

CITY OF PORTLAND
REVENUE DIVISION APPEALS BOARD

BOARD RULES

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1. BOARD RULES

- A. The Revenue Division Appeals Board of the City of Portland (the **“Board”**), which was created by the provisions of Portland City Code §7.02.295, and which is comprised of five members of the public with an appropriate level of expertise in accounting methods and tax regulation, has adopted these Revenue Division Appeals Board Rules (the **“Board Rules”**) to govern its meetings, hearings, and activities.
- B. In accordance with Portland City Code (**“PCC”**) §7.02.290, and as referred to in other provisions of the Portland City Code, Multnomah County Code, Metropolitan Service District (**“Metro”**) Code, and other programs under the administration of the City of Portland, Bureau of Revenue and Financial Services, Revenue Division (**“Revenue Division”**), the Board hears appeals of taxpayers against the Revenue Division related to various tax programs.
- C. The Board Rules may be amended, supplemented, or suspended by the Board, as it determines in its discretion to be appropriate to ensure that its responsibilities in the Portland City Code are fulfilled.

2. DEFINITIONS

- A. **“Appellant”** means the taxpayer initiating the appeal.
- B. **“Authorized Representative”** means a licensed professional (such as an attorney, Certified Public Accountant, or Enrolled Agent) that has authority to act on behalf of a Party. *PCC §7.02.250, 7.02.255.*
- C. **“Code”** means the Portland City Code (also **“PCC”**), Multnomah County Code (also **“MCC”**), or Metropolitan Service District (**“Metro”**) Code (also **“Metro Code”**), as appropriate in the context of the tax program at issue.
- D. **“Mailed”** means the submission of document(s) from one Party to another. Mailed includes all documents sent via U.S. mail or by fax or email, as long as the Parties have consented to delivery by such means.
- E. **“Party”** means a person who is a party to the proceeding and is entitled to fully participate in the proceeding, unless such rights are waived.
- F. **“Respondent”** means the Revenue Division.
- G. **“Written Appeal Response”** means the document submitted by the Respondent addressing the arguments advanced in the Appellant’s Written Appeal Statement. *PCC §7.02.290(D).*
- H. **“Written Appeal Statement”** means the document submitted by the Appellant that contains the Appellant’s explanation of the reasons the Division’s Final Determination is incorrect, and a statement of what the correct determination should be. This statement should also include a statement of relevant facts and analysis of law to support Appellant’s conclusions. *PCC §7.02.290(C).*
- I. **“Written Notice”** means any notice delivered in writing (including by electronic means) that is reasonably calculated to provide actual notice to the intended person(s).
- J. **“Written Notice of Appeal”** means a written statement that clearly states the Appellant’s intent to appeal any part of the Final Determination. This must include the name and address of the Appellant, as well as a copy of the Final Determination. This can be submitted by mail, fax, or email. *PCC §7.02.290(B).*
- K. **“Written Notice of Appearance”** means a written document filed with the Board that identifies the Authorized Representative(s) that will represent, accompany, or advise a Party.

3. STATUTE OF LIMITATIONS

- A.** Appellant has 30 days from the date the Final Determination was mailed or delivered to submit the Written Notice of Appeal to the Revenue Division. Failure to submit a Written Notice of Appeal within 30 days from the date the Final Determination was mailed or delivered will constitute a waiver and forfeiture of any and all rights to appeal any assessment contained in the Final Determination. *PCC §7.02.290(B)*.
- B.** Appellant has 90 days from the date the Final Determination was mailed or delivered to file the Written Appeal Statement with the Board. Failure to submit a Written Statement within 90 days from the date the Final Determination was mailed will constitute a waiver and forfeiture of any and all rights to appeal any assessment contained in the Final Determination. *PCC §7.02.290(C)*.
- C.** Respondent has 150 days from the date the Final Determination was mailed or delivered to file the Written Appeal Response with the Board. Failure to submit an Appeal Response within 150 days from the date the Final Determination was mailed will constitute a waiver of the Respondent's ability to respond to the Appellant's Written Statement. *PCC §7.02.290(D)*.

4. FILING DOCUMENTS WITH THE BOARD

- A.** Documents required by these Board Rules, the Code, or any other authority to be filed with the Board shall be deemed to be filed when addressed to the Revenue Division Appeals Board and mailed or hand-delivered to the Revenue Division at its office.
- B.** The Revenue Division shall transmit all documents filed with the Board to all Board members by email, fax, mail, or secure file transfer within 5 business days of filing.

5. REPRESENTATION

- A.** The Appellant may appear on their own behalf, or may be accompanied, represented, or advised by one or more Authorized Representatives.
- B.** Authorized Representatives may appear only by filing a Written Notice of Appearance with the Board at least 7 calendar days before the hearing. Authorized Representatives who fail to timely file a Written Notice of Appearance will not be allowed to attend the hearing.
- C.** The Board will consider motions for leave to file a late Written Notice of Appearance only in the event that a previous Authorized Representative is unable to attend the hearing due to unforeseen circumstances or upon a showing of good cause, and only if such motion is filed in advance of the scheduled appearance. The Board will rule on whether to grant or deny any such motion, and its ruling is final.

6. STAY OF ASSESSMENT AND INTEREST ACCRUAL PENDING APPEAL

- A.** The filing of the Written Notice of Appeal will automatically stay the collection of any assessment contained in the Final Determination, including related interest and/or penalties. The stay is lifted upon the Board's issuance of its final decision. This provision does not toll any penalty or interest otherwise owed under the Code, and interest and penalties continue to accrue during the duration of the appeal. *PCC §7.02.290(H)*.

7. AMENDMENTS AND SUPPLEMENTAL RESPONSES

- A.** All amendments or supplements to the Written Appeal Statement or Written Appeal Response must be filed at least 7 calendar days prior to the hearing. Amendments or supplemental responses filed less than 7 days prior to the hearing will not be considered by the Board or entered into its record, unless the Board has specifically requested such amendment or supplemental response.
- B.** If the Board requests or permits an amendment or supplemental response to be filed, the opposing Party shall be given no less than 30 days to respond to the amendment or supplemental response after it is filed with the Board, and the Pre-Hearing Conference and/or hearing shall be postponed, as appropriate, to give the opposing Party sufficient time to submit a response to the amendment or supplemental response.

8. BURDEN OF PROOF

- A.** The burden of proof in all appeals shall rest on the Appellant.
- B.** The Appellant must prove, by a preponderance of the evidence, that the Final Determination is incorrect.

9. RULES OF EVIDENCE

- A.** All evidence disclosed during the hearing must be relevant to the issues raised in the Final Determination, Written Appeal Statement, Written Appeal Response, or any supplements or amendments thereto previously filed with the Board.
- B.** Evidence that is redundant, irrelevant, or prejudicial shall be inadmissible.
- C.** The Board shall, in its sole discretion and with attention to consistency and impartiality, determine whether evidence is admissible, and will not be bound by any other rules of admissibility.
- D.** The Board will rule on admissibility of witness testimony at the hearing. The following rules will apply to all witness testimony:
 - i.** Fact witnesses may only testify to their personal, first-hand knowledge of any relevant events. Opinions or inferences shall be limited to opinions or inferences that are rationally based on the perception of the witness and that are helpful to a clear understanding of the determination of a fact.
 - ii.** Expert witnesses must be established as experts by the Party advancing the witness. The Board has sole discretion to admit a witness as an expert witness. Parties advancing expert witnesses should be prepared to present relevant evidence of the expert's qualifications at the hearing.
 - iii.** With the Board's advance approval, witnesses may appear via affidavit if they are unable to appear at the hearing. In these instances, the Board will determine the process for cross-examination of witnesses appearing via affidavit. All witnesses must testify in a manner so as to allow cross-examination by the opposing Party.
 - iv.** The Board may dismiss witnesses or end testimony and/or cross-examination at any time.

10. CONDUCT OF HEARINGS

- A. The time and date of all hearings shall be set by the Board. The Board will notify all Parties of the time and date of the hearing no later than 14 days prior to the hearing. *PCC §7.02.290(E)*.
- B. The hearing shall be conducted by and shall be under the control of the Board. In accordance with these rules, the Board's Chairperson or Vice Chairperson shall preside over the hearing and may make rulings on any matter before the Board, subject to ratification by the Board upon the call of any Board member.
- C. Hearings will generally be conducted by the Board in executive session (pursuant to ORS 192.660(2)(f), to consider information or records that are exempt by law from public inspection). All attendees in executive session will be required to agree to keep all Taxpayer information confidential, and may be required to sign a written confidentiality agreement acknowledging the requirement under Federal, State, and local law to keep Taxpayer information confidential, as well as acknowledging the penalties for disclosure of information. Taxpayers may, upon written request to the Board, waive these confidentiality provisions and request that the hearing be conducted as part of a public Board meeting.
- D. The Board shall conduct the hearing in the following manner:
 - i. The Board Chairperson shall open the hearing with a brief introduction of the Parties, case, issues presented, and procedures.
 - ii. The Appellant, and then the Respondent, shall each be given the opportunity to make an opening statement.
 - iii. The Appellant shall present evidence in support of the allegations contained in the Written Appeal Statement and in support of the relief requested.
 - iv. The Appellant shall call its witnesses for examination. Each witness will be sworn in by the Board Chairperson, then will be examined by the Appellant, following which Respondent will be given an opportunity to cross-examine each witness.
 - v. The Respondent shall present evidence in support of the allegations contained in the Written Appeal Response and in support of its determination.
 - vi. The Respondent shall call its witnesses for examination. Each witness will be sworn in, then will be examined by the Respondent, following which Appellant will be given an opportunity to cross-examine each witness.
 - vii. The Board has discretion to ask any witness and/or any Party questions at any time during the hearing.
 - viii. The Appellant, and then the Respondent shall be given the opportunity to make a closing statement.
 - ix. The Board may, upon request or its own initiative, recess or adjourn a hearing to a later meeting.
- E. An Appellant who fails to appear for a scheduled hearing shall be deemed to have waived their right to appeal and the case will be dismissed, with prejudice.
- F. A complete record of the hearing, including an audio recording, shall be entered into the Board's case record, and shall include all arguments, witness testimony, and other evidence received by the Board at the hearing.

11. POST-HEARING SUBMISSIONS

- A. The Board may request either or both Parties to file additional written evidence, written responses or interrogatories, or any other materials, with the Board, and may review and enter such materials into its record.
- B. The Board will establish deadlines for the submission of any such materials and may grant extensions to such deadlines as it determines appropriate.
- C. Any such materials filed with the Board and entered into its record shall be served on the opposing Party, and such opposing Party shall have 30 days to file a response to such materials with the Board, a copy of which response shall be served on the other Party at the time of filing.
- D. Parties shall strictly limit their filings related to such requests to only materials directly relevant to the Board's requests, and/or directly relevant to the filings to which a response is requested. New arguments not briefed in the Written Appeal Statement and/or Written Appeal Response, or raised at the hearing, will not be accepted or considered by the Board unless explicitly requested by the Board.

12. POSTPONEMENT AND RESCHEDULING

- A. Any Party desiring a postponement of the hearing shall promptly submit a written request to the Board, detailing the reason for the request. The Board has the sole authority to grant such a request and may only do so for good cause, unless it determines that the public safety, health, or welfare, or the interests of the opposing Party, would be prejudiced or endangered by the postponement.
- B. If granted by the Board, the Board will issue a written order outlining the new date and time of the postponed conference or hearing.

13. ORDERS AND RULINGS

- A. Any order issued by the Board shall be binding on all Parties. Orders shall be written and signed by the Board Chairperson, Vice Chairperson, or a majority of its members. *PCC §7.02.290(F)*.
- B. Orders pertaining to a specific appeal will be served on all Parties to the appeal.
- C. The Chairperson or Vice Chairperson may issue administrative orders relating to the logistics, timing, location, or other specifics of any Board hearing, conference, meeting, or matter without prior approval by the Board, but such orders shall not include the Board's authority to issue determinations, findings of fact, or conclusions of law, which orders shall always require previous approval by a majority of Board members then in office.
- D. At hearings, the presiding officer shall have the authority to issue orders and make rulings on any matter within the Board's authority or control.
- E. Notwithstanding the foregoing, any order or ruling issued by the Chairperson, Vice Chairperson, or other presiding officer shall be subject to approval by a majority of Board members currently in office upon the call of any Board member for review of the order or ruling.

14. DECISIONS, FINDINGS, AND DETERMINATIONS

- A. The Board shall issue its decision within four months from the time that it determines that its record is closed. The Board's final decision (the "Findings and Determination") should include pertinent portions of the Board's record in the matter, findings of fact, and conclusions of law. In the Board's sole discretion, it may extend the time for issuance of its decision for good cause and with written notice to the Parties.
- B. The Board's decisions, including all determinations, findings of fact, and conclusions of law issued under these Rules, the Portland City Code, or any other authority, shall be made by a majority of the Board members currently in office.
- C. The Board's decision shall be binding on all Parties.
- D. A decision shall be rendered for every appeal unless the appeal is withdrawn by the Appellant. Appellants or Respondents who agree to compromise or withdraw any appeal should notify the Board promptly of any such negotiations, and shall notify the Board immediately if a settlement is reached or if the Appellant agrees to withdraw the appeal. Decisions will not be issued for any withdrawn appeal.

15. EX-PARTE CONTACT

- A. The Board will not consult with any Party off the record or outside of the hearing regarding the specifics or issues of any case. This prohibition extends to individual Board members or individual employees of the Revenue Division.

16. BOARD ORGANIZATION, MEMBERS, AND AUTHORITY

- A. Upon any change in the composition of the Board, it shall, by majority vote, elect one of its members to serve as Chairperson, and another of its members to serve as Vice Chairperson, to serve at the pleasure of the Board, and to hold the duties, responsibilities, and authorities commonly associated with those offices.
- B. The Chairperson shall set the agenda for all Board meetings and shall work with Revenue Division staff to ensure that public notices of each meeting are published appropriately and that meetings are conducted in accordance with Oregon's Public Meeting Law (ORS 192.610 *et seq.*).
- C. A majority of Board members then in office shall constitute a quorum for the purposes of holding any meeting or hearing of the Board, or in order for the Board to make any decision, adopt any motion, or issue any ruling or order. Notwithstanding the foregoing, the Board may, in the absence of a quorum, take action to adjourn the meeting, compel the attendance of absent members, or take evidence and admit such evidence into the Board's record. Any such evidence admitted in the absence of a quorum is subject to ratification by the Board once a quorum is present and before the issuance of the Board's decision in the matter.
- D. In accordance with PCC §7.02.255(B), no member of the Board may participate in any matter before the Board if the Appellant is a client of the Board member or the Board member's firm. Upon the discovery of any such situation, the Board member shall file, by written notice to all Board members, a notification that the Board member is disqualified from participating in the appeal. In such instances, the Board member will not be permitted to receive documents related to that appeal, to observe or attend the hearing or any deliberations, and will not review, vote on, or sign the Board's decision.