

June 7, 2007

TO: Chairman Gibbons and Commissioners

FROM: Alfred H. Harf
Executive Director

RE: Meeting with the Commonwealth's Finance Secretary Wagner and Tax
Commissioner Bowen re Motor Fuels Tax Issues

Following an exchange of letters between PRTC Chairman Gibbons and Commonwealth Finance Secretary Wagner earlier this year, the Secretary's office assented to meeting to discuss Taxation's motor fuels tax collection and enforcement practices. The meeting occurred on May 22nd, and this is a brief account of what occurred.

The primary purpose of the meeting was to allow the PRTC representatives (i.e., Chairman Gibbons, PRTC Legal Counsel Horan, and me) to express the Commission's concerns about Taxation's non-communicative operating style. Using one recent case that has been of particular interest to PRTC as an illustration, we opened the discussion by faulting the fact that Taxation has repeatedly rebuffed PRTC's requests for substantive information, and kept PRTC at arm's length from the tactical and strategic decision-making required to decide how best to resolve "collection dispute" issues in that case. We noted that the 2% motor fuels tax is being collected expressly for PRTC's use and, as the intended recipient of the 2% motor fuels tax revenue, PRTC has a direct interest in insuring that taxes owed are being properly collected.

Our opening observations prompted Secretary Wagner and Commissioner Bowen to ask if the case under discussion was an aberration, or whether PRTC feels that there are other issues warranting constructively critical examination. We replied that the one case is merely an illustration of "operating style" concerns we have, and that operating style is one among a number of concerns. Asked to summarize our other concerns, we highlighted:

1. The long lag times between when taxes are supposed to be remitted and when some of them are;

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2. The chronic need for debits and credits arising because collections are sometimes misassigned to jurisdictions (owing in part to what we understand is a change in “remittance” requirements that frees the tax payer of the obligation to report remittances that are for multiple service stations in more than one jurisdiction on a “jurisdictional” basis);
3. The adequacy of current auditing efforts to identify instances of non-payment and under-payment; and
4. The desirability of isolating fuel sales by jurisdiction to facilitate projections of fuel tax yields in jurisdictions thinking about membership.

The discussion then turned to prospective improvements to allay these concerns, and a number of ideas were surfaced for follow-up consideration /action, namely:

1. PRTC and its member jurisdictional staff will collaborate on an approach for informing Taxation of service stations either newly opening or closing, drawing on available local information, so Taxation’s auditors have an easier time discerning where registrations are necessary and instances of non-payment may be present;
2. Taxation staff will examine current practices on tracking, reporting, and auditing to examine concerns # 1, 2, and 3 in a constructively self-critical way, arranging for follow-up discussion with PRTC once this fact-finding has been completed; and
3. Taxation staff will examine whether the Tax Code permits Taxation to consult more openly with PRTC on the tactical and strategic decision-making that is a necessary part of enforcement, advising PRTC of limitations and the reasons for them.

With regard to fuel sales by jurisdiction, Taxation staff clarified that no such information is collected in jurisdictions where the 2% motor fuels tax is not in effect. References were made to the fact that DMV formerly collected such information but no longer does because of a change in the Tax Code.

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Finally, with regard to the specific case we discussed with Taxation, we were advised that the dispute has been settled, and we were provided with an account of the disposition on a confidential basis.