

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 812 Session of 2017

INTRODUCED BY TARTAGLIONE AND COSTA, JUNE 29, 2017

REFERRED TO FINANCE, JUNE 29, 2017

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," in corporate net income tax, further providing
11 for definitions, for imposition of tax, for reports and
12 payments of tax and for consolidated reports; and, in general
13 provisions, further providing for underpayment of estimated
14 tax.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Section 401(3)1(a) and 4(c)(1) and (5) of the act
18 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
19 1971, are amended, (3)1(t) is amended by adding a paragraph,
20 (3)2(a)(16.1) is amended by adding a subparagraph, (3)2 is
21 amended by adding a clause, (3)4(c) is amended by adding
22 subparagraphs and the section is amended by adding definitions
23 to read:

24 Section 401. Definitions.--The following words, terms, and

1 phrases, when used in this article, shall have the meaning
2 ascribed to them in this section, except where the context
3 clearly indicates a different meaning:

4 * * *

5 (3) "Taxable income." 1. (a) In case the entire business
6 of the corporation is transacted within this Commonwealth, for
7 any taxable year which begins on or after January 1, 1971,
8 taxable income for the calendar year or fiscal year as returned
9 to and ascertained by the Federal Government, or in the case of
10 a corporation participating in the filing of consolidated
11 returns to the Federal Government or that is not required to
12 file a return with the Federal Government, the taxable income
13 which would have been returned to and ascertained by the Federal
14 Government if separate returns had been made to the Federal
15 Government for the current and prior taxable years, subject,
16 however, to any correction thereof, for fraud, evasion, or error
17 as finally ascertained by the Federal Government.

18 * * *

19 (t) * * *

20 (5) The adjustment required by paragraph (1) shall not apply
21 to a transaction between the taxpayer and an affiliated entity
22 where the taxpayer and the affiliated entity file a combined
23 report in this State and the intangible expense or cost, or
24 interest expense or cost, are eliminated pursuant to the
25 definition of "combined business income" set forth under
26 paragraph (15).

27 2. In case the entire business of any corporation, other
28 than a corporation engaged in doing business as a regulated
29 investment company as defined by the Internal Revenue Code of
30 1986, is not transacted within this Commonwealth, the tax

1 imposed by this article shall be based upon such portion of the
2 taxable income of such corporation for the fiscal or calendar
3 year, as defined in subclause 1 hereof, and may be determined as
4 follows:

5 (a) Division of Income.

6 * * *

7 (16.1) * * *

8 (D) Sales from the licensing of intangible property are in
9 this State if a licensee utilized the property in this State. If
10 the property was utilized both inside and outside this State,
11 the sale is in this State in proportion to the utilization of
12 the intangible property in this State to the utilization of the
13 intangible property everywhere.

14 * * *

15 (f) Corporations That are Members of a Unitary Business.

16 (1) For taxable years beginning after December 31, 2018,
17 business income of a unitary business that consists of two or
18 more corporations is the combined business income of all
19 members, as determined on a water's-edge basis.

20 (2) Each member of a unitary business shall apportion the
21 combined business income of the unitary business by multiplying
22 the combined business income of the unitary business by the
23 member's sales factor, the numerator of which shall be the
24 member's sales attributable to this State and the denominator of
25 which shall be the combined sales of all members of the unitary
26 business. In computing the sales of each member for purposes of
27 apportionment, the following are excluded from the numerator and
28 denominator:

29 (i) Receipts from transactions between or among members of
30 the unitary business that are deferred under 26 CFR 1.1502-13

1 (relating to intercompany transactions) for Federal taxable
2 income purposes.

3 (ii) Business income of certain entities excluded from the
4 definition of combined business income.

5 (iii) Dividends excluded from the definition of "combined
6 business income."

7 (3) For taxable years beginning after December 31, 2018, any
8 member of the group that would otherwise apportion its business
9 income under paragraph (3)2(b), (c), (d) or (e) shall convert
10 its apportionment formula into a single sales fraction, as
11 prescribed by the department.

12 (4) Nonbusiness income of each member of a unitary business
13 shall be allocated as provided under paragraphs (5) through (8)
14 of phrase (a) of subclause 2 of the definition of "taxable
15 income."

16 (5) The taxable income of a member of a unitary business
17 includes its apportioned share of the combined business income
18 of the unitary business plus its nonbusiness income or loss
19 allocated to this State, minus its net loss deduction.

20 (6) The Secretary of Revenue has the authority and
21 responsibility to make adjustments to insure that a corporation
22 does not incur an unfair penalty nor realize an unfair benefit
23 because it is required to compute its combined business income
24 as provided herein. Fairness shall be measured by whether the
25 corporation's income allocated and apportioned to this State
26 fairly reflects the corporation's share of the unitary business
27 conducted in this State in the taxable year.

28 * * *

29 4. * * *

30 (c) (1) [The] For taxable years beginning prior to January

1 1, 2018, the net loss deduction shall be the lesser of:

2 * * *

3 (3) (A) For taxable years beginning after December 31,
4 2017, through December 31, 2018, the net loss deduction shall be
5 thirty per cent of the taxable income as determined under
6 subclause 1 or, if applicable, subclause 2.

7 (B) For taxable years beginning after December 31, 2018, the
8 net loss deduction shall be the sum of:

9 a. thirty per cent of the taxable income as determined under
10 subclause 1 or, if applicable, subclause 2 for net losses
11 carried over from taxable years beginning prior to January 1,
12 2019; plus

13 b. the total net losses carried over from taxable years
14 beginning after December 31, 2018.

15 (C) Net losses may be carried over twenty taxable years. The
16 earliest net loss shall be carried over to the earliest taxable
17 year to which it may be carried.

18 (4) Any member of a unitary business that has unused net
19 loss from taxable years that began prior to January 1, 2019, or
20 that generate net losses while a member of a unitary business
21 may only use the net loss for taxable years beginning after
22 December 31, 2018, and only to the extent of the member's
23 apportionable share of combined business income and may not be
24 used by other members of the same unitary business.

25 (5) Any net loss realized for a taxable year that begins
26 after December 31, 2018, unused by a corporation which
27 subsequently becomes a member of another unitary business may
28 only be used by that corporation.

29 * * *

30 (5) "Taxable year." [The] 1. Except as set forth in

1 subclause 2, the taxable year which the corporation, or any
2 consolidated group with which the corporation participates in
3 the filing of consolidated returns, actually uses in reporting
4 taxable income to the Federal Government, or which the
5 corporation would have used in reporting taxable income to the
6 Federal Government had it been required to report its taxable
7 income to the Federal Government. With regard to the tax imposed
8 by Article IV of this act (relating to the Corporate Net Income
9 Tax), the terms "annual year," "fiscal year," "annual or fiscal
10 year," "tax year" and "tax period" shall be the same as the
11 corporation's taxable year, as defined in this [paragraph]
12 subclause or subclause 2.

13 2. All members of a unitary business shall have a common
14 taxable year for purposes of computing tax due under this
15 article. The taxable year for such purposes is the common
16 taxable year adopted, in a manner prescribed by the department,
17 by all members of a unitary business. The common taxable year
18 must be used by all members of the unitary business in the year
19 of adoption and all future years unless otherwise permitted by
20 the department.

21 * * *

22 (11) "Tax haven." Means:

23 (A) A jurisdiction that at the beginning of a taxable year
24 is a tax haven as identified by the Organisation for Economic
25 Co-operation and Development;

26 (B) Bermuda;

27 (C) The Cayman Islands;

28 (D) The Bailiwick of Jersey;

29 (E) The Grand Duchy of Luxembourg.

30 (12) "Unitary business." A single economic enterprise that

1 is made up of separate parts of a single corporation, of a
2 commonly controlled group of corporations, or both, that are
3 sufficiently interdependent, integrated and interrelated through
4 their activities so as to provide a synergy and mutual benefit
5 that produces a sharing or exchange of value among them and a
6 significant flow of value to the separate parts. A unitary
7 business includes all those parts and corporations that are
8 included in a unitary business under the Constitution of the
9 United States.

10 (13) "Water's-edge basis." A system of reporting that
11 includes the business income and apportionment factors of
12 certain entities of a unitary business, described as follows:

13 1. Any member incorporated in the United States or formed
14 under the laws of any state of the United States, the District
15 of Columbia, any territory or possession of the United States or
16 the Commonwealth of Puerto Rico.

17 2. Any member, regardless of the place incorporated or
18 formed, if the average of its property, payroll and sales
19 factors within the United States is twenty per cent or more.

20 3. Any member which is a domestic international sales
21 corporation as described in sections 991, 992, 993 and 994 of
22 the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.
23 §§ 991, 992, 993 and 994); a foreign sales corporation as
24 described in sections 921, 922, 923, 924, 925, 926 and 927 of
25 the Internal Revenue Code of 1986; or any member which is an
26 export trade corporation, as described in sections 970 and 971
27 of the Internal Revenue Code of 1986.

28 4. Any member not described in subclause 1, 2 or 3 shall
29 include the portion of its business income derived from or
30 attributable to sources within the United States, as determined

1 under the Internal Revenue Code of 1986 without regard to
2 Federal treaties, and its apportionment factors related thereto.

3 5. Any member that is a "controlled foreign corporation" as
4 defined in section 957 of the Internal Revenue Code of 1986, to
5 the extent the business income of that member is income defined
6 in section 952 of the Internal Revenue Code of 1986, Subpart F
7 income, not excluding lower-tier subsidiaries' distributions of
8 such income which were previously taxed, determined without
9 regard to Federal treaties, and the apportionment factors
10 related to that income; any item of income received by a
11 controlled foreign corporation and the apportionment factors
12 related to such income shall be excluded if the corporation
13 establishes to the satisfaction of the Secretary of Revenue that
14 such income was subject to an effective rate of income tax
15 imposed by a foreign country greater than ninety per cent of the
16 maximum rate of tax specified in section 11 of the Internal
17 Revenue Code of 1986. The effective rate of income tax
18 determination shall be based upon the methodology set forth
19 under 26 CFR 1.954-1 (relating to foreign base company income).

20 6. Any member that is not described in subclause 1, 2, 3, 4
21 or 5 and that is doing business in a tax haven. The business
22 income and apportionment factors of a corporation doing business
23 in a tax haven shall be excluded if the corporation establishes
24 to the satisfaction of the Secretary of Revenue that its income
25 was subject to an effective rate of income tax imposed by a
26 country greater than ninety per cent of the maximum rate of tax
27 specified in section 11 of the Internal Revenue Code of 1986.

28 (14) "Commonly controlled group." For a corporation, the
29 corporation is a member of a group of two or more corporations
30 and more than fifty per cent of the voting stock, or controlling

1 interest, of each member of the group is directly or indirectly
2 owned by a common owner or by common owners, either corporate or
3 noncorporate, or by one or more of the member corporations of
4 the group.

5 (15) "Combined business income." The aggregate taxable
6 income or loss of all members of a unitary business, subject to
7 apportionment except:

8 (A) Income from an intercompany transaction between members
9 of a unitary business shall be deferred in a manner similar to
10 26 CFR 1.1502-13 (relating to intercompany transactions) for
11 Federal taxable income purposes.

12 (B) Dividends paid by one member of a unitary business to
13 another to the extent those dividends are included in business
14 income of the payee corporation.

15 (C) Income of the following corporations is not included in
16 the determination of combined business income:

17 (i) any entity subject to taxation under Article VII, VIII,
18 IX or XV;

19 (ii) any entity specified in the definition of "institution"
20 in section 701.5 that would be subject to taxation under Article
21 VII were it doing business in this Commonwealth as that phrase
22 is defined in section 701.5;

23 (iii) any entity commonly known as a title insurance company
24 that would be subject to taxation under Article VIII were it
25 incorporated in this State;

26 (iv) any entity specified as an insurance company,
27 association or exchange in Article IX that would be subject to
28 taxation under Article IX were it transacting insurance business
29 in this State;

30 (v) any entity specified in the definition of "institution"

1 in section 1501 that would be subject to taxation under Article
2 XV were it located, as defined in section 1501, in this State;
3 or

4 (vi) any entity that is a small corporation, as defined in
5 section 301(s.2).

6 (16) "Member." A corporation that is a member of the
7 unitary business. The term does not include a corporation listed
8 under paragraph (15) (C).

9 Section 2. Section 402(b) of the act is amended to read:

10 Section 402. Imposition of Tax.--* * *

11 (b) The annual rate of tax on corporate net income imposed
12 by subsection (a) for taxable years beginning for the calendar
13 year or fiscal year on or after the dates set forth shall be as
14 follows:

Taxable Year	Tax Rate
January 1, 1995[, and each taxable year thereafter] <u>through</u> <u>December 31, 2018</u>	9.99%
<u>January 1, 2019 through</u> <u>December 31, 2019</u>	<u>8.99%</u>
<u>January 1, 2020 through</u> <u>December 31, 2020</u>	<u>7.99%</u>
<u>January 1, 2021 through</u> <u>December 31, 2021</u>	<u>6.99%</u>
<u>January 1, 2022 and</u> <u>each taxable year</u> <u>thereafter</u>	<u>6.49 %</u>

29 * * *

30 Section 3. Section 403 of the act is amended by adding a

1 subsection to read:

2 Section 403. Reports and Payment of Tax.--* * *

3 (a.1) (1) Each corporation that is a member of a unitary
4 business that consists of two or more corporations, unless
5 excluded by the provisions of this article, shall file as part
6 of a combined annual report. The corporations of the unitary
7 business shall designate one member that is subject to tax under
8 this article to file the combined annual report and to act as
9 agent on behalf of all other members of the unitary business.
10 Each corporation that is a member of a unitary business is
11 liable for its tax liability under this article. The agent is
12 also liable for the aggregate tax liability amount of the
13 unitary business under this article.

14 (2) The oath or affirmation of the designated member's
15 president, vice president or other principal officer, and of its
16 treasurer or assistant treasurer shall constitute the oath or
17 affirmation of each corporation that is a member of that unitary
18 business.

19 (3) The designated member shall transmit to the department,
20 upon a form prescribed by the department, an annual combined
21 report under oath or affirmation of its president, vice
22 president or other principal officer, and of its treasurer or
23 assistant treasurer.

24 (4) In addition to the information required under subsection
25 (a), the report shall set forth:

26 (i) All corporations included in the unitary business.

27 (ii) All necessary data, both in the aggregate and for each
28 corporation of the unitary business, that sets forth the
29 determination of tax liability for each corporation of the
30 unitary business.

1 (iii) Any other information that the department may require.
2 (a.2) A corporation that is a member of a unitary business
3 of two or more corporations must determine its business income
4 and apportionment factors on a water's-edge basis.

5 * * *

6 Section 4. Section 404 of the act is amended to read:

7 Section 404. Consolidated Reports.--The department shall not
8 permit any corporation owning or controlling, directly or
9 indirectly, any of the voting capital stock of another
10 corporation or of other corporations, subject to the provisions
11 of this article, to make a consolidated report[, showing the
12 combined net income].

13 Section 5. Section 3003.3(d) of the act is amended and the
14 section is amended by adding a subsection to read:

15 Section 3003.3. Underpayment of Estimated Tax.--* * *

16 (d) Notwithstanding the provisions of the preceding
17 subsections, and other than as set forth under subsection (d.1),
18 interest with respect to any underpayment of any installment of
19 estimated tax shall not be imposed if the total amount of all
20 payments of estimated tax made on or before the last date
21 prescribed for the payment of such installment equals or exceeds
22 the amount which would have been required to be paid on or
23 before such date if the estimated tax were an amount equal to
24 the tax computed at the rates applicable to the taxable year,
25 including any minimum tax imposed, but otherwise on the basis of
26 the facts shown on the report of the taxpayer for, and the law
27 applicable to, the safe harbor base year, adjusted for any
28 changes to sections 401, 601, 602 and 1101 enacted for the
29 taxable year, if a report showing a liability for tax was filed
30 by the taxpayer for the safe harbor base year. If the total

1 amount of all payments of estimated tax made on or before the
2 last date prescribed for the payment of such installment does
3 not equal or exceed the amount required to be paid per the
4 preceding sentence, but such amount is paid after the date the
5 installment was required to be paid, then the period of
6 underpayment shall run from the date the installment was
7 required to be paid to the date the amount required to be paid
8 per the preceding sentence is paid. Provided, that if the total
9 tax for the safe harbor base year exceeds the tax shown on such
10 report by ten per cent or more, the total tax adjusted to
11 reflect the current tax rate shall be used for purposes of this
12 subsection. In the event that the total tax for the safe harbor
13 base year exceeds the tax shown on the report by ten per cent or
14 more, interest resulting from the utilization of such total tax
15 in the application of the provisions of this subsection shall
16 not be imposed if, within forty-five days of the mailing date of
17 each assessment, payments are made such that the total amount of
18 all payments of estimated tax equals or exceeds the amount which
19 would have been required to be paid on or before such date if
20 the estimated tax were an amount equal to the total tax adjusted
21 to reflect the current tax rate. In any case in which the
22 taxable year for which an underpayment of estimated tax may
23 exist is a short taxable year, in determining the tax shown on
24 the report or the total tax for the safe harbor base year, the
25 tax will be reduced by multiplying it by the ratio of the number
26 of installment payments made in the short taxable year to the
27 number of installment payments required to be made for the full
28 taxable year.

29 (d.1) With respect to any underpayment of an installment of
30 estimated corporate net income tax for any tax year that begins

1 in year 2019 or 2020 by a corporation required to file a
2 combined report pursuant to section 403(a.1)(1), interest shall
3 not be imposed if the total amount of all payments of estimated
4 corporate net income tax made on or before the last date
5 prescribed for the payment of such installment equals or exceeds
6 the amount which would have been required to be paid on or
7 before such date if the estimated tax were an amount equal to
8 the combined tax shown on the reports of all the members of the
9 unitary business for the safe harbor base year computed at the
10 rate applicable to the taxable year.

11 Section 6. This act shall take effect as follows:

12 (1) Except as provided under paragraph (2), the
13 amendment of sections 401, 402, 403, 404 and 3003.3 shall
14 apply to taxable years beginning after December 31, 2018.

15 (2) The amendment of section 401(3)4 shall apply to
16 taxable years beginning after December 31, 2017.

17 Section 7. This act shall take effect July 1, 2018, or
18 immediately, whichever is later.