

**CHAPTER 108. DISTRIBUTIONS**

- Sec.  
108.1. Distributions by corporations.  
108.2. Distributions by business trusts.  
108.3. Distributions by investment companies.

**Authority**

The provisions of this Chapter 108 issued under section 354 of the Tax Reform Code of 1971 (72 P. S. § 7354), unless otherwise noted.

**Source**

The provisions of this Chapter 108 adopted March 1, 1996, effective March 2, 1996, 26 Pa.B. 887, unless otherwise noted.

**§ 108.1. Distributions by corporations.**

(a) That portion of a distribution paid or credited out of earnings and profits by a corporation to a taxpayer in his capacity as a stockholder shall be taxed as a dividend. The remaining portion shall be applied against, and reduce, the adjusted basis of the taxpayer's stock and, to the extent that it exceeds the adjusted basis of the stock, shall be taxed as a net gain from the disposition of intangible personal property.

(b) The amount of a distribution shall be the amount of money, and the fair market value of property determined as of the date of the distribution, received, reduced, but not below zero, by the amount of any liability of the corporation assumed by the stockholder in connection with the distribution and the amount of any liability to which the property received by the stockholder is subject immediately before, and immediately after, the distribution.

(c) The portion of a distribution that is paid or credited out of earnings and profits shall be determined in accordance with the following:

(1) Every distribution shall be deemed to be made out of earnings and profits to the extent thereof and from the most recently accumulated earnings and profits.

(2) If the current taxable year's earnings and profits equal or exceed the amount of distributions made on stock during the year, each distribution is wholly a dividend paid out of current earnings and profits.

(3) If the amount of distributions made on stock during the current taxable year exceeds the year's earnings and profits, the following apply:

(i) The year's earnings and profits shall be allocated proportionately to each distribution.

(ii) The remaining portion of each distribution is a dividend only to the extent of accumulated earnings and profits at the time the distribution is made.

(4) Income or gain that is taxable under, as well as income or gain that is exempt from, or not taxable under, this article shall be included in computing earnings and profits.

**§ 108.2. Distributions by business trusts.**

A distribution paid or credited to a taxpayer in its capacity as an interest holder by a business trust is treated in the same manner as a distribution by a corporation to its stockholders.

**§ 108.3. Distributions by investment companies.**

(a) *Investment company.* For purposes of this section, the term “investment company” includes the following:

(1) A regulated investment company, as defined in 26 U.S.C.A. § 851 (relating to the definition of regulated investment company).

(2) An incorporated or unincorporated enterprise registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80b-21).

(3) An investment company which has no or only limited powers under its governing instruments to vary its investments.

(b) *Dividends and other distributions.* Except as provided in subsection (c), distributions paid or credited to their shareholders with respect to their shares by investment companies are taxed in the same manner as distributions by corporations to their stockholders.

(c) *Pennsylvania exempt-interest dividends.* If, for any taxable year beginning on or after January 1, 1993, the total amount of the distributions that, but for this subsection, would otherwise constitute taxable dividends exceeds the accumulated income account of the investment company, the excess shall constitute excludible Pennsylvania exempt-interest dividends and shall be allocated proportionately to each distribution.

(d) *Accumulated income account.* Each investment company shall establish and maintain an accumulated income account and shall cumulatively adjust the account at the close of each taxable year beginning on or after January 1, 1993, as follows:

(1) By increasing the account for the sum of the following:

(i) The amount of the investment company’s current earnings and profits determined without taking into account the following:

(A) The investment company’s capital gain net income, as defined in 26 U.S.C.A. § 1222(9) (relating to other terms relating to capital gains and losses), if any.

(B) Items of interest derived by the investment company from an obligation that is statutorily free from taxation by the Commonwealth.

(C) Items of Pennsylvania exempt-interest dividend paid or credited to the investment company as a shareholder by another investment company.

(D) A distributive share of an item described in clause (B) or (C).

(E) That proportion of an amount otherwise allowable as a deduction in computing the earnings and profits which the total of the items described in clauses (B)—(D) bears to the sum of the total and other gross income of the investment company—exclusive of its capital gain net income.

(ii) The amount of the investment company's capital gain net income.

(iii) The aggregate amount, if any, of Pennsylvania exempt-interest dividend distributions paid or credited to shareholders for the immediately preceding taxable year.

(2) By reducing, but not below zero, the account for the aggregate amount, if any, of distributions paid or credited out of earnings and profits for the immediately preceding taxable year.

(e) *Special rule.*

(1) For purposes of subsection (d), the amount of an investment company's accumulated income account as of the beginning of its 1993 taxable year, the aggregate amount of Pennsylvania exempt-interest dividend distributions paid or credited to shareholders for the 1992 taxable year, and the aggregate amount of distributions paid or credited out of earnings and profits for the 1992 taxable year shall be deemed to be zero, if, at the close of its 1992 taxable year, one of the following applies:

(i) The investment company was unincorporated and had no power under its governing instruments to vary its investments except to eliminate unsafe investments and investments not consistent with the preservation of the capital or tax status of the investments of the fund, honor redemption orders, meet anticipated redemption requirements, negate gains from discount purchases, maintain a constant net asset value per unit under, and in compliance with, an order or rule of the United States Securities and Exchange Commission, or defray normal administrative expenses.

(ii) The investment company was a partnership.

(iii) The investment company had no undistributed earnings and profits.

(2) Otherwise, the amount of an investment company's accumulated income account as of the beginning of its 1993 taxable year shall be the amount that would have been standing to the account at the close of the investment company's 1992 taxable year had the investment company always maintained such an account in accordance with this section.

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