

AMENDMENTS TO HOUSE BILL NO. 1709

Sponsor: REPRESENTATIVE PEIFER

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

3 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
4 act relating to tax reform and State taxation by codifying
5 and enumerating certain subjects of taxation and imposing
6 taxes thereon; providing procedures for the payment,
7 collection, administration and enforcement thereof; providing
8 for tax credits in certain cases; conferring powers and
9 imposing duties upon the Department of Revenue, certain
10 employers, fiduciaries, individuals, persons, corporations
11 and other entities; prescribing crimes, offenses and
12 penalties," in personal income tax, further providing for
13 definitions, providing for alternate tax imposed at pass-
14 through entity level and further providing for taxability of
15 partners, for income of a Pennsylvania S corporation and for
16 income taxes imposed by other states.

17 Amend Bill, page 1, lines 17 through 24; pages 2 and 3, lines
18 1 through 30; page 4, lines 1 through 25; by striking out all of
19 said lines on said pages and inserting

20 Section 1. Section 301(w) of the act of March 4, 1971
21 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended
22 to read:

23 Section 301. Definitions.--Any reference in this article to
24 the Internal Revenue Code of 1986 shall mean the Internal
25 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.),
26 as amended to January 1, 1997, unless the reference contains the
27 phrase "as amended" and refers to no other date, in which case
28 the reference shall be to the Internal Revenue Code of 1986 as
29 it exists as of the time of application of this article. The
30 following words, terms and phrases when used in this article
31 shall have the meaning ascribed to them in this section except
32 where the context clearly indicates a different meaning:

33 * * *

34 (w) "Taxpayer" means any individual, estate or trust subject
35 to the tax imposed by this article, any partnership having a

1 partner who is a taxpayer under this act, any Pennsylvania S
2 corporation having a shareholder who is a taxpayer under this
3 act [and], any person required to withhold tax under this
4 article and, unless otherwise provided, a pass-through entity
5 that elects to pay the tax imposed under section 302.3.

6 Section 2. The act is amended by adding a section to read:

7 Section 302.3. Alternate Tax Imposed at Pass-Through Entity
8 Level.--(a) Notwithstanding any other provision of this act, a
9 pass-through entity may elect, on an annual basis, to have the
10 tax imposed under this article applied to the income of the
11 pass-through entity. The following shall apply:

12 (1) An electing pass-through entity shall be subject to and
13 shall pay a tax imposed at the rate provided in section 302(b)
14 on:

15 (i) Each resident taxable owner's share of each class of
16 income and gain enumerated in section 303 for the taxable year.

17 (ii) Each nonresident taxable owner's share of each class of
18 income and gain enumerated in section 303 from sources within
19 this Commonwealth for the taxable year.

20 (2) An electing resident Pennsylvania S corporation shall be
21 subject to and shall pay a tax imposed at the rate provided in
22 section 302(b) on each resident taxable owner's share of each
23 class of income and gain enumerated in section 303 for the
24 taxable year.

25 (3) An electing standard Pennsylvania S corporation shall be
26 subject to and shall pay a tax imposed at the rate provided in
27 section 302(b) on each taxable owner's share of each class of
28 income and gain enumerated in section 303 from sources within
29 this Commonwealth for the taxable year.

30 (4) An entity that is disregarded for tax purposes under
31 this article shall be disregarded for purposes of determining if
32 an individual, estate or trust is a taxable owner of an interest
33 in the income, gain or loss of a pass-through entity that makes
34 an election under this section.

35 (5) For purposes of determining the tax under this
36 subsection, the residence of a taxable owner shall be determined
37 as of the last day of the pass-through entity's taxable year.

38 (6) In determining its tax under this section, a pass-
39 through entity that owns a direct or indirect ownership interest
40 in one or more pass-through entities shall include its share of
41 each class of income enumerated in section 303 received from
42 those pass-through entities. The pass-through entity that
43 generates an item of income, gain or loss shall determine its
44 classification and whether that item of income, gain or loss
45 constitutes income or loss from sources within this
46 Commonwealth.

47 (7) Guaranteed payments made to a partner in a partnership
48 shall be treated as additional income allocated to the partner.
49 With respect to a nonresident taxable owner, only guaranteed
50 payments that constitute income from sources within this
51 Commonwealth shall be subject to the tax under this section.

1 (8) In determining the tax under this section, a pass-
2 through entity shall not be permitted to use any tax credits
3 otherwise available to the pass-through entity except a credit
4 for estimated taxes paid for the current taxable year under this
5 section or an overpayment of a prior-year tax paid under this
6 section.

7 (b) (1) Any election described under subsection (a) shall
8 be made by an individual with authority to bind the pass-through
9 entity or sign returns under this article or who is authorized
10 to make the election and represents to having the authorization
11 under penalty of perjury on or before the fifteenth day of the
12 fourth month of the pass-through entity's taxable year in a
13 manner prescribed by the department.

14 (2) In instances where a pass-through entity does not have
15 either a resident individual, estate or trust as a partner,
16 member, shareholder or beneficiary, or income or loss from
17 sources within this Commonwealth as of the fifteenth day of the
18 fourth month of its taxable year, the pass-through entity may
19 make an election within ninety days of the earlier of meeting
20 either the ownership or income or loss requirement.

21 (3) An election under this section shall take effect for the
22 taxable year in which the election is submitted to the
23 department. Only one election may be submitted by an individual
24 identified under clause (1) on behalf of the pass-through entity
25 to the department for the taxable year.

26 (4) An election made under this section shall be irrevocable
27 for the taxable year.

28 (5) An election under this section may be made only for tax
29 years that the limitation on individual deductions applies under
30 section 164(b) (6) of the Internal Revenue Code of 1986 (Public
31 Law 99-514, 26 U.S.C. § 164(b) (6)).

32 (c) (1) A taxable owner of an interest in a pass-through
33 entity that elects to pay tax under subsection (a) shall be
34 allowed a refundable credit against the tax imposed under
35 section 302 in the amount of the taxable owner's share of the
36 tax that the pass-through entity actually paid under this
37 section. A taxable owner's share of the tax shall take into
38 account guaranteed payments and other special allocations made
39 to the owner.

40 (2) A taxable owner shall be entitled to claim the credit
41 under clause (1) on the taxable owner's tax return that includes
42 the last day of the taxable year of the pass-through entity.

43 (3) The credit allowed under this subsection shall be
44 applied after the application of all other tax credits available
45 to the owner for the taxable year. If the amount of the credit
46 allowable under this subsection for any taxable year exceeds the
47 tax due for the year under this article, the excess amount shall
48 be treated as an overpayment, to be credited or refunded.

49 (4) No credit shall be allowed to a taxable owner under
50 clause (1) unless the electing pass-through entity paid the tax
51 imposed under this article and provides the department on its

1 tax return all the information required in subsection (e)(2) and
2 (3).

3 (5) The aggregate amount of credits claimed by all taxable
4 owners of a pass-through entity under clause (1) may not exceed
5 the tax that the pass-through entity paid under subsection (a)
6 for the taxable year.

7 (d) A pass-through entity that elects to pay tax under
8 subsection (a) shall be required to make estimated tax payments
9 in four equal installments on or before the fifteenth day of the
10 fourth, sixth and ninth month of its taxable year, and the
11 fifteenth day of the first month of its subsequent taxable year.

12 (e) (1) On or before the date provided under section
13 330(a), each pass-through entity that elects to pay tax under
14 subsection (a) shall file a return for the taxable year
15 reporting the information required under this article.

16 (2) The return filed under clause (1) shall include, in a
17 format as prescribed by the department, a certification by an
18 individual authorized to act on behalf of the pass-through
19 entity, which includes the following:

20 (i) A timely, valid election to be subject to the tax under
21 this article and whether a Pennsylvania S corporation is
22 electing to be treated as a resident Pennsylvania S corporation
23 or standard Pennsylvania S corporation.

24 (ii) That all statements contained in the certification are
25 true.

26 (3) Each pass-through entity that elects to pay tax under
27 subsection (a) shall report on a return required under this
28 article the following:

29 (i) Any tax due under this article. The balance of any tax
30 shown on the return, not previously paid as installments of
31 estimated tax or an overpayment of a prior-year tax, shall be
32 paid with the return.

33 (ii) Identifying information of each taxable owner eligible
34 to receive a credit under subsection (c), including a Social
35 Security number or tax identification number and status as a
36 resident or nonresident. The pass-through entity must provide
37 information sufficient to identify a disregarded entity and its
38 taxable owners.

39 (iii) For each taxable owner who will be entitled to claim a
40 credit on a tax return, the taxable owner's share of the tax
41 imposed on the pass-through entity under this section.

42 (iv) Each resident taxable owner's share of the pass-through
43 entity's income and each nonresident taxable owner's share of
44 income from sources from within this Commonwealth included in
45 the tax base under this section.

46 (v) The classification of each owner as a taxable resident
47 or nonresident for purposes of calculating the pass-through
48 entity's tax liability under this section.

49 (vi) Any other information as required by the department.

50 (4) A pass-through entity that elects to pay tax under
51 subsection (a) shall not be required to withhold tax from a

1 nonresident taxable owner under section 324.

2 (5) To meet the requirements of this section, if a taxable
3 owner holds an interest in the pass-through entity through an
4 entity that is a disregarded entity for purposes of this
5 article, the pass-through entity must provide information
6 sufficient to identify both the disregarded entity that holds an
7 interest in the pass-through entity and the taxable owner that
8 owns the disregarded entity and is eligible for a credit under
9 subsection (c).

10 (6) Each pass-through entity paying tax under this section
11 shall report to each taxable owner required to file a return
12 under this article a statement that contains the following
13 information:

14 (i) Classification as a resident taxable owner or a
15 nonresident taxable owner for purposes of calculating the pass-
16 through entity's tax under subsection (a).

17 (ii) The taxable owner's allocable share of the pass-through
18 entity's income included in the tax base for purposes of
19 computing the tax under subsection (a).

20 (iii) The owner's allocable share of the tax paid under
21 subsection (a).

22 (iv) Any other information, as required by the department.

23 (f) (1) Any assessment of tax imposed under this section,
24 including interest, penalties and additions, shall be assessed
25 against the pass-through entity at the tax rate applicable to
26 the tax year. The department may not assess any additional tax,
27 including interest, penalties and additions, against the taxable
28 owners.

29 (2) Any determination of an overpayment or refund of tax
30 imposed under this section made subsequent to the filing of the
31 return under subsection (e) shall be made at the pass-through
32 entity level at the tax rate applicable to the tax year.

33 (3) The pass-through entity shall be required to provide
34 each owner a statement of any adjustment of the taxable owner's
35 credit within ninety days of an assessment, overpayment or
36 refund becoming final.

37 (4) The taxable owner shall report the adjustment of the
38 credit on an amended return for the taxable owner's taxable year
39 that includes the pass-through entity's taxable year for which
40 the tax was assessed.

41 (5) Only the pass-through entity may appeal or settle an
42 assessment or overpayment of tax issued under this section or
43 petition for a refund of tax imposed under this section.

44 (g) The basis of both a resident taxable owner and
45 nonresident taxable owner of a pass-through entity that elects
46 to pay tax under subsection (a) shall be determined as if the
47 election under subsection (b) had not been made and each of the
48 taxable owners of the taxed pass-through entity had properly
49 taken into account each taxable owner's pro rata share of the
50 taxed pass-through entity's items of income, gain, loss and
51 deduction in the manner required with respect to a pass-through

1 entity for which no such election is in effect.

2 (h) (1) Unless otherwise provided in this section, the
3 provisions of this article shall apply to this section.

4 (2) The department may issue guidelines and promulgate
5 regulations necessary for the implementation of this section.

6 (i) (1) In the case of any taxable year that includes the
7 effective date of this section, a pass-through entity may file
8 an election under subsection (b)(1) at any time within ninety
9 days of the effective date of this section provided that if the
10 election is made, the pass-through entity must, on or before the
11 date the next estimated tax payment is due after the election,
12 make an estimated tax payment equal to the total estimated tax
13 that would have been due for the tax year had the election been
14 made for the full tax year, and any nonresident withholding made
15 under section 324 by the pass-through entity for the current tax
16 year may be applied by the pass-through entity against its
17 estimated tax liability.

18 (2) In the case of any taxable year that includes the
19 effective date of this section, any nonresident withholding made
20 under section 324 by the pass-through entity for the current tax
21 year for an owner shall be applied by the pass-through entity
22 against its estimated tax liability.

23 (3) In the case of any taxable year that includes the
24 effective date of this section, the department may not assess
25 interest and penalties against an eligible pass-through entity
26 for any underpayment of estimated tax due under subsection (d),
27 so long as the eligible pass-through entity acted in good faith
28 with no intent to defraud the Commonwealth.

29 (j) As used in this section, the following words and phrases
30 shall have the meanings given to them in this subsection unless
31 the context clearly indicates otherwise:

32 "Electing pass-through entity." A pass-through entity that
33 elects at the time it makes its election to be subject to the
34 tax under this section to determine its tax in accordance with
35 subsection (a) (1), (4), (5), (6), (7) and (8).

36 "Electing resident Pennsylvania S corporation." A
37 Pennsylvania S corporation that is a pass-through entity whose
38 shareholders only include resident individuals, estates or
39 trusts, and disregarded entities whose owners only include
40 resident individuals, estates or trusts that elects at the time
41 it makes its election to be subject to the tax under this
42 section to determine its tax in accordance with subsection (a)
43 (2), (4), (5), (6), (7) and (8).

44 "Electing standard Pennsylvania S corporation." A
45 Pennsylvania S corporation that is a pass-through entity whose
46 shareholders only include resident and nonresident individuals,
47 estates or trusts, and disregarded entities whose owners only
48 include resident and nonresident individuals, estates or trusts
49 that elects at the time it makes its election to be subject to
50 the tax under this section to determine its tax in accordance
51 with subsection (a) (3), (4), (5), (6), (7) and (8).

1 "Nonresident taxable owner." An individual, estate or trust
2 subject to the tax imposed under this article, other than a
3 resident taxable owner, that is a partner, shareholder, member
4 or other owner of an interest in a pass-through entity that has
5 income from sources within this Commonwealth.

6 "Partnership." A domestic or foreign general partnership,
7 joint venture, limited partnership, limited liability company,
8 business trust or other unincorporated entity that for Federal
9 income tax purposes is classified as a partnership. The term
10 does not include a publicly traded partnership.

11 "Pass-through entity." A partnership or Pennsylvania S
12 corporation.

13 "Resident taxable owner." A resident individual, resident
14 trust or resident estate that is a partner, shareholder, member
15 or other owner of an interest in a pass-through entity.

16 "Taxable owner." A resident taxable owner or nonresident
17 taxable owner.

18 Section 3. Sections 306, 307.8(a) and 314 of the act are
19 amended to read:

20 Section 306. Taxability of Partners.--Except as provided
21 under [section] sections 302.3 and 306.2, a partnership as an
22 entity shall not be subject to the tax imposed by this article,
23 but the income or gain of a member of a partnership in respect
24 of said partnership shall be subject to the tax and the tax
25 shall be imposed on his share, whether or not distributed, of
26 the income or gain received by the partnership for its taxable
27 year ending within or with the member's taxable year.

28 Section 307.8. Income of a Pennsylvania S Corporation.--(a)
29 A Pennsylvania S corporation shall not be subject to the tax
30 imposed by this article, except as provided under subsection (f)
31 and section 302.3, but the shareholders of the Pennsylvania S
32 corporation shall be subject to the tax imposed under this
33 article as provided in this article.

34 * * *

35 Section 314. Income Taxes Imposed by Other States.--(a) A
36 resident taxpayer before allowance of any credit under section
37 302.3 or 312 shall be allowed a credit against the tax otherwise
38 due under this article for the amount of any income tax, wage
39 tax or tax on or measured by gross or net earned or unearned
40 income imposed on him or on a Pennsylvania S corporation or
41 partnership in which he is a direct or indirect shareholder or
42 partner, to the extent [of his pro rata share thereof determined
43 in accordance with section 307.9,] that the tax was imposed on
44 the taxpayer's distributive share or other share thereof by
45 another state with respect to income which is also subject to
46 tax under this article. For purposes of this subsection, the
47 term "state" shall only include a state of the United States,
48 the District of Columbia, the Commonwealth of Puerto Rico and
49 any territory or possession of the United States.

50 (b) The credit provided under this section shall not exceed
51 the proportion of the tax otherwise due under this article that

1 the amount of the taxpayer's income subject to tax by the other
2 jurisdiction bears to his entire taxable income.

3 (c) In lieu of submitting a copy of each State return in
4 which a tax liability is reported and tax is paid, a partner,
5 shareholder, partnership or Pennsylvania S corporation may
6 provide a certified statement that reflects each partner's or
7 shareholder's share of taxable income, amount of State income
8 tax paid and other information that the department requires.

9 Section 4. This act shall apply as follows:

10 (1) The amendment or addition of sections 301(w), 302.3,
11 306 and 307.8(a) of the act shall apply to taxable years
12 beginning after December 31, 2021.

13 (2) The amendment of section 314(a) shall apply to
14 taxable years beginning after December 31, 2020.

15 Section 5. This act shall take effect immediately.