We provide here a written summary of answers provided by the Department Revenue to the committee at periodic question and answer sessions. These documents are classified as revenue information issued for informational purposes only for the convenience of PICPA’s members. Pursuant to 61 Pa. Code Section 3.4, these documents should not be relied upon for any purpose or used in tax appeals. Taxpayers requiring a binding opinion on a specific fact situation may request a written letter ruling under 61 Pa. Code Section 3.3.

PICPA State Taxation Committee
Annual Meeting with the PA Department of Revenue
PA NewsMedia Association Building
Wed., October 24, 2018
1:00 p.m.

Agenda/Discussion Topics

Administrative

1. Both the Board of Appeals and Board of Finance & Revenue have the ability to accept settlement offers on tax appeals. Approximately how many settlements have been reached at each board?

2. Approximately what percentage of settlement offers submitted are accepted by one of the boards?

3. Please advise whether the Department would publish on its website the names and docket numbers of Board of Finance and Revenue decisions that the Department appeals to Commonwealth Court.

4. An ongoing situation experienced: receive a taxpayer notice of non-agreement with adjusted income. No explanation is provided as to the cause. “An adjustment made to a prior return resulted in a lower or zero carry-over credit. The amount reported on the federal schedule(s) K-1, or PA Schedule(s) RK-1 or PA Schedule(s) NRK-1 does not agree or was not calculated into the final amount(s) listed on the tax return.” The notice states: “See the reverse side for additional information and interest rates.” However, there is no additional information provided.

After waiting 40 minutes on hold, and speaking with a DOR representative, a spreadsheet was emailed to detail the Department’s calculation. A taxpayer or their representative should not have to go through the process of calling the Department to get a better explanation than “we changed it” on the initial notice. How can this communication system be improved?

Corporate Income Tax
5. How does the Department plan to apply the new IRC §163(j) interest limitations to members of a federal consolidated group which file separately for Pennsylvania corporate net income tax?

6. For taxpayers with both intercompany interest and third-party interest, what is the Department’s position on ordering of the interest limitations under IRC §163(j) and Pennsylvania’s related party expense disallowance rules for interest related to intangibles?

7. When does the Department anticipate issuing draft market-based sourcing regulations for comments by interested parties, or for public comment?

8. Please explain whether the Department has the authority to assert economic nexus for CNI Tax under the current statute without a law change, and if so, intends to assert economic nexus without a law change.

**Personal Income Tax**

9. Does PA have any comments on the IRS regulations (enacted effective Aug. 27, 2018) to combat workarounds related to the federal SALT deduction?

**R&D**

10. This was the first year for the online R&D credit application. Does the Department anticipate making any changes to the process in subsequent years?

11. The following are R&D online application concerns and suggestions for next year’s version:
   - We are unable to enter a year-end that is not month-end.
   - Some companies have an odd year-end when the company changes hands or if they are a 52/53 company.
   - A PA Revenue ID can’t be added after the application has been started. It is not a required field, but the Department would probably like it to be there. It appears that in order to enter that ID, we would have to completely start the application over.
   - There is no way to delete applications from the incomplete applications section. If an application is accidently started or later is discovered to have zero credit, it clutters up this section for review of qualifying clients. It will go away after Sept. 15, but it would be nice to remove it now for the reviewers to see a clean qualifying list.
   - Pressing enter on the application does not take you to the next fillable cell. That action saves the application or submits it. If enter is pressed on the final screen, there is a concern that “Submit” might be the default action when that is not the intent of the individual working on the application.

**Sales & Use Tax**

12. Given the U.S. Supreme Court’s decision in the Wayfair case, is the Department considering any changes to existing sales and use tax nexus and collection rules?
13. Will the Wayfair decision have any impact on the recent marketplace provisions?

Miscellaneous

14. A Trust has been in existence for many years, but has never had income nor a need to file a return. In the fourth quarter it received income for the first time. If the Trust pays an estimated tax of greater than 90% of the annual tax by January 15, will there still be an underpayment of estimated tax penalty or can the Trust eliminate the penalty by calculating annualization?

Tax Credit

15. Does Pennsylvania allow a credit against use tax for sales tax legally paid to another state? For instance, if Company purchases laptops in state X on which it pays sales tax legally due to state X, but then Company subsequently ships those laptops to Pennsylvania where they are used by employees, would Pennsylvania allow a credit against use tax for the state X sales tax Company paid for those laptops?

16. What are the qualifications or limitations to this credit for sales tax legally paid other states?

17. Is this credit limited to sales tax paid to certain states and, if so, specifically which states are those and what is the basis/rationale for just those states?