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METTE, EVANS & WOODSIDE

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

3401 NORTH FRONT STREET
P.O. BOX 5950
HARRISBURG, PA 17110-0950

IRS NO.
23-1985005

TELEPHONE (717) 232-5000 FAX (717) 236-1816

HTTP://WWW.METTE.COM

MATTHEW E. HAMLIN**
KATHLEEN DOYLE YANINEK
JENNIFER A. YANKANICH
MARCUS J. LEMON
RANDALL G. HURST*
MARK D. HIPP
RONALD L. FINCK
AMBROSE W. HEINZ
JENNIFER L. DENCHAK

OF COUNSEL
JAMES W. EVANS

* MARYLAND BAR
** NEW YORK BAR

HOWELL C. METTE
ROBERT MOORE
CHARLES B. ZWALLY
PETER J. RESSLER
LLOYD R. PERSUN
JAMES A. ULSH
DANIEL L. SULLIVAN
JEFFREY A. ERNICO
MARY ALICE BUSBY
KATHRYN L. SIMPSON
ANDREW H. DOWLING
MICHAEL D. REED
PAULA J. LEICHT
GARY J. HEIM
THOMAS F. SMIDA
MICHAEL L. MIXELL
JOHN F. YANINEK*
VICKY ANN TRIMMER
TIMOTHY A. HOY
JAMES M. STRONG

January 16, 2006

**Re: Notice of Proposed Rulemaking
35 Pennsylvania Bulletin 6767 et seq. (12-17-05)
62 Pa. Code §§31.11-16, 46.9**

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Ms. Mary R. Sprunk
Office of Chief Counsel
PA Department of Revenue
Department 281061
Harrisburg, PA 17128-1061

Independent Regulatory Review Commission
14th Floor, Harrisstown 2
333 Market Street
Harrisburg, PA 17101

Ladies and Gentlemen:

On behalf of Keystone Nazareth Bank & Trust Co. in Bethlehem, Pennsylvania, we submit these comments and objections to this proposed rulemaking commenced by the Department of Revenue (Department, which appeared in 35 Pennsylvania Bulletin 6767 et seq. on December 17, 2005. The comment and objection period expires on January 17, 2006, because the 30th day for comment and objection fell on a legal holiday, January 16, 2006.

The Notice of Proposed Rulemaking (Notice) is defective. It inaccurately represents "that deleting . . . §46.9 [the financial institution security equipment regulation] in [its] entirety rids 61 Pa. Code of duplicated regulations". The Notice also inaccurately suggests that the Department's regulation on financial institution security equipment will be transferred to its construction contractor regulation "to avoid the duplication of information".

The financial institution security equipment regulation is not proposed to be transferred to the construction contractor regulation. Compare the Notice with 61 Pa. Code §§46.9 and 31.11-31.16. The **only** language proposed to be transferred from the financial institution security equipment regulation (61 Pa. Code §46.9) to the construction contractor regulation (61 Pa. Code §§31.11-31.16) is a list of "[e]xamples of security equipment", 61 Pa. Code §46.9(f) (the "List"). No other language is proposed to be transferred. For example, the definitions of the terms "financial institution" and "security equipment" are not transferred. 61 Pa. Code §46.9(b). These definitions presently do not appear in the construction contractor regulation. 61 Pa. Code §§31.11-31.16.

January 16, 2006

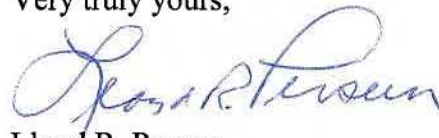
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In reality, the proposed rulemaking seeks to revoke the financial institution security equipment regulation except for the List. The Department of Revenue failed to disclose its intention to do so, violating provisions of the Regulatory Review Act and the Commonwealth Documents Law. 71 P.S. §745.5(a); 45 P.S. §1201(1), (3). The proposed changes and the words to be deleted were not adequately disclosed. Such inadequate disclosure also violates procedural due process guaranteed taxpayers by the Pennsylvania Constitution and also the Fourteenth Amendment to the United States Constitution.

In the financial institution security regulation, the term "security equipment" is defined as "systems, devices and equipment and their components, utilized by a financial institution for its protection of convenience in conducting financial transactions." 61 Pa. Code §46.9(b). This language encompasses main frame computers containing customer records, teller machines, proof machines and encoders, data lines, customer related software, bank and telephone systems, banking LAN and WAN and check processing equipment, for example. Such "equipment" would be taxable if the Department's changes are permitted to become effective, thereby increasing the cost of the bank's products and services to its customers. The changes are **not** disclosed in the Notice.

The remedy for these defects is to withdraw the proposed rulemaking or, in the alternative, to transfer the Department's financial institution security equipment regulation in its entirety to its construction contractor regulation as represented originally in the Notice. In any event, any change in the construction contractor regulation or the financial institution security equipment regulation should be prospective and not retroactive. Retroactive changes unlawfully will extinguish the bank's refund claims and rights which already are vested. E.g., First National Bank of Fredericksburg v. Commonwealth of Pennsylvania, 520 Pa. 244, 553 A.2d 937 (1989); Dale National Bank v. Commonwealth of Pennsylvania, 502 Pa. 170, 465 A.2d 965 (1983) and cases cited therein.

Very truly yours,



Lloyd R. Persun

LRP:hmc

January 16, 2006

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cc: Chairperson
Finance Committee
Pennsylvania Senate
Room 351 C
Main Capitol Building
Harrisburg, PA 17120

Chairperson
House Committee of Finance
Pennsylvania House of Representatives
Room 209 ROB
Ryan Office Building
Harrisburg, PA 17120