



## **COST BENEFIT ANALYSIS FOR JUNE 14 and 17, 2019 RULEMAKING HEARING**

### **1. A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

The proposed rules are a repeal and reenactment of adjudicatory procedures for the Board of Assessment Appeals (“BAA”) to hear property tax appeals by property owners from decisions by either County Boards of Equalization and/or Commissioners or the State Property Tax Administrator. Overall the current rules were reordered in order to track the pre-hearing and hearing process. Some of the language of the current rules was retained. Classes that will be impacted by the proposed rules are:

- Property owners appealing their assessed values or classifications;
- Counties, including elected officials (county boards of equalization/commissioners and assessors) defending the assessed values of classifications of properties within their jurisdiction;
- The State Property Tax Administrator;
- The State Board of Assessment Appeals.

In repealing and reenacting its adjudicatory rules of procedures, the BAA is striving for an administrative adjudicatory process which allows for parties appearing in hearings to have a full and fair opportunity to present their case. Hearings before the BAA are *de novo* hearings conducted under Colorado’s Administrative Procedures Act (§24-4-105), as are the final agency orders resulting from those hearings. Under §39-8-107(1) and §39-8-108(2), appeals from the BAA’s final agency orders are to Colorado’s Court of Appeals and the record of the hearing before the BAA is the sole basis for a decision by the Court of Appeals.

Petitioners appealing decisions of County Boards of Equalization/Commissioners have three potential venues – arbitration, district court or the BAA. The proposed rules recognize the intent of this statutory scheme to provide property owners, appealing to the BAA, with an adjudicatory alternative which is accessible, efficient and cost-effective. The proposed rules’ structure is similar to that of other state adjudicatory agencies’ rules of procedure and a scaled down version of those governing proceedings in the judicial branch.

### **2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.**

The proposed rules are the result of a review of the effectiveness of the currently existing rules. This review included meetings with stakeholders, guidance from the latest performance audit and a process improvement exercise.





Prior to drafting the proposed rules, during December 2018 and January 2019, BAA staff met with representative stakeholders, including the following groups:

- Colorado Assessors Association – the professional organization for all of Colorado’s county assessors;
- Property Tax Attorneys Group (PTAG) - the county attorneys representing County Boards of Equalization/Commissioners)
- Petitioners’ representatives – while there is no professional organization, the group which met with BAA staff was comprised of tax agents (private companies filing petitions on behalf of property owners) and private practice attorneys who represent property owners.

During those meetings, the various parties expressed different views of the existing pre-hearing and hearing process under the current iteration of the rules, including the impact of those rules on negotiating agreements between taxpayers and counties, and the three part interplay of discovery, the provision of pre-hearing information from county agencies to property tax payers and vice versa and the exchange of information for purposes of hearing (witnesses and exhibits).

A second round of meetings was conducted with the same three groups during late April 2019 and early May 2019 to review a proposed draft of the rules and receive feedback. The Notice of Rulemaking, the proposed Statement of Basis and Purpose and the proposed rules were then sent to all persons on the rulemaking list compiled pursuant to §24-4-103(2) and (3).

The BAA staff has also reviewed the 2011 Performance Audit of the BAA conducted by the Office of the State Auditor and the recommendations contained within that audit. Three key OSA recommendations are included in the overall structure of the proposed rules, including the following:

- Clarifying timeliness requirements and ensuring appeals are resolved in accordance with those requirements;
- Ensuring parties appropriately exchange information prior to hearings; and
- Improving information available to taxpayer petitioners.

Finally, the BAA staff has begun a process improvement review identifying over 300+ steps in its appeal process.

The probable quantitative and qualitative impact of the proposed rules upon the affected classes reflects a balancing of the issues raised during stakeholder meetings, the OSA’s recommendations, and the BAA’s process improvement exercise. These issues including the





escalating number of appeals filed with the BAA during valuation years, the increasing complexity of those appeals, the need for timely resolution of appeals, the impact of varying levels of information provided by the parties, and the need for transparency of information available to taxpayers appealing their valuations.

**a. Escalating number of appeals filed with the BAA during valuation years and the increasing complexity of those appeals:**

During valuation years 2013, 2015, and 2017 the BAA received 2652, 3178 and 3805 appeals respectively, an overall 43% increase. During non-valuation years (referred to as abatement years) 2014, 2016 and 2018, the BAA received 1076, 1239 and 1317 appeals respectively, an overall 22% increase. Cases may be filed electronically or in hard copy format. For BAA staff to process cases filed electronically it takes 2 to 5 minutes to review and accept (“docket”) a case. For cases filed in hard copy format it takes an additional 10 to 15 minutes per case – and then only in cases where all of the information has been provided. Cases may not be set for hearing until they have been docketed. For tax year 2017, approximately 500 cases were filed electronically – only 13% of all cases filed. This meant it took an additional 550 hours to review and docket all of the cases filed in hard copy format. This delay severely impacts how quickly BAA staff is able to set matters for hearing. Proposed Rule 3(a) is intended to address this particular issue.

Increasingly, parties are seeking discovery and/or the exchange of information given the complexity of the cases presented to the BAA. On appeal to the Court of Appeals and the Supreme Court over the past year, there are cases dealing with the classification of vacant lots, exemption of businesses run by non-profits, the definition of ownership in real property and taxation of businesses operating on governmental land.

Proposed Rules 3(a) (electronic filing of petitions), 7 (restricting motions practice) and 9 (allowing limited discovery) address the issues discussed above.

**b. Timeliness of appeal resolution:**

The 2011 Performance Audit emphasized the need for the timely resolution of appeals, recommending a hearing within a year of filing. This need is two-fold. First, petitioners often pay their property taxes prior to resolution of their appeal. If they prevail at hearing then they have waited for over a year to receive a refund on any overpayment. Second, counties must pay interest on any overpayment, therefore, any delays in the appeals process can potentially increase the amount of interest counties must pay to petitioners if the counties lose.

Along with the other proposed rules, proposed Rules 3(a) (electronic filing of petitions), 7 (restricting motions practice), 9 (allowing limited discovery), 11(a)(1) (the disclosure by





the county of two pieces of information upon which their valuation will be based at hearing) and 12(b) (disallowing more than one continuance absent good cause) address this issue. The overall structure of the proposed rules, including the earlier exchange of information, the provision of limited discovery, the restriction of motions and the limitation on continuances, promotes an efficient and cost-effective dispute resolution process focused on achieving a fair and timely resolution of property tax disputes at the BAA level.

**c. Exchange of information prior to hearings:**

The proposed rules attempt to recognize both the petitioner's burden of proof and the county's access and control of the valuation information. As in any adjudicatory setting, the goal is for the parties to appropriately exchange information prior to hearing to avoid "trial by ambush." This may be done through informal exchange of information, mandated exchange of information or discovery.

Currently, parties before the BAA must simultaneously provide each other with a list of witnesses and exhibits two weeks before the adjudicatory hearing. Discovery is allowed by permission of the BAA. The burden of proof at hearing is on the petitioner (the property owner) to establish that the assessed valuation of the county is incorrect.

One of the primary issues raised by the petitioners' stakeholders group was the initial provision of mass appraisal information by counties to support valuations and then, two weeks prior to hearing, the provision of a site specific report, sometimes at a different valuation level, just before the hearing. One of the primary issues for the counties was that the burden of proof is on petitioner taxpayers to prove the counties' valuations are incorrect and the site specific reports require 4-6 hours to prepare. Therefore, the counties stated they (the petitioners) should present specific information before the counties are required to present specific information (referred to as a staggered exchange).

The proposed rules balance the petitioner's burden of proof while recognizing the counties have assessed the property value based on information within their custody and control. Proposed Rules 9 (allowing limited discovery) and 11(b)(1) provide for the appropriate exchange of information.

**d. Information available to taxpayer petitioners:**

Counties assess property based on a mass appraisal approach utilizing CAMA software to provide taxpayers with assessed values upon which their property taxes will be based. As stated above, petitioners are expected to demonstrate that the counties' assessment of value is erroneous. The amount of information available or provided to taxpayer petitioners varies depending on counties' websites, the level of staffing within assessors' offices, the volume of appeals within a county, the approach of legal counsel representing petitioners and counties and the approach of assessors' offices to resolving their taxpayer appeals.





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**3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

The BAA does not foresee any increased costs that it or any other state agency will bear in the implementation and enforcement of the proposed rules. Indirectly, there is an impact on state revenues through the timely resolution of property tax appeals. Fifty percent of all property tax revenues go to school districts. Any remaining need is filled, in part, through state revenues. Therefore, timely resolution of property tax appeals stabilizes the funding for school districts.

**4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.**

The probable costs and benefits of the proposed rules to state agencies is minimal compared to the additional costs of increasing non-compliance with the OSA’s recommendations and the state agency staffing of a steadily increasing number and complexity of petitions.

**5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

A revision of the current rules is necessary in order to continue meeting the guidelines set forth by the 2011 Performance Audit as well as address issues raised by different stakeholders regarding the current rule structure. There are no known less costly or less intrusive means of achieving the balancing of all these interests in the BAA’s adjudicatory process.

**6. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.**

The alternative is to maintain the status quo, which was considered and rejected given the concerns raised by the stakeholder groups and the OSA’s recommendations. The proposed rules provide for a fair adjudicatory process which is more efficient and deals with the increasing issues of timely resolution of taxpayer appeals, the increasing complexity of issues addressed by the BAA, and the appropriate sharing of information between stakeholders.

