

SUBSTANTIVE POLICY STATEMENT
NUMBER SBOE-04-006
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THIS SUBSTANTIVE POLICY STATEMENT IS ADVISORY ONLY. A SUBSTANTIVE POLICY STATEMENT DOES NOT INCLUDE INTERNAL PROCEDURAL DOCUMENTS THAT ONLY AFFECT THE INTERNAL PROCEDURES OF THE AGENCY AND DOES NOT IMPOSE ADDITIONAL REQUIREMENTS OR PENALTIES ON REGULATED PARTIES OR INCLUDE CONFIDENTIAL INFORMATION OR RULES MADE IN ACCORDANCE WITH THE ARIZONA ADMINISTRATIVE PROCEDURE ACT. IF YOU BELIEVE THAT THIS SUBSTANTIVE POLICY STATEMENT DOES IMPOSE ADDITIONAL REQUIREMENTS OR PENALTIES ON REGULATED PARTIES YOU MAY PETITION THE AGENCY UNDER SECTION 41-1033, ARIZONA REVISED STATUTES, FOR A REVIEW OF THE STATEMENT.

Short Title: Appearance before the Board.

Appearance before the State Board of Equalization ("SBOE") is deemed the practice of law and is regulated by the Arizona Supreme Court. Ariz. R. Sup. Ct. 31. Only attorneys authorized by the Arizona State Bar to practice law are permitted to represent parties before the SBOE, unless an exception exists. Following are exceptions to this rule describing persons that are permitted to appear before the SBOE:

1. Persons representing themselves;
2. Employees of the county assessor's office or the Department of Revenue when representing their agency;
3. Registered property tax agents under the conditions established in A.R.S. §42-16001;
4. A certified public accountant or other federally authorized tax practitioner;
5. A taxpayer that is a legal entity as defined in Ariz. R. Sup. Ct. 31.3(c)(1) may be represented by a layperson when:
 - i. the person is an officer, partner, member, manager, employee, or trustee of the entity;
 - ii. the entity specifically authorized the person to appear before the SBOE;
 - iii. such representation is not the person's primary duty; and
 - iv. the person is not receiving separate or additional compensation for the representation, other than the reimbursement of costs.

A summary of the reasoning and analysis used by the SBOE to create this policy is contained in the memorandum to board members dated June 4, 2024.

MEMORANDUM

To: All Board Members
CC: All Hearing Officers and Staff
From: George R. Shook, Interim Chair
Date: June 4, 2024
RE: Appearance before the SBOE

BACKGROUND

In hearings before the State Board of Equalization ("SBOE"), petitioners are often not represented by attorneys. In order for parties to understand which non-attorneys are permitted under Arizona law to appear before the SBOE on behalf of a taxpayer and under what circumstances, the following memorandum explains the analysis used in creating the SBOE's policy on representation by non-attorneys.

DISCUSSION

Appearance before the SBOE on behalf of another is considered a practice of law and is regulated by the Arizona Supreme Court. *State Bar v. Arizona Land Title & Trust Co.*, 90 Ariz. 76, 95, 166 P.2d 1, 14 (1961), *modified* on other grounds, 91 Ariz. 293, 371 P.2d 1020 (1962); *and see, Mosher v. Hiner*, 62 Ariz. 110, 113-14 154 P.2d 372 (1944) (finding that representing only one's self is not the practice of law).

The practice of law is under the jurisdiction of the Arizona Supreme Court. Ariz. R. Sup. Ct. 31(a); Ariz. Const. art. III § 5. Attorneys who are members in good standing of the Arizona State Bar may practice law. Ariz. R. Sup. Ct. 31.1(a) and (c). Generally, individuals who are not members of the State Bar in good standing may not practice law. Ariz. R. Sup. Ct. 31.2 (prohibiting the unauthorized practice of law). The purpose of the prohibition against the unauthorized practice of law is to protect the public. *In re Non-Member of State Bar Van Doo*, 214 Ariz. 300, ¶ 10, 152 P.3d 1183, 1186 (2007) (analyzing the discipline used to effect the purpose of the regulation of the practice of law). The Court exercises its authority over the unauthorized practice of law through the Arizona State Bar. Ariz. R. Sup. Ct. 77(a).

The Arizona Supreme Court created exceptions to the unauthorized practice of law "in a limited manner as authorized in Rule 31.3(b) through (e), but the person or entity who engages in such an activity is subject to the Arizona Supreme Court's jurisdiction concerning that activity." Ariz. R. Sup. Ct. 31.3(a)(1). A common area for non-lawyers to represent others are in tax matters. Ariz. R. Sup. Ct. 31.3(d) (creating exceptions for non-attorneys to represent taxpayers in administrative settings under limited conditions).

This memorandum reviews the exceptions to the unauthorized practice of law that are applicable to appearances before the SBOE.

1. Persons representing themselves.

A person may represent one's self in a legal proceeding because representing one's self is not the practice of law. *Mosher v. Hiner*, 62 Ariz. 110, 113, 154 P.2d 372, 374 (1944). It is the policy of the SBOE to permit any of the record owners of a property to represent themselves before the SBOE. This extends to other taxpayers with standing to appeal, such as someone that controls or possesses the property. A.R.S. § 42-16056(D).

2. Employees of the county assessor's office or the Department of Revenue when representing their agency.

Employees of a governmental entity are specifically allowed to appear on behalf of their agency to conduct their agency's business. Ariz. Sup. Ct. R. 31.3(b)(1). Appearances before the SBOE by assessor and Department of Revenue personnel is in the furtherance of their duties and at the direction of their agency. It is SBOE policy to permit these appearances.

3. Registered property tax agents under the conditions established in A.R.S. § 42-16001.

Property tax agents are registered by the Department of Insurance and Financial Institutions. Title 32, Chapter 36, Article 4 of the Arizona Revised Statutes. In order to be designated as an agent for a taxpayer, the tax agent must file, along with the petition for appeal, a completed form authorizing the representation. A.R.S. § 42-16001. Currently, there are no statutory provisions that allow for legal entities to register as a property tax agent, only natural persons. A.R.S. § 32-3652(A).

The required agency-authorization form created by the Department of Revenue is form 82130AA. A.R.S. § 42-16001(C). In order to appear on behalf of a taxpayer before the SBOE, property tax agents must ensure that the following is included on the agency-authorization form: (a) the name of the agent or agents designated by the taxpayer, (b) the Department of Insurance and Financial Institutions registration number for each agent who may represent the taxpayer, (c) the county and account number for personal property appeals, and the county and parcel numbers for the real property for which the agent is designated to represent the taxpayer, and (d) the name, contact information, and title of the person signing the agent-authorization form on behalf of the taxpayer. Information regarding the individual signing the authorization needs to be in sufficient detail to identify the signer and their role on behalf of the taxpayer. The taxpayer may designate multiple agents on one form; however, a general designation for any agent belonging to a firm is unacceptable. The designated agents must be specifically identified with their Department of Insurance and Financial Institutions registration number. The SBOE believes that all agent designations or changes to an agent designation must be in writing and using the correct form. A.R.S. § 42-16001(B)(1) (requiring that designations must be in writing).

Under these circumstances, a property tax agent may represent the taxpayer before the SBOE for compensation. Ariz. R. Sup. Ct. 31.3(d)(3).

4. A certified public accountant or other federally authorized tax practitioner.

An appearance by a "certified public accountant or other federally authorized tax practitioner" is a specific exception for tax-related proceedings such as a hearing before the SBOE. Ariz. R. Sup. Ct. 31.3(d)(2). Federally authorized tax practitioners include attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and registered tax return preparers. 31 C.F.R. § 10.3 (listing authorized practitioners and limits of representation). Of these, attorneys, certified public accountants, and enrolled agents are not limited in their right to represent clients in appeals. 31 C.F.R. § 10.3(a),(b) and (c). Therefore, SBOE policy is to allow attorneys, certified public accountants, and enrolled agents to represent clients in an appeal before the SBOE since it is within their authority as federally authorized tax practitioners.

Enrolled agents must provide their Enrolled Agent Number to the SBOE at the time a petition is filed. Attorneys must provide their bar number issued by the state bar and certified public accountants must provide their certificate number issued by the board of accountancy.

5. An officer or employee of a taxpayer that is a legal entity as defined in Ariz. R. Sup. Ct. 31.3(c)(1).

In court, it is considered an unauthorized practice of law for a corporation to be represented by anyone other than an attorney. *Ramada Inns, Inc. v. Lane & Bird Advertising, Inc.*, 102 Ariz. 127, 128, 426 P.2d 395, 396 (1967) (finding that a corporation cannot represent itself through an officer who is not an attorney). Even so, the Arizona Supreme Court made an exception for certain non-lawyers to represent legal entities before the SBOE under the following conditions:

- [The] taxpayer is a legal entity (including a governmental entity) and:
- i. the person is an officer, partner, member, manager, or employee of the entity;
 - ii. the entity has specifically authorized the person to represent it in the proceeding;
 - iii. such representation is . . . secondary or incidental to other duties relating to the entity's management or operation; and
 - iv. the person is not receiving separate or additional compensation for such representation (other than receiving reimbursement for costs).
Ariz. R. Sup. Ct. 31.3(d)(5)(B).

SBOE policy allows a taxpayer that is a legal entity, such as a corporation, limited liability company, partnership, condominium or home-owners association, or trust to be represented by an officer (such as a corporate officer, a limited liability company manager, officer of an association, or a trustee of a trust), a person with an ownership interest in the entity and involved in the operation of the entity (such as a partner in a partnership or a member of a limited liability company or association), or an employee of the entity. See Ariz. R. Sup. Ct. 31.3(c)(1) (including a condominium association, A.R.S. § 33-1202, a homeowners association, A.R.S. § 33-1802, and a trust in the definition of a "legal entity"). The rule does not limit the level of the employee that may appear before the SBOE. A trustee of a trust or a member of a limited

liability company, for instance, may be a legal entity, such as a bank or a trust company. The entity rules would then apply to that member or trustee.

While the definition of legal entity includes governmental agencies, it is the opinion of the SBOE that the rule discussed herein does not apply to the government's representative, which consists of the Department of Revenue or assessor personnel appearing before the board to defend their agency's assessment decisions. The rule is specifically limited to legal entities that are the "taxpayer." Ariz. R. Sup. Ct. 31.3(d)(5)(B) (limiting the exception to when the taxpayer is a legal entity). In their appearances before the SBOE, the assessor or the Department is not the taxpayer and, thus, is not included in this exception. As discussed in Section No. 2 above, appearances by government personnel before the SBOE, when their agency is not a taxpayer, are permitted when the appearance is in furtherance of their official duties. Ariz. R. Sup. Ct. 31.3(b)(1).

The representation must be "specifically authorized." Ariz. R. Sup. Ct. 31.3(d)(5)(B)(ii). The rule does not require the SBOE to perform any fact finding as to the proof of this authority, nor does the rule require any documentary proof of this authority. A previous version of the rule required that "the association's employee or management company is specifically authorized in writing by the association[.]" Ariz. R. Sup. Ct. 31(d)(31) (2019) (including that the authorization be in writing for small-claims actions). The requirement for a specific authorization to be in writing appeared in no other exception in the 2019 rule. When renumbered and amended in 2020, the requirement for "a writing" was removed and this requirement does not appear at all in the current (2023) version of the rule. Ariz. R. Sup. Ct. 31.3(c)(3) (allowing legal entities to be represented in justice and municipal courts under the same conditions as representations in tax-related matters). Thus, documentary evidence that the person is specifically authorized is not required under the Supreme Court rule cited above. Even so, a person claiming to be authorized may be required to testify as to their authorization under oath at the hearing prior to commencing the appeal.

The appearance must not be a part of the primary duties of the person. Ariz. R. Sup. Ct. 31.3(d)(5)(B)(iii). For example, a large retailer with multiple locations in several states is represented by an employee from its tax department whose primary duty is to appeal ad-valorem property valuations in various jurisdictions. Because this type of appearance would be the employee's primary duty, this employee does not fall under the exception to the unauthorized practice of law. If the person is not qualified under one of the professional exceptions, such as certified public account or enrolled agent, the person may register as a property tax agent and be able to appear on behalf of the legal entity under the conditions described in Section 3 above. *See* A.R.S. § 32-3651, et seq.

It is SBOE policy to allow appearances on behalf of a legal entity by an officer, partner, member, manager, trustee, or employee, who is not an attorney, provided that the representation satisfies the conditions described above. While it is not the practice of the SBOE to require documentary proof that all of the conditions described above are satisfied, the person representing the entity may be asked to testify as to these conditions under oath.