

Chapter TA 1

PRACTICE AND PROCEDURE

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TA 1.01 Business hours. The offices of the board at Madison, Wisconsin will be open pursuant to the provisions of section 14.59, Wis. Stats.

TA 1.02 Appearance and practice. Any person, firm or corporation with an appeal pending or desiring to take an appeal may select a representative who shall appear for such person, firm or corporation before the board and may be authorized to carry on all correspondence with the board. Such authorization shall be in writing and may be by separate document or may be incorporated in and made a part of the petition for review.

TA 1.03 Petitions for review. Petitions shall contain, in substance, the following:

A caption in substantially the following form:

WISCONSIN BOARD OF TAX APPEALS

-----,
Petitioner

vs.

Docket No. -----

-----,
Respondent

To the Honorable Wisconsin Board of Tax Appeals:

- (1) The full name of each petitioner.
- (2) 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 appealed from.
- (3) A clear and concise statement of the petitioner's objections to the decision or determination appealed from, and of the contentions of law, if any, upon which the petitioner relies. A copy of the order, assessment or determination appealed from shall be attached to the petition.
- (4) The name and address of the representative of the petitioner, together with a statement that he is authorized to appear and act for the petitioner. If the representative be a firm consisting of more than one individual, then the firm name may be used. The petitioner

may sign the petition or the same may be signed by his duly authorized representative. If the representative is a firm, then any authorized member thereof may sign the petition on behalf of the petitioner.

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

(6) Prayer setting forth the relief sought.

Note: The requirements with respect to the number of copies of the petition for review and the manner of service thereof are set forth in chapter 73, Wis. Stats. It is suggested that the applicable provisions of chapter 73 be examined so that the statutory requirements outlined are fully complied with. (Section 73.01 (6) (a), Wis. Stats., (amended by chapter 562, laws of 1947) prescribes the requirements for filing a petition for review. An original and 4 copies thereof are to be filed with the clerk of the board.)

TA 1.04 Form and style of papers. (1) All papers filed with the board shall be either printed or typewritten, and if typewritten, shall be on only one side of plain white paper. This paper shall be not more than 8½ inches wide and 11 inches long, and shall weigh not less than 16 pounds to the ream. They shall not be bound with stiff covers or backs. Copies shall be legible but may be on any weight paper. If printed they shall be in 10- or 12-point type, and on good unglazed paper, 5¾ inches wide by 9 inches long, with inside margin not less than 1 inch wide, and with double-leaded text and single-leaded quotations. Citations shall be in italics when printed, and underscored when typewritten.

(2) The proper caption shall be placed upon all papers filed. If the petitioner is an individual, the full given name and surname shall be set forth in the caption. If the petitioner is a married woman, her given name shall be used, not the name of her husband preceded by "Mrs." If the petitioner is a fiduciary, the name of the estate, trust, or other person for whom he acts, shall be given first, followed by the name of the fiduciary.

(3) Except as otherwise provided in these rules, a signed original and 3 copies of all papers shall be filed. Whenever any paper is filed in more than one proceeding (as a motion to consolidate proceedings or in proceedings already consolidated), one additional copy shall be filed for each additional proceeding. (With respect to the filing of petition for review an original and 4 copies thereof shall be filed with the clerk of the board. See provisions of section 73.01 (6) (a), Wis. Stats., (amended by chapter 562, laws of 1947).)

(4) The written signature, whether of the representative or of the petitioner, shall be in individual and not in the firm name, except that where the petitioner is a corporation the written signature shall be by an active officer of the corporation. The name and mailing address of the petitioner or of the representative shall be typed or printed immediately following the written signature.

TA 1.05 Docket. Upon receipt of the petition, the proceeding will be docketed and assigned a number and the petitioner notified thereof. This number shall be placed by the parties on all papers thereafter filed in the proceeding.

TA 1.06 Amendments. Either party may amend his petition or answer at any time before the hearing before this board, by consent of the adverse party or by leave of the board. An original and four copies of such amendment shall be filed with the clerk, and the

clerk shall serve upon the adverse party or his attorney or agent of record a copy of such amendment. All motions to amend must be accompanied by the proposed amendments.

TA 1.07 Motions. (1) Except during the hearing, motions shall be made in writing. At least 5 days' notice thereof shall be given to the adverse party by registered mail or by personal service.

(2) Upon written application to the board, dates and places for hearing motions shall be ordered by the board and notice thereof shall be given to the parties or their representatives at least 5 days before the time set for hearing thereon.

(3) Motions to dismiss a petition for review shall be entertained by the board. The board may reserve its ruling on such motion until after a hearing upon the subject matter set forth in the petition. The rights of the party moving to dismiss the petition shall not be prejudiced by the holding of the hearing. The board shall in such instances set the time for filing an answer to the petition for review, and the filing of such answer shall not waive any of the rights of the respondent with respect to the motion for dismissal.

(4) If any party fails to appear at the time set for hearing on any motion, the board may proceed ex parte.

TA 1.08 Extensions of time. Continuances, extensions of time, and adjournments may be ordered by the board on its own motion or may be granted by it, in its discretion, on motion of either party filed in writing and showing good and sufficient cause therefor.

TA 1.09 Hearings. (1) When a proceeding has been placed upon the calendar for hearing, the clerk will notify the parties of the time and place of hearing not less than 10 days prior thereto, except as otherwise provided by statute.

(2) Parties shall arrange to have their witnesses in attendance at the time and place designated in the notice of hearing, and exhibits must be ready for presentation at such time. The unexcused absence of a party at the place and hour set for the hearing of any proceeding before the board will not be the occasion for adjournment or delay.

Note: See provisions of section 71.12 (3), Wis. Stats., (formerly numbered section 71.14), as to personal appearance of petitioner.

TA 1.10 Briefs. (1) The board, in its discretion, may require that briefs be submitted either before or after the hearing and may designate the manner of filing and serving the same and the time therefor.

(2) Briefs which are not filed with the clerk of the board and served within the time designated shall be given no consideration unless applications for extension of time, stating the reasons therefor, are made within the time previously limited for the filing thereof, and such application is granted.

TA 1.11 Evidence. The following do not constitute evidence:

- (1) The petition;
- (2) Statements of counsel;
- (3) Unidentified and unauthorized documents and letters;
- (4) Affidavits which have not been submitted to the opposing party and approved by such party to be submitted as evidence;
- (5) Briefs and written arguments.

TA 1.12 Proposed findings of fact. The board may require either party to a proceeding to submit proposed findings of fact at the close of the hearing or within such time as it may direct.

TA 1.13 Practice and procedure. Except as otherwise provided herein, the practice and procedure before the board shall substantially follow that before the circuit courts of this state.

Note: (relating to: MOTOR FUEL TAX REFUNDS)—Section 73.01 (6) (c), Wis. Stats., (1947) provides as follows:

“(6) Appeals to Board. (c) Whenever an appeal is taken from any determination of the commissioner of taxation under the provisions of subsection (5) (a) and no other procedure for appeal is specified in chapter 73 or chapter 76, the person feeling aggrieved by such determination shall file with the clerk of the Board an original and 4 copies of petition for review within 30 days after such determination, but not thereafter, and the clerk of the Board shall forthwith transmit one of the copies to the commissioner of taxation. The provisions of paragraph (a) shall apply in so far as the time for and service of an answer by the commissioner of taxation is required and also with respect to the filing of a reply by the petitioner.”

Although, in view of the above section, it has not been concluded whether or not this Board has jurisdiction to review determinations made by the department of taxation under the provisions of chapter 78, Wisconsin statutes, in relation to *motor fuel tax refunds*, the rule of practice and procedure of this Board, in event a petition for review in respect thereto is filed with the clerk of this Board, apply in so far as applicable, no specific rules having been promulgated.

TA 1.14 Petition for declaratory ruling. (Form provided for pursuant to section 227.06, Wis. Stats.) The petition shall contain, in substance, the following:

A caption in the following form:

WISCONSIN BOARD OF TAX APPEALS

In re: the application of _____ (state name of the petitioner) for a declaratory ruling on Rule number _____, pursuant to section 227.06, Wis. Stats.

To the Honorable Wisconsin Board of Tax Appeals:

(1) The full name of the petitioner, his address, and the name of his representative.

(2) The number of the rule on which a declaratory ruling is sought.

(3) A statement of the ruling sought.

(4) The nature of the interest of the petitioner in the proceeding and the reason or reasons upon which is predicated the request for declaratory ruling.

(5) The signature of the petitioner. (The petition need not be verified.) The original of the petition shall be served upon the clerk of the Board, either by personal service or registered mail; four (4) copies of the petition shall be filed with the clerk at the time the

original is served. Notice by registered mail will be given by the Board within 10 days from the date of the service of the original petition, setting the time and place of a public hearing upon the petition. The procedure with respect to the hearing and the determination of matters presented in said petition will substantially follow the provisions of section 73.01, Wis. Stats. (For statutory provisions with reference to petitions for declaratory rulings see chapter 227, Wis. Stats.)

TA 1.15 Petition for rules. (Form provided for pursuant to section 227.04, Wis. Stats.) The petition shall contain, in substance, the following:

(1) The full name of the petitioner, his address, and the name of his representative.

(2) A statement setting forth in full the rule requested to be promulgated, amended, or repealed.

(3) The reason or reasons upon which the petitioner predicates the submission of the petition and the relief sought.

(4) The signature of the petitioner. (The petition need not be verified.)

With respect to the service of the petition, matters pertaining to the hearing thereon, and the disposition thereof, please refer to section TA 1.14.

TA 1.16 Dismissals. In all instances where petitions for review have been filed with the board and the hearing is not required nor has been held and no determination following any hearing is required to be entered by the board and request is made that no further proceedings be held by the board with respect to such petition for review and dismissal of the proceedings or the petition for review is requested, the order entered by the Board in such instances shall provide:

(1) That the application for abatement of the assessment is denied and the assessment to which the application for abatement was filed shall be affirmed, and

(2) That the petition for review be dismissed.

If the petition for review arises with respect to a denial of claim for refund, in such instances the order shall provide:

(1) That the claim for refund is denied, and

(2) That the petition for review be dismissed.

TA 1.17 Amendment of rules. The board reserves the right to amend, alter or change these rules from time to time as, in its discretion, circumstances may require or render necessary or expedient, and in accordance with the provisions of chapter 227, Wis. Stats.