
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1584 Session of
2023

INTRODUCED BY PISCIOTTANO, GREINER, SMITH-WADE-EL, SCHLOSSBERG,
SANCHEZ, MADDEN, HILL-EVANS, CEPEDA-FREYTIZ, KUTZ, MENTZER
AND FEE, JULY 18, 2023

REFERRED TO COMMITTEE ON FINANCE, JULY 18, 2023

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 personal income tax, further providing for
11 definitions, providing for elective tax imposed at pass-
12 through entity level and further providing for taxability of
13 partners, for income of a Pennsylvania S corporation and for
14 income taxes imposed by other states.

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

17 Section 1. Section 301(w) of the act of March 4, 1971
18 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended
19 to read:

20 Section 301. Definitions.--Any reference in this article to
21 the Internal Revenue Code of 1986 shall mean the Internal
22 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.),
23 as amended to January 1, 1997, unless the reference contains the

1 phrase "as amended" and refers to no other date, in which case
2 the reference shall be to the Internal Revenue Code of 1986 as
3 it exists as of the time of application of this article. The
4 following words, terms and phrases when used in this article
5 shall have the meaning ascribed to them in this section except
6 where the context clearly indicates a different meaning:

7 * * *

8 (w) "Taxpayer" means any individual, estate or trust subject
9 to the tax imposed by this article, any partnership having a
10 partner who is a taxpayer under this act, any Pennsylvania S
11 corporation having a shareholder who is a taxpayer under this
12 act [and], any person required to withhold tax under this
13 article and, unless otherwise provided, a pass-through entity
14 that elects to pay the tax imposed under section 302.3.

15 Section 2. The act is amended by adding a section to read:

16 Section 302.3. Elective Tax Imposed at Pass-Through Entity
17 Level.--(a) Notwithstanding any other provision of this
18 article, a pass-through entity may elect, on an annual basis, to
19 have the tax imposed under this article applied to the income of
20 the pass-through entity. The following shall apply:

21 (1) An electing pass-through entity shall be subject to and
22 shall pay a tax imposed at the rate provided in section 302(b)
23 on:

24 (i) Each resident taxable owner's share of each class of
25 income and gain enumerated in section 303 for the taxable year.

26 (ii) Each nonresident taxable owner's share of each class of
27 income and gain enumerated in section 303 from sources within
28 this Commonwealth for the taxable year.

29 (2) An electing resident Pennsylvania S corporation shall be
30 subject to and shall pay a tax imposed at the rate provided in

1 section 302(b) on each resident taxable owner's share of each
2 class of income and gain enumerated in section 303 for the
3 taxable year.

4 (3) An electing standard Pennsylvania S corporation shall be
5 subject to and shall pay a tax imposed at the rate provided in
6 section 302(b) on each taxable owner's share of each class of
7 income and gain enumerated in section 303 from sources within
8 this Commonwealth for the taxable year.

9 (4) An entity that is disregarded for tax purposes under
10 this article shall be disregarded for the purposes of this
11 section.

12 (5) In determining the pass-through entity's tax under this
13 section, a pass-through entity that owns a direct or indirect
14 ownership interest in one or more pass-through entities shall
15 include the share of each class of income enumerated in section
16 303 received from those pass-through entities. The pass-through
17 entity that generates an item of income, gain or loss shall
18 determine the classification and whether that item of income,
19 gain or loss constitutes income or loss from sources within this
20 Commonwealth.

21 (6) Guaranteed payments made to a partner in a partnership
22 shall be treated as additional income allocated to the partner.
23 With respect to a nonresident taxable owner, only guaranteed
24 payments that constitute income from sources within this
25 Commonwealth shall be subject to the tax under this section.

26 (7) In determining the tax due under this section, a pass-
27 through entity shall not be permitted to use any tax credits
28 otherwise available to the pass-through entity except a credit
29 for estimated taxes paid for the current taxable year under this
30 section or an overpayment of a prior-year tax paid under this

1 section.

2 (b) (1) Any election described under subsection (a) shall
3 be made by an individual with authority to bind the pass-through
4 entity or sign returns under this article or who is authorized
5 to make the election and represents to having the authorization
6 under penalty of perjury on or before the fifteenth day of the
7 fourth month of the pass-through entity's taxable year in a
8 manner prescribed by the department.

9 (2) In instances where a pass-through entity does not have
10 either a resident individual, estate or trust as a partner,
11 member, shareholder or beneficiary, or income or loss from
12 sources within this Commonwealth as of the fifteenth day of the
13 fourth month of the pass-through entity's taxable year, the
14 pass-through entity may make an election no later than ninety
15 days from the date the pass-through entity meets the
16 requirements specified under section 335(c)(1) to file a return,
17 or the last day of the pass-through entity's taxable year,
18 whichever is earlier. For the purpose of determining the filing
19 requirements of a pass-through entity under this clause, the
20 reference to partnership in section 335(c)(1) shall include a
21 Pennsylvania S corporation.

22 (3) An election under this section shall take effect for the
23 taxable year in which the election is submitted to the
24 department. Only one election may be submitted by an individual
25 identified under clause (1) on behalf of the pass-through entity
26 to the department for the taxable year.

27 (4) An election made under this section shall be irrevocable
28 for the taxable year.

29 (5) An election under this section may be made only for tax
30 years that the limitation on individual deductions applies under

1 26 U.S.C. § 164(b)(6) (relating to taxes).

2 (c) (1) A taxable owner of an interest in a pass-through
3 entity that elects to pay tax under subsection (a) shall be
4 allowed a refundable credit against the tax imposed under
5 section 302 in the amount of the taxable owner's share of the
6 tax that the pass-through entity actually paid under this
7 section. A taxable owner's share of the tax shall take into
8 account guaranteed payments and other special allocations made
9 to the owner.

10 (2) A taxable owner shall be entitled to claim the credit
11 under clause (1) on the taxable owner's tax return that includes
12 the last day of the taxable year of the pass-through entity.

13 (3) The credit allowed under this subsection shall be
14 applied after the application of all other tax credits available
15 to the owner for the taxable year. If the amount of the credit
16 allowable under this subsection for any taxable year exceeds the
17 tax due for the year under this article, the excess amount shall
18 be treated as an overpayment, to be credited or refunded.

19 (4) No credit shall be allowed to a taxable owner under
20 clause (1) unless the electing pass-through entity paid the tax
21 imposed under this article and provides the department on the
22 tax return all the information required in subsection (e)(2) and
23 (3).

24 (5) The aggregate amount of credits claimed by all taxable
25 owners of a pass-through entity under clause (1) may not exceed
26 the tax that the pass-through entity paid under subsection (a)
27 for the taxable year.

28 (d) A pass-through entity that elects to pay tax under
29 subsection (a) shall be required to make estimated tax payments
30 in four equal installments on or before the fifteenth day of the

1 fourth, sixth and ninth month of the pass-through entity's
2 taxable year, and the fifteenth day of the first month of the
3 pass-through entity's subsequent taxable year.

4 (e) (1) On or before the date provided under section
5 330(a), each pass-through entity that elects to pay tax under
6 subsection (a) shall file a return for the taxable year
7 reporting the information required under this article.

8 (2) The return filed under clause (1) shall include, in a
9 format as prescribed by the department, a certification by an
10 individual authorized to act on behalf of the pass-through
11 entity, which includes the following:

12 (i) A timely, valid election to be subject to the tax under
13 this article and whether a Pennsylvania S corporation is
14 electing to be treated as a resident Pennsylvania S corporation
15 or standard Pennsylvania S corporation.

16 (ii) That all statements contained in the certification are
17 true.

18 (3) Each pass-through entity that elects to pay tax under
19 subsection (a) shall report on a return required under this
20 article the following:

21 (i) Any tax due under this article. The balance of any tax
22 shown on the return, not previously paid as installments of
23 estimated tax or an overpayment of a prior-year tax, shall be
24 paid with the return.

25 (ii) Identifying information of each taxable owner eligible
26 to receive a credit under subsection (c), including a Social
27 Security number or tax identification number and status as a
28 resident or nonresident. The pass-through entity must provide
29 information sufficient to identify a disregarded entity and the
30 taxable owners.

1 (iii) For each taxable owner who will be entitled to claim a
2 credit on a tax return, the taxable owner's share of the tax
3 imposed on the pass-through entity under this section.

4 (iv) Each resident taxable owner's share of the pass-through
5 entity's income and each nonresident taxable owner's share of
6 income from sources from within this Commonwealth included in
7 the tax base under this section.

8 (v) The classification of each owner as a taxable resident
9 or nonresident for purposes of calculating the pass-through
10 entity's tax liability under this section.

11 (vi) Any other information as required by the department.

12 (4) A pass-through entity that elects to pay tax under
13 subsection (a) shall not be required to withhold tax from a
14 nonresident taxable owner under section 324.

15 (5) To meet the requirements of this section, if a taxable
16 owner holds an interest in the pass-through entity through an
17 entity that is a disregarded entity for purposes of this
18 article, the pass-through entity must provide information
19 sufficient to identify both the disregarded entity that holds an
20 interest in the pass-through entity and the taxable owner that
21 owns the disregarded entity and is eligible for a credit under
22 subsection (c).

23 (6) Each pass-through entity paying tax under this section
24 shall report to each taxable owner required to file a return
25 under this article a statement that contains the following
26 information:

27 (i) Classification as a resident taxable owner or a
28 nonresident taxable owner for purposes of calculating the pass-
29 through entity's tax under subsection (a).

30 (ii) The taxable owner's allocable share of the pass-through

1 entity's income included in the tax base for purposes of
2 computing the tax under subsection (a).

3 (iii) The owner's allocable share of the tax paid under
4 subsection (a).

5 (iv) Any other information, as required by the department.

6 (f) (1) Any assessment of tax imposed under this section,
7 including interest, penalties and additions, shall be assessed
8 against the pass-through entity at the tax rate applicable to
9 the tax year. The department may not assess any additional tax,
10 including interest, penalties and additions, against the taxable
11 owners.

12 (2) Any determination of an overpayment or refund of tax
13 imposed under this section made subsequent to the filing of the
14 return under subsection (e) shall be made at the pass-through
15 entity level at the tax rate applicable to the tax year.

16 (3) The pass-through entity shall be required to provide
17 each owner a statement of any adjustment of the taxable owner's
18 credit within ninety days of an assessment, overpayment or
19 refund becoming final.

20 (4) The taxable owner shall report the adjustment of the
21 credit on an amended return for the taxable owner's taxable year
22 that includes the pass-through entity's taxable year for which
23 the tax was assessed.

24 (5) Only the pass-through entity may appeal or settle an
25 assessment or overpayment of tax issued under this section or
26 petition for a refund of tax imposed under this section.

27 (6) A pass-through entity that elects to pay tax under
28 subsection (a) shall be liable for the tax due under this
29 section.

30 (7) Except as provided under clause (8), a taxable owner,

1 either directly or through a disregarded entity, shall be
2 severally liable for an assessment of the tax imposed under
3 subsection (a) that is not paid by a pass-through entity that
4 made an election under subsection (b) to the extent of the
5 taxable owner's direct share of the unpaid tax, including
6 interest, additions and penalties of the electing resident
7 Pennsylvania S corporation or electing standard Pennsylvania S
8 corporation.

9 (8) A taxable owner who, directly or through a disregarded
10 entity, is a general, managing or controlling partner of a
11 partnership that made an election under subsection (b), who is
12 the managing or controlling shareholder in a Pennsylvania S
13 corporation that made an election under subsection (b), who owns
14 more than fifty percent of the interests or profits of a
15 partnership or Pennsylvania S corporation that made an election
16 under subsection (b) or who was the individual who made the
17 election under subsection (b) on behalf of a partnership or
18 Pennsylvania S corporation, shall be jointly and severally
19 liable for an assessment of the tax imposed under subsection
20 (a), including interest, additions and penalties, that was not
21 paid by a pass-through entity that made an election under
22 subsection (b).

23 (9) If an electing pass-through entity, electing resident
24 Pennsylvania S corporation or electing standard Pennsylvania S
25 corporation fails to pay the tax under this section, including
26 interest, additions and penalties, any tax paid by a taxable
27 owner shall not be treated as being collected from the electing
28 pass-through entity, electing resident Pennsylvania S
29 corporation or electing standard Pennsylvania S corporation.

30 (g) The basis of both a resident taxable owner and

1 nonresident taxable owner of a pass-through entity that elects
2 to pay tax under subsection (a) shall be determined as if the
3 election under subsection (b) had not been made and each of the
4 taxable owners of the taxed pass-through entity had properly
5 taken into account each taxable owner's pro rata share of the
6 taxed pass-through entity's items of income, gain, loss and
7 deduction in the manner required with respect to a pass-through
8 entity for which no such election is in effect.

9 (h) (1) Unless otherwise provided in, or inconsistent with,
10 this section, the provisions of this article shall apply to this
11 section.

12 (2) The department may issue guidelines and promulgate
13 regulations necessary for the implementation of this section.

14 (i) (1) In the case of any taxable year that includes the
15 effective date of this section, a pass-through entity may file
16 an election under subsection (b)(1) at any time within ninety
17 days of the effective date of this section provided that if the
18 election is made, the pass-through entity must, on or before the
19 date the next estimated tax payment is due after the election,
20 make an estimated tax payment equal to the total estimated tax
21 that would have been due for the tax year had the election been
22 made for the full tax year, and any nonresident withholding made
23 under section 324 by the pass-through entity for the current tax
24 year may be applied by the pass-through entity against the
25 estimated tax liability.

26 (2) In the case of any taxable year that includes the
27 effective date of this section, any nonresident withholding made
28 under section 324 by the pass-through entity for the current tax
29 year for an owner shall be applied by the pass-through entity
30 against the estimated tax liability.

1 (3) In the case of any taxable year that includes the
2 effective date of this section, the department may not assess
3 interest and penalties against an eligible pass-through entity
4 for any underpayment of estimated tax due under subsection (d),
5 so long as the eligible pass-through entity acted in good faith
6 with no intent to defraud the Commonwealth.

7 (j) As used in this section, the following words and phrases
8 shall have the meanings given to them in this subsection unless
9 the context clearly indicates otherwise:

10 "Electing pass-through entity." A pass-through entity that
11 elects at the time an election is made to be subject to the tax
12 under this section to determine the tax in accordance with
13 subsection (a).

14 "Electing resident Pennsylvania S corporation." A
15 Pennsylvania S corporation that is a pass-through entity whose
16 shareholders only include resident individuals, estates or
17 trusts, and disregarded entities whose owners only include
18 resident individuals, estates or trusts that elects at the time
19 an election is made to be subject to the tax under this section
20 to determine the tax in accordance with subsection (a).

21 "Electing standard Pennsylvania S corporation." A
22 Pennsylvania S corporation that is a pass-through entity whose
23 shareholders only include resident and nonresident individuals,
24 estates or trusts, and disregarded entities whose owners only
25 include resident and nonresident individuals, estates or trusts
26 that elects at the time an election is made to be subject to the
27 tax under this section to determine the tax in accordance with
28 subsection (a).

29 "Nonresident taxable owner." An individual, estate or trust
30 subject to the tax imposed under this article, other than a

1 resident taxable owner, that is a partner, shareholder, member
2 or other owner of an interest in a pass-through entity that has
3 income from sources within this Commonwealth.

4 "Partnership." A domestic or foreign general partnership,
5 joint venture, limited partnership, limited liability company,
6 business trust or other unincorporated entity that for Federal
7 income tax purposes is classified as a partnership. The term
8 does not include a publicly traded partnership.

9 "Pass-through entity." A partnership or Pennsylvania S
10 corporation.

11 "Resident taxable owner." A resident individual, resident
12 trust or resident estate that is a partner, shareholder, member
13 or other owner of an interest in a pass-through entity.

14 "Taxable owner." A resident taxable owner or nonresident
15 taxable owner.

16 Section 3. Sections 306, 307.8(a) and 314 of the act are
17 amended to read:

18 Section 306. Taxability of Partners.--Except as provided
19 under [section] sections 302.3 and 306.2, a partnership as an
20 entity shall not be subject to the tax imposed by this article,
21 but the income or gain of a member of a partnership in respect
22 of said partnership shall be subject to the tax and the tax
23 shall be imposed on his share, whether or not distributed, of
24 the income or gain received by the partnership for its taxable
25 year ending within or with the member's taxable year.

26 Section 307.8. Income of a Pennsylvania S Corporation.--(a)
27 A Pennsylvania S corporation shall not be subject to the tax
28 imposed by this article, except as provided under subsection (f)
29 and section 302.3, but the shareholders of the Pennsylvania S
30 corporation shall be subject to the tax imposed under this

1 article as provided in this article.

2 * * *

3 Section 314. Income Taxes Imposed by Other States.--(a) A
4 resident taxpayer before allowance of any credit under section
5 302.3 or 312 shall be allowed a credit against the tax otherwise
6 due under this article for the amount of any income tax, wage
7 tax or tax on or measured by gross or net earned or unearned
8 income imposed on him or on a Pennsylvania S corporation or
9 partnership in which he is a direct or indirect shareholder or
10 partner, to the extent [of his pro rata share thereof determined
11 in accordance with section 307.9,] that the tax was imposed on
12 the taxpayer's distributive share or other share thereof by
13 another state with respect to income which is also subject to
14 tax under this article. For purposes of this subsection, the
15 term "state" shall only include a state of the United States,
16 the District of Columbia, the Commonwealth of Puerto Rico and
17 any territory or possession of the United States.

18 (b) The credit provided under this section shall not exceed
19 the proportion of the tax otherwise due under this article that
20 the amount of the taxpayer's income subject to tax by the other
21 jurisdiction bears to his entire taxable income.

22 (c) In lieu of submitting a copy of each State return in
23 which a tax liability is reported and tax is paid, a partner,
24 shareholder, partnership or Pennsylvania S corporation may
25 provide a certified statement that reflects each partner's or
26 shareholder's share of taxable income, amount of State income
27 tax paid and other information that the department requires.

28 Section 4. This act shall apply as follows:

29 (1) The amendment or addition of sections 301(w), 302.3,
30 306 and 307.8(a) of the act shall apply to taxable years

1 beginning after December 31, 2023.

2 (2) The amendment of section 314(a) shall apply to
3 taxable years beginning after December 31, 2022.

4 Section 5. This act shall take effect immediately.