

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 520 Session of
2005

INTRODUCED BY VEON, LEVDANSKY, GRUCELA, BELARDI, BEBKO-JONES,
BELFANTI, BLAUM, CALTAGIRONE, DeWEESE, FABRIZIO, FREEMAN,
GERGELY, HALUSKA, LaGROTTA, McCALL, MUNDY, RUFFING, STURLA,
TANGRETTI, WALKO, WASHINGTON, GOODMAN, JOSEPHS, MANDERINO,
McGEEHAN, ROONEY, SOLOBAY, SURRA, THOMAS, WANSACZ AND
WILLIAMS, FEBRUARY 15, 2005

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 15, 2005

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," further providing, in corporate net income tax,
11 for the definition of "taxable income."

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

14 Section 1. Section 401(3)2 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:

1 * * *

2 (3) "Taxable income." * * *

3 2. In case the entire business of any corporation, other
4 than a corporation engaged in doing business as a regulated
5 investment company as defined by the Internal Revenue Code of
6 1986, is not transacted within this Commonwealth, the tax
7 imposed by this article shall be based upon such portion of the
8 taxable income of such corporation for the fiscal or calendar
9 year, as defined in subclause 1 hereof, and may be determined as
10 follows:

11 * * *

12 (e) Combined Reports.

13 (1) Taxable income of a corporation that is a member of a
14 unitary business group shall be determined by combining the
15 business income of all members of the unitary business group,
16 determining the apportionment factor for the unitary business
17 group, applying that apportionment factor to the business income
18 of the corporation and making any adjustment for nonbusiness
19 income. The following shall apply:

20 (A) Net operating losses arising from the combined
21 activities of a unitary group shall be available to other
22 members of the group if the member to which it was initially
23 assigned is unable to use it. In such cases it shall be assigned
24 to other members in proportion to their share of the group's
25 unitary income in the year of assignment.

26 (B) Excess tax credits shall remain with the member of the
27 group that made the qualifying investment and shall not be
28 available to reduce the taxable revenue of any other members of
29 the unitary group.

30 (C) Corporate attributes generated before combined reporting

requirements took effect or before the corporation became a member of a unitary group shall be treated as belonging to the entity that established them and shall not be available to the combined group, except that corporate attributes that mature under the combined reporting regime shall be treated as if they had arisen entirely within that regime. The department shall have the authority and responsibility to insure that neither an unfair benefit nor a lack of substantial fairness results during the transition to or from the combined reporting system.

(D) For the purpose of the combined report required under the provisions of this paragraph, a unitary group must adopt an annual accounting period for the purpose of computing the income included in the combined report. Where a unitary group has a hierarchal structure, with a parent corporation at the top of the hierarchy and subsidiaries and lower-tier corporations under it, the accounting period of the parent corporation shall be used. In a hierarchal structure the parent corporation shall be considered the principal member. If a unitary group does not have a common parent corporation for all members of the group, the member having the largest aggregate amount of property and payroll as apportioned to the State shall be considered the principal member and have its accounting period used for purposes of the combined report.

(2) Notwithstanding any other provision of law, a taxpayer subject to the taxes imposed under this article may apportion its income under this paragraph. A return under a water's edge election must include the income and apportionment factors of the following affiliated corporations only:

(A) a corporation incorporated in the United States in a unitary relationship with the taxpayer and eligible to be

1 included in a Federal consolidated return as described in
2 sections 1501 through 1505 of the Internal Revenue Code of 1986
3 (26 U.S.C. §§ 1501-1505) that has more than twenty per cent of
4 its payroll and property assignable to locations inside the
5 United States. For the purposes of determining eligibility for
6 inclusion in a Federal consolidated return under the provisions
7 of the Internal Revenue Code, the eighty per cent stock
8 ownership requirement of 26 U.S.C. § 1504 must be reduced to
9 ownership of over fifty per cent of the voting stock directly or
10 indirectly owned or controlled by an includable corporation;

11 (B) a domestic international sales corporation, as described
12 in sections 991 through 994 of the Internal Revenue Code of 1986
13 (26 U.S.C. §§ 991-994) and a foreign sales corporation, as
14 described in sections 921 through 927 of the Internal Revenue
15 Code of 1986 (26 U.S.C. §§ 921-927);

16 (C) an export trade corporation, as described in sections
17 970 and 971 of the Internal Revenue Code of 1986 (26 U.S.C. §§
18 970 and 971);

19 (D) a foreign corporation deriving gain or loss from the
20 disposition of a United States real property interest to the
21 extent recognized under section 897 of the Internal Revenue Code
22 of 1986 (26 U.S.C. § 897);

23 (E) a corporation incorporated outside the United States if
24 over fifty per cent of its voting stock is owned directly or
25 indirectly by the taxpayer and if more than twenty per cent of
26 the average of its payroll and property is assignable to a
27 location inside the United States; or

28 (F) a corporation that is in a unitary relationship with the
29 taxpayer and that is incorporated in a tax haven, including
30 Andorra, Anguilla, Antigua and Barbuda, Aruba, The Bahamas,

Bahrain, Barbados, Belize, Bermuda, British Virgin Islands,
Cayman Islands, Cook Islands, Turks and Caicos Islands,
Dominica, Gibraltar, Granada, Guernsey-Sark-Alderney, Isle of
Man, Jersey, Liberia, Liechtenstein, Luxembourg, Maldives,
Marshall Islands, Monaco, Montserrat, Nauru, Netherlands
Antilles, Niue, Panama, Samoa, Seychelles, St. Kitts and Nevis,
St. Lucia, St. Vincent, and the Grenadines, Tonga, U.S. Virgin
Islands, and Vanuatu. Income shifted to a tax haven, to the
extent taxable, shall be considered income subject to
apportionment.

(3) The following shall apply to a water's edge election
under this paragraph:

(A) A water's edge election may be made by a taxpayer and
shall be effective only if every affiliated corporation subject
to the taxes imposed under this article consents to the
election. Consent of the common parent of an affiliated group
constitutes consent of all members of the group. An affiliated
corporation that becomes subject to taxes under this article or
makes a water's edge election shall be considered to have
consented to the election.

(B) Each water's edge election must be for a three-year
renewable period.

(4) A unitary business group shall consist of all entities
classified as a corporation for Federal income tax purposes
whose activities or operations are functionally integrated or
contribute or depend upon the activities or operations of one or
more other members and which are part of a commonly owned or
controlled group of corporations as set forth in clause (5).

(5) A corporate or noncorporate common parent which owns,
directly or indirectly, more than fifty per cent of the voting

stock of at least one other member of the group, and more than fifty per cent of the voting stock of each member, other than the common parent, shall be considered to be owned, directly or indirectly, by one or more of the other members of the group.

(6) A unitary business group shall be limited to the following:

(A) corporations that are incorporated in the United States;

(B) domestic international sales corporations and foreign sales corporations;

(C) corporations whose apportionment factors average twenty per cent or more within the United States;

(D) export trade corporations; and

(E) under the circumstances and to the extent provided by regulations prescribed by the department:

(i) corporations not described in subclauses (A) through (D) to the extent that their income is derived from or assignable to sources within the United States; or

(ii) controlled foreign corporations.

(7) Corporations subjected to tax under Articles VII, VIII and IX shall not be included in a unitary business group for purposes of combined reporting.

Section 2. The addition of section 401(3)2(e) of the act shall apply to taxable years beginning after December 31, 2004.

Section 3. This act shall take effect immediately.