

RULES AND REGULATIONS

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 111]

Proof Required to Establish Credit

The Secretary of Revenue (Secretary), under the authority in section 354 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7354), amends § 111.5 (relating to proof required to establish credit) to read as set forth in Annex A.

Because of time constraints associated with the policy change for Personal Income Tax in the current fiscal year, the Department of Revenue (Department), under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL), and 1 Pa. Code § 7.4 (relating to omission of notice of proposed rulemaking), finds that notice of proposed rulemaking is under the circumstances impracticable and, therefore, may be omitted.

The Department's justification for utilizing the proposed rulemaking omitted process is that it is in the public interest to eliminate by January 1, 2006, the regulatory requirement that, to claim credit for income taxes imposed by other states, a taxpayer shall file with a Pennsylvania tax return a copy of the tax return filed with the other state that is signed. There is no legal requirement that the copy be signed. See section 333(c) of the TRC (72 P. S. § 7333(c)). The signature requirement also is an inconvenience to taxpayers and tax practitioners in completing Pennsylvania tax returns.

Purpose of the Final-Omitted Rulemaking

The purpose of this final-omitted rulemaking is to amend § 111.5 to reflect a policy change made by the Department which eliminates the need for a "signed" copy of the tax return filed with another state for proof required to establish credit.

Explanation of Regulatory Requirements

The Department is removing language in § 111.5 that requires a taxpayer to file with a Pennsylvania tax return a "signed" copy of a tax return with other states to claim a credit for taxes paid to another state. The only amendment to this section is the deletion of the word "signed."

Fiscal Impact

The Department has determined that the final-omitted rulemaking will have no adverse fiscal impact on the Commonwealth.

Paperwork

The final-omitted rulemaking will not generate substantial paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The final-omitted rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. The regulation is scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

The contact person for an explanation of the final-omitted rulemaking is Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on December 13, 2005, the Department submitted a copy of the regulations with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. On the same date, the regulations with proposed rulemaking omitted were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

In accordance with section 5.1(j.1) of the Regulatory Review Act, the final-omitted rulemaking was deemed approved by the Committees on February 1, 2006. IRRC met on February 2, 2006, and approved the final-omitted rulemaking under section 5.1(e) of the Regulatory Review Act.

Findings

The Department finds that the final-omitted rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statute. Under section 204 of the CDL, the Department also finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are unnecessary because it is in the public interest to expedite this amended regulation that reduces the burden to the taxpayer.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code Chapter 111, are amended by amending § 111.5 to read as set forth in Annex A.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

GREGORY C. FAJT,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 891 (February 18, 2006).)

Fiscal Note: 15-431. No fiscal impact; (8) recommends adoption. Implementation of this final-omitted rulemaking will generate savings of \$200,000 for Fiscal Year 2005-2006.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE V. PERSONAL INCOME TAX

CHAPTER 111. CREDITS AGAINST TAX

§ 111.5. Proof required to establish credit.

Credit will not be allowed under this section unless the taxpayer has proved to the satisfaction of the Department the amount of tax paid to the other state. A Form W-2 indicating income tax withheld for another state will not be sufficient to establish credit under this section. The mere fact that tax was withheld does not establish the fact that a taxpayer has been liable for the payment of tax to another state. Therefore, when claiming a credit for taxes paid to another state, a taxpayer shall file with his Pennsylvania tax return a copy of the tax return filed with the other state. The return will be considered as prima facie evidence of the amount of income tax, if any, paid to the other state.

[Pa.B. Doc. No. 06-273. Filed for public inspection February 17, 2006, 9:00 a.m.]
