

Volume 11 - Opinions of Counsel SBRPS No. 28

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Assessment review, board of (hearings; meetings) (appointment schedule) (adjournment for assessor review) - Real Property Tax Law, §§ 524, 525:

A board of assessment review must hear complaints for at least four hours on the scheduled grievance day even if it schedules individual hearings on an appointment basis.

If a board of assessment review accepts evidence first submitted at an adjourned hearing, the board must grant an assessor's request for another adjournment for the assessor's review of, and possible response to, such evidence.

We have received an inquiry concerning board of assessment review hearing procedures. One such board follows a process whereby it appoints hearing times to complainants; some are scheduled for grievance day itself, others on an adjourned hearing date. The assessor and a clerk are available throughout grievance day until 9:00 P.M. to accept grievance applications, but the question is whether it is necessary for the board to be in attendance as well. A second question is how a board of assessment review should proceed with respect to materials submitted at an adjourned hearing where the assessor has not had advance opportunity to review the same.

The law does not address the authority of a board of assessment review to schedule appointments to hear complaints (as contrasted with a "first-come, first-served" policy). We see nothing in statute to prohibit such a practice and agree that many, and perhaps most, taxpayers would prefer the former practice to the latter. So long as a statute is silent, and taxpayers' due process of law guarantees are assured, in our opinion, a board of assessment review may establish its own procedures.

The answer to the first question, however, is addressed, at least in part, in statute. Section 525(1) of the Real Property Tax Law provides, in part:

The board of assessment review shall fix the place or places for the hearing of complaints in relation to assessments and fix the hours of such hearing, which hours **shall be** for a period of at least four hours, not necessarily continuous between [9 A.M.] and [10 P.M.] but in no event less than two hours after [6 P.M.](emphasis added).

Clearly, then, a board of assessment review is required to hear complaints (for the board in question, given its procedures, on an appointment basis) for at least four hours on grievance day, at least two being evening hours. This four-hour minimum has added significance given the provisions of section 524(1) of the RPTL that authorizes the filing of complaints with the assessor at

any time prior to the board's hearing or with the board at its hearing, but prohibits new filings at any adjourned hearing.

The answer to the second question is not directly addressed in law, but we can extrapolate an answer from law. That is, the aforementioned section 524(1) also provides that: "Where a complaint is filed within three business days preceding such hearing, the board of assessment review shall grant an assessor's request for an adjournment to permit the assessor to prepare a response to the complaint." Similarly, section 525(2) provides, in part: "The assessor shall have the right to be heard on any complaint and upon his or her request his or her remarks with respect to any complaint shall be recorded in the minutes of the board. Such remarks may be made only in open and public session of the board of assessment review."^{1} Reading these provisions together, the most reasonable conclusion is that, if the assessor does not have sufficient time to review a complainant's material submitted at an adjourned hearing, the assessor may request another adjournment for review and preparation of a response. Boards of assessment review should therefore be mindful of the assessment calendar deadlines in scheduling adjourned hearing dates.

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^{1} These provisions were added to sections 524 and 525 by chapter 662 of the Laws of 1991 at the request of this agency. In our memorandum in support of the bill enacted as chapter 662, we noted that an assessor's receipt of a complaint perhaps just moments before he or she is required to respond to it was "inadequate to the assessor's right to be heard on the complaint." Similarly, "the practice of some [boards of assessment review] to hear the assessor's responses behind closed doors . . . lend[s] an air of impropriety to the [board of assessment review's] decision-making process" (1991 N.Y. Legis. Ann., p.371). As should be evident, the intent of the legislation was to increase the fairness of the grievance process for both the taxpayer and the assessor.

Updated: January 19, 2018