

## PERSONAL INCOME TAX BULLETIN 2005-02

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### Gain or Loss Derived From The Disposition Of A Going Concern

#### Section 1. Intangible personal property.

For purposes of this Bulletin, the term "*intangible personal property*" includes only:

- Good will employed in a going concern,
- Going concern value of assets employed in a going concern,
- Working capital employed in a going concern,
- Workforce in place of a going concern, including its composition and terms and conditions (contractual or otherwise) of its employment,
- Business books and records of a going concern,
- Operating systems or any other information base (including lists or other information with respect to current or prospective customers) used in a going concern,
- Patents, copyrights, formulas, processes, designs, patterns, know-how, format or other similar items employed in a going concern,
- "Customer-based intangibles" as defined at Internal Revenue Code ("IRC") §197(d)(2),
- "Supplier-based intangibles" as defined at IRC §197(d)(3),
- Licenses, permits or other rights granted by a governmental unit or an agency or instrumentality thereof that is employed in a going concern, or
- Covenants not to compete entered into in connection with an acquisition of an interest in a going concern.

The term does not include corporate stock, notes, bonds, debentures or other evidences of indebtedness, interest rate, currency or equity notional principal contracts, foreign currencies or interests (or derivative financial interest instruments) in commodities held solely for investment or to trade for the account of the holder.

## **Section 2. Income from sources within this Commonwealth.**

1. The gain derived from a disposition of a proprietary interest in a corporation, investment company or investment partnership, a partner's interest in a partnership, a member's interest in a limited liability company, or a shareholder's share in a Pennsylvania S corporation or business trust does not constitute income from sources within this Commonwealth for a nonresident.

2. Gain from a disposition of a sole proprietor's proprietary interest in a going concern is earned, received or acquired from sources within this Commonwealth if the gain is attributable to the disposition of—

- Real or tangible personal property sited in this Commonwealth, including inventoriable or operational items.
- Intangible personal property employed in the trade, profession, occupation or business carried on by the sole proprietor in this Commonwealth.
- Unless the taxpayer uses an accrual method of accounting, accounts or notes receivable from sales of products or services sold in the ordinary course of business operations in this Commonwealth.

## **Section 3. Computation of Income from sources within this Commonwealth.**

1. If the nonresident carries on a trade or business, profession, or occupation wholly within Pennsylvania as described in 61 Pa. Code §109.3, his gain from the disposition of intangible personal property employed therein and receivables from sales of products or services sold in the ordinary course of business operations shall be wholly allocated to this Commonwealth as income from sources within this Commonwealth.

2. If the nonresident carries on a trade or business, profession, or occupation both within and without Pennsylvania, his gain from the disposition of intangible personal property employed therein and receivables from sales of products or services sold in the ordinary course of business operations shall be allocated by multiplying the net gain therefrom by the average of the property, payroll, and sales percentages of the proprietorship determined under 61 Pa. Code §109.5(c) for the 365-day period preceding the disposition.

3. Gain attributable to real or tangible personal property sited in this Commonwealth is wholly allocable to Pennsylvania, whether or not employed in a trade or business, profession or occupation.

4. If not transferable or not separately dealt with as a separate item in a *bona fide* sale of a going concern, no gain shall be attributed to goodwill.

5. Gains that represent the incremental value attaching to property as a result of being an integral part of a going concern shall be allocated in the same manner as the affected property.
6. Losses incurred in connection with the disposition of a trade or business carried on entirely outside this Commonwealth shall not be recognized.
7. Losses incurred in connection with the disposition of a trade or business carried on partially within this Commonwealth shall be recognized only in proportion to the average of the property, payroll, and sales percentages of the trade or business as determined under 61 Pa. Code §109.5(c) for the 365-day period preceding the disposition.
8. Losses incurred in connection with the disposition of a trade or business carried on partially within this Commonwealth in excess of those allowable under paragraph 7 shall not be recognized.
9. Income from sources within this Commonwealth shall be computed without regard to a member's, partner's or shareholder's distributive share of any loss described in paragraph 6 or paragraph 8.
10. For nonresident estates, trusts or beneficiaries, income from sources within this Commonwealth shall be computed without regard to any loss described in paragraph 6 or paragraph 8.

#### **Section 4. Partnerships, PA S corporations, trusts or estates.**

1. The gains of a partnership, PA S corporation, trust or estate that is disposing of its proprietary interest in a going concern from sources within this Commonwealth shall be determined in the same manner as the gains of a nonresident individual sole proprietor.
2. For purposes of this bulletin, the term "partnership" includes limited partnerships, limited liability companies, business trusts or any other entities that, for Federal income tax purposes, are classified as a partnership.

#### **Section 5. Burden of proof.**

1. The burden of proving income is not from sources within this Commonwealth shall be upon the taxpayer.
2. The burden of proving losses or deductions are from sources within this Commonwealth shall be upon the taxpayer.