

PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

[61 PA. CODE CHS. 151 AND 153]
Amended Report—Corporation Taxes

The Department of Revenue (Department), under section 6 of The Fiscal Code (72 P. S. § 6), proposes amendments to Chapter 151 (relating to general provisions), by adding § 151.14 (relating to amended report); and Chapter 153 (relating to Corporate Net Income Tax), by replacing obsolete language and adding § 153.66 (relating to applicability) to read as set forth in Annex A.

Purpose of Proposed Rulemaking

The purpose of the proposed rulemaking is to provide a procedure for the filing of amended Corporate Tax reports for tax reports governed by the assessment process enacted in Act 119-2006. A new § 151.14 is proposed which reflects the replacement of the Corporate Tax settlement process with an assessment process.

Explanation of Regulatory Requirements

The proposed rulemaking will provide clear instructions for corporate taxpayers filing amended reports. The Department is proposing a new § 151.14 outlining the provisions for filing Corporate Tax amended reports. Examples in Chapter 153 have been amended with updated language. Obsolete language has been replaced throughout § 153.54. Specifically, obsolete language was removed in § 153.54(b)(1) regarding the "Report of Change form." Section 153.54(g) has been expanded to explain: (1) Corporate Net Income Tax settled prior to January 1, 2008; and (2) Corporate Net Income Tax not settled prior to January 1, 2008. In addition, an "applicability" section is added in § 153.66 to clarify that §§ 153.61—153.65 apply to taxes settled prior to January 1, 2008.

Affected Parties

The Commonwealth's corporate taxpayers and tax practitioners may be affected by the proposed rulemaking. The proposed rulemaking adds a fourth leg to what the Department has already accomplished for the education of the tax community on the changes to amended reports under Act 119-2006. The Department has: (1) added detailed language in the Instruction Booklet for Form RCT 101; (2) published a notice on the Department's web site, "Notice to Pennsylvania Taxpayers Regarding Amended Corporate Tax Reports;" and (3) participated in numerous seminars in the tax community on this subject.

Fiscal Impact

The Department has determined that this proposed rulemaking will have minimal fiscal impact on the Commonwealth.

Paperwork

The proposed rulemaking will not create additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The proposed rulemaking will become effective upon final-form 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 any comments, suggestions or objections regarding the proposed rulemaking to Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, P. O. Box 281061, Harrisburg, Pennsylvania 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 February 20, 2009, 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 (Committees). In addition to submitting the 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.

The Committees may, at any time prior to the submittal of the final-form regulations, convey to the agency and the Commission, their comments, recommendations and objections to the proposed rulemaking. IRRC may, within 30 days of the close of the public comment period, submit to the agency and Committees any comments, recommendations and objections to the proposed rulemaking. 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.

STEPHEN H. STETLER,
Acting Secretary

Fiscal Note: 15-445. No fiscal impact; (8) recommends adoption.

(Editor's Note: The following section is new. The text has been printed in regular print to enhance readability.)

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE VI. CORPORATION TAXES

CHAPTER 151. GENERAL PROVISIONS.

§ 151.14. Amended report.

(a) *Applicability.* This section applies to taxes imposed by Articles IV, VI, VII, VIII, IX, XI and XV of the Tax Reform Code of 1971 and not settled prior to January 1, 2008, along with the following:

(1) Corporate Loans Tax imposed under sections 19—24 of the State Personal Property Tax Act (72 P. S. §§ 3250-10—3250-15).

(2) Co-operative Agricultural Corporate Net Income Tax Act imposed under the Co-operative Agricultural Association Corporate Net Income Tax (72 P. S. § 3420-21—3420-30).

(3) The electric co-op corporation membership fee imposed under 15 Pa.C.S. § 7333 (relating to license fee; exemption from excise taxes).

(4) Gross Receipts Tax on private bankers imposed under section 1 of the act of May 16, 1861 (P. L. 708, No. 660) (72 P. S. § 2221).

(b) *General.*

(1) An amended report may be filed by a taxpayer, on a form prescribed by the Department under oath or affirmation of an authorized officer, within 3 years after filing of the original report. An amended report may be filed for the purpose of bringing to the attention of the Department a correction to the original report or to provide additional information which the taxpayer requests the Department to consider.

(2) The Department will only consider additional information if it is submitted with an amended report. The filing of an amended report is not a new report.

(c) *Prerequisite.* An amended report will not be considered by the Department unless the taxpayer consents in writing, on a form prescribed by the Department, to the extension of the assessment period for the tax year to 1 year from the date of the filing of the amended report or 3 years from the filing of the original report, whichever period last expires. See section 407.4 of the TRC (72 P. S. § 7407.4). In addition, the taxpayer is required to maintain records until the end of the extended assessment period.

(d) *Petition rights.*

(1) An amended report does not replace the filing of a Petition for Reassessment or a Petition for Refund.

(2) The filing of an amended report does not extend the time limits for a taxpayer to file a Petition for Reassessment or a Petition for Refund.

(e) *Review of amended report.*

(1) The Department is not obligated to revise the tax due the Commonwealth upon review of an amended report. Its failure to revise the tax due the Commonwealth will not change any existing appeal rights of the taxpayer.

(2) If the Department determines an adjustment of the taxpayer's account is appropriate, it will adjust the corporation's tax on the Department's records to conform to the revised tax as determined and will credit the taxpayer's account to the extent of any overpayment resulting from the adjustment or assess the taxpayer's unpaid tax and unreported liability for tax, interest or penalty due the Commonwealth, whichever is applicable.

(f) *Amended report filed when tax liability is under appeal.*

(1) An amended report involving issues under appeal will be forwarded to the appropriate board or to the Office of the Attorney General, to be included in the appeal.

(2) If the amended report involves issues other than those under appeal, the Department may review the amended report. The review of a report does not obligate the Department to change the tax due the Commonwealth and will not change any existing appeal rights of the taxpayer. If the Department determines that a change to the tax liability is appropriate, it will adjust the corporation's tax on the Department's records to conform to the revised tax as reported. The Department will credit the taxpayer's account to the extent of any overpayment resulting from the adjustment or assess the taxpayer's

unpaid tax and unreported liability for tax, interest or penalty due the Commonwealth, whichever is applicable.

(g) *Additional information required to be provided with an amended report.* An amended report filed with the Department must contain the following:

(1) Agreement to the extension of the assessment period as described in subsection (c).

(2) The calculation of the amended tax liability.

(3) Revised Pennsylvania supporting schedules, if applicable.

(4) A complete explanation of the changes being made and the reason for those changes.

(5) A copy of the amended Federal income tax return is required if the amended report is filed due to a change in Federal taxable income based on the filing of an amended Federal income tax return. In addition, the Department may also require proof of acceptance of the amended Federal income tax return.

(6) Other information required by the Department to support the calculation of the amended tax liability.

CHAPTER 153. CORPORATE NET INCOME TAX REPORTS AND PAYMENT OF TAX

§ 153.54. Changes made by Federal government.

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(b) *What is required to be filed with the Department.* The following are required to be filed with the Department:

(1) A Report of Change [**form (RCT 128-B)**] as prescribed by the Department.

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(d) *When a change or correction in Federal taxable income is final and received.* A change or correction will be final and received as follows:

* * * * *

Example 1. Taxpayer files a [**1972**] **2003** Report with the Department in conformity with its Federal Return as filed in [**1972**] **2003**. In [**1973**] **2004**, the Internal Revenue Service audits the taxpayer's Return which results in an increase of the taxpayer's Federal taxable income. Taxpayer does not contest this change. Thirty days after receipt of a Federal Notice and Demand for Payment, the taxpayer is required to file a Report of Change with the Department.

Example 2. Taxpayer files a [**1972**] **2003** Report with the Department in conformity with its Federal Return as filed in [**1972**] **2003**. In [**1973**] **2004**, the Internal Revenue Service audits the taxpayer's Return which results in an increase of taxpayer's Federal taxable income. Taxpayer contests this change and files a petition in the United States Tax Court. The United States Tax Court upholds the Internal Revenue Service's action. Taxpayer does not appeal the United States Tax Court's decision. Thirty days after receipt of a Federal Notice and Demand for Payment, the taxpayer is required to file a Report of Change with the Department.

Example 3. Taxpayer files a [**1972**] **2003** report with the Department in conformity with its Federal return as filed in [**1972**] **2003**. In [**1973**] **2004**, the Internal Revenue Service audits the taxpayer's return which results in an increase of the taxpayer's Federal taxable income. Taxpayer contests this change and pursues all

administrative and judicial remedies available without paying the contested amount of tax. The United States Supreme Court upholds the Internal Revenue Service's action. Thirty days after receipt of a Federal Notice and Demand for Payment, the taxpayer is required to file a Report of Change with the Department.

* * * * *

(3) A change or correction which does not increase or decrease the taxpayer's Federal tax is final when the taxpayer receives a notice from the IRS that its return will be adjusted in accordance with the examination report. The change or correction is "received" by the taxpayer on the date the taxpayer receives notice from the IRS that its return will be adjusted in accordance with the examination report.

Example. Taxpayer files a [1972] 2003 report with the Department in conformity with its Federal return as filed in [1972] 2003. In [1974] 2005, the Internal Revenue Service audits taxpayer's Federal return. The audit does not result in an increase in the Federal tax, but a change in the Commonwealth taxable income does occur due to the Federal action. Taxpayer is required to file a Report of Change within 30 days of notification by the Internal Revenue Service of its action.

(e) *More than one change or correction in Federal taxable income for a particular tax year.* A taxpayer is required to file a Report of Change for each change or correction by the Commissioner of Internal Revenue or by any other agency or court of the United States in the taxpayer's taxable income as reported to the Federal Government.

Example. As a result of a Federal audit of its [1972] 2003 Federal return, the taxpayer's Federal taxable income has been increased and the taxpayer has paid the Federal government additional tax. Since the taxpayer's Commonwealth taxable income also increased for [1972] 2003, taxpayer has filed a Report of Change with the Department. Thereafter, in a separate and subsequent court action the taxpayer contests the change in its Federal taxable income for [1972] 2003 and receives a refund from the Federal Government. Since its Commonwealth taxable income for [1972] 2003 has been decreased by this separate and subsequent action, the taxpayer is required to file a second Report of Change with the Department.

* * * * *

(g) *Report of change [within one year from the date of settlement] required to report Federal change or correction.*

(1) Corporate Net Income Tax settled prior to January 1, 2008. When a Federal change or correction in taxable income as reported to the Federal government occurs within 1 year of the date of settlement and, therefore, a Commonwealth amended report could be timely filed as provided in § 153.64 (relating to amended report), the taxpayer nevertheless is required to file a Report of Change. Filing an amended report will not satisfy the requirement of filing a Report of Change.

Example. Taxpayer files a Federal Return on March 15, [1972] 2003. Based upon that return, the taxpayer files its Commonwealth Report on April 15, [1972] 2003. In August of [1972] 2003, the IRS

discovers an error in the taxpayer's return. Taxpayer shall file a Report of Change even though the final change or correction was received within the period in which the taxpayer could file an amended report. An amended report will not satisfy the requirement of filing a Report of Change.

(2) Corporate Net Income Tax not settled prior to January 1, 2008. When a Federal change or correction in taxable income as reported to the Federal government occurs, the taxpayer is required to file a Report of Change regardless of whether or not an amended report could have been timely filed as provided in § 151.14 (relating to amended report). Filing an amended report will not satisfy the requirement of filing a Report of Change.

Example. Taxpayer files a Federal Return on March 15, 2007. Based upon that return, the taxpayer files its Commonwealth Report on April 15, 2007. In August of 2008, the IRS conducts an audit and notifies taxpayer that its Federal taxable income is different than the reported figure. Taxpayer shall file a Report of Change even though the final change or correction was received within the period in which the taxpayer could file an amended report. An amended report will not satisfy the requirement of a Report of Change.

SETTLEMENT AND RESETTLEMENT

§ 153.66. Applicability.

Sections 153.61—153.65, regarding settlement and resettlement, apply to taxes settled prior to January 1, 2008.

[Pa.B. Doc. No. 09-411. Filed for public inspection March 6, 2009, 9:00 a.m.]

**[61 PA. CODE CH. 53]
Clothing**

The Department of Revenue (Department), under section 270 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7270), proposes amendments to 61 Pa. Code Chapter 53. "Wearing Apparel," by renaming the chapter "Clothing," amending definitions, conforming the regulation to the statute, clarifying examples and the scope in § 53.1 to read as set forth in Annex A.

Purpose of Proposed Rulemaking

The proposed rulemaking will conform to Pennsylvania law and avoid any confusion for taxpayers paying Sales and Use Taxes. In addition, the proposed rulemaking codifies legislative changes relating to clothing patterns that were set forth in Act 23-2000 (See section 204(26) of the TRC 72 P. S. § 7204(26)).

Explanation of Regulatory Requirements

The major reason for this amendment is to bring the regulation into conformity with the statute. The current definition of "wearing apparel" in § 53.1(a)(7) (relating to clothing) when read in conjunction with § 53.1(b)(3) would appear to exempt from Sales and Use Tax the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning of accessories, ornamental wear, formal day or evening apparel, fur articles and sporting goods and clothing. (The statute in section 201(k)(4) and (o)(4) of the TRC (72 P. S.

§ 7201(k)(4) and (o)(4) excludes from the definition of "sale at retail" and "use" the repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning of only wearing apparel or shoes. Although "wearing apparel" is not defined in the TRC, it is referred to in section 7204(26) of the TRC as a subset of clothing. That section provides an exemption from tax for "all vesture, wearing apparel, raiments, garments, footwear and other articles of clothing . . . but all accessories, ornamental wear, formal day or evening apparel, and articles made of fur . . . and sporting goods and clothing not normally used or worn when not engaged in sports shall not be excluded from tax." This language clearly indicates that wearing apparel is clothing since wearing apparel is followed by "and other articles of clothing." The language also indicates that accessories, ornamental wear, formal day or evening apparel, fur articles, sporting goods and sporting clothing are not clothing or wearing apparel and the sale or use of these items are taxable.

To bring the regulation into conformity with the statute, the "definitions" subsection in § 53.1(a) has been amended. "Clothing" has been enhanced to mirror language in the statute in section 204(26) of the TRC. The definition for "wearing apparel" has been deleted.

The "scope" subsection has been amended in § 53.1(b) to remove language and insert clarifying language that mirrors language in the statute in sections 7201(k)(4) and (o)(4) and 7204(26) of the TRC. Language has been added in § 53.1(c) to clarify examples of accessories, ornamental wear, formal day or evening apparel, fur articles and sporting goods and sporting clothing. The word "wearing apparel" has been deleted from this subsection.

In subsection (d), the word "patterns" has been deleted to mirror the statute as a result of Act 23-2000.

Affected Parties

Taxpayers in this Commonwealth paying Sales and Use Tax may be affected by the proposed amendment although it is believed that the repairers, alterers, and the like, of accessories, ornamental wear, and the like, have been charging Sales Tax on these services.

Fiscal Impact

The Department has determined that the proposed amendment will have minimal fiscal impact on the Commonwealth.

Paperwork

The proposed amendment will not create additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The proposed amendment will become effective upon final-form 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

Interested persons are invited to submit in writing any comments, suggestions or objections regarding the proposed amendment to Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, P. O. Box 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 February 20, 2009, the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance (Committees). In addition to submitting the proposed amendment, 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.

The Committees may, at any time prior to the submittal of the final-form regulation, convey to the agency and the Commission, their comments, recommendations and objections to the proposed regulation. IRRC may, within 30 days of the close of the public comment period, submit to the agency and Committees any comments, recommendations and objections to the proposed amendment. 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 amendment, by the Department, the General Assembly and the Governor.

THOMAS W. WOLF,
Secretary

Fiscal Note: 15-446. 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 53. [WEARING APPAREL] CLOTHING

§ 53.1. Clothing.

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

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(2) *Clothing*—Articles, including **vesture, wearing apparel, raiments, garments or shoes**, which are designed to cover the human body as ordinary or everyday wear.

* * * * *

[(7) *Wearing apparel*—Articles worn or carried on or about the human body including but not limited to **clothing, accessories, ornamental wear, formal day or evening apparel, fur articles and sporting goods and sporting clothing.**]

(b) *Scope.* [**Scope shall conform with**] **This section applies to the following transactions:**

* * * * *

(3) A charge for the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning [**wearing apparel**] **shoes of any type or clothing** is not subject to tax with the exception of the [**following**]

(i) **Imprinting] imprinting** or printing of clothing belonging to others.

[(ii) **Alterations of formal day and evening apparel made at the time of sale by the seller.]**

(4) **A charge for the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning accessories, ornamental wear, formal day or evening apparel, fur articles or sporting goods and sporting clothing, except for shoes of any type shall be subject to tax unless the purchaser is entitled to claim an exemption under the law.**

(c) *Examples [of wearing apparel]*. The following are examples of [**wearing apparel] accessories, orna-**

mental wear, formal day or evening apparel, fur articles and sporting goods and sporting clothing:

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(d) *Materials to be incorporated in clothing[—]*. The sale of items such as fabrics, thread, knitting yarn, buttons, snaps and zippers, to be incorporated into clothing [**may] are not [be] subject to tax[; however, the]. The** sale of property such as needles, [**patterns,] dress forms, scissors and thimbles, shall be subject to tax unless the purchaser is engaged in the business of manufacturing or of purchasing the items for resale.**

[Pa.B. Doc. No. 09-412. Filed for public inspection March 6, 2009, 9:00 a.m.]
