

TAXATION SECTION



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SYNOPSIS OF COMMENTS

The State and Local Taxes Committee of the D.C. Bar's Section on Taxation is pleased to submit to the D.C. Department of Finance and Revenue proposed rules of procedure to be adopted by the Board of Real Property Assessments and Appeals ("BRPAA") for the District of Columbia, together with a section-by-section commentary explaining the basis for the proposal.

BRPAA was established by legislation enacted in 1993 to replace the previously-existing Board of Equalization and Review ("BER"). Since that time, BRPAA has been reviewing real property assessment appeals without any established rules of practice. During that period, it has relied to some extent on BER regulations, even though the statute establishing BRPAA significantly differs from the repealed provision establishing BER and even though the BER regulations were out of date in some respects.

The proposed regulations represent a revision and reorganization of the previous BER regulations. They reflect the changes brought about by the legislation creating BRPAA; they update the old regulations to reflect current practices; they clarify areas of ambiguity which existed under the old regulations; and they reorganize the structure of the old regulations so as to consolidate in one place provisions dealing with common issues rather than, as was the case under the old regulations, have them scattered throughout. The accompanying section-by-section commentary explains the basis for each of the proposed regulations.

TAXATION SECTION



The District of Columbia Bar

June 10, 1996

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D.C. Bar President

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D.C. Bar Executive Director

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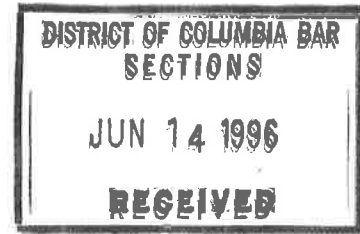
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The Honorable James R. Murphy
Acting Chair
Board of Real Property Assessments
and Appeals
One Judiciary Square
441 4th Street, N.W.
Washington, DC 20001



Dear Mr. Murphy:

On behalf of the Taxation Section of the D.C. Bar, we are pleased to submit herewith proposed rules of practice for the Board of Real Property Assessments and Appeals ("BRPAA"), along with a section-by-section commentary describing the basis for each of the proposed regulations.

Under Taxation Section practice, each committee of the Section is to undertake at least one tax-policy project a year. The leadership of the State and Local Taxes Committee chose to prepare proposed regulations for BRPAA. We were prompted in this regard by the fact that, since it was created by legislation in 1993, BRPAA has yet to adopt its own rules of practice governing its procedures. Instead, it has operated under regulations previously adopted by the Board of the Board of Equalization and Review ("BER") even though the legislation creating BRPAA differs in some significant respects from the prior legislation under which BER had operated.

Where appropriate, we followed the approach taken in the BER regulations in preparing these proposed regulations. We have added new material to deal with the differences between former and current law and to reflect current assessment law and practice. We have also reorganized the old regulations so as to assure that issues in common are dealt with in a single place. (In the BER

STANDARD DISCLAIMER

The views expressed herein and in the attachments are those of the Taxation Section of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.

The proposed regulations and commentary were prepared by Sam M. Chappell, of the Law Offices of Sam M. Chappell, and Joseph A. Rieser, Jr., of Reed Smith Shaw & McClay. Mr. Chappell and Mr. Rieser are Vice-chair and Chair, respectively, of the State and Local Taxes Committee of the Taxation Section.

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regulations, provisions dealing with issues in common were often scattered throughout.) Finally, through definitional and other provisions, we have tried to eliminate ambiguities which were present in the old regulations and to make them easier to understand. The commentary accompanying the proposed regulations explains the basis for our proposals.

We hope that you will find these proposals useful; and we would welcome the opportunity to discuss them with you.

Very truly yours,



Joseph A. Rieser, Jr.
Chair, State and Local
Taxes Committee

cc: Paul L. Wright (w/encl.)
Interim Director
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**COMMENTARY ON PROPOSED RULES
FOR THE BOARD OF REAL PROPERTY ASSESSMENTS AND APPEALS
PREPARED BY THE DISTRICT OF COLUMBIA BAR
COMMITTEE ON STATE AND LOCAL TAXES
ON BEHALF OF THE TAXATION SECTION**

June, 1996

The Board of Equalization and Review ("BER"), which was established under D.C. Code § 47-825, was replaced in 1993 by the Board of Real Property Assessments and Appeals ("BRPAA"). D.C. Code § 47-825.1 (Supp. 1996). BRPAA has been reviewing real property assessment appeals for three years without regulations. Although BRPAA has relied to some extent on the BER Regulations, the need for new rules is readily apparent: (1) the statutory provision establishing BRPAA, D.C. Code § 47-825.1, differs significantly from the repealed provision which had established BER, D.C. Code § 47-825, and (2) much time has passed since the BER Regulations were updated to take into account current tax assessment law and practice.¹

The Committee on State and Local Taxes of the District of Columbia Bar (the "Committee"), on behalf of the Taxation Section, has drafted a set of proposed regulations (the "Proposed BRPAA Regulations") to replace the BER Regulations. The Proposed BRPAA Regulations are based in large part on D.C. Code § 47-825.1 and the BER Regulations. In addition, the Committee found the proposed rules of the Real Property Law Committee and the Tax Committee of the Bar Association of the District of Columbia (the "voluntary bar") drafted in March 1994 to be very helpful.

This commentary is intended both to explain the authority for and general organization of the Proposed BRPAA Regulations and to give the reasons for each proposed regulation. When the specific comments cite a provision from the D.C. Code or the BER Regulations, the authority or source for the proposed regulation is that cited provision.

General Comment

The authority for the Proposed BRPAA Regulations is D.C. Code § 47-825.1(c)(3).

¹ Final BER Regulations in Chapter 20 of Title 9 of the D.C. Municipal Regulations (the "BER Regulations") were originally published at 22 D.C. Reg. 1217 (Sept. 8, 1975) and subsequently amended at 23 D.C. Reg. 6251 (Feb. 11, 1977), 32 D.C. Reg. 1180 (Mar. 1, 1985), and 34 D.C. Reg. 3177 (May 15, 1987).

2000 General Provisions and Definitions

General This proposal contains more defined terms than BER Reg. § 2000 in order to make the reading of the remaining sections clearer and easier.

2000.1 BER Reg. § 2000.1.

2000.2 BER Reg. § 2000.3. The reference to Chapter 99 is intended to point readers to that chapter in Title 9 which defines terms in this title.

2000.3 D.C. Code § 47-825.1(a)(1).

2000.4 For clarity.

2000.5 D.C. Code § 47-825.1(a)(1)(B).

2000.6 D.C. Code § 47-825.1(d)(1) and BER Reg. § 2001.5.

2000.7 For ease of reading. See § 2003.1 (authorizing the Board Chairperson to appoint Panel Chairpersons).

2000.8 BER Reg. § 2000.2.

2000.9 BER Reg. § 2000.2.

2000.10 D.C. Code § 47-802(2). For clarity.

2000.11 D.C. Code § 47-802(3). For clarity.

2000.12 BER Reg. §§ 2008.1, 2008.3, 2008.4, 2011.3, and 2011.4 provide the basic language for this definition. Also, the voluntary bar's proposed § 2000.3 was helpful. See also D.C. Code § 47-825.1(f)(1) (indicating that an owner's representative may file a petition).

2000.13 For clarity. See D.C. Code § 47-802(1) (defining real property).

2001 Meetings, Quorum, and Decisions of the Board

General Whereas the BER Regulations had rules in several sections for governing meetings, this proposal consolidates such rules in this one section.

2001.1 D.C. Code § 47-825.1(c)(1).

2001.2 D.C. Code § 47-825.1(c)(1).

- 2001.3 D.C. Code § 47-830(b) and BER Reg. § 2006.2.
- 2001.4 BER Reg. § 2003.1.
- 2001.5 D.C. Code § 47-825.1(c)(4).
- 2001.6 D.C. Code § 47-825.1(c)(2). There may an issue regarding what constitutes a majority. Is it a majority of the members appointed or a majority of the potential number of members?
- 2001.7 BER Reg. § 2002.2. The voluntary bar's proposed § 2002.2 would require a majority of the full Board to amend the Board's rules. This subsection does not address that issue because the Board must comply with subchapter I of Chapter 15 of Title 1 before issuing rules. See D.C. Code § 47-825.1(c)(3).
- 2001.8 BER Reg. § 2004.6.
- 2001.9 BER Reg. § 2005.1.
- 2001.10 BER Reg. § 2005.2.

2002 Members, Officers, and Staff

General Whereas the BER Regulations had rules in several sections dealing with assignments and personnel, this proposal consolidates these rules in this one section.

- 2002.1 D.C. Code § 47-815.1(l)(3), with the clarification that the training will be by certified appraisers.
- 2002.2 D.C. Code § 47-815.1(l)(3), with the clarification that the training will be by attorneys familiar with these regulations and the tax assessment regulations.
- 2002.3 BER Reg. § 2001.1.
- 2002.4 BER Reg. § 2001.3.
- 2002.5 BER Reg. § 2001.2.
- 2002.6 BER Reg. § 2001.6.
- 2002.7 BER Reg. §§ 2001.4 and 2001.7.

2003 Panel Assignments, Meetings, and Decisions

General Whereas the BER Regulations had rules in several sections dealing with assignments, meetings, and decisions of Panels, the Proposed BRPAA Regulations consolidate these rules in this one section.

2003.1 BER Reg. § 2001.4. This provision also gives the Chairperson the power to make all Panel assignments, subject to the specific statutory restrictions.

2003.2 This provision, which is merely advisory, is based on the original goal of the enabling legislation to have higher quality appeal hearings.

2003.3 D.C. Code § 47-825.1(d)(2).

2003.4 For clarity.

2003.5 BER Reg. § 2003.2.

2003.6 BER Reg. §§ 2002.1, 2004.4, and 2004.5.

2003.7 BER Reg. §§ 2002.1, 2004.4, and 2004.5. BER Reg. §§ 2004.4 and 2004.5 provide alternative methods for the Chairperson to reschedule a hearing when a two-member Panel cannot reach a unanimous decision. In BER Reg. § 2004.4, the Chairperson could appoint a third Panel member for the rehearing. In BER Reg. § 2004.5, the rescheduled hearing was to be before an entirely different Panel. This proposed regulation makes clear that the Chairperson may choose either method to remedy a deadlocked two-person Panel.

2004 Prohibitions on Members

General This new section is entirely new and is based mainly on the new statutory language and in part on BER Reg. § 2004.

2004.1 D.C. Code § 47-825.1(a)(2)(B).

2004.2 D.C. Code § 47-825.1(d)(3).

2004.3 BER Reg. §§ 2004.2 and 2004.3; D.C. Code §§ 47-825.1(a)(2)(B) and (d)(3).

2004.4 BER Reg. § 2004.3.

2004.5 D.C. Code §§ 47-825.1(a)(2)(B).

2004.6 This subsection was added to deal with disputes regarding recusal.

2004.7 D.C. Code §§ 47-825.1(a)(2)(A).

2005 Computation of Time

2005.1 BER Reg. § 2007.1.

2005.2 BER Reg. § 2007.2.

2005.3 This subsection, which is taken from the voluntary bar's proposal, makes clear that time periods referred to in days mean business or working days.

2006 Filing of Petitions

2006.1 BER Reg. § 2008.1.

2006.2 D.C. Code § 47-830(a)(1); BER Reg. § 2008.3.

2006.3 D.C. Code § 47-830(a)(2); BER Reg. § 2008.4.

2006.4 The practice has been that a separate petition must be filed for each lot. In a memorandum order dated July 19, 1995, the D.C. Superior Court relied on this Board practice when requiring that a separate court appeal be filed for each lot. This memorandum order has created uncertainty regarding the filing of court appeals. This subsection, while stating the general rule that a single petition must be filed for each lot, is intended to point to BRPAA Prop. Reg. § 2006.5, which allows one petition to be filed for multiple lots in certain limited circumstances.

2006.5 This subsection describes the three limited situations in which a taxpayer may file one petition for more than one lot. There do not appear to be any disadvantages to allowing a single petition to cover multiple lots under these circumstances. On the other hand, the reasons to allow a single petition to cover multiple lots in these situations are (1) to reduce the paperwork burdens on the Board, the Department, and the petitioner and (2) to reduce the Superior Court filing fees.

2006.6 This subsection makes clear that if a dispute arises under BRPAA Prop. Reg. § 2006.5 the Chairperson will be the arbiter.

2006.7 This subsection prevents the Chairperson from having to choose between allowing an improper multiple lot appeal to go forward or dismissing an appeal that could not be refiled because the deadline has passed. When the Chairperson decides against the petitioner under BRPAA Prop. Reg. § 2006.6, then the petitioner will have the time to amend if the petition was filed in good faith. A filing that is in good faith is one where the petitioner had a

reasonable basis for believing that the petition met one of the three conditions set forth in BRPAA Prop. § 2006.5. See BER Reg. § 2009.10. BRPAA Prop. Reg. § 2009.4 deals with a petition for multiple lots that is not filed in good faith.

- 2006.8 BER Reg. § 2008.6. In recent practice the petition form has had carbon copies attached. This subsection makes clear that photocopies are also acceptable. Also, in recent practice, BRPAA has sent a copy to the Department, whereas the petitioner may or may not have sent a copy to the Department. This subsection makes clear that BRPAA will forward a copy to the Department.
- 2006.9 BER Reg. §§ 2009.1 and 2009.2. The definition of estimated market value in this proposed subsection is tied directly to the D.C. Code definition. The other small changes in language are stylistic.
- 2006.10 Because of the new rule in D.C. Code § 47-825.1(f)(1) that the petitioner must submit all information with the petition, a separate section, BRPAA Prop. Reg. § 2007, has been developed to deal with this issue.
- 2006.11 D.C. Code § 47-825.1(f)(1) requires paragraphs (b) and (c). The other paragraphs in this subsection require BRPAA to make prospective petitioners aware of a few other important rules. Paragraph (d) was suggested by the voluntary bar's § 2020.5.

2006.12 BER Reg. § 2009.8.

2007 Evidence

- 2007.1 D.C. Code § 47-825.1(f)(1).
- 2007.2 BER Reg. § 2009.3, but applies only to construction within the past two years.
- 2007.3 BER Reg. § 2009.4.
- 2007.4 BER Reg. § 2009.5, with the property class references changed to conform to current law.
- 2007.5 BER Reg. §§ 2009.6 and 2009.7.
- 2007.6 The last clause of D.C. Code § 47-825.1(f)(1) is the authority for this provision.

2008 Director's Response

2008.1 D.C. Code § 47-825.1(f)(3).

2009 Amendment or Dismissal of a Petition

2009.1 BER Reg. § 2009.10.

2009.2 BER Reg. § 2009.9.

2009.3 BER Reg. § 2009.11.

2009.4 This subsection deals with the filing of a single petition to cover multiple lots that was not in good faith. A filing that is not in good faith is one where the petitioner had no reasonable basis for believing that the petition met one of the three conditions set forth in BRPAA Prop. § 2006.5.

2010 Hearing Notices

2010.1 BER Reg. § 2010.1.

2010.2 BER Reg. § 2010.2.

2010.3 BER Reg. § 2010.3, except that the proposal provides for ten-day notice (instead of five-day notice).

2010.4 BER Reg. § 2010.4.

2011 Petitions by the Chairperson and the Director

2011.1 D.C. Code § 47-825.1(e).

2011.2 This subsection is intended to make sure that the Director and affected taxpayer(s) receive notice of the Chairperson's petition.

2011.3 BER Reg. § 2008.5.

2011.4 BER Reg. § 2008.5.

2011.5 This subsection refers to § 2010 for when and how the notices in §§ 2011.2 and 2011.4 should be given.

2012 Failure to Appear for a Hearing and Continuances

2012.1 This subsection combines BER Reg. §§ 2013.1, 2013.2, 2013.4, and 2013.5.

2012.3 This subsection combines BER Reg. §§ 2013.1, 2013.3, and 2013.4

2012.3 BER Reg. § 2012.1.

2013 Burden of Proof

2013.1 BER Reg. § 2014.1.

2014 Hearing Procedures and Evidence

2014.1 D.C. Code § 47-825.1(d)(5). See also voluntary bar's § 2016.8.

2014.2 BER Reg. § 2011.

2014.3 BER Reg. § 2016.1.

2014.4 BER Reg. § 2016.2.

2014.5 BER Reg. § 2011.5.

2014.6 BER Reg. § 2015.1.

2014.7 BER Reg. § 2016.2.

2014.8 This provision gives the Chairperson or a Panel the authority to permit the petitioner or the Department to examine a witness called by the Board or the other party.

2014.9 BER Reg. § 2019.1.

2014.10 BER Reg. § 2019.2.

2014.11 D.C. Code § 47-825(f)(1).

2014.12 D.C. Code § 47-825(f)(1).

2014.13 D.C. Code § 47-825(f)(3).

2014.14 BER Reg. § 2016.3.

2015 Witnesses

2015.1 BER Reg. § 2015.3.

2015.2 This subsection applies specifically to appeal hearings and is intended to provide all parties the opportunity to call relevant witnesses.

2015.3 This subsection was suggested in the voluntary bar's § 2015.3.

2015.4 BER Reg. § 2015.2.

2015.5 BER Reg. § 2015.4.

2016 Prohibition on Ex Parte Communications

2016.1 BER Reg. § 2016.4.

2016.2 This subsection is essentially § 2016.7 from the voluntary bar's proposal. This subsection applies the general rule in BRPAA Prop. Reg. § 2016.1 prohibiting ex parte communications to communications initiated by Board members.

2017 Field Studies and Inspections

2017.1 BER Reg. § 2017.1.

2017.2 BER Reg. § 2017.2.

2017.3 BER Reg. § 2017.3.

2017.4 BER Reg. § 2017.4.

2018 Appeal Hearing Records and Transcripts

2018.1 BER Reg. § 2018.1.

2018.2 BER Reg. § 2018.3.

2018.3 BER Reg. §§ 2018.2 and 2018.7.

2018.4 BER Reg. § 2018.4.

2018.5 BER Reg. § 2018.5.

2018.6 This new subsection was suggested by the voluntary bar's § 2018.8.

2019 Appeal Rehearings

2019.1 BER Reg. §§ 2020.1 and 2020.4.

- 2019.2 BER Reg. §§ 2020.2 and 2020.3, except that time limits are provided and notice is required to the other party.
- 2019.3 BER Reg. § 2020.4.
- 2019.4 BER Reg. § 2020.5, except that the last clause is from the voluntary bar's § 2020.4.

2020 Appeal Decisions and Notices of Decisions

- 2020.1 For clarity in light of BRPAA Prop. Reg. § 2020.2.
- 2020.2 This subsection was suggested by the voluntary bar.
- 2020.3 D.C. Code § 47-825.1(f)(2).
- 2020.4 BER Reg. § 2021.1.
- 2020.5 BER Reg. § 2021.5.
- 2020.6 BER Reg. § 2021.3.
- 2020.7 BER Reg. § 2021.4.
- 2020.8 BER Reg. § 2021.2.
- 2020.9 This subsection is necessary to deal with petitions filed under BRPAA Prop. Reg. §2006.5.
- 2020.10 D.C. Code § 47-825.1(d)(4).
- 2020.11 D.C. Code § 47-825.1(d)(4).
- 2020.12 D.C. Code § 47-825.1(d)(4).
- 2020.13 D.C. Code § 47-830(b).
- 2020.14 D.C. Code § 47-830(b).
- 2020.15 BER Reg. § 2022.
- 2020.16 D.C. Code § 47-825.1(f)(4).

2021 Revised Assessment Roll and Annual Report

2021.1 D.C. Code § 47-825.1(h).

2021.2 D.C. Code § 47-825.1(l).

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