
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1541 Session of
2013

INTRODUCED BY PEIFER, MAHER, ADOLPH, DENLINGER, DUNBAR, GREINER,
BARRAR, K. BOYLE, CARROLL, CLYMER, CUTLER, EVANKOVICH,
EVERETT, FARINA, GROVE, HACKETT, C. HARRIS, F. KELLER,
M. K. KELLER, LAWRENCE, MARSICO, METCALFE, MICOZZIE, MILLARD,
MILNE, O'NEILL, PETRI, PICKETT, RAPP, REESE, SANKEY, SAYLOR,
SCAVELLO, SWANGER AND TALLMAN, JUNE 17, 2013

REFERRED TO COMMITTEE ON FINANCE, JUNE 17, 2013

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," further providing for definitions and for
11 petition for reassessment; providing for the Board of Finance
12 and Revenue; further providing for review by the board; and
13 making repeals.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Section 2701 of the act of March 4, 1971 (P.L.6,
17 No.2), known as the Tax Reform Code of 1971, added October 18,
18 2006 (P.L.1149, No.119), is amended to read:

19 Section 2701. Definitions.

20 The following words and phrases when used in this article
21 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Board." The Board of Finance and Revenue.

3 "Department." The Department of Revenue of the Commonwealth.

4 "Party." The term includes both a taxpayer and the
5 department.

6 "Petitioner." A taxpayer.

7 "Return." The term includes a tax report.

8 "Secretary." The Secretary of Revenue of the Commonwealth.

9 Section 2. Section 2702 of the act, amended July 2, 2012
10 (P.L.751, No.85), is amended to read:

11 Section 2702. Petition for reassessment.

12 (a) General rule.--A taxpayer may file a petition for
13 reassessment with the department within 90 days after the
14 mailing date of the notice of assessment.

15 (a.1) Petition for review of tax adjustment not resulting in
16 an increase in liability.--

17 (1) A petition for reassessment under subsection (a) may
18 include a request for review of the department's adjustment
19 of a tax item if the adjustment did not result in a tax
20 increase in the year of adjustment but may increase the tax
21 due in a subsequent year. A request for review may include:

22 (i) Recalculation of the taxpayer's corporate net
23 income tax net loss under Article IV as adjusted by the
24 department.

25 (ii) Recalculation of the taxpayer's capital stock
26 franchise tax average net income under Article VI as
27 adjusted by the department.

28 (iii) Recalculation of the personal income tax basis
29 of an asset under Article III as adjusted by the
30 department.

1 (2) A taxpayer must file a petition for review under
2 this subsection within 90 days of the mailing date of the
3 department's notice of adjustment. A taxpayer's failure to
4 file a petition under this subsection shall not prejudice the
5 taxpayer's right to file a petition in a subsequent tax year.

6 [(b) Special rule for shares taxes.--Notwithstanding any
7 provision of law to the contrary, section 1104.1 of the act of
8 April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, shall
9 constitute the exclusive method by which an appeal from the
10 assessment of the tax imposed by Article VII or VIII may be
11 made.]

12 (b.1) Application to shares taxes.--A petition for
13 reassessment under subsection (a) may include a request for
14 review of the assessment of the tax imposed by Article VII or
15 VIII.

16 (c) Application to inheritance and estate taxes.--This
17 section shall not apply to the taxes imposed by Article XXI.
18 Part XI of Article XXI shall provide the exclusive procedure for
19 protesting the appraisement and assessment of taxes imposed by
20 Article XXI.

21 Section 3. The act is amended by adding a section to read:
22 Section 2703.1. Board.

23 (a) Membership.--Notwithstanding any other law to the
24 contrary, the Board of Finance and Revenue shall consist of the
25 the following members:

26 (1) the State Treasurer, who shall serve as an ex
27 officio member or the State Treasurer's designee; and

28 (2) two members nominated by the Governor and approved
29 by the Senate.

30 The State Treasurer or the State Treasurer's designee, but not

1 both, shall have one vote on the board and the other two members
2 shall each have one vote on the board.

3 (b) Terms.--Members nominated by the Governor and approved
4 by the Senate shall serve an initial term of four and six years
5 respectively as designated by the Governor at the time of
6 nomination and until their successors have qualified. After the
7 initial terms, members nominated by the Governor and approved by
8 the Senate shall serve for a term of six years and until a
9 successor has qualified.

10 (c) Member Qualifications.--Each member nominated by the
11 Governor and each member who is a designee of the State
12 Treasurer must satisfy and maintain the following criteria:

13 (1) Be a citizen of the United States.

14 (2) Be a resident of the Commonwealth of Pennsylvania.

15 (3) Be an attorney in good standing before the Supreme
16 Court of Pennsylvania or be a certified public accountant in
17 good standing before the State Board of Accountancy.

18 (4) Have at least ten years of experience in a position
19 requiring substantial knowledge of Pennsylvania tax law.

20 (5) Devote full time to the duties of the office and,
21 while a member, may not engage in any other gainful
22 employment or business, nor hold another office or position
23 of profit in a government of this Commonwealth, any other
24 state or the United States. Nothing in this section may be
25 interpreted to prohibit members of the board from serving in
26 the National Guard and the reserves of the armed forces of
27 the United States while a member of the board.

28 (d) Initial term.--The initial term of the members nominated
29 by the Governor and approved by the Senate shall begin January
30 1, 2014.

1 (e) Renomination.--A member may be renominated upon the
2 expiration of the member's term.

3 (f) Vacancies.--Any vacancy shall be filled for the
4 unexpired term in the same manner as set forth in this section.

5 (g) Salary.--Each of the members of the board who are
6 nominated by the Governor and approved by the Senate shall
7 receive an annual salary commensurate with the annual salary
8 received by the State Treasurer.

9 (h) Operation of Board.--Two members of the board shall
10 constitute a quorum. The board shall elect a secretary, who need
11 not be a member of the board. The State Treasurer shall be the
12 chairman of the board and shall, in consultation with the other
13 members, select and appoint the counsel, clerks and other
14 employees as may be necessary to administer the responsibilities
15 of the board and for the proper conduct of its work.

16 (i) Oath of office.--Before entering upon the duties of
17 office, a member shall take and subscribe to an oath or
18 affirmation to faithfully discharge the duties of the office.

19 (j) Actions of board.--The board may take any action that is
20 necessary to properly exercise the duties, functions and powers
21 given the board upon the effective date of this section.

22 (k) Need for majority.--The powers and duties vested in and
23 imposed upon the board shall in all cases be exercised or
24 performed by a majority of the board.

25 (l) Powers.--The board is authorized to promulgate and adopt
26 all rules, regulations and forms as may be necessary or
27 appropriate.

28 Section 4. Section 2704 of the act, added October 18, 2006
29 (P.L.1149, No. 119), is amended to read:
30 Section 2704. Review by board.

1 (a) Petition for review of a decision and order.--Within 90
2 days after the mailing date of the department's notice of
3 decision and order on a petition filed with it, a taxpayer may
4 petition the board to review the decision and order of the
5 department.

6 (b) Petition for review of denial by department's failure to
7 act.--A petition for review may be filed with the board within
8 90 days after the mailing date of the department's notice to the
9 petitioner of its failure to dispose of the petition within the
10 time periods prescribed by section 2703(d) or (e).

11 (c) Contents of petition.--

12 (1) A petition for review of the department's decision
13 and order on a petition for reassessment shall state all of
14 the following:

15 (i) The tax type and tax periods included within the
16 petition.

17 (ii) The amount of the tax that the taxpayer claims
18 to have been erroneously assessed.

19 (iii) The basis upon which the taxpayer claims that
20 the assessment is erroneous.

21 (2) A petition for review of the department's decision
22 and order on a petition for refund shall state all of the
23 following:

24 (i) The tax type and tax periods included within the
25 petition.

26 (ii) The amount of the tax that the taxpayer claims
27 to have been overpaid.

28 (iii) The basis of the taxpayer's claims for refund.

29 (2.1) All petitions for review shall identify a mailing
30 address to which all correspondence and decisions can be

1 mailed and received and, if so desired, an e-mail address to
2 which all correspondence and decisions can be electronically
3 sent. The board shall be permitted to rely upon the accuracy
4 of the address provided by the taxpayer, and it shall be the
5 duty of the taxpayer to notify the board if there is any
6 change in an address provided to the board.

7 (3) A petition may satisfy the requirements of
8 paragraphs (1)(iii) or (2)(iii) by incorporating by reference
9 the petition filed with the department in which the basis of
10 the taxpayer's claim is specifically stated.

11 (d) Affidavit.--A petition shall be supported by an
12 affidavit by the petitioner or the petitioner's authorized
13 representative that the petition is not made for the purpose of
14 delay and that the facts set forth in the petition are true.

15 (d.1) Representation.--

16 (1) Appearances in tax appeal proceedings conducted by
17 the board may be by the taxpayer or by an attorney,
18 accountant or other representative provided the
19 representation does not constitute the unauthorized practice
20 of law as administered by the Pennsylvania Supreme Court.

21 (2) The department shall have the right to be
22 represented in all tax appeal proceedings before the board.
23 The secretary, or the secretary's designee, shall notify the
24 board as to whom copies of all communications, notices and
25 decisions should be sent on behalf of the department.

26 Communications with the department's appointed representative
27 shall be by electronic means.

28 (d.2) Evidence.--The petitioner and the department shall be
29 entitled to present oral and documentary evidence in support of
30 their positions. The petitioner and the department will be

1 provided the opportunity to comment upon any submitted evidence
2 and provide written and oral argument to support their
3 positions.

4 (d.3) Ex parte communications.--The members or staff of the
5 board shall not participate in any ex parte communications with
6 the petitioner or the department or their representatives
7 regarding the merits of any tax appeal pending before the board.
8 Any information or documentation provided to the members or
9 staff of the board by the petitioner or the department or their
10 representatives in a communication regarding the merits of any
11 appeal pending before the board shall also be promptly provided
12 to the other party.

13 (d.4) Access to department's database.--The board shall be
14 provided access to the department's records relating to a
15 petition before the board.

16 (d.5) Request for hearing.--Upon written request of the
17 petitioner or the department or when deemed necessary by the
18 board, the board shall schedule a hearing to review a petition.
19 The petitioner and the department shall be notified by the board
20 of the date, time and place where the hearing will be held.

21 (d.6) Hearing practice.--Hearings shall be open to the
22 public and shall be conducted in accordance with such rules of
23 practice and procedure as the board may adopt and promulgate. On
24 request of either party or on its own accord, the board may
25 conduct part or all of the hearing as an executive session to
26 the extent that if held in public it would violate a lawful
27 privilege or lead to the disclosure of information or
28 confidentiality protected by law.

29 (d.7) Compromise settlement.--The board shall establish
30 procedures to facilitate the compromise settlement of issues on

1 appeal. A compromise settlement shall be ordered by the board
2 only with the agreement of both the petitioner and the
3 department. The provisions of section 2707(c) shall be
4 applicable to compromise settlements under this section.

5 (e) Decision and order.--The board shall issue a decision
6 and order in writing disposing of a petition on any basis as it
7 deems to be in accordance with law and equity. A decision and
8 order shall include the conclusions reached and the facts on
9 which the decision was based. The decision and order shall be
10 approved by a majority of the board. A copy of the decision and
11 order and any dissenting opinion shall be sent to the petitioner
12 utilizing the method identified by the petitioner and by
13 electronic means to the department.

14 (f) Time limit for decision and order.--

15 (1) Except as provided in [paragraph] paragraphs (2) and
16 (3), the board shall issue a decision and order disposing of
17 a petition within six months after receipt of the petition.
18 Upon the request of the petitioner or the department, the
19 board may extend the time period for the board to dispose of
20 the petition for one additional six-month period.

21 (2) If at the time of the filing of a petition
22 proceedings are pending in a court of competent jurisdiction
23 in which any claim made in the petition may be established,
24 the board, upon the written request of the petitioner, may
25 defer consideration of the petition until the final judgment
26 determining the question or questions involved in the
27 petition has been decided. If consideration of the petition
28 is deferred, the board shall issue a decision and order
29 disposing of the petition within six months after the final
30 judgment.

1 (3) If a matter pending before the board would be
2 materially affected by an audit or other proceeding before
3 the Internal Revenue Service or by an audit or other
4 proceeding conducted by another state, the board, upon the
5 written request of the petitioner, may defer consideration of
6 the petition until such time as the other audit or proceeding
7 is completed. If consideration of the petition is deferred,
8 the board shall issue a decision and order disposing of the
9 petition within six months after the audit or other
10 proceeding is final.

11 (g) Failure of board to take action.--The failure of the
12 board to dispose of the petition within the time period provided
13 for by subsection (f) shall act as a denial of the petition.
14 Notice of the board's failure to take action and the denial of
15 the petition shall be issued to the petitioner and the
16 department. The mailing date of the notice shall begin the time
17 for filing any appeal.

18 (h) Publication of decisions.--

19 (1) The board shall publish each decision, along with
20 any dissenting opinion, which grants or denies in whole or in
21 part a petition for review or a petition for refund.

22 (2) Prior to publication of a decision, the board shall
23 edit the decision to delete the following:

24 (i) Information identified by the petitioner to be a
25 trade secret or confidential proprietary information as
26 defined in section 102 of the act of February 14, 2008
27 (P.L.6, No.3), known as the Right-to-Know Law.

28 (ii) An individual's Social Security number, home
29 address, driver's license number, personal financial
30 information, home, cellular or personal telephone

1 numbers, personal e-mail addresses, employee number or
2 other confidential personal identification number and a
3 record identifying the name, home address or date of
4 birth of a child seven years of age or younger.

5 (iii) Specific dollar amounts of tax.

6 (iv) Other permitted exceptions in accordance with
7 such rules of practice and procedure as the board may
8 promulgate and adopt.

9 (3) The disclosure of any remaining information,
10 including the name of the taxpayer and the nature of the
11 taxpayer's business, shall be deemed not to violate any
12 provision of law to the contrary, including:

13 (i) Sections 274, 353 and 408.

14 (ii) 18 Pa.C.S. § 7326 (relating to disclosure of
15 confidential tax information).

16 (iii) Section 731 of the act of April 9, 1929
17 (P.L.343, No.176), known as the Fiscal Code.

18 (4) Decisions shall be indexed and published on a
19 publicly accessible Internet website maintained by the board.

20 (i) Appeals.--An appeal from a decision of the board shall
21 be to the Commonwealth Court and shall be de novo.

22 Section 5. Repeals are as follows:

23 (1) Section 207 and 302 of the act of October 15, 1980
24 (P.L.950, No.164), known as the Commonwealth Attorney's Act,
25 shall be repealed insofar as they are inconsistent with the
26 addition of section 2703.1 of the act.

27 (2) The General Assembly declares that the repeal under
28 paragraph (3) is necessary to effectuate the amendment of
29 section 2702 of the act.

30 (3) Section 1104.1 of the act of April 9, 1929 (P.L.343,

1 No.176), known as the Fiscal Code, is repealed.

2 (4) The General Assembly declares that the repeal under
3 paragraph (5) is necessary to effectuate the amendment of
4 section 2704(h) of the act.

5 (5) Section 503.1 of the Fiscal Code is repealed.

6 (6) The General Assembly declares that the repeal under
7 paragraph (7) is necessary to effectuate the addition of section
8 2703.1 of the act.

9 (7) Section 405 of the act of April 9, 1929, (P.L.177,
10 No.175), known as the Administrative Code is repealed.

11 Section 6. The act shall apply as follows:

12 (1) The amendment of sections 2701, 2702 and 2704 of the
13 act shall apply to:

14 (i) All petitions filed with the board and all other
15 business of the board on or after April 1, 2014.

16 (ii) All petitions filed with the board prior to
17 April 1, 2014, that have not been the subject of a final
18 and irrevocable decision by the board as of that date, to
19 the extent this act can be made applicable to those
20 petitions.

21 (2) Section 2703.1 of the act shall apply on April 1,
22 2014, or when the two board members referred to in section
23 2703.1(a)(2) have been sworn in, whichever is later. The
24 members of the board in office before April 1, 2014, shall
25 continue their terms until a successor is appointed.

26 Section 7. This act shall take effect April 1, 2014.