

9/22/99

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| <b>Regulatory Analysis Form</b>   |  | This form is for use by IRRRC<br>1999 SEP 28 PM 3:36<br><b>INDEPENDENT REGULATORY REVIEW COMMISSION</b><br><br>IRRC Number: 1882 |
| (1) Agency<br><br>Revenue   |  |  |
| (2) I.D. Number (Governor's Office Use)<br><br>15-381   |  |  |
| (3) Short Title<br><br>Definitions; Net Profits and Regulated Investment Companies  |  |  |
| (4) PA Code Cite<br><br>61 Pa. Code §§ 101.1, 101.6, 103.12, 109.3, 109.4, 109.5, 109.7, 109.8, 113.1, 117.15, 121.10, 121.11, 121.14 and 155.30  | (5) Agency Contacts & Telephone Numbers<br><br>Primary Contact: Anita M. Doucette (717) 787-1382<br><br>Secondary Contact: Douglas A. Berguson (717) 787-1382  |  |
| (6) Type of Rulemaking (check one)<br><br><input type="checkbox"/> Proposed Rulemaking<br><input checked="" type="checkbox"/> Final Order Adopting Regulation<br><input type="checkbox"/> Final Order, Proposed Rulemaking Omitted  | (7) Is a 120-Day Emergency Certification Attached?<br><br><input checked="" type="checkbox"/> No<br><input type="checkbox"/> Yes: By the Attorney General<br><input type="checkbox"/> Yes: By the Governor |  |
| (8) Briefly explain the regulation in clear and nontechnical language.<br><p>Section 101.1 is amended by replacing the existing definitions of "employee" and "employer" with new definitions consistent with the requirements of Act 110 of 1989 (72 P.S. § 7301(g) and (h)). In addition, definitions for "casual employe" and "casual employer" have been added. The addition of the definitions of "casual employe" and "casual employer" required amendments to §§ 101.6(a), (c)(7) and (d); 109.3; 109.4; 109.5(c)(2)(i); 109.7; 109.8; 117.15(h); 121.10(c)(6); 121.11(b) and the deletion of § 121.14. The definition of "income" is expanded to implement the provisions of section 602(f)(2)(A) of the TRC (72 P.S. § 7602(f)(2)(A)) and to reflect the holdings of the Commonwealth Court in <u>Morgan v. Commonwealth</u>, 400 A.2d 1384 (Pa. Cmwlth. 1979) and <u>Wettach v. Commonwealth</u>, 620 A.2d 730 (Pa. Cmwlth. 1993). The revisions provide that the term "income" includes income received by a taxpayer directly or through partnerships, associations, Pennsylvania S Corporations or estates or trusts. Section 103.12 is amended to reflect the holdings in <u>Morgan</u> and <u>Wettach</u>. Section 113.1 (relating to employers required to withhold tax) is amended to bring it into conformity with Act 110 of 1989. The definition of "personal income tax income" set forth in § 155.30(b)(4) is amended to provide that the term means income computed in the same manner and on the same basis as the income of an individual under Article V (relating to Personal Income Tax).</p> |  |  |
| (9) State the statutory authority for the regulation and any relevant state or federal court decisions.<br><br>Statutory authority for the regulation is contained in sections 354, 408 and 603 of the TRC (72 P.S. §§ 7354, 7408 and 7603).  |  |  |

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by federal or state law, court order, or federal regulation.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation will bring existing regulations into conformity with the laws of this Commonwealth and make them consistent with current Federal requirements. It will also provide a concise and nontechnical definition of "income" and "net profits" that will help business owners, investors, tax practitioners and regulated investment companies properly classify and compute their income, losses and deductions.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environmental or general welfare risks associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

One of the most common questions and concerns is "Am I subject to Pennsylvania withholding requirements even though I am not subject to Federal requirements (and vice-versa)?" This regulation will benefit pension and profit-sharing trusts, persons who hire home workers or domestics, and many others who are not required to withhold Federal income tax from "wages." The income definitions will benefit business owners, investors, tax practitioners and regulated investment companies who or that are required to classify and compute their income, losses and deductions by helping them to avoid interest and penalty charges and minimize costs of litigation.

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No parties should be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Regulated investment companies that are subject to the capital stock/foreign franchise tax and business owners, investors and tax practitioners will be required to comply with the regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The regulation was published in the Pennsylvania Bulletin and the public was invited to comment. The Department received one public comment and comments from the Independent Regulatory Review Commission. The Department considered the comments in preparing the final-form regulation. In addition, a copy of the regulation was forwarded to the Pennsylvania Bar Association; the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Chamber of Business and Industry and all parties who commented on the proposal. The regulation was listed in the Department's Agenda of Regulations published at 29 Pa.B. 3443 (July 3, 1999) and was forwarded to interested parties upon request.

(17) 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.

No additional cost can be associated with compliance.

## Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

This regulation does not increase costs or savings to local governments. No legal, accounting or consultant procedures are required by the regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

This regulation does not increase costs or savings to state government. No legal, accounting or consultant procedures are required by the regulation.

### Regulatory Analysis Form

(20) 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.

|                             | Current FY<br>Year | FY +1<br>Year | FY +2<br>Year | FY +3<br>Year | FY +4<br>Year | FY +5<br>Year |
|-----------------------------|--------------------|---------------|---------------|---------------|---------------|---------------|
| <b>SAVINGS:</b>             | \$                 | \$            | \$            | \$            | \$            | \$            |
| Regulated Community         |                    |               |               |               |               |               |
| Local Government            |                    |               |               |               |               |               |
| State Government            |                    |               |               |               |               |               |
| <b>Total Savings</b>        | N/A                |               |               |               |               |               |
| <b>COSTS:</b>               |                    |               |               |               |               |               |
| Regulated Community         |                    |               |               |               |               |               |
| Local Government            |                    |               |               |               |               |               |
| State Government            |                    |               |               |               |               |               |
| <b>Total Costs</b>          | N/A                |               |               |               |               |               |
| <b>REVENUE LOSSES:</b>      |                    |               |               |               |               |               |
| Regulated Community         |                    |               |               |               |               |               |
| Local Government            |                    |               |               |               |               |               |
| State Government            |                    |               |               |               |               |               |
| <b>Total Revenue Losses</b> | N/A                |               |               |               |               |               |

(20a) Explain how the cost estimates listed above were derived.

N/A

### Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

| Program | FY -3 | FY -2 | FY -1 | Current FY |
|---------|-------|-------|-------|------------|
|         |       |       |       |            |
|         |       |       |       |            |
|         |       |       |       |            |
| N/A     | N/A   | N/A   | N/A   | N/A        |

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There are no adverse effects or costs.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There are no nonregulatory alternatives associated with the regulation.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There are no alternative regulatory schemes associated with the regulation.

## Regulatory Analysis Form

(24) 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 regulation.

Federal standards are made applicable for withholding tax purposes. The other provisions vary from Federal standards because Article III of the Tax Reform Code fundamentally differs from the Federal income tax provisions.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Article III of the Tax Reform Code, as originally enacted, was consistent with the Federal income and the tax laws of almost every other state that imposes an income tax. That tax was declared unconstitutional in 1971 by the Pennsylvania Supreme Court. Notwithstanding the fact that it adopts only a handful of Federal income tax provisions, the current law with its low, fixed rate and limited deductions and exemptions is considered by many to be preferable.

(26) Will the regulation affect existing or proposed 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 agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The regulation was presented to the House and Senate Finance Committees and the Independent Regulatory Review Commission. At the same time the regulation was presented to the Committees and the Commission, the regulation was published in the Pennsylvania Bulletin and the public was invited to comment.

The Committees and the Commission may hold hearings or meetings to consider the final-form regulation. The date, time and location of such hearings or meetings can be ascertained by contacting the Committees and Commission. Notice of the Commission's public meeting to formally consider the final-form regulation will be published in the Pennsylvania Bulletin prior to the meeting date.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The regulation will not change existing reporting, record keeping, or other paperwork requirements.

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

No special groups are affected by the regulation.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

This regulation will be effective upon final publication in the Pennsylvania Bulletin. Compliance with the regulation is required upon publication. There are no permits, licenses or other approvals required by this regulation.

(31) Provide the schedule for continual review of the regulation.

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



CDL-1

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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1999 SEP 28 PM 3: 36

INDEPENDENT REGULATORY  
REVIEW COMMISSION

9/22/99

# 1882

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to  
form and legality. Attorney General

By: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

\_\_\_\_\_  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections  
attached.

Copy below is hereby certified to be true and correct copy  
of a document issued, prescribed or promulgated by:

PA Department of Revenue

(Agency)

Document/Fiscal Note No. 15-381

Date of Adoption: \_\_\_\_\_

By: Robert A. Judge, Sr.  
Robert A. Judge, Sr.  
Secretary of Revenue

Title: \_\_\_\_\_  
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to  
form and legality. Executive or Independent  
Agencies.

By: R. E. Grimaldi

9/24/99  
Date of Approval

(Deputy General Counsel)  
~~(Chief Counsel, Independent Agency)~~  
(Strike inapplicable title)

Check if applicable. No Attorney  
General approval or objection  
within 30 days after submission

DEPARTMENT OF REVENUE

NOTICE OF FINAL RULEMAKING

Personal Income Tax

61 Pa. Code §§101.1, 101.6, 103.12, 109.3,  
109.4, 109.5, 109.7, 109.8, 113.1, 117.15,  
121.10, 121.11, 121.14 and 155.30

Definitions; Net Profits and Regulated  
Investment Companies

## PREAMBLE

The Department of Revenue (Department), under the authority contained in section 354, 408 and 603 of the Tax Reform Code of 1971 (TRC) (72 P.S. §§ 7354, 7408 and 7603), by this order amends 61 Pa. Code, Chapter 101. General Provisions, Chapter 103. Imposition and Determination of Tax, Chapter 109. Nonresident Individuals, Chapter 113. Withholding of Tax, Chapter 117. Return and Payment of Tax, Chapter 121. Final Returns and Chapter 155. Capital Stock Tax and Foreign Franchise Tax, sections 101.1, 101.6, 103.12, 109.3, 109.4, 109.5, 109.7, 109.8, 113.1, 117.15, 121.10, 121.11, 121.14 and 155.30.

### Purpose of Regulation

The regulation will bring existing regulatory provisions into conformity with the laws of this Commonwealth and make them consistent with current Federal requirements. It will also provide a concise and nontechnical definition of "income" and "net profits" that will help business owners, investors, tax practitioners and regulated investment companies properly classify and compute their income, losses and deductions.

### Explanation of Regulatory Requirements

Section 101.1 is amended by replacing the existing definitions of "employee" and "employer" with new definitions consistent with the requirements of Act 110 of 1989 (72 P.S. § 7301(g) and (h)). In addition, definitions for "casual employee" and "casual employer" have been added. The addition of the definitions of "casual employee" and "casual employer" required amendments to §§ 101.6(a), (c)(7) and (d); 109.3; 109.4; 109.5(c)(2)(i); 109.7; 109.8; 117.15(h); 121.10(c)(6); 121.11(b) and the deletion of § 121.14.

The definition of "income" is expanded to implement the provisions of section 602 (f) (2) (A) of the TRC (72 P.S. § 7602(f)(2)(A)) and to reflect the holdings of the Commonwealth Court in Morgan v. Commonwealth, 400 A.2d 1384 (Pa. Cmwlth. 1979) and Wettach v. Commonwealth, 620 A.2d 730 (Pa. Cmwlth. 1993). The revisions provide that the term "income" includes income received by a taxpayer directly or through partnerships, associations, Pennsylvania S Corporations or estates or trusts. The revisions also specify that:

(1) The taxable income of a partnership or Pennsylvania S Corporation is to be computed in the same way and on the same basis as the taxable income of an individual.

(2) The taxable income of an individual is the total of the eight classes of income enumerated and classified in section 303 of the TRC, each class computed without setoff between or among any other class and, unless a net taxable class, without deductions.

Section 103.12 is amended to reflect the holdings in Morgan and Wettach.

Section 113.1 (relating to employers required to withhold tax) is amended to bring it into conformity with Act 110 of 1989.

The definition of "personal income tax income" set forth in § 155.30(b)(4) is amended to provide that the term means income computed in the same manner and on the same basis as the income of an individual under Article V (relating to Personal Income Tax).

#### Affected Parties

Regulated investment companies that are subject to the capital stock/foreign franchise tax and business owners, investors and tax practitioners may be affected by the regulation.

#### Comment and Response Summary

Notice of proposed rulemaking was published at 27 Pa.B. 4436 (August 30, 1997). This proposal is being adopted with changes as set forth in Annex A.

The Department received one comment from the public during the public comment period. The Department also received comments from the Independent Regulatory Review Commission (IRRC). No comments were received from the House and Senate Finance Committees.

Amendments to the proposed rulemaking in response to comments are as follows:

(1) In its comments, IRRC stated that it believed the proposed definitions for "employee" and "employer" were more

expansive than the statutory definitions and could include instances when an employer is not required to withhold Federal income tax. IRRRC recommended that the Department delete the proposed definitions and adopt the statutory definitions. The Department recognizes IRRRC's concern with the proposed definitions and has adopted the statutory definitions of "employee" and "employer" in § 101.1.

However, it must also be recognized that not every individual who performs services for another individual or an entity and earns taxable compensation therefor does so as an "individual from whose wages an employer is required under the Internal Revenue code to withhold Federal income tax." For example, remuneration paid for domestic service in a private home is excluded from the definition of "wages" at section 3401(a)(3) of the IRC (26 U.S.C. § 3401(a)(3)); and, as a consequence, no individual who only earns compensation for such services can be such an individual. Also, for example, certain sales persons are excluded from the definition of "employee" at section 3508 of the IRC (26 U.S.C. § 3508) and, as a consequence, also cannot be such an individual.

It is the Department's position that an item of remuneration received for services is taxable as compensation whether or not the services were rendered as, or the item is received by, an "employee." That is why "compensation" has always been defined so it "includes" (and is thus not limited to) "items of remuneration received by an employee." 61 Pa. Code §§ 101.6(a) and 101.8(e).

To resolve this issue, the Department has added a definition of "casual employee" and "casual employer" to § 101.1 and has inserted the terms in the following sections: 101.6(a), (c)(7) and (d); 109.3; 109.4; 109.5(c)(2)(i); 109.7; 109.8; 117.15(h); 121.10(c)(6); 121.11(b). Section 121.14 was deleted because the section is obsolete.

(2) In response to IRRRC's request that the Department consider amending § 113.1 because it contains a definition of "employer," the Department has amended the section to make it consistent with the current statutory definition of "employer."

(3) In the proposed definition of "income," the Department used the phrases "allowable unreimbursed business expense," "allowable costs of goods sold" and "allowable costs of acquisition, expenses of sale and collection expenses;" however, the regulation did not establish what would be considered

"allowable." Although the Department explained to IRRC that a future regulation would address what would be considered allowable, IRRC suggested in its comments that the Department either proceed with the other rulemaking expeditiously so that it would tract with the subject regulation or the phrases should be deleted to avoid confusion. The Department agrees with IRRC's suggestion, and has deleted the term "allowable" from the above-referenced phrases.

An amendment to the proposed rulemaking in response to a public comment received outside the public comment period is as follows:

Proposed § 103.12(b)(1) described that net profits are different from other classes of personal income in that the profits are derived from the marketing of a product or service to customers on a commercial basis; from securities employed as working capital in the business operations; from accounts and notes receivable from sales of products or services sold in the ordinary course of the business operations; or from assets which serve an operational function in the ordinary course of business operations. The comment requested that the Department add the phrase "from the active conduct of a securities trade or business," to paragraph (1).

In response to the comment, the Department has added a new subsection (e) to § 103.12. This new subsection details "marketing of a product or service to customers" for participants in the securities or commodities market. The standards set forth in paragraphs (1) - (5) come from Morgan.

The Department has also added a new subsection (f) to § 103.12 to clarify that a taxpayer may operate as an investor or trader with respect to a portion of his securities transactions and as a "business man" with respect to the rest of his securities transactions. Only the latter count toward the taxpayer's net profits. The former count toward his interest, dividends, and gains or losses from disposition of property.

A comment that did not result in an amendment to the proposed rulemaking is as follows:

IRRC and the public comment objected to the provisions of § 103.12 that require a regulated investment company (RIC) to classify its "personal income tax income" within the eight classes of income subject to tax under section 303 of the TRC (72 P.S. § 7303). IRRC and the public comment indicated that

the nature of a RIC is as a commercial enterprise conducted for profit. Therefore, IRRC and the public comment concluded that regulated investment companies should be allowed to classify their undistributed personal income tax income only as net profits.

The objection overlooks the special nature of RICs as investment agents for their shareholders, and the resulting special Federal tax treatment afforded RICs. RICs invest in securities and distribute the income earned as dividends to their shareholder investors. The federal government recognizes the regulated investment company as the alter ego of the shareholders by allowing the RIC a deduction for dividends paid to their shareholders. 26 U.S.C. § 852. Consequently, a RIC may completely escape Federal corporate income taxation by distributing all of its income.

RICs are highly regulated by the Internal Revenue Code. At least ninety percent of the income of a RIC must consist of dividends, interest and gain or other income from stocks or securities (including foreign currencies). 26 U.S.C. § 851. A RIC's income retains its character when distributed to its shareholders. In other words, if the income was earned by the RIC as interest, it is classified as interest for the shareholder.

RICs organized as corporations automatically receive the benefit of this special Federal tax treatment for Pennsylvania corporate net income tax purposes. This results from the fact that the Pennsylvania taxable income of a corporation is its Federal taxable income. However, the capital stock franchise tax is not based upon Federal taxable income. Therefore, the General Assembly enacted special capital stock franchise tax rules for RICs that recognizes their special character as the alter ego of their shareholders.

Accordingly the capital stock franchise tax uses personal income tax income as one component of a formula for determining the capital stock franchise tax liability of a RIC. Section 602(f)(2)(A) of the Tax Reform Code specifically provides:

(A) Personal income tax income shall mean income to the extent enumerated and classified in section 303. 72 P.S. §7602(f)(2)(A).

Section 303 of the TRC defines eight classes of income that are subject to tax. 72 P.S. § 7303. Those classes include:

compensation; net profits; net gains from the disposition of property; net gains from rents, royalties patents and copyrights; dividends; interest; gambling an lottery winnings; and net gains or income from estates or trusts. The comments suggest the definition of personal income tax income results in all income earned by a RIC being re-classified only as net profits, including the dividends and interest earned by the RIC.

The re-classification of the RICs interest and dividends as net profits is contrary to the special Federal tax treatment of RICs and their shareholders. It is also contrary to the rules of statutory construction.

Section 1921 of the Rules of statutory construction provides that "[e]very statute shall be construed, if possible, to give meaning and effect to all of its provisions." 1 Pa.C.S. §1921(a). If the General Assembly had meant for all personal income tax income of a RIC to be classified as net profits, section 602(f)(2)(A) would simply state that personal income tax income is net profits as enumerated in section 303(a)(2) of the TRC. However, personal income tax income is defined as "income to the extent enumerated and classified in section 303." 72 P.S. §7602(f)(2)(A). The plain reading of the statute does not limit personal income tax income to only one of the eight classes of income enumerated in section 303 of the TRC.

The objection also ignores the fact that other business entities that are subject to Article III do not classify their interest and dividends as net profits. Section 307.9(a) of the TRC provides that "[e]ach shareholder of a Pennsylvania S Corporation shall take into income such shareholder's pro rata share of the income or loss in each applicable class of income received by the corporation ..." 72 P.S. § 7307.9(a).

For over 25 years, the Department's regulations have also provided that every partner's share of the income of the partnership shall be reported within the eight classes of personal income tax income "depending upon which class it shall fall within." 61 Pa. Code § 107.1. Accordingly, the personal income tax income of Pennsylvania S Corporations, partnerships and other business entities is classified in the same manner and on the same basis as the income of a natural individual.

In addition, it is a presumption that "the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable." 1 Pa.C.S. §1922(1). RICs are required to distribute at least ninety percent of their income. In

practice, their expenses are ordinarily greater than their undistributed income. Under the interpretation as proposed by IRRC and the public comment, such regulated investment companies would not have personal income tax income to report. Accordingly, an interpretation that classifies a RIC's income as only net profits may produce a result where it would be exceptional for a RIC to have personal income tax income.

For all of the above reasons, personal income tax income must be interpreted as "income to the extent enumerated and classified under section 303." 72 P.S. §7602(f)(2)(A). The regulation as drafted interprets the statute exactly in that manner.

#### Fiscal Impact

The Department has determined that the amendments will have no fiscal impact on the Commonwealth.

#### Paperwork

The amendments will not generate additional paperwork for the public or the Commonwealth.

#### Effectiveness/Sunset Date

The amendments will become effective upon final publication in the Pennsylvania Bulletin. The regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

#### Contact Person

The contact person for an explanation of the amendments is Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, Pennsylvania 17128-1061.

#### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on August 20, 1997, the Department submitted a copy of the notice of proposed rulemaking, published at 27 Pa.B. 4436, to IRRC and the Chairpersons of the House Committee on Finance and the Senate Committee on Finance for review and comment. In compliance with section 5(c) of the Regulatory Review Act (71 P.S. §745.5(c)), the Department also provided



IRRC and the Committees with copies of all comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC, the Committees and the public.

These final-form regulations were (deemed) approved by the Committees on \_\_\_\_\_ and were (deemed) approved by IRRC on \_\_\_\_\_, in accordance with section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)).

### Findings

The Department finds that:

(1) Public notice of intention to amend the regulations has been duly given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments are necessary and appropriate for the administration and enforcement of the authorizing statute.

### Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code, are amended by amending Chapters 101. General Provisions, 103. Imposition and Determination of Tax, 109. Nonresident Individuals, 113. Withholding of Tax, 117. Return and Payment of Tax, 121. Final Returns and 155. Capital Stock Tax and Foreign Franchise Tax, sections 101.1, 101.6, 103.12, 109.3, 109.4, 109.5, 109.7, 109.8, 113.1, 117.15, 121.10, 121.11, 121.14 and 155.30 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the Pennsylvania Bulletin.

ROBERT A. JUDGE, SR.  
SECRETARY OF REVENUE

09/02/99

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

ANNEX A

Title 61. Revenue, Part I. Department of Revenue, Subpart B.  
General Fund Revenues, Article V. Personal Income Tax, Chapter  
101. General Provisions.

§ 101.1. Definitions.

The following words and terms, when used in this article,  
have the following meanings, unless the context clearly indicates  
otherwise:

\* \* \*

CASUAL EMPLOYE - ANY INDIVIDUAL WHO PERFORMS, OR BY  
AGREEMENT, REFRAINS FROM PERFORMING, ANY SERVICE OF WHATEVER  
NATURE AND IS NOT AN EMPLOYEE.

CASUAL EMPLOYER - A PERSON FOR WHOM A CASUAL EMPLOYE  
PERFORMS, OR REFRAINS FROM PERFORMING, ANY SERVICE, PROVIDED  
THAT, IF THE PERSON DOES NOT MAKE THE PAYMENT OF REMUNERATION,  
THE TERM ALSO INCLUDES THE PERSON MAKING PAYMENT.

\* \* \*

Employe - [Every individual performing services if the  
relationship between him and the person for whom he performs the  
services is the legal relationship of employer and employe as  
determined by the usual common law rules. Generally, the  
relationship of employer and employe exists when the person for  
whom services are performed has the right to control and direct

the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which the result is accomplished. That is, an employe is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is not an employe.

(i) The definition of "employe" for Pennsylvania Personal Income Tax purposes is the same as that for Federal income tax withholding purposes. Consequently, an individual who is issued a Form W-2 indicating Federal income tax withheld, is an employe unless he can affirmatively prove that the Federal withholding was not required, that is, that an employer-employe relationship does not exist and the withholding was done merely as a convenience. In addition, the remuneration paid for certain types of services is not subject to Federal income tax withholding regardless of whether an employer-employe relationship exists. In these cases, the failure to withhold does not indicate nonemploye status and a determination must be made based on the particular facts of the relationship. The

remuneration referred to is cited at section 3401-(a) of the IRC and includes, inter alia, that paid:

(A) For agricultural labor.

(B) For domestic service in certain circumstances.

(C) For services performed by an ordained, commissioned or licensed minister of a church in the exercise of his ministry.

(D) For services performed by an individual under the age of 18 in the delivery or distribution of newspapers.

(ii) Generally, F.I.C.A. employe tax is only withheld on individuals who are "employes" within the common law meaning. Consequently, an individual who is issued a Form W-2 indicating F.I.C.A. employe tax withheld, will be considered an employe unless he can affirmatively prove:

(A) That he is among the classes of individuals cited at section 3121(d) of the IRC who are employes for F.I.C.A. purposes only.

(B) That no employer-employe relationship otherwise exists. The classes of individuals referred to are:

(I) Certain agent-drivers or commission drivers.

(II) Full-time life insurance salesmen.

(III) Certain home workers.

(IV) Certain traveling or city salesmen.

(ii) Generally, evidence of payment of Federal Self-Employment Tax is conclusive proof that an individual is not an

employee. However, this does not apply to certain classes who are subject to Self-Employment Tax regardless of whether an employer-employee relationship exists. In these cases, the payment of Self-Employment Tax does not indicate nonemployee status and a determination must be made based on the particular facts of the relationship. The classes referred to are cited at section 1.1402(c)-3 of the IRC and include, inter alia:

- (A) Certain newspaper vendors.
- (B) Certain sharecroppers.
- (C) Employees of foreign governments.
- (D) Ministers and members of religious orders unless exempt.
- (E) State and local government employees compensated on fee basis.

(iv) Where the presence or absence of an employer-employee relationship cannot be determined on the basis of Federal income tax withholding, F.I.C.A. employee tax withholding or payment of Self-Employment Tax, the following factors are considered, in addition to the elements enumerated in subparagraph (i) in making the determination. No one factor is conclusive; rather, the test is one of the totality of the following circumstances:

- (A) Whether the individual is required by his principal, or by the person from whom remuneration is received, to work fixed hours, follow a prescribed routine or perform prescribed duties.

(B) Whether the individual participates in pension, unemployment, disability or hospitalization plans offered by the principal.

(C) Whether the individual is guaranteed an amount of remuneration by the principal.

(D) Whether the individual is either reimbursed for expenses or receives an expense allowance.

(E) Whether the individual represents only one principal.] ~~The term includes any individual who performs any service, of whatever nature, for any other individual or any entity and earns or receives remuneration therefor.~~ ANY INDIVIDUAL FROM WHOSE WAGES AN EMPLOYER IS REQUIRED UNDER THE INTERNAL REVENUE CODE TO WITHHOLD FEDERAL INCOME TAX. For the purpose of Chapter 113 (relating to withholding of tax) THIS DEFINITION, the term has TERMS "EMPLOYEE," "EMPLOYER" AND "WAGES" HAVE the same meaning MEANINGS as when used in Chapter 24 of the IRC (26 U.S.C.A. §§ 3401 - 3406) (relating to collection of income tax at source on wages).

Employer - [An individual, partnership, association, corporation, governmental body or unit or agency, or another entity employing one or more persons for compensation. A person required under the Internal Revenue Code, as amended, to withhold Federal income tax from compensation of an employee is prima facie deemed to be an employer.] ~~The term means any person for whom an~~

individual performs any service, of whatever nature, provided that:

(i) If the person for whom the individual performs the service does not have the payment of the remuneration for the service, the term means the person having the payment of the remuneration.

(ii) AN INDIVIDUAL, PARTNERSHIP, ASSOCIATION, CORPORATION, GOVERNMENTAL BODY OR UNIT OR AGENCY, OR ANY OTHER ENTITY WHO OR THAT IS REQUIRED UNDER THE INTERNAL REVENUE CODE TO WITHHOLD FEDERAL INCOME TAX FROM WAGES PAID TO AN EMPLOYEE. For the purpose of Chapter 113 (relating to withholding of tax) THIS DEFINITION, the term has TERMS "EMPLOYEE," "EMPLOYER" AND "WAGES" HAVE the same meaning MEANINGS as when used in 26 U.S.C.A. Chapter 24 of the IRC.

\* \* \*

Income - The total of the classes enumerated under Chapter 103 Subchapter B (relating to the determination of tax) received by a taxpayer directly, or through partnerships, associations or Pennsylvania S corporations and the amount of each class derived by the taxpayer through estates or trusts[. There may be no setoff between or among the classes.] determined and computed in accordance with the requirements of this article relating to the taxation of a natural individual's personal income, including the requirements that:



(i) There is no setoff between, or among, any different classes of personal income tax income. FOR EXAMPLE, AN INDIVIDUAL'S NET PROFIT FROM MANUFACTURING TOYS IS \$100, HIS NET LOSS FROM THE BUSINESS OF SELLING GARDEN SUPPLIES IS \$20, AND HIS NET LOSS FROM PASSIVE OWNERSHIP OF INVESTMENT RENTAL PROPERTIES IS \$10. HIS TOTAL NET BUSINESS PROFITS ARE \$80 WHICH IS HIS INCOME, AGAINST WHICH HE MAY NOT SET OFF HIS LOSSES ON RENTALS.

(ii) No deduction is allowed for expenses, whether paid or incurred for the production or collection of income or for the management, conservation or maintenance of property, except:

(A) Allowable—unreimbursed UNREIMBURSED employe business expense.

(B) Allowable—costs COSTS of goods sold and expense incurred in the operation of a business.

(C) Allowable—costs COSTS of acquisition, expenses of sale and collection expenses.

(D) Expenses necessary to the production or collection of rents and royalties or for the management, conservation or maintenance of rents, royalties, patents or copyrights.

(iii) In the case of a Pennsylvania S corporation, partnership or other association, trust or estate, the THE distributive income of the same A PENNSYLVANIA S CORPORATION, PARTNERSHIP OR OTHER ASSOCIATION, TRUST OR ESTATE is elassed CLASSIFIED, determined and computed in the same way and on the same basis as the taxable income of a natural individual; and, in

the case of a Pennsylvania S corporation, partnership or other association, each shareholder, partner or member SHALL take into income the shareholder's, partner's or member's pro rata share of the income or loss in each applicable class of income received by the Pennsylvania S corporation, partnership or other association.

(iv) Married persons may not compute their tax as if they were one person; and no setoff between married persons is permitted. For example, an individual's net profit from manufacturing toys is \$100, his net loss from the business of selling garden supplies is \$20, his wife's loss from a business she operates is \$20, and his net loss from passive ownership of investment rental properties is \$10. His total net business profits are \$80 which is his [total] income, against which he may not set off ~~his losses on rentals or~~ his wife's business losses.

\* \* \*

#### § 101.6. Compensation.

(a) Compensation includes items of remuneration received by an employe OR CASUAL EMPLOYE, directly or through an agent, in cash or in property, based on payroll periods or piecework, for services rendered as an employe OR CASUAL EMPLOYE, agent or officer of an individual, partnership, but not guaranteed payments to a partner for services rendered to the partnership, business or nonprofit corporation, or government agency. These items include salaries, wages, commissions, bonuses, stock options, incentive payments, fees, tips, termination or severance

payments, rewards, vacation and holiday pay, tax assumed by the employer OR CASUAL EMPLOYER, and other remuneration received for services rendered.

\* \* \*

(c) Compensation does not mean or include any of the following:

\* \* \*

(7) The value of meals and lodging furnished for the convenience of an employer OR CASUAL EMPLOYER shall not constitute compensation. Payments made to an Individual Retirement Account, as provided by the Federal Employee Retirement Income Security Act of 1974, are not excludable in computing income which is subject to tax under this article.

\* \* \*

(d) The Department may require the submission of a statement from an employer OR CASUAL EMPLOYER with respect to its employes OR CASUAL EMPLOYEES regarding the verification or substantiation of unreimbursed and reimbursed business expenses. The statement of the employer OR CASUAL EMPLOYER should verify that the expenses were required by the employer OR CASUAL EMPLOYER. The statement must set forth the types of expenses such as travel, meals, hotel and so forth that the employer OR CASUAL EMPLOYER specifically requires the employe OR CASUAL EMPLOYEE to incur and to what extent, if any, the expenses are reimbursed. If the employer OR CASUAL EMPLOYER requires the

employe OR CASUAL EMPLOYE to maintain an office, or office-in-home, a statement by the employer OR CASUAL EMPLOYER to this effect should also be included. The Department does not require the employer OR CASUAL EMPLOYER to specifically list the amount expended or to verify each expense incurred by the employe OR CASUAL EMPLOYE.

Chapter 103. Imposition and Determination of Tax.

§ 103.12. Net Profits.

(a) Net profits shall be the net income from the operation of a business, profession or other activity after provision for all costs and expenses incurred in the conduct thereof [are]. They shall be determined either on a cash or accrual basis in accordance with accepted accounting principles and practices [but without deduction of taxes based on income].

(b) ~~Net TO CONSTITUTE NET profits are different from other classes of personal income in that~~ ALL OF THE FOLLOWING MUST APPLY:

(1) The GROSS profits are MUST BE derived from the marketing of a product or service to customers on a commercial basis OR from securities employed as working capital in the business operations; from accounts and notes receivable from sales of products or services sold in the ordinary course of the business operations; or from assets which serve an operational function in the ordinary course of business operations.

(2) The marketing activity ~~is~~ MUST BE conducted with the manifest objective of achieving profitable operations.

(3) The marketing activity ~~is~~ MUST BE conducted with regularity and continuity and ~~is~~ SHALL not BE limited or exclusive.

(c) ~~Net~~ IN COMPUTING NET profits shall be computed wholly without reference to any, NO DEDUCTION SHALL BE ALLOWED FOR ANY item of revenue, cost, expense or liability derived or incurred in connection with, or attributable to ANY OF THE FOLLOWING:

(1) The ownership or disposition of assets that are held for investment purposes or otherwise serve an investment function.

(2) The trading in securities for personal purposes and not for the accounts of customers.

(3) The sale, discontinuation or abandonment of a business or segment thereof.

(4) Any tax imposed on, or measured by, gross or net earned or unearned income.

(5) An isolated or nonrecurring transaction which is not a normal or routine business activity.

(d) Choosing to form a partnership or other entity or to associate with others, receiving and reporting income or gain as the income of the partnership, entity or associates or dividing the same among its partners, beneficial owners or associates or the trading in securities for the benefit of shareholders,

partners, members or associates does not of itself make the income of the partnership, entity or associates net profits.

(E) FOR PURPOSES OF THIS SECTION, ONLY THE FOLLOWING PARTICIPANTS IN THE STOCK, SECURITIES, OPTIONS, DERIVATIVES, FUTURES OR COMMODITIES MARKET ARE ENGAGED IN MARKETING OF A PRODUCT OR SERVICE TO CUSTOMERS:

(1) THOSE WHO MAINTAIN OR PROVIDE A MARKET PLACE OR FACILITIES FOR BRINGING TOGETHER PURCHASERS AND SELLERS OF SUCH FINANCIAL INVESTMENT PRODUCTS.

(2) THOSE WHO ARE LICENSED TO ACT AS THEIR CUSTOMER'S AGENTS AND CHARGE A NEGOTIATED COMMISSION FOR EXECUTING TRANSACTIONS AND DO NOT TAKE TITLE TO THE PARTICULAR POSITIONS THEY BUY OR SELL.

(3) THOSE WHO DEVOTE MANAGERIAL ATTENTION TO THE FINANCIAL INVESTMENT PRODUCTS HOLDINGS OF OTHERS, OR WHO EMPLOY OTHER PERSONS TO ASSIST THEM IN SUCH MANAGEMENT, IN THE CAPACITY OF A LICENSED INVESTMENT ADVISOR.

(4) LICENSED DEALERS, INCLUDING FINANCIAL INVESTMENT PRODUCT SPECIALISTS AND MARKET MAKERS, IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(I) THE DEALER MAINTAINS AN INVENTORY OF FINANCIAL INVESTMENT PRODUCTS WITH THE OBJECTIVE OF RESELLING HIS INVENTORIES AT A PROFIT TO CUSTOMERS OR OPERATES AS A SPECIALIST OR MARKET MAKER.

(II) THE DEALER MAKES MARKET BY QUOTING THE BID AND ASKED PRICES AT WHICH HE IS WILLING TO BUY AND SELL SUCH FINANCIAL INVESTMENT PRODUCTS AND BY BUYING DIRECTLY FROM OR SELLING DIRECTLY TO CUSTOMERS.

(III) THE DEALER'S PROFIT IS DETERMINED IN WHOLE OR IN PART BY A MARKUP BASED ON COST.

(IV) THE DEALER ELECTS TO INVENTORY SECURITIES HELD FOR RESALE TO CUSTOMERS OR USES THE MARK-TO-MARKET SYSTEM OF ACCOUNTING.

(5) UNDERWRITERS WHO FACILITATE INITIAL SALES OF FINANCIAL INVESTMENT PRODUCTS BY ACTING EITHER AS LICENSED DEALERS IN A PRINCIPAL CAPACITY OR AS BROKERS IN AN AGENCY CAPACITY.

(F) WHERE A PERSON OPERATES AS AN INVESTOR OR TRADER WITH RESPECT TO A PORTION OF THAT PERSON'S ACTIVITIES AND AS A MARKET ESTABLISHMENT, BROKER, INVESTMENT COUNSELOR OR DEALER WITH RESPECT TO THE REST, THE PROVISIONS OF THIS SECTION SHALL APPLY ONLY TO THE OPERATIONS AS A MARKET ESTABLISHMENT, BROKER, INVESTMENT COUNSELOR OR DEALER.

Chapter 109. Nonresident Individuals.

§ 109.3. Business carried on wholly within this Commonwealth.

A business, trade, profession or occupation, as distinguished from personal services as an employe OR CASUAL EMPLOYE, is carried on by a nonresident wholly within this Commonwealth, if the activities described in § 101.8 (relating to

income from sources within the Commonwealth) are carried on solely within this Commonwealth and no such activities are carried on outside of this Commonwealth though the nonresident or his representative travels outside of the Commonwealth for purpose of buying, selling, financing or performing any duties in connection with the business, and even though sales may be made to, or services performed for, or on behalf of, persons or corporations located outside of this Commonwealth. If a nonresident individual carries on a business, trade, profession or occupation wholly within this Commonwealth, all his items of income, gain, loss, and deduction attributable to the business shall be deemed from sources within this Commonwealth.

§ 109.4. Business carried on partly within and partly without this Commonwealth.

A business, trade, profession, or occupation, as distinguished from personal services as an employe OR CASUAL EMPLOYE, is carried on partly within and partly without this Commonwealth if one or more of the activities described in § 101.8 (relating to income from sources within this Commonwealth), is systematically and regularly carried on within this Commonwealth and one or more of such activities is systematically and regularly carried on outside of this Commonwealth or if one or more of such activities is systematically and regularly carried on both within and without this Commonwealth.



§ 109.5. Apportionment and allocation of income from a business carried on partly within and partly without this Commonwealth.

\* \* \*

(c) If the books and records of the business do not disclose to the satisfaction of the Department the proportion of the net amount of the ~~times~~ ITEMS of income, gain, loss, and deduction attributable to the activities of the business carried on in the Commonwealth, such proportion shall, except as provided in § 109.6 (relating to rentals and gains from sale or exchange of real property), be determined by multiplying the net amount of the items of income, gain, loss, and deduction of the business by the average of the following percentages:

\* \* \*

(2) Payroll percentage. The payroll percentage shall be determined as follows:

(i) The percentage computed by dividing the total wages, salaries and other personal service compensation paid or incurred during the taxable year to employees OR CASUAL EMPLOYEES in connection with the business carried on within this Commonwealth, by the total of all wages, salaries, and other personal service compensation paid or incurred during the taxable year to employees OR CASUAL EMPLOYEES in connection with the business carried on both within and without this Commonwealth.

\* \* \*

§ 109.7. Earnings of salesmen.

If the commission for sales made or other compensation for services performed by a nonresident traveling salesman, agent, or other employe OR CASUAL EMPLOYE depends directly upon the volume of business transacted by him, his items of income derived from or connected with Commonwealth sources include that proportion of the amount of such items attributable to such business which the volume of business transacted by him within this Commonwealth bears to the total volume of business transacted by him within and without this Commonwealth.

§ 109.8. Earnings of nonresident employes OR CASUAL EMPLOYES and officers.

If a nonresident employe OR CASUAL EMPLOYE, including corporate officers but excluding employes OR CASUAL EMPLOYES provided for in § 109.7 (relating to earnings of salesmen) performs services for his employer OR CASUAL EMPLOYER both within and without this Commonwealth, his income derived from Commonwealth sources includes that proportion of his total compensation for services rendered as an employe OR CASUAL EMPLOYE which the total number of working days employed within this Commonwealth bears to the total number of working days employed both within and without this Commonwealth. However, any allowance claimed for days worked outside of this Commonwealth shall be based upon the performance of services which, of necessity, obligate the employe OR CASUAL EMPLOYE to perform out-of-State duties in the service of his employer OR CASUAL

EMPLOYER. In making the allocation provided for in this section, no account shall be taken of nonworking days, including Saturdays, Sundays, holidays, days of absence because of illness or personal injury, vacation or leave with or without pay.

Chapter 113. Withholding of Tax.

§ 113.1. Employers required to withhold tax.

~~An employer is any~~ ANY individual, partnership, association, corporation, organization, fiduciary, governmental body, unit, agency, or any other entity who IS AN EMPLOYER, makes payment of compensation and ~~who~~ maintains an office or transacts business within this Commonwealth IS SUBJECT TO THE REQUIREMENTS OF THIS CHAPTER, whether or not a paying agency is maintained within this Commonwealth. ~~For the purpose of withholding Commonwealth income tax, "employer" includes an organization that may itself be exempt from Federal income tax such as religious and governmental organizations.~~ The phrase "transacting business within this Commonwealth" includes having or maintaining within this state, directly or indirectly, an office, distribution house, sales house, warehouse, or other place of business, or operating within this state by any agent or other representative under the authority of the employer or its subsidiary, irrespective of whether such place of business or agent or other representative is located in this state permanently or temporarily, or whether such employer is licensed to do business in this state. The term "agent" is broader than the term employe and includes anyone

acting under the authority of the principal in an agency capacity. It matters not that an agent may engage in business on his own account, for other persons, or as an independent contractor acting as an agent.

Chapter 117. Return and Payment of Tax.

§ 117.15. Records.

\* \* \*

(h) Records of employes OR CASUAL EMPLOYES. While not mandatory, except in the case of claims, it is advisable for each employe OR CASUAL EMPLOYEE to keep permanent, accurate records showing the name and address of each employer OR CASUAL EMPLOYER for whom he performs services as an employe OR CASUAL EMPLOYEE, the dates of beginning and termination of such services, the information with respect to himself which is required by this chapter to be kept by employers OR CASUAL EMPLOYERS, and the receipts furnished him by an employer OR CASUAL EMPLOYER.

\* \* \*

Chapter 121. Final Returns.

§ 121.10. Reporting income.

\* \* \*

(c) Examples of income not subject to the tax which should not be reported are the following:

\* \* \*

(6) The value of meals and lodging furnished for the convenience of the employer OR CASUAL EMPLOYER.

\* \* \*

§ 121.11. Partnership or similar enterprise.

\* \* \*

(b) A taxpayer should enter his share of net profits on line two. ~~He shall also include identification of his employer on line two of his Form PA-40.~~

§ 121.14. Reserved.

Chapter 155. Capital Stock Tax and Foreign Franchise Tax.

§ 155.30. Regulated investment companies.

\* \* \*

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

\* \* \*

(4) Personal Income Tax Income - [The term includes compensation, net profits from the operation of a business, profession or farm, interest income, dividends received, net gains or income from the sale, exchange or disposition of property, rents, royalties, patents and copyrights income from estates and trusts and gambling winnings.] The term means income computed in the same manner and on the same basis as the income of an individual under Article V (Personal Income Tax).

09/24/99

Final-Form Regulation 15-381  
Requests for Copy of Regulation

1 of 1      Zachary P. Alexander, Esq.  
                 Stradley, Ronon, Stevens and Young, LLP  
                 2600 One Commerce Square  
                 Philadelphia, PA 19103-7098



October 1, 1997

Zachary P. Alexander, Esq.  
Stradley, Ronon, Stevens  
and Young, LLP  
2600 One Commerce Square  
Philadelphia, PA 19103-7098

Dear Mr. Alexander:

We have received your letter dated September 26, 1997, in which you commented on proposed regulation 15-381, relating to definitions; net profits and regulated investment companies. The Department will consider your comments when preparing the final-form regulation.

In accordance with section 5.1(a) of Act 1997-24, requests for information concerning the final-form regulation may be submitted to me at the above address or by calling (717) 787-1382. Commentators that request information regarding the final-form regulation will receive a copy of the regulation when the Department submits the final-form regulation to the Independent Regulatory Review Commission and the House and Senate Finance Committees.

Thank you for participating in the regulatory process.

Sincerely,

Handwritten signature of Anita M. Doucette in cursive script.  
Anita M. Doucette  
Regulatory Coordinator

AMD:tlch (sp)

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT

I.D. NUMBER: 15-381  
SUBJECT: Personal Income Tax  
AGENCY: DEPARTMENT OF REVENUE

RECEIVED  
1999 SEP 28 PM 3:38  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
- a. With Revisions                      b. Without Revisions

FILING OF REGULATION

| DATE    | SIGNATURE   | DESIGNATION                              |
|---------|-------------|--|
| 9/28/99 | Patty Macut | HOUSE COMMITTEE ON FINANCE               |
| 9-28-99 | A. Burns    | SENATE COMMITTEE ON FINANCE              |
| 9/28/99 | St. Helms   | INDEPENDENT REGULATORY REVIEW COMMISSION |
|         |             | ATTORNEY GENERAL                         |
|         |             | LEGISLATIVE REFERENCE BUREAU             |

September 24, 1999