Aug. 2, 2017

Dear Representatives,

On behalf of the Pennsylvania Institute of Certified Public Accountants (PICPA) and the Pennsylvania Chamber of Business and Industry (PA Chamber), we are writing to you with serious concern regarding the Department of Revenue’s (Department) proposed changes to the tax appeals process contained in House Bill 542, Printer’s Number 2259. The PICPA and PA Chamber were instrumental in the enactment of the last major reform of the tax appeals process (Act 52 of 2013).

Below you will find our specific comments and concerns.

Section 2703(e) and (e.1) [page 85] – The Department’s proposed changes to give itself unilateral authority to hold a case pending are highly problematic. This is of particular concern when the Department does not want its audit position to be reviewed independently, whether by the Board of Finance and Revenue (BF&R) or the appellate courts. There should be statutory standards for exercising this significant power of blocking appeals and/or a mechanism for a taxpayer to appeal such a decision. The provision should be amended to allow BF&R an extension of up to six months to decide a petition to which this provision is applicable.

Further, the phrase “materially affected” should be deleted, as that term is not defined and is unclear as “to whom the proceeding must materially affect.” If consideration of the petition is deferred under these proposed changes, the Department shall issue a decision and order within six months after the audit or other proceeding is completed. The subsection does not define when “the audit or other proceeding is completed.”

The subsection is also silent as to whether the results of the other proceeding would be incorporated into the continued matter. In addition, if the taxpayer appeals a decision of the Department, the appeal should be incorporated into the continued matter. It is nonsensical to continue a proceeding until the
completion of an audit and not incorporate a subsequent appeal of the assessment. The BF&R should have the authority to grant a six-month extension to decide a proceeding covered under subsection (e.1).

Section 2703(f) [page 86] – This provision should be amended to provide for the incorporation of any federal change into a Board of Appeals (BOA) decision and order. Additionally, the provision should be amended to allow the BOA an extension of up to six months to decide a petition to which this provision is applicable.

Section 2704(d.2) [pages 86-87] – The proposed changes impose draconian standards upon a petitioner for not providing evidence to the Department that would be most impactful to the pro se petitioner. The BF&R should only disregard written arguments and evidence if the failure to provide them to the other party would be prejudicial. As appeals to Commonwealth Court are de novo and costly, all efforts should be made to resolve cases at the BF&R. The Department’s proposed changes will result in many more cases being appealed to Commonwealth Court. The BF&R should not be statutorily barred from considering evidence. The word “shall” on page 87, line 3, should be changed to “may.”

Section 2704(d.3) [page 87] – The BF&R staff historically has been very helpful in explaining BF&R procedures to petitioners who are less familiar with the workings of the BF&R, especially out-of-state practitioners and taxpayers. The Department is seeking to statutorily prohibit the BF&R from providing information on “specific procedures,” which are not defined in the legislation. The Department’s proposed changes are anti-taxpayer and should be deleted.

Section 2704(d.5) [page 87] – This provision requiring the Department or the petitioner to provide the hearing notification is draconian and unreasonable, and the proposed remedy denying a hearing is overly harsh and violative of the due process clauses of the U.S. and Pennsylvania constitutions. The BF&R is the proper authority to notify the opposing party that a hearing has been requested.

Section 2704(d.7)(3) [page 87, lines 10-18] – The Department is proposing to require the petitioner in the case of a compromise settlement to pay any liability within 60 days with no commensurate requirement that the Department issue a refund within the same time period. The “shall” provisions under this section should be replaced by “may” as there may be good cause why the liability cannot be paid within the specified time period. If the petitioner fails to pay the liability within 60 days, the BF&R should issue a decision and order on the merits, and not just deny the petition.

Section 2704(e) [pages 88-90] – Creating a bifurcated process based on a dollar threshold is concerning, especially when the “summary claim” order would not be appealable per proposed section(e)(1)(v). Furthermore, because of the potential due process implications, especially the waiver of appeal rights, only the petitioner should be given the option to elect summary claim procedures. The petitioner should have to make an affirmative election to use this process.

Section 2704(e)(2)(ii) [page 90, line 21] – This must be deleted. There is no reason to deny precedent for a BF&R order based in equity, removing a key provision of the Taxpayer Bill of Rights (72 P.S. Section 3310-210):

Section 3310-210. Decisions of Board of Finance and Revenue and Department of Revenue
(a) Precedent. – Where the Board of Finance and Revenue has issued a decision or an order in favor of a taxpayer and the Commonwealth has not appealed the decision or order, the department may not make an assessment against the taxpayer that raises an identical or substantially identical issue.

(b) Application. – Precedent shall apply to tax periods following the period to which the decision or order of the Board of Finance and Revenue applies. It shall not apply where there has been a change in statute, regulation or material fact applicable to periods following the period to which the decision or order of the Board of Finance and Revenue applies.

(c) Decisions of department. – In the case of a tax imposed under Article III of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971, the department may not assess a taxpayer with respect to an issue for which the department assessed the same taxpayer in a previous year and the taxpayer prevailed in removing such assessment based upon identical or substantially identical facts.

(d) Exception. – Subsections (a) and (c) shall not apply if the department, upon publication of notice, changes its policy with respect to a discretionary issue, provided that any such change in policy shall be effective prospectively only.

Section 2704(f)(2) [page 91, line 4] – The provision should be amended to allow the BF&R an extension of up to six months to decide an appeal to which this provision applies. Current law does not provide for a six-month extension.

Section 2702(f)(3) [page 91, line 16] – The provision should be amended to provide for the incorporation of any federal change into the BF&R decision and order. In addition, the provision should be amended to allow the BF&R to extend the time period for issuing a decision and order for up to six months. Current law does not provide for a six-month extension.

Our two organizations remain greatly concerned that the Department is seeking dramatic, anti-taxpayer changes to the tax appeal process. We respectfully request you consider these comments.

Thank you and please do not hesitate to contact us if we can be of further assistance.

Sincerely,

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

Sam Denisco
Vice President, Government Affairs
PA Chamber

cc: Members of the House
Hon. Joseph Torsella, Treasurer