

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2782 Session of
1994

INTRODUCED BY FAJT, FEE, TRELLO, GAMBLE, BIRMELIN AND
D. R. WRIGHT, MAY 18, 1994

REFERRED TO COMMITTEE ON FINANCE, MAY 18, 1994

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," providing for the increase of personal income
11 tax; reducing the rate of corporate net income tax; further
12 defining "average net income" for capital stock and franchise
13 tax computations; and including electric utilities on the
14 increased gross receipts tax and additional surtax.

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

17 Section 1. Sections 302 and 402 of the act of March 4, 1971
18 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended or
19 added August 4, 1991 (P.L.97, No.22), are amended to read:

20 Section 302. Imposition of Tax.--(a) Every resident
21 individual, estate or trust shall be subject to, and shall pay
22 for the privilege of receiving each of the classes of income
23 hereinafter enumerated in section 303, a tax upon each dollar of

1 income received by that resident during that resident's taxable
2 year at the following rates:

3 (1) Two and one-tenth per cent for taxable years commencing
4 with or within calendar year 1987 through the first half of the
5 taxable year commencing with or within calendar year 1991.

6 (2) Two and eight-tenths per cent for the second half of the
7 taxable year commencing with or within calendar year 1991 and
8 each taxable year thereafter.

9 (3) A temporary assessment equal to an additional three-
10 tenths per cent for the second half of the taxable year
11 commencing with or within calendar year 1991 through the first
12 half of the taxable year commencing with or within calendar year
13 1992.

14 (4) A surcharge equal to an additional one-tenth per cent
15 for the taxable year commencing with or within calendar year
16 1994 and each taxable year thereafter.

17 (b) Every nonresident individual, estate or trust shall be
18 subject to, and shall pay for the privilege of receiving each of
19 the classes of income hereinafter enumerated in section 303 from
20 sources within this Commonwealth, a tax upon each dollar of
21 income received by that nonresident during that nonresident's
22 taxable year at the following rates:

23 (1) Two and one-tenth per cent for taxable years commencing
24 with or within calendar year 1987 through the first half of the
25 taxable year commencing with or within calendar year 1991.

26 (2) Two and eight-tenths per cent for the second half of the
27 taxable year commencing with or within calendar year 1991 and
28 each taxable year thereafter.

29 (3) A temporary assessment equal to an additional three-
30 tenths per cent for the second half of the taxable year

1 commencing with or within calendar year 1991 through the first
2 half of the taxable year commencing with or within calendar year
3 1992.

4 (4) A surcharge equal to an additional one-tenth per cent
5 for the taxable year commencing with or within calendar year
6 1994 and each taxable year thereafter.

7 Section 402. Imposition of Tax.--Every corporation shall be
8 subject to, and shall pay for the privilege of (i) doing
9 business in this Commonwealth; or (ii) carrying on activities in
10 this Commonwealth; (iii) having capital or property employed or
11 used in this Commonwealth; or (iv) owning property in this
12 Commonwealth, by or in the name of itself, or any person,
13 partnership, association, limited partnership, joint-stock
14 association, or corporation, a State excise tax at the rate of
15 twelve per cent per annum upon each dollar of taxable income of
16 such corporation received by, and accruing to, such corporation
17 during the calendar year 1971 and the first six months of 1972
18 and at the rate of eleven per cent per annum upon each dollar of
19 taxable income of such corporation received by, and accruing to,
20 such corporation during the second six months of calendar year
21 1972 through the calendar year 1973 and at the rate of nine and
22 one-half per cent per annum upon each dollar of taxable income
23 of such corporation received by, and accruing to, such
24 corporation during the calendar years 1974, 1975 and 1976 and at
25 the rate of ten and one-half per cent per annum upon each dollar
26 of taxable income of such corporation received by, and accruing
27 to, such corporation during the calendar year 1977 through the
28 calendar year 1984 and at the rate of nine and one-half per cent
29 per annum upon each dollar of taxable income of such corporation
30 received by and accruing to such corporation during the calendar

1 year 1985 through calendar year 1986 and at the rate of eight
2 and one-half per cent per annum upon each dollar of taxable
3 income of such corporation received by and accruing to such
4 corporation during the calendar year 1987 through the calendar
5 year 1990 and at the rate of ten and one-half per cent per annum
6 upon each dollar of taxable income of such corporation received
7 by and accruing to such corporation during calendar year 1991
8 [and during each calendar year thereafter] through the calendar
9 year 1993 and at the rate of eight and twenty-five hundredths
10 per cent per annum upon each dollar of taxable income of such
11 corporation received by and accruing to such corporation during
12 the calendar year 1994 and during each calendar year thereafter,
13 with an additional surtax equal to one and seventy-five
14 hundredths per cent per annum upon each dollar of taxable income
15 of such corporation received by and accruing to such corporation
16 during calendar year 1991 and during each calendar year
17 thereafter, except where a corporation reports to the Federal
18 Government on the basis of a fiscal year, and has certified such
19 fact to the department as required by section 403 of this
20 article, in which case, such tax, at the rate of twelve per
21 cent, shall be levied, collected, and paid upon all taxable
22 income received by, and accruing to, such corporation during the
23 first six months of the fiscal year commencing in the calendar
24 year 1972 and at the rate of eleven per cent, shall be levied,
25 collected, and paid upon all taxable income received by, and
26 accruing to, such corporation during the second six months of
27 the fiscal year commencing in the calendar year 1972 and during
28 the fiscal year commencing in the calendar year 1973 and at the
29 rate of nine and one-half per cent, shall be levied, collected,
30 and paid upon all taxable income received by, and accruing to,

1 such corporation during the fiscal year commencing in the
2 calendar years 1974, 1975 and 1976 and at the rate of ten and
3 one-half per cent, shall be levied, collected, and paid upon all
4 taxable income received by, and accruing to, such corporation
5 during the fiscal year commencing in the calendar year 1977
6 through the fiscal year commencing in 1984 and at the rate of
7 nine and one-half per cent, shall be levied, collected, and paid
8 upon all taxable income received by and accruing to such
9 corporation during the fiscal year commencing in 1985 through
10 the fiscal year commencing in 1986 and at the rate of eight and
11 one-half per cent per annum upon each dollar of taxable income
12 of such corporation received by and accruing to such corporation
13 during the fiscal year commencing in 1987 through the fiscal
14 year commencing in 1990 and at the rate of ten and one-half per
15 cent per annum upon each dollar of taxable income of such
16 corporation received by and accruing to such corporation during
17 the fiscal year commencing in 1991 [and during each fiscal year
18 thereafter] through the fiscal year commencing in 1993 and at
19 the rate of eight and twenty-five hundredths per cent per annum
20 upon each dollar of taxable income of such corporation received
21 by and accruing to such corporation during the fiscal year
22 commencing in 1994 and during each fiscal year thereafter, with
23 an additional surtax equal to one and seventy-five hundredths
24 per cent per annum upon each dollar of taxable income of such
25 corporation received by and accruing to such corporation during
26 the fiscal year commencing in 1991 and during each fiscal year
27 thereafter. No penalty prescribed by subsection (e) of section
28 3003 shall be assessed against a corporation for the additional
29 tax which may be due as a result of the increase in tax rate
30 from nine and one-half per cent to ten and one-half per cent

1 imposed retroactively by this section for the calendar year 1977
2 or for the fiscal year commencing in 1977.

3 Section 2. The definition of "average net income" in section
4 601(a) of the act, amended December 23, 1983 (P.L.360, No.89),
5 is amended to read:

6 Section 601. Definitions and Reports.--(a) The following
7 words, terms and phrases when used in this Article VI shall have
8 the meaning ascribed to them in this section, except where the
9 context clearly indicates a different meaning:

10 "Average net income." The sum of the net income or loss for
11 each of the current and immediately preceding four years,
12 divided by five. If the entity has not been in existence for a
13 period of five years, the average net income shall be the
14 average net income for the number of years that the entity has
15 actually been in existence. In computing average net income,
16 losses shall be entered as computed, but in no case shall
17 average net income be less than zero. The net income or loss of
18 the entity for any taxable year shall be computed by taking the
19 amount set forth as income per books on the income tax return
20 filed by the entity with the Federal Government for such taxable
21 year, or if no such return is made, as would have been set forth
22 had such a return been made, subject, however, in either case to
23 any correction thereof, for fraud, evasion or error[.] and
24 adding to such amount the amount of any dividends received from
25 any subsidiary or investee corporation, which dividends are not
26 already included in said income per books due to the application
27 of consolidation or use of, the equity method of accounting or
28 any other accounting method which would under value average net
29 income unless such dividends are not specifically added to the
30 income. In the case of any entity which has an investment in

1 another corporation, the net income or loss shall be computed on
2 an unconsolidated basis exclusive of the net income or loss of
3 such other corporation.

4 * * *

5 Section 3. Section 1101(b) of the act, amended July 13, 1987
6 (P.L.317, No.58), is amended to read:

7 Section 1101. Imposition of Tax.--* * *

8 (b) Electric Light, Waterpower and Hydro-electric
9 Utilities.--Every electric light company, waterpower company and
10 hydro-electric company now or hereafter incorporated or
11 organized by or under any law of this Commonwealth, or now or
12 hereafter organized or incorporated by any other state or by the
13 United States or any foreign government and doing business in
14 this Commonwealth, and every limited partnership, association,
15 joint-stock association, copartnership, person or persons,
16 engaged in electric light and power business, waterpower
17 business and hydro-electric business in this Commonwealth, shall
18 pay to the State Treasurer, through the Department of Revenue, a
19 tax of [forty-four] forty-five mills with a surtax equal to five
20 mills upon each dollar of the gross receipts of the corporation,
21 company or association, limited partnership, joint-stock
22 association, copartnership, person or persons, received from:

23 (1) the sales of electric energy within this State, except
24 gross receipts derived from the sales for resale of electric
25 energy to persons, partnerships, associations, corporations or
26 political subdivisions subject to the tax imposed by this
27 subsection upon gross receipts derived from such resale; and

28 (2) the sales of electric energy produced in Pennsylvania
29 and made outside of Pennsylvania in a state that has taken
30 action since December 21, 1977 which results in higher costs for

1 electric energy produced in that state and sold in Pennsylvania
2 unless the action that was taken after December 21, 1977 is
3 rescinded according to the following apportionment formula:
4 except for gross receipts derived from sales under clause (1),
5 the gross receipts from all sales of electricity of the producer
6 shall be apportioned to the Commonwealth of Pennsylvania by the
7 ratio of the producer's operating and maintenance expenses in
8 Pennsylvania and depreciation attributable to property in
9 Pennsylvania to the producer's total operating and maintenance
10 expenses and depreciation.

11 * * *

12 Section 4. The automatic adjustment of rates provided for in
13 66 Pa.C.S. § 1307 shall not include nor apply to the gross
14 receipts taxes paid under section 1101(b) of the act. However,
15 this exclusion shall not apply if the gross receipts tax paid
16 under section 1101(b) of the act is subsequently changed by the
17 General Assembly.

18 Section 5. The amendment of sections 601 and 1101 of the act
19 shall be retroactive to the tax years beginning on or after
20 January 1, 1993.

21 Section 6. This act shall take effect immediately.