Legislative Proposal – Board of Finance & Revenue

Late Filed Appeals

Problem

- BF&R has limited discretion to consider appeals that are filed beyond the statutory 60-day period following a final Department of Revenue decision. As a consequence, this limitation can cause inequitable results involving individual taxpayers.

Proposed Solution

- Amend the BF&R statute to permit the board to accept a late filed application upon a finding that (1) there has been good cause shown by the taxpayer; and (2) that permitting the late filed appeal will not prejudice any other party.

Settlement Mediation

Problem

- BF&R receives approximately 4.2 thousand appeals annually. Statutorily, the Board is mandated to resolve each appeal within 6 months of its filing, otherwise the underlying decision from the Department of Revenue is upheld.

- A significant number of appeals could be resolved without a final Board decision, but through a mediated settlement between the parties. Currently, only about 13% of eligible appeals are resolved through settlement prior to appeal before Commonwealth Court.

- Most settled resolutions are completed only <u>after</u> a BF&R decision – resulting in little efficiency benefit to either the taxpayer or BF&R.

- The Board has no statutory authority to direct a mediation process.

Proposed Board-Directed Settlement Mediation

- The Board or either the Department of Revenue or the taxpayer may request a settlement conference.
- The Board would be permitted to defer consideration of the appeal until conclusion of the settlement conference.
- The taxpayer may decline to participate in a settlement conference after providing written notice to the Board.
- Settlement conference is to be held within 60 days of board referral of the appeal to settlement conference.

Board Oversight of Mediation Process

- The Board shall appoint one or more settlement officers.
- The settlement officer may be either an employee or independent contractor retained by the Board.
- Settlement officer must be either an attorney or CPA with "significant experience in a position requiring substantial knowledge of Pennsylvania tax law".
- May not be employed by the Department of Revenue, Treasury or the Board, other than as a settlement officer.

Mediation Process

- Parties may choose to be represented by counsel.
- Settlement conferences are to be conducted in an informal manner.
- Settlement cannot be imposed, recommendations may be made to parties, but parties must agree for settlement to be presented to the Board for approval.
- Settlement conference can be terminated by either party.
- Board proceedings are to resume 21 days following notice of termination of settlement conference without resolution.

Cost (assumes no cost to parties)

- Estimated that as many as 500 appeals annually could benefit from mediated settlement process.
- Assuming an average of 3 hours per appeal, total mediation hours for 500 annual appeals could total 1,500 hours.
- A projected cost of $300 per hour for experienced tax or CPA mediator, total annual cost is estimated to be $450,000 per year.
- Board, which assigns or approves the number of cases submitted for mediated settlement conferences, can control expenditures by limiting mediation case flow.

COMPROMISES

The Board of Finance and Revenue (BFR) encourages taxpayers to settle their appeal by negotiating a compromise with the Department of Revenue (the Department). There are many benefits to taxpayers and the Department from resolving appeals through a negotiated compromise rather than having BFR issue a decision on the merits:

> Time – If a taxpayer or the Department disagrees with a BFR decision, an appeal must be filed with Commonwealth Court. It is rare for tax cases filed in Commonwealth Court to be settled within two years of filing (much longer if the parties are unable to settle the case). By compromising a petition while it is pending at BFR, the parties avoid protracted litigation.
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> Expense – In most cases, taxpayers must hire legal representation for Commonwealth Court tax appeals. In addition, there is a filing fee for tax appeals filed with Commonwealth Court. By compromising a petition while it is pending at BFR, the parties avoid such expenses, which often are substantial.
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> Finality – Taxation contains a fair amount of uncertainty. By compromising a petition through a negotiated compromise, each party can claim a partial victory on what may be a questionable issue, and avoid the inherent risks of an "all or nothing" decision.

COMPROMISE PROCEDURE

Pursuant to BFR regulations, taxpayers wishing to compromise their dispute should submit to BFR and to the Department a completed BFR Request for Compromise Form within 30 days from the petition filing date. Please note that the BFR petition form also provides, in section 5, a place for a taxpayer to indicate that it requests a compromise. BFR regulations also provide that if the parties fail to agree to a compromise within 90 days from the petition filing date, BFR will schedule the petition for a hearing, if requested, and for a decision on the merits.

In addition to initially notifying BFR and the Department that a compromise is requested, **the taxpayer must also directly contact the Department counsel** assigned to the matter to provide Department counsel with a detailed compromise request and any other requested information. (A taxpayer can contact BFR to learn who the assigned Department counsel is.) Failure to contact Department counsel will result in the Department not acting on the compromise request. All compromise negotiations take place directly between the taxpayer and Department counsel. BFR is not involved with those negotiations.

Even if a taxpayer does not request a compromise within the 30-day period or the parties did not reach a final compromise agreement within the 90-day period, BFR usually will permit the parties to continue compromise negotiations after the 90-day period. However, please note that if the parties are attempting to finalize a compromise beyond the 90-day period, the parties should notify BFR of that fact and keep BFR advised on the status of those negotiations (or the fact that the parties have been unable to agree to a compromise) at least every 30 days. Failure of the parties to keep BFR advised could result in the Board issuing a decision on the merits and therefore precluding a compromise resolution.

Once the parties arrive at a compromise agreement, both parties must inform BFR of the compromise terms, including the amount of tax, and whether interest and/or penalties apply. Absent extraordinary circumstances, BFR will then issue an order confirming the compromise terms.