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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 679

Session of 2011

INTRODUCED BY TARTAGLIONE, COSTA, SOLOBAY, FONTANA, HUGHES, YUDICHAK, BREWSTER, BLAKE, FARNESE AND KASUNIC, MARCH 28, 2011

REFERRED TO FINANCE, MARCH 28, 2011

AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," in corporate net income tax, further providing for definitions, for imposition, for reports and payment and for consolidated reports; and in general provisions, further providing for underpayment of estimated tax.

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

Section 1. Section 401(3)1(a) and (b) and 2(a) and (5) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended or added December 23, 1983 (P.L.370, No.90), July 1, 1985 (P.L.78, No.29), August 4, 1991 (P.L.97, No.22), May 12, 1999 (P.L.26, No.4), June 22, 2001 (P.L.353, No.23), June 29, 2002 (P.L.559, No.89) and October 9, 2009 (P.L.451, No.48) are amended, clause (3)2 is amended by adding a phrase and the section is amended by adding clauses to read:

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

* * *

(3) "Taxable income." 1. (a) In case the entire business of the corporation is transacted within this Commonwealth, for any taxable year which begins on or after January 1, 1971, taxable income for the calendar year or fiscal year as returned to and ascertained by the Federal Government, or in the case of a corporation participating in the filing of consolidated returns to the Federal Government <u>or that is not required to file a return with the Federal Government</u>, the taxable income which would have been returned to and ascertained by the Federal Government if separate returns had been made to the Federal Government for the current and prior taxable years, subject, however, to any correction thereof, for fraud, evasion, or error as finally ascertained by the Federal Government.

(b) Additional deductions shall be allowed from taxable income on account of any dividends received from any other corporation but only to the extent that such dividends are included in taxable income as returned to and ascertained by the Federal Government. For tax years beginning on or after January 1, 1991, additional deductions shall only be allowed for amounts included, under section 78 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned to and ascertained by the Federal Government and for the amount of any dividends received from a foreign corporation included in taxable income to the extent such dividends would be deductible in arriving at Federal taxable income if received from a domestic corporation. For taxable years beginning on or after January 1, 2012, if not otherwise allowed as a deduction, an additional deduction is allowed for all dividends paid by one to another of the included corporations of a unitary business to the extent those dividends are included in business income of a corporation that is required to determine its business income pursuant to paragraph (1) of phrase (e) of subclause (2).

* * *

2. In case the entire business of any corporation, other than a corporation engaged in doing business as a regulated investment company as defined by the Internal Revenue Code of 1986, is not transacted within this Commonwealth, the tax imposed by this article shall be based upon such portion of the taxable income of such corporation for the fiscal or calendar year, as defined in subclause 1 hereof, and may be determined as follows:

(a) Division of Income.

(1) As used in this definition, unless the context otherwise requires:

(A) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if either the acquisition, the management or the disposition of the property constitutes an integral part of the taxpayer's regular trade or business operations. The term includes all income which is apportionable under the Constitution of the United States.

(B) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(C) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employes for personal services.

(D) "Nonbusiness income" means all income other than business income. The term does not include income which is apportionable under the Constitution of the United States.

(E) "Sales" means all gross receipts of the taxpayer not allocated under this definition other than dividends received, interest on United States, state or political subdivision obligations and gross receipts heretofore or hereafter received from the sale, redemption, maturity or exchange of securities, except those held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

(F) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(G) "This state" means the Commonwealth of Pennsylvania or, in the case of application of this definition to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

(2) Any taxpayer having income from business activity which is taxable both within and without this State other than activity as a corporation whose allocation and apportionment of income is specifically provided for in section 401(3)2(b)(c) and (d) shall allocate and apportion taxable income as provided in this definition.

(3) For purposes of allocation and apportionment of income under this definition, a taxpayer is taxable in another state if

in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax or if that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(4) Rents and royalties from real or tangible personal property, gains, interest, patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs (5) through (8).

(5) (A) Net rents and royalties from real property located in this State are allocable to this State.

(B) Net rents and royalties from tangible personal property are allocable to this State if and to the extent that the property is utilized in this State, or in their entirety if the taxpayer's commercial domicile is in this State and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(6) (A) Gains and losses from sales or other disposition of

real property located in this State are allocable to this State.

(B) Gains and losses from sales or other disposition of tangible personal property are allocable to this State if the property had a situs in this State at the time of the sale, or the taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the state in which the property had a situs.

(C) Gains and losses from sales or other disposition of intangible personal property are allocable to this State if the taxpayer's commercial domicile is in this State.

(7) Interest is allocable to this State if the taxpayer's commercial domicile is in this State.

(8) (A) Patent and copyright royalties are allocable to this State if and to the extent that the patent or copyright is utilized by the payer in this State, or if and to the extent that the patent copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) (A) Except as provided in subparagraph (B):

(i) For taxable years beginning before January 1, 2007, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus three times the sales factor and the denominator of which is five.

(ii) For taxable years beginning after December 31, 2006, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the sum of fifteen times the property factor, fifteen times the payroll factor and seventy times the sales factor and the denominator of which is one hundred.

(iii) For taxable years beginning after December 31, 2008, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the sum of eight and a half times the property factor, eight and a half times the payroll factor and eighty-three times the sales factor and the denominator of which is one hundred.

(iv) For taxable years beginning after December 31, 2009, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the sum of five times the property factor, five times the payroll factor and ninety times the sales factor and the denominator of which is one hundred.

(B) For purposes of apportionment of the capital stock - franchise tax as provided in section 602 of Article VI of this act, the apportionment fraction shall be the property factor plus the payroll factor plus the sales factor as the numerator, and the denominator shall be three.

(10) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period but shall not include the security interest of any corporation as seller or lessor in personal property sold or leased under a conditional sale, bailment lease, chattel mortgage or other contract providing for the retention of a lien or title as security for the sales price of the property.

(11) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(12) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(13) The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

(14) Compensation is paid in this State if:

(A) The individual's service is performed entirely within the State;

(B) The individual's service is performed both within and without this State, but the service performed without the State is incidental to the individual's service within this State; or

(C) Some of the service is performed in this State and the base of operations or if there is no base of operations, the place from which the service is directed or controlled is in this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(15) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(16) Sales of tangible personal property are in this State if the property is delivered or shipped to a purchaser, within this State regardless of the f.o.b. point or other conditions of the sale.

(17) Sales, other than sales of tangible personal property and sales set forth under paragraphs (17.1) and (17.2), are in this State if:

(A) The income-producing activity is performed in this State; or

(B) The income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other state, based on costs of performance.

(17.1) Sales of services are in this State if sales are derived from customers within this State. If part of the sales with respect to a specific contract or other agreement to perform services is derived from customers from within this State, sales are in this State in proportion to the sales derived from customers within this State to total sales with respect to that contract or agreement.

(17.2) In order to determine sales in this State of any railroad, truck, bus, airline, pipeline, natural gas or water transportation company that is required to determine its business income under paragraph (1) of phrase (e) of this subclause the company must convert the relevant fraction set forth under phrase (b), (c) or (d) of this subclause to gross receipts. Sales in this State are the result of multiplying total gross receipts from relevant transportation activities by the decimal equivalent of the relevant fraction set forth under phrase (b), (c) or (d) of this subclause.

(18) If the allocation and apportionment provisions of this definition do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition the Secretary of Revenue or the Secretary of Revenue may require, in respect to all or any part of the taxpayer's business activity:

(A) Separate accounting;

(B) The exclusion of any one or more of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or

(D) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. In determining the fairness of any allocation or apportionment, the Secretary of Revenue may give consideration to the taxpayer's previous reporting and its consistency with the requested relief.

* * *

(e) Corporations That are Members of a Unitary Business.

(1) Notwithstanding any contrary provisions of this article, for taxable years that begin on or after January 1, 2012, business income of a corporation that is a member of a unitary business that consists of two or more corporations, at least one of which does not transact its entire business in this State, is determined by combining the business income of either all corporations, other than as provided under this paragraph, that are water's-edge basis members or all corporations, other than as provided under this paragraph, that are worldwide members of the unitary business. Business income from an intercompany transaction between included corporations of a unitary business shall be deferred in the manner set forth under 26 CFR 1.1502-13 (relating to intercompany transactions) in determining the business income of a corporation that is a member of that unitary business. Business income of the following corporations is not included in the determination of combined business income:

(i) any corporation subject to taxation under Article VII, VIII, IX or XV;

(ii) any corporation specified in the definition of "institution" in section 701.5 that would be subject to taxation under Article VII if it was located, as defined in section 701.5, in this State;

(iii) any corporation commonly known as a title insurance company that would be subject to taxation under Article VIII if it was incorporated in this State;

(iv) any corporation specified as an insurance company, association or exchange in Article IX that would be subject to taxation under Article IX if its insurance business was transacted in this State;

(v) any corporation specified in the definition of "institution" in section 1501 that would be subject to taxation under Article XV if it was located, as defined in section 1501, in this State; or

(vi) any corporation that is a small corporation, as defined in section 301(s.2), or a qualified Subchapter S subsidiary, as defined in section 301(o.3).

(2) Notwithstanding any contrary provisions of this article, all corporations that are required to compute business income under paragraph (1) are entitled to apportion the business income when one corporation of the same unitary business is entitled to apportion the business income. Notwithstanding any contrary provisions of this article, for taxable years that begin on or after January 1, 2012, the denominator of the apportionment fraction of a corporation that is required to compute its business income under paragraph (1) shall be computed on a combined basis for all included corporations of the unitary business. Gross receipts from an intercompany transaction between included corporations of a unitary business shall be eliminated unless the gross receipts are derived from transactions that are deferred in the manner set forth under 26 CFR 1.1502-13 in computing the numerator and denominator of the apportionment fraction of a corporation that is required to compute its business income under paragraph (1). Gross receipts from transactions that had been deferred in the manner set forth under 26 CFR 1.1502-13 are included in a corporation's apportionment fraction during the same taxable year that it realizes business income that had been deferred due to the

transaction. The apportionment fraction of the following corporations shall not be included in the determination of the combined apportionment fraction:

(i) any corporation subject to taxation under Article VII, VIII, IX or XV;

(ii) any corporation specified in the definition of "institution" in section 701.5 that would be subject to taxation under Article VII if it was located, as defined in section 701.5, in this State;

(iii) any corporation commonly known as a title insurance company that would be subject to taxation under Article VIII if it was incorporated in this State;

(iv) any corporation specified as an insurance company, association or exchange in Article IX that would be subject to taxation under Article IX if its insurance business was transacted in this State;

(v) any corporation specified in the definition of "institution" in section 1501 that would be subject to taxation under Article XV if it was located, as defined in section 1501, in this State;

(vi) any corporation that is a small corporation, as defined in section 301(s.2), or a qualified Subchapter S subsidiary, as defined in section 301(o.3).

(3) A corporation that is required to compute its business income under paragraph (1) shall apportion the combined business income by multiplying the combined business income by a fraction which is the combined apportionment fraction set forth under paragraph (2).

(4) Nonbusiness income of a corporation that is required to compute business income under paragraph (1) shall be allocated

as provided in paragraphs (5), (6), (7) and (8) of phrase (a) of subclause 2 of the definition of "taxable income."

(5) Each corporation that is a member of a unitary business that consists of two or more corporation shall determine its tax liability based on its apportioned share of the combined business income of the unitary business plus its nonbusiness income or loss allocated to this State, minus its net loss deduction.

(6) If any provision of this phrase operates so that an amount is added to or deducted from taxable income for a taxable year for any corporation of a unitary business that previously had been added to or deducted from taxable income of any corporation of the same unitary business, an appropriate adjustment shall be made for the taxable year in order to prevent double taxation or double deduction. If this adjustment is not made by the appropriate corporation of the unitary business, the Secretary of Revenue is authorized to make this adjustment.

(7) The Secretary of Revenue shall have the authority and responsibility to make adjustments to insure that a corporation does not incur an unfair penalty nor realize an unfair benefit because it is required to compute its business income under paragraph (1). Fairness shall be measured by whether the corporation's income allocated and apportioned to this State fairly reflects the corporation's share of the unitary business conducted in this State in the taxable year.

* * *

(5) "Taxable year." [The] 1. Except as set forth in subclause 2, the taxable year which the corporation, or any consolidated group with which the corporation participates in

the filing of consolidated returns, actually uses in reporting taxable income to the Federal Government[.], or which the corporation would have used in reporting taxable income to the Federal Government had it been required to report its taxable income to the Federal Government. With regard to the tax imposed by Article IV of this act (relating to the Corporate Net Income Tax), the terms "annual year," "fiscal year," "annual or fiscal year," "tax year" and "tax period" shall be the same as the corporation's taxable year, as defined in this [paragraph.] subclause or subclause 2.

2. All corporations of a unitary business shall have a common taxable year for purposes of computing tax due under this article. The taxable year for the purposes shall be the common taxable year adopted, in a manner prescribed by the department, by all corporations of a unitary business. The common taxable year must be used by all corporations of that unitary business in the year of adoption and all future years unless otherwise permitted by the department.

* * *

(8) "Tax haven." A jurisdiction that at the beginning of a taxable year is a tax haven as identified by the Organization for Economic Co-operation and Development, plus the sovereignties of Bermuda, the Cayman Islands, the Bailiwick of Jersey and the Grand Duchy of Luxembourg.

(9) "Unitary business." A single economic enterprise that is made up of separate parts of a single corporation, of a commonly controlled group of corporations, or both, that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a

<u>significant flow of value to the separate parts. A unitary business shall include only those parts and corporations which may be included as a unitary business under the Constitution of the United States.</u>

<u>(10) "Water's-edge basis." A system of reporting that includes the business income and apportionment factor of certain corporations of a unitary business, described as follows:</u>

<u>1. The business income and apportionment factor of any member incorporated in the United States or formed under the laws of any state of the United States, the District of Columbia, any territory or possession of the United States or the Commonwealth of Puerto Rico.</u>

<u>2. The business income and apportionment factor of any member, regardless of the place incorporated or formed, if the average of its property, payroll and sales factors within the United States is twenty per cent or more.</u>

<u>3. The business income and apportionment factor of any member which is a domestic international sales corporation as described in sections 991, 992, 993 and 994 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 991, 992, 993 and 994); a foreign sales corporation as described in former sections 921, 922, 923, 924, 925, 926 and 927 of the Internal Revenue Code of 1986 (formerly 26 U.S.C. §§ 921, 922, 923, 924, 925, 926 and 927); or any member which is an export trade corporation, as described in sections 970 and 971 of the Internal Revenue Code of 1986 (26 U.S.C. §§ 970 and 971).</u>

<u>4. Any member not described in subclauses 1, 2 and 3 shall include the portion of its business income derived from or attributable to sources within the United States, as determined under the Internal Revenue Code of 1986 without regard to</u>

Federal treaties, and its apportionment factor related thereto.

5. Any member that is a "controlled foreign corporation" as defined in section 957 of the Internal Revenue Code of 1986 (26 U.S.C. § 957), to the extent the business income of that member is income defined in section 952 of the Internal Revenue Code of 1986 (26 U.S.C. § 952), Subpart F income, not excluding lower-tier subsidiaries' distributions of the income which were previously taxed, determined without regard to Federal treaties, and the apportionment factor related to that income; any item of income received by a controlled foreign corporation and the apportionment factor related to the income shall be excluded if the corporation establishes to the satisfaction of the Secretary of Revenue that the income was subject to an effective rate of income tax imposed by a foreign country greater than ninety per cent of the maximum rate of tax specified in section 11 of the Internal Revenue Code of 1986 (26 U.S.C. § 11). The effective rate of income tax determination shall be based upon the methodology set forth under 26 CFR 1.954-1 (relating to foreign base company income).

6. The business income and apportionment factor of any member that is not described in subclause 1, 2, 3, 4 and 5 and that is doing business in a tax haven. The business income and apportionment factor of a corporation doing business in a tax haven shall be excluded if the corporation establishes to the satisfaction of the Secretary of Revenue that its income was subject to an effective rate of income tax imposed by a country greater than ninety per cent of the maximum rate of tax specified in section 11 of the Internal Revenue Code of 1986 (26 U.S.C. § 11).

(11) "Commonly controlled group." For a corporation, the

corporation is a member of a group of two or more corporations and more than fifty per cent of the voting stock of each member of the group is directly or indirectly owned by a common owner or by common owners, either corporate or noncorporate, or by one or more of the member corporations of the group.

(12) "Separate company." A corporation that is not a member of a unitary business that consists of two or more corporations.

(13) "Tax." Includes interest, penalties and additions to tax unless a more limited meaning is disclosed by the context.

Section 2. Section 402(b) of the act, amended June 29, 2002 (P.L.559, No.89), is amended to read:

Section 402. Imposition of Tax.--* * *

(b) The annual rate of tax on corporate net income imposed by subsection (a) for taxable years beginning for the calendar year or fiscal year on or after the dates set forth shall be as follows:

Taxable Year	Tax Rate
[January 1, 1995, and each taxable year thereafter	9.99%]
January 1, 1995, through taxable years ending December 31, 2011	9.99%
January 1, 2012, to December 31, 2012, and each taxable year thereafter	7.50%

* * *

Section 3. Section 403 of the act is amended by adding subsections to read:

Section 403. Reports and Payment of Tax.--* * *

(a.1) (1) Each corporation subject to tax under this article shall file an annual report in accordance with this section. Each corporation that is a member of a unitary business that consists of two or more corporations, unless excluded by the provisions of this article, shall file as part of a combined annual report. The corporations of the unitary business shall designate one member that is subject to tax under this article to file the combined annual report and to act as agent on behalf of all other corporations that are members of the unitary business. Each corporation that is a member of a unitary business shall be responsible for its tax liability under this article.

(2) The oath or affirmation of the designated member's president, vice president or other principal officer, and of its treasurer or assistant treasurer shall constitute the oath or affirmation of each corporation that is a member of that unitary business.

(3) The designated member shall transmit to the department upon a form prescribed by the department, an annual combined report under oath or affirmation of its president, vice president or other principal officer, and of its treasurer or assistant treasurer. The report shall set forth:

(i) All corporations included in the unitary business.

(ii) All necessary data, both in the aggregate and for each corporation of the unitary business, that sets forth the determination of tax liability for each corporation of the unitary business.

(iii) Any other information that the department may require.

(a.2) (1) Activities that evidence a significant flow of value among commonly controlled corporations shall include the following:

(i) Assisting in the acquisition of equipment.

(ii) Assisting with filling personnel needs.

(iii) Lending funds or guaranteeing loans.

(iv) Interplay in the area of corporate expansion.

(v) Providing technical assistance.

(vi) Supervising.

(vii) Providing general operational guidance.

(viii) Providing overall operational strategic advice.

(ix) Common use of trade names and patents.

(2) Significant flow of value must be more than the flow of funds arising out of passive investment and shall consist of more than periodic financial oversight.

(a.3) (1) With respect to a commonly controlled group of corporations, the presence of any of these factors creates a presumption of a unitary business:

(i) Corporations engaged in the same type of business.

(ii) Corporations engaged in different steps in a vertically structured enterprise.

(iii) Strong centralized management of corporations.

(2) A corporation newly formed by a corporation that is a member of a unitary business is rebuttably presumed to be a member of the unitary business.

(3) A corporation that owns a controlling interest in two or more corporations of a unitary business is rebuttably presumed to be a member of the unitary business.

(4) A corporation that permits one or more other corporations of a unitary business to substantially use its patents, trademarks, service marks, logo-types, trade secrets, copyrights or other proprietary assets or that is principally engaged in loaning money to one or more other corporations of a

unitary business is rebuttably presumed to be a member of the unitary business. This presumption only applies to a commonly controlled group of corporations.

(a.4) As far as applicable to a specific unitary business, unless there is a revision of applicable State law or unless a corporation is not included under the provisions of this article, there is a rebuttable presumption for all tax years that begin in years 2012 and 2013 that a unitary business of two or more corporations includes at least all corporations that are part of a unitary business under the law of any state of the United States in which the corporation files a tax report or tax return of combined net income for the same tax year.

(a.5) Unless an election is made to use a worldwide basis of accounting, a corporation that is a member of a unitary business of two or more corporations must determine its business income and apportionment factor upon a water's-edge basis. This basis shall apply to all corporations of the unitary business. If an election is made to use a worldwide basis of accounting, all corporations of the unitary business must make the election, upon a form, prescribed, prepared and furnished by the department. This election shall bind all corporations of the unitary business for the period of time that the election remains in effect. An initial election is binding for a period of seven years. Subsequent elections shall be binding for a period of five years.

* * *

Section 4. Section 404 of the act is amended to read:

Section 404. Consolidated Reports.--The department shall not permit any corporation owning or controlling, directly or indirectly, any of the voting capital stock of another corporation or of other corporations, subject to the provisions of this article, to make a consolidated report[, showing the combined net income].

Section 5. Section 3003.3(d) of the act, amended October 18, 2006 (P.L.1149, No.119), is amended and the section is amended by adding subsections to read:

Section 3003.3. Underpayment of Estimated Tax.--* * *

(d) Notwithstanding the provisions of the preceding subsections, other than as set forth under subsection (d.1), interest with respect to any underpayment of any installment of estimated tax shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to the tax computed at the rates applicable to the taxable year, including any minimum tax imposed, but otherwise on the basis of the facts shown on the report of the taxpayer for, and the law applicable to, the safe harbor base year, adjusted for any changes to sections 401, 601, 602 and 1101 enacted for the taxable year, if a report showing a liability for tax was filed by the taxpayer for the safe harbor base year. If the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment does not equal or exceed the amount required to be paid per the preceding sentence, but such amount is paid after the date the installment was required to be paid, then the period of underpayment shall run from the date the installment was required to be paid to the date the amount required to be paid per the preceding sentence is paid. Provided, that if the total tax for the safe harbor base year exceeds the tax shown on such report by ten per cent or more, the total tax adjusted to reflect the current tax rate shall be used for purposes of this subsection. In the event that the total tax for the safe harbor base year exceeds the tax shown on the report by ten per cent or more, interest resulting from the utilization of such total tax in the application of the provisions of this subsection shall not be imposed if, within forty-five days of the mailing date of each assessment, payments are made such that the total amount of all payments of estimated tax equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to the total tax adjusted to reflect the current tax rate. In any case in which the taxable year for which an underpayment of estimated tax may exist is a short taxable year, in determining the tax shown on the report or the total tax for the safe harbor base year, the tax will be reduced by multiplying it by the ratio of the number of installment payments made in the short taxable year to the number of installment payments required to be made for the full taxable year.

(d.1) (1) Notwithstanding subsections (a), (b) and (c), interest with respect to any underpayment of any installment of estimated corporate net income tax for any tax year that begins in year 2012 or 2013 shall not be imposed if the total amount of all payments of estimated corporate net income tax made on or before the last date prescribed for the payment of the installment equals or exceeds the amount which would have been required to be paid on or before that date if the estimated tax were an amount equal to the tax shown on the report of the taxpayer for the safe harbor base year, if a report showing a liability for tax was filed by the taxpayer for the safe harbor base year.

(2) If the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment does not equal or exceed the amount required to be paid under paragraph (1), but the amount is paid after the date the installment was required to be paid, the period of underpayment shall run from the date the installment was required to be paid to the date the amount required to be paid under paragraph (1) is paid.

(3) If the total tax for the safe harbor base year exceeds the tax shown on the report by ten per cent or more, the total tax shall be used for purposes of this subsection. If the total tax for the safe harbor base year exceeds the tax shown on the report by ten per cent or more, interest resulting from the utilization of the total tax in the application of the provisions of this subsection shall not be imposed if, within forty-five days of the mailing date of a notice from the department increasing the total tax, payments are made such that the total amount of all payments of estimated tax equals or exceeds the amount which would have been required to be paid on or before the date if the estimated tax were an amount equal to the total tax.

(4) If the taxable year for which an underpayment of estimated tax may exist is a short taxable year, in determining the tax shown on the report or the total tax for the safe harbor base year, the tax shall be reduced by multiplying it by the ratio of the number of installment payments made in the short taxable year to the number of installment payments required to be made for the full taxable year.

(d.2) (1) If there is a substantial underpayment, as defined in subsection (a), of any installment of estimated corporate net income tax or estimated capital stock/franchise tax for any taxable year beginning in 2012 or 2013, there shall be imposed additional interest in an amount determined at one hundred twenty per cent of the annual rate as provided by law upon the entire underpayment for the period of the substantial underpayment.

(2) The additional interest imposed under this subsection shall be in addition to any other interest imposed on underpayments under this section.

Section 6. The amendment or addition of the following provisions shall apply to taxable years beginning after December 31, 2011:

(1) Section 401(3)1(a) and (b) and 2(a) and (e), (5), (8), (9), (10), (11), (12) and (13) of the act.

(2) Section 402(b) of the act.

(3) Section 403(a.1), (a.2), (a.3), (a.4) and (a.5) of the act.

(4) Section 404 of the act.

(5) Section 3003.3(d), (d.1) and (d.2) of the act.

Section 7. This act shall take effect immediately.