

PENNSYLVANIA DEPARTMENT OF REVENUE
ISSUED: May 2, 2008

MISCELLANEOUS TAX BULLETIN 2008–01

Practice before the Board of Appeals (Board) pursuant to Article 27 of the Tax Reform Code (Act 119 of 2006)

1. Petitions for Reassessment.

- a. *General Rule.* A petition for reassessment (72 P.S. § 9703) may be filed with the Board within 90 days after the mailing date of the notice of the assessment. The petition shall include:
 - i. The tax type and tax periods included within the petition;
 - ii. The amount of tax (including any applicable interest or penalties) that the taxpayer claims to have been erroneously assessed; and
 - iii. The basis on which the taxpayer claims that the assessment is erroneous.
- b. *Special Rule for Shares Tax.* Section 1104.1 of the Act of April 9, 1929 (P.L. 343, No. 176), known as the Fiscal code, shall be the exclusive appeal method for assessments of the taxes imposed by Article VII or VIII of the Tax Reform Code.
- c. *Amendments.* A petition for reassessment may be amended to add additional facts or to contest additional portions of the amount of tax as assessed, above, at any time prior to the date that the Board's decision and order is issued.
- d. *Decision and Orders.* The Board's decision and order will review and address issues properly raised in the petition for reassessment. Any decision and order that increases the tax liability of the petitioner by \$300 or more will be sent by certified mail.
- e. *Items not properly raised.* If a petition for reassessment raises issues outside of the assessment, the Board, upon notification to the taxpayer or the taxpayer's authorized representative, will divide the issues into two petitions – a petition for reassessment and a petition for refund. The petition for refund will include all issues not properly before the Board in a petition for reassessment as permitted by Section 2703.

2. Petitions for Refunds.

- a. *General Rule.* If a taxpayer believes that there has been an overpayment of tax, a petition for refund may be filed in accordance with Section 3003.1 of the Tax Reform Code (72 P.S. § 10003.1) or Section 1104.1 of the Fiscal Code; provided however that the petitioner has paid the full amount of the tax (and any applicable interest and penalties) reported to the Department or to an agent or licensee of the Department authorized to collect taxes, for the tax period for which the refund is being requested. A petition for refund shall include:
 - i. The tax type and tax periods included within the petition;
 - ii. The amount of tax (including any applicable interest and penalties) that the taxpayer claims to have been overpaid. (72 P.S. § 9703)
- b. *Additional Assessment.* A petition for refund may be filed for tax reported and paid to the Department or to an agent or licensee of the Department authorized to collect taxes, even if an assessment for an additional amount of tax has been issued for the same tax period for which the refund is claimed; provided however, that the petitioner has paid the amount of tax reported. If the Board grants full or partial relief to the petitioner, the decision and order will indicate that a refund is due to the petitioner. The appropriate taxing bureau will review the taxpayer's account to determine whether an offset against any outstanding liability is required before the petitioner is issued a cash refund or a credit.

3. Applicability.

- a. *General rule.* This tax bulletin shall not apply to or affect any appeal involving assessments, determination or settlements of tax liability made by the Department prior to January 1, 2008. The procedures in place prior to January 1, 2008 shall apply until final resolution of the appeal by a decision of the Board, the Board of Finance and Revenue or a decision by a court of competent jurisdiction.
- b. *Rule for certain taxes.* The exclusive procedures for appeals of taxes imposed by Article 21 (inheritance and estate taxes) will remain governed by the provisions contained in Part 11 of that Article. Appeals of the taxes imposed by Chapters 90 (liquid fuels and fuels tax), 95 (taxes for highway maintenance & construction) and 96 (motor carriers road tax) of Title 75 of the Consolidated Statutes will

continue to be governed by the appropriate procedures contained in Title 75.

4. Effective Date. This bulletin shall take effect immediately.

EXAMPLES

Example 1

Taxpayer is issued a sales tax audit assessment on 4/30/08. Taxpayer timely files a petition for reassessment. In the petition, the taxpayer contests 20 of 50 assessed transactions claiming the manufacturing exemption. At the hearing on 11/5/08, Taxpayer amends its petition to contest an additional 20 transactions claiming the sale for resale exemption. The resale argument was not raised in the original petition. May the Board address the merits of the resale argument, even though it was not raised within the 90 day appeal period and the time for paying the assessment and filing a petition for refund under Section 3003.1(b) has expired?

ANSWER:

An amended petition for reassessment relates back to the date of the original filing when the claim or defense in the amendment arises out of the same transaction(s), issue(s), or item(s) of income, deduction or credit as the assessment issued by the Department.

If the additional 20 transactions were part of the original 50 assessed transactions, the amendment is allowed. Since the amendment relates back to the original filing date, the Board may address the additional 20 transactions in its decision and order.

Example 2

Taxpayer is a manufacturer and is assessed sales tax on utilities at 70% exempt/30% taxable. Taxpayer files a petition claiming that it is 80% exempt and only 20% taxable. Upon review the Board concludes that Petitioner is 60 % exempt and 40% taxable. How should the Board handle the increase in tax?

ANSWER:

Taxpayer has petitioned for reassessment of tax on utilities. The proper taxation of these transactions is raised by the petition. The Board may increase or decrease the assessment in its decision and order.

Example 3

Taxpayer receives a personal income tax assessment as the result of some unreimbursed expenses (UE) (line 2) being reduced. Taxpayer files a petition for a reassessment disagreeing with any reduction in UE. The Board determines that there is insufficient documentation to substantiate any of the UE deduction. Accordingly, the Board would disallow all of the UE expenses and thus increase the tax. How should the Board handle this situation?

ANSWER:

Taxpayer has petitioned for reassessment of the reduction of his unreimbursed expenses. The proper treatment of this deduction is raised by the petition. The Board may increase or decrease the assessment in its decision and order only in regard to the unreimbursed expenses disallowed by the assessment. See Commonwealth v. Rigling, 48 Pa. Commw. 303; 409 A.2d 936 (1980).

Example 4

Taxpayer receives a personal income tax assessment as the result of an increase in his business income (line 4) and the sale of property (line 5) from IRS cross match. Taxpayer files a petition disagreeing with the increase in both classes of income. How will the Board handle this situation?

ANSWER:

Taxpayer has petitioned for reassessment of the increases in tax resulting from the IRS cross match of business income and sale of property. The proper treatment of these items of income is raised in the petition. The Board may increase or decrease the assessment in its decision and order only in regard to the items of income that are the basis of the assessment.

Example 5

Taxpayer receives a personal income tax assessment because the Department believes that the taxpayer is a part year resident of Pennsylvania. Taxpayer files a petition for reassessment raising the issue of residency/domicile. The Board reviews the residency/domicile issue and determines taxpayer is a full time resident for the tax year and believes that the tax should be increased. How will the Board handle this situation?

ANSWER:

Taxpayer has petitioned for reassessment of the increase in personal income tax resulting from the review of his residency status. The issue of taxpayer's residency is raised by the petition. The Board may increase the assessment in its decision and order as it relates to the issue raised in the petition for reassessment – the taxpayer's residency status.

Example 6

Taxpayer receives an assessment that increases reported Capital Stock Tax because of a change in book income. Petitioner files a petition for reassessment with the Board. The Board reviews the book income issue presented in the petition and believes that there should be a further tax increase. How will the Board handle this situation?

ANSWER:

Taxpayer has petitioned for reassessment of an increase in Capital Stock Tax resulting from a specific book income adjustment. The petition contests this book income issue in the petition. The Board may increase or decrease the assessment in its decision and order only in regard to the specific book income adjustment upon which the assessment is made.

Example 7

Taxpayer receives an assessment increasing its corporate net income tax because the Department decreased the taxpayer's net operating loss. Petitioner files a petition for reassessment that

disagrees with the Department's decrease of the net operating loss and also raises issues that are outside the basis of the assessment, such as, reducing the numerator of its property factor for apportionment purposes. How should the Board handle this situation?

ANSWER:

Taxpayer has petitioned for reassessment of the tax increase resulting from an assessment. The Board may increase or decrease the assessment in its decision and order only in regard to the items that form the basis of the assessment – i.e. the decrease in the net operating loss.

Other issues raised by the taxpayer in its petition may not be considered as part of the petition for reassessment. A separate petition must be filed to raise a refund claim based upon the taxpayer's claim that the property factor should be reduced. Upon identification that the taxpayer has raised claims outside the assessment, the Board may afford the taxpayer the opportunity to file a separate petition for refund. In the alternative, upon notification to the taxpayer, the Board may divide the petition and docket two separate petitions – a petition for reassessment of the items that form the basis of the assessment and a petition for refund for other issues.