

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2182 Session of 2003

INTRODUCED BY BROWNE, NOVEMBER 24, 2003

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 15, 2004

AN ACT

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

<—

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

15 Section 1. The definitions of "average net income" and
16 "corporation" in section 601 of the act of March 4, 1971 (P.L.6,
17 No.2), known as the Tax Reform Code of 1971, amended May 7, 1997
18 (P.L.85, No.7) and December 23, 2003 (P.L.250, No.46), are
19 amended to read:

20 Section 601. Definitions and Reports.--(a) The following
21 words, terms and phrases when used in this Article VI shall have
22 the meaning ascribed to them in this section, except where the

1 context clearly indicates a different meaning:

2 "Average net income." The sum of the net income or loss for
3 each of the current and immediately preceding four years,
4 divided by five. If the entity has not been in existence for a
5 period of five years, the average net income shall be the
6 average net income for the number of years that the entity has
7 actually been in existence. In computing average net income,
8 losses shall be entered as computed, but in no case shall
9 average net income be less than zero. The net income or loss of
10 the entity for any taxable year shall be the amount set forth as
11 income per books on the income tax return filed by the entity
12 with the Federal Government for such taxable year, or if no such
13 return is made, as would have been set forth had such a return
14 been made, subject, however, in either case to any correction
15 thereof, for fraud, evasion or error. In the case of any entity
16 which has an investment in another corporation, the net income
17 or loss shall be computed on an unconsolidated basis exclusive
18 of the net income or loss of such other corporation. In the case
19 of a limited liability company or business trust that is not
20 taxable as a [partnership] corporation for Federal income tax
21 purposes, the net income or loss of the limited liability
22 company or business trust for any given year shall be reduced by
23 the amount of distributions made by such limited liability
24 company or business trust to any member of such limited
25 liability company or business trust who is deemed to be
26 materially participating in the activities conducted by such
27 limited liability company or business trust for purposes of
28 section 469 of the Internal Revenue Code of 1986 (Public Law 99-
29 514, 26 U.S.C. § 469). For this purpose, distributions which are
30 made to a member of a limited liability company or business

1 trust within thirty (30) days of the end of a given year may be
2 treated as having been made in the preceding year and not in the
3 year in which such distribution is actually made.

4 * * *

5 "Corporation." (A) Any of the following entities:

6 (1) A corporation.

7 (2) A joint-stock association.

8 (3) A business trust.

9 (4) A limited liability company. This clause excludes a
10 restricted professional company which is subject to 15 Pa.C.S.
11 Ch. 89 Subch. L (relating to restricted professional companies)
12 [and which is deemed to be a limited partnership pursuant to 15
13 Pa.C.S. § 8997 (relating to taxation of restricted professional
14 companies)].

15 (5) An entity which for Federal income tax purposes is
16 classified as a corporation.

17 (6) A business trust which is a real estate investment trust
18 as defined in section 856 of the Internal Revenue Code of 1986
19 (Public Law 99-514, 26 U.S.C. § 856) more than fifty per cent of
20 the voting power or value of the beneficial interests or shares
21 of which are owned or controlled, directly or indirectly, by a
22 single corporation that is not:

23 (i) a real estate investment trust as defined in section 856
24 of the Internal Revenue Code of 1986;

25 (ii) a qualified real estate investment trust subsidiary
26 under section 856(i) of the Internal Revenue Code of 1986;

27 (iii) a regulated financial institution as defined by
28 section 401(6) of Article IV; or

29 (iv) formed as a holding company, subsidiary or affiliate of
30 a regulated financial institution prior to December 1, 2003.

1 (7) A business trust which is a qualified real estate
2 investment trust subsidiary under section 856(i) of the Internal
3 Revenue Code of 1986 owned, directly or indirectly, by a real
4 estate investment trust as defined in section 856 of the
5 Internal Revenue Code of 1986 more than fifty per cent of the
6 voting power or value of the beneficial interests or shares of
7 which are owned or controlled, directly or indirectly, by a
8 single corporation that is not:

9 (i) a real estate investment trust as defined in section
10 856 of the Internal Revenue Code of 1986;

11 (ii) a qualified real estate investment trust subsidiary
12 under section 856(i) of the Internal Revenue Code of 1986;

13 (iii) a regulated financial institution as defined by
14 section 401(6) of Article IV; or

15 (iv) formed as a holding company, subsidiary or affiliate of
16 a regulated financial institution prior to December 1, 2003.

17 (B) The term does not include any of the following:

18 (1) A business trust which qualifies as a real estate
19 investment trust under section 856 of the Internal Revenue Code
20 of 1986 (26 U.S.C. § 856) or which is a qualified real estate
21 investment trust subsidiary under section 856(i) of the Internal
22 Revenue Code of 1986 (26 U.S.C. § 856(i)).

23 (2) A business trust which qualifies as a regulated
24 investment company under section 851 of the Internal Revenue
25 Code of 1986 (26 U.S.C. § 851) and which is registered with the
26 United States Securities and Exchange Commission under the
27 Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1
28 et seq.) or a related business trust which confines its
29 activities in this Commonwealth to the maintenance,
30 administration and management of intangible investments and

1 activities of regulated investment companies.

2 (3) A corporation, trust or other entity which is an exempt
3 organization as defined by section 501 of the Internal Revenue
4 Code of 1986 (26 U.S.C. § 501).

5 (4) A corporation, trust or other entity organized as a not-
6 for-profit organization under the laws of this Commonwealth or
7 the laws of any other state which:

8 (i) would qualify as an exempt organization as defined by
9 section 501 of the Internal Revenue Code of 1986 (26 U.S.C. §
10 501);

11 (ii) would qualify as a homeowners association as defined by
12 section 528(c) of the Internal Revenue Code of 1986 (26 U.S.C. §
13 528(c)); or

14 (iii) is a membership organization subject to the Federal
15 limitations on deductions from taxable income under section 277
16 of the Internal Revenue Code of 1986 (26 U.S.C. § 277) but only
17 if no pecuniary gain or profit inures to any member or related
18 entity from the membership organization.

19 (5) A cooperative agricultural association subject to 15
20 Pa.C.S. Ch. 75 (relating to cooperative agricultural
21 associations).

22 (6) A business trust if the trust is all of the following:

23 (i) Created or managed by an entity which is subject to the
24 tax imposed by Article VII or XV or which is an affiliate of the
25 entity which shares at least eighty per cent common ownership.

26 (ii) Created and managed for the purpose of facilitating the
27 securitization of intangible assets.

28 (iii) Classified as a partnership or a disregarded entity
29 for Federal income tax purposes.

30 * * *

1 SECTION 2. 15 PA.C.S. § 8997(B)(2) IS REPEALED. <—
2 Section ~~2~~ 3. This act shall apply to taxable years beginning <—
3 after December 31, 2003.
4 Section ~~3~~ 4. This act shall take effect immediately. <—