

CONTINUATION SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

ANNEX A

Title 61. Revenue, Part I. Department of Revenue, Subpart A.
General Provisions, Chapter 7. Board of Appeals.

§ 7.1. RESERVED.

§ 7.2. RESERVED.

§ 7.3. RESERVED.

§ 7.4. RESERVED.

§ 7.5. RESERVED.

§ 7.6. RESERVED.

§ 7.7. RESERVED.

§ 7.10. Definitions.

The following words and terms, when used in this chapter,
have the following meanings, unless the context clearly
indicates otherwise:

Administrative Proceeding - An administrative proceeding as
defined under the Administrative Agency Law (2 Pa.C.S. § 101),
including proceedings related to registrations and licenses.

Appeal - a request for one of the following:

(1) A resettlement, reassessment, redetermination, protest, review or refund of taxes, interest or payments made into the Commonwealth treasury, including a reassessment or refund as provided under Section 2703(a) of the Tax Reform Code (72 P.S. § 9703).

(2) A denial of an application for tax exempt status as a charitable, volunteer firemen's or religious organization or nonprofit educational institution.

(3) Reconsideration of interest payable on a tax overpayment.

(4) A redetermination of the Department's action regarding a claim for a property tax rebate or rent rebate as provided for under Section 1311 of the Taxpayer Relief Act (53 P.S. § 6926.1311).

(5) Review of other actions, other than administrative proceedings, arising under statutes administered by the Department.

Board - The Board of Appeals of the Department consisting of the Chairperson and members as designated by the Secretary.

§ 7.11. Jurisdiction.

The Board will exercise the powers and duties of the Department and the Secretary with respect to appeals and administrative proceedings before the Department.

§ 7.12. Manner of Proceeding before the Board.

Proceedings before the Board shall be initiated by the filing of a petition, whether the proceeding is an appeal or administrative proceeding.

§ 7.13. Petitions.

(a) Place. Petitions shall be filed with the Board.

(b) Time.

(1) Petitions shall be filed within the time limits prescribed by statute, this title or other regulation. The burden is on the petitioner to present evidence sufficient to prove that a petition is timely filed.

(2) In the absence of a specific time limit for filing as prescribed in paragraph (1), a petition shall be filed no later than 90 days after the date of the Department's decision or action that is the subject of the petition.

(3) The date of a Department decision or action for purposes of the filing of a petition is the mailing date of the notice of such decision or action. If there is no notice, then the date is when the petitioner became aware of the Department's decision or action.

(c) Receipt.

(1) General rule. A petition is filed with the Board on the date the Board receives it.

(2) Appeals. In the case of appeals, the Board receives a petition on the mailing date of the petition as provided for under Section 1102.1 of the FC (72 P.S. § 1102.1) and Section 3003.6 of the TRC (72 P.S. § 10003.6).

(3) A petition that the Board receives after the date prescribed by statute or this title, but presented to other Department personnel prior to or on the date prescribed by statute or this title is deemed filed as of the date the other Department personnel receives it.

(d) Manner and form. A petition may be delivered to and filed with the Board by hand delivery, mail or electronically through the Department's website. A petition shall be in writing. A writing includes an electronic petition submitted through the Department's website. The Department will prescribe the form for a petition.

(e) Contents. A petition shall contain all information, documentation and attachments required by statute and the following:

(1) General. All petitions shall contain the following:

(i) Petitioner's name, address and telephone number.

(ii) The name, address and telephone number of the petitioner's authorized representative, if any.

(iii) The petitioner's signature. If the petitioner is a corporation or association, an officer of the corporation or association shall sign the petition. If an authorized representative files the petition for the petitioner, then the authorized representative may sign the petition on behalf of the petitioner.

(iv) A detailed statement in separate numbered paragraphs of the facts and grounds relied upon. If based upon a written document, a copy of the document, or material part thereof, shall be attached.

(v) A statement specifying the relief requested.

(vi) A statement indicating whether or not a hearing is requested.

(vii) A signed statement certifying that the facts contained in the petition are true and correct to the petitioner's knowledge and belief, and that the petition is not made for purposes of delay.

(2) Appeal petitions. In addition to the requirements of paragraph (1), an appeal petition shall contain the following:

(i) Designation of the tax, including the year or other period, and the amount involved. A copy of any document relating thereto shall be attached.

(ii) Petitioner's license number, account number, employer identification number, Social Security number, claim number, file number, corporate box number or other appropriate identifying designation.

(iii) In the case of an Inheritance and Estate Tax protest, the petition shall contain the decedent's name, last known address, the file number and the assessment control number, if applicable.

(f) Docketing of petitions.

(1) The Department will docket upon receipt any filing that purports to be a petition. If a filing fails to

satisfy any statutory requirement for the filing of a petition,
the Board will notify the petitioner of the deficiency in the
filing and give the petitioner an opportunity to correct the
deficiency. The petitioner shall remedy the deficiency within
30 days of the Board's notice. If the petitioner fails to
remedy the deficiency, the Board will summarily dismiss the
petition.

(2) For purposes of section 806.1(a)(4) of the FC (72
P. S. § 806.1(a)(4)), the administrative review procedure will
be deemed to be initiated on the date the Board docketed the
petition.

(g) Additional Information. Upon written request, the
Board may require a petitioner to furnish additional information
that may be necessary to define the issues or to determine the
case.

(h) Signatures. A signature includes an electronic
signature issued by the Department to the Petitioner.

§ 7.14. Board practice and procedure.

(a) General rules. Practice and procedure before the
Board is as follows:

(1) Burden of proof. The petitioner shall have the burden of proof on all issues except fraud.

(2) Representation.

(i) An individual may appear on his own behalf or be represented by a person possessing the requisite technical education, training or experience. There is no requirement that a petitioner be represented before the Board by an attorney or certified public accountant. A petitioner's representative shall be authorized in writing to represent the petitioner. A letter signed by the petitioner, or a listing as a representative on the face of the petition signed by the petitioner will be accepted as authorization for representation. An authorization continues until the Board is notified in writing by the petitioner that the authorization is rescinded.

(ii) Only an attorney-at-law representing a petitioner, or the petitioner acting without representation before the Board, shall be permitted to raise or make a legal argument at a hearing before the Board.

(iii) A notice or other written communication to the petitioner shall be given to the petitioner's authorized representative, and shall have the same force and effect as if given to the petitioner directly. Action before the Board taken

by petitioner's authorized representative shall have the same force and effect as if taken by the petitioner.

(3) Consolidation or severance. Two or more proceedings may be consolidated or severed by the Board at its discretion.

(4) Hearings.

(i) Waiver. The petitioner may waive the right to a hearing and rest the case upon the petition and record, with or without a written brief. The Board on its own motion may require a hearing.

(ii) Notice of hearing. When the petitioner requests a hearing in writing, or when the Board requires a hearing, reasonable notice will be given to the petitioner in writing specifying the date, time and place for the hearing.

(iii) Continuances. The Board may grant a reasonable request for continuance of a scheduled hearing. The request shall be made or confirmed in writing, shall state the reasons for the continuance and shall be received within at least 5 days prior to the scheduled hearing. The Board may grant a request not in conformity with this paragraph in extraordinary circumstances.

(iv) Presiding officer. Hearings will be conducted by a presiding officer who will be a Board member or a hearing officer designated by the Board. Additional Board members or hearing officers may participate in a hearing at the discretion of the Board.

(v) Authority of presiding officer. The presiding officer has authority to do the following:

(A) Regulate the conduct of hearings, including the scheduling thereof, subject to Board policy, and the recessing, reconvening and adjournment thereof, and to do acts and take measures necessary or proper for the efficient conduct of hearings.

(B) Administer oaths and affirmations.

(C) Rule upon offers of proof and receive evidence.

(D) Take or cause depositions to be taken.

(E) Hold appropriate conferences before or during hearings.

(F) Dispose of procedural requests or similar matters.

(G) Take other action necessary or appropriate to the discharge of the the presiding officer's vested duties, consistent with statutory authority, regulations and Board policy.

(vi) Contemptuous conduct. Contemptuous conduct is grounds for exclusion from the hearing.

(5) Evidence. Hearings before the Board need not adhere to the technical rules of evidence or procedure. In cases involving issues of fact, oral testimony shall be under oath or affirmation. At the discretion of the Board's presiding officer, depositions or affidavits may be received in lieu of oral testimony if the actual presence of a witness is not feasible.

(6) Subpoenas. The Board, on its own motion or at the request of a petitioner, may compel the production of books, records, documents and other data pertinent to the issues and may require persons having information to appear and submit to oral examination under oath or affirmation. The petitioner shall pay the costs associated with the issuance of a subpoena requested by the petitioner as a condition precedent to the issuance of the subpoena.

(7) Additional hearings. After the conclusion of a hearing but prior to the issuance of a final decision, the Board or the presiding officer may, upon its own motion or upon request of the petitioner, allow one or more additional hearings.

(8) Decision and order. The Board will issue a final decision and order, as follows:

(i) The Board's final decision and order will include findings of facts and conclusions of law and dispose of all issues raised in the petition.

(ii) The Board's final decision and order will be in writing and signed by one or more members of the Board.

(iii) When provided by statute, the Board's exercise of equity power will be limited to situations where the petitioner establishes that he has acted in good faith, without negligence and with reasonable diligence.

(iv) One copy of the final decision and order will be mailed to the petitioner or to the petitioner's authorized representative at the mailing address shown on the petition.

(v) The Board may publish precedential decisions if the identity of the taxpayer is kept confidential.

(9) Corrected orders.

(i) The Board may, on its own motion or at the request of the Petitioner, correct clerical or computational errors contained in a final order. The corrected order will specifically set forth the items in the prior order that are being corrected and will contain a provision indicating that except for the corrections being made the prior order is affirmed.

(ii) The issuance of a corrected order will not extend the period for which an appeal may be taken from the original final order.

(b) Appeals. In addition to the provisions of subsection (a), practice and procedure before the Board related to appeals shall be as follows:

(1) Confidential character of hearings. Information gained from hearings shall be considered confidential information under section 731 of the Fiscal Code (72 P. S. § 731).

(2) Transcripts. No written transcripts of hearings will be prepared by the Board; however, a recording of the hearing may be made at the discretion of either the Board or the petitioner.

(3) Decision and Order. In the Board's discretion, the Board's final decision and order involving an assessment of tax, interest, penalties or additions may separate the reassessment into one of the following:

(i) Reporting periods involving disputed and nondisputed tax, interest, penalties or additions.

(ii) Disputed and nondisputed tax, interest, penalties or additions.

(4) Bonds and Security.

(i) Sales, use and hotel occupancy tax bonds.

(A) In the case of petitions involving the sales, use and Hotel Occupancy Tax, the Department may by notice require a petitioner to file a surety bond. This bond shall be filed within 5 days of the date of the notice. Surety bonds shall be on a form approved by the Department, in an amount of 120% of the amount of the assessment remaining unpaid at the

time of notice of bond requirement, and shall be issued by a surety company authorized to do business in this Commonwealth.

(B) A petitioner, in lieu of filing a bond, may deposit with the Department a certified check payable to the Pennsylvania Department of Revenue in the amount of the bond required. On written application to and approval by the Department, the petitioner may post other security.

(C) If a surety bond is required, a petitioner may, within the time for filing the bond, file a written request for a hearing before the Board regarding the need for or amount of the bond. The petitioner shall furnish a financial statement to the Board at the time the request for hearing is made. The validity of the assessment itself may not be considered at the hearing. The determination of the Board will be final and its order shall be complied with within 15 days after notice thereof is mailed to the petitioner. If a taxpayer fails to appear at a scheduled hearing, the Board may immediately cause a lien to be filed under section 242 of the Tax Reform Code (72 P. S. § 7242).

(ii) Personal income tax security requirement in jeopardy assessment appeals. A petition for reassessment of a jeopardy assessment shall be accompanied by a bond or other

security in an amount that the Department deems necessary. The bond shall be executed by a surety company which is authorized to do business in this Commonwealth. A petitioner may deposit with the Department, cash or a certified check payable to the Pennsylvania Department of Revenue in the amount required by the Department. On written application to and approval by the Department, the petitioner may post other security. In the case of failure to post an acceptable bond or other security, the Board will nonetheless accept the petition, if filed within the 10 day period provided by statute. If an acceptable bond or other security is not posted, the Department has the right to file a lien or otherwise proceed with collection of the assessment, even though the assessment has been appealed.

(c) Administrative Proceedings. In addition to the provisions of subsection (a), practice and procedure before the Board related to administrative proceedings shall be as follows:

(1) Applicable law. The Administrative Agency Law (2 Pa.C.S. § 103(a)) and other applicable laws and regulations related to the administrative proceeding shall apply.

(2) Record. A full and complete record shall be kept of the proceedings.

(3) Transcripts. Hearings and testimony provided during such hearings shall be stenographically recorded. Copies of hearing transcripts will be made available to the petitioner at the petitioner's cost.

Chapter 901. LOCAL OPTION SMALL GAMES OF CHANCE

§ 901.1. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

* * *

Board—[The Small Games of Chance Board of the Department] The Board of Appeals of the Department as provided for in Part I, Chapter 7 of this Title.

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BOARD PROCEDURES

§ 901.161. Jurisdiction and purpose.

The Board will receive and review petitions challenging the Department's decisions to deny an application for a manufacturer registration certificate or game of chance approval or a distributor license. The Board will also receive and review petitions from manufacturers or distributors challenging the Department's revocation of a manufacturer registration certificate, game of chance approval or a distributor license. [The Board will provide petitioners with the opportunity for a hearing and will make recommendations to the Secretary regarding petitions.]

§ 901.162. RESERVED.

§ 901.163. RESERVED.

§ 901.164. Petitions.

[(a) Time for filing.] A petition shall be filed within 15 days after the applicant, registrant or licensee receives notice of the Department's decision.

[(b) Place for filing. A petition shall be filed with the Bureau of Business Trust Fund Taxes, Department 280901, Harrisburg, Pennsylvania 17128-0901. A change of address will be published as a notice in the Pennsylvania Bulletin.

(c) Form and content. A petition shall be in writing, signed by the petitioner, a responsible person or authorized representative, and shall contain:

(1) The petitioner's name, address and telephone number.

(2) The name, address and telephone number of the authorized representative, if any.

(3) A copy of the notice of the Department's decision.

(4) A detailed statement in separate numbered paragraphs of the facts and grounds relied upon, specifically stating why the Department's decision is improper.

(5) A copy of the documents relevant to the petition.

(6) A statement specifying the relief requested by the petitioner.

(7) A statement indicating whether or not a hearing is requested.

(8) A signed statement certifying that to the petitioner's knowledge and belief, the facts contained in the

petition are true and correct and that the petition is not made for purposes of delay.

(9) The petition shall contain pertinent data known to the petitioner.

(d) Number of copies. Four copies of the petition and documentation shall be submitted.

(e) Additional information. Upon written request, the Board may require a petitioner to furnish additional information that may be necessary to define the issues or to determine the case. The Board may deny the petition for failure to furnish the additional information within a stated, reasonable amount of time after the request.]

§ 901.165. Board practice and procedure.

[(a) General. The provisions of 2 Pa.C.S. §§ 501–508 and 701–704 (relating to the administrative agency law) do not apply to practice and procedure before the Board to the extent that those provisions are inconsistent with §§ 901.161–901.164, this section and §§ 901.166–901.168 (relating to Board recommendation; decision and order; and stay of appeal).

(b) Representation.

(1) A petitioner is not required to be represented before the Board by an attorney. An individual or a partner in a partnership, corporation or association may be represented by a bona fide officer thereof or another person upon a showing of adequate authorization. A petitioner's representative shall be authorized in writing to represent the petitioner. A letter signed by the petitioner or a listing as a representative on the face of the petition signed by the petitioner will be accepted as authorization for representation. An authorization continues until the Board is notified in writing by the petitioner that the authorization is rescinded. A party may be represented by a member in good standing of the bar of this Commonwealth.

(2) Only an attorney-at-law representing a petitioner, or the petitioner acting without representation before the Board, is permitted to raise or argue a legal question at a hearing before the Board.

(3) Notices and other written communications to the petitioner will be given to the petitioner's authorized representative, and will have the same force and effect as if given to the petitioner directly. Action before the Board taken by the petitioner's authorized representative will have the same force and effect as if taken by the petitioner.

(c) Hearings.

(1) Waiver. The petitioner has the right to a hearing or to have the case decided upon the petition and record. A hearing shall be requested in writing. If a hearing is not requested, it is considered waived.

(2) Notices of hearing. When the petitioner requests a hearing in writing, reasonable notice will be given to the petitioner in writing specifying the date, time and place of the hearing.

(3) Continuances. The Board may grant a reasonable request for continuance of a scheduled hearing. The request shall be made or confirmed in writing, state the reasons for the continuance and be received at least 5 days prior to the scheduled hearing. The Board may grant a request that is not in conformity with this paragraph under extraordinary circumstances. The Board will notify the petitioner of its decision on the requested continuance.

(4) Presiding officer. The Deputy Secretary or a designee shall conduct the hearings.

(5) Transcripts. Written transcripts of hearings will not be prepared by the Board unless specifically requested in

writing. The cost of the transcript is \$1.50 per page. A recording of the hearing will be made.

(6) Contemptuous conduct. Contemptuous conduct is grounds for exclusion from the hearing.

(d) Authority of presiding officer. The presiding officer has authority to:

(1) Regulate the conduct of hearings, including scheduling, recessing, reconvening and adjourning, and to do acts and take measures necessary or proper for the efficient conduct of hearings.

(2) Administer oaths and affirmation.

(3) Receive evidence.

(4) Take or cause depositions to be taken.

(5) Hold appropriate conferences before or during hearings.

(6) Take other action necessary or appropriate to the discharge of the duties vested in the officer, consistent with statutory authority, regulations and Board policy.

(7) Participate in making decisions.

(8) Rule upon offers of proof and receive relevant evidence.

(9) Dispose of procedural requests or similar matters.

(e) Service. Notices and decisions issued under §§ 901.161–901.164, this section and §§ 901.166–901.168 will be sent by first class mail, postage prepaid.

(f) Consolidation. Two or more proceedings may be consolidated or severed by the Board at its discretion.

(g) Bond. A registrant or licensee whose license or registration has been revoked due to Commonwealth tax liabilities, and who has been notified of the revocation, shall file a bond in an amount of 120% of the tax and interest with the Department for an appeal of the revocation to stay the revocation.

(h) Evidence and subpoenas. The presentation of evidence and the issuance of subpoenas relating to hearings before the Board are governed by 1 Pa. Code Chapter 35 Subchapter C (relating to evidence and witnesses).

(i) Burden of proof. The petitioner has the burden of proof.]

The provisions of this Section and Part I, Subpart A, Chapter 7 of this Title shall govern the practice and procedure before the Board.

§ 901.166. RESERVED.

§ 901.167. RESERVED.

§ 901.168. Stay of appeal.

(a) After a petition is filed, actions [Actions] to revoke a registration, license or game approval will be stayed pending the decision of the [Secretary when a petition has been filed with the] Board.

(b) [During the pendency of the appeal]Pending the Board's decision and order, the certificate, game approval or license of the petitioner will be suspended. (See § 901.23a (relating to effect of denial, suspension, revocation, expiration of a certificate, license or game of chance).)

10/30/10