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By Electronic Mail

John F. Mizner, Esq.
Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

**Board of Finance and Revenue
Comment on Final Regulation #64-5, IRRC # 3091**

Chairman Mizner:

I respectfully submit the following comment regarding the above-referenced Final Regulation.

In the Final Regulation, the Board of Finance and Revenue (the "Board") has changed the Proposed Regulation and has added an additional limitation on the grounds for reconsideration. Specifically, Section § 703.41 of the Final Regulation now provides that "[n]either the sufficiency of the submission nor a determination as to whether a party satisfied its burden of proof is a basis for a reconsideration." The Proposed Regulation did not include this provision and no comments on the Proposed Regulation addressed the grounds for reconsideration.

As an example of how this change could work, consider a taxpayer who paid more personal income tax than was actually due because of a computational error on his tax return. The taxpayer appeals to the Board. He submits to the Board copies of his tax return and cancelled tax check reflecting payment of tax. The Board agrees that the tax return contains a computational error that would result in relief, but the Board concludes, erroneously, that he has not proved that he actually paid the tax. Assume that this conclusion is incorrect: The taxpayer's cancelled check, which was submitted to the Board, proves payment of the tax, but the Board overlooked that check.

Under the original Proposed Regulation, the taxpayer in this example would have been permitted to file a request for reconsideration with the Board calling the Board's attention to the cancelled tax check (which is evidence that he paid the tax). By contrast, under the Final Form Regulation, a request for reconsideration is prohibited because it is based on sufficiency of evidence and the burden of proof.

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Thus, under the Final Regulation, to resolve this simple oversight, the taxpayer will need to retain a lawyer, file an appeal to Commonwealth Court, pay a significant filing fee, and then wait for one or two years for his case to get resolved there.¹

This change runs counter to the Board's goal of providing "the just, speedy, and inexpensive determination of every proceeding before the Board."² A blanket rule that prohibits reconsideration, in every case, for sufficiency of evidence or burden of proof will not promote these interests. In the interest of justice, the Board should correct an erroneous decision called to its attention. In the interest of speed, although reconsideration can delay a final decision at the Board by a few weeks, an incorrect decision that must be appealed to Commonwealth Court delays a final decision by years. In the interest of expense, an unnecessary appeal to Commonwealth Court requires both taxpayers and the Commonwealth to commit substantial fees and other resources.

As the Board acknowledged in its Regulatory Analysis Form, it considers approximately 5,000 cases annually, which is about 417 cases each month. Even if the type of situation posed in this example (that is, the Board overlooking evidence) occurs in just a small fraction of these cases, the change in the Final Regulation would result in significant delay, injustice, and expense for the affected taxpayers and the Commonwealth.

We request that this language be removed from the Final Regulation. That would still leave reconsideration to the Board's discretion. Even under the original Proposed Regulation, a taxpayer would still be required to timely submit, in the first instance, all necessary evidence to the Board in order for the Board reconsider that evidence.

Sincerely,



Kyle O. Sollie

KOS:eaj

cc: Jacqueline A. Cook, Esq. (via email)

¹ It is my experience, based on nearly 20 years of practicing law before the Commonwealth Court and over 100 cases at that court, that because of the workload of the court and the Deputy Attorney Generals who represent the Commonwealth, cases typically take at least a year, and often two or more years, to resolve in court even when the case is relatively simple.

² Regulation § 702.2(a).