

2022 Pennsylvania Department of Revenue - Annual Q&A December 12, 2022, 9:30 AM - Strawberry Square Offices, Harrisburg

1. Can you provide an update on staffing levels at the Department? At our 2021 meeting, 80% of your workforce was teleworking and 20% had returned to the office. Have there been changes since that time?

These numbers have not changed since August of 2020. We continue to monitor production on a quarterly basis and productivity remains consistent with, or higher than, pre pandemic levels.

It should be noted that DOR continues to have 200+ vacancies, across the agency, which we have struggled to fill since July 2021. This is not a budgetary/funding issue, but rather an issue of trying to recruit and retain.

2. The following was submitted by one of our members: “The **Schedule a Call** feature on the PA DOR website has only one week listed at a time and there are rarely time slots available. I attempted to schedule a call on a Monday afternoon at 3:30ish and there were already no time slots available for that week.” Can you provide any statistics on this feature i.e., how many calls are scheduled each week, the average length of each call etc.? Are there any plans to increase call availability?

The Schedule a Call application can only display five consecutive calendar days, but there are multiple time slots for each call queue (i.e., PIT, Sale, Corp, PTRR, etc.). The number of slots available are limited since the same staff manning our other phone lines man this service as well. CEC will look to increase this service in the new year once our implementation of the rest of PATH has passed.

3. Simple client issue resolution continues to be a challenge for practitioners. Members are experiencing long telephone wait times, dropped calls, limited Schedule a Call time slots, and backlogs on responses to submissions sent through the *Submit a Question* portal as well as submissions through myPATH. Can you address the current backlog for each of the following?

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| • PA 40 | May |
| • PA 40X | May |
| • PA 20/65 | July |
| • PTRR | October |
| • REV 1500 | August |
| • Appeals | PIT (Aug) PTRR (Sept) Business Taxes (Current) |
| • Tax clearance certificates | 9 Weeks (if older email ra-rvcom-corp-clear@pa.gov) |
| • “Submit a Question” | 5 days |
| • myPATH submissions | Billings (Nov) Notice Response (Nov) |

We have already talked about the Schedule a Call application, as for wait times and dropped calls we are looking at ways to better handle call volumes. Submit a question response are averaging less than 5 days. So, if there are specific cases you need guidance on, please provide data. As we are not sure where any issues with this channel exists.

5. Board of Appeals:

- A. It appears that many cases are being forced into appeals in lieu of revenue employees making simple adjustments (i.e., a credit carryover that is applied to the wrong year that erroneously results in an assessment notice). What is the rationale for this? Appeals is a costly process for both the taxpayer and the Department for a simple credit adjustment.

Having multiple avenues to make adjustments causes confusion for the taxpayer, often causing them to miss their appeal rights. DOR urges taxpayers to file appeals electronically to simplify the process.

- B. Revenue backlogs and communication challenges are making it increasingly difficult to obtain resolution on issues within the 60-day appeal window. It seems like the only option is to file for an appeal automatically when responding to a notice. Is this what the Department is advising taxpayers to do?

Yes, it's necessary in order to preserve taxpayer's due process rights, if you are getting close to an appeal deadline and you are not sure what to do, we recommend filing an appeal. If you eventually determine you don't need to appeal, it only takes a quick email to withdraw the appeal; if you miss an appeal deadline, however, the complications for a taxpayer/client may be significant.

- C. Has the Department ever considered pausing the clock on the 60-day window once a response/submission is made and received by the Department to account for the backlog?

No – that timeframe is in the statute.

6. Is there an archived list on the website of approved major disaster declarations that offer individual assistance such as extended deadlines?

We don't have the archived data available on our website. As each event has been a considered a unique situation, we have treated them as such. However, we will look into potential changes.

7. If a Pennsylvania estimated tax payment has been applied to the wrong tax year, what is the most efficient method for a taxpayer to have it fixed and applied to the correct year?

It depends on the stage of the return:

- If the return hasn't been filed yet, attach a request when filing the return
- If the taxpayer receives a request for information, stand-alone adjustment summary or billing notice, they should respond to the letter via myPATH using the Letter ID listed on their notice.

If an assessment notice was issued, they should file an appeal to the Board of Appeals.

8. What is the process for submitting the PA Property Tax Rebate Form PA-1000 through myPATH?

Go to mypath.pa.gov and locate the Rebates panel on the homepage. Click the hyperlink to Apply for a Property Tax/Rent Rebate within that panel.

Filing a Property Tax Rent Rebate application is a non-logged in function on myPATH, so you will not need to create a Username and Password.

Prior to beginning, please have these potentially required documents nearby and available to be electronically uploaded with the application:

- Proof of age
- Proof of disability
- Proof of death
- Proof of income
- Proof of taxes paid
- Completed Rent Certificate

- Copies of a will, deed, decree of distribution or trust agreement proving property ownership
- DEX-41

Accepted file types include pdf, jpeg, jpg, png, gif, tiff, and rtf. If your attachments are not able to be electronically uploaded with your application, you will have to file a [paper application](#).

9. When responding to a notice in myPATH, the portal does not allow an explanation to be entered without an attachment, but in some cases, there is no attachment. What is recommended? Should practitioners just attach the notice itself to get around this?

Including the letter, will be beneficial for department personnel reviewing the response to locate the taxpayer and the issue the response is regarding. Another option is to upload a document with the written response such as on a word document. Practitioners also have the option to use myPATH to send a message to the department as a response to the notice.

10. When a response to a PA notice is uploaded through myPATH, how can the status of the issue be obtained by the practitioner or taxpayer? Will there be a “closing letter” issued if/when an issue is resolved? The ability to know the status i.e., that it was received or is being reviewed or is closed, would be beneficial for everyone, practitioner, taxpayer, and the department alike.

The department should send a letter after documentation received has been reviewed. We do adjust our messaging based upon our current backlogs for reviewing this correspondence but do not have a mechanism to check the status of these. We recommend that the customer contacts the department if it is beyond the period noted when response was submitted.

11. Client works for Blue Cross Blue Shield who submits Pennsylvania Wages. PA DOR questioned why the PA wages were different than Medicare wages and asked that the employee obtain the letter from IBX. Turns out, IBX had a certain retirement plan under PA law that was excludible from PA wages. My issue is that IBX is a large company with many Pennsylvania employees. Why does the employee have to get the letter? If my client received this request, I'm sure that many other taxpayers that work for IBX did also. Why can't PA get the explanation from IBX? Is it expected that we obtain the letter every year and submit it with the return?

Page 10 in the PA-40 instructions state that a physical copy of the W-2 form is required when the Medicare wages in Box 5 on Form W-2 are greater than the PA wages in Box 16. It also states a PA-40 W-2 Reconciliation Worksheet should be included. The tax examiners utilize Box 12 on the W-2 form and the W-2 Reconciliation Worksheet to determine the taxability on the difference between the Medicare and PA state wages. If either of those two documents are not included at the time of filing a letter may go out to the taxpayer to request additional information. Sometimes even if the W-2 and/or the W-2 Reconciliation is included, there may be times where we need further verification from the employer to verify if the difference is taxable or non-taxable.

We encourage taxpayers to provide as much information at the time of filing to prevent the need for the department to request additional documentation. If the W-2 and/or the W-2 Reconciliation doesn't provide an explanation of why the Medicare wages are different than it would be helpful to have an explanation attached.

12. It doesn't appear that there is consistency in what is done when PA wages are different from Medicare wages. Is there a standard policy? In one case, PA wages were arbitrarily changed to match Medicare wages from a prior year; no notice was given to the taxpayer. It wasn't discovered until the following year when the taxpayer received a notice that they owed tax. Formerly there was a form that reconciled Medicare wages to PA wages that has since been eliminated. Are there any plans to bring this form back?

Every time a tax examiner makes an adjustment, they should be sending a notice out to the taxpayer. This scenario sounds like a tax examiner error if the PA wages were used to match a prior year's Medicare wages. As mentioned in my previous answer, when the Medicare wages are greater than the state wages, the W-2 form, and the W-2 Reconciliation Worksheet should always be included at the time of filing.

13. The language used on the PA notices is confusing and ambiguous and it is rare that taxpayers and/or practitioners understand the notice without having to ask further questions through the portal or through other means.

A redacted tax notice sent to the client referenced in the previous question is attached in order to provide an example.

When looking at this notice, it appears that the request was denied and that they owe \$195. The notice indicates additional tax, interest, and penalty of \$195. Page 3/4 shows the adjusted values. "Notice of Assessment" appears on the top of the notice.

A couple of days after receiving the notice, the client received a \$124 refund check.

When I inquired about it through the practitioner portal, I asked whether the Employer letter was accepted, and whether this was owed and this is what they said:

"The assessment is showing an adjustment of \$195.00 not tax due. The amount shown as total balance due is a negative number which means an overpayment that is being refunded. The account has a 0 balance. "

This is not the outcome that is presented on the notice.

With the implementation of Rollout 3, the department began issuing assessment notices for all tax changes. An assessment notice does not equate to a balance due to the department. An assessed amount is the amount of tax the department has changed on a return and the amount to be considered for appeal by the taxpayer should they disagree with the department's adjustment. If a taxpayer is receiving a refund and the department has adjusted the tax on the return (lowering their refund amount), an assessment will still be issued notifying the taxpayer of the assessed tax. It will also provide the new amount that is being refunded. It will be displayed as a negative amount due on the assessment notice. An adjustment summary notice will be included with the Notice of Assessment providing exactly which lines were adjusted and the reason(s) for the adjustment. The reason(s) is the basis of the assessment for use in appeals.

The department did receive the example referenced in this question and upon review it was determined that the tax examiner made an error. When returns are initially reviewed and it is determined that the department needs additional information, the tax examiner will send out the letter requesting the additional information, but they also adjust the return to reflect the changes necessary if the taxpayer fails to respond to that notice. That way after 90 days, if no response is received, the notice of assessment will go out automatically by our system. If the taxpayer does respond the tax examiner that reviews the correspondence is required to adjust the return, back to the original figures and send an updated notice indicating that the correspondence was reviewed, and the return was accepted as filed. In this example, the tax examiner made the adjustment to the taxpayer's return. The adjustment summary portion of the notice reflected the adjusted figures since the tax examiner failed to have a new adjustment summary sent out to the taxpayer advising that their correspondence was reviewed and accepted.

There are six new employees that handle processing correspondence, so this was a training issue that we have seen a few times and have since addressed with the employees.

14. Does Pennsylvania offer solar system installation tax credits?

No, there is not a state tax credit available

15. Is driveway sealing a taxable service subject to sales tax in Pennsylvania?

No. Pa Sales tax would not be collected upon providing the services of driveway sealing. However, the service provider would be required to pay Sales or Use tax upon their purchase price of all materials used and consumed in the job.

Per 60.1 Building Maintenance/Cleaning Services:

(e) Examples of services which are not building maintenance services or building cleaning services. The following are examples of services which are not building maintenance services or building cleaning services:

- (1) Building repair services to buildings.
- (2) Maintenance of boilers, furnace, or parts thereof (effective January 1, 1992).
- (3) Cleaning of outdoor in-ground pools.
- (4) Painting or wallpapering interior walls, ceilings, or floors.
- (5) Exterior building painting.
- (6) Sandblasting real property; pointing of bricks.
- (7) Carpet dying.
- (8) Snow plowing.
- (9) Plumbing repairs, such as opening drains or repairing water leaks.
- (10) Driveway sealing.

16. How will Pennsylvania conform to federal depreciation rules such as Section 179 and bonus depreciation during the upcoming year?

The department is planning on updating the bulletin on Section 179. As always, the department, for PIT purposes, does not conform to the IRC for bonus depreciation.

17. Does the department yet know how like-kind exchanges will be reported once conformity with the federal standards begins in the upcoming year?

With respect to pass through entities, taxpayers should answer Question #11 in Section VII of the PA-20S/PA-65 Information return, "Has the entity entered into any like-kind exchanges under IRC Section 1031? If yes, submit federal Form 8824".

With regard to individual PA-40 returns, if there was a like-kind exchange during the year, the taxpayer should include federal Form 8824 with their return filing.

18. If a grantor (PA resident) has an Intentionally Defective Grantor Trust all with non-PA source income and moves to another state (now grantor is no longer a PA resident) but the Trustee is still a PA resident, does the Pennsylvania Department of Revenue require that a return be filed?

Remember that filing requirements do not depend on whether or not a trust is a grantor trust. If the trust is irrevocable, it would determine its filing requirements based upon the guidance as set forth in the Form PA-41 instructions.

19. Must a partnership return be filed if it had zero activity during the year?

Per our instructions to the PA-20S/PA-65, if the PA S corporation or partnership was inactive during the entire tax reporting period, the entity must still submit the PA-20S/PA-65 Information Return and fill in the Inactive oval. If filing an information return as inactive, the PA S Corporation or partnership must include the PA-20S/PA-65 Partner Member Shareholder Directory and the PA Schedules RK-1 and/or NRK1.

20. If a Pennsylvania employer withholds state income tax from a NJ resident, what is the process for obtaining a refund?

If PA taxes were withheld from a NJ resident, the taxpayer would be required to file a PA-40 return and request a refund. The taxpayer would not report any income on the return, but they would report the PA withholding amount on Line 13. They must include a copy of the NJ Resident Income Tax Return and a copy of the W-2 form at the time of filing.

21. Under what circumstances if a sole proprietor had a net operating loss but sold fully depreciated business equipment for a gain, would those activities offset each other on the Pennsylvania return?

The circumstances would be those that would allow the sole proprietor to properly classify the gain from the sale of equipment as business income. See form instructions and the Personal Income Tax Guide for the requirements necessary to classify gain as business income.

22. What course of action do you recommend to a practitioner who discovers that a previous preparer used the wrong EIN on a Schedule C?

You could provide us with a corrected Schedule C that reflects the updated EIN, and we can attach it to the taxpayer's tax return.

23. Can you provide information on the PA Educational Improvement Tax Credit (PA EITC) and how it can be utilized?

The Educational Tax Credit Program is comprised of two different tax credits: Educational Improvement Tax Credit (EITC) and the Opportunity Scholarship Tax Credit (OSTC).

The program permits the Department of Community and Economic Development (DCED) to allocate tax credits to businesses if they donate money to approved organizations within the program, providing scholarships to help families pay private or charter school tuition.

Applications for tax credits are accepted by DCED on July 1st each fiscal year, until the amount of tax credits are exhausted. Tax credit applications are processed on a first-come-first served basis by submission date.

Upon receipt of proof of a contribution, DCED will notify the Department of Revenue that the entity has been awarded a credit within the program.

The entity decides if the tax credit will be applied towards corporation tax and/or passed through to its partners, shareholders, or members. The tax credit cannot be sold or assigned.

For additional guidance, please refer to the Department of Revenue tax credits webpage: <https://www.revenue.pa.gov/taxcredits> for access to program guidelines, bulletins, and contact information.

24. Will a federal extension relieve a Pennsylvania late filing penalty if a Pennsylvania extension had not been filed?

Per our instructions it states that: If the taxpayer has an approved extension for filing a federal income tax return and does not owe PA income taxes then the department will grant the same extension and will not require a PA extension form.

The extension oval should be completed at the time of filing to avoid late filing penalties in the future.

25. If a CARES Act Coronavirus Relief Distribution (CRD) spreading the Federal income tax burden on the distribution over 3 years was taken, and subsequently the taxpayer decides to repay the distribution, can an amended return be filed to obtain a refund from Pennsylvania as PA taxed the entire distribution immediately?

Pennsylvania does not follow the federal provision on this. If the withdrawal meets the age or years of service requirement, then it is not subject to PA income tax. Otherwise, early distributions from retirement accounts are subject to tax to the extent that they were not already subject to tax at the time the money was contributed to the account.

In the event someone takes an early distribution from a retirement plan that would be subject to tax and subsequently pays it back, the department would not refund tax paid on that amount. Any reinvestment would be considered basis and wouldn't be taxable upon later distribution. (See FAQ #3886)

26. How can the balance of a tax lien be verified to pay it off and get it released?

A lien balance can be checked via the Pay Off a Lien option on the Tax Compliance panel of myPATH. However, some liens may not be viewable through this service. If you search for a lien and nothing is found, please request a lien payoff by completing the lien payoff request form via Lien Payoff Request Form (REV-1038) and following the submission instructions on the form.

Once you have the payoff amount, it can be paid as myPATH. Payoffs submitted through the myPATH portal are usually satisfied within 5 business days.

27. An individual owns stocks in their living trust and passes away and upon death the trust turns into an irrevocable trust. Are the heirs allowed to use the step-up on stock values to FMV when the assets move to the irrevocable trust upon death?

Yes.

28. Does PA conform with the Federal rules on the exclusion of gain from a primary residence when the residence is sold for health reasons without meeting the ownership or use test?

We have our own rules for gain from the sale of a primary residence. 61 Pa. Code § 103.13(h). They are not linked to the Federal rules. We do have a rule that there can be more than one disposition of a principal residence within a two-year period when the disposition is the result of unforeseen health issue. See below. But that rule does not change the 2-year (within 5) ownership and use requirements. I don't know if this is exactly the same as the Federal rules. Tell people to stop asking if we follow the federal rules and ask what our rules are. It shouldn't be too hard for these folks to find our rules given that they are in our regulations.

(h) Exclusion of all gain from disposition of principal residence after December 31, 1997.

(1) Eligible individuals. An individual may exclude from tax gain realized on the sale or other disposition of the taxpayer's principal residence if all of the following conditions are met:

(i) The date of disposition of the residence is after December 31, 1997.

(ii) The taxpayer used the residence as his principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of its disposition.

(iii) The taxpayer owned the residence for periods aggregating 2 years or more during the 5-year period ending on the date of its disposition.

(iv) One of the following applies:

(A) During the 2-year period ending on the date of disposition of the taxpayer's principal residence, there was no prior disposition by the taxpayer of a principal residence.

(B) The disposition of the taxpayer's principal residence is by reason of an unforeseen change in employment or health or severe financial hardship to the taxpayer resulting from a sudden and unexpected accident, loss of property due to casualty or other similar extraordinary and unforeseeable circumstance arising as a result of events beyond the control of the taxpayer.

29. Under what circumstances does Pennsylvania offer one-time penalty abatement?

The Pennsylvania Department of Revenue has implemented a process to abate three commonly accessed penalties for taxpayers in certain situations. In circumstances where we have abated the penalty, a Notice of Waived Penalty is issued to customers who are first time recipients of a penalty for one of the following three reasons:

- Bad Payment Fee
- Electronic Funds Transfer (EFT) Penalty
- Late Filing Penalty

These customers are granted relief if they have never received a bad payment fee, late filing penalty, underpayment penalty, or estimated underpayment penalty in the past.

PLEASE NOTE: Customers who receive this notice do not need to take any further action. This notice is designed as an informational notice to inform customers that the penalty has been abated and how to avoid the situation from happening in the future.

30. Re: Electronic Filing Mandate for estimated tax payments that exceed \$15,000

A. How was this change communicated to the taxpayers affected by the change?

This new legislative requirement was communicated in a number of different ways. It was the first item on the first page of the PA40 instruction booklet under “what’s new”. This was also included in presentation made to the PICPA and PSTAP during the fall of 2021, including the FTS. This was also included in the Legislative Summary document that the department issued in July 2021, as well as the Tax Update.

B. Can you explain the process for working with software companies to effectuate the change in their software programming? Some software companies addressed the issue while others did not, causing practitioners to question the discrepancies among the companies.

The testing that we perform with software vendors is limited to our ability to process their MEF files and their printed paper returns. We certify 30+ software vendors annually, across tax types. We do not have the time or resources to work with them individually on their actual software programming. Keeping up with the legislation in the various states, as well as at the federal level, is the responsibility of the software vendor.

31. How do you claim the Child and Dependent Care Enhancement Program credit in Pennsylvania for the 2022 tax year?

This credit was added to Line 23 of the PA-40 return. This line will now be used for this new Child and Dependent Care Enhancement Credit, as well as the Other Credits. A new schedule was developed called the PA Schedule DC. The credit is based off 30% of the federal credit amount, so you would use Line 9a of the federal Form 2441 to come up with the calculation. The department will require both the federal Form 2441 and Schedule 3.

32. How are PA Property Tax/Rent Rebates exceeding the amount listed on the PA-1000 determined (bonus payment)?

Since the legislation to pay the additional rebate didn’t occur until after we began issuing the rebates, some claimants received two separate rebates, one for the original rebate and one for the 70% bonus rebate. Some claimants received one rebate that included both. Letters were mailed out to claimants.

33. How can available C-Corp Net Operating Loss apportionment carryforwards be verified?

Request a Statement of Account via myPATH to review available net operating loss carryforwards.

34. Are there any plans to update the PA-1000 Property Tax/Rent Rebate form to add a “negative / loss” indicator box such as indicating a loss when selling capital assets?

You may claim a loss on the PA-1000 for sale or exchange of property, rental income, and business income.

Line 8 Sale or Exchange of Property
Line 9 Rental Income or Loss
Line 10 Business Income or Loss

35. Prior to 2018, there were limits on depreciation of luxury automobiles and SUVs under IRC Section 280F. (See, for example <https://dwdcpa.com/resources/insights/2017-luxury-vehicle-limits/>) With the passage of bonus depreciation these limits were increased.

Does PA recognize this increase or are we still limited to the old limits? It has come to our attention that ProSeries and Lacerte (that we know of) are limiting the deduction, while other software is not.

We would like clarification either way to provide to the software providers so that they may program correctly.

PA does not recognize the increase in limitations. When providing for depreciation, the PA statute refers to a “method or convention allowable for Federal income tax purposes at the time the property is placed in service or under the Internal Revenue Code of 1986, whichever is earlier” (emphasis added).

This is similar to the same “problem” IRC 179 had. That statute had the same “or, whichever is earlier” language which kept us at levels back at 1986/1997. This year legislature removed the “or, whichever is earlier” language and simply made it IRC 179 in effect at the time the property is placed in service. I believe until/unless the legislature does the same thing with this provision, we must follow the “old” limits.