AN ACT

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

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

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

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

* * *

(w) "Taxpayer" means any individual, estate or trust subject to the tax imposed by this article, any partnership having a partner who is a taxpayer under this act, any Pennsylvania S corporation having a shareholder who is a taxpayer under this act [and], any person required to withhold tax under this article and, unless otherwise provided, a pass-through entity that elects to pay the tax imposed under section 302.3.

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

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

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

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

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

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

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

(4) An entity that is disregarded for tax purposes under this article shall be disregarded for the purposes of this section.

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

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

(7) In determining the tax due under this section, a pass-through entity shall not be permitted to use any tax credits otherwise available to the pass-through entity except a credit for estimated taxes paid for the current taxable year under this section or an overpayment of a prior-year tax paid under this section.
(b) (1) Any election described under subsection (a) shall be made by an individual with authority to bind the pass-through entity or sign returns under this article or who is authorized to make the election and represents to having the authorization under penalty of perjury on or before the fifteenth day of the fourth month of the pass-through entity's taxable year in a manner prescribed by the department.

(2) In instances where a pass-through entity does not have either a resident individual, estate or trust as a partner, member, shareholder or beneficiary, or income or loss from sources within this Commonwealth as of the fifteenth day of the fourth month of its taxable year, the pass-through entity may make an election no later than ninety days from the date the pass-through entity meets the requirements specified under section 335(c)(1) to file a return, or the last day of the pass-through entity's taxable year, whichever is earlier. For the purpose of determining the filing requirements of a pass-through entity under this clause, the reference to partnership in section 335(c)(1) shall include a Pennsylvania S corporation.

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

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

(5) An election under this section may be made only for tax years that the limitation on individual deductions applies under section 164(b)(6) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 164(b)(6)).
(c) (1) A taxable owner of an interest in a pass-through entity that elects to pay tax under subsection (a) shall be allowed a refundable credit against the tax imposed under section 302 in the amount of the taxable owner's share of the tax that the pass-through entity actually paid under this section. A taxable owner's share of the tax shall take into account guaranteed payments and other special allocations made to the owner.

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

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

(4) No credit shall be allowed to a taxable owner under clause (1) unless the electing pass-through entity paid the tax imposed under this article and provides the department on its tax return all the information required in subsection (e)(2) and (3).

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

(d) A pass-through entity that elects to pay tax under subsection (a) shall be required to make estimated tax payments in four equal installments on or before the fifteenth day of the fourth, sixth and ninth month of its taxable year, and the
(e) (1) On or before the date provided under section 330(a), each pass-through entity that elects to pay tax under subsection (a) shall file a return for the taxable year reporting the information required under this article.

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

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

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

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

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

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

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

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

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

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

(4) A pass-through entity that elects to pay tax under subsection (a) shall not be required to withhold tax from a nonresident taxable owner under section 324.

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

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

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

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

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

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

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

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

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

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

(g) The basis of both a resident taxable owner and nonresident taxable owner of a pass-through entity that elects to pay tax under subsection (a) shall be determined as if the election under subsection (b) had not been made and each of the taxable owners of the taxed pass-through entity had properly taken into account each taxable owner's pro rata share of the
taxed pass-through entity's items of income, gain, loss and
deduction in the manner required with respect to a pass-through
entity for which no such election is in effect.

(h) (1) Unless otherwise provided in, or inconsistent with,
this section, the provisions of this article shall apply to this
section.

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

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

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

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

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

"Electing pass-through entity." A pass-through entity that elects at the time it makes its election to be subject to the tax under this section to determine its tax in accordance with subsection (a).

"Electing resident Pennsylvania S corporation." A Pennsylvania S corporation that is a pass-through entity whose shareholders only include resident individuals, estates or trusts, and disregarded entities whose owners only include resident individuals, estates or trusts that elects at the time it makes its election to be subject to the tax under this section to determine its tax in accordance with subsection (a).

"Electing standard Pennsylvania S corporation." A Pennsylvania S corporation that is a pass-through entity whose shareholders only include resident and nonresident individuals, estates or trusts, and disregarded entities whose owners only include resident and nonresident individuals, estates or trusts that elects at the time it makes its election to be subject to the tax under this section to determine its tax in accordance with subsection (a).

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

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

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

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

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

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

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

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

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

(b) The credit provided under this section shall not exceed
the proportion of the tax otherwise due under this article that
the amount of the taxpayer's income subject to tax by the other
jurisdiction bears to his entire taxable income.

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

Section 4. This act shall apply as follows:

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

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

Section 5. This act shall take effect immediately.