

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the Register before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 15. REVENUE

#### CHAPTER 12. DEPARTMENT OF REVENUE PROPERTY TAX OVERSIGHT COMMISSION

#### PREAMBLE

- Sections Affected:**

  - ✓ R15-12-104
  - ✓ R15-12-104
  - ✓ R15-12-105
  - ✓ R15-12-202
  - ✓ R15-12-203
  - ✓ R15-12-305
  - ✓ R15-12-307
  - ✓ R15-12-308
  - ✓ R15-12-309
  - ✓ R15-12-310
  - ✓ R15-12-311
  - ✓ R15-12-312

**Rulemaking Action:**

  - Repeal
  - New Section
  - Amend
  - Amend
- The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 42-105 and 42-306

Implementing statute: A.R.S. §§ 42-301 and 42-307
- The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Ernest Powell, Tax Analyst

Address: Department of Revenue  
Tax Research and Analysis Section  
1600 West Monroe  
Phoenix, Arizona 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680
- An explanation of the rule, including the agency's reasons for initiating the rule:**

The rules provide political subdivisions with the procedures to follow when appealing a decision of the Property Tax Oversight Commission regarding levy limits. The Department is proposing to amend the rules to incorporate legislative changes and to conform to current rulemaking guidelines.
- A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.
- The preliminary summary of the economic, small business, and consumer impact:**

Identification of the Rulemaking:

The Department is proposing to amend the rules to conform to current rulemaking guidelines.

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In addition, Laws 1996, Chapter 102 made numerous changes to the statutes that govern administrative hearings. One of the changes provides that a commission that directly conducts an administrative hearing, and does not use the services of an administrative law judge, is not required to use the services of the Office of Administrative Hearings. The Department is proposing to amend the rules to remove any reference to a hearing officer and to amend R15-12-104 to state that the Commission shall directly conduct the hearings.

Also, Laws 1996, Chapter 102 established specific time-frames for a party to file a motion for a rehearing and for the Commission to rule on the motion. The Department is proposing to amend R15-12-312 to incorporate this legislative change.

Summary of Information in the Economic, Small Business, and Consumer Impact Statement:

It is expected that the benefits of the rules will be greater than the costs. The amendment of these rules will benefit the political subdivisions by making the rules conform to current rulemaking guidelines which will make the rules clearer and easier to understand. In addition, the amendment of the rules will benefit the political subdivisions by making the rules conform with current statutes. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the amendment of these rules.

**7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Ernest Powell, Tax Analyst  
Address: Department of Revenue  
Tax Research and Analysis Section  
1600 West Monroe  
Phoenix, Arizona 85007  
Telephone: (602) 542-4672  
Fax: (602) 542-4680

**8. The time, place, and nature of the proceedings for the adoption of the rule:**

Oral proceedings at which members of the public may appear and make comments regarding the rules or the economic, small business, and consumer impact statement will occur as follows:

Date: August 6, 1997  
Time: 9:30 a.m.  
Location: Department of Revenue Building  
Small Conference Room, B1, First Floor  
1600 West Monroe  
Phoenix, Arizona 85007  
Nature: Public hearing

A person may submit written comments regarding the proposed rules by submitting the comments no later than 5 p.m., August 6, 1997, to the person listed above.

**9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.

**10. Incorporations by reference and their location in the rule:**

None.

**11. The full text of the rule follows:**

**TITLE 15. REVENUE**

**CHAPTER 12. DEPARTMENT OF REVENUE  
PROPERTY TAX OVERSIGHT COMMISSION**

**ARTICLE 1. GENERAL PROVISIONS**

Section  
R15-12-104. ~~Hearings Hearing Officer~~  
R15-12-105. Voting

**ARTICLE 2. PROPERTY TAX LEVY LIMITS**

Section  
R15-12-202. Involuntary Tort Judgments  
R15-12-203. Levy Limit Worksheets

**ARTICLE 3. HEARING AND APPEAL PROCEDURE**

Section  
R15-12-305. Supplementing the Petition  
R15-12-307. Rescheduling of Hearing  
R15-12-308. Evidence  
R15-12-309. Subpoena  
R15-12-310. ~~Post-hearing Memoranda Hearing Procedures~~  
R15-12-311. Prehearing Issue Resolution  
R15-12-312. Rehearing

**ARTICLE 1. GENERAL PROVISIONS**

**R15-12-104. Hearings Hearing Officer**

~~A quorum of the Commission shall directly conduct all hearings regarding contested cases before the Commission. The Chairman or a quorum of the Commission may appoint a Commission member, or a hearing officer of the Department of Revenue, as hearing officer to hold hearings and take testimony on any action before the Commission. The hearing officer shall make a written report to the Commission.~~

**R15-12-105. Voting**

- A. A Commission member may vote on decisions if:
1. ~~The that member was present at all hearings during which the matter being voted on was discussed with discussions pertaining to the particular matter being voted on;~~
  2. ~~The the member was not present at all hearings but the member reviewed the evidence submitted at the hearings and attended or listened listed to tape recordings of all hearings during which the matter being voted on was discussed with discussions pertaining to the particular matter being voted on;~~
  3. ~~that member has reviewed the report of the hearing officer and the evidence submitted at the hearing; or~~
  - 3.4. ~~The the parties submitted the matter has been submitted by the parties for a decision based on a joint stipulation of facts.~~
- B. Any member who dissents may state the reasons for the member's dissent.

**ARTICLE 2. PROPERTY TAX LEVY LIMITS**

**R15-12-202. Involuntary Tort Judgments**

- A. ~~A political subdivision that paid an involuntary involuntary tort judgment judgments may only use the judgment be used only to:~~
1. ~~Offset offset excess collections from collected during the previous fiscal year; or~~
  2. ~~Justify to justify a primary property tax levy limit being set above the maximum allowable rate in the current fiscal year.~~
- B. The Commission shall recognize an involuntary tort judgment if:
1. ~~The the judgment is pursuant to a court order or settlement agreement; and~~
  2. ~~The the judgment is approved for payment by the political subdivision's governing board; and~~
  3. ~~The the Attorney General certifies that the judgment is an involuntary tort judgment; and~~
  4. ~~The the political subdivision submits copies of the court order or settlement agreement and the minutes of the governing board's pay approval to the Commission on or before the 1st Monday of July.~~

**R15-12-203. Levy Limit Worksheets**

- A. The counties shall simultaneously submit copies of the final levy limit worksheets for all political subdivisions in their respective counties to the Commission and the affected political subdivision. ~~The County Assessor shall verify that the copies are shall be certified as true and correct and, if so, certify the copies, by the County Assessor.~~
- B. The counties shall deliver the worksheets to affected political subdivisions and the Commission shall be in possession of the worksheets on or before the 2nd Monday of August.

**ARTICLE 3. HEARING AND APPEAL PROCEDURE**

**R15-12-305. Supplementing the Petition**

~~The If a petition is timely filed, the Commission or hearing officer may grant a the political subdivision's request for an additional period of time, not to exceed 15 days, within which to supplement a timely filed the petition. The Commission shall not consider a-A supplement to the petition that the political subdivision files after the additional period of time shall be excluded if it is not filed within the additional time period which was granted.~~

**R15-12-307. Rescheduling of Hearing**

~~The Commission may postpone or recess the hearing may be postponed or recessed for good cause shown, at the Commission's or hearing officer's discretion. The Commission Hearings shall specify the be continued to a specified date, time, and place for the hearing to continue.~~

**R15-12-308. Evidence**

- A. The political subdivision and the Commission may:
1. ~~Call call and examine witnesses,~~
  2. ~~Introduce introduce exhibits,~~
  3. ~~Cross-examine cross-examine opposing witnesses on any matter relevant to the issues, even though the that matter was not covered in the direct examination,~~
  4. ~~Impeach impeach any witness regardless of which party 1st called the witness to testify, and~~
  5. ~~Rebut rebut the evidence against it, and~~
  6. ~~Call and examine as if under cross-examination a A-party or its employees, agents, or officers may be called by any party and examined as if under cross-examination.~~
- B. The Commission shall be liberal in admitting evidence, but the Commission shall consider objections to the admission of and comments on the weakness of evidence shall be considered in assigning weight to the evidence.
- C. ~~The Commission shall take oral Oral evidence shall be taken only on oath or affirmation.~~
- D. Legible copies may be admitted into evidence or substituted in place of the original documents.
- E. The original records and files of the Commission or the Department of Revenue shall not be removed from their offices for use as evidence or for other purposes. Copies of public records and files may be purchased for a nominal cost.
- F. The Commission may take official notice, as an admission of fact, of the records maintained by the Department of Revenue.

**R15-12-309. Subpoena**

~~The Commission or hearing officer may, on upon request of a party or on its their own initiative, cause to be issue issued subpoenas.~~

**R15-12-310. Post-hearing Memoranda Hearing Procedures**

- A. ~~All interested parties to the proceeding shall have the right to submit evidence at the hearing and to cross-examine witnesses.~~
- B. If the Commission or a hearing officer desires the submission of post-hearing memoranda or information, the Commission or hearing officer shall, at the time of the hearing, direct the parties to submit the post-hearing memoranda or information comply within an agreed upon a specified period of time.

**R15-12-311 Prehearing Issue Resolution**

~~If the Commission or the hearing officer and a political subdivision agree as to the resolution of some or all of the issues prior to the hearing, the Commission it shall be so stipulate to the agreed issues stipulated in the record by the hearing officer or the Commission and that issue shall consider those issues be deemed withdrawn. The Commission shall then issue an order of partial resolution that becomes which shall become part of the Commission's record of the Commission. The Commission shall forward copies Copies of~~

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the order shall be forwarded to the political subdivision, County Assessor, and the Department of Revenue.

**R15-12-312. Rehearing**

- A. Any party in a contested case before the Commission who is aggrieved by a decision rendered in such case may file a petition for rehearing or review with the Commission within not later than 30 ten days after receiving the date of the final decision, a written petition for rehearing specifying particular grounds therefor. The party shall attach a supporting memorandum, specifying the grounds for the petition.
- B. The party who filed the A petition for rehearing or review under this rule may amend it be amended at any time before the Commission rules it is ruled upon by the Commission. Any other party to the original hearing may file a A response may be filed within 5 ten days after the Commission's receipt of the petition for rehearing or review service of such petition by any other party. The party shall support the response with a memorandum discussing the legal and factual issues. Either party or the The Commission may request require the filing of written briefs upon the issues raised in the petition and may provide for oral argument.
- C. The Commission may grant a A-rehearing or review of the decision may be granted for any of the following causes that materially affect a affecting the petitioning party's rights:
1. Irregularity in the administrative proceedings, or any order or of the Commission or its hearing officer or the prevailing party or any abuse of discretion which whereby the petitioning party was deprived a party of a fair hearing;
  2. Misconduct of the Commission, its staff, or its hearing officer or the prevailing party;
  3. Accident or surprise which could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
  5. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the proceeding; or

6. ~~The That~~ the decision is not justified by the evidence or is contrary to law.
- D. ~~The Commission shall not consider the financial~~ Financial impact to the political subdivision shall not be construed as a cause for of rehearing.
- E. ~~The Commission may grant a rehearing or review within~~ Not later than 15 ten days after its the Commission's receipt of the a-petition for rehearing or review, the Commission may grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). The Commission may grant a petition for rehearing or review for a reason not stated in the petition. An order modifying a decision or granting a rehearing shall specify with particularity the ground or grounds for the order, on which rehearing is granted, and any the rehearing shall cover only cover those matters so specified. If the Commission fails to take action on a petition for rehearing or review within 15 ten days of the Commission's receipt of the petition, the petition shall be deemed denied.
- F. ~~The Commission may, on its own initiative, order a rehearing or review within~~ Not later than 15 ten days after its a-decision is rendered, the Commission may on its own initiative order a rehearing of its decision for any reason set forth in subsection (C). ~~The Commission may grant a petition for rehearing for a reason not stated in the petition after giving the parties or their counsel notice and an opportunity to be heard on the matter.~~ The In either case the order granting such a rehearing shall specify the grounds for rehearing or review therefor.
- G. ~~The petitioner shall include all affidavits with the petition for rehearing or review when~~ When the a-petition for rehearing is based upon affidavits, they shall be served with the petition. An opposing party may, within 5 ten days after the petition for rehearing or review is filed, such service, submit serve opposing affidavits. ~~The Commission may extend this, which period may be extended for an additional period of time not to exceed exceeding 5 20 days by the Commission for good cause shown.~~ Reply affidavits may be permitted.