

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 683 Session of
2007

INTRODUCED BY NICKOL, MARCH 9, 2007

REFERRED TO COMMITTEE ON FINANCE, MARCH 9, 2007

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 providing, in corporate net income tax,
11 for definitions and 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) The following apply:

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

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

13 (ii) That the disallowance or reduction is necessary in
14 order to reflect an arms' length standard, as that phrase is
15 defined in the Federal income tax regulations implementing
16 section 482 of the Internal Revenue Code of 1986 (Public Law 99-
17 514, 26 U.S.C. § 482).

18 (2) These provisions shall be strictly construed in favor of
19 the taxpayer and interpreted and applied in conformity with the
20 requirements of section 482 of the Internal Revenue Code of 1986
21 (26 U.S.C. § 482) and the regulations adopted by the Internal
22 Revenue Service to implement it, except to the extent of any
23 inconsistency between this section and section 482 of the
24 Internal Revenue Code of 1986 (26 U.S.C. § 482).

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

27 (i) For a transaction among related parties where all of the
28 related parties are subject to the imposition of tax under
29 section 402.

30 (ii) For a transaction in which a related party qualifies

for Pennsylvania tax incentive programs to the extent to which the transaction is subject to the tax incentive program.

(iii) For a transaction among related parties if the terms and conditions of the transactions are subject to the jurisdiction of another Federal or State agency.

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

(v) For an entity whose controlling equity interest is directly or indirectly owned for the benefit of a Pennsylvania-based organization organized in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)).

* * *

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

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

(f) Notwithstanding the requirements of this section, other provisions of this act and the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," upon the receipt of the recommendations of the Pennsylvania Business Tax Reform Commission and not later than July 1, 2006, the department, acting jointly with the Board of Finance and Revenue, shall publish a notice of proposed rulemaking to modify the procedures for settlements and resettlements and the consideration of tax appeals. Upon final adoption pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act," the regulations:

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

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

3 (3) May not affect a taxpayer's right to seek de novo review
4 of decisions regarding taxes by the Commonwealth Court.

5 Section 3. The addition of section 401(3)1(t) of the act
6 shall apply to taxable years beginning on or after January 1,
7 2008, but shall not authorize the adjustment of net operating
8 loss deductions carried forward from prior tax years.

9 Section 4. This act shall take effect immediately.