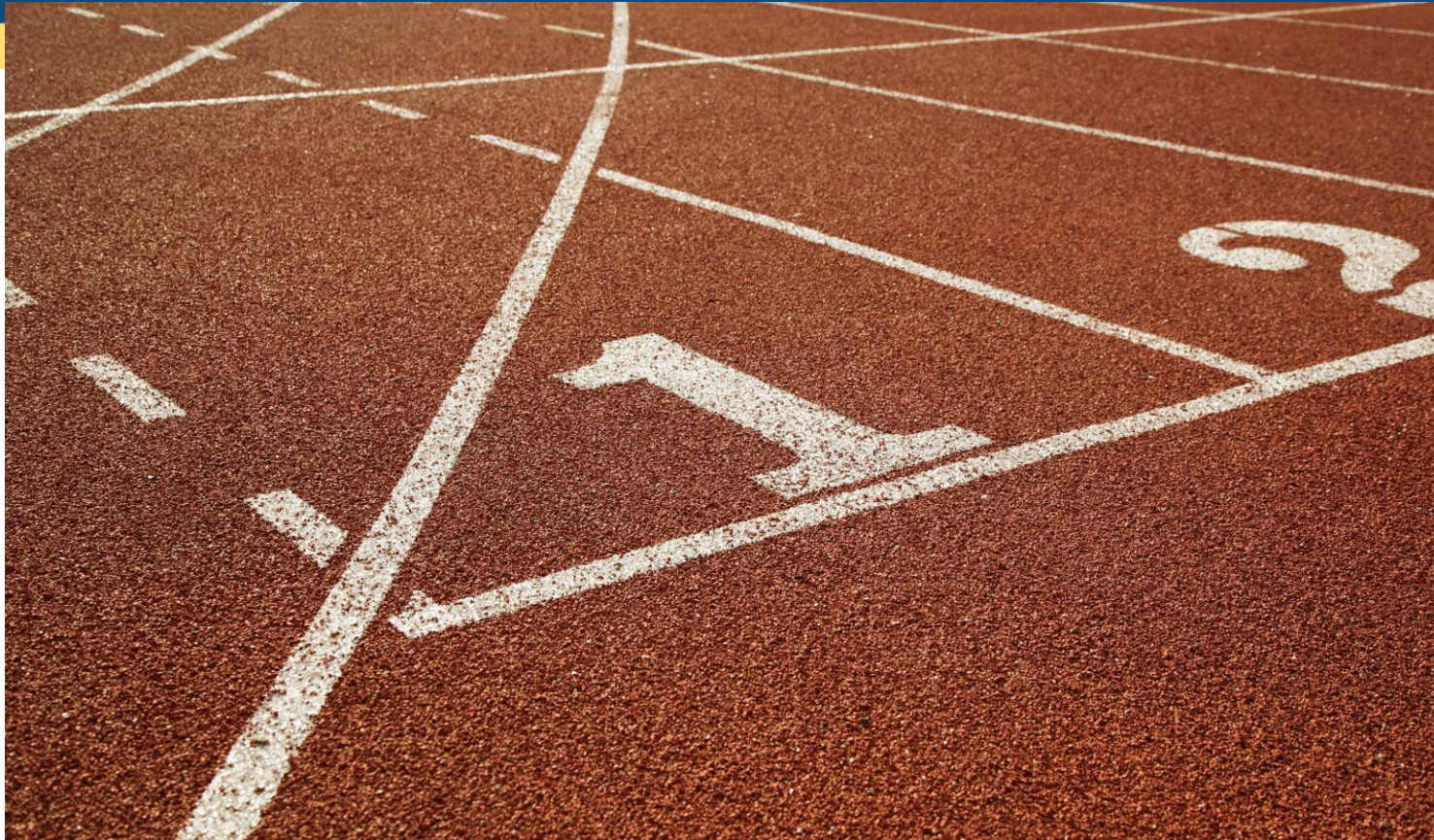




WTD Review Project

September 2022

Dan Jensen, Assistant Director, ARHD

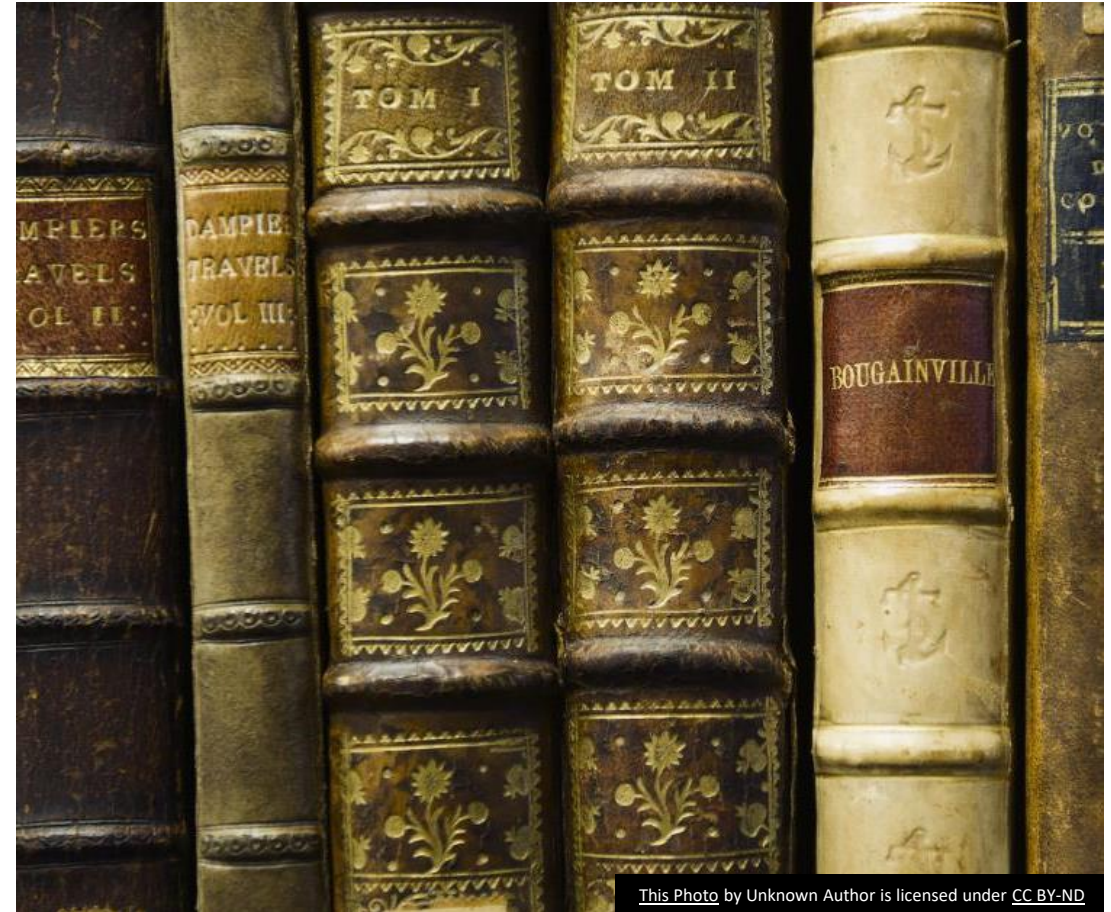


Background information about Washington Tax Decisions

- The Department's Administrative Review and Hearings Division handles reviews of DOR actions.
- When that review is complete, we issue a written determination, which analyzes the issue and reaches a final decision for the Department. That determination can be published.

WTD (Washington Tax Decision) History

- Authorized by RCW 82.32.410.
- Gives DOR authority to designate certain written determinations as precedents.
- Requires certain redactions, such as “names, addresses, and other identifying details of the person to whom the written determination pertains and of another person identified in the written determination.”



WTD Publication Criteria

A determination may be published when all of the following criteria are met:

1. The decision is a well-reasoned application of the law to a specific set of facts.
2. The decision addresses only the law and facts necessary to resolve this case.
3. The decision is needed to:
 - a) Provide guidance on a previously unaddressed area of the law, and to articulate the Department's current policy;
 - b) Apply the law to a significantly different set of facts;
 - c) Overrule a published determination; or
 - d) Provide a better or more current articulation on how the law should be interpreted.
4. The decision can be effectively sanitized, or the taxpayer will grant a waiver of the secrecy clause.

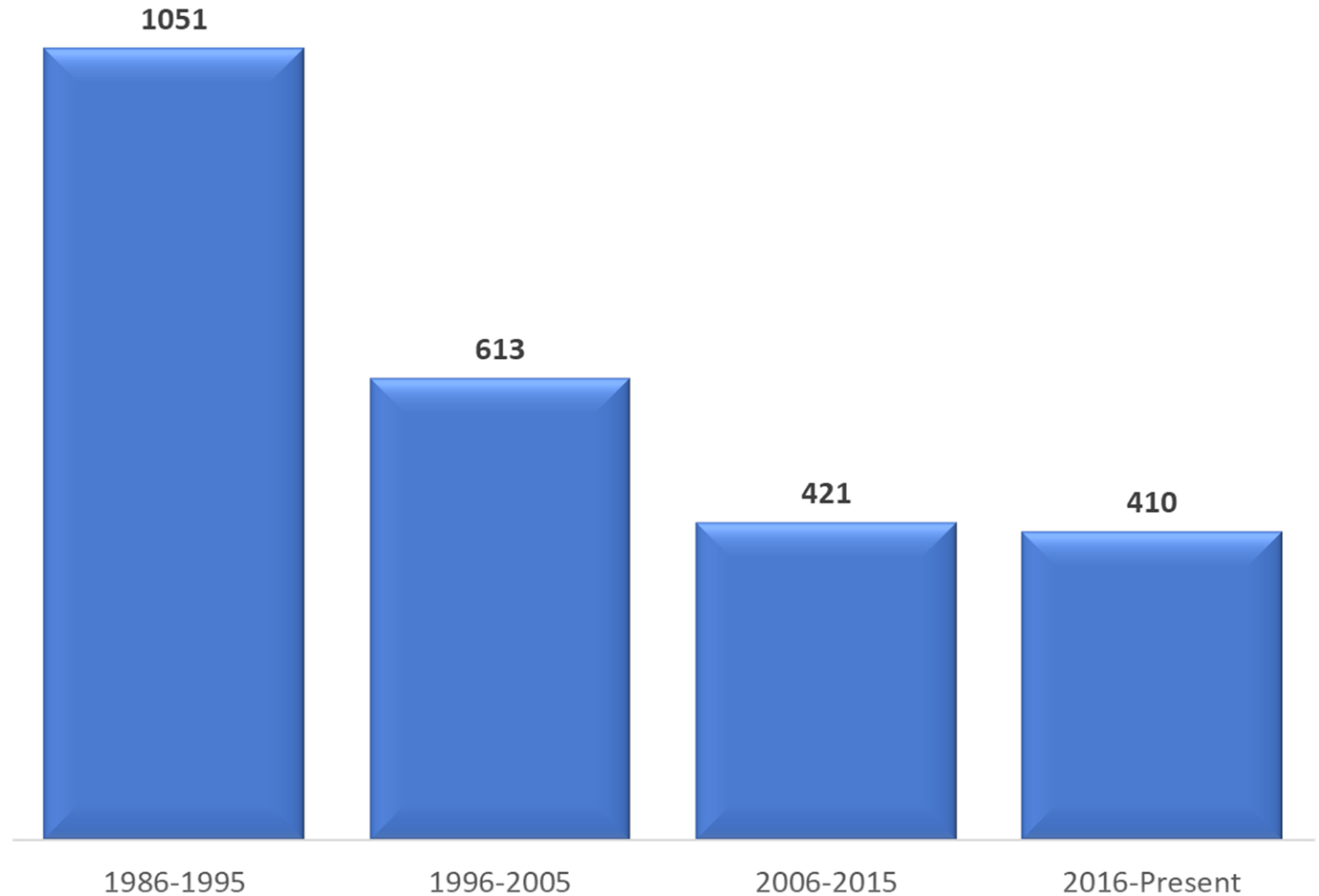
Criteria currently available on dor.wa.gov, but will soon be added to a standalone rule.

Publishing WTDs since ...

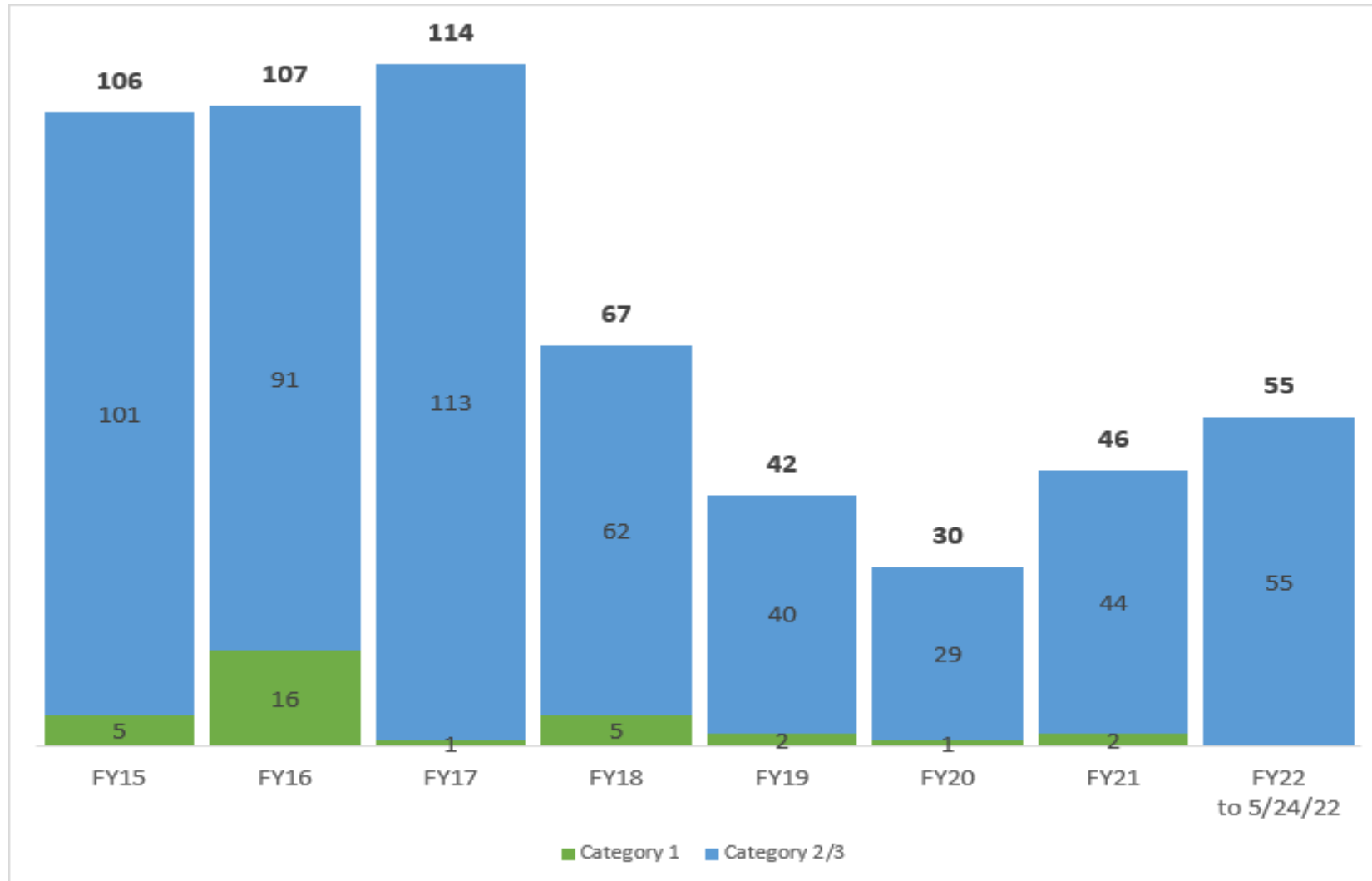
- a) 1976.
- b) 1980
- c) 1986
- d) 1991

WTD Publication Over the Years

We have published approximately 2,495 WTDs since 1986.



More recent publication data by fiscal year:



Publication Review Process

- Currently, all WTDs recommended for publication go through a robust review process.
- The process is designed to ensure the case is truly precedential and consistent with what we've done previously.

WTD Panel

- Reviews all determinations recommended for publication.
- Categorizes them by difficulty.

Internal DOR
Review

- Policy and Operating divisions review most WTD candidates.
- Focus is to fix issues if identified.

AGO Review

- Allows us to appreciate how WTD impacts current litigation.
- We will sometimes place publication on hold.

A proposal

- At the State Tax Conference, a suggestion was made to add an outside perspective to this process.
- We welcome your input.

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Internal DOR Review

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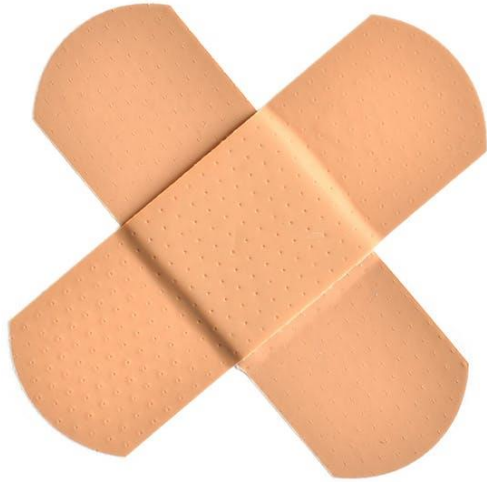
AGO Review

- Allows us to appreciate how WTD impacts current litigation.
- We will sometimes place publication on hold.

Stakeholder Review

- This is where we think it could work because the WTD candidates are sanitized after AGO review.
- We would also have a clearer picture of what we want to publish.

Back to WTD Withdrawal:



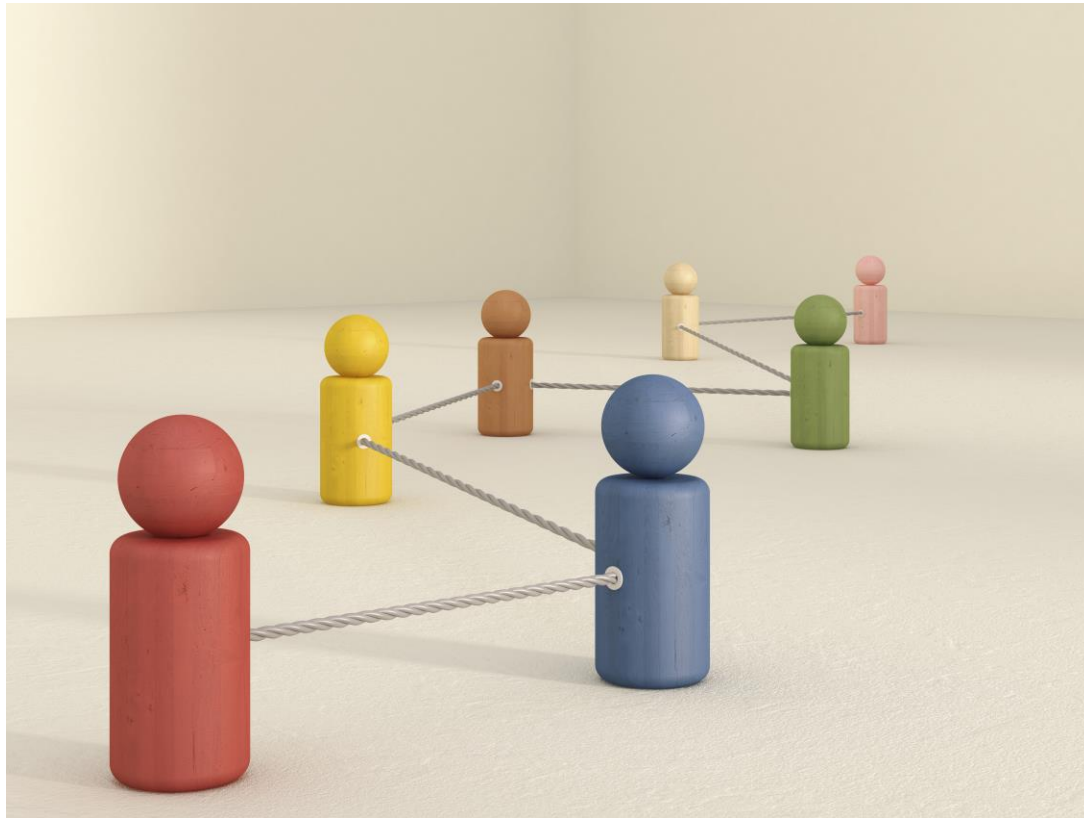
- Two approaches to withdrawing WTDs: (1) ETA 3133.2019 (14 total); and (2) some WTDs are overruled by subsequent WTDs.
- We also place a note on the top of the WTD indicating it was been withdrawn/overruled and update the WTD in Taxpedia.

The need for WTD Review

- Cases are only withdrawn when someone (internal or external) points out a problem in our WTD.
- Not all problems result in withdrawal.
- We suspect there are others that are no longer accurate. Could be because:
 - Law has evolved since publication;
 - Something was missed during the publication review process; or
 - We realize we got it wrong in the WTD.

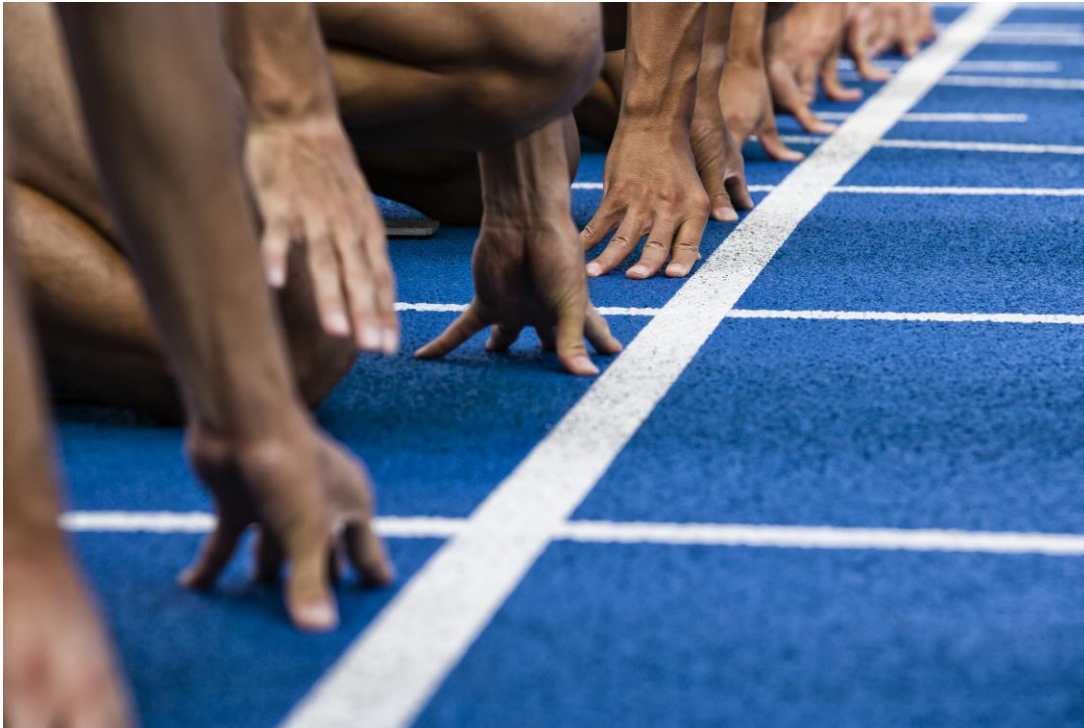


In July 2022, ARHD started its WTD Review Project.



- WTD Review Team:
 - TPS Is to review prior WTDs and research whether they continue to be accurate statements of the law and DOR policy,
 - TROs will provide initial review of their findings, and
 - Program oversight by an ARHD manager and the WTD Panel lead (ARHD's program manager).

Where will we start?



- Over 2,400 WTDs to review.
- Will start with low hanging fruit. Example: WTDs that discuss repealed statutes. Cases where we may already know the law has changed.
- Then, will review by Rule, starting with Rules that are more common.

The Bucket Approach

- Not every case with an outdated statute or rule needs to be withdrawn.
- Goal is to create buckets for withdrawal v. clarification.
 - **Group 1:** cases that are wrong and need to be withdrawn.
 - **Group 2:** cases where law was good at the time but has changed.
 - **Group 3:** cases where most of WTD is still good, but small part may not be.



What we want and what we don't want.

- What we want:
 - Clean up our WTDs and make sure that what someone reads they can rely on.
 - Make sure that we flag WTDs that are outdated.
 - We want to catch WTDs that are no longer consistent with DOR policy.
 - Catch errors.
- What we don't want:
 - To remove a WTD that is potentially harmful to the DOR's litigation strategy.
 - To unnecessarily withdraw all determinations that aren't current.
 - Change DOR precedent.

Timeline

July 2022: Start
Reviewing WTDs.

August/September
2022: Work with
Lean Transformation
Office to refine
process, develop
efficiencies.

Early 2023: Start
communicating to
public initial results.
Update ETAs.

We want your feedback and recommendations.

- The WTD review program is just starting and we have time to tweak it and make it as efficient as possible.
- We welcome your input. Both in terms of how you think WTD review should work and what determinations should be withdrawn.



Questions?