



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

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JUL 20 2012

HARRISBURG OFFICE

July 20, 2012

Honorable Mike Brubaker
Chairman
Senate Finance Committee
Senate of Pennsylvania
168 Main Capitol
Senate Box 203036
Harrisburg, PA 17120-3036

Dear Senator Brubaker:

Enclosed please find the Department of Revenue's draft final form regulation relating to the consolidation of administrative proceedings administered by the Department under the jurisdiction of the Board of Appeals. The language set forth in this draft regulation amends the proposal that was published at 42 Pa.B.1222 (March 10, 2012).

We would appreciate it if you could convey your comments to this office by **August 21, 2012**. Comments received by this date will be considered in the drafting of the final form regulation.

Thank you for your anticipated input and assistance in promulgating this regulation.

Sincerely,

Douglas A. Berguson
Senior Counsel

Enclosures

DAB:jjjs
#32094



**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

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DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: _____ (Deputy Attorney General)</p> <hr/> <p>DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:</p> <p>PA Department of Revenue (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>15-454</u></p> <p>DATE OF ADOPTION _____</p> <p>BY _____ Daniel Meuser TITLE <u>Secretary of Revenue</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p>BY _____</p> <hr/> <p>DATE OF APPROVAL</p> <p>(Deputy General Counsel) (Chief Counsel-Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General Approval or objection within 30 days after submission.</p>
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NOTICE OF FINAL RULEMAKING

DEPARTMENT OF REVENUE

Board of Appeals - Small Games of Chance

61 Pa. Code Chapters 7 and 901

PREAMBLE

The Department of Revenue (Department), under authority contained in section 6 of The Fiscal Code (72 P.S. § 6) and section 306 of the Local Option Small Games of Chance Act (10 P.S. § 328.306) proposes amendments to 61 Pa. Code, Chapter 7. Board of Appeals and Chapter 901. Local Option Small Games of Chance to read as set forth in Annex A.

Purpose of Regulation

This regulation contains amendments to Parts I and VII of Title 61. This proposed rulemaking consolidates all administrative appeals under the jurisdiction of the Department's Board of Appeals (the "Board"). Additionally, the proposed rulemaking will streamline the administrative appeals process by creating a uniform set of procedures for all administrative appeals within the Department. The proposed rulemaking preserves the Board's jurisdiction over tax appeals.

Explanation of Regulatory Requirements

The current regulations at §§ 7.1 - 7.7 are reserved.

Section 7.11 (relating to definitions) contains the definition for "Board" previously contained in § 7.1 (relating to definitions) and definitions of "administrative proceeding" and "appeal."

Section 7.12 (relating to jurisdiction) explains that the Board's jurisdiction includes appeals and administrative proceedings as defined in § 7.11.

Section 7.13 (relating to manner of proceeding before the Board) explains that proceedings before the Board are initiated by the filing of a petition.

Section 7.14 (relating to petitions) contains the text in current § 7.3 (relating to petitions) with some minor modifications explained as follows:

Subsection 7.14(a) contains language in current § 7.3(a) stating that petitions should be filed with the Board.

Subsection 7.14(b) is an expansion of language in current § 7.3(a) regarding the time limits for filing a petition.

Subsection 7.14(c) is an expansion of language in current § 7.3(a) regarding receipt of a petition.

Subsection 7.14(d) is language that is in current § 7.3(b) and is expanded to include electronically filed petitions.

Subsection 7.14(e) is language in current § 7.3(b)(1). This subsection explains the general requirements and contents of a petition and also additional requirements for an appeal petition.

Subsection 7.14(f) is language that is in current § 7.3(c) that has been revised to explain the process of docketing petitions.

Subsection 7.14(g) is language in current § 7.3(b)(1)(ix) regarding additional information.

Subsection 7.14(h) is new language added to include electronic signatures.

Section 7.15 (relating to Board practice and procedure) contains the text in current § 7.5 (relating to Board practice) with minor modifications explained as follows:

Subsection 7.15(a)(1), which explains the burden of proof before the Board, is identical to current § 7.5(c)(2).

Subsection 7.15(a)(2) is nearly identical to § 7.5(b) with minor rewording and describes the petitioner's right to have representation.

Subsection 7.15(a)(3) explains the Board's discretion to consolidate or sever multiple proceedings.

Subsection 7.15(a)(4) is made up primarily of the language in current § 7.5.(c) and (d) regarding the conduct and procedures of hearings.

Subsection 7.15(a)(5) contains the identical language in current § 7.5.(e) regarding evidence.

Subsection 7.15(a)(6) is language from current § 7.5.(f) regarding subpoenas with minor rewording.

Subsection 7.15(a)(7) is language from current § 7.5(h) regarding additional hearings and evidence.

Subsection 7.15(a)(8) contains language from current § 7.6 (relating to decision and order) regarding the Board's decision and order.

Subsection 7.15(a)(9) is generally the language from current § 7.7 (relating to reconsideration) modified to clarify the Board's ability to issue corrected orders for clerical and computational errors.

Subsection 7.15(b) contains language from §§ 7.5(c)(5) and (7), 7.6(c) and 7.3(b)(2)(ii).

Subsection 7.15(c) explains additional practices and procedures for administrative proceedings before the Board.

Section 7.16 (relating to security upon petition for review) outlines the requirements and procedures for taxpayers to file appropriate security with their petition for review filed in Commonwealth Court.

Section 901.1 (relating to definitions) is amended to change the definition of "Board" to mean the Board of Appeals rather than the Small Games of Chance Board.

The last sentence of § 901.161 (relating to jurisdiction and purpose), regarding the Board's recommendation to the Secretary, is deleted to maintain consistency with other changes in this rulemaking.

Sections 901.162 and 901.163 (relating to composition; and powers and duties) are reserved.

Section 901.164(a) (relating to petitions) is amended to clarify the time frame for filing a petition challenging a decision of the Department and § 901.164(b)-(e) is reserved.

Section 901.165 (relating to board practice and procedure) is amended by deleting the existing language and adding new language that states what sections in the regulations govern the practice and procedures before the Board.

Sections 901.166 and 901.167 (relating to board recommendation; and decision and order) are deleted.

Section 901.168(a) and (b) (relating to stay of appeal) is amended by updating language in subsections (a) and (b) to be consistent with other changes in this rulemaking.

Affected Parties

Pennsylvania taxpayers and tax practitioners may be affected by the regulation.

Comment and Response Summary

Notice of proposed rulemaking was published at 42 Pa.B. 1222 (March 10, 2012). This proposal is being adopted with changes to read as set forth in Annex A.

The Department received no comments from the public during the public comment period. No comments were received from either the House Finance Committee or the Senate Finance Committee. Due to content of this rulemaking, the Department also served the proposed rulemaking on the House Gaming Oversight Committee and

they had no comments. The only comments received on the proposed rulemaking were from the Independent Regulatory Review Commission (IRRC).

Explanations and amendments to the proposed rulemaking in response to IRRC's comments are as follows:

(1) In response to IRRC's request to specifically and consistently identify the Department's statutory authority, the Department is revising the citation in the preamble to the Local Option Small Games of Chance law to reflect the specific statutory section that gives the Department regulatory authority. Further, the Department is revising the response to Question # 8 of the Regulatory Analysis Form ("RAF") to mirror the citations contained in the preamble.

(2) IRRC expressed concern regarding references to "statutes," "prescribed by statute" and "required by statute" in §§ 7.14 and 7.15. These references are not intended to refer to a specific statute or statutes, but are general in nature. There are too many applicable statutory sections to reference in this regulation. Therefore, no change has been made.

(3) In response to IRRC's request for additional information on Question # 10 of the RAF regarding how many people will benefit from the changes and quantify those benefits, the Department has revised its response to Question # 10 in the final rulemaking RAF.

(4) Subsection 7.14(b): This subsection is not intended to provide guidance on all possible filing deadlines. Other statutes and regulations provide for such deadlines. The Department does not believe it is necessary to provide a cross-reference here.

Subsection 7.14(b)(3) and Section 901.164: The Department has changed these provisions to provide that an appeal must be filed within a specific time frame from the date of the Department's notice. This eliminates the need for determining when a taxpayer or person receives the notice and provides a definite time frame for filing.

Subsections 7.14(c) and (d): IRRC suggests that the Department define the term electronic/electronically/electronic means. It is intended that these terms shall have their general and common usage meanings and do not need to be defined in the regulation. The terms reference any electronic method of filing permitted by the Department. Other Department publications and resources provide taxpayer guidance as to the available electronic filing methods accepted by the Department. Further, subsection (d) already provides that electronic filing can include "facsimile transmittals and transmission via the Department's website."

Subsection (c)(2): This subsection merely provides a cross-reference. As such it would be redundant to reiterate an existing statute here. Reiterating the cross-referenced statute here would

require a regulatory change should the cross-referenced statute ever change. Therefore, no change has been made.

Subsection (d) Manner and form: All Department forms are available to the public. The manners in which forms are available are subject to change based upon availability, budgetary constraints and technology. The Department believes the public understands that Department forms are available from the Department and that they contact the Department by writing, telephone, fax or internet to obtain them. It is not necessary for a regulation to describe all of the methods for contacting the Department.

In response to IRRC's comment on Subsection 7.14(e)(2)(i), the Department agrees that the last sentence of this subsection is ambiguous. Therefore, it has been deleted in the final rulemaking.

(5) In the final rulemaking, the Department revised § 901.165 in response to IRRC's comment. The use of the phrase "This section" was incorrect. The Department has corrected this mistake and changed the phrase to read, "The provisions of this Part relating to Board Procedures."

Fiscal Impact

The Department has determined that the proposed amendment will have no fiscal impact on the Commonwealth.

Paperwork

The proposed amendment will not create additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The regulation will become effective upon final publication in the Pennsylvania Bulletin. The regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing any comments, suggestions, or objections regarding the proposed amendment to Mary R. Sprunk, Office of Chief Counsel, PA Department of Revenue, P.O. Box 281061, Harrisburg, Pennsylvania 17128-1061, within thirty (30) days after the date of the publication of this notice in the Pennsylvania Bulletin.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 28, 2012, the Department submitted a copy of this proposed rulemaking, published at 42 Pa.B. 1222 (March 10, 2012) to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance, the Senate Committee on Finance and the House Committee on Gaming Oversight. No comments were received from the public. Therefore, compliance with 5(c) of the Regulatory Review Act, which requires IRRC and

the Committees with copies of all comments received, was not required.

In preparing these final form regulations, the Department considered the comments received from IRRC. There were no comments received on the proposed rulemaking from the Committees or the public.

The final-form regulations were deemed approved by the Committees on _____, 2012 and were approved by IRRC on _____, 2012 in accordance with section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)).

Findings

The Department finds that:

(1) Public notice of intention to amend regulations has been duly given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments are necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code Chapters 7 and 901, are amended by adding §§ 7.11 - 7.16, deleting §§ 7.1 - 7.7, modifying §§ .901.1, 901.165 and 901.168 and deleting

§§ 901.162, 901.163, 901.164(b)-(e), 901.166 and 901.167 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the Pennsylvania Bulletin.

DANIEL MEUSER
SECRETARY OF REVENUE

6/12/12

Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency:

Revenue

(2) Agency Number:

Identification Number: 15-454

 **DRAFT**

IRRC Number:

(3) PA Code Cite: 61 Pa. Code Chapter 7 and Chapter 901

(4) Short Title: Board of Appeals

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Mary R. Sprunk, Regulatory Coordinator, (717) 783-7524, msprunk@pa.gov

Secondary Contact: Douglas A. Berguson, Senior Counsel, (717) 346-4633, dberguson@pa.gov

(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Department is promulgating a new regulation that will expand the Board of Appeals' jurisdiction to include appeals of Department administrative proceedings. This regulation gives clear instructions and will streamline the process for taxpayers seeking to file an appeal of a Department administrative proceeding. The regulation preserves the Board of Appeals' jurisdiction over tax appeals as well as the procedure and rules associated with tax appeals.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Statutory authority for the regulation is set forth in section 6 of the Fiscal Code (72 P.S. § 6) and section 306 of the Local Option Small Games of Chance Act (10 P.S. § 328.306)

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is not mandated by federal or state law, court order or federal regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This regulation will create clear guidance for taxpayers seeking an appeal of an administrative proceeding within the Department. Additionally, the regulation preserves the Board of Appeals' jurisdiction over tax appeals as well as the procedure and rules associated with tax appeals. It is anticipated that these regulations will have very little effect on the volume of appeals received by the Board of Appeals (BOA) because no substantive change was made to the tax appeals process. These regulations will now provide that the BOA has jurisdiction of administrative appeals of record required to be held by the Department which occur infrequently. We do not anticipate that the BOA will receive more than 50 administrative appeals in a year and it will not affect the number of tax appeals. The regulation is promulgated to revise the internal workings of the Department.

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

N/A

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

No parties should be adversely affected by the regulation.

(13) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

Pennsylvania taxpayers and tax practitioners will be required to comply with the regulation.

(14) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation does not increase costs or savings to the regulated community. No legal, accounting or consulting procedures are required by this regulation.

(15) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation does not increase costs or savings to the regulated community. No legal, accounting or consulting procedures are required by this regulation.

(16) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation does not increase costs or savings to the regulated community. No legal, accounting or consulting procedures are required by this regulation.

(17) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. **Not Applicable**

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(17a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There are no adverse effects from this regulation and implementation costs are minimal.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

A copy of the regulation was forwarded to the Pennsylvania Bar Association, the Philadelphia Bar Association, the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Society of Public Accountants, the Pennsylvania Chamber of Business and Industry, the Pennsylvania Food Merchants Association – Pennsylvania Convenience Store Council, the Pennsylvania Motor Truck Association and the Pennsylvania Petroleum Marketers & Convenience Store Association. This regulation is listed on the Department's Quarterly Regulatory Report posted on the Department's website and will be forwarded to interested parties upon request.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

There are no alternative regulatory provisions associated with the regulation.

(21) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no federal standards associated with this regulation.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation will not put Pennsylvania at a competitive disadvantage with other states.

(23) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation does not affect any other existing or proposed regulations of the Department or any other state agency.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This regulation expands the Board of Appeals' jurisdiction to include the appeal of Department administrative proceedings. It gives clear guidance and a streamlined process for taxpayers seeking an appeal of a Department administrative proceeding. Further, taxpayers seeking to appeal the outcome of a Department administrative proceeding will be required to complete a Board of Appeals Petition Form.

(25) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

N/A.

(26) Include a schedule for review of the regulation including:

- | | |
|---|------------------------------------|
| A. The date by which the agency must receive public comments: | <u>30 days after publication</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>4th quarter 2012</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon final publication</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>Upon final publication</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(27) Provide the schedule for continual review of the regulation.

This regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

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

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ANNEX A

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

§§ 7.1. - 7.7. (Reserved)

§ 7.11. Definitions.

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

Administrative proceeding - As defined in 2 Pa.C.S. § 101
(relating to definitions), including proceedings related to
registrations and licenses.

Appeal - A request for or a review or protest of one of the
following:

(i) A resettlement, reassessment, redetermination,
review or refund of taxes, interest, penalties, additions or
payments made into the State treasury, including a reassessment
or refund as provided under Section 2703(a) of the TRC (72 P.S.
§ 9703(a)).

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

(iii) A reconsideration of interest payable on a tax overpayment.

(iv) 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).

(v) A 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.

§ 7.12. 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.

§ 7.13. Manner of Proceeding before the Board.

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

§ 7.14. 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 date of the notice of the decision or action. ~~If a there is not a 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. A petition that is received by electronic means after the close of business is received on

the date of transmission as long as the Board receives the transmission by 12 midnight.

(2) Appeals. Section 1102.1 of the FC (72 P.S. § 1102.1) and section 3003.6 of the TRC (72 P.S. § 10003.6) apply to appeals that are transmitted to the Department by mail.

(3) Department personnel. A petition that the Board receives after the date prescribed by statute or this title that is 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, including facsimile transmittal or through the Department's web site. A petition shall be in writing. A writing includes an electronic petition submitted through the Department's web site. The Department will prescribe the form for a petition.

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

(1) General. Petitions must contain the following:

(i) The 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, 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 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 must contain the following:

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

(ii) The 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 must 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 a filing that purports to be a petition or which otherwise claims relief that may be sought through the filing of 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 deficiencies, 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.

§ 7.15. 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 not a 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. The Board may, upon its own motion or the request of a petitioner, consolidate or sever two or more proceedings at its discretion.

(4) Hearings.

(i) Request for hearing. The Board will provide a petitioner the opportunity for a hearing upon written request.

(ii) 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.

(iii) 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.

(vi) 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 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.

(v) 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.

(vi) 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 presiding officer's vested

duties, consistent with statutory authority, regulations and Board policy.

(vii) 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 instead 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 and evidence. 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 or the submission of additional evidence.

(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 when 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) Reconsideration.

(i) Within the statutory appeal period and prior to the statutory time when the Board's failure to act results in a denial of an appeal, and upon the written request of a petitioner or upon request of the Department, the Board may reopen a case in which a final decision and order has been issued, for the following purposes:

(A) Correcting clerical or computational errors.

(B) Considering evidence that the Department or the Board received on or prior to the mailing date of the final decision and order and not taken into consideration as part of the final decision and order.

(ii) If the Board decides to reopen a case, a member of the Board will notify the petitioner in writing and provide an opportunity for a hearing. An amended decision and order will be issued.

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

(1) Nonapplicable law. Sections 501-508 and 701-704 of 2 Pa.C.S. (relating to Administrative Agency Law) do not apply.

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

(3) Transcripts. Written transcripts of hearings will not be prepared by the Board. A recording of the hearing may be made at the discretion of either the Board or the petitioner.

(4) 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.

(5) 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, instead 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 TRC (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 subsection (a), practice and procedure before the Board related to administrative proceedings shall be as follows:

(1) Applicable law. Sections 501-508 and 701-704 of Pa.C.S. (relating to Administrative Agency Law) and other applicable laws and regulations related to the proceeding apply.

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

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

§ 7.16. Security upon petition for review.

(a) General Rule. The Pennsylvania Rules of Appellate Procedure provide that a petition for review of an order of the Board of Finance and Revenue in a tax matter filed with the Commonwealth Court operates as a supersedeas upon the filing of appropriate security.

(b) Alternate procedure. If appropriate security is not filed as described in subsection (a), the Department will pursue collection activity, including the filing of a lien, to collect unpaid tax, interest, additions or penalties subject to the Commonwealth Court's review except as provided subsection (c).

(c) Rules and procedures.

(1) Request for Department review. A person may submit a request to the Department to determine whether the amount of unpaid tax, interest, additions or penalties is in jeopardy of collection if appropriate security is not provided.

(2) Determination. If the Department determines that the amount of unpaid tax, interest, additions or penalties is not in jeopardy, then the Department will not pursue collection activities during the Commonwealth Court's review. The Department's determination will be based upon the documentation required to be submitted in paragraph (3). The Department's determination under this paragraph is made solely at the Department's discretion.

(3) Procedure. The request under paragraph (1) shall be made in writing on a form prepared by the Department. The written request shall include the person's most recent financial statements, including a balance sheet, income statement and all notes pertaining to the statements. The Department may request other financial documentation. An individual may be required to submit a personal balance sheet.

(4) Appeal rights. There is not a right to appeal the Department's determination under paragraph (2).

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 Chapter 7 (relating to Board of Appeals).

* * *

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.~~ A PERSON CHALLENGING A DECISION OF THE DEPARTMENT SHALL FILE A PETITION WITHIN 15 DAYS AFTER THE ISSUE DATE OF 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.]

~~This section~~ THE PROVISIONS OF THIS PART RELATING TO BOARD PROCEDURES and Chapter 7 (relating to Board of Appeals) govern practice and procedure before the Board.

§ 901.166. RESERVED.

§ 901.167. RESERVED.

§ 901.168. Stay of appeal.

(a) [Actions] After a petition is filed, 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).)

6/12/12