

STATEMENT OF EMERGENCY


802 KAR 1:010E

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(1) in order to meet an imminent threat to the public health, safety, or welfare. This administrative regulation must be filed as soon as possible in order to comply with the provisions of Executive Order 2020-708, which abolished the Kentucky Claims Commission on September 1, 2020, and established the Office of Claims and Appeals and Board of Tax Appeals in the Public Protection Cabinet. As a result, the Public Protection Cabinet must immediately implement new procedures and regulations for filing appeals pursuant to the authority of this new office and board. An ordinary administrative regulation alone is not sufficient because the new office and board must be established immediately to seamlessly continue service to the taxpayers of the Commonwealth and not impede current appeals, or create an additional backlog of appeals. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

9/2/2020
Date

9/2/2020
Date


Andy Beshear, Governor


Kerry B. Harvey, Secretary
Public Protection Cabinet

1 PUBLIC PROTECTION CABINET

2 Office of the Secretary

3 (Emergency Administrative Regulation)

4 802 KAR 1:010E. Tax appeal procedures.

5 RELATES TO: KRS Chapter 12.027, 13B, 49.220, 49.230, 49.240, 49.250; EO

6 2020-708

7 STATUTORY AUTHORITY: KRS 49.020, 49.220(1)

8 NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 2020-708

9 (“Order”) requires that the Kentucky Claims Commission be abolished and the Office of

10 Claims and Appeals be immediately established within the Public Protection Cabinet, and

11 to include the Board of Tax Appeals. The Order also sets forth the powers and duties of

12 the Board of Tax Appeals, and authorizes the Board to promulgate regulations necessary

13 to immediately carry out the provisions and purposes of the Order and the Board’s

14 statutory authority. KRS 49.020(5) authorizes the Board [~~commission~~] to promulgate

15 administrative regulations that are necessary to carry out the provisions and purposes of

16 the Board’s [~~commission’s~~] statutory authority. KRS 49.220(1) authorizes the Board

17 [~~commission~~], with exclusive jurisdiction, to hear and determine appeals from final rulings,

18 orders, and determinations of any agency of state or county government affecting

19 revenue and taxation. This administrative regulation establishes the procedures

20 governing tax appeals.

1 Section 1. Definitions. (1) "Board" means the Board of Tax Appeals.

2 (2) "Office" means the Office of Claims and Appeals.

3 Section 2. Rules for Filing Tax Appeals with the Board. (1) Initiation of tax appeal.

4 A party wishing to appeal a final ruling, order, or determination of any agency of state or
5 county government affecting revenue or taxation shall file a petition with the Board for a
6 formal hearing in accordance with KRS Chapter 13B.

7 (2) Timing. The initial petition of appeal shall be received by the Board within thirty
8 (30) days of the date of mailing of the final ruling, order, or determination of the agency
9 of state or county government that is the subject of the appeal. If the determination is not
10 mailed, then the initial petition shall be considered as received by the Board within (30)
11 days of the date of issuance.

12 (a) An untimely appeal shall be dismissed.

13 (b) If the appeal is timely filed, but deficient, the Board, Office, or hearing officer
14 shall notify the petitioner of deficiencies and allow fifteen (15) business days to amend
15 the petition.

16 (3) Format and content. A petition of appeal shall be legibly written, typed, or
17 printed and contain the following:

18 (a) A statement of all relevant issues of fact and law;

19 (b) A statement certifying that the information contained in the petition of appeal is
20 true and correct to the best knowledge of the petitioner or counsel, if represented by an
21 attorney;

22 (c) The signature of the petitioner or the signature of counsel, if represented by an
23 attorney;

1 (d) The petitioner's mailing address, telephone number, and email address;

2 (e) If represented by an attorney, the petitioner's attorney's name, mailing address,
3 telephone number, and email address; and

4 (f) A copy of the final ruling, order, or determination to be reviewed.

5 (4) Upon receiving a petition of appeal, the Board shall provide notice to:

6 (a) The appellee that an action has been filed;

7 (b) The petitioner that the petition of appeal has been received; and

8 (c) The petitioner's counsel, if represented by an attorney.

9 (5) Upon receiving a Petition of Appeal, the appellee or the appellee's attorney
10 shall file an entry of appearance within thirty (30) days of the date of the notice of appeal
11 provided by the Board. The entry of appearance shall contain the mailing address,
12 telephone number, and email address of the appellee and the appellee's attorney, if
13 applicable.

14 Section 3. Rules Applicable to All Filings. (1) Filings. All documents may be filed:

15 (a) In person or by private delivery to Board of Tax Appeals, 500 Mero Street, 2
16 SC1, Frankfort, KY 40601;

17 (b) Mail to the address listed above; or

18 (c) Electronic mail to taxappeals@ky.gov if the document can be sent in one (1)
19 electronic message.

20 (2) Service.

21 (a) Any party who files a pleading or motion with the Board or hearing officer shall
22 notify all other parties to the appeal by serving upon each party a copy of the pleading or
23 motion filed. A filed pleading or motion shall be accompanied by a certification stating:

1 (i) That a copy has been served on each party, or if the party is represented by
2 counsel, on the party's counsel; and

3 (ii) The method of service used.

4 (b) Service upon a party shall be made by delivering a copy to the attorney or party,
5 electronic mail, or by mailing it to the attorney or party at the last known address. Service
6 is complete upon mailing, unless the serving party learns or has reason to know that it
7 did not reach the person to be served. Service by electronic mail shall be considered
8 complete when sent if properly addressed. Documents filed by electronic mail shall be
9 considered received when sent if properly addressed.

10 ~~[Rules Applicable to All Filings. (1) Filings. All documents shall be filed by mail,~~
11 ~~electronic mail to taxappeals@ky.gov, or in person. Documents filed by electronic mail~~
12 ~~shall be considered received when sent if properly addressed.~~

13 ~~(2) Service. Any party who files a document with the commission or hearing officer~~
14 ~~shall serve to all other parties to the appeal a copy of the document filed. A filed document~~
15 ~~shall be accompanied by a certification stating: (a) That a copy has been served on each~~
16 ~~party; and (b) The method of service used.~~

17 ~~Section 2. Rules for Filing Tax Appeals with the Commission. (1) Initiation of tax~~
18 ~~appeal. A party wishing to appeal a final ruling, order, or determination of any agency of~~
19 ~~state or county government affecting revenue or taxation shall file a petition of appeal with~~
20 ~~the commission.~~

21 ~~(2) Timing. The initial petition of appeal shall be received by the commission within~~
22 ~~thirty (30) days of the date of mailing of the final ruling, order, or determination of the~~
23 ~~agency of state or county government that is the subject of the appeal.~~

1 ~~(a) An untimely appeal shall be dismissed.~~

2 ~~(b) If the appeal is timely filed, the commission or hearing officer shall notify the~~
3 ~~petitioner of deficiencies and allow fifteen (15) days to amend the petition.~~

4 ~~(3) Format and content. A petition of appeal shall be legibly written, typed, or~~
5 ~~printed and contain the following:~~

6 ~~(a) A statement of all relevant issues of fact and law;~~

7 ~~(b) A statement certifying that the information contained in the petition of appeal is~~
8 ~~true and correct to the best knowledge of the petitioner or counsel, if represented by an~~
9 ~~attorney;~~

10 ~~(c) The signature of the petitioner or counsel, if represented by an attorney;~~

11 ~~(d) The petitioner's mailing address, telephone number, and email address;~~

12 ~~(e) If represented by an attorney, the petitioner's attorney's name, mailing address,~~
13 ~~telephone number, and email address; and~~

14 ~~(f) A copy of the final ruling, order, or determination to be reviewed.~~

15 ~~(4) Upon receiving a petition of appeal, the commission shall provide notice to:~~

16 ~~(a) The appellee that an action has been filed;~~

17 ~~(b) The petitioner that the petition of appeal has been received; and~~

18 ~~(c) The petitioner's counsel, if represented by an attorney.]~~

19 Section 4[3]. Representation in Proceedings before the Board [Commission]. (1) If
20 the appeal is by an individual, the individual may proceed without an attorney or engage
21 counsel to provide representation.

22 (2) An individual who is not an attorney shall not be permitted to represent any
23 other individual or legal entity who is a party to an appeal.

1 (3) In accordance with Supreme Court Rule 3.020, if the appealing party is a
2 corporation, joint venture, partnership, LLC, estate, or any entity other than an individual
3 as identified in subsection (1) of this section, the entity shall be represented by an attorney
4 on all matters before the board, including the filing of the appeal.

5 (4) An attorney licensed to practice in another state, but not the Commonwealth of
6 Kentucky, shall be permitted to represent a party before the board if the attorney complies
7 with Supreme Court Rule 3.030(2).

8 ~~[The appellee or the appellee's attorney shall file an entry of appearance within~~
9 ~~thirty (30) days of the date of the notice of appeal provided by the commission. The entry~~
10 ~~of appearance shall contain the mailing address, telephone number, and email address~~
11 ~~of the appellee and the appellee's attorney, if any. (2) An individual who is not an attorney~~
12 ~~shall not represent any other individual or an entity or other individual who is a party to an~~
13 ~~appeal.]~~

14 Section 5[4]. Discovery. (1) Discovery may be obtained without prior order of the
15 Board [commission] or hearing officer. [pursuant to the] The Kentucky Rules of Civil
16 Procedure (CR) governing depositions and discovery shall apply except to the extent the
17 provisions of this section differ.

18 (2) In addition to the provisions of CR 26 addressing opinions and use of expert
19 witnesses:

20 (a) a party shall disclose to the other party or parties the identity of any witness
21 qualified as an expert by knowledge, skill, experiences, training, or education the party
22 may use at the hearing to provide expert testimony at least ninety (90) days before the
23 date set for the hearing, absent a stipulation between the parties or an order issued by

1 the Board providing otherwise; or

2 (b) if the evidence is intended solely to contradict or rebut evidence on the same
3 subject matter of a witness identified by another party, within thirty (30) days after the
4 other party's disclosure.

5 ~~(3)[(2)]~~ The Board [~~commission~~] or hearing officer may deny, limit, or require
6 discovery.

7 ~~(4)[(3)]~~ If a party fails to comply with an order regarding discovery, the Board
8 [~~commission~~] or hearing officer may order that the:

9 (a) Matters that the requesting party was seeking to establish through discovery
10 shall be taken as having been established for the purposes of the hearing;

11 (b) Noncomplying party shall be prohibited from introducing related documents or
12 testimony at the hearing;

13 (c) Appeal be dismissed or relief be granted as requested by the opposing party;

14 (d) Appeal be stayed until the order is obeyed; or

15 (e) Noncomplying party, the advising attorney, or both pay the reasonable costs,
16 including attorney's fees, caused by the failure to comply.

17 ~~(5)[(4)]~~ A response to discovery under subsection (1) of this section shall not be
18 filed with the Board [~~commission~~] unless required by order of the Board or hearing
19 officer.~~[or used as evidence.]~~

20 Section 6. Prehearing or Status Conference and Hearing Schedule. (1) In any
21 appeal assigned to a Board member or hearing officer, the Board or hearing officer may
22 schedule a prehearing or status conference. The prehearing or status conference may be
23 conducted by telephone or other electronic means upon reasonable notice to all parties,

1 which consists of prior notice of not less than five (5) days, unless otherwise agreed to by
2 the parties.

3 (2) A prehearing or status conference may be used to set a hearing date, discuss
4 jurisdictional matters, settlement possibilities, discovery, preparation of stipulations,
5 clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas,
6 mediation, and other matters that will promote the orderly and prompt conduct of the
7 hearing.

8 (3) If the Board member or hearing officer and parties cannot agree upon a hearing
9 date, the Board member or hearing officer shall set the matter for hearing no later than
10 six (6) months from the date of the conference.

11 (4) Upon conclusion of the prehearing or status conference, the Board member or
12 hearing officer shall issue an order including all matters determined at the prehearing or
13 status conference.

14 Section 7 ~~[5]~~. Prehearing Filings. (1) At least thirty (30) days prior to the hearing, a
15 party shall file with the Board ~~[commission]~~ or hearing officer a:

16 (a) ~~[(1)]~~ Prehearing summary that contains a:

17 1. ~~[(a)]~~ Summary of the party's position on any issue of fact in dispute;

18 2. ~~[(b)]~~ Summary of the party's position on any issue of law raised by the appeal;

19 and

20 3. ~~[(c)]~~ Written statement of facts to which the party agrees and any facts which
21 ~~[that]~~ a party does not dispute;

22 (b) ~~[(2)]~~ List of the names, addresses, and phone numbers (if known) of all
23 witnesses the party expects to call to testify as a witness at the hearing; ~~[and]~~

1 (c) [(3)] Copy of all exhibits that the party intends to introduce at the hearing;

2 (d) Proposed findings of fact and conclusions of law; and

3 (e) Proposed final order if the appeal is heard by the board, or a proposed
4 recommended order if the appeal is heard by a hearing officer.

5 (2) The prehearing filings required by this section shall satisfy the requirements
6 under KRS 13B.090(3) establishing a party's right to inspect a list of witnesses and
7 documentary or tangible evidence at least five (5) days prior to the hearing. The Board
8 may issue a prehearing order modifying discovery procedures or deadlines, or mandating
9 additional requirements for prehearing filings.

10 Section 8 [6]. Motion Practice. (1) Any party may file a motion. Any party affected
11 by a motion or pleading may file a response to the motion or pleading within thirty (30)
12 [fifteen (15)] days from the date on which the motion or pleading was [originally] served.

13 (2) A moving party may file a reply to another party's response. The reply shall be
14 filed within fifteen (15) days from the date the response was served. Other replies or
15 responses shall not be filed, unless prior approval is granted by the Board [commission]
16 or hearing officer.

17 Section 9. Briefs. A party shall file with the Board or hearing officer any brief
18 required by order of the Board or hearing officer. The Board or hearing officer may require
19 a party to file a post-hearing brief or to supplement at any time a brief already filed to
20 assist in adjudicating the hearing. A brief shall include the signature of the party, or the
21 party's counsel.

22 Section 10 [7]. Summary Disposition. (1) At any time after the commencement of
23 an appeal [has begun], a party may move for a summary disposition of the whole or a

1 part of the appeal by filing a motion that: ~~[, in which event the procedure established in~~
2 ~~subsections (1)] through (4) of this section shall apply.~~

3 ~~(1) The moving party shall file a motion that:~~

4 (a) Asserts that there are no disputed material facts as to one (1) or more of the
5 issues before the Board ~~[commission]~~ or hearing officer;

6 (b) Includes a statement specifying which material facts are undisputed. Assertions
7 of a material undisputed fact or facts may be submitted to the Board or hearing officer
8 through affidavits or responses made by another party to any discovery request, including
9 answers to interrogatories, admissions, and depositions. Facts stated in the petition of
10 appeal, including exhibits attached to the petition, may be relied upon as undisputed
11 material facts by the appellee; and

12 ~~[A material undisputed fact may be submitted to the commission or hearing officer~~
13 ~~through affidavits, discovery responses, or deposition testimony;]~~

14 (c) States that any issue before the Board ~~[commission]~~ or hearing officer for which
15 summary disposition is sought is a matter of legal, and not factual, interpretation.~~]; and~~

16 ~~—— (d) Attaches a copy of any legal authority that supports the moving party's~~
17 ~~position on any legal issue before the board ~~[commission]~~ or hearing officer.]~~

18 (2)(a) Within twenty (20) days after a party moves for summary disposition, any
19 other party may file a response presenting the party's position on issues of law and fact,
20 which shall include any affidavit, written response to discovery requests, deposition
21 testimony, or statements in the Petition of Appeal, demonstrating the party's assertion
22 that a material fact or facts are disputed.~~[shall:~~

23 ~~1. Submit an An acknowledgment that there are no disputed material facts;~~

1 ~~2. Submit a response stating that a material fact is in dispute, along with any~~
2 ~~affidavit, discovery response, or deposition testimony that shows the material fact in~~
3 ~~dispute. Facts stated in the petition of appeal and any document or exhibit attached~~
4 ~~thereto may be relied upon as undisputed material facts by the appellee; and~~

5 ~~3. Attach all legal authorities that support the opposing party's position on any legal~~
6 ~~issue.]~~

7 (b) Failure of a nonmoving party to respond within twenty (20) days to the motion
8 for summary disposition or to request additional time to respond to the motion may result
9 in the Board [~~commission~~] or hearing officer finding there are no disputed factual issues
10 to be considered in deciding the legal issues.

11 (3) If the nonmoving party files a response to the motion for summary disposition,
12 the moving party shall have ten (10) days to file a reply to the response.

13 (4) The Board [~~commission~~] or hearing officer may grant a motion for summary
14 disposition in whole or in part. If the Board [~~commission~~] or hearing officer grants a
15 summary disposition as to one (1) or more issues, but not all issues, then the remaining
16 issues shall be heard by the Board [~~commission~~] or hearing officer in accordance with this
17 administrative regulation and KRS Chapter 13B.

18 Section 11 [8]. Other. Except as otherwise stated in KRS Chapter 49 or this
19 administrative regulation, the conduct of hearings shall be governed by the procedures
20 established in KRS Chapter 13B.

802 KAR 1:010E

APPROVED BY AGENCY:



Kerry B. Harvey, Secretary
Public Protection Cabinet

9/2/2020

Date

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 802 KAR 1:010E

Contact Person: Leah Cooper Boggs

Phone Number: 502-352-8095

Email: lboggs@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the tax appeal procedures for persons or entities wishing to dispute their tax liability.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with Governor's Executive Order 2020-708, which immediately abolishes the Kentucky Claims Commission and establishes the Board of Tax Appeals and Office of Claims and Appeals in the Public Protection Cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 12.080 which authorizes the Secretary of the Public Protection Cabinet to prescribe general rules for the conduct of this administrative office as he deems necessary or expedient for the proper conduct of the work of the office not inconsistent with the general rules prescribed by the Governor; and KRS 49.020(5) which authorizes the promulgation of regulations to carry out the duties of the office.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation removes references to the abolished Kentucky Claims Commission and inserts language regarding the new Board of Tax Appeals and Office of Claims and Appeals. It also provides more comprehensive guidelines to file an appeal.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b)

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Public Protection Cabinet, the Board of Tax Appeals, the Office of Claims and Appeals, the state and

county agencies charged with the administration of taxation, and any person or entity filing a claim or appeal with the Office of Claims and Appeals and the Board of Tax Appeals.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None known, beyond updating documentation to reflect the new Office structure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected expenditures because of this administrative regulation. Current staff will implement the provisions once promulgated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are currently 151 tax appeals pending before the Claims Commission, including 43 from 2018 and 103 from 2019. This backlog involves a significant sum, which negatively affects the State's ability to appropriate revenue, and raises concerns with respect to the procedural due process rights of taxpayers. Establishing a separate Board of Tax Appeals and providing greater guidance will provide greater efficiency and service to the citizens of the Commonwealth.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None. Current staff and agency funds will provide implementation.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency budgetary funding will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 802 KAR 1:010E

Contact Person: Leah Cooper Boggs

Phone Number: 502-352-8095

Email: lboggs@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Public Protection Cabinet, Office of Claims and Appeals, and Board of Tax Appeals.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B, 49.020, 49.220.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation should not create any additional expenses or revenues for any state or local government agency after implementation. It is only updating references to the newly created Office of Claims and Appeals and Board of Tax Appeals, and establishing procedures to file appeals under the new office structure.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation. This administrative regulation does not contain any fees or charges for filing an appeal with the Board of Tax Appeals.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: