

10/06/08

Regulatory Analysis Form

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INDEPENDENT REGULATORY REVIEW COMMISSION

(1) Agency

Revenue

(2) I.D. Number (Governor's Office Use)

15-445

IRRC Number: 2750

(3) Short Title

Amended Report

(4) PA Code Cite

61 Pa. Code §§ 151.14, 153.54 and 153.66

(5) Agency Contacts & Telephone Numbers

Primary Contact: Mary R. Sprunk (717) 783-7524

Secondary Contact: Douglas A. Berguson (717) 346-4633

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
- Final Order Adopting Regulation
- Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
- Yes: By the Attorney General
- Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The purpose of the proposed rulemaking is to provide a procedure for the filing of amended corporate tax reports for tax reports governed by the assessment process enacted in Act 119-2006. A new "amended report" section 151.14 is proposed which reflects the replacement of the corporate tax settlement process with an assessment process. Examples in Chapter 153 have been amended with updated language. Obsolete language has been replaced throughout section 153.54. Subsection 153.54 (g) has been expanded to explain (1) Corporate Net Income Tax settled prior to January 1, 2008; and (2) Corporate Net Income Tax not settled prior to January 1, 2008. In addition, an "applicability" section is added at 153.66 to clarify that sections 153.61 – 153.65 apply to taxes settled prior to January 1, 2008.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Statutory authority for the regulation is set forth in section 6 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 6).

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by federal or state law, court order or federal regulation.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Department is proposing a new § 151.14 that outlines the provisions for filing corporate tax amended reports. In addition, the regulation will provide clear instructions for corporate taxpayers filing amended reports.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environmental or general welfare risks associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Corporate taxpayers and tax practitioners will benefit as a result of the amended regulation.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No parties should be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Corporate taxpayers and tax practitioners will be required to comply with the regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

A copy of the regulation was forwarded to the Pennsylvania Bar Association; the Pennsylvania Institute of Certified Public Accountants; the Pennsylvania Society of Public Accountants and the Pennsylvania Chamber of Business and Industry. The regulation is listed on the Department's Regulatory Report posted on the Department's website and will be forwarded to interested parties upon request.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no costs and/or savings to the regulated community associated with this regulation.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

This regulation does not increase costs or savings to local governments. No legal, accounting, or consultant procedures are required by this regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

This regulation does not increase costs or savings to state government. No legal, accounting, or consultant procedures are required by this regulation.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:						
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

There are no savings from implementing this regulation. There are minimal costs for implementing this regulation.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

(21) Using the cost-benefit information provided above, explain how the benefits of the pronouncement outweigh the adverse effects and costs.

The purpose of the regulation is to provide a procedure for the filing of amended reports. This is a result of replacing the corporate tax settlement process with an assessment process. While the approach to verifying returns has changed, the channels for appeal, reassessment, etc., remain largely unchanged. Therefore, these changes are expected to have a minimal fiscal impact.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There are no nonregulatory alternatives associated with the regulation.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There are no alternative regulatory schemes associated with the regulation.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no federal standards associated with this regulation.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The regulation will not put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation does not affect any other existing or proposed regulations of the Department or any other state agency.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Department has not scheduled any public hearings or informational meetings to discuss the regulation.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

This regulation does not change existing reporting, record keeping or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special groups are affected by the regulation.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

This regulation will be effective upon final publication in the Pennsylvania Bulletin. There are no permits, licenses or other approvals required by the regulation.

(31) Provide the schedule for continual review of the regulation.

This regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

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INDEPENDENT REGULATORY
COMMISSION

DO NOT WRITE IN THIS SPACE

(Pursuant to Commonwealth Documents Law)

10/06/08

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p><i>Amy M. Elliott</i></p> <p>By: _____ (Deputy Attorney General)</p> <p>DEC 12 2008</p> <p>DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:</p> <p>PA Department of Revenue _____ (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. 15- <u>445</u></p> <p>DATE OF ADOPTION _____</p> <p>BY <i>Thomas W. Wolf</i> _____ Thomas W. Wolf TITLE <u>Secretary of Revenue</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p><i>Andrew C. Clark</i></p> <p>BY _____ Andrew C. Clark</p> <p>NOV 13 2008</p> <p>DATE OF APPROVAL</p> <p>(Deputy General Counsel) (Chief Counsel Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General Approval or objection within 30 days after submission.</p>
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NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code, §§ 151.14, 153.54 and 153.66

Amended Report - Corporation Taxes

PREAMBLE

The Department of Revenue (Department), under the authority contained in section 6 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 6), proposes amendments to 61 Pa. Code, Chapter 151. General Provisions, by adding section 151.14 (relating to amended report); and Chapter 153. Corporate Net Income Tax, by replacing obsolete language and adding section 153.66 (relating to applicability) to read as set forth in Annex A.

Purpose of Regulation

The purpose of the proposed rulemaking is to provide a procedure for the filing of amended corporate tax reports for tax reports governed by the assessment process enacted in Act 119-2006. A new "amended report" section 151.14 is proposed which reflects the replacement of the corporate tax settlement process with an assessment process.

Explanation of Regulatory Requirements

The regulation will provide clear instructions for corporate taxpayers filing amended reports. The Department is proposing a new section 151.14 outlining the provisions for filing corporate tax amended reports. Examples in Chapter 153 have been amended with updated language. Obsolete language has been replaced throughout section 153.54. Specifically, obsolete language was removed in section 153.54(b)(1) relating to the "Report of Change form." Subsection 153.54 (g) has been expanded to explain (1)

Corporate Net Income Tax settled prior to January 1, 2008; and (2) Corporate Net Income Tax not settled prior to January 1, 2008. In addition, an "applicability" section is added at 153.66 to clarify that sections 153.61 - 153.65 apply to taxes settled prior to January 1, 2008.

Affected Parties

Pennsylvania corporate taxpayers and tax practitioners may be affected by the regulation. The proposed regulation adds a fourth leg to what the Department has already accomplished for the education of the tax community on the changes to Amended Reports under Act 119-2006. The Department has: (1) added detailed language in the Instruction Booklet for Form RCT 101; (2) published a notice on the Department's website, "Notice to Pennsylvania Taxpayers Regarding Amended Corporate Tax Reports," and (3) participated in numerous seminars in the tax community on this subject.

Fiscal Impact

The Department of Revenue has determined that the proposed amendment will have minimal fiscal impact on the Commonwealth.

Paperwork

The regulations will not generate substantial paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The regulations will become effective upon publication in the Pennsylvania Bulletin. The regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing any comments, suggestions, or objections regarding the proposed amendment to Mary R. Sprunk, Office of Chief Counsel, PA Department of Revenue, P.O. Box 281061, Harrisburg, Pennsylvania 17128-1061, within thirty (30) days after the date of the publication of this notice in the Pennsylvania Bulletin.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on *February 20, 2009*, the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

The Committees may, at any time prior to the submittal of the final-form regulation, convey to the agency and the Commission, their comments, recommendations and objections to the proposed regulation. The Independent Regulatory Review Commission may, within 30 days of the close of the public comment period, submit to the agency and Committees any comments, recommendations and objections to the proposed regulation. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the amendments, by the Department, the General Assembly and the Governor.

THOMAS W. WOLF
SECRETARY OF REVENUE

09/02/08

CONTINUATION SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

ANNEX A

Title 61. Revenue, Part I. Department of Revenue, Subpart B.
General Fund Revenues, Article VI. Corporation Taxes, Chapter 151.
General Provisions.

REPORTING

§ 151.14. Amended report.

(a) Applicability. This section applies to taxes imposed by Articles IV, VI, VII, VIII, IX, XI, and XV of the Tax Reform Code of 1971 (72 P.S. §§ 7101 -- 10004) and not settled prior to January 1, 2008, along with the following:

(1) Corporate Loans Tax imposed under the act of June 22, 1935 (P.L. 414, § 17) (72 P.S. §§ 3250-10 -- 3250-15).

(2) Co-operative Agricultural Corporate Net Income Tax Act imposed under the act of May 23, 1945 (P.L. 893, § 1) (72 P.S. § 3420-21 -- 3420-30).

(3) Electric Co-op Corporation Membership fee imposed under the act of June 21, 1937 (P.L. 1969, No. 389) (15 Pa. C.S. § 7333).

(4) Gross Receipts Tax on Private Bankers imposed under the act of May 16, 1861 (P.L. 708) (72 P.S. § 2221).

(b) General.

(1) An amended report may be filed by a taxpayer, on a form prescribed by the Department under oath or affirmation of an authorized officer, within 3 years after filing of the original report. An amended report may be filed for the purpose of bringing to the attention of the Department a correction to the original report or to provide additional information which the taxpayer requests the Department to consider.

(2) The Department will only consider additional information if it is submitted with an amended report. The filing of an amended report is not a new report.

(c) Prerequisite. An amended report will not be considered by the Department unless the taxpayer consents in writing, on a form prescribed by the Department, to the extension of the assessment period for the tax year to 1 year from the date of the filing of the amended report or 3 years from the filing of the original report, whichever period last expires. See section 407.4 of the Tax Reform Code of 1971 (72 P.S. § 7407.4). In addition, the taxpayer is required to

maintain records until the end of the extended assessment period.

(d) Petition Rights.

(1) An amended report does not replace the filing of a Petition for Reassessment or a Petition for Refund.

(2) The filing of an amended report does not extend the time limits for a taxpayer to file a Petition for Reassessment or a Petition for Refund.

(e) Review of amended report.

(1) The Department is not obligated to revise the tax due the Commonwealth upon review of an amended report. Its failure to revise the tax due the Commonwealth will not change any existing appeal rights of the taxpayer.

(2) If the Department determines an adjustment of the taxpayer's account is appropriate, it will adjust the corporation's tax on the Department's records to conform to the revised tax as determined and will credit the taxpayer's account to the extent of any overpayment resulting from the adjustment or assess the taxpayer's unpaid tax and unreported liability for tax, interest or penalty due the Commonwealth, whichever is applicable.

(f) Amended report filed when tax liability is under appeal.

(1) An amended report involving issues under appeal will be forwarded to the appropriate board or to the Office of the Attorney General, to be included in the appeal.

(2) If the amended report involves issues other than those under appeal, the Department may review the amended report. The review of a report does not obligate the Department to change the tax due the Commonwealth and will not change any existing appeal rights of the taxpayer. If the Department determines that a change to the tax liability is appropriate, it will adjust the corporation's tax on the Department's records to conform to the revised tax as reported. The Department will credit the taxpayer's account to the extent of any overpayment resulting from the adjustment or assess the taxpayer's unpaid tax and unreported liability for tax, interest or penalty due the Commonwealth, whichever is applicable.

(g) Additional information required to be provided with an amended report. An amended report filed with the Department must contain the following:

(1) Agreement to the extension of the assessment period as described in subsection (c).

(2) The calculation of the amended tax liability.

(3) Revised Pennsylvania supporting schedules, if applicable.

(4) A complete explanation of the changes being made and the reason for those changes.

(5) If the amended report is filed due to a change in Federal taxable income based on the filing of an amended Federal income tax return, a copy of the amended Federal income tax return is required. In addition, the Department may also require proof of acceptance of the amended Federal income tax return.

(6) Any other information required by the Department to support the calculation of the amended tax liability.

Chapter 153. CORPORATE NET INCOME TAX

REPORTS AND PAYMENT OF TAX

§ 153.54. Changes made by Federal government.

* * * * *

(b) What is required to be filed with the Department. The following are required to be filed with the Department:

(1) A Report of Change [form (RCT 128-B)] as prescribed by the Department.

* * * * *

(d) When a change or correction in Federal taxable income is final and received. A change or correction will be final and received as follows:

* * * * *

Example 1. Taxpayer files a [1972] 2003 Report with the Department in conformity with its Federal Return as filed in [1972] 2003. In [1973] 2004 the Internal Revenue Service audits the taxpayer's Return which results in an increase of the taxpayer's Federal taxable income. Taxpayer does not contest this change. Thirty days after receipt of a Federal Notice and Demand for Payment, the taxpayer is required to file a Report of Change with the Department.

Example 2. Taxpayer files a [1972] 2003 Report with the Department in conformity with its Federal Return as filed in [1972] 2003. In [1973] 2004 the Internal Revenue Service audits the taxpayer's Return which results in an increase of taxpayer's Federal taxable income. Taxpayer contests this change and files a petition in the United States Tax Court. The United States Tax Court upholds the Internal Revenue Service's action.

Taxpayer does not appeal the United States Tax Court's decision. Thirty days after receipt of a Federal Notice and Demand for Payment, the taxpayer is required to file a Report of Change with the Department.

Example 3. Taxpayer files a [1972] 2003 report with the Department in conformity with its Federal return as filed in [1972] 2003. In [1973] 2004 the Internal Revenue Service audits the taxpayer's return which results in an increase of the taxpayer's Federal taxable income. Taxpayer contests this change and pursues all administrative and judicial remedies available without paying the contested amount of tax. The United States Supreme Court upholds the Internal Revenue Service's action. Thirty days after receipt of a Federal Notice and Demand for Payment, the taxpayer is required to file a Report of Change with the Department.

* * * * *

(3) A change or correction which does not increase or decrease the taxpayer's Federal tax is final when the taxpayer receives a notice from the IRS that its return will be adjusted in accordance with the examination report. The change or correction is "received" by the taxpayer on the date the

taxpayer receives notice from the IRS that its return will be adjusted in accordance with the examination report.

Example. Taxpayer files a [1972] 2003 report with the Department in conformity with its Federal return as filed in [1972] 2003. In [1974] 2005 the Internal Revenue Service audits taxpayer's Federal return. The audit does not result in an increase in the Federal tax, but a change in the Commonwealth taxable income does occur due to the Federal action. Taxpayer is required to file a Report of Change within 30 days of notification by the Internal Revenue Service of its action.

(e) More than one change or correction in Federal taxable income for a particular tax year. A taxpayer is required to file a Report of Change for each change or correction by the Commissioner of Internal Revenue or by any other agency or court of the United States in the taxpayer's taxable income as reported to the Federal Government.

Example. As a result of a Federal audit of its [1972] 2003 Federal return, the taxpayer's Federal taxable income has been increased and the taxpayer has paid the Federal government additional tax. Since the taxpayer's Commonwealth taxable income also increased for [1972] 2003, taxpayer has filed a Report of Change with the Department. Thereafter, in a separate and

subsequent court action the taxpayer contests the change in its Federal taxable income for [1972] 2003 and receives a refund from the Federal Government. Since its Commonwealth taxable income for [1972] 2003 has been decreased by this separate and subsequent action, the taxpayer is required to file a second Report of Change with the Department.

* * * * *

(g) Report of change [within one year from the date of settlement] required to report Federal change or correction.

(1) Corporate Net Income Tax settled prior to January 1, 2008. When a Federal change or correction in taxable income as reported to the Federal government occurs within 1 year of the date of settlement and, therefore, a Commonwealth amended report could be timely filed as provided in § 153.64 (relating to amended report), the taxpayer nevertheless is required to file a Report of Change. Filing an amended report will not satisfy the requirement of filing a Report of Change.

Example. Taxpayer files a Federal Return on March 15, [1972] 2003. Based upon that return, the taxpayer files its Commonwealth Report on April 15, [1972] 2003. In August of [1972] 2003 the IRS discovers an error in the taxpayer's return. Taxpayer shall file a Report of Change even though the final change or correction was received within the period in which the

taxpayer could file an amended report. An amended report will not satisfy the requirement of filing a Report of Change.

(2) Corporate Net Income Tax not settled prior to January 1, 2008. When a Federal change or correction in taxable income as reported to the Federal government occurs, the taxpayer is required to file a Report of Change regardless of whether or not an amended report could have been timely filed as provided in § 151.14 (relating to amended report). Filing an amended report will not satisfy the requirement of filing a Report of Change.

Example. Taxpayer files a Federal Return on March 15, 2007. Based upon that return, the taxpayer files its Commonwealth Report on April 15, 2007. In August of 2008, the IRS conducts an audit and notifies taxpayer that its Federal taxable income is different than the reported figure. Taxpayer shall file a Report of Change even though the final change or correction was received within the period in which the taxpayer could file an amended report. An amended report will not satisfy the requirement of a Report of Change.

SETTLEMENT AND RESETTLEMENT

§ 153.66. Applicability.

Sections 153.61 - 153.65 (relating to settlement, copy of the settlement will be sent to the taxpayer, resettlement by the Department, amended report and corrected report) apply to taxes settled prior to January 1, 2008.

09/12/08

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 15-445
 SUBJECT: AMENDED REPORT – CORPORATION TAXES
 AGENCY: DEPARTMENT OF REVENUE

RECEIVED

2009 FEB 20 AM 10:46

INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/20/09	<i>David G. Argall</i>	minority HOUSE COMMITTEE ON FINANCE - <u>DAVID G. ARGALL</u>
2/20/09	<i>David K. Levdansky</i>	MAJORITY CHAIRMAN <u>David K. Levdansky</u>
2/20	<i>James Ferlò</i>	minority SENATE COMMITTEE ON FINANCE - <u>James Ferlò</u>
2/20/09	<i>Patrick M. Browne</i>	MAJORITY CHAIRMAN <u>Patrick M. Browne</u>
2/20/09	<i>St. Belmont</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
2/20/09	<i>Michelle Lott</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)