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Sequence Number: 02-01-11
Rule ID(s): 4902
File Date: 02/01/2011
Effective Date: ~~05/02/2011~~

05/17/2011

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	State Board of Equalization
Division:	
Contact Person:	Kelsie Jones, Executive Secretary
Address:	Ste. 1700, 505 Deaderick St., Nashville, TN
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Revision Type (check all that apply):

- ☒ Amendment
☐ New
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0600-01	Contested Case Procedures
Rule Number	Rule Title
0600-01-.11	Hearings Before Administrative Judge
0600-01-.14	Petition for Board Review
0600-01-.17	Fees

Substance of rule amendments:

Rule 0600-01-.11 would be amended by adding the following language at the end of paragraph (2):

The designee may be permitted to participate by telephone or other electronic means when hearings are conducted at locations other than Nashville.

Rule 0600-01-.14 would be amended by deleting the last sentence of paragraph (2) and substituting instead the following:

If any member of the Board requests a meeting with respect to the petition, the executive secretary will convene a meeting of the Board to vote on whether to grant review of the petition.

Rule 0600-01-.17 would be amended by substituting the language "two dollars (\$2)" for the language "one dollar (\$1)" in paragraph (2), and by substituting the language "seven dollars (\$7)" for the language "five dollars (\$5)" in paragraph (2).

Rule 0600-01-.17 would be further amended by deleting the second sentence of paragraph (3) and substituting instead the following:

The fee shall be thirty dollars (\$30) for property valued at less than \$100,000, forty-two dollars (\$42) for property valued from \$100,000 to less than \$250,000, sixty dollars (\$60) for property valued from \$250,000 to less than \$400,000, and one hundred twenty dollars (\$120) for property valued at \$400,000 or more.

Rule 0600-01-.17 would be further amended by adding the following language at the end of paragraph (5):

An additional processing fee of ten dollars (\$10) per parcel shall be due for settlements.

Authority: T.C.A. §67-1-305 and 67-5-1501 (d).

Legal Contact:

Kelsie Jones, Executive Secretary
State Board of Equalization
Ste. 1700 – 505 Deaderick Street
Nashville, TN 37243-0280
615/532-7160

Contact for disk acquisition: Kelsie Jones

The roll call vote by the Board on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent
Hargett	x			
Button	x			
Odubeko				x
Trost	x			
Mitchell	x			
Wilson	x			
Lillard				x

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Equalization on 10/15/10 and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 7/30/10

Notice published in the Tennessee Administrative Register on: _____

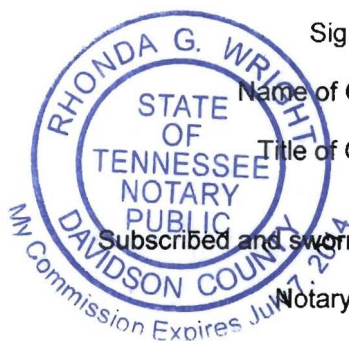
Rulemaking Hearing(s) Conducted on: 9/27/10

Date: 10/28/10

Signature: Kelsie Jones

Name of Officer: Kelsie Jones

Title of Officer: Executive Secretary



Subscribed and sworn to before me on: October 28, 2010

Notary Public Signature: Rhonda G. Wright

My commission expires on: July 7, 2014

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper Jr

Robert E. Cooper, Jr.
Attorney General and Reporter

1-22-11

Date

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Filed with the Department of State on:

2/1/11

Effective on:

5/2/11

05/17/2011

Tre Hargett

Tre Hargett
Secretary of State

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Public Hearing Comments

The Board received comments from a practitioner suggesting Rule 0600-01-.14 be revised to require a public meeting before the Board acts on a petition for Assessment Appeals Commission review. The final draft accepts this suggestion.

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed amendment to Rule 0600-01-.17 increasing appeal processing and hearing fees may financially impact counties when counties are required to pay these fees as the nonprevailing party to an appeal. The impact is not expected to exceed \$10,000 state-wide.

Regulatory Flexibility Addendum

Pursuant to TCA §4-5-401 et seq., the Board has reviewed these amendments for their impact on small business and determined the impact would be negligible. This conclusion is based on the following findings or assumptions:

- (1) Rule 0600-01-.17 implements a statute authorizing an increase in appeal filing fees of approximately twenty percent, resulting in additional fee revenue state-wide of about \$20,000.
- (2) Small businesses potentially affected by the fee increase are refunded most of the fee if the appeal is successful.
- (3) No additional record keeping is required.
- (4) The Board has considered agent and public comments and determined no less intrusive or burdensome method exists to achieve the desired effect of partially funding the state-level appeal process with user fees. There is no state property tax.
- (5) Exemption of small businesses would defeat the purpose of assuring at least partial user funding of the appeal process.

Additional Information Required by Joint Government Operations Committee

The following information is submitted in compliance with Tenn. Code Ann. §4-5-226:

(A) Brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule.

These rule amendments modify existing rules in Board procedures for hearing contested case property tax appeals, including:

Increases fees generally by about 20% (.17).

Permits Board exemption designee to participate in appeal hearings telephonically (.11).

Requires public meeting before Board decides to review decisions of the Assessment Appeals Commission (.14).

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto.

No federal law. State law is Tenn. Code Ann. §67-5-1501.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by the rule, and whether the aforementioned urge adoption or rejection of the rules.

The rules affect primarily participants in state-level property tax appeals. One practitioner suggested revision of the rule regarding Board review of the Assessment Appeals Commission, but no other persons expressed a position regarding the rule amendments.

(D) Identification of any opinions of the Attorney General and Reporter or any judicial ruling which directly relates to the rules.

None.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based.

The proposed amendment to Rule 0600-01-.17 increasing appeal processing and hearing fees may financially impact counties when counties are required to pay these fees as the nonprevailing party to an appeal. The impact is not expected to exceed \$10,000 state-wide. The fee increase will increase state revenues by about \$20,000 annually.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rules.

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(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees (including address and telephone number).

Same as above.

(H) Contact information

Same as above.

• (l) **Additional information relevant to the rules will be provided upon request of the committees or committee staff.**

Will be provided upon request.

AMENDMENTS TO CHAPTER 0600-01 CONTESTED CASE PROCEDURES, ADOPTED 10/15/10

'REDLINE' DEPICTION OF RULES AS AMENDED, PER TCA 4-5-226 (i):

0600-1-.11 HEARINGS BEFORE ADMINISTRATIVE JUDGE.

- (1) In the hearing of an appeal before an administrative judge concerning the classification and/or assessment of a property, the party seeking to change the current classification and/or assessment shall have the burden of proof.
- (2) In the hearing of an appeal from an initial determination on an application for property tax exemption, the party seeking to change the initial determination shall have the burden of proof. In a show cause hearing for revocation of an exemption, the person claiming exemption shall bear the burden of showing by a preponderance of evidence why the exemption should not be revoked. Upon request of a party or order of the administrative judge, the Board designee who made the initial determination under appeal will attend the hearing. The designee may testify and, at the discretion of the administrative judge, examine witnesses or otherwise participate in the hearing. The designee may be permitted to participate by telephone or other electronic means when hearings are conducted at locations other than Nashville.
- (3) A record of the hearing of any appeal before an administrative judge will be made by tape recording. Any party may, at its own expense, procure a court reporter to record the oral proceedings.

0600-1-.14 PETITION FOR BOARD REVIEW.

- (1) A petition for review by the Board of action taken by the Commission shall be filed with the Executive Secretary. The petition need not be in any particular format, but must:
 - (a) be filed within the period of time allowed under Tenn. Code Ann. section 67-5-1502(j)(2); and
 - (b) state its basis and the relief requested.
- (2) The Executive Secretary or his/her designee shall acknowledge receipt in writing of any petition under this rule, and send a copy of the petition to each member of the Board. ~~If any member of the Board moves to grant or deny the petition, the executive secretary shall poll the remaining members and the wishes of a majority of the members shall prevail.~~ If any member of the Board requests a meeting with respect to the petition, the executive secretary will convene a meeting of the Board to vote on whether to grant review of the petition.

0600-1-.17 FEES.

- (1) Persons initiating a contested case before the Board shall pay a fee to defray the expense of processing case documents and a fee to defray the costs of hearing, as provided in this rule. No fee shall be due from a person who qualifies as an indigent person for purposes of civil actions in the courts of Tennessee and who establishes indigence by filing a uniform affidavit in the form stated in Rule 29 of the Rules of the Supreme Court of Tennessee. No fee shall be due from an appellant who has attained the age of sixty-five (65) years at the time of filing the appeal, where the subject property of the appeal is owned by the appellant and used as the appellant's primary residence and has a value not in excess of \$150,000.
- (2) The processing fee shall be ~~one dollar (\$1)~~ two dollars (\$2) per parcel for any appeal filed in electronic format and ~~five dollars (\$5)~~ seven dollars (\$7) per parcel for each appeal using the paper form otherwise required by these rules. The fee for a paper filing shall be in addition to any fee previously paid for an electronic filing for the same parcel.
- (3) The fee for hearing costs shall be proportionate to the value of the property as recorded by the assessor or as determined by the Board, or in the case of exempt properties for which no assessor value has been established, the value as estimated by staff based on available information. ~~The fee shall be twenty-five dollars (\$25) for properties valued at less than \$100,000, thirty-five dollars (\$35) for property valued from \$100,000 to less than \$250,000, fifty dollars (\$50) for property valued from \$250,000 to less than \$400,000, and one hundred dollars (\$100) for property valued at \$400,000 or more.~~ The fee shall be thirty dollars (\$30) for property valued at less than \$100,000, forty-two dollars (\$42) for property valued from \$100,000 to less than \$250,000, sixty dollars (\$60) for property valued from \$250,000 to less than \$400,000, and one hundred twenty dollars (\$120) for property valued at \$400,000 or more. Where appeals for multiple tax years involving the same property have been consolidated for hearing, only one fee is due for the consolidated hearing.

- (4) The fee for processing, and one-half the fee for hearing shall be due upon the filing of the appeal, except that an attorney or registered agent for a taxpayer may file a statement agreeing to be surety for fees ultimately due, and fees due from a city, county or county assessor may be accumulated and billed or deducted periodically from funds otherwise payable by the Board to the city or county. The remaining half of hearing fees shall not be due if the initial decision and order is allowed to become final, or if the original appellant withdraws an appeal from an initial decision and order before a hearing on the appeal is heard. If an appeal from an initial decision and order is filed by a party other than the original appellant, the remaining one-half of hearing fees shall be assessable against the party appealing the initial decision and order. No proceedings shall be conducted until any fee due is remitted or agent's surety given and the appeal may be dismissed if the fees are not paid or surety given within a reasonable time. Fees must be remitted by check or money order, no cash accepted.
- (5) Hearing fees are refundable: a) if a matter is withdrawn or concluded by entry of an agreed order of the Board prior to a scheduled hearing; b) if the appellant obtains relief equal to half or more of the relief claimed, provided that if relief awarded equals less than half claimed, hearing fees will be refunded in proportion to the amount of relief awarded. To the extent hearing fees are refunded on the basis of relief granted after a hearing, the non-prevailing party to the appeal will be assessed such fees. An additional processing fee of ten dollars (\$10) per parcel shall be due for settlements.
- (6) Fees assessed against a county or county assessor may be deducted from funds otherwise due the county pursuant to grants administered by the Board, unless the county or county assessor elects to remit the assessed fees directly.
- (7) For purposes of calculating fees, a public utility property appealed to the Board as a single property pursuant to Tenn. Code Ann. §67-5-1327, shall be considered one property or parcel of property.