

P. O. Box 47471
Olympia, WA 98504-7471

Washington Department of Revenue
Property Tax Division

**2012 Review
Of the
Benton County Board of
Equalization**



July 2013

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Overview

Introduction

The Department of Revenue (Department) conducted an on-site interview with the Clerk of the Benton County Board of Equalization (Clerk). The interview focused on the Benton County Board of Equalization's (Board) processes and procedures.

Purpose

The primary purpose of this review by the Department is to assist the Board in their processes and procedures to ensure compliance with state statutes and regulations.

An effective review of the methods employed by the Board in administering the assessment appeal process will promote fair, timely, and uniform property tax assessments.

Scope of Review

The review is limited in scope. We interviewed the Clerk, and reviewed petition files for compliance with state statutes and regulations.

Information Reviewed

To complete our review, we gathered information about the administration of the Board through interviews, documents provided by the Clerk, and independent verification. The areas we reviewed included, but were not limited to:

- Petitions for appeal (2011 assessment year for taxes payable in 2012)
 - Hearing procedures
 - Board orders
 - Board members and hearing examiners qualifications
 - Regular convened session
 - Reconvening processes
 - Publications, forms, literature, and website
 - Board policies
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Overview, Continued

Categories of Results

The Department has completed its review and grouped the results into two categories:

- The first category, *Requirements*, is of the greatest urgency for effective administration by the Clerk and the Board. A change is required to adhere to the law.
- The second category, *Recommendations*, requires the attention of the Clerk and the Board. We note recommendations as being in the best interest of all parties. We believe improvements in these areas can improve service to the public.

The Department based the requirements and recommendations contained in this report on our review of the administrative procedures employed, existing state statutes and regulations, and areas we saw opportunities to improve processes, procedures, and communication.

Results

In this section

The Department identified three requirements and five recommendations directed toward improving the Board's processes.

The items identified may be specific to the Clerk's duties, the Board's duties, county legislative authority duties, or they may have shared components of responsibility. We have listed a summary of these items below.

Requirements

The Department identified three procedures that the Board and Clerk must change to comply with the law.

1. The Board is required to have clear, cogent, and convincing evidence before overruling the assessor's presumption of correctness during valuation appeals. (RCW 84.40.0301 and WAC 458-14-046)
 2. The Board is required to keep confidential information in a separate sealed envelope. (RCW 84.40.340, WAC 458-14-095)
 3. The Board is required to have a certification of the assessment roll from the assessor before they issue orders for the assessment year in question. (RCW 84.40.320)
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Recommendations

The Department identified five recommendations the Board should consider as areas for improvement:

1. The Department recommends the Board develop a desk reference manual for the Board's administrative duties.
 2. The Department recommends the Board Clerk keep a record of when the Board members attend the Department's training.
 3. The Department recommends Board members recuse themselves from hearings when possible conflicts of interests are in question.
 4. The Department recommends the Board update some of their form letters.
 5. The Department recommends the Board review the rule listing the reasons why the filing deadline can be waived for good cause and clearly state the reason(s) why the Board grants or denies the appellant's request. (WAC 458-14-056)
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Requirements

Introduction

For the items listed as *Requirements*, the Board of Equalization must make changes in procedure to comply with law.

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Clear, Cogent, and Convincing Evidence

Requirement **The Board is required to have clear, cogent, and convincing evidence before overruling the assessor’s presumption of correctness during valuation appeals. (RCW 84.40.0301 and WAC 458-14-046)**

What the law says The assessor enjoys a presumption of correctness in valuation appeals. The statute requires clear, cogent, and convincing evidence to overcome the presumption that the assessor’s determination of property value is correct.

This means that the appellant disputing the value must provide the Board with sufficient evidence to show that it is highly probable the assessor’s value is incorrect.

The clear, cogent, and convincing evidence standard does not apply when:

- Values have been corrected;
 - Valuation methods have been invalidated; or
 - The issue before the Board is not a valuation issue.
-

What we found One of three randomly selected appeal files reviewed during this audit does not contain any written market evidence from the appellants indicating the value of the subject property. The Board’s orders did not reference any verbal testimony indicating the true and fair market value.

The appellant provided photographs of the subject’s neighboring properties, the Benton County Assessor’s (Assessor) assessment records of the neighboring properties, and a letter describing the subject property’s characteristics and the neighboring properties’ exterior physical condition.

The Board found the condition of the neighboring properties affects the subject property and accepted the appellant’s opinion of true and fair market value.

Recommendation to remedy The Board cannot overrule the Assessor’s original value without clear, cogent, and convincing evidence that the value is incorrect. The Board must use the criteria set forth in RCW 84.40.030 when reviewing the evidence of value, admissibility, and weight while determining market value.

The clear, cogent, and convincing evidence standard denotes a quantum of proof that is less than beyond a reasonable doubt, but greater than a mere preponderance of the evidence.

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Clear, Cogent, and Convincing Evidence, Continued

**Recommendation
to remedy**
(Continued)

The orders reviewed explain how the Board arrived at their decision. However, one of the appeal files reviewed did not include any comparable sales, valuation evidence, or documentary evidence from the appellants. It is unclear how the Assessor's presumption of correctness was overruled.

The comparison of assessed values is not market-based evidence and should not be used to determine the subject's true and fair market value.

Photographs can depict an accurate condition of the property as of the date the photograph was taken, but photographs do not demonstrate market value. Based on the written data in the appeal file, it is unclear how the appellant overcame the Assessor's presumption of correctness and what market-based evidence was used to determine the subject's true and fair market value is less than the Assessor's original value.

**Why it is
important**

By statute, the assessor's valuation is presumed correct, unless the appellant provides clear, cogent, and convincing evidence to support a change in value. The goal of boards of equalization is to determine the true and fair market value of the subject property based on market evidence given to the board of equalization.

Confidential Evidence

Requirement	The Board is required to keep confidential information in a separate sealed envelope. (RCW 84.40.340, WAC 458-14-095)
What the law says	Confidential evidence and testimony is exempt from public disclosure and must be placed in an envelope, which is sealed from public inspection and bears the notation " <i>confidential evidence</i> " and the case number.
What we found	<p>During the interview with the Clerk, she stated they do not maintain sealed files with confidential information. She did note they recycle extra copies of confidential information that was used by the Board members during the hearing.</p> <p>During the draft review process, the Clerk stated they have already implemented a process in which the original copy of the confidential information is sealed from public inspection and they are shredding the extra copies used by the Board members during the hearing. This process will be verified during the follow-up portion of the review.</p>
Recommendation to remedy	The paper file must be sealed and labeled with the notation of " <i>confidential evidence</i> " and the case number.
Why it is important	Proper handling of evidence and testimony ensures confidential information will not be disclosed inappropriately and instills taxpayer confidence in the Board.

Certification of Assessment Roll

Requirement **The Board is required to have a certification of the assessment roll from the Assessor before they issue orders for the assessment year in question. (RCW 84.40.320)**

What the law says County assessors must certify the assessment roll to boards of equalization by July 15 of the assessment year for the purpose of equalization.

What we found The Clerk stated only one year out of the last ten years has the Board received a certification of the assessment roll from the Assessor's Office. The Board has held hearings without the official certification of the assessment roll indicating the Assessor has completed their work.

The Assessor's Office has annually completed the certification and supplied a copy to the Department. The 2011 assessment roll was certified on October 14, 2011.

Two of the three appeal files reviewed during the audit have orders dated prior to the 2011 assessment roll certification.

Recommendation to remedy If the Board schedules hearings for an assessment year prior to receiving the official certification from the Assessor, they should not issue an order until they have received the assessment roll certification.

Why it is important Once the assessment roll has been certified to the Board, the Assessor's ability to alter the roll without the input of the Board is very limited. If the Assessor has not certified the assessment roll and the Board issues an order, the Assessor has the ability to overrule that order.

Recommendations

Introduction For the items listed as *Recommendations*, the Department believes the Board could improve program compliance and service to the public by making voluntary changes in procedure.

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Desk Reference Manual

Recommendation **The Department recommends the Board develop a desk reference manual for the Board’s administrative duties.**

What we found The Board does not currently have a desk reference manual. However, they do refer to the Department's “*Operations Manual for County Boards of Equalization.*”

What our concern is In the event of a short- or long-term staff absence, the duties, processes, and procedures of the Board are not documented.

Recommendation to remedy Develop desk reference manuals, which may include policy information and specific step-by-step procedures on how to administer the duties of the Board.

The goal of a desk reference manual is to provide the tools necessary to perform the duties of the Board in an efficient and professional manner. The Board should follow such manual in its operations and procedures.

Why is it important Desk reference manuals are useful for training staff and a good tool in preventing the loss of institutional knowledge.

Board Member Training

Recommendation **The Department recommends the Clerk keep a record of when the Board members attend the Department's training.**

What we found The Clerk stated she is unaware of what years the Board members attend statutorily required training. The Board members are responsible to individually register for the Department's training classes.

What our concern is RCW 84.48.042 requires board members to attend training provided by the Department within one year of their appointment or reappointment to the board. Since the county legislative authority appoints board members, the clerk would have the most up to date information concerning their appointment and their training needs to stay within the requirements of the law.

Recommendation to remedy Create a spreadsheet or database listing the dates of appointment and or reappointments per board member, and the class name and date of each class the board member attended. Since the Department is not aware of when the members are appointed we expect the members to attend training every three years.

Why it is important Any member that does not attend training timely is barred from serving as a member, unless the Department waives the training requirement. (RCW 84.48.014)

Conflict of Interest

Recommendation **The Department recommends Board members recuse themselves from hearings when possible conflicts of interest are in question.**

What We Found The Clerk indicated the Board does not have a written policy to assist the members in recognizing possible situations involving conflict of interest.

What our concern is WAC 458-14-146 required members to disqualify themselves from hearings when:

- The subject property is owned in whole or part by members or employees of the board or county legislative authority or any person related to a member or employee of the board or county legislative authority by blood or marriage.
- The board member is or has been a real estate agent, appraiser, or assessor and has been involved with the subject property, until the subject property has been revalued since their involvement.

It is important for the Board members to consider the perception of others concerning possible conflicts of interest outside of the reasons stated in WAC 458-14-146.

For example:

- The appellant is a member's neighbor.
 - The appellant's child is on the same sports team as a member's child.
 - The member has personal knowledge concerning the subject property.
-

Recommendation to remedy Board members should recuse themselves, or ask the appellant and assessor if they believe a fair outcome can be reached if a possible conflict of interest exists before the hearing starts.

Why it is important Both the United States Constitution and Washington Constitution guarantee due process. Part of due process includes the right to an impartial hearing. If the perception of a conflict of interest exists, the assessor's and appellant's due process will also be in question.

Form Letters

Recommendation **The Department recommends the Board update some of their form letters.**

What we found Some of the form letters combine topics, which may confuse appellants. Also, some of the form letters contain inaccurate information. For Example:

- Untimely Filed Taxpayer Petition letter:
 - The subject line references an untimely filed petition, yet the document also discusses requests to reconvene boards of equalization. These are two separate topics and should be discussed in two separate letters.
 - The letter should clearly state the petition has been rejected, but can be reinstated if the appellant meets one of the conditions in WAC 458-14-056.
 - The letter should include the appellant’s right to appeal the decision denying a hearing due to the missing the filing deadline to the Board of Tax Appeals (BTA).
- Request for Reconvening/Late Filing Exception Request letter:
 - The subject line of the document references two separate topics that should be addressed in two separate form letters.
 - The sample letter provided by the Clerk states the Board has reviewed the appellant’s reason for filing a request for reconvening and a copy of their originally filed petition will be forwarded to the Assessor. When an appellant files a Request for Reconvening, they do not generally submit an appeal petition. It is unclear if the Board granted the taxpayer’s request to reconvene the Board or if the Board granted the taxpayer’s request to waive the filing deadline.
- Late Filing Request letter:
 - Add language to the letter referencing where the appellant can obtain the BTA appeal information.
- Order of the Benton County Board of Equalization letter:
 - The document states the appellant must submit an appeal to the BTA within 30 days after the Board has served or mailed its decision. The actual appeal period is within 30 days of the date of mailing, not after the date of mailing.

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Form Letters, Continued

What we found
(continued)

Example (continued)

- Board Order form:
 - The Board is using a customized version of the Department’s order form that contains out of date phone numbers. The current phone number are:
 - (360)705-6715, Visually impaired assistance
 - (360)705-6718, Teletype (TTY) assistance
 - (360)534-1400, Tax assistance
 - The Department’s current version of the form was last updated August 5, 2012. This form is available on the Department’s website, www.dor.wa.gov.
 - Hearing postponement letter:
 - The letter is addressed to the appellant with a copy to the file. The Assessor’s Office should also receive a copy of this letter.
-

What our concern is

The appeals process can be a confusing process for appellants. Information provided to appellants should be written clearly and contain accurate information.

Recommendation to remedy

The Clerk should periodically review all form letters and make the necessary changes to the documents.

Why it is important

Clear and accurate information given to appellants will help them understand the appeals process.

Waiver of Filing Deadline for Good Cause

Recommendation **The Department recommends the Board Review the rule listing the reasons why the filing deadline can be waived for good cause and clearly state the reason(s) why the Board grants, or denies the appellant’s request. (WAC 458-14-056)**

What we found One of the three appeals files reviewed contained a 2010 assessment year petition that was filed after that assessment year’s appeal deadline. The table below demonstrates the timeline and course of action this petition followed.

Date	Course of Action
08/23/2010	Deadline to appeal the 2010 assessed values
10/05/2010	Clerk received the 2010 appeal petition from appellant.
10/05/2010	Clerk sent the appellant an “Untimely Filed Taxpayer Petition” letter asking if they meet one of the qualifications to waive the filing deadline. A deadline of October 20, 2010 to respond to the letter was given or the appeal would be dismissed as untimely.
10/26/2010	<p>Clerk received appellant’s request to waive the 2010 assessment filing deadline. The document was signed October 21, 2010, one day after the deadline.</p> <p>Appellant’s reason to waive the filing deadline: <i>“Enclosed is my assessment with date highlighted and petition. I read this to mean I had to wait at least 30 days before I could file my petition. Please allow me to be reassessed and to petition the current evaluation.”</i></p>
11/04/2010	<p>The Clerk sent the appellant a letter stating the Board denied the appellant’s request to waive the filing deadline. The letter states, <i>“Your reasoning did not conform to the statute/conditions required for an exception or a reconvening by the Board. There was too much time lapse for the Board to consider your appeal. However, you do have the right as a taxpayer to appeal the Board’s decision to the State Board of Tax Appeals.”</i></p> <p>The letter also asked if the appellant wanted the Board to consider the 2010 assessment appeal for the 2011 assessment year.</p>

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Waiver of Filing Deadline for Good Cause, Continued

What we found
(Continued)

Petition timeline and course of action (continued)

Date	Course of Action
11/04/2010 (continued)	One of the Board members hand wrote a note on the waiver request form saying the statutes allows them only a 30-day window to accept a request for reconvening.
8/4/2011	Board order issued for the 2011 assessment year.

The Clerk correctly identified the 2010 assessment petition was not filed timely and promptly notified the appellant.

The “Untimely Filed Taxpayer Petition” letter offers the appellant three options:

1. Request the Board be reconvened to hear the 2010 assessment year appeal.
2. Request the filing deadline be waived for the 2010 assessment year appeal.
3. Change the assessment appeal year from 2010 to 2011.

We did not find any communication from the appellant requesting their 2010 assessment year petition be carried forward as a 2011 assessment year appeal.

What our concern is

The Department is concerned the Board:

- Is not distinguishing a difference between an appellant requesting the filing deadline be waived for good cause and an appellant requesting the Board be reconvened to hear an appeal.
- Is imposing a limit of a “30 day window to accept a Request for Reconvening” that is not required by statute.
- Is incorrectly advising appellants they have the right to appeal their decision regarding the waiver of the filing deadline for good cause to the BTA.
- Did not explain why the appellant’s reason to waive the filing deadline did not conform to the “statute/conditions” required. WAC 458-14-056(3)(c) allows boards of equalizations to waive the filing deadline when the taxpayer relied upon incorrect, ambiguous, or misleading written advice. It is unclear why the Board did not agree with the appellant’s opinion that they had to wait 30 days from the date of the notice.
- Held a hearing for a 2011 assessment appeal without documentation from the appellant requesting the appeal for the 2011 assessment year.

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Waiver of Filing Deadline for Good Cause, Continued

**Recommendation
to remedy**

WAC 458-14-056 lists the reasons why the Board may waive the filing deadline upon the appellant's request. The rule states the appellant must make the request within a "*reasonable time after the filing deadline.*" A reasonable time is not defined in either statute or rule. If the Board has adopted a policy defining what they believe is a "*reasonable time after the filing deadline*", that should be communicated to the appellant.

The Department recommends:

- The Clerk update the "Untimely Filed Taxpayer Petition" letter to only address waiving the filing deadline for good cause, as separate rules apply to the reconvening of boards of equalization.
- The Clerk update the language within the "Untimely Filed Taxpayer Petition" letter to reference the appellant does not have the right to appeal this decision to the BTA.
- If an appellant submits a petition after the filing deadline, do not hold a hearing for the following assessment year unless the appellant provides instructions requesting the petition be considered for the following assessment year.
- The Board and Clerk review the following section of the BOE Operating Manual concerning waiving the filing deadline for good cause and reconvening boards:
 - Section 2.10
 - Section 8.3(2)
 - Section 2.2

**Why it is
important**

Proper administration of the rules to waive the filing deadline for good cause ensures equity and uniform treatment of Benton County stakeholders (appellants, taxing districts, and assessor).

Next Steps

Prioritizing Requirements and Recommendations

Once the Clerk and Board receive a final copy of this review, the Department will (if requested) consult with them to prioritize the items listed in the report.

Questions

For questions about specific requirements or recommendations in our report, please contact the contributing staff members listed below.

Levy and Appeals Specialist	Diann Locke	(360) 534-1427
County Performance and Administration Manager	Michael Braaten	(360) 534-1428

Follow up

The Department will follow up in six months to review the changes implemented. This will give the Board an opportunity to provide information to the Department about any issues they encountered during the implementation process.

For Additional Information Contact

Washington State Department of Revenue
Property Tax Division
P.O. Box 47471
Olympia, WA 98504-7471
(360) 534-1400
www.dor.wa.gov

Closing Statement

Goodwill

It is apparent that the Clerk and Board members take great pride in serving Benton County stakeholders. They are committed to providing uniform treatment while adjudicating disputes in a timely and professional manner. The Clerk is both organized and detailed.

We commend the Clerk, the Board, and the county legislative authority for their willingness to look at changes to improve the administration of the appeals process.

The Department is committed to the success of the Benton County Board of Equalization by ensuring the members and Clerk comply with state statutes and regulations.
