

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

# HOUSE BILL

## No. 1472 Session of 2003

---

INTRODUCED BY J. TAYLOR, ADOLPH, BARRAR, BUNT, CAPPELLI,  
CORRIGAN, CRAHALLA, DALLY, FICHTER, HORSEY, LAUGHLIN,  
LEDERER, LEH, LEWIS, McILHATTAN, S. MILLER, PHILLIPS,  
REICHLEY, R. STEVENSON, E. Z. TAYLOR, WATSON AND YOUNGBLOOD,  
MAY 29, 2003

---

AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES,  
AS AMENDED, NOVEMBER 24, 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:

\* \* \*

~~"Exchange related activities." Include the activities:~~

<—

~~(1) of:~~

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

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

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

~~and~~

~~(2) on or through a national securities exchange, a registered securities association, a registered clearing agency, a foreign financial regulatory authority, a facility, a trading facility, an alternative trading system, an electronic communications network, an electronic trading facility, a designated contract market, a derivatives transaction execution facility, a derivatives clearing organization or clearing house or similar trading market or facility. The terms "market maker," "specialist," "national securities exchange," "registered~~

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

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

30 ~~(1) Any exchange related assets of any direct or indirect~~

~~subsidiary of the entity.~~

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

"EXCHANGE-RELATED ACTIVITIES." ACTIVITIES WHICH ARE ALL OF THE FOLLOWING:

(1) CONDUCTED BY:

(I) A MARKET MAKER, SPECIALIST OR FLOOR BROKER THAT IS REGISTERED WITH THE UNITED STATES SECURITIES EXCHANGE COMMISSION OR THE COMMODITIES FUTURES TRADING COMMISSION; OR

(II) A PERSON PERFORMING REGISTERED CLEARING OR SETTLEMENT FUNCTIONS WITH RESPECT TO SECURITIES.

(2) OCCURS ON OR THROUGH A NATIONAL SECURITIES EXCHANGE, A REGISTERED SECURITIES ASSOCIATION OR CLEARING AGENCY, DESIGNATED COMMODITIES MARKET, FOREIGN FINANCIAL AUTHORITY OR A REGISTERED ELECTRONIC TRADING, EXECUTION, MARKET OR CLEARING FACILITY FOR SECURITIES AS THESE TERMS ARE DEFINED IN THE SECURITIES EXCHANGE ACT OF 1934 (48 STAT. 881, 15 U.S.C. § 78A ET SEQ.) AND THE COMMODITY EXCHANGE ACT (42 STAT. 988, 7 U.S.C. § 1 ET SEQ.).

"EXCHANGE-RELATED ASSET." A TANGIBLE OR INTANGIBLE ASSET TO THE EXTENT THAT IT IS USED IN EXCHANGE-RELATED ACTIVITIES. THE TERM INCLUDES SECURITIES USED IN CONNECTION WITH EXCHANGE-RELATED ACTIVITIES; EXCHANGE MEMBERSHIPS; CASH AND DEPOSITS USED IN SUPPORT OF EXCHANGE-RELATED ACTIVITIES; INVESTMENTS IN ORGANIZATIONS TO THE EXTENT THAT THE ORGANIZATIONS USE THE INVESTMENT AS EXCHANGE-RELATED ASSETS; AND DEBT EXTENDED BY A LENDER UNDER COMMON CONTROL WITH THE BORROWER IF THE FUNDS BORROWED ARE USED AS EXCHANGE-RELATED ASSETS.

\* \* \*

1       "SECURITIES." A SECURITY, MUNICIPAL SECURITY, FINANCIAL  
2       INSTRUMENT, COMMODITY, CURRENCY, OPTION OR FUTURE AS THOSE TERMS  
3       ARE DEFINED IN THE SECURITIES EXCHANGE ACT OF 1934 (48 STAT.  
4       881, 15 U.S.C. § 78A ET SEQ.) AND THE COMMODITY EXCHANGE ACT (42  
5       STAT. 988, 7 U.S.C. § 1 ET SEQ.).

6       \* \* \*

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

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

~~subsection (h) upon such proportion of its capital stock, if  
any, as may be invested in any property or business not strictly  
incident or appurtenant to the manufacturing, processing,  
research or development business, in addition to the local taxes  
assessed upon its property in the district where located, it  
being the object of this provision to relieve from State  
taxation only so much of the capital stock as is invested purely  
in the manufacturing, processing, research or development plant  
and business: [and] Provided further, That the provisions of  
this section shall not apply to the taxation of so much of the  
capital stock value attributable to student loan assets owned or  
held by an entity created for the securitization of student  
loans or by a trustee on its behalf[.]: and Provided further,  
That the provisions of this section shall not apply to the  
taxation of so much of the capital stock value of an entity  
attributable to exchange related assets calculated by including  
exchange related assets as assets relieved from taxation under  
the act of June 22, 1931 (P.L.685, No.250), entitled "An act  
providing for the settlement of capital stock tax in the cases  
of corporations, joint stock associations, limited partnerships,  
and companies which own assets which are exempted or relieved  
from capital stock tax."~~

~~\* \* \*~~

~~(b.1) The capital stock value before apportionment of an  
entity subject to the capital stock or franchise tax shall not  
include that portion of the entity's capital stock value  
attributable to exchange related assets. The portion of capital  
stock value attributable to exchange related assets shall be  
calculated by multiplying the entity's capital stock value,  
otherwise determined under section 601, times the value of~~

~~exchange related assets over the value of all assets. An entity  
may apportion its capital stock value after the exclusion  
provided hereunder, as provided by law.~~

SECTION 602. IMPOSITION OF TAX.--(A) THAT EVERY DOMESTIC  
ENTITY FROM WHICH A REPORT IS REQUIRED UNDER SECTION 601 HEREOF  
SHALL BE SUBJECT TO, AND PAY TO THE DEPARTMENT ANNUALLY, A TAX  
WHICH IS THE AMOUNT COMPUTED BY MULTIPLYING EACH DOLLAR OF THE  
CAPITAL STOCK VALUE AS DEFINED IN SECTION 601(A) BY THE  
APPROPRIATE RATE OF TAX AS SET FORTH IN SUBSECTION (H); EXCEPT  
THAT ANY DOMESTIC ENTITY OR COMPANY SUBJECT TO THE TAX  
PRESCRIBED HEREIN MAY ELECT TO COMPUTE AND PAY ITS TAX UNDER AND  
IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (B) OF THIS  
SECTION 602: PROVIDED, THAT THE PROVISIONS OF THIS SECTION SHALL  
NOT APPLY TO THE TAXATION OF THE CAPITAL STOCK OF ENTITIES  
ORGANIZED FOR MANUFACTURING, PROCESSING, RESEARCH OR DEVELOPMENT  
PURPOSES, WHICH IS INVESTED IN AND ACTUALLY AND EXCLUSIVELY  
EMPLOYED IN CARRYING ON MANUFACTURING, PROCESSING, RESEARCH OR  
DEVELOPMENT WITHIN THE STATE, EXCEPT SUCH ENTITIES AS ENJOY AND  
EXERCISE THE RIGHT OF EMINENT DOMAIN, BUT EVERY ENTITY ORGANIZED  
FOR THE PURPOSE OF MANUFACTURING, PROCESSING, RESEARCH OR  
DEVELOPMENT EXCEPT SUCH ENTITIES AS ENJOY AND EXERCISE THE RIGHT  
OF EMINENT DOMAIN SHALL PAY THE STATE TAX OF THE AMOUNT COMPUTED  
BY MULTIPLYING EACH DOLLAR OF THE CAPITAL STOCK VALUE AS DEFINED  
IN SECTION 601(A) BY THE APPROPRIATE RATE OF TAX AS SET FORTH IN  
SUBSECTION (H) UPON SUCH PROPORTION OF ITS CAPITAL STOCK, IF  
ANY, AS MAY BE INVESTED IN ANY PROPERTY OR BUSINESS NOT STRICTLY  
INCIDENT OR APPURTENANT TO THE MANUFACTURING, PROCESSING,  
RESEARCH OR DEVELOPMENT BUSINESS, IN ADDITION TO THE LOCAL TAXES  
ASSESSED UPON ITS PROPERTY IN THE DISTRICT WHERE LOCATED, IT  
BEING THE OBJECT OF THIS PROVISION TO RELIEVE FROM STATE

1 TAXATION ONLY SO MUCH OF THE CAPITAL STOCK AS IS INVESTED PURELY  
2 IN THE MANUFACTURING, PROCESSING, RESEARCH OR DEVELOPMENT PLANT  
3 AND BUSINESS: [AND] PROVIDED FURTHER, THAT THE PROVISIONS OF  
4 THIS SECTION SHALL NOT APPLY TO THE TAXATION OF SO MUCH OF THE  
5 CAPITAL STOCK VALUE ATTRIBUTABLE TO STUDENT LOAN ASSETS OWNED OR  
6 HELD BY AN ENTITY CREATED FOR THE SECURITIZATION OF STUDENT  
7 LOANS OR BY A TRUSTEE ON ITS BEHALF[.]; AND PROVIDED FURTHER,  
8 THAT THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE  
9 TAXATION OF SO MUCH OF THE CAPITAL STOCK VALUE OF AN ENTITY  
10 ATTRIBUTABLE TO EXCHANGE-RELATED ASSETS CALCULATED BY INCLUDING  
11 EXCHANGE RELATED ASSETS AS ASSETS RELIEVED FROM TAXATION UNDER  
12 THE ACT OF JUNE 22, 1931 (P.L.685, NO.250), ENTITLED "AN ACT  
13 PROVIDING FOR THE SETTLEMENT OF CAPITAL STOCK TAX IN THE CASES  
14 OF CORPORATIONS, JOINT-STOCK ASSOCIATIONS, LIMITED PARTNERSHIPS,  
15 AND COMPANIES WHICH OWN ASSETS WHICH ARE EXEMPTED OR RELIEVED  
16 FROM CAPITAL STOCK TAX."

17 \* \* \*

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

20 Section 4. This act shall take effect immediately.