

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

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FEB 28 2012

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency:

Revenue

(2) Agency Number:

Identification Number: 15-454

IRRC Number: 2933

(3) PA Code Cite: 61 Pa. Code Chapter 7 and Chapter 901

(4) Short Title: Board of Appeals

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Mary R. Sprunk, Regulatory Coordinator, (717) 783-7524, msprunk@pa.gov

Secondary Contact: Douglas A. Berguson, Senior Counsel, (717) 346-4633, dberguson@pa.gov

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
 Final Regulation
 Final Omitted Regulation

- Emergency Certification Regulation;
 Certification by the Governor
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Department is promulgating a new regulation that will expand the Board of Appeals' jurisdiction to include appeals of Department administrative proceedings. This regulation gives clear instructions and will streamline the process for taxpayers seeking to file an appeal of a Department administrative proceeding. The regulation preserves the Board of Appeals' jurisdiction over tax appeals as well as the procedure and rules associated with tax appeals.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Statutory authority for the regulation is set forth in section 6 of the Fiscal Code (72 P.S. § 6) and section 206 of the Administrative Code of 1929 (71 P.S. § 66).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is not mandated by federal or state law, court order or federal regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This regulation will create clear guidance for taxpayers seeking an appeal of an administrative proceeding within the Department. Additionally, the regulation preserves the Board of Appeals' jurisdiction over tax appeals as well as the procedure and rules associated with tax appeals.

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

N/A

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

No parties should be adversely affected by the regulation.

(13) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

Pennsylvania taxpayers and tax practitioners will be required to comply with the regulation.

(14) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation does not increase costs or savings to the regulated community. No legal, accounting or consulting procedures are required by this regulation.

(15) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation does not increase costs or savings to the regulated community. No legal, accounting or consulting procedures are required by this regulation.

(16) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation does not increase costs or savings to the regulated community. No legal, accounting or consulting procedures are required by this regulation.

(17) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. **Not Applicable**

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(17a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There are no adverse effects from this regulation and implementation costs are minimal.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

A copy of the regulation was forwarded to the Pennsylvania Bar Association, the Philadelphia Bar Association, the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Society of Public Accountants, the Pennsylvania Chamber of Business and Industry, the Pennsylvania Food Merchants Association – Pennsylvania Convenience Store Council, the Pennsylvania Motor Truck Association and the Pennsylvania Petroleum Marketers & Convenience Store Association. This regulation is listed on the Department's Quarterly Regulatory Report posted on the Department's website and will be forwarded to interested parties upon request.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

There are no alternative regulatory provisions associated with the regulation.

(21) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no federal standards associated with this regulation.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation will not put Pennsylvania at a competitive disadvantage with other states.

(23) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation does not affect any other existing or proposed regulations of the Department or any other state agency.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This regulation expands the Board of Appeals' jurisdiction to include the appeal of Department administrative proceedings. It gives clear guidance and a streamlined process for taxpayers seeking an appeal of a Department administrative proceeding. Further, taxpayers seeking to appeal the outcome of a Department administrative proceeding will be required to complete a Board of Appeals Petition Form.

(25) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

N/A.

(26) Include a schedule for review of the regulation including:

- | | |
|---|------------------------------------|
| A. The date by which the agency must receive public comments: | <u>30 days after publication</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>4th quarter 2012</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon final publication</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>Upon final publication</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(27) Provide the schedule for continual review of the regulation.

This regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

August 12, 2011

RECEIVED
IRRC

2012 FEB 28 P 11: 21

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

By: Andrew W. Elliott
(Deputy Attorney General)

NOV 01 2011

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

PA Department of Revenue
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 15-454

DATE OF ADOPTION

BY: Daniel Meuser
TITLE Secretary of Revenue
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies

BY: [Signature]

SEP 30 2011

DATE OF APPROVAL
Andrew C. Clark
(Deputy General Counsel)
(~~Chief Counsel-Independent Agency~~)
(Strike inapplicable title)

Check if applicable. No Attorney General Approval or objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

Board of Appeals - Small Games of Chance

61 Pa. Code Chapters 7 and 901

PREAMBLE

The Department of Revenue (Department), under authority contained in the act of April 9, 1929 (P.L. 343, No. 176) (72 P.S. § 6) and the act of December 19, 1988 (P.L. 1262, No. 156) (10 P.S. §§ 311-327) proposes amendments to 61 Pa. Code, Chapter 7. Board of Appeals and Chapter 901. Local Option Small Games of Chance to read as set forth in Annex A.

Purpose of Regulation

This regulation contains amendments to Parts I and VII of Title 61. The regulation is being proposed to consolidate all administrative appeals under the jurisdiction of the Department's Board of Appeals (the "Board"). Additionally, the regulation will streamline the administrative appeals process by creating a uniform set of procedures for all administrative appeals within the Department. The regulation preserves the Board's jurisdiction over tax appeals.

Explanation of Regulatory Requirements

The current regulations at §§ 7.1 - 7.7 are reserved.

Section 7.10 (relating to definitions) is added and contains the definition for "Board" previously contained in § 7.1 as well as the addition of new definitions "Administrative Proceeding" and "Appeal."

Section 7.11 (relating to jurisdiction) is added and explains that the Board's jurisdiction includes appeals and administrative proceedings as defined in § 7.10.

Section 7.12 (relating to manner of proceeding before the Board) is new language explaining that all proceedings before the Board are initiated by the filing of a petition.

Section 7.13 (relating to petitions) was previously § 7.3 with some minor modifications explained below.

Subsection 7.13(a) contains language that was previously in subsection 7.3(a) stating that petitions should be filed with the Board.

Subsection 7.13(b) is an expansion of language that was previously in subsection 7.3(a) regarding the time limits for filing a petition.

Subsection 7.13(c) is an expansion of language that was previously in subsection 7.3(a) regarding receipt of a petition.

Subsection 7.13(d) is language that was previously in subsection 7.3(b) and is now expanded to include electronically filed petitions.

Subsection 7.13(e) is language that was previously in paragraph 7.3(b)(1) and explains the general requirements and contents of a petition and also the additional requirements for an appeal petition.

Subsection 7.13(f) is language that was previously in subsection 7.3(c) and has been revised to now explain the process of docketing petitions.

Subsection 7.13(g) is language that was previously in subparagraph 7.3(b)(1)(ix) and is now in its own subsection regarding additional information.

Subsection 7.13(h) is new language added to include electronic signatures.

Section 7.14 (relating to board practice and procedure) is added and was previously § 7.5 with minor modifications explained below.

Paragraph 7.14(a)(1) is the identical language that was previously paragraph 7.5(c)(2) explaining the burden of proof before the Board.

Paragraph 7.14(a)(2) is nearly the identical language that was previously in subsection 7.5(b) with minor rewording and describes the petitioner's right to have representation.

Paragraph 7.14(a)(3) is new language that explains the Board's discretion to consolidate or sever multiple proceedings.

Paragraph 7.14(a)(4) is made up primarily of the language that was previously in subsections 7.5.(c) and 7.5(d) regarding the conduct and procedures of hearings.

Paragraph 7.14(a)(5) contains the identical language that was previously in subsection 7.5.(e) regarding evidence.

Paragraph 7.14(a)(6) is language that was previously subsection 7.5.(f) regarding subpoenas with minor rewording.

Paragraph 7.14(a)(7) is language that was previously in subsection 7.5(h) regarding additional hearings and evidence.

Paragraph 7.14(a)(8) contains language that was previously in § 7.6 regarding the Board's decision and order.

Paragraph 7.14(a)(9) is generally the language that was previously in § 7.7 but is being modified to clarify the Board's ability to issue corrected orders for clerical and computational errors.

Subsection 7.14(b) contains language that was previously in paragraphs 7.5(c)(5), 7.5(c)(7), subsection 7.6(c) and subparagraph 7.3(b)(2)(ii).

Subsection 7.14(c) is new language that explains additional practices and procedures for administrative proceedings before the Board.

Section 7.15 (relating to security upon petition for review) is new and outlines the requirements and procedures for tax payers to file appropriate security with their petition for review filed in Commonwealth Court.

Section 901.1 (relating to definitions) has been amended to change the definition of "Board" to mean the BOA rather than The Small Games of Chance Board.

Section 901.161 (relating to jurisdiction and purpose) is unchanged except for the last sentence regarding the Board's recommendation to the Secretary, which is deleted to maintain consistency with other changes in this regulation.

Sections 901.162 (relating to composition) and 901.163 (relating to powers and duties) are reserved.

Section 901.164 (relating to petitions) is amended by deleting all language except for the language that was previously in subsection (a) regarding the time frame for filing petitions.

Section 901.165 (relating to board practice and procedure) is amended by removing the existing language and adding new language that states what sections in the regulations now govern the practice and procedures before the Board.

Sections 901.166 (relating to board recommendation) and 901.167 (relating to stay of appeal) are reserved.

Section 901.168 (relating to stay of appeal) is amended by updating language in subsections (a) and (b) to be consistent with other changes made within this regulation.

Affected Parties

Pennsylvania taxpayers and tax practitioners may be affected by the regulation.

Fiscal Impact

The Department has determined that the proposed amendment will have no fiscal impact on the Commonwealth.

Paperwork

The proposed amendment will not create additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The regulation will become effective upon final publication in the Pennsylvania Bulletin. The regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing any comments, suggestions, or objections regarding the proposed amendment to Mary R. Sprunk, Office of Chief Counsel, PA Department of Revenue, P.O. Box 281061, Harrisburg, Pennsylvania 17128-1061, within thirty (30) days after the date of the publication of this notice in the Pennsylvania Bulletin.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 28, 2012 the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee

on Finance and the Senate Committee on Finance. In addition to submitting the amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

The Committees may, at any time prior to the submittal of the final-form regulation, convey to the agency and the Commission, their comments, recommendations and objections to the proposed regulation. The Independent Regulatory Review Commission may, within 30 days of the close of the public comment period, submit to the agency and Committees any comments, recommendations and objections to the proposed regulation. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the amendments, by the Department, the General Assembly and the Governor.

3/1/11

DANIEL MEUSER
SECRETARY OF REVENUE

CONTINUATION SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

ANNEX A

Title 61. Revenue, Part I. Department of Revenue, Subpart A.
General Provisions, Chapter 7. Board of Appeals.

§ 7.1. RESERVED.

§ 7.2. RESERVED.

§ 7.3. RESERVED.

§ 7.4. RESERVED.

§ 7.5. RESERVED.

§ 7.6. RESERVED.

§ 7.7. RESERVED.

§ 7.10. Definitions.

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

Administrative Proceeding - An administrative proceeding as
defined under the Administrative Agency Law (2 Pa.C.S. § 101),
including proceedings related to registrations and licenses.

Appeal - A request for or a review or protest of one of the
following:

(1) A resettlement, reassessment, redetermination, review or refund of taxes, interest, penalties, additions or payments made into the Commonwealth treasury, including a reassessment or refund as provided under Section 2703(a) of the Tax Reform Code (72 P.S. § 9703).

(2) A denial of an application for tax exempt status as a charitable, volunteer firemen's or religious organization or nonprofit educational institution.

(3) Reconsideration of interest payable on a tax overpayment.

(4) 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).

(5) 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.

§ 7.11. 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.

§ 7.12. Manner of Proceeding before the Board.

Proceedings before the Board shall be initiated by the filing of a petition, whether the proceeding is an appeal or administrative proceeding.

§ 7.13. 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.

(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 such decision or action. If a there is no notice, then the date is when the petitioner became aware of the Department's 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 the date of transmission as long as the Board receives the transmission by 12:00 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) A petition that the Board receives 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 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 website. A petition shall be in writing. A writing includes an electronic petition submitted through the Department's website. The Department will prescribe the form for a petition.

(e) Contents. A petition shall contain all information, documentation and attachments required by statute and the following:

(1) General. All petitions shall contain the following:

(i) 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, then 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 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.

(2) Appeal petitions. In addition to the requirements of paragraph (1), an appeal petition shall contain the following:

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

(ii) 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 shall 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 any 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.

§ 7.14. 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 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.

(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 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.

(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.

(vi) 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.

(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 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.

(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 where 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 the provisions of subsection (a), practice and procedure before the Board related to appeals shall be as follows:

(1) The provisions of the Administrative Agency Law (see 2 Pa.C.S. §§ 103(a), § 501-508 and 701-704) do not apply.

(2) Confidential character of hearings. Information gained from hearings shall be considered confidential information under section 731 of the Fiscal Code (72 P. S. § 731).

(3) 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.

(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, 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 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 Tax Reform Code (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 the provisions of subsection (a), practice and procedure before the Board related to administrative proceedings shall be as follows:

(1) Applicable law. The Administrative Agency Law (see 2 Pa.C.S. §§ 103(a), § 501-508 and 701-704) and other applicable laws and regulations related to the proceeding shall apply.

(2) Record. A full and complete record shall be kept of the proceedings.

(3) Transcripts. Hearings and testimony provided during such hearings shall be stenographically recorded. Copies of hearing transcripts will be made available to the petitioner at the petitioner's cost.

§ 7.15. Security upon petition for review.

(a) General Rule. 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 any 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) No appeal rights. There is no right to appeal the Department's determination under paragraph (2).

Chapter 901. LOCAL OPTION SMALL GAMES OF CHANCE

§ 901.1. Definitions.

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

* * *

Board—[The Small Games of Chance Board of the Department] The

Board of Appeals of the Department as provided for in Part I,
Chapter 7 of this Title.

* * *

BOARD PROCEDURES

§ 901.161. Jurisdiction and purpose.

The Board will receive and review petitions challenging the Department's decisions to deny an application for a manufacturer registration certificate or game of chance approval or a distributor license. The Board will also receive and review petitions from manufacturers or distributors challenging the Department's revocation of a manufacturer registration certificate, game of chance approval or a distributor license. [The Board will provide petitioners with the opportunity for a hearing and will make recommendations to the Secretary regarding petitions.]

§ 901.162. RESERVED.

§ 901.163. RESERVED.

§ 901.164. Petitions.

[(a) Time for filing.] A petition shall be filed within 15 days after the applicant, registrant or licensee receives notice of the Department's decision.

[(b) Place for filing. A petition shall be filed with the Bureau of Business Trust Fund Taxes, Department 280901, Harrisburg, Pennsylvania 17128-0901. A change of address will be published as a notice in the Pennsylvania Bulletin.

(c) Form and content. A petition shall be in writing, signed by the petitioner, a responsible person or authorized representative, and shall contain:

(1) The petitioner's name, address and telephone number.

(2) The name, address and telephone number of the authorized representative, if any.

(3) A copy of the notice of the Department's decision.

(4) A detailed statement in separate numbered paragraphs of the facts and grounds relied upon, specifically stating why the Department's decision is improper.

(5) A copy of the documents relevant to the petition.

(6) A statement specifying the relief requested by the petitioner.

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

(8) A signed statement certifying that to the petitioner's knowledge and belief, the facts contained in the petition are true and correct and that the petition is not made for purposes of delay.

(9) The petition shall contain pertinent data known to the petitioner.

(d) Number of copies. Four copies of the petition and documentation shall be submitted.

(e) 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. The Board may deny the petition for failure to furnish the additional information within a stated, reasonable amount of time after the request.]

§ 901.165. Board practice and procedure.

[(a) General. The provisions of 2 Pa.C.S. §§ 501-508 and 701-704 (relating to the administrative agency law) do not apply to practice and procedure before the Board to the extent that those provisions are inconsistent with §§ 901.161-901.164, this section and §§ 901.166-901.168 (relating to Board recommendation; decision and order; and stay of appeal).

(b) Representation.

(1) A petitioner is not required to be represented before the Board by an attorney. An individual or a partner in a partnership, corporation or association may be represented by a bona fide officer thereof or another person upon a showing of adequate authorization. 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. A party may be represented by a member in good standing of the bar of this Commonwealth.

(2) Only an attorney-at-law representing a petitioner, or the petitioner acting without representation

before the Board, is permitted to raise or argue a legal question at a hearing before the Board.

(3) Notices and other written communications to the petitioner will be given to the petitioner's authorized representative, and will have the same force and effect as if given to the petitioner directly. Action before the Board taken by the petitioner's authorized representative will have the same force and effect as if taken by the petitioner.

(c) Hearings.

(1) Waiver. The petitioner has the right to a hearing or to have the case decided upon the petition and record. A hearing shall be requested in writing. If a hearing is not requested, it is considered waived.

(2) Notices of hearing. When the petitioner requests a hearing in writing, reasonable notice will be given to the petitioner in writing specifying the date, time and place of the hearing.

(3) 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 that is not in conformity with this paragraph under extraordinary circumstances. The Board will notify the petitioner of its decision on the requested continuance.

(4) Presiding officer. The Deputy Secretary or a designee shall conduct the hearings.

(5) Transcripts. Written transcripts of hearings will not be prepared by the Board unless specifically requested in writing. The cost of the transcript is \$1.50 per page. A recording of the hearing will be made.

(6) Contemptuous conduct. Contemptuous conduct is grounds for exclusion from the hearing.

(d) Authority of presiding officer. The presiding officer has authority to:

(1) Regulate the conduct of hearings, including scheduling, recessing, reconvening and adjourning, and to do acts and take measures necessary or proper for the efficient conduct of hearings.

(2) Administer oaths and affirmation.

(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 the officer, consistent with statutory authority, regulations and Board policy.

(7) Participate in making decisions.

(8) Rule upon offers of proof and receive relevant evidence.

(9) Dispose of procedural requests or similar matters.

(e) Service. Notices and decisions issued under §§ 901.161–901.164, this section and §§ 901.166–901.168 will be sent by first class mail, postage prepaid.

(f) Consolidation. Two or more proceedings may be consolidated or severed by the Board at its discretion.

(g) Bond. A registrant or licensee whose license or registration has been revoked due to Commonwealth tax liabilities, and who has been notified of the revocation, shall file a bond in an amount of 120% of the tax and interest with

the Department for an appeal of the revocation to stay the revocation.

(h) Evidence and subpoenas. The presentation of evidence and the issuance of subpoenas relating to hearings before the Board are governed by 1 Pa. Code Chapter 35 Subchapter C (relating to evidence and witnesses).

(i) Burden of proof. The petitioner has the burden of proof.]

The provisions of this Section and Part I, Subpart A, Chapter 7 of this Title shall govern the practice and procedure before the Board.

§ 901.166. RESERVED.

§ 901.167. RESERVED.

§ 901.168. Stay of appeal.

(a) After a petition is filed, actions [Actions] to revoke a registration, license or game approval will be stayed pending the decision of the [Secretary when a petition has been filed with the] Board.

(b) [During the pendency of the appeal]Pending the Board's decision and order, the certificate, game approval or license of

the petitioner will be suspended. (See § 901.23a (relating to effect of denial, suspension, revocation, expiration of a certificate, license or game of chance).)

10/30/09

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER:	15-454	RECEIVED IRRC 2012 FEB 28 P 11: 21
SUBJECT:	Board of Appeals – Small Games of Chance	
AGENCY:	DEPARTMENT OF REVENUE	

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2-28-12	<u><i>K. Bennett</i></u>	HOUSE COMMITTEE ON FINANCE <i>Mundy</i>
2/28/12	<u><i>Amy Noel</i></u>	MAJORITY CHAIRMAN <u><i>Benninghoff</i></u>
	<u><i>Tom Chalk</i></u> 2/28/12 <i>gbs</i>	SENATE COMMITTEE ON FINANCE <i>Wozniak</i>
	<u><i>Jane Walker</i></u> 2/28/12 <i>gbs</i>	MAJORITY CHAIRMAN <u><i>Brubaker</i></u>
	<u><i>Ashley Roach</i></u> 2-28-12	HOUSE COMMITTEE ON GAMING OVERSIGHT <i>Youngblood</i>
	<u><i>Cowley May</i></u> 2/28/12 <i>gbs</i>	MAJORITY CHAIRMAN <u><i>Schrader</i></u>
	<u>2/28/12 <i>K Cooper</i></u>	INDEPENDENT REGULATORY REVIEW COMMISSION
	_____	ATTORNEY GENERAL (for Final Omitted only)
	<u><i>Samuel House</i></u> 2/28/12	LEGISLATIVE REFERENCE BUREAU (for Proposed only)