

CHAPTER 7. BOARD OF APPEALS

- Sec.
7.1—7.7. [Reserved].
7.11. Definitions.
7.12. Jurisdiction.
7.13. Manner of proceeding before the Board.
7.14. Petitions.
7.15. Board practice and procedure.
7.16. Security upon petition for review.

Authority

The provisions of this Chapter 7 issued under section 6 of The Fiscal Code (72 P. S. § 6), unless otherwise noted.

Source

The provisions of this Chapter 7 adopted January 9, 1987, effective January 10, 1987, 17 Pa.B. 186, unless otherwise noted.

Cross References

This chapter cited in 61 Pa. Code § 2.11 (relating to appeals); 61 Pa. Code § 6.11 (relating to appeals of denial and penalty reinstatement); 61 Pa. Code § 58.11 (relating to taxes paid; purchases resold); 61 Pa. Code § 119.13 (relating to restrictions on refunds); 61 Pa. Code § 119.18 (relating to limitations on refund or credit); 61 Pa. Code § 901.1 (relating to definitions); and 61 Pa. Code § 901.165 (relating to Board practice and procedure).

§ 7.1. [Reserved].**Authority**

The provisions of this § 7.1 amended under sections 6 and 1301.26 of the act of April 9, 1929 (P.L. 343, No. 176) (72 P. S. §§ 6 and 1301.26); reserved under 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).

Source

The provisions of this § 7.1 adopted January 9, 1987, effective January 10, 1987, 17 Pa.B. 186; amended September 21, 1990, effective September 22, 1990, 20 Pa.B. 4865; reserved January 25, 2013, effective January 26, 2013, 43 Pa.B. 532. Immediately preceding text appears at serial page (198141).

§§ 7.2 and 7.3. [Reserved].**Authority**

The provisions of these §§ 7.2 and 7.3 reserved under 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).

Source

The provisions of these §§ 7.2 and 7.3 reserved January 25, 2013, effective January 26, 2013, 43 Pa.B. 532. Immediately preceding text appears at serial pages (198141) to (198144).

§ 7.4. [Reserved].**Authority**

The provisions of this § 7.4 amended under sections 6 and 1301.26 of the act of April 9, 1929 (P.L. 343, No. 176) (72 P.S. §§ 6 and 1301.26); reserved under 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).

Source

The provisions of this § 7.4 adopted January 9, 1987, effective January 10, 1987, 17 Pa.B. 186; amended September 21, 1990, effective September 22, 1990, 20 Pa.B. 4865; reserved January 25, 2013, effective January 26, 2013, 43 Pa.B. 532. Immediately preceding text appears at serial page (198144).

Cross References

This section cited in 61 Pa. Code § 32.21 (relating to charitable, volunteer firemen's and religious organizations, and nonprofit educational institutions).

§§ 7.5—7.7. [Reserved].**Authority**

The provisions of these §§ 7.5—7.7 reserved under 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).

Source

The provisions of these §§ 7.5—7.7 reserved January 25, 2013, effective January 26, 2013, 43 Pa.B. 532. Immediately preceding text appears at serial pages (198144) to (198147).

§ 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.

Authority

The provisions of this § 7.11 issued under 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).

Source

The provisions of this § 7.11 adopted January 25, 2013, effective January 26, 2013, 43 Pa.B. 532.

§ 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.

Authority

The provisions of this § 7.12 issued under 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).

Source

The provisions of this § 7.12 adopted January 25, 2013, effective January 26, 2013, 43 Pa.B. 532.

§ 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.

Authority

The provisions of this § 7.13 issued under 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).

Source

The provisions of this § 7.13 adopted January 25, 2013, effective January 26, 2013, 43 Pa.B. 532.

§ 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.

(Editor's Note: The act of October 30, 2017 (P. L. 672, No. 43) amended the appeal period from 90 days to 60 days. The Department will amend the following paragraph in a future rulemaking.)

(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.

(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.

(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.

Authority

The provisions of this § 7.14 issued under 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).

Source

The provisions of this § 7.14 adopted January 25, 2013, effective January 26, 2013, 43 Pa.B. 532.

§ 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 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.

(iv) *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 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 do not need to 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 2 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.

Authority

The provisions of this § 7.15 issued under 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).

Source

The provisions of this § 7.15 adopted January 25, 2013, effective January 26, 2013, 43 Pa.B. 532.

§ 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).

Authority

The provisions of this § 7.16 issued under 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).

Source

The provisions of this § 7.16 adopted January 25, 2013, effective January 26, 2013, 43 Pa.B. 532.

[Next page is 8-1.]