

PROPOSED RULEMAKING

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 65]

Unemployment Compensation; Active Search for Work

The Department of Labor and Industry (Department) proposes to amend § 65.11 (relating to active search for work) to read as set forth in Annex A.

A. *Statutory Authority*

This rulemaking is proposed under section 201(a) of the Unemployment Compensation Law (law) (43 P. S. § 761(a)), which authorizes the Department to promulgate and amend rules and regulations necessary to administer the law, and section 401(b) of the law (43 P. S. § 801(b)), which directs the Department to establish the requirements a claimant shall meet to “make an active search for suitable employment.”

B. *Background and Description of Proposed Rulemaking*

Section 401 of the law contains various eligibility criteria for unemployment compensation (UC) benefits. As amended by the act of June 17, 2011 (P. L. 6, No. 6) (Act 6), section 401 of the law provides that “[c]ompensation shall be payable to any employee who is or becomes unemployed, and who—” . . . “(b)(1) [i]s making an active search for suitable employment.”

The requirement in section 401(b) of the law that a claimant make an active search for suitable employment took effect on January 1, 2012, and applies to benefit years that begin on or after that date.

This proposed rulemaking will amend § 65.11 to contain the requirements a claimant shall meet to be eligible for benefits under section 401(b) of the law. This rulemaking is proposed in accordance with the General Assembly’s directive in section 401(b)(1) of the law that “[t]he requirements for ‘active search’ shall be established by the department”

Under proposed subsection (b), a claimant’s initial active search requirement is to register for employment search services in the Pennsylvania Careerlink® system within 30 days after the claimant files his application for benefits. Section 401(b)(1) of the law provides that this requirement must be part of the Department’s overall work search requirements. If the claimant fails to register within that 30-day period, he is ineligible for benefits for weeks that end beyond that 30-day period unless the claimant has registered no later than Sunday of the week.

In addition to the initial requirement to register for employment search services, generally a claimant shall satisfy the requirements of subsection (d)(1), (2) and (5) during each week for which compensation is claimed, beginning with the third week of the benefit year. During the third through eighth weeks, subsection (d)(1) requires the claimant to apply for at least two positions each week. However, the claimant may limit his applications to positions that would provide employment and wages similar to those the claimant had prior to his unemployment and are within a generally accepted commuting distance. During the ninth week of the benefit year and subsequent weeks, subsection (d)(2) requires the claimant

to apply for not less than three positions each week that would provide suitable employment under section 4(t) of the law (43 P. S. § 753(t)). A claimant may apply for a position by mail, phone or electronic transmission, by submitting an application or resume to the employer, or by following a hiring procedure established by the employer.

Subsection (d)(5) enumerates seven types of job search activities other than applying directly to an employer for a position. Generally, a claimant shall engage in at least one of these activities during each week. If a claimant applies in a week for more than the number of positions required under subsection (d)(1) or (2), the additional application may substitute for a work search activity under subsection (d)(6).

There are certain exceptions and alternative requirements under proposed subsection (e). Notwithstanding the registration requirement in subsection (b) and the weekly work search activities required under subsection (d), the Department may determine that a claimant has satisfied the active search requirement in section 401(b) of the law if the claimant engages in work search efforts that are comparable to the way in which jobs in the claimant’s trade or occupation are found in the claimant’s community and labor market. Work search activities under subsection (d) are not required for a week if the claimant is a member of a union that has a hiring hall or the claimant is registered with a hiring hall, the claimant is required to obtain employment through the hiring hall, and the claimant fulfills the requirements to maintain eligibility for referral by the hiring hall during the week. Work search activities under subsection (d) also are not required for a week if the claimant actively participates during the week in a program or activity that is approved by the Department as an acceptable work search alternative. If the claimant works part time during a week and earns in excess of the partial benefit credit under section 4(m.3) of the law, the claimant will satisfy subsection (d)(1) by applying for one position and subsection (d)(2) by applying for two positions, and the claimant is not required to satisfy subsection (d)(5) for the week. If a claimant’s labor market is located outside of this Commonwealth, the claimant shall register for employment search services with the employment service that serves the claimant’s labor market in addition to registering with the Pennsylvania Careerlink® system.

Under proposed subsection (f), the active search requirement does not apply to a week in which the claimant is in training with the approval of the Secretary of Labor and Industry or a week in which the claimant is participating in work sharing. The exception for weeks in which the claimant is in approved training is required under section 3304(a)(8) of the Federal Unemployment Tax Act (26 U.S.C.A. § 3304(a)(8)).

Section 401(b)(5) of the law provides that the active search requirement is not applicable to a claimant who is laid off for lack of work and is advised by his employer of the date when he will return to work. Subsection (f)(2) articulates certain criteria to determine if a claimant has been given a return-to-work date for purposes of section 401(b)(5) of the law and specifies certain circumstances when section 401(b)(5) of the law would not apply.

For purposes of eligibility for extended benefits, subsection (g) states that a claimant shall satisfy work search

requirements for extended benefits in addition to meeting the requirements of section 401(b) of the act and § 65.11.

C. *Affected Persons*

This proposed rulemaking will affect claimants who file an application for UC benefits that takes effect on or after January 1, 2012.

D. *Fiscal Impact*

The Department anticipates that a claimant will be able to meet the active search requirement in section 401(b) of the law and § 65.11 at minimal or no cost.

The Department will integrate administration of the active search requirement into its day-to-day administration of all of the eligibility provisions of the law. It is not possible to accurately isolate the cost to administer only the active search provision.

E. *Paperwork Requirements*

Proposed subsection (c) requires a claimant to create a record of his work search activities that contains the information required by the Department, retain the record for 2 years from the effective date of the application for benefits and produce the record for the Department's review at the times and in the format and manner as the Department requires.

F. *Sunset Date*

The regulation will be monitored through practice and application. Therefore, a sunset date is not designated.

G. *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 19, 2012, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Labor and Industry Committee and House Labor and Industry Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

I. *Public Comment*

Interested parties are invited to submit written comments, objections or suggestions about the proposed rulemaking to Susann Morrison, Executive Assistant to the Deputy Secretary for UC Programs, Room 1721B, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121, (717) 705-3799 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public. Comments may also be submitted electronically at sumorrison@pa.gov. A subject heading referencing the proposed rulemaking, name and return mailing address must be included in each

transmission. In addition, electronic comments must be contained in the text of the transmission, not in an attachment.

JULIA K. HEARTHWAY,
Secretary

Fiscal Note: 12-96. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART II. BUREAU OF EMPLOYMENT SECURITY

Subpart A. UNEMPLOYMENT COMPENSATION

CHAPTER 65. [EMPLOYE] EMPLOYEE PROVISIONS

Subchapter B. PREREQUISITES FOR ELIGIBILITY

[REGISTRATION] ACTIVE SEARCH FOR WORK

§ 65.11. [Work registration; effective period] Active search for work.

(a) [A claimant who files an application for benefits in accordance with § 65.41 (relating to filing methods) and declares his availability for suitable work has registered for work for purposes of section 401(b) of the law (43 P. S. § 801(b)). The work registration is effective on the date that the application is effective in accordance with § 65.42 (relating to application for benefits—effective date) or § 65.43a (relating to extended filing) and remains in effect for the benefit year corresponding to the application and any subsequent period for which benefits are payable pursuant to the application.

(b)] *Initial procedures.* When a claimant files an application for benefits in accordance with § 65.41 (relating to filing methods), the Department will provide information [relevant to the claimant's reemployment and receipt of employment services to the employment office] to the claimant regarding the process to register for employment search services and post a resume in the Pennsylvania CareerLink® system and advise the claimant of services provided by the Department and the Pennsylvania CareerLink® system.

(b) *Work registration.* A claimant shall register for employment search services in the Pennsylvania CareerLink® system within 30 days after the claimant files his application for benefits. If a claimant does not register for employment search services in the Pennsylvania CareerLink® system within 30 days after the claimant files his application for benefits, the claimant will be ineligible for compensation for any week that ends more than 30 days after the claimant files his application for benefits unless the claimant registers no later than Sunday of that week.

(c) *Weekly requirements.* To be eligible for compensation for the third consecutive week of the benefit year and each week thereafter, a claimant shall do the following:

(1) Engage in work search activities during the week in accordance with subsections (d) and (e).

(2) Create a record of his work search activities during the week containing the information required by the Department.

(3) Retain the record for 2 years from the effective date of the application for benefits.

(4) Produce the record for the Department's review at the times and in a format and manner as required by the Department.

(d) *Weekly work search activities.*

(1) During each week from the third consecutive week of the benefit year through the eighth consecutive week of the benefit year, the claimant shall apply for employment as follows:

(i) Except as provided in subparagraph (ii), the claimant shall apply for at least two positions.

(ii) The claimant may limit his applications to positions that would provide employment and wages similar to those the claimant had prior to his unemployment and are within a 45 minute commuting distance or a commuting distance that is generally accepted in the claimant's labor market, whichever is greater.

(2) During the ninth consecutive week of the benefit year and each week thereafter, the claimant shall apply for employment as follows:

(i) The claimant shall apply for at least three positions that would provide suitable employment under section 4(t) of the law (43 P. S. § 753(t)).

(ii) The claimant may not limit his applications to positions described in paragraph (1)(ii) if doing so would result in an insufficient number of applications during the week.

(3) For purposes of paragraphs (1) and (2), a claimant may apply for a position by expressing an interest in employment to the employer the following ways:

(i) In person.

(ii) By mail, phone or electronic transmission.

(iii) By submitting a job application or resume to the employer.

(iv) By following a hiring procedure established by the employer.

(4) A repeated application for the same position does not satisfy the requirements of paragraphs (1) and (2) unless there is a reasonable basis to believe that the employer's hiring circumstances have changed.

(5) In addition to the requirements of paragraphs (1) and (2), the claimant shall do at least one of the following during the week:

(i) Attend a job fair.

(ii) Search positions posted on the Pennsylvania CareerLink® system or Internet job banks.

(iii) Post a resume in the Pennsylvania CareerLink® system or other resume posting service.

(iv) Contact colleagues, former coworkers or other individuals in similar professions or occupations to make known the claimant's availability for employment or obtain information about available positions, prospective employers or other employment opportunities.

(v) Utilize an employment agency, employment registry or school placement service.

(vi) Take a civil service test or other pre-employment test.

(vii) Participate in a program or activity offered through the Pennsylvania CareerLink® system.

(6) If a claimant applies for more than the minimum number of positions under paragraph (1) or (2), the additional application may substitute for a work search activity under paragraph (5).

(e) *Alternative requirements.*

(1) Work search activities under subsection (d) are not required for a week if either of the following apply:

(i) The claimant meets all of the following:

(A) Is a member of a union that has a hiring hall or the claimant is registered with a hiring hall.

(B) Is required to obtain employment through the hiring hall.

(C) Fulfills the requirements to maintain eligibility for referral by the hiring hall during the week.

(ii) The claimant actively participates during the week in a program or activity approved by the Department as an acceptable work search alternative.

(2) If a claimant works part time during a week and earns in excess of the claimant's partial benefit credit as defined in section 4(m.3) of the law, the following apply:

(i) The claimant shall satisfy the requirements of subsection (d)(1) by applying for one position during the week and subsection (d)(2) by applying for two positions during the week.

(ii) The claimant will not be required to satisfy the requirement of subsection (d)(5) during the week.

(3) For purposes of subsection (b), if a claimant's labor market is located outside of this Commonwealth the claimant shall register for employment search services with the employment service that serves the claimant's labor market in addition to registering with the Pennsylvania CareerLink® system.

(4) Notwithstanding any other provision of this section, the Department may determine that a claimant has satisfied the requirements of section 401(b) of the law (43 P. S. § 801(b)) if the claimant's work search efforts include actions comparable to traditional actions in the claimant's trade or occupation by which jobs have been found by others in the community and labor market in which the claimant is seeking employment.

(f) *Applicability.*

(1) This section does not apply:

(i) As provided in section 401(b)(4) and (5) of the law.

(ii) To a week in which a claimant is in training with the approval of the Secretary.

(iii) To a week in which a claimant is participating in a work sharing plan under Article XIII of the law (43 P. S. §§ 916.1—916.13).

(2) For purposes of section 401(b)(5) of the law:

(i) A claimant is advised by the employer of the date on which he will return to work only if both of the following conditions are satisfied:

(A) The employer designates a specific recall date and notifies the claimant of the recall date in writing.

(B) The employer's designation of a recall date is bona fide.

(ii) Section 401(b)(5) of the law does not apply to a week following the week in which either of the following occur:

(A) The designated recall date is rescinded by the employer or is rescinded in fact.

(B) The designated recall date has passed.

(g) *Extended benefits.* For purposes of extended benefits under Article IV-A of the law (43 P.S. §§ 811—818), if the eligibility requirements for extended benefits include work search requirements in addition to the requirements of section 401(b) of the law and this section, the claimant also shall satisfy the additional work search requirements applicable to extended benefits.

(h) *Definitions.* For purposes of this section and section 401(b) of the law, the following words and phrases have the following meanings, unless the context clearly indicates otherwise:

Employment service—The State employment service established under 20 CFR Part 652 (relating to establishment and functioning of state employment services).

Pennsylvania CareerLink® system—The system of offices, personnel and resources, including the Commonwealth Workforce Development System or successor electronic resources, through which the Department provides services under the Wagner-Peyser Act (29 U.S.C.A. §§ 49—491-2) and the Workforce Investment Act of 1998 (29 U.S.C.A. §§ 2801—2945) or similar or successor statutes.

Register for employment search services—Information regarding education, work history and qualifications and other information required by the Department that is relevant to receipt of employment search services.

[Pa.B. Doc. No. 12-804. Filed for public inspection May 4, 2012, 9:00 a.m.]

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 117, 119 AND 121] Personal Income Tax; Amended Returns

The Department of Revenue (Department), under authority in section 354 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 7354), proposes to amend Chapters 117, 119 and 121 (relating to return and payment of tax; liabilities and assessment—procedure and administration; and final returns) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

This proposed rulemaking will clarify the Department's policy on amended returns for Pennsylvania Personal

Income Tax and replace outdated language. In addition, the proposed rulemaking will provide clear instructions for taxpayers regarding petitions for refunds.

Explanation of Regulatory Requirements

Proposed amendments to §§ 117.1 and 117.7 (relating to general requirements of a return; and time for filing returns and paying tax) delete out-of-date language and add clarifying language.

Proposed amendments to § 119.13 (relating to restrictions on refunds) delete outdated references to the Board of Finance and Revenue and replace them with an updated reference to Chapter 7 (relating to Board of Appeals). Proposed amendments to subsection (b) delete minor language and add paragraphs (3)—(5) for more details on exceptions. Subsection (c) is proposed to be deleted. The text in subsection (c)(3) is proposed as new § 119.13a (relating to refund claim filed by a legal representative or other fiduciary). The text in subsection (c)(4) is proposed as new § 119.13b (relating to checks in payment of claims).

Proposed amendments to § 119.18 (relating to limitations on refund or credit) delete outdated references to the Board of Finance and Revenue and replace them with an updated reference to Chapter 7.

Proposed amendments to § 121.1 (relating to filing tax return) add subsection (g). This language is currently in § 121.25(b) (relating to amended return).

Proposed amendments to § 121.25 delete outdated language, amend subsection (b) and add subsections (e)—(g) to provide uniformity and guidance on amended returns to Pennsylvania taxpayers. It is important to note the proposed amendments to subsection (b)(1) explain that a Personal Income Tax amended return may be filed within 3 years from the original or extended due date of the return. This marks a change in current policy and practice. The policy change will benefit taxpayers by giving additional time to file an amended return in cases where a taxpayer has been granted an extension to file the original return.

Affected Parties

Pennsylvania taxpayers and tax practitioners may be affected by the proposed rulemaking.

Fiscal Impact

The Department has determined that the 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.

Effective and Sunset Dates

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-form publication. A sunset date has not been assigned.

Contact Person

Interested persons are invited to submit in writing comments, suggestions or objections regarding this proposed rulemaking 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 proposed rulemaking in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 25, 2012, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

DANIEL MEUSER,
Secretary

Fiscal Note: 15-456. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 61. REVENUE****PART I. DEPARTMENT OF REVENUE****Subpart B. GENERAL FUND REVENUES****ARTICLE V. PERSONAL INCOME TAX****CHAPTER 117. RETURN AND PAYMENT OF TAX****§ 117.1. General requirements of a return.**

Every taxpayer having an item of income or loss within the meaning of this article for the taxable year shall file a tax return on or before the date when the Federal income tax return of the taxpayer is due or would be due if the taxpayer were required to file a Federal income tax return under the Internal Revenue Code. Consequently, returns are due on or before April 15 for the calendar year taxpayers and on or before the 15th day of the fourth month following the close of the fiscal year for fiscal year taxpayers[, but in any event for the first reporting period no earlier than April 15, 1972].

§ 117.7. Time for filing returns and paying tax.

All persons required to make and file returns under § 117.1 (relating to general requirements of a return) shall, without assessment, notice[,] or demand, pay [any tax due thereon on the same due date fixed for filing the return] the tax required to be reported as due on a return at the time prescribed in § 117.1 for filing a return, determined without regard to any extension of time for filing the return. Payment of [the balance of any tax due thereon] the tax should accompany the return when filed.

**CHAPTER 119. LIABILITIES AND ASSESSMENT—
PROCEDURE AND ADMINISTRATION****§ 119.13. Restrictions on refunds.**

(a) *General rule.* Except as provided in subsection (b), [no] the Department will make a credit or refund [will be made] under § 119.12 (relating to refund or credit of overpayment) [without the approval of the

Board of Finance and Revenue] only pursuant to a petition for refund. See Chapter 7 (relating to Board of Appeals).

(b) *Exceptions.* [Credits or refunds may be made without application to the Board of Finance and Revenue if one of the following occurs] The Department will make a credit or refund if the credit or refund arises as a result of:

(1) The [credit or refund arises by reason of the] overpayment of an installment of estimated tax.

(2) [Such credit or refund arises upon the] The filing of a final return showing less tax due after the application of the allowable credits than the amount of tax withheld from the compensation of the taxpayer or the amount of tax paid by him as estimated tax under this article [or pursuant to Article III of the act of March 4, 1971 (P. L. 6, No. 2) (72 P. S. §§ 7301—7361)].

(3) The filing of an amended return showing an overpayment of tax.

(4) A petition for reassessment. The credit or refund will only be for amounts paid by reason of the assessment.

(5) A Departmental audit.

[(c) *Form of claims for credit or refund.* Credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer. The following requirements apply:

(1) No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed before the expiration of such period. The claim shall set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Department of the exact basis thereof. The statement of the grounds and facts shall be verified by a written declaration that it is made under the penalties of perjury. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund or credit.

(2) In the case of any tax imposed by this article, a separate claim shall be made for each type of tax for each taxable year or period.

(3) If a return is filed by an individual and, after his death, a refund claim is filed by a legal representative, certified copies of the letters testamentary, letters of administration, or other similar evidence shall be annexed to the claim to show the authority of the legal representative to file the claim. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany this claim, if a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund is to be paid, letters testamentary, letters of administration, or other evidence may be required

but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim. A claim may be executed by an agent of the person assessed, but in such case a power of attorney shall accompany the claim.

(4) Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and may be sent directly to the claimant or to such person in care of an attorney or agent who has filed a power of attorney specifically authorizing him to receive such checks.]

(Editor's Note: Sections 119.13a and 119.13b are new and printed in regular type to enhance readability.)

§ 119.13a. Refund claim filed by a legal representative or other fiduciary.

If a return is filed by an individual and, after his death, a refund claim is filed by a legal representative, certified copies of the letters testamentary, letters of administration or other similar evidence shall be annexed to the claim to show the authority of the legal representative to file the claim. If an executor, administrator, guardian, trustee, receiver or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary does not need to accompany this claim if a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In these cases, if a refund is to be paid, letters testamentary, letters of administration or other evidence may be required but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim. A claim may be executed by an agent of the person assessed, but in this case a power of attorney must accompany the claim.

§ 119.13b. Checks in payment of claims.

Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and may be sent directly to the claimant or to a person in care of an attorney or agent who has filed a power of attorney specifically authorizing him to receive checks.

§ 119.18. Limitations on refund or credit.

Any [application] petition for refund shall be filed [with the Board of Finance and Revenue within three years from the time the return is required to be filed] in accordance with Chapter 7 (relating to Board of Appeals) and within applicable limitation periods.

CHAPTER 121. FINAL RETURNS

§ 121.1. Filing tax return.

* * * * *

(f) A return need not be filed by an individual whose tax liability is less than \$1.

(g) A return filed before the due date or extended due date will be considered to be filed on the due date or extended due date.

(Editor's Note: The proposed text in § 121.1(g) is being moved from § 121.25(b).)

§ 121.25. Amended return.

* * * * *

(b) [If the error discovered results in a refund of tax, the amended Form PA-40 shall be filed within 3 years from the date the original return was due in order to receive a refund. A return filed before the due date or extended due date will be considered to be filed on the due date or extended due date.] The Department will review an amended return if the following apply:

(1) The amended return is filed within 3 years of the due date or extended due date of the original return.

(2) The amendments shown on the amended return involve issues other than those under appeal.

(3) The taxpayer is not challenging the Department's policy, its interpretation or the constitutionality of the Commonwealth's statutes. A challenge of the Department's policy, its interpretation of the statutes or the constitutionality of the Commonwealth's statutes must be made by filing a petition for reassessment or a petition for refund.

(c) If a tax payment was made with the original return, the amount of this payment shall be included on the amended return in the manner prescribed by instructions of the Department. [This can be done by entering between lines 15 and 16 in the "Tax Credit" section of Form PA-40 the words "Amount paid with original return." The dollar amount shall be entered directly below line 15 and included in "Total Credits" (line 16).]

(d) If a refund was received or is expected to be received from the original return, the amount of this refund shall be shown on the amended return in the manner prescribed by instructions of the Department. [Between line 15 and 16 in the "Tax Credit" section of Form PA-40 the words, "Refund shown on original return" shall be entered. The dollar amount shall be entered directly below line 15 and this amount subtracted from the other credits to arrive at the proper amount to be shown as "Total Credits" (line 16).]

(e) Effect of an amended return on petition rights.

(1) An amended return does not replace the filing of a petition for reassessment or a petition for refund.

(2) The filing of an amended return does not extend the time limits for a taxpayer to file a petition for reassessment or a petition for refund.

(f) Review of amended return.

(1) The Department is not obligated to revise the tax due the Commonwealth upon review of an amended return. The Department's failure to revise the tax due the Commonwealth is not appealable and does not change existing appeal rights of the taxpayer.

(2) If the Department determines an adjustment of the taxpayer's account is appropriate, it will adjust the Department's records to conform to the revised tax as determined and will credit the taxpayer's account to the extent of an overpayment resulting from the adjustment or assess the taxpayer.

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

(g) An amended return filed with the Department must contain the following:

- (1) The calculation of the amended tax liability.
- (2) Revised Pennsylvania supporting schedules, if applicable.
- (3) A complete explanation of the changes being made and the reason for those changes.

[Pa.B. Doc. No. 12-805. Filed for public inspection May 4, 2012, 9:00 a.m.]
