

Comments of the Independent Regulatory Review Commission



Department of Community and Economic Development Regulation #4-97 (IRRC #3156)

Local Earned Income Tax

September 28, 2016

We submit for your consideration the following comments on the proposed rulemaking published in the July 30, 2016 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Community and Economic Development (Department) to respond to all comments received from us or any other source.

1. Section 151.1. Definitions. – Clarity.

Out-of-state employer

This term is defined as “an employer that does not have a place of business in this Commonwealth.” Does the regulation need to also address an out-of-state employer that does have a place of business in Pennsylvania? Do the definition and regulation adequately address Pennsylvania residents who work for an out-of-state employer at a place of business outside of Pennsylvania? We ask the Department to review this definition and explain how the regulation adequately covers all possible employment circumstances.

2. Section 151.5. Publication of a Policy and Procedure Manual. – Clarity.

This section discusses material that will be placed on the Department’s website. We suggest including the website address so that the reader can easily locate the documents.

3. Section 151.11. Registration of employers. – Clarity.

Subsection (a)

This subsection references and reflects the statute at 53 P.S. § 6924.512(1). We note the statute includes a time limit of “. . . within 15 days after becoming an employer” The regulation should include the 15 day time limit.

Subsection (b)

The second sentence of this subsection states “On or after January 1, 2012” We question whether the date of January 1, 2012 is still needed today. The Department should review this subsection and consider deleting this date.

4. Section 151.21. Mandatory education for tax officers. – Clarity.

Both Subsections (a) and (b) require the person to “achieve a passing grade” on the respective certification exams. The regulation is not clear on what constitutes a passing grade. We recommend including in the regulation the specific grade required to pass the certification exams in both subsections.

5. Section 151.22. Minimum number of persons required to receive mandatory education and meet the qualifications and requirements for tax officers. – Clarity.

Minimum number of persons

This section requires a tax officer to designate at least one person for every five counties to satisfy the mandatory education requirements. Can the tax officer designate itself so that the minimum would be one or is the tax officer required to designate a second person?

Example

The beginning of this section requires the tax officer to designate at least one person for every five counties to satisfy certain education requirements whereas the example requires at least 4 employees. Could there be a circumstance where the tax officer itself and three employees could satisfy this requirement in the example? We recommend reviewing the example to be sure it accurately reflects the stated requirement.

6. Section 151.23. Duties of a tax collection committee in selecting a tax officer. – Consistency with statute; Need; Economic impact; Clarity.

Subparagraph (1)(i)

The statute at 53 P.S. § 6924.508(f)(1) states, “The Department shall, **by regulation, establish the qualifications** and requirements a tax officer must meet prior to being appointed and must meet for continuing appointment.” (Emphasis added.) We recommend deleting Subparagraph (1)(i) of the regulation because it relies on the Department’s Policy and Procedure Manual to set qualifications for tax officers. To be consistent with the statute, the Department should establish the qualifications and requirements a tax officer must meet in the regulation.

Subparagraph (1)(ii)

There are two concerns with this subparagraph. First, this subparagraph requires a written statement prepared by an “accountant professional.” The Pennsylvania Institute of Certified Public Accountants (PICPA) commented that the phrase “accountant professional” should be replaced by the phrase “Certified Public Accountant or Public Accountant.” We agree.

Second, PICPA believes that the phrase “exists as a solvent entity” is inconsistent with the statute and the American Institute of Certified Public Accountants Code of Professional Conduct. We recommend that the Department review this phrase in consultation with PICPA to establish an acceptable standard.

Subparagraph (1)(iii)

This subparagraph requires a Statement on Standards for Attestation Engagements (SSAE) 16 audit “or other fiscal control audit.” It is not clear what would meet the alternative of the “other fiscal control audit.” We recommend deleting this phrase or, if needed, replacing it with a clear alternative standard.

Reappointment of a tax officer

The Pennsylvania State Association of Boroughs (PSAB) commented that Paragraphs (2), requiring at least five references, and (3), requiring an onsite visit, are not needed if the same tax officer is being reappointed by the tax collection committee. PSAB recommends bifurcating the appointing and reappointing requirements. The Department should consider amending the requirements in the circumstance that the tax committee reappoints the same tax officer.

7. Section 151.41. Rules for mediation. – Statutory authority, Legislative intent; Reasonableness.

\$500 filing fee for mediation

Under Subparagraph (1)(iv), the Department proposes to charge a \$500 filing fee for mediation. The \$500 filing fee is also mentioned in Subparagraph (3)(i). The PSAB “adamantly opposes” the fee and questions the statutory authority for the fee. The Pennsylvania State Association of Township Supervisors also expressed concerns with the fee.

The statute provides that “Costs incurred by the department for mandatory mediation under this section shall be equitably assessed by the department against the parties to the mediation.” 53 P.S. § 6924.505(k)(2)(viii). While the statute provides a mechanism for the Department to recover costs incurred, the Department has not established how a flat fee would meet the statute. Additionally, the Department has not established how a flat fee meets the statutory requirement to equitably assess its costs against the parties to the mediation. We recommend deleting the \$500 flat fee from Subparagraphs (1)(iv) and (3)(i). The Department should also explain in the Preamble how it will otherwise equitably assess the costs against the parties.

Timeline

The statute at 53 P.S. § 6924.505(2)(iii) states, in part, that the “mediation efforts shall be completed no later than 30 days following **the notice** that the dispute has met the threshold requirement... **unless the time period is extended by mutual agreement** of the parties to the mediation.” Emphasis added. Paragraphs (4) and (5) establish a timeline to complete the mediation “within 20 days but no later than 30 days following the Department’s determination” and rely on a mediator appointed by the Office of General Counsel. We have three concerns.

First, the statute provides the ability to extend the time period by mutual agreement, but this is not included in Paragraphs (4) and (5). We recommend adding the option to extend the time period to Paragraphs (4) and (5).

Second, the Department provides written notice of its determination to all parties under Subparagraph (3)(iii), which by statute begins the 30 day period. However, Paragraphs (4) and (5) differ from the statute by stating “no later than 30 days following the Department’s determination.” To be consistent with the statute, Paragraphs (4) and (5) should state no longer than 30 days following the Department’s written notice provided in Subparagraph (3)(iii).

Third, the Department should explain how the regulation will accomplish the statutory requirement to complete the mediation in 30 days, unless the time period is extended by mutual agreement.

8. Section 151.61. Withdrawal and establishment of a new tax collection committee. – Clarity.

The second sentence of Subsection (d) discusses election of the chairperson, vice chairperson and secretary and also discusses duly appointed voting delegates. The regulation is not clear regarding whether the Secretary is a duly appointed voting delegate. The Department should amend this subsection to clarify whether the secretary is a voting delegate or not.

9. Miscellaneous Clarity

- Paragraph 151.41(3) refers to “the threshold conditions for mandatory mediation.” We recommend adding a cross-reference in Paragraph (3) to Subparagraph (1)(iii) to clarify the threshold conditions to be met.
- Section 151.51 consists of a single paragraph, but includes the phrase “unless otherwise specified in this section.” We recommend deleting this phrase.