

## 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