

PROPOSED RULEMAKING

BOARD OF CLAIMS

[61 PA. CODE CH. 899]
Rules of Procedure

The Board of Claims (Board) under 72 P. S. §§ 4651-1—4651-10 and section 204(1) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)) intends to amend its rules of procedure, Rules 899.101—899.701 by final order, proposed rulemaking omitted.

The rules of procedure govern practice before the Board. The amendments will affect two rules. First, Rule 899.201(b) will be amended to reduce the number of copies of a claim which are required to be filed with the Board from an original and four copies to an original and three copies. Second, the amendment will repeal Rule 899.201(d) which states that a claim is timely only if received within 6 months after it accrued. Repeal of this rule is necessary because Rule 899.201(d) no longer accurately states the applicable statute of limitations for all actions before the Board. For claims involving contracts covered by 62 Pa.C.S. Part I (relating to the Procurement Code), the applicable statute of limitations is found in 62 Pa.C.S. § 1712 (relating to authority to resolve contract and breach of contract controversies). For all other claims within the Board's jurisdiction, the applicable statute of limitations can be found in 72 P. S. § 4651-6.

Interested persons may submit comments or suggestions to the Board of Claims, 200 North Third Street, Suite 700, Harrisburg, PA 17101-1518, or by contacting Connie Rode at (717) 787-3325 within 15 days of the publication of this notice in the *Pennsylvania Bulletin*.

DAVID C. CLIPPER,
Chief Administrative Judge

Annex A

TITLE 61. REVENUE

PART VI. BOARD OF CLAIMS

CHAPTER 899. RULES OF PROCEDURE

Subchapter B. PLEADINGS

Rule 899.201. Statement of claim.

(a) A plaintiff shall prepare a concise and specific written statement of the claim, signed and verified by the plaintiff. The caption of the claim shall contain the full names of all parties to the claim. Each claim shall contain the name, address, telephone number and Supreme Court Identification Number of counsel for the plaintiff.

(b) The plaintiff shall file an original and three copies of the claim with the Board, accompanied by a \$50 check made payable to the Commonwealth of Pennsylvania.

(c) Service of the claim and any amended claim will be made by the Board. The Board will serve one copy of the

claim and any amended claim to the defendant involved, and one copy to the Attorney General.

[Pa.B. Doc. No. 00-1633. Filed for public inspection September 22, 2000, 9:00 a.m.]

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 33]

Sales and Use Tax; Partial Refunds for Bad Debts

The Department of Revenue (Department), under authority contained in section 270 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7270), proposes to amend § 33.3 (relating to cancellations, returns, allowances and exchanges) and add § 33.5 (relating to partial refunds for bad debts) to read as set forth in Annex A.

Purpose of Proposed Rulemaking

This proposed rulemaking explains the application of section 247.1 of the TRC (72 P. S. § 7247.1) relating to partial refund of Sales Tax attributed to bad debts.

Explanation of Regulatory Requirements

Section 33.3(d) is deleted because it is in direct conflict with section 247.1 of the TRC.

Section 33.5(a) provides definitions of "affiliated entity," "bad debt," "discount amount" and "purchase price" for use in the section. Filing of a petition for partial refund is explained in § 33.5(b). Subsection (b)(3) provides a listing of supporting records that the vendor shall retain and make available to the Department upon its request. Section 33.5(c) provides an example that suggests how to determine the partial refund amount when the purchaser makes no payment on account and when the purchaser makes a partial payment on account.

Affected Parties

Taxpayers filing petitions for refund of Sales Tax paid to the Department that is attributed to a bad debt may be affected by the proposed rulemaking

Fiscal Impact

The Department has determined that the proposed rulemaking will have no significant fiscal impact on the Commonwealth.

Paperwork

The proposed rulemaking will not require significant additional paperwork for the public or the Commonwealth. Additional paperwork may be required to calculate the partial refund amount; however, the amount is undeterminable.

Effectiveness/Sunset Date

The regulations will become effective upon final publication in the *Pennsylvania Bulletin*. The regulations are

scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing comments, suggestions or objections regarding the proposed rulemaking to Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061, within 30 days after the date of the publication of this notice in the Pennsylvania Bulletin.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 8, 2000, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the amendments, by the Department, the General Assembly and the Governor.

ROBERT A. JUDGE, SR., Secretary

Fiscal Note: 15-415. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE II. SALES AND USE TAX

CHAPTER 33. COMPUTATION OF TAX

§ 33.3. Cancellations, returns, allowances and exchanges.

* * * * *

[(d) Bad debts. A seller may not be permitted to take a sales tax credit for amounts representing bad debts or uncollectible accounts. The tax remains due upon the original purchase price of the property sold.]

(Editor's Note: The Department is proposing to add § 33.5 (relating to partial refunds for bad debts), which has been printed in regular text to enhance readability.)

§ 33.5. Partial refunds for bad debts.

(a) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Affiliated entity—A corporation that is part of the same affiliated group as the vendor, as defined in section 1504(a)(1) of the IRC (26 U.S.C.A. § 1504(a)(1)).

Bad debt—The portion of the purchase price that the vendor determined to be uncollectible and wrote off as such, either in whole or in part on the vendor's books, and which was deducted for Federal income tax purposes.

Discount amount—The amount of credit granted to a vendor by the Department under section 227 of the TRC (72 P. S. § 7227), for the collection and timely payment of the Sales Tax and timely filing of the return.

Purchase price—The total value of anything paid or delivered, or promised to be paid or delivered, whether it be money or otherwise, in complete performance of a sale at retail or purchase at retail, as purchase price is defined in section 201(g) of the TRC (72 P. S. § 7201(g)), but not including interest, finance charges and expenses incurred in attempting to collect any amount receivable.

(b) Filing a petition for partial refund.

(1) A vendor may file with the Board of Appeals a petition for a refund of one-third of the Sales Tax paid to the Department attributable to amounts deducted as a bad debt on Federal Income Tax returns required to be filed after January 1 and before December 31, 1999, less one-third of the discount amount. Thereafter, a vendor may petition for a refund of two-thirds of the Sales Tax paid to the Department attributable to amounts deducted as a bad debt on Federal Income Tax returns required to be filed after January 1, 2000, less two-thirds of the discount amount. See Chapter 7 (relating to Board of Appeals). The vendor shall file the petition in accordance with section 253 of the TRC (72 P. S. § 7253).

(2) A vendor may assign the right to file a petition for refund attributable to a bad debt only to an affiliated entity.

Example: Company P owns 100% of Company R which operates as a retailer in this Commonwealth. Company P also owns 100% of Company F, which has an agreement with Company R pursuant to which Company F issues credit cards to customers of Company R. The credit cards bear Company R's name and are used exclusively for purchases at Company R stores. Company R may assign to Company F its right to petition for partial refund of tax attributable to bad debts of Company R's customers, when Company R's customers fail to pay amounts charged on their "Company R" credit cards, the unpaid amounts are written off as bad debts and are deducted for Federal Income Tax purposes.

(3) The vendor or affiliated entity bears the burden of establishing the validity of a bad debt deduction. The vendor shall retain supporting records and make those records available upon request by the Department. At a minimum, the vendor shall retain records that substantiate the following:

(i) The name or account number of the purchaser and the date of the sale giving rise to the bad debt.

(ii) A description and the purchase price of the property that is the subject of the debt and the amount of Sales Tax the vendor charged.

(iii) The date or period when the vendor remitted the Sales Tax to the Department.

(iv) The dates and amounts of any payments the purchaser made on the debt or account.

(v) That the purchaser failed to pay the purchase price of the property or service that is the subject of the bad debt.

(vi) That the vendor wrote off the bad debt on its books and records.

(vii) That the bad debt was deducted on a Federal Income Tax return required to be filed after January 1, 1999, in accordance with section 166 of the IRC (26 U.S.C.A. § 166) for a refund of one-third of the Sales Tax paid attributable to the bad debt.

(viii) That the bad debt was deducted on a Federal Income Tax return required to be filed after January 1, 2000, in accordance with section 166 of the IRC for a refund of two-thirds of the Sales Tax paid attributable to the bad debt.

(ix) That the vendor assigned its rights to an affiliated entity, if applicable.

(4) If the vendor or affiliated entity that has received a bad debt refund later collects on a bad debt, in whole or in part, the vendor or the affiliated entity shall remit to the Department, with the first return filed after the collection, that proportion of the bad debt refund which is represented by the amount of taxable purchase price collected, divided by the total taxable purchase price previously treated as a bad debt for refund purposes.

(c) *Examples for determining the partial refund amount, using as a basis a one-third refund.*

(1) *No payment on account.* When the purchaser makes no payment on account, the vendor calculates one-third of the Sales Tax it paid to the Department on a bad debt and, if applicable, subtracts one-third of the discount amount to yield the amount of the bad debt refund.

Example: Purchase on account

Sale of Tools	\$200	Taxable Purchase on Account
	<u>12</u>	Sales Tax Remitted by Vendor
	\$212	Total Purchase Price

$\frac{\$12}{3} = \4 Partial Refund, less one-third of any discount allowed by the Department

(2) *Partial payment on account.* When the purchaser makes partial payment on account:

(i) If a transaction combines both taxable and nontaxable components and the purchaser has made a partial payment on the debt, the vendor shall allocate the partial payment proportionally between the taxable and nontaxable components of the transaction.

Example: Purchase on account

Clothing	\$200	Nontaxable Purchase
Tools	<u>800</u>	Taxable Purchase
	\$1,000	Combined Purchase Price
	48	Sales Tax on \$800
	<u>\$1,048</u>	Total Price

Partial Payment on account: \$500

Allocation of Partial Payment:

$\frac{\$ 800 \text{ Taxable Purchase}}{\$1,000 \text{ Combined Purchase Price}} = 80\%$, Taxable Portion

$80\% \times \$500 \text{ Partial Payment} = \400 of the Partial Payment Allocated to Taxable Purchase and Tax

(ii) The vendor shall prorate any partial payment on a taxable transaction or on the taxable portion of a transaction between the original purchase price and the Sales Tax due on the sale. For example, continuing with the original transaction:

Amount Allocable to Taxable Purchase = \$400

To prorate \$400 between purchase price and Sales Tax divide by 1.06:

$\frac{\$400}{1.06} = \377.36 Amount of Partial Payment related to Taxable Purchase Price

$\$800 \text{ Taxable Price less } \$377.36 \text{ paid} = \$422.64 \text{ Bad Debt}$

(iii) The vendor shall then compute one-third of the Sales Tax paid on a bad debt and subtract one third of the discount amount to yield the amount of the bad debt refund.

$\$422.64 \times .06 = \25.36 Sales Tax paid by vendor to the Department attributable to Bad Debt

$\frac{1}{3} \times \$25.36 = \8.45 Sales Tax Partial Refund Amount less 1/3 of the discount taken, if any.

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