

# Comments of the Independent Regulatory Review Commission



## Department of Revenue Regulation #15-454 (IRRC #2933)

### Board of Appeals; Small Games of Chance

May 9, 2012

We submit for your consideration the following comments on the proposed rulemaking published in the March 10, 2012 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Revenue (Department) to respond to all comments received from us or any other source.

#### 1. Regulatory Analysis Form and Preamble. – Statutory authority; Clarity.

The Department's response to question number eight of the Regulatory Analysis Form (RAF) cites to Section 6 of the Fiscal Code and Section 206 of the Administrative Code of 1929 as the statutory authority for this rulemaking. However, in the preamble, the Department cites to Section 6 of the Fiscal Code and the entire Local Option Small Games of Chance Act as the authority. The RAF and the preamble accompanying the final-form regulation should more specifically and consistently identify the Department's statutory authority, as required by the Regulatory Review Act. 71 P.S. § 745.5(a)(1.1).

#### 2. References to “statute.” – Clarity.

This rulemaking includes several references to the term “statute” and phrases such as “prescribed by statute” or “required by statute.” The sections of the rulemaking that include these terms or phrases are:

- § 7.14(b)(1)
- § 7.14(c)(3)
- § 7.14 (e)
- § 7.14(f)(1)
- § 7.15(a)(4)(vi)(G)
- § 7.15(a)(8)(iii)
- § 7.15(a)(9)(i)
- § 7.15(b)(5)(ii)

The use of such terms and phrases lacks clarity. We believe the regulated community would be better served if the final-form rulemaking included references to the specific statutes in question.

#### 3. Need for the regulation.

Question 10 of the RAF asks a promulgating agency to explain the compelling public interest that justifies the regulation, describe who will benefit from the regulation and quantify the benefits as completely as possible, including the number of people that will benefit. The

response provided by the Department to this question does not provide this Commission with the required responses. When the final-form regulation is submitted, we request that the Department describe how many people will benefit from the changes and quantify those benefits.

#### **4. Section 7.14. Petitions. – Clarity; Reasonableness and feasibility; Implementation procedures.**

##### *Subsection (b) Time*

This subsection provides that petitions must be filed “within the time limits prescribed by statute, this title or other regulation” or no later than 90 days after the Department’s decision or action. As written, this provision does not clearly notify taxpayers of the filing deadlines. We also note that Department Form REV-1799 BA currently lists the time limitations for filing appeal petitions for numerous taxes. We believe including these requirements in the final-form regulation would assist the regulated community in understanding the time-frames associated with filing appeals. We ask the Department to consider including this information in the final-form regulation.

Subsection (b)(3) provides that for purposes of filing a petition, the date of the underlying Department decision or action will be the date of the notice of the decision or action. Where there is not a notice, “then the date is when the petitioner became aware of the Department’s decision or action.” How will the Department know or determine when the petitioner becomes aware? The final-form regulation should specify how the Department will implement this provision. We have a similar concern with language found in § 901.164, pertaining to petitions.

##### *Subsection (c) Receipt*

This subsection provides, that as a general rule, a petition is filed on the date the Board receives it. We have two concerns with this subsection. First, Subsection (c)(1) includes the term “electronic means.” We note that other sections of the rulemaking use the term “electronic” or “electronically” as it pertains to the filing of a petition. To add clarity to the rulemaking, we ask the Board to include a definition of the term “electronic” in the final-form rulemaking.

Second, Subsection (2) includes references to sections of two statutes that address the receipt of appeals transmitted to the Department by mail. The statutes provide that the postmark of the United States Postal Service is considered the date received of petitions. To improve the clarity of the rulemaking, we suggest that the statutory language be included in the final-form rulemaking.

##### *Subsection (d) Manner and form*

The last sentence of subsection (d) provides that the Department “will prescribe the form for a petition.” The final-form regulation should specify how that form can be obtained or located.

The last sentence of subsection (e)(2)(i) (“ . . . any document relating shall . . .”) is ambiguous and should be revised to clearly identify the necessary documentation.

**5. Section 901.165. Board practice and procedure. – Clarity; Need.**

The existing language of this section is being deleted and replaced with new language that provides that “[t]his section and Chapter 7 . . . govern practice and procedure before the Board.” What is the need for this provision since the existing language is being removed and the new language no longer contains any procedural requirements?