

# MATTERS OF APPEAL

A McCORD TREASURY UPDATE ON THE BOARD OF FINANCE AND REVENUE

Wednesday, May 21, 2014

Pennsylvania Treasury | [www.patreasury.gov/bf&r.html](http://www.patreasury.gov/bf&r.html)

## Message from the Treasurer



Many taxpayers are unfamiliar with the Board of Finance and Revenue, but for those who encounter the Board during a tax appeal, it is a critically important step to resolution of a tax matter. For all individuals and businesses, it is important that the tax appeal process be transparent, efficient and balanced. Act 52 of 2013 achieved these goals and significantly changed the landscape of this second level of tax appeals in Pennsylvania for the better. I was proud to lead this effort.

This edition of Matters of Appeal takes a closer look at the new BF&R and what taxpayers can expect. We recently unveiled a new BF&R website, [www.patreasury.gov/BF&R.html](http://www.patreasury.gov/BF&R.html), which offers expanded functionality and new features.

As always, we welcome your thoughts and feedback via [bfr@patreasury.gov](mailto:bfr@patreasury.gov).

Yours in service,

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

## Meet the New Board Members



### Chair

**Jacqueline A. Cook, Esq.** was appointed by Treasurer McCord in April to serve as his designee and Chair of the Board of Finance and Revenue. Ms. Cook attended the University of Scranton (B.S. Accounting) and University of Notre Dame Law School (J.D.). She has served as Secretary of the Board of Finance and Revenue from 2006 to present. For 13 years prior to that, as legal counsel to four State Treasurers, she was appointed to serve as the Chairman of the Board of Finance and Revenue, voting on over 50,000 Pennsylvania tax appeal cases. She has assisted in drafting several pieces of tax-related legislation, including the electronic collection of Revenue and Labor and Industry taxes. Ms. Cook has also chaired committees to procure the collection of Commonwealth funds, including tax payments and lecture on tax appeals throughout Pennsylvania. Most recently, in preparation for the changes mandated by Act 52 of 2013, Ms. Cook has been instrumental in the development of new policies, regulations, website, case management system and public searchable database for the BF&R. She serves as Chair of BF&R at the pleasure of the Treasurer.



**David R. Kraus** was nominated by Governor Corbett and confirmed by the Senate on May 6, 2014. Mr. Kraus is a lawyer who has been exclusively engaged in the practice of state and local tax law since graduating from law school in 1985. He is a graduate of Dickinson College, where he majored in English and Political Science, and the Boston University School of Law where he earned his law degree. He is a member of the Pennsylvania Bar.

Although Mr. Kraus began his career as Counsel to the Board of Finance and Revenue, he spent 25 years in private practice, representing taxpayers in state and local tax disputes in Pennsylvania and throughout the country as a partner with two large international law firms, managing the firms' Harrisburg offices. Immediately before being nominated and confirmed to the Board of Finance and Revenue, he served as Chief Counsel to the Pennsylvania Department of Revenue. Mr. Kraus serves a six-year term.



**R. Scott Shearer** was nominated by Governor Corbett and confirmed by the Senate on May 6, 2014. Mr. Shearer has a B.S. in Chemical Engineering from Lehigh University. He received his law degree from Dickinson School of Law and an LLM in Taxation from Georgetown University Law Center. He is admitted to practice before the PA Supreme Court, US Supreme Court and various other federal courts.

He began his career as a Deputy Attorney General with the Tax Litigation Unit of the PA Department of Justice and thereafter was a partner in various law firms including Shearer Mette Evans & Woodside; Eckert Seamans Cherin & Mellott, LLC; and Keefer Wood Allen & Rahal, LLP with his practice concentrated in PA state tax matters on behalf of businesses and individuals involving a broad range of state taxes. Mr. Shearer serves a four-year term.

## A More Balanced and Transparent Board: Changes to the Board of Finance and Revenue

The recently enacted Act 52 of 2013 significantly changes the landscape of the second level of tax appeals in Pennsylvania. Effective April 2014, some of the noteworthy departures from past proceedings, as well as things that remain the same, are outlined below. For more information on the new Board of Finance and Revenue, please visit the redesigned BF&R website at <http://www.patreasury.gov/bf&r.html>.

### WHAT CHANGES:

#### Board

A new three-member independent Board replaces the six-member board. The Treasurer remains as Chair of the Board. The other two members, appointed by the Governor and confirmed by the state Senate, will work full-time at BF&R and must be PA-licensed attorneys or certified public accountants with at least 10 years of experience with PA tax law.

#### Compromise

BF&R will establish procedures to facilitate the compromise settlement of an appeal, with the agreement of both parties.

#### Decisions

All BF&R decisions rendered after April 2014 (after deletion of certain confidential information) will soon be available to the public in a searchable database available at [www.patreasury.gov/bf&r.html](http://www.patreasury.gov/bf&r.html). Please note there may be time delay between the rendering of a decision and its posting to the database due to time needed to redact and upload documents.

#### Ex parte

One-way communications now prohibited. A party submitting information or documentation to the Board will also be required to serve the other party. A procedure to assist the taxpayer with this requirement is currently in development.

#### Revenue

Both the taxpayer and Department of Revenue will have the right to be represented before the Board.

### WHAT DOESN'T:

#### Hearings

BF&R hearings will remain public.

#### Representation

Taxpayers may still be represented before BF&R by themselves, an attorney, an accountant, or another representative so long as it does not constitute unauthorized practice of law.

#### Appeals

Appeals from BF&R decisions will still be taken to the Commonwealth Court and will be heard de novo (i.e., no formal record will be made before BF&R and new evidence may be presented on appeal to court).

## Ex Parte Communications Prohibited

Effective April 2014, Act 52 prohibits Board of Finance and Revenue members or BF&R staff from participating in any ex parte communications with the Petitioner or the Department of Revenue or their representatives regarding the merits of any tax appeal pending before the Board.

An ex parte communication includes any material, oral or written, including electronic correspondence, relevant to the merits of a tax appeal before the Board. As such, Board members and BF&R staff can no longer have telephone calls, meetings, or email communications regarding the merits of a case with only one of the parties – the Petitioner, the Petitioner’s representative or the Department – without giving the other party notice and opportunity to participate.

Although BF&R’s new policies are not fully developed, we anticipate that the aforementioned forms of communication will be handled through a prehearing conference, when requested, to be held shortly after an appeal is filed with the Board of Finance and Revenue.



*Board of Finance and Revenue board members after the swearing-in ceremony. From left to right, David R. Kraus, Jacqueline Cook, Chair, and R. Scott Shearer.*

## Protecting Taxpayer Information: Redactions to Decisions Prior to Publication

One of the most significant changes to BF&R in the new law is the publication of decisions. BF&R decisions, which grant or deny in whole or in part a petition for review or petition for refund, will be published, along with any dissenting opinions. Prior to the publication of a decision, BF&R will edit a decision to redact the following:

- Information identified by the 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 (65 P.S. § 67.102).
- 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.
- Specific dollar amount of tax.
- Information pursuant to the Right-to-Know Law (65 P.S. § 67.101 et seq).



## Board of Finance & Revenue: Who We Are

Jacqueline A. Cook, Chair  
Appointed by Treasurer McCord

David R. Kraus, nominated by the Governor  
Confirmed by the Senate

R. Scott Shearer, nominated by the Governor  
Confirmed by the Senate

### BF&R STAFF

#### *Acting Secretary*

Thomas W. Watson

#### *Docketing*

Jodi Reed, Supervisor

#### *Supervising Counsel*

Timothy P. Loftus (Corporation Tax)

Thomas W. Watson (Sales/Misc. Tax)

Robert C. Kolb (Personal Income Tax)

#### *Liquid Fuels*

Diane Fetters, Supervisor

#### *Taxpayer Advocate*

Rachael Bell

## CONTACT BF&R

#### BY MAIL:

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#### 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

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#### BY EMAIL:

bfr@patreasury.gov

#### ONLINE/NEWSLETTER SIGN-UP

[www.patreasury.gov/bf&r.html](http://www.patreasury.gov/bf&r.html)



## Directions to Board of Finance & Revenue

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

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

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 – 13<sup>th</sup> 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 13<sup>th</sup> Street. If coming from the west or south, make a left onto 13<sup>th</sup> Street at the traffic light. From 13<sup>th</sup> 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 4<sup>th</sup> floor.