

# STATEMENTS OF POLICY

## Title 4—ADMINISTRATION

### PART II. EXECUTIVE BOARD

#### [4 PA. CODE CH. 4]

#### Reorganization of the Department of Conservation and Natural Resources

The Executive Board approved a reorganization of the Department of Conservation and Natural Resources effective August 6, 1999.

The organization chart at 29 Pa.B. 4456 (August 21, 1999) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

*(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)*

[Pa.B. Doc. No. 99-1374. Filed for public inspection August 20, 1999, 9:00 a.m.]

---

#### [4 PA. CODE CH. 9]

#### Reorganization of the Department of Education

The Executive Board approved a reorganization of the Department of Education effective August 6, 1999.

The organization chart at 29 Pa.B. 4457 (August 21, 1999) is published at the request of the Joint Committee

on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

*(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)*

[Pa.B. Doc. No. 99-1375. Filed for public inspection August 20, 1999, 9:00 a.m.]

---

#### [4 PA. CODE CH. 9]

#### Reorganization of the Department of General Services

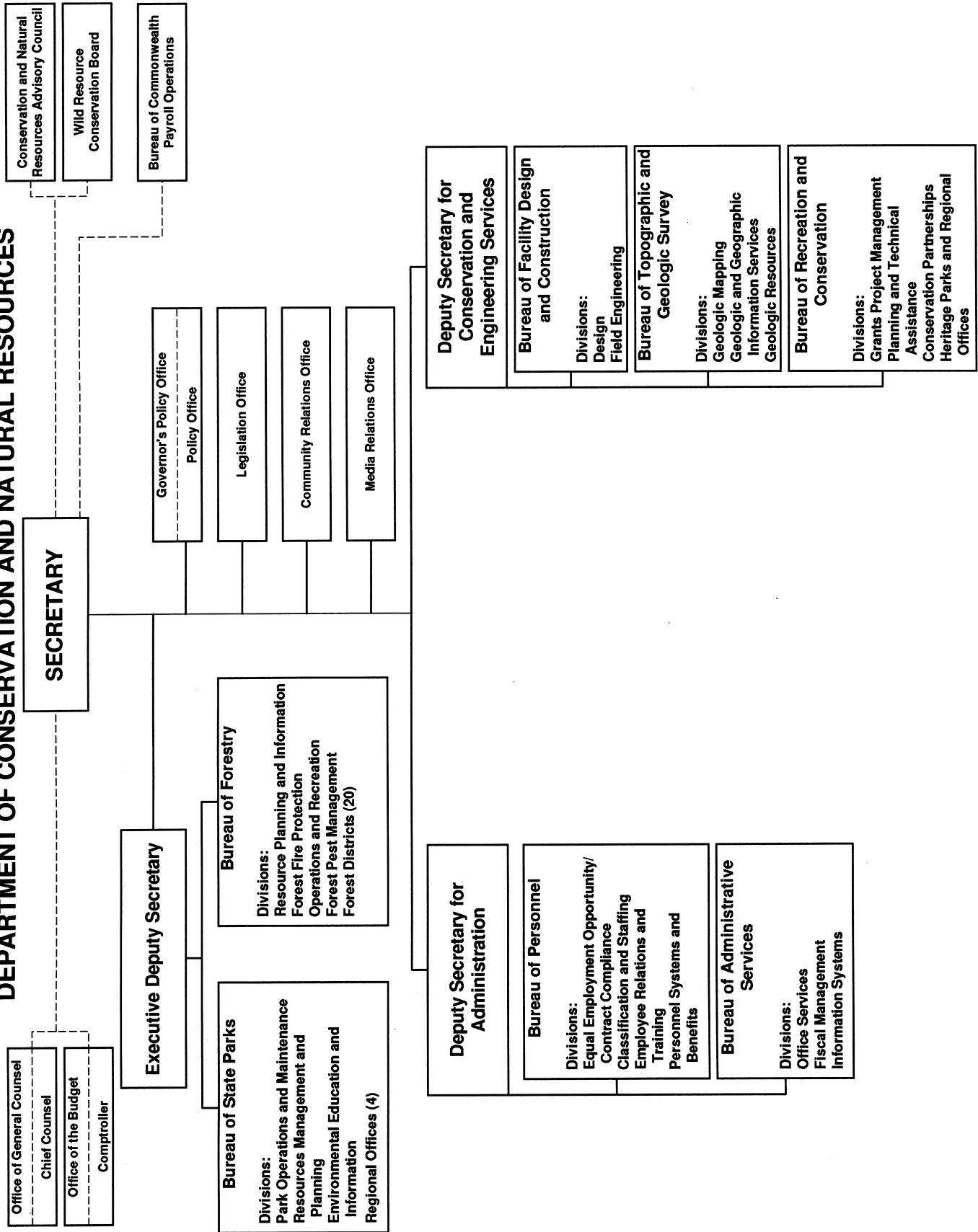
The Executive Board approved a reorganization of the Department of General Services effective August 6, 1999.

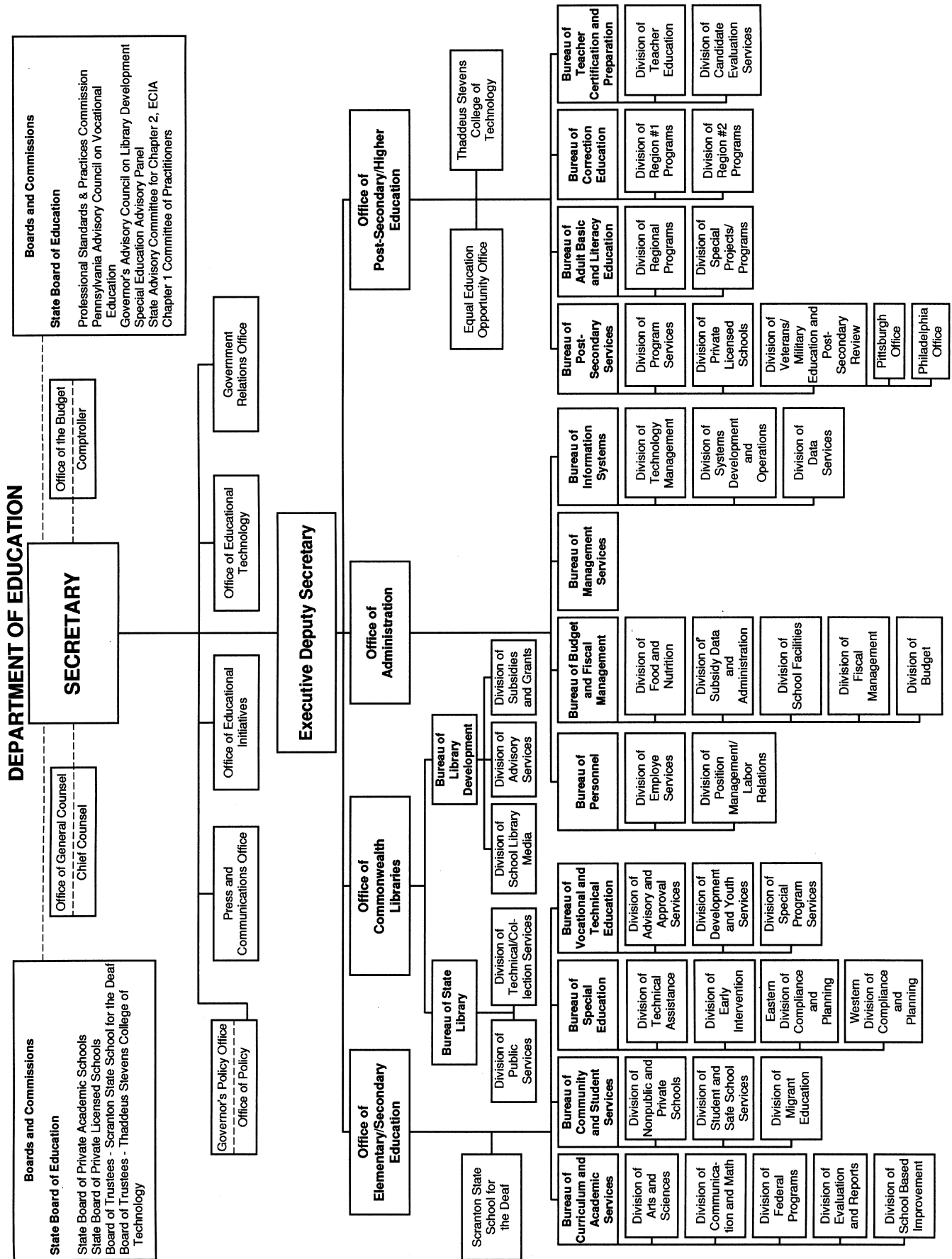
The organization chart at 29 Pa.B. 4458 (August 21, 1999) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

*(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)*

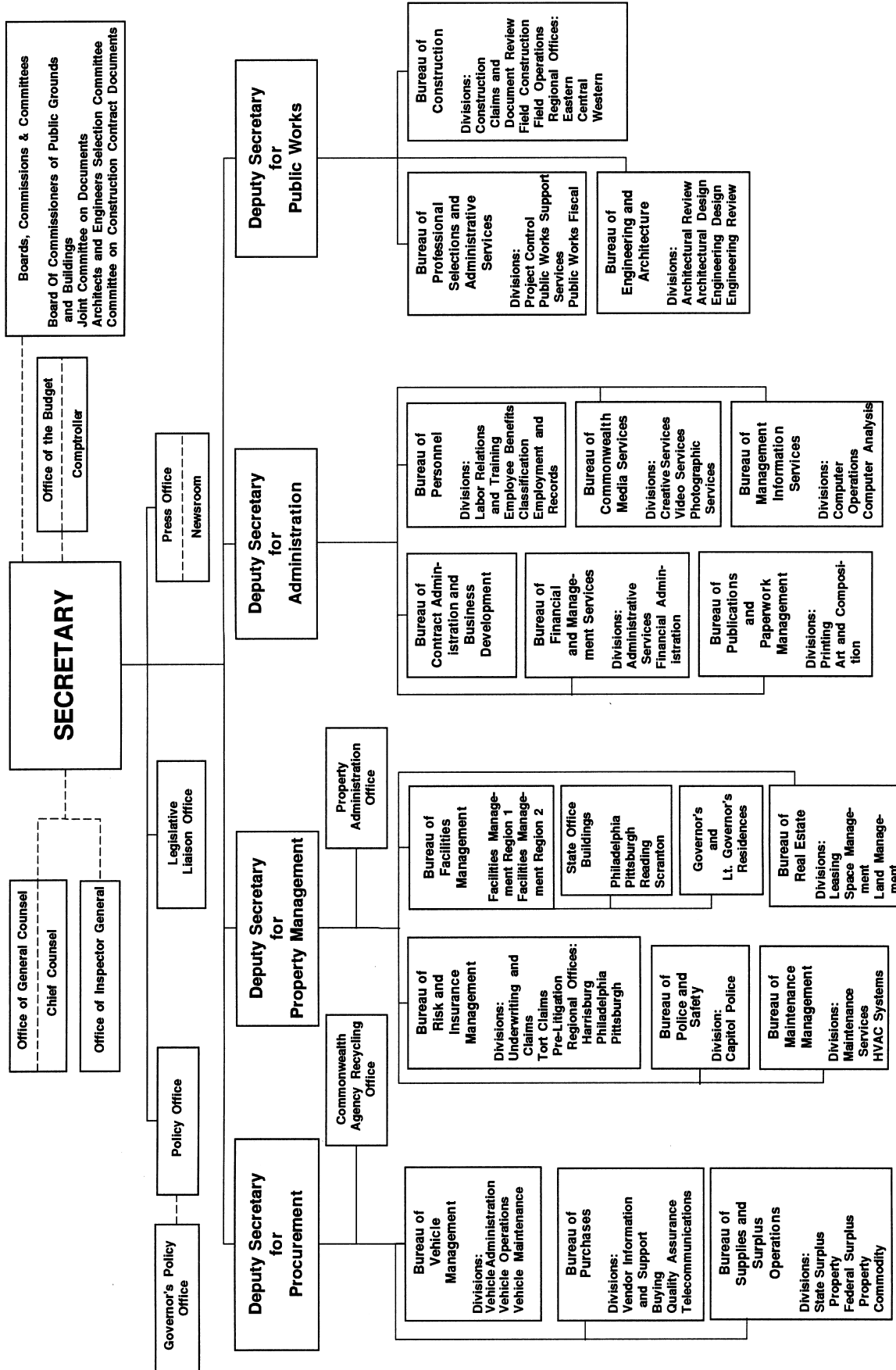
[Pa.B. Doc. No. 99-1376. Filed for public inspection August 20, 1999, 9:00 a.m.]

**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**





DEPARTMENT OF GENERAL SERVICES



# Title 61—REVENUE

## DEPARTMENT OF REVENUE

### [61 PA. CODE CH. 9]

#### Pennsylvania S Corporation Election

The Department of Revenue (Department), has adopted a revised statement of policy under the authority contained in § 3.2 (relating to statements of policy). This statement of policy revises § 9.13 (relating to Pennsylvania S Corporation election) and shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

The purpose of the amendments to the statement of policy is to advise the public of the effect of the Pennsylvania S Corporation provisions of sections 5, 6.1 and 32 of the act of May 12, 1999 (P. L. 26, No. 4) (Act 4).

Act 4 eliminated the 25% passive income test. A corporation under the Internal Revenue Code is now allowed to have passive income in excess of 25% of total income and still qualify as a Pennsylvania S Corporation. In addition, the 5-year waiting period with respect to corporations whose S election was terminated for exceeding the passive income limitation is deleted. Those businesses denied or who did not apply previously can apply on or before September 15, 1999, for S status to be effective for taxable years that commenced between January 1, 1999, through May 12, 1999.

To effectuate the provisions of Act 4, the Department has deleted § 9.13(b)(3) and (c). Existing subsection (d) has become subsection (c) with revisions to paragraph (5) and the addition of paragraphs (6) and (7). Existing subsections (e) and (f) have become subsections (d) and (e) accordingly. Existing subsection (g) has become subsection (f) with minor revisions to paragraph (3) and example 3. Existing subsection (h) has become subsection (g) with a minor revision to paragraph (1). Existing subsection (i) has become subsection (h).

Specific questions relating to information provided in this statement of policy may be directed to the Department of Revenue, Office of Chief Counsel, Dept. 281061, Harrisburg, PA 17128-1061.

*(Editor's Note: The regulations of the Department, 61 Pa. Code Chapter 9, are amended by amending a statement of policy in § 9.13 (relating to Pennsylvania S Corporation election), to read as set forth in Annex A, with ellipses referring to the existing text of the section.)*

ROBERT A. JUDGE, Sr.,  
*Secretary*

**Fiscal Note:** 15-411. No fiscal impact; (8) recommends adoption. While the change to the Tax Reform Code discussed in this statement of policy did cause a revenue loss, the statement of policy just explains that change and therefore there is no fiscal impact.

#### Annex A

### TITLE 61. REVENUE

#### PART I. DEPARTMENT OF REVENUE

##### Subpart A. GENERAL PROVISIONS

#### CHAPTER 9. REVENUE

#### PRONOUNCEMENTS—STATEMENTS OF POLICY

#### § 9.13. Pennsylvania S Corporation election.

\* \* \* \* \*

(b) *Pennsylvania S Corporation election.* A Pennsylvania S Corporation election may be made by the sharehold-

ers of any small corporation that is subject to the Pennsylvania corporate net income tax or that owns directly, or through a wholly owned subsidiary, 100% of the stock of a qualified Subchapter S subsidiary that is subject to the Pennsylvania corporate net income tax. A corporation is a small corporation if it meets all of the following requirements:

(1) The corporation has a valid election in effect under Subchapter S of the IRC of 1986 (26 U.S.C.A. §§ 1361—1379).

(2) The corporation would have qualified as a Federal S Corporation under Subchapter S of the IRC of 1986, as amended to January 1, 1997.

(c) *Form and method of election.*

(1) Except as provided in paragraph (5), a Pennsylvania S Corporation election shall be filed with the Department on Form REV 1640 on or before the 15th day of the third month of the current taxable year to be effective for that year. All shareholders of record on the day the election is filed shall consent to the election by signing either Form REV 1640 or a separate statement of consent, which may be attached to the Pennsylvania form. The separate consent shall contain the following:

(i) The name, address, Pennsylvania Corporation Tax account (box) number, if applicable, and Federal employer identification number of the corporation.

(ii) The name, address and Social Security number or identification number of the shareholder.

(iii) The percentage of stock owned by the shareholder and the dates acquired, but not the percentage of shares of stock for those shareholders who sold or transferred all stock in the corporation during the part of the tax year that occurred before the Pennsylvania election form is filed with the Department.

(iv) The day and month of each shareholder's tax year end.

(2) The corporation shall attach a schedule to the Pennsylvania S Corporation election identifying the name, address, Pennsylvania Corporation Tax account (box) number, if applicable, and Federal employer identification number on each qualified Subchapter S subsidiary owned by the corporation.

(3) The corporation shall submit a copy of the Federal Notification of Approval with its Pennsylvania S Corporation election. If the corporation's Federal S Corporation election is pending at the time the Pennsylvania S Corporation election is filed, the corporation shall indicate that Federal approval is pending, and shall submit a copy of the Federal approval to the Department within 30 days of receipt.

(4) The Pennsylvania S Corporation election shall be filed with the Department by mailing the original executed Form REV 1640 to the Department by certified mail. The election shall be deemed filed on the date the envelope transmitting the election is postmarked by the United States Postal Service. Presentation of a certified mail receipt issued to the small corporation by the United States Postal Service shall be evidence of the filing of the election on the postmark date indicated on the receipt.

(5) For purposes of implementing the Pennsylvania S Corporation amendments of the act of May 12, 1999 (P. L. 26, No. 4) that are retroactive in effect to taxable years beginning on or after January 1, 1999, a Pennsylvania S Corporation election may be filed with the Department on or before September 15, 1999, to be effective for taxable

years that commenced between January 1, 1999, through May 12, 1999. Elections filed with the Department after September 15, 1999, for a corporation that had a taxable year which commenced between January 1, 1999, through May 12, 1999, shall be effective for the following taxable year if the requirements in subsection (b) are met.

(6) Effective for taxable years beginning on or after January 1, 1999, the passive investment income test is repealed. The 5-year requirement for reapplication after termination for failing the passive investment income test is also repealed. A corporation which in the last 5 years failed to meet the passive investment income test and subsequently had its S Corporation status terminated may reapply for Pennsylvania S Corporation status even though 5 years have not lapsed since the taxable year for which the termination was effective.

(7) Every termination of Pennsylvania S Corporation status for failing the passive investment income test made by a settlement of corporate net income tax mailed after January 1, 1999, shall be effective only for tax years beginning prior to January 1, 1999. If termination of Pennsylvania S Corporation status was made by a settlement of corporate net income tax mailed prior to January 1, 1999, the corporation shall file a new election to be eligible for Pennsylvania S Corporation tax treatment for tax years beginning on or after January 1, 1999.

(d) *Late elections.* Pennsylvania S Corporation elections filed with the Department after the 15th day of the third month of the current taxable year shall be effective for the following taxable year if the requirements in subsection (b) are met.

(e) *Newly formed and foreign corporations.*

(1) A newly formed corporation may elect Pennsylvania S Corporation tax treatment for its first taxable year in Pennsylvania by filing a Pennsylvania S Corporation election with the Department within 75 days of incorporation. If the corporation does not commence business immediately, the election may be filed within 75 days of the date of first activity to be effective for the corporation's taxable year during which activities were commenced.

(2) A foreign corporation may elect Pennsylvania S Corporation tax treatment for its first taxable year in this Commonwealth by filing a Pennsylvania S Corporation election with the Department within 75 days of the commencement of its first taxable year in this Commonwealth. A foreign corporation's first taxable year in this Commonwealth commences on the date the corporation begins doing business in this Commonwealth and becomes subject to the Corporate Net Income Tax imposed under Article IV of the TRC (72 P. S. §§ 7401—7411).

(f) *Revocation or termination of S status.*

(1) A Pennsylvania S Corporation election may be revoked if shareholders holding more than one-half of the shares of stock of the corporation execute their consent to the revocation.

(i) The portion of the taxable year before the revocation takes effect shall be treated as a short taxable year during which the corporation was an S Corporation.

(ii) The portion of the taxable year after the revocation takes effect shall be treated as a short taxable year during which the corporation is subject to Corporate Net Income Tax.

(2) A Pennsylvania S Corporation election shall be terminated for failure to meet the requirements of subsec-

tion (b). The termination applies retroactively to the beginning of the corporation's taxable year.

(3) If a Pennsylvania S Corporation election is revoked by the shareholders under paragraph (1) or terminated under paragraph (2), the corporation will not be eligible to be taxed as a Pennsylvania S Corporation until the fifth taxable year after the taxable year for which the revocation or termination was effective.

*Example 1:* REV, Inc. is a calendar year taxpayer that has a valid Pennsylvania S Corporation election in effect since January 1, 1990. The shareholders of REV, Inc. revoke their Pennsylvania S Corporation election effective for the taxable year beginning January 1, 1997. REV, Inc. is not eligible to be taxed as a Pennsylvania S Corporation until the taxable year beginning January 1, 2002.

*Example 2:* MID REV, Inc. is a calendar year taxpayer that has a valid Pennsylvania S Corporation election in effect. The shareholders of MID REV, Inc. revoke their Pennsylvania S Corporation election effective July 1, 1997. MID REV, Inc. will be treated as a Pennsylvania S Corporation for the period from January 1, 1997, through June 30, 1997. MID REV, Inc., will not be treated as a Pennsylvania S Corporation from July 1, 1997, through the remainder of the taxable year. The period from July 1, 1997, through December 31, 1997, shall be treated as a short taxable year for corporate net income tax purposes. MID REV, Inc. is not eligible to be taxed as a Pennsylvania S Corporation until the taxable year beginning January 1, 2002.

*Example 3:* TERM, Inc. is a calendar year taxpayer that has a valid Pennsylvania S Corporation election in effect. 35% of the gross receipts of TERM, Inc. for the taxable year beginning January 1, 1996, are derived from passive investment income. The Pennsylvania S Corporation election of TERM, Inc. is terminated for failing the passive investment income test effective for the taxable year beginning January 1, 1996. TERM, Inc. is eligible to be taxed as a Pennsylvania S Corporation for the taxable year beginning January 1, 1999. To be taxed as a Pennsylvania S Corporation for the taxable year beginning January 1, 1999, TERM, Inc. shall elect S Corporation status by September 15, 1999.

*Example 4:* FED TERM 1, Inc. is a calendar year taxpayer that has a valid Pennsylvania S Corporation election in effect. The Federal S Corporation election of FED TERM 1, Inc. is terminated effective for the taxable year beginning January 1, 1997. The Internal Revenue Service determines that the termination was inadvertent and reinstates the Federal S Corporation election of FED TERM 1, Inc. effective for the taxable year beginning January 1, 1997. The Pennsylvania S Corporation election of FED TERM 1, Inc. is not terminated and FED TERM 1, Inc. will be taxed as a Pennsylvania S Corporation for the taxable year beginning January 1, 1997.

*Example 5:* FED TERM 2, Inc. is a calendar year taxpayer that has a valid Pennsylvania S Corporation election in effect. The Federal S Corporation election of FED TERM 2, Inc. is terminated effective for the taxable year beginning January 1, 1997. The Internal Revenue Service determines that the termination was inadvertent and reinstates the Federal S Corporation

election of FED TERM 2, Inc. effective for the taxable year beginning January 1, 1999. The Pennsylvania S Corporation election of FED TERM 2, Inc. is terminated effective for the taxable year beginning January 1, 1997. FED TERM 2, Inc. will not be taxed as a Pennsylvania S Corporation for taxable years beginning on or after January 1, 1997. FED TERM 2, Inc. is not eligible to be taxed as a Pennsylvania S Corporation until the taxable year beginning January 1, 1999. FED TERM 2, Inc. shall file a new Pennsylvania S Corporation election to be taxed as a Pennsylvania S Corporation for taxable years beginning on or after January 1, 1999.

(g) *Qualified Subchapter S subsidiaries.*

(1) A Pennsylvania S corporation election filed by the parent Federal S Corporation of a qualified Subchapter S subsidiary shall be effective for the qualified Subchapter S subsidiary. A qualified Subchapter S subsidiary is not eligible to file a separate Pennsylvania S Corporation election.

(2) A qualified Subchapter S subsidiary is not eligible to elect Pennsylvania S Corporation tax treatment independent of its parent Federal S Corporation. A qualified Subchapter S subsidiary will not receive Pennsylvania S Corporation tax treatment if its parent Federal S Corporation does not have a valid Pennsylvania S corporation election in effect.

(3) As used in this section, the term "qualified Subchapter S subsidiary" means a corporation that is a qualified Subchapter S subsidiary of a Federal S corporation as determined by the Internal Revenue Service under section 1308(b)(3)(B) of the IRC (26 U.S.C.A. § 1308(b)(3)(B)).

(h) *Instructions.* The Pennsylvania S Corporation tax report instructions provide further explanation of the taxation of Pennsylvania S Corporations and their shareholders.

[Pa.B. Doc. No. 99-1377. Filed for public inspection August 20, 1999, 9:00 a.m.]

---