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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 6, 2009

Honorable Stephen H. Stetler, Secretary
Department of Revenue
Strawberry Square, 11th Floor
Harrisburg, PA 17128

Re: Regulation #15-445 (IRRC #2750)
Department of Revenue
Amended Report - Corporation Taxes

Dear Secretary Stetler:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Patrick M. Browne, Chair, Senate Finance Committee
Honorable Jim Ferlo, Chair, Senate Finance Committee
Honorable David K. Levdansky, Chair, House Finance Committee
Honorable Samuel E. Rohrer, Chair, House Finance Committee

Comments of the Independent Regulatory Review Commission



Department of Revenue Regulation #15-445 (IRRC #2750)

Amended Report - Corporation Taxes

May 6, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the March 7, 2009 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Revenue (Department) to respond to all comments received from us or any other source.

1. Section 151.14. Amended report. – Implementation procedures; Clarity and lack of ambiguity.

According to the Department, the purpose of this rulemaking is to provide for the filing of amended corporation tax reports governed by the assessment process established by Act 119 of 2006. The assessment process is intended to eventually replace the settlement process the Department has used to process corporation tax reports. We have two concerns.

First, a commentator has noted that the proposed regulation does not include provisions similar to those found under § 153.65, pertaining to the settlement and resettlement process for corrected reports. Has the Department considered including language in the proposed regulation that would clarify procedures for filing corrected reports? The Preamble to the final-form regulation should explain why provisions similar to those found in § 153.65, are or are not, necessary.

Second, it is our understanding that the purpose of this section is to provide taxpayers with a mechanism for amending corporate tax reports for routine or non-controversial matters. Allowing a taxpayer to file an amended report is not required by any statute, and the proposed regulation has been written to allow the Department a great degree of latitude for accepting, reviewing and amending corporate tax returns. Unless an assessment is issued by the Department as a result of a taxpayer filing an amended report, there is no right to appeal.

While we understand the rationale for the latitude the Department has provided itself via this rulemaking, we are concerned that the regulation lacks predictability and does not provide the regulated community with any degree of certainty that their amended reports will be processed in a timely manner. In addition, it does not establish a binding norm that can be evenly applied to all taxpayers filing an amended report. This ambiguity and lack of clarity could negatively affect taxpayers that are trying to make informed business decisions pertaining to their tax obligations.

We suggest the final-form regulation be amended to require the Department to take action on an amended report within a specific time frame and provide notice to the taxpayer of that action. We also suggest that the final-form regulation clarify or provide examples of the types of changes that could be made through the amended report process. Finally, the final-form regulation should alert taxpayers to the fact that not all actions taken or decisions made by the Department on an amended report are appealable.

2. Applicability. – Implementation procedures.

The proposed rulemaking includes a new § 153.66, which states, “Sections 153.61—153.65, regarding settlement and resettlement, apply to taxes settled prior to January 1, 2008.” Chapter 153, the chapter in which this new language is found, pertains exclusively to the corporate net income tax. Since this rulemaking applies to several taxes that fall under the corporate tax umbrella, we suggest that the language found in § 153.66 be moved to Chapter 151, which pertains to general provisions for all corporate taxes, not just the corporate net income tax.

3. Miscellaneous clarity.

Subsection 151.14(f)(1) makes reference to an “appropriate board.” It is our understanding that this term means either the Board of Appeals or the Board of Finance and Revenue. We suggest that the specific boards be named in the final-form regulation.

Under § 151.14(g)(5), the Department may require a taxpayer to provide “proof of acceptance” of their Federal income tax return by the Internal Revenue Service. To improve the clarity of this subsection, we suggest that the final-form regulation list examples or types of documentation that would be appropriate “proof of acceptance.”

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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Mary Sprunk
Agency: Department of Revenue
Phone: 3-7524
Fax: 2-1459
Date: May 6, 2009
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Revenue Department's regulation #15-445 (IRRC #2750). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Mary R. Sprunk Date: 5/6/09