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June 11, 2015

Via Electronic Mail

Jacqueline A. Cook, Esq.  
 Chair, Board of Finance and Revenue  
 Treasury Department  
 1101 South Front Street, Suite 400  
 Harrisburg, PA 17104-2539

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Dear Ms. Cook:

On behalf of the Pennsylvania Institute of Certified Public Accountants (PICPA) and the Pennsylvania Chamber of Business and Industry, we offer the following comments regarding the Board of Finance and Revenue's proposed rulemaking, 61 PA. Code Chs. 701—703, General Provisions; Tax and Other Appeal Proceedings, published in the May 16, 2015, Pennsylvania Bulletin.

Sincerely,

Peter N. Calcara, CAE  
 Vice President, Government Relations  
 PICPA

Samuel Denisco  
 Vice President, Government Affairs  
 PA Chamber of Business and Industry

Enclosure

cc: Independent Regulatory Review Commission

**Comments by the PICPA and PA Chamber on  
Proposed Rulemaking  
Board of Finance and Revenue  
61 PA. Code Chs. 701—703**

**General Comment**

We suggest that the rulemaking expressly provide that the General Rules of Administrative Practice and Procedure **do not** apply to proceedings before the Board of Finance and Revenue, and therefore any reference to proceedings should be stricken. The Administrative Agency Law, specifically Section 501(b)(1), provides that “[n]one of the provisions of this subchapter shall apply to (1) Proceedings before the Department of Revenue, Auditor General, or **Board of Finance and Revenue**, involving the original settlement, assessment or determination or resettlement, reassessment or redetermination, review or refund of taxes, interest or payments made into the Commonwealth treasury.” (2 Pa. C.S. Section 501 (b))

Also, we recommend changing the word “supersedes” to “not applicable” throughout the rulemaking. For example, we recommend the following rewrite: Section 702.1(b) should be rewritten as “1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) does not apply.”

**Section 702.4. Filing generally**

• **Section 702.4(c)**

We recommend deleting the second sentence in its entirety. If a petitioner submits a petition electronically and there is some problem in its delivery to the Board, the petition should be considered timely if the petitioner can in some way establish that it was in fact transmitted on time. We do not believe any language needs to be included to address this situation. The Board can address the issue on a case-by-case basis, utilizing its equitable powers if necessary.

**Section 702.21. Representation**

• **Section 702.21(a)**

We recommend deleting the last portion of the sentence: “as administered by the Pennsylvania Supreme Court.” The phrase is immaterial and factually incorrect, as there are also statutory provisions that govern the practice of law.

• **Section 702.21(d)**

We recommend the following rewrite of the provision: “If a petitioner authorizes a representative after the petition is filed, the petitioner shall file a form prescribed by the Board or a letter on the petitioner’s letterhead naming the representative.”

**Section 702.22. Limited practice before the Board**

• **Section 702.22(a)**

We recommend removing item (1), as it is already covered in Section 702.21. Representation.

**Section 703.3. Board acknowledgement**

- **Section 703.3**

We recommend the following rewrite: “The Board shall acknowledge receipt of all petitions. The acknowledgement will set forth deadlines for subsequent submissions and the staff member assigned to the petition.”

**Section 703.4. Other submissions**

- **Section 703.4(a)**

We recommend deleting the second sentence in the subsection, as there is no statutory basis for the requirement. If evidence is inadequate, whether or not additional information is provided, relief may always be denied based on failure to meet the petitioner’s burden of proof.

- **Section 703.4(e)(1)(i)**

We recommend deleting “without restriction, and may not require a password to view the contents.” This is impractical in today’s world of electronic communications. Many entities have already moved to encrypted information, and more are following.

**Section 703.5 Service**

- **Section 703.5(b)**

The Board should incorporate the rules for service in the regulations. Petitioners and representatives should not have to search multiple sites for rules.

**Section 703.6. Consolidation**

- **Section 703.6(a)**

We recommend adding “or with the consent of multiple petitioners” at the end of the first sentence.

**Section 703.7. Timeliness of submissions**

- **Section 703.7(a)**

The regulation is too restrictive in requiring the submission of additional evidence within 60 days. In certain instances a petitioner does not retain a representative until after 60 days have lapsed, or is otherwise unable to obtain all the additional information within the 60-day period. Under current practice, a petitioner who is unable to provide information within 60 days has been advised to request that the Board extend the period to issue a decision in the case beyond the six-month period. The regulation should codify current practice. Therefore, we recommend the time period be extended to 90 days.

Also, we recommend the last sentence in the subsection be deleted.

**Section 703.8. Withdrawal or termination of appeal**

- **Section 703.8(a)**

We recommend changing the word “request” to “notice.” The term request implies that the Board has discretion in the matter.

**Section 703.11. Compromise generally**

- **Section 703.11(b)**

The rulemaking seems to imply that only a taxpayer can initiate a compromise. This should be broader to allow the Department of Revenue to offer a compromise as well. Therefore, we

recommend the following rewrite: “A party or its representative may submit to the Board and the other party a compromise proposal, which is posted on the Board’s website, at any time prior to an order issued by the Board.” We believe this provision is more reflective of current practices and procedures before the Board.

- **Sections 703.11 (d) and (e)**

These provisions do not reflect current practice. In many instances compromise requests are filed after the parties have had a chance to discuss the case, usually in the presence of the briefer in a prehearing conference. The meeting takes place after the 30-day filing period. In many instances, the process of agreeing on a compromise does not occur within 90 days of the filing of the petition. The parties usually request, and are granted, a continuance of a case as long as the parties are still negotiating a compromise. We recommend both subsections be deleted from the final rulemaking.

**Section 703.34. Hearing procedure**

- **Section 703.34(a)**

The Department of Revenue should be required to provide notice to the petitioner of its intent to participate at the hearing and if it has any written documentation to be presented to the petitioner in advance of the hearing. The department should not be able to skip a prehearing conference and then take a position that the petitioner has not had a chance to consider.

**Section 703.51. Publication of orders**

- **Section 703.51(a)**

We recommend adding “within 90 days of the Order” at the end of the sentence. This will help ensure decisions are published within a reasonable time.

**Additional Issues for the Board to Consider**

We offer the following additional items for the Board to consider when addressing this rulemaking.

- The time period for issuing a decision and the grounds and procedures for requesting an extension of the six-month period to decide a case, especially in instances where a case that has been held pending resolution of a similar case in Commonwealth Court or the Pennsylvania Supreme Court is settled or otherwise resolved.
- The procedures for getting a case being held docketed.
- It is important to note that the Board has six months from the date of the disposition of the court case to decide the case being held, and the six-month period may not be extended.