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By Email to:

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Chairman Mark J. DeFrancisco
Appellate Tax Board
100 Cambridge Street, 2nd Floor
Boston, MA 02144

Dear Chairman DeFrancisco:

Enclosed please find the Department of Revenue's redline comments on the draft revisions to the Appellate Tax Board's Rules of Practice and Procedure issued on April 20, 2023. The Department obviously has significant, long-term experience litigating cases before the Board and great familiarity with the Board's existent rules and practice. We appreciate and support the Board's goals of making litigation before the Board more transparent and encouraging parties to confer throughout the process to narrow the issues for trial and facilitate settlement.

Many of our suggestions are intended to codify the Board's existing practice and thereby provide more certainty to litigants. These include our suggestion that in formal proceedings the Massachusetts rules of evidence generally apply, subject to the Board's discretion to vary from those rules when appropriate. With respect to informal and small claims proceedings we suggest that the admissibility rule of G.L. c. 30A, § 11 be explicitly adopted, that is, "evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs." These suggestions merely articulate what we understand to be the Board's current practice.

Also, we suggest the addition of rules expressly addressing Mass. R. Civ. P. 30(b)(6) depositions, privilege logs, electronic signatures, and discovery of information held in electronic form. We further suggest a rule that clarifies the computation of periods of time prescribed or allowed by the Rules, and the abandonment of the old practice of formal exceptions to adverse rulings. In all of these matters our suggestions incorporate language from the Massachusetts Rules of Civil Procedure or, in the case of electronic signatures, language of a Supreme Judicial Court order, as noted in the margin of the redline.

Finally, we understand the draft revisions to give the Board discretion as to whether to grant requests for in-person hearings and stenographic recordings. We suggest that a distinction be drawn between evidentiary and non-evidentiary hearings. We believe that requests for in-person evidentiary hearings should be granted as of right, and that requests for stenographic recording of evidentiary hearings under formal procedure should be granted as of right.

Thank you for considering these comments and suggestions as you proceed with revision of the Rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Fatale", written in a cursive style.

Michael Fatale
General Counsel