

02/10/12

RECEIVED  
IRRC

INDEPENDENT REGULATORY  
REVIEW COMMISSION  
2012 APR 25 AM 10:33

# Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency:  
Revenue

(2) Agency Number:

Identification Number: 15-456

IRRC Number:

2940

(3) PA Code Cite: 61 Pa. Code §§ 117.1, 117.7, 119.13, 119.13a, 119.13b, 119.18 and 121.25

(4) Short Title: Personal Income Tax – Amended Returns

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

Primary Contact: Mary Sprunk (717) 783-7524

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

(6) 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

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

The Department is promulgating a regulation change that will codify the Department's policy on Amended Returns for Pennsylvania Personal Income Tax and replace outdated language. In addition, the regulation will provide clear instructions for taxpayers regarding petitions for refunds.

(8) 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).

(9) 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.

(10) 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.

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.

The proposed rulemaking proposes a PIT amended return may be filed within three years from the original or extended due date of the return. This marks a change in current policy and practice. The policy change will benefit taxpayers by giving additional time to file an amended return in cases where a taxpayer has been granted an extension to file the original return.

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

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

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

No parties should be adversely affected by the regulation.

(13) 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.

(14) 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.

This regulation does not increase costs or savings to the regulated community. No legal, accounting or consulting procedures are required by this regulation.

(15) 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 consulting procedures are required by this regulation.

(16) 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 consulting procedures are required by this regulation.

(17) 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. NA

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

(17a) Provide the past three year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>
NA	NA	NA	NA	NA

(18) 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 and provide uniformity for taxpayers and tax practitioners regarding amended returns. The proposed regulation change also replaces outdated language and offers clear instructions concerning petitions of refund.

There are no adverse effects from this regulation, and implementation costs are minimal.

(19) 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.

(20) 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.

(21) 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.

(22) 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.

(23) 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.

(24) 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.

(25) 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.

(26) 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>4<sup>th</sup> Quarter, 2012</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>                          |

(27) 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.



CDL-1

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

RECEIVED  
IRRC

2012 APR 25 AM 10:33

(Pursuant to Commonwealth Documents Law)

02/10/12

DO NOT WRITE IN THIS SPACE

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

*Amy M. Elliott*

By: \_\_\_\_\_  
(Deputy Attorney General)

APR 11 2012

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. 15-456

DATE OF ADOPTION \_\_\_\_\_

BY *D. Meuser*  
Daniel Meuser

TITLE Secretary of Revenue  
(Executive Officer, Chairman or Secretary)

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

*Megan L. Considine*  
Megan L. Considine

MAR 07 2012

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 §§ 117.1, 117.7, 119.13,  
119.13a, 119.13b, 119.18 and 121.25

Personal Income Tax - Amended Returns

## 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; Chapter 119, Liabilities and Assessment; and Chapter 121, Final Returns, to read as set forth in Annex A.

### Purpose of Regulation

This regulation change will clarify the Department's policy on Amended Returns for Pennsylvania Personal Income Tax and replace outdated language. In addition, the regulation will provide clear instructions for taxpayers regarding petitions for refunds.

### Explanation of Regulatory Requirements

Amendments to §§ 117.1 and 117.7 (relating to general requirements of a return; time for filing returns and paying tax) are proposed to delete out-of-date language and insert clarifying language.

Section 119.13 (relating to restrictions on refunds) is amended to remove outdated references to the Board of Finance and Revenue and replace with an updated reference to Chapter 7, Board of Appeals. Subsection (b) has been amended with the deletion of minor language and new paragraphs (3) - (5) added for more details on exceptions. Subsection (c), including paragraphs (1) and (2),

is deleted. Paragraph (3) is renumbered to a new Section 119.13a, Refund claim filed by a legal representative or other fiduciary. Paragraph (4) is also renumbered to a new Section 119.13b, Checks in payment of claims.

Section 119.18 (relating to limitations on refund or credit) is amended to remove outdated references to the Board of Finance and Revenue and replace with an updated reference to Chapter 7, Board of Appeals.

Section 121.1 (relating to filing tax return) is amended to insert language in a new subsection (g) that is being moved from § 121.25 (b).

Section 121.25 (relating to amended return) is amended to remove outdated language and insert new regulatory language in subsections (b), (e), (f) and (g) which provide uniformity and guidance on amended returns to Pennsylvania taxpayers. It is important to note the new language inserted at Paragraph (b)(1) explains that a PIT amended return may be filed within three years from the original or extended due date of the return. This marks a change in current policy and practice. The policy change will benefit taxpayers by giving additional time to file an amended return in cases where a taxpayer has been granted an extension to file the original return.

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 *April 25, 2012* 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.

DANIEL MEUSER  
SECRETARY OF REVENUE

10/17/11

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.

§ 117.1. General requirements of a return.

Every taxpayer having an item of income or loss within the meaning of this article for the taxable year shall file a tax return on or before the date when the Federal income tax return of the taxpayer is due or would be due if the taxpayer were required to file a Federal income tax return under the Internal Revenue Code. Consequently, returns are due on or before April 15 for the calendar year taxpayers and on or before the 15th day of the fourth month following the close of the fiscal year for fiscal year taxpayers[, but in any event for the first reporting period no earlier than April 15, 1972].

\* \* \*

§ 117.7. Time for filing returns and paying tax.

All persons required to make and file returns under § 117.1 (relating to general requirements of a return)

shall, without assessment, notice, or demand, pay the tax required to be reported as due on a return at the time prescribed in § 117.1 for filing such return [any tax due thereon on the same due date fixed for filing the return], determined without regard to any extension of time for filing the return. Payment of [the balance of any] such tax [due thereon] should accompany the return when filed.

**CHAPTER 119. LIABILITIES AND ASSESSMENT - PROCEDURE  
AND ADMINISTRATION**

§ 119.13. Restrictions on refunds.

(a) General rule. Except as provided in subsection (b), [no] the Department will make a credit or refund [will be made] under § 119.12 (relating to refund or credit of overpayment) [without the approval of the Board of Finance and Revenue] only pursuant to a petition for refund. See 61 Pa. Code Chapter 7, Board of Appeals.

(b) Exceptions. [Credits] The Department will make a credit or [refunds] refund [may be made without application to the Board of Finance and Revenue] if [one of the following occurs] the credit or refund arises as a result of:

(1) [The credit or refund arises by reason of the] The overpayment of an installment of estimated tax.

(2) [Such credit or refund arises upon the] The filing of a final return showing less tax due after the application of the allowable credits than the amount of tax withheld from the compensation of the taxpayer or the amount of tax paid by him as estimated tax under this article [or pursuant to Article III of the act of March 4, 1971 (P. L. 6, No. 2) (72 P. S. §§ 7301-7361)].

(3) The filing of an amended return showing an overpayment of tax.

(4) A petition for reassessment. The credit or refund shall be only for amounts paid by reason of the assessment.

(5) A departmental audit.

[(c) Form of claims for credit or refund. Credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer. The following requirements apply:

(1) No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed



before the expiration of such period. The claim shall set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Department of the exact basis thereof. The statement of the grounds and facts shall be verified by a written declaration that it is made under the penalties of perjury. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund or credit.

(2) In the case of any tax imposed by this article, a separate claim shall be made for each type of tax for each taxable year or period.

(3) § 119.13a. Refund claim filed by a legal representative or other fiduciary.

If a return is filed by an individual and, after his death, a refund claim is filed by a legal representative, certified copies of the letters testamentary, letters of administration, or other similar evidence shall be annexed to the claim to show the authority of the legal representative to file the claim. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not

accompany this claim, if a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund is to be paid, letters, testamentary, letters of administration, or other evidence may be required but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim. A claim may be executed by an agent of the person assessed, but in such case a power of attorney shall accompany the claim.

[(4)] § 119.13b. Checks in payment of claims.

Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and may be sent directly to the claimant or to such person in care of an attorney or agent who has filed a power of attorney specifically authorizing him to receive such checks.

\* \* \*

§ 119.18. Limitations on refund or credit.

Any [application] petition for refund shall be filed [with the Board of Finance and Revenue within three years from the time the return is required to be filed] in

accordance with Chapter 7 (relating to board of appeals) of this article and within applicable limitation periods.

**CHAPTER 121. FINAL RETURNS**

§ 121.1. Filing tax return.

\* \* \*

(g) A return filed before the due date or extended due date will be considered to be filed on the due date or extended due date.

**Editor's note: The text inserted at § 121.1 (g) is being moved from § 121.25 (b).**

§ 121.25. Amended return.

\* \* \*

(b) [If the error discovered results in a refund of tax, the amended Form PA-40 shall be filed within 3 years from the date the original return was due in order to receive a refund. A return filed before the due date or extended due date will be considered to be filed on the due date or extended due date.] The Department will review an amended return if the following apply:

(1) The amended return is filed within three years of the due date or extended due date of the original return.

(2) The amendments shown on the amended return involve issues other than those under appeal.

(3) The Taxpayer is not challenging the Department's policy, its interpretation or the constitutionality of the Commonwealth's statutes. Any challenge 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) If a tax payment was made with the original return, the amount of this payment shall be included on the amended return in the manner prescribed by instructions of the Department. [This can be done by entering between lines 15 and 16 in the "Tax Credit" section of Form PA-40 the words "Amount paid with original return." The dollar amount shall be entered directly below line 15 and included in "Total Credits" (line 16).]

(d) If a refund was received or is expected to be received from the original return, the amount of this refund shall be shown on the amended return in the manner prescribed by instructions of the Department. [Between line 15 and 16 in the "Tax Credit" section of Form PA-40 the words, "Refund shown on original return" shall be entered. The dollar amount shall be entered directly below line 15 and this amount subtracted from the other credits to arrive

at the proper amount to be shown as "Total Credits" (line 16).]

(e) Effect of an Amended Return on Petition Rights.

(1) An amended return does not replace the filing of a petition for reassessment or a petition for refund.

(2) The filing of an amended return does not extend the time limits for a taxpayer to file a petition for reassessment or a petition for refund.

(f) Review of amended return.

(1) The Department is not obligated to revise the tax due the Commonwealth upon review of an amended return. The Department's failure to revise the tax due the Commonwealth is not appealable 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 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.

(g) An amended return filed with the Department must contain the following:

(1) The calculation of the amended tax liability.

(2) Revised Pennsylvania supporting schedules, if applicable.

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

10/17/11

Department of Revenue - Notice of Proposed Rulemaking

61 Pa. Code, §§ 117.1, 117.7, 119.13,  
119.13a, 119.13b, 119.18 and 121.25

Personal Income Tax - Amended Returns

15-456

SECRETARY'S CERTIFICATION

I, Daniel Meuser, do hereby certify that I have reviewed this regulation and determined that the regulation is consistent with the principles outlined in Executive Order 1996-1.



---

Daniel Meuser  
Secretary of Revenue

Department of Revenue - Notice of Proposed Rulemaking

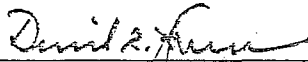
61 Pa. Code, §§ 117.1, 117.7, 119.13,  
119.13a, 119.13b, 119.18 and 121.25

Personal Income Tax - Amended Returns

15-456

FORM AND LEGALITY

I hereby certify that I have reviewed this regulation for form and legality, that I have discussed any legal and policy issues with the attorneys responsible for this regulation, that I have made all appropriate revisions and that all information contained in the Preamble and Annex A is current and accurate.



---

David R. Kraus  
Chief Counsel



