

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Conservation and Natural Resources

The Executive Board approved a reorganization of the Department of Conservation and Natural Resources effective June 27, 2006.

The organization chart at 36 Pa.B. 3670 (July 15, 2006) 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) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 06-1323. Filed for public inspection July 14, 2006, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[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 June 20, 2006.

The organization chart at 36 Pa.B. 3671 (July 15, 2006) 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) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 06-1324. Filed for public inspection July 14, 2006, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Transportation

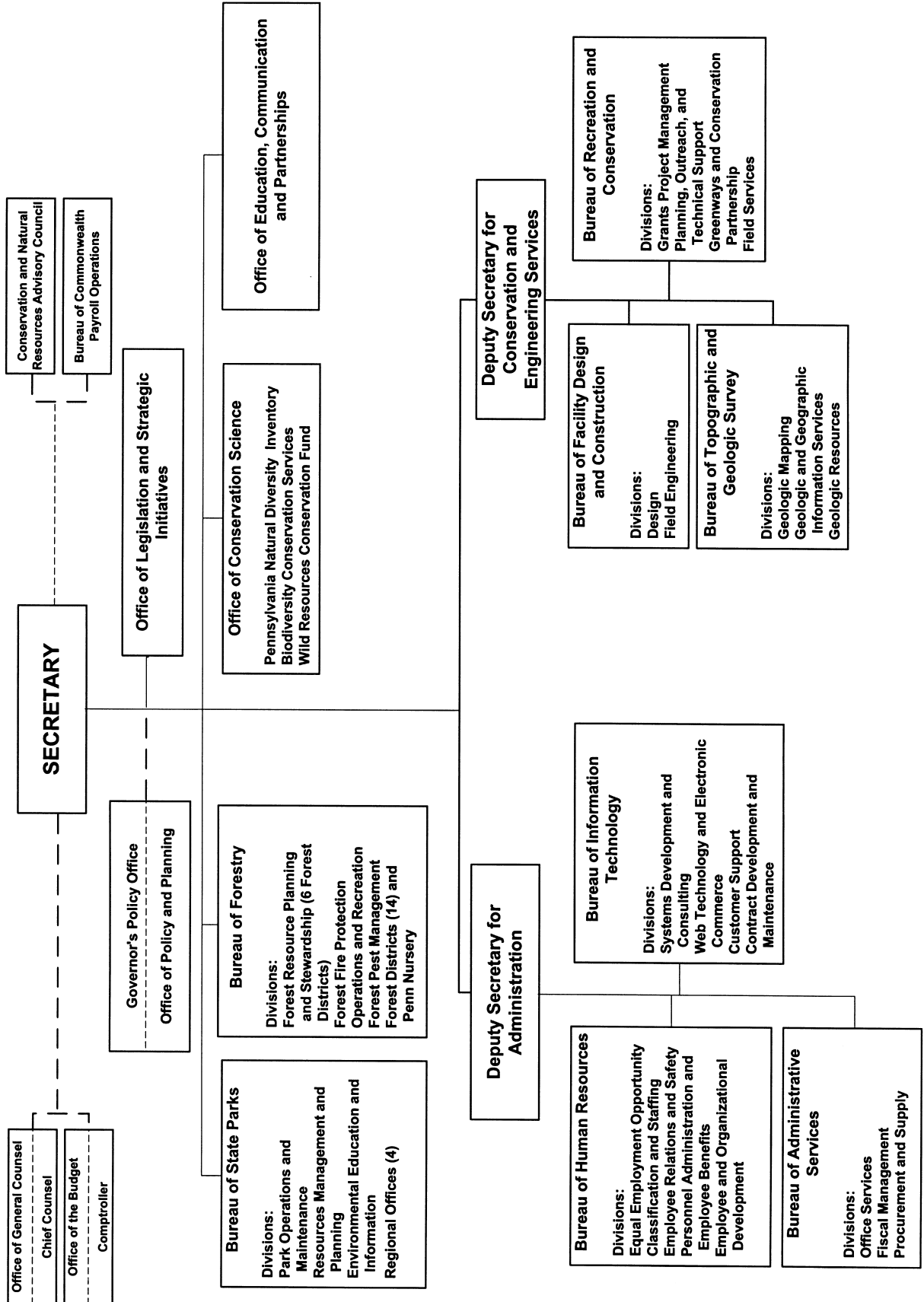
The Executive Board approved a reorganization of the Department of Transportation effective June 27, 2006.

The organization chart at 36 Pa.B. 3672 (July 15, 2006) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

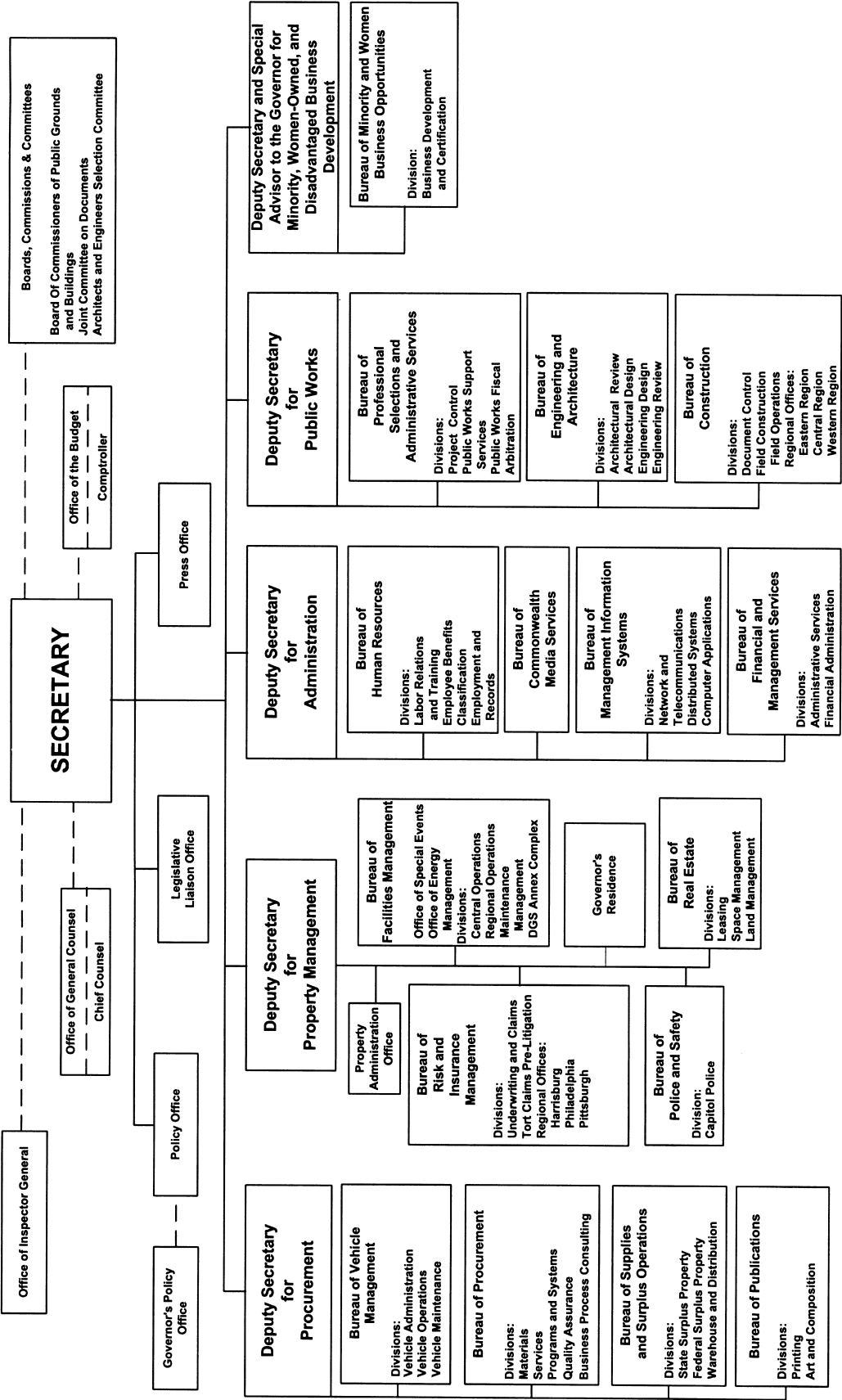
(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania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

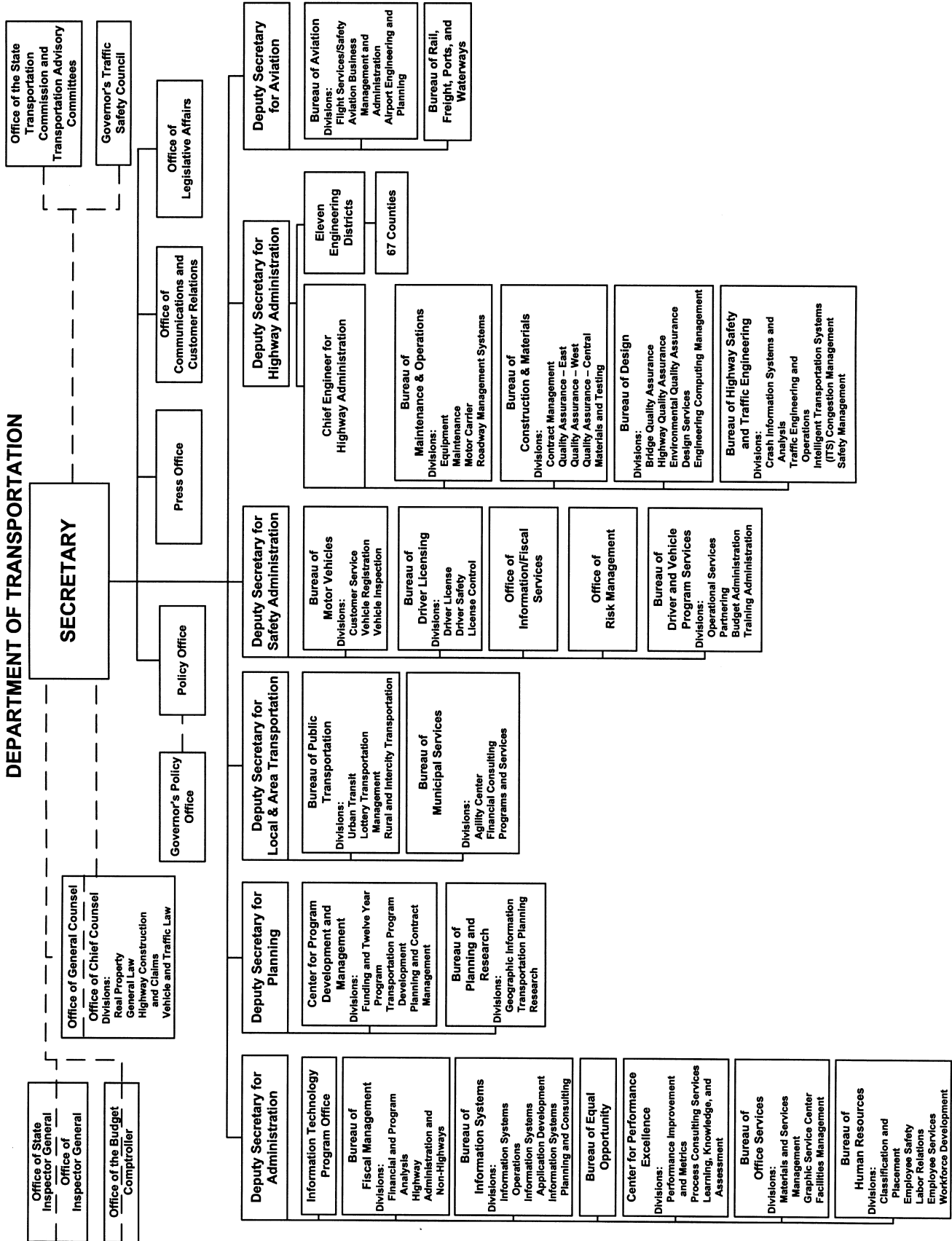
[Pa.B. Doc. No. 06-1325. Filed for public inspection July 14, 2006, 9:00 a.m.]

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES



DEPARTMENT OF GENERAL SERVICES





Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 9]

Cost of Collection

The Department of Revenue (Department) has adopted a statement of policy under § 3.2 (relating to statements of policy). The statement of policy adds § 9.18 (relating to cost of collection) and takes effect immediately upon publication in the *Pennsylvania Bulletin*.

This statement of policy is promulgated by the Department to address the scope and the application of all costs of collection incurred by the Department or the Office of Attorney General on taxes administered by the Department.

Specific questions regarding 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:* Title 61 of the *Pennsylvania Code* is amended by adding a statement of policy in § 9.18 to read as set forth in Annex A.)

GREGORY C. FAJT,
Secretary

Fiscal Note: 15-437. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart A. GENERAL PROVISIONS

CHAPTER 9. REVENUE

PRONOUNCEMENTS—STATEMENTS OF POLICY

§ 9.18. Cost of collection.

(a) *Definition.* The following term, when used in this section, has the following meaning:

Cost of collection—Limited only to lien filing costs, costs imposed under a Federal or other State tax refund offset program, or costs incurred by the Department or the Office of Attorney General in paying commissions or other remuneration, such as private attorneys' fees, or fees to private collection agencies to collect the Department collectible tax liabilities.

(b) *Reimbursement for cost of collection.*

(1) The costs of collection incurred by the Department or the Office of Attorney General on a liability for taxes administered by the Department, in addition to all tax principal, interest, penalties and fees, must be paid in full before the delinquent taxpayer's liability will be extinguished by the Department on its records unless the cost of collection is discharged by operation of law.

(2) Exceptions are as follows:

(i) Fuels tax liabilities.

(ii) Motor Carrier Road Tax liabilities. The fuel tax system is excluded from these provisions because statutory provisions in 75 Pa.C.S. § 9014(b) (relating to collection of unpaid taxes) already establish a commission that shall be paid by a delinquent distributor when a delinquent fuel tax liability is paid by the distributor, after institution of a suit by the Office of Attorney General and

the commissions under 75 Pa.C.S. § 9014(b) already constitute a lien on a delinquent distributor's property.

(c) *Cost of collection.*

(1) The costs of collection shall be added to the amount of the liability for taxes administered by the Department and constitute a lien against the real and personal property of the person, with or without any evidence of the specific itemized breakdown of the costs of collection being stated on the underlying filed tax lien or on the State tax lien certificate itself. The tax lien will not be satisfied until all of the tax, interest, penalty and cost of collection directly associated with the lien tax liability have been entirely paid or discharged by operation of law.

(2) Private attorneys' fees or expenses incurred by a private attorney to file and argue the need for a supersedeas bond or any other form of adequate security while the private attorney is still litigating the underlying merits of a contested State tax appeal will not be deemed a cost of collection.

(3) The costs of collection may be collected by the Commonwealth in any other lawful way or method that the underlying tax liability can be collected.

[Pa.B. Doc. No. 06-1326. Filed for public inspection July 14, 2006, 9:00 a.m.]

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 170]

Documentation Requirements to Establish Out-of-State Sales after *Gilmour Manufacturing* Decision

The Department of Revenue (Department) has adopted a statement of policy under § 3.2 (relating to statements of policy). The statement of policy adds § 170.11 (relating to documentation requirements to establish out-of-State sales after *Gilmour Manufacturing* decision) and takes effect immediately upon publication in the *Pennsylvania Bulletin*.

This statement of policy is promulgated by the Department to clarify the scope and application of *Commonwealth v. Gilmour Manufacturing Corporation*, 822 A.2d 676 (Pa. 2003) to the Corporate Net Income Tax and Pennsylvania activities. In addition, the Department is identifying and clarifying what documentation will be acceptable to the Department to establish that deliveries of goods in this Commonwealth were destined to an out-of-State location.

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

(*Editor's Note:* Title 61 of the *Pennsylvania Code* is amended by adding a statement of policy in § 170.11 to read as set forth in Annex A.)

GREGORY C. FAJT,
Secretary

Fiscal Note: 15-438. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE VI. CORPORATION TAXES

**CHAPTER 170. CORPORATION TAX
PRONOUNCEMENTS—STATEMENTS OF POLICY
NONBUSINESS INCOME**

- Sec.
170.1. Nonbusiness income—liquidations; effect of *Laurel Pipe Line* decision.
170.2. (Reserved).
170.3. Nonbusiness income—application of *Canteen Corporation* decision.

SALES APPORTIONMENT FACTOR

§ 170.11. Documentation requirements to establish out-of-State sales after *Gilmour Manufacturing* decision.

(a) In *Commonwealth v. Gilmour Manufacturing Corporation*, 573 Pa. 143, 822 A.2d 676 (2003), the Supreme Court held that for purposes of calculating its Pennsylvania sales apportionment factor for the Corporate Net Income Tax, a Pennsylvania corporation is not required to include in the numerator sales of goods to out-of-State buyers who retrieve the goods at the seller's place of business in this Commonwealth and then transport the goods out of this Commonwealth. The Court determined that section 401(3)2(a)(16) of the Tax Reform Code (72 P. S. § 7401(3)2(a)(16)) mandated that conclusion with regard to the "dock sales," regardless of whether the buyer personally retrieves the item using his own means of transport or by engaging the services of a for-hire motor carrier. The Court ruled that the Department regulation on the subject, § 153.26(b)(2) (relating to sales factor), was inconsistent with the statutory requirement insofar as it required the inclusion of the sales in the numerator of the taxpayer's sales factor.

(b) The Court's holding excludes from the Pennsylvania portion of the apportionment factor only sales to out-of-State buyers who transport the goods out of this Commonwealth. Sales to purchasers who do not transport the goods outside of this Commonwealth for use or resale are Pennsylvania sales for purposes of calculating the sales factor numerator. Thus, in the absence of sufficient evidence establishing an ultimate destination to an out-of-State location, sales of goods in which delivery is made to the buyer at a Pennsylvania location must be reported as Pennsylvania sales and included in the numerator of the Pennsylvania sales apportionment fraction.

(c) Documentation sufficient to establish an out-of-State sale includes:

(1) Bills of lading of the carrier establishing that the goods were destined for or delivered to an out-of-State location.

(2) Delivery instructions from the purchaser to the carrier establishing that the goods were to be transported out of this Commonwealth.

(3) Warehouse receipts of the purchaser showing that the goods were delivered to an out-of-State location.

(4) Invoices issued by the taxpayer/seller to the purchaser showing an out-of-State delivery address.

(d) Documentation which will be deemed insufficient to establish that the ultimate destination of goods is to an out-of-State location:

(1) Invoices issued by the taxpayer/seller to the purchaser showing an out-of-State mailing address.

(2) Affidavits or other declarations from the seller, its employees or agents that the ultimate destination of goods was an out-of-State location.

(e) Examples of documentation are as follows: A taxpayer sells plumbing fixtures to Company X, a New Jersey corporation which has retail stores in New Jersey and Pennsylvania.

(1) *Examples of sufficient documentation:*

Example 1. Company X uses a carrier to pick the goods up at A's warehouse in Pennsylvania. Company X provides documentation it procured from the carrier showing that the merchandise was delivered to X's warehouse in New Jersey.

Example 2. A taxpayer secures a copy of the delivery instructions from Company X to the carrier directing that the fixtures be taken to Company X's warehouse in New Jersey.

Example 3. Company X uses a carrier to pick up the merchandise. The taxpayer secures a copy of the bill of lading showing the fixtures were delivered to the New Jersey location.

(2) *Examples of insufficient documentation:*

Example 1. A taxpayer produces invoices submitted to Company X at its headquarters in New Jersey and a remittance letter accompanying the check from X's New Jersey headquarters.

Example 2. The same as Example 1, except the taxpayer provides an affidavit from its sales manager asserting that the merchandise sold to Corporation X was delivered to X's warehouse in New Jersey.

[Pa.B. Doc. No. 06-1327. Filed for public inspection July 14, 2006, 9:00 a.m.]