

#3091

K&L GATES

EMBARGOED MATERIAL

March 9, 2016

Raymond Pepe
raymond.pepe@KLGates.com

T 717.231.5988
F 717.231.4501

John F. Mizner
Chair
Independent Regulatory Review Commission
14th Floor, Harrisstown 2
333 Market Street
Harrisburg, PA 17101

2016 MAR 10 AM 9:31

RECEIVED
IRRC

Re: Regulation #64-5: Board of Finance and Revenue

Dear Commissioner Mizner:

On behalf of our client, the Pennsylvania Bankers Association, I respectfully recommend disapproval of the final form of Regulation #64-5 of the Board of Finance and Revenue. The final form regulations recommended by the board provide important and valuable measures to improve the review of petitions filed with the board. Our clients believe, however, that there are two serious deficiencies in the final form rules that justify their disapproval so that the board can be afforded an opportunity to improve these much needed and important regulations.

Lack of Notice to Petitioners of Agency Objections. On June 15, 2016, the Pennsylvania Bankers Association submitted comments to the Board of Finance and Revenue recommending that in order for the Department of Revenue or any other governmental agency to offer evidence or legal arguments to the board regarding a petition, the agency should be required, at least 30 days prior to a meeting of the board at which the petition will be considered, (1) to give written notice to the petitioner, the board, and any other party to the proceeding; (2) file and serve upon the board and all parties to a proceeding a response to the petition setting forth the legal or factual basis for any objections the agency intends to raise to the petition or the relief requested by the petitioner; and (3) present any documentary evidence the agency wishes the board to consider, or disclose the identity of any witnesses it intends to present testimony to the board and describe the testimony that will be offered. In the absence of such a notice and written response to a petition, the Department should be barred from participating in the proceeding relating to a petition submitted to the board.

The members of the Pennsylvania Bankers Association believe that because petitioners are required to set forth the legal and factual basis for claims put before the board, it is only fair and proper to require any agency opposing a petition to give the same type of advance notice to the board and to petitioners.

In response to these recommendations, the board responded by stating that it “has developed comprehensive and adequate regulations in Chapter 703, specifically, which set forth the requirements for filing and service of submissions by both parties and hearing procedures, which address this recommendation.”

Unfortunately, as currently drafted, section 703.4 of the final form regulation only provides that the Department of Revenue may file a submission in a manner set forth in section 702.4 in response to a petition, and fails to set forth any procedure for other agencies from whom relief is requested to make submissions to the board. To the extent an agency elects to voluntarily make a submission to the board, the rules provide no timetable or deadlines for such submissions which assure timely and adequate notice to petitioners. More importantly, because any “agency against whom the petitioner seeks relief or a remedy” is automatically designated as a party to proceedings before the board under section 702.3, the submission of a written response to the petition under section 702.4 is not required for the department to participate in a hearing before the board. Furthermore, section 702.4, merely specifies how a response is filed and served, and unlike section 703.2 which requires the petitioner to set forth relevant facts and the basis upon which the petitioner claims that an assessment is erroneous or a refund is due, no requirements are imposed on the department or another agency appearing before the board to oppose the relief sought by the petitioner to explain or set forth evidence in opposition to the relief requested.

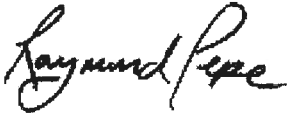
As a result, under current rules of the board an agency representative may appear at a hearing and present legal and factual claims about which the petitioner has not been provided reasonable notice or an opportunity to prepare a reply. Our clients, therefore, respectfully request that the rules as submitted be disapproved so that the board can specify clear and more detailed procedures for the participation by state agencies in its proceedings.

Extension of Deadline for Action by the Board. The final form regulation was revised to add to section 703.11 language not included in the proposed regulation published in the Pennsylvania Bulletin providing that, “The submission of a request for compromise shall extend the time under section 2704(f)(1) of the Tax Reform Code of 1971.”

As drafted, this automatic extension of the deadline for action by the board is contrary to the requirements of section 2704(f)(1) of the Tax Reform Code which only extends the deadline for action by the board “upon the request of the petitioner or the department.” While petitioners may wish to submit requests for compromises, it is unnecessary and contrary to the law automatically extend the deadline for action by the board whenever a request for a compromise is submitted. Automatically extending the deadline for board action whenever a request for a compromise is submitted, especially in lieu of any indication that the request will be considered by the Department of Revenue, will unnecessarily and unreasonably delay the resolution of petitions filed with the board.

As a result, we request that the regulations be disapproved so it can be clarified that extensions of the six-month deadline for action by the board may occur only upon the request of a petitioner or the department.

Sincerely,

A handwritten signature in black ink that reads "Raymond Pepe". The signature is written in a cursive style with a large, prominent initial "R".

Raymond Pepe