
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2226 Session of
2024

INTRODUCED BY FRIEL, BURGOS, HILL-EVANS, MARCELL, SANCHEZ,
VENKAT, NEILSON, SCHLOSSBERG AND POWELL, APRIL 17, 2024

REFERRED TO COMMITTEE ON FINANCE, APRIL 17, 2024

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, establishing the Net
11 Operating Loss Transfer Program; imposing a penalty; and
12 making editorial changes.

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

15 Section 1. Sections 410, 411 and 412 of the act of March 4,
16 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, are
17 renumbered to read:

18 Section [410] 480. Penalties.--(a) Any person violating any
19 of the provisions of section 409 shall be guilty of a
20 misdemeanor, and shall, upon conviction thereof, be sentenced to
21 pay a fine not exceeding one thousand dollars (\$1,000) and costs
22 of prosecution, or to undergo imprisonment for not more than six
23 months, or both.

1 (b) Any person who shall wilfully make a false and
2 fraudulent return of taxable income made taxable by this
3 article, shall be guilty of wilful and corrupt perjury, and,
4 upon conviction thereof, shall be subject to punishment as
5 provided by law. Such penalty shall be in addition to any other
6 penalties imposed by this article.

7 (c) Any person, who wilfully fails, neglects, or refuses to
8 make a report or to pay the tax as herein prescribed, or who
9 shall refuse to permit the department to examine the books,
10 papers, and records of any corporation liable to pay tax under
11 this article, shall be guilty of a misdemeanor, and, upon
12 conviction thereof, shall be sentenced to pay a fine not
13 exceeding one thousand dollars (\$1,000) and costs of
14 prosecution, or to undergo imprisonment not exceeding six
15 months, or both. Such penalty shall be in addition to any other
16 penalties imposed by this article.

17 Section [411] 498. Repeal.--The act of May 16, 1935
18 (P.L.208), known as the "Corporate Net Income Tax Act," is
19 repealed.

20 Section [412] 499. Effective Date.--This article shall take
21 effect immediately, and the tax imposed shall apply to taxable
22 years beginning January 1, 1971 and thereafter.

23 Section 2. Article IV of the act is amended by adding a part
24 to read:

25 PART VI-A

26 NET OPERATING LOSS TRANSFER PROGRAM

27 Section 421. Definitions.

28 The following words and phrases when used in this part shall
29 have the meanings given to them in this section unless the
30 context clearly indicates otherwise:

1 "Allowable expenditures." Costs incurred in connection with
2 the operation of the new or expanding biotechnology business or
3 technology business located in this Commonwealth, including the
4 expenses of fixed assets, such as the construction, acquisition
5 and development of real estate, materials, start-up, tenant fit-
6 out, working capital, salaries and research and development
7 expenditures.

8 "Biotechnology." The continually expanding body of
9 fundamental knowledge about the functioning of biological
10 systems from the macro level to the molecular and subatomic
11 levels, including novel products, services, technologies and
12 subtechnologies developed as a result of insights gained from
13 research advances, which add to that body of fundamental
14 knowledge.

15 "Biotechnology business." Any of the following:

16 (1) A person, whose headquarters or base of operations
17 is located in this Commonwealth, engaged in the research,
18 development, production or provision of biotechnology for the
19 purpose of developing or providing products or processes for
20 specific commercial or public purposes, including medical,
21 pharmaceutical, nutritional and other health-related
22 purposes, agricultural purposes and environmental purposes.

23 (2) A person, whose headquarters or base of operations
24 is located in this Commonwealth, engaged in providing
25 services or products necessary for research, development,
26 production or provision of a technology/biotechnology
27 business.

28 "Cost." The expenses incurred in connection with the
29 operation of a new or expanding biotechnology business or
30 technology business in this Commonwealth, including the expenses

1 of fixed assets, such as the construction, acquisition and
2 development of real estate, materials, start-up, tenant fit-out,
3 working capital and any other expenses determined by the
4 department to be necessary to carry out the purposes of this
5 article.

6 "Financial institution." An individual or organization
7 deemed eligible by the department for participation in the
8 program, including State-chartered or federally chartered banks,
9 savings banks or savings and loan associations, banks organized
10 under the laws of a foreign government, private individuals,
11 insurance companies, landlords, finance companies and venture
12 capitalists.

13 "Fixed assets." Real property, interests in real property,
14 plants, equipment and any other assets commonly accepted as
15 fixed assets.

16 "Full-time employee." The following apply:

17 (1) Any of the following:

18 (i) a person employed by a new or expanding
19 biotechnology business or technology business for
20 consideration for at least 35 hours a week;

21 (ii) a person who renders any other standard of
22 service generally accepted by custom or practice as full-
23 time employment and whose wages are subject to
24 withholding as provided under 26 U.S.C. § 1400Z-2(c)
25 (relating to special rules for capital gains invested in
26 opportunity zones), as amended; or

27 (iii) a person who renders any other standard of
28 service generally accepted by custom or practice as full-
29 time employment, and whose distributive share of income,
30 gain, loss or deduction, or whose guaranteed payments, or

1 any combination thereof, is subject to tax under this
2 article.

3 (2) The term does not include a person who works as an
4 independent contractor or on a consulting basis for the new
5 or expanding biotechnology business or technology business.

6 "Net operating loss carryover." The amount of the deduction
7 from taxable income of net losses allowable for taxpayers under
8 section 401(3).

9 "New or expanding biotechnology business or technology
10 business." A biotechnology business or technology business
11 that, as of June 30 of the year in which the business files an
12 application for the program:

13 (1) has been in operation in this Commonwealth for no
14 more than five years; and

15 (2) has at least 15% of its total United States
16 employees working in this Commonwealth.

17 "Program." The Net Operating Loss Transfer Program
18 established under section 422.

19 "Purchasing taxpayer." A taxpayer who purchases tax benefits
20 under this part.

21 "Selling taxpayer." A taxpayer who is a new or expanding
22 biotechnology business or technology business that sells tax
23 benefits under this part.

24 "Tax benefit." The amount of an unused but otherwise
25 allowable net operating loss carryover accrued by a selling
26 taxpayer.

27 "Technology business." A business that:

28 (1) has its headquarters or base of operations in this
29 Commonwealth;

30 (2) owns, has filed for or has a valid license to use

1 protected, proprietary intellectual property; and

2 (3) employs a combination of highly educated or trained
3 managers and workers, or both, employed in this Commonwealth
4 who use sophisticated scientific research service or
5 production equipment, processes or knowledge to discover,
6 develop, test, transfer or manufacture a product or service.

7 "Working capital." Liquid capital assets other than fixed
8 assets.

9 Section 422. Transferable Net Operating Loss Program.

10 (a) Establishment.--

11 (1) The Transferable Net Operating Loss Program is
12 established to allow a new or expanding biotechnology
13 business or technology business in this Commonwealth with
14 amounts of unused net operating loss carryover to sell the
15 tax benefits for use by other taxpayers under this article.

16 (2) The tax benefits may be used by the purchasing
17 taxpayer in accordance with the program. The purchasing
18 taxpayer may apply the tax benefits to the purchasing
19 taxpayer's tax liability for the taxable year during which
20 the tax benefits were purchased, except that any tax benefits
21 received by the purchasing taxpayer plus any other net loss
22 deduction allowable under this article shall not cause the
23 purchasing taxpayer's total net loss deduction to exceed the
24 limits established under section 401(3).

25 (b) Approval of sale of tax benefits.--

26 (1) The department, in consultation with the Department
27 of Community and Economic Development, shall review and
28 approve applications by new or expanding biotechnology
29 businesses or technology businesses in this Commonwealth with
30 unused but otherwise allowable net operating loss carryover

1 to sell those tax benefits in exchange for private financial
2 assistance to be contributed by a purchasing taxpayer in an
3 amount equal to 80% of the amount of the tax benefit being
4 sold.

5 (2) A selling taxpayer's transferable tax benefits shall
6 be limited to net operating losses that the selling taxpayer
7 requests to transfer in its application to the department and
8 shall not, in total, exceed the maximum amount of tax
9 benefits that the selling taxpayer is eligible to transfer.

10 (3) The department shall establish rules for the
11 repayment of all, or a portion of, an amount equal to the
12 selling price of the tax benefit under section 427.

13 (c) Approval of purchase of tax benefits.--

14 (1) The department shall review and approve applications
15 for the purchase of tax benefits in exchange for private
16 financial assistance to be made by the purchasing taxpayer in
17 an amount equal to 80% of the amount of the tax benefit being
18 sold.

19 (2) The department shall not approve an application
20 unless the selling taxpayer certifies that as of the date of
21 the application that the selling taxpayer is operating as a
22 new or expanding biotechnology business or technology
23 business and has no current intention to cease operating as a
24 new or expanding biotechnology business or technology
25 business.

26 (d) Private financial assistance.--The private financial
27 assistance shall assist in funding expenses incurred in
28 connection with the operation of the new or expanding
29 biotechnology business or technology business in this
30 Commonwealth, including the expenses of fixed assets, such as

1 the construction and acquisition and development of real estate,
2 materials, start-up, tenant fit-out, working capital, salaries,
3 research and development expenditures and any other expenses
4 determined by the department to be necessary to carry out the
5 purposes of the program.

6 (e) Distribution of tax benefits and private financial
7 assistance.--The department shall equally distribute tax
8 benefits based on the amount of tax benefits approved for sale
9 and the amount of private financial assistance committed by
10 purchasing taxpayers during the taxable year.

11 Section 423. Authorization to approve certain transfers of tax
12 benefits.

13 (a) Approval of sale of tax benefits.--The department shall
14 approve the sale of tax benefits. A selling taxpayer shall be
15 subject to a lifetime cap of \$20,000,000. During each taxable
16 year, a selling taxpayer that meets all eligibility requirements
17 shall be permitted to sell an amount of tax benefits that shall
18 not exceed the lifetime cap over a period of five taxable years,
19 except that the amount of tax benefits sold by a selling
20 taxpayer per taxable year shall not exceed \$5,000,000.

21 (b) Approval of purchase of tax benefits.--The department
22 shall approve the transfer of tax benefits to a purchasing
23 taxpayer. A purchasing taxpayer shall be permitted to purchase
24 no more than \$100,000,000 in tax benefits per taxable year. If
25 the demand from more than one purchasing taxpayer exceeds
26 \$100,000,000, the department shall distribute the annual tax
27 benefits on a pro rata basis.

28 Section 424. Eligibility.

29 A new or expanding biotechnology business or technology
30 business shall be eligible to apply to the program if the

1 department, in consultation with the Department of Community and
2 Economic Development, finds that the business:

3 (1) Meets the definition of a "new or expanding
4 biotechnology business or technology business."

5 (2) Meets any of the following:

6 (i) has protected and proprietary intellectual
7 property that is exclusive to the applicant;

8 (ii) has use/license technology or patents developed
9 in this Commonwealth;

10 (iii) provides technology to the agriculture
11 industry; or

12 (iv) generates at least 50% of its revenue in this
13 Commonwealth.

14 (3) Has unused net operating loss carryover.

15 (4) Has no positive net operating income for the past
16 two years.

17 (5) Is subject to tax under this article and files all
18 required tax returns under this article.

19 Section 425. Application to program.

20 (a) Fee.--An application submitted by a selling taxpayer or
21 a purchasing taxpayer shall be accompanied by a nonrefundable
22 \$2,500 application fee. Completed applications must be received
23 by June 30 of each fiscal year.

24 (b) Selling taxpayer application.--An application submitted
25 to the program by a selling taxpayer must include:

26 (1) a spending certification form attesting to having
27 spent the proceeds of the prior year's sale of tax benefits
28 in accordance with the definition of "allowable
29 expenditures";

30 (2) the tax benefit identification form which summarizes

1 the accumulated net operating loss carryover to be sold, the
2 years that the net operating loss carryover was incurred and
3 the value intended to be sold;

4 (3) a private financial assistance form specifying how
5 the selling taxpayer will expend the private financial
6 assistance for allowable expenditures for the operations of
7 the new or expanding biotechnology business or technology
8 business;

9 (4) if a selling taxpayer was authorized to sell and did
10 sell tax benefits during the previous taxable year, a
11 spending certification that attests that the selling taxpayer
12 spent the proceeds of the prior year's sale of tax benefits
13 in accordance with the prior year's private financial
14 assistance form;

15 (5) a description of and business plan or presentation
16 for the selling taxpayer's new or expanding biotechnology
17 business or technology business, which shall demonstrate that
18 the business is the primary business of the selling taxpayer
19 and that the applicant meets the definition of a new or
20 expanding biotechnology business or technology business. If
21 applicable, documentation of protected proprietary
22 intellectual property must be provided;

23 (6) financial statements for the two most recent full
24 years of operation, or if the selling taxpayer has been in
25 operation for less than two years, the selling taxpayer's
26 most recent financial statement, if any;

27 (7) a list of all affiliates and subsidiaries of the
28 selling taxpayer. A corporation is considered to be an
29 affiliate or subsidiary of the selling taxpayer if the
30 corporation is subject to tax under this article and one or

1 more of the following applies:

2 (i) the taxpayer is an entity or an affiliated group
3 of corporations that directly or indirectly owns or
4 controls 50% or greater of the selling taxpayer;

5 (ii) the taxpayer and the selling taxpayer are both
6 members of the same consolidated group of affiliated
7 corporations, as filed for Federal income tax purposes;
8 and

9 (iii) any other test of affiliation as determined by
10 the department; and

11 (8) any other information required by the department.

12 (c) Purchasing taxpayer application.--An application
13 submitted by a purchasing taxpayer must include:

14 (1) the name, address and telephone number of the
15 purchasing taxpayer;

16 (2) a statement of the amount of tax benefits that the
17 purchasing taxpayer requests to receive;

18 (3) an attestation that includes the following:

19 (i) a statement that the purchasing taxpayer has
20 committed to contributing private financial assistance to
21 the program;

22 (ii) the dollar amount of private financial
23 assistance the purchasing taxpayer will contribute, which
24 shall be equal to 80% of the amount of tax benefits the
25 purchasing taxpayer requests to receive; and

26 (iii) a statement that the purchasing taxpayer has
27 the financial ability to contribute the amount specified
28 under subparagraph (ii);

29 (4) a statement of the total amount of unused net
30 operating loss carryover, if any, that the purchasing

1 taxpayer has accrued;

2 (5) a list of all affiliates and subsidiaries of the
3 purchasing taxpayer. A corporation is considered to be an
4 affiliate or subsidiary of the purchasing taxpayer if the
5 corporation is subject to tax under this article and one or
6 more of the following applies:

7 (i) the corporation is an entity or an affiliated
8 group of corporations that directly or indirectly owns or
9 controls 50% or greater of the purchasing taxpayer;

10 (ii) the corporation and the purchasing taxpayer are
11 both members of the same consolidated group of affiliated
12 corporations, as filed for Federal income tax purposes;
13 and

14 (iii) any other test of affiliation as determined by
15 the department; and

16 (6) any other information required by the department.

17 Section 426. Review of applications.

18 (a) Review of application.--The department, in consultation
19 with the Department of Community and Economic Development, shall
20 review each program application the department receives to
21 determine whether the application meets all of the requirements
22 established under this part.

23 (b) Approval.--Except as provided for under subsection (c),
24 if the department determines that an application was received on
25 or before the June 30 deadline and meets all the requirements
26 established under this part, the department shall approve the
27 application and shall notify a selling taxpayer or a purchasing
28 taxpayer of the approval.

29 (c) Denial.--The department shall deny an application if one
30 or more of the following applies:

1 (1) An applicant does not meet all requirements under
2 this part.

3 (2) The application was received after the June 30
4 deadline.

5 (3) The selling taxpayer has demonstrated positive net
6 operating income in any of the two previous full years of
7 ongoing operations as determined on its financial statements
8 issued in a manner as determined by the department.

9 Section 427. Allocation of tax benefits.

10 (a) Limitation on selling taxpayer.--A selling taxpayer
11 shall be subject to a lifetime cap of \$20,000,000. During each
12 taxable year, a selling taxpayer that meets all eligibility
13 requirements shall be permitted to sell an amount of tax
14 benefits that shall not exceed the lifetime cap over a period of
15 five taxable years. The amount of tax benefits sold by a selling
16 taxpayer per taxable year shall not exceed \$5,000,000, except if
17 all selling taxpayers have sold their annual tax benefits and
18 there remains additional purchasing taxpayer demand under the
19 annual purchasing taxpayer cap, the department shall allow
20 sellers of tax benefits to exceed the individual seller annual
21 cap and shall award the additional cap demand on a pro rata
22 basis.

23 (b) Limitation on purchasing taxpayer.--A purchasing
24 taxpayer may purchase no more than \$100,000,000 in tax benefits
25 per taxable year. Tax benefits awarded to a purchasing taxpayer
26 shall be reduced by the percentage of available tax benefits
27 sold by selling taxpayers who are affiliates or subsidiaries of
28 the purchasing taxpayer, pursuant to the information provided on
29 the application materials required under section 425.

30 Section 428. Repayment of tax benefits.

1 (a) Forfeiture.--If a selling taxpayer fails to use the
2 private financial assistance received for the sale of tax
3 benefits in a manner prescribed under this part, or fails to
4 maintain a headquarters or a base of operation in this
5 Commonwealth during the five years following receipt of the
6 private financial assistance, the selling taxpayer shall forfeit
7 and remit the face value of the sold tax benefits to the
8 department in accordance with subsections (c) and (d). The face
9 value of the sold tax benefits shall be the amount of unused net
10 operating loss carryover the department approved for sale by the
11 selling taxpayer.

12 (b) Exception.--The forfeiture requirement in subsection (a)
13 pertaining to the failure to maintain a headquarters or a base
14 of operation in this Commonwealth shall not apply if the failure
15 is due to the liquidation of the new or expanding biotechnology
16 business or technology business.

17 (c) Prorated certificate.--If a selling taxpayer fails to
18 maintain a headquarters or base of operation in this
19 Commonwealth during the five years following the receipt of the
20 private financial assistance, the department shall allow the
21 selling taxpayer to retain 20% of the face value of the sold tax
22 benefit for each full year the selling taxpayer remained in this
23 Commonwealth, except that the selling taxpayer forfeits and
24 remits to the department the remaining amount of the face value
25 of the sold tax benefit.

26 (d) Failure to use benefits.--If a selling taxpayer uses the
27 private financial assistance received in exchange for the sale
28 of tax benefits for expenditures that are not allowable
29 expenditures, the department shall require the selling taxpayer
30 to remit to the department 100% of the amount of the

1 expenditures that are not allowable expenditures.

2 Section 429. Fraudulent application information.

3 A selling taxpayer or purchasing taxpayer who with intent to
4 defraud the Commonwealth willfully submits, or causes to be
5 submitted, a program application under section 425 which
6 contains false information commits a misdemeanor and, upon
7 conviction, shall be sentenced to pay a fine not exceeding
8 \$2,000 or undergo imprisonment not exceeding three years, or
9 both.

10 Section 430. Report.

11 (a) Duty.--Not later than one year following the effective
12 date of this subsection, and not later than March 1 of each year
13 thereafter, the department shall prepare a report on the
14 program.

15 (b) Contents.--The report shall include:

16 (1) A description of the demand for the program from new
17 or expanding biotechnology businesses or technology
18 businesses and financial institutions.

19 (2) The efforts made by the department to promote the
20 program.

21 (3) The total amount of tax benefits approved for
22 transfer by the department under the program.

23 (4) An assessment of the effectiveness of the program in
24 meeting the goals of this part.

25 (c) Submission.--The department shall submit the report
26 under this section to the Governor and the General Assembly,
27 including recommendations for legislation to improve the
28 effectiveness of the program.

29 Section 431. Regulations and guidelines.

30 (a) Promulgation.--The department shall promulgate

1 regulations to implement this part.

2 (b) Guidelines.--The department shall develop written
3 guidelines for the implementation of this part. The guidelines
4 shall be in effect until the department promulgates regulations
5 for the implementation of this part.

6 Section 3. This act shall take effect in 60 days.