

# Comments of the Independent Regulatory Review Commission



## Department of Revenue Regulation #15-459 (IRRC #3183)

### Withholding of Tax

December 27, 2017

We submit for your consideration the following comments on the proposed rulemaking published in the October 28, 2017 *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 Revenue (Department) to respond to all comments received from us or any other source.

**1. Economic or fiscal impacts; Clarity, feasibility and reasonableness of requirements; Reasonableness of requirements, implementation procedures and timetables for compliance.**

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.

While we agree with the intent and purpose of the rulemaking, we raise the following issues:

- 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.
- 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.

- In RAF #22 (b) the Department provides a link to REV1667R 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-1776R form to specify the new threshold for electronic reporting or explain why this information is not needed in the instructions.
- 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 regulation.
- 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.

## **2. Section 113.4. Time and place for filing reconciliation and withholding statements. – Clarity.**

The new subsection (c) reads:

The annual withholding reconciliation statement and accompanying wage 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 or more wage and tax withholding statements under subsection (a), the employer shall transmit electronically to the Department the annual withholding reconciliation statement and accompanying wage and tax withholding statements.

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.

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.

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.

### **3. Miscellaneous Clarity.**

- 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.”