

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
[25 PA. CODE CH. 121]

### Corrective Amendment to 25 Pa. Code § 121.1

The Department of Environmental Protection (Department) has discovered a discrepancy between the agency text of 25 Pa. Code § 121.1 (relating to definitions) as deposited with the Legislative Reference Bureau and as published at 29 Pa.B. 1879 (April 10, 1999) and in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 295) and as currently appearing in the *Pennsylvania Code*. The definition of "minor operating permit modification" was inadvertently omitted.

Therefore, under 45 Pa.C.S. § 901: The Department of Environmental Protection has deposited with the Legislative Reference Bureau a corrective amendment to 25 Pa. Code § 121.1. The corrective amendment to 25 Pa. Code § 121.1 is effective as of April 10, 1999, the date the defective text was printed in the *Pennsylvania Bulletin*.

The correct version of 25 Pa. Code § 121.1 appears in Annex A, with ellipses referring to the existing text of the regulation.

JAMES M. SEIF,  
*Secretary*

#### Annex A

### TITLE 25. ENVIRONMENTAL PROTECTION PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### Subpart C. PROTECTION OF NATURAL RESOURCES

#### ARTICLE III. AIR RESOURCES

#### CHAPTER 121. GENERAL PROVISIONS

#### § 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*Metalized epoxy coating*—A coating applied to aerospace vehicles or components that contains relatively large quantities of metallic pigmentation for appearance or added protection, or both.

*Minor operating permit modification*—A change to incorporate de minimis conditions and other insignificant physical changes to a source or applicable requirements into an existing permit or a change that does not require plan approval but which contravenes an express permit term. The term does not include the following:

(i) A change to permit terms or conditions that the source is violating.

(ii) A change to existing monitoring, reporting or recordkeeping requirements in the permit except as follows:

(A) A change in the enforceable operating level of the method that, prior to the source's submission of a minor permit revision application, the Department has affirmatively determined the source has demonstrated to be correlated to the source's existing or proposed compliance emissions rate. The changes may not involve a switch to a new or alternative monitoring or recordkeeping operating parameter.

(B) A change to a monitoring or recordkeeping method that affects the measurement sensitivity of the method and representativeness of the data (for example, precision, accuracy, measurement location or averaging time), so that there may be a measurable effect in relation to the relevant source compliance emissions rate; a change that affects the scope and intent of the existing monitoring method (for example, modified sample conditioning system, upgraded detector, upgraded data management system); or changes that may be generally applicable to similar monitoring methods in the same or other source categories (for example, equipment modification for interference avoidance). The changes may not involve a switch to new or alternative monitoring methods. Prior to the source's submission of a minor permit revision application, the Department must have affirmatively determined that the monitoring or recordkeeping change has been demonstrated by the source to have a known relationship and ability to determine compliance with the applicable source compliance emissions rate.

(iii) A change that is a modification under Title I of the Clean Air Act.

(iv) A change subject to Title IV of the Clean Air Act.

(v) A change that exceeds the emissions allowable under the permit, whether expressed as a rate of emissions or in terms of total emissions.

(vi) Any other change precluded by the Clean Air Act or the regulations adopted thereunder as being eligible for processing as a minor permit modification.

*Miscellaneous metal parts and products*—Items made of ferrous or nonferrous metals, including, but not limited to, large farm machinery, small farm machinery, small appliances, commercial and industrial machinery, fabricated metal products and items listed under the *Standard Industrial Classification Code* 3300 through 3900. The term does not include cans, coils, automobiles, light duty trucks, metal furniture, magnet wire, large appliances, aerospace vehicles or components and automobile refinishing and customized top coating of automobiles and trucks, if production since January 1, 1987, has not exceeded 34 vehicles per day.

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[Pa.B. Doc. No. 99-2085. Filed for public inspection December 10, 1999, 9:00 a.m.]

## Title 55—PUBLIC WELFARE

### DEPARTMENT OF PUBLIC WELFARE

#### [55 PA. CODE CH. 3040]

#### Subsidized Child Day Care Eligibility

The Department of Public Welfare (Department) by this order adopts amendments to Chapter 3040 (relating to subsidized child care eligibility), under the authority of Articles II, IV and VII of the Public Welfare Code (62 P. S. §§ 201—211, 401—493 and 701—703), the act of December 16, 1997 (P. L. 549, No. 58) (Act 58) and Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. No. 104-193), known as the Child Care and Development Block Grant (CCDBG) (42 U.S.C.A. §§ 9858—9858q).

#### *Purpose of Amendments*

These amendments will change certain sections of Chapter 3040 relating both to income limits for low-income families who receive child care subsidy and to the weekly co-payment schedule. These amendments also apply to subsidized child care recipients who are receiving Temporary Assistance for Needy Families (TANF) benefits. The changes will provide increased access to subsidized child care for low-income working families and include refinements to the Department's subsidized child care program. Proposed rulemaking is omitted because the amendments relate to Commonwealth grants and benefits (45 P. S. § 1204 (1)(iv)). In addition, proposed rulemaking is omitted as unnecessary and contrary to public interest because these changes increase benefits to many families who are eligible for the subsidized child care program and make additional families eligible beginning February 1, 2000. By omitting proposed rulemaking, families will receive the benefits much sooner and families with income between 186% and 235% of the Federal Poverty Income Guidelines (FPIG) will not lose their child care subsidy beginning February 1, 2000. See (45 P. S. § 1204(3)).

#### *Background*

The current regulations for subsidized child care are codified in Chapters 165 and 168 (relating to employment and training program; and transitional child care) and Chapter 3040 and became effective February 1, 1999. Chapters 165 and 168 establish eligibility criteria for child care benefits for families who are receiving cash assistance benefits under the TANF program. Chapter 3040 establishes eligibility criteria for families who formerly received cash assistance and for other low-income working families.

When the current regulations were adopted, the Department made a commitment to monitor the impact of the regulations on TANF families, former TANF families and other low-income working families. The Department tracked, through monthly reports from the Child Care Information Services (CCIS) agencies, the number of children enrolled in subsidized care, the number of children on the waiting list, the length of time families were on the waiting list for subsidized child care, the number of families who left the subsidized child care program and the number of families on the waiting list who did not enroll in the subsidized child care program because of the co-payment amounts. The Department also received comments from parents, providers, advocates and legislators regarding the impact of the current regulations.

From the monitoring results, the Department determined that the enrollment of children into the subsidized

child care program greatly increased since February 1999; and the waiting list was substantially reduced both in terms of time families waited for subsidy and the number of families on the waiting list for any length of time. The results indicated that nearly 95% of the children on the waiting list prior to February 1999 were enrolled into service; the time families spent waiting for subsidized child care dropped from an average of 6 to 8 months to an average of a few weeks at most; less than 2% of families on the waiting list refused subsidized child care because of the co-payment amount; and the number of families leaving the subsidized child care program since February 1999 increased approximately 1% over the previous year.

However, the comments from parents and other individuals identified three major areas in the current regulations that created difficulties for some families: the income limit (185% of the FPIG) for receiving subsidized child care after February 1, 2000; the amount of the weekly co-payment generally; and the amount of the co-payment specifically for parents with only one child who is school-age and needs only part-time before- and after-school care.

There were suggestions that the Department return to the co-payment schedule and the income limit of 235% of the FPIG for initial eligibility for subsidized child care that were in place prior to February 1, 1999. While the Department did not see a large number of families leave the subsidized child care program, there was a concern that families whose income exceeded 185% of the FPIG as of February 1, 2000, who under the current regulation would lose subsidy, would be at risk of not being able to handle the full cost of child care. The Department determined that to return to the income limits for initial eligibility that were in place prior to February 1, 1999, without a comparable waiting list priority system would either mean an increase in the budget of \$110 million per year or would necessitate extensive cuts in availability of a child care subsidy for low-income families below 185% of the FPIG. The Department determined that it could continue eligibility for subsidy to families whose income did not exceed 235% of the FPIG to remain in the subsidized child care program and pay an increased co-payment without jeopardizing the pace of enrollment into the subsidized child care program, service for the families already receiving subsidy, or the length of time that families wait for subsidized child care.

Additionally, the Department determined that it should also revise the co-payment schedule to reflect the higher income limit. In doing that, the Department also made a decision to lower the maximum percentage of annual gross income that a family would be required to pay from 14.5% at 185% of the FPIG to 13.5% at 235% of the FPIG. As a result, the weekly co-payment for about one-third of those families with annual income below 200% of the FPIG will be reduced by \$5 to \$10 per week. These decreases take place in many of the income ranges below 200% of the FPIG, including some below 100% of the FPIG. The majority of the decreases are for families within the income ranges of 170% to 200% of the FPIG. The families in these income ranges had some of the largest co-payment increases when the current co-payment schedule became effective February 1, 1999.

On October 1, 1999, the Department administratively implemented the co-payment reduction for those families whose co-payments will be less under the new regulations than under the current regulations. The Department also administratively implemented the provision that families

with only one school-age child needing before- and after-school care pay one-half the weekly co-payment. That was effective March 1, 1999.

*Purpose of the Amendments*

The Department determined that there are adequate resources to increase the income limits for families to remain eligible for subsidized child care and adjust the co-payment schedule to reflect the higher income limits. The purpose of amending the regulations is to expand the eligibility limit for families continuing to receive subsidized child care from 185% to 235% of the FPIG; to revise the co-payment schedule to achieve more uniform increments in co-payments for families as income increases; to cap the co-payment for families whose income does not exceed 235% of the FPIG at 13.5% of their annual income; and to allow families who have only one child needing part-time before- and after-school care to pay one-half the weekly co-payment.

*Summary of Changes*

There are three changes in the new and revised regulations: 1) an increase in the income limit for families receiving subsidized child care; 2) a revised co-payment schedule that reflects the higher income limit and a reduction from 14.5% to 13.5% as the highest amount of a family's annual gross income to be used for the family's co-payment; and 3) a provision that a family with only one child receiving part-time before- and after-school care pay one-half of the weekly co-payment. Following is a discussion of the changes. The description of the one-half weekly co-payment for a child in school is included with the discussion on co-payment.

*Changes to Income Limit*

*Current Regulations*—A family whose annual income is at or below 185% of the FPIG can apply for and receive subsidized child care. Once enrolled in subsidized child care, families whose annual income is between 186% and 235% of the FPIG can continue to receive subsidized child care until February 1, 2000. Under the current regulations, these families will lose their child care subsidy effective February 1, 2000. The income limit for eligibility for entry into the subsidized child care program remains at 185% of the FPIG.

*New Regulations*—In § 3040.27, the Department is deleting the grandfathering provision which indicates that a family who is enrolled in the subsidized child care program prior to February 1, 1999, and whose income exceeds 185% of the FPIG and is not greater than 235% of the FPIG continues to receive subsidized child care until February 1, 2000. The Department is revising § 3040.32(f) to provide that a family that applies for subsidized child care is ineligible if the family's gross annual income exceeds 185% of the FPIG. The Department is adding a new subsection (g) to § 3040.32 to indicate that when a family is receiving subsidized child care and its gross annual income exceeds 235% of the FPIG, that family is ineligible for subsidized child care.

The Department has determined that after February 1, 2000, as a family's income increases beyond 185% of the FPIG and up to 235% of the FPIG, the family could benefit from a continuation of a child care subsidy. There are 4,000 children who currently would benefit from this change. If these regulations are not adopted, subsidy for these children will be terminated effective February 1, 2000. Continuing to receive subsidized child care eases a family's transition to paying for the full cost of child care once subsidy ends. Without a continued subsidy, many families may experience a financial difficulty in paying

the full cost of child care once their income is greater than 185% of the FPIG, and may risk losing their child care services.

*Copayments*

*Current Regulations*—The current regulations include a co-payment schedule in which a family's weekly co-payment is a family fee based on income and family size regardless of the number of children needing subsidized care. Under this co-payment schedule, the family's annual co-payment does not exceed 10% of the family's annual income when the family's income does not exceed 100% of the FPIG, and does not exceed 14.5% of the family's annual income when the family's income does not exceed 185% of the FPIG. Families whose income is more than 185% of the FPIG and not more than 235% of the FPIG and who were "grandfathered" until February 1, 2000, are paying the same co-payment as families whose income is 185% of the FPIG. Consequently, families with incomes from 185% to 235% of the FPIG pay a lower percentage of their income for child care than some families with incomes at 185% of the FPIG. Also, there is no provision in the current regulation for families with only one child who is enrolled in school to pay one-half of the weekly co-payment when that child is receiving only part-time, before- and after-school care.

*New Regulations*—In § 3040.63, the Department is revising the co-payment schedule to accommodate families enrolled in the subsidized child care program whose income increases up to 235% of the FPIG.

Under the revised co-payment schedule, the Department retains the principle that a family's weekly co-payment is based on income and family size, regardless of the number of children needing subsidized child care.

The revised co-payment schedule provides for increases in the weekly co-payment of \$5 as the family's annual income increases into a higher income range. Each co-payment amount of \$5 is applicable to income ranges set at intervals of \$1,650. By using an income range set at intervals of \$1,650 for each co-payment level, minor fluctuations in income will not result in a change of co-payment for a family, unless the change puts them in a new income range. The income ranges allow a family's income to fluctuate up or down without a resulting co-payment change.

In subsection (a)(3), the Department is revising this paragraph to provide that the family's annual co-payment may not exceed 13.5% of the family's annual income when the annual income does not exceed 235% of the FPIG.

In other changes to § 3040.63, the Department is:

- Adding a provision that the family's annual co-payment may not exceed 10% of the family's annual income when the annual income does not exceed 100% of the FPIG.
- Adding a provision that if the family's annual income exceeds 235% of the FPIG during any time the family is receiving subsidized child care, the family will no longer be eligible for subsidized child care.
- Adding a provision that if the family's annual income does not exceed 185% of the FPIG at the time of initial determination of eligibility and does not exceed 235% of the FPIG during the time the family is receiving subsidized child care, the family is income-eligible.
- Revising the co-payment schedule in Appendix B, which reflects family size, income limits and weekly co-payment amounts.

- Adding a provision to allow a family that has only one child who is enrolled in school, including kindergarten, and who receives a total of fewer than 5 hours daily of before- or after-school, or both, child care to pay one-half the weekly co-payment found in Appendix B.

The Department is revising the co-payment schedule at Appendix B to accommodate families whose income increases to 235% of the FPIG and reducing the percentage of a family's income that is required to meet the family's weekly co-payment responsibility.

Some families with income between 200% and 235% of the FPIG who otherwise would have become ineligible for subsidized child care on February 1, 2000, when the "grandfather" clause expires, will continue to receive a subsidy but will pay a higher co-payment than families with income at 185% of the FPIG. The amount of the increased weekly co-payment for these families is far less than the actual weekly cost of child care these families would have to pay if their subsidy were terminated effective February 1, 2000. This increased co-payment is proportional to increases in co-payments that other families receiving subsidy experience as their income increases. The revised co-payment schedule also includes the co-payment amounts for some families whose income is between 170% and 185% of the FPIG which are lower than reflected in the previously published co-payment schedule in Appendix B.

In addition, the Department is changing the co-payment schedule to reflect more equal, progressive increments in co-payments as a family's income increases. An additional revision is the method for determining the co-payment. The Department is deleting the formula used to determine the co-payment amount in current § 3040.63(d)(2). The complex formula resulted in anomalies when the annual FPIG changed in 1999. The revision to the regulations enables the Department to revise the co-payment schedule to reflect the annual FPIG changes and results in co-payments that are increased in \$5 intervals when a family's annual income increases by \$1,650. The Department will issue appropriate revisions to the co-payment schedule annually when the FPIG is revised.

Under the current regulation, a family with only one school-age child needing part-time before- and after-school care had to pay a full weekly co-payment that often was a greater amount than the weekly cost of child care, leaving the family ineligible for a subsidy. Many of these families expressed concern about the lack of alternatives for care of their children during these periods. The Department recognized that these families might leave their children unattended before and after school and could benefit from subsidized child care.

#### *Fiscal Impact*

##### *Public Sector*

*Commonwealth*—The Department will realize an increase in costs to the subsidized child care program of \$7 million on an annual basis because of the revisions to the current co-payment schedule. The Department will provide the additional funds to offset the increase in costs to assure there are adequate resources to continue services to children receiving subsidy and to assure that no children are terminated from subsidy because of lack of available funds.

*Political Subdivisions*—Local governments will not have increased costs due to these final-form regulations.

#### *Private Sector*

Approximately 4,000 children whose family income falls between 185% and 235% of the FPIG who were receiving subsidized child care and who otherwise would have lost subsidy effective February 1, 2000, will continue to remain in the subsidized child care program after February 1, 2000. All families whose income is below 185% of the FPIG can apply for subsidy and are eligible to continue to receive subsidy until their income reaches 235% of the FPIG, assuming they meet all other eligibility factors. It is estimated that there will be 2,500 to 3,000 families that will be affected by this change annually and that will remain eligible when their family income ranges from 186% to 235% of the FPIG. In addition, nearly 23,000 families will realize a decrease in their weekly co-payment amounts based on the new co-payment schedule.

#### *General Public*

There will be a benefit to the general public. Families are able to remain eligible for subsidized child care until their income reaches 235% of the FPIG. Remaining in subsidized child care will help families remain self-sufficient because they have adequate child care supports to continue employment. Some families with incomes below 185% of the FPIG will have lower weekly co-payment amounts than under the current regulations. Also, families with only one child attending school and needing part-time before- and after-school care will pay one-half the weekly co-payment.

#### *Paperwork Requirements*

The eligibility agents, the CCIS agencies in each county, will experience a time-limited increase in paperwork because they will need to complete eligibility redeterminations and determine a co-payment amount for families receiving subsidized child care whose income falls between 185% and 235% of the FPIG after February 1, 2000.

#### *Effective Date*

The final-omitted regulations are effective February 1, 2000.

#### *Sunset Date*

No sunset date applies to these final-omitted regulations.

#### *Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on October 13, 1999, the Department submitted a copy of these final-omitted regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Committee on Health and Human Services and the House Committee on Aging and Youth. On the same date, the final-omitted regulations were submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

In accordance with section 5.1(d) and (e) of the Regulatory Review Act, these final-omitted regulations were deemed approved by the Committees on November 2, 1999. The final-form regulations were approved by IRRC on November 4, 1999.

#### *Contact Person*

The contact person for these final-omitted regulations is Kathryn J. Holod, Director, Bureau of Child Day Care Services, Bertolino Building, 4th Floor, Harrisburg, PA 17102, (717) 787-8691.

*Findings*

The Department finds that:

(1) Public notice of intention to adopt the administrative regulations by this order is omitted because the regulations relate to Commonwealth grants and benefits and is unnecessary and contrary to public interest under section 204(1)(iv) and (3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1204(1)(iv) and (3)) and the regulations thereunder, 1 Pa. Code § 7.4(1)(iv) and (3).

(2) The adoption of these final-omitted regulations in the manner provided in this order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

*Order*

The Department, acting under the Public Welfare Code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 3040, are amended by amending §§ 3040.32, 3040.63 and Appendix B and deleting § 3040.27 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 Attorney General and the Office of General Counsel for approval as to legality and form 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 February 1, 2000.

FEATHER O. HOUSTOUN,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 5963 (November 20, 1999).)*

**Fiscal Note:** 14-464; (1) General Fund;

<i>Day Care Program (State Funds)</i>	<i>Cash Grants Program (State Funds)</i>
(2) Implementing Year 1999-00 is \$2.992 million	\$2.258 million
(3) 1st Succeeding Year 2000-01 is \$4 million	\$3 million
2nd Succeeding Year 2001-02 is \$4 million	\$3 million
3rd Succeeding Year 2002-03 is \$4 million	\$3 million
4th Succeeding Year 2003-04 is \$4 million	\$3 million
5th Succeeding Year 2004-05 is \$4 million	\$3 million
(4) 1998-99 Program—\$57.545 million	\$259.688 million
1997-98 Program—\$47.717 million	\$323.388 million
1996-97 Program—\$48.309 million	\$523.236 million

(7) Day Care Program and Cash Grants Program; (8) recommends adoption.

**Annex A**

**TITLE 55. PUBLIC WELFARE**

**PART V. CHILDREN, YOUTH AND FAMILIES  
MANUAL**

**Subpart B. ELIGIBILITY FOR SUBSIDY**

**CHAPTER 3040. SUBSIDIZED CHILD CARE  
ELIGIBILITY**

**§ 3040.27. (Reserved).**

**§ 3040.32. Financial eligibility.**

(a) The parent/caretaker shall provide paystubs indicating gross earned income for any 4 consecutive weeks within the most recent 6-week period for employed family members.

(b) Family members unable to provide paystubs because of exceptional employment circumstances shall provide documentation of earned income as follows:

(1) If paystubs are not available at the time of application because the employed family member has not been employed for 4 weeks, written documentation of anticipated gross earned income from the employer is sufficient evidence of earnings. The documentation is satisfactory until, but not after, the family member is employed for 8 consecutive weeks, at which time the family member shall present the paystubs.

(2) If income is received in cash, written employer documentation of gross earned income for 4 consecutive weeks within the most recent 6-week period is sufficient documentation.

(c) The eligibility agent shall require, and the parent/caretaker shall provide, documentation of all unearned family income unless specifically excluded in Appendix A, Part III (relating to income exclusions). See Appendix A, Part I (relating to income inclusions) which lists the unearned income included when computing the adjusted monthly income.

(d) The parent/caretaker shall seek all available income listed in Appendix A, Part I, except cash assistance.

(e) The parent/caretaker shall document all income deductions listed in Appendix A, Part II (relating to income deductions).

(f) The family is ineligible for child care subsidy at initial determination of eligibility if the annual family income exceeds 185% of FPIG.

(g) The family is ineligible for child care subsidy at redetermination if the annual family income exceeds 235% of FPIG.

**§ 3040.63. Calculating a co-payment.**

(a) The determination of a family co-payment considers the following:

(1) The family size and income.

(2) The co-payment may not be less than \$5.

(3) The family's annual co-payment may not exceed 13.5% of the family's annual income.

(4) If the family's annual income is 100% of FPIG or less, the annual co-payment may not exceed 10% of the family's annual income.

(b) The eligibility agent shall determine a family's adjusted monthly income as follows:

(1) Determine the gross monthly income by using documentation of 4 consecutive weeks of income from employment within the most recent 6-week period. Include other sources of income in Appendix A, Part I (relating to sources of earned or unearned income to be included). Following is the conversion method to determine gross monthly income:

<i>Frequency of income</i>	<i>Conversion method</i>
Daily	Multiply the daily income by the number of work-days in a week, then multiply by 4.3

<i>Frequency of income</i>	<i>Conversion method</i>
Weekly	Multiply by 4.3
Biweekly (every 2 weeks)	Divide by 2, then multiply by 4.3
Semimonthly (twice a month)	Multiply by 2 for monthly gross income.
Monthly	Use the figure given.
Quarterly	Divide by 3.
Annually	Divide by 12.
Lump sum income	Divide by 12.

family exceeds 185% of the FPIG or if at redetermination the annual income for the family exceeds 235% of the FPIG, the family is not eligible for subsidized child care.

(d) If the annual income for the family does not exceed 185% of the FPIG at initial determination of eligibility or does not exceed 235% of the FPIG at redetermination and the family is otherwise eligible, the eligibility agent shall determine the co-payment by using the co-payment chart in Appendix B. The co-payment as set forth in Appendix B is calculated in \$5 increments for each \$1,650 of annual income.

(2) Determine the amount of the monthly income deductions listed in Appendix A, Part II.

(3) Determine the adjusted monthly income by subtracting the total monthly deductions from the total gross monthly income.

(4) Convert the adjusted monthly income to annual income by multiplying the adjusted monthly income by 12.

(c) If at initial application, the annual income for the

(e) If a family has only one child who is enrolled in school, including kindergarten, and who receives a total of fewer than 5 hours daily of before- or after-school child care, the family shall pay one-half the weekly amount derived from the chart in Appendix B.

(f) If the co-payment is equal to or exceeds the weekly reimbursement rate for care or if the Department's weekly payment to the provider would be less than \$5, the family is not eligible for child care subsidy with that provider.

**Appendix B  
CO-PAYMENT CHART  
FAMILY CO-PAYMENT SCALE  
(BASED ON THE 1999 FEDERAL POVERTY INCOME GUIDELINES)**

Weekly Co-pay	Family Size: 1		Family Size: 2		Family Size: 3	
	Annual Income		Annual Income		Annual Income	
\$5	Less than:	\$6,590	Less than:	\$7,760.00	Less than:	\$8,930
\$10	\$6,590.01	\$8,240	\$7,760.01	\$9,410.00	\$8,930.01	\$10,580
\$15	\$8,240.01	\$9,890	\$9,410.01	\$11,060.00	\$10,580.01	\$12,230
\$20	\$9,890.01	\$11,540	\$11,060.01	\$12,710.00	\$12,230.01	\$13,880
\$25	\$11,540.01	\$13,190	\$12,710.01	\$14,360.00	\$13,880.01	\$15,530
\$30	\$13,190.01	\$14,840	\$14,360.01	\$16,010.00	\$15,530.01	\$17,180
\$35	\$14,840.01	\$16,490	\$16,010.01	\$17,660.00	\$17,180.01	\$18,830
\$40	\$16,490.01	\$18,140	\$17,660.01	\$19,310.00	\$18,830.01	\$20,480
\$45	\$18,140.01	\$19,364	\$19,310.01	\$20,960.00	\$20,480.01	\$22,130
\$50			\$20,960.01	\$22,610.00	\$22,130.01	\$23,780
\$55			\$22,610.01	\$24,260.00	\$23,780.01	\$25,430
\$60			\$24,260.01	\$25,910.00	\$25,430.01	\$27,080
\$65			\$25,910.01	\$25,991.00	\$27,080.01	\$28,730
\$70					\$28,730.01	\$30,380
\$75					\$30,380.01	\$32,030
\$75					\$32,030.01	\$32,618
	185% FPIG	\$15,244.00	185% FPIG	\$20,461.00	185% FPIG	\$25,678.00

Weekly Co-pay	Family Size: 4		Family Size: 5		Family Size: 6	
	Annual Income		Annual Income		Annual Income	
\$5	Less than:	\$10,100	Less than:	\$11,270	Less than:	\$12,440
\$10	\$10,100.01	\$11,750	\$11,270.01	\$12,920	\$12,440.01	\$14,090
\$15	\$11,750.01	\$13,400	\$12,920.01	\$14,570	\$14,090.01	\$15,740
\$20	\$13,400.01	\$15,050	\$14,570.01	\$16,220	\$15,740.01	\$17,390
\$25	\$15,050.01	\$16,700	\$16,220.01	\$17,870	\$17,390.01	\$19,040
\$30	\$16,700.01	\$18,350	\$17,870.01	\$19,520	\$19,040.01	\$20,690
\$35	\$18,350.01	\$20,000	\$19,520.01	\$21,170	\$20,690.01	\$22,340
\$40	\$20,000.01	\$21,650	\$21,170.01	\$22,820	\$22,340.01	\$23,990

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\$45	\$21,650.01	\$23,300	\$22,820.01	\$24,470	\$23,990.01	\$25,640
\$50	\$23,300.01	\$24,950	\$24,470.01	\$26,120	\$25,640.01	\$27,290
\$55	\$24,950.01	\$26,600	\$26,120.01	\$27,770	\$27,290.01	\$28,940
\$60	\$26,600.01	\$28,250	\$27,770.01	\$29,420	\$28,940.01	\$30,590
\$65	\$28,250.01	\$29,900	\$29,420.01	\$31,070	\$30,590.01	\$32,240
\$70	\$29,900.01	\$31,550	\$31,070.01	\$32,720	\$32,240.01	\$33,890
\$75	\$31,550.01	\$33,200	\$32,720.01	\$34,370	\$33,890.01	\$35,540
\$80	\$33,200.01	\$34,850	\$34,370.01	\$36,020	\$35,540.01	\$37,190
\$85	\$34,850.01	\$36,500	\$36,020.01	\$37,670	\$37,190.01	\$38,840
\$90	\$36,500.01	\$38,150	\$37,670.01	\$39,320	\$38,840.01	\$40,490
\$95	\$38,150.01	\$39,245	\$39,320.01	\$40,970	\$40,490.01	\$42,140
\$100			\$40,970.01	\$42,620	\$42,140.01	\$43,790
\$105			\$42,620.01	\$44,270	\$43,790.01	\$45,440
\$110			\$44,270.01	\$45,872	\$45,440.01	\$47,090
\$115					\$47,090.01	\$48,740
\$120					\$48,740.01	\$50,390
\$125					\$50,390.01	\$52,040
\$130					\$52,040.01	\$52,499
	185% FPIG	\$30,895.00	185% FPIG	\$36,112.00	185% FPIG	\$41,329.00

Weekly Co-pay	Family Size: 7		Family Size: 8		Family Size: 9	
	Annual Income		Annual Income		Annual Income	
\$5	Less than:	\$11,960	Less than:	\$13,130	Less than:	\$14,300
\$10	\$11,960.01	\$13,610	\$13,130.01	\$14,780	\$14,300.01	\$15,950
\$15	\$13,610.01	\$15,260	\$14,780.01	\$16,430	\$15,950.01	\$17,600
\$20	\$15,260.01	\$16,910	\$16,430.01	\$18,080	\$17,600.01	\$19,250
\$25	\$16,910.01	\$18,560	\$18,080.01	\$19,730	\$19,250.01	\$20,900
\$30	\$18,560.01	\$20,210	\$19,730.01	\$21,380	\$20,900.01	\$22,550
\$35	\$20,210.01	\$21,860	\$21,380.01	\$23,030	\$22,550.01	\$24,200
\$40	\$21,860.01	\$23,510	\$23,030.01	\$24,680	\$24,200.01	\$25,850
\$45	\$23,510.01	\$25,160	\$24,680.01	\$26,330	\$25,850.01	\$27,500
\$50	\$25,160.01	\$26,810	\$26,330.01	\$27,980	\$27,500.01	\$29,150
\$55	\$26,810.01	\$28,460	\$27,980.01	\$29,630	\$29,150.01	\$30,800
\$60	\$28,460.01	\$30,110	\$29,630.01	\$31,280	\$30,800.01	\$32,450
\$65	\$30,110.01	\$31,760	\$31,280.01	\$32,930	\$32,450.01	\$34,100
\$70	\$31,760.01	\$33,410	\$32,930.01	\$34,580	\$34,100.01	\$35,750
\$75	\$33,410.01	\$35,060	\$34,580.01	\$36,230	\$35,750.01	\$37,400
\$80	\$35,060.01	\$36,710	\$36,230.01	\$37,880	\$37,400.01	\$39,050
\$85	\$36,710.01	\$38,360	\$37,880.01	\$39,530	\$39,050.01	\$40,700
\$90	\$38,360.01	\$40,010	\$39,530.01	\$41,180	\$40,700.01	\$42,350
\$95	\$40,010.01	\$41,660	\$41,180.01	\$42,830	\$42,350.01	\$44,000
\$100	\$41,660.01	\$43,310	\$42,830.01	\$44,480	\$44,000.01	\$45,650
\$105	\$43,310.01	\$44,960	\$44,480.01	\$46,130	\$45,650.01	\$47,300
\$110	\$44,960.01	\$46,610	\$46,130.01	\$47,780	\$47,300.01	\$48,950
\$115	\$46,610.01	\$48,260	\$47,780.01	\$49,430	\$48,950.01	\$50,600
\$120	\$48,260.01	\$49,910	\$49,430.01	\$51,080	\$50,600.01	\$52,250
\$125	\$49,910.01	\$51,560	\$51,080.01	\$52,730	\$52,250.01	\$53,900
\$130	\$51,560.01	\$53,210	\$52,730.01	\$54,380	\$53,900.01	\$55,550
\$135	\$53,210.01	\$54,860	\$54,380.01	\$56,030	\$55,550.01	\$57,200
\$140	\$54,860.01	\$56,510	\$56,030.01	\$57,680	\$57,200.01	\$58,850

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\$145	\$56,510.01	\$58,160	\$57,680.01	\$59,330	\$58,850.01	\$60,500
\$150	\$58,160.01	\$59,126	\$59,330.01	\$60,980	\$60,500.01	\$62,150
\$155			\$60,980.01	\$62,630	\$62,150.01	\$63,800
\$160			\$62,630.01	\$64,280	\$63,800.01	\$65,450
\$165			\$64,280.01	\$65,753	\$65,450.01	\$67,100
\$170					\$67,100.01	\$68,750
\$175					\$68,750.01	\$70,400
\$180					\$70,400.01	\$72,050
\$185					\$72,050.01	\$72,380
	185% FPIG	\$46,546.00	185% FPIG	\$51,763.00	185% FPIG	\$56,980.00

Weekly Co-pay	Family Size: 10		Family Size: 11		Family Size: 12	
	Less than:	Annual Income	Less than:	Annual Income	Less than:	Annual Income
\$5	Less than:	\$15,470.00	Less than:	\$16,640	Less than:	\$17,810
\$10	\$15,470.01	\$17,120.00	\$16,640.01	\$18,290	\$17,810.01	\$19,460
\$15	\$17,120.01	\$18,770.00	\$18,290.01	\$19,940	\$19,460.01	\$21,110
\$20	\$18,770.01	\$20,420.00	\$19,940.01	\$21,590	\$21,110.01	\$22,760
\$25	\$20,420.01	\$22,070.00	\$21,590.01	\$23,240	\$22,760.01	\$24,410
\$30	\$22,070.01	\$23,720.00	\$23,240.01	\$24,890	\$24,410.01	\$26,060
\$35	\$23,720.01	\$25,370.00	\$24,890.01	\$26,540	\$26,060.01	\$27,710
\$40	\$25,370.01	\$27,020.00	\$26,540.01	\$28,190	\$27,710.01	\$29,360
\$45	\$27,020.01	\$28,670.00	\$28,190.01	\$29,840	\$29,360.01	\$31,010
\$50	\$28,670.01	\$30,320.00	\$29,840.01	\$31,490	\$31,010.01	\$32,660
\$55	\$30,320.01	\$31,970.00	\$31,490.01	\$33,140	\$32,660.01	\$34,310
\$60	\$31,970.01	\$33,620.00	\$33,140.01	\$34,790	\$34,310.01	\$35,960
\$65	\$33,620.01	\$35,270.00	\$34,790.01	\$36,440	\$35,960.01	\$37,610
\$70	\$35,270.01	\$36,920.00	\$36,440.01	\$38,090	\$37,610.01	\$39,260
\$75	\$36,920.01	\$38,570.00	\$38,090.01	\$39,740	\$39,260.01	\$40,910
\$80	\$38,570.01	\$40,220.00	\$39,740.01	\$41,390	\$40,910.01	\$42,560
\$85	\$40,220.01	\$41,870.00	\$41,390.01	\$43,040	\$42,560.01	\$44,210
\$90	\$41,870.01	\$43,520.00	\$43,040.01	\$44,690	\$44,210.01	\$45,860
\$95	\$43,520.01	\$45,170.00	\$44,690.01	\$46,340	\$45,860.01	\$47,510
\$100	\$45,170.01	\$46,820.00	\$46,340.01	\$47,990	\$47,510.01	\$49,160
\$105	\$46,820.01	\$48,470.00	\$47,990.01	\$49,640	\$49,160.01	\$50,810
\$110	\$48,470.01	\$50,120.00	\$49,640.01	\$51,290	\$50,810.01	\$52,460
\$115	\$50,120.01	\$51,770.00	\$51,290.01	\$52,940	\$52,460.01	\$54,110
\$120	\$51,770.01	\$53,420.00	\$52,940.01	\$54,590	\$54,110.01	\$55,760
\$125	\$53,420.01	\$55,070.00	\$54,590.01	\$56,240	\$55,760.01	\$57,410
\$130	\$55,070.01	\$56,720.00	\$56,240.01	\$57,890	\$57,410.01	\$59,060
\$135	\$56,720.01	\$58,370.00	\$57,890.01	\$59,540	\$59,060.01	\$60,710
\$140	\$58,370.01	\$60,020.00	\$59,540.01	\$61,190	\$60,710.01	\$62,360
\$145	\$60,020.01	\$61,670.00	\$61,190.01	\$62,840	\$62,360.01	\$64,010
\$150	\$61,670.01	\$63,320.00	\$62,840.01	\$64,490	\$64,010.01	\$65,660
\$155	\$63,320.01	\$64,970.00	\$64,490.01	\$66,140	\$65,660.01	\$67,310
\$160	\$64,970.01	\$66,620.00	\$66,140.01	\$67,790	\$67,310.01	\$68,960
\$165	\$66,620.01	\$68,270.00	\$67,790.01	\$69,440	\$68,960.01	\$70,610
\$170	\$68,270.01	\$69,920.00	\$69,440.01	\$71,090	\$70,610.01	\$72,260
\$175	\$69,920.01	\$71,570.00	\$71,090.01	\$72,740	\$72,260.01	\$73,910
\$180	\$71,570.01	\$73,220.00	\$72,740.01	\$74,390	\$73,910.01	\$75,560
\$185	\$73,220.01	\$74,870.00	\$74,390.01	\$76,040	\$75,560.01	\$77,210



\$190	\$74,870.01	\$76,520.00	\$76,040.01	\$77,690	\$77,210.01	\$78,860
\$195	\$76,520.01	\$78,170.00	\$77,690.01	\$79,340	\$78,860.01	\$80,510
\$200	\$78,170.01	\$79,007.00	\$79,340.01	\$80,990	\$80,510.01	\$82,160
\$205			\$80,990.01	\$82,640	\$82,160.01	\$83,810
\$210			\$82,640.01	\$84,290	\$83,810.01	\$85,460
\$215			\$84,290.01	\$85,634	\$85,460.01	\$87,110
\$220					\$87,110.01	\$88,760
\$225					\$88,760.01	\$90,410
\$230					\$90,410.01	\$92,060
\$235					\$92,060.01	\$92,261
	185% FPIG	\$62,197.00	185% FPIG	\$67,414.00	185% FPIG	\$72,631.00

[Pa.B. Doc. No. 99-2086. Filed for public inspection December 10, 1999, 9:00 a.m.]

## Title 61—REVENUE

### DEPARTMENT OF REVENUE

[61 PA. CODE CHS. 101, 103, 109, 113, 117, 121 AND 155]

#### Personal Income Tax; Definitions; Net Profits and Regulated Investment Companies

The Department of Revenue (Department), under the authority contained in sections 354, 408 and 603 of the Tax Reform Code of 1971 (TRC) (72 P. S. §§ 7354, 7408 and 7603), by this order amends §§ 101.1, 101.6, 103.12, 109.3—109.5, 109.7, 109.8, 113.1, 117.15, 121.10, 121.11, 121.14 and 155.30.

##### *Purpose of the Amendments*

The amendments 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 (relating to definitions) is amended by replacing the existing definitions of “employee” and “employer” with new definitions consistent with section 301(g) and (h) of the TRC (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 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 (72 P. S. § 7303), each class computed without setoff between or among any other class and, unless a net taxable class, without deductions.

Section 103.12 (relating to net profits) 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 section 301 of the TRC.

The definition of “Personal Income Tax income” in § 155.30(b)(4) (relating to regulated investment companies) 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 these amendments.

##### *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. IRRC recommended that the Department delete the proposed definitions and adopt the statutory definitions. The Department recognizes IRRC’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" in section 3401(a)(3) of the Internal Revenue Code (IRC) (26 U.S.C.A. § 3401(a)(3)); and, as a consequence, no individual who only earns compensation for these services can be such an individual. Also, for example, certain sales persons are excluded from the definition of "employee" in section 3508 of the IRC (26 U.S.C.A. § 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." See 61 Pa. Code §§ 101.6(a) and 101.8(e) (relating to compensation; and income from sources within this Commonwealth).

To resolve this issue, the Department has added a definition of "casual employe" 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 IRRC's request that the Department consider amending § 113.1 (relating to employers required to withhold tax) 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 these 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 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 the taxpayer's securities transactions and as a business person with respect to the rest of the taxpayer's securities transactions. Only the latter count toward the taxpayer's net profits. The former count toward the taxpayer's 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. 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. See 26 U.S.C.A. § 852. Consequently, a RIC may completely escape Federal corporate income taxation by distributing all of its income.

RICs are highly regulated by the IRC. At least 90% of the income of a RIC must consist of dividends, interest and gain or other income from stocks or securities (including foreign currencies). See 26 U.S.C.A. § 851. A RIC's income retains its character when distributed to its shareholders. 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 Commonwealth Corporate Net Income Tax purposes. This results from the fact that the Commonwealth 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 recognize 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 TRC (72 P. S. § 7602(f)(2)(A)) specifically provides:

(A) Personal Income Tax income means income to the extent enumerated and classified in section 303 of the TRC.

Section 303 of the TRC defines eight classes of income that are subject to tax. Those classes include: compensation; net profits; net gains from the disposition of property; net gains from rents, royalties patents and copyrights; dividends; interest; gambling and 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 reclassified only as net profits, including the dividends and interest earned by the RIC.

The reclassification 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.

The rules of statutory construction provide that "[e]very statute shall be construed, if possible, to give meaning and effect to all of its provisions." See 1 Pa.C.S. § 1921(a) (relating to legislative intent controls). 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) of the TRC 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." See 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 of the TRC (72 P. S. §§ 7301—7361) do not classify their interest and dividends as net profits. Section 307.9(a) of the TRC (72 P. S. § 7307.9(a)) 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 . . ." See 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." See 61 Pa. Code § 107.1 (relating to general taxability of partners and members). 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." See 1 Pa.C.S. § 1922(1) (relating to presumptions in ascertaining legislative intent). RICs are required to distribute at least 90% 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, the 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 previously stated reasons, Personal Income Tax income must be interpreted as "income to the extent enumerated and classified under section 303." See 72 P. S. § 7602(f)(2)(A). The amendments 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 amendments are

scheduled for review within 5 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, PA 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 the Department also provided IRRC and the Committees with copies of the 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 October 18, 1999, and were approved by IRRC on October 21, 1999, 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 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 Chapters 103, 109, 113, 117, 121 and 155, are amended by amending §§ 101.1, 101.6, 103.12, 109.3—109.5, 109.7, 109.8, 113.1, 117.15, 121.10, 121.11 and 155.30 and by deleting § 121.14 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(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

*(Editor's Note: The amendment of §§ 101.6, 103.12, 109.3—109.5, 109.7, 109.8, 113.1, 117.15, 121.10, 121.11 and the deletion of § 121.14 were not included in the proposal at 27 Pa.B. 4436 (August 30, 1977). For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 5777 (November 6, 1999).)*

**Fiscal Note:** Fiscal Note 15-381 remains valid for the final adoption of the subject regulations.

**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*—An individual who performs, or by agreement, refrains from performing, a service of whatever nature and is not an employe.

*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*—An individual from whose wages an employer is required under the IRC to withhold Federal Income Tax. For the purpose of this definition, the terms “employe,” “employer” and “wages” have the same meanings as 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 any other entity who or that is required under the IRC to withhold Federal Income Tax from wages paid to an employe. For the purpose of this definition, the terms “employe,” “employer” and “wages” have the same meanings as in 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 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) A deduction is not 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) Unreimbursed employe business expenses.

(B) Costs of goods sold and expense incurred in the operation of a business.

(C) 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) The distributive income of a Pennsylvania S corporation, partnership or other association, trust or estate is 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 income, against which he may not set off 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 does not constitute compensation. Payments made to an Individual Retirement Account, as provided by the Employee Retirement Income Security Act of 1974 (ERISA), the act of September 2, 1974 (Pub. L. No. 93-406, 88 Stat. 829), 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 employes 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 shall 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

employe 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**

**Subchapter B. 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. They shall be determined either on a cash or accrual basis in accordance with accepted accounting principles and practices.

(b) To constitute net profits, all of the following must apply:

(1) The gross profits shall be derived from one of the following:

(i) The marketing of a product or service to customers on a commercial basis or from securities employed as working capital in the business operations.

(ii) Accounts and notes receivable from sales of products or services sold in the ordinary course of the business operations.

(iii) Assets which serve an operational function in the ordinary course of business operations.

(2) The marketing activity shall be conducted with the manifest objective of achieving profitable operations.

(3) The marketing activity shall be conducted with regularity and continuity and may not be limited or exclusive.

(c) In computing net profits, a deduction will not be allowed for any item of 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 these 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 that management, in the capacity of a licensed investment advisor.

(4) Licensed dealers, including financial investment product specialists and market makers, if the conditions in subparagraphs (i)—(iv) 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 the 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) When 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, this section applies 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 this Commonwealth) are carried on solely within this Commonwealth and none of the activities are carried on outside of this Commonwealth though the nonresident or his representative travels outside of this Commonwealth for purpose of buying, selling, financing or performing 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 the activities is systematically and regularly carried on outside of this Commonwealth or if one or more of the 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 items of income, gain, loss and deduction attributable to the activities of the business carried on in this Commonwealth, the 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 employes or casual employes 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 employes or casual employes 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 the items attributable to the 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 an employer or casual employer both within and without this Commonwealth, his income derived from Commonwealth sources includes that proportion of the employe's 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 may 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 individual, partnership, association, corporation, organization, fiduciary, governmental body, unit, agency or other entity who is an employer, makes payment of compensation and maintains an office or transacts business within this Commonwealth is subject to this chapter, whether or not a paying agency is maintained within this Commonwealth.

(1) 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 Commonwealth by any agent or other representative under the authority of the employer or its subsidiary, irrespective of whether the place of business or agent or other representative is located in this Commonwealth permanently or temporarily, or whether the employer is licensed to do business in this Commonwealth.

(2) The term "agent" is broader than the term employe and includes anyone acting under the authority of the principal in an agency capacity. It does not matter 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.**

(a) *In general.* Except as provided in subsection (b), a person subject to tax under this article, or a person required to file a return of information with respect to income, shall keep permanent books of account or records, including inventories, sufficient to establish the amount of gross income, deductions allowable, credits or other matters required to be shown by the person and any return of the tax or information.

(b) *Wage earners.* Individuals whose gross income include salaries, wages or similar compensation for personal services rendered shall be required, with respect to the income, to keep the records to enable the Department to determine the correct amount of income subject to tax. It is not necessary, with respect to the income, that an individual keep the books of account or records required by subsection (a).

(c) *Notice of Department requiring returns, statements or the keeping of records.* The Department may require a person, by notice served upon him, to make returns, render a statement or keep specific records as will enable the Department to determine whether or not the person is liable to tax under this article.

(d) *Retention of records.* The books of records required by this section shall be kept at all times available for inspection by authorized personnel of the Department, and shall be retained so long as the contents thereof may become material in the administration of the tax imposed under this article.

(e) *Form of records.* The records required by this section shall be kept accurately, but no particular form is required for keeping the records. The forms and systems of accounting shall be used as will enable the Department

to ascertain whether liability for taxes incurred exists and, if so, the amount thereof.

(f) *Copies of returns, schedules and statements.* A person who is required, by this section or by instructions applicable to any form prescribed, to keep any copy of any return, schedule, statement or other document shall keep the copy as part of his records.

(g) *Records of claimants.* A person (including an employe) who, under this chapter, claims a refund, credit or abatement shall keep a complete and detailed record with respect to the tax, interest, addition to the tax, additional amount or assessable penalty to which the claim relates.

(h) *Records of employes or casual employes.* While not mandatory, except in the case of claims, it is advisable for each employe or casual employe 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 employe, the dates of beginning and termination of the 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.

(i) *Place and period for keeping records.* The records required by this article shall be kept, by the person required to keep them, at one or more convenient safe locations accessible to authorized personnel of the Department, and shall at all times be available for inspection by the personnel. Every person required by this article to keep records in respect of a tax, whether or not the person incurs liability for the tax, shall maintain the records for at least 4 years after the due date of the tax for the return period to which the records relate, or the date the tax is paid, whichever is later. The records of claimants shall be maintained for at least 3 years after the date the claim is filed.

**CHAPTER 121. FINAL RETURNS**

**§ 121.10. Reporting income.**

(a) Under the law, only certain classes of income are subject to tax. Therefore, that income not included in any of the eight categories is exempt from the tax.

(b) Examples of income subject to the tax which shall be reported are the following:

- (1) Wages, salaries, commissions, bonuses, incentive payments and tips.
- (2) Net profits from business or profession.
- (3) Profits from a partnership or association.
- (4) Net gains from sales or exchanges of real estate, autos, securities and other property.
- (5) Rents and royalties from property, patents and copyrights.
- (6) Gambling and lottery winnings.
- (7) Interest on bank deposits, bonds and notes.
- (8) Interest on net gain on bonds or obligations of other states or countries.
- (9) The taxpayer's share of income from estates or trusts.
- (10) Dividends except dividends paid in the form of stock distributed by a corporation to its stockholders if the distribution is not treated as personal income for Federal Income Tax purposes.

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

- (1) Pensions and annuities.
- (2) Government payments made to veterans and their families.
- (3) Benefits paid by public retirement systems.
- (4) Interest on obligations of this Commonwealth or its political subdivisions and authorities and interest on certain obligations of the United States government, its agencies or instrumentalities are not taxable if they are statutorily free from taxation. Interest on obligations of other states and countries, however, shall be subject to the Commonwealth Income Tax.
- (5) Payments to reimburse actual expenses.
- (6) The value of meals and lodging furnished for the convenience of the employer or casual employer.
- (7) Social Security benefits.
- (8) Military pay received by a United States serviceman on active duty outside of this Commonwealth.
- (9) Life insurance proceeds.
- (10) Workers' Compensation benefits.
- (11) Payments for occupational diseases under section 108 of the Workers' Compensation Act (77 P. S. § 27.1) and section 108 of the Pennsylvania Occupational Disease Act (77 P. S. § 1208).
- (12) Public assistance payments.
- (13) Unemployment compensation payments.
- (14) Income received for child support.
- (15) Educational stipends for which no services are rendered, such as scholarships.
- (16) Dividends paid in the form of stock by the distributing corporation if not treated as personal income for Federal Income Tax purposes.

**§ 121.11. Partnership or similar enterprise.**

(a) If a person is a member of a partnership, joint venture or similar enterprise, the person shall report his share of taxable income whether he received it or not.

(b) A taxpayer should enter his share of net profits on line two.

**§ 121.14. (Reserved).**

**CHAPTER 155. CAPITAL STOCK TAX AND FOREIGN FRANCHISE TAX**

**§ 155.30. Regulated investment companies.**

(a) *General.* Commencing with the calendar year 1985 and each year thereafter, the Capital Stock or Foreign Franchise Tax of a regulated investment company is the sum of the following products:

- (1) Seventy five dollars multiplied by the quotient, rounded to the nearest whole number, produced by dividing the net asset value of the regulated investment company by 1 million.
- (2) The apportioned undistributed Personal Income Tax income of the regulated investment company multiplied by the Personal Income Tax rate for the same tax year.

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

*Apportioned undistributed Personal Income Tax income*—Undistributed Personal Income Tax income multi-

plied by a fraction, the numerator of which is income distributed during the taxable period to shareholders who are Commonwealth resident individuals, estates or trusts and the denominator of which is income distributed during the taxable period.

*Monthly net asset value*—The actual market value of assets owned by the regulated investment company without exemptions or exclusions, less liabilities, debts and other obligations as of the last day of the month.

*Net asset value*—Determined by adding the monthly net asset values for each month during the taxable period and dividing the sum by the number of months involved.

*Personal Income Tax income*—Income computed in the same manner and on the same basis as the income of an individual under Article V of the TRC (relating to personal income tax).

*Regulated investment company*—A domestic corporation and a foreign corporation which is registered to do business in this Commonwealth, maintains an office in this Commonwealth, has filed a timely election to be taxed as a regulated investment company with the Federal government and qualified to be taxed as a regulated investment company under the IRC.

*Undistributed Personal Income Tax income*—Personal Income Tax income, other than Personal Income Tax

income undistributed on account of the Capital Stock or Foreign Franchise Tax liability of the regulated investment company, less Personal Income Tax income distributed to shareholders.

(c) *Determination of income considered to be distributed.*

(1) Personal Income Tax income is deemed to be either distributed to shareholders or undistributed in the same proportion that the total income received by the regulated investment company during the taxable year is distributed to shareholders or undistributed.

(2) At the election of the regulated investment company, income distributed after the close of a taxable year, but deemed distributed during the taxable year for Federal income tax purposes, is deemed distributed during the year.

(3) If a regulated investment company in a taxable year has both current income and income accumulated from a period year, distributions made during the year shall be deemed to have been made first from current income.

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