

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 884 Session of  
2005

INTRODUCED BY NICKOL, MARCH 14, 2005

REFERRED TO COMMITTEE ON FINANCE, MARCH 14, 2005

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," further defining "taxable income"; and further  
11 providing for settlement and resettlement.

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

14 Section 1. Section 401(3)1 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 a paragraph to read:

17 Section 401. Definitions.--The following words, terms, and  
18 phrases, when used in this article, shall have the meaning  
19 ascribed to them in this section, except where the context  
20 clearly indicates a different meaning:

21 \* \* \*

22 (3) "Taxable income." 1. \* \* \*

1 (t) (1) If two or more corporations are owned or controlled  
2 directly or indirectly by related parties, the department, under  
3 section 407, may disallow or reduce deductions for interest  
4 expenses, costs and intangible expenses paid, accrued or  
5 incurred in connection with one or more transactions between or  
6 among corporations, if the Secretary of Revenue determines both  
7 of the following:

8 (i) That the disallowance or reduction is necessary because  
9 the evasion of taxes is the principal purpose of transactions  
10 that have no independent business purpose or economic substance.

11 (ii) That the disallowance or reduction is necessary in  
12 order to reflect an arms' length standard, as that phrase is  
13 defined in the Federal income tax regulations implementing  
14 section 482 of the Internal Revenue Code of 1986 (Public Law 99-  
15 514, 26 U.S.C. § 482).

16 (2) These provisions shall be strictly construed in favor of  
17 the taxpayer and interpreted and applied in conformity with the  
18 requirements of section 482 of the Internal Revenue Code of 1986  
19 and the regulations adopted by the Internal Revenue Service to  
20 implement it, except to the extent of any inconsistency between  
21 this section and section 482 of the Internal Revenue Code of  
22 1986.

23 (3) There shall be a presumption against a finding by the  
24 Secretary of Revenue of tax evasion in the following:

25 (i) For transactions among related parties where all of the  
26 related parties are subject to the imposition of tax pursuant to  
27 section 402.

28 (ii) For transactions where one or more of the related  
29 parties qualify for Pennsylvania tax incentive programs to the  
30 extent to which such transactions are subject to the tax

1 incentive program.

2 (iii) For transactions among related parties when the terms  
3 and conditions of the transactions are subject to the  
4 jurisdiction of another Federal or State agency.

5 (iv) For related parties who are subject to and file a  
6 corporate tax return based on net income.

7 (v) For an entity whose controlling equity interest is  
8 directly or indirectly owned for the benefit of a Pennsylvania-  
9 based organization organized in accordance with section  
10 501(c)(3) of the Internal Revenue Code of 1986.

11 \* \* \*

12 Section 2. Section 407 of the act is amended by adding a  
13 subsection to read:

14 Section 407. Settlement and Resettlement.--\* \* \*

15 (f) Notwithstanding the requirements of this section, other  
16 provisions of this act and the act of April 9, 1929 (P.L.343,  
17 No.176), known as "The Fiscal Code," upon the receipt of the  
18 recommendations of the Corporate Tax Reform Commission, and not  
19 later than July 1, 2004, the department, acting jointly with the  
20 Board of Finance and Revenue, shall publish a notice of proposed  
21 rulemaking to modify the procedures for settlements and  
22 resettlements and the consideration of tax appeals. Upon final  
23 adoption pursuant to the act of June 25, 1982 (P.L.633, No.181),  
24 known as the "Regulatory Review Act," the regulations:

25 (1) May modify procedures for settlement and resettlement of  
26 accounts and consideration of tax appeals prescribed under this  
27 act and "The Fiscal Code."

28 (2) May modify the duties and responsibilities of the  
29 department and the Board of Finance and Revenue.

30 (3) May not affect a taxpayer's right to seek de novo review

1 of decisions regarding taxes by the Commonwealth Court.

2 Section 3. The addition of section 401(3)1(t) of the act  
3 shall apply to taxable years beginning on or after January 1,  
4 2006, but shall not authorize the adjustment of net operating  
5 loss deductions carried forward from prior tax years.

6 Section 4. This act shall take effect immediately.