

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1462 Session of 2023

INTRODUCED BY FIEDLER, DALEY, SCOTT, SAMUELSON, INNAMORATO, KRAJEWSKI, DELLOSO, N. NELSON, RABB, MADSEN, HILL-EVANS, KINSEY, T. DAVIS, MADDEN, SANCHEZ, FREEMAN, DONAHUE, WAXMAN, BOYD, SHUSTERMAN, BURGOS, STURLA, OTTEN, WARREN, ABNEY, BRENNAN, O'MARA, HANBIDGE, WEBSTER, GALLAGHER AND D. WILLIAMS, JUNE 27, 2023

REFERRED TO COMMITTEE ON FINANCE, JUNE 27, 2023

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," in corporate net income tax, further providing
 11 for definitions, for reports and payment of tax and for
 12 consolidated reports; and, in general provisions, further
 13 providing for underpayment of estimated tax.

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

16 Section 1. Section 401(3)1(a), (b), (t) and (5) of the act
 17 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
 18 1971, are amended, (3)2(a) (9) (A) is amended by adding a unit,
 19 (3)1 and (3)4 are amended by adding phrases and the section is
 20 amended by adding clauses to read:

21 Section 401. Definitions.--The following words, terms, and

1 phrases, when used in this article, shall have the meaning
2 ascribed to them in this section, except where the context
3 clearly indicates a different meaning:

4 * * *

5 (3) "Taxable income." 1. (a) In case the entire business
6 of the corporation is transacted within this Commonwealth, for
7 any taxable year which begins on or after January 1, 1971,
8 taxable income for the calendar year or fiscal year as returned
9 to and ascertained by the Federal Government before special
10 deductions provided for in 26 U.S.C. Ch. 1 Subch. B Pt. VIII
11 (relating to special deductions for corporations), not including
12 the deductions provided for in 26 U.S.C. § 243 (relating to
13 dividends received by corporations), or in the case of a
14 corporation participating in the filing of consolidated returns
15 to the Federal Government or that is not required to file a
16 return with the Federal Government, the taxable income which
17 would have been returned to and ascertained by the Federal
18 Government before special deductions provided for in 26 U.S.C.
19 Ch. 1 Subch. B Pt. VIII, not including the deductions provided
20 for in 26 U.S.C. § 243, if separate returns had been made to the
21 Federal Government for the current and prior taxable years,
22 subject, however, to any correction thereof, for fraud, evasion,
23 or error as finally ascertained by the Federal Government.

24 (b) Additional deductions shall be allowed from taxable
25 income on account of any dividends received from any other
26 corporation but only to the extent that such dividends are
27 included in taxable income as returned to and ascertained by the
28 Federal Government. For tax years beginning on or after January
29 1, 1991, additional deductions shall only be allowed for amounts
30 included, under [section 78 of the Internal Revenue Code of 1986

1 (Public Law 99-514, 26 U.S.C. § 78)] 26 U.S.C. § 78 (relating to
2 gross up for deemed paid foreign tax credit), in taxable income
3 returned to and ascertained by the Federal Government and for
4 the amount of any dividends received from a foreign corporation
5 included in taxable income to the extent such dividends would be
6 deductible in arriving at Federal taxable income if received
7 from a domestic corporation. For taxable years beginning after
8 December 31, 2024, the additional deduction with respect to
9 dividends shall not be allowed for dividends between members of
10 a unitary group.

11 * * *

12 (p.1) For taxable years after December 31, 2024, in the case
13 of a corporation that is a member of a unitary business, the
14 term "taxable income" shall mean the combined unitary income of
15 the unitary business, as determined on a water's-edge basis.

16 * * *

17 (t) (1) Except as provided in paragraph (2), (3) or (4) for
18 taxable years beginning after December 31, 2014, and in addition
19 to any authority the department has on the effective date of
20 this paragraph to deny a deduction related to a fraudulent or
21 sham transaction, no deduction shall be allowed for an
22 intangible expense or cost, or an interest expense or cost,
23 paid, accrued or incurred directly or indirectly in connection
24 with one or more transactions with an affiliated entity. In
25 calculating taxable income under this paragraph, when the
26 taxpayer is engaged in one or more transactions with an
27 affiliated entity that was subject to tax in this Commonwealth
28 or another state or possession of the United States on a tax
29 base that included the intangible expense or cost, or the
30 interest expense or cost, paid, accrued or incurred by the

1 taxpayer, the taxpayer shall receive a credit against tax due in
2 this Commonwealth in an amount equal to the apportionment factor
3 of the taxpayer in this Commonwealth multiplied by the greater
4 of the following:

5 (A) the tax liability of the affiliated entity with respect
6 to the portion of its income representing the intangible expense
7 or cost, or the interest expense or cost, paid, accrued or
8 incurred by the taxpayer; or

9 (B) the tax liability that would have been paid by the
10 affiliated entity under subparagraph (A) if that tax liability
11 had not been offset by a credit.

12 The credit issued under this paragraph shall not exceed the
13 taxpayer's liability in this Commonwealth attributable to the
14 net income taxed as a result of the adjustment required by this
15 paragraph.

16 (2) The adjustment required by paragraph (1) shall not apply
17 to a transaction that did not have as [the] a principal purpose
18 the avoidance of tax due under this article and was done at
19 arm's length rates and terms.

20 (3) The adjustment required by paragraph (1) shall not apply
21 to a transaction between a taxpayer and an affiliated entity
22 domiciled in a foreign nation which has in force a comprehensive
23 income tax treaty with the United States providing for the
24 allocation of all categories of income subject to taxation, or
25 the withholding of tax, on royalties, licenses, fees and
26 interest for the prevention of double taxation of the respective
27 nations' residents and the sharing of information.

28 (4) The adjustment required by paragraph (1) shall not apply
29 to a transaction where an affiliated entity directly or
30 indirectly paid, accrued or incurred a payment to a person who

1 is not an affiliated entity, if the payment is paid, accrued or
2 incurred on the intangible expense or cost, or interest expense
3 or cost, and is equal to or less than the taxpayer's
4 proportional share of the transaction. The taxpayer's
5 proportional share shall be based on relative sales, assets,
6 liabilities or another reasonable method.

7 (5) The adjustment required under paragraph (1) shall not
8 apply to a transaction between the taxpayer and an affiliated
9 entity, where the taxpayer and the affiliated entity file a
10 combined annual report in this State.

11 2. In case the entire business of any corporation, other
12 than a corporation engaged in doing business as a regulated
13 investment company as defined by the Internal Revenue Code of
14 1986, is not transacted within this Commonwealth, the tax
15 imposed by this article shall be based upon such portion of the
16 taxable income of such corporation for the fiscal or calendar
17 year, as defined in subclause 1 hereof, and may be determined as
18 follows:

19 (a) Division of Income.

20 * * *

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

22 * * *

23 (vi) (a) For taxable years beginning after December 31,
24 2024, all business income of a unitary business shall be
25 apportioned to this State by multiplying the income by the
26 member's sales factor, the numerator of which shall be the
27 member's total sales in this State, and the denominator of which
28 shall be the combined total sales of all members of the unitary
29 business everywhere. In computing the sales of each member for
30 purposes of apportionment, the following sales are excluded from

1 the numerator and denominator:

2 (I) sales from transactions between or among members of the
3 unitary business that are deferred under 26 CFR 1.1502-13
4 (relating to intercompany transactions) for Federal taxable
5 income purposes; and

6 (II) the sales of each member that are excluded from the
7 unitary business pursuant to the definition of water's-edge
8 basis.

9 (b) The Pennsylvania sales of each nontaxable member shall
10 be determined based upon the apportionment rules applicable to
11 the member and shall be aggregated. Each taxable member of the
12 group shall include in its sales factor numerator a portion of
13 the aggregate Pennsylvania sales of nontaxable members based on
14 a ratio, the numerator of which is the taxable member's
15 Pennsylvania sales and the denominator of which is the aggregate
16 Pennsylvania sales of all the taxable members of the group.

17 (c) Nonbusiness income of each member of a unitary business
18 shall be allocated as provided in paragraphs (5) through (8) of
19 phrase (a) of subclause 2 of this definition. A member of the
20 unitary business is subject to tax on its apportioned share of
21 all business income of the unitary business, plus its
22 nonbusiness income or loss allocated to this State, minus the
23 member's net loss deduction.

24 (d) The Secretary of Revenue shall apply the administrative
25 and judicial interpretations of 26 U.S.C. § 482 (relating to
26 allocation of income and deductions among taxpayers) in
27 administering this section.

28 (e) For taxable years beginning after December 31, 2024, any
29 member of a unitary group that would otherwise apportion its
30 business income under phrase (b), (c), (d) or (e) of subclause 2

1 of this definition shall determine its apportionment formula
2 using a single sales fraction.

3 * * *

4 4. * * *

5 (h) Subject to the limitations of this subclause, any member
6 of a unitary business that has unused net loss from taxable
7 years that began prior to January 1, 2024, or that generates net
8 losses while a member of a unitary business may only take the
9 net loss deduction for taxable years beginning after December
10 31, 2023, to the extent of the member's share of combined
11 unitary income after apportionment and the net losses may not be
12 used by other members of the same unitary business.

13 (i) Any net loss realized for a taxable year unused by a
14 corporation which subsequently becomes a member of another
15 unitary business, may only be used by that corporation.

16 * * *

17 (5) "Taxable year." [The taxable year which the
18 corporation, or any consolidated group with which the
19 corporation participates in the filing of consolidated returns,
20 actually uses in reporting taxable income to the Federal
21 Government. With regard to the tax imposed by Article IV of this
22 act (relating to the Corporate Net Income Tax), the terms
23 "annual year," "fiscal year," "annual or fiscal year," "tax
24 year" and "tax period" shall be the same as the corporation's
25 taxable year, as defined in this paragraph.]

26 1. Except as set forth in subclause 2, the taxable year
27 which the corporation, or any consolidated group with which the
28 corporation participates in the filing of consolidated returns,
29 actually uses in reporting taxable income to the Federal
30 Government, or which the corporation would have used in

1 reporting taxable income to the Federal Government had it been
2 required to report its taxable income to the Federal Government.
3 With regard to the tax imposed by Article IV, the terms "annual
4 year," "fiscal year," "annual or fiscal year," "tax year" and
5 "tax period" shall be the same as the corporation's taxable
6 year, as defined in this subclause or subclause 2.

7 2. All members of a unitary business shall have a common
8 taxable year for purposes of computing tax due under this
9 article. The taxable year for such purposes is the common
10 taxable year adopted, in a manner prescribed by the department,
11 by all members of the unitary business. The common taxable year
12 must be used by all members of the unitary business in the year
13 of adoption and all future years unless otherwise permitted by
14 the department.

15 * * *

16 (12) "Tax haven." Means any of the following:

17 (A) Andorra.

18 (B) Anguilla.

19 (C) Antigua and Barbuda.

20 (D) Aruba.

21 (E) The Bahamas.

22 (F) Bahrain.

23 (G) Barbados.

24 (H) Belize.

25 (I) Bermuda.

26 (J) The British Virgin Islands.

27 (K) The Cayman Islands.

28 (L) The Cook Islands.

29 (M) Cyprus.

30 (N) Dominica.

1 (O) Gibraltar.
2 (P) Grenada.
3 (Q) Guernsey-Sark-Alderney.
4 (R) The Isle of Man.
5 (S) Jersey.
6 (T) Liberia.
7 (U) Liechtenstein.
8 (V) Luxembourg.
9 (W) Malta.
10 (X) The Marshall Islands.
11 (Y) Mauritius.
12 (Z) Monaco.
13 (AA) Montserrat.
14 (BB) Nauru.
15 (CC) Netherlands Antilles.
16 (DD) Niue.
17 (EE) Panama.
18 (FF) Samoa.
19 (GG) San Marino.
20 (HH) Seychelles.
21 (II) St. Kitts and Nevis.
22 (JJ) St. Lucia.
23 (KK) St. Vincent and the Grenadines.
24 (LL) Turks and Caicos Islands.
25 (MM) Vanuatu.
26 (NN) A jurisdiction that is identified as a tax haven by the
27 Organization for Economic Co-operation and Development.
28 (13) "Unitary business." A single economic enterprise that
29 is made up of separate parts of a single corporation, of a
30 commonly controlled group of corporations, or both, that are

1 sufficiently interdependent, integrated and interrelated through
2 their activities so as to provide a synergy and mutual benefit
3 that produces a sharing or exchange of value among them and a
4 flow of value to the separate parts. A unitary business includes
5 all those parts and corporations that are included in a unitary
6 business under the Constitution of the United States.

7 (14) "Water's-edge basis." A system of reporting that
8 includes the income and apportionment factors of certain members
9 of a unitary business, described as follows:

10 (A) Any member incorporated in the United States or formed
11 under the laws of any state of the United States, the District
12 of Columbia, any territory or possession of the United States or
13 the Commonwealth of Puerto Rico.

14 (B) Any member, regardless of the place incorporated or
15 formed, if at least twenty per cent of the member's sales factor
16 is within the United States, and the following shall apply:

17 (i) For purposes of determining whether at least twenty per
18 cent of a member's sales factor is within the United States, the
19 calculation must be performed on a stand-alone basis. Sales
20 shall be gross figures without eliminations for transactions
21 with other members of any unitary business.

22 (ii) Whether sales are within the United States is based on
23 the sales factor sourcing rules contained in section 401(3).

24 (C) Any member which is one of the following:

25 (i) A domestic international sales corporation as described
26 in 26 U.S.C. Ch. 1 Subch. N Pt. IV Subpt. A (relating to
27 treatment of qualifying corporations).

28 (ii) A foreign sales corporation as described in 26 U.S.C.
29 Ch. 1 Subch. N Pt. IV Subpts. A and B (relating to treatment of
30 distributions to shareholders).

1 (iii) An export trade corporation as described in 26 U.S.C.
2 §§ 970 (relating to reduction of subpart F income of export
3 trade corporations) and 971 (relating to definitions).

4 (D) Any member not described in subparagraph (A), (B) or (C)
5 shall include the portion of the member's taxable income derived
6 from or attributable to sources within the United States, as
7 determined under 26 U.S.C. (relating to Internal Revenue Code)
8 without regard to Federal treaties, and its apportionment
9 factors related thereto.

10 (E) Any member that is a "controlled foreign corporation" as
11 defined in 26 U.S.C. § 957 (relating to controlled foreign
12 corporations; United States persons), to the extent the income
13 of that member is income defined in 26 U.S.C. § 952 (relating to
14 Subpart F income defined) as Subpart F income, not excluding
15 lower-tier subsidiaries' distributions of such income which were
16 previously taxed, determined without regard to Federal treaties,
17 and the apportionment factors related to that income; any item
18 of income received by a controlled foreign corporation and the
19 apportionment factors related to such income shall be excluded
20 if the corporation establishes to the satisfaction of the
21 Secretary of Revenue that such income was subject to an
22 effective rate of income tax imposed by a foreign country
23 greater than ninety per cent of the maximum rate of tax
24 specified in 26 U.S.C. § 11 (relating to tax imposed). The
25 effective rate of income tax determination shall be based upon
26 the methodology set forth under 26 CFR 1.954-1 (relating to
27 foreign base company income).

28 (F) Any member that is incorporated in or is doing business
29 in a tax haven. The income and apportionment factors of a member
30 doing business in a tax haven shall be excluded if the member

1 establishes to the satisfaction of the Secretary of Revenue that
2 the member's income was subject to an effective rate of income
3 tax imposed by a country greater than ninety per cent of the
4 maximum rate of tax specified in 26 U.S.C. § 11.

5 (15) "Commonly controlled group." For a corporation, the
6 corporation is a member of a group of two or more corporations
7 and more than fifty per cent of the voting stock or controlling
8 interest of each member of the group is directly or indirectly
9 owned by a common owner or by common owners, either corporate or
10 noncorporate, or by one or more of the member corporations of
11 the group.

12 (16) "Combined unitary income." The aggregate taxable
13 income or loss of all members of a unitary business, subject to
14 apportionment, except:

15 (A) Income from an intercompany transaction between members
16 of a unitary business shall be deferred in a manner similar to
17 26 CFR 1.1502-13 (relating to intercompany transactions) for
18 Federal taxable income purposes.

19 (B) Dividends paid by one member of a unitary business to
20 another.

21 (C) Income of the following members is not included in the
22 determination of combined unitary income:

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

25 (ii) any member specified in the definition of "institution"
26 in section 701.5 that would be subject to taxation under Article
27 VII, were it doing business in this State, as defined in section
28 701.5;

29 (iii) any member commonly known as a title insurance company
30 that would be subject to taxation under Article VIII, were it

1 incorporated in this State;

2 (iv) any member specified as an insurance company,
3 association or exchange in Article IX that would be subject to
4 taxation under Article IX, were it transacting insurance
5 business in this State;

6 (v) any member specified in the definition of "institution"
7 in section 1501 that would be subject to taxation under Article
8 XV, were it located, as defined in section 1501, in this State;
9 or

10 (vi) any member that is a small corporation as defined in
11 section 301(s.2) except to the extent of such small
12 corporation's net recognized built-in gain to the extent of and
13 as determined for Federal income tax purposes under 26 U.S.C. §
14 1374(d)(2) (relating to tax imposed on certain built-in gains).

15 (17) "Member." A corporation that is a member of a unitary
16 business. The term does not include a corporation listed in
17 clause (15)(C).

18 Section 2. Section 403 of the act is amended by adding
19 subsections to read:

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

21 (a.1) (1) Each corporation that is a member of a unitary
22 business that consists of two or more corporations, unless
23 excluded by the provisions of this article, shall file as part
24 of a combined annual report. The member of the unitary business
25 shall designate one member that is subject to tax under this
26 article to file the combined annual report and to act as agent
27 on behalf of all other members of the unitary business. Each
28 corporation that is a member of a unitary business is liable for
29 its tax liability under this article. The agent is also liable
30 for the aggregate amount of the unitary business' tax liability

1 pursuant to this article.

2 (2) The oath or affirmation of the designated member's
3 president, vice president, treasurer, assistant treasurer or
4 other authorized officer shall constitute the oath or
5 affirmation of each corporation that is a member of that unitary
6 business.

7 (3) The designated member shall transmit to the department
8 upon a form prescribed by the department a combined annual
9 report under oath or affirmation of the member's president, vice
10 president, treasurer, assistant treasurer or other authorized
11 officer.

12 (4) In addition to the information required in subsection
13 (a), the combined annual report shall set forth:

14 (i) All members included in the unitary business.

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

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

20 (a.2) A member of a unitary business of two or more
21 corporations must determine the member's income and
22 apportionment factors on a water's-edge basis.

23 * * *

24 Section 3. Section 404 of the act is amended to read:

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

1 Section 4. Section 3003.3(d) of the act is amended and the
2 section is amended by adding a subsection to read:

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

4 (d) Notwithstanding the provisions of [the preceding
5 subsections,] this section, other than as set forth in
6 subsection (d.1), interest with respect to any underpayment of
7 any installment of estimated tax shall not be imposed if the
8 total amount of all payments of estimated tax made on or before
9 the last date prescribed for the payment of such installment
10 equals or exceeds the amount which would have been required to
11 be paid on or before such date if the estimated tax were an
12 amount equal to the tax computed at the rates applicable to the
13 taxable year, including any minimum tax imposed, but otherwise
14 on the basis of the facts shown on the report of the taxpayer
15 for, and the law applicable to, the safe harbor base year,
16 adjusted for any changes to sections 401, 601, 602 and 1101
17 enacted for the taxable year, if a report showing a liability
18 for tax was filed by the taxpayer for the safe harbor base year.
19 If the total amount of all payments of estimated tax made on or
20 before the last date prescribed for the payment of such
21 installment does not equal or exceed the amount required to be
22 paid per the preceding sentence, but such amount is paid after
23 the date the installment was required to be paid, then the
24 period of underpayment shall run from the date the installment
25 was required to be paid to the date the amount required to be
26 paid per the preceding sentence is paid. Provided, that if the
27 total tax for the safe harbor base year exceeds the tax shown on
28 such report by ten per cent or more, the total tax adjusted to
29 reflect the current tax rate shall be used for purposes of this
30 subsection. In the event that the total tax for the safe harbor

1 base year exceeds the tax shown on the report by ten per cent or
2 more, interest resulting from the utilization of such total tax
3 in the application of the provisions of this subsection shall
4 not be imposed if, within forty-five days of the mailing date of
5 each assessment, payments are made such that the total amount of
6 all payments of estimated tax equals or exceeds the amount which
7 would have been required to be paid on or before such date if
8 the estimated tax were an amount equal to the total tax adjusted
9 to reflect the current tax rate. In any case in which the
10 taxable year for which an underpayment of estimated tax may
11 exist is a short taxable year, in determining the tax shown on
12 the report or the total tax for the safe harbor base year, the
13 tax will be reduced by multiplying it by the ratio of the number
14 of installment payments made in the short taxable year to the
15 number of installment payments required to be made for the full
16 taxable year.

17 (d.1) With respect to any underpayment of an installment of
18 estimated corporate net income tax for any tax year that begins
19 in taxable year 2025 or 2026 by a corporation required to file a
20 combined annual report pursuant to section 403(a.1)(1), interest
21 shall not be imposed if the total amount of all payments of
22 estimated corporate net income tax made on or before the last
23 date prescribed for the payment of such installment equals or
24 exceeds the amount which would have been required to be paid on
25 or before such date if the estimated tax were an amount equal to
26 the combined tax shown on the reports of all the members of the
27 unitary business for the safe harbor base year computed at the
28 rate applicable to the taxable year.

29 Section 5. This act shall apply to taxable years beginning
30 after December 31, 2024.

1 Section 6. This act shall take effect immediately.