

# Pa. Business Income Rule Sparks Worries of Tax Overreach

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Cheryl Upham was quoted in a Law360 article discussing concerns tax practitioners have raised regarding a proposed regulation from the Pennsylvania Department of Revenue that outlines what constitutes apportionable business income. The regulation includes the department's interpretation of a U.S. Supreme Court precedent on the unitary business principle, which allows a state to apportion and tax income from certain interconnected entities. While this principle can apply in Pennsylvania, which uses separate reporting, practitioners have called out potential overreach in authority on the department's part. The rule's criteria as to whether separate corporations are part of a unitary business has sparked discussion, as the regulation states they must be part of a commonly controlled group.

The rule also aims to achieve consistency among state classification of income as business or nonbusiness income by requiring taxpayers to file reports listing the jurisdictions where their income classification is not uniform and provide supporting details. This has been considered a potential violation of due process. According to Cheryl, while these requests have previously been made in audits, it would be a burden for all taxpayers to do so annually. States' positions vary on what they consider business or nonbusiness income, creating nuances in reports. "States interpret U.S. Supreme Court decisions differently," said Cheryl.

The department's proposed rule was revised to address practitioner concerns regarding the connection between income and a company's operations. Cheryl noted the regulation appears to minimize the importance of the multiformity and unrelated-assets doctrines. She mentioned a major issue with the regulation is that it implies multiformity doctrines no longer exist. The unitary business principle is a warranted consideration in certain scenarios in separate reporting states, though a provision in the preamble stating companies are presumed to be unitary and taxpayers have the burden of proof "to prove the existence of nonunitary income" went too far. "That is outside of the scope of the appropriate discussion in a separate company reporting state," said Cheryl.

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