



Pennsylvania Tax Reports

December 6, 2004

By: Joseph C. Bright
Wolf, Block, Schorr and Solis-Cohen LLP
Philadelphia, PA
e-mail: jbright@wolfblock.com

STATEMENTS OF POLICY ADDRESS CANTEEN AND GILMOUR

Two corporate tax statements of policy issued by the Department of Revenue set out the Department's interpretation of *Canteen Corp. v. Commonwealth*, 818 A.2d 594 (Pa. Cmwlth. 2003), *aff'd*, - A.2d - (Pa. 2004), and *Commonwealth v. Gilmour Manufacturing Corp.*, 822 A.2d 676 (Pa. 2003).

In Statement of Policy 2004-01, the Department states that it will not apply *Canteen Corp.* to tax years beginning after 1998. The Department states that Act 2001-23 amended the definition of *business income* so that if any of the acquisition, management or disposition of property constitutes an integral part of a taxpayer's regular trade or business operations, the income will be business income. Previously, the statute required that all three elements be present. However, Act 2001-23 also states that its amendments were clarifications. In *Laurel Pipe Line Co. v. Board of Finance and Revenue*, 642 A.2d 472 (Pa. 1994), the court held that gain realized from the partial liquidation of a discreet business segment and distributed to shareholders is nonbusiness income. If Act 2001-23 merely clarified the law, then presumably it did not change the holding in *Laurel Pipe Line*. Thus, the Department's Statement of Policy may not be correct.

In Statement of Policy 2004-02, the Department states its position on what elements of proof are necessary under *Gilmour* for a taxpayer to exclude receipts from the numerator of the sales factor on the grounds that the delivery is to a customer outside the state. The Department states that invoices showing an out-of-state mailing address and affidavits are not sufficient proof, but the bills of lading, delivery instructions, warehouse receipts, or a delivery address will be sufficient.