August 24, 2026

Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

By email: irrc@irrc.state.pa.us

Re: Department of Revenue Proposed Regulations 61 Pa. Code § 153.26 and 153.26a (Sales Factor Sourcing Sales of Tangible Personal Property and Sales Factor Sourcing Sales of Services)

Dear Commissioners:

On behalf of the Pennsylvania Chamber of Business and Industry (PA Chamber), we appreciate the opportunity to comment on the Department of Revenue's proposed regulation at 61 Pa. Code Sections 153.26 and 153.26a regarding the sourcing of sales of tangible personal property and services for Pennsylvania corporate net income tax (CNIT) purposes.

The PA Chamber is the largest broad-based business association in Pennsylvania. It has over 13,000 member businesses throughout Pennsylvania, which employ more than half of the Commonwealth's private workforce. Its members range from small companies to mid-size and large business enterprises. The Pennsylvania Chamber's mission is to advocate on public policy issues that will expand private sector job creation, to promote an improved and stable business climate, and to promote Pennsylvania's economic development for the benefit of all Pennsylvania citizens.

The PA Chamber supports the Department's effort to provide formal direction through the form of a regulation that will provide taxpayers with clear and predictable guidance. We believe a well-crafted regulation could provide certainty and be mutually beneficial to taxpayers and the Department.

We concur with many of the concerns that have been raised by the Pennsylvania Institute of Certified Public Accountants (PICPA) in their submitted comments. In addition to the concerns raised by PICPA, we offer a few additional comments. We are particularly concerned with (1) areas that the proposed regulations deviate from statute and (2) areas where the proposed regulations seek to establish one-way presumptions against taxpayers that alleviate the Department from making a statutorily required finding.

1. **The Department's rules for professional services are contrary to statute.**

The regulations propose to source professional services in a way that is contrary to statute as applied to many taxpayers. It also differs from Information Notice Corporation Taxes 2014-01

("Notice 2014-01"), and its litigation position in *Synthes USA HQ, Inc. v. Commonwealth*, 289 A.3d 846 (Pa. 2023), which the Department states the proposed regulations are intended to mirror.

Pennsylvania statute, 72 P.S. 7401(3)2.(a)(16.1)(C) sources services to the location that they are "delivered," or if delivered in multiple states, based on the percentage of value delivered in each state. Secondary rules apply only if delivery location cannot be determined.

Proposed regulation Section 153.26a(d)(17) seeks to replace the statutory delivery-location rule with different rules. The proposed regulation sources professional services first to a customer's primary residence (for certain individual customers) or to the state the contract is principally managed (for business customers) (followed by a waterfall of secondary rules). The proposed regulation creates a special rule for professional services provided to affiliated corporations; such services are not sourced to the delivery location (as required by the statute) or to place of contract management (the proposed rule for services to unaffiliated corporations). Instead, the proposed regulation requires taxpayers to source such services based on the payroll of the affiliated corporation.

For many services, the Department's specific rules (primary residence, place of contract management, customer's payroll footprint) are not the place where the customer receives the benefit of the service. For such services the Department's regulation is contrary to statute.

The Department must justify this differential treatment and explain why it has concluded that the benefit received location differs for services provided to affiliated versus unaffiliated corporations. The proposed regulation should be revised to state that the Department's rules are simply "safe harbors" available to taxpayers, but that taxpayers are entitled to follow the statute and source to delivery location.

2. **The Department's rules for internet access are contrary to statute and Notice 2014-01.**

The proposed regulations seek to source internet access receipts in a way that is contrary to statute and the Department's long-standing guidance in Notice 2014-01. As described above, the statute sources services to delivery location. In Notice 2014-01 the Department interpreted this to mean internet access service is sourced to the location that the "service is used by a customer in PA." By contrast, proposed regulation Section 153.26a(d)(1)(ii) seeks to establish two different rules for internet access: (1) access provided to individuals is required to be sourced to the place of "primary use," which is presumed to be billing address; and (2) access provided to others is sourced to the location "the access service is used."

By replacing the single use-based rule of Notice 2014-01 with two separate rules, the proposed regulations contradict the Department's established policy and create new ambiguity and uncertainty. The proposed regulations should maintain tax certainty and administrative continuity by adopting a single use-based rule for internet access receipts that mirrors the rule in Notice 2014-01.

3. The proposed regulations incorrectly suggest the Department can invoke alternative apportionment without satisfying the statutory standard.

Proposed regulation Section 153.26a(e)(3) provides that the Department may invoke alternative apportionment under 72 P.S. § 7401(3)2.(a)(18) "if it is determined the target market used by a taxpayer is overinflated and not representative of the true market for a service."

That standard is contrary to the statutory standard for invoking alternative apportionment. 72 P.S. § 7401(3)2.(a)(18) provides that to invoke alternative apportionment the Commonwealth must establish that the standard formula does "not fairly represent the extent of the taxpayer's business activity." The proposed regulation thus seeks to lower the statutory threshold for alternative apportionment from "does not fairly represent" to its subjective "overinflation" standard.

The proposed regulation must be revised to comport with the statute by recognizing that the Department would still need to determine that the taxpayer's method "does not fairly represent" the taxpayer's business activity to invoke alternative apportionment.

A similar problem exists in proposed regulation Section 153.26a(f)(3), which provides that the Department may require alternative apportionment if the taxpayer treats the service as delivered in different locations on its returns filed with other states. As with Section 153.26a(e)(3), this provision suggests the Department may invoke alternative apportionment without meeting the statutory standard in 72 P.S. § 7401(3)2.(a)(18), and should be clarified.

4. The Department cannot presume 100% PA sales.

Proposed regulation Section 153.26a(f)(2) says that the Department "may apportion up to 100%" of a taxpayer's sales to the state if the Department determines that the taxpayer's records are not "sufficient." This strongly implies a presumption of 100% apportionment upon a unilateral Department finding of documentary insufficiency.

Presuming 100% PA apportionment after a unilateral determination that a taxpayer's records are not "sufficient" is unfair because there is no definition as to what constitutes "sufficient." Moreover, this presumption does not exist in the statute. If the Department concludes that a taxpayer's records are not sufficient, then the Department must be required to use available documentation to determine the most reasonable alternative.

5. The "State-to-State Consistency" provision must be stricken.

Proposed regulation Section 153.26a(f)(3) would require taxpayers to disclose situations in which their Pennsylvania sourcing differs from the treatment of the same receipts in other states.

Requiring a taxpayer to explain the sourcing method that results from applying different rules in 50 jurisdictions is a monumental task. Moreover, because the proposed regulations suggest that the Department will raise alternative apportionment to adjust a taxpayer's return if the taxpayer sources its services differently, the regulations impose an inherent obligation to explain any differences in sourcing method, even if such differences arise naturally from differing state statutes. This causes substantial increase in compliance costs, undermining the Department's statement that there will be "no fiscal impact on the regulated community…" Response to Regulatory Analysis Form Question No. 19.

Proposed regulation Section 153.26a(f)(3) should be stricken entirely. At a minimum, Section 153.26a(f)(3) should be revised to apply only when the inconsistency arises from the taxpayer's application of its own sourcing methodology, and does not apply when the inconsistency results from differences in the statutory or regulatory sourcing rules of the other states. Narrowing the requirement in this way will accomplish the Department's audit objectives while minimizing the impact on the community.

6. **The Department cannot disregard a taxpayer's method when it fails to report a change.**

Proposed regulation section 153.26a(g)(2)(iii) provides that if a taxpayer fails to "adequately disclose" a change that "the Department may disregard" the taxpayer's method and substitute its own. This presumption excuses the Department from its obligation to determine that the taxpayer's method is incorrect solely because of a purported procedural defect.

A procedural disclosure failure should not be treated the same as a substantive sourcing failure, especially when the Department could simply require the taxpayer to cure the disclosure deficiency. Moreover, "adequate disclosure" is an undefined and amorphous standard that could be applied inconsistently and pretextually, leaving the taxpayer exposed to arbitrary enforcement.

At a minimum, the Department must first notify the taxpayer of the disclosure deficiency and permit a cure before exercising its substitution authority. And, it must be allowed to exercise its substitution authority only upon a finding that the taxpayer's method is "unreasonable," consistent with Section 153.26a(g)(1)(ii).

7. **The Department cannot exclude affidavits as evidence without basis.**

Proposed regulation Section 153.26a(h) defines the "documentary evidence" necessary to support a sourcing method to exclude "an affidavit or other document prepared in anticipation of, or in connection with, a tax audit, examination or litigation."

While the statute gives the Department authority to prescribe rules for "administration and enforcement" (72 P.S. § 7408), it does not authorize the Department to exclude the type of evidence that is routinely accepted as evidence in tax appeals by the Board of Finance and Revenue (the second-level administrative body for challenging Department assessments) or courts. Taxpayers that cannot produce contemporaneous records but can reconstruct or attest to their methodology through affidavits are left without recourse—even where the affidavits are factually accurate.

The exclusion of affidavits from the definition of "documentary evidence" should be stricken. At a minimum, rather than categorically prohibited, the exclusion for affidavits should be limited to those that are entirely unsupported by any corroborating data.

8. **Regulation fails to address common contract manufacturing arrangements.**

Contract manufacturing is a common arrangement where a taxpayer engages a third party to manufacture goods on its behalf. In such arrangements, the contract manufacturer generally ships the manufactured product to the taxpayer, or to the taxpayer's customer. The regulations should provide examples clarifying how a contract manufacturer should source receipts received from such contract manufacturing services.

The failure of the regulations to address such a common arrangement undermines its goal for clarity and consistency, given taxpayers and auditors will likely apply the regulations inconsistently in this area. For these same reasons we reiterate PICPA's comment that contract research and development arrangements should also be addressed.

Conclusion

Thank you for the opportunity to review and provide comments on the proposed regulations regarding sourcing sales of services. The PA Chamber welcomes the opportunity to meet with you to discuss our comments in more detail. We would also like to reiterate our appreciation for the work the Department has already put into these regulations as better clarity and certainty in this area is something we all desire. We welcome the opportunity to meet with the Department and other stakeholders to discuss our concerns and work collaboratively to make improvements to the proposed regulation.

Sincerely,

Neal R Lesher

Neal R. Lesher
Vice President of Government Affairs

cc: Maria L. Miller, PA DOR (via email)