

CHAPTER 7. BOARD OF APPEALS

Sec.	
7.1.	Definitions.
7.2.	Jurisdiction.
7.3.	Petitions.
7.4.	Filing of special petitions.
7.5.	Board practice and procedure.
7.6.	Decision and order.
7.7.	Reconsideration.

Authority

The provisions of this Chapter 7 issued under section 6 of the act of April 9, 1929 (P.L. 343, No. 176) (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); and 61 Pa. Code § 58.11 (relating to taxes paid; purchases resold).

§ 7.1. Definitions.

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

Board—The Board of Appeals of the Department consisting of the Chairperson and members as designated by the Secretary.

Petition—An application to the Board in the form provided by § 7.3(b) (relating to petitions) whereby a taxpayer seeks redetermination, reassessment, resettlement, credit, refund or other relief or remedy provided by statute or this title.

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).

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. Immediately preceding text appears at serial page (139169).

§ 7.2. Jurisdiction.

The Board will exercise the powers and duties of the Department and the Secretary with respect to the following:

(1) The review as authorized by law of determinations, assessments, settlements, credits or refunds, bond requirements or other actions arising under the statutes administered by the Department, except for licensing under the provisions relating to Cigarette Tax under sections 1225 and 1226 of the TRC (72 P. S. §§ 8225 and 8226). See Chapter 83 (relating to adjudicative procedure before the Cigarette Tax Board).

(2) Other matters specifically designated by the Secretary.

§ 7.3. Petitions.

(a) *Filing.* Petitions should be filed with the Secretary of the Board of Appeals, Post Office Box 8480, Harrisburg, Pennsylvania 17105 within the time limits prescribed by statute or this title—see § 7.4 (relating to filing of special petitions). Petitions are filed on the date received by the Board. Written petitions received by the Board after the date prescribed by statute or this title, but presented to other Department personnel prior to or on the date prescribed by statute or this title are deemed filed as of the date of receipt by the other Department personnel. The burden is on the taxpayer to present evidence sufficient to prove the petition was timely presented to the Department.

(b) *Contents.* Petitions shall be in writing, signed by the petitioner—if corporate petitioner, a corporate officer shall sign—or authorized representative and shall contain:

(1) *General requirements.*

(i) Petitioner's name, address and telephone number.

(ii) Name, address and telephone number of authorized representative, if any.

(iii) Designation of the tax, including the year or other period and the amount involved. A copy of any document relating thereto shall be attached.

(iv) Petitioner's license number, account number, employer identification number, Social Security number, claim number, file number, corporate box number or other appropriate identifying designation.

(v) 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.

(vi) A statement specifying the relief to which the taxpayer deems itself entitled.

(vii) A statement indicating whether or not a hearing is requested.

(viii) A signed statement certifying that the facts contained 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.

(ix) Upon written request the Board may require a petitioner to furnish additional information that may be necessary to define the issues or to deter-

mine the case. The Board may deny the petition for failure to furnish the additional information within a stated reasonable amount of time after the request.

(2) *Special requirements.*

(i) *Protests.* In the case of an Inheritance and Estate Tax petition—protest—the petition shall, in addition to the requirements of paragraph (1), contain the decedent's name, last known address, the file number and the assessment control number, if applicable.

(ii) *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 reassessment bond. This bond shall be filed within 5 days of the date of the notice. Reassessment 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, in lieu 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 reassessment 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).

(iii) *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) *Perfection of petition.*

(1) A claim for relief which fails to satisfy the requirements of subsection (b) shall be registered upon receipt. Thereafter, the Board may request the taxpayer to submit additional information needed for the claim to conform to subsection (b). Failure to submit the requested additional information within 30 days of the date of Board's request shall result in the dismissal of the claim.

(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 requested additional information is received by the Board.

Cross References

This section cited in 61 Pa. Code § 7.1 (relating to definitions).

§ 7.4. Filing of special petitions.

A taxpayer aggrieved by the Department's initial action on a request for interest payable on a tax overpayment, or an application for tax exempt status as a charitable, volunteer firemen's or religious organization or nonprofit educational institution shall file a petition for relief within 90 days of the mailing date of the notice of the action complained of.

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).

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. Immediately preceding text appears at serial page (149554).

Cross References

This section cited in 61 Pa. Code § 7.3 (relating to petitions); and 61 Pa. Code § 32.21 (relating to charitable, volunteer firemen's and religious organizations, and nonprofit educational institutions).

§ 7.5. Board practice and procedure.

(a) *General.* Practice and procedure before the Board is not governed by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law).

(b) *Representation.*

(1) An individual may appear on his own behalf or be represented by a person possessing the requisite technical education, training or experience. There is no 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.

(2) Only an attorney-at-law representing a petitioner, or the petitioner acting without representation before the Board, shall be permitted to raise or argue a legal question at a hearing before the Board.

(3) A notice or other written communication to the petitioner shall be given to the petitioner's authorized representative, and shall 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.

(c) *Hearings.*

(1) *Waiver.* The petitioner, with the approval of the Board, may waive the right to a hearing and rest the case upon the petition and record, with or without a written brief.

(2) *Burden of proof.* The petitioner shall have the burden of proof on all issues except fraud.

(3) *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.

(4) *Continuances.* The Board may grant a reasonable request for continuance of a scheduled hearing. The request shall be made or confirmed in writing, shall state the reasons for the continuance and shall be received within at least 5 days prior to the scheduled hearing. The Board may grant a request not in conformity with this paragraph in extraordinary circumstances.

(5) *Confidential character of hearings.* Information gained from hearings shall be considered confidential information under section 731 of the FC (72 P. S. § 731).

(6) *Presiding officer.*

(i) In corporate tax matters, hearings will be conducted by one or more representatives of the Department. Representatives of the Department of the Auditor General may be in attendance.

(ii) In all other matters, hearings will be conducted by a member of the Board, or by a hearing officer designated by the Board.

(7) *Transcripts.* No written transcripts of hearings will be prepared by the Board; however, a recording of the hearing may be made at the discretion of either the Board or the petitioner.

(d) *Authority of presiding officers.* Presiding officers have authority to:

(1) 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.

(2) Administer oaths and affirmations.

- (3) Receive evidence.
- (4) Take or cause depositions to be taken.
- (5) Hold appropriate conferences before or during hearings.
- (6) Take other action necessary or appropriate to the discharge of the duties vested in them, consistent with statutory authority, regulations and Board policy.

(e) *Evidence.* Hearings before the Board need not 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 in lieu of oral testimony if the actual presence of a witness is not feasible.

(f) *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. Costs associated with the issuance of a subpoena requested by the petitioner shall be paid by the petitioner as a condition precedent to the issuance of the subpoena.

(g) *Oral argument.* When in the opinion of the Board the complexity or importance of the issues of fact or law so require, the entire Board or a panel of Board members designated by the Chairperson may sit for the purpose of hearing oral argument.

(h) *Reopening of proceedings.* 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, reopen the matter for further hearing.

§ 7.6. Decision and order.

(a) The Board's final decision and order will include findings of facts and discussion of law that the Board may deem necessary.

(b) The Board's final decision and order will be in writing and signed by one or more members of the Board, except that in the case of taxes subject to audit and approval by the Department of the Auditor General, the final decision and order is subject to the approval of the Department of the Auditor General.

(c) 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:

- (1) Reporting periods involving disputed and nondisputed tax, interest, penalties or additions.
- (2) Disputed and nondisputed tax, interest, penalties or additions.

(d) When provided by statute, the Board's exercise of equity power will be limited to situations where the petitioner establishes that he has acted in good faith, without negligence and with reasonable diligence.

(e) 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.

(f) The Board may publish precedential decisions if the identity of the taxpayer is kept confidential.

§ 7.7. Reconsideration.

(a) Within the statutory appeal period and prior to the statutory time when the Board's failure to act results in a denial of the petition, and upon the written request of a petitioner or upon request of the Department, the Board may reopen a case in which a final order has been issued, for the purpose of correcting clerical or computational errors or considering evidence that was received by the Department on or prior to the mailing date of the final order, but not made available to the Board.

(b) 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.

[Next page is 8-1.]

7-8

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