

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1472 Session of
2003

INTRODUCED BY J. TAYLOR, ADOLPH, BARRAR, BUNT, CAPPELLI,
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REICHLEY, R. STEVENSON, E. Z. TAYLOR, WATSON AND YOUNGBLOOD,
MAY 29, 2003

REFERRED TO COMMITTEE ON FINANCE, MAY 29, 2003

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," adding definitions; and further providing for the
11 capital stock franchise tax.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Section 601(a) of the act of March 4, 1971
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended
16 by adding definitions to read:

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

21 * * *

1 "Exchange-related activities." Include the activities:

2 (1) of:

3 (i) acting as a market maker, specialist, broker, floor
4 broker, introducing broker, dealer, floor trader, futures
5 commission merchant, commodity trading advisory, commodity pool
6 operator, or foreign currency option participant or in a similar
7 capacity that is registered with the Securities Exchange
8 Commission, the Pennsylvania Securities Commission or the
9 Commodity Futures Trading Commission;

10 (ii) otherwise dealing in, trading or hedging securities,
11 municipal securities, commodities, futures, options, hybrid
12 instruments, derivative security products, derivative commodity
13 products, security futures, security futures products, foreign
14 currencies or foreign currency derivative products; or

15 (iii) performing clearing or settlement functions in
16 securities, commodities, futures, options, hybrid instruments,
17 derivative security products, derivative commodity products,
18 security futures, security futures products, foreign currencies
19 or foreign currency derivative products;

20 and

21 (2) on or through a national securities exchange, a
22 registered securities association, a registered clearing agency,
23 a foreign financial regulatory authority, a facility, a trading
24 facility, an alternative trading system, an electronic
25 communications network, an electronic trading facility, a
26 designated contract market, a derivatives transaction execution
27 facility, a derivatives clearing organization or clearing house
28 or similar trading market or facility. The terms "market maker,"
29 "specialist," "national securities exchange," "registered
30 securities association," "foreign financial regulatory

1 authority," "facility," "registered clearing agency,"
2 "alternative trading system," "electronic communications
3 network," "security," "broker," "dealer," "security future" and
4 "security futures product" shall have the same meaning as set
5 forth under the Securities Exchange Act of 1934 (15 U.S.C. § 78a
6 et seq.), as amended, and the rules promulgated thereunder. The
7 terms "commodity," "future," "option," "hybrid instrument,"
8 "floor broker," "introducing broker," "floor trader," "trading
9 facility," "electronic trading facility," "futures commission
10 merchant," "commodity trading advisor," "commodity pool
11 operator," "designated contract market," "derivatives
12 transaction execution facility" and "derivatives clearing
13 organization" shall have the same meaning as set forth under the
14 Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended, The
15 Municipal Securities Rulemaking Board and the rules promulgated
16 thereunder.

17 "Exchange-related assets." Tangible and intangible assets
18 used in exchange-related activities. Exchange-related assets
19 include all of the following, whether dealt, traded or used as
20 hedges in connection with securities exchange activities:
21 securities, municipal securities, commodities, futures, options,
22 hybrid instruments, derivative security products, derivative
23 commodity products, security futures, security futures products,
24 foreign currencies, foreign currency derivative products,
25 exchange memberships and cash and deposits to the extent such
26 cash and deposits are used in or to support exchange-related
27 activities. Exchange-related assets of an entity shall be deemed
28 to include:

29 (1) Any exchange-related assets of any direct or indirect
30 subsidiary of the entity.

1 (2) Any receivable resulting from a loan to another entity
2 of funds or other assets for use in exchange-related activities,
3 to the extent that the value of such exchange-related assets is
4 reflected in the value of assets held by the entity.

5 * * *

6 Section 2. Section 602(a) of the act, amended May 24, 2000
7 (P.L.106, No.23), is amended and the section is amended by
8 adding a subsection to read:

9 Section 602. Imposition of Tax.--(a) That every domestic
10 entity from which a report is required under section 601 hereof
11 shall be subject to, and pay to the department annually, a tax
12 which is the amount computed by multiplying each dollar of the
13 capital stock value as defined in section 601(a) by the
14 appropriate rate of tax as set forth in subsection (h); except
15 that any domestic entity or company subject to the tax
16 prescribed herein may elect to compute and pay its tax under and
17 in accordance with the provisions of subsection (b) of this
18 section 602: Provided, That the provisions of this section shall
19 not apply to the taxation of the capital stock of entities
20 organized for manufacturing, processing, research or development
21 purposes, which is invested in and actually and exclusively
22 employed in carrying on manufacturing, processing, research or
23 development within the State, except such entities as enjoy and
24 exercise the right of eminent domain, but every entity organized
25 for the purpose of manufacturing, processing, research or
26 development except such entities as enjoy and exercise the right
27 of eminent domain shall pay the State tax of the amount computed
28 by multiplying each dollar of the capital stock value as defined
29 in section 601(a) by the appropriate rate of tax as set forth in
30 subsection (h) upon such proportion of its capital stock, if

1 any, as may be invested in any property or business not strictly
2 incident or appurtenant to the manufacturing, processing,
3 research or development business, in addition to the local taxes
4 assessed upon its property in the district where located, it
5 being the object of this provision to relieve from State
6 taxation only so much of the capital stock as is invested purely
7 in the manufacturing, processing, research or development plant
8 and business: [and] Provided further, That the provisions of
9 this section shall not apply to the taxation of so much of the
10 capital stock value attributable to student loan assets owned or
11 held by an entity created for the securitization of student
12 loans or by a trustee on its behalf[.]: and Provided further,
13 That the provisions of this section shall not apply to the
14 taxation of so much of the capital stock value of an entity
15 attributable to exchange-related assets calculated by including
16 exchange-related assets as assets relieved from taxation under
17 the act of June 22, 1931 (P.L.685, No.250), entitled "An act
18 providing for the settlement of capital stock tax in the cases
19 of corporations, joint-stock associations, limited partnerships,
20 and companies which own assets which are exempted or relieved
21 from capital stock tax."

22 * * *

23 (b.1) The capital stock value before apportionment of an
24 entity subject to the capital stock or franchise tax shall not
25 include that portion of the entity's capital stock value
26 attributable to exchange-related assets. The portion of capital
27 stock value attributable to exchange-related assets shall be
28 calculated by multiplying the entity's capital stock value,
29 otherwise determined under section 601, times the value of
30 exchange-related assets over the value of all assets. An entity

1 may apportion its capital stock value after the exclusion
2 provided hereunder, as provided by law.

3 * * *

4 Section 3. This act shall apply retroactively to tax years
5 beginning on or after January 1, 2003.

6 Section 4. This act shall take effect immediately.