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INDEPENDENT REGULATORY
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DEPARTMENT OF REVENUE
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OFFICE OF CHIEF COUNSEL

VIA Electronic and U.S. Mail
Mary R. Sprunk, Regulatory Coordinator
Office of Chief Counsel
Department of Revenue
P.O. Box 281061
Harrisburg, PA 17128-1061

Re: Public Comments—15-445
Amended Report—Corporation Taxes

Dear Ms. Sprunk:

On behalf of the Pennsylvania Institute of Certified Public Accountants (PICPA), we offer the following comments and concerns regarding the Department of Revenue's proposed Amended Report—Corporation Taxes (61 Pa. Code, Secs. 151.14, 153.54, and 153.66) regulations. We respectfully request that the Department consider our comments when preparing the final-form regulations.

PICPA represents more than 19,000 CPAs in business and industry, public practice, government, and education. Our members provide auditing, accounting, and tax services to individuals, not-for-profit organizations, and employers of all sizes; advise clients on state, federal, and international tax matters; and prepare income and other tax returns for an extensive number of state taxpayers.

Our specific comments and concerns follow.

1. Under 61 Pa. Code, Sec. 153.65, the Department of Revenue requires a corporation to file a "corrected report" within thirty days after the filing of an amended federal Form 1120X if the filing of the federal Form 1120X results in a change in the corporation's federal taxable income, as computed on a separate company basis. A "corrected report" is filed on a RCT-101-X, the same form used to file an "amended report." Under proposed Sec. 153.66, the "corrected report" provisions would apply only to reports originally settled before Jan. 1, 2008.

As drafted, the proposed regulations do away with the "corrected report" concept. Instead, proposed 61 Pa. Code, Sec. 151.14 also would apply to instances in which a corporation files an amended federal Form 1120. C.f. Prop. 61 Pa. Code, Sec. 153.14(g)(5). Under the proposed amended report regulation, a corporation is permitted to file an amended RCT-101-X within three years from the date the corporation files its original report. In addition, the Department of Revenue has the discretion to change a corporation's tax.

The proposed regulation, as drafted, does not require a taxpayer to file an amended report for instances in which the corporation files a federal Form 1120X. In addition, there is no requirement that the Department of Revenue act on the amended report in this instance. The incorporation of the "corrected report" in the proposed amended report regulation is contrary to the statute.

72 Pa.C.S., Sec. 7403(f) provides "[i]f the corporation shall claim in its report that the return made to the Federal Government was inaccurate, the amount claimed by it to be the taxable income, taxable under this article, and the basis of such claim of inaccuracy, shall be fully specified."

72 Pa.C.S., Sec. 7406(a) and (b) provide:

(a) If the amount of the taxable income, as returned by any corporation to the federal government, is finally changed or corrected by the commission of internal revenue or by any other agency or court of the united states, such corporation, within thirty days after the receipt of such final change or correction, shall make a report of change, under oath or affirmation, to the department showing such finally changed or corrected taxable income, upon which the tax is required to be paid to the united states. In case a corporation fails to file a report of change, which results in an increase in taxable income within the time prescribed, there shall be added to the tax, a penalty of five dollars (\$5) for every day during which such corporation is in default, but the department may abate any such penalty in whole or in part.

(b) If, as a result of such final change or correction, a corporation should report any change in the amount of the taxable income of any corporation upon which tax is imposed by this article, the department shall adjust the corporation's tax on the department's records to conform to the revised tax as reported and shall credit taxpayer's account to the extent of any overpayment resulting from the adjustment. The department shall then have the power, and its duty shall be to determine and assess the taxpayer's unpaid and unreported liability for tax, interest, or penalty due the commonwealth, or to credit the taxpayer's account.

Under either provision, a corporation that files an amended federal income tax return (federal Form 1120X) is required to notify the Department of Revenue of those changes. In addition, the Department of Revenue is required to adjust the corporation's tax liability to reflect those changes.

In addition, the failure to incorporate the "corrected report" concept for reports not settled prior to Jan. 1, 2008, also may provide for abuse. For example, assume a corporation files a 2006 federal Form 1120 on March 15, 2007, and a 2006 RCT-101 on April 15, 2007. The corporation discovers an error and files a federal Form 1120X on March 15, 2010. The error results in an increase of federal taxable income. Assuming that the proposed amended report regulation covers "corrected reports," if the corporation waits until April 16, 2010, there is no duty to file an RCT-101-X. Similarly, if the amended federal income tax return results in a reduction of federal

taxable income and the corporation files a timely RCT-101-X, the proposed regulation does not require the Department of Revenue to adjust the corporation's tax.

2. Assuming that the Department of Revenue incorporates the "corrected report" concept into final regulations, the regulations also should include that a federal Form 1139 requires the filing of a corrected report for instances in which a corporation seeks to carry back a capital loss. A corporation uses a federal Form 1139 to carry back NOLs and capital loss carryovers. The carryback of an NOL will not impact Pennsylvania taxable income. Pennsylvania has its own NOL provisions and does not provide for a carryback of NOLs. However, the carryback of capital losses will impact Pennsylvania taxable income, as the carry back would change federal taxable income (federal Form 1120, line 28).

3. Sec. 151.14(b) should be amended to include examples of types of "additional information" that the Department of Revenue will consider upon the filing of an amended report. For example, the department has granted the right to apportion, the manufacturing exemption, and to correct consolidated net worth through the filing of an amended report. However, the department has never granted multiform business/unrelated asset treatment, non-business income treatment, or change in methodology for sourcing sales of other than tangible personal property through the filing of an amended report. The inclusion of examples would assist taxpayers in choosing the right course of action for seeking relief.

4. Sec. 151.14(c) should be amended to clarify that the one-year extension of limitations period after the amendment is filed is limited to issues raised in the amended return. If the taxpayer instead petitioned for refund to the Board of Appeals (BOA) but let the three-year limitations period lapse, only the specific issues raised would be in play for increase/decrease at the BOA level (see Miscellaneous Tax Bulletin 2008-01). Why should the taxpayer be penalized for choosing the amended return option? Moreover, if the amended return reports increased tax, why should the taxpayer be exposed to potential additional assessments for other items by filing the amendment? Also, the statute allows for extension agreements, but does not specify a timeframe. If the issue results in a refund, and the taxpayer chooses to instead file a BOA refund petition, there is a six month window for action. The timeframe should be consistent.

5. Sec. 151.14(e) should be amended to provide that the Department of Revenue will notify the taxpayer in writing of its decision to grant or deny relief within a certain period of time after receiving the amended report. In the event that the Department of Revenue grants no or partial relief, the sooner the notification is sent, the greater the chance that a taxpayer may still choose the reassessment/refund options.

6. Sec. 151.14(e) should be amended to provide that the Department of Revenue's action/inaction on an amended report is not appealable. This amendment will provide a taxpayer additional guidance in determining how to seek relief.

7. Sec. 151.14(f) needs to clarify the treatment of interrelated issues raised in an amended report and in an assessment appeal. Take as an example a taxpayer who appeals an assessment based upon an increase in the sales factor. Subsequent to the filing of the appeal, the taxpayer files an amended report requesting an adjustment of consolidated net worth. The Department of Revenue adjusts the consolidated net worth. Assuming that the taxpayer obtains relief on the apportionment issue at the administrative appeal level, it is unclear whether the administrative body will reflect the adjusted consolidated net worth in determining the reassessed tax, since the consolidated net worth issue was not before the administrative body.

8. Sec. 151.14(g) requires the taxpayer to provide "proof of acceptance" by the IRS of the amended federal income tax return. We are unclear as to how one proves acceptance, since the IRS letter only indicates whether the tax increased or decreased. We urge the last sentence in this section be deleted.

9. Sec. 153.54 needs to clarify when a taxpayer needs to file a report of change in the instance a taxpayer challenges only some of the issues raised during an audit. For example, the IRS proposes five adjustments during an audit. The taxpayer agrees with three of those adjustments and pays the additional tax, but continues to contest the remaining two adjustments. When is the taxpayer required to file a report of change?

Please do not hesitate to contact me should you need additional information.

Sincerely,



Peter N. Calcara, Vice President
Government Relations

Cc: The Honorable Patrick Browne, Chair, Senate Finance Committee
The Honorable James Ferlo, Democratic Chair, Senate Finance Committee
The Honorable David Levdansky, Chair, House Finance Committee
The Honorable Arthur Coccodrilli, Chair, IRRC