

## **Pennsylvania Statutes Title 72 P.S.**

### **Taxation and Fiscal Affairs § 7301. Definitions**

Any reference in this article to the Internal Revenue Code of 1986 shall mean the Internal Revenue Code of 1986 ( Public Law 99-514 , 26 U.S.C. § 1 et seq. ), as amended to January 1, 1997, unless the reference contains the phrase “as amended” and refers to no other date, in which case the reference shall be to the Internal Revenue Code of 1986 as it exists as of the time of application of this article. The following words, terms and phrases when used in this article shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning:

**(a) “Accepted accounting principles and practices”** means, unless otherwise explicitly provided for in this article, those accounting principles, systems or practices, including the installment sales method of reporting, which are acceptable by standards of the accounting profession and which are not inconsistent with the regulations of the department setting forth such principles and practices.

**(b) “Association”** means any form of unincorporated enterprise which:

(1) is subject to the tax imposed under Article IV; 1 or

(2) is required to make a return under section 6042 of the Internal Revenue Code of 1986 ( Public Law 99-514 , 26 U.S.C. § 6042 ).

The term shall not include a partnership or investment company.

**(c) “Business”** means an enterprise, activity, profession, vocation, trade, joint venture, commerce or any other undertaking of any nature when engaged in as commercial enterprise and conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, Pennsylvania S corporation, association or other unincorporated entity.

**(c.1) “Charitable trust”** means a trust operated exclusively for religious, charitable, scientific, literary or educational purposes.

**(c.2) “Claimant”** means a person who is subject to the tax imposed under this article, is not a dependent of another taxpayer for purposes of section 151 of the Internal Revenue Code of 1986 ( Public Law 99-514 , 26 U.S.C. § 151 ), but is entitled to claim against such tax the poverty tax provisions as provided by this act.

**(d) “Compensation”** means and shall include salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered, whether directly or through an agent, and whether in cash or in property. The term “compensation” shall include any part of a distribution under a plan described in section 409A(d)(1) of the Internal Revenue Code of 1986 ( Public Law 99-514 , 26 U.S.C. § 409A(d)(1) ), as amended, attributable to an elective deferral of income or the income on any elective deferral of income, whether paid or payable during employment or to a retired person upon or after retirement from service.

The term “compensation” shall not mean or include: (i) periodic payments for sickness and disability other than regular wages received during a period of sickness or disability; or (ii) disability, retirement or other payments arising under workmen's compensation acts, occupational disease acts and similar legislation by any government; or (iii) payments commonly recognized as old age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment; or (iv) payments commonly known as public assistance, or unemployment compensation payments by any governmental agency; or (v) payments to reimburse actual expenses; or (vi) payments made by employers or labor unions, including payments made pursuant to a cafeteria plan qualifying under section 125 of the Internal Revenue Code of 1986 ( Public Law 99-514 , 26 U.S.C. § 125 ), for employee benefit programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits or strike benefits: Provided, That the program does not discriminate in favor of highly compensated individuals as to eligibility to participate, payments or program benefits; or (vii) any compensation received by United States servicemen serving in a combat zone; or (viii) payments received by a foster parent for in-home care of foster children from an agency of the Commonwealth or a political subdivision thereof or an organization exempt from Federal tax under section 501(c)(3) of the Internal Revenue Code of 1954 which is licensed by the Commonwealth or a political subdivision thereof as a placement agency; or (ix) payments made by employers or labor unions for employee benefit programs covering social security or retirement; or (x) personal use of an employer's owned or leased property or of employer-provided services.

**(d.1) “Corporation,”** for purposes of applying the provisions of section 303(a) 2 with respect to a “reorganization” as defined in that section, the term “corporation” shall include a business trust to which 15 Pa.C.S. Ch. 95 (relating to business trusts) applies, a common law business trust or a limited liability company that for Federal income tax purposes is taxable as a corporation or an investment company.

**(d.2) “Corporate item”** means an item, including income, gain or loss, deduction or credit determined at the Pennsylvania S corporation level, which is required to be taken into account for a Pennsylvania S corporation's taxable year.

**(e) “Department”** means the Department of Revenue of this Commonwealth.

**(e.1) “Dependent”** means a child who is the dependent of a claimant for purposes of section 151 of the Internal Revenue Code of 1986 ( Public Law 99-514 , 26 U.S.C. § 151 ).

**(f) “Dividends”** means any distribution in cash or property made by a corporation, association, business trust or investment company with respect to its stock out of accumulated earnings and profits or out of earnings and profits of the year in which such dividend is paid: Provided, however, That the term “dividends” shall not include:

(i) a distribution of the stock of a corporation made by the corporation originally issuing same to its own stockholders if such distribution is not treated as personal income for Federal individual income tax purposes; or

(ii) for taxable years beginning on or after January 1, 1993, a distribution made by an investment company out of earnings and profits derived from interest that is statutorily free from State and local taxation under Article XXIX of this act 3 or the act of August 31, 1971 (P.L. 395, No. 94), entitled “An act exempting from taxation for State and local purposes within the Commonwealth certain obligations, their transfer and the income therefrom (including any profits made on the sale thereof), 4 issued by the Commonwealth, any public authority, commission, board or other agency created by the Commonwealth, any political subdivision of the Commonwealth or any public authority created by any such political subdivision,” or the laws of the United States.

(g) “**Employee**” means any individual from whose wages an employer is required under the Internal Revenue Code to withhold Federal income tax.

(h) “**Employer**” means an individual, partnership, association, corporation, governmental body or unit or agency, or any other entity who or that is required under the Internal Revenue Code to withhold Federal income tax from wages paid to an employe.

(i) “**Fiduciary**” means a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any trust or similar capacity, whether domiciliary or ancillary.

(i.1) “**Health savings account**” has the meaning given in section 223(d) of the Internal Revenue Code of 1986 , as amended ( Public Law 99-514 , 26 U.S.C. § 223(d) ).

(j) “**Income**” for a resident individual, estate or trust means the same as compensation, net profits, gains, dividends, interest or income enumerated and classified under section 303 of this article. 5

(k) “**Income from sources within this Commonwealth**” for a nonresident individual, estate or trust means the same as compensation, net profits, gains, dividends, interest or income enumerated and classified under section 303 of this article to the extent that it is earned, received or acquired from sources within this Commonwealth:

(1) By reason of ownership or disposition of any interest in real or tangible personal property in this Commonwealth; or

(2) In connection with a trade, profession, occupation carried on in this Commonwealth or for the rendition of personal services performed in this Commonwealth; or

(3) As a distributive share of the income of an unincorporated business, Pennsylvania S corporation, profession, enterprise, undertaking or other activity as the result of work done, services rendered or other business activities conducted in this Commonwealth, except as allocated to another state pursuant to regulations promulgated by the department under this article; or

(4) From intangible personal property employed in a trade, profession, occupation or business carried on in this Commonwealth; or

<Section 51(4) of Act 2016, July 13, P.L. 526, No. 84 , provides that the amendment by that Act of 72 P.S. § 7301(k)(5) concerning lottery winnings shall apply retroactively to January 1, 2016.>

(5) As gambling and lottery winnings by reason of a wager placed in this Commonwealth, the conduct of a game of chance or other gambling activity located in this Commonwealth or the redemption of a lottery prize from a lottery conducted in this Commonwealth, other than noncash prizes of the Pennsylvania State Lottery.

Provided, however, That “income from sources within this Commonwealth” for a nonresident individual, estate or trust shall not include any items of income enumerated above received or acquired from an investment company registered with the Federal Securities and Exchange Commission under the Investment Company Act of 1940. 6

(l) “**Individual**” means a natural person and shall include the members of a partnership or association and the shareholders of a Pennsylvania S corporation.

(l.1) “**Installment sales method of reporting**” means the method by which a taxpayer reports the gain upon the sale of tangible personal property or real property when at least one payment is to be received in any taxable year following the taxable year of sale, whether such property is sold or otherwise disposed of in an isolated transaction or from the inventory of a dealer or broker. Taxpayers may elect to allocate the gain upon such transactions in equal proportion to each payment to be received. Taxpayers who do not elect to allocate the gain upon such transactions in equal proportion to each payment received shall report all gains upon the sale in the taxable year in which the transaction occurred. For the purposes of this definition: (i) the gain upon the transaction shall be the difference between the sales price and the seller's basis in the property; and (ii) the sales price shall be the face amount of the evidence of indebtedness given in exchange for the property sold or otherwise disposed of together with the value of any other consideration received by the seller. Where the evidence of indebtedness fails to state a price, the evidence of indebtedness will be valued at the fair market value of the property sold, less the value of other property or cash received in the same transaction. The installment sales method of reporting shall not be used for transactions the object of which is the lending of money or the rendering of services.

(l.2) “**Investment company**” includes any incorporated or unincorporated enterprise registered with the Federal Securities and Exchange Commission under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq. ).

(m) “**Nonresident individual**” means any individual who is not a resident of the Commonwealth.

(n) “**Nonresident estate or trust**” means any estate or trust which is not a resident estate or trust. The term “nonresident estate or trust” shall not include charitable trusts or pension or profit sharing trusts.

**(n.0) “Partnership”** means a domestic or foreign general partnership, joint venture, limited partnership, limited liability company, business trust or other unincorporated entity that for Federal income tax purposes is classified as a partnership.

**(n.1) “Pennsylvania S corporation”** means any small corporation as defined in section 301(s.2) 7which does not have a valid election under section 307 8 in effect. A qualified Subchapter S subsidiary owned by a Pennsylvania S corporation shall be treated as a Pennsylvania S corporation without regard to whether an election under section 307 has been made with respect to the subsidiary.

**(n.2) “Partnership item”** means an item, including income, gain or loss, deduction or credit determined at the partnership level, which is required to be taken into account for a partnership's taxable year.

**(o) “Person”** means any individual, employer, association, fiduciary, partnership, corporation or other entity, estate or trust, resident or nonresident, and the plural as well as the singular number. For the purpose of determining eligibility for special tax provisions, the term “person” means a natural individual.

**(o.1) “Poverty”** means an economic condition wherein the total amount of poverty income is insufficient to adequately provide the claimant, his spouse and dependent children with the necessities of life.

**(o.2) “Poverty income”** means for the purpose of determining eligibility for special tax provisions all moneys or property (including interest, gains or income derived from obligations which are statutorily free from State or local taxation under any other act of the General Assembly of the Commonwealth of Pennsylvania or under the laws of the United States) received of whatever nature and from whatever source derived, but not including (i) periodic payments for sickness and disability other than regular wages received during a period of sickness or disability; or (ii) disability, retirement or other payments arising under workmen's compensation acts, occupational disease acts and similar legislation by any government; or (iii) payments commonly recognized as old age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment; or (iv) payments commonly known as public assistance or unemployment compensation payments by any governmental agency; or (v) payments to reimburse actual expenses; or (vi) payments made by employers or labor unions for programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, Social Security and retirement; or (vii) any compensation received by United States servicemen serving in a combat zone.

**(o.3) “Qualified Subchapter S subsidiary”** means a domestic or foreign corporation which for Federal income tax purposes is treated as a qualified Subchapter S subsidiary, as defined in section 1361(b) (3)(B) of the Internal Revenue Code of 1986 ( Public Law 99-514 , 26 U.S.C. § 1361 ), as amended to January 1, 2005.

**(o.4) “Publicly traded partnership”** means an entity defined under section 7704 of the Internal Revenue Code of 1986 ( Public Law 99-514 , 26 U.S.C. § 7704 ) with equity securities

registered with the Securities and Exchange Commission under section 12 of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a ).

**(p) “Resident individual”** means an individual who is domiciled in this Commonwealth unless he maintains no permanent place of abode in this Commonwealth and does maintain a permanent place of abode elsewhere and spends in the aggregate not more than thirty days of the taxable year in this Commonwealth; or who is not domiciled in this Commonwealth but maintains a permanent place of abode in this Commonwealth and spends in the aggregate more than one hundred eighty-three days of the taxable year in this Commonwealth.

**(q) “Received”** for the purpose of computation of income subject to tax under this article means “received, earned or acquired” and the phrase “received, earned or acquired” shall be construed according to the method of accounting required by the department under this article for computing and reporting income subject to the tax.

**(r) “Resident estate”** means the estate of a decedent who at the time of his death was a resident individual.

**(s) “Resident trust”** means:

(1) A trust created by the will of a decedent who at the time of his death was a resident individual; and

(2) Any trust created by, or consisting in whole or in part of property transferred to a trust by a person who at the time of such creation or transfer was a resident. The term “resident trust” under this subclause (2) shall not include charitable trusts or pension or profit sharing trusts.

**(s.1) “Special tax provisions”** means a refund or forgiveness of all or part of the claimant's liability under the provisions of this article.

**(s.2) “Small corporation”** means any corporation which has a valid election in effect under Subchapter S of Chapter 1 of the Internal Revenue Code of 1986, 9 as amended to January 1, 2005.

**(t) “State”** means, except as provided under section 314(a), [FN10] any state or commonwealth of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States and any foreign country.

**(u) “Tax”** includes interest, penalties and additions to tax, and further includes the tax required to be withheld by an employer on compensation paid, unless a more limited meaning is disclosed by the context.

**(v) “Taxable year”** means the taxable period on the basis of which a taxpayer or a claimant is required to file his Federal income tax return pursuant to the Internal Revenue Code or if he is not required to or does not file a Federal income tax return, the calendar year provided that for the initial period during which the tax is first imposed “taxable year” means the period beginning June 1, 1971, and ending with the taxable period on the basis of which a taxpayer is required to

file his Federal income tax return pursuant to the Internal Revenue Code or if he is not required to or does not file a Federal income tax return, December 31, 1971.

(w) **“Taxpayer”** means any individual, estate or trust subject to the tax imposed by this article, any partnership having a partner who is a taxpayer under this act, any Pennsylvania S corporation having a shareholder who is a taxpayer under this act and any person required to withhold tax under this article.

1 72 P.S. § 7401 et seq.

2 72 P.S. § 7303(a).

3 72 P.S. § 9901.

4 72 P.S. § 4752-1 et seq.

5 72 P.S. § 7303.

6 15 U.S.C.A. § 80b-1 et seq.

7 Subsec. (s.2) of this section.

8 72 P.S. § 7307.

9 26 U.S.C.A. § 1361 et seq.

10 72 P.S. § 7314.