

Comments of the Independent Regulatory Review Commission



Department of Revenue Regulation #15-463 (IRRC #3403)

Payment Methods for Obligations Due the Commonwealth

July 24, 2024

We submit for your consideration the following comments on the proposed rulemaking published in the May 25, 2024 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Revenue (Department) to respond to all comments received from us or any other source.

1. Section 5.12. Definitions. – Clarity.

EFT – electronic funds transfer

This definition lists four types of EFTs the Department will accept. The types are: automated clearing house debit or credit; debit or credit card; Fedwire or other wire transfer, but only with approval of the Department (Fedwire); and other EFT as designated in Department instructions or publications (other EFT). The definition states that virtual currency is not considered an EFT.

We have two concerns with the definition. First, the language regarding Fedwire is vague. Would a person seeking to pay an obligation via Fedwire need Departmental approval to do so, or is the requirement for Departmental approval only applicable to other types of wire transfers? In addition, the requirement to obtain Department approval is substantive. Section 2.11(e) of the *Pennsylvania Code and Bulletin Style Manual* states that substantive provisions may not be included in a definition. Therefore, the provision requiring Department approval should be moved to another section of the regulation. The final-form regulation should also be amended to set forth the process a person can use to obtain the required Departmental approval.

Second, the language regarding “other EFT” is not appropriate regulatory language because it would allow the Department to establish a requirement outside of the regulatory review process. Regulations establish a binding norm for the regulated community and have the full force and effect of law. The Department should either delete the reference to other wire transfers from the final-form regulation or specifically state what other types of wire transfers are acceptable.

Treasury - This term is not used in any section of the proposed regulation and should be deleted from the final-form regulation.

2. Section 5.13. Payments in general. – Clarity.

Subsection (a) states the following, “A person shall remit payment of an obligation due the Commonwealth at the location the Department shall designate in Department instructions or publications.” (Emphasis added.) The existing regulation that is being deleted through this rulemaking process used the term “taxpayer” instead of “person.” What is the reason for this change? It is our understanding that the term “person” includes individuals and various types of businesses and organizations with tax obligations. Therefore, we ask the Department to define the term “person” in § 5.12 of the final-form regulation. We note that “person” is used in other sections of this regulation.

3. Section 5.14. Payments required to be paid by EFT. – Clarity.

Subsection (a) states, in part, that “...a payment of \$1,000 or more toward an obligation due the Commonwealth must be remitted to the Department” by EFT or a certified or cashier’s check. Subsections (b) and (c) provide exceptions to Subsection (a). We have three concerns with this section of the regulation. First, the title of this section references payments required to be paid by EFT. However, Subsection (a) allows for payment by certified or cashier’s check. We suggest that the Department amend the title of this section to reflect that option. In addition, the Preamble submitted with the final-form regulation should be amended to reflect that EFT payments include certified or cashier’s checks.

Second, Section 5.3(f) of the existing regulation lists the specific types of taxes that are subject to EFT requirements. As noted above, the existing EFT regulations are being deleted and replaced through this rulemaking process. This proposed regulation does not list the types of taxes or obligations that will be subject to EFT requirements. We note that the Regulatory Analysis Form and Preamble submitted with this rulemaking list the taxes that are currently subject to EFT requirements and new tax obligations that will be subject to EFT requirements. To improve the clarity of the regulation and to assist the regulated community with its compliance obligations, we suggest that the final-form regulation be amended to include all the taxes or financial obligations that must be remitted through EFT.

Third, if a person has a financial obligation to a Commonwealth agency other than the Department of \$1,000 or more, must the payment be remitted to the Department? If not, Subsection (a) should be clarified to specify how those obligations should be paid, or, as suggested above, the specific obligations should be listed in the final-form regulation.

Third, the intent of Subsection (b) is to provide an exception for individual taxpayers. It reads as follows:

TRC section 332.1 payments. The following payments are subject to the electronic payment provisions of section 332.1 of the TRC (72 P.S. § 7332.1) and are not subject to the payment provisions in subsection (a):

(1) Form PA-40 (Personal Income Tax Return) and PA-41 (Fiduciary Income Tax Return) tax liability payments, including estimated payments and payments made with the return.

(2) Form PA-40 NRC (Nonresident Consolidated Income Tax Return) tax liability payments.

(3) Withholding payments required under sections 316.2, 324 and 324.4 of the TRC (72 P.S. §§ 7316.2, 7324 and 7324.4).

(4) Other payments made by individuals under sections 301—361 of the TRC (72 P.S. §§ 7301—7361).

As currently written, this subsection lacks clarity and would require taxpayers to either be familiar with or have the ability to research the various sections of the Tax Reform Code cited above. We suggest that the Department rewrite this subsection of the regulation in plain language to allow for easier compliance by the regulated community. We have a similar concern with Subsection (c), regarding inheritance tax payments.

4. Section 5.15. Date of receipt of rules. – Reasonableness.

We question the reasonableness of Subsection (b). It reads as follows:

The person with the obligation due the Commonwealth bears the burden of remitting the payment by the due date. The person with the obligation due the Commonwealth is accountable for errors committed by the person, the payor or third parties. These errors are not justification for the abatement of interest or penalty.

The Department states in the Preamble that, “Persons with obligations due the Commonwealth are notified they are responsible for their choice of payment and bear the burden of any late payments associated with their choice, even if the late payment is due to circumstances beyond the person’s control.”

Section 5.7 of the existing regulation provides several reasons why penalties on late payments may be abated and provides a six-month grace period for new EFT taxpayers to resolve problems with their payments. What is the Department’s reason for not including the provisions of § 5.7 in this regulation?

The Pennsylvania Institute of Certified Public Accountants submitted comments expressing concern with a lack of penalty abatement provisions in the regulation. We ask the Department to work with the regulated community on this issue as it develops the final-form regulation.