

Testimony Before the House Finance Committee
Department of Revenue
Wednesday, September 25, 2024

Chairman Samuelson, Chairman Greiner, and members of the Committee, thank you for the opportunity to meet with you today. I am Amy Gill, Deputy Secretary of Tax Policy for the Department of Revenue (Department). On behalf of Secretary Patrick Browne, I am pleased to discuss the proposed changes to the appeal process for the Department's Board of Appeals and the Pennsylvania Treasury's Board of Finance and Revenue.

The tax appeals process in Pennsylvania has four stages that are ordered in a sequence from the first level of review to the final level of review: (1) the Board of Appeals; (2) the Board of Finance & Revenue; (3) Commonwealth Court; and (4) the PA Supreme Court. Each step in the appeals process has distinct procedures and characteristics that help to ensure that due process is provided to taxpayers effectively and efficiently.

The goal of the tax appeals process should be to resolve tax controversies accurately, quickly, and at the lowest level possible. Any proposed changes to one level of the tax appeals process should be considered in the context of the collective impact on the tax appeals system, as a change in one level will inherently have effects on all levels of the system.

In the current draft of HB 1994, there are a few items that are of concern to the Department. One is the proposed settlement process. While it is true that under current law the Board of Finance and Revenue has no authority to direct a settlement process, **there is a process already in place that allows the board to facilitate compromises on tax appeals.** This bill proposes to remove that existing procedure and replace it with a new process. At the very least, these two processes should exist to provide options for potential resolution.

Section 2704(d.7) of the Tax Reform Code of 1971 states that "The board shall establish procedures to facilitate the compromise settlement of issues on appeal. A compromise settlement shall be ordered by the board only with the agreement of both the petitioner and the department. The provisions of section 2707(c) shall be applicable to compromise settlements under this section."

Compromises handled by the Board of Finance and Revenue are permitted on all tax types, except for gaming appeals and certain 'all or nothing' situations like Sales Tax License Revocations, Charitable Exemption Denials, Property Tax Rent Rebate eligibility, and also Jeopardy Assessments.

The Department commends the Board of Finance and Revenue for clearly publicizing the existing compromise process on its website as a downloadable handout called the "Board

Encourages Compromises.” This handout clearly explains the benefits and current procedures for requesting a compromise and is attached to this testimony for reference.

As a result of the Board of Finance and Revenue’s active and public support for the existing compromise process, in 2024 year-to-date, the Board of Finance and Revenue used the existing compromise process to resolve 300 tax appeals out of 1,808 total tax appeals resolved. This represents 16 percent of the cases closed this year at the Board of Finance and Revenue. HB 1994 PN 2528 eliminates this compromise process. The current process should stay in place, as it is used and is understood by tax practitioners and taxpayers.

While this proposal would give the Board of Finance and Revenue the authority to direct a settlement process, there is no requirement that either party must agree to a resolution during the settlement process. Without some type of binding agreement, the settlement may not occur. The case would revert back to the regular timeline and lengthen the process to close the appeal.

While the current compromise process at the Board of Finance and Revenue utilizes the existing staff from both the Department of Revenue and the Board of Finance and Revenue, this proposed settlement process allows for an employee of the board or a third party to mediate settlements. If an additional settlement process is put into place, the Department believes that these settlement mediations should be conducted by a true third-party. This is why the Department has previously suggested alternative approaches, including the use of the Office of Taxpayer Rights Advocate, which was created by the General Assembly to resolve issues between the Department and taxpayers.

Furthermore, there should be a reporting requirement to ensure that the settlement process is working as intended.

In addition to the settlement process, the Department has serious concerns regarding the open-ended extension for appeals contained in Section 2704 (a.1). There are very little restrictions in this language, and it opens the possibility of older issues being brought up long after the existing statute of limitations has expired. Our Supreme Court has noted that such limitations periods are absolute conditions to the right to obtain relief and are necessary to avoid great uncertainty in the budgetary planning and fiscal affairs of the Commonwealth.

Under HB 1994 PN 2528, the Department estimates an unknown fiscal impact from these cases being brought up past their statute of limitation. **In 2023, the Board of Finance and Revenue denied jurisdiction on 496 appeals, out of a total of 2,757 appeals received. Of those appeals, the majority were corporate tax appeals, and fewer than 30 percent were from individual taxpayers.** The department suggests that this language be tightened to extend the current 60 days for most tax types to 90 days only.

The Department of Revenue is very supportive of changes to the tax appeals process that serve the goal of resolving tax appeals accurately, efficiently, and cost-effectively, at the lowest level possible. The Department is committed to continue working with the various stakeholders to find positive and productive ways to improve the tax appeals process at all levels. We welcome the opportunity to work with the members of the Committee and answering any questions you may have. Thank you for the opportunity to provide testimony on behalf of the Department of Revenue.