

AMENDMENTS TO HOUSE BILL NO. 48

Sponsor: REPRESENTATIVE MUNDY

Printer's No. 36

1 Amend Bill, page 1, line 10, by inserting after "penalties,"
2 in corporate net income tax, further providing for definitions,
3 for imposition, for reports and payment and for consolidated
4 reports; in inheritance tax,

5 Amend Bill, page 1, line 11, by inserting after "tax"
6 ; and, in general provisions, further providing for
7 underpayment of estimated tax

8 Amend Bill, page 1, lines 14 through 16, by striking out all
9 of said lines and inserting

10 Section 1. Section 401(3)1(a) and (b) and 2(a) and (5) of
11 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
12 Code of 1971, amended or added December 23, 1983 (P.L.370,
13 No.90), July 1, 1985 (P.L.78, No.29), August 4, 1991 (P.L.97,
14 No.22), May 12, 1999 (P.L.26, No.4), June 22, 2001 (P.L.353,
15 No.23), June 29, 2002 (P.L.559, No.89), October 9, 2009
16 (P.L.451, No.48) and July 2, 2012 (P.L.751, No.85) are amended,
17 clause (3)2 is amended by adding a phrase and the section is
18 amended by adding clauses to read:

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

23 * * *

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

1 as finally ascertained by the Federal Government.

2 (b) Additional deductions shall be allowed from taxable
3 income on account of any dividends received from any other
4 corporation but only to the extent that such dividends are
5 included in taxable income as returned to and ascertained by the
6 Federal Government. For tax years beginning on or after January
7 1, 1991, additional deductions shall only be allowed for amounts
8 included, under section 78 of the Internal Revenue Code of 1986
9 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned
10 to and ascertained by the Federal Government and for the amount
11 of any dividends received from a foreign corporation included in
12 taxable income to the extent such dividends would be deductible
13 in arriving at Federal taxable income if received from a
14 domestic corporation. For taxable years beginning on or after
15 January 1, 2013, if not otherwise allowed as a deduction, an
16 additional deduction is allowed for all dividends paid by one to
17 another of the included corporations of a unitary business to
18 the extent those dividends are included in business income of a
19 corporation that is required to determine its business income
20 pursuant to paragraph (1) of phrase (e) of subclause (2).

21 * * *

22 2. In case the entire business of any corporation, other
23 than a corporation engaged in doing business as a regulated
24 investment company as defined by the Internal Revenue Code of
25 1986, is not transacted within this Commonwealth, the tax
26 imposed by this article shall be based upon such portion of the
27 taxable income of such corporation for the fiscal or calendar
28 year, as defined in subclause 1 hereof, and may be determined as
29 follows:

30 (a) Division of Income.

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

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

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

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

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

50 (E) "Sales" means all gross receipts of the taxpayer not
51 allocated under this definition other than dividends received,

1 interest on United States, state or political subdivision
2 obligations and gross receipts heretofore or hereafter received
3 from the sale, redemption, maturity or exchange of securities,
4 except those held by the taxpayer primarily for sale to
5 customers in the ordinary course of its trade or business.

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

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

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

21 (3) For purposes of allocation and apportionment of income
22 under this definition, a taxpayer is taxable in another state if
23 in that state the taxpayer is subject to a net income tax, a
24 franchise tax measured by net income, a franchise tax for the
25 privilege of doing business, or a corporate stock tax or if that
26 state has jurisdiction to subject the taxpayer to a net income
27 tax regardless of whether, in fact, the state does or does not.

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

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

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

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

1 (6) (A) Gains and losses from sales or other disposition of
2 real property located in this State are allocable to this State.

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

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

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

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

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

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

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

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

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

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

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

7 (v) For taxable years beginning after December 31, 2012, all
8 business income shall be apportioned to this State by
9 multiplying the income by the sales factor.

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

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

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

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

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

41 (14) Compensation is paid in this State if:

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

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

47 (C) Some of the service is performed in this State and the
48 base of operations or if there is no base of operations, the
49 place from which the service is directed or controlled is in
50 this State, or the base of operations or the place from which
51 the service is directed or controlled is not in any state in

1 which some part of the service is performed, but the
2 individual's residence is in this State.

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

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

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

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

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

20 (17.1) Sales of services are in this State if sales are
21 derived from customers within this State. If part of the sales
22 with respect to a specific contract or other agreement to
23 perform services is derived from customers from within this
24 State, sales are in this State in proportion to the sales
25 derived from customers within this State to total sales with
26 respect to that contract or agreement.

27 (17.2) In order to determine sales in this State of any
28 railroad, truck, bus, airline, pipeline, natural gas or water
29 transportation company that is required to determine its
30 business income under paragraph (1) of phrase (e) of this
31 subclause the company must convert the relevant fraction set
32 forth under phrase (b), (c) or (d) of this subclause to gross
33 receipts. Sales in this State are the result of multiplying
34 total gross receipts from relevant transportation activities by
35 the decimal equivalent of the relevant fraction set forth under
36 phrase (b), (c) or (d) of this subclause.

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

42 (A) Separate accounting;

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

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

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

1 requested relief.

2 * * *

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

4 (1) Notwithstanding any contrary provisions of this article,
5 for taxable years that begin on or after January 1, 2013,
6 business income of a corporation that is a member of a unitary
7 business that consists of two or more corporations, at least one
8 of which does not transact its entire business in this State, is
9 determined by combining the business income of either all
10 corporations, other than as provided under this paragraph, that
11 are water's-edge basis members or all corporations, other than
12 as provided under this paragraph, that are worldwide members of
13 the unitary business. Business income from an intercompany
14 transaction between included corporations of a unitary business
15 shall be deferred in the manner set forth under 26 CFR 1.1502-13
16 (relating to intercompany transactions) in determining the
17 business income of a corporation that is a member of that
18 unitary business. Business income of the following corporations
19 is not included in the determination of combined business
20 income:

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

23 (ii) any corporation specified in the definition of
24 "institution" in section 701.5 that would be subject to taxation
25 under Article VII if it was located, as defined in section
26 701.5, in this State;

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

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

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

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

41 (2) Notwithstanding any contrary provisions of this article,
42 all corporations that are required to compute business income
43 under paragraph (1) are entitled to apportion the business
44 income when one corporation of the same unitary business is
45 entitled to apportion the business income. Notwithstanding any
46 contrary provisions of this article, for taxable years that
47 begin on or after January 1, 2013, the denominator of the
48 apportionment fraction of a corporation that is required to
49 compute its business income under paragraph (1) shall be
50 computed on a combined basis for all included corporations of
51 the unitary business. Gross receipts from an intercompany

1 transaction between included corporations of a unitary business
2 shall be eliminated unless the gross receipts are derived from
3 transactions that are deferred in the manner set forth under 26
4 CFR 1.1502-13 in computing the numerator and denominator of the
5 apportionment fraction of a corporation that is required to
6 compute its business income under paragraph (1). Gross receipts
7 from transactions that had been deferred in the manner set forth
8 under 26 CFR 1.1502-13 are included in a corporation's
9 apportionment fraction during the same taxable year that it
10 realizes business income that had been deferred due to the
11 transaction. The apportionment fraction of the following
12 corporations shall not be included in the determination of the
13 combined apportionment fraction:

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

16 (ii) any corporation specified in the definition of
17 "institution" in section 701.5 that would be subject to taxation
18 under Article VII if it was located, as defined in section
19 701.5, in this State;

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

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

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

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

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

39 (4) Nonbusiness income of a corporation that is required to
40 compute business income under paragraph (1) shall be allocated
41 as provided in paragraphs (5), (6), (7) and (8) of phrase (a) of
42 subclause 2 of the definition of "taxable income."

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

49 (6) If any provision of this phrase operates so that an
50 amount is added to or deducted from taxable income for a taxable
51 year for any corporation of a unitary business that previously

1 had been added to or deducted from taxable income of any
2 corporation of the same unitary business, an appropriate
3 adjustment shall be made for the taxable year in order to
4 prevent double taxation or double deduction. If this adjustment
5 is not made by the appropriate corporation of the unitary
6 business, the Secretary of Revenue is authorized to make this
7 adjustment.

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

16 * * *

17 (5) "Taxable year." [The] 1. Except as set forth in
18 subclause 2, the taxable year which the corporation, or any
19 consolidated group with which the corporation participates in
20 the filing of consolidated returns, actually uses in reporting
21 taxable income to the Federal Government[.], or which the
22 corporation would have used in reporting taxable income to the
23 Federal Government had it been required to report its taxable
24 income to the Federal Government. With regard to the tax imposed
25 by Article IV of this act (relating to the Corporate Net Income
26 Tax), the terms "annual year," "fiscal year," "annual or fiscal
27 year," "tax year" and "tax period" shall be the same as the
28 corporation's taxable year, as defined in this [paragraph.]
29 subclause or subclause 2.

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

38 * * *

39 (8) "Tax haven." A jurisdiction that during a taxable year
40 has no or a nominal effective tax on the income taxable under
41 this article and does any of the following:

42 1. has laws or practices that prevent effective exchange of
43 information for tax purposes with other governments regarding
44 taxpayers subject to its jurisdiction;

45 2. has a tax regime that lacks transparency. A tax regime
46 lacks transparency if the details of legislative, legal or
47 administrative provisions are not open and apparent, are not
48 consistently applied among similarly situated taxpayers or if
49 the information needed by taxing authorities to determine a
50 taxpayer's correct tax liability, such as accounting records and
51 underlying documentation, is not readily available;

1 3. facilitates the establishment of foreign-owned entities
2 without the need for a local substantive presence or prohibits
3 the entities from having a commercial impact on the local
4 economy;

5 4. explicitly or implicitly excludes the jurisdiction's
6 resident taxpayers from taking advantage of the jurisdiction's
7 tax regime or prohibits persons that benefit from the
8 jurisdiction's tax regime from operating in the jurisdiction's
9 domestic market; or

10 5. has created a tax regime that is favorable for tax
11 avoidance, based upon an overall assessment of relevant factors,
12 including whether the jurisdiction has a significant untaxed
13 offshore financial or other services sector relative to its
14 overall economy.

15 (9) "Unitary business." A single economic enterprise that
16 is made up of separate parts of a single corporation, of a
17 commonly controlled group of corporations, or both, that are
18 sufficiently interdependent, integrated and interrelated through
19 their activities so as to provide a synergy and mutual benefit
20 that produces a sharing or exchange of value among them and a
21 significant flow of value to the separate parts. A unitary
22 business shall include only those parts and corporations which
23 may be included as a unitary business under the Constitution of
24 the United States.

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

28 1. The business income and apportionment factor of any
29 member incorporated in the United States or formed under the
30 laws of any state of the United States, the District of
31 Columbia, any territory or possession of the United States or
32 the Commonwealth of Puerto Rico.

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

37 3. The business income and apportionment factor of any
38 member which is a domestic international sales corporation as
39 described in sections 991, 992, 993 and 994 of the Internal
40 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 991, 992,
41 993 and 994); a foreign sales corporation as described in former
42 sections 921, 922, 923, 924, 925, 926 and 927 of the Internal
43 Revenue Code of 1986 (formerly 26 U.S.C. §§ 921, 922, 923, 924,
44 925, 926 and 927); or any member which is an export trade
45 corporation, as described in sections 970 and 971 of the
46 Internal Revenue Code of 1986 (26 U.S.C. §§ 970 and 971).

47 4. Any member not described in subclauses 1, 2 and 3 shall
48 include the portion of its business income derived from or
49 attributable to sources within the United States, as determined
50 under the Internal Revenue Code of 1986 without regard to
51 Federal treaties, and its apportionment factor related thereto.

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

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

29 (11) "Commonly controlled group." For a corporation, the
30 corporation is a member of a group of two or more corporations
31 and more than fifty per cent of the voting stock of each member
32 of the group is directly or indirectly owned by a common owner
33 or by common owners, either corporate or noncorporate, or by one
34 or more of the member corporations of the group.

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

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

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

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

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

Taxable Year	Tax Rate
[January 1, 1995, and each	
taxable year thereafter	9.99%]
<u>January 1, 1995, and each</u>	
<u>taxable year through December</u>	
<u>31, 2012</u>	<u>9.99%</u>

January 1, 2013, through
December 31, 2013 9.45%
January 1, 2014, and each
taxable year thereafter 8.990%
* * *

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.

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

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

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

7 (iii) Strong centralized management of corporations.

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

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

14 (4) A corporation that permits one or more other
15 corporations of a unitary business to substantially use its
16 patents, trademarks, service marks, logo-types, trade secrets,
17 copyrights or other proprietary assets or that is principally
18 engaged in loaning money to one or more other corporations of a
19 unitary business is rebuttably presumed to be a member of the
20 unitary business. This presumption only applies to a commonly
21 controlled group of corporations.

22 (a.4) As far as applicable to a specific unitary business,
23 unless there is a revision of applicable State law or unless a
24 corporation is not included under the provisions of this
25 article, there is a rebuttable presumption for all tax years
26 that begin in years 2013 and 2014 that a unitary business of two
27 or more corporations includes at least all corporations that are
28 part of a unitary business under the law of any state of the
29 United States in which the corporation files a tax report or tax
30 return of combined net income for the same tax year.

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

44 (a.6) The department shall determine the adequacy of
45 estimated tax payments required under section 3003.2 for tax
46 year 2013 and any fiscal year beginning during the calendar year
47 2013 and shall have the authority to waive or reduce the payment
48 of interest due on account of an underpayment as a result of the
49 implementation of the provisions of subsection (a.1).

50 * * *

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

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

7 Section 5. Section 2111 of the act is amended by adding a
8 subsection to read:

9 Amend Bill, page 3, by inserting between lines 4 and 5

10 Section 6. Section 3003.3(d) of the act, amended October 18,
11 2006 (P.L.1149, No.119), is amended and the section is amended
12 by adding subsections to read:

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

14 (d) Notwithstanding the provisions of the preceding
15 subsections, other than as set forth under subsection (d.1),
16 interest with respect to any underpayment of any installment of
17 estimated tax shall not be imposed if the total amount of all
18 payments of estimated tax made on or before the last date
19 prescribed for the payment of such installment equals or exceeds
20 the amount which would have been required to be paid on or
21 before such date if the estimated tax were an amount equal to
22 the tax computed at the rates applicable to the taxable year,
23 including any minimum tax imposed, but otherwise on the basis of
24 the facts shown on the report of the taxpayer for, and the law
25 applicable to, the safe harbor base year, adjusted for any
26 changes to sections 401, 601, 602 and 1101 enacted for the
27 taxable year, if a report showing a liability for tax was filed
28 by the taxpayer for the safe harbor base year. If the total
29 amount of all payments of estimated tax made on or before the
30 last date prescribed for the payment of such installment does
31 not equal or exceed the amount required to be paid per the
32 preceding sentence, but such amount is paid after the date the
33 installment was required to be paid, then the period of
34 underpayment shall run from the date the installment was
35 required to be paid to the date the amount required to be paid
36 per the preceding sentence is paid. Provided, that if the total
37 tax for the safe harbor base year exceeds the tax shown on such
38 report by ten per cent or more, the total tax adjusted to
39 reflect the current tax rate shall be used for purposes of this
40 subsection. In the event that the total tax for the safe harbor
41 base year exceeds the tax shown on the report by ten per cent or
42 more, interest resulting from the utilization of such total tax
43 in the application of the provisions of this subsection shall
44 not be imposed if, within forty-five days of the mailing date of
45 each assessment, payments are made such that the total amount of
46 all payments of estimated tax equals or exceeds the amount which
47 would have been required to be paid on or before such date if
48 the estimated tax were an amount equal to the total tax adjusted
49 to reflect the current tax rate. In any case in which the

1 taxable year for which an underpayment of estimated tax may
2 exist is a short taxable year, in determining the tax shown on
3 the report or the total tax for the safe harbor base year, the
4 tax will be reduced by multiplying it by the ratio of the number
5 of installment payments made in the short taxable year to the
6 number of installment payments required to be made for the full
7 taxable year.

8 (d.1) (1) Notwithstanding subsections (a), (b) and (c),
9 interest with respect to any underpayment of any installment of
10 estimated corporate net income tax for any tax year that begins
11 in year 2013 or 2014 shall not be imposed if the total amount of
12 all payments of estimated corporate net income tax made on or
13 before the last date prescribed for the payment of the
14 installment equals or exceeds the amount which would have been
15 required to be paid on or before that date if the estimated tax
16 were an amount equal to the tax shown on the report of the
17 taxpayer for the safe harbor base year, if a report showing a
18 liability for tax was filed by the taxpayer for the safe harbor
19 base year.

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

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

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

48 (d.2) (1) If there is a substantial underpayment, as
49 defined in subsection (a), of any installment of estimated
50 corporate net income tax or estimated capital stock/franchise
51 tax for any taxable year beginning in 2013 or 2014, there shall

1 be imposed additional interest in an amount determined at one
2 hundred twenty per cent of the annual rate as provided by law
3 upon the entire underpayment for the period of the substantial
4 underpayment.

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

8 Section 7. The amendment or addition of the following
9 provisions shall apply to taxable years beginning after December
10 31, 2012:

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

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

14 (3) Section 403(a.1), (a.2), (a.3), (a.4), (a.5) and
15 (a.6) of the act.

16 (4) Section 404 of the act.

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

18 Amend Bill, page 3, line 5, by striking out "2" and inserting

19 8

20 Amend Bill, page 3, line 7, by striking out "3" and inserting

21 9

22 Amend Bill, page 3, line 7, by striking out "in 60 days." and
23 inserting

24 as follows:

25 (1) The additions of section 2111(t) of the act shall
26 take effect in 60 days.

27 (2) Section 8 of this act shall take effect in 60 days.

28 (3) The remainder of this act shall take effect
29 immediately.