**PSTAP Committee on Cooperation with the Pennsylvania Department of Revenue**

**ANNUAL Q&A – December 1, 2015**

1. Please provide an updated contact list of Key Personnel.

Handouts were provided during the December 1, 2015 meeting.

1. 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.
2. 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.

1. 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

1. Can the taxpayer efile with a pdf copy of “substitute PA information?”

**Answer**

Refer to answer in 2b.

1. 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 lessor 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).

1. 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.

1. 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.

1. 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

1. 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.

1. 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.

1. 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.

1. 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.

1. 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 the there are any questions regarding the refund, please call 717-783-5250 and select option 7.

1. 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.

1. Does Pennsylvania Recognize Roth IRA conversations? 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.

1. 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.

1. 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.

1. 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.

1. 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.

1. 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.

1. 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 e-file, 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.

1. 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.

1. 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.

1. 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.

1. 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.

1. 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).

1. 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.

1. 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.

1. What is the Departments 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.



1. 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.”

1. 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.

1. 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.

1. 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 $164000 allocable to TP. The net trade /business loss of $64000 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.  $3072) 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.

1. 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.

1. 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.

**Board of Appeals: Additional Information Regarding Mail Dates**

If the envelope filing an appeal has a label from an USPS automated postal center or click and ship or a licensed USPS vendor (such as stamps.com or simple certified mail, BOA will use the date by which the mailing was accepted by USPS to be the mail date for purposes of determining jurisdiction.

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)

Copies of cases attached

 