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Commonwealth of Pennsylvania



BOARD OF FINANCE AND REVENUE
1101 South Front Street, Suite 400
Harrisburg, Pennsylvania 17104
FAX (717) 783-4499
PHONE (717) 787-2974

Delivered Via Electronic Mail

March 7, 2016

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

**RE: Board of Finance and Revenue Response to ReedSmith Comment on
Final Regulation #64-5, IRRC # 3091**

Dear Chairman Mizner:

Please allow this letter to serve as the Board of Finance and Revenue's (Board) response to the comment regarding the above-referenced Final Regulations submitted by Kyle O. Sollie, ReedSmith, on March 3, 2016.

Mr. Sollie is mistaken when he asserts that no comment on the Proposed Regulations addressed the grounds for reconsideration. I respectfully refer the Commission and the commenter to Exhibit A of the Department of Revenue's ("Department") comments which were submitted on June 15, 2015. More specifically to Subchapter E. Request for Reconsideration, Section 703.41, where the Department wrote:

[COMMENT: is insufficiency of the evidence / failure to carry burden of proof basis for reconsideration? These arguments would seem to fall under errors of law or fact, or a hybrid of the two. It would be helpful to indicate if insufficiency of the evidence / failure to carry burden of proof are legitimate reasons for reconsideration.]

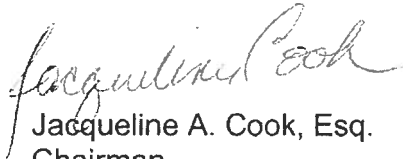
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In the Board's Final Regulations at Section 703.41(a), the Board clarified the reconsideration provisions of the regulations by including, "Neither the sufficiency of the submission nor a determination as to whether a party satisfied its burden of proof is a basis for reconsideration." Insofar as the Board is statutorily charged with disposing of petitions for review of the Department's decisions "on any basis as it deems to be in accordance with law and equity," it is solely the Board's duty to determine whether the submitted evidence satisfies the petitioner's burden of proof. (See, 72 P.S. § 9704(e)).

Further, the Board disagrees with Mr. Sollie's characterization of the error described in his example where the Board overlooked the submission of a check. If the Board reaches an erroneous conclusion because it failed to consider a piece of evidence that was timely submitted to the Board, the Board has committed, albeit unintentionally, an error of fact which is the very purpose of a request for reconsideration. The Board would grant the reconsideration in order to correct its error. By way of contrast, the Board's clarification of Section 703.41(a) addresses the situation where the Board concludes that the checks submitted by the petitioner were sufficient to establish proof of payment and the Department submits a request for reconsideration arguing that the checks were insufficient to prove payment. The Department's hypothetical disagreement with the Board's conclusion belongs in Commonwealth Court.

The Board concludes that the Final Regulations regarding requests for reconsideration are appropriate and should remain as submitted by the Board.

Respectfully,



Jacqueline A. Cook, Esq.
Chairman
Board of Finance and Revenue