

AMENDMENTS TO SENATE BILL NO. 771

Sponsor: SENATOR MUTH

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1 Amend Bill, page 1, lines 1 through 11, 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 corporate net income tax, further providing
13 for definitions, for imposition of tax, for reports and
14 payment of tax and for consolidated reports; and, in general
15 provisions, further providing for underpayment of estimated
16 tax.

17 Amend Bill, page 1, lines 14 through 22; page 2, lines 1
18 through 22; by striking out all of said lines on said pages and
19 inserting

20 Section 1. Section 401(3)1(a), (b), (t) and (5) of the act
21 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
22 1971, are amended, (3)2(a) (9) (A) is amended by adding a unit,
23 (3)1 and (3)4 are amended by adding phrases and the section is
24 amended by adding clauses to read:

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

29 * * *

30 (3) "Taxable income." 1. (a) In case the entire business
31 of the corporation is transacted within this Commonwealth, for
32 any taxable year which begins on or after January 1, 1971,
33 taxable income for the calendar year or fiscal year as returned
34 to and ascertained by the Federal Government before special
35 deductions provided for in sections 241, 242, 243, 244, 245,

1 246, 247, 248, 249 and 250 of the Internal Revenue Code of 1986
2 (26 U.S.C. §§ 241, 242, 243, 244, 245, 246, 247, 248, 249 and
3 250), or in the case of a corporation participating in the
4 filing of consolidated returns to the Federal Government or that
5 is not required to file a return with the Federal Government,
6 the taxable income which would have been returned to and
7 ascertained by the Federal Government before special deductions
8 provided for in sections 241, 242, 243, 244, 245, 246, 247, 248,
9 249 and 250 of the Internal Revenue Code of 1986 (26 U.S.C. §§
10 241, 242, 243, 244, 245, 246, 247, 248, 249 and 250) if separate
11 returns had been made to the Federal Government for the current
12 and prior taxable years, subject, however, to any correction
13 thereof, for fraud, evasion, or error as finally ascertained by
14 the Federal Government.

15 (b) Additional deductions shall be allowed from taxable
16 income on account of any dividends received from any other
17 corporation but only to the extent that such dividends are
18 included in taxable income as returned to and ascertained by the
19 Federal Government. For tax years beginning on or after January
20 1, 1991, additional deductions shall only be allowed for amounts
21 included, under section 78 of the Internal Revenue Code of 1986
22 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned
23 to and ascertained by the Federal Government and for the amount
24 of any dividends received from a foreign corporation included in
25 taxable income to the extent such dividends would be deductible
26 in arriving at Federal taxable income if received from a
27 domestic corporation. For taxable years beginning after December
28 31, 2021, the additional deduction with respect to dividends
29 shall not be allowed for dividends between members of a unitary
30 group.

31 * * *

32 (p.1) For taxable years after December 31, 2022, in the case
33 of a corporation that is a member of a unitary business, the
34 term "taxable income" shall mean the combined unitary income of
35 the unitary business, as determined on a water's-edge basis.

36 * * *

37 (t) (1) Except as provided in paragraph (2), (3) or (4) for
38 taxable years beginning after December 31, 2014, and in addition
39 to any authority the department has on the effective date of
40 this paragraph to deny a deduction related to a fraudulent or
41 sham transaction, no deduction shall be allowed for an
42 intangible expense or cost, or an interest expense or cost,
43 paid, accrued or incurred directly or indirectly in connection
44 with one or more transactions with an affiliated entity. In
45 calculating taxable income under this paragraph, when the
46 taxpayer is engaged in one or more transactions with an
47 affiliated entity that was subject to tax in this Commonwealth
48 or another state or possession of the United States on a tax
49 base that included the intangible expense or cost, or the
50 interest expense or cost, paid, accrued or incurred by the
51 taxpayer, the taxpayer shall receive a credit against tax due in

1 this Commonwealth in an amount equal to the apportionment factor
2 of the taxpayer in this Commonwealth multiplied by the greater
3 of the following:

4 (A) the tax liability of the affiliated entity with respect
5 to the portion of its income representing the intangible expense
6 or cost, or the interest expense or cost, paid, accrued or
7 incurred by the taxpayer; or

8 (B) the tax liability that would have been paid by the
9 affiliated entity under subparagraph (A) if that tax liability
10 had not been offset by a credit.

11 The credit issued under this paragraph shall not exceed the
12 taxpayer's liability in this Commonwealth attributable to the
13 net income taxed as a result of the adjustment required by this
14 paragraph.

15 (2) The adjustment required by paragraph (1) shall not apply
16 to a transaction that did not have as [the] a principal purpose
17 the avoidance of tax due under this article and was done at
18 arm's length rates and terms.

19 (3) The adjustment required by paragraph (1) shall not apply
20 to a transaction between a taxpayer and an affiliated entity
21 domiciled in a foreign nation which has in force a comprehensive
22 income tax treaty with the United States providing for the
23 allocation of all categories of income subject to taxation, or
24 the withholding of tax, on royalties, licenses, fees and
25 interest for the prevention of double taxation of the respective
26 nations' residents and the sharing of information.

27 (4) The adjustment required by paragraph (1) shall not apply
28 to a transaction where an affiliated entity directly or
29 indirectly paid, accrued or incurred a payment to a person who
30 is not an affiliated entity, if the payment is paid, accrued or
31 incurred on the intangible expense or cost, or interest expense
32 or cost, and is equal to or less than the taxpayer's
33 proportional share of the transaction. The taxpayer's
34 proportional share shall be based on relative sales, assets,
35 liabilities or another reasonable method.

36 (5) The adjustment required under paragraph (1) shall not
37 apply to a transaction between the taxpayer and an affiliated
38 entity, where the taxpayer and the affiliated entity file a
39 combined annual report in this State.

40 2. In case the entire business of any corporation, other
41 than a corporation engaged in doing business as a regulated
42 investment company as defined by the Internal Revenue Code of
43 1986, is not transacted within this Commonwealth, the tax
44 imposed by this article shall be based upon such portion of the
45 taxable income of such corporation for the fiscal or calendar
46 year, as defined in subclause 1 hereof, and may be determined as
47 follows:

48 (a) Division of Income.

49 * * *

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

51 * * *

1 (vi) (a) For taxable years beginning after December 31,
2 2022, all business income of a unitary business shall be
3 apportioned to this State by multiplying the income by the
4 member's sales factor, the numerator of which shall be the
5 member's total sales in this State, and the denominator of which
6 shall be the combined total sales of all members of the unitary
7 business everywhere. In computing the sales of each member for
8 purposes of apportionment, the following sales are excluded from
9 the numerator and denominator:

10 (I) sales from transactions between or among members of the
11 unitary business that are deferred under 26 CFR 1.1502-13
12 (relating to intercompany transactions) for Federal taxable
13 income purposes; and

14 (II) the sales of each member that are excluded from the
15 unitary business pursuant to the definition of water's-edge
16 basis.

17 (b) The Pennsylvania sales of each nontaxable member shall
18 be determined based upon the apportionment rules applicable to
19 the member and shall be aggregated. Each taxable member of the
20 group shall include in its sales factor numerator a portion of
21 the aggregate Pennsylvania sales of nontaxable members based on
22 a ratio, the numerator of which is the taxable member's
23 Pennsylvania sales and the denominator of which is the aggregate
24 Pennsylvania sales of all the taxable members of the group.

25 (c) Nonbusiness income of each member of a unitary business
26 shall be allocated as provided in paragraphs (5) through (8) of
27 phrase (a) of subclause 2 of this definition. A member of the
28 unitary business is subject to tax on its apportioned share of
29 all business income of the unitary business, plus its
30 nonbusiness income or loss allocated to this State, minus the
31 member's net loss deduction.

32 (d) The Secretary of Revenue has the authority to
33 distribute, apportion or allocate gross income, deductions,
34 credits or allowances between and among two or more
35 corporations, persons, entities, members or unitary businesses,
36 whether or not incorporated, whether or not organized in the
37 United States and whether or not affiliated, if:

38 (I) the corporations, persons, entities, members or unitary
39 businesses are owned or controlled directly or indirectly by the
40 same interests within the meaning of section 482 of the Internal
41 Revenue Code (26 U.S.C. § 482); and

42 (II) the Secretary of Revenue determines that the
43 distribution, apportionment or allocation is necessary in order
44 to reflect an arm's length standard within the meaning of 26 CFR
45 1.482-1 (relating to allocation of income and deductions among
46 taxpayers) and to reflect clearly the income of those
47 corporations, persons, entities, members or unitary businesses.

48 (e) The Secretary of Revenue shall apply the administrative
49 and judicial interpretations of section 482 of the Internal
50 Revenue Code (26 U.S.C. § 482) in administering this section.

51 (f) For taxable years beginning after December 31, 2022, any

1 member of a unitary group that would otherwise apportion its
2 business income under phrase (b), (c), (d) or (e) of subclause 2
3 of this definition shall determine its apportionment formula
4 using a single sales fraction.

5 * * *

6 4. * * *

7 (h) Subject to the limitations of this subclause, any member
8 of a unitary business that has unused net loss from taxable
9 years that began prior to January 1, 2023, or that generates net
10 losses while a member of a unitary business may only take the
11 net loss deduction for taxable years beginning after December
12 31, 2021, to the extent of the member's share of combined
13 unitary income after apportionment and the net losses may not be
14 used by other members of the same unitary business.

15 (i) Any net loss realized for a taxable year unused by a
16 corporation which subsequently becomes a member of another
17 unitary business, may only be used by that corporation.

18 * * *

19 (5) "Taxable year." [The taxable year which the
20 corporation, or any consolidated group with which the
21 corporation participates in the filing of consolidated returns,
22 actually uses in reporting taxable income to the Federal
23 Government. With regard to the tax imposed by Article IV of this
24 act (relating to the Corporate Net Income Tax), the terms
25 "annual year," "fiscal year," "annual or fiscal year," "tax
26 year" and "tax period" shall be the same as the corporation's
27 taxable year, as defined in this paragraph.]

28 1. Except as set forth in subclause 2, the taxable year
29 which the corporation, or any consolidated group with which the
30 corporation participates in the filing of consolidated returns,
31 actually uses in reporting taxable income to the Federal
32 Government, or which the corporation would have used in
33 reporting taxable income to the Federal Government had it been
34 required to report its taxable income to the Federal Government.
35 With regard to the tax imposed by Article IV, the terms "annual
36 year," "fiscal year," "annual or fiscal year," "tax year" and
37 "tax period" shall be the same as the corporation's taxable
38 year, as defined in this subclause or subclause 2.

39 2. All members of a unitary business shall have a common
40 taxable year for purposes of computing tax due under this
41 article. The taxable year for such purposes is the common
42 taxable year adopted, in a manner prescribed by the department,
43 by all members of the unitary business. The common taxable year
44 must be used by all members of the unitary business in the year
45 of adoption and all future years unless otherwise permitted by
46 the department.

47 * * *

48 (11) "Tax haven." Means any of the following:

49 (A) Andorra.

50 (B) Anguilla.

51 (C) Antigua and Barbuda.

1 (D) Aruba.
2 (E) The Bahamas.
3 (F) Bahrain.
4 (G) Barbados.
5 (H) Belize.
6 (I) Bermuda.
7 (J) The British Virgin Islands.
8 (K) The Cayman Islands.
9 (L) The Cook Islands.
10 (M) Cyprus.
11 (N) Dominica.
12 (O) Gibraltar.
13 (P) Grenada.
14 (Q) Guernsey-Sark-Alderney.
15 (R) The Isle of Man.
16 (S) Jersey.
17 (T) Liberia.
18 (U) Liechtenstein.
19 (V) Luxembourg.
20 (W) Malta.
21 (X) The Marshall Islands.
22 (Y) Mauritius.
23 (Z) Monaco.
24 (AA) Montserrat.
25 (BB) Nauru.
26 (CC) Netherlands Antilles.
27 (DD) Niue.
28 (EE) Panama.
29 (FF) Samoa.
30 (GG) San Marino.
31 (HH) Seychelles.
32 (II) St. Kitts and Nevis.
33 (JJ) St. Lucia.
34 (KK) St. Vincent and the Grenadines.
35 (LL) Turks and Caicos Islands.
36 (MM) Vanuatu.
37 (NN) A jurisdiction that is identified as a tax haven by the
38 Organization for Economic Co-operation and Development.
39 (12) "Unitary business." A single economic enterprise that
40 is made up of separate parts of a single corporation, of a
41 commonly controlled group of corporations, or both, that are
42 sufficiently interdependent, integrated and interrelated through
43 their activities so as to provide a synergy and mutual benefit
44 that produces a sharing or exchange of value among them and a
45 flow of value to the separate parts. A unitary business includes
46 all those parts and corporations that are included in a unitary
47 business under the Constitution of the United States.
48 (13) "Water's-edge basis." A system of reporting that
49 includes the income and apportionment factors of certain members
50 of a unitary business, described as follows:
51 (A) Any member incorporated in the United States or formed

1 under the laws of any state of the United States, the District
2 of Columbia, any territory or possession of the United States or
3 the Commonwealth of Puerto Rico.

4 (B) Any member, regardless of the place incorporated or
5 formed, if at least twenty per cent of the member's sales factor
6 is within the United States, and the following shall apply:

7 (i) For purposes of determining whether at least twenty per
8 cent of a member's sales factor is within the United States, the
9 calculation must be performed on a stand-alone basis. Sales
10 shall be gross figures without eliminations for transactions
11 with other members of any unitary business.

12 (ii) Whether sales are within the United States is based on
13 the sales factor sourcing rules contained in section 401(3).

14 (C) Any member which is one of the following:

15 (i) A domestic international sales corporation as described
16 in sections 991, 992, 993 and 994 of the Internal Revenue Code
17 of 1986 (26 U.S.C. §§ 991, 992, 993 and 994).

18 (ii) A foreign sales corporation as described in former
19 sections 921, 922, 923, 924, 925, 926 and 927 of the Internal
20 Revenue Code of 1986 (26 U.S.C. §§ 921, 922, 923, 924, 925, 926
21 and 927).

22 (iii) An export trade corporation as described in sections
23 970 and 971 of the Internal Revenue Code of 1986 (26 U.S.C. §§
24 970 and 971).

25 (D) Any member not described in subparagraph (A), (B) or (C)
26 shall include the portion of the member's taxable income derived
27 from or attributable to sources within the United States, as
28 determined under the Internal Revenue Code of 1986 (26 U.S.C. §
29 1 et seq.) without regard to Federal treaties, and its
30 apportionment factors related thereto.

31 (E) Any member that is a "controlled foreign corporation" as
32 defined in section 957 of the Internal Revenue Code of 1986 (26
33 U.S.C. § 957), to the extent the income of that member is income
34 defined in section 952 of the Internal Revenue Code of 1986 (26
35 U.S.C. § 952) as Subpart F income, not excluding lower-tier
36 subsidiaries' distributions of such income which were previously
37 taxed, determined without regard to Federal treaties, and the
38 apportionment factors related to that income; any item of income
39 received by a controlled foreign corporation and the
40 apportionment factors related to such income shall be excluded
41 if the corporation establishes to the satisfaction of the
42 Secretary of Revenue that such income was subject to an
43 effective rate of income tax imposed by a foreign country
44 greater than ninety per cent of the maximum rate of tax
45 specified in section 11 of the Internal Revenue Code of 1986 (26
46 U.S.C. § 11). The effective rate of income tax determination
47 shall be based upon the methodology set forth under 26 CFR
48 1.954-1 (relating to foreign base company income).

49 (F) Any member that is incorporated in or is doing business
50 in a tax haven. The income and apportionment factors of a member
51 doing business in a tax haven shall be excluded if the member

1 establishes to the satisfaction of the Secretary of Revenue that
2 the member's income was subject to an effective rate of income
3 tax imposed by a country greater than ninety per cent of the
4 maximum rate of tax specified in section 11 of the Internal
5 Revenue Code of 1986 (26 U.S.C. § 11).

6 (14) "Commonly controlled group." For a corporation, the
7 corporation is a member of a group of two or more corporations
8 and more than fifty per cent of the voting stock or controlling
9 interest of each member of the group is directly or indirectly
10 owned by a common owner or by common owners, either corporate or
11 noncorporate, or by one or more of the member corporations of
12 the group.

13 (15) "Combined unitary income." The aggregate taxable
14 income or loss of all members of a unitary business, subject to
15 apportionment, except:

16 (A) Income from an intercompany transaction between members
17 of a unitary business shall be deferred in a manner similar to
18 26 CFR 1.1502-13 (relating to intercompany transactions) for
19 Federal taxable income purposes.

20 (B) Dividends paid by one member of a unitary business to
21 another.

22 (C) Income of the following members is not included in the
23 determination of combined unitary income:

24 (i) any member subject to taxation under Article VII, VIII,
25 IX or XV;

26 (ii) any member specified in the definition of "institution"
27 in section 701.5 that would be subject to taxation under Article
28 VII, were it doing business in this State, as defined in section
29 701.5;

30 (iii) any member commonly known as a title insurance company
31 that would be subject to taxation under Article VIII, were it
32 incorporated in this State;

33 (iv) any member specified as an insurance company,
34 association or exchange in Article IX that would be subject to
35 taxation under Article IX, were it transacting insurance
36 business in this State;

37 (v) any member specified in the definition of "institution"
38 in section 1501 that would be subject to taxation under Article
39 XV, were it located, as defined in section 1501, in this State;
40 or

41 (vi) any member that is a small corporation as defined in
42 section 301(s.2) except to the extent of such small
43 corporation's net recognized built-in gain to the extent of and
44 as determined for Federal income tax purposes under section
45 1374(d)(2) of the Internal Revenue Code of 1986 (Public Law 99-
46 514, U.S.C. § 1374(d)(2)).

47 (16) "Member." A corporation that is a member of a unitary
48 business. The term does not include a corporation listed in
49 clause (15)(C).

50 Section 2. Section 402(b) of the act is amended to read:

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

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

| Taxable Year | Tax Rate |
|---|----------|
| January 1, 1995, [and each taxable year thereafter] through December 31, 2022 | 9.99% |
| January 1, 2023, through December 31, 2023 | 8.99% |
| January 1, 2024, through December 31, 2024 | 8.29% |
| January 1, 2025, through December 31, 2025 | 7.49% |
| January 1, 2026, through December 31, 2026 | 6.99% |
| January 1, 2027, and each taxable year thereafter | 5.99% |
| * * * | |

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 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 member 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 members of the unitary business. Each corporation that is a member of a unitary business is liable for its tax liability under this article. The agent is also liable for the aggregate amount of the unitary business' tax liability pursuant to this article.

(2) The oath or affirmation of the designated member's president, vice president, treasurer, assistant treasurer or other authorized officer 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 a combined annual report under oath or affirmation of the member's president, vice president, treasurer, assistant treasurer or other authorized officer.

(4) In addition to the information required in subsection (a), the combined annual report shall set forth:

- 1 (i) All members included in the unitary business.
2 (ii) All necessary data, both in the aggregate and for each
3 member of the unitary business, that sets forth the
4 determination of tax liability for each member of the unitary
5 business.
6 (iii) Any other information that the department may require.
7 (a.2) A member of a unitary business of two or more
8 corporations must determine the member's income and
9 apportionment factors on a water's-edge basis.

10 * * *

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

12 Section 404. Consolidated Reports.--The department shall not
13 permit any corporation owning or controlling, directly or
14 indirectly, any of the voting capital stock of another
15 corporation or of other corporations, subject to the provisions
16 of this article, to make a consolidated report[, showing the
17 combined net income].

18 Section 5. Section 3003.3(d) of the act is amended and the
19 section is amended by adding a subsection to read:

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

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

1 each assessment, payments are made such that the total amount of
2 all payments of estimated tax equals or exceeds the amount which
3 would have been required to be paid on or before such date if
4 the estimated tax were an amount equal to the total tax adjusted
5 to reflect the current tax rate. In any case in which the
6 taxable year for which an underpayment of estimated tax may
7 exist is a short taxable year, in determining the tax shown on
8 the report or the total tax for the safe harbor base year, the
9 tax will be reduced by multiplying it by the ratio of the number
10 of installment payments made in the short taxable year to the
11 number of installment payments required to be made for the full
12 taxable year.

13 (d.1) With respect to any underpayment of an installment of
14 estimated corporate net income tax for any tax year that begins
15 in taxable year 2023 or 2024 by a corporation required to file a
16 combined annual report pursuant to section 403(a.1)(1), interest
17 shall not be imposed if the total amount of all payments of
18 estimated corporate net income tax made on or before the last
19 date prescribed for the payment of such installment equals or
20 exceeds the amount which would have been required to be paid on
21 or before such date if the estimated tax were an amount equal to
22 the combined tax shown on the reports of all the members of the
23 unitary business for the safe harbor base year computed at the
24 rate applicable to the taxable year.

25 Section 6. The amendment of sections 401, 402, 403, 404 and
26 3003.3 of the act shall apply to taxable years beginning after
27 December 31, 2022.

28 Section 7. This act shall take effect July 1, 2022, or
29 immediately, whichever is later.