

TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT
PART I. GENERAL INFORMATION
SUBPART B. LOCAL GOVERNMENT UNIT DEBT ACT ADMINISTRATIVE
RULES AND PROCEDURES

12 PA. CODE § 11.1
PENNSYLVANIA ADMINISTRATIVE CODE

§ 11.1. Purpose, scope and authority.

(a) This chapter sets forth the practice and procedure before the Department in adjudicatory proceedings relating to complaints and petitions filed with the Department under section 8211 of the act (relating to petitions for declaratory orders and complaints to department).

(b) This chapter is not applicable to a proceeding to the extent that the act sets forth inconsistent practice or procedure.

(c) Adjudicatory proceedings under section 8211 of the act will be governed by the rules in 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), except if inconsistent with the procedures in this chapter or in the act.

§ 11.2. Definitions.

The following terms and phrases, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act - - 53 Pa.C.S. §§ 8801-8271 (relating to the Local Government Unit Debt Act).

Complainant - A local government unit, a taxpayer of the local government unit or other interested party authorized by the act to file a complaint under section 8211 of the act (relating to petitions for declaratory orders and complaints to department) asserting the validity or invalidity of proceedings for the incurring of debt or for the issuance of tax anticipation notes or for the exclusion of debt as self-liquidating or subsidized.

Office of the Department - For purposes of the receipt of filings, documents and other materials, the issuance and entry of orders, and other matters related to adjudicatory proceedings filed under section 8211 of the act, the Department of Community and Economic Development, Office of Chief Counsel, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA

17120-0225.

Local Government Unit - An entity as defined in Section 8002(c) of the act (relating to definitions).

Petitioner - A local government unit, a taxpayer of the local government unit or other interested party as authorized by the act to file a petition for declaratory order asserting the validity or invalidity of proceedings for the incurring of debt or for the issuance of tax anticipation notes, or for the exclusion of debt as self-liquidating or subsidized, as authorized by section 8211 of the act.

Respondent - A local government unit, an official of a local government unit or another person named, or the real party in interest, in a complaint or petition filed under section 8211 of the act.

Secretary - The Secretary of the Department.

§ 11.3. Timely filing.

(a) Complaints or petitions shall be received for filing at the office of the Department within the time limits as prescribed by Section 8211 of the act (relating to petitions for declaratory orders and complaints to department). Other pleadings, submittals or other documents required or permitted to be filed shall be received for filing at the office of the Department within the time limits prescribed in this chapter or, if applicable, as prescribed by the presiding officer.

(b) The date of receipt at the office of the Department, as recorded by the Department, and not the date of deposit in the mails is determinative of the date of filing. The complainant or petitioner will be notified in writing by the Department of receipt of the filing of a complaint or petition.

(c) Section 1908 of Title 1 of the Pennsylvania Consolidated Statutes (relating to computation of time) applies for purposes of computing time for filing and notice requirements in this chapter.

(d) This section supersedes 1 Pa. Code § 31.11 (relating to timely filing required).

§ 11.4. Entry of orders.

(a) In computing a period of time involving the date of entry of an order by the Department, the date of entry shall be the day

the office of the Department mails or hand delivers copies of the order to the parties. The date of entry of an order may or may not be the day of its adoption by the Department. The Department will clearly indicate on each order the date of its entry. As prescribed by 210 Pa. Code Rule 1512 (relating to time for petitioning for review), the period within which an appeal to Commonwealth Court, under section 8211(d) of the act (relating to petitions for declaratory orders and complaints to department), shall be filed is 15 calendar days from the date of entry of the appropriate order by the Department.

(b) Orders of the Department will be effective as of the dates of entry, unless otherwise specifically provided in the orders.

(c) This section supersedes 1 Pa. Code §§ 31.13 and 31.14 (relating to issuance of agency orders; and effective dates of agency orders).

§ 11.5. Appearance before the Department.

(a) An individual complainant or petitioner may appear on his own behalf. An authorized officer or employee of a local government unit may represent the local government before the Department.

(b) Representation of parties by an attorney is permitted as provided by 1 Pa. Code § 31.22 (relating to appearance by attorney).

(c) Subsection (a) supersedes 1 Pa. Code § 31.21 (relating to appearance in person).

§ 11.6. Filings.

(a) Pleadings, submittals and other documents, other than correspondence, shall be bound at the top of the page, with two-hole fasteners approximately 2 3/4 inches from the edge of each side of each page.

(b) Except as otherwise provided by this chapter, a single pleading or other submittal may be accepted for filing with respect to a particular proceeding and one or more related proceedings. If offered with respect to one or more related proceedings, the pleading or submittal shall reference the other proceedings in its caption or title.

(c) No pleading, submittal or other document filed in respect of a section 8211 adjudicatory proceeding is required to be

accompanied by a filing fee.

(d) Except as may be otherwise provided by this chapter, or as may be ordered or requested by the Department, pleadings, submittals or other documents filed with the Department shall consist of an original and two conformed copies, including exhibits, if any.

(e) No submission by facsimile machine will be accepted.

(f) This section supersedes 1 Pa. Code §§ 33.2(c), 33.4, 33.15, 33.21 and 33.22.

§ 11.7. Complaints.

(a) A person authorized to file a complaint with the Department under section 8211 of the act (relating to petitions for declaratory orders and complaints to department) may file a complaint at the office of the Department within the time limits prescribed in section 8211 of the act.

(1) Complaints shall be by letter or other writing, typewritten or legibly printed, as required by 1 Pa. Code § 33.2 (relating to form) and this chapter, and shall contain the following:

(i) The name, address and interest of each complainant.
(ii) The name and address of each respondent.
(iii) A statement of the facts and legal grounds which form the basis for the conclusion that there has been a violation of the act.

(2) The allegations shall concern matters within the jurisdiction of the Department under the act, pertaining to the regularity of the debt or other proceedings filed before the Department, the validity of the bonds, notes, tax anticipation notes or other obligations of a local government unit, or the legality of the purpose for which the obligations are to be issued.

(3) The complaint also shall include an identification of the relief sought and the legal basis for the relief.

(4) Supporting material may be submitted with the complaint.

(5) Notice pleading will not be permitted.

(6) If ordered by the Department, a complainant shall amend a complaint in the manner and within the time period prescribed in the order.

(7) A copy of the complaint will be mailed by the Department to the respondent named thereon or who, in the determination of the Department, will be called upon to address the allegations of the complaint or answer the same under § 11.9 (relating to answers to complaints and petitions).

(b) Joinder of complaints or petitions will be permitted in accordance with 1 Pa. Code § 35.11 (relating to joinder of formal complaints).

(c) Upon the filing of a document purporting to be a complaint or petition in the office of the Department, a determination will be made by the Department as to whether the filing constitutes a complaint or petition and whether it has been timely filed.

(1) If a determination is made that the pleading, as filed, is insufficient to meet the requirements of a complaint or petition under the act, a further determination will be made by the Department, in its discretion, whether to:

(i) Permit the filing of an amended complaint or petition.

(ii) Issue an order dismissing the complaint or petition, with or without prejudice.

(iii) Schedule a conference with the parties.

(iv) Take other action deemed just and appropriate by the Department.

(2) If a determination is made that the pleading is untimely filed, the Department will issue an order dismissing the complaint or petition, with prejudice.

(d) If, in the judgement of the Department, a complaint has been filed within the purview of section 8211 of the act, the Department will either invite the parties to an informal conference, set the matter for a formal hearing or take other action which in the judgment of the Department is just and appropriate. Complainants shall be required to attend a conference or hearing held on the complaint.

(e) This section supersedes 1 Pa. Code §§ 35.1, 35.2, 35.5, 35.7, 35.9, 35.11 and 35.14.

§ 11.8. Petitions for declaratory order.

(a) A person authorized to file a petition or declaratory order asserting the validity of proceedings filed with the

Department under section 8211 of the act (relating to petitions for declaratory orders and complaints to department) may do so at the office of the Department within the time limits prescribed in section 8211 of the act. A copy of the petition will be mailed by the Department to the named respondent or who, in the determination of the Department, will be called upon to answer the allegations. If a local government unit files a petition with the Department, the Department may require service of the petition by publication on taxpayers of the local government unit as the circumstances warrant.

(b) A petition shall be in writing, shall state the name and address of the petitioner and respondent, the interest of the petitioner in the subject matter, the issues which are the subject of the petition, a complete statement of the facts and legal grounds prompting the petition, the relief sought and shall reference the specific sections of the act, or other appropriate statutory authority, relied upon for the relief.

(c) This section supersedes 1 Pa. Code §§ 35.17-35.20, 35.23 and 35.24 (relating to petitions; and protests).

§ 11.9. Answers to complaints and petitions.

(a) Upon the determination of the Department to accept a timely filing as a complaint or petition, the Department will mail a copy of the filing to each respondent. Answers to the complaints and petitions shall be filed by the respondent at the office of the Department within 10 calendar days of the date of mailing by the Department of the complaint or petition, as applicable, unless for cause shown the Department with or without motion prescribes a different time.

(1) A respondent who fails to file an answer within the applicable period shall be deemed in default, and the relevant basic facts, but no conclusions of law, stated in the complaint or petition shall be deemed admitted.

(2) Answers shall be in writing, and so drawn as fully and completely to advise the parties and the Department as to the nature of the defense.

(3) The answer shall admit or deny specifically and in detail each material allegation of the pleading answered, and state clearly and concisely the facts and provisions of the act relied upon.

(4) By answering a complaint the respondent shall be deemed, if appropriate, to request a certificate of approval of the

relevant proceedings of the local government unit under section 8204 of the act (relating to certificate of approval or transcript) and no other affirmative relief shall be requested by the respondent.

(b) A party may file a responsive amendment, modification or supplement to a complaint, petition, answer or other pleading within 7 calendar days of the date of service of the preceding pleading, unless otherwise prescribed by the Department.

(c) This section supersedes 1 Pa. Code §§ 35.35-35.41 (relating to answers).

§ 11.10. Withdrawal of pleadings.

(a) A party may withdraw a pleading filed with the office of the Department at any time, with or without cause. The withdrawal, shall be effective immediately upon filing notice thereof with the office of the Department.

(b) This section supersedes 1 Pa: Code § 35.51 (relating to withdrawal of pleadings).

§ 11.11. Motions

(a) A respondent may file prior to or with his answer a motion that the allegations in, or legal grounds for, the complaint or petition be made more definite and certain. A motion shall point out the defects complained of and details desired. The Department will determine if an amendment to the complaint or petition is warranted and, if so, prescribe a time period for an amended complaint or petition to be filed.

(b) A respondent may file at any time, before or after the filing of his answer, a motion to dismiss a complaint or petition.

(1) The motion may be filed with supporting affidavits or documents, including additional items or proceedings of the local government unit submitted to the Department under the act.

(2) The complainant or petitioner shall have an opportunity to file a responsive affidavits or documents.

(3) The complaint or petition shall be dismissed if the pleadings, together with affidavits or documents, if any, and the proceedings of the local government unit which are the subject matter of the complaint or petition show that there is no genuine issue as to a material fact and that the moving party is entitled

to dismissal of the complaint or petition as a matter of law.

(c) The presiding officer at any time may schedule oral argument on a motion. Written notice of the time, date and place of the oral argument shall be mailed to each party at least 7 calendar days prior to the date set down for oral argument. The presiding officer may prescribe the format and conditions for the conduct of an oral argument, including, without limitation, the order of the proceeding, and the filing of briefs and responsive submittals. The presiding officer shall issue an order promptly on the motion and, if deemed appropriate by the presiding officer, file a written opinion thereon, or shall prepare a report for submission to the Secretary, as permitted by this chapter.

(d) This section supersedes 1 Pa. Code §§ 35.54, 35.55 and 35.177-35.180.

§ 11.12. Hearings.

(a) After receipt of a complaint or petition, the Department, with or without motion, may schedule a hearing to hear and determine procedural and substantive matters within the jurisdiction of the Department under the act arising from the proceedings of a local government unit taken under the act.

(b) The scope of the hearing may be limited by the presiding officer to specified legal or factual issues presented in the pleadings or a motion. The holding of a hearing may be conditional on the outcome of an initial hearing or oral argument on a motion to dismiss or other preliminary motion and a determination thereon by the presiding officer.

(c) This section supersedes 1 Pa. Code §§ 35.101 and 35.102 (relating to general).

§ 11.13. Notice of hearings.

(a) A written notice of hearing which are ordered by the Department will be mailed by the Department to all parties at least 7 calendar days prior to the date fixed for the hearing. Notice in writing will be provided to each party of the time, date and place of an initial hearing and of a reconvened, rescheduled or subsequent hearing unless announcement was made thereof by the presiding officer at the adjournment of an earlier hearing or oral argument.

(b) In fixing the time and date of a hearing, the interests of convenience and availability of the parties and their attorneys

shall be balanced against the exigencies arising from the transaction described in the proceedings and pleadings, and circumstances in the financial marketplace. Hearings shall be held at the offices of the Department unless extraordinary circumstances exist which the presiding officer determines require different location.

(c) This section supersedes 1 Pa. Code §§ 35.103 -35.106 (relating to notice of hearing).

§ 11.14. Presiding officer.

(a) A complaint or petition, upon filing with the Department, will be assigned to a presiding officer who will appointed by the Secretary for that purpose.

(b) The presiding officer will have powers and authority, subject to this chapter and the act, to:

(1) Receive pleadings, documents and submittals in respect of an adjudicatory proceeding filed under section 8211 of the act (relating to petitions for declaratory orders and complaints to department).

(2) Regulate the course, conduct and scope of hearings and oral arguments, including the scheduling thereof, and the recessing, reconvening and adjournment thereof.

(3) Administer oaths and affirmations.

(4) Issue subpoenas.

(5) Rule upon offers of proof and receive evidence.

(6) Take or cause depositions or other discovery to be taken.

(7) Dispose of procedural matters, including motions, except those motions which render a final determination of the proceedings.

(8) Allow and fix time for the presentation of oral argument, as the presiding officer deems appropriate, at or before the close of the taking of testimony.

(9) Promptly prepare and certify to the Secretary, upon the conclusion of the presentation of the matter before the presiding officer, or upon receipt of a motion to discuss or other motion and related documents involving the final determination of the

proceeding, the formal record, including briefs, if any, and a report of the presiding officer which includes the findings of fact and conclusions of law of the presiding officer.

(c) If a presiding officer at any time becomes unavailable, the Secretary will either designate another presiding officer, or will cause the record to be certified to the Secretary for decision, as may be deemed appropriate, after giving notice to the parties.

(d) This section supersedes 1 Pa. Code §§ 35.185–35.187, 35.190 and 35.203–35.207.

§ 11.15. Final orders.

(a) Upon receipt of the formal records, briefs, if any, and report of the presiding officer, the Secretary will promptly review the materials and issue a final order.

(b) The Secretary may accept the report of the presiding officer, or modify, or reverse findings of fact or conclusions of law of the presiding officer as shall appear just and proper on the basis of the evidence submitted and issues presented in the case.

(c) A copy of the final order of the Secretary will promptly be entered by the Department and mailed to the parties to the proceedings.

(d) The right of appeal from the final report and order of the Secretary shall be governed by section 8211 of the act (relating to petitions for declaratory orders and complaints to department) and Pa.R.A.P.

(e) This section supersedes 1 Pa. Code §§ 35.210, 35.202, 35.211–35.214, 35.221, 35.225, 35.226 and 35.251.