

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p>		INDEPENDENT REGULATORY REVIEW COMMISSION	
<p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		2015 MAR 10 AM 11:53	
(1) Agency Treasury Department for the Board of Finance and Revenue			
(2) Agency Number: 64 Identification Number: 64-5		IRRC Number: 3091	
(3) PA Code Cite: 61 Pa. Code §§ 702 and 703			
(4) Short Title: General Provision and Tax and Other Appeal Proceedings			
(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Jennifer Langan, Deputy Chief Counsel, 717.787.9738, jlangan@patreasury.gov Secondary Contact:			
(6) Type of Rulemaking (check applicable box):			
<input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation		<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General	
(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)			
<p>The rulemaking creates new regulations consistent with Act of 2013 (P.L. 270, No. 52), which reorganized the Board of the Finance and Revenue – a tax appeal board - and instituted new procedures for practicing before the Board. There are two chapters of regulations to be implemented <i>General Provisions</i> and <i>Tax and Other Appeal Proceedings</i>. The regulations include: an extensive definition section; filing procedures and deadlines; rules for representation before the Board, <i>ex parte</i> communications, compromise settlement procedures; procedures for the hearing process; and, to request reconsideration.</p> <p>This rulemaking would rescind the prior regulations 61 Pa. Code § 701 <i>et seq.</i></p>			
(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.			
Tax Reform Code of 1971 - 72 P.S. § 9703.1(m).			
(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.			

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No

(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.

The General Assembly passed Act 52 of 2013 which reorganized the Board of Finance and Revenue. The Board of Finance and Revenue is a state tax appeal board that has equitable powers as they can abate penalties and interest for taxpayers when a case warrants. The Board has attorneys, financial professionals, and citizens who practice before it each month. The regulations will provide clarification to the statutes governing practice before the Board specifically, 72 P.S. § 9701 *et seq.* It will also provide specific procedures for those practicing before the Board and streamline processes.

Approximately, 5000 cases a year are filed with the Board.

(11) 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.

Not applicable.

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

Not applicable.

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

These regulations will rescind and supersede the prior regulations governing the Board of Finance and Revenue specifically 61 Pa. Code § 701.

As these regulations are specific to practicing before the Board, we do not foresee them affecting another agency's regulations.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The proposed regulations were sent to the Pennsylvania Institute for Certified Public Accountants, Pennsylvania Bar Association Tax Section, the Pennsylvania Chamber of Business and Industry, and the Pennsylvania Department of Revenue. The groups offered some comments on the regulations which were incorporated to the proposed regulations herein.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Taxpayers in the Commonwealth who challenge an assessment or a non-refund of corporate, personal, sales, motor fuels tax, property tax/rent rebate, etc. may be affected by the regulation if they wish to seek relief before the Board of Finance and Revenue. However, the regulations would not affect the amount of the tax or how a tax is levied rather, the regulations are simply the procedures for appearing before the Board.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Taxpayers and the representatives that appear before the Board would be required to comply. The Board adjudicates approximately 5000 cases a year.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

As the regulation simply institutes procedures for appearing before the Board of Finance and Revenue, we do not expect any financial, economic or social impact to anyone.

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

There is no expected cost to regulations. The new regulations simply streamline Board processes.

(19) 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.

No anticipated costs and/or saving to the regulated communicated associated with this rulemaking,

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

Not applicable.

(21) Provide a specific estimate of the costs and/or savings to the **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.

As the Board of Finance and Revenue has been provided with compromise authority, many cases will be resolved at the Board thereby eliminating the need for a costly and prolonged appeal to Commonwealth Court. Although a cost savings will be realized, it is difficult to predict how many cases will be resolved early through compromise since the Parties must agree to the compromise.

(22) For each of the groups and entities identified in items (19)-(21) above, 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.

There will be no additional legal, accounting or consulting procedures or additional reporting, recordkeeping or other paperwork required.

(23) 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						

(23a) Provide the past three year expenditure history for programs affected by the regulation.
Not applicable.

Program	FY -3	FY -2	FY -1	Current FY

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the

following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Not applicable.

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

Not applicable.

(26) 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.

After extensive review of other Commonwealth regulations involving hearing boards similar to the Board of Finance and Review, Treasury was careful to draft regulations that were the least burdensome on taxpayers. Additionally, the regulations provide the Board and staff administrative support because the procedures for practicing before the Board are more clearly articulated.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The regulations really have no impact on small business other than simply changing and/or codifying the procedures for filing an appeal and appearing before the Board of Finance and Revenue. Taxpayers, including small businesses, have had the opportunity to appear before the Board since it was established however, with the enactment of Act 270 of 2013 which changed some administrative procedures at the

Board, the Department wanted to establish more defined procedures for appearing before the Board.

(28) 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.

Not applicable.

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

- A. The date by which the agency must receive public comments: 30 days after publication of the proposed rulemaking in the *Pennsylvania Bulletin*.
- B. The date or dates on which public meetings or hearings will be held: No public meetings or hearings will be held.
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: Spring 2015
- D. The expected effective date of the final-form regulation: Date of publication in the *Pennsylvania Bulletin*
- E. The date by which compliance with the final-form regulation will be required: Effective date
- F. The date by which required permits, licenses or other approvals must be obtained: Not applicable

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The proposed regulations will be reviewed annually.

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

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p><i>[Signature]</i></p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>DEC 01 2014</p> <p>DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>Pennsylvania Treasury Department/Board of Finance and Revenue</p> <p>_____ (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>64/5</u></p> <p>DATE OF ADOPTION: <u>9/29/2014</u></p> <p>BY: <i>[Signature]</i></p> <p>Chairman</p> <p>TITLE _____ (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p><i>[Signature]</i></p> <p>BY: _____ Chief Counsel Treasury Department</p> <p><u>10/7/14</u></p> <p>DATE OF APPROVAL</p> <p>(Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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PROPOSED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA TREASURY DEPARTMENT
BOARD OF FINANCE OF REVENUE
61 Pa. Code Chapters 702 and 703
Rescind 61 Pa. Code Chapter 701

BOARD OF FINANCE AND REVENUE
[61 PA. CODE CHS. 701—703]
General Provisions; Tax and Other Appeal Proceedings

The Board of Finance and Revenue (“Board”), under the general authority set forth in Section 2703.1(m) of the Tax Reform Code of 1971 (72 P.S. § 9703.1), proposes to rescind current regulations Chapter 701 and to create new regulations Chapters 702 and 703.

Purpose of the Proposed Rulemaking

The purpose of the proposed rulemaking is to create new regulations consistent with the act of July 9, 2013 (P.L. 270, No. 52), which reorganized the Board and instituted new procedures for practicing before the Board. There are only two chapters of regulations to be implemented including *General Provisions* and *Tax and Other Appeal Proceedings*. The regulations include: an extensive definition section; filing procedures and deadlines; processes for representation by third parties before the Board, ex parte communications, petitioning the Board; compromise settlement procedures; procedures for the hearing process; and, to request reconsideration.

Chapter 702. General Provisions

Subchapter A – Overview proposes the scope of the regulations and for the liberal construction of the regulations so long as it does not affect the substantive rights of the parties. This subchapter also provides an extensive definition section. Additionally, the subchapter sets forth the following: the procedure on filing generally; the Board’s office hours; administration of oaths; formal rules of evidence does not apply to Board matters; and, the Board has no subpoena or deposition power.

Subchapter B – Time proposes the procedures for the date of filing a Party’s submission as well as how the Board will compute time for a submission.

Subchapter C - Representation before the Board contains provisions for who may represent petitioners before the Board and the Board’s criteria for limiting a person’s right to practice before the Board.

Subchapter D - Ex Parte Communications contains a definitional section and the general rules for ex parte communication between a Board member or staff and a party.

Chapter 703. Tax and Other Appeal Proceedings

Subchapter A – Submission proposes the general requirements for what information a Petition for Relief must contain at a minimum. Additionally, under this subchapter the Board must acknowledge the receipt of the Petition. This subchapter also contains the following requirements: Board requested additional submissions from Petitioners;

consolidation of Petitions; timeliness of submissions; and, withdrawal or termination of appeals.

Subchapter B – Compromise Procedures sets forth the rules for compromise settlements before the Board. More specifically, the subchapter proposes the rules for compromise settlements generally between the parties including time deadlines and waivers.

Subchapter C – Prehearing Conferences sets forth the procedure for requesting a prehearing conference, scheduling prehearing conferences, and nonparticipation of one party.

Subchapter D – Hearings sets forth the following: how to request a hearing; notice of proceedings will be in accordance with the Sunshine Act; scheduling of hearings; hearing procedures; and, a party's failure to appear.

Subchapter E – Request for Reconsideration sets forth the procedures for a party requesting reconsideration to object to a Board order including: the basis of the request for reconsideration; time period for filing a request for reconsideration and extension; and the contents of the request. This subchapter also details how the Board shall respond to requests for reconsideration and provides the party's appeal rights.

Subchapter F – Publication of Orders sets forth that the Board shall publish on the Board's website each final order, along with dissenting opinions, that grants or denies in whole or in part of the Petition. The subchapter also sets forth the timing of such publication. Additionally, the subchapter sets forth what constitutes confidential information the Board will automatically redact and procedures for a Petitioner to request additional redactions pursuant to Pennsylvania's Right-to-Know Law's definitions of confidential and proprietary information.

Contact Person

The Contact person for these regulations is Jennifer Langan, Deputy Chief Counsel, Pennsylvania Treasury Department, (717.787.9738).

Affected Parties

Taxpayers and representatives of taxpayers seeking relief in the administrative appeal process may be affected by this amendment.

Fiscal Impact

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

Effectiveness

The amendment will become effective upon final form publication in the Pennsylvania Bulletin.

Public Comments

Interested persons are invited to submit in writing any comments, suggestions, or objections regarding the proposed rulemaking within 30 days after the date of the publication of this notice in the Pennsylvania Bulletin to Jacqueline Cook, Chairman, Board of Finance and Revenue, 1101 South Front Street, Suite 400, Harrisburg, Pennsylvania 17104-2539, Attention: Public Comment.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on _____, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. A copy of this material is available to the public upon request and its available on the Board's website at www.patreasury.gov/BF&R.

The Committees may, at any time prior to 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 Board, the General Assembly and the Governor.

JACQUELINE COOK
CHAIRMAN OF THE BOARD OF
FINANCE AND REVENUE

TITLE 61. REVENUE

PART VI. BOARD OF FINANCE AND REVENUE

CHAPTER 701. [SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE] (Reserved)

(Editor's Note: As part of this proposed rulemaking, the Board is proposing to rescind Chapter 701 which appears in 61 Pa. Code pages 701-1—701-3, serial pages (265847)—(265849).)

§§ 701.1—701.7. (Reserved).

CHAPTER 702. GENERAL PROVISIONS

Subchapter A. OVERVIEW

§ 702.1. Scope.

- (a) This chapter establishes the practice and procedure before the Board.
- (b) This chapter supersedes 1 Pa. Code Part II (relating to General Rules Of Administrative Practice and Procedure)
- (c) Subsection (a) supersedes 1 Pa. Code §§ 31.1 and 31.6 (relating to scope of part; and amendments to rules).

Statutory reference – 72 P.S. § 9703.1(m).

§ 702.2. Liberal construction.

- (a) This chapter 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 this chapter, including a deadline, when necessary or appropriate, if the waiver does not adversely affect a substantive right of either party.
- (c) Subsections (a)—(b) supersede 1 Pa. Code § 31.2 (relating to liberal construction).

Statutory reference – 72 P.S. § 9703.1.

§ 702.3. Definitions.

(a) The following words and terms, when used in this part, 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.

Chairperson – The State Treasurer or the State Treasurer’s designee.

Confidential proprietary information – The term as defined in section 102 of the Right-to-Know Law (65 P.S. § 67.102).

Department – The Department of Revenue of the Commonwealth.

Electronic delivery—A method of dispatching or receiving a submittal via electronic means such as email, 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 section 503 of The Fiscal Code (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— The term as defined in section 102 of the Right-to-Know Law (65 P.S. § 67.102).

(b) Subsection (a) supersedes 1 Pa. Code § 31.3 (relating to definitions).

Statutory reference 72 P.S. § 9701.

§ 702.4. 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

(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 documents filed with the Board. The petitioner accepts the risk that delay, disruption or interruption of a document filed with the Board by electronic delivery may cause the document to not be properly or timely filed.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 31.4, 31.5 and 33.61 (relating to information and special instructions; communications and filings generally; and application for waiver of formal requirements).

Statutory reference – 72 P.S. § 9704(c).

§ 702.5. Board office hours.

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

(b) Subsection (a) supersedes 1 Pa. Code § 31.5 (relating to communications and filings generally).

§ 702.6. Oaths.

(a) A Board member or the secretary will have the power to administer oaths or affirmations with respect to any proceeding.

(b) Subsection (a) supersedes 1 Pa. Code § 35.148.

§ 702.7. Formal rules of evidence do not apply.

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

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.161—35.169 and 35.173 (relating to evidence; and official notice of facts).

§ 702.8. Subpoenas and depositions.

(a) The Board does not possess the power to issue subpoenas nor take depositions.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.142 and 35.145—35.152 (relating to subpoenas; and depositions).

Subchapter B. TIME

§ 702.11. 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 by means of electronic delivery on a day other than a business day, the document will be deemed to be filed on the next business day.

(b) Subsection (a) supersedes 1 Pa. Code § 31.11 (relating to timely filing required).

Statutory reference – 72 P.S. § 9704(a) and (b).

§ 702.12. Computation of time.

(a) 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 runs until the end of the next business day.

(b) Subsection (a) supersedes 1 Pa. Code § 31.12 (relating to computation of time).

Statutory reference – 72 P.S. § 9704(a) and (b).

Subchapter C. REPRESENTATION BEFORE THE BOARD

§ 702.21. 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. Unless another method is prescribed, the Department will be deemed to be served electronically when the Board docket 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.

(h) *Supersession.* Subsections (a)—(g) supersede 1 Pa. Code §§ 31.21-31.26 (relating to representation before any agency).

Statutory reference – 72 P.S. § 9704(d) and (d.1).

§ 702.22. Limited practice before the Board.

(a) The Board may deny, temporarily or permanently, the privilege of representing a party 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.

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.27 and 31.28 (relating to contemptuous conduct; and suspension and disbarment).

Subchapter D. EX PARTE COMMUNICATIONS

§ 702.31. Definitions.

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

Communication – A verbal, written or electronic correspondence.

Ex parte communication – A communication, outside of a public hearing, by one party with the Board or the staff not in the presence of the other party, regarding the merits of a petition.

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. The waiver shall be in a format as designated by the Board and published on the Board's website.

Statutory reference – 72 P.S. § 9704(d) and (d.3).

§ 702.32. General rules.

(a) *Communication with Board Members.* The Board members may not participate in an ex parte communication.

(b) *Communication with Staff.* The staff may not participate in an ex parte communication, except when:

(i) A party provides a waiver; or

(ii) The staff provides a party or its representative with 10 days written notice of a meeting at which a communication will occur and the party or its representative fails to participate in the meeting.

(c) *Written and electronic submission.* A 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 an ex parte communication. Upon discovery of an ex parte communication, the staff will promptly notify the other party. The Board may take any reasonable measures deemed necessary to remedy an ex parte communication.

Statutory reference – 72 P.S. § 9704(d) and (d.3).

CHAPTER 703. TAX AND OTHER APPEAL PROCEEDINGS

Subchapter A. SUBMISSIONS.

§ 703.1. 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 the 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.

(c) *Supersession.* Subsections (a) and (b) supersede 1 Pa. Code § 35.17 (relating to petitions generally).

Statutory reference – 72 P.S. § 9704(a) and (c)

§ 703.2. Petition content.

(a) *General.* A petition must include, at a minimum, the following, as 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 is permitted to rely upon the accuracy of the physical or electronic mail address provided by the petitioner. It is the duty of the petitioner to notify the Board if there is a change in an address provided to the Board.

(c) *Signature.* The petitioner or the petitioner's authorized representative shall sign a petition. The Board may require evidence that the signatory has authority to sign on behalf of petitioner.

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code §§ 31.11-31.15, 33.1-33.4, 35.18-35.41 and 35.48-35.55.

Statutory reference – 72 P.S. § 9704(c).

§ 703.3. Board acknowledgment.

The Board will acknowledge receipt of petitions. The acknowledgement will set forth deadlines for subsequent submissions.

§ 703.4. 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) *Submissions.* Submissions filed subsequent to the petition shall include the petitioner's name and the docket number.

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

(d) *Copies.* Petitioners are required to file one copy of a document either in hard copy or electronically at the time of filing. At its sole discretion, the Board may require additional copies of submissions.

(e) *Electronic submissions.*

(1) An electronic submission made with the Board must be:

(i) 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.

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

(2) Petitioners may file one electronic copy at the electronic mail address provided. Paper copies are not required unless the document is too large to transmit by means of electronic delivery.

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

(g) *Supersession.* Subsections (a)—(e) supersedes 1 Pa. Code §§ 33.1-33.41, 35.1-35.14 and 35.191-35.221 (relating to general requirements, filing generally, execution, verification, copies, fees, service, amendments and briefs).

Statutory reference – 72 P.S. 9704(c) and (d).

§ 703.5. Service

(a) A party must serve the other party with each submission.

(b) The Board shall publish on its website instructions regarding service.

(c) Subsection (a) – (c) supersedes 1 Pa. Code § 33.31 -33.37 (relating to service).

703.6. Consolidation.

(a) 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.

(b) Subsection (a) is identical to 1 Pa. Code §§ 35.45 and 35.122 (relating to consolidation; and consolidation of formal proceedings).

§ 703.7. Timeliness of submissions.

(a) *Time.* Unless a different time is prescribed by the Board or staff, submissions shall 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 the submission. Evidence filed after the prescribed deadlines will not be reviewed by the Board.

(b) *Supersession.* Subsection (a) supersedes 1 Pa. Code §§ 35.35 (relating to answers to complaints and petitions).

§ 703.8. Withdrawal or termination of appeal.

(a) A petitioner that desires to terminate an appeal before final decision by the Board shall submit to the Board a written request to withdraw the appeal.

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.42 and 35.51 (relating to withdrawal or termination).

Subchapter B. COMPROMISE PROCEDURES

§ 703.11. 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) 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 will 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 to waive any right to:

(1) Appeal the compromise order.

(2) Claim a refund of money paid pursuant to the compromise order.

(3) File a petition or appeal that raises the same issues of the tax period and liability addressed in the compromise order.

(g) Subsections (a)—(f) supersedes 1 Pa. Code § 35.115 (relating to offers of settlement, stipulations).

Statutory reference – 72 P.S. § 9704(d) and (d.7).

Subchapter C. PREHEARING CONFERENCES

§ 703.21. 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, by telephone or by 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 702, Subchapter D (relating to ex parte communications) or by failing to participate in the prehearing conference after being provided notice and an opportunity to attend.

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code § 35.111—35.116 (relating to prehearing conferences).

Statutory reference – 72 P.S. § 9704(d), (d.5) and (d.6).

Subchapter D. HEARINGS

§ 703.31. Disposition of petitions.

(a) 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 shall request it on the petition form or subsequently, in writing.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 31.13, 35.101, 35.121-35.128.

Statutory reference – 72 P.S. § 9704(d), (d.5) and (e).

§ 703.32. Notice of proceeding.

(a) When notice of hearings is required, publication will be in accordance with 65 Pa. Code Chapter 701 (relating to Sunshine Act).

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.51 and 35.103—35.106 (relating to docket; and notice of hearings).

Statutory reference – 72 P.S. § 9704(d), (d.5) and (d.6).

§ 703.33. Scheduling of hearing.

(a) The secretary will schedule hearings and 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 these requests.

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

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 31.15, 35.102-35.106 and 35.121.

Statutory reference – 72 P.S. § 9704(d), (d.5) and (d.6).

§ 703.34. 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.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.123, 35.125, 35.127, 35.128, 35.131-35.139, 35.171-35.190, 35.201.

Statutory reference – 72 P.S. § 9704(d), (d.5) and (d.6).

§ 703.35. Failure to appear at hearing.

(a) 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.

(b) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.124 and 35.126 (relating to appearances; and presentation of the parties).

Subchapter E. REQUEST FOR RECONSIDERATION

§ 703.41. Request for reconsideration.

(a) *Basis of 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.

(b) *Supersession.* Subsection (a) supersedes 1 Pa. Code § 35.231-35.241 (relating to application for rehearing or reconsideration).

§ 703.42. Time for filing request for reconsideration and extension.

(a) A request for reconsideration must be filed by a party and provided to the other party 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 under section 2704(f)(1) of the Tax Reform Code of 1971 (72 P.S. § 9704(f)(1)).

(b) Subsection (a) supersedes 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

§ 703.43. Filing a request for reconsideration.

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

(b) *Manner of filing.* A request for reconsideration must be submitted to the Board electronically at 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 will provide the petitioner, or petitioner's representative, with a copy of the request for reconsideration at the same time the Department files the request. The notice shall be made to the address in 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 or at the following address:

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

(d) *Supersession*. Subsections (a)—(c) supersede 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

§ 703.44. 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 any future applicable deadlines. In all cases for which a reconsideration request is granted, the Board will subsequently issue a reconsidered order.

§ 703.45. Appeal rights.

(a) *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 Pennsylvania Rule of Appellate Procedure 1571(b). 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 Pennsylvania Rule of Appellate Procedure 1571(b).

(b) *Supersession*. Subsection (a) is superseded by 1 Pa. Code §§ 31.14, 35.190, 35.225, 35.226 and 35.251.

Statutory reference – 72 P.S. § 9704(i).

Subchapter F. PUBLICATION OF ORDERS

§ 703.51. Publication of orders.

(a) *General rule*. The Board will 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 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.

Statutory reference – 72 P.S. § 9704(h).

§ 703.52. 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 (65 P.S. § 67.102), 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 Right-to-Know Law. The petitioner is responsible for notifying the Board within 30 days of the mailing date of the order of any trade secret or confidential proprietary information that petitioner does not want to be published. The notification must clearly identify the language contained in the order that should be redacted, and the reason for the requested redaction.

(b) *Confidential information in a published order.* 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 it will make every reasonable effort to redact the confidential information promptly.

Statutory reference – 72 P.S. § 9704(h)(2) and (h)(3).



VIA HAND DELIVERY

March 10, 2015

The Honorable John Mizner
Chairman
Independent Regulatory Review Commission
14th Floor, Harrisstown 2
333 Market Street
Harrisburg, PA 17101

Re: Treasury Department Regulation 64/5 - Board of Finance of Revenue

Dear Chairman Mizner:

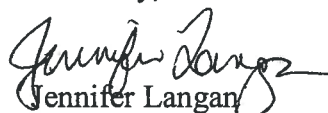
The Pennsylvania Treasury Department (“Treasury”) has enclosed for the Senate Finance Committee’s review two chapters of proposed regulations for the Board of Finance of Revenue (“Board”) *Chapter 702 – General Matters* and *Chapter 703 - Tax and Other Appeal Proceedings*. The Board is a tax appeal board for which Treasury is administratively responsible.

Act of 2013 (P.L. 270, No. 52) reorganized the Board and instituted new procedures for practicing before the Board. Accordingly, Treasury is presenting the proposed rulemaking providing for administrative procedures related to the filing, consideration and final resolution of appeals from decisions of the Department of Revenue.

The proposed regulations have been sent to the Pennsylvania Institute for Certified Public Accountants, Pennsylvania Bar Association Tax Section, the Pennsylvania Chamber of Business and Industry and the Pennsylvania Department of Revenue for their comments.

If you or your staff would like to discuss these regulations or if you have any questions, please contact me at 717.787.9738.

Sincerely,


Jennifer Langan
Deputy Chief Counsel

Enclosure

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

I.D. NUMBER: 64-5
SUBJECT: General: Provisions and Tax and other Appeal Proceedings
AGENCY: Pennsylvania Treasury Department for the Board of
 Finance and Revenue

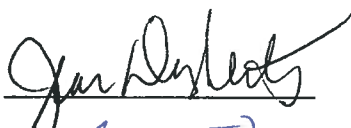
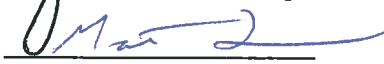
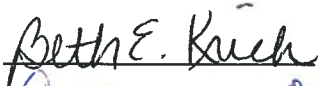
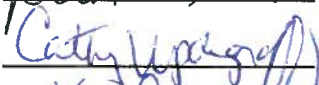
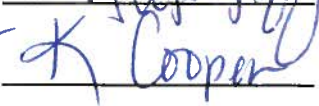

TYPE OF REGULATION

- 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
 - With Revisions
 - Without Revisions

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FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<u>HOUSE COMMITTEE - Finance Committee</u>
3/10/15		MAJORITY CHAIR <u>Bernie O'Neil</u>
3/11/2015		MINORITY CHAIR <u>Jake Wheatley</u>
		<u>SENATE COMMITTEE - Committee on Finance</u>
3/10/15		MAJORITY CHAIR <u>John Eichelberger</u>
3/10/15		MINORITY CHAIR <u>John Blake</u>
3/10/15		
		<u>INDEPENDENT REGULATORY REVIEW COMISSION</u>
		<u>ATTORNEY GENERAL (for Final Omitted only)</u>
3/10/15		<u>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</u>