

<h2 style="margin: 0;">Regulatory Analysis Form</h2> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0;">(All Comments submitted on this regulation will appear on IRRC's website)</p>	<p style="margin: 0;"><i>INDEPENDENT REGULATORY REVIEW COMMISSION</i></p> <p style="margin: 0;">RECEIVED</p> <p style="margin: 0; font-size: small;">Independent Regulatory Review Commission</p> <p style="margin: 0;">May 15, 2024</p>
<p>(1) Agency</p> <p>Revenue</p>	<p>IRRC Number: 3402</p>
<p>(2) Agency Number: 15</p> <p>Identification Number: 462</p>	
<p>(3) PA Code Cite: 61 Pa. Code § 153.24a</p>	
<p>(4) Short Title: Corporate Net Income Tax (CNIT) - Business Income and Nonbusiness Income</p>	
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Maria L. Miller (717) 783-7524</p> <p>Secondary Contact: Michael Vadner (717) 346-4640</p>	
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation</p> <p><input type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>	<p><input type="checkbox"/> Emergency Certification Regulation</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The purpose of the proposed rulemaking is to add § 153.24a Business Income and Nonbusiness Income due to legislative changes and the further development of the Unitary Business Principle of the U.S. Constitution in case law. This regulation affirms that Pennsylvania applies the U.S. Constitutional standard as set forth in the definitions of “Business income” and “Nonbusiness income” contained in 72 P.S. § 7401(3)2.(a)(1) for determining income subject to tax in Pennsylvania.</p>	

(8) State the statutory authority for the regulation. Include specific statutory citation.

Statutory authority for the regulation is contained in Article IV, Part V of the Tax Reform Code of 1971 (TRC) (72 P.S. § 7408(a) and Article IV, Part I of the TRC (72 P.S. § 7401(3)).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is mandated by Pennsylvania statute, 72 P.S. § 7401(3)2.(a)(1)(A) and 72 P.S. § 7401(3)2.(a)(1)(D), which adopted the U.S. Constitution standard for determining business income in Pennsylvania. Specifically, these statutory provisions explicitly state that the term “business income” includes all income which is apportionable under the Constitution of the United States and that the term “nonbusiness income” does not include income which is apportionable under the Constitution of the United States.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Act 23 of 2001 (72 P.S. § 7401(3)) adopts the U.S. Constitution standard for determining business income in Pennsylvania and provides operative provisions in the definition of “Taxable income.” The Department is promulgating this regulation to clarify the definitions of “business income” and “nonbusiness income” and to clarify rules for Pennsylvania Corporate Net Income Tax taxpayers.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No provisions are more stringent than federal standards. The majority of the language in this proposed regulation mirrors the rules adopted by the Multistate Tax Commission's Model General Allocation and Apportionment Regulations. See [FINAL-APPROVED-2018-Proposed-Amendments-042020.pdf \(mtc.gov\)](#)

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The Pennsylvania regulation is similar to tax regulations in other states. The regulation will not put Pennsylvania at a competitive disadvantage with other states. In fact, it will improve the competitiveness of Pennsylvania companies doing business in other states by assuring they will not be subject to double taxation on the same income.

The majority of the language in this proposed regulation mirrors the Multi-State Tax Commission rules on "Apportionable and Nonapportionable Income," and have been adopted by several states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation does not affect any other existing or proposed regulations of the Department or any other state agency.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

In conducting informal public outreach, a copy of the proposed regulation was forwarded to the Pennsylvania Bar Association, the Philadelphia Bar Association, the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Society of Public Accountants, the Pennsylvania Chamber of Business and Industry, the National Federation of Independent Business and the SMC Business Councils. The Department received one comment letter containing ten comments or concerns regarding this regulation from the Philadelphia Bar Association.

The regulation is listed in the Quarterly Regulatory Report published on Revenue’s website (www.revenue.pa.gov) and will be forwarded to interested parties upon request.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The total number of businesses affected by the proposed regulation is the total number of Corporate Net Income Tax (CNIT) filers. In tax year 2019, the most recent available year for data, there were 92,429 CNIT filers. Of these firms, approximately 76,300 qualify as a small business under Federal Small Business Administration guidelines.

There is no negative fiscal impact from this proposed regulation, as it clarifies existing Pennsylvania law. All of these entities will benefit from this clarification resulting in uniform compliance.

(16) List the persons, groups or entities, including small businesses that will be required to comply with the regulation. Approximate the number that will be required to comply.

All CNIT filers will be required to comply with the proposed regulation. There were 92,429 filers in tax year 2019.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There is no financial, economic or social impact on individuals, small businesses, businesses and labor communities, or other public and private organizations. All of these entities will benefit from this clarification of the CNIT regulations and uniform compliance.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulation clarifies existing law; therefore, there are no aggregate costs and/or benefits to compare.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There is no fiscal impact on the regulated community from this regulation, as it clarifies existing Pennsylvania law.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The proposed regulation has no fiscal impact on local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The proposed regulation has no fiscal impact on state government.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No legal, accounting, consulting procedures, additional reporting, recordkeeping or other paperwork are required by this proposed regulation, as it clarifies existing Pennsylvania law.

(22a) Are forms required for implementation of the regulation?

No new forms are required for implementation of this regulation.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. **This regulation is a clarification of existing Pennsylvania law; therefore, it has no fiscal impact on state or local government, or the regulated community.**

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(23a) Provide the past three year expenditure history for programs affected by the regulation.
There is no government program for the public on this matter.

Program	FY -3	FY -2	FY -1	Current FY

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

- (a) Approximately 76,300 small businesses will be subject to the regulation.
- (b) There are no significant projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation.
- (c) The regulation does not impact small businesses adversely or otherwise, as it is a clarification of existing Pennsylvania law and will result in uniform compliance. Furthermore, it only applies to businesses being taxed in multiple states.
- (d) There are no alternative methods of achieving the purpose of the proposed regulation.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special groups are affected by the proposed regulation.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

There are no alternative regulatory provisions associated with the proposed regulation.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

As stated in (24)(c), there is no fiscal impact on small businesses required to file CNIT returns. Therefore, a regulatory flexibility analysis was not conducted.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No scientific data, studies or references have been done by the Commonwealth to justify this regulation. However, Walter Hellerstein of the University of Georgia published a Special Report that recommended that other states adopt statutory language similar to Pennsylvania's Act 23 of 2001. The Report is entitled The Business-Nonbusiness Income Distinction and the Case for Its Abolition (2001 STT 171-26, September 4, 2001).

(29) Include a schedule for review of the regulation including:

- | | |
|---|----------------------------------|
| A. The length of the public comment period: | <u>30 days after publication</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>NA</u> |
| C. The expected date of delivery of the final-form regulation: | <u>Currently Unknown</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon final publication</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Upon final publication</u> |

F. The expected date by which required permits, licenses or other approvals must be obtained:

NA

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

This regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

02/20/2024

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**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)**

RECEIVED

Independent Regulatory
Review Commission

May 15, 2024

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: Amy M. Elliott (Deputy Attorney General)</p> <p><small>Digitally signed by Amy M. Elliott DN: cn=Amy M. Elliott, o=Pen nsylvania Office of Attorney General, ou=Chief Deputy Attorney General, email=ae Elliott@attorney.org, c=US Date: 2024.04.08 09:28:18 -0400</small></p> <p><u>4/8/2024</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>PA Department of Revenue</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>15-462</u></p> <p>DATE OF ADOPTION <u>12/21/2021</u></p> <p>BY <u>C. Daniel Hassell</u> C. Daniel Hassell TITLE <u>Secretary of Revenue</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p>BY <u>[Signature]</u></p> <p><u>11/30/2023</u> DATE OF APPROVAL</p> <p>(Deputy General Counsel) (Chief Counsel-Independent-Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General Approval or objection within 30 days after submission.</p>
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NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

Corporate Net Income Tax

61 Pa. Code, § 153.24a

Business income and Nonbusiness income

PREAMBLE

The Department of Revenue (Department), under the authority contained in Article IV, Part V of the Tax Reform Code of 1971 (TRC) (72 P.S. § 7408(a)), proposes amendments to 61 Pa. Code, Chapter 153. Corporate Net Income Tax, by adding section 153.24a (relating to business and nonbusiness income) to read as set forth in Annex A.

Purpose of Regulation

The purpose of the proposed rulemaking is to add § 153.24a Business Income and Nonbusiness Income due to legislative changes and the further development of the Unitary Business Principle of the U.S. Constitution in case law.

Corporations doing business, carrying on activities, having capital or property employed or used, owning property in this Commonwealth, or having substantial nexus in this Commonwealth are subject to and shall pay taxes to the Commonwealth. See 72 P.S. § 7402. Corporations subject to tax in the Commonwealth must calculate and pay tax based on the entity's taxable income. See, e.g., 72 P.S. §§ 7401 – 7412. As part of calculating taxable income a multi-state corporation must determine the amount of its business income, which is then subjected to a statutory apportionment formula, as well as items of nonbusiness income, if any, which are then subject to allocation. See 72 P.S. § 7401. The statutory apportionment formula attempts to determine the percentage of a corporation's income that is subject to corporate taxation in any given state. Under current Pennsylvania law, the statutory apportionment formula for most taxpayers consists of a single sales factor where the numerator of the factor is the taxpayer's total sales in Pennsylvania, and the denominator consists of the taxpayer's total sales everywhere. See 72 P.S. § 7401(3)2.(a)(9)(A)(v) and 72 P.S. § 7401(3)2.(a)(15).

Business income, by definition in Pennsylvania, includes all income which is apportionable under the Constitution of the United States. 72 P.S. § 7401(3)(2).(a)(1)(A). Nonbusiness income is

defined as all income that is not business income. It is subject to allocation whereby specific items of nonbusiness income are allocated in total to one specific state for purposes of corporate taxation rather than being apportioned. 72 P.S. § 7401(3)(2)(a)(4)-(8).

The Department is promulgating this regulation to affirm that the definition of “business income” includes all income of the taxpayer’s unitary business in an effort to clarify when income should be classified as business versus nonbusiness income and minimize future disputes between the Department and taxpayers on these issues. The language of 72 P.S. § 7401(3)2.(a)(1)(A) provides:

“Business income” means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if either the acquisition, the management or the disposition of the property constitutes an integral part of the taxpayer's regular trade or business operations. **The term includes all income which is apportionable under the Constitution of the United States.**

(Emphasis added).

Over a series of cases, the U.S. Supreme Court has developed criteria to determine which income is apportionable under the Constitution of the United States. See generally, *Allied-Signal v. Director, Division of Taxation*, 504 U.S. 768, 119 L. Ed. 2d. 533 (1992); *Exxon Corporation v. Wisconsin Department of Revenue*, 447 U.S. 207, 65 L.Ed.2d 66 (1980); *Mobil Oil Corporation v. Commissioner of Taxes of Vermont*, 445 U.S. 425, 63 L.Ed.2d 510 (1980). The U.S. Supreme Court, in its criteria, has focused on the concept of the “unitary business principle.”

First, companies are presumed to be unitary, and the burden of proof is upon the taxpayer to prove the existence of nonunitary income. For example, in the matter of *Mobil Oil Corporation v. Commissioner of Taxes of Vermont*, 445 U.S. 425, 63 L.Ed.2d 510 (1980), Mobil took the position that the dividends it received from foreign subsidiaries were not apportionable income subject to tax in Vermont. Essentially, it argued that the foreign dividends must be excepted from the application of Vermont’s apportionment factor and instead, in effect, be treated as nonbusiness income subject

instead to allocation because the foreign dividends lacked sufficient nexus with the company's business activities in Vermont. The Supreme Court noted that:

[T]he linchpin of apportionability in the field of state income taxation is the unitary business principal. In accord with this principal, what appellant must show, in order to establish that its dividend income is not subject to an apportioned tax in Vermont, is that the income was earned in the course of activities unrelated to the sale of petroleum products in that State.

Id. at 439.

The Supreme Court ultimately held against Mobil, finding that the company did not prove that the foreign operations of its affiliates were distinct in any business or economic sense from its petroleum sales activities in Vermont. Moreover, the Court found that the foreign activities were part of Mobil's integrated business and thus subject to tax by Vermont.

Approximately three months after issuing its decision in *Mobil*, the U.S. Supreme Court further decreed that a taxpayer cannot avoid apportionment of its unitary business income merely by utilizing separate accounting to report its income in one particular state. *Exxon Corporation v. Wisconsin Department of Revenue*, 447 U.S. 207, 65 L.Ed.2d 66 (1980). In *Exxon*, the taxpayer argued that since it was able to separately account for its Wisconsin income, only that income should have been subjected to tax by the state and application by Wisconsin of the state's statutory apportionment formula violated the Due Process Clause. The Supreme Court disagreed, finding that as discussed in *Mobil* "the linchpin of apportionability" is the unitary business principal. Once the finding of a unitary business is present then a state may Constitutionally apply an apportionment formula in order to determine the tax due to the state. In order to avoid subjecting income to apportionment the taxpayer would need to prove that the income in question was from unrelated business activities, which constituted a discrete business enterprise. *Mobil Oil Corporation v. Commissioner of Taxes of Vermont*, 445 U.S. 425, 442, 439.

In 1992, the United States Supreme Court outlined the analysis that states must conduct to determine whether a unitary business exists. See *Allied-Signal v. Director, Division of Taxation*, 504 U.S. 768, 119 L. Ed. 2d. 533 (1992). There the Court reiterated that a review of the three factors of a unitary business identified in *Mobil*: (1) functional integration; (2) centralization of management; and (3) economies of scale was a necessary analysis that a court must engage in before reaching a determination as to whether income from a business was appropriately subject to apportionment. The opinion noted that the unitary business inquiry “focuses on the objective characteristics of the asset’s use and its relation to the taxpayer and its activities within the taxing State.” *Id.* It went on to state that a unitary relationship was not necessarily required for a finding that income was subject to apportionment. Instead, that threshold could be reached where no unitary relationship existed, but it could be shown that the income arose from an operational rather than an investment function.

This differentiation between operational and investment functions, albeit nonbinding, was later held by the Supreme Court as being a tool that states could use to determine whether an asset was part of a unitary business. In *MeadWestvaco ex rel. Mead Corp. v. Illinois Dept. of Rev.*, 553 U.S. 16, 19, 26, 128 S. Ct. 1498, 170 L.Ed. 2d 404 (2008), the Supreme Court clarified that the commentary in *Allied-Signal* did not announce a new ground for the constitutional apportionment of income. Instead, the conclusion that an asset “served an operational function was merely instrumental to the constitutionally relevant conclusion that the asset was a unitary part of the business being conducted in the taxing State rather than a discrete asset to which the state had no claim.” *Id.* The Supreme Court went on to affirm that the “hallmarks” of a unitary relationship were, again, functional integration, centralized management and economies of scale.

These four United States Supreme Court cases provide the framework upon which this Commonwealth must determine what taxpayer income is apportionable under the Constitution of the

United States and thus meets the definition of “business income” under the language of 72 P.S. § 7401(3)2.(a)(1)(A) as opposed to what income, by default, is properly classified as “nonbusiness income” and instead subject to allocation.

This proposed regulation will require a unitary business analysis applying current pronouncements of the U.S. Supreme Court. The Department is promulgating this regulation to affirm that the definition of “business income” includes all income of the taxpayer’s unitary business in an effort to clarify when income should be classified as business versus nonbusiness income and minimize future disputes between the Department and taxpayers on these issues. Given that all states, which impose a corporate income tax, apportion income, with these regulations the Department seeks to promote the consistent classification of income as either business income or nonbusiness income among different taxing jurisdictions. Consistency with other states’ interpretation of the same or substantially similar language was a goal that the Pennsylvania Supreme Court noted was favored in the determination of the proper interpretation of statutory language. See *Commonwealth of Pennsylvania v. Gilmour Manufacturing Company*, 573 Pa. 143, 822 A.2d 676 (2003). To further promote consistent treatment with other states, the majority of the proposed language for this regulation mirrors the rules of the Multistate Tax Commission’s¹ Model General Allocation and

¹ As described on its web site: “The Multistate Tax Commission is an intergovernmental state tax agency working on behalf of states and taxpayers to facilitate the equitable and efficient administration of state tax laws that apply to multistate and multinational enterprises. Created by the Multistate Tax Compact, the Commission is charged by this law with:

- Facilitating the proper determination of State and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes;
- Promoting uniformity or compatibility in significant components of tax systems;
- Facilitating taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration;
- Avoiding duplicative taxation.

The commission was created in 1967 as an effort by states to protect their tax authority in the face of previous proposals to transfer the writing of key features of state tax laws from the state legislature. For that reason, the Commission has been a voice for preserving the authority of states to determine their own tax policy within the limits of the U.S. Constitution.”

Apportionment Regulations. The Pennsylvania Tax Reform Code's definitions of "business income" and "nonbusiness income" as originally enacted were based upon the Uniform Division of Income for Tax Purposes Act (UDITPA), Uniform Division of Income for Tax Purposes, U.L.A. Div. Inc. Tax and did not contain the last sentence of the definition referring to the Constitution of the United States. The core theory underlying the UDITPA model statute was the unitary business principle. See Multistate Tax Commission *Synopsis of The Project to Revise UDITPA* at [https://www.mtc.gov/getattachment/Uniformity/Project-Teams/Multistate-Tax-Compact-Article-IV/The-Project-to-Revise-UDITPA-\(NC-Note\).pdf.aspx](https://www.mtc.gov/getattachment/Uniformity/Project-Teams/Multistate-Tax-Compact-Article-IV/The-Project-to-Revise-UDITPA-(NC-Note).pdf.aspx).

Unfortunately, the application of the original UDITPA definitions of the transactional and functional tests was problematic in multiple states and led to litigation in various states across the country. A comprehensive and critical review of these state court decisions is contained in a special report published in *Tax Analysts State Tax Today* (2001 STT 171-26, September 4, 2001), "The Business-Nonbusiness Income Distinction and the Case for its Abolition," by Professor Walter Hellerstein of the University of Georgia. Rather than leading to uniform taxation in the adopting states, the original UDITPA language led to nonuniformity and division.

In order to clarify the law regarding the determination of business income in Pennsylvania, the definition of "Taxable Income" was modified in Act 23 of 2001 (72 P.S. § 7401(3)) to adopt the U.S. Constitutional standard for determining business income. Correspondingly, the definition of nonbusiness income was modified to make clear that the term did not include income which is apportionable under the Constitution of the United States. While Federal constitutional limits on the authority of the Commonwealth were present before the addition of this language to the definitions of business and nonbusiness income in 2001, the addition of this language directly tied the treatment of income to both the existing language emanating from UDITPA, as modified by the

Commonwealth, as well as United States Supreme Court jurisprudence. The General Assembly's enactment of the revised definitions of business and nonbusiness income has established legislative intent consistent with adopting the unitary business principle as the standard for determining business and nonbusiness income in this Commonwealth.

To the extent they are inconsistent with the unitary business principle, the application of older Pennsylvania-court-designed concepts such as "unrelated income" or "multiformity" do not limit the State's authority to tax under the unitary business principle. These concepts arose at a time when the Commonwealth's tax law lacked the requisite allocation and apportionment provisions to meet federal constitutionality. To save the constitutionality of the former statutes, Commonwealth courts developed and applied these principles to limit the application of the tax to appropriate U.S. Constitutional limits. Having its origin in the context of property taxation, the doctrine of multiformity as it existed in the 1930's was expressed in restrictive terms requiring concrete connections between taxing state and the property taxed. See, for example, *Commonwealth v. Columbia Gas and Electric*, 336 Pa. 209 (1939). Claims based upon the historical principles of multiformity or unrelated income within this Commonwealth, which purport to provide extra-statutory remedies, will be evaluated by the Department based on the whether the income in question should be treated as falling within the current unitary business principle as determined by the U.S. Supreme Court. To the extent a company realizes income from a unitary business, the Department will apply an apportionment formula to the company's total income in order to obtain a reasonable approximation of the income associated with the activities conducted within this Commonwealth. On the other hand, to the extent a company can establish that certain income is non-unitary with its normal business activities then the allocation provisions in the existing statutory guidance as well as these proposed regulations would be implicated.

Some corporations not domiciled within this Commonwealth have cited *Commonwealth v. ACF Industries, Inc.*, 441 Pa. 129; 271 A.2d 273 (1970) for the proposition that the Commonwealth may not tax all of the income of a multistate unitary business. In *ACF*, the taxpayer stipulated it was a unitary business, yet claimed that certain income of its unitary business could not be subject to tax by the Commonwealth pursuant to the multiformity and unrelated assets concepts. However, what was actually before the court in *ACF* was the interpretation of a 1957 amendment to the Corporate Net Income Tax Act of May 16, 1935 (P.L. 208, No. 91). That 1957 amendment was repealed when the Tax Reform Code of 1971 enacted a new corporate net income tax which codified the UDITPA concepts of business and nonbusiness for purposes of apportioning the income of a multistate business. Thus, the *ACF* case is inapplicable.

And Pennsylvania courts have followed suit with regard to the unitary business principle. The Pennsylvania Supreme Court in *Glatfelter Pulpwood Co. v. Commonwealth*, 619 Pa. 243, 61 A.3d 993 (2013) dismissed a taxpayer's multiformity claim finding that the income at issue was from the taxpayer's unitary business under the UDITPA functional test for business income stating:

As the High Court has made clear, to calculate the in-state income of a multistate enterprise for taxation purposes, a state is not required to isolate those income-producing activities that physically occur within its borders; rather, a state may tax a fairly apportioned share of the total income of a multi-state enterprise if that enterprise constitutes a "unitary business." *MeadWestvaco ex rel. Mead Corp. v. Illinois Dept. of Rev.*, 553 U.S. 16, 19, 26, 128 S. Ct. 1498, 170 L.Ed. 2d 404 (2008).

Id., 619 Pa. at 268, 61 A.3d at 1008.

As an additional consideration, under Pennsylvania law at 72 P.S. § 7404, corporations owning or controlling other corporations may not file a consolidated report showing combined net income. Taxable income will continue to be determined on a separate company as opposed to on a consolidated basis. While the analysis of the unitary or nonunitary nature of the income is essentially the same between separate company and consolidated filing jurisdictions, the approach to performing

the analysis in a consolidated filing jurisdiction necessarily involves examining not only activities within each corporate entity, but also the activities between the entities potentially included in the corporate filing group. This regulation will promote the Commonwealth's uniform interpretation of the unitary business concept with other states. Moreover, the proposed regulations are intended to provide additional guidance to taxpayers and incorporate the analysis offered by the United States Supreme Court on the apportionment or allocation of income.

Description of Proposed Amendments

The following paragraphs provide a brief description for each specific section of this proposed rulemaking:

The Department proposes to add one section, Section 153.24a. Section 153.24a (relating to business or nonbusiness income) explains the approach to determining whether corporate income is treated as business income which is subject to apportionment based on the company's sales factor or is nonbusiness income and is allocated to one state. In essence, if income is classified as business income, then the taxpayer determines a fraction where the numerator is its sales sourced to this Commonwealth and the denominator is its sales everywhere. 72 P.S. § 7401(3)2.(a)(15). The taxpayer then multiplies that fraction by the business income and subjects the result to the applicable tax rate. If the income is determined to be nonbusiness income, the income is just taxed by one state and no sales factor is calculated. For nonbusiness income, the Commonwealth either taxes 100% of the income or none of it.

There is a need for additional guidance in this area as it impacts all corporate taxpayers which have operations both inside and outside of this Commonwealth. In preparing annual tax returns, such taxpayers must determine if income falls within the broad definition of business income and subject

to tax in this Commonwealth or whether the income falls outside of the definition of business income and for the Commonwealth's purposes should only be taxed by one state.

Subsection 153.24a(a) (relating to definitions) includes the following definitions of key terms that are used in this proposed rulemaking for clarity and consistency: allocation, apportionment, business activity, business income, nonbusiness income and trade or business.

Subsection 153.24a(b) (relating to apportionment and allocation) establishes the statutory references in this Commonwealth regarding the classification of income as being either business income or nonbusiness income. It further clarifies that income is business income if it meets the definition of business income and nonbusiness income if it does not meet the definition of business income. This is important because all income of a multi-state taxpayer falls into one of these two categories and once categorized, it triggers different tax calculations for that company.

Subsection 153.24a(c) (relating to the transactional test) describes the transactional test for determining business or nonbusiness income and discusses its application to taxpayers. This subsection identifies that if a transaction or activity is in the regular course of a taxpayer's trade or business it is treated as business income whether it occurs on a regular or irregular basis. It also makes clear that whether a transaction or activity takes place inside or outside of this Commonwealth is not determinative of whether the income generated by it constitutes business or nonbusiness income. This subsection is important as the transactional test is one of the principal tests used to determine whether an item of income is business income for Pennsylvania purposes and is consequently subject to apportionment or will be treated as nonbusiness income by the Commonwealth and be subject to allocation.

Subsection 153.24a(d) (relating to the functional test) describes a second test relating to property, the functional test, that is used in determining whether income is business or nonbusiness

income and discusses its application to taxpayers. The subsection paraphrases the applicable statutory language from 72 P.S. § 7401 by describing business income as including income from tangible and intangible property if either the acquisition, management or disposition of the property constitutes an integral part of the taxpayer's trade or business. It goes on to provide additional descriptions of the types of property covered by the test, the meaning of the language "acquisition, management or disposition" and provides a test for how long property must be removed from use in a taxpayer's business activities before the Department will consider income related to it changing from business to nonbusiness. In order to aid taxpayers with making this determination the subsection contains four examples highlighting specific scenarios involving the use of property by businesses and whether income arising from that property constitutes business or nonbusiness income under the functional test.

This subsection also addresses an issue historically raised by taxpayers regarding whether there is a "liquidation" exception to the functional test by clarifying that even if transactions are infrequent, if the property involved was used in the operation of the business while owned by the taxpayer, its sale results in business income. It also clarifies that the determination of business versus nonbusiness income is not impacted by whether the activity or property involved is located inside or outside this Commonwealth. Examples are also provided which provide further guidance on these points.

Importantly, this subsection informs taxpayers of the Department's longstanding position that if deductions are taken against a taxpayer's business income in earlier periods, with respect to a piece of property, the Department will presume that income with respect to that property is in fact business income. However, the absence of such deductions against business income in earlier periods will not create a presumption for or against business or nonbusiness income treatment in future periods.

Finally, this subsection makes clear that the functional test applies equally to all types of property whether they be tangible or intangible, real or personal.

Subsection 153.24a.(e) (relating to the unitary business principle) outlines the unitary business concept as the foundation for the apportionment of income from a multi-state business. Specifically, the unitary business concept, which is further described in Subsection 153.24a.(f), requires apportionable income to be derived from the same unitary business that is conducted, at least in part, in this Commonwealth. If income meets the previously discussed transactional and functional tests it is also going to be unitary income, but even if it does not meet either of these tests, it may still constitute unitary business income of the taxpayer and be subjected to apportionment by the Commonwealth under the U.S. Constitution. This concept that the test for business versus nonbusiness income is broader than just the transactional and functional tests is very important for taxpayers to understand and consider as they attempt to determine the classification of their income. It has also been an area of dispute between the Department and taxpayers in the past and this subsection provides important guidance to taxpayers in this regard.

Subsection § 153.24a.(f) (relating to principles for determining the existence of a unitary business) describes what a unitary business is, why it is important to determine whether a business is unitary or not and provides significant guidance based on established U.S. Supreme Court precedence as to what characterizes a unitary business. Those tests as set forth by the U.S. Supreme Court focus on functional integration, centralization of management and economies of scale. This subsection of the proposed regulation goes on to describe each of these three characteristics in detail. It also provides higher level guidance to taxpayers concerning the general indicators of a unitary business and provides specific tests as to what constitutes a commonly controlled group for purposes of determining whether a unitary relationship exists. Even though the Commonwealth taxes each

separate corporation, rather than an entire affiliated group of corporations, it is still essential to include guidance on commonly controlled groups in the proposed regulation. Frequently, taxpayers subject to the Commonwealth's corporate income taxation are members of an affiliated group of corporations that file one or more consolidated federal income tax returns including multiple entities in each as well as owning direct and/or indirect interests in foreign entities, which while engaged in the same business as the Commonwealth taxpayer, may not be part of the same federal consolidated return or returns. These other entities may transact significant business with their affiliate that files in this Commonwealth and understanding when a unitary relationship exists between the Commonwealth filer and the other affiliated entity may be important in reaching a determination as to the proper treatment of the income or loss which is recognized as a result of these transactions.

Subsection § 153.24a.(g) (relating to examples of business and nonbusiness income) provides additional examples of business and nonbusiness income to aid taxpayers in making determinations of the classification of items of income. The examples address rents received from real or tangible property, gains or losses from the sale of assets, interest and royalties.

Subsection 153.24a.(h) (relating to consistency and uniformity in reporting) requires taxpayers to notify the Department if the classification of an item previously reported to the Commonwealth as either business or nonbusiness income changes on a current return. Additionally, to the extent the taxpayer is not uniform across all jurisdictions in which it files as to whether an item of income is apportionable or non-apportionable income under the U.S. Constitution, the report filed with Pennsylvania must disclose the variances and the rationale for them. These requirements aid the Department in evaluating the determinations reached by taxpayers regarding the classification of income as business or nonbusiness. It also promotes uniformity in the interpretation of similar state laws across the country, which is a goal that the Commonwealth's courts have previously recognized.

Affected Parties

Corporate taxpayers and tax practitioners within this Commonwealth will be affected by the proposed regulation in a positive way as it will promote uniform tax compliance.

Fiscal Impact

The Department of Revenue has determined that the proposed regulation will have no fiscal impact on the Commonwealth as it is a clarification of Pennsylvania law.

Paperwork Requirements

The regulations will not generate substantial paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The regulations will become effective upon notice or publication in the *Pennsylvania Bulletin*. The regulation is scheduled for review within 5 years of final publication. No sunset date has been assigned.

Public Comments and Contact Person

Interested persons are invited to submit in writing any comments, suggestions, or objections regarding the proposed amendment to Maria L. Miller, Office of Chief Counsel, PA 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 May 15, 2024, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the 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 IRRC, their comments, recommendations and objections to the proposed regulation. The IRRC may, within 30 days of the close of the public comment period, submit to the Department and Committees, any comments, recommendations and objections to the proposed regulation. The notification shall 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.

PATRICK M. BROWNE
SECRETARY OF REVENUE

ANNEX A

Title 61. Revenue

Part I. Department of Revenue

Subpart B. General Fund Revenues

Article VI. Corporation Taxes

Chapter 153. Corporate Net Income Tax

ALLOCATIONS AND APPORTIONMENTS

(Editor's Note: The text in § 153.24a is new and is not underlined for ease of reading.)

§ 153.24a. Business and nonbusiness income.

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

Allocation – The assignment of items of nonbusiness income to a particular state.

Apportionment – The division of business income between states by the use of a formula containing apportionment factors.

Business activity - The transactions and activities occurring in the regular course of a particular trade or business of a taxpayer and includes the acquisition, management or disposition of property that constitutes an integral part of the taxpayer's trade or business.

Business income - All income which is apportionable under the Constitution of the United States, including the following:

(i) Income arising from transactions and activity in the regular course of the taxpayer's trade or business.

(ii) Income arising from tangible and intangible property if either the acquisition, management or disposition of the property constitutes an integral part of the taxpayer's regular trade or business.

Nonbusiness income - All income other than business income. It does not include any income that is apportionable under the Constitution of the United States.

Trade or business - All transactions and activity that are included in the unitary business of the taxpayer under the unitary business principle as applied by the United States Supreme Court.

(b) Apportionment and Allocation. Article IV of the Tax Reform Code requires that every item of income be classified either as business income or nonbusiness income. For purposes of this classification, income includes gains and losses. Business income is apportioned among jurisdictions by use of a formula. Nonbusiness income is specifically allocated to one or more specific jurisdictions pursuant to express rules.

(1) An item of income is classified as business income if it falls within the definition of business income in subsection (a).

(2) An item of income is nonbusiness income only if it does not meet the definitional requirements in subsection (a) for being classified as business income.

(c) Transactional test. Business income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business.

(1) If the transaction or activity is in the regular course of the taxpayer's trade or business, the income arising from the transaction or activity is business income. If the income arose from the unitary business of the taxpayer, income is business income even though the actual transaction or activity that gives rise to the income does not occur in this Commonwealth.

(2) For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity need not be one that frequently occurs in the trade or business. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business, if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted or are within the scope of what that kind of trade or business does. The transactional test includes income from sales of inventory, property held for sale to customers, and services which are commonly sold by the trade or business. The transactional test also includes income from the sale of property used in the production of business income of a kind that is sold and replaced with some regularity, even if replaced less frequently than once a year.

(d) Functional test - Business income also includes income from tangible and intangible property if either the acquisition, management or disposition of the property constitutes an integral part of the taxpayer's regular trade or business. Income arising from property, which was depreciated, amortized, expensed or for which management costs were expensed in computing taxable income while owned by the taxpayer is business income under the functional test.

(1) Property includes any direct or indirect interest in, control over, or use of real property, tangible personal property and intangible property by the taxpayer. Property that constitutes an integral part of the trade or business refers to property that is or was used to contribute to the production of business income directly or indirectly, without regard to the materiality of the contribution. Property that is held solely for investment purposes does not constitute an integral part of the trade or business.

(2) Acquisition, management or disposition refers to a taxpayer's activities in acquiring property, exercising control and dominion over property and disposing of property, including dispositions by sale, lease or license. Income arising from the liquidation, disposition

or other use of property which was acquired or developed in the course of the taxpayer's trade or business constitutes business income even if the property was not directly employed in the operation of the taxpayer's trade or business.

(3) Income from the disposition or other use of property which has been withdrawn from use in the taxpayer's trade or business and is instead held solely for unrelated investment purposes is nonbusiness income. Property that was used in the taxpayer's trade or business is not considered converted to investment purposes merely because it is offered for sale, but any property which has been withdrawn from use in the taxpayer's trade or business for 5 years or more is presumed to be held for investment purposes.

(4) The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, rents, royalties, gains, income derived from accounts receivable, operating income, non-operating income, and the like, is of no aid in determining whether income is business or nonbusiness income.

Example 1: The taxpayer purchases a chain of 100 retail stores for the purpose of merging those store operations with its existing business. Five of the retail stores are redundant under the taxpayer's business plan and are sold 6 months after acquisition. Even though the five stores were never integrated into the taxpayer's trade or business, the income is business income because the property's acquisition was related to the taxpayer's trade or business.

Example 2: The taxpayer is in the business of developing adhesives for industrial and construction uses. In the course of its business, it accidentally creates a weak but non-toxic adhesive and patents the formula, awaiting future applications. Another manufacturer uses the formula to create temporary body tattoos. The taxpayer wins a patent infringement suit against

the other manufacturer. The entire damages award, including interest and punitive damages, constitutes business income.

Example 3: The taxpayer is engaged in the oil refining business and maintains a cash reserve for buying and selling oil on the spot market as conditions warrant. The reserve is held in overnight “repurchase agreement” accounts of U.S. treasuries with a local bank. The interest on those amounts is business income because the reserves are necessary for the taxpayer’s business operations. Over time, the cash in the reserve account grows to the point that it exceeds any reasonably expected requirement for acquisition of oil or other short-term capital needs and is held pending subsequent investment opportunities unrelated to the taxpayer’s business operations. The interest received on the excess amount is nonbusiness income.

Example 4: A manufacturer decides to sell one of its redundant factories to a real estate developer and transfers the ownership of the factory to a special purpose subsidiary, SaleCo (Taxpayer) immediately prior to its sale to the real estate developer. The parties elect to treat the sale as a disposition of assets under IRC 338(h)(10) (26 U.S.C. § 338(h)(10)), resulting in Taxpayer recognizing a capital gain on the sale. The capital gain is business income.

(i) Under the functional test, income from the liquidation, disposition or other utilization of property is business income if the property is or was an integral part of the taxpayer's trade or business. The income is business income even though the transaction or activity from which it is derived did not occur in the regular course of the taxpayer's trade or business.

(ii) Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or transactions involving property, including transactions made in the full or partial liquidation or the winding-up of any portion of the trade or business, is business income, if the property is or was related to the taxpayer's trade or business.

Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like, that was developed or acquired for use by the taxpayer in its trade or business, constitutes business income whether or not the licensing itself constituted the operation of a trade or business, and whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.

(iii) Under the functional test, income from intangible property is business income when the intangible property serves an operational function as opposed to solely an investment function.

(iv) If either the acquisition, management or disposition of the property is or was an integral part of the taxpayer's trade or business, then income from that property is business income even though the actual transaction or activity involving the property that gives rise to the income does not occur in this Commonwealth.

Example 1: A manufacturer purchases raw materials to be incorporated into the product it offers for sale. The nature of the raw materials is such that the purchase price is subject to extreme price volatility. In order to protect itself from extreme price increases or decreases, the manufacturer enters into future contracts pursuant to which the manufacturer can either purchase a set amount of the raw materials for a fixed price, within a specified time period, or resell the future contracts. Any gain on the sale of the future contracts would be considered business income, regardless of whether the contracts were either made or resold in this Commonwealth.

Example 2: A national retailer produces substantial revenue in its business activities. It invests a large portion of the revenue in fixed income securities which are divided into two categories: (a) short-term securities held pending use of the funds in the taxpayer's trade or business; and (b) long-term securities held solely as an investment. Interest income on the short-

term securities held pending use of the funds in the taxpayer's trade or business (a) is business income because the funds represent working capital necessary to the operations of the taxpayer's trade or business. Interest income derived from the long-term investment securities (b) is nonbusiness income as those securities were held solely as an investment and not in furtherance of the taxpayer's trade or business.

(5) If with respect to an item of property a taxpayer takes a deduction from income that is apportioned to this Commonwealth including depreciation, amortization, expensing or for which management costs were expensed in computing taxable income while owned by the taxpayer, it is presumed that the item or property is or was an integral part of the taxpayer's trade or business. No presumption arises from the absence of any of these actions.

(6) Application of the functional test is unaffected by the form of the property, tangible or intangible property, real or personal property. Income arising from an intangible interest, for example, corporate stock or other intangible interest in an entity or a group of assets, is business income when the intangible itself or the property underlying or associated with the intangible is or was an integral part of the taxpayer's trade or business. While apportionment of income derived from transactions involving intangible property may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, the establishment of a relationship is not the exclusive basis for concluding that the income is subject to apportionment. It is sufficient to support the finding of business income if the holding of the intangible interest served an operational rather than an investment function.

(e) Unitary business principle. The Due Process Clause and the Commerce Clause of the U.S. Constitution restrict states from apportioning income that has no rational relationship with the taxing state. The protection against extra-territorial state taxation afforded by these Clauses is

often described as the “unitary business principle.” The unitary business principle requires apportionable income to be derived from the same unitary business that is being conducted at least in part in this Commonwealth. The unitary business that is conducted in this Commonwealth includes both a unitary business that the taxpayer alone may be conducting and a unitary business the taxpayer may conduct with any other person or persons. Satisfaction of either the transactional test or the functional test complies with the unitary business principle because each test requires that the transaction or activity, in the case of the transactional test or the property, in the case of the functional test, be tied to the same trade or business. Items of income that do not satisfy the transactional or functional tests for business income may still be classified as business income if the income is apportionable business income under the unitary business principle. The application of the unitary business principle to this income assures that income over which the Commonwealth has Constitutional authority to tax does not escape taxation. Determination of the scope of the unitary business being conducted in this Commonwealth is without regard to the extent to which this Commonwealth requires or permits combined reporting.

(f) Principles for determining the existence of a unitary business.

(1) Unitary business principle.

(i) The concept of a unitary business. A unitary business is a single economic enterprise that is made up either of separate parts of a single entity or of a commonly controlled group of entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. This flow of value to an entity located in this Commonwealth that comes from being part of a unitary business conducted both within and without this Commonwealth is what provides the constitutional due process

definite link and minimum connection necessary for this Commonwealth to apportion income of the unitary business, even if that income arises in part from activities conducted outside the Commonwealth. The income of the unitary business is then apportioned to this Commonwealth. This sharing or exchange of value may also be described as requiring that the operation of one part of the business be dependent upon, or contribute to, the operation of another part of the business. Phrased in the disjunctive, the foregoing means that if the activities of one business either contributes to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary business.

(ii) Constitutional requirement for a unitary business. The sharing or exchange of value described in subparagraph (i) that defines the scope of a unitary business requires more than the mere flow of funds arising out of a passive investment or from the financial strength contributed by a distinct business undertaking that has no operational relationship to the unitary business. The unitary business principle shall be applied to the fullest extent allowed by the U.S. Constitution. The unitary business principle shall not be applied to result in the combination of business activities or entities under circumstances where, if it were adverse to the taxpayer, the combination of such activities or entities would not be allowed by the U.S. Constitution.

(iii) Separate trades or businesses conducted within a single entity. A single entity may have more than one unitary business. In such cases it is necessary to determine the business income attributable to each separate unitary business as well as its nonbusiness income, which is specifically allocated. The business income of each unitary business is then apportioned by a statutory formula that takes into consideration the in-state and the out-of-state factors that relate to the respective unitary business whose income is being apportioned.

(iv) Unitary business unaffected by formal business organization. A unitary business may exist within a single entity or among a commonly controlled group of entities. The scope of what is included in a commonly controlled group of entities is set forth below in subsection (f)(4).

(2) Determination of a unitary business.

(i) A unitary business is characterized by significant flows of value evidenced by factors such as those described in *Mobil Oil Corp. v. Vermont*, 445 U.S. 425 (1980): functional integration, centralization of management, and economies of scale. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A particular business operation may be suggestive of one or more of the factors mentioned above.

(ii) Description and illustration of functional integration, centralization of management and economies of scale.

(A) Functional integration. Functional integration refers to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes, but is not limited to, transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There is no specific type of functional integration that must be present. The following is a list of examples of business operations that can support the finding of functional integration. The order of the list does not establish a hierarchy of importance.

(I) Sales. Sales, exchanges, or transfers, collectively “sales” of products, services, and intangibles between business activities provide evidence of functional integration. The significance of the intercompany sales to the finding of functional integration will be affected by the character of what is sold, and the percentage of total sales or purchases represented by the intercompany sales. For example, sales among entities that are part of a vertically integrated unitary business are indicative of functional integration. Functional integration is not negated by the use of a readily determinable market price to effect the intercompany sales, because such sales can represent an assured market for the seller or an assured source of supply for the purchaser.

(II) Common marketing. The sharing of common marketing features among entities is an indication of functional integration when such marketing results in significant mutual advantage. Common marketing exists when a substantial portion of the entities' products, services, or intangibles are distributed or sold to a common customer, when the entities use a common trade name or other common identification, or when the entities seek to identify themselves to their customers as a member of the same enterprise. The use of a common advertising agency or a commonly owned or controlled in-house advertising office does not by itself establish common marketing that is suggestive of functional integration. However, the activity is relevant to determining the existence of economies of scale and centralization of management.

(III) Transfer or pooling of technical information or intellectual property. Transfers or pooling of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development, provide evidence of functional integration when the matter transferred is significant to the businesses' operations.

(IV) Common distribution system. Use of a common distribution system by the entities, under which inventory control and accounting, storage, trafficking and transportation are controlled through a common network provides evidence of functional integration.

(V) Common purchasing. Common purchasing of substantial quantities of products, services, or intangibles from the same source by the entities, particularly where the purchasing results in significant cost savings or where the products, services or intangibles are not readily available from other sources and are significant to each entity's operations or sales, provides evidence of functional integration.

(VI) Common or intercompany financing. Significant common or intercompany financing, including the guarantee by, or the pledging of the credit of, one or more entities for the benefit of another entity or entities provides evidence of functional integration if the financing activity serves an operational purpose of both borrower and lender. Lending which serves an investment purpose of the lender does not necessarily provide evidence of functional integration.

(B) Centralization of management. Centralization of management exists when directors, officers, or other management employees jointly participate in the management decisions that affect the respective business activities and that may also operate to the benefit of the entire economic enterprise. Centralization of management can exist whether the centralization is effected from a parent entity to a subsidiary entity, from a subsidiary entity to a parent entity, from one subsidiary entity to another, from one division within a single entity to another division within an entity, or from any combination of the foregoing. Centralization of management may exist even when day-to-day management responsibility and accountability has been decentralized,

so long as the management has an ongoing operational role with respect to the business activities. An operational role can be effected through mandates, consensus building, or an overall operational strategy of the business, or any other mechanism that establishes joint management.

(I) Facts providing evidence of centralization of management. Evidence of centralization of management is provided when common officers participate in the decisions relating to the business operations of the different segments. Centralization of management may exist when management shares or applies knowledge and expertise among the parts of the business. The existence of common officers and directors, while relevant to a showing of centralization of management, does not alone provide evidence of centralization of management. Common officers are more likely to provide evidence of centralization of management than are common directors.

(II) Stewardship distinguished. Centralized efforts to fulfill stewardship oversight are not evidence of centralization of management. Stewardship oversight consists of those activities that any owner would take to review the performance of or safeguard an investment. Stewardship oversight is distinguished from those activities that an owner may take to enhance value by integrating one or more significant operating aspects of one business activity with the other business activities of the owner. For example, implementing reporting requirements or mere approval of capital expenditures may evidence only stewardship oversight.

(C) Economies of scale. Economies of scale refer to a relation among and between business activities resulting in a significant decrease in the average per unit cost of operational or administrative functions due to the increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management. The following are examples of business operations that can support

the finding of economies of scale. The order of the list does not establish a hierarchy of importance.

(I) Centralized purchasing. Centralized purchasing designed to achieve savings due to the volume of purchases, the timing of purchases or the interchangeability of purchased items among the parts of the business engaging in the purchasing provides evidence of economies of scale.

(II) Centralized administrative functions. The performance of traditional corporate administrative functions, such as legal services, payroll services, pension and other employee benefit administration, in common among the parts of the business may result in some degree of economies of scale. An entity that secures savings in the performance of corporate administrative services due to its affiliation with other entities that it would not otherwise reasonably be able to secure on its own because of its size, financial resources, or available market, provides evidence of economies of scale.

(3) Indicators of a unitary business.

(i) Same type of business. Business activities that are in the same general line of business generally constitute a single unitary business as, for example, a multistate grocery chain.

(ii) Steps in a vertical process. Business activities that are part of different steps in a vertically structured business almost always constitute a single unitary business. For example, a business engaged in the exploration, development, extraction, and processing of a natural resource and the subsequent sale of a product based upon the extracted natural resource is engaged in a single unitary business, regardless of the fact that the various steps in the process are operated

substantially independently of each other with only general supervision from the business's executive offices.

(iii) Strong centralized management. Business activities which might otherwise be considered as part of more than one unitary business may constitute one unitary business when there is a strong central management, coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing. Strong centralized management exists when a central manager or group of managers makes substantially all of the operational decisions of the business. For example, some businesses conducting diverse lines of business may properly be considered as engaged in only one unitary business when the central executive officers are actively involved in the operations of the various business activities and there are centralized offices that perform for the business activities, the normal matters that a truly independent business would perform for itself, such as personnel, purchasing, advertising or financing.

(4) Commonly controlled group of entities.

(i) Separate corporations can be part of a unitary business only if they are members of a commonly controlled group.

(ii) A commonly controlled group means any of the following:

(A) A parent corporation and any one or more corporations or chains of corporations, connected through stock ownership or constructive ownership with the parent, but only if one of the following apply:

(I) The parent owns stock possessing more than 50% of the voting power of at least one corporation.

(II) Stock cumulatively possessing more than 50% of the voting power of each of the corporations, except the parent, is owned by the parent, one or more corporations described in clause (4)(ii)(A), or one or more other corporations that satisfy the conditions of this subclause.

(B) Any two or more corporations, if stock possessing more than 50% of the voting power of the corporations is owned, or constructively owned, by the same person.

(C) Any two or more corporations that constitute stapled entities.

(I) For purposes of this clause, stapled entities means any group of two or more corporations, if more than 50% of the ownership or beneficial ownership of the stock possessing voting power in each corporation consists of stapled interests.

(II) Two or more interests are stapled interests if, by reason of form of ownership, restrictions on transfer, or other terms or conditions in connection with the transfer of one of the interests, the other interest or interests are also transferred or required to be transferred.

(D) Any two or more corporations, if stock possessing more than 50% of the voting power of the corporations is cumulatively owned without regard to the constructive ownership rules of clause (4)(ii)(A) by, or for the benefit of, members of the same family. Members of the same family are limited to an individual, his or her spouse, parents, brothers or sisters, grandparents, children and grandchildren and their respective spouses.

(iii) Commonly controlled group.

(A) If, in the application of subparagraph (ii), a corporation is a member of more than one commonly controlled group of corporations, the corporation shall elect to be treated as a member of only the commonly controlled group or part thereof with respect to which it has a unitary business relationship. If the corporation has a unitary business relationship with more than

one of those groups, it shall elect to be treated as a member of only one of the commonly controlled groups with respect to which it has a unitary business relationship. This election shall remain in effect until the unitary business relationship between the corporation and the rest of the members of its elected commonly controlled group is discontinued or unless revoked with the approval of the Department.

(B) Membership in a commonly controlled group shall be treated as terminated in any year, or fraction thereof, in which the conditions of subparagraph (ii) are not met, except as follows:

(I) When stock of a corporation is sold, exchanged, or otherwise disposed of, the membership of a corporation in a commonly controlled group shall not be terminated if the requirements of subparagraph (ii) are again met immediately after the sale, exchange or disposition.

(II) The Department may treat the commonly controlled group as remaining in place if the conditions of subparagraph (ii) are again met within a period not to exceed 2 years.

(iv) A taxpayer may exclude some or all corporations included in a commonly controlled group by reason of clause (ii)(D) by showing that those members of the group are not controlled directly or indirectly by the same interests, within the meaning of the same phrase in Section 482 of the Internal Revenue Code (26 U.S.C § 482). For purposes of this subparagraph, the term controlled includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised.

(v) Except as otherwise provided, stock is owned when title to the stock is directly held or if the stock is constructively owned.

(A) An individual constructively owns stock that is owned by any of the following:

(I) His or her spouse.

(II) Children, including adopted children of that individual or the individual's spouse who have not attained the age of 21 years.

(III) An estate or trust, of which the individual is an executor, trustee, or grantor, to the extent that the estate or trust is for the benefit of that individual's spouse or children.

(B) Stock owned by a corporation, or a member of a controlled group of which the corporation is the parent corporation, is constructively owned by any shareholder owning stock that represents more than 50% of the voting power of the corporation.

(C) In the application of clause (ii)(D) dealing with stock possessing voting power held by members of the same family, if more than 50% of the stock possessing voting power of a corporation is, in the aggregate, owned by or for the benefit of members of the same family, stock owned by that corporation shall be treated as constructively owned by members of that family in the same ratio as the proportion of their respective ownership of stock possessing voting power in that corporation to all of such stock of that corporation.

(D) Except as otherwise provided, stock owned by a partnership is constructively owned by any partner, other than a limited partner, in proportion to the partner's capital interest in the partnership. For this purpose, a partnership is treated as owning proportionately the stock owned by any other partnership in which it has a tiered interest, other than as a limited partner.

(E) In any case where a member of a commonly controlled group, or shareholders, officers, directors, or employees of a member of a commonly controlled group is a

general partner in a limited partnership, stock held by the limited partnership is constructively owned by a limited partner to the extent of its capital interest in the limited partnership.

(F) In the application of clause (ii)(D) dealing with stock possessing voting power held by members of the same family, stock held by a limited partnership is constructively owned by a limited partner to the extent of the limited partner's capital interest in the limited partnership.

(vi) For purposes of the definition of a commonly controlled group, each of the following shall apply:

(A) Corporation means any entity defined as a corporation, as defined in §401 (1) of Article IV of the TRC (72 P.S. § 401 (1)).

(B) Person means an individual, a trust, an estate, a qualified employee benefit plan, a limited partnership, or a corporation.

(C) Voting power means the power of all classes of stock entitled to vote that possess the power to elect the membership of the board of directors of the corporation.

(D) More than 50% of the voting power means voting power sufficient to elect a majority of the membership of the board of directors of the corporation.

(E) Stock possessing voting power includes stock where ownership is retained but the actual voting power is transferred in either of the following manners:

(I) For 1 year or less.

(II) By proxy, voting trust, written shareholder agreement, or by similar device, where the transfer is revocable by the transferor.

(F) In the case of an entity treated as a corporation under clause (vi)(A), stock possessing voting power refers to an instrument, contract, or similar document demonstrating

an ownership interest in that entity that confers power in the owner to cast a vote in the selection of the management of that entity.

(G) In the general application of this subparagraph, if an entity may elect to be treated as a partnership or as a corporation under the laws of this Commonwealth or under Section 7701 of the Internal Revenue Code and elects to be treated as a partnership, that entity shall be treated as a general partnership. If, however; contractual agreements, member agreements, or other restrictions limit the power of some or all of the members to participate in the vote of stock possessing voting power owned by that entity, similar to the restrictions of limited partners in a limited partnership, the Department may permit or require that entity to be treated as a limited partnership.

(g) Examples of business income and nonbusiness income. The examples used in these regulations are illustrative only and are limited to the facts they contain.

(1) Rents from real and tangible personal property.

Example 1: The taxpayer operates a multistate car rental business. The income from car rentals is business income.

Example 2: The taxpayer is engaged in the heavy construction business in which it uses equipment such as cranes, tractors, and earth-moving vehicles. The taxpayer makes short-term leases of the equipment when particular pieces of equipment are not needed on any particular project. The rental income is business income.

Example 3: The taxpayer operates a multistate chain of men's clothing stores. The taxpayer purchases a five-story office building for use in connection with its trade or business and uses the street floor as one of its retail stores and the second and third floors for its general corporate

headquarters. The remaining two floors are held for future use in the trade or business and are leased to tenants on a short-term basis in the meantime. The rental income is business income.

Example 4: The taxpayer operates a multistate chain of grocery stores. The taxpayer purchases as an investment an office building in another state with surplus funds and leases the entire building to others. The net rental income is nonbusiness income of the grocery store trade or business. Therefore, the net rental income is nonbusiness income.

Example 5: The taxpayer operates a multistate chain of men's clothing stores. The taxpayer invests in a 20-story office building and uses the street floor as one of its retail stores and the second floor for its general corporate headquarters. The remaining 18 floors are leased to others. The rental of the 18 floors is not done in furtherance of but rather is separate from the operation of the taxpayer's trade or business. The net rental income is nonbusiness income of the clothing store trade or business. Therefore, the net rental income is nonbusiness income.

Example 6: The taxpayer constructed a plant for use in its multistate manufacturing business and 20 years later the plant was closed and offered for sale. The plant was rented for a temporary period from the time it was closed by the taxpayer until it was sold 18 months later. The rental income is business income and the gain on the sale of the plant is business income.

(2) Gains or losses from sales of assets.

Example 1: In conducting its multistate manufacturing business, the taxpayer systematically replaces automobiles, machines and other equipment used in the trade or business. The gains or losses resulting from those sales constitute business income.

Example 2: The taxpayer constructed a plant for use in its multistate manufacturing business and 20 years later sold the property at a gain while it was in operation by the taxpayer. The gain is business income.

Example 3: Same as Example 2 except that the plant was closed and offered for sale but was not in fact sold until a buyer was found 18 months later. The gain is business income.

Example 4: Same as Example 2 except that the plant was rented while being held for sale. The rental income is business income and the gain on the sale of the plant is business income.

(3) Interest.

Example 1: The taxpayer operates a multistate chain of department stores, selling for cash and on credit. Service charges, interest or time-price differentials and the like are received with respect to installment sales and revolving charge accounts. These amounts are business income.

Example 2: The taxpayer conducts a multistate manufacturing business. During the tax year, the taxpayer receives a Federal income tax refund pertaining to the taxpayer's trade or business and collects a judgment against a debtor of the business. Both the tax refund and the judgment bear interest. The interest income is business income.

Example 3: The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover such items as workmen's compensation claims, rain and storm damage, machinery replacement, and the like. The funds in those accounts earn interest. Similarly, the taxpayer temporarily invests funds intended for payment of Federal, state and local tax obligations pertaining to the taxpayer's trade or business. The interest income is business income.

Example 4: The taxpayer is engaged in a multistate money order and traveler's check business. In addition to the fees received in connection with the sale of the money orders and traveler's checks, the taxpayer earns interest income by the investment of the funds pending their redemption. The interest income is business income.

Example 5: The taxpayer is engaged in a multistate manufacturing and sales business. The taxpayer usually has working capital and extra cash totaling \$200,000 which it regularly invests in short-term interest-bearing securities. The interest income is business income.

(4) Patent and copyright royalties.

Example 1: The taxpayer is engaged in the multistate business of manufacturing and sales of industrial chemicals. In connection with that business, the taxpayer obtained patents on certain of its products. The taxpayer licensed the production of the chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties received by the taxpayer are business income.

Example 2: The taxpayer is engaged in the music publishing trade or business and holds copyrights on numerous songs. The taxpayer acquires the assets of a smaller publishing company, including music copyrights. These acquired copyrights are used by the taxpayer in its trade or business. Any royalties received on these copyrights are business income.

(h) Consistency and uniformity in reporting.

(1) Year to year consistency. In filing reports with this Commonwealth, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in reports for prior years, the taxpayer shall disclose the nature and extent of the modification in the report for the current year.

(2) State to state consistency. If the returns or reports filed by a taxpayer for all states to which the taxpayer files income or gross receipts tax reports are not uniform in the classification of income as apportionable or non-apportionable income under the U.S. Constitution, the taxpayer shall disclose in its report to this Commonwealth the nature and extent

of the variance. For purposes of this paragraph, the phrase “returns or reports filed by a taxpayer for all states” includes returns or reports filed by a taxpayer with political subdivisions of a state.

From: [Foreman, Mark](#)
To: [Miller, Maria \(REV\)](#)
Subject: Re: Dept of Revenue - Proposed Regulation (#15-462) - 61 Pa. Code § 153.24a. Business and Nonbusiness Income
Date: Wednesday, May 15, 2024 9:56:35 AM
Sensitivity: Confidential

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Independent Regulatory
Review Commission

May 15, 2024

Message received

On May 15, 2024, at 9:10 AM, Miller, Maria (REV) <mariamil@pa.gov> wro

**Kindly provide acknowledgement for receipt of this message by email
reply to: mariamil@pa.gov.**

**THIS EMAIL IS SENT ON BEHALF OF DEPUTY CHIEF COUNSEL, MICHAEL
VADNER:**

TO: Honorable Steve Samuelson, Chair
House Finance Committee

**RE: 61 Pa. Code § 153.24a - Business Income and Nonbusiness Income
Corporation Taxes (#15-462)**

Attached is a cover letter and the following documents for your review and
comment, regarding the Department's the above-captioned proposed
regulations at 61 Pa. Code § 153.24a:

- Signed Face Sheet
- Preamble
- Annex A
- RAF

The deadline for public comment is June 24, 2024.

If you have any questions, please contact me or attorney Vadner at:

Michael Vadner | Deputy Chief Counsel
(717) 346.4640
mvadner@pa.gov

Best regards,

Maria L. Miller | Regulatory Coordinator
PA Department of Revenue | Office of Chief Counsel
PO Box 281061 | Hbg PA 17128-1061
Phone: 717.783.7524 | Fax: 717.772.1459
www.revenue.pa.gov

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RETRANSMISSION, DISSEMINATION OR OTHER USE OF, OR TAKING OF ANY ACTION IN RELIANCE

From: [Bulletin](#)
To: [Miller, Maria \(REV\)](#)
Cc: [Gohsler, Thomas](#); [Vadner, Michael](#); [Brosso, Dominic](#); [Rhodes, Alexis](#); [Adeline E. Gaydosh](#)
Subject: [External] Re: Department of Revenue Proposed Regulation (#15-462) - 61 Pa. Code § 153.24a - Business Income and Nonbusiness Income
Date: Wednesday, May 15, 2024 9:42:12 AM

May 15, 2024

ATTENTION: *This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).*

Good morning, Maria,

Thank you for sending this proposed rulemaking. As requested it is scheduled for publication in the 5/25 issue of the *Pennsylvania Bulletin*.

Have a terrific day!

Adeline

From: Miller, Maria (REV) <mariamil@pa.gov>
Sent: Wednesday, May 15, 2024 9:09 AM
To: Bulletin <bulletin@palrb.us>
Cc: Gohsler, Thomas <tgohsler@pa.gov>; Vadner, Michael <mvadner@pa.gov>; Dominic Brosso <dbrosso@pa.gov>; Rhodes, Alexis <alrhodes@pa.gov>
Subject: Department of Revenue Proposed Regulation (#15-462) - 61 Pa. Code § 153.24a - Business Income and Nonbusiness Income

Kindly provide acknowledgement for receipt of this message by email reply to: mariamil@pa.gov.

RE: 61 Pa. Code § 153.24a - Business Income and Nonbusiness Income Corporation Taxes

Good morning:

Attached is the Department of Revenue's Proposed Regulation (#15-462) at 61 Pa. Code § 153.24a (relating to business income and nonbusiness income).

As instructed by the Office of General Counsel (OGC)—see below thread—we are providing you with *MSWord* versions of the following documents for publication in the Saturday, May 25, 2024, edition of the *Pennsylvania Bulletin*:

- Preamble
- Annex

We are also including, for your records, a merged PDF file (see attachment 3) of the "OAG approved" regulatory package, including the signed face sheet and RAF, per OGCs instructions.

RECEIVED

Independent Regulatory
Review Commission

May 15, 2024

Please contact me if you have any questions.

Thank you,

Maria L. Miller | Regulatory Coordinator
PA Department of Revenue | Office of Chief Counsel
PO Box 281061 | Hbg PA 17128-1061
Phone: 717.783.7524 | Fax: 717.772.1459
www.revenue.pa.gov

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From: Keys, Jaclyn (GC) <jackkeys@pa.gov>
Sent: Monday, April 8, 2024 9:44 AM
To: Miller, Maria (REV) <mariamil@pa.gov>
Cc: Rizzi, Alicia (GC) <arizzi@pa.gov>; Gohsler, Thomas <tgohsler@pa.gov>; Vadner, Michael <mvadner@pa.gov>; Rhodes, Alexis <alrhodes@pa.gov>; Brosso, Dominic <dbrosso@pa.gov>; Abelson, Addie <adabelson@pa.gov>; GC, Regulations <RA-GCREGULATIONS@pa.gov>
Subject: Department of Revenue Proposed Regulation #15-462 Approved

Good morning,

OAG has approved the attached version of the regulation. Please see the attached signed face sheet, along with delivery instructions for proposed regulations and a transmittal sheet for use if in-person delivery will occur.

Thank you,

Jaclyn Keys | Legal Office Administrator
Regulatory Coordinator
Governor's Office of General Counsel
Commonwealth of Pennsylvania
333 Market Street, 17th Floor | Harrisburg, PA 17101
Office: 717.772.4257 | Cell: 717.571.8831 | Fax: 717.787.1788
jackkeys@pa.gov | www.ogc.pa.gov

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May 15, 2024

From: [Carraghan, Julie](#)
To: [Miller, Maria \(REV\)](#)
Subject: RE: Dept of Revenue - Proposed Regulation (#15-462) - 61 Pa. Code § 153.24a. Business and Nonbusiness Income
Date: Wednesday, May 15, 2024 9:37:52 AM
Sensitivity: Confidential

#15-462 has been also received by Senator Miller's office. Thank you.

Julie Carraghan

Legislative Director, and
Senate Dem. Finance Committee Executive Director
Senator Nick Miller
Room 352 MC
717-787-7105
Julie.Carraghan@pasenate.com

From: Miller, Maria (REV) <mariamil@pa.gov>
Sent: Wednesday, May 15, 2024 9:09 AM
To: Carraghan, Julie <Julie.Carraghan@pasenate.com>
Cc: Gohsler, Thomas <tgohsler@pa.gov>; Vadner, Michael <mvadner@pa.gov>; Rhodes, Alexis <alrhodes@pa.gov>; Brosso, Dominic <dbrosso@pa.gov>
Subject: Dept of Revenue - Proposed Regulation (#15-462) - 61 Pa. Code § 153.24a. Business and Nonbusiness Income
Importance: High
Sensitivity: Confidential

EXTERNAL EMAIL

Kindly provide acknowledgement for receipt of this message by email reply to:
mariamil@pa.gov.

THIS EMAIL IS SENT ON BEHALF OF DEPUTY CHIEF COUNSEL, MICHAEL VADNER:

TO: Honorable Nick Miller, Minority Chair
Senate Finance Committee

RE: 61 Pa. Code § 153.24a - Business Income and Nonbusiness Income Corporation Taxes (#15-462)

Attached is a cover letter and the following documents for your review and comment, regarding the Department's the above-captioned proposed regulations at 61 Pa. Code § 153.24a:

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Independent Regulatory
Review Commission
May 15, 2024

- Signed Face Sheet
- Preamble
- Annex A
- RAF

The deadline for public comment is June 24, 2024.

If you have any questions, please contact me or attorney Vadner at:

Michael Vadner | Deputy Chief Counsel
(717) 346.4640
mvadner@pa.gov

Best regards,

Maria L. Miller | Regulatory Coordinator
PA Department of Revenue | Office of Chief Counsel
PO Box 281061 | Hbg PA 17128-1061
Phone: 717.783.7524 | Fax: 717.772.1459
www.revenue.pa.gov

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May 15, 2024

From: [Leventry, Justin](#)
To: [Miller, Maria \(REV\)](#)
Cc: [Gohsler, Thomas](#); [Vadner, Michael](#); [Rhodes, Alexis](#); [Brosso, Dominic](#)
Subject: RE: Dept of Revenue - Proposed Regulation (#15-462) - 61 Pa. Code § 153.24a. Business and Nonbusiness Income
Date: Wednesday, May 15, 2024 9:12:58 AM
Sensitivity: Confidential

Received. Thanks.

From: Miller, Maria (REV) <mariamil@pa.gov>
Sent: Wednesday, May 15, 2024 9:09 AM
To: Leventry, Justin <jleventry@pasen.gov>
Cc: Gohsler, Thomas <tgohsler@pa.gov>; Vadner, Michael <mvadner@pa.gov>; Rhodes, Alexis <alrhodes@pa.gov>; Brosso, Dominic <dbrosso@pa.gov>
Subject: Dept of Revenue - Proposed Regulation (#15-462) - 61 Pa. Code § 153.24a. Business and Nonbusiness Income
Importance: High
Sensitivity: Confidential

ⓘ CAUTION : External Email ⓘ

Kindly provide acknowledgement for receipt of this message by email reply to: mariamil@pa.gov.

THIS EMAIL IS SENT ON BEHALF OF DEPUTY CHIEF COUNSEL, MICHAEL VADNER:

TO: Honorable Scott E. Hutchinson, Chair
Senate Finance Committee

RE: 61 Pa. Code § 153.24a - Business Income and Nonbusiness Income Corporation Taxes (#15-462)

Attached is a cover letter and the following documents for your review and comment, regarding the Department's the above-captioned proposed regulations at 61 Pa. Code § 153.24a:

- Signed Face Sheet
- Preamble
- Annex A
- RAF

The deadline for public comment is June 24, 2024.

If you have any questions, please contact me or attorney Vadner at:

Michael Vadner | Deputy Chief Counsel
(717) 346.4640
mvadner@pa.gov

Best regards,

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Maria L. Miller | Regulatory Coordinator
PA Department of Revenue | Office of Chief Counsel
PO Box 281061 | Hbg PA 17128-1061
Phone: 717.783.7524 | Fax: 717.772.1459
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From: [Sarah Shook](#)
To: [Miller, Maria \(REV\)](#)
Subject: RE: [EXTERNAL]: Dept of Revenue - Proposed Regulation (#15-462) - 61 Pa. Code § 153.24a. Business and Nonbusiness Income
Date: Wednesday, May 15, 2024 9:11:11 AM
Sensitivity: Confidential

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Received, thank you!

Have a great rest of your week as well!

Independent Regulatory
Review Commission

May 15, 2024

Kind Regards,
Sarah Shook

Administrative Assistant
Representative Keith J. Greiner, CPA
Finance Committee
49 EW – PA House of Representatives
43rd Legislative District
P. O. Box 202043
Harrisburg, PA 17120-2043
717-783-6422

From: Miller, Maria (REV) <mariamil@pa.gov>
Sent: Wednesday, May 15, 2024 9:08 AM
To: Robert Gaertner <Rgaertne@pahousegop.com>; Sarah Shook <Sshook@pahousegop.com>
Cc: Gohsler, Thomas <tgohsler@pa.gov>; Vadner, Michael <mvadner@pa.gov>; Rhodes, Alexis <alrhodes@pa.gov>; Brosso, Dominic <dbrosso@pa.gov>
Subject: [EXTERNAL]: Dept of Revenue - Proposed Regulation (#15-462) - 61 Pa. Code § 153.24a. Business and Nonbusiness Income
Importance: High
Sensitivity: Confidential

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mariamil@pa.gov.

THIS EMAIL IS SENT ON BEHALF OF DEPUTY CHIEF COUNSEL, MICHAEL VADNER:

TO: Honorable Keith J. Greiner, Minority Chair
House Finance Committee

RE: 61 Pa. Code § 153.24a - Business Income and Nonbusiness Income Corporation Taxes (#15-462)

Attached is a cover letter and the following documents for your review and comment, regarding the Department's the above-captioned proposed regulations at 61 Pa. Code § 153.24a:

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Review Commission

May 15, 2024

- Signed Face Sheet
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Best regards,

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