

# PENNSYLVANIA ACCOUNTANT

THE MAGAZINE OF THE PENNSYLVANIA SOCIETY OF TAX & ACCOUNTING PROFESSIONALS

[WWW.PSTAP.ORG] MARCH 2016

PA DEPARTMENT OF REVENUE  
2015 Q&A Meeting  
Transcript Inside This Issue

69<sup>TH</sup> ANNUAL MEETING  
June 16-19, 2016  
Explore the Finger Lakes of New York  
Radisson Hotel Corning

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Form **1040**

Department of the Treasury—Internal Revenue Service  
**U.S. Individual Income Tax Return**

For the year Jan. 1–Dec. 31, 2014, or other tax year

Your first name and initial

If a joint return, spouse's first name and initial

Home address (number and street name)

City, town or post office

Foreign country name

### Filing Status

Check only one

Exempt status

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3

6a

b

c

name

so

If married, your filing status

dependents

instructions

check here

total number

dependents claim

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# A MESSAGE FROM THE PRESIDENT



The Holidays are now behind us. It is a great time of the year to give thanks for all the many blessings we enjoy in this great country of ours.

The opportunity to take time to be with family and friends is very precious and makes for some great memories.

I WANT TO  
THANK ALL  
NINE OF THE  
CHAPTERS  
FOR THEIR  
HOSPITALITY

I want to thank all nine of the chapters for their hospitality provided to me while visiting them over the past months. This gave me the opportunity to meet with chapter officers and members that do not attend any of the state meetings or activities. I was also able to express the value of being a member of this society, by attending your chapter meetings and participating at the educational seminars. Also, how friendships are developed by getting involved, whether it be serving on a committee or as an officer at the chapter and the state level. The visitations gave me the opportunity to promote PSTAP's 69th Annual Convention in Corning, NY.

We must now prepare for yet another tax season, as winter finally arrives with the first snowstorm for 2016. As tax practitioners, we need to be aware of the extender legislation titled the "Protecting Americans from Tax Hikes (PATH) Act of 2015." Many of the provisions were made permanent, while others were only extended through 2016 and a few through 2019. Monitor the PSTAP's List Serve for any further details or breaking news. This is a great member benefit.

I started something new at the September Board meeting, "Show and Tell". Members have the opportunity, prior to the start of the board meeting, to get in front of everyone and share a hobby or certain passion they may have. I have been sharing some antique quilts and the history that goes with them. My wife Pat and I lecture on the history of our antique quilt collection and love to share this passion with others. Frank Kelly shared a few pieces of his art collection at the December meeting. Two more members have offered to share their passion with the Board at the May meeting. I believe the May "Show and Tell" will be very interesting. So come early and get your seat. Oh! By the way we will have a Board meeting afterwards.

I wish everyone a prosperous and rewarding tax season.

Respectfully Submitted By:

Arlan R. Christ, EA  
PSTAP President



# ANNOUNCEMENTS UPDATES AND GENERAL INFORMATION



## BUXMONT CHAPTER SUPPORTING THE FUTURE OF THE PROFESSION

**The Buxmont Chapter of the PSTAP participated in a community outreach project that has allowed the Middle Bucks Institute of Technology to support the efforts of their students through technology.**

The Middle Bucks Institute of Technology offers its' high school students who think they want to become accountants, business managers or business owners an opportunity to get a head start on these careers through a specialized business program.

Buxmont's donation has provided students with the necessary tools that are relevant in business work. Specifically, MBIT purchased IPADS that has served its' students by cutting down the cost of purchasing textbooks by providing an e-book option, provides the latest communication and networking tools to create a mobile office and provides the students the opportunity to download apps that they can integrate into their study

habits, team projects and presentations.

Students enjoy using the IPADS as a learning tool. "They currently use the IPADS as the School Store POS system. It is useful in processing sales, tracking sales and outputting inventory. They IPADS are also useful for day to day classroom activities. The IPADS have become a useful tool in the classroom that helps integrate technology and real world experiences."

Buxmont Chapter members, Mel Cherry, PA and Frank Corso, CPA, serve on the school's Occupational Advisory Committee, which meets twice a year to discuss the ongoing curriculum. They made a presentation to the students to give them insight into the field of accounting.

## EXPLORE THE FINGER LAKES!

**PSTAP 69th Annual Meeting Set for June 16-19th in Corning New York**

Registration Fee: \$550 per couple includes 3 dinners, 3 breakfasts, cocktail reception, group activities and transportation to activities, entertainment & welcome gift as well as all applicable taxes and gratuities.

Hotel reservations will be made directly through the Radisson Hotel Corning website at the rate of \$139 plus tax. Located in the heart of the city's downtown historic Gaffer District, the Radisson Corning is an award winning hotel with many amenities. The ideal location to enjoy the ambience of Corning.

A unique and customized itinerary is being planned which includes the following:

- Go back in time to the 1960's with a full scale SOCK HOP featuring the area's

most popular entertainment - come dressed the part for a fun evening filled with contests, great food, and lots of dancing;

- Wine tours and tastings - The Finger Lakes are known for their wine, particularly for the world renowned Rieslings crafted in this region of New York. Attendees will enjoy learning about the wine making and production process, how to pair your favorite wine(s) with dinner and take in the breathtaking landscapes this region has to offer.
- Enjoy a cocktail reception and dinner in Veraisons Restaurant at Glenora Winery overlooking the majestic Lake Seneca.
- Explore all of the nooks and crannies of the charming town of Corning
- Plus much more.....

Registration material will be available on the homepage of our website in mid-April. **Please direct all questions to the PSTAP Executive Office at 1-800-270-3352.**

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for your reference to assist you in managing your practice and to better serve your clients.

### What documents will I Find in the Small Firm Toolkit?

This is a new benefit and it is an ongoing work in progress. Additions to the document library will be made all the time. Don't see something you need? Send us an email and let us know.

Some of the most popular Models & Samples in our library include (this is a short list, there are many additional documents on the website):

- 7216 Consent to Disclose & Consent to Use Statements;
- Checklists...Checklists...& more Checklists;
  - » Act 32 EIT for Small Employers
  - » Business Tax Returns - Reviewer
  - » Individual Tax Returns - Reviewer
  - » Items to Put in a Permanent File
  - » Payroll Tax
  - » Preparers Pre Review Procedures
  - » Plus many more...
- Engagement Letters for Personal and Business Returns

- Final RCT-101 Filing Instructions & Sample Statement/Rider
- Letter to Inform a Client of a Fee Increase
- Quick Reference Guides -PA PIT & Pass Through Business

### How do I Access the Small Firm Toolkit?

1. Log in to the PSTAP website at [www.pstap.org](http://www.pstap.org) using your PSTAP ID number and password.
2. Once logged in, select '**PSTAP Documents**' on the left side of the screen.
3. Scroll down to '**Models and Samples**' tab located about half-way down the page.

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# PENNSYLVANIA

## TAX UPDATE

By McNees Wallace & Nurick LLC

### **Tax Increases Part of Governor Wolf's 2016-2017 Proposed Budget**

*By Randy L. Varner, Chair, State and Local Tax Practice Group*

On February 9, amidst the Commonwealth's longest-ever budget standoff over the 2015-2016 budget, Governor Wolf presented his 2016-2017 budget address to the General Assembly with combative and pointed remarks. While there are tax increases and revenue enhancements in his new budget, the new changes do not come close to the drastic tax overhaul that was contained in his proposal last year.

Major proposed tax and revenue changes are as follows:

**Personal Income Tax.** The proposal would raise the Commonwealth's flat Personal Income Tax rate from 3.07% to 3.4%, effective January 1, 2016. The proposal includes a 40% increase in the Tax Forgiveness program to lessen or eliminate the Personal Income Tax burden on low income taxpayers. The proposal would also subject Pennsylvania Lottery winnings to tax. The administration estimates the net revenue increase for 2015-2016 to be nearly \$555 million and for 2016-2017, nearly \$1.3 billion.

**Sales and Use Tax.** Unlike last year, the proposal does not involve an increase in the 6% tax rate. The proposal involves expanding the tax base to include movie tickets and basic television, and clarifying that items delivered or accessed electronically or digitally, including books, music, video and photographs, are subject to tax. These changes would be effective April 1, 2016. The administration estimates a net revenue increase for 2015-2016 to be roughly \$66 million and for 2016-2017 to be nearly \$415 million.

**Severance Tax.** The Governor has once again included a severance tax as part of his budget proposal. This proposal would impose a 6.5% tax on the value of natural gas severed through unconventional means (fracking). There would be a credit issued against the tax for amounts paid as part of the existing Impact Fee. This tax would be effective on July 1, 2016 and is estimated to provide nearly \$218 million in revenue in the 2016-2017 year.

**Bank Shares Tax.** The proposal would increase the Bank Shares Tax rate from 0.89% to 0.99%, effective January 1, 2016. The revenue estimate for this increase is \$37.4 million in 2015-2016 and \$39.2 million in 2016-2017.

**Insurance Premiums Tax.** The proposal includes a 0.5% surcharge on property, casualty, and fire premiums, for a total tax rate on the premiums at 2.5%. This change would be effective January 1, 2016. This is estimated to raise an additional \$80.7 million in 2015-2016 and an additional \$100.9 million in 2016-2017.

**Cigarette Taxes.** The per-pack tax on cigarettes would be raised from \$1.60 to \$2.60, effective April 1, 2016. This will generate an additional \$122 million in 2015-2016 and \$468 million in 2016-2017.

**Other Tobacco Taxes.** Effective May 1, 2016, a 40% tax will be imposed on the wholesale price of other tobacco products, including cigars, smokeless tobacco and e-cigarettes. A 40% tax on loose tobacco is effective July 1, 2016. Revenue estimates are \$10.6 million for 2015-2016 and \$136 million for 2016-2017.

**Gaming Tax.** The proposal includes an 8% tax on promotional plays of slots and table games, effective January 1, 2016. This is estimated to raise \$21 million in 2015-2016 and \$50.9 million in 2016-2017.

The Governor's package includes total spending of \$32.7 billion, which includes nearly \$1.6 billion in mandated



spending increases for debt obligations, corrections, human services and pensions. The governor argues that this proposed budget would fully fund pension and debt obligations and eliminate the structural deficit.

#### **What is the outlook?**

Over the last eight months of the 2015-2016 budget standoff, the only thing that has been certain about the situation is uncertainty. As this article is being written, Governor Wolf and Republican leadership in the General Assembly are once again sitting down to discuss the impasse. It would seem that the 2016-2017 proposals are wholly dependent on how the 2015-2016 dispute is resolved. At this time, there is simply no way to know what the resolution will be or when it will happen.

#### **Lease Receipts Subject to Business Privileges Taxes After All**

*By Sharon R. Paxton, State and Local Tax Practice Group*

The Pennsylvania Supreme Court recently reversed a 2014 Commonwealth Court decision, in which the Commonwealth Court had ruled that the Local Tax Enabling Act ("LTEA") bars local taxing jurisdictions from imposing business

privilege taxes on receipts from leases or lease transactions. See *Fish, Hrabrick and Briskin v. Township of Lower Merion*, 29 MAP 2015 (Pa., December 21, 2015). Many taxpayers had filed protective refund claims for business privilege taxes paid on lease receipts pending final disposition of the appeal in the *Fish* case. Unfortunately, those refund claims are no longer viable.

The LTEA provides the authority and limitations for all taxing jurisdictions other than the City of Philadelphia to impose taxes. While the LTEA allows for the imposition of business privilege taxes, the LTEA expressly excludes the power to impose tax "on. . . leases or lease transactions." In *Fish*, the township argued that its tax was actually imposed on the privilege of doing business in the township and was not a direct tax on leases. The Commonwealth Court flatly rejected this argument and held that the LTEA prohibits "any tax"—i.e. privilege, transactional, or otherwise—on leases and lease transactions." In reaching its conclusion, the Court stated that the LTEA must be read in a way "that most restricts the taxing authority..."

The Supreme Court applied prior precedent establishing that business privileges and transactions are separate and distinct subjects of taxation.

Therefore, a business privilege tax that encompasses all businesses offering services within a local taxing jurisdiction may be imposed on receipts derived from leases, even though a tax directed specifically to lease transactions would constitute a prohibited tax. The Court further clarified that this rule applies even if a taxpayer's revenues are derived exclusively from "untaxable transactions," such as lease transactions.

#### **The End of (New) Limited Partnerships in Pennsylvania?**

*By Shaun R. Eisenhauer, Corporate & Tax Group*

On December 31, 2015, after a 15-year phase-out (originally intended to last only nine years), Pennsylvania's 171 year-old capital stock tax finally expired.

While few will mourn its passing, that expiration may take with it the formation of new limited partnerships in Pennsylvania. Let's see why.

The capital stock tax was an annual charge based on a combination of an entity's income and assets. It applied to corporations and limited liability companies but not to partnerships. A purchaser of real estate or other significant assets, who



also wanted limited liability, was therefore faced with a difficult calculation: Would avoiding the annual cost of the capital stock tax justify acquiring the assets in the complicated limited partnership structure? For every other purpose, the more user-friendly limited liability company would do just fine.

To limit the effect of the capital stock tax, an acquirer would use a limited partnership where the limited partners could own 99% (or more) of the limited partnership and a limited liability entity like a corporation or LLC would own the remaining 1% (or less) general partnership interest. In this way, only the general partner's percentage of the limited partnership's assets would be affected by a capital stock tax. All ultimate owners would be insulated from liability by virtue of their status as either (i) limited partners of the partnership or (ii) stockholders/ members of the general partner.

Unfortunately, this locked the assets into the limited partnership model. That model requires maintenance of two separate entities: The limited partnership itself and the general partner entity. This necessitates dual filings, meetings, reporting, ownership tracking and potentially licensing. Because many states have no capital stock tax on limited liability companies, out-of-state investors were often surprised by this complication.

Absent the capital stock tax, acquiring assets in a new limited liability company provides limited liability to its owners and pass-through taxation in a single, flexible, customizable entity.

Are there ANY remaining reasons to form a limited partnership in Pennsylvania? Four have been suggested and each are rebuttable.

#### **Point 1**

There is a much more robust body of common law demonstrating the limited liability features of limited partnerships and corporations than for limited liability companies, which have existed

in the United States only since 1977. Counterpoint: While that is certainly true, it is also semantically evident that limited liability companies are designed to provide, well, limited liability!

#### **Point 2**

For leveraged limited partnerships, partnership taxation generally allows for higher basis to the general partner, and therefore more deductions. Counterpoint: Members of a limited liability company can achieve the same result through express guaranties by designated members.

#### **Point 3**

If the capital stock tax is resurrected, it may be better to own property in a limited partnership once again. Counterpoint: Yes, the capital stock tax could be resurrected. But if it is, there is no telling which entities will be affected under a new tax regime.

#### **Point 4**

A limited partnership allows for active control by a general partner and passive investment by limited partners. While that same dichotomy can be achieved through good drafting of an operating agreement

with a strong manager-managed overlay, this last reason may prove to be the limited partnership's salvation. Just as the corporate entity has survived the advent of limited liability companies thanks to historical comfort with the familiar officer/director/shareholder structure, a limited partnership provides an off-the-shelf active management/passive investment structure. That hard-wired result avoids the necessity of negotiating the many details of a limited liability operating agreement. Counterpoint: When a thorough consideration of those details is embraced, the limited liability operating agreement provides many planning opportunities, which allows for all the benefits and is burdened with virtually none of the limitations or complications of a limited partnership.

In sum, when determining how to acquire assets in 2016 and beyond, the limited partnership offers few remaining advantages in Pennsylvania. As a result, the long-awaited expiration of the capital stock tax makes limited liability companies king of the entity-formation hill. 🏆



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Total Quantity of All Items	<b>A</b>	Total Cost	<b>B</b>
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STEP 3 Calculate Quantity Discount (Total Quantity × Quantity Discount Per Item)		Quantity Discount Per Item						Quantity Discount
Total Quantity of All Items (from STEP 2)	×	1 Item	2 Items	3-5 Items	6-10 Items	11-20 Items	21+ Items	
<b>A</b>	(items) x	\$0.00 per item	\$3.00 per item	\$4.00 per item	\$5.00 per item	\$6.00 per item	\$7.00 per item	= \$ <b>C</b>

STEP 4 Calculate Shipping & Handling Charge (Total Quantity × S&H Charge Per Item)		Shipping & Handling (S&H) Charge Per Item						Shipping & Handling Charge*
Total Quantity of All Items (from STEP 2)	×	1 Item	2 Items	3-5 Items	6-10 Items	11-20 Items	21+ Items	
<b>A</b>	(items) x	\$7.45 per item	\$6.45 per item	\$5.95 per item	\$5.45 per item	\$4.95 per item	\$3.95 per item	= \$ <b>D</b>

\* Excludes all online products. Please call for international orders.

STEP 5 Calculate Order Cost (Total Cost - Quantity Discount + S&H Charge)		Total Cost (from STEP 2)	-	Quantity Discount (from STEP 3)	+	Shipping & Handling Charge (from STEP 4)	=	Order Cost
<b>B</b>				<b>C</b>		<b>D</b>		= \$

STEP 6 Finalize Your Order		Sales Tax	MN residents add 7.275% (Order Cost from STEP 5 × 0.07275)	=	\$
<b>Order Total</b>		Order Cost (from STEP 5) + Sales Tax		=	\$

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Customer # \_\_\_\_\_

Company Name \_\_\_\_\_

Name \_\_\_\_\_

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# PSTAP COMMITTEE ON COOPERATION WITH THE PENNSYLVANIA DEPARTMENT OF REVENUE

ANNUAL Q&A - December 1, 2015

## DEPARTMENT OF REVENUE KEY PERSONNEL

<b>Secretary of Revenue</b>	<b>Eileen McNulty</b>	<b>(717) 783-3680</b>
Executive Deputy Secretary	Robert Coyne	(717) 783-3690
Chief Counsel	Jeff Snively	(717) 772-9212
Chief Counsel	Doug	(717) 787-1382
Press Office	Gary Miller (Acting)	(717) 346-4626
Legislative Liaison Office	Kristin Crawford	(717) 783-4025
Lottery	Drew Svitko	(717) 702-8020
Taxpayer Advocate	Marva Patterson (PIT & Inheritance)	(717) 772-9347
Policy Director	Radee Skipworth	(717) 783-3680
<b>Deputy Secretary for Taxation</b>	<b>John Kaschak</b>	<b>(717) 783-3685</b>
Voluntary Disclosure Liaison	Matthew Pettigrew	(717) 787-9832
Business Trust Fund Taxes	Matthew DeFrank	(717) 783-5477
Corporation Taxes	Tom Bordner	(717) 787-8211
Individual Taxes	Meggan Swisher	(717) 787-8346
Motor Fuel Taxes	Jim Dehnert	(717) 783-9191
Taxpayer Services & Information Center	Donald Bianchi	(717) 772-9201
<b>Deputy Secretary for Administration</b>	<b>Christin Heidingsfelder</b>	<b>(717) 783-3691</b>
Administrative Services	Pam McGranaghan	(717) 787-8293
Fiscal Management	Melanie Rhine	(717) 783-3999
Human Resources	Linda Miller	(717) 787-7315
Imaging & Document Management	Bernard Stakem	(717) 787-8117
<b>Deputy Secretary for Compliance &amp; Collections</b>	<b>Sue Leighton</b>	<b>(717) 783-3690</b>
Collections & Taxpayer Services	Thomas Scott	(717) 787-6611
Compliance	Sean Washington	(717) 787-3847
Criminal Tax Investigations	Anthony Beccone	(717) 783-9685
Pass Through Business Office	Karen Sutsko	(717) 705-7400
EPAD	Kevin Milligan	(717) 783-5571
<b>Deputy Secretary for Tax Policy</b>	<b>C. Daniel Hassell</b>	<b>(717) 787-4099</b>
Research	Amy Gill	(717) 787-6300
Board of Appeals	Lauren Zaccarelli	(717) 783-3664
Audits	Jason Weimer	(717) 783-1731
<b>Chief Information Officer</b>	<b>Ron Wilt</b>	<b>(717) 772-9613</b>
Information Systems	Michael Dailey	(717) 787-2300
PIT	David Braden	(717) 787-8346
Corp	Jeff Creveling	(717) 783-6042

1 Please provide an updated contact list of Key Personnel.

### ANSWER

An updated listing of Key Personnel at the PA Department of Revenue appears on the previous page.

2 This question is in reference to a Pennsylvania resident who is a partner in a **non**-Pennsylvania partnership and does **not** file a PA K-1.

a. What is PA Revenue's position on filing procedures for out of state partnerships that only provide taxpayer (PA Resident) with a "substitute form" with PA allocated information?

### ANSWER

In cases where a PA Schedule RK-1 is not provided to a PA resident, a federal Schedule K-1 must be provided. The total income from federal K-1 should be included for a PA resident. The PA allocated income would only be used for a PA nonresident taxpayer.

b. Can the taxpayer efile the return or must the return be filed on paper?

### ANSWER

The return can be submitted via e-file if:

- the software product being used supports the attachment of PDF files and
- the income reported on the federal Schedule K-1 is converted to and reported based on PA classification rules

c. Can the taxpayer efile with a pdf copy of "substitute PA information?"

### ANSWER

Refer to answer in 2b.

d. How does the taxpayer claim a credit for withholding without a PA K-1?

### ANSWER

A statement must be provided by the entity and attached to the PA-40. The statement should include the breakdown of states, breakdown by Pennsylvania income class, taxes paid to those states and the resident credit claimed, which is the lesser of the actual tax paid or 3.07 percent of the total income taxed in the other state.

The statement must also include the entity's name, entity's federal employer identification number, tax year, owner name(s) and owner tax identification number(s).

3 Does the Department of Revenue have a taxpayer advocate regarding sales tax issues?

### ANSWER

The Office of Chief Counsel does not have a "taxpayer advocate" for sales tax issues, however if a taxpayer speaks to one of the sales tax attorneys any assistance they receive is free and confidential. The Office of Chief Counsel can be reached at 717-783-1382.

4 When the Board of Appeals denies a compromise, no written decision is provided. It is very difficult to explain an oral decision to a client. Would the Department consider issuing a written decision? Is there a reason why a written decision is not provided?

### ANSWER

The Department's authority to compromise is governed by Section 2707 of the TRC. This section provides a taxpayer may propose a compromise and if the compromise offer is accepted, then the Board will issue a compromise order that is not subject to further appeal. If the Board does not accept the compromise, then Section 2703(c) applies and the Board is required to issue a written decision on the merits which may be appealed.

5 Is it a matter of public record when the Department of Revenue has granted a charitable exemption sales tax license number?

### ANSWER

Yes

**If yes, please provide information on how to access this information.**

### ANSWER

Requests can be made via fax at 717-705-8413 or mailed to the following address:

PA Department of Revenue  
Bureau of Business Trust Fund Taxes  
PO BOX 280909  
Harrisburg, PA 17128-0909

6 Does the \$500 penalty for late filing of business returns apply to PA65/20S or only the PA RCT 101? Will these penalties be abated once they are filed?

### ANSWER

The \$500 penalty is imposed under section 403(d) of Article IV of the Tax Reform Code. It only applies to reports required under Article IV. The PA20S/PA65 is required under Article III. Therefore, the \$500 penalty does not apply to the PA20S/PA65.

Assessments for late file penalties should be appealed to the Board of Appeals.

7 When a sole proprietorship makes an election to become a single member LLC, is the new entity required to obtain all new tax filing numbers for payroll taxes etc.?

### ANSWER

If the SMLLC provides documentation from the IRS that allows the continuation of their FEIN, they do not need to obtain new account numbers.

If the IRS requires the assignment of a new FEIN that would constitute a new business partner and new account numbers would need to be obtained.

8 Client received a "Notice of Registration" from the Department of Revenue. The EIN matched but there was a different PA 10 digit ID number. I was told that the Department was trying to create an account that would combine the withholding tax accounts and the corporate accounts. I was told that going forward we were to use the new account number. Is this correct?

### ANSWER

It appears as if the business has already registered for Corporation Taxes and had been assigned a Revenue ID. Then, subsequently, the same entity registered for employer taxes using the corporation's EIN but received a new Revenue ID. If this is the case, and the corporate registration included the EIN, it is possible that the names did not match exactly and that is why the second Revenue ID number was issued.

9 In the situation where a spouse dies and all of his/her assets transfer to the other spouse and nothing is subject to tax, does an inheritance tax return have to be filed? If yes, a simplified version of the form should be available.

## ANSWER

If all of the assets are jointly owned with the spouse, the inheritance tax return does not have to be filed. However, if the will is probated and/or there are assets that are not jointly owned with a spouse, then an inheritance tax return must be filed.

The REV-1500 is the correct form for reporting inheritance tax. The form was revised this year to add a spousal oval to be used if the spouse is the sole beneficiary.

**10** My software reported that it could not automatically withdraw the tax due because the date shown on the payment screen to have the money withdrawn was the day before the return was actually filed. I contacted my software provider, Drake, and they confirmed that the money was not set up to be automatically withdrawn. I contacted my client and told her that she would have to mail the check in with the voucher and she did. I received an email from her which indicated that PA Department of Revenue did have the money automatically withdrawn and cashed the check. What is the best way for her to get the duplicate payment back from PA?

## ANSWER

Once the return is processed, the Department will automatically refund any overpayment. If there are any questions regarding the refund, please call 717-783-5250 and select option 7.

**11** What are the Pennsylvania filing requirements for a nonprofit charity filing a 990 federal tax return each year? Is it necessary to file with the PA Department of Public Charities?

## ANSWER

The Department of Revenue does not have a filing requirement. The Bureau of Charitable Organizations is under the Department of State.

**12** Does Pennsylvania Recognize Roth IRA conversions? I have a 1099 R from Schwab for \$60K in boxes 1 and 2 and code 2. It was a conversation from a traditional Roth IRA. My software is putting that on line 1a of the PA-40 and I think that is correct. However, as I look at last year's return with the same thing going on, the former CPA didn't show it on the PA-40. I read the instructions and

I still think my software is correct, but I want to make sure. The taxpayer is 50. Please verify.

## ANSWER

Yes, the department recognizes conversions of traditional IRAs to Roth IRAs. However, the conversion could become taxable if there are federal taxes paid upon the conversion and the federal tax amount is not repaid into the converted IRA within 60 days of the transfer or the transfer is not a direct transfer from trustee to trustee. If there are federal taxes withheld and not paid in to the converted IRA account, the transfer is listed on two lines on PA Schedule W-2S. The amount converted net of federal taxes is listed on one line and the federal tax amount paid is listed on a separate line on the form. The amount net of federal taxes is not taxable but the federal taxes paid could be subject to tax to the extent the amount exceeds the adjusted basis in the IRA being converted as the cost recovery method is used to determine the taxable amount. The PA-40 IN instructions includes Filing Tip #3 for PA Schedule W-2S that provides additional information on the reporting requirements for converting a traditional IRA to a Roth IRA.

**13** What is the process to handle suspected identity theft when a return is rejected?

## ANSWER

If an electronically filed return has been rejected, contact the Department of Revenue at 717-787-8201 to verify if a fraudulent return has been filed using the taxpayer's identity. If the taxpayer has confirmed that a fraudulent state return has in fact been filed, they will be required to contact the Office of Taxpayer's Rights Advocate at 717-772-9347 to begin the process of rectifying their tax account. The taxpayer may be required to file a police report, submit a copy of the federal Identity Theft Affidavit (Form 14039) or provide other supporting documentation.

**14** Client is setting up an internet business from his home in Philadelphia. He is selling items that are subject to Pennsylvania Sales Tax to customers both outside of and within Pennsylvania.

## ANSWER

Client needs to register to collect Pennsylvania sales tax and Philadelphia city tax.

**a.** Does PA have any agreements with other state to collect sales tax on goods sold over the internet?

## ANSWER

PA does not have any agreements with other states to collect sales tax on goods sold over the internet.

**b.** Given that the business is in Philadelphia, is he required to collect the additional 2% when goods are shipped to customers within the city?

## ANSWER

Local tax applies to sales originating in, or the use of taxable property or services in, a county or city that has imposed a local tax. Accordingly, Client is required to collect the additional 2% on goods shipped to customers within the city as well as on goods shipped to Pennsylvania destinations located outside of the city. Client does not have to collect the additional 2% on goods shipped to out-of-State destinations.

**c.** What about the additional 1% when shipped to customers in Allegheny County?

## ANSWER

Client is not required to collect the additional 1%. Vendors may voluntarily collect local tax to relieve the purchaser of the responsibility to report use tax, but it is not required of vendors that are not located in the city or county that is imposing the tax.

**15** Now that PA is penalizing taxpayers for not filing tax forms when there is no activity, do we have to efile a PA 1065 for an LLC that registered with the feds as a partnership or do we just file an INACTIVE RCT 101 for the Capital Stock Report?

## ANSWER

An inactive LLC must file the PA-65. The PA-20S/PA-65 now has an inactive oval indicator on page 1. In order to efile, certain schedules may be required in order to validate the return.

If an entity is required to file as a partnership they are required to file the

PA-1065. All entities existing in the Bureau of Corporation Taxes Business Tax System are required to file a PA Corporation Tax report, regardless of their activity. A corporation having no activity anywhere can file the Form RCT-1-1I.

**16** What is the Department of Revenue's position on the Tangible Property/Repair Regulations, new Rev. Proc. 2015-20?

### ANSWER

If a taxpayer follows the new IRS tangible property regulations for purposes of reporting the taxpayer's Pennsylvania Personal Income Tax liability, the taxpayer must disclose that the taxpayer is following the federal regulations on the Pennsylvania return and must indicate whether following the federal regulations constitutes an accounting method change for the taxpayer for PA purposes. If there is an accounting method change that would result in a 481 adjustment, then the same adjustment is required to be made within one year for Pennsylvania purposes even if the adjustment is spread over 4 years for federal purposes. Unlike the IRS, Pennsylvania does not permit this adjustment to be made over several years.

**17** How does a practitioner obtain or verify a 10 digit ID number if the client cannot provide it?

### ANSWER

To verify a Revenue ID, taxpayer's or practitioners can call 717-705-6225 and select option 4. For new entities that register through Department of State revenue ID will be assigned and a Welcome to PA letter will be sent to the taxpayer. Taxpayer's can complete the PA-100 form located on our Revenue website or simply file the form RCT-101 and a number will be assigned.

**18** I processed a payroll on Tuesday Sept 29, for Friday Oct 2, 2015. I logged into ETIDES to schedule the withholding payment, but could not change the tax period to October, even after going to the additional period screen. Is there a way to have these periods be made available earlier?

### ANSWER

Our e-TIDES application will allow for the deposit scheduling of future payroll tax

periods, as long as those periods are within the current quarter. It's limited to pay periods within the current quarter because there is always the potential for a deposit frequency change, initiated by DOR or the employer, which would take effect on the first day of the upcoming quarter.

**19** For the past 6 years my client has received a notice from the Liquor Control Board regarding their liquor license stating that taxes have not been paid. Every year I call the Department of Revenue to tell them they have the wrong EIN for sales tax for the client. The same EIN is used for payroll, sales tax, etc. They find the sales tax paid under the correct EIN and clear up the issue with the Liquor Control Board. Why won't they correct the EIN and save us the trouble each year telling them they have the wrong EIN?

### ANSWER

Please provide the details of this specific business partner and we'll have the problem resolved.

**20** It appears that PA has routinely disallowed tax credits for taxes paid to other states, and prior to 2014, foreign taxes. They claim they don't receive the other state's return, even though our software shows it's attached. Does PA allow out of state credits; how are they processed and how is the taxpayer notified if/when the credit is denied?

### ANSWER

When examining a return, our procedures are to review the electronic return to try to verify that the other state's tax return is attached. We will also verify if the other state's tax returns were received in those prior tax years. Upon review of that information if we believe there is enough information to support the out of state credit claimed without the actual copy of the other state's return, we will accept the credit. If we do not have a copy of the other state's tax return, we will request a copy of the return to be submitted to the Department. The credits should not be disallowed unless we have not received responses to our requests for copies of the other state returns. If there are specific examples where we denied the credit prior to requesting a copy of the return or when the return was attached the PA return, please provide them and we will research the issue further.

The following professional software products did not support PDF attachments for Personal Income Tax filings (PA-40) in tax year 2014:

- Jackson Hewitt
- Liberty Tax Service
- Tax Hawk, Inc.
- Taxsoftware.com
- Lamson Tech/1040NOW
- H&R Block
- TaxSlayer, LLC
- Advanced Tax Solutions, LLC

If you are unable to include the other state's tax return as a PDF attachment, the PA return should still be filed electronically and a copy of the other state's return should be faxed to the department at 717-772-9310 or 717-787-2840. We recommend that the form DEX-93, Personal Income Tax Fax Cover Sheet, be used when faxing the return. The DEX-93 can be downloaded from the department's website at [www.revenue.pa.gov](http://www.revenue.pa.gov).

**21** Because the due date for the 2015 PA tax return is 4/18/16, why does the 1st Quarter Estimate remain due 4/15/16?

### ANSWER

Section 330 (a) of the Tax Reform Code (TRC) provides that the due date of individual returns follows the federal due date. Whereas Section 326 provides for the due dates of estimated payments. Furthermore, Regulation 115.9 of the PA Code states:

- (1) If a taxpayer first meets the requirements for filing of estimated tax on or before April 1, he shall file a declaration no later than April 15 and pay his estimated tax in full with his declaration; or in four equal installments. The first installment on filing the declaration, and the second, third and fourth installments on or before the succeeding June 15, September 15, and January 15 respectively.

If April 15 falls on a Saturday, Sunday or holiday, the department has long held that the next business day will be the due date of an estimated payment. Since April 15 is Friday and is not a holiday for Pennsylvania purposes, the due date for estimated payments is April 15.

**22** What is the proper tax treatment of a 1099R with code 4D?

## ANSWER

A 1099R with a code 4D would be taxable as interest income on the PA-40 to the extent that it is taxable for Federal income tax purposes.

**23** What is the Department's position on mileage reimbursement when the employer reimburses less than the full standard mileage rate?

## ANSWER

The department will not allow an employee the difference between the employer rate and the federal rate. If the taxpayer was reimbursed for mileage, no deduction is authorized on the PA Schedule UE unless the reimbursement was included in the employee's compensation. If the mileage reimbursement was included in the employee's compensation then the employee is only authorized to take the amount that was reimbursed on the PA Schedule UE, they are not authorized to take the federal rate. The brochure for UE expenses, REV-637, Unreimbursed Allowable Employee Business Expenses for PA Personal Income Tax Purposes, is attached to this correspondence.

**24** How should a "statutory employee" such as an insurance agent properly file in PA?

## ANSWER

Statutory employees should report all taxable income they receive as non-employee compensation unless their activities constitute a business, profession, or other activity engaged as a commercial enterprise. For more information to determine if the taxpayer meets the Commercial Enterprise Test refer to Chapter 11 of the PIT Guide. The employee would use the PA Schedule UE to claim the expenses and those expenses that are not reported in a specific part of the Schedule UE should be itemized and claimed on a PA Schedule C and then included in Part C of the Schedule UE under Miscellaneous Expenses. The line for Schedule UE should indicate to "See Schedule C for list of expenses."

**25** Is there a way to remove defunct clients from ETIDES?

## ANSWER

To remove defunct clients from your e-TIDES access, the account administrator must be changed by the Department's e-Business Tax Unit. Requests can either be emailed to [retides@pa.gov](mailto:retides@pa.gov) or faxed to (717) 787-0145.

**26** Does PA have a statute of limitations on collections?

## ANSWER

No, we have no statute of limitations on collections. If we did, this would be a disincentive for delinquent taxpayers to pay their delinquent tax liability including satisfying liens on delinquent liabilities.

**27** A PA resident taxpayer (TP) was active partner in two different NY partnerships. One partnership had income from trade/business allocation to TP of \$100,000 while other had a trade / business loss of \$164,000 allocable to TP. The net trade /business loss of \$64,000 resulted in no taxable income for this class of income. PA DOR has denied the loss on the premise that the partnership did not file a PA 65 and file and report the related RK-1 reflecting the loss to the TP. PA DOR assessed the tax on the income (i.e. \$30,720) but disallowed the loss.

Additional Information: The partnership did NOT file with PA.

I heard from another member that at one of the PA Department of Revenue fall tax seminars the speakers stated point blank that PDR WILL DISALLOW losses from out of state partnerships if a PA return is NOT filed. This was a surprise to most especially the practitioners from Maryland. When confronted and asked is there a dollar amount of loss threshold that will be disallowed, the answer was no specific amount BUT in most cases the PDR was disallowing the "larger" losses."

## ANSWER

Every partnership having a resident partner or every partnership having any income derived from sources within this Commonwealth shall make a return for the taxable year setting forth all items of income, loss and deduction, and such other pertinent information as the department may require.

The Department does disallow losses if a PA-65 is not filed.

**28** Would DOR consider allowing a payment plan, for taxes due upon filing of an annual return, as part of the modernization of PIT? This payment plan would not eliminate penalties or interest.

## ANSWER

The department currently accepts partial payments, from a taxpayer, between the filing of an annual return and the liability going into collections. Once in collections, the department does offer deferred payment plans. Before the department could accept a payment plan, upon the filing of the annual return, further research would need to be done to determine the impact on cash flows, appeal rights, etc.

The important thing is that the taxpayers file their return by April 15 and send as much of a payment as they can with the PA-40.

**29** Would DOR consider being the central repository for local earned income tax collections?


## ANSWER

Local earned income taxes (EIT) are authorized by municipalities and school districts and represent their principal source of non-property tax revenue. Act 32 of 2008 brought sweeping changes to the EIT collection and distribution process in Pennsylvania, reducing the number of collectors in the Commonwealth from 560 to no more than 69. The Act created tax collection districts and tax collections committees in order to ensure local oversight of the income tax collections and distributions within the tax collection district.

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The cites of court cases which held that the date on a label from a USPS automated postal service is not proof of mailing are:

- Darden v. Daniel, 16 So.3d 1162 (LA 2009)
- Huber v. American Accounting Association, 21 N.E. 3d 443 (IL 2014) 

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## Future Events: Mark your Calenders

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Wednesday, August 1 - Saturday,  
August 20, 2016  
Tampa, FL

**NSA Annual Meeting**  
August 2017 (Dates to be determined)  
Reno, NV

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Please feel free to contact me with any questions via e-mail at:  
[andrewpiernock@comcast.net](mailto:andrewpiernock@comcast.net)

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	A	B	C	D	E	F		COLUMN A X COLUMN D	COLUMN B X COLUMN E	COLUMN C X COLUMN F		
EXAMPLE PRODUCT	\$49	\$45	\$52	2	5	6	13	\$98	\$225	\$312	\$635	<input type="checkbox"/> eBook Only
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All States Quickfinder Handbook	\$80	\$76	N/A			N/A		\$	\$	N/A	\$	<input type="checkbox"/> eBook Only
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Laminated Tax Tables for Individual Returns	\$16	\$12	N/A			N/A		\$	\$	N/A	\$	<input type="checkbox"/> eBook Only
Laminated Tax Tables for Business Returns	\$16	\$12	N/A			N/A		\$	\$	N/A	\$	<input type="checkbox"/> eBook Only
<b>QUICKFINDER ORDER TOTALS</b>												
								\$	\$	\$	\$	

### CALCULATE YOUR QUICKFINDER ORDER DISCOUNTS AND SHIPPING CHARGES

STEP #		
1	Enter your total QF order quantity from above	QUANTITY =
2	Enter your total QF order \$ total from above	\$ =
3	Calculate Shipping for Quickfinder – Order Quantity (Step 1) \$5.50/Handbook - \$3/Tax table	\$ =
4	Apply Quickfinder Quantity Discount – Based on your order quantity, calculate your discount dollars off using the table below and circle the appropriate discount percent.	- \$

Buy Any 2	•	Save 5%*
Buy Any 3 – 5	•	Save 20%*
Buy 6 – 10	•	Save 22%*
Buy Any 11 – 20	•	Save 25%*
Buy Any 21+	•	Save 30%*

5	Calculate Quickfinder Order Total – Add amounts from steps 2, 3 & 4	\$ =
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## OTHER THOMSON REUTERS MUST HAVE RESOURCES

	LIST PRICE		ORDER QUANTITY		TOTAL PRODUCT ORDER \$		ORDER TOTAL
	Print Book	Online/Download	Print Book	Online/Download	Print Book	Online/Download	
Checkpoint IRS Response Library	N/A	\$329	N/A		N/A		
Quickfinder Tax and Financial Tools+	N/A	\$230	N/A		N/A		
RIA Federal Tax Handbook, 2016 Edition	\$98.25	N/A		N/A		N/A	\$
RIA California Handbook, 2016 Edition	\$95.45	N/A		N/A		N/A	\$
<b>OTHER PRODUCTS ORDER TOTAL</b>							<b>\$</b>

CALCULATE RIA SHIPPING & HANDLING
For RIA Federal Tax Handbook add \$12.00/handbook For RIA California Tax Handbook add \$12.45/handbook
Note: There is no shipping and handling cost for Checkpoint IRS Response Library and Quickfinder Tax & Financial Tools.

CALCULATE YOUR COMBINED ORDER TOTALS AND SHIPPING CHARGES		
STEP #		
1	Enter your total from the Quickfinder section	\$ =
2	Enter your total from this section	\$ =
3	Calculate Shipping & Handling for RIA products	\$ =
4	Order Subtotal (add steps 1, 2 & 3)	\$ =
5	Sales Tax (apply your rate)	\$ =
6	Grand Total	\$ =

\*Subscription: Your software subscription to Quickfinder Tax and Financial Tools will automatically renew at the conclusion of your initial term for subsequent terms of one (1) year each, unless and until either party gives the other party written notice of termination before the end of the then current term. Once a renewal term has commenced, it is non-cancellable. Subscription renewals will be invoiced based on the price in effect at the time of renewal and the license fees are subject to increase over the previous year's term, plus shipping and handling, if applicable. If a renewal term has begun, requests to cancel will be effective at the end of the current subscription term.  
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# PRACTITIONER'S CORNER

## Educational Improvement Tax Credit FAQ

The Department of Revenue has received questions regarding the Educational Improvement Tax Credit. The following FAQ was added to their website to provide some clarity and we were asked to share it with our membership:

*Q: How do I claim my 2015-16 awarded Education Improvement Tax Credit?*

A: 2015-16 tax credits authorized after February 5th from the Department of Community and Economic ("DCED") may be applied against your 2015 or 2016 tax year liability. To claim the credit taxpayers should fax a copy of the final credit award letter provided by the DCED to the Bureau of Corporation Taxes Accounting Division at (717)705-6227. The taxpayer should note on the fax whether the credit should be applied to tax year 2015 or 2016.

The above letter should also accompany the REV-1123 Educational Improvement/Opportunity Scholarship Tax Credit Election Form for requests to pass the credit through to shareholders.

## Active Military Exempt from EIT

HB 561 was signed by the governor 2/23/16 as Act 6 of 2016. The law clarifies that active military personnel are exempt from the local Earned Income Tax (EIT), whether inside or outside PA. The new law will take effect immediately and is applicable to earned income taxes levied and collected after Dec. 31, 2015.

## The IRS has released statistics on audits, collections, etc. for fiscal year 2015

In general, for individuals field audits are down but correspondence audits

are up. Total individual audits are down slightly from 0.86% to 0.84%. However, results vary by income group. Taxpayers with income under \$200,000 saw their audit chances decrease slightly; the same was true for those with income above \$200,000. However, taxpayers with income of \$1 million or more had their audit chances increase from 7.5% to 9.55%. While the chances of an S corporation or partnership being audited was around 0.5%, there was an increase from the prior year for both groups.

## Taxpayers who work outside the country for the requisite period of time may be able to exclude up to \$101,300 (2016 amount; indexed for inflation) from their taxable income

However, that exclusion does not apply to employees of the U.S. government or an agency thereof. In *Alfred S. Co* (T.C. Memo. 2016-19) the taxpayer was a mechanical engineer who provided services to the Overseas Buildings Operations, an arm of the U.S. Department of State. The Court examined the factors that are used to determine if an individual is an employee or independent contractor and found the taxpayer to be a common-law employee. It was clear he was under the control of his employer, and, since that employer was an arm of the U.S. government, he was not entitled to the foreign earned income exclusion. However, the Court found him not liable for the accuracy-related penalty because the taxpayer's belief he was an independent contractor and not an employee was reasonable under the circumstances and in light of the taxpayer's level of education and experience.

## The Treasury Department issued a newly revised U.S. Model Income Tax Convention (the "2016 Model")

The Model is the baseline text the Treasury Department uses when it negotiates tax treaties. The U.S. Model Income Tax Convention was last updated in 2006. "The 2016 Model is the result of a concerted effort by the Treasury Department to further our policy commitment to provide relief from double taxation and ensure certainty and stability in the tax treatment of treaty residents," said Deputy Assistant Secretary for International Tax Affairs Robert B. Stack. "The 2016 Model includes a number of provisions intended to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance," he added.

## Before the IRS can file a tax lien on a taxpayer, it must verify that the requirements of any applicable law or administrative procedure have been met.

In part, that requires Appeals to verify that a valid notice of deficiency was issued to the taxpayer. In *David Peterson* (T.C. Memo., 2016-17) the taxpayer requested a face-to-face collection due process (CDP) hearing and stated that he planned to: (1) verify that the IRS had followed proper procedures; (2) challenge the tax liability and accrued penalties; and (3) discuss collection alternatives. The taxpayer claimed he never received a notice of deficiency. The IRS Settlement Officer made an error and consulted the wrong certified mailing list and did not consult any documents that would confirm the mailing of a notice of deficiency. The Court found that Appeals did not satisfy the verification requirement of Sec. 6330(c)(1). The IRS argued this was a harmless error. The Court didn't agree because it was not clear from the record a notice of deficiency was mailed. The Court remanded the case to Appeals to verify proper mailing. 📧

## KEEPING YOU IN THE KNOW

JUST ONE CLAIM COULD PUT YOUR FIRM IN FINANCIAL JEOPARDY  
CAN YOUR FIRM AFFORD THE DEFENSE COSTS WITHOUT THIS COVERAGE?

### Cyber Liability Coverage

In today's data-driven world where sensitive information is stored and transferred electronically, organizations of all sizes are vulnerable to costly and damaging liabilities from data security breaches that are occurring at alarming, and growing, rates. According to the Privacy Rights Clearinghouse, U.S. businesses of all types suffered 2,372 breaches since 2005, compromising more than 515 million data records, including those containing customers' private information and companies' financials.

### Why you need protection

Whether a firm's data is compromised by a hacker, virus, cyber thief, or simply because of lost or stolen computers, laptops, flash drives and smart phones, data breaches can have serious ramifications. There are substantial financial costs involved in finding and remedying a breach, including the cost of notifying customers – now legally mandated by 46 states – possible fines and legal expenses. The company can also suffer immense damage to its reputation and from the interruption to business.

### Claim Example

#### Computer fraud

A hacker gained unauthorized access to an insured's accounts payable in the computer system. Using this access he altered bank routing information on outgoing payments, resulting in \$1 million being transferred to his personal account rather than to the entity which was supposed to be paid. Cyber Liability covers damages caused by the unauthorized entry of data into the insured's computer system.

### Coverages Provided

Security breach remediation and notification expense	Communications and media liability
Network and information security liability	Computer fraud
Regulatory defense expenses	Funds transfer fraud
Crisis management event expenses	E-commerce extortion
Computer program and electronic data restoration expenses	Business interruption and additional expense

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