



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017)
(Implements RCW 34.05.310)

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DATE: December 06, 2017

TIME: 10:49 AM

WSR 17-24-126

Agency: Department of Revenue

Subject of possible rule making: WAC 458-14-127 Reconvened boards-Authority.

Statutes authorizing the agency to adopt rules on this subject: RCW 84.08.010, 84.08.070, and 84.48.200

Reasons why rules on this subject may be needed and what they might accomplish: WAC 458-14-127 titled, Reconvened boards-Authority, explains the circumstances under which county boards of equalization may reconvene under their own authority or by the authority from the Department of Revenue after their regularly convened session has ended. WAC 458-14-127 is being amended to clarify these conditions and provide examples for county boards of equalization and county assessors. This rule is also being amended to incorporate legislation resulting from the passage of Substitute Senate Bill 5133 in 2017, and Substitute Senate Bill 5275 in 2015..

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None

Process for developing new rule (check all that apply):

Negotiated rule making

Pilot rule making

Agency study

Other (describe) Parties interested in this rule making may contact the individual listed below. The public may also participate by providing written comments throughout this rule making or by giving oral testimony at the public meeting or public hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

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(If necessary)

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Additional comments:

Written comments may be submitted by mail or email and should be directed to Leslie Mullin using one of the contact methods above. Written and oral comments will be accepted at the Public Meeting.


Date: January 10, 2018 **Time:** 10:00 A.M.

Public Meeting Location:

Conference Room 114C

6400 Linderson Way SW

Tumwater, Washington 98501

Date: December 6, 2017	Signature: 
Name: Erin T Lopez	
Title: Rules Coordinator	

AMENDATORY SECTION (Amending WSR 06-13-034, filed 6/14/06, effective 7/15/06)

WAC 458-14-127 Reconvened boards—Authority. (~~((1) Boards of equalization may reconvene on their own authority to hear requests concerning the current assessment year when the request is filed with the board by April 30 of the tax year immediately following the board's regularly convened session and at least one of the following conditions is met:~~

~~(a) A taxpayer requests the board reconvene and submits to the board an affidavit stating that notice of change of value for the assessment year was not received by the taxpayer at least fifteen calendar days prior to the deadline for filing the petition, and can show proof that the value was actually changed.~~

~~(b) An assessor submits an affidavit to the board stating that the assessor was unaware of facts which were discoverable at the time of appraisal and that such lack of facts caused the valuation of property to be materially affected. Submitting such an affidavit to the board is for the purpose of correcting latent defects in the assessment process that become apparent only after the normal appeal process has expired, and is wholly within the assessor's discretion. In the affidavit, the assessor must state the facts which affected the value and also state both the incorrect value and the true and fair market value of the property and must mail a copy of the affidavit to the taxpayer. If the board decides to reconvene to consider the valuation, it must notify both the taxpayer and assessor of its decision in writing.~~

~~(c) In an arm's length transaction, a bona fide purchaser or contract buyer of record has acquired an interest in real property subsequent to the first day of July and on or before December 31 of the assessment year and the sale price was less than ninety percent of the assessed value.~~

~~(2) Upon request of either the taxpayer or the assessor, boards may reconvene on their own authority to hear appeals with respect to property or value that was omitted from the assessment rolls. No request shall be accepted if it is made concerning an assessment year that is more than three years prior to the year the omitted property or value was discovered. The request itself must be received by the board no later than thirty calendar days, or up to sixty days if a longer time period is adopted by the county legislative authority under RCW 84.40.038, after the mailing of the notification of the discovery of the omitted property or value. For example, if omitted property is discovered in September 2005, and the property was omitted since 2000, the board may only reconvene to hear an appeal for assessment year 2002, and subsequent years. If the taxpayer is notified by mail of the discovery of the omitted property or value on October 14, 2005, for example, any request with respect to the omitted property or value must be made no later than thirty calendar days after October 14, 2005, or up to sixty days if a longer time period is adopted by the county legislative authority under RCW 84.40.038.~~

~~(3) Upon request of either the taxpayer or the assessor, a board may reconvene on its own authority to hear an appeal under the following circumstances:~~

~~(a) A taxpayer, who owns property in a county that revalues real property on an annual basis, had a timely appeal pending with the~~

board when the same property was valued by the assessor in at least one intervening assessment year, between the filing of the appeal and the issuance of the board's written decision;

(b) The assessed value of the property under appeal did not change during the intervening assessment year or years;

(c) No appeal was filed by the taxpayer regarding the same property during the intervening assessment year or years when the assessed value did not change; and

(d) The request to reconvene is filed with the board no later than thirty calendar days after mailing of the board's decision.

(4) Requests for reconvening boards concerning prior year's assessments or for an extension of the annual regularly convened session to enable the board to complete its annual equalization duties must be submitted to the clerk of the board who must submit the request to the department for determination.

(5) The department may require any board to reconvene at any time for the purpose of performing or completing any duty or taking any action the board might lawfully have performed or taken at any of its previous meetings, or for any other purpose allowed by law. This statutory authority is reserved for those instances when an error has occurred and where the regular remedial procedures do not apply. These instances include significant valuation errors that become apparent only after the normal appeal process has expired.

(6) The department must reconvene a board upon request of a taxpayer when the taxpayer makes a prima facie showing of actual fraud on the part of taxing officials, or makes a prima facie showing that the taxpayer's property is overvalued by at least double the true and fair value. The department must reconvene a board upon request of an assessor when the assessor makes a prima facie showing of actual or constructive fraud on the part of a taxpayer.

(7) All reconvening requests must:

(a) Specify the assessment year(s) that is the subject of the request; and

(b) State the specific grounds upon which the request is based; and

(c) If the taxpayer is the party requesting the reconvening, state that he or she is the owner or duly authorized agent, personal representative or guardian, of the property or is a lessee responsible for the payment of the property taxes.

(8) No board shall reconvene later than three years after the adjournment of its regularly convened session, except in the case of omitted property or value, as noted in subsection (2) of this section. The three years is determined by the date of adjournment of the board's regularly convened session, which is four weeks after July 15th, or four weeks after the first business day after July 15th, if July 15th falls on a Saturday, Sunday, or holiday. For example, for a timely request to reconvene regarding the 2006 assessment roll, the allowable time period in which to receive the request would be from August 14, 2006 through August 13, 2009.) (1) **Introduction.** This rule explains the circumstances under which boards of equalization (boards) may reconvene under their own authority or by the authority from the department of revenue (department) after their regularly convened session has ended.

(2) **Other rules to reference.** Readers may want to refer to other rules for additional information, including:

(a) WAC 458-12-050 Omitted property and omitted value.

(b) WAC 458-12-360 Notice of change in value of real property.

(c) WAC 458-14-025 Assessment roll adjustments not requiring board action.

(d) WAC 458-14-026 Assessment roll corrections agreed to by taxpayer.

(e) WAC 458-14-046 Regularly convened session—Board duties—Presumption—Equalization to revaluation year.

(f) WAC 458-14-056 Petitions—Time limits—Waiver of filing deadline for good cause.

(g) WAC 458-14-170 Appeals to the state board of tax appeals.

(3) **Definitions.** The definitions found in WAC 458-14-005 apply to this rule.

(4) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide. The board or department will evaluate each case on its particular facts and circumstances.

(5) **When can boards of equalization reconvene under their own authority?**

(a) A board can reconvene under its own authority if it has reasonable and convincing evidence that at least one of the following occurred:

(i) Reconvene to consider value when a taxpayer submits a request to the board to reconvene and provides:

(A) An affidavit stating that they did not receive their change of value notice for the assessment year at least fifteen calendar days prior to the deadline for filing their petition; and

(B) Documents or affidavits that show the assessed value, which is the value of real or personal property determined by the assessor, changed from the prior assessment year.

(ii) Reconvene to consider assessor discovered latent defect. An assessor submits a request to the board to reconvene and provides an affidavit stating that he or she was unaware of facts which were discoverable at the time of appraisal and the lack of these facts caused the valuation of property to be materially affected.

(A) In the affidavit, the assessor must state the facts that affected the value and also indicate both the incorrect value and the true and fair market value of the property.

(B) A copy of the affidavit must also be mailed or electronically transmitted to the taxpayer.

(C) Submitting this affidavit to the board is for the purpose of correcting latent defects in the assessment process that become apparent only after the normal appeal process has expired, and is wholly within the assessor's discretion.

(iii) Reconvene to consider subsequent sale of property at less than ninety percent of assessed value. A new owner submits a request to reconvene and provides:

(A) An affidavit stating that the owner has acquired an interest in real property in an arm's length transaction, as defined in WAC 458-14-005, after the first day of July and on or before December 31st of the assessment year and the sale price was less than ninety percent of the assessed value; and

(B) The purchase date and sales price of the real property.

(iv) Reconvene to consider omitted property or value. Either the taxpayer or the assessor submits a request to the board to reconvene to hear appeals with respect to property or value that was omitted from the assessment rolls and provides a copy of the assessor's notification of omitted property or value.

(A) A request to reconvene the board will not be accepted if it is made concerning an assessment year that is more than three years prior to the year the omitted property or value was discovered.

(B) The request must be filed with the board no later than thirty calendar days, or up to sixty calendar days if a longer time period is adopted by the county legislative authority under RCW 84.40.038, after sending notification of the discovery of the omitted property or value.

(C) Example 1. In April 2017, an assessor discovers property that has been omitted from the assessment roll since 2012. The assessor can only add the omitted property to the assessment rolls for the 2014, 2015, and 2016 assessment years. The taxpayer is notified of the discovery of the omitted property on June 14, 2017, so any appeal by the taxpayer with respect to the omitted property must be made no later than thirty calendar days after June 14, 2017, or up to sixty calendar days if a longer time period to appeal was adopted by the county legislative authority under RCW 84.40.038. The board is not required to "reconvene" for the 2017 assessment year because the assessor's discovery of the omitted property in April 2017 occurred prior to the assessor certifying the assessment roll to the board before its regularly convened session began.

(v) Reconvene to consider intervening assessment year after board decision. A taxpayer submits a request to reconvene the board to review an intervening assessment year or years after receiving a written decision by the board which revalued the property, and provides a copy of the written decision and documentation demonstrating the assessed value did not change from the prior assessment year. The taxpayer's request must demonstrate that:

(A) The same property was valued by the assessor in at least one intervening assessment year, between the filing of the appeal and the issuance of the board's written decision;

(B) The assessed value of the property under appeal did not change during the intervening assessment year or years;

(C) No appeal was filed by the taxpayer regarding the same property during the intervening assessment year or years when the assessed value did not change; and

(D) The request to reconvene the board for the intervening assessment year or years is filed with the board no later than thirty calendar days after issuing the board's decision regarding the timely filed appeal.

(E) Example 2. A taxpayer has an appeal pending before the board appealing their 2016 assessed value of \$75,000. Before the appeal is heard, the assessor certifies the 2017 assessment roll on June 30, 2017. The taxpayer's 2017 assessed value for their property did not change from the 2016 assessed value, and the taxpayer did not file an appeal with the board for the 2017 assessment year before the appeal deadline. The board hearing for the 2016 assessed value was held in August 2017 and the board issued an order overruling the assessor's 2016 assessed value. The taxpayer can file a request to reconvene the board for the 2017 assessment year within thirty calendar days of the issuance of the board's 2016 assessment year board order.

(b) A request by a taxpayer or assessor to reconvene the board for the reasons described in (a)(i) through (iii) of this subsection must be filed by April 30 of the year immediately following the assessment year in question.

(c) In making its decision on whether a condition is met to reconvene under its own authority, the board must consider only the re-

quest and documents provided with the request, and any supplements supplied by the requestor prior to the board's decision. When a board decides to grant or deny a reconvene under its own authority for any of the reasons described in this subsection, it must notify both the taxpayer and assessor of its decision in writing.

(6) **When can the department order a board to reconvene?**

(a) The department on its own initiative or in response to a request may require any board to reconvene at any time for the purpose of:

(i) Increasing or decreasing the valuation of any taxable property;

(ii) Adding any property to the assessment roll;

(iii) Performing any order or requirement made by the department;

or

(iv) Performing or completing any duty, such as equalization, or taking any action the board might lawfully have performed or taken at any of its previous meetings, or for any other purpose allowed by law. RCW 84.08.060.

(b) The department's decision to reconvene the board under (a) of this subsection is wholly within the department's discretion in exercising its general supervision and control over the administration of the tax laws of the state. RCW 84.08.010. In making a determination on whether to reconvene in response to a request, the department is only required to consider the request and documents provided with the request, and any supplemental documents supplied by the requestor prior to the department's decision.

(c) The department will require a board to reconvene if it has reasonable and convincing evidence from the requestor that at least one of the following conditions have been met:

(i) Upon request by an assessor when the assessor provides proof of actual fraud on the part of the taxpayer;

(ii) Upon request by the taxpayer when the taxpayer provides proof of actual fraud on the part of the assessor; or

(iii) Upon request by a taxpayer or assessor when the requestor provides proof that the property is overvalued by at least double (one hundred percent), of the true and fair market value. Proof of at least one hundred percent overvaluation of the true and fair market value of a taxpayer's property must be demonstrated by:

(A) Market value determinations as contained in orders from county boards of equalization or the state board of tax appeals;

(B) Stipulated market value agreements between the taxpayer and assessor; or

(C) Market-based evidence such as arm's length transactions used in a market value appraisal of the subject property. A market value appraisal of real property is determined by the use of one or more of the following acceptable approaches to value: Sales comparison approach, cost approach, and/or income approach.

(iv) For purposes of determining whether the conditions of (c) of this subsection have been met, a comparison of assessed values from a prior or subsequent assessment year is not considered reasonable and convincing evidence of a property's true and fair market value.

(v) Example 3. Taxpayer submits a reconvening request because he believes his home is overvalued by at least one hundred percent of the true and fair market value for the 2015 and 2016 assessment years. To demonstrate overvaluation, he provides a comparison of his 2015 and 2016 assessed values to his current 2017 assessed value. Under (c)(iv) of this subsection, the department must deny Taxpayer's reconvening

request because the assessed value of a property from a prior or subsequent assessment year does not constitute reasonable and convincing evidence of a property's true and fair market value. Instead, Taxpayer must submit evidence of the true and fair market value of the property, such as appraisals as of the assessment dates at issue (January 1, 2015, and January 1, 2016), before the department can order the board to reconvene.

(vi) Example 4. A property owned by Taxpayer had a 2015 assessed value of \$31,000,000 and a 2016 assessed value of \$22,000,000. Taxpayer timely appealed the 2016 assessed value to the board and the board reduced the assessed value from \$22,000,000 to \$15,000,000. This order demonstrates the assessor overvalued the property for the 2016 assessment year by forty-seven percent.

Taxpayer then submits a request to the board to reconvene for the 2015 assessed value stating that the property was overvalued by at least one hundred percent. To demonstrate proof of one hundred percent overvaluation for the 2015 assessed value, Taxpayer provides a comparison of the board order reducing the 2016 assessed value to \$15,000,000 (from \$22,000,000) with the 2015 assessed value of \$31,000,000.

The department must deny the Taxpayer's reconvening request for the 2015 assessment year because a comparison of the assessed value from one assessment year to the assessed value of another assessment year is not an acceptable method in determining market value. When determining the market value of real property, one or more of the following three approaches are used:

- (A) Sales comparison approach;
- (B) Cost approach; and/or
- (C) Income approach.

Additionally, the board order for the 2016 assessment year only demonstrates the assessor overvalued the property by forty-seven percent, not one hundred percent. To demonstrate one hundred percent overvaluation for the 2015 assessment year, the Taxpayer must have submitted reasonable and convincing evidence of the market value of the property as of January 1, 2015, (the 2015 assessment date) either with the application or prior to the department's determination.

(vii) Example 5. Taxpayer appeals her 2016 assessed value to the board and the board reduced the value from \$350,000 to \$150,000. The board order demonstrates the assessor overvalued the property for the 2016 assessment year by one hundred thirty-three percent. Taxpayer then submits a reconvening request to the board to hear an appeal for the 2015 assessment year valuation of \$335,000 because she believes the assessor overvalued her property by at least double.

Under (c)(iii)(A) of this subsection, the department must grant Taxpayer's request to reconvene the board for the 2015 assessment year based on the board's 2016 assessment year board order because the order demonstrates that the assessor overvalued her property by at least double (one hundred percent) for the 2016 assessment year.

(viii) Example 6. Taxpayer submits a reconvening request because he believes the assessor's valuation of \$225,000 for his property is overvalued by at least one hundred percent of the true and fair market value for the 2016 assessment year. To demonstrate overvaluation, he provides a market appraisal of the property with a valuation date of March 3, 2016, indicating the property's true and fair market value is \$110,000.

The valuation date of the market appraisal, March 3, 2016, is approximately two months after the assessment date, January 1, 2016, in

question. Additionally, a comparison of the 2016 market appraisal value of \$110,000 and the 2016 assessed value of \$225,000, shows an overvaluation of one hundred five percent. Therefore, under (c)(iii)(C) of this subsection, the department must approve the request and reconvene the board to hear the taxpayer's appeal for the 2016 assessment year.

(7) How does a taxpayer or assessor request an approval to reconvene?

(a) All reconvening requests from a taxpayer or assessor must be submitted to the board in the county the property is located and contain the following information:

(i) The assessment year(s) that is the subject of the request;

(ii) The specific circumstances under subsection (5) or (6) of this rule upon which the request is based; and

(iii) If the taxpayer is the party requesting the reconvening, state that he or she is the owner or duly authorized agent, personal representative or guardian of the property, or is a lessee responsible for the payment of the property taxes.

(b) If a request to reconvene is due to any of the circumstances listed in subsection (6) of this rule, the board must forward all reconvening requests and relevant documentation supporting the request to the department.

(8) Can the three-year limitation on reconvening a board be exceeded?

(a) No board can reconvene later than three years after the adjournment date of its regularly convened session, except in the case of omitted property or value, as noted in subsection (5)(a)(iv) of this rule.

(b) Example 7. An assessor discovers omitted property in December 2017 that was omitted since 2012. The board adjourned its regularly convened session for the 2017 assessment year in August 2017 and adjourned its regularly convened session for the 2014 assessment year in August 2014. Under these circumstances, the board may only reconvene to hear an appeal for assessment years 2014, 2015, 2016, and 2017. Although it has been more than three years since the adjournment of the board's 2014 regularly convened session (August 2014), it has not been more than three years prior to the year of discovery (2017) of the omitted property. RCW 84.40.085.

(9) **Calculating the three year limitation.** Under subsections (5) and (6) of this rule, boards may reconvene under their own authority or by the authority from the department, within three years after the adjournment date of their regularly convened session. Therefore, the three-year limitation is determined by the "date of adjournment" of the board's regularly convened session.

(a) Example 8. The assessor certifies the 2016 assessment roll to the board on June 30, 2016, and the board begins its regularly convened session on July 15, 2016, and meets for twenty-eight days. Based on these facts, the board's "date of adjournment" will be August 11, 2016. Therefore, the allowable time period to submit a request to reconvene for the 2016 assessment year will be from August 12, 2016, through August 11, 2019.

(b) Example 9. The assessor certifies the 2018 assessment roll to the board on August 10, 2018, and the board begins its regularly convened session on August 24, 2018, and meets for twenty-one days. Based on these facts, the board's "date of adjournment" will be September 13, 2018. Therefore, the allowable time period to submit a request to reconvene for the 2018 assessment year will be from September 14, 2018, through September 13, 2021.

(10) Denial of a reconvening request.

(a) An assessor or property owner feeling aggrieved by the denial of a reconvening request issued by the board may file an appeal with the state board of tax appeals in accordance with WAC 458-14-170.

(b) An assessor or property owner feeling aggrieved by the denial of a reconvening request issued by the department may appeal by filing with the state board of tax appeals, a notice of appeal within thirty days after the department has mailed its decision.

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