

DRAFT FINAL FORM REGULATION

**DEPARTMENT OF REVENUE #15-445 (IRRC #2750)
AMENDED REPORT – CORPORATION TAXES**

2750



**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL**

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November 2, 2009

Ms. Mary Lou Harris
Director for Regulatory Outreach
Independent Regulatory Review Commission
333 Market Street – 14th Floor
Harrisburg, PA 17101

Dear Ms. Mary Lou Harris:

The Department has prepared a draft final form regulation relating to Amended Report – Corporation Taxes. In accordance with the requirement within the Governor's Executive Order 1996-1 that agencies seek input from affected parties on regulatory initiatives, we have enclosed a copy for your review and comment. The language set forth in this draft regulation amends the proposal that was published at 39 Pa.B. 1207 (March 7, 2009).

We would appreciate it if you could convey your comments on behalf of Independent Regulatory Review Commission to this office by December 2, 2009. Comments received by this date will be considered in the drafting of the final form regulation.

Thank you for your anticipated input and assistance in promulgating this regulation.

Sincerely,

A handwritten signature in cursive script that reads "Douglas A. Berguson".

Douglas A. Berguson
Senior Counsel

Enclosures

MRS:tnk

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

DRAFT A

2750

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NOTICE OF FINAL RULEMAKING

DEPARTMENT OF REVENUE

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

Amended Report - Corporation Taxes

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DRAFT A

PREAMBLE

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

Purpose of this Final-Form Rulemaking

This final-form rulemaking provides 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 § 151.14 is proposed which reflects the replacement of the Corporate Tax settlement process with an assessment process.

Explanation of Regulatory Requirements

This final-form rulemaking will provide clear instructions for corporate taxpayers filing amended reports. The Department is proposing a new § 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 § 153.54. Specifically, obsolete language was removed in § 153.54(b)(1) regarding the "Report of Change form." Section 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 the final rulemaking, a new subsection (h) with examples has been added in § 153.54 to address changes initiated by the taxpayer. In addition, an "applicability" section is added in § 153.66 to clarify that §§ 153.61 - 153.65 apply to taxes settled prior to January 1, 2008.

Affected Parties

The Commonwealth's corporate taxpayers and tax practitioners may be affected by this final-form rulemaking. The final-form rulemaking 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.

Comment and Response Summary

Notice of proposed rulemaking was published at 39 Pa. B. 1207 (March 7, 2009). This proposed rulemaking is being adopted with amendments to read as set forth in Annex A.

The Department has prepared a comment and response document that is available to interested parties by contacting Mary R. Sprunk, Office of Chief Counsel, Pennsylvania Department of Revenue, P.O. Box 281061, Harrisburg, Pennsylvania 17128-1061.

The Department received one comment from the public during the public comment period. No comments were received from either the House Finance Committee or the Senate Finance Committee. The Independent Regulatory Review Commission (IRRC) submitted comments on the proposed rulemaking. The following is a summary of the Department's responses to the key issues referenced in the comments:

The Department added clarifying language in § 151.14(b) and (c) to address comments requesting time frames and examples of changes for the amended report process.

The Department added clarifying language in § 151.14(e) for taxpayers to understand that the Department's failure to revise the tax due the Commonwealth is not an appealable action and will not change any existing appeal rights.

A new subsection (h) under § 153.54 has added a "Report of Change" provision to address amended Federal Income Tax returns, which include any document allowed or authorized by the IRS for a taxpayer to adjust their Federal taxable income. Examples of

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"proof of acceptance by the Federal government" have been added to the new subsection (h).

Fiscal Impact

The Department has determined that the final-form rulemaking will have minimal fiscal impact on the Commonwealth.

Paperwork

The final-form rulemaking will not create additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The final-form rulemaking will become effective upon final 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

The contact person for an explanation of the final-form rulemaking is Mary R. Sprunk, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, Pennsylvania 17128-1061.

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 the notice of proposed rulemaking, published at 39 Pa.B. 1207 (March 7, 2009), to the Independent Regulatory Review Commission

(IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on ,2009, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on , and approved the final-form rulemaking.

Findings

The Department finds that:

(1) Public notice of intention to amend the regulations has been duly given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments are necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code, Chapters 151 and 153, are amended by adding § 151.14, replacing obsolete language and adding § 153.66 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the Pennsylvania Bulletin.

STEPHEN H. STETLER
SECRETARY OF REVENUE

10/08/09

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 and not settled prior to January 1, 2008, along with the following:

(1) Corporate Loans Tax imposed under sections 19 - 24 of the State Personal Property Tax Act (72 P.S. §§ 3250-10 -- 3250-15).

(2) Co-operative Agricultural Corporate Net Income Tax Act imposed under the Co-operative Agricultural Association Corporate Net Income Tax (72 P.S. § 3420-21 -- 3420-30).

(3) The electric co-op corporation membership fee imposed under 15 Pa.C.S. § 7333 (relating to license fee; exemption from excise taxes).

(4) Gross Receipts Tax on private bankers imposed under section 1 of the act of May 16, 1861 (P.L. 708, No. 660) (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 TAXPAYER MAY SUBMIT ANY INFORMATION IT BELIEVES IS RELEVANT TO THE DETERMINATION OF ITS TAX. The filing of an amended report is not a new report.

(3) THE DEPARTMENT WILL NOT ACCEPT AN AMENDED REPORT THAT CHALLENGES THE DEPARTMENT'S POLICY, ITS INTERPRETATION OF THE STATUTES OR THE CONSTITUTIONALITY OF THE COMMONWEALTH'S STATUTES.. ANY CHALLENGES OF THE DEPARTMENT'S POLICY, ITS INTERPRETATION OF THE STATUTES OR THE CONSTITUTIONALITY OF THE

COMMONWEALTH'S STATUTES MUST BE MADE BY FILING A PETITION FOR REASSESSMENT OR A PETITION FOR REFUND.

(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 TRC (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 IS NOT AN

APPEALABLE ACTION AND 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 ADMINISTRATIVE APPEAL 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.

Editor's note: Paragraph (5) is moved to § 153.54(h)(2).

~~(5) A copy of the amended Federal income tax return is required 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. In addition, the Department may also require proof of acceptance of the amended Federal income tax return.~~

~~(6)~~ (5) 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). THIS REQUIREMENT APPLIES TO CHANGES OR CORRECTIONS INITIATED BY EITHER THE TAXPAYER OR THE FEDERAL GOVERNMENT. 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.

(H) CHANGES INITIATED BY THE TAXPAYER.

(1) A REPORT OF CHANGE SHALL BE FILED, AND ADDITIONAL TAX DUE PAID, WITHIN 30 DAYS OF THE DATE THE AMENDED FEDERAL RETURN IS FILED, OR WOULD HAVE BEEN FILED IN THE CASE OF A CORPORATION PARTICIPATING IN THE FILING OF A CONSOLIDATED FEDERAL RETURN.

(2) TAXPAYER MUST PROVIDE A COPY OF THE AMENDED FEDERAL INCOME TAX RETURN IF THE REPORT OF CHANGE IS FILED DUE TO A CHANGE IN FEDERAL TAXABLE INCOME BASED ON THE FILING OF AN AMENDED FEDERAL INCOME TAX RETURN. IN ADDITION, THE DEPARTMENT MAY ALSO REQUIRE PROOF OF ACCEPTANCE OF THE AMENDED FEDERAL INCOME TAX RETURN. EXAMPLES OF PROOF OF ACCEPTANCE BY THE FEDERAL GOVERNMENT INCLUDE THE FOLLOWING:

(i) COPY OF THE IRS REFUND CHECK.

(ii) IRS STATEMENT OF ADJUSTMENT TO YOUR ACCOUNT.

(iii) IRS ACCOUNT TRANSCRIPT.

(iv) OTHER DOCUMENTATION AT THE DISCRETION OF THE DEPARTMENT.

(3) AMENDED FEDERAL INCOME TAX RETURNS INCLUDE ANY DOCUMENT ALLOWED OR AUTHORIZED BY THE IRS FOR A TAXPAYER TO ADJUST THEIR FEDERAL TAXABLE INCOME.

EXAMPLE 1. 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 TAXPAYER DISCOVERS TAXABLE INCOME WAS UNDERREPORTED AND FILES AN AMENDED FEDERAL INCOME TAX 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 A REPORT OF CHANGE.

EXAMPLE 2. TAXPAYER FILES A FEDERAL RETURN ON MARCH 15, 2007. BASED UPON THAT RETURN, THE TAXPAYER FILES ITS COMMONWEALTH REPORT ON APRIL 15, 2007. IN MARCH 2009, WHEN FILING THE FEDERAL INCOME TAX RETURN FOR 2008, THE TAXPAYER FILES FEDERAL FORM 1139, CORPORATION APPLICATION FOR TENTATIVE

REFUND, ADJUSTING 2006 FEDERAL TAXABLE INCOME FOR A CAPITAL LOSS CARRYBACK FOR 2008. 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, regarding settlement and resettlement, apply to taxes settled prior to January 1, 2008.

10/08/09

**AMENDED REPORT - CORPORATION TAXES
61 Pa. Code, §§ 151.14, 153.54 and 153.66**

**DEPARTMENT OF REVENUE REGULATION
#15-445**

COMMENT AND RESPONSE DOCUMENT

**Department of Revenue Regulation #15-445
AMENDED REPORT -
CORPORATION TAXES
61 PA. CODE, §§ 151.14, 153.54 and 153.66**

This is a list of organizations and interested parties from whom the Department of Revenue has received comments regarding the above-referenced regulation.

<u>ID #</u>	<u>Name/Address</u>
(1)	Kim Kaufman, Executive Director Independent Regulatory Review Commission (IRRC) 14 th Floor 333 Market Street Harrisburg, PA 17101
(2)	Peter N. Calcara, Vice President Government Relations Pennsylvania Institute of Certified Public Accountants (PICPA) 500 N. 3 rd Street, Suite 600A Harrisburg, PA 17101

Department of Revenue Regulation # 15-445
61 Pa. Code, §§ 151.14, 153.54 and 153.66
Amended Report - Corporation Taxes

COMMENTS AND RESPONSES

Section 151.14(b). General

1. Comment - Examples:

"We suggest that the final-form regulation clarify or provide examples of the types of changes that could be made through the amended report process." (1)

"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. . . .The inclusion of examples would assist taxpayers in choosing the right course of action for seeking relief."
(2)

Response:

The Department does not want to limit the types of additional information that taxpayers may submit or the issues that may be raised by filing an amended report. The Department is willing to consider any information the taxpayer submits. Revisions have been made to the final rulemaking to clarify this matter.

Section 151.14(c). Prerequisite

2. Comment - One-year extension of limitations period:

"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."
(2)

Response:

The authority for § 151.14(c) is 72 P.S. § 7407.4. The requested amendment is inconsistent with the statute. The taxpayer has no authority to limit the issues the Department may assess when consenting to an extension. No revisions have been made in the final rulemaking on this matter.

Section 151.14(e). Review of amended report

3. Comment - Time Frame for action and notification to taxpayers:

"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." (1)

"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." (2)

Response:

The Department is not changing in this rulemaking its current policy of no time frame to review amended reports or the practice under the current regulation. The filing of an amended report will not change any existing appeal rights of the taxpayer. The taxpayer should follow the appropriate appeal procedure (Petition for Reassessment or Petition for Refund) that is in place. The Department has added clarifying language in the final rulemaking at § 151.14(b)(3).

4. Comment - Appealable actions:

"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." (1)

"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." (2)

Response:

The Department agrees with commentators. Clarifying language has been added at § 151.14(e) in the final rulemaking.

Section 151.14(f) Amended report filed when tax liability is under appeal.

5. Comment - Treatment of interrelated issues:

"Sec. 151.14(f) needs to clarify the treatment of interrelated issues raised in an amended report and in an assessment appeal." Commentator provided an example. (2)

Response:

The example given by the commentator does not raise related issues (sales factor and consolidated net worth). For example, if an administrative appeal board grants relief on the sales factor, the statement of account issued by the Department will reflect the consolidated net worth accepted by the Department at the time the decision and order is issued. If the Department subsequently accepts the consolidated net worth shown in the amended report, the account will be adjusted appropriately.

The Department will not address an issue in an amended report that is raised in an appeal for that taxpayer. No revisions to the final rulemaking have been made on this matter.

6. Comment - Appropriate board:

"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." (1)

Response:

The Department has added clarifying language at § 151.14(f)(1) in the final rulemaking. The reference now reads "appropriate administrative appeal board."

Section 151.14(g)(5) Additional information required to be provided with an amended report.

7. Comment - Proof of acceptance:

"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.'" (1)

"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." (2)

Response:

The Department agrees with IRRC. Examples of proof of acceptance by the Federal government are added at § 153.54(h)(2) in the final rulemaking.

Section 153.54 Changes made by Federal government.

8. Comment - Report of change.

"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." (2)

Response:

The Department's current policy regarding this matter is not changing in this rulemaking. Pursuant to § 153.54(c) and (d)(1), a report of change is required to be filed with the Department within 30 days of when the taxpayer receives the Federal Notice and Demand for Payment. No revisions to the final rulemaking have been made concerning this comment.

Section 153.66 Applicability.

9. Comment - Applicability language moved to Chapter 151.

"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." (1)

Response:

In order to avoid confusion to readers of Chapter 153, the Department has not made the suggested changes to this section in the final rulemaking. The language at § 153.66 applies to sections 153.61 - 153.65 and therefore should remain at its proposed location.

Other - Corrected Reports

10. Comment - Inclusion of language to clarify procedures for filing corrected reports.

"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." (1)

"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. . . . 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." (2)

Response:

In the final rulemaking, the Department has made "Report of Change" provisions for instances in which a corporation files a Federal form 1120X. The Department added language at § 153.54(g)(2) and a new subsection (h) (relating to changes initiated by the taxpayer) to expand on these matters.

11. Comment - Federal Form 1139 requires the filing of a corrected report.

"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."

(2)

Response:

In the final rulemaking, the Department added provisions for "Report of Change" (see *Response to Comment #10*) for amended Federal income tax returns including any document allowed or authorized by the IRS for a taxpayer to adjust their Federal taxable income.

10/08/09