

MATTERS OF APPEAL

A McCORD TREASURY UPDATE ON THE BOARD OF FINANCE AND REVENUE

July 25, 2013

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

Taxpayers deserve an appeals process that is transparent, predictable and fair. This concept drives my work to modernize the Board of Finance and Revenue and make it more accessible and accountable to people and businesses. Through my role as BF&R chairman, I implemented some reforms, such as publicizing decisions online and questioning some of the board's customary practices, but some systemic issues remained.

For decades, various parties have attempted and failed to revamp the tax appeals system for Pennsylvania citizens, but we are finally taking a major step forward with BF&R reforms enacted as part of this year's Tax Code bill (Act 52 of 2013, as introduced, HB 465). These new reforms are more extensive and have the force of law. In this edition of *Matters of Appeal*, we will take a closer look at this pro-taxpayer legislation.



As always, I hope you find this newsletter helpful and please do share your feedback via bfr@patreasury.gov.

Yours in service,

A handwritten signature in black ink that reads "Rob McCord".

Rob McCord, State Treasurer and Chair of the Board of Finance and Revenue

Precedents for Professionals: Professional Conduct Reminders and Practice Tips

Solicitation of Clients Among BF&R Petitioners

Attorneys in attendance at public hearings of BF&R are reminded that they are precluded from directly soliciting clients (often referred to as "trolling") for business among other BF&R petitioners. Rule 7.3 of the Pennsylvania Rules of Professional Conduct, promulgated by the Supreme Court of Pennsylvania, (set forth in full below) specifically prohibits such direct contact with prospective clients.

Rules of Professional Conduct: Rule 7.3 Direct Contact with Prospective Clients

A lawyer shall not solicit in-person or by intermediary professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted is a lawyer or has a family, close personal, or prior professional relationship with the lawyer. The term "solicit" includes contact in-person, by telephone or by real-time electronic communication, but, subject to the requirements of Rule 7.1 and Rule 7.3 (b), does not include written communications, which may include targeted, direct mail advertisements.

Comment: [1] There is a potential for abuse inherent in direct solicitation, including in-person, telephone or real-time electronic communication, by a lawyer of prospective clients known to need legal services. These forms of contact subject the lay person to the private importuning of a trained advocate, in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with possibility of undue influence, intimidation, and over-reaching.

[2] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written

See Precedents, Page 2

BF&R Committed to Customer Service

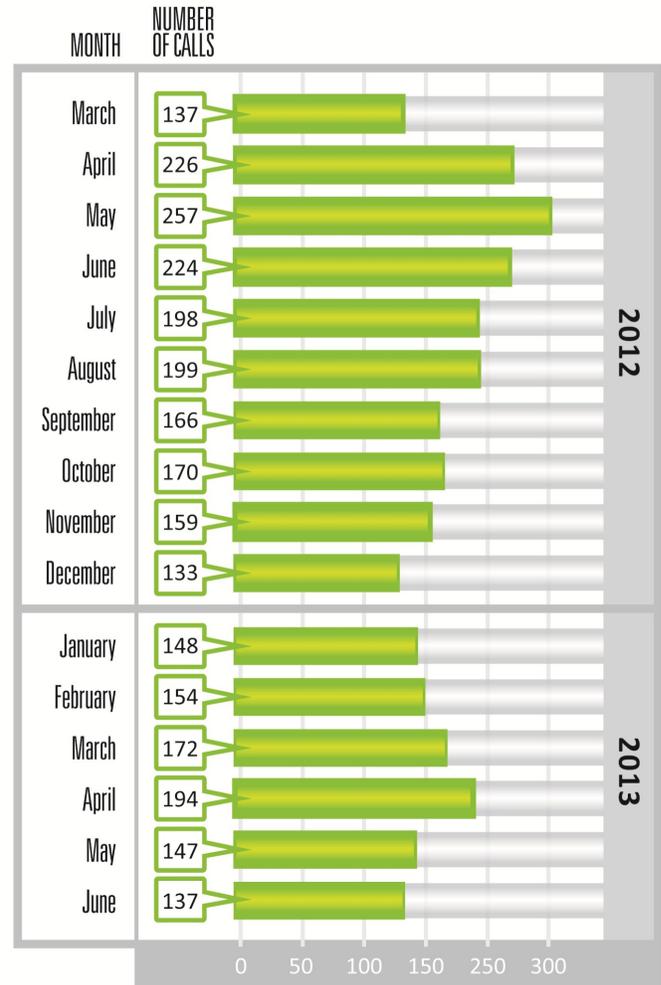
Last spring, Treasurer McCord created a new Taxpayer Advocate position at BF&R – a designated staff person to provide a deeper level of customer service, but helping taxpayers who file appeals is a team effort at BF&R. The staff receives many thanks from constituents who are happy to reach a live person on the phone, and often call BF&R with issues outside its jurisdiction just for suggestions on where to turn next.

Supportive comments include:

- On briefer Kim Williams: “I just want to thank you for all you did to help and support my property tax appeals. It is always nice to know there are still people around like you, giving more of themselves for others.”
- On attorney Tom Watson: “He made a significant contribution simply by successfully caring about his job and doing that which was right. I am very impressed with his professionalism and his willingness to help. I wanted you to know that his efforts are greatly appreciated.”
- On attorney Christopher Andreoli: “If I was rating him 1-5, I’d give him a 5!”
- On briefer Tira Stago: “I don’t know how to thank you enough for your help. It seemed that no-one else would even listen to my claim.”

2,915 calls tracked

between March 14, 2012 and July 17, 2013



Precedents *(continued from page 1)*

communications, which may be mailed, or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person, telephone or real-time electronic persuasion that may overwhelm the client’s judgment.

Practice Tips

Amended Return vs. Appeal: An amended PA-40 Personal Income Tax Return and Schedule PA-40X should not be used to make corrections to a tax return if the amended return will be filed within four months of

the end of three years from the due date of the original return (not including extensions). In such cases, it is recommended that a Petition for Refund (REV-65) be filed in order to protect appeal rights. Although amended returns may be filed up to three years from the due date of the original return or extended due date, the department is under no obligation to act upon amended returns. In contrast, if a REV-65 is filed, the Board of Appeals must act on the petition within six months of the date of filing the petition.

Continuance Requests: Granting continuances, for cause shown, will be discretionary with the Board. 61 Pa. Code § 701.7.

See Precedents, Page 3

How Act 52 of 2013 Changes the Board of Finance and Revenue

The law governing BF&R's composition and the manner in which it hears appeals had not been altered in more than 50 years. BF&R has been criticized for its lack of independence from the Department of Revenue, whose decisions were the subject of the appeal. Treasurer McCord worked in a bipartisan fashion with leaders of the business, legal, and tax accounting communities to help craft Act 52. [Read the full text of Act 52 here](#). The law, which takes effect next year, will change BF&R in the following ways:

- BF&R will change from six to three members – two appointed by the governor and confirmed by the Senate, plus the state treasurer. Until now, the board included the secretary of revenue along with the auditor general, attorney general, secretary of the commonwealth and the governor's general counsel;
- Ex parte communications between the Department of Revenue or a taxpayer with board members and staff will be prohibited;
- The Revenue department and the taxpayer will both be entitled to present oral and documentary evidence;
- BF&R will have the power to settle cases upon mutual agreement of the department and the taxpayer, which it now lacks; and
- BF&R will be required to provide specific information on how decisions were reached and publish all opinions (after redacting confidential information) on searchable databases for the public.

“The change provides for more balance and transparency in the appeals process, and altogether a positive, good government improvement.”

– Maureen Riehl, Council on State Taxation

Precedents *(continued from page 2)*

Reconsideration Requests: BF&R will accept Petitions for Reconsideration of its final order. Petitions must be filed within 15 days after the mail date of a final order. The application must be made by petition, stating specifically the alleged mistake of law or fact made by the Board, the correction of which would change the outcome of the final order.

It is noted that in the absence of applicable BF&R interim regulations regarding Petitions for Reconsideration, this Board will follow the procedures set forth in Pennsylvania's General Rules of Administrative Practice and Procedure, 1 Pa. Code Section 35.241. Please refer to these rules to determine

what effect filing this kind of petition may have on a Petition for Review to the Commonwealth Court.

The Board may deny a Petition for Reconsideration in writing. Otherwise, a Petition for Reconsideration will be deemed denied if no response is made within 30 days after it is filed.

Agency denial of an application for rehearing or reconsideration may occur after the expiration of the period permitted by Pa. R.A.P. No. 1571 for the filing of a petition for review. Therefore, Pennsylvania Rules of Appellate Procedure contemplate that a party may elect to concurrently petition for review and apply for rehearing or reconsideration of an adjudication or other final order.

Board of Finance & Revenue: Who We Are

Rob McCord, State Treasurer (Chair) | Eugene DePasquale, Auditor General | Kathleen Kane, Attorney General
 Dan Meuser, Secretary of Revenue | Carol Aichele, Secretary of the Commonwealth
 James D. Schultz, Governor's General Counsel

**Note: The composition of the Board will change in January 2014 as outlined in Act 52 of 2013*

BF&R Staff

Secretary of the Board
 Jacqueline Cook

Docketing
 Joan Karlavage, Supervisor

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

Liquid Fuels
 Diane Fetters, Supervisor

Taxpayer Advocate
 Rachael Bell

UPCOMING HEARING DATES

August 20 and 21, 2013
 September 24 and 25, 2013
 October 29 and 30, 2013
 No November meeting
 December 10 and 11, 2013

CONTACT BF&R

By mail:

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

Hours of operation:

Mon.—Fri., 8:00 a.m. to 4:30 p.m.

By phone:

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

By fax:

(717) 783-4499

By email:

bfr@patreasury.gov

Online / Newsletter sign-up

www.patreasury.gov/bfr.html

Directions to BF&R

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

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

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

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



Do you purchase fuel for your farm or emergency vehicles?

You may be eligible for a refund – contact the liquid fuels section at (717) 787-6534 for an application. Supervisor Diane Fetters and her team of professionals stand ready to help you receive the refund you are due.

- Applications for agricultural producers and volunteer fire, ambulance, and rescue squads are due **September 30, 2013**.
- Applications for political subdivisions and nonpublic, nonprofit schools are due March 31, 2014.