

MATTERS OF APPEAL

A TREASURY UPDATE ON THE BOARD OF FINANCE AND REVENUE

December 2016

Pennsylvania Treasury | www.patreasury.gov/bfr.html

Message from Treasurer Reese



Since the Board of Finance and Revenue was transformed three years ago, we have seen a clear increase in transparency, efficiency and balance in the Board's deliberations and decisions. For

example, we have established a searchable database on Treasury's website which now contains nearly 5,000 Orders — a significant accomplishment considering decisions of the Board were never previously published. While these decisions do not set precedent, they do provide valuable tax guidance to Pennsylvania citizens, businesses and those considering moving or expanding to the Commonwealth.

The new Board has also approved scores of compromises and reviewed many reconsiderations, thereby reducing the need for costly and time-consuming litigation. The Department of Revenue, while no longer a member of the Board, has been involved as a party in each appeal resulting in a more robust and balanced approach to the tax appeal system.

This edition of Matters of Appeal provides more details of the Board's achievements since the reorganization and also takes a closer look at the various deadlines required to meet the legislative objectives.

Your comments and feedback are welcome via bfr@patreasury.gov.

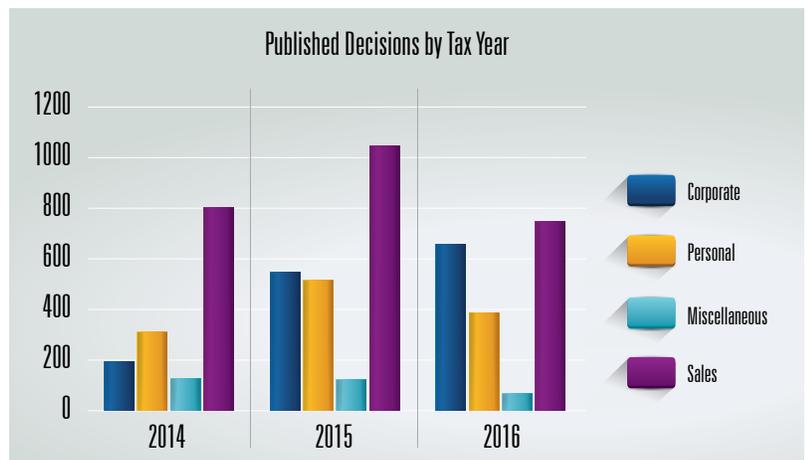
Timothy Reese
Treasurer Reese

Increased Transparency

Since the passage of Act 52 of 2013, the Board has been committed to improving the openness of its operations. Accountability and collaboration are essential for efficient operations and to earn the public trust. In two and a half years, the Board has published decisions and dissenting opinions for over 5,000 cases in an easy-to-use, searchable, database located on the Board's website. This helps the public make more informed business and tax planning decisions. The Board also revamped its website to be a "one-stop" tool for the tax appeals process with links to interactive Board forms, links to relevant laws and regulations, and a live calendar updated with monthly dockets. Over 17,000 viewers have utilized the website since Act 52.

The Board believes that public engagement improves the quality of its decisions and has aggressively solicited input from the tax and business communities when drafting its new comprehensive regulations. The regulations are a step-by-step manual for appealing a matter before the Board. (See 61 Pa. Code §§ 702 and 703.)

Act 52 prohibits the Board staff from having ex parte communications with either party during the appeals process. Scheduling discussions involving all parties in the permissible timeframe can be difficult; therefore, the staff mostly communicates to parties by email or letter. The ex parte constraint, as well as time constraints, have largely eliminated the Board's former practice of conducting prehearing conferences. Nevertheless, the parties may still communicate (and are encouraged to communicate) with the Board via email, but should remember to copy the opposing party.

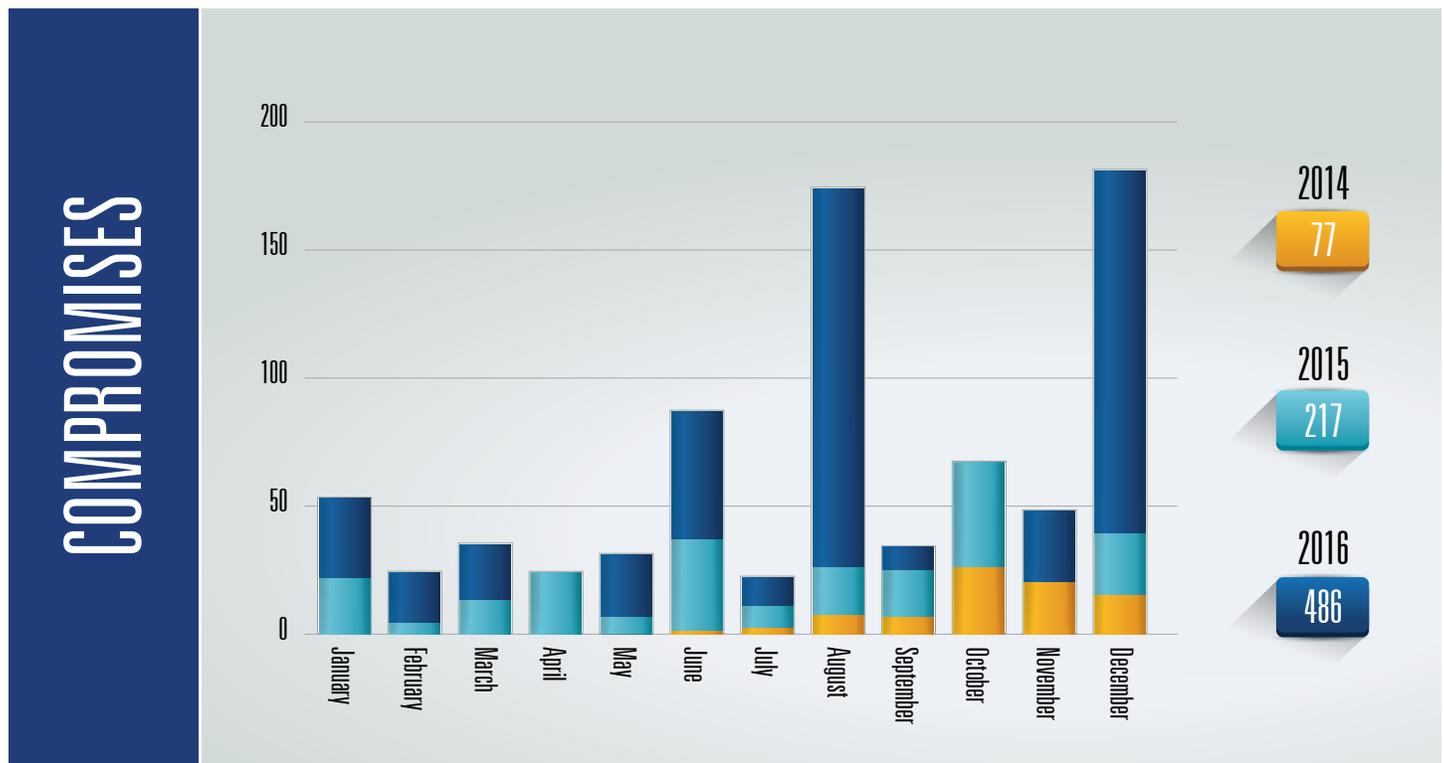


Improving Efficiency

The staff is the Board’s most important resource and their competence, knowledge and experience are unparalleled for any quasi-judicial tax agency. Since the new law was passed, the staff has worked with the Board to maximize operational efficiency and better serve the taxpayers.

On an annual basis, 8 staff counsel and 3 tax petition reviewers, analyze evidence and the law and make recommendations to the Board in 3,500-4,500 appeals. As the Board generally holds 10 hearings a year, each reviewer is working on an average of 32 to 42 appeals per hearing – no small feat considering appeals may involve millions of dollars and tens of thousands of transactions. Since the law mandates that the Board decide cases within six months (unless either party asks for an extension), it is important that the Board review and rule on appeals as quickly as possible. To improve the efficiency for tax payers, revenue and the board, the board has instituted the following:

- Accept petitions electronically (bfr@patreasury.gov)
- Created an online fillable petition form (<http://www.patreasury.gov/bfr/petition/>)
- Require a sworn statement on the petition form instead of a notarized affidavit
- Allow a representative, as petitioner’s agent, to sign petition form
- Accept the “mail date” of certain forms of commercial mail as timely
- Established a framework of deadlines
- Created a comprehensive website housing necessary forms, laws, decision database and calendar (<http://www.patreasury.gov/bfr/about/>)
- Promulgated all-inclusive regulations establishing the practice and procedure before the Board
- Approve compromises between the parties to avoid costly litigation (<http://www.patreasury.gov/bfrassets/pdf/CompromiseForm.pdf>)
- Instituted a reconsideration procedure prior to the deadline for appeal to court
- Encourage electronic filing since it is easier to share with all parties, as required by law



To learn more about the Board’s process and procedures, please visit www.patreasury.gov

Balance

To make the administrative appeal procedure more independent, Act 52 of 2013 removed the Department of Revenue from the Board and, instead, made it a party to the appeal. This new construct helps ensure the Board takes a more balanced approach when deciding appeals. As a result of Act 52, we are seeing a much more participatory, collaborative approach of tax appeals. Under the new Board, the parties are working together during the fact-finding stage, either via email or in prehearing conferences and earnestly negotiating to reach a compromise satisfactory to both parties. The Department of Revenue has attended every hearing day along with the taxpayer which provides more insightful, well-reasoned discussions with the Board.

On occasion, Board members may write dissenting opinions that are published with the majority opinion which provides additional insight into Board's decisions. The Board has also developed a formal reconsideration procedure in the event a party believes a Board Order contains a misstatement of fact or law based on evidence previously submitted. This allows the Board the opportunity to "get it right" and help avoid costly and prolonged litigation. The Board has developed significant procedures to accommodate this new law, which has benefitted everyone involved.

Board Deadlines

From Date Petition Filed:

- 30 DAYS** compromise form due*
- 60 DAYS** all submissions due*
- 90 DAYS** all responses to submissions due*
- 90 DAYS** notify board if compromise reached, if not, appeal listed for decision*
- 6 MONTHS** board must decide case or it is deemed denied, unless either party requests extension*
- 12 MONTHS** maximum amount of time board has to decide case with extension; however, board strives to move cases as soon as possible

From Date Order Mailed:

- 15 DAYS** reconsideration request due, only in instances when a party believes the board's order contains a misstatement of fact or law based on the evidence previously submitted
- 20 DAYS** board's reconsideration request reply due – if granted, appeal stayed until reconsideration order mailed, if denied – appeal to Commonwealth Court
- 30 DAYS** appeal to Commonwealth Court due
- 30 DAYS** parties may request additional redactions that meet the definition of "proprietary confidential information" as defined by the Right to Know Law

From Hearing Date:

- 10 DAYS** hearing reply due 10 days prior to hearing date
- 10 DAYS** continuance request due 10 days prior to hearing date

From Date Lead Case is Final:

- 6 MONTHS** board must decide case continued behind lead case in court or it is deemed denied, no extensions authorized by law

* Deadline may be extended

Board of Finance & Revenue:

Who We Are

Jacqueline A. Cook (Chair)
 Designee for Timothy Reese, State Treasurer
 R. Scott Shearer (member)
 David R. Kraus (member)

BF&R STAFF

Acting Secretary of the Board

Thomas W. Watson

Docketing

Jodi Reed, Supervisor

Supervising Counsel

Timothy P. Loftus (Corporation Tax)
 Thomas W. Watson (Sales/Misc. Tax)
 Robert C. Kolb (Personal Income Tax)

Liquid Fuels

Eric Schreiner, Supervisor

Taxpayer Advocate

TBA

CONTACT BF&R

BY MAIL:

Board of Finance and Revenue
 Riverfront Office Center
 1101 South Front Street, Suite 400
 Harrisburg, PA 17104-2359

HOURS OF OPERATION:

Mon.—Fri., 8:00 a.m. to 4:00 p.m.

BY PHONE:

Tax Appeals: (717) 787-2974
 Liquid Fuels: (717) 787-6534
 Taxpayer Advocate: (717) 787-2974

BY FAX:

(717) 783-4499

BY EMAIL:

bfr@patreasury.gov
 Online / Newsletter sign-up
www.patreasury.gov/bfr.html

Directions to BF&R

Please note that some GPS navigational units lead drivers incorrectly to 1101 South Front Street in Steelton, PA.



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

The Riverfront Office Center (ROC), also commonly referred to as the PennDOT building, is located on the east shore of the Susquehanna River just south of the Interstate 83 bridge (South Bridge). From I-83, take the Harrisburg – 13th Street Exit (Exit 44-A) and follow the blue and white signs for the PennDOT customer service center. If coming from the north or east, merge onto 13th Street. If coming from the west or south, make a left onto 13th Street at the traffic light. From 13th Street, make a right onto Sycamore Street at the second traffic light. Go straight through the next traffic light. This will take you to the ROC/ PennDOT building.

Use the entrance located in the middle of the building. You will need to produce picture identification to register with building security. BF&R is located on the 4th floor.