



Pennsylvania Institute of Certified Public Accountants
(PICPA)

Testimony

by

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to

House Finance Committee
Pennsylvania House of Representatives

Public Hearing on

Changes to the Board of Finance and Revenue (BF&R)

Appeal Process (House Bill 1994)

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Good morning, Chairmen Samuelson and Greiner and members of the Pennsylvania House Finance Committee. My name is Jay Brower, and I am a CPA and managing director of corporate and individual tax compliance and research services at CBIZ Marks Paneth in Philadelphia. I have over 30 years of extensive professional experience in federal, state, and local tax matters, and a deep understanding of complex tax regulations and compliance. In my role as chair of the Pennsylvania Institute of Certified Public Accountants' (PICPA) State Taxation Steering Committee, I represent a broad segment of state tax thought leaders across Pennsylvania, advocating for fair and effective tax policy and providing strategic leadership on key state taxation issues.

The PICPA is a professional CPA association of nearly 20,000 members working to improve the profession and serve the public interest in Pennsylvania. Founded in 1897, the PICPA is the second-oldest CPA organization in the United States, as well as one of the largest. Membership includes practitioners in public accounting, education, government, and industry.

Thank you for the opportunity to appear before you to express PICPA's strong support for House Bill 1994 and its companion bill, Senate Bill 1051. The legislation builds on the success of Act 52 of 2013 - which the PICPA supported - reconstituting the Board of Finance and Revenue (BF&R) from a six-member board to three full-time members, including two appointed by the governor and the state treasurer. The centerpiece of both bills is the establishment of a formal settlement conference process after a tax appeal is filed with the BF&R, which is under the authority of the state Treasury Department. The BF&R is the second level of administrative tax appeals in Pennsylvania. Participation in the settlement conference process will be voluntary and either party may opt out. The objective of this new process is to reduce the number of tax cases appealed to the Commonwealth Court, saving both the Commonwealth and taxpayers time and money. House Bill 1994 and, to a lesser extent, Senate Bill 1051 provide additional procedural changes that will benefit taxpayers, especially individuals and smaller taxpayers.

One of the PICPA's Guiding Principles of Good Tax Policy is effective tax administration. This principle is rooted in the need to keep costs associated with collecting a tax at a minimum for both the government and taxpayers. Minimizing administrative and compliance costs is critical. These costs include the administrative cost to the government that is influenced by the number of revenue officers necessary to administer the tax. Consideration of taxpayer compliance costs is also a must. This principle is closely related to the principle of simplicity. The more complex a tax, the greater the costs of government administration and the greater the

compliance costs for taxpayers to determine and report their tax liability. Consideration of appropriate use of secure technology is also necessary. The benefits of any reform should outweigh the costs of adoption, including transitional and implementation costs.

As you are aware, the tax appeals process plays a critical role in ensuring that both businesses and individuals only pay the tax that they are required to pay under the law. The process requires that a taxpayer be afforded the opportunity to present his or her claim fully in a timely and cost-effective manner before an impartial decision-maker. The process also must avoid procedural pitfalls that prevent a taxpayer from presenting that claim.

Under the current administrative appeals system, there is no formal process for a taxpayer and Department of Revenue to sit down with an impartial conferee, present all relevant evidence and arguments, and attempt to settle a case before it reaches Commonwealth Court. As a result, there are too many cases that otherwise should be resolved at the administrative appeals levels that are ending up in Commonwealth Court. Conversely, the cost to appeal a case to Commonwealth Court precludes some taxpayers who otherwise have meritorious claims from obtaining relief.

The current system presents significant challenges to a taxpayer who seeks a timely, impartial, and cost-effective resolution of a tax appeal. Appeals to the Commonwealth Court take many years to resolve and impose significant costs, all of which negatively impact Pennsylvania's taxpayers, including businesses.

House Bill 1994, and its companion Senate Bill 1051, would amend Article XXVII of the Tax Reform Code and establish a voluntary settlement conference process after an appeal is filed with the BF&R. Many states have enacted procedures for a taxpayer to attempt to informally resolve a tax dispute at different stages of the audit and appeals process.

Under both bills, either party may request, or the BF&R may refer, a case to a settlement conference before an impartial and unconflicted settlement officer. A party must file a request within 30 days of the filing of a petition for review. Participation is voluntary and either party may opt out. To protect the integrity of the settlement process, a settlement officer must be an attorney or certified public accountant with substantial knowledge of Pennsylvania tax law and may not be an employee of the Department of Revenue, BF&R, or the Treasurer, other than in the capacity as a settlement officer. The Treasurer will determine the compensation of the settlement officer. The bills protect the settlement officer from certain legal liability

that may arise from his or her role as a settlement officer and from having to testify in any subsequent legal proceeding about the settlement conference.

The settlement officer will be responsible for scheduling and conducting the conference. The BF&R will not be permitted to participate in the settlement conference, or otherwise be apprised of the discussions.

Either the party or a representative of a party may attend the settlement conference. The settlement conference will be conducted in an informal manner with the purpose of facilitating a settlement between the parties. To facilitate settlement discussions, any confidential information disclosed by a party in the course of a settlement conference shall not be divulged by the settlement officer. In addition, the bills limit a party's use of certain information disclosed at a settlement conference in future proceedings. The settlement officer must return to each respective party all documents containing confidential information after the case is settled or the BF&R mails its order deciding the case.

The settlement officer shall evaluate the merits of a dispute during the settlement conference and communicate them to the parties. The settlement officer does not have the authority to impose a settlement. After the conference, the settlement officer may continue to communicate with the parties for a period of up to 30 days to facilitate a settlement.

At the conclusion of the settlement conference process, the parties either will present a settlement agreement to the BF&R for approval or, if a settlement cannot be reached, the case will be scheduled for hearing under existing rules and procedures.

The proposed legislation provides a structured, yet adaptable, process that aims to resolve disputes efficiently without the need to extend the current statutory period imposed on the BF&R to resolve an appeal. Under current law, the BF&R has six months from the date an appeal is filed to decide a case and may extend that period for up to another six months. The proposed legislation provides strict timelines for requesting a settlement conference, objecting to participate in a settlement conference, referring a case to a settlement conference, scheduling and having a settlement conference, and either reaching a settlement and reporting it to the BF&R or scheduling a hearing if a settlement is not reached. Under the timeframes set forth in the bills, the BF&R still should be able to resolve a case referred to a settlement conference within one year of an appeal being filed.

The BF&R estimates that the cost of implementing the settlement conference process would be around \$500,000. It is anticipated that participants in the settlement

conference process will include small taxpayers appealing assessed penalties and payment-related issues, as well as businesses appealing sales and use tax assessments or denied refund claims involving hundreds of transactions.

In conclusion, both House Bill 1994 and Senate Bill 1051 promote a more flexible, efficient, and fair tax dispute resolution process by introducing a settlement conference option that offers a constructive alternative to full litigation. The PICPA strongly encourages the Committee to consider this legislation, as it provides a valuable mechanism to expedite and simplify tax dispute resolution in Pennsylvania.

Thank you for considering my testimony, and I am available to answer any questions you may have.