

Compromises to be Permitted at Board of Appeals: Major Announcement Alters Decades-Long Practice

November 30, 2011

The Pennsylvania Department of Revenue has announced a change in tax appeals procedure potentially offering taxpayers much quicker resolution of tax disputes, but requiring thorough preparations by taxpayers and their representatives at the first administrative appeal level.

In a bulletin issued November 16, 2011, the Department announced that, effective immediately, the Board of Appeals will have the power to implement compromises of most types of tax appeals filed with the Board (including Corporate Net Income Tax, Capital Stock/Franchise Tax, Personal Income Tax, Sales and Use Tax and Gross Receipts Tax appeals). *Miscellaneous Tax Bulletin 2011-02*. The stated goal for the Department's implementation of compromise procedures at the Board of Appeals is to provide an "impartial, timely and inexpensive resolution of tax disputes." There will be two bases for compromise: (1) doubt as to liability; and/or (2) the promotion of effective tax administration.

Under the previous system, taxpayers were not able to negotiate settlements of state tax liabilities until after the filing of an appeal with the Commonwealth Court, which meant that taxpayers had to pursue appeals before two administrative boards (the Department of Revenue's Board of Appeals and the Board of Finance and Revenue) before they had any chance to resolve an appeal by negotiated settlement. However, one of the advantages of the prior system was the involvement of the Attorney General's Office in negotiations at the court level. While the AG's Office represented the Commonwealth's interest, they brought a fresh viewpoint to the table, not colored by being involved in making the Department's initial determination on an issue. The AG's Office will not be involved in negotiations at the Board of Appeals level but, presumably, if an agreement is not reached at the Board level and further appeals are taken, negotiations with the AG's Office may ensue after appeal to court.

While the Board of Appeals' hearing officers will be authorized to conduct informal settlement conferences to facilitate settlement discussions, the Department may be represented in those conferences. And, any compromise involving less than \$50,000 of relief will require approval by a Deputy Chief Counsel of the Department while any settlement providing more than \$50,000 of relief will require the approval of the Department's Chief Counsel and a designee for the Secretary of Revenue.

If negotiations under the prior system are any indication, one may expect the Revenue Department's participant in negotiations at the Board of Appeals level often to take aggressive positions on legal issues. Obtaining a reasonable settlement will require

taxpayers and their representatives to have a complete understanding of the legal arguments applicable to the facts of their cases and to have a full sense of the strengths and weaknesses of their position. Negotiations may require extensive back and forth about the merits of the arguments advanced by both sides.

We regard the Department's initiative as a major improvement in the Commonwealth's appeals process because it will provide taxpayers with the possibility of negotiating early in the appeals process. However, taxpayers and their representatives will have to be prepared to evaluate whether an early settlement makes sense in a particular case based on the terms on which the Department is willing to settle the appeal at the Board level.

The members of McNees Wallace & Nurick's State and Local Tax Group have extensive experience both in handling matters before the Department's Board of Appeals and in negotiating settlements of tax appeals. If your company is considering an appeal of a Pennsylvania tax matter and wishes to discuss the new appeal procedure, please contact one of the members of the McNees SALT group.

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