

# Comments of the Independent Regulatory Review Commission



## Department of Revenue Regulation #15-464 (IRRC #3494)

### Sales Factor Sourcing Sales of Tangible Personal Property and Sales Factor Sourcing Sales of Services

September 23, 2026

We submit for your consideration the following comments on the proposed rulemaking published in the July 25, 2026 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Revenue (Department) to respond to all comments received from us or any other source.

- 1. Whether the regulation conforms to the intention of the General Assembly in the enactment of the statute upon which the regulation is based; Statutory authority; Possible conflict with statute; Whether the regulation represents a policy decision of such a substantial nature that it requires legislative review; Fiscal impact; Implementation procedures; Clarity.**

This proposed rulemaking revises the Department's corporate net income tax (CNIT) regulations found in Chapter 153 in two ways. First, it amends the title of Section 153.26 to clarify that the section is limited to addressing only the sourcing of sales of tangible personal property and does not include sourcing for sales of either services or intangibles.

Second, it adds a new section, Section 153.26a, to address the sales factor apportionment process for determining whether a corporation's receipts for sales of services should be sourced to Pennsylvania. According to the Department, the new section provides general rules for determining whether a service is delivered in Pennsylvania, as well as special rules for certain industries, markets, or businesses where determining the location of service delivery may be difficult to ascertain. The new section also provides basic rules for reasonably approximating the amount of service receipts that are delivered in Pennsylvania.

Act 52 of 2013 (Act 52) amended Pennsylvania's Tax Reform Code and revised the methodology for sourcing revenue from sales of services in the computation of CNIT. *See* 72 P.S. § 7401(3)2.(a)(16.1)(C). In 2014, the Department issued guidance addressing the implementation of Act 52. That guidance was challenged in court and in 2023 the Pennsylvania Supreme Court upheld the methodology used by the Department. *Synthes USA HQ, Inc. v. Commonwealth*, 289 A.3d 846, 878 (Pa. 2023). The Department states that the regulated community has requested guidance on sourcing revenue from the sales of service for CNIT purposes for years.

The Department explains in the Preamble that, for consistency, it relied on the general structure of the Multistate Tax Commission's (MTC) Regulation IV.17 (regarding Allocation and Apportionment Regulations) (MTC Model) for this rulemaking.

Members of the regulated community have raised numerous issues with rulemaking related to inconsistencies or deviations from Act 52. Some of those issues relate to differences between Act 52 interpretations and the language of the MTC Model. Clarity concerns were also raised.

Representative Keith Greiner, Minority Chairman of the House Finance Committee, submitted a letter that summarizes concerns of the regulated community. It states the following: "I understand the need for clarity when it comes to the regulations promulgated by the Department of Revenue, but I strongly urge the Department to review the concerns raised by the business community and work to include their suggestions into any final form regulations."

Senator Scott Hutchinson, Majority Chairman of the Senate Finance Committee, also submitted a letter that summarizes the issues raised by the regulated community. His letter concludes with the following paragraph:

I believe these issues should be resolved before the regulation advances. I urge you to compel the Department of Revenue to substantially revise the proposal in a way that adheres to the language enacted by the General Assembly, preserves reasonable flexibility for taxpayers, reduces unnecessary administrative burdens, and addresses the concerns raised by the regulated community. Where additional statutory authority is needed, those policy decisions should be presented to the General Assembly rather than established through regulation.

In order to determine if a regulation conforms to the intention of the General Assembly in the enactment of a statute upon which it is based, this Commission is guided by Section 5.2(a) of the RRA. It states, in part, the following: "In making its determination, the commission shall consider written comments submitted by the committees and current members of the General Assembly, pertinent opinions of Pennsylvania's courts and formal opinions of the Attorney General." (Emphasis added.)

Listed below are topics and sections of the proposed rulemaking identified by the regulated community as problematic that we believe warrant further consideration by the Department because those topics or sections deviate or conflict with Act 52 or lack clarity. In light of comments from Representative Greiner and Senator Hutchinson, we urge the Department to work with the regulated community to develop a final regulation that is clear and consistent with statute.

- The following terms should be defined in the regulation: "tangible personal property," "intangible personal property," "service," "delivered," and "total value."
- Act 52 does not support the use of the "look through" rule and that concept, as adopted in the MTC Model is the subject of litigation in other states. Therefore, the "look through" rule, as incorporated in the proposed rulemaking, should be removed from the final-form rulemaking.

- *Section 153.26a(b), relating to priority of rules for sourcing sales of service.* The primary and secondary sources rules lack clarity.
- *Section 153.26a(c), relating to rules for determining delivery location.* Terms used in this section need to be defined or clarified, certain examples need to be clarified, and additional examples need to be provided for how and when certain transactions are taxed.
- *Section 153.26a(d), relating to sourcing rules for certain industries, markets, or business models.* Regulatory provisions and examples included in this subsection lack clarity and are inconsistent with Act 52. Additional examples of how certain transactions are taxed should be provided.
- *Section 153.26a(e), relating to rules of reasonable approximation.* The rules are inconsistent with Act 52. If the rules are retained, additional guidance is needed.
- *Section 153.26a(f), relating to record keeping and documentary evidence.* The rules could impose documentation and compliance burdens and costs and this is not accounted for in the Regulatory Analysis Form submitted with the proposed rulemaking. The “alternative apportionment” mechanism of this subsection is faulty.
- *Section 153.26a(g), relating to changes in sourcing methodology.* The manner in which these rules will be implemented is viewed as problematic and unclear. In addition, the statutory authority of the Department to impose the requirements is questioned.
- *Section 153.26a(h), relating to definitions.* The exclusion of affidavits as a type of documentary evidence is questioned.

We ask the Department to review the concerns of the stakeholders, Representative Greiner, and Senator Hutchinson, and to explain in the Preamble to the final-form regulation why the rulemaking is consistent with the Tax Reform Code and Act 52 or amend the final-form regulation so that is consistent with statute. If additional statutory authority is needed to accomplish the goals of this rulemaking, we agree with Senator Hutchinson and suggest that the Department present those policy decisions to the General Assembly for possible legislative action. Furthermore, the final-form regulation should be amended to provide greater clarity on what would be a taxable transaction.

In addition, the proposal includes 21 examples that are intended to provide guidance on how certain businesses or transactions should be taxed. Regulations establish binding norms between the regulated community and the governmental agency imposing the regulation. Informative or illustrative language should not be included in a regulation. We believe that the regulated community could benefit from examples of how certain businesses will be taxed and acknowledge that the regulated community has called for additional examples to clarify how transactions should be taxed. However, we suggest that the examples be deleted from the rulemaking and placed in a policy statement or guidance document that is easily accessible to the regulated community. This would allow the Department to continually update the examples as new or unexpected types of transactions arise, including those identified by the regulated community in comments on this proposed rulemaking.

## **2. Miscellaneous Clarity.**

Section 2.11(a) of the *Pennsylvania Code and Bulletin Style Manual* states definitions should be placed near the beginning of a chapter. The definitions used in § 153.26a are placed at the end of that section under Subsection (h). To be consistent with the *Pennsylvania Code and Bulletin Style Manual*, and to improve the clarity of this rulemaking, we suggest the definitions be moved to the beginning of § 153.26a.