

21ST SENATORIAL DISTRICT
SCOTT E. HUTCHINSON

HARRISBURG OFFICE
SENATE BOX 203021
HARRISBURG, PA 17120-3021
(717) 787-9684
FAX (717) 787-6088
TTY (800) 364-1581

shutchinson@pasen.gov
senatorscotthutchinson.com



Senate of Pennsylvania

June 24, 2024

Maria L. Miller
Office of General Counsel
Pennsylvania Department of Revenue
Harrisburg, PA 17120

RE: Comments on Proposed Regulation #15-462: Business Income and Nonbusiness Income

Dear Ms. Miller:

Please note my strong opposition to the Department of Revenue's proposed rulemaking regarding Business Income and Nonbusiness Income (Regulation #15-462).

Most concerning to me is that this proposal far exceeds the department's statutory authority "...to prescribe, adopt, promulgate, and enforce rules and regulations, not inconsistent with this article, relating to any matter or thing pertaining to the administration and enforcement of the provisions of this article, and the collection of taxes, penalties, and interest imposed by this article (72 P.S. Section 7408)."

For example, the allocable/apportionable income provisions contained in this proposal differ from and are inconsistent with the definition of "business income" found in Pennsylvania's Corporate Net Income Tax statute, a clear administrative overreach and undermining of the General Assembly's exclusive legislative power.

Additionally, this proposal ignores a longstanding legal doctrine adopted by Pennsylvania courts that establishes a unitary business test to determine apportionable business income. This three-factor test, referred to as the multiform business/unrelated asset doctrine, was adopted by the Pennsylvania Supreme Court in 1970 (*Commonwealth v. ACF Industries Inc.*) and has since been upheld by the courts. This doctrine remains in effect until reversed by either the General Assembly or the courts, despite the department's erroneous assertion that it is no longer viable.

If approved, this regulatory proposal would wrongly usurp both the legislature's and the judiciary's respective constitutional authority to enact and interpret Pennsylvania's tax laws.

Sincerely,

Scott E. Hutchinson
State Senator, 21st District

