

# BOARD OF FINANCE AND REVENUE

## INTERIM OPERATING RULES

### CHAPTER 1. GENERAL PROVISIONS

#### Subchapter A. OVERVIEW

##### § 1.1. Scope of interim rules.

(a) These interim rules, as may be amended, govern the practice and procedure before the Board.

(b) The interim rules, as may be amended, will govern until such time as regulations are promulgated that will supersede the applicability of 61 Pa. Code, Part 4, Board of Finance and Revenue, Chapter 701, and, to the extent applicable, 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

##### § 1.2. Liberal construction.

(a) The interim rules shall be liberally construed to secure the just, speedy and inexpensive determination of every Proceeding before the Board. The Board at any stage of a Proceeding may disregard an error or defect of procedure that does not affect the substantive rights of the Parties.

(b) The Board at any stage of a Proceeding may waive a requirement of these interim rules, including a deadline, when necessary or appropriate, if the waiver does not adversely affect a substantive right of either Party.

##### § 1.3. Definitions.

Subject to additional definitions contained in subsequent sections which are applicable to specific chapters or subchapters, the following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

*Board* - The Board of Finance and Revenue.

*Business day* – A day on which the Board's office is scheduled to be open excluding Saturdays, Sundays, or legal holidays.

*Chairman* – The State Treasurer or the State Treasurer's designee.

*Confidential proprietary information* – As defined in the Section 102 of the Act of February 14, 2008 (P.L. 6, No. 3) known as the Right-to-Know Law, codified at 65 P.S. § 67.102, Commercial or financial information received by an agency:

(1) that is privileged or confidential; and

(2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.

*Department* – The Pennsylvania Department of Revenue.

*Electronic delivery* — A method of dispatching or receiving a submittal via electronic means such as email or facsimile, or the Board's electronic filing system.

*Order*—A decision by the Board that becomes final unless a timely request for reconsideration is filed by a Party and is timely granted by the Board.

*Party*—A person who appears in a Proceeding before the Board. The term includes both a taxpayer and the Department, or in appeals filed under 72 P.S. § 503, the claimant and the opposing governmental agency.

*Personal financial information* - An individual's personal credit, charge or debit card information; bank account information; bank, credit or financial statements; account or PIN numbers and other information relating to an individual's personal finances.

*Petition* – An application to the Board in which Petitioner seeks relief or remedy.

*Petitioner*— A taxpayer or other claimant.

*Proceeding* – Any matter before the Board, including a petition, hearing or claim.

*Secretary* —The Secretary of the Board of Finance and Revenue, who is the Board officer with whom documents are filed and by whom official records are kept.

*Staff*—The attorneys, non-attorney tax petition reviewers and administrative personnel employed to support the Board in the performance of its duties and responsibilities.

*Trade secret*—Information identified by the Petitioner as and that meets the definition of a trade secret or confidential proprietary information as defined in Section 102 of Act of February 14, 2008 (P.L. 6, No. 3) known as Right-to-Know Law.

#### **§ 1.4. Filing generally.**

(a) Documents filed with the Board should be submitted in one of the following manners:

(1) In person or by mail:

Secretary of the Board  
Pennsylvania Board of Finance and Revenue  
1101 South Front Street, Suite 400  
Harrisburg, Pennsylvania 17104-2539

(2) Electronically, at [bfr@patreasury.gov](mailto:bfr@patreasury.gov).

(3) By facsimile at 717.783.4499

(b) When the Board is of the opinion that a submission for filing does not sufficiently set forth required material or is otherwise insufficient, the Board may accept it for filing and advise the person submitting it of the deficiency and require that the deficiency be corrected.

(c) The Petitioner bears the responsibility for the readability of any documents filed with the Board. The Petitioner accepts the risk that any delay, disruption, or interruption of any document filed with the Board by means Electronic Delivery may not be properly or timely filed.

#### **§ 1.5. Board office hours.**

Unless otherwise directed by the Chairman, the Board offices will be scheduled to be open from 8:00 a.m. until 4:30 p.m. on Business Days.

#### **§ 1.6. Oaths.**

A Board member or the Secretary will have the power to administer oaths or affirmations with respect to any Proceeding.

#### **§ 1.7. Formal rules of evidence do not apply.**

Formal rules of evidence do not apply to matters before the Board.

#### **§ 1.8. Subpoenas.**

The Board does not possess the power to issue subpoenas.

### **Subchapter B. TIME**

#### **§ 1.11. Date of filing.**

(a) Whenever a Party's submission is required or permitted to be filed, it will be deemed to be filed on the earliest of the following dates:

(1) On the date actually received by the Board.

(2) On the date deposited with an IRS-designated private delivery service (as set forth in an IRS Notice - currently 2004-83), as shown on the delivery receipt attached to or included within the envelope containing the document.

(3) On the date deposited in the United States Mail as shown by the United States Postal Service stamp on the envelope or noted on a United States Postal Service Form 3817 certificate of mailing. A mailing envelope stamped by an in-house postage meter is insufficient proof of the date of mailing.

(4) When a document is submitted via Electronic Delivery on a day other than a Business Day, the document will be deemed to be filed on the next Business Day.

### **§ 1.12. Computation of time.**

Except as otherwise provided by statute, in computing a period of time prescribed by law, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is not a Business Day, in which event the period shall run until the end of the next Business Day.

## **Subchapter C. REPRESENTATION BEFORE THE BOARD**

### **§ 1.21. Representation.**

(a) *Representative.* Appearances in Proceedings before the Board may be by the Petitioner or by an attorney, accountant or other representative provided the representation does not constitute the unauthorized practice of law as administered by the Pennsylvania Supreme Court.

(b) *Power of attorney.* The Board may require in any Proceeding that a power of attorney, signed and executed by the Petitioner, be filed with the Board before recognizing any person or persons as representing the Petitioner.

(c) *Notice of Petitioner's Representative.* A Petitioner or his designated representative shall file with the Secretary a Petition that includes the name of the Petitioner, and if applicable, Petitioner's representative, which will serve as notice of appearance. The Department will be deemed to be served electronically when the Board docketed the case onto the Department's appeal system.

(d) *Designated representative after petition filed.* If a Petitioner authorizes a representative after the Petition is filed, the Petitioner shall file with the Secretary a form prescribed by the Board or a letter on the Petitioner's letterhead naming the representative.

(e) *Change in representative.* A change in representative that occurs during the course of a Proceeding shall be reported promptly to the Secretary.

(f) *Change in address.* A change in address that occurs during the course of a Proceeding shall be reported promptly to the Secretary.

(g) *Withdrawal of representative.* Representation continues until a Petitioner or Petitioner's representative notifies the Secretary in writing that the designation of representation is rescinded.

#### **§ 1.22. Limited practice before the Board.**

(a) The Board may deny, temporarily or permanently, the privilege of representing a Petitioner before it in any way to a person who is found by the Board, after notice and opportunity for hearing in the matter, to have done one or more of the following:

(1) Lacked the requisite qualifications to represent others.

(2) Engaged in unethical, contemptuous or improper conduct with respect to any matter before the Board.

(3) Repeatedly failed to follow Board directives.

#### **Subchapter D. EX PARTE COMMUNICATIONS**

##### **§ 1.31. Definitions.**

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

*Communications* – Any verbal, written or electronic communication by a Party or its representative with the Board or the Staff.

*Ex Parte Communication* – A Communication regarding the merits of a Petition that takes place outside of a public hearing by one Party with respect to which the other Party was not provided notice and an opportunity to participate in said Communication unless the other Party has previously provided a Waiver of its right to participate in and thereafter object to the Communication.

*Waiver* – An acknowledgement to the Staff by a Party or its representative that the Party chooses not to participate in a Communication between the Staff and the other Party and agrees not to thereafter object to such Communication. Failure of a Party or its representative to participate in a Communication, for which the Party was provided notice and an opportunity to participate, shall be deemed a waiver by that Party of its right to object to such Communication. The Waiver shall be in a format as designated by the Board and published on the Board's website.

**§ 1.32. General rules.**

(a) *Communication with Board Members.* The Board members shall not participate in any Communications with a Party concerning the merits of a Petition pending before the Board, outside of a public hearing.

(b) *Communication with Staff.* The Staff may not participate in any Ex Parte Communications.

(c) *Written and electronic submission.* Any written or electronic submission provided to the Board or Staff by a Party must be promptly provided to the other Party.

(d) *Notification.* The Staff will make every reasonable effort to avoid Ex Parte Communications, and promptly upon discovery of an Ex Parte Communication, will notify the other Party. The Board may take any reasonable measures deemed necessary to remedy an Ex Parte Communication.

## CHAPTER 2. TAX AND OTHER APPEAL PROCEEDINGS

### Subchapter A. SUBMISSIONS.

#### § 2.1. Petitions generally.

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

(b) *Petition Form.* A Petition must be filed using the Board's designated petition form or otherwise conform to the format of the Board's designated form located on the Board's website.

#### § 2.2. Petition content.

(a) *General.* A Petition shall include, at a minimum, all of the following that are applicable:

(1) The Petitioner's name, address, telephone number and electronic mail address.

(2) The name, address, telephone number and electronic 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.

(b) *Accuracy of Address for Board Correspondence.* The Board shall be permitted to rely upon the accuracy of the physical or email address provided by the Petitioner. It shall be the duty of the Petitioner to notify the Board if there is any change in an address provided to the Board.

(c) *Signature.* A Petition must be signed by the Petitioner or by Petitioner's authorized representative. The Board may require evidence that the signatory has authority to sign on behalf of Petitioner.

### **§ 2.3. Board Acknowledgment.**

The Board shall acknowledge receipt of all Petitions. The acknowledgement will set forth deadlines for subsequent submissions.

### **§ 2.4. Other Submissions.**

(a) *Information requests.* The Board may request a Party to furnish additional information, in a format designated by the Board. The Board may deny the requested relief for failure to furnish the additional information.

(b) All submissions filed subsequent to the Petition shall include the Petitioner's name and the docket number.

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

(1) Petitioners are required to file one copy of a document in hard copy at the time of filing, unless they chose to file electronically. The Board, at its sole discretion, may require additional copies of submissions.

(d) *Electronic submissions.* An electronic submission made with the Board must:

(1) Be in a format so that the document, and when feasible, its attachments, shall be capable of being printed and copied without restriction, and may not require a password to view the contents.

(2) Be filed in accordance with the instructions regarding electronic submissions, if any, made available on the Board's website.

(3) Petitioners may file one electronic copy at the email address provided. Paper copies are not required unless the document is too large to transmit via Electronic Mail.

(e) *Evidence will not be returned.* Evidence submitted to the Board will not be returned.

### **§ 2.5. Consolidation.**

The Board may consolidate Petitions, issues or Proceedings involving a common question of law or fact for the same Petitioner. The Board may structure a Proceeding to avoid unnecessary costs or delay.

## **§ 2.6. Timeliness of Submissions.**

Unless a different time is prescribed by the Board or Staff, all submissions must be submitted no later than 60 days after the filing date of the Petition. The Board shall provide the opposing Party 30 days to respond to these submissions. Evidence filed after the prescribed deadline may not be reviewed by the Board.

## **§ 2.7. Withdrawal or termination of appeal.**

A Petitioner that desires to terminate an appeal before final decision by the Board shall to the Board a written request to withdraw the appeal.

## **Subchapter B. COMPROMISE PROCEDURES**

### **§ 2.11. Compromise generally.**

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

(b) A Petitioner offering a compromise shall submit to the Board and to the Department, a completed Board of Finance and Revenue Request for Compromise Form, which is posted on the Board's webpage, with a Petition or within 30 days from the Petition filing date.

(c) All negotiations of a compromise shall take place between the Petitioner and the Department.

(d) The timely 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.

(e) If the Parties fail to agree to a compromise within 90 days from the Petition filing date, the Board shall 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:

(1) to waive any right to appeal the compromise order;

(2) to waive any right to claim a refund of money paid pursuant to the compromise order; and

(3) to waive any right to file a Petition or appeal that raises the same issues of the tax period(s) and liability(ies) addressed in the compromise order.

## **Subchapter C. PREHEARING CONFERENCES**

### **§ 2.21. Prehearing conference.**

(a) *Request for a prehearing conference.* A Party may request a prehearing conference with the Staff. 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 of a prehearing conference date and time, which may be in the Board's office, via telephone or via 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 1, Subchapter D. Ex Parte Communications, of these Interim Rules or by failing to participate in the prehearing conference after being provided notice and an opportunity to attend.

## **Subchapter D. HEARINGS**

### **§ 2.31. Disposition of Petitions.**

(a) All Petitions filed with the Board shall be resolved by a written order of the majority of the Board based on the submissions and information available to the Board.

(b) A Petitioner who desires a hearing must request it on the Petition form or subsequently, in writing.

### **§ 2.32. Notice of Proceeding.**

When notice of hearings is required, publication will be in accordance with the Pennsylvania Sunshine Act (65 Pa.C.S. A. §701 et. seq).

### **§ 2.33. Scheduling of hearing.**

(a) The Secretary shall schedule hearings and will 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 such requests.

(d) The Secretary or the Board in the exercise of discretion, or upon application for cause, may reschedule a hearing.

### **§ 2.34. Hearing procedure.**

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

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

### **§ 2.35. Failure to appear at hearing.**

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.

## **Subchapter E. REQUEST FOR RECONSIDERATION**

### **§ 2.41. 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 evidence that was not previously submitted.

### **§ 2.42. Time for filing request for reconsideration and extension.**

A request for reconsideration may be filed by a Party and served 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 pursuant to 72 P.S. §9704(f)(1).

### **§ 2.43. Filing a request for reconsideration.**

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

(b) *Manner of filing.* A request for reconsideration must be submitted to the Board electronically at [bfr@patreasury.gov](mailto:bfr@patreasury.gov), by facsimile at 717-783-4499 or at the following address:

Board of Finance and Revenue  
Riverfront Office Center  
1101 South Front St., Suite 400  
Harrisburg, PA 17104-2539

(c) *Notice to the other Party.* If the Department files a request for reconsideration, the Department must provide Petitioner (or Petitioner's representative) with a copy of the

request for reconsideration at the same time the Department files the Request. Such notice must be made to the address contained within the Board's Order or by Electronic Delivery to an electronic mail address provided by Petitioner. If the Petitioner files a request for reconsideration, a copy of the request for reconsideration must be provided to the Department electronically at [RA-RVOCCBFRNOTIF@pa.gov](mailto:RA-RVOCCBFRNOTIF@pa.gov) or at the following address:

Pennsylvania Department of Revenue  
Office of Chief Counsel  
Attn: Request for BF&R Reconsideration  
10<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17128-1061

#### **§ 2.44. Board's response to request for reconsideration.**

The Board will respond to all requests for reconsideration 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 the applicable deadlines. In all cases for which a reconsideration request is granted, the Board will subsequently issue a Reconsidered Order.

#### **§ 2.45. 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 Order is a "final order" for purposes of appeal to Commonwealth Court within the time specified by Rule 1571(b) of the Pennsylvania Rules of Appellate Procedure. When the Board grants a request for reconsideration and issues a Reconsidered Order, the Reconsidered Order will be a "final order" appealable to Court within the time specified by Rule 1571(b).

### **Subchapter F. PUBLICATION OF ORDERS**

#### **§ 2.51. Publication of Orders.**

(a) *General Rule.* The Board shall publish 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 Internet website maintained by the Board and accessible through the Board's website.

(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 to identify any Trade Secret or Confidential Proprietary Information that needs to be redacted from the Order.

## **§ 2.52. 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 as defined in section 102 of the Right-to-Know Law, home cellular or 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 as and that meets the definition of a trade secret or confidential proprietary information as defined in section 102 of the act of February 14, 2008 (P.L. 6, No. 3) known as the Right-to-Know Law. Petitioner is responsible for notifying the Board within 30 days of the Order's mailing date of any trade secret or confidential proprietary information that Petitioner does not want to be published. Such notification must clearly identify the language contained in the Order that should be redacted, and the reason for the requested redaction.

(4) 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 will make every effort to redact such confidential information promptly.