

Original: 2508

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

HTTP://WWW.METTE.COM

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

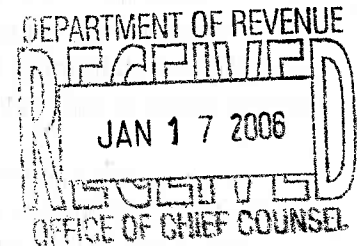
MATTHEW E. HAMLIN\*\*  
KATHLEEN DOYLE YANINEK  
JENNIFER A. YANKANICH  
MARCUS J. LEMON  
RANDALL G. HURST\*  
MARK D. HIPF  
RONALD L. FINCK  
AMBROSE W. HEINZ  
JENNIFER L. DENCHAK

OF COUNSEL  
JAMES W. EVANS

\* MARYLAND BAR  
\*\* NEW YORK BAR

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**



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

Independent Regulatory Review Commission  
14<sup>th</sup> 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 30<sup>th</sup> 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".

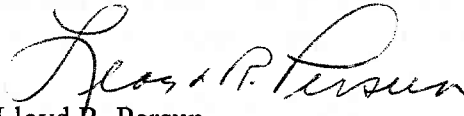
The financial institution security equipment regulation is not proposed to be transferred to the construction contractor regulation. Compare the Notice with 61 Pa. Code §§46.9 and 31.11-31.16. The **only** language proposed to be transferred from the financial institution security equipment regulation (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.

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  
Page 3

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

