

## AMENDMENTS TO HOUSE BILL NO. 2150

Sponsor: REPRESENTATIVE MUNDY

Printer's No. 3338

1 Amend Bill, page 2, line 24, by striking out "A PARAGRAPH"  
2 and inserting

3 paragraphs

4 Amend Bill, page 3, lines 23 through 30; page 4, lines 1  
5 through 30; page 5, lines 1 through 5, by striking out all of  
6 said lines on said pages and inserting

7 (t) For purposes of computing its net income under this  
8 chapter, a taxpayer shall add back all of the following:

9 (1) Otherwise deductible intangible expenses directly or  
10 indirectly paid, accrued or incurred in connection with one or  
11 more direct or indirect transactions with one or more related  
12 members.

13 (2) Otherwise deductible interest paid, accrued or incurred  
14 to a related member during the taxable year.

15 (u) (1) If the related member was subject to tax in this  
16 Commonwealth, another state or possession of the United States  
17 or a foreign nation or a combination of those governmental  
18 entities on a tax base that included the interest expense or  
19 intangible expense paid, accrued or incurred by the taxpayer,  
20 the taxpayer shall receive a credit against tax due in this  
21 Commonwealth in an amount equal to the higher of the tax paid by  
22 the related member with respect to the portion of its income  
23 representing the interest expense or the intangible expense  
24 paid, accrued or incurred by the taxpayer, or the tax that would  
25 have been paid by the related member with respect to that  
26 portion of its income if:

27 (A) that portion of its income had not been offset by  
28 expenses or losses; or

29 (B) the tax liability had not been offset by a credit or  
30 credits.

31 (2) The credit determined under subparagraph (1) shall be  
32 multiplied by the apportionment factor of the taxpayer in this  
33 Commonwealth, but may not exceed the taxpayer's liability in  
34 this Commonwealth attributable to the net income taxed as a  
35 result of the adjustment required by paragraph (t).

1     (v) (1) The adjustment required under paragraph (t) and the  
2 credit allowed under paragraph (u) shall not apply:

3     (A) To the portion of the intangible expense that the  
4 taxpayer establishes by clear and convincing evidence meets both  
5 of the following requirements:

6     (i) the related member during the same taxable year directly  
7 or indirectly paid, accrued or incurred the portion to a person  
8 that is not a related member; and

9     (ii) the transaction giving rise to the intangible expense  
10 between the taxpayer and the related member was undertaken for a  
11 valid business purpose.

12     (B) If the taxpayer establishes by clear and convincing  
13 evidence that:

14     (i) the transaction giving rise to interest expense between  
15 the taxpayer and the related member was undertaken for a valid  
16 business purpose; and

17     (ii) the interest expense was paid, accrued or incurred  
18 using terms that reflect an arm's length relationship.

19     (C) If the taxpayer establishes by clear and convincing  
20 evidence that:

21     (i) the related member was subject to tax on its net income  
22 in this Commonwealth, another state or possession of the United  
23 States or a combination of those governmental entities;

24     (ii) the tax base for the tax included the interest expense  
25 or the intangible expense paid, accrued or incurred by the  
26 taxpayer; and

27     (iii) the aggregate effective rate of tax applied to the  
28 related member is no less than four per cent.

29     (D) If the taxpayer establishes by clear and convincing  
30 evidence that:

31     (i) the interest expense or the intangible expense was paid,  
32 accrued or incurred to a related member organized under the laws  
33 of a country other than the United States;

34     (ii) the related member's income from the transaction was  
35 subject to a comprehensive income tax treaty between the country  
36 and the United States;

37     (iii) the related member's income from the transaction was  
38 taxed in the country at a tax rate at least equal to that  
39 imposed by the Commonwealth; and

40     (iv) the interest expense or intangible expense was paid,  
41 accrued or incurred pursuant to a transaction that was  
42 undertaken for a valid business purpose and using terms that  
43 reflect an arm's length relationship.

44     (E) If the taxpayer and the department agree in writing to  
45 the application or use of alternative adjustments or  
46 computations. The department may, in its discretion, agree to  
47 the application or use of alternative adjustments or  
48 computations when it concludes that in the absence of the  
49 agreement the income of the taxpayer would not be properly  
50 reflected.

51     (2) (Reserved).

1 (w) Nothing under paragraphs (t), (u) or (v) shall be  
2 construed to limit or negate the department's authority to enter  
3 into agreements and compromises allowed by law.

4 Amend Bill, page 10, line 30; page 11, lines 1 through 30;  
5 page 12, lines 1 through 20, by striking out all of said lines  
6 on said pages and inserting

7 (8) "Aggregate effective rate of tax." The sum of the  
8 effective rates of tax imposed by the Commonwealth, another  
9 state or a possession of the United States or any combination of  
10 those governmental entities on a related member.

11 (9) "Effective rate of tax." The maximum statutory rate of  
12 tax imposed by the Commonwealth, another state or a possession  
13 of the United States on a related member's net income multiplied  
14 by the apportionment percentage, if any, applicable to the  
15 related member under the laws of that jurisdiction. For purposes  
16 of this definition, the following shall apply:

17 (A) The effective rate of tax shall be zero if the related  
18 member's net income tax liability in the jurisdiction is  
19 reported on a combined or consolidated return including both the  
20 taxpayer and the related member where the reported transactions  
21 between the taxpayer and the related member are eliminated or  
22 offset.

23 (B) When computing the effective rate of tax for a  
24 jurisdiction in which a related member's net income is  
25 eliminated or offset by a credit or similar adjustment that is  
26 dependent upon the related member either maintaining or managing  
27 intangible property or collecting interest income in that  
28 jurisdiction, the maximum statutory rate of tax imposed by the  
29 jurisdiction shall be decreased to reflect the statutory rate of  
30 tax that applies to the related member as effectively reduced by  
31 the credit or similar adjustment.

32 (10) "Interest expense." Amounts directly or indirectly  
33 allowed as deductions under section 163 of the Internal Revenue  
34 Code of 1986 (26 U.S.C. § 163) for purposes of determining  
35 taxable income under the Internal Revenue Code of 1986.

36 (11) "Intangible expense." The term includes:

37 1. Expenses, losses and costs for, related to, or in  
38 connection directly or indirectly with, the direct or indirect  
39 acquisition, use, maintenance or management, ownership, sale,  
40 exchange, or any other disposition of intangible property to the  
41 extent the amounts are allowed as deductions or costs in  
42 determining taxable income before operating loss deductions and  
43 special deductions for the taxable year under the Internal  
44 Revenue Code of 1986.

45 2. Losses related to, or incurred in connection directly or  
46 indirectly with, factoring transactions or discounting  
47 transactions.

48 3. Royalty, patent, technical and copyright fees.

1     4. Licensing fees.

2     5. Other similar expenses and costs.

3     (12) "Intangible property." The term includes patents,  
4 patent applications, trade names, trademarks, service marks,  
5 copyrights, mask works, trade secrets and similar types of  
6 intangible assets.

7     (13) "Related entity." Any of the following:

8     1. A stockholder who is an individual or a member of the  
9 stockholder's family under section 318 of the Internal Revenue  
10 Code of 1986 (26 U.S.C. § 318) if the stockholder and the  
11 members of the stockholder's family own, directly, indirectly,  
12 beneficially or constructively, in the aggregate, at least fifty  
13 per cent of the value of the taxpayer's outstanding stock.

14     2. A stockholder or a stockholder's partnership, limited  
15 liability company, estate, trust or corporation, if the  
16 stockholder and the stockholder's partnerships, limited  
17 liability companies, estates, trusts and corporations own  
18 directly, indirectly, beneficially or constructively, in the  
19 aggregate, at least fifty per cent of the value of the  
20 taxpayer's outstanding stock.

21     3. A corporation or a party related to the corporation in a  
22 manner that would require an attribution of stock from the  
23 corporation to the party or from the party to the corporation  
24 under the attribution rules of the Internal Revenue Code of 1986  
25 if the taxpayer owns, directly, indirectly, beneficially or  
26 constructively, at least fifty per cent of the value of the  
27 corporation's outstanding stock. The attribution rules of the  
28 Internal Revenue Code of 1986 shall apply for purposes of  
29 determining whether the ownership requirements of this  
30 definition have been met.

31     (14) "Related member." A person that, with respect to the  
32 taxpayer during all or any portion of the taxable year, is any  
33 of the following:

34     1. A related entity.

35     2. A component member as defined in section 1563(b) of the  
36 Internal Revenue Code of 1986 (26 U.S.C. § 1563(b)).

37     3. A person to or from whom there is attribution of stock  
38 ownership in accordance with section 1563(e) of the Internal  
39 Revenue Code of 1986 (26 U.S.C. § 1563(e)).

40     4. A person that, notwithstanding its form of organization,  
41 bears the same relationship to the taxpayer as a person  
42 described in subclauses 1, 2 and 3.

43     (15) "Valid business purpose." As follows:

44     1. One or more business purposes which alone or in  
45 combination constitute the primary motivation for a business  
46 activity or transaction and the activity or transaction changes  
47 in a meaningful way, apart from tax effects, the economic  
48 position of the taxpayer.

49     2. For the purpose of subclause 1, the following shall  
50 apply:

51     (A) A business purpose shall not include the avoidance or

1 reduction of taxation.

2 (B) The economic position of the taxpayer shall include an  
3 increase in the market share of the taxpayer or the entry by the  
4 taxpayer into new business markets.

5 Amend Bill, page 13, by inserting between lines 24 and 25

6 Section 4. The addition of section 401(3)1(t), (u), (v) and  
7 (w) and (8), (9), (10), (11), (12), (13), (14) and (15) of the  
8 act shall apply to taxable years beginning after December 31,  
9 2012.

10 Amend Bill, page 13, line 25, by striking out "4" and  
11 inserting

12 5