

**CHAPTER 9. REVENUE PRONOUNCEMENTS—
STATEMENTS OF POLICY**

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Source

The provisions of this Chapter 9 adopted September 20, 1991, effective September 21, 1991, 21 Pa.B. 4288, unless otherwise noted.

§ 9.1. [Reserved].

Source

The provisions of this § 9.1 adopted September 20, 1991, effective September 21, 1991, 21 Pa.B. 4288; reserved October 8, 1993, effective October 9, 1993, 23 Pa.B. 4795. Immediately preceding text appears at serial pages (181427) to (181428).

§ 9.2. Sales and use tax changes.

The act of August 4, 1991 (P. L. 97, No. 22) (act) contains numerous changes to Sales and Use Tax law found in Article II of the TRC (72 P. S. §§ 7201—7282). The changes are effective October 1, 1991. These changes also apply to Philadelphia Local Sales Tax. The major changes are:

- (1) *Services.*
 - (i) The following services are taxable:
 - (A) Lobbying services.
 - (B) Adjustment services, collection services or credit reporting services.
 - (C) Secretarial or editing services.
 - (D) Disinfecting or pest control services, building maintenance or cleaning services.
 - (E) Employment agency services, help supply services or other personnel supply services.

(F) Computer programming or other computer related services, including the provision of:

- (I) Computer integrated systems design.
- (II) Computer processing.
- (III) Data preparation or processing services.
- (IV) Information retrievable services or computer facilities management services.
- (G) Lawn care services.
- (H) Storage services.

(ii) Vendors of the services listed in subparagraph (i) are required to collect tax on the purchase price charged for the services. The users of the services are required to pay use tax upon the use of the services if the sales tax had not been paid to the vendor. A person rendering these services in this Commonwealth is considered to “maintain a place of business” in this Commonwealth and shall collect the tax and remit it directly to the Department.

(2) *Pay television.* Pay television except for “minimum pay television” is taxable. This includes anything charged to a customer for a service other than minimum pay television service. For example, if a cable television customer purchases basic service and in addition purchases a “pay” channel, tax is owed on the price charged for the “pay” channel. Installation and repair service for pay television with the exception of minimum pay television also is subject to tax.

(3) *Telephone service.* Sales tax is imposed on interstate and intrastate telephone services with the exception of residential subscriber line charges and basic local residential telephone service. Interstate service is taxable if the interstate call either originates or terminates in this Commonwealth and is billed to a service address in this Commonwealth.

(4) *Household paper goods and soaps.* Household supplies purchased for residential consumption, including soaps, detergents, cleaning and polishing preparations, paper goods, household wrapping supplies and items of a similar nature are taxable with the exception of disposable diapers, incontinence products, toilet paper, sanitary napkins, tampons or similar items used for feminine hygiene.

(5) *Food sales.* The list of facilities which are considered eating places has been expanded to include facilities which were not specifically listed previously. Purchases of food or beverages from these facilities are subject to tax. For example, the purchase of a pizza from a pizzeria now is subject to tax regardless of whether the pizza is picked up at the pizzeria or delivered to the purchaser.

(6) *Tangible personal property.* To make the TRC internally consistent “tangible” was added to the clause “personal property.” The most important aspect of this change is that only those producing “tangible personal property” are eligible for the manufacturing exemption.

(7) *Remanufacturing.* The act provides that the term “manufacturing” includes the remanufacturing for wholesale distribution by a remanufacturer of motor vehicle parts from used parts acquired in bulk by the remanufacturer using an assembly line process.

(8) *Baking and food processing.* The definition of manufacturing has been amended by excluding the cooking, freezing or baking of food products. The definition of “processing” has been amended to include the baking of food products when the products are packaged in sealed containers for wholesale distribution. Therefore, those engaged in the preparation of food for retail sales are not eligible for the manufacturing or processing exemption. Only those engaged in the business of processing food and packaging the food in sealed containers for wholesale distribution are eligible for the processing exemption. For example, a pizzeria engaged in the retail sale of pizzas and other similar baked items for retail sale is no longer granted the manufacturing or processing exemption and is required to pay tax upon property and services used in the operation.

(9) *Ship supplies.* The exemption for the purchase of property or services to be used in ship cleaning and maintenance, or ships’ fuels, supplies, equipment or stores now only applies to vessels “designed for commercial use of registered tonnage of 50 tons or more.”

(10) *Refunds.* The payment of sales tax refunds issued in conjunction with a contract with a charitable, volunteer firemens, nonprofit educational, religious or governmental organization shall be paid to that organization.

(11) *Licenses.* An applicant for a sales tax license shall have filed all State tax reports and paid all State taxes not subject to an appeal or an authorized deferred payment plan. A licensee will be required to file for a renewal of the sales tax license on or before January 31, 1992. Thereafter, a sales tax license shall be valid for not more than 5 years, and the Department will establish a staggered renewal system. If a licensee fails to file State tax reports or pay any State taxes, the Department may revoke the licensee’s sales tax license. The fine for making taxable sales without a license has been increased from not more than \$300 to not more than \$1,000.

(12) *Crimes.* The wilfill failure to remit returns timely or timely pay tax is a criminal offense.

Source

The provisions of this § 9.2 adopted September 20, 1991, effective September 21, 1991, 21 Pa.B. 4288.

§ 9.3. Additional services which are subject to tax.

(a) Beginning October 1, 1991, the services described in this section are subject to State and local sales tax. If the service was purchased prior to October 1, 1991, that portion of the contract relating to the value of the contract after Octo-

ber 1, 1991, is subject to tax. The manufacturing, mining, processing, farming, dairying and public utility exemptions do not apply to the purchase or use of these services. These services are presumed to be subject to Pennsylvania sales tax if the delivery or benefit of the service occurs in this Commonwealth. Use tax is due if the purchaser of the services does not pay tax to the vendor.

(1) *Lobbying services.* Consideration paid to a “lobbyist” for “lobbying” as those terms are defined in the Lobbying Registration and Regulation Act (46 P. S. §§ 148.1—148.7b).

(2) *Adjustment, collection and credit reporting services.* Consideration paid or retained for the adjustment of accounts, the collection of accounts receivable, credit investigations or the issuing of mercantile and consumer credit reports. Charges for providing credit card and collection services by a central agency, debt counseling or adjustment services for individuals or the billing or collection of an account by local exchange telephone companies are not subject to tax.

(3) *Secretarial and editing services.* Charges for secretarial and editing services. Examples include: editing, letter writing, word processing, proofreading, filing, sorting, resume writing, typing, answering services and other secretarial duties. Charges for court reporting or stenographic services are not subject to tax.

(4) *Employment agencies services.* Charges for providing employment services to an employer or an employe of the type performed by an employment agency, executive placing services or labor employment contractor. Charges by theatrical employment agencies, motion picture casting bureaus and services relating to the hiring of farm labor are not subject to tax.

(5) *Help supply services.* Charges for providing temporary or continuing help services under a contract in which the helper is supervised by the person or business needing the help and the helper is on the payroll of the person or agency providing the help. Examples include: labor and manpower pools, employe leasing services, office help supply services, temporary help services, usher services, escort services, bartending services, modeling services and fashion-show model supply services. Charges for services relating to the hiring of farm labor are not subject to tax.

(6) *Computer program services.* Charges for providing computer programming or computer software design and analysis. Examples include: services of the type provided by or through computer programming services, customer computer programming services or assistance services, computer code authors and free-lance computer software writers, software upgrading or modification, custom software programming, custom computer programs or system software developments, custom computer software systems analysis and design and custom application software programming.

(7) *Computer integrated systems design services.*

(i) Charges for developing or modifying computer software and packaging or bundling the software with computer hardware (computer and computer peripheral equipment) to create and market an integrated system for specific application, if the person rendering this service performs the following when providing the service:

(A) The development or modification of the computer software.

(B) The marketing of computer hardware.

(C) Is involved in all phases of systems development from design through installation.

(ii) Examples include: computer systems integration, computer network systems integrations, local area network (LAN) systems integration, office automation or systems analysis, computer systems value-added resellers, computer systems turnkey vendors, computer-aided design (CAD) systems services, computer-aided engineering (CAE) systems services or computer-aided manufacturing (CAM) system services.

(8) *Computer processing, data preparation or processing services.* Charges for computer processing, data preparation or processing services. Examples include: providing processing and preparation of reports from data supplied by the customer or a specialized service, such as data entry services, and the like, making data processing equipment available on an hourly, time-sharing or other basis; computer time-sharing and leasing or rental of computer time; computer tabulating and calculating services; data entry, processing or verification services; key-punch services and optical scanning data services.

(9) *Information retrieval services.* Charges for providing computer online information retrieval services. Examples include: data base information retrieval services; online information retrieval services, and the like.

(10) *Computer facilities management services.* Charges for providing onsite computer facilities management services, controlling the operation of data processing facilities and similar services.

(11) *Other computer-related services.* Charges for supplying computer-related services not described or included in paragraphs (6)—(10). Examples include: computer consulting services; software documentation services; disk, diskette or tape conversion; disk, diskette or tape recertification services; computer hardware and software requirement analysis services; testing and debugging services; software documentation services; software installation services; software training services; reformatting editing services and data recovery services.

(b) Services described in this subsection are presumed to be subject to sales tax if the service is provided at a location or service address within this Commonwealth. Except for storage services, the following are presumed to be subject to use tax if the applicable sales tax was not charged at the time of the purchase of the service.

(1) *Disinfecting and pest control services.* Charges for disinfecting, termite control, insect control, rodent control or other pest control services. Examples include: deodorizing rest rooms, sanitizing washrooms, cleaning rest rooms, exterminating or fumigating services.

(2) *Building maintenance and cleaning services.* Charges for providing maintenance and cleaning services. Examples include: janitorial, maid or housekeeping service; office or interior building cleaning or maintenance service; window cleaning service; floor waxing service; lighting maintenance service, such as bulb replacement; furnace and air conditioning filter replacement; chimney and spouting cleaning service; acoustical tile cleaning service; venetian blind cleaning; building siding cleaning; cleaning and maintenance of telephone booths and cleaning and degreasing of service stations. The term “building maintenance or cleaning services” does not include repairs performed on buildings and other structures.

(3) *Lawn care services.* Charges for lawn upkeep. Examples include: fertilization, weed control, lawn mowing, shrubbery trimming, lawn thatching, leaf raking and other lawn treatment services. Charges for landscaping, sodding and grass seeding of new lawns is not subject to tax.

(4) *Storage service.* Charges for the storage of corporeal personal property within a building or similar structure, such as a storage shed, warehouse, truck or airport terminal, freezer locker, and the like. The term “corporeal personal property” includes goods, wares or merchandise; furniture and household goods; vehicles; furs; and farm products. Charges for the storage of personal property outside of a building or similar structure are not subject to tax. The term “storage” includes the storage of vehicles in a building. The term does not include parking in a parking garage.

(5) *Pay television.* Charges for cable television, community antenna television and other distribution of television, video or radio services, with or without the use of wires, to subscribers or paying customers in excess of charges for the minimum or basic service. Charges relating to the installation or repair of the pay television services are subject to tax. Charges for the minimum or basic service as well as its installation and repair are not subject to tax.

Source

The provisions of this § 9.3 adopted September 20, 1991, effective September 21, 1991, 21 Pa.B. 4290.

§ 9.4. [Reserved].

Source

The provisions of this § 9.4 adopted September 20, 1991, effective September 21, 1991, 21 Pa.B. 4291; amended July 2, 1993, effective July 3, 1993, 23 Pa.B. 3133; amended November 17, 1995, effective November 18, 1995, 25 Pa.B. 4979; reserved October 30, 1998, effective October 31, 1998, 28 Pa.B. 5488. Immediately preceding text appears at serial pages (203018) to (203023).

§ 9.5. [Reserved].**Source**

The provisions of this § 9.5 adopted October 4, 1991, effective October 5, 1991, 21 Pa.B. 4646; reserved January 8, 1993, effective January 9, 1993, 23 Pa.B. 189. Immediately preceding text appears at serial pages (163094) and (165677).

§ 9.6. [Reserved].**Source**

The provisions of this § 9.6 adopted October 4, 1991, effective October 5, 1991, 21 Pa.B. 4646; amended January 3, 1992, effective January 4, 1992, apply retroactively to January 1, 1992, 22 Pa.B. 46; reserved January 8, 1993, effective January 9, 1993, 23 Pa.B. 189. Immediately preceding text appears at serial pages (165677) to (165679).

§ 9.7. [Reserved].**Source**

The provisions of this § 9.7 adopted October 4, 1991, effective October 5, 1991, 21 Pa.B. 4647; amended January 3, 1992, effective January 4, 1992, apply retroactively to January 1, 1992, 22 Pa.B. 47; reserved January 8, 1993, effective January 9, 1993, 23 Pa.B. 178. Immediately preceding text appears at serial pages (165679) to (165683).

§ 9.8. [Reserved].**Source**

The provisions of this § 9.8 adopted October 4, 1991, effective October 5, 1991, 21 Pa.B. 4649; amended January 3, 1992, effective January 4, 1992, apply retroactively to January 1, 1992, 22 Pa.B. 48; reserved October 22, 1993, effective October 23, 1993, 23 Pa.B. 5037. Immediately preceding text appears at serial pages (176761) to (176764).

§ 9.9. [Reserved].**Source**

The provisions of this § 9.9 adopted October 4, 1991, effective October 5, 1991, 21 Pa.B. 4650; amended January 3, 1992, effective January 4, 1992, apply retroactively to January 1, 1992, 22 Pa.B. 48; reserved January 8, 1993, effective January 9, 1993, 23 Pa.B. 186. Immediately preceding text appears at serial pages (165686) and (168285).

§ 9.10. [Reserved].**Source**

The provisions of this § 9.10 adopted October 4, 1991, effective October 5, 1991, 21 Pa.B. 4651; reserved January 8, 1993, effective January 9, 1993, 23 Pa.B. 183. Immediately preceding text appears at serial page (168286).

§ 9.11. [Reserved].**Source**

The provisions of this § 9.11 adopted March 27, 1992, effective upon publication, but applies retroactively for tax years beginning on or after January 1, 1992, 22 Pa.B. 1477; reserved December 4, 2020, effective December 5, 2020, and is applicable to tax years beginning on or after January 1, 2021, 50 Pa.B. 6905. Immediately preceding text appears at serial pages (249836) and (203025) to (203027).

§ 9.12. Foreign dividends effect of *Kraft* decision.

(a) The act of August 4, 1991 (P. L. 97, No. 22), effective for tax years beginning on or after January 1, 1991, amended the Corporate Net Income (CNI) Tax by repealing the total exclusion of all corporate dividends from taxable income and instead following the dividend exclusion provided under the IRC. In addition, the foreign dividend gross-up was specifically allowed as a deduction, while no foreign tax credit was provided.

(b) In *Kraft General Foods, Inc. v. Iowa Department of Revenue*, 112 S.Ct. 2365 (1992), decided June 18, 1992, the United States Supreme Court struck down an Iowa statute imposed on a corporation's net income, substantially similar in all material respects to the amended Pennsylvania CNI Tax, on the ground that it facially discriminated against foreign commerce in violation of the Foreign Commerce Clause. The Department has concluded that the *Kraft* decision is equally applicable to the CNI Tax to the extent that adoption of the Federal tax base results in a facial discrimination against foreign commerce by not allowing any deduction for certain foreign dividends.

(c) To administer the CNI Tax in a constitutional manner, an additional deduction from the CNI Tax base for foreign dividends is required. *See*—for example—*Commonwealth v. Curtis Publishing Co.*, 363 Pa. 299, 69 A.2d 410 (1949). Until the General Assembly amends the affected provision of the CNI statute, the Department finds that by allowing a deduction for foreign dividends in the following manner, discrimination is remedied and the original intent of the General Assembly to tax at least a portion of Federally-taxable dividends is achieved.

(1) The Department will allow foreign dividends reported on lines 13 and 14 of the Federal return Schedule C an additional deduction equal to one of the following:

- (i) Seventy percent, if the dividends are from a less than 20%-owned foreign corporation.
- (ii) Eighty percent, if the dividends are from a 20%-or-more-owned foreign corporation.
- (iii) One hundred percent, if the dividends are from a foreign corporation that meets the "80% voting and value test" of section 1504(a)(2) of the IRC (26 U.S.C.A. § 1504(a)(2)) and would otherwise qualify for a 100% deduction under section 243(a)(3) of the IRC (26 U.S.C.A. § 243(a)(3)) if the foreign corporation were a domestic corporation.

(2) The treatment of foreign dividends set forth in paragraph (1) follows the Federal exemption of domestic dividends.

(d) A schedule, in the following form, shall be used to compute the additional deductions for foreign dividends and the total dividend deduction to be claimed on original and amended CNI returns for 1991 and thereafter.

[Next page is 9-17].

PA DIVIDEND DEDUCTION SCHEDULE

1. Federal Schedule C, line 20, Total deductions	\$ _____
2. Federal Schedule C, Line 15, Foreign dividend gross-up (section 78)	\$ _____
3. Dividends from less-than-20%-owned foreign corporations listed on lines 13 and 14 of Federal Schedule C-----× 70%	\$ _____
4. Dividends from 20%-or-more-owned foreign corporations listed on lines 13 and 14 of Federal Schedule C-----× 80%	\$ _____
5. Dividends listed on lines 13 and 14 of Federal Schedule C from foreign corporations that meet the “80-percent voting and value test” of section 1504(a)(2) of the IRC and would otherwise qualify for a 100% deduction under section 243(a)(3) of the IRC if they were a domestic corporation. Do not list any amounts included in item 4.	\$ _____
Total PA dividend deduction—Add lines 1, 2, 3, 4, 5 (Enter on RCT-101, page 3, section C, line 2a)	\$ _____

Source

The provisions of this § 9.12 adopted October 2, 1992, effective October 3, 1992, 22 Pa.B. 4897.

§ 9.13. Pennsylvania S Corporation election.

(a) *Generally.* The shareholders of a corporation which qualifies as a “small corporation” under subsection (b) may elect to be taxed as a Pennsylvania S Corporation. The shareholders’ election of Pennsylvania S Corporation status is valid only if all shareholders of record on the day the election is filed sign a consent to the election. If an election is made, each shareholder will be subject to Pennsylvania Personal Income Tax on each shareholder’s pro rata share of the S Corporation income, whether distributed or not. For taxable years beginning on or after January 1, 1998, the taxable income of a Pennsylvania S Corporation for corporate net income tax purposes is the corporation’s net recognized built-in gain as determined for Federal income tax purposes under section 1374(d)(2) of the IRC (26 U.S.C.A. § 1374(d)(2)).

(b) *Pennsylvania S Corporation election.* A Pennsylvania S Corporation election may be made by the shareholders of any small corporation that is subject to the Pennsylvania corporate net income tax or that owns directly, or through a wholly owned subsidiary, 100% of the stock of a qualified Subchapter S subsidiary that is subject to the Pennsylvania corporate net income tax. A corporation is a small corporation if it meets all of the following requirements:

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

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

(c) *Form and method of election.*

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

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

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

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

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

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

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

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

(5) For purposes of implementing the Pennsylvania S Corporation amendments of the act of May 12, 1999 (P. L. 26, No. 4) that are retroactive in effect to taxable years beginning on or after January 1, 1999, a Pennsylvania S Cor-

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

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

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

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

(e) *Newly formed and foreign corporations.*

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

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

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

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

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

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

(2) A Pennsylvania S Corporation election shall be terminated for failure to meet the requirements of subsection (b). The termination applies retroactively to the beginning of the corporation's taxable year.

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

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

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

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

year beginning January 1, 1999, TERM, Inc. shall elect S Corporation status by September 15, 1999.

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

Example 5: FED TERM 2, Inc. is a calendar year taxpayer that has a valid Pennsylvania S Corporation election in effect. The Federal S Corporation election of FED TERM 2, Inc. is terminated effective for the taxable year beginning January 1, 1997. The Internal Revenue Service determines that the termination was inadvertent and reinstates the Federal S Corporation election of FED TERM 2, Inc. effective for the taxable year beginning January 1, 1999. The Pennsylvania S Corporation election of FED TERM 2, Inc. is terminated effective for the taxable year beginning January 1, 1997. FED TERM 2, Inc. will not be taxed as a Pennsylvania S Corporation for taxable years beginning on or after January 1, 1997. FED TERM 2, Inc. is not eligible to be taxed as a Pennsylvania S Corporation until the taxable year beginning January 1, 1999. FED TERM 2, Inc. shall file a new Pennsylvania S Corporation election to be taxed as a Pennsylvania S Corporation for taxable years beginning on or after January 1, 1999.

(g) *Qualified Subchapter S subsidiaries.*

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

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

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

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

Source

The provisions of this § 9.13 adopted October 21, 1994, effective October 22, 1994, 24 Pa.B. 5331; amended December 23, 1995, effective December 24, 1995, 24 Pa.B. 6451; amended July 3, 1997, effective retroactively to taxable years beginning on or after January 1, 1997, 27 Pa.B. 3237; amended August 20, 1999, effective August 21, 1999, 29 Pa.B. 4459. Immediately preceding text appears at serial pages (232203) to (232208) and (249837).

§ 9.14. [Reserved].

Source

The provisions of this § 9.14 adopted October 20, 1995, effective October 21, 1995, 25 Pa.B. 4534; reserved October 30, 1998, effective October 31, 1998, 28 Pa.B. 5492. Immediately preceding text appears at serial page (205321).

§ 9.15. Tax amnesty administration and implementation issues.

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

Amnesty period—The time period of 90 consecutive days beginning on Friday, October 13, 1995, and ending on Wednesday, January 10, 1996.

Eligible liability—An eligible tax liability, eligible interest liability and an eligible penalty liability.

Program—Tax Amnesty Program.

(b) *Nonparticipation penalty.*

(1) *Scope.* The nonparticipation penalty applies to those eligible taxpayers that fail to participate in the Program. Section 6.21(b) (relating to nonparticipation penalty) addresses three general circumstances under which the Department will not impose the nonparticipation penalty. However, many specific questions have been received concerning what effect, if any, the timing of assessments or appeals would have on the application of the nonparticipation penalty. Paragraphs (2)—(6), inclusive, address concerns taxpayers have raised.

(2) *Ineligible taxpayers.* The nonparticipation penalty will not be imposed upon a taxpayer that is not eligible to participate in the Program under § 6.3(b) (relating to eligible taxpayers).

Example: Prior to the amnesty period, Taxpayer became the subject of a criminal investigation for failing to file and pay sales and use tax. Taxpayer is not eligible to participate in the Program and, thus, the nonparticipation penalty will not apply to this taxpayer.

(3) *Corporation tax accounts.* Payment of eligible liabilities may be made by the use of any available credit that a taxpayer may have in its corporation

tax account. The Department will give a taxpayer the opportunity to request that an eligible liability be offset by such a credit before the nonparticipation penalty is imposed.

Example: Taxpayer has a settled 1990 Capital Stock Tax credit of \$10,000 and an unpaid settled 1991 Capital Stock Tax liability of \$600. Taxpayer may use its settled credit to pay its 1991 Capital Stock Tax liability under the Program and avoid the imposition of the nonparticipation penalty.

(4) *Effect of successful appeal of eligible liability.* An administrative or judicial decision that reduces or refunds an eligible liability that was not the subject of a valid appeal under paragraph (6) or was not paid on or before the last day of the amnesty period does not automatically relieve the taxpayer of liability for a nonparticipation penalty. A separate petition to appeal the imposition of the nonparticipation penalty shall be filed.

Example: Taxpayer does not pay an eligible liability during the amnesty period. The nonparticipation penalty is imposed. Subsequently, Taxpayer pays the eligible liability and files a Petition for Refund for the eligible liability. The refund of the eligible liability is granted. The nonparticipation penalty, however, will not be abated automatically.

(5) *Post amnesty period increase in eligible liability.* Except in cases where there is evidence of fraud or the appeal is not valid under paragraph (6), the nonparticipation penalty will not be imposed upon a taxpayer in any of the following situations:

(i) After the amnesty period, the taxpayer receives an assessment, a determination of additional tax, a settlement notice or resettlement notice establishing an eligible liability, based on an audit, or otherwise, and one of the following occurs:

(A) The tax return or tax report for the eligible liability was timely filed and payment of the reported eligible liability was made on or before January 10, 1996.

(B) The eligible liability was timely reported on a tax amnesty return and payment was timely made. See §§ 6.1, 6.5 and 6.6 (relating to definitions; tax amnesty return; and payment).

(ii) After the amnesty period, the taxpayer receives a Federal Report of Change that increases its taxable income and, consequently, its liability for an eligible tax. See section 406 of the TRC (72 P. S. § 7406).

(iii) During the amnesty period, the taxpayer receives an assessment, determination of additional tax due, a settlement notice, or a resettlement notice for an eligible liability, but is not required to file an appeal of the assessment, determination, settlement or resettlement until after the amnesty period, if one of the following conditions are met:

(A) The taxpayer subsequently files a timely and valid administrative or judicial appeal for that particular eligible liability.

(B) The taxpayer subsequently pays the eligible liability on or before the date when an appeal of the assessment, determination, settlement notice or resettlement notice is required to be filed.

(6) *Timely and valid appeals.*

(i) The nonparticipation penalty will not be imposed upon a taxpayer that on or before the last day of the amnesty period, files a timely and valid administrative or judicial appeal contesting an eligible liability. An appeal is not valid if the Department determines that the appeal is filed in bad faith. An appeal is filed in bad faith when, the appeal has no basis in law or fact, or was undertaken solely to delay the collection of a tax. An appeal is presumptively in bad faith if it is barred by res judicata or time, or was filed with a tribunal that did not have proper jurisdiction to hear the appeal.

(ii) The nonparticipation penalty will not be imposed upon a taxpayer in either of the following situations:

(A) Before the end of the amnesty period, the taxpayer receives an adverse decision in a valid administrative or judicial appeal of an eligible liability, but is not required to file a further appeal of the adverse decision until after the amnesty period.

(B) On or before the last day of the amnesty period, the taxpayer files a timely and valid administrative or judicial appeal contesting an eligible liability and subsequently either withdraws the appeal or does not further appeal an adverse decision.

(c) *Prospective continued compliance.* The continued compliance requirement as provided in § 6.10 (relating to continued compliance requirement) is intended to apply to those taxes that are to be reported, filed and paid after the amnesty period. Taxes that are to be filed, reported and paid prior to the last day of the amnesty period would not be considered in determining whether a taxpayer that had an eligible penalty liability abated under the Program was in continuing compliance so as to avoid a reinstatement of the eligible penalty liability.

(d) *Report all eligible liabilities.* To participate in the Program, a taxpayer shall report on a tax amnesty return and make payment in accordance therewith all eligible liabilities that are not the subject of a valid and timely administrative or judicial appeal. See § 6.4 (relating to participation requirements) and §§ 6.5 and 6.6.

Example: Taxpayer has an eligible liability for corporate tax as well as an eligible liability for sales and use tax. Taxpayer has filed a valid and timely appeal of the eligible liability for corporate tax on or before the end of the amnesty period. Taxpayer may participate in the Program with respect to the eligible liability for sales and use tax.

Example: Taxpayer has an eligible liability for corporate tax and an eligible liability for sales and use tax. Taxpayer has not filed an appeal for either eligible liability on or before the end of the amnesty period. Taxpayer may not participate in the Program unless it participates with respect to both eligible liabilities.

(e) *Partial withdrawal of appeals.* When a taxpayer has been assessed both eligible and noneligible liabilities, because the assessment relates to periods both before and after December 31, 1993, the taxpayer may participate in the Program with respect to the eligible liability and still appeal the assessment of the noneligible liability. Except as provided in subsection (d), a taxpayer may not participate in the Program by paying an eligible liability associated with less than all of the issues in an assessment while continuing an appeal on any other issue in the assessment. In this latter case, the appeal must either be withdrawn in its entirety before an eligible penalty liability can be abated under the Program or continued in its entirety.

(f) *Interest on additions to tax.* An addition to tax for underpayment of estimated tax is defined as an eligible penalty liability under § 6.1 that the Department may abate under the Program.

Example: Taxpayer has an outstanding liability for 1992 Capital Stock Tax and an outstanding \$1,000 in addition to tax for underpayment of Estimated 1992 Capital Stock Tax on which interest has been settled in the amount of \$100. Taxpayer elects to participate in the Program and pays the 1992 Capital Stock Tax liability. The \$1,000 addition to tax will be abated and the \$100 interest will not be due because the associated eligible penalty liability, the \$1,000 addition to tax, was abated.

(g) *Refund based on Federal Report of Change.* A resettlement under section 406(b) of the TRC (72 P. S. § 7406(b)) based on a Federal Report of Change that decreases an eligible liability paid by a taxpayer participating in the Program during the amnesty period will be a basis for allowing the taxpayer a refund or a credit.

(h) *Amended returns.* To participate in the amnesty program, a taxpayer shall file amended tax returns or amended tax reports for all years in which the taxpayer underreported eligible liability. An amended tax return or amended tax report that reduces an eligible liability will not be accepted under the Program.

Source

The provisions of this § 9.15 adopted December 8, 1995, effective December 9, 1995, 25 Pa.B. 5620.

§ 9.16. Effect of Federal Small Business Job Protection Act.

(a) *Internal Revenue Code Subchapter S revisions.* The United States Congress has enacted the Small Business Job Protection Act of 1996 (Federal Act) (Pub.L. No. 104-188, 110 Stat. 1755 (1996)) to be effective for tax years beginning after December 31, 1996. This act amends Subchapter S of the IRC by revising the manner in which Federal S corporations may organize. Among other things, these revisions affect the following areas:

- (1) The number of shareholders.
- (2) The types of shareholders.
- (3) Affiliations with other corporations.
- (4) Invalid elections.
- (5) Reelections within 5 years after termination.
- (6) Interim closing of the books upon termination of a shareholder's interest.
- (7) Basis adjustments for distributions occurring in loss years.

(b) *Pennsylvania S corporation tax treatment.* The TRC authorizes the shareholders of a "small corporation" to elect not to be subject to corporate net income tax. Section 301(s.2) of the TRC (72 P. S. § 7301(s.2)) defines a "small corporation" as "any corporation which has a valid election in effect under subchapter S of Chapter 1 of the Internal Revenue Code of 1954, as amended as of January 1, 1983, and which does not have passive investment income in excess of twenty-five percent of its gross receipts."

(c) *Effect of Internal Revenue Code Subchapter S revisions on the TRC.* Section 1937 of Title 1 of the *Pennsylvania Consolidated Statutes* (relating to references to statutes and regulations) provides that a reference to a specific statute includes the statute with all amendments, unless the specific language of the statute clearly includes only the statute as in force as of a specific date. The definition of "small corporation" contained in section 301(s.2) of the TRC specifically references "subchapter S of Chapter 1 of the IRC, as amended as of January 1,

1983.” This specific statutory reference locks in the IRC as it existed on January 1, 1983. Subsequent Federal amendments are not applicable to the TRC definition of “small corporation.” Therefore, the Federal Act has no impact on the manner in which Pennsylvania S corporations may organize. Corporations that do not qualify for Federal Subchapter S status under the IRC, as amended as of January 1, 1983, are not eligible to elect Pennsylvania S corporation tax treatment.

(d) *Answers to the most frequently asked questions.* Since the enactment of the Federal Act, the Department has received numerous inquiries concerning the impact of the Federal Act on Pennsylvania S corporations. This subsection provides the Department’s response to the most frequently asked questions.

(1) *Effect on Pennsylvania S corporations.*

(i) *Question:* Does the enactment of the Federal Act, effective for tax years beginning after December 31, 1996, change the corporations that are eligible to elect Pennsylvania S corporation tax treatment?

(ii) *Answer:* No. The corporations that are eligible to elect Pennsylvania S corporation tax treatment are not changed by the enactment of the Federal Act. Only Federal S corporations that would qualify to elect Federal S corporation tax treatment under the IRC, as amended as of January 1, 1983, are eligible to elect Pennsylvania S corporation tax treatment.

(2) *Limitations on number of shareholders.*

(i) *Question:* Will a valid Pennsylvania S corporation lose its Pennsylvania S status if it expands to 75 shareholders as permitted by the Federal Act?

(ii) *Answer:* Yes. Pennsylvania is locked into the IRC as of January 1, 1983. The IRC as of that date does not permit a Federal S corporation to have 75 shareholders. Therefore, a Pennsylvania S corporation would cease to be a small corporation eligible for Pennsylvania S corporation tax treatment and its Pennsylvania S election would be terminated if it expands to 75 shareholders. The corporation would not be eligible to elect Pennsylvania S status for 5 taxable years.

(3) *Ownership interests.*

(i) *Affiliated groups.* The Federal Act permits a Federal S corporation to be a member of an affiliated group as determined under section 1504 of the IRC (generally, an 80% or greater common interest).

(A) *Question:* May a Pennsylvania S corporation be a member of an affiliated group? For example, may it hold an 80% or greater interest in another corporation?

(B) *Answer:* No. Pennsylvania is locked into the IRC as of January 1, 1983. The IRC as of that date does not permit a Federal S corporation to be a member of an affiliated group as determined under section 1504 of the IRC (generally, an 80% or greater common interest). Therefore, a corporation is not eligible for Pennsylvania S corporation tax treatment if it is

part of an affiliated group as determined by section 1504 of the IRC. This means that a Pennsylvania S corporation may not own 80% or more of the stock of another corporation.

(ii) *Electing small business trusts.* The Federal Act permits a Federal S corporation to have an electing small business trust (IRC § 1361(e)) as a shareholder.

(A) *Question:* May a Pennsylvania S corporation have an electing small business trust as a shareholder?

(B) *Answer:* No. Pennsylvania is locked into the IRC as of January 1, 1983. The IRC as of that date does not permit a Federal S corporation to have an electing small business trust as a shareholder. Therefore, a corporation is not eligible for Pennsylvania S corporation tax treatment if it has a shareholder that is an electing small business trust.

(iii) *Qualified pension, profit-sharing and stock bonus plans; and IRC § 501(c)(3) exempt organizations.* The Federal Act permits a Federal S corporation to have shareholders that are qualified pension, profit-sharing and stock bonus plans under section 401 of the IRC or exempt organizations under section 501(c)(3) of the IRC.

(A) *Question:* May a Pennsylvania S corporation have a shareholder that is a qualified pension, profit-sharing and stock bonus plan under section 401 of the IRC or an exempt organization under section 501(c)(3) of the IRC?

(B) *Answer:* No. Pennsylvania is locked into the IRC as of January 1, 1983. The IRC as of that date does not permit a Federal S corporation to have a qualified pension, profit-sharing and stock bonus plan under section 401 of the IRC or an exempt organization under section 501(c)(3) of the IRC as a shareholder. Therefore, a corporation is not eligible for Pennsylvania S corporation tax treatment if it has any shareholder that is a qualified pension, profit-sharing and stock bonus plan under section 401 of the IRC or an exempt organization under section 501(c)(3) of the IRC.

(4) *Qualified Subchapter S subsidiaries.*

(i) *Flow through treatment.* The Federal Act permits a Federal S corporation to own a 100% ownership interest in another corporation known as a qualified Subchapter S subsidiary (IRC § 1361(b)(3)(B)(ii)). Upon election of the parent Federal S corporation, the two corporations shall be treated as a single entity and the assets, liabilities, income, deductions and credits of the wholly owned subsidiary shall be treated as belonging to the parent corporation.

(A) *Question:* May a Pennsylvania S corporation own a 100% ownership interest in another corporation and elect qualified Subchapter S subsidiary tax treatment?

(B) *Answer:* No. Pennsylvania is locked into the IRC as of January 1, 1983. The IRC as of that date does not permit a Federal S corporation to

own 80% or more of the ownership interest of another corporation. Therefore, a corporation is not eligible for Pennsylvania S corporation tax treatment if it has a qualified Subchapter S subsidiary.

(ii) *Taxation.*

(A) *Question:* How will Pennsylvania tax a Federal S corporation that creates a qualified Subchapter S subsidiary?

(B) *Answer:* Under the IRC as of January 1, 1983, neither the parent Federal S corporation nor the qualified Subchapter S subsidiary would be eligible for Pennsylvania S corporation tax treatment. Both corporations would be required to file Pennsylvania corporate tax reports on a separate company basis with pro forma Federal 1120's identifying the Federal corporate net income tax that would have been reported to the Federal government if they had filed separate returns as C corporations.

Source

The provisions of this § 9.16 adopted December 27, 1996, effective December 28, 1996, 26 Pa.B. 6190.

§ 9.17. Research and development tax credit implementation issues.

(a) The Research and Development Tax Credit Law (72 P. S. §§ ___) provides for a credit against a taxpayer's liabilities imposed under Article III, IV or VI of the TRC (72 P. S. §§ 7301—7361, 7401—7412 and 7601—7606). The credit is available to those businesses who incur expenses for qualified research and development activities performed within this Commonwealth. This statement of policy provides an explanation of eligible taxpayers.

(b) The Research and Development Tax Credit Law's definition of Pennsylvania base amount requires that a taxpayer have at least 1 taxable year preceding the taxable year in which the Pennsylvania qualified research and development expenses are incurred. A taxpayer may not apply for a research and development credit until the calendar year beginning after the close of the taxpayer's second taxable year in which Pennsylvania research and development expenses are incurred which are effectively connected with the conduct of a trade or business within this Commonwealth.

(c) A taxpayer with Pennsylvania qualified research and development expenses which are effectively connected with the conduct of a trade or business within this Commonwealth in at least 2 preceding taxable years, the second which ended on or before December 31, 1996, may apply for a research and development tax credit by September 15, 1997. The credit will be for those research and development expenses incurred in the taxpayer's taxable year that ended in 1996. A taxpayer shall apply for the credit on the form prescribed by the Department. The form is available by contacting the Bureau of Corporation Taxes, Taxing Division—R & D Unit, Department 280703, Harrisburg, Pennsylvania, 17128-0703.

(d) Section 306 of the TRC (72 P. S. § 7306) explains that a partnership is not subject to Personal Income Tax, but the income of a member of a partnership is subject to the tax on his share of the income received by the partnership. As the partner is the entity subject to tax under Article III of the TRC, and not the partnership, each partner is entitled to a research and development tax credit. The research and development credit applicable to a partnership may be claimed by each partner on a pass through basis with each partner (taxpayer) computing the credit on a pro rata basis.

Source

The provisions of this § 9.17 adopted August 15, 1997, effective August 16, 1997, 27 Pa.B. 4115.

§ 9.18. Cost of collection.

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

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

(b) *Reimbursement for cost of collection.*

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

(2) Exceptions are as follows:

(i) Fuels tax liabilities.

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

(c) *Cost of collection.*

(1) The costs of collection shall be added to the amount of the liability for taxes administered by the Department and constitute a lien against the real and personal property of the person, with or without any evidence of the specific itemized breakdown of the costs of collection being stated on the underlying filed tax lien or on the State tax lien certificate itself. The tax lien will not be

satisfied until all of the tax, interest, penalty and cost of collection directly associated with the liened tax liability have been entirely paid or discharged by operation of law.

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

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

Source

The provisions of this § 9.18 adopted July 14, 2006, effective July 15, 2006, 36 Pa.B. 3673.

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