

3/26/10

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE



(1) Agency:

Revenue

(2) Agency Number:

Identification Number:

15-449

IRRC Number:

2852

(3) Short Title:

Amendments to Chapter 117. Return and Payment of Tax

(4) PA Code Cite:

61 Pa. Code §§ 117.9, 117.9b & 117.9c

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact:

Mary R. Sprunk, Regulatory Coordinator
Pennsylvania Department of Revenue, Office of Chief Counsel
P.O. Box 281061
Harrisburg, PA 17128-1061
(717) 783-7524
(717) 772-1459 (Fax)

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

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Department is promulgating a regulation change that will clarify the Department's policy on the form of return taxpayers are required to submit for Pennsylvania Personal Income Tax. In addition, the regulation will provide clear instructions for taxpayers regarding reporting requirements.

(9) Include a schedule for review of the regulation including:

- | | |
|---|-------------------------------------|
| A. The date by which the agency must receive public comments: | <u>30 days after publication</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>1st Quarter, 2011</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon final publication</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>Upon final publication</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(10) 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.

Regulatory Analysis Form

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

Statutory authority for the regulation is set forth in section 354 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 7354).

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

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

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Amendments to § 117.9, the creation of §§ 117.9b and 117.9c are proposed to reflect the Department's policy regarding the form of Pennsylvania Personal Income Tax returns. This new regulatory language will provide uniformity and guidance to Pennsylvania taxpayers.

Pennsylvania taxpayers and tax practitioners will benefit as a result of the new regulation.

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(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

No scientific data, studies or references are used to justify this regulation.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

No parties should be adversely affected by the regulation.

(16) 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.

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

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SECTION III: COST AND IMPACT ANALYSIS

(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. Explain how the dollar estimates were derived.

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

(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. Explain how the dollar estimates were derived.

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. Explain how the dollar estimates were derived.

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.

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

	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) 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

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(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The Department is promulgating a regulation change that will clarify the Department's policy on the form of return taxpayers are required to submit for Pennsylvania Personal Income Tax. In addition, the regulation will provide clear instructions for taxpayers regarding reporting requirements and is expected to have a minimal fiscal impact.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

A copy of the regulation was forwarded to the Pennsylvania Bar Association, the Philadelphia 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 Quarterly Regulatory Report posted on the Department's website and will be forwarded to interested parties upon request.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

There are no alternative regulatory provisions associated with the regulation.

(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 regulations.

There are no federal standards associated with this regulation.

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(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

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

(26) Will the regulation affect any other 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) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This regulation does not change existing reporting, record keeping or other paperwork requirements. The new regulatory language will provide uniformity and guidance to Pennsylvania taxpayers.

Regulatory Analysis Form

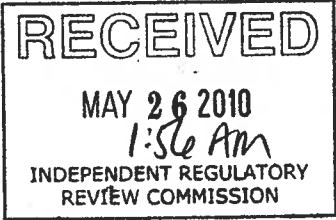
(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special groups are affected by the regulation.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

3/26/10



DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

[Signature]

By: _____
(Deputy Attorney General)

MAY 05 2010

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

PA Department of Revenue
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 15-449

DATE OF ADOPTION _____

BY *C. Daniel Hassell*
C. Daniel Hassell, Acting
TITLE Secretary of Revenue
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies

[Signature]

BY Andrew C. Clark

APR 08 2010

DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel-Independent Agency~~)
(Strike inapplicable title)

Check if applicable. No Attorney General Approval or objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code §§ 117.9, 117.9b & 117.9c

Amendments to Chapter 117. Return and Payment of Tax

PREAMBLE

The Department of Revenue (Department), under authority contained in section 354 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 7354), proposes amendments to 61 Pa. Code, Chapter 117. Return and Payment of Tax, by adding clarification language to section 117.9 (relating to form of return), and adding section 117.9b (relating to consistent positions) to read as set forth in Annex A.

Purpose of Regulation

This regulation change will clarify the Department's policy on the form of return taxpayers are required to submit for Pennsylvania Personal Income Tax. In addition, the regulation will provide clear instructions for taxpayers regarding reporting requirements.

Explanation of Regulatory Requirements

Amendments to § 117.9 (relating to form of return), the creation of § 117.9b (relating to consistent positions) and § 117.9c (relating to execution of return by Secretary of Revenue) are proposed to reflect the Department's policy regarding the form of Pennsylvania Personal Income Tax returns. This new regulatory language will provide uniformity and guidance to Pennsylvania taxpayers.

Affected Parties

Pennsylvania taxpayers and tax practitioners may be affected by the regulation.

Fiscal Impact

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

Paperwork

The proposed amendment will not create additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The regulation 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

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 *May 26, 2010*, 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.

C. DANIEL HASSELL, ~~ACTING~~
SECRETARY OF REVENUE

01/11/10

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 V. Personal Income Tax,
Chapter 117. Return and Payment of Tax.

§ 117.9. Form of return.

(a) Required form. A return of tax shall be in processible form. To be in processible form, a return must satisfy each of the following requirements:

(1) It shall be filed on the form prescribed by instructions of the Department or transmitted electronically or telephonically in a manner authorized by the Department in instructions.

(2) The taxpayer's name, filing status, postal address, and taxpayer identification number shall be set forth in the form or transmittal.

(3) The form or transmittal shall show, for the reportable period, the self-assessed amounts of the taxpayer's income by class and tax liability before credits and payments and contain the required information (whether on the return or on required attachments or return

schedules) sufficient to permit the mathematical verification of such liability.

(4) The form or transmittal shall be verified by a signed declaration that the taxpayer, to the best of his knowledge and belief, believes the information submitted thereon to be true, correct, and complete.

(5) The form or transmittal, on its face, shall plausibly purport to be in compliance with the tax laws of this Commonwealth and to show an honest and genuine attempt to satisfy such laws.

(6) The form or transmittal shall contain no information that, on its face, indicates that:

(i) The self-assessment is substantially incorrect.

(ii) Information required by such form or transmittal or on a required attachment or return schedule has been omitted.

(iii) A required attachment, notice or schedule has been omitted.

(b) Filing processible returns. The filing of a processible return is required in order to:

(1) Commence the running of the statute of limitations for the assessment of the tax shown as due on the return or the assessment of a deficiency.

(2) Commence the running of interest on overpayments of tax showing on the return.

(3) Obtain credit or refund of the overpayment showing on the return under section 347 of the Tax Reform Code of 1971 (72 P.S. § 7347).

(c) Request for forms. [Persons filing returns should use the envelopes and preaddressed prescribed forms furnished to them by the Department.] A taxpayer shall not be excused from making a return [, however,] by the fact that no return form has been furnished to him or the one that was furnished becomes lost or damaged. Taxpayers not supplied with or in possession of the proper form should make application therefor to the Department listing their name, address, and identification number and sending such request to the Department of Revenue[, the Personal Income Tax Bureau, Harrisburg, Pennsylvania 17127]. The application shall be made in the manner prescribed by instructions of the Department in effect at the time of application. Such request should be made in ample time to have their returns prepared, certified, and filed on or before the due date. [Each taxpayer should carefully prepare his return and set forth fully and clearly the information required to be included therein. Returns which

have not been so prepared will not be accepted as meeting the requirements of this article.]

(d) Incomplete forms or transmittals. Except as provided in subsection (e), an incomplete form or transmittal shall be treated as filed only when it is completed.

(e) Exception. Required details as to a particular item of gross income or deduction may be omitted only if the taxpayer attaches a statement that he or she is under investigation and can validly assert that the details might incriminate the taxpayer.

(f) Partners and Pennsylvania S corporation shareholders. If a complete partnership or Pennsylvania S corporation return of income for the enterprise's taxable year ending with or within a partner's or shareholder's taxable year has not been filed with the Department, a copy of the Pennsylvania Schedule RK-1 "Resident Shareholder's Share of Income, Loss and Credits" or NRK-1 "Nonresident Shareholder's Share of Income, Loss and Credits" furnished to the partner by the partnership and the Federal Schedule K-1 "Shareholder's Share of Income, Deductions, Credits, etc." furnished to the partner by the partnership or Pennsylvania Schedule RK-1 or NRK-1 furnished to the partner by the Pennsylvania S corporation and Federal

Schedule K-1 furnished to the partner by the Pennsylvania S corporation respectively is a required attachment for purposes of this section.

(g) Notice. Promptly after the date of a determination by the Department that an incomplete or otherwise non-processible return has been filed, the Department will supply the taxpayer with a written statement setting forth in reasonable detail the basis of its determination.

(h) Deductions, losses or credits. A taxpayer who fails or refuses to make a required processible return or who makes a false or fraudulent return shall be presumed to have failed to have maintained adequate records to substantiate any amount of deduction, loss or credit.

* * *

§ 117.9b. Consistent positions.

(a) In general. A taxpayer shall take consistent positions with respect to the facts asserted in a prior taxable year. For example, a taxpayer may not treat the receipt of cash as a loan while the statute of limitations is open and declare it to be a dividend once the statute expires.

(b) Partners and Pennsylvania S corporation shareholders. Partners of partnerships and shareholders of

Pennsylvania S corporations shall report each partnership or Pennsylvania S corporation item consistently with the way it is reported on the entity's return under this article, unless it is reported incorrectly and the Department and the partnership are notified of the correction.

§ 117.9c. Execution of return by Secretary of Revenue.

(a) Authority of Secretary to make and subscribe return. If a person fails to make a required processible return at the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, the Secretary or deputy may make the return from his own knowledge and from information obtained through testimony or otherwise.

(b) Status of return. A return so made and subscribed shall be prima facie good and sufficient for all legal purposes.

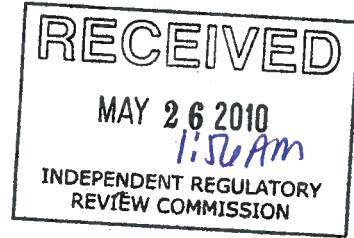
01/11/10

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

I.D. NUMBER: 15-449
 SUBJECT: AMENDMENTS TO CHAPTER 117. RETURN AND PAYMENT OF TAX.
 AGENCY: DEPARTMENT OF REVENUE

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
3/20/10	<u>Samuel Rohrer</u> (minority)	HOUSE COMMITTEE ON FINANCE
5/26/10	<u>David K. Levdansky</u>	MAJORITY CHAIRMAN
5/26/10	<u>James Ferlo</u> (minority)	SENATE COMMITTEE ON FINANCE
5/26/10	<u>Patrick M. Browne</u>	MAJORITY CHAIRMAN
5/26/10	<u>K. Cooper</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
5/26/10	<u>Mayra Garcia</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)