

PROPOSED RULE-MAKING ORDER

WISCONSIN TAX APPEALS COMMISSION

The Wisconsin Tax Appeals Commission proposes an order to repeal ss. TA 1.33(2) and (3), TA 1.39, TA 1.61, and TA 1.63(2) and (3); to renumber TA 1.33(1); to renumber and amend ss. TA 1.03, TA 1.17, TA 1.31(1) and (2), and TA 1.63(1); to amend ss. TA 1.01(1), (2) and (3), TA Subchapter II (title), TA 1.11, TA 1.13 (title), (1) and (2), TA 1.15 (title), (1), (2), (3) and (4), TA 1.17, TA 1.19, TA 1.21, TA Subchapter III (title), TA 1.35(1) and (2), TA 1.37, TA Subchapter IV (title), TA 1.51(1) and (2), TA 1.53, TA 1.55(1), (2), (3) and (4), and TA 1.57(1) and (2); and to create ss. TA 1.001(1), (2), (3), (4), (5), (6), (7), (8) and (9), TA 1.01(4) and (5), TA 1.03(2), TA 1.13(3), TA 1.15(5), TA 1.17(2), TA 1.20, TA 1.23, TA 1.24, TA 1.30, TA 1.31(1), (2) and (3), TA 1.32, TA 1.34(1), (2), (3), (4) and (5), TA 1.51(3), (4) and (5), and TA 1.57(3), (4), (5) and (6); all relating to the rules of practice and procedure before the commission.

RULE SUMMARY

Statutes Interpreted: Wis. Stat. § 73.01(5) allows parties to file petitions for review by the Tax Appeals Commission and describes the process by which the commission conducts such review. The proposed rule changes relate to the procedures for such review.

Statutory Authority: Wis. Stat. § 73.01(4)(b) gives the commission authority to promulgate its rules of procedure.

Explanation of Agency Authority: Pursuant to Wis. Stat. § 73.01(4) and subject to judicial review, the Tax Appeals Commission is the final authority for the hearing and determination of all appeals arising in the following areas of state taxation: individual income; corporation franchise/income; fiduciary; withholding; gift; sales and use; recycling surcharge; county sales tax; car line; cigarette use; controlled substances; metalliferous minerals occupation; motor fuel and alternative fuel; International Registration Plan fees; intoxicating liquor; cigarettes and tobacco products; homestead credit; farmland preservation credit; assessments of manufacturing property; pollution abatement; taxation district appeals regarding the relative value of taxable property in taxation districts of a county; real estate transfer fees; telephone license fees; and electric cooperative association license fees. The commission's rules govern procedures in such appeals.

Related Statute or Rule: Appeals of state taxation assessments to the commission are permitted pursuant to Wis. Stats. §§ 70.38(4)(a), 70.397, 70.64,

70.995(8), 71.07(9e), 71.55(6m), 71.61, 71.88, 76.38(12)(a), 76.39(4)(c), 76.48(6), 76.91, 77.26(3), 77.59(5m) and (6)(b), 78.01, 78.22, 78.40, 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 341.43 and 341.45.

Plain Language Analysis: Section by section details of this rule order are outlined as follows:

Section 1: TA 1.001(1), (2), (3), (4), (5), (6), (7), (8) and (9) are created to provide definitions of certain terms used in this chapter. The definition of “business hours” conforms to the commission’s current business hours. The definition of “party” is added to clarify that an intervenor or amicus curiae may participate in a matter under review only to the extent granted by order of the commission. The definition of “working day” is found in Wis. Stat. § 227.01(14). Legal holidays are designated in Wis. Stat. § 230.35(4)(a). The definition of “small claims” is found in Wis. Stat. § 73.01(1)(b).

Section 2: TA 1.01(1), (2) and (3) are amended to show a preference for documents to be printed by a computer printer, to replace the term “petitioner” with the more inclusive term of “party” and to remove the requirement of filing additional copies of papers in a consolidated proceeding.

Section 3: TA 1.01(4) and (5) are created to make the prescribed form of pleading mandatory. Sub. (4) is added to clarify that this rule does not apply to exhibits. Sub. (5) provides a method for the commission to enforce TA 1.01.

Section 4: TA 1.03 is renumbered to 1.03(1) and amended for consistency.

Section 5: TA 1.03(2) is created to codify the commission’s current practice of requiring the filing of a written notice of appearance by a party’s representative.

Section 6: The title of Subchapter II is amended from “Filing an Appeal” to “Petitions and Related Filings” to better describe the contents of this subchapter.

Section 7: TA 1.11 is amended to add references to TA 1.01 and 1.15 to the rule, and to change the note following the rule.

Section 8: The title of TA 1.13 is amended to “When a petition is filed” for consistency. TA 1.13(1) and (2) are amended to codify the practice of the commission to treat petitions filed after business hours as filed on the next working day, and to clarify that a petition may be timely filed even if it is not accompanied by the required filing fee.

Section 9: TA 1.13(3) is created to conform the commission's rules to the holding of the Court of Appeals in *Kuntz v. Dep't of Revenue*, 149 Wis. 2d 399, 439 N.W.2d 644 (Ct. App. 1989) (unpublished decision). In that case, the court held that a petitioner's failure to pay the commission's required filing fee by the date the petition is due under Wis. Stat. § 73.01(5)(a) does not deprive the commission of jurisdiction in the case. The court effectively held that a petitioner's failure to pay the filing fee by the statutory due date is curable, and the commission's longstanding practice since that decision has been to assert jurisdiction in such a case if the petitioner subsequently pays the fee in a prompt manner. As an unpublished decision, *Kuntz* does not have precedential value. However, this issue arises frequently in connection with petitions filed with the commission, and it is likely that the courts would follow the rationale explained in *Kuntz* in reviewing the commission's handling of this issue in similar future cases. In cases where the petition is not accompanied by the required filing fee, the commission now requires payment of the filing fee within 30 days of receipt of notice from the commission, as provided in this new rule.

Section 10: The title of TA 1.15 is amended to "Forms for petitions" for consistency. TA 1.15(1), (2), (3) and (4) are amended to clarify these subsections. Subs. (1) and (4) are amended to change the reference to "department of revenue" to "department" for consistency. With regard to existing sub. (2), many of the suggested elements of the model petition for review are mandated by Wis. Stats. §§ 70.995(8)(c) and (d) and 73.01(5). For example (2)(c) and (d) are largely mandated by Wis. Stat. § 73.01(5)(b). The amendment makes the elements specified in sub. (2) mandatory. The number of copies of each petition for review is reduced from four to three in sub. (3) for consistency. The notes following TA 1.15 are deleted, and new notes are created following TA 1.15(5).

Section 11: TA 1.15(5) is created to codify the practice of the commission to permit a petitioner to file an amended petition for review if the initial petition for review lacks information required by statute.

Section 12: TA 1.17 is renumbered to TA 1.17(1) and amended for consistency and to refer to the newly created subsection 2.

Section 13: TA 1.17(2) is created to adopt the policy the commission followed in *City of Niagara v. Dep't of Revenue and Niagara of Wisconsin Paper Corp.*, Wis. Tax Rptr. (CCH) ¶400-329 (WTAC Nov. 25, 1997), to assign the same docket number to a cross-appeal that it had assigned to the petition for review to which the cross-appeal relates.

Section 14: TA 1.19 is amended to conform the language of that section to the other sections of these rules.

Section 15: TA 1.20 is created to codify the commission's current practices concerning intervenors.

Section 16: TA 1.21 and note are amended to make the amendment of pleadings more consistent with the rules of civil procedure and Wis. Stat. § 802.09(1).

Section 17: TA 1.23 and note are created to allow the filing of certain documents other than petitions by electronic transmission.

Section 18: TA 1.24 is created to codify the commission's current practice of permitting amicus curiae briefs as a matter of discretion.

Section 19: The title of Subchapter III is amended from "Procedures Prior to a Hearing" to "Practice and Procedure," because this subchapter includes rules applicable to practice and procedure prior to, during and after a hearing, as well as practice and procedure in cases in which no hearing is held.

Section 20: TA 1.30 is created to replace TA 1.39 and state the commission practice of generally following the circuit court rules of civil procedure at the beginning of Subchapter III. The enumeration of statutes in the note is intended to assist non-lawyer representatives and pro se litigants.

Section 21: TA 1.31(1) and (2) are renumbered to TA 1.31(4) and (5) and amended to eliminate superfluous language in light of the newly created TA 1.30. The amended rule clarifies the current commission practice that only the commission issues notices of hearings.

Section 22: TA 1.31(1), (2) and (3) are created to describe what types of motions may be made before the commission and when those motions may be made, and to require sufficient copies of motions and supporting papers be provided in cases where all three commissioners must render a decision.

Section 23: TA 1.32 is created to codify the commission's current practices concerning consolidation of matters before the commission.

Section 24: TA 1.33(1) is renumbered to TA 1.33.

Section 25: TA 1.33(2) and (3) are repealed to conform this section to the commission's current practices concerning prehearing conferences.

Section 26: The note following TA 1.33(3) is amended for consistency.

Section 27: TA 1.34(1), (2), (3), (4) and (5) and note are created to clarify that attorneys authorized to practice law in Wisconsin may issue subpoenas in proceedings before the commission, just as in civil proceedings, as authorized by Wis. Stat. § 227.45(6m), and provides a framework for issuing subpoenas and subpoenas duces tecum in matters pending before the commission.

Section 28: TA 1.35(1), (2) and note are amended to clarify certain language and replace the term “counsel” with the more inclusive term “party.”

Section 29: TA 1.37 is amended to make it clear that the commission’s authority to grant extensions is limited.

Section 30: TA 1.39 is repealed in favor of TA 1.30.

Section 31: The title of TA Subchapter IV is amended from “Hearings” to “Hearings and Briefs.”

Section 32: TA 1.51(1), (2) and note are amended to place the statutory reference in the note and to require a longer notice period for a hearing.

Section 33: TA 1.51(3), (4), (5) and note are created to codify the commission’s practice of exchanging witness names and exhibits prior to a hearing, to codify the commission’s practice in allowing telephonic testimony as allowed by Wis. Stat. § 807.13, and to provide a penalty for unreasonable conduct by a party in a hearing.

Section 34: TA 1.53 and note are amended to clarify that evidence may be excluded at the presiding commissioner’s discretion and for consistency.

Section 35: TA 1.55(1), (2), (3) and (4) are amended to reflect that recordings are no longer recorded exclusively on “tape,” to allow for the use of different methods of recording in the future, and to reflect the commission’s current practices regarding recordings and transcripts. The note following TA 1.55(1) is amended for consistency and to state the correct statutory authority for recording contested hearings in Wis. Stat. § 227.44(8).

Section 36: TA 1.57(1) and (2) are amended to remove unnecessary language and to provide the method for disregarding briefs that are filed after the time designated by the commission.

Section 37: TA 1.57(3), (4), (5) and (6) are created to provide specific guidelines for filing briefs with the commission.

Section 38: TA 1.61 and note are repealed in favor of TA 1.001.

Section 39: TA 1.63(1) is renumbered and amended and the note is amended to simplify this rule and conform it more closely to Wis. Stat. § 73.01(4)(am).

Section 40: TA 1.63(2) and (3) are repealed to simplify TA 1.63 and conform it more closely to Wis. Stat. § 73.01(4)(am).

Effective Date: This provision specifies the date that the rules provided in this rule-making order shall become effective.

Summary of, and comparison with, existing or proposed federal regulations:

There are no federal regulations governing practice and procedure before the commission. The commission's rules are analogous to the rules of the U. S. Tax Court, and the commission consulted those rules in drafting these rule changes. However, as a state administrative agency, the commission's rules of practice and procedure are much less restrictive than the Tax Court's rules.

Comparison with rules in adjacent states: Adjacent states have various entities that review state tax appeals that range from a state tax court in Minnesota to a hearing division within the Departments of Revenue in Iowa and Illinois. These entities have procedures for hearings that are generally comparable to those of the commission.

Summary of factual data and analytical methodologies: The commission has not collected any data nor adopted a methodology in connection with its development of these proposed rule changes. The proposed changes generally are intended to simplify and clarify a number of rules, bring the rules into conformity with applicable precedent and the commission's current practices, and update the rules to reflect changes in technology.

Analysis and supporting documentation used to determine effect on small business or in preparation of economic impact report: The commission has not collected any data in connection with its determination of the impact of these proposed rule changes on small business or in preparation of an economic impact report. The commission's rules of procedure affect small businesses in that they may become parties to cases pending before the commission. The proposed changes are not anticipated to have any significant effect on small businesses. These changes may benefit small businesses that come before the commission in that they will simplify and clarify existing procedural rules and enable the commission to operate more efficiently. The commission has not prepared an economic impact report. Due to the nature of the proposed changes, the commission expects that the fiscal impact of the changes will be negligible.

Agency contact person: David C. Swanson, Chairperson, Tax Appeals Commission, 5005 University Avenue, Suite 110, Madison, WI 53705; telephone: 608-266-1391; email: davidc.swanson@wisconsin.gov.

Place where comments are to be submitted and deadline for submission: Mail: Wisconsin Tax Appeals Commission, 5005 University Avenue, Suite 110, Madison, WI 53705; Electronic Mail: TAC@wisconsin.gov; Facsimile: 608-261-7060. Deadline for submission: September 17, 2008

TAX APPEALS COMMISSION

CHAPTER TA 1 PRACTICE AND PROCEDURES BEFORE THE TAX APPEALS COMMISSION

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SUBCHAPTER I GENERAL PROVISIONS

SECTION 1. TA 1.001(1), (2), (3), (4), (5), (6), (7), (8) and (9) and note are created to read:

TA 1.001 Definitions. In this chapter:

(1) "Business hours" means the commission's business hours, which are from 7:45 a.m. to 4:30 p.m. central time on working days.

(2) "Commission" means the tax appeals commission.

(3) "Department" means the department of revenue.

(4) "Party" means a petitioner or respondent in a case before the commission, or an intervenor or amicus curiae in a case before the commission to the extent specifically granted by order of the commission under TA 1.20 or TA 1.24.

(5) "Petition" means the document filed with the commission that qualifies as a petition for review under TA 1.15.

(6) "Petitioner" means any aggrieved party that has filed or caused to be filed a petition for review with the commission.

(7) "Respondent" means the department of revenue or the department of transportation.

(8) "Small claims" means a matter in which the amount in controversy, including any penalty, after the department of revenue takes its final action on the petition for redetermination, is less than \$2,500, unless the commission, on its own motion determines that the case not be heard as a small claims case or

unless the department of revenue determines that the case has statewide significance.

(9) "Working day" means any day except Saturday, Sunday and any holiday designated by state statute or other legal holiday.

Note: Statutory references: ss. 73.01(1)(b), 227.01(14) and 230.35(4)(a), Stats.

SECTION 2. TA 1.01(1), (2) and (3) are amended to read:

TA 1.01 Form and style of papers. (1) Papers filed with the ~~tax appeals~~ commission shall be legible and, if possible, ~~typewritten. They should be typed or printed by a computer printer~~ on plain white paper not more than 8.5 inches wide and 11 inches long. ~~A party should write on only one side of a paper. See s. TA 1.57 for additional requirements for briefs.~~

(2) Each party should place the proper caption on all papers filed with the commission. See s. TA 1.15(2)(a) for a sample caption. ~~Each petitioner should~~ party shall state its that party's full and complete name in the caption of all papers filed.

(3) Except as provided in ss. TA 1.15(3) ~~and 1.19, 1.31(2), and 1.57(3),~~ each party shall file a signed original and one copy of all papers. ~~Each party shall file one additional copy of motions to consolidate proceedings and of all papers filed in proceedings that are consolidated.~~

SECTION 3. TA 1.01(4) and (5) are created to read:

(4) This section does not apply to exhibits offered by a party or attached to a paper filed with the commission.

(5) If a paper is filed that does not comply with this section, the commission, on its own motion or on the motion of a party, may order the party filing the paper to comply with this section and provide for further relief as is just and equitable.

SECTION 4. TA 1.03 is renumbered TA 1.03(1) and amended to read:

TA 1.03 Appearance and practice. (1) Any party ~~before this commission~~ may ~~select~~ designate a representative. This section does not constitute a waiver of ~~any~~ the requirement of personal appearance of a petitioner at a commission hearing.

SECTION 5. TA 1.03(2) is created to read:

(2) Any representative of a party shall be designated in a written document signed either by a party or a representative. This designation of a representative may be made in a party's petition for review or in a notice of appearance. Any notice of appearance shall include the name, address, daytime telephone number, facsimile number, if any, and e-mail address, if any, of the representative.

SECTION 6. The title of TA Subchapter II is amended to read:

SUBCHAPTER II
FILING AN APPEAL PETITIONS AND RELATED FILINGS

SECTION 7. TA 1.11 and note are amended to read:

TA 1.11 Time for filing. An appeal to the commission must be filed in writing in accordance with ss. TA 1.01 and 1.15 during the period prescribed by statute.

Note: ~~Section TA 1.11 interprets ss. 70.38 (4), 70.64 (3), 70.995 (8), 71.09 (13) (d), 71.12 (1) (a), 72.86 (4), 73.01 (5)(a), 76.38 (12) (a), 76.39 (4) (c), 76.48 (6), 77.59 (6) (b) and 139.33 (5), Stats. The statutory period for filing an appeal with the commission is within 60 days of the determination of the state board of assessors or of the department of revenue or, in all other cases, within 60 days after the redetermination, as provided in s. 73.01 (5)(a), Stats.~~

SECTION 8. TA 1.13(1), (2) and notes are amended to read:

TA 1.13 When ~~an appeal~~ a petition is filed. (1) Except as provided in sub. (2), a petition for review is filed on the date on which the petition for review ~~and proper filing fee are~~ is received in the commission's office in Madison during the commission's business hours. A petition for review received after the commission's business hours is considered filed on the next working day.

(2) A petition for review is considered timely filed if it is ~~accompanied by the required filing fee and it is~~ mailed by certified mail in a properly addressed envelope with postage duly prepaid, which envelope is postmarked before midnight of the last day for filing.

Note: ~~The proper address of the commission is 5005 University Avenue, Suite 110, Madison, Wisconsin 53705.~~

Note: ~~Section TA 1.13 interprets ss. 70.995 (8) (a), 73.01 (5) (a), Stats.~~

SECTION 9. TA 1.13(3) and notes are created to read:

(3) If a petition for review is timely filed and is not accompanied by the required filing fee, the commission shall promptly notify the petitioner of the requirement

to pay the proper filing fee. Failure of the petitioner to pay the fee within 30 days of receipt of notice from the commission shall result in the dismissal of the petition for review.

Note: The mailing address of the Commission is Suite 110, 5005 University Avenue, Madison, Wisconsin 53705.

Note: Statutory references: ss. 70.995 (8) (a) and 73.01 (5) (a), Stats.

SECTION 10. TA 1.15(1), (2), (3), (4) and notes are amended to read:

TA 1.15 Forms for ~~appeals~~ petitions. (1) A petition for review shall be in writing. Except as provided in sub. (4) for appeals of assessments of manufacturing property and appeals of penalties imposed by the department of ~~revenue~~ for the late submission of manufacturing forms, the petition may be in letter form and shall clearly inform the commission that a decision or determination of the respondent is being appealed.

(2) A petition for review filed under sub. (1) ~~may~~ shall contain the following:

(a) A caption substantially in the following form:

WISCONSIN TAX APPEALS COMMISSION

(Name(s) of petitioner(s)),

Petitioner(s),

vs.

_____ Docket No. _____

Wisconsin Department of (Revenue) (Transportation),

Respondent.

To the Wisconsin Tax Appeals Commission:

(b) The full name and address of each petitioner, and if no representative is designated, the daytime telephone number of each petitioner.

(c) A clear and concise statement of the facts or other matter in controversy upon which the petitioner relies, giving the date of notice of the decision or determination being appealed and, if possible, attaching a copy.

(d) A clear and concise statement of the petitioner's objections to the decision or determination being appealed from and of the contentions of law, if any, upon which the petitioner relies.

(e) The name ~~and~~, address, daytime telephone number, facsimile number and e-mail address, if any, of the petitioner's representative, if any, together with a statement that the representative is authorized to appear and act for the petitioner. If the representative is a business organization, the business organization's name may be used. The petitioner or the petitioner's representative shall sign the petition.

(f) A statement of the portion, if any, of the tax which is admitted by the petitioner to be correct.

(g) A statement of the relief sought.

(h) An attached copy of the notice of action or determination being appealed.

(3) A petitioner shall file with the commission the original copy of a petition for review and ~~four~~ 3 additional copies.

(4) A petition for review appealing either an assessment of manufacturing property or a penalty imposed by the department ~~of revenue~~ for late submission of the standard manufacturing property report form ~~should~~ shall be on forms provided by the commission.

~~**Note:** Forms for appealing either an assessment of manufacturing property or a penalty for late submission of the standard manufacturing property report form may be obtained by writing to: Tax Appeals Commission, 5005 University Avenue, Suite 110, Madison, Wisconsin 53705.~~

~~**Note:** Section TA 1.15 interprets ss. 70.995 (8) (c) and (d) and 73.01 (5), Stats.~~

SECTION 11. TA 1.15(5) and notes are created to read:

(5) If a petition for review is filed that does not comply with this section, the commission, on its own motion or the motion of a party, may order the petitioner to file an amended petition for review that complies with this section and may provide for further relief as is just and equitable.

Note: Forms for appealing either an assessment of manufacturing property or a penalty for late submission of the standard manufacturing property report form may be obtained by telephoning the commission at (608) 266-1391, by writing to the commission at its mailing address or by downloading the forms at www.wisbar.org.

Note: Statutory references: ss. 70.995 (8) (c) and (d) and 73.01 (5), Stats.

SECTION 12. TA 1.17 is renumbered to TA 1.17(1) and amended to read:

TA 1.17 Docket. ~~Upon~~⁽¹⁾ ~~Except as provided in sub. (2), upon~~ receipt of a petition for review ~~with the required filing fee~~, the commission shall docket and assign a number to the petition and notify the petitioner. Each party shall place this number on all papers subsequently filed by that party in the proceeding before the commission.

SECTION 13. TA 1.17(2) and note are created to read:

(2) Upon receipt of a cross-appeal, the commission shall assign it the same docket number as was assigned to the petition for review to which the cross-appeal relates.

Note: Statutory reference: s. 70.995 (8) (a), Stats.

SECTION 14. TA 1.19 and note are amended to read:

TA 1.19 Answer and reply to petitions for review. After receiving and docketing a petition for review, the commission shall transmit one copy to the ~~department of revenue~~ respondent and to each other party to the proceeding, if any, except the petitioner. Within 30 days after ~~such~~ this transmission, the ~~department~~ respondent shall file an original and 3 copies of ~~an~~ its answer to the petition with the commission and shall serve one copy on the petitioner or the petitioner's ~~attorney or agent~~ representative. Within 30 days after service of the answer, the petitioner may file and serve a reply ~~in the same manner as the petition is filed~~.

Note: ~~Section 1.19 interprets~~ Statutory reference: s. 73.01 (5) (a), Stats.

SECTION 15. TA 1.20 is created to read:

TA 1.20 Intervention. Upon the motion of a party or a prospective intervenor, the commission may allow the intervenor to participate in a proceeding before the commission as provided by order of the commission. In deciding whether to permit a prospective intervenor to intervene in a matter, the commission shall consider the ability of the parties to fully present the merits of the issues and the

effect intervention will have on the prosecution of the matter. An order allowing intervention shall specify the extent of the intervenor's authorized participation in the proceeding. Notwithstanding any right to intervene in a matter granted by order of the commission, the commission may enter an order in the matter based upon the stipulation of the petitioner and respondent regardless of the assent or objection of an intervenor.

SECTION 16. TA 1.21 and note are amended to read:

TA 1.21 Amendments of documents filed. ~~A petitioner or respondent party may amend its petition, answer or reply at any time before the commission's hearing with the consent of the adverse party or by leave of the commission upon motion duly made once as a matter of course at any time within 6 months after the petition is filed or within the time set in a scheduling order issued by the commission. Otherwise a party may amend a pleading only by leave of the commission upon a motion duly made or by written consent of the adverse party, and leave shall be freely given at any stage of the action when justice so requires.~~ Each party shall file the proposed amendments with all motions to amend. A party shall plead in response to an amended petition for review as provided by s. TA 1.19.

~~Note: Section 1.21 interprets s.~~ Statutory references: ss. 73.01 (5) (b) and 802.09(1), Stat. Stats.

SECTION 17. TA 1.23 and note are created to read:

TA 1.23 Filing documents by electronic transmission. Except for a petition for review, a party may file any document no more than 10 pages in length with the commission by facsimile transmission or electronic mail. Documents filed by facsimile or electronic mail shall be considered filed when the commission receives a complete printable copy, except that documents so filed after the commission's normal business hours shall be considered filed on the next working day. Documents filed by facsimile or electronic mail shall be considered original filed documents. The original signed document transmitted electronically must be sent to the commission by the close of the next working day with any copies required by ss. TA 1.01(3), 1.19, 1.31(2) or 1.57(3). A party is responsible for ensuring receipt by the commission of any document transmitted electronically by that party, and the commission shall provide evidence of its receipt at the party's request.

Note: The commission's facsimile number is (608) 261-7060 and its electronic mail (e-mail) address is TAC@wisconsin.gov.

SECTION 18. TA 1.24 is created to read:

TA 1.24 Amicus curiae. Upon the motion of a party or proposed amicus curiae, the commission may permit an amicus curiae to file a brief in any proceeding. In determining whether to grant or deny the motion, the commission shall consider all relevant factors, including the ability of the parties to present the merits of the case, any delay that may be caused by the filing of an amicus curiae brief and the request of any party to respond to an amicus curiae brief.

SECTION 19. The title of TA Subchapter III is amended to read:

SUBCHAPTER III
PROCEDURES PRIOR TO A HEARING PRACTICE AND PROCEDURE

SECTION 20. TA 1.30 and note are created to read:

TA 1.30 Rules of Procedure. Unless otherwise provided in ch. 73, ch. 227, s. TA 1.53, or by order of the commission, the rules of procedure governing civil actions in the circuit courts of this state shall substantially apply in matters before the commission.

Note: Statutory reference: s. 73.01(4)(b), Stats.; See also, ss. 801.14, 801.15, 802.01, 802.02, 802.03, 802.04, 802.05, 802.06, 802.08, 802.09, 802.10, ch. 804, 805.03, 805.07, 805.10, 805.17, 805.18, 807.03, 807.05, 807.06, 807.13, 807.14, and 814.245, Stats.

SECTION 21. TA 1.31(1) and (2) are renumbered to TA 1.31 (4) and (5) and amended to read:

TA 1.31 Motions. ~~(1) (4) Motions shall be brought in the manner provided under the rules of civil procedure in force in the circuit courts of this state except that~~ If the commission may schedules a hearing on a motion, the commission shall issue notices a notice of the dates for hearings date, time and location of the hearing on motions the motion.

~~(2) (5) The~~ If a hearing is convened on a motion, the commission or the presiding commissioner may rule on ~~any the~~ the motion at ~~the time set for the hearing on it~~ after hearing the arguments of the party or parties present. The commission or presiding commissioner may rule on any motion if any party fails to appear at the time set for a hearing.

SECTION 22. TA 1.31 (1), (2), (3) and note are created to read:

TA 1.31 Motions. (1) A party requesting an order from the commission shall make the request in the form of a motion which clearly describes the order sought and the grounds for granting it. A party may move the commission for

any substantive or procedural order authorized by law, including any of the following:

(a) An order dismissing a party or petition for lack of personal or subject matter jurisdiction. A motion to dismiss for lack of jurisdiction may be made at any point in the proceeding, but shall be made as soon as the basis for the motion becomes apparent to the moving party.

(b) An order dismissing a petition before a hearing for failure to state a claim on which relief can be granted.

(c) An order granting summary judgment as to any issue or the entire matter under consideration. A motion for summary judgment shall be brought and decided in accordance with civil procedure statutes governing motions for summary judgment.

Note: Statutory reference: s. 802.08, Stats.

(2) Except in small claims cases, each party shall file an original and 3 copies of all motions and supporting papers and affidavits, unless ordered otherwise by the commission. In small claims cases, each party shall file an original and one copy of all motions and supporting papers and affidavits.

(3) Upon the filing of a motion, the commission may set a briefing schedule.

SECTION 23. TA 1.32 is created to read:

TA 1.32 Consolidation. Matters before the commission that involve the same parties or that arise from the same transaction(s) or assessment(s) may be consolidated by stipulation of the parties, or upon the motion of a party or of the commission. In determining whether to consolidate one or more matters, the commission shall consider the convenience and resources of the parties and the commission, and the possible prejudice to any party.

SECTION 24. TA 1.33(1) is renumbered as follows:

TA 1.33 Prehearing conferences. ~~(1)~~ Upon its own motion or upon the request of a party to a proceeding, the commission may direct the parties to appear before it at a prehearing conference.

SECTION 25. TA 1.33(2) and (3) are repealed.

SECTION 26. The note appended to TA 1.33 is amended to read:

Note: Section TA 1.33 interprets Statutory reference: s. 227.44 (4), Stats.

SECTION 27. TA 1.34(1), (2), (3), (4) and (5) and note are created to read:

TA 1.34 Subpoenas. (1) Attorneys licensed to practice law in Wisconsin may issue and serve subpoenas and subpoenas duces tecum as provided by statute in proceedings before the commission.

(2) Any party not represented by an attorney licensed to practice law in Wisconsin may apply in writing to request that the commission issue a subpoena or subpoena duces tecum. Except as provided in a scheduling order, every application for a subpoena or subpoena duces tecum shall be filed at least 30 days prior to the hearing date or the date sought for examination or production and shall be served by the requesting party on all parties to the proceeding. A party opposing the issuance of a subpoena or subpoena duces tecum shall file a written objection with the commission not later than seven days after receipt of the application and shall serve a copy of its objection on all other parties to the proceeding.

(3) An application for a subpoena shall contain the name of the person to be examined and the time, date and location of the examination.

(4) An application for a subpoena duces tecum shall include the information described in sub. (3) and a detailed description of the documents to be produced at the examination.

(5) The party applying for a subpoena or a subpoena duces tecum shall be responsible for serving the subpoena or subpoena duces tecum and for paying any related costs and fees.

Note: Statutory references: ss. 227.45 (6m), 805.07 and 885.01 (4), Stats.

SECTION 28. TA 1.35(1), (2) and note are amended to read:

TA 1.35 Discovery. (1) Parties may obtain discovery before the commission in the same manner and by the same methods as provided under ch. 804, Stats., unless inconsistent with or prohibited by statute, or as otherwise determined by the commission. When resort would normally be had to a circuit court under ch. 804, Stats., the parties shall first resort ~~shall be had~~ to the commission.

(2) The commission shall ~~refuse to not~~ hear ~~any and all motions~~ a motion concerning discovery ~~under ch. 804, Stats.,~~ unless the moving counsel shall party first ~~advise~~ advises the commission in writing that after serious effort to resolve

differences, ~~counsel~~ the parties are unable to reach an accord. This statement shall further recite the circumstances of such efforts to resolve differences and the names of all persons participating therein.

~~Note: Section TA 1.35 interprets~~ Statutory references: s. 73.01 (4) (d) and ch. 804, Stats.

SECTION 29. TA 1.37 is amended to read:

TA 1.37 Extensions. ~~The~~ Unless prohibited by law, the commission may grant continuances, extensions of time, postponements or adjournments upon a showing of good and sufficient cause.

SECTION 30. TA 1.39 is repealed.

SECTION 31. The title of TA Subchapter IV is amended to read:

SUBCHAPTER IV HEARINGS AND BRIEFS

SECTION 32. TA 1.51(1), (2) and note are amended to read:

TA 1.51 Hearings. (1) When a proceeding is placed on the commission's calendar for a hearing, the commission shall notify the parties of the time and place of the hearing not less than ~~10~~ 30 days prior to the hearing, except as otherwise provided by statute or by agreement of the parties.

(2) ~~A~~ Each party shall arrange to have witnesses ~~in attendance~~ present and exhibits ready for presentation at the time and place designated in the notice of hearing.

~~Note: Section TA 1.51 interprets ss. 71.12 (3) and~~ Statutory reference: s. 73.01 (5) (b), Stats.

SECTION 33. TA 1.51(3), (4), (5) and note are created to read:

(3) No later than 5 working days prior to the day of the hearing, each party shall file with the commission and serve upon all other parties a written list of the names of witnesses and copies of the exhibits that the party intends to introduce at the hearing. For purposes of this section, service is complete upon mailing rather than upon receipt. Witnesses and exhibits not identified in this manner may be excluded from the hearing at the discretion of the presiding commissioner. This section does not apply to witnesses and exhibits introduced in rebuttal which the party could not reasonably have anticipated introducing prior to the hearing.

(4) The presiding commissioner may permit oral arguments and oral testimony to be communicated on the record by telephone as allowed by statute.

(5) Conduct that unreasonably impedes the orderly progress of a hearing or contemptuous conduct at a hearing shall be grounds for exclusion from the hearing. The presiding commissioner may take other actions that are authorized by statute and are appropriate under the circumstances.

Note: Statutory reference: s. 807.13, Stats.

SECTION 34. TA 1.53 and note are amended to read:

TA 1.53 Evidence. The commission is not bound by common law or statutory rules of evidence. Irrelevant, immaterial or unduly repetitious testimony shall be excluded at the presiding commissioner's discretion.

Note: ~~Section TA 1.53 interprets~~ Statutory reference: s. 227.45, Stats.

SECTION 35. TA 1.55(1), (2), (3) and (4) and note are amended to read:

TA 1.55 Transcripts. (1) The commission shall make ~~either~~ a stenographic, electronic or other record of all commission hearings.

Note: See Statutory references: ss. 73.01 (4) (c) and ~~227.07(8)~~ 227.44(8), Stats.

(2) If the hearing has been electronically ~~tape~~ recorded, copies of ~~tapes~~ the recording will be provided upon request at a cost of \$10 per tape or disc, paid in advance, or at no cost if a copy of the recording is provided electronically, such as via electronic mail.

(3) Upon request of a party, the commission may order preparation of a written transcript of a hearing. The party making the request shall be responsible for all reasonable costs incurred by the commission in transcribing the record and in preparation of the transcript. Costs may be prorated among the parties if more than one party makes the request. The original of the transcript shall be retained by the commission. If a decision of the commission is appealed and no party has requested a transcript, the commission may have a transcript prepared on its own motion to complete the record for the matter on appeal.

(4) Upon proper showing of financial inability to pay for a copy of the transcript, the commission may furnish a copy of a ~~tape~~ recording or transcript to a party without cost.

SECTION 36. TA 1.57(1) and (2) are amended to read:

TA 1.57 Briefs. (1) The commission may require that briefs be submitted ~~either before or after the hearing~~ and may designate the time and the manner of filing and serving briefs. ~~When briefs are required, the party bearing the burden of proof on the issue shall file the initial and final briefs unless otherwise ordered by the commission.~~

(2) The commission may, upon its own motion or the motion of a party, ~~strike and~~ disregard briefs that are filed with the commission or served after the time designated unless an application for extension of time under s. TA 1.37 is made and granted.

SECTION 37. TA 1.57(3), (4), (5) and (6) are created to read:

(3) Unless ordered otherwise by the commission, a party filing a brief shall file the original and 3 copies with the commission and serve one copy on each other party to the proceeding.

(4) Unless ordered otherwise by the commission, typed initial and response briefs shall include the caption described in s. TA 1.15(2)(a) and shall be formatted as follows:

(a) No more than 40 pages in length, not including the table of contents, table of authorities, and any appendices, exhibits or attachments;

(b) Each page shall have one-inch top and bottom margins and one-inch side margins;

(c) Text shall be double-spaced and quotations in excess of 5 lines shall be single-spaced and indented; and,

(d) The type size/font used shall be no smaller than 12 characters per inch or 12-point nonproportional print (e.g., Courier).

(5) Hand-written initial and/or response briefs of a party shall not exceed 20,000 words, unless ordered otherwise by the commission.

(6) Reply briefs shall be limited to 20 pages formatted pursuant to this section and hand-written reply briefs shall not exceed 10,000 words, unless ordered otherwise by the commission.

SECTION 38. TA 1.61 and note are repealed.

SECTION 39. TA 1.63(1) is renumbered and amended and the appended note is amended to read:

TA 1.63 Frivolous appeals. ~~(1)~~ Whenever it appears to the commission or to a presiding commissioner ~~in respect to hearings decided by one commissioner,~~ that an appeal has been instituted or maintained primarily for delay or is frivolous or groundless, the commission or commissioner, at the time the decision in the matter is issued, may assess damages against the taxpayer in an amount not to exceed \$1,000.

Note: Statutory reference: ~~See s. 73.01(4)(am), Stats.~~

SECTION 40: TA 1.63(2) and (3) are repealed.

EFFECTIVE DATE. The rules provided in this rule-making order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.22(2) (intro), Stats.

[END]