procedure
- 1.07: Content of Statement Under Informal Procedure and Waiver of Appeal
- 1.08: Filing and Service of Statement Under Informal Procedure
- 1.09: Transfer of Appeals from Informal to Formal Procedure
- 1.10: Content of Petition Under Small Claims Procedure and Waiver of Appeal
- 1.11: The Postmark Rule, Alternative Delivery Services, and Substantiating Marks
- 1.12: Docketing of Appeals
- 1.13: Answers, Responsive Pleadings, and Service Thereof

Pre-Trial Pleadings

- 1.14: Amended and Supplemental Pleadings
- 1.15: Substitution of Parties
- 1.16: Motions
- 1.17: Summary Judgment

Pre-Trial Conferences

- 1.18: Mediation
- 1.19: Status Conferences

Discovery and Stipulations

- 1.20: Interrogatories
- 1.21: Depositions
- 1.22: Stipulations and Agreed Statements of Fact

Hearings

- 1.23: Scheduling of Hearings
- 1.24: Inactive Appeals
- 1.25: Conduct of Hearings
- 1.26: Subpoenas
- 1.27: Evidence
- 1.28: Public Records
- 1.29: Recording and Transcription of Hearings and Other Proceedings
- 1.30: Submission for Decision Without a Hearing

Post-Hearing

- 1.31: Briefs
- 1.32: Decision by a Single Member
- 1.33: Computation of Abatement Amount
- 1.34: Request for Findings of Fact and Report
- 1.35: Claim of Appeal
- 1.36: Computation of Time
- 1.37: Exceptions Unnecessary

1.01: Rule-Making Authority, Scope of Rules, and Definitions

- (1) Rule-Making Authority. In accordance with M.G.L. c. 58A, § 8, the Appellate Tax Board promulgates these Rules of Practice and Procedure (Rules). The Rules are promulgated as a regulation pursuant to M.G.L. c. 30A, § 1. As a regulation, the Rules are numbered sequentially in accordance with 950 CMR 20.00: *Preparing and Filing Regulations* and *The Regulations Manual* published by the Secretary of the Commonwealth of Massachusetts. When citing to a particular Rule, parties may use the regulation format beginning with 831 CMR followed by the section, subsection, and subpart; or they may reference a particular Rule by using the whole number appearing to the right of the decimal point in the regulation format. For example, this Rule may be cited as either 831 CMR 1.01(1) or Rule 1(1).
- (2) Scope of Rules. The Rules will be construed, administered, and employed to secure the just and efficient determination of every appeal before the Board.
- (3) Definitions. As used in the Rules, the following terms have the following meanings:
- (a) Appellant - the party filing an appeal with the Board;
 - (b) Appellee - the Commissioner of Revenue or Board of Assessors;
 - (c) Assessors - a Board of Assessors;
 - (d) Board - the Appellate Tax Board;
 - (e) Chairman - the Chairman of the Board;
 - (f) Clerk - the Clerk of the Board;
 - (g) Commissioner - the Commissioner of Revenue;
 - (h) Hard Copy - a document on a physical medium such as paper, as contrasted with an electronic version that is transmitted *via* email;
 - (i) Massachusetts Attorney - an attorney admitted to practice before the courts of the Commonwealth and engaged in the practice of law in the Commonwealth;
 - (j) Member - a member of the Board; and
 - (k) Non-Massachusetts Attorney - an attorney engaged in the practice of law who is not admitted to practice before the courts of the Commonwealth.

1.02: Appearance and Practice Before the Board

- (1) In any proceeding before the Board, persons may appear and act for: themselves; partnerships of which they are partners; corporations of which they are officers; limited liability companies of which they are members or managers; a municipal or other board of which they are members; or a city or town for which they have been elected or appointed as an assessor.
- (2) A Massachusetts attorney may appear and practice before the Board.
- (3) A Non-Massachusetts attorney must obtain the permission of the Board to appear *pro hac vice* for a particular Board appeal. A motion to appear *pro hac vice* must be filed by a Massachusetts attorney and be accompanied by an affidavit of the Non-Massachusetts attorney setting forth facts sufficient to demonstrate that the Non-Massachusetts attorney is a member in good standing of the bar of one or more jurisdictions. If the Board permits a Non-Massachusetts attorney to appear *pro hac vice*, a Massachusetts attorney must appear as co-counsel on any pleading or other document filed with the Board and must appear at all Board proceedings, unless excused by the Board.
- (4) Attorneys, including attorneys admitted *pro hac vice*, shall conduct themselves in a manner conforming to the disciplinary rules of the Massachusetts Supreme Judicial Court.
- (5) Except as provided in Rule 2(1) and Rule 10(15), a non-attorney is not permitted to appear before the Board or to sign any pleading or motion in any appeal from the refusal of the Commissioner to abate a tax or take an action.
- (6) The filing of any pleading, motion, or similar document shall constitute an appearance by the attorney who signs it, unless the document states otherwise.
- (7) Notice of any change of attorney shall be given promptly to the Clerk and to the opposing party.

1.02: continued

- (8) An attorney may withdraw an appearance with the permission of the Board on such terms as the Board may prescribe.
- (9) The Board may, for cause, deny or suspend the right of any person to practice before it.
- (10) The Board in its discretion may allow such other person to appear on behalf of a party as the Board deems appropriate.

1.03: Form of Documents Filed with the Board

- (1) All hard copies of pleadings, motions, and other documents filed with the Board shall be either printed or typewritten on one side only of plain white paper measuring 8½ x 11 inches with adequate margins, shall be clearly legible, and shall be signed by the party or the person appearing on behalf of the party.
- (2) The Board encourages parties to file pleadings, other than the petitions described in Rules 5 and 10 and the statement under informal procedure described in Rule 7, by email to the Clerk at the email address listed for the Clerk on the Board's website at <https://www.mass.gov/orgs/appellate-tax-board>.
- (3) Signatures on pleadings, motions, and other documents filed with the Board may be electronic. An electronic signature may take the form of:
 - (a) a scan of the signatory's handwritten signature;
 - (b) an electronic signature made by means of a stylus, an electronic pen, a computer mouse, a touch screen, or other similar method;
 - (c) an electronically inserted image intended to substitute for a signature; or
 - (d) a "/s/ name of signatory" block.

1.04: Jurisdiction

- (1) The Board's jurisdiction to hear and decide appeals is governed by statute. The Board cannot waive statutory jurisdictional requirements or excuse the failure of Appellants to comply with these requirements, regardless of the reason. Appellants should therefore ensure that they have complied with all jurisdictional requirements prior to filing an appeal with the Board.
- (2) The Board's receipt and docketing of an appeal does not constitute an acknowledgment that jurisdictional requirements have been met.
- (3) The Board, on its own motion or the motion of an Appellee, may determine at any point in the proceedings that the Board has no jurisdiction and dismiss the appeal for lack of jurisdiction

1.05: Content of Petition Under Formal Procedure

- (1) An Appellant may elect the formal procedure under M.G.L. c. 58A, § 7 by filing a petition under formal procedure that contains all facts and dates necessary for the determination of the Board's jurisdiction and includes:
 - (a) a caption in the following form:

Commonwealth of Massachusetts
Appellate Tax Board

PETITION UNDER FORMAL PROCEDURE

Docket No. _____

Appellant

Appellee

1.05: continued

- (b) if the appeal is from the Assessors' refusal to abate a real estate or personal property tax, or to take an action, the petition should include:
1. in the caption, the Appellant's name as the Appellant and the Assessors of the city or town in which the property is located as the Appellee;
 2. the fiscal year at issue;
 3. a description of the property taxed, including the address or location of the property;
 4. the assessed value of the property;
 5. the rate and amount of the tax;
 6. the amounts and dates of all payments made for the fiscal year at issue;
 7. the date the Appellant filed the abatement application with the Assessors; and
 8. the date the Assessors denied the Appellant's abatement application.
- (c) if the appeal is from the refusal of the Commissioner to abate a tax or to take an action, the petition should include:
1. in the caption, the Appellant's name as the Appellant and the Commissioner as the Appellee;
 2. the type of tax at issue;
 3. the tax period(s) at issue;
 4. the filing date(s) of the tax return(s) for the tax period(s) at issue;
 5. the date(s) and amount(s) of the disputed assessment(s) or refund(s) requested, including tax, penalties, and interest;
 6. the date(s) and amount(s) of any payment(s) made by the Appellant for the tax period(s) at issue;
 7. the date(s) the Appellant filed an abatement application(s), amended return(s), or other request(s) with the Commissioner; and
 8. the date(s) the Commissioner denied the Appellant's abatement application(s) or other request(s).
- (d) petitions under formal procedure should also include:
1. a clear and concise statement of the Appellant's objections to the decision or determination appealed from, the facts on which the Appellant relies and the contentions of law, if any, which the Appellant desires to raise;
 2. a statement of the relief sought;
 3. the name, address, telephone number, and email address of the Appellant and any person appearing on behalf of the Appellant; and
 4. the dated signature of the Appellant or any person appearing on behalf of the Appellant.

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

(3) The Appellant must request the Board's permission to include two or more parcels of real estate in a single petition under formal procedure. The request should include a description of the parcels, including their location, their assessed values, and whether the parcels were included in a single decision of the Assessors. In its discretion, the Board may require that each parcel be the subject of a separate petition, with a separate entry fee required for each petition.

(4) The Assessors or the Commissioner, as the case may be, shall be designated as Appellee by their official title, without naming the individual or individuals holding the title, and if, while the appeal is pending, a change occurs in the individual or individuals holding the title, no substitution of parties shall be necessary.

1.06: Filing and Service of Petition Under Formal Procedure

(1) The Appellant shall file an original and two copies of the petition under formal procedure with the Clerk. Filing must be made with the Board by: in-hand delivery; first-class mail; or one of the alternative delivery services designated in Rule 11.

831 CMR: APPELLATE TAX BOARD

1.06: continued

(2) The Appellant shall, at the time of filing a petition under formal procedure, pay to the Clerk the appropriate entry fee as described in the Board's Schedule of Entry Fees on its website at <https://www.mass.gov/orgs/appellate-tax-board>.

(3) The Appellant shall serve the Appellee with a copy of the petition under formal procedure stamped with the docket number assigned by the Board. Service of the petition may be made on the Appellee by: in-hand delivery; first-class mail addressed to the usual place of business of the Appellee; or by email to the email address of the Appellee.

(4) The Appellant shall file with the Clerk a signed acknowledgment or certificate of service affirming that a copy of the petition under formal procedure has been served on the Appellee in accordance with Rule 6(3). The signed acknowledgment or certificate of service shall give the address or email address to which the copy has been hand-delivered, mailed, or emailed to the Appellee and the date of hand-delivery, mailing, or emailing. The signed acknowledgment or certificate of service may be filed with the Board by email to the Clerk.

(5) Failure to conform to the requirements of this Rule shall be grounds, in the discretion of the Board, for dismissal of the appeal.

(6) At the joint request of the Appellant and Appellee in an appeal from the refusal of the Commissioner to abate a tax or take an action, and with the approval of the Board, an appeal may be transferred from the formal procedure to the small claims procedure if the appeal otherwise qualifies for the small claims procedure under M.G.L. c. 58A, § 7B.

1.07: Content of Statement Under Informal Procedure and Waiver of Appeal

(1) If an appeal is from the Assessors' refusal to abate a real estate or personal property tax or to take an action, an Appellant may elect to file an appeal under the informal procedure in accordance with M.G.L. c. 58A, § 7A. To elect the informal procedure, the Appellant should file a statement under informal procedure that contains all facts and dates necessary for the determination of the Board's jurisdiction and includes:

(a) a caption in the following form:

Commonwealth of Massachusetts
Appellate Tax Board

STATEMENT UNDER INFORMAL PROCEDURE

Docket No. _____

Appellant

Appellee

- (b) the statement under informal procedure should include the following information:
1. in the caption, the Appellant's name as the Appellant and the Assessors of the city or town in which the property is located as the Appellee;
 2. the fiscal year at issue;
 3. a description of the property taxed, including the address or location of the property;
 4. the assessed value of the property;
 5. the rate and amount of the tax;
 6. the amounts and dates of all payments made for the fiscal year at issue;
 7. the date the Appellant filed the abatement application with the Assessors;
 8. the date the Assessors denied the Appellant's abatement application;
 9. a short statement of the Appellant's objections to the decision or determination appealed from and the relief requested;

1.07: continued

10. the name, address, telephone number, and email address of the Appellant and any person appearing on behalf of the Appellant; and
 11. the dated signature of the Appellant or any person appearing on behalf of the Appellant.
- (2) The statement under informal procedure must include a signed waiver of the right to appeal the decision of the Board and the right to a findings of fact and report or other statement of reasons for the Board's decision, except as provided in M.G.L. c. 58A, § 7A.
- (3) The Appellant must request the Board's permission to include two or more parcels of real estate in a single statement under informal procedure. The request should include a description of the parcels, including their location, their assessed values, and whether the parcels were included in a single decision of the Assessors. The Board may require that each parcel be the subject of a separate statement under informal procedure with a separate entry fee required for each statement under informal procedure.
- (4) No pre-trial discovery will be permitted in appeals under the informal procedure.
- (5) The Chairman will provide for the speedy hearing of all appeals to be heard under the informal procedure.

1.08: Filing and Service of Statement Under Informal Procedure

- (1) The Appellant shall file an original and two copies of the statement under informal procedure with the Clerk. Filing must be made with the Board by: in-hand delivery; first-class mail; or one of the alternative delivery services designated in Rule 11.
- (2) The Clerk will serve one copy of the Appellant's statement under informal procedure on the Assessors and return one copy to the Appellant. The Clerk may use email to serve a copy of the statement under informal procedure on the Assessors and to return a copy of the statement under informal procedure to the Appellant.
- (3) The Appellant shall, at the time of filing a statement under informal procedure, pay to the Clerk the appropriate entry fee as described in the Board's Schedule of Entry Fees on its website at <https://www.mass.gov/orgs/appellate-tax-board>.

1.09: Transfer of Appeals from Informal to Formal Procedure

- (1) If the assessed value of the property at issue exceeds \$20,000, the Assessors may, within 30 days of the date of service of a statement under informal procedure, elect to have the appeal heard under the formal procedure by so notifying the Clerk in writing, by first-class mail or email, and by paying to the Clerk the appropriate entry fee as described in the Board's Schedule of Entry Fees on its website at <https://www.mass.gov/orgs/appellate-tax-board>.
- (2) The Clerk will transfer the appeal to the formal procedure and give notice of the transfer to both parties by first-class mail or email. If so transferred, all future proceedings relating to the appeal will be conducted under the formal procedure and the Appellant's waiver of the right of appeal and the right to a findings of fact and report shall be void.

1.10: Content of Petition Under Small Claims Procedure and Waiver of Appeal

- (1) If an appeal is from the refusal of the Commissioner to abate a tax or to take an action, the Appellant may elect to file an appeal under the small claims procedure in accordance with M.G.L. c. 58A, § 7B. To elect the small claims procedure, the amount of tax in dispute shall not exceed the following limits:
 - (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. c. 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.

1.10: continued

(2) For purposes of M.G.L. c. 58A, § 7B, the amount of any tax placed in dispute does not include any interest, penalty, or addition to tax imposed by M.G.L. c. 62C, § 28 or any statute referred to in M.G.L. c. 62C, § 2. If, however, only the imposition or the amount of interest or penalties is in dispute, the interest or penalties shall not exceed \$25,000 for any tax period or taxable event or transaction as specified in M.G.L. c. 58A, § 7B and this Rule.

(3) If the amount in dispute exceeds these limitations, the Appellant may still elect the small claims procedure but, unless the small claims procedure is discontinued, any abatement granted to the Appellant by the Board cannot exceed the limitations set by M.G.L. c. 58A, § 7B and this Rule.

(4) To elect the small claims procedure, the Appellant should file a petition under small claims procedure that contains all facts and dates necessary for the determination of the Board's jurisdiction and includes:

(a) a caption in the following form:

Commonwealth of Massachusetts
Appellate Tax Board

PETITION UNDER SMALL CLAIMS PROCEDURE

Docket No. _____

Appellant

Appellee

(b) in the caption, the Appellant's name as the Appellant and the Commissioner as the Appellee;

(c) the type of tax at issue;

(d) the tax period(s) at issue;

(e) the filing date(s) of the tax return(s) for the tax period(s) at issue;

(f) the date(s) and amount(s) of the disputed assessment(s) or refund(s) requested, including tax, penalties, and interest;

(g) the date(s) and amount(s) of any payment(s) made by the Appellant for the tax period(s) at issue;

(h) the date(s) the Appellant filed an abatement application(s), amended return(s), or other request(s) with the Commissioner;

(i) the date(s) the Commissioner denied the Appellant's abatement application(s) or other request(s);

(j) the name, address, telephone number, and email address of the Appellant and any person appearing on behalf of the Appellant; and

(k) the dated signature of the Appellant or any person appearing on behalf of the Appellant.

(5) The petition under small claims procedure must include a signed waiver of the right to appeal the decision of the Board.

(6) The Appellant shall file an original and two copies of the petition under small claims procedure with the Clerk. Filing must be made with the Board by: in-hand delivery; first-class mail; or one of the alternative delivery services designated in Rule 11.

(7) The Appellant must, at the time of filing the petition under small claims procedure, pay to the Clerk the appropriate entry fee as described in the Board's Schedule of Entry Fees on its website at <https://www.mass.gov/orgs/appellate-tax-board>.

(8) The Clerk will serve one copy of the petition on the Commissioner and return one copy to the Appellant.

1.10: continued

- (9) At any time before the commencement of the hearing, the Board on its own motion or at the request of either party to the appeal may order the small claims designation removed and the proceedings transferred to the formal procedure.
- (10) Dispositive motions in appeals under the small claims procedure shall be filed and served in accordance with Rule 16 and Rule 17.
- (11) No pre-trial discovery will be permitted in appeals under the small claims procedure except upon prior motion and a showing that the requested information: is necessary to the moving party's case; is not available from other sources; and is being sought by the least burdensome method available.
- (12) Hearings of appeals under the small claims procedure will be conducted as informally as possible consistent with orderly procedure. Evidence determined by the Board to have probative value will be admissible.
- (13) Neither briefs nor oral arguments will be required in appeals under the small claims procedure, but the Board in its discretion may permit the filing of briefs.
- (14) The Chairman will provide for the speedy hearing of all appeals to be heard under the small claims procedure.
- (15) In appeals under the small claims procedure, the Appellant may be represented by a person of the Appellant's choosing upon written authorization of the Appellant and permission of the Board.
- (16) The provisions of Rule 26 regarding subpoenas and the summoning of witnesses shall be applicable under the small claims procedure.
- (17) The Board will issue a brief written summary of the reasons for its decision in each appeal decided under the small claims procedure. The Board will not issue findings of fact and reports in appeals decided under the small claims procedure.
- (18) Decisions issued in appeals under the small claims procedure will not be reviewed by any court and will not be treated as precedent in any other case.

1.11: The Postmark Rule, Alternative Delivery Services, and Substantiating Marks

- (1) Generally, a document is considered filed when it is delivered to the Board. If, however, a document is delivered to the Board by United States mail after the statutory due date in a properly addressed envelope, then the date of the United States postmark is deemed to be the date of delivery if the date of the United States postmark is on or before the due date ("postmark rule"). For purposes of a document delivered to the Board by United States mail, the Board also will recognize the following substantiating marks in applying the postmark rule:
- (a) Registered Mail: The date affixed by the United States Post Office as the date of registration is treated as the postmark date for purposes of the postmark rule.
 - (b) Certified Mail: The date of the United States postmark on the sender's United States Post Office receipt is treated as the postmark date for purposes of the postmark rule.
 - (c) Certificate of Mailing: The date affixed by the United States Post Office on a Certificate of Mailing is treated as the postmark date for purposes of the postmark rule.
- (2) 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 permits delivery by all private delivery services recognized by the Internal Revenue Service at the time of filing a document with the Board ("alternative delivery service"). Only a substantiating mark produced or affixed by the alternative delivery service, and not by the party relying on the mark, will be treated as valid for purposes of the postmark rule.
- (3) The Board may determine, on a case-by-case basis, whether any other private delivery service qualifies as an alternative delivery service for purposes of applying the postmark rule. The Board will consider the criteria enumerated in Internal Revenue Code § 7502(f)(2) in making this determination.

831 CMR: APPELLATE TAX BOARD

1.11: continued

(4) In the event that a United States postmark or other authorized substantiating mark is illegible or missing when delivered to the Board, the Board may make such inferences concerning the United States postmark or other authorized substantiating mark as are consistent with the purposes of the foregoing statutes and this Rule.

1.12: Docketing of Appeals

The Clerk will assign to each appeal a docket number and will notify the parties of the docket number. The parties shall place the docket number on all documents thereafter filed in the appeal, including all correspondence with the Board.

1.13: Answers, Responsive Pleadings, and Service Thereof

(1) The Appellee shall file with the Clerk and serve on the Appellant an answer within 30 days of the service of the petition under formal procedure or statement under informal procedure or 25 business days of the service of the petition under small claims procedure.

(2) The Board may grant further time for the Appellee to file an answer.

(3) If the Appellant files an amended petition pursuant to Rule 14, the Appellee shall file an answer or amended answer within 30 days of service of the amended petition or such further time as the Board may allow.

(4) In lieu of filing an answer, the Appellee may file a motion to dismiss the appeal or other motion identified in Rule 16(6). If the motion to dismiss or other motion identified in Rule 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.

(5) Pursuant to M.G.L. c. 58A, §§ 7 and 7A, in an appeal from the Assessors' refusal to abate a real estate or personal property tax, no answer need be filed where the Appellee contests only the Appellant's allegation of overvaluation or improper classification of the property at issue. Challenges to the jurisdiction of the Board may be raised at any time regardless of whether an answer was filed.

(6) If the Appellee files an answer, the Appellee must serve a copy of the answer on the Appellant or person appearing on behalf of the Appellant, by in-hand delivery, first-class mail, or email to the email address of the Appellant or the person appearing on behalf of the Appellant. The answer should contain:

- (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 Appellee relies; and
- (c) an address, telephone number, and email address where service of notices, pleadings, and other documents concerning the appeal may be made.

1.14: Amended and Supplemental Pleadings

(1) Parties may amend their pleadings with consent of the opposing party or permission of the Board.

(2) A further and clearer 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 in its discretion may order the substitution of the proper parties.

(2) All motions for substitution of a party shall be filed with the Board and served upon the opposing party in accordance with Rule 16. The Board may order further service in its discretion.

1.16: Motions

- (1) Motions must be in writing with a copy served on the opposing party or the person appearing on behalf of the opposing party. A party may file and serve motions by email. Motions may also be made orally at the hearing on the merits of the appeal, but the Board may order that they be reduced to writing within such time and in such form as the Board may order.
- (2) Motions will be heard on the day and time designated in the current Board Standing Order governing motions or such other time as the Board may designate, as posted on the Board's website at <https://www.mass.gov/orgs/appellate-tax-board>.
- (3) Motion hearings will be held by video conference unless the Board approves a request for an in-person or telephonic hearing on the motion. The Clerk will initiate all video or telephonic motion hearings unless other arrangements have been made and approved by the Board.
- (4) Prior to filing any discovery-related motion, the moving party shall confer with the opposing party and shall be responsible for initiating the pre-motion conference between the parties. All discovery-related motions shall include a certificate stating that the required conference was held, together with the date and time of the conference and the names of all participating parties. If the conference was not held despite reasonable efforts by the moving party to initiate the conference, the certificate shall set forth the efforts made to hold the conference. Discovery-related motions not accompanied by a certificate will not be scheduled for a motion hearing.
- (5) Except as provided in Rule 16(6) or otherwise allowed by the Board, motions must include a notice of hearing setting forth the requested date and time of the motion hearing and a certificate of service indicating how a copy of the motion and notice of hearing were served on the opposing party. The motion, notice of hearing, and certificate of service must be filed with the Clerk and served on the opposing party no later than seven days before the date requested for the motion hearing, unless a different period is fixed by the Board. Any opposition to a motion or affidavits in support of or in opposition to a motion should be filed and served no later than one day in advance of the motion hearing, unless the Board orders them to be filed and served at some other time.
- (6) If the non-moving party assents to the motion, or otherwise in the discretion of the Board, the Board may rule on a non-dispositive motion without a hearing.
- (7) Objections to the sufficiency or form of pleadings or to the jurisdiction of the Board shall be made by motion to dismiss, or to strike, or by other appropriate motion stating specifically the ground(s) for the objection.
- (8) All motions to dismiss based on lack of jurisdiction, including motions to dismiss for failure to timely pay the tax at issue and for failure to timely file an abatement application or appeal to the Board, must be supported by an affidavit as to the specific facts and authenticity of documents on which the motion to dismiss is based.
- (9) Motions for summary judgment shall be filed and heard in accordance with Rule 17.
- (10) If a party fails to appear at the time set for hearing of the motion, the Board may proceed *ex parte*.

1.17: Summary Judgment

- (1) Either party may file a motion for summary judgment no later than 30 days prior to the date set for the hearing of the appeal unless the Board in its discretion permits otherwise.
- (2) The moving party shall file with the motion and serve on the opposing party:
 - (a) a brief statement of the applicable law; and
 - (b) affidavits and/or copies of those portions of deposition transcripts, pleadings, admissions, or other documents demonstrating that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.

1.17: continued

- (3) If the moving party is relying on facts based on requests or demands for admissions, the moving party must provide proof of compliance with the filing and notice requirements of M.G.L. c. 231, § 69.
- (4) The non-moving party shall have 21 days from the date of service of the motion for summary judgment to file with the Board and serve on the moving party an opposition, together with any affidavits or other documents that support a denial of the motion.
- (5) In the alternative, the non-moving party may file a cross-motion for summary judgment, which shall be subject to the same requirements as the original motion for summary judgment. An opposition to a cross-motion for summary judgment shall be filed within 21 days from the date of service of the cross-motion.
- (6) The Board will schedule the hearing of the motion(s).
- (7) Summary judgment will be granted if the Board determines that no genuine issue of material fact exists and a party is entitled to judgment as a matter of law. Summary judgment, when appropriate, may be rendered against the moving party.
- (8) If, after consideration of a motion for summary judgment and any related cross-motion for summary judgment, the Board cannot make a judgment on the entire appeal or grant all of the relief requested, the Board may nonetheless narrow the scope of any subsequent hearing on the merits by:
 - (a) ruling on one or more legal issues raised in the motion or cross-motion for summary judgment as to which there is no genuine issue of material fact; and
 - (b) determining those facts as to which there is no dispute and those facts shall be deemed established for purposes of the hearing on the merits, reserving all disputed facts for the hearing on the merits.

1.18: Mediation

- (1) The Board's Mediation Program is established under the authority of M.G.L. c. 58A, § 8A to "employ alternative dispute resolution techniques including, without limitation, mediation and arbitration." Mediation affords parties the opportunity to meet confidentially with Board mediators to facilitate the expeditious and informal resolution of appeals.
- (2) One or more attorneys in the Board's legal department will serve as Board mediators. To ensure that the parties will receive a full and impartial hearing if cases are not resolved at mediation, Members do not serve as mediators and there are no discussions between Board mediators and Members regarding issues discussed at mediation conferences.
- (3) Either party may request mediation. In accordance with M.G.L. c. 58A, § 8A, both parties must agree to mediation. If the Board determines that a case is appropriate for mediation, it will contact the parties to schedule a date and time for the mediation conference. If the Board determines that the case is not appropriate for mediation, the parties will be notified that the case will be scheduled for a hearing on the merits of the appeal.
- (4) The Board's jurisdiction over an appeal must be established prior to commencement of a mediation conference and Board mediators will require the Assessors or the Commissioner to provide documentation to confirm jurisdiction.
- (5) While no formal presentation of evidence or testimony is expected at the mediation conference, Board mediators may request that each party provide a position statement to the Board mediators and the opposing party no later than one week before the date of the mediation conference. Any such documentation will be kept confidential and will not form a part of the Board's case file.
- (6) Board mediators may, in their discretion, hold the mediation conference at the Board's offices or by video conference.

1.18: continued

(7) During the mediation conference, Board mediators will facilitate discussions between the parties but will not impose a resolution. Recommendations offered by Board mediators are not binding on either party. Any discussions held during the mediation conference will be treated as confidential by Board mediators and will not be shared with any other persons outside the mediation conference.

(8) If a resolution is achieved at the mediation conference, the parties are responsible for negotiating and executing the terms of any settlement documents and for filing an appropriate withdrawal of the appeal with the Board.

(9) Appeals not resolved through the mediation process will proceed to a hearing on the merits that will be presided over by a Member who will have no knowledge of any discussions held in the mediation conference.

1.19: Status Conferences

(1) The Board may, in its discretion, schedule one or more status conferences in pending appeals. Status conferences are designed to bring the parties together to discuss, among other topics: the progress of discussions regarding settlement; the formal or informal exchange of relevant information; the option of a mediation conference; a schedule for discovery, expert report exchange, submission of an agreed statement of facts, and a hearing date; and the narrowing of issues for hearing.

(2) If the Board determines that a status conference is warranted, the Clerk will contact the parties to schedule the conference. In addition, if the parties believe that a status conference would be beneficial, they may contact the Clerk to request the scheduling of a conference.

(3) Status conferences may be held by video conference, telephone, or in-person at the Board's offices. The Clerk will inform the parties of the medium by which the conference will be held, but the parties may request a particular medium for the conference.

(4) Prior to the commencement of the status conference, the parties are expected to: confer regarding the topics to be discussed at the conference; agree on a date for a further status conference if they believe one will be beneficial; and, if necessary, provide a proposed scheduling order covering the matters outlined in this Rule.

1.20: Interrogatories

(1) In accordance with M.G.L. c. 231, § 61, either party in appeals under the formal procedure may interrogate the opposing party for the discovery of facts and documents admissible in evidence at the hearing of the appeal.

(2) If information responsive to an interrogatory is stored in electronic form, the responding party shall produce it in the form or forms in which it is maintained or in a reasonably usable form.

(3) When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

- (a) expressly make the claim; and
- (b) describe the nature of the documents, communications, or tangible things not produced or disclosed, and do so in a manner that, without revealing information itself privileged or protected, will enable the other party and the Board to assess the claim.

(4) Unless the Board orders otherwise, interrogatories and responses shall not be filed with the Clerk except when a motion to compel further responses to discovery is filed.

1.21: Depositions

- (1) Parties must request permission of the Board by motion to conduct a deposition. The motion to take a deposition must set forth the following:
 - (a) the name and address of each proposed deponent;
 - (b) the subject matters concerning which the proposed deponent is to testify, together with a statement of the relevance of the subject matter to the resolution of the appeal; and
 - (c) the time and place of the proposed deposition(s).
- (2) The motion to take a deposition shall be served and marked in accordance with Rule 16.
- (3) Approval to take a deposition, either within or without the Commonwealth, is within the discretion of the Board.
- (4) If the Board grants permission to take a deposition, the procedures set forth in Rule 30 of the Massachusetts Rules of Civil Procedure applicable to depositions will be followed by the parties.
- (5) In the case of the deposition of a public or private corporation, partnership, association, government agency or other business entity under Rule 30(b)(6) of the Massachusetts Rules of Civil Procedure, the deponent organization must designate one or more persons who consent to testify on its behalf. The persons designated must testify about information known or reasonably available to the organization.

1.22: Stipulations and Agreed Statements of Fact

- (1) The parties shall use best efforts to stipulate, to the fullest extent possible, to all matters not privileged that are relevant to the appeal.
- (2) The parties' stipulations must be reduced to writing in an agreed statement of fact signed by each party or the person appearing on behalf of a party.
- (3) Where facts are not disputed, an objection on the ground of materiality or relevance may be raised by either party, but such an objection is not cause for refusal to stipulate.
- (4) Documents or other exhibits annexed to or filed with an agreed statement of facts will be part of the agreed statement of facts.
- (5) An agreed statement of facts prepared pursuant to this Rule, including documents or other exhibits that are part of the agreed statement of fact, shall be filed by the parties at least seven days in advance of the hearing of the appeal, unless the Board otherwise specifies.
- (6) Nothing in this Rule prevents a party from: objecting at a hearing on the merits to the introduction in evidence of documents or facts on the ground of materiality or relevance; or maintaining that a genuine issue of fact exists for resolution by the Board.

1.23: Scheduling of Hearings

- (1) The Clerk will place appeals on the hearing list sequentially by docket number, unless the Board otherwise directs.
- (2) The Clerk will send notices of hearing dates to the parties or the person appearing on behalf of a party.
- (3) In the discretion of the Board, hearings will be conducted in person at the Board's offices, by video conference, or in a suitable place outside of Boston.
- (4) The Board may continue the scheduled hearing date on its own motion or at the request of either party. A request for a continuance must be made in writing and will not be effective unless the Board in its discretion grants the request. The party requesting the continuance must confer with the opposing party in an effort to agree on a proposed continuance date. If the parties do not agree to a continuance, the party requesting the continuance must do so by motion in accordance with Rule 16.

1.23: continued

- (5) If a party fails to appear at the time set for the hearing, the Board may proceed *ex parte*.
- (6) The Board may place an appeal on a reserve list without a hearing date for good cause shown, as, for example, to await the decision in another case.

1.24: Inactive Appeals

- (1) Any appeal that has remained on the Board's docket for three or more years without action by either party will be marked inactive. The Clerk will notify the parties that the appeal has been marked inactive and that the appeal may be dismissed if no action is taken within 30 days.
- (2) If neither party contacts the Board within 30 days of such notice, the Board will dismiss the appeal.

1.25: Conduct of Hearings

- (1) The Board may make hearings and proceedings as informal as possible, so that substance and not form will govern, and that a final and just determination of all matters before it may be promptly reached, provided that the Board shall observe the rules of privilege recognized by law.
- (2) The Board will not consider, unless equity and good conscience so require, any issue of fact or contention of law not raised in the pleadings.
- (3) In proceedings under the formal procedure, subject to the discretion of the Board, the Board shall observe the rules of evidence observed by the courts of this Commonwealth. All evidence shall be admitted which is admissible under the statutes of this Commonwealth or under rules of evidence applied in this Commonwealth.
- (4) In proceedings under the informal and small claims procedures, rules of pleadings, practice, and evidence will be eliminated to the extent practicable. In such proceedings, evidence may be given probative effect if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.

1.26: Subpoenas

- (1) Either party may summon witnesses or may require the production of documents in the same manner in which witnesses may be summoned and documents may be required to be produced for the purpose of trial in the courts of the Commonwealth.
- (2) The Board may summon and examine witnesses and require, by subpoena signed by the Chairman, the production of all returns, books, papers, documents, correspondence, and other evidence pertinent to the appeal.

1.27: Evidence

- (1) Any document that a party intends to introduce as evidence at the hearing of an appeal, other than documents to impeach the credibility of a witness, must be submitted to the Board and provided to the opposing party by in-hand delivery, first-class mail, or email no later than seven days prior to the scheduled hearing, except upon good cause shown. Any document that is not timely submitted and provided may be excluded from evidence, or the Board may order the continuance of the hearing.
- (2) The Board may require that hard copies of proposed documentary evidence be provided to the Board and the opposing party. Demonstratives and chalks not constituting evidence but intended by a party to facilitate testimony, or to summarize evidence or legal analysis, must be submitted to the Board and provided to the opposing party prior to the scheduled hearing.
- (3) For appeals from a decision of the Assessors, the following documents must be introduced as evidence by the Assessors and, therefore, submitted to the Board and provided to the opposing party as provided in this Rule:

1.27: continued

- (a) a date-stamped copy of the Appellant's abatement application showing the date of filing;
 - (b) the notice of the Assessors' action or inaction on the Appellant's abatement application;
 - (c) the tax bills for each installment of the tax for the fiscal year(s) at issue;
 - (d) affidavit(s) from the municipality's treasurer showing: the date the tax bill for the fiscal year(s) at issue was mailed; the amount due and the amount paid for each installment of the tax bill; the date that each installment of the tax bill was paid; and interest incurred, if any, on each installment of the tax bill; and
 - (e) on appeals for exemption under M.G.L. c. 59, § 5, clause third, date-stamped copies of the Form 3ABC and Form PC filed with the Assessors showing the date of filing.
- (4) For appeals from a decision of the Commissioner, the following documents, if applicable, must be introduced as evidence by the Commissioner and, therefore, submitted to the Board and provided to the opposing party as provided in this Rule:
- (a) the tax return(s) filed by the taxpayer for the tax period(s) at issue, with the date(s) of filing;
 - (b) the notice of intention to assess issued by the Commissioner, with the date of notice, in the case of a disputed assessment;
 - (c) the notice of assessment, or other determination at issue, with the date of notice;
 - (d) the abatement application or amended return filed with the Commissioner, with the date of filing;
 - (e) the notice of the Commissioner's action on the abatement application or amended return, with the date of notice; and
 - (f) the date(s) and amount(s) of any tax payments for the tax period(s) at issue.
- (5) The Board may require that additional documents be introduced as evidence and, therefore, submitted to the Board and provided to the opposing party as provided in this Rule.
- (6) The Board may accept as evidence a clear and legible copy of any original book, document, record, model, diagram, or other proposed exhibit offered at the hearing of an appeal.
- (7) 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 the Commissioner. 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: Public Records

- (1) All evidence marked as exhibits and all pleadings, briefs, and other documents that the parties file with or otherwise provide to the Board, whether in hard-copy or electronic form, and all other documents specified in M.G.L. c. 58A, § 13, shall be open to the inspection of the public, except for documents provided to the Board in connection with the Board's mediation program under Rule 18.
- (2) In accordance with M.G.L. c. 58A, § 13, if a party requests withdrawal from the Board's custody the originals of books, documents, records, models, diagrams, or other exhibits introduced into evidence, the party must substitute a legible copy of the original and comply with such other terms as the Board may in its discretion prescribe.
- (3) To the extent not covered in M.G.L. c. 58A, § 13, all "public records" as defined in M.G.L. c. 4, § 7, clause 26, shall be open to the inspection of the public.
- (4) No document specified in M.G.L. c. 58A, § 13, defined in M.G.L. c. 4, § 7, clause 26, or covered by this Rule, will be the subject of a protective order.

1.29: Recording and Transcription of Hearings and Other Proceedings

(1) At the request of any party or in the discretion of the Board, the Board may order that a hearing or other proceedings in an appeal be recorded by a stenographer present at the hearing and that a transcript of the hearing or other proceedings be produced. Written notice of the request for a stenographer in a form approved by the Clerk shall be given to the Clerk at least five days before the hearing or other proceedings is scheduled to commence, but the Board in its discretion may permit later notice.

(2) Subject to availability of appropriate recording devices, the Board will digitally record hearings or other proceedings. As an alternative to Rule 29(1), any party may request the digital file of the Board's recording of the hearing or other proceedings within 14 days of the completion of the hearing or other proceedings. The party requesting the digital file is responsible for facilitating transcription of the audio recording by a transcriber listed on the Board's website at <https://www.mass.gov/orgs/appellate-tax-board>.

(3) The Board in its discretion may deny a party's request for a recording and/or transcript for certain proceedings including, for example, status conferences.

(4) The cost of a transcript shall be borne by the party requesting the transcript. If the opposing party also wishes to receive a copy of the transcript, the parties will share equally in the cost imposed for producing the transcript. In the case of a digital recording, the Board shall provide the requesting party with a digital copy of the audio of the hearing or other proceedings. The party shall be responsible for facilitating transcription of the audio recording by a transcriber prescribed in Rule 29(2).

(5) In every hearing or other proceedings for which a transcript is produced, the cost of producing the transcript shall include one copy of the transcript to be submitted to the Board without cost to the Board.

(6) With the exception of the digital file of a hearing or other proceedings, if no party requests that a hearing or other proceedings be officially recorded in accordance with this Rule, stenographic notes, transcripts, or recordings of such hearing or other proceedings that may be created by the Board shall be for the information of the Board only, and will not be open to inspection or available for the use of the parties, unless otherwise ordered in the discretion of the Board.

(7) The Board may issue standing orders from time to time as needed to clarify and implement Rule 29.

1.30: Submission for Decision Without a Hearing

(1) The parties may, with the approval of the Board and on such conditions as the Board may prescribe, submit an appeal to the Board for decision without a hearing.

(2) The Board may, in its discretion, require that the parties appear for argument or file briefs in connection with a submission of an appeal for decision without a hearing.

1.31: Briefs

(1) At the conclusion of a hearing, the Board may order, or the parties may request, that briefs be filed. The Member presiding at the hearing will establish a briefing schedule.

(2) The parties may also file briefs prior to or at the time of the hearing.

(3) Briefs will be filed with the Board and served on the opposing party by email, unless otherwise ordered by the Board.

1.32: Decision by a Single Member

(1) In accordance with M.G.L. c. 58A, § 1A, a single Member may decide the following appeals:

- (a) an appeal under the formal procedure from a decision of the Assessors in which the assessed value of the property involved does not exceed \$500,000;

1.32: continued

- (b) an appeal under the formal procedure from a decision of the Assessors in which the value of the property involved exceeds \$500,000 but does not exceed \$750,000, if both parties give written consent to a decision by a single Member;
- (c) an appeal under the informal procedure from a decision of the Assessors in which the assessed value of the property involved is less than \$1,000,000; and
- (d) an appeal under the small claims procedure from a decision of the Commissioner.

(2) In the discretion of the Member presiding at the hearing of an appeal that may be decided by a single Member, the appeal may be submitted to the full Board for decision.

1.33: Computation of Abatement Amount

(1) If the Board determines all issues necessary to decide an appeal except for the abatement amount, the Board will order the parties to compute the abatement amount based on the Board's determination of the issues.

(2) The parties shall, if they agree on the abatement amount, file with the Clerk a computation showing the abatement amount.

(3) If the parties do not agree on the abatement amount, either party may file with the Clerk a computation showing their proposed abatement amount.

(4) Based on the parties' joint or separate computation(s) of the abatement amount(s), or after a hearing on the parties' computation(s), the Board will determine the correct abatement amount and enter a final decision with respect to the appeal.

(5) The response to the Board's Order for computation of the abatement amount under this Rule shall be limited to the amount based on the Board's determination of the issues. The response is not an opportunity to request a rehearing or reconsideration of the issues the Board has determined. A response to the Board's Order under this Rule will not prevent a party from appealing the final decision entered by the Board.

1.34: Request for Findings of Fact and Report

(1) After the issuance of a decision under the formal procedure without findings of fact, the Board will promulgate a findings of fact and report if either party files a request with the Clerk within ten days of the date of the Board's decision in accordance with M.G.L. c. 58A, § 13.

(2) A request for findings of fact and report may be filed in-person at the Board's offices, by first-class mail, or by emailing the Clerk, with a copy to the opposing party.

1.35: Claim of Appeal

(1) In accordance with M.G.L. c. 58A, § 13, appeals from final decisions of the Board are governed by the Massachusetts Rules of Appellate Procedure (MRAP).

(2) A claim of appeal from a final decision of the Board must be filed with the Board in accordance with Rule 4 of MRAP.

(3) For the purposes of Rule 4 of MRAP, the date the Board's decision is issued shall be the date of the entry of judgment if no timely request for findings of fact and report is made. If a timely request for findings of fact and report is made, the date of promulgation of the Board's findings of fact and report will be the date of the entry of judgment.

(4) The Board will prepare the record on appeal and notify the parties in accordance with the relevant provisions of Rules 8 and 9 of MRAP.

(5) The party taking the appeal must then docket the appeal in the Massachusetts Appeals Court in accordance with Rule 10 of MRAP.

1.36: Computation of Time

In computing any period of time prescribed or allowed by these Rules, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes those days specified in M.G.L. c. 4, § 7 and any other day appointed as a holiday by the President or the Congress of the United States or designated by the laws of the Commonwealth.

1.37: Exceptions Unnecessary

Formal exceptions to rulings of the Board sustaining or overruling objections are unnecessary to preserve the right to review.

REGULATORY AUTHORITY:

831 CMR 1.00: M.G.L. c. 58A, § 8.