

**CHAPTER 703. TAX AND OTHER APPEAL PROCEEDINGS**

**Subchap.**

**A. SUBMISSIONS .....703.1**

**B. COMPROMISE PROCEDURES ..... 703.11**

**C. PREHEARING CONFERENCES..... 703.21**

**D. HEARINGS .....703.31**

**E. REQUEST FOR RECONSIDERATION .....703.41**

**F. PUBLICATION OF ORDERS..... 703.51**

**Authority**

The provisions of this Chapter 703 issued under section 2703.1(m) of the Tax Reform Code of 1971 (72 P.S. § 9703.1(m)), unless otherwise noted.

**Source**

The provisions of this Chapter 703 adopted July 8, 2016, effective July 9, 2016, 46 Pa.B. 3646, unless otherwise noted.

**Subchapter A. SUBMISSIONS**

**Sec.**

703.1. Petitions generally.

703.2. Petition content.

703.3. Board acknowledgment.

703.4. Department submissions.

703.5. Other submissions.

703.6. Service.

703.7. Consolidation.

703.8. Timeliness of submissions.

703.9. Withdrawal or termination of appeal.

**§ 703.1. Petitions generally.**

(a) *General requirements.* Petitions must be in writing, state clearly and concisely the interest of the petitioner in the subject matter, the facts and the basis for the relief sought.

(b) *Petition form.* A petition shall be filed using the Board’s designated petition form or otherwise conform to the format of the Board’s designated form on the Board’s web site.

(c) *Supersession.* Subsections (a) and (b) supersede 1 Pa. Code § 35.17 (relating to petitions generally).

**Cross References**

This section cited in 61 Pa. Code § 703.2 (relating to petition content).

**§ 703.2. Petition content.**

(a) *General.* To constitute a properly filed petition, a petition must include, at a minimum, the following, as applicable:

- (1) The petitioner's name, address, telephone number and e-mail address.
- (2) The name, address, telephone number and e-mail address of the petitioner's representative.
- (3) The Board of Appeals docket number.
- (4) The petitioner's appropriate identifying designation, such as license number, Social Security number, claim number, file number or corporate box number.
- (5) The appeal type and relevant periods for review.
- (6) The amount of tax or other amounts petitioner claims to have been erroneously assessed or to have been overpaid.
- (7) The basis upon which the petitioner claims that an assessment is erroneous or a refund is due.
- (8) A statement of the relevant facts.
- (9) A statement indicating whether a hearing before the Board is requested.
- (10) A statement indicating whether the petitioner will submit a compromise offer to the Department within 30 days of filing the petition.
- (11) An affidavit of the petitioner or the petitioner's authorized representative that the petition is not made for the purpose of delay and that the facts in the petition are true.

(b) *Accuracy of address for Board correspondence.* The Board is permitted to rely upon the accuracy of the physical or e-mail address provided by the petitioner. It is the duty of the petitioner to notify the Board by a method prescribed in § 702.4 (relating to filing generally) when there is a change in an address provided to the Board.

(c) *Signature.* The petitioner or the petitioner's authorized representative shall sign a petition. The Board may require evidence that the signatory has authority to sign on behalf of petitioner.

(d) *Petitions not properly filed.* The Board will provide petitioners an opportunity to correct a petition that does not comply with § 703.1 (relating to petitions generally) or this section. The Board may dismiss petitions which are not properly filed.

(e) *Supersession.* Subsections (a)—(d) supersede 1 Pa. Code §§ 31.11—31.15, 33.1—33.4, 35.18—35.20, 35.23, 35.24, 35.27—35.32, 35.35—35.41, 35.45, 35.48—35.51, 35.54 and 35.55.

**Cross References**

This section cited in 61 Pa. Code § 702.21 (relating to representation).

**§ 703.3. Board acknowledgment.**

The Board will acknowledge receipt of petitions. The acknowledgement will set forth deadlines for subsequent submissions.

**§ 703.4. Department submissions.**

The Department may file a submission in a manner set forth in § 702.4 (relating to filing generally) in response to the petition.

**§ 703.5. Other submissions.**

(a) *Submission requests.* The Board may request a party to provide additional submissions in a format designated by the Board.

(b) *Requirements.* Submissions filed subsequent to the petition must include the petitioner's name and the docket number.

(c) *Legibility.* Submissions made with the Board must be legible.

(d) *Copies.* Parties are required to file with the Board one copy of a submission either in hard copy or electronically at the time of filing. In its sole discretion, the Board may require additional copies of submissions.

(e) *Electronic submissions.*

(1) An electronic submission made with the Board must be:

(i) In a format so that the submission and, when feasible, its attachments, are capable of being printed and copied without restriction. If the Board is unable to access an electronic submission due to a security restriction of the party, the submission will not be considered.

(ii) Filed in accordance with the instructions regarding electronic submissions, if any, made available on the Board's web site.

(2) Parties may file one electronic copy at the e-mail address provided. Paper copies are not required unless the submission is too large to transmit by means of electronic delivery.

(f) *Submissions will not be returned.* Submissions submitted to the Board will not be returned.

(g) *Supersession.* Subsections (a)—(f) supersede 1 Pa. Code §§ 33.1—33.4, 33.11, 33.12, 33.15, 33.21—33.23, 33.31—33.37, 33.41, 35.1, 35.2, 35.5—35.7, 35.9—35.11, 35.14, 35.191—35.193, 35.201—35.207, 35.211—35.214 and 35.221.

**§ 703.6. Service.**

(a) A party shall serve the other party with each submission.

(b) Subsection (a) does not apply to the petition form and the first 20 pages of a submission filed with the petition which the Board will docket onto the Department's appeal system.

(c) The Department will be deemed to be served electronically when the Board docket the petition onto the Department's appeal system.

(d) The preferred method of service is electronic. If electronic service is not available, service shall be by mail or in person using a method prescribed in § 702.4 (relating to filing generally).

(e) Subsection (a)—(d) supersedes 1 Pa. Code §§ 33.31—33.37 (relating to service of documents).

#### Cross References

This section cited in 61 Pa. Code § 702.32 (relating to general rules).

### § 703.7. Consolidation.

(a) *Same petitioners.* The Board, in its own discretion, may consolidate petitions, issues or proceedings involving a common question of law or fact for the same petitioner.

(b) *Different petitioners.* The Board may consolidate proceedings of different petitioners for the limited purpose of hearings with the consent of the parties.

(c) *Supersession.* Subsections (a) and (b) supersede 1 Pa. Code §§ 35.45 and 35.122 (relating to consolidation; and consolidation of formal proceedings).

### § 703.8. Timeliness of submissions.

(a) *Time.* Unless a different time is prescribed by the Board or staff, a party shall file submissions no later than 60 days after the filing date of the petition. The Board shall provide the opposing party 30 days to respond to the submission. Submissions filed after the prescribed deadlines may be reviewed by the Board upon good cause shown.

(b) *Supersession.* Subsection (a) supersedes 1 Pa. Code § 35.35 (relating to answers to complaints and petitions).

### § 703.9. Withdrawal or termination of appeal.

(a) A petitioner that wishes to terminate an appeal before final decision by the Board shall submit to the Board a written notice to withdraw the appeal by a method prescribed in § 702.4 (relating to filing generally).

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.42 and 35.51 (relating to withdrawal or termination; and withdrawal of pleadings).

## Subchapter B. COMPROMISE PROCEDURES

Sec.  
703.11. Compromise generally.

### § 703.11. Compromise generally.

(a) A compromise settlement will be ordered by the Board only with the agreement of the parties.

(b) A party offering a compromise shall submit to the Board and to the other party a completed Board of Finance and Revenue Request for Compromise Form within 30 days from the petition filing date. The submission of a request for compromise will extend the time under section 2704(f)(1) of the Tax Reform Code of 1971 (72 P.S. § 9704(f)(1)). A blank compromise form may be obtained from the Board and will be posted on the Board's web site.

(c) The submission of a completed Board of Finance and Revenue Request for Compromise Form is required for the Board to grant a continuance for the purpose of pursuing a potential compromise.

(d) Negotiations of a compromise are voluntary and will take place between the petitioner and the Department.

(e) If the parties fail to agree to a compromise within 90 days from the petition filing date, the Board will schedule the petition for a hearing, if requested, and for a decision on the merits.

(f) If the Board issues a compromise order, the parties agree, as a condition of the compromise, to waive any right to:

- (1) Appeal the compromise order.
- (2) Claim a refund of money paid pursuant to the compromise order.
- (3) File a petition or appeal that raises the same issues of the tax period and liability addressed in the compromise order.

(g) Subsections (a)—(f) supersede 1 Pa. Code § 35.115 (relating to offers of settlement).

### Subchapter C. PREHEARING CONFERENCES

Sec.  
703.21. Prehearing conference.

#### § 703.21. Prehearing conference.

(a) *Request for a prehearing conference.* A party may request a prehearing conference with the staff by a method prescribed in § 702.4 (relating to filing generally). The staff may conduct a prehearing conference in response to a request or when the Board or staff deem necessary.

(b) *Scheduling prehearing conferences.* Staff will notify the parties, by a method prescribed in § 702.4, of a prehearing conference date and time, which may be in the Board's office, by telephone or by another agreed-upon electronic method.

(c) *Nonparticipation of one party.* A party may choose not to participate in the prehearing conference upon the submission of a waiver consistent with Chapter 702, Subchapter D (relating to ex parte communications) or by failing to participate in the prehearing conference after being provided notice and an opportunity to attend.

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code §§ 35.111—35.116 (relating to prehearing conferences).

#### Subchapter D. HEARINGS

Sec.	
703.31.	Disposition of petitions.
703.32.	Notice of proceeding.
703.33.	Scheduling of hearing.
703.34.	Hearing procedure.
703.35.	Failure to appear at hearing.

#### § 703.31. Disposition of petitions.

(a) Petitions filed with the Board will be resolved within 6 months after the receipt of the petition unless the deadline has been extended consistent with section 7204(1), (2) or (3) of the Tax Reform Code of 1971 (72 P.S. § 9704(1), (2) and (3)), by a written order of the majority of the Board based on the submissions and information available to the Board. Failure of the Board to dispose of a petition within the time period results in a deemed denial and the starting of the appellate period.

(b) If at the time of the filing of a petition proceedings are pending in a court of competent jurisdiction in which any claim made in the petition may be established, the Board, upon the written request of the petitioner, may defer consideration of the petition until the final judgment determining the question involved in the petition has been decided. If consideration of the petition is deferred, the Board will issue a decision and order disposing of the petition within 6 months after final judgment.

(c) If a matter pending before the Board would be materially affected by an audit or other proceeding before the Internal Revenue Service or by an audit or other proceeding conducted by another state, the Board, upon the written request of the petitioner, may defer consideration of the petition until the other audit or proceeding is complete. If consideration of the petition is deferred, the Board will issue a decision and order disposing of the petition within 6 months after the audit or other proceeding is final.

(d) The parties shall notify the Board, as part of the petition or subsequently in writing, utilizing a method set forth in § 702.4 (relating to filing generally) as to whether a petition shall be disposed of with or without a public hearing. A public hearing will be scheduled if any party requests one or if it is deemed necessary by the Board.

(e) The Board will notify the parties of the date of the scheduled hearing. The petitioner shall notify the Board as to whether it intends to attend the hearing by filing a Hearing Reply Form with the Board at least 10 days prior to the scheduled hearing.

(f) If a party fails to file a hearing reply at least 10 days prior to the scheduled hearing, the party may only present an oral argument with the consent of the Board.

(g) Subsections (a)—(e) supersede 1 Pa. Code §§ 31.13, 31.15, 35.101 and 35.121—35.128.

#### **§ 703.32. Notice of proceeding.**

(a) When notice of hearings is required, publication will be in accordance with 65 Pa.C.S. Chapter 7 (relating to Sunshine Act).

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.51 and 35.103—35.106 (relating to docket; and notice of hearing).

#### **§ 703.33. Scheduling of hearing.**

(a) The secretary will schedule public hearings and maintain a hearing calendar of all petitions scheduled for hearing.

(b) Public hearings of the Board ordinarily will be held in the hearing room in the Riverfront Office Center, 1101 South Front Street, Suite 400, Harrisburg, Pennsylvania 17104-2539.

(c) The Board will consider requests for remote access to hearings and, if feasible, will grant these requests.

(d) The secretary or the Board in the exercise of discretion, or upon application for good cause, may reschedule a hearing. Requests to reschedule a hearing shall be filed 10 days prior to the scheduled hearing.

(e) The submission of a request to reschedule a hearing will extend the time under 2704(f)(1) of the Tax Reform Code of 1971 (72 P.S. § 9704(f)(1)).

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.102—35.106 and 35.121.

#### **§ 703.34. Hearing procedure.**

(a) At the hearing, the petitioner shall present its case first. If the Department responds, the petitioner will be provided an opportunity to respond.

(b) The order of presentation in subsection (a) may be varied by the Board.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.123, 35.125, 35.127, 35.128, 35.131—35.133, 35.137—35.139, 35.173, 35.177—35.180, 35.185—35.190 and 35.201.

**§ 703.35. Failure to appear at hearing.**

(a) If a party requests a hearing and thereafter fails to appear at the scheduled hearing, the opposing party may present its case to the Board at the scheduled hearing, after which the Board will render its decision.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.124 and 35.126 (relating to appearances; and presentation by the parties).

**Subchapter E. REQUEST FOR RECONSIDERATION**

Sec.

703.41. Request for reconsideration.

703.42. Time for filing request for reconsideration and extension.

703.43. Filing a request for reconsideration.

703.44. Board's response to request for reconsideration.

703.45. Appeal rights.

**§ 703.41. Request for reconsideration.**

(a) *Basis of request for reconsideration.* A request for reconsideration may be filed by a party to object to a Board order due to the Board's alleged failure to address an issue raised in the appeal, error of law or fact, or computational error. A request for reconsideration will not be granted to review issues or arguments not raised before the Board or to review a submission that was not previously submitted. Neither the sufficiency of the submission nor a determination as to whether a party satisfied its burden of proof is a basis for a reconsideration.

(b) *Supersession.* Subsection (a) supersedes 1 Pa. Code §§ 35.231—35.233 and 35.241 (relating to reopening and rehearing).

**§ 703.42. Time for filing request for reconsideration and extension.**

(a) A request for reconsideration shall be filed by a party and provided to the other party within 15 days from the mailing date indicated on the order. When necessary, a request for reconsideration will serve as an automatic request for an extension of time under section 2704(f)(1) of the Tax Reform Code of 1971 (72 P.S. § 9704(f)(1)).

(b) Subsection (a) supersedes 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

**§ 703.43. Filing a request for reconsideration.**

(a) *Request for reconsideration.* A request for reconsideration must be concise and identify the alleged error.

(b) *Manner of filing.* A request for reconsideration shall be submitted to the Board and the opposing party utilizing a method in § 702.4 (relating to filing generally).



(c) *Supersession.* Subsections (a) and (b) supersede 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

**§ 703.44. Board's response to request for reconsideration.**

The Board will respond to all requests for reconsideration by either granting or denying the request. If the Board grants a request for reconsideration the Board will issue a letter to both parties setting forth any future applicable deadlines. In all cases for which a reconsideration request is granted, the Board will subsequently issue a reconsidered order.

**§ 703.45. Appeal rights.**

(a) *Appeal rights.* A request for reconsideration is not a substitute for a court appeal. When the Board denies the request for reconsideration the Board's original order is a "final order" for purposes of appeal to Commonwealth Court within the time specified by Pennsylvania Rule of Appellate Procedure 1571(b) (relating to determinations of the Board of Finance and Revenue). When the Board grants a request for reconsideration the time period for filing an appeal is stayed until the Board issues a reconsidered order. The reconsidered order will replace the original order and will be a "final order" appealable to Commonwealth Court within the time specified by Pennsylvania Rule of Appellate Procedure 1571(b).

(b) *Supersession.* Subsection (a) supersedes 1 Pa. Code §§ 31.14, 35.190, 35.225, 35.226 and 35.251.

**Subchapter F. PUBLICATION OF ORDERS**

Sec.  
703.51. Publication of orders.  
703.52. Redaction.

**§ 703.51. Publication of orders.**

(a) *General rule.* The Board will publish a redacted version of each final order, along with any dissenting opinion, that grants or denies in whole or in part a petition.

(b) *Location of order publication.* Published orders will be indexed and published on a publicly accessible web site maintained by the Board and accessible through the Board's web site.

(c) *Timing of publication.* The Board will not publish an order for at least 30 days after the order's mailing date to enable petitioner time to identify any trade secret or confidential proprietary information that needs to be redacted from the order.

**§ 703.52. Redaction.**

(a) *Redaction of confidential information.* Prior to publication of an order the Board will edit the order to redact the following:

(1) An individual's Social Security number, home address, driver's license number, personal financial information, home, cellular and personal telephone numbers, personal e-mail addresses, employee number or other confidential personal identification number and a record identifying the name, home address or date of birth of a child 17 years of age or younger.

(2) Specific dollar amounts of tax.

(3) Information identified by petitioner that meets the definition of a "trade secret" or "confidential proprietary information." The petitioner is responsible for notifying the Board within 30 days of the mailing date of the order of any trade secret or confidential proprietary information that petitioner does not want to be published. The notification must clearly identify the language in the order that should be redacted, and the reason for the requested redaction.

(4) Other information determined by the Board to be confidential under State or Federal law.

(b) *Confidential information in a published order.* If, after an order is published, it is discovered that the published order contains confidential information that should not have been published, the Board should be notified as soon as possible and the Board will make every reasonable effort to redact the confidential information promptly.

[Next page is 801-1.]

703-10