



# PSTAP ANNUAL MEETING

## December 2021: Questions and Answers

We provide here a summary of answers provided by the Department of Revenue (DOR) from December 6, 2021. This presentation is classified as revenue information issued for informational purposes only for the convenience of PSTAP's members. Pursuant to 61 PA. Code Section 3.4, this presentation should not be relied upon for any purpose or used in tax appeals. Taxpayers requiring a binding opinion on a specific situation may request a written letter ruling under 61 PA. Code Section 3.3.

### 1. Please provide an updated list of department personnel with contact information.

We appreciate the assistance that the department provides to our members so that they can effectively assist their clients and ultimately support tax collection for the Commonwealth. Practitioners lost an extremely responsive, valuable resource with the retirement of David Braden. David not only took the time necessary to address inquiries from the practitioner community but he understood the application and impact of the issues based on his public accounting experience. We look forward to establishing new channels and building on existing relationships within the department to fill that void.

We realize that you feel a loss with the departure of Dave Braden and we miss him too but truth be told, the department had to determine what the best use of its resources was and we decided that our focus needed to be on how we can best serve all of our customers.

The Customer Experience Center was designed to provide you with a single contact point to have your issues triaged. A place where the best course of action for resolution can be determined. We are here to, not only help resolve your issue, but to make sure that the subject matter experts know about the problems that exist. This also helps us to make sure that we train our staff about issues so they can better assist our customers, and in many cases it allows us to provide materials to our stakeholders so they can understand what is changing and how they need to adapt.

- In response to your question, we will provide materials for you to distribute to your members regarding the best way to contact the department going forward.
- For over a decade we have had the Tax Practitioner email channel available in the 'Ask a Question' feature of our Online Customer Service Center. We usually provide a response to these questions within 3 business days. This can be used for both general questions and account specific inquiries.
- In the past two years, we have created the schedule a call feature. You can use this option to select a date/time that works for you and one of our representatives will call you back. We do not limit the number of issues that you can address at one time, so feel free to use this channel to discuss various issues at once.
- Going forward, we strongly suggest that you start using the myPATH portal to interact with the department as much as possible. This will be the best option for resolving your issues quickly and easily. We suggest that you familiarize yourself with the homepage as there is a ton of functionality available without the need to create an account. Please keep in mind that in the future, all taxes will be integrated into the new system so we recommend that you start using it as soon as possible.
- And finally, we have created a contact list which outlines the main reasons that you would need to contact the Department of Revenue. This list outlines the best phone number to call or the email address to send your information to. In addition, we have added information to tell you when you can use myPATH.

At the end of the day, we have made a decision to allow the people who are processing or reviewing returns to continue doing that. We have heard complaints about backlogs and we cant fix that if we are constantly pulling them away from their main job duties. The individuals in the Customer Experience Center are trained to handle all of your tax matters and will be sure to take care of your concerns.

### 2. Please provide an update on the current status of the PA Department of Revenue workforce. Are employees returning to the office?



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Department of Revenue employees have been fully returned to work since August of 2020. Approximately 80% of our workforce will remain teleworking permanently, while 20% have returned to offices.

### **Will any changes be made to improve communication channels?**

We will need additional information as to what communication channels are not currently working.

### **Will any of the regional offices be reopened?**

Regional offices have been reopened since the fall of 2020.

### **Practitioners are reporting long telephone wait times and/or an inability to communicate with the department. Please provide any appropriate guidance that we can share with the practitioner community regarding communication channels.**

Due to a number of factors, the department had been seeing long delays in the processing of PIT refunds and PTRR rebates. As a result, call wait times were often exceeding 25 minutes. We have worked our way through PTRR backlogs and have made significant improvements with PIT refunds. Call wait times are beginning to drop.

### **3. Is the Original Issue Discount (OID) on a PA municipal bond considered tax-exempt interest?**

Normally, we don't tax interest from PA or US obligations. So, if the OID income is considered imputed interest and since we don't tax PA bond interest, we would not tax OID interest income on a PA bond.

### **4. If two spouses are divorcing and one spouse wants to buy out the other spouse in their personal vacation home, does that create tax consequences to the spouse who is being bought out?**

Regardless of the scenario, this is a sale of property transaction. Since the property was owned by both parties involved, the cost basis would be split 50/50. The "seller" would take the payment received and subtract out their 50% share of the cost basis to determine the gain or loss for tax reporting purposes. The "purchaser" would then assume full ownership of property and make the necessary adjustments to the cost basis based on the purchase of the other 50%.

### **Please address the question regarding both of the following scenarios: (a) the buy out is at fair market value; (b) the buy out is substantially less than fair market value.**

The department doesn't get involved whether the sale price is at fair market value. We would only look at what was given in exchange.

### **5. Under what circumstances does PA allow an installment sale treatment for Goodwill or Covenants Not to Compete?**

The installment sales method cannot be used to recover basis for the sale of intangibles. Installment payments for the sale of intangible assets are reported when received or constructively received, and cost recovery method is used to recover basis. The only exception to this rule is when a promissory note is given for the payment of the full sale price and that note is assignable. In those cases, the note is treated as the equivalent of cash and the entire sale price must be reported in the year of sale. You don't wait to receive the installment payments.

### **6. How does an employee substantiate W-2 wages when his/her employer has gone out of business and cannot be located AND employee has not received a W-2?**

The following instruction is listed on page 10 of the PA-40 instruction booklet: If you do not have a Form W-2 or a federal substitute W-2, Form 4852, you must submit evidence of your PA compensation and tax withheld by providing pay stubs and a statement identifying your employer and the reason you do not have a Form W-2. Please submit legible photocopies. Keep your original documents



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- 7. Under what circumstances does a new sales tax ID need to be obtained by an estate in the event a sole proprietor dies? Is there a period of time in which the estate can use the current sales tax id to wrap up the business?**

Technically licenses are non-transferrable so a new registration should be done right away.

- 8. What is the timeframe to obtain a PA Clearance Certificate and is there a process to have it expedited?**

If referring to an REV-181 clearance certificate, 3-6 months is the current best estimate for timeframe. Currently we offer no way to expedite processing.

- 9. Once emergency pandemic rules are lifted (post COVID) how will the department determine nexus for employees who continue to work from home? How will the department apply nexus to the corporate net income tax and sales and use tax?**

We have issued guidance on our website at [www.revenue.pa.gov/COVID19/Telework](http://www.revenue.pa.gov/COVID19/Telework).

- 10. Is Pennsylvania currently offering any tax credits for volunteer firefighters?**

There is no Personal Income Tax credit for Volunteer Firefighters

- 11. How can a tax practitioner be certain an individual is from the PA Department of Revenue when they return a call using the call-back option? This is particularly important when calls are being returned to a general number and not a direct number to the individual who scheduled the call back.**

If you are using the Schedule-A-Call feature on our website, you should be using a direct dial number, as use of a general line will most likely cause problems with connection the call.

As for validating whether the caller is a DOR employee, the call back voice recording identifies that this is a call from the PA Dept of Revenue. Once connected, our team should provide you their name and agent number. If you have concerns with the authenticity of our agents, I would suggest that you use the Tax Practitioner email option in the 'Submit-A-Question' feature of our Online Customer Service Center.

- 12. There have been many questions about the taxability of various grants in recent months. The department has provided some feedback to us as we have requested specific information. Can you please provide guidance on PA Cares Grants, CDFI and the grants for childcare centers? Has the department developed a definition that could help practitioners determine the taxability of the various grants?**

### **Coronavirus Aid, Relief, & Economic Security (CARES) Act: Pennsylvania Taxability (pa.gov)**

- The department has published guidance on the CARES Act monies.
- The department has published guidance relating to CDFIs.

### **COVID-19 Information (pa.gov)**

- Commonwealth Hospitality Industry Recovery Program (CHIRP)

Act 1 of 2021 provided for county block grants. Applications should be made to the county Certified Economic Development Organizations (CEDOs) and Community Development Financial Institutions (CDFIs). Grants are not taxable to Pennsylvania Personal Income Tax (PIT) or Corporate Net Income Tax (CNIT). Questions about the application process should be directed to the county CEDOs and CDFIs.



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Grants are generally not taxable unless they would fall within one of the taxable classes of income, but that has to be determined on a case by case basis. There are several different types of grants to childcare centers. Please provide more information on this grant.

### **13. Does PA allow Section 179 on Qualified Improvement Property?**

The PIT statute related to Section 179 deduction is linked to the FIT law as it existed at the time the property is placed in service or 12/31/97. Because Qualified Improvement Property did not exist as of 12/31/97, then it could not be considered “property commonly referred to as Section 179” property for purposes of the PA deduction.

### **14. If an S-Corporation had no activity and never filed a return, what penalties would be assessed upon filing the first return containing activity?**

More information would be helpful, but if the entity truly had no activity and no income, there would be no requirement to file, and no penalties could be imposed. Obviously, if there is no income, there is also no need to withhold, and no penalty could be imposed for not withholding.

### **15. Client has an S-Corp which recognized a large gain on the sale of a PA property which was only reported to the S-Corp via an Investment K-1 at the end of August 2021. The S-Corp return was on extension and was filed by 9/15 as well as the non-resident tax payment for the H&W FL shareholders (previously PA residents @ 50% each). They have received a 30% penalty for late payment of the non-resident taxes withheld. Is there either a safe harbor or revenue section to cite which would allow me to successfully appeal this late penalty since the gain was not known until late August or is the PA rule pretty much “cut and dry” that the payment must be made no later than 4/15 on a calendar year S-Corp to avoid this penalty on pass-throughs? I understand that the interest must be paid by statute. I have been unable to find any exceptions for the abatement.**

Pennsylvania statute requires S corporations to withhold tax on PA-source income allocable to a nonresident shareholder. It also requires the withholding must be paid by the 15th day of the fourth month after the end of the tax year. The statute also provides a mechanism for taxpayers to request abatement of these penalties by filing a petition with the Board of Appeals. The Board of Appeals can abate penalties in situations where it believes relief should be granted; those decisions are made based on the facts and circumstances of each situation.

### **16. When does the PA Department of Revenue issue Identity Verification Letters?**

Due to concerns with fraudulent activity, the department does not publicly release what generates the selection of a taxpayer to receive an identity verification letter.

### **17. When does the PA Department of Revenue issue Application of Credit Notices?**

Once the department has processed the return and carried forward a credit the following period.

### **18. As PSTAP has formerly communicated, there has been much confusion regarding the wording of the Application of Credit Notice, specifically the use of the word “examination.” We would like to see the wording modified. Below is the suggestion we submitted in June 2021. Please advise if there are plans to change the wording or provide additional clarification to taxpayers regarding the use of the word “examination” so that they don’t think they have been flagged and/or audited.**

**We received the return you filed. This notice will confirm your overpayment of \$XXX which will be carried forward and credited to the next tax period.**

The wording on this notice was updated effective August 28, 2021. The word Examination has been removed.



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**19. The need for many calls to the department could be eliminated if the department would provide appropriate explanation when they send letters that impose additional tax. I experienced a particularly frustrating situation this year: I scheduled a call with the DOR to ask why there was additional tax. I couldn't send a response without first understanding what adjustment was made. The PA DOR representative I called could only tell me it had to do with a credit related to Maryland. She said the notes on the file were unclear so she couldn't tell me anything more. I wrote a letter based on only this information asking for a clearer explanation and never received a response. This was during tax season 2020. Now, I have another shareholder of the same corporation who just received a similar letter - just a bill for additional tax with no explanation. Sorry, I know I'm not to speak about a particular client, but these types of letters are systemic. By comparison, letters from the IRS and NJ will at least show you why the adjustment was made so you can go back and review to determine whether you agree with the adjustment and can prepare a substantive response. It seems like eliminating the need for "information gathering" calls to the department would be in the best interest of everyone involved.**

Typically, when an adjustment is made by the department two notices are generated to the taxpayer. The first notice provides the period financials as well as a descriptions and amounts of penalties and interest that may have been generated, etc. The second notice is an Adjustment Summary that provides the reason or basis for the adjustment as well as the lines of the return that were adjusted including a column of the As Filed figures and a column of As Adjusted figures. Both notices are mailed at the same time and are within the same envelope. Since this question is regarding a specific taxpayer, please provide us with the taxpayer's information so that we may research it further to determine why both notices may not have been generated.

**20. Taxpayer receives an adjustment summary notice indicating an adjustment to the estimated payments reported on the tax return. Notice indicates a net adjustment of \$177 to taxes paid, no refund was requested and no amount will be carried forward. Six weeks later the taxpayer gets a refund with no explanation. Situations like this cause confusion to the Taxpayer and a lack of confidence in the department as well as in the tax practitioner. This is a systemic issue. We are getting calls from clients, resulting in research, then when the client gets a refund, another call, more research. Can the department indicate on the notice how the overpayment will be treated?**

The Bureau of Individual Taxes and the PATH team are not aware of a systemic issue, so examples would be helpful to determine if the issue is system related or a training issue.

**21. Tax examiners are not reviewing e-filed returns for PDF attachments. I have been receiving notices for missing information that was attached to the e-filed return. eg. W-2's, 1099's, out of state returns, UE documentation, etc. Is there any guidance on what practitioners can do to ensure that the pdf attachments are reviewed by the tax examiners?**

Tax examiners were notified that they need to look in all locations for supporting documentation prior to sending out a request for information or before an adjustment is made to a taxpayer's return.

**22. Why can't immediate access be granted to myPATH by verification of the taxpayer through a means similar to the IRS where a checkbox is provided that allows the preparer to discuss the return? We have to wait until the letter is received before we can log in.**

Gaining access to a client's taxpayer information via myPATH does require the client to establish a myPATH login first. Once the client's myPATH account is established they then have the ability to properly manage third-party access to their account and their taxpayer information. This is the only means for ensuring only authorized individuals gain access. In addition, in order to comply with IRS publication 1075 requirements, we were instructed



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by the IRS to include this access letter requirement given the fact that accounts on myPATH may contain FTI. Third party users may request access from their client to manage that client's account(s). Their client can accept or deny the request and can manage Access Levels for the third party. Access can be revoked at any time. Depending on the Logon Type and Access Level, third party users can view submissions, letters, messages, and manage payments and returns for their clients through the Accountant Center.

**23. The following information was submitted by a PSTAP member after attending the 2021 Fall Tax Seminar. We are including this as it conveys the sentiments of many posts on our email discussion group and comments at the tax seminars. He writes:**

*"I am extremely frustrated by PA DOR's policy position that will prevent Tax Professionals from having direct (authorized) access to client taxpayer information in myPATH. Is it that they are not listening to practitioners or are practitioners not speaking up? The presenter stated that the main objective of myPATH is to help taxpayers become self-sufficient, which is a fine objective, but many of our clients do not yearn to be self-sufficient. While some taxpayers prepare their own returns, others do not and there are all kinds of varying levels of involvement among clients.*

*Why doesn't PA DOR see an advantage of partnering with tax professionals to resolve taxpayer issues? A true partnership would make tax administration more efficient and effective for everyone! Other states have adopted measures that prove this. While Pennsylvania has had a longstanding resistance to providing a Practitioner Priority Line other states provide it with great success. I just resolved an issue involving 2 years lost refund checks, with the New Jersey Practitioner Priority Line - it took less than 5 minutes and the client received replacement checks in less than 10 days.*

*However, despite this inflexibility, I had been very encouraged in recent years by being able to use E-Tides to electronically file POA's, view notices and resolve issues either electronically or on the phone with PA DOR staff, who I found to be very competent and efficient. However, with the advent of myPATH that ease of efficient administration is no longer possible as the client has to create a myPATH account either on their own or with our assistance. When asked about expanding access for practitioners, DOR site security as an excuse. Who is more security conscience than the IRS and they have found ways (albeit with overkill) to give Tax Professionals a secure portal to access taxpayer information via e-Services.*

*I recommend that PSTAP advocate with PA DOR to, at a minimum, provide Circular 230 practitioners with the same level of access to taxpayer authorizations, account information and problem resolution as was available in E-tides.*

*I must also add that today's Presenter stated that E-tides business taxpayer information would not be automatically converted to the myPATH when it replaces E-Tides. Information would have to be reentered. I personally find this unacceptable. I would say to PA DOR, don't convert to myPATH until you figure out how to successfully convert all information in E-Tides to myPATH - E-Tides isn't broken, don't try to fix it with a system that offers no enhancements.*

The presenter's statement that "E-tides business taxpayer information would not be automatically converted to the myPATH when it replaces E-Tides" is not complete or accurate. We are in the process of identifying our approach to this transition. We do plan to convert logins where feasible; however, we will only do so under specific circumstances. As we identify a final approach to transition, we will keep PSTAP informed.

The department believes reducing the risk of unauthorized access to a taxpayer's information is of utmost importance. As such, while we recognize the potential delays and inconvenience surrounding the establishment of these accounts and related access, the department must weigh these against the risk of allowing unauthorized access to taxpayers' information.