

<h2 style="margin: 0;">Regulatory Analysis Form</h2> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0; font-size: small;">(All Comments submitted on this regulation will appear on IRRC's website)</p>	<p style="margin: 0;">INDEPENDENT REGULATORY REVIEW COMMISSION</p> <div style="border: 2px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p style="margin: 0; font-size: 2em; font-weight: bold;">RECEIVED</p> <p style="margin: 0;">SEP 12 2018</p> <p style="margin: 0; font-size: small;">Independent Regulatory Review Commission</p> </div> <p style="margin: 10px 0 0 0;">IRRC Number: 3183</p>
<p>(1) Agency</p> <p>Revenue</p>	
<p>(2) Agency Number: 15</p> <p>Identification Number: 459</p>	
<p>(3) PA Code Cite: 61 Pa. Code, § 113.4</p>	
<p>(4) Short Title:</p> <p>Withholding of Tax</p>	
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Mary R. Sprunk (717) 783-7524</p> <p>Secondary Contact: Douglas A. Berguson (717) 346-4633</p>	
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation</p> <p><input checked="" type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>	<p><input type="checkbox"/> Emergency Certification Regulation;</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The amendments in this final-form regulation to Section 113.4 (regarding time and place for filing reconciliation and withholding statements) are made to reduce the threshold for the electronic transmission requirement for the annual reconciliation statement from 250 to 10 or more withholding statements (Form W-2). In addition, obsolete language “magnetic media” is proposed to be deleted and replaced with “electronic transmission.” The amendments in this final-form regulation change the method of filing for certain affected employers, not the information that is required to be reported. Finally, reference to specific form numbers in subsections (b) and (c) are being eliminated. Given that form numbers change periodically, the Department is removing the numbers to avoid confusion and the forms are being referenced in accordance with the suggested language in § 2.12 (relating to forms) of the <i>Pennsylvania Code & Bulletin Style Manual</i>. In the final-form rulemaking, a definition for “electronic transmission” has been added in subsection (d).</p>	

(8) State the statutory authority for the regulation. Include specific statutory citation.

Statutory authority for the regulation is contained in section 354 of the Tax Reform Code of 1971 (72 P.S. § 7354).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is not mandated by federal or state law, court order or federal regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The amendments to Section 113.4 are made to improve the efficiency and accuracy of the Department's tax system by further automating the reporting of tax information.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

A similar, but not identical, federal standard exists that requires employers filing 250 or more Forms W-2 to file electronically based on a requirement set forth in Section 6011(e)(2)(A) of the Internal Revenue Code. However, the IRS encourages all employers to file Forms W-2 electronically.

The Department, like many other state tax agencies, is setting a lower electronic filing threshold to increase the ease of filing for taxpayers, reduce clerical errors from hand keying Form W-2 data, and reduce processing costs for both taxpayers and the Department. Electronic filing of tax documents has become the norm at the state and federal levels and the Department's regulation follows that pattern.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The Pennsylvania regulation is similar to tax regulations in at least 25 states that require the electronic filing of withholding returns and statements where there are less than 250 W-2 statements (such as Virginia-1, North Carolina-1, Minnesota-10, Connecticut-25, District of Columbia-25, West Virginia-50 and Iowa-50). The regulation will not put Pennsylvania at a competitive disadvantage with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation does not affect any other regulations of the Department or any other state agency.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

In conducting informal public outreach during the proposed rulemaking stage, a copy of the proposed regulation was forwarded to the Pennsylvania Bar Association, the Philadelphia Bar Association, the Pennsylvania Institute of Certified Public Accountants (PICPA), the Pennsylvania Society of Public Accountants, the Pennsylvania Chamber of Business and Industry, the National Federation of Independent Business and the SMC Business Councils. The Department received no informal public outreach comments or concerns regarding this amendment.

The proposed rulemaking was published at 47 Pa.B. 6726 (October 28, 2017) for formal comments. The Department received formal comments from PICPA and IRRC. The Department has responded to their comments in the attached “Comment and Response” document.

The regulation is listed in the Quarterly Regulatory Report published on Revenue’s website (www.revenue.pa.gov).

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Employers with 10 to 249 employees will be affected by the amendment to the regulation. Based on available data, it is estimated that approximately 86,700 employers will be affected by the amendment to the regulation. Of those employers, approximately 86,500 are considered small business. These employers would be affected by being required to file the annual withholding reconciliation statement and withholding statements electronically, rather than sending the forms in the mail.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Employers with 10 to 249 employees will be required to comply with the amendment to the regulation. Based on available data, it is estimated that approximately 86,700 employers will be required to comply with the regulation and submit the annual withholding reconciliation statement and accompanying withholding statements electronically. Of the 86,700 employers, approximately 17,000 are already filing electronically so the affected number of employers is approximately 70,000. Most of these would likely be considered small businesses.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

As indicated in Question (16), approximately 70,000 employers will be affected who presently aren't filing electronically. The regulation alters the method of filing for these employers, but the required content of these forms is not changing.

The Department has evaluated the benefits of the regulation and determined that it will improve the effectiveness and efficiency of the Department's operations. The Department has taken the effect on small businesses into account and provided employers with nine or less employees will not have to comply with the new electronic filing requirements. For those employers that have to comply with electronic filing, the burden should not be substantial. The only costs for affected small businesses will be internet access to the Department's e-TIDES system available on the Department's Website. Small businesses do not have to purchase any additional software. Affected businesses will also have reduced postage and processing costs filing electronically compared to filing paper forms.

Small businesses filing nine or fewer Forms W-2 would still be permitted to file paper returns.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The final-form regulation will improve the effectiveness and efficiency of department operations.

The final-form regulation creates no revenue impact. There are no adverse effects from this regulation and implementation costs are minimal.

Please see the response to Question 17 regarding the minimal effect on small businesses.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation does not significantly increase costs or savings to the regulated community. No legal, accounting or consulting procedures are required by this regulation. One commentator suggested that the regulation may prove to be a "hardship" on small business. However, the commentator did not provide any information to explain or quantify the alleged hardship. Consequently, the Department has no way to address or remedy the alleged hardship. The Department recognized the effect on small business and did not make the electronic filing a requirement for all employers, but set a threshold that exempts employers with nine or less employees. Please see the response to Question 17 regarding the effect on small businesses.

(20) Provide a specific estimate of the costs and/or savings to the local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation does not increase costs or savings to local governments. No legal, accounting or consulting procedures are required by this regulation.

(21) Provide a specific estimate of the costs and/or savings to the state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation does not increase costs to state government. The Department estimates a savings of \$30,000 per year to state government by decreasing the administrative costs associated with processing paper filings. No legal, accounting or consulting procedures are required by this regulation.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No legal, accounting, consulting procedures, additional reporting, recordkeeping or other paperwork are required by this regulation. The amendments in the final-form rulemaking may require certain employers to file their annual reconciliation statements and copies of withholding statements by means of electronic transmission instead of on paper.

(22a) Are forms required for implementation of the regulation?

No new forms are required for implementation of these amendments.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

The Annual Withholding Reconciliation Statement (REV-1667) is available electronically on the Department's Website:

<https://www.revenue.pa.gov/FormsandPublications/FormsforBusinesses/EmployerWithholding/Documents/rev-1667r.pdf>

An employer does not use the paper form of the REV-1667 to comply with the new electronic filing requirement. Electronic filing will be done through the Department's e-TIDES system available on the Department's Website or at this direct link:

<https://www.etides.state.pa.us/>

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:						
Regulated Community						
Local Government						
State Government*	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000
Total Savings	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000
COSTS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

*The savings to State government reflect the estimated savings if every affected employer switched from paper to electronic filing, and may be overstated to the extent that some employers may already be utilizing the electronic filing option.

(23a) Provide the past three year expenditure history for programs affected by the regulation.
There is no government program for the public on this matter.

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Employers with 10 to 249 employees will be required to comply with the amendment to the regulation. Based on available data, it is estimated that approximately 86,700 employers will be required to comply with the regulation and submit the annual withholding reconciliation statement and accompanying withholding statements electronically. Of the 86,700 employers, approximately 17,000 are already filing electronically so the affected number of employers is approximately 70,000.

Since 86,500 of the 86,700 employers affected are small businesses, the majority of the 70,000 employers that would be new electronic filers under the regulation would be small businesses. The effects on small businesses are minimal, as the only costs for small businesses will be internet access to the Department's e-TIDES system available on the Department's Website. Small businesses do not have to purchase any additional software.

There are no alternative methods of achieving the purpose of the final-form regulation.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

One commentator suggested that the regulation may prove to be a “hardship” on small business. However, the commentator did not provide any information to explain or quantify the alleged hardship. Consequently, the Department has no way to address or remedy the alleged hardship. The Department recognized the effect on small business and did not make the electronic filing a requirement for all employers, but set a threshold that exempts employers with nine or less employees.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

There are no alternative regulatory provisions associated with the regulation. The Department determined the threshold of 10 as it is in line with other electronic filing mandates. The Department did not reject other thresholds for electronic reporting. The Department has published several “Notices of Method of Filing” in the *Pennsylvania Bulletin* for electronic filing mandates as authorized under 72 P.S. § 10 (relating to method of filing). See:

- 44 Pa.B. 6294 (October 4, 2014) for PA Directory of Corporate Partners Return (PA-65 Corp)
- 43 Pa.B. 5771 (September 28, 2013) for Employer Quarterly Return of Income Tax Withheld (PA-W3)
- 43 Pa.B. 5773 (September 28, 2013) for Pennsylvania Corporate Tax Report (RCT-101)
- 43 Pa.B. 5774 (September 28, 2013) for Pennsylvania Personal Income Tax Return (PA-40)
- 43 Pa.B. 5775 (September 28, 2013) for Pennsylvania Sales, Use and Hotel Occupancy Tax Return (PA-3).

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The effects on impacted small businesses are expected to be minimal. See responses to Questions 24 and 25.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No scientific data, studies or references are used to justify this regulation.

(29) Include a schedule for review of the regulation including:

- A. The length of the public comment period: 30 days
- B. The date or dates on which any public meetings or hearings will be held: NA
- C. The expected date of delivery of the final-form regulation: 4th Quarter, 2018
- D. The expected effective date of the final-form regulation: Upon publication in the Pa. Bulletin
- E. The expected date by which compliance with the final-form regulation will be required: The first filing date after the effective date of the regulation, January 31, 2019.
- F. The expected date by which required permits, licenses or other approvals must be obtained: NA

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

This regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)



DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: _____ (Deputy Attorney General)</p>	<p>Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>PA Department of Revenue</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>15-459</u></p> <p>DATE OF ADOPTION _____</p> <p>BY <u>C. Daniel Hassell</u> C. Daniel Hassell TITLE <u>Secretary of Revenue</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p>BY <u>Manisa A. Z. Zeln</u></p> <p><u>SEP 10 2018</u> DATE OF APPROVAL</p> <p>(Deputy General Counsel) (Chief Counsel Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General Approval or objection within 30 days after submission.</p>
<p>DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>		

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code, Chapter 113.

Withholding of Tax

PREAMBLE

The Department of Revenue (Department), under authority contained in section 354 of the Tax Reform Code of 1971 (72 P.S. § 7354), amends 61 Pa. Code, § 113.4 (relating to time and place for filing reconciliation and withholding statements) to read as set forth in Annex A.

Purpose of Final-Form Rulemaking

The purpose of this final-form rulemaking is to improve the efficiency and accuracy of the Department's tax system by further automating the reporting of tax information.

Explanation of Regulatory Requirements

The final-form rulemaking amendments to § 113.4(c) reduce the threshold for the electronic transmission requirement of the annual reconciliation statement from 250 to 10 or more withholding statements (Form W-2). In addition, "magnetic media" is proposed to be deleted and replaced with "electronic transmission." Electronic transmission is defined in subsection (d). This rulemaking amends the method of filing for certain affected employers, not the information that is required to be reported. Finally, reference to specific form numbers in subsections (b) and (c) are proposed to be deleted. Given that form numbers change periodically, the Department is removing the numbers to avoid confusion and the forms are being referenced in accordance with

§ 2.12 (relating to forms) of the *Pennsylvania Code & Bulletin Style Manual*.

Affected Parties

Employers and tax practitioners in this Commonwealth will be affected by the regulation.

Comment and Response Summary

Notice of proposed rulemaking was published at 47 Pa.B. 6726 (October 28, 2017). The final-form rulemaking is being adopted to read as set forth in Annex A.

The Department has prepared a comment and response document that covers the public comments and the comments of the Independent Regulatory Review Commission (IRRC) to the proposed regulation and the Department's responses thereto. It is available to interested parties by contacting Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, P.O. Box 281061, Harrisburg, PA 17128-1061.

In its evaluation of provisions, during the proposal stage, the Department received comments from IRRC and the Pennsylvania Institute of Certified Public Accountants (PICPA). No official comments were received from either the House Finance Committee or the Senate Finance Committee. The following is a summary of the Department's response to the key issues referenced in the comments:

As requested by IRRC, the Department is adding more detailed information on the Regulatory Analysis Form (RAF) to support why the regulation is in the public interest.

In order to address the concerns of PICPA regarding notice to the public of the new electronic filing requirements, the Department is formalizing a communications plan to publish compliance information on our Revenue website, distribute information through our electronic filing system e-TIDES, and conduct a mailing to non-eTIDES filers.

Fiscal Impact

The Department has determined that the amendments in this final-form rulemaking will have minimal revenue effect on the Commonwealth. This regulation is not designed to be revenue generating. It is an administrative processing change that will lower the Department's operating costs.

Paperwork

The final-form regulation will not create additional paperwork for the public or the Commonwealth. It will require certain employers to file their annual withholding reconciliation statements and accompanying wage and tax withholding statements by means of electronic transmission instead of on paper.

Effective Date

The final-form regulation will become effective upon publication in the Pennsylvania Bulletin. Its provisions will be

applicable to annual withholding reconciliations statements that are required to be filed after the effective date of the regulation.

Sunset Date

The regulation is scheduled for review within five years of final publication. A sunset date has not been assigned.

Contact Person

The contact person for an explanation of the amendments is Mary R. Sprunk, Office of Chief Counsel, PA Department of Revenue, P.O. Box 281061, Harrisburg, Pennsylvania 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 18, 2017, the Department submitted a copy of the notice of proposed rulemaking, published at 47 Pa.B. 6726 (October 28, 2017) and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing this final-form rulemaking, the Department has considered the comments received from IRRC and PICPA.

The final-form rulemaking was deemed approved by the Committees on _____, and was approved by IRRC on _____, in accordance with section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)).

Finding

The Department of Revenue finds that:

(1) Public notice of intention to amend the regulations has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. 1201 and 1202) and the regulations thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments are necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(1) The regulations of the Department, 61 Pa. Code Chapter 113, are amended by amending § 113.4 to read as set forth in Annex A.

(2) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(3) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(4) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

C. DANIEL HASSELL
SECRETARY OF REVENUE

09/07/18

**PERSONAL INCOME TAX
61 PA CODE CHAPTER 113
Withholding of Tax**

**DEPARTMENT OF REVENUE REGULATION
15-459**

COMMENT AND RESPONSE DOCUMENT

Department of Revenue Regulation # 15-459
PERSONAL INCOME TAX
61 PA CODE CHAPTER 113
Withholding of Tax

This is a list of organizations and interested parties from whom the Department of Revenue has received formal comments regarding the above-referenced regulation.

<u>ID #</u>	<u>Name/Address</u>
(1)	David Sumner, Executive Director Independent Regulatory Review Commission 14 th Floor 333 Market Street Harrisburg, PA 17101
(2)	Peter N. Calcara, Vice President Government Relations Pennsylvania Institute of Certified Public Accountants (PICPA) 500 North Third Street Suite 600A Harrisburg, PA

Department of Revenue Regulation # 15-459
PERSONAL INCOME TAX
61 PA CODE CHAPTER 113
Withholding of Tax

COMMENTS AND RESPONSES

Section 113.4. Time and place for filing reconciliation and withholding statement.

New subsection (c) language:

1. Comment:

"Some comments from PICPA members that lowering the number of wage and tax withholding statements (Form W-2) from 250 to 10 may prove to be a hardship for some small businesses. We encourage the Department to engage the tax practitioner community as well as business organizations to educate employers once this change goes into effect." (2)

Response:

The Department recognizes the need to engage the tax practitioner community and business organizations to assist in educating our taxpayers. At this time, the Department is formalizing a communications plan to publish information on the Department's web site, distribute information through our electronic filing system e-TIDES, and conduct a mailing to non-eTIDES filers.

2. Comment:

"What is the penalty if the annual reconciliation meets the electronic transmission threshold, but is submitted on paper?" (2)

Response:

The Department recognizes that this is a new process and will not assess a penalty for noncompliance the first year the requirement is in place.

For all subsequent years, if the return is not submitted in the proper format the return will be deemed not filed. The application of a penalty for not filing will be applied as authorized under 72 P.S. § 7352 (a) and 61 Pa. Code § 121.26.

3. Comment:

"The new language includes two options for employers to forward the wage and tax withholding statements to the Department. However, new subsection (c) addresses only the electronic transmission requirements for those employers who are required to furnish ten or more wage and tax withholding statements to the Department. To improve clarity, the final-form regulation should explicitly state that employers who furnish less than ten wage and tax withholding statements may submit this information either via first class mail or electronic transmission." (1)

Response:

Based on the comment, the Department updated Subsection (c) to include directions for taxpayers that fall under the electronic filing threshold.

4. Comment:

"The phrase 'as specified in instruction of the Department' is vague. Where are these instructions located? The Department should specify where the instructions can be found." (1)

Response:

The instructions will accompany the printed REV-1667 form (for paper filers) and will be available on the Department's publicly available web site where the taxpayer community will file the electronic version of the form. The Annual Withholding Reconciliation Statement (REV-1667) with the accompanying instructions is available on the Department's web site:

<https://www.revenue.pa.gov/FormsandPublications/FormsforBusinesses/EmployerWithholding/Documents/rev-1667r.pdf>

Electronic filing will be done through the Department's e-TIDES system available on the Department's web site at this direct link:
<https://www.etides.state.pa.us/>

Instructions will be available in the e-TIDES system at the link as well.

5. Comment:

"The regulation does not define 'electronic transmission.' Does the term include email, fax or tele-file? How will the regulated community know which electronic transmission formats are acceptable? The Department should explain, in Preamble to the final rulemaking, how it will communicate with the regulated community in regards to acceptable formats of electronic transmission and define the term in the regulation." (1)

Response:

In the final-form rulemaking, the term "electronic transmission" has been defined in subsection (d). Currently, it is the Department's plan to have employers file via the Department's e-TIDES electronic filing system. The public will be educated on how to file electronically through the e-TIDES system as explained in our answer in Comment #1. The term does not include email, fax or tele-file.

6. Comment:

"New Section 113.4(c) reads 'The annual withholding reconciliation statement and accompanying wage tax withholding statements as required under subsection (b) shall be forwarded to the Department.....' To be consistent, an "and" should be inserted between the words 'wage' and 'tax.'" (1)

Response:

The Department agrees and inserted "and" between the words "wage" and "tax" in the final-form rulemaking.

Regulatory Analysis Form (RAF)

7. Comment:

"Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed rulemaking and the reasons

for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under Section 5(a) of the RRA (71 P.S. § 745.5(a)) in the Regulatory Analysis Form (RAF). Some of the information contained in the RAF submitted with this rulemaking is not sufficient to allow this Commission to determine if the regulation is in the public interest." (1)

7 (a) Comment:

"The Department estimates that 86,700 employers (with 10-249 employees) will be required to comply with electronic transmission requirements. The Department notes that this number may be overstated because some employers may already be compliant. (RAF #16) The Department should, to the extent possible, provide more information about the number of employers that currently report electronically. This information will be beneficial to the Commission in determining whether the implementation procedures and timetables for compliance are reasonable."(1)

Response:

The Department has revised #16 on the RAF: Employers with 10 to 249 employees will be required to comply with the amendment to the regulation. Based on available data, it is estimated that approximately 86,700 employers will be required to comply with the regulation and submit the annual withholding reconciliation statement and accompanying withholding statements electronically. Of the 86,700 employers, approximately 17,000 are already filing electronically so the affected number of employers is approximately 70,000.

7 (b) Comment:

"In RAF #24, the Department reports the majority of employers (approximately 86,700) that will be subject to the regulation are considered small businesses. According to the Department, there are no significant projected reporting, recordkeeping and/or administrative costs required for compliance. Although the Pennsylvania Institute of Certified Public Accountants (PICPA) has no objections to the regulation as drafted, it shared some member concerns that lowering the threshold from 250 to 10 may prove

to be a hardship for some small businesses. PICPA also asked the Department to clarify the penalties for noncompliance under the new requirements. The Department should address these concerns and continue to communicate with the regulated community as it develops the final-form rulemaking.”(1)

Response:

See Responses to Comments 1 & 2.

7 (c) Comment:

“In RAF #22 (b) the Department provides a link to REV 1667R form. How does an employer use this form to comply with the new electronic reporting requirements? Is there an electronic version of this form through the state’s Electronic Tax Information and Data Exchange System (e-TIDES)? How will employers be informed about the new threshold for electronic reporting? The Department should revise the instructions on the REV-1667R form to specify the new threshold for electronic reporting or explain why this information is not needed in the instructions.”
(1)

Response:

An employer does not use the paper form of the REV-1667 to comply with the new electronic filing requirements. Electronic filing will be done through the Department’s e-TIDES system. The link to the paper form was provided in the RAF part #22b because it requires the attachment of the copy of the form. The Department could not attach a copy of the form available through e-TIDES. However, in the RAF accompanying the final-form rulemaking, the Department has supplied a link to the e-TIDES system.

Employers will be informed about the new threshold for electronic reporting through the Department’s communications plan to announce the change. The Department is revising the instructions on the REV-1667 form and announcing the change is part of the Department’s communications plan.

7 (d) Comment:

"In RAF #26, the Department states that there are no alternative regulatory provisions associated with the regulation. How did the Department determine the proposed threshold for electronic reporting? Did the Department consider and reject other thresholds for electronic reporting requirements? The Department should include this information in the RAF of the final-form regulations." (1)

Response:

The Department determined the threshold of 10 as it is in line with other electronic filing mandates. No, the Department did not reject other thresholds for electronic reporting. The Department has added this information on #26 of the RAF of the final-form regulation.

The Department has published several "Notices of Method of Filing" in the *Pennsylvania Bulletin* for electronic filing mandates as authorized under 72 P.S. § 10 (relating to method of filing). See:

- 44 Pa.B. 6294 (October 4, 2014) for PA Directory of Corporate Partners Return (PA-65 Corp)
- 43 Pa.B. 5771 (September 28, 2013) for Employer Quarterly Return of Income Tax Withheld (PA-W3)
- 43 Pa.B. 5773 (September 28, 2013) for Pennsylvania Corporate Tax Report (RCT-101)
- 43 Pa.B. 5774 (September 28, 2013) for Pennsylvania Personal Income Tax Return (PA-40)
- 43 Pa.B. 5775 (September 28, 2013) for Pennsylvania Sales, Use and Hotel Occupancy Tax Return (PA-3).

7 (e) Comment:

"In RAF #29 the Department lists the expected delivery date of the final form regulation as the fourth quarter 2017. The effective date and expected date for compliance are "upon final publication." The Department should revise its response to reflect an updated delivery schedule for the final-form regulation. In addition, we ask the Department to ensure that the effective and compliance dates provide sufficient time for employers to comply with the new electronic reporting requirements." (1)

Response:

The Department has updated the expected delivery date on RAF #29 in the final-form rulemaking. The effective date remains as "upon final publication in the Pennsylvania Bulletin" as is the Department's policy in order to address the time frames for the regulatory approval process. The preamble to the final-form regulation has been amended to indicate the regulation applies to statements that are required to be filed after the effective date of the regulation. The Department's communications plan will provide this information to the public.

09/07/18 VERSION

CONTINUATION SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

ANNEX A

Title 61. Revenue, Part I. Department of Revenue, Subpart B.
General Fund Revenues, Article V. Personal Income Tax, Chapter
113. Withholding of Tax.

§ 113.4. Time and place for filing reconciliation and
withholding statements.

(a) An employer shall [submit] furnish a wage and tax
withholding statement to each of his employees on or before
January 31 following the year of payment of compensation, or within
30 days from the date of the last payment of compensation if
employment or the business is terminated.

(1) An employer shall use the combined Federal-State
Wage and Tip Withholding Statement (Form W-2) issued by the
Internal Revenue Service or one that conforms thereto with the
word "Commonwealth" printed, stamped or typed thereon. The
statement [shall] must show the name of employer, address and
identification number of the employer; the name, address and Social
Security number of the employee; the total compensation paid during
the taxable year; and the total amount of Pennsylvania tax withheld
during the taxable year.

(2) The wage and tax withholding statements required in this chapter shall be in addition to a requirement of the Federal or a local government.

(b) [A completed Reconciliation Statement (Return Form PA-W3) reconciling Personal Income Tax withheld with related quarterly withholding returns and deposit and employee withholding statements shall be submitted by the following:] Every employer who withholds tax under this chapter shall file with the Department an annual withholding reconciliation statement, on a form provided by the Department, along with a copy of all employee wage and tax withholding statements, by the following:

(1) A going business for tax withheld in the prior year, annually, by January 31.

(2) A terminated business within 30 days after the end of the month in which business or payment of compensation ceased.

(c) [Reconciliation Statements (Form PA-W3), with accompanying withholding statements (Form W-2) for each employee shall be forwarded by means of first class mail with sufficient postage or electronic or magnetic media as specified in instructions of the Department to the Department. If an employer is required to file 250 or more withholding statements, the reconciliation statement, with accompanying withholding statements shall be forwarded by means of electronic or magnetic media as

specified in the instructions of the Department available on its website or at its Harrisburg or district offices.] The annual withholding reconciliation statement and accompanying wage AND tax withholding statements as required under subsection (b) shall be forwarded to the Department by first class mail or electronic transmission as specified in instructions of the Department. If an employer is required to furnish ten NINE or more-LESS wage and tax withholding statements under subsection (a), the employer shall MAY FORWARD transmit electronically to the Department the annual withholding reconciliation statement and accompanying wage and tax withholding statements TO THE DEPARTMENT BY FIRST CLASS MAIL.

(d) FOR PURPOSES OF THIS SECTION, THE TERM "ELECTRONIC TRANSMISSION" MEANS THE PROCESS OF SENDING DIGITAL OR ANALOG DATA OVER A COMMUNICATION MEDIUM TO ONE OR MORE COMPUTING, NETWORK, COMMUNICATION OR ELECTRONIC DEVICES.

09/07/18

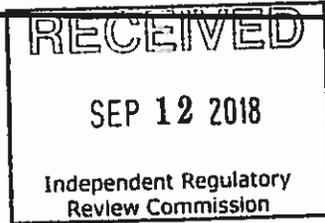
Requests for Final-Form Regulation

In accordance with section 5.1(a) of Act 1997-24, requests for information concerning the final-form regulation may be submitted to the Department. Commentators that request information regarding the final-form regulation will receive a copy of the regulation when the Department submits the final-form regulation to the Independent Regulatory Review Commission and the House and Senate Finance Committees.

The Department of Revenue, Office of Chief Counsel, has not received any requests for information concerning the final-form regulation for "Amendments to § 113.4 Withholding of Tax."

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 15-459
SUBJECT: Withholding of Tax
AGENCY: DEPARTMENT OF REVENUE



TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON FINANCE</i>
9/12/18	<i>Cornie McClure</i>	MAJORITY CHAIR <u><i>Bernie O'Neil</i></u>
9/12/18	<i>Gami Beato</i>	MINORITY CHAIR <u><i>Jake Wheatley, Jr.</i></u>
		<i>SENATE COMMITTEE ON FINANCE</i>
9/12/18	<i>K. B. King</i>	MAJORITY CHAIR <u><i>Scott Hutchinson</i></u>
9/12/18	<i>Cheryl Grogan</i>	MINORITY CHAIR <u><i>John P. Blake</i></u>
9/12/18	<i>K. Cooper</i>	
		<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
		<i>ATTORNEY GENERAL (for Final Omitted only)</i>
		<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>