

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**  
**No. 1585** Session of  
1987

INTRODUCED BY TRELLO, WILSON, DeLUCA, PETRONE, VAN HORNE,  
GAMBLE, BUNT, CORNELL, FOX, NAHILL, FARMER, EVANS, MAYERNIK  
AND KENNEY, JUNE 23, 1987

REFERRED TO COMMITTEE ON FINANCE, JUNE 23, 1987

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 providing for the imposition, collection  
11 and apportionment of taxes on mutual thrift institutions.

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

14 Section 1. Section 1501 of the act of March 4, 1971 (P.L.6,  
15 No.2), known as the Tax Reform Code of 1971, added December 1,  
16 1983 (P.L.228, No.66), is amended to read:

17 Section 1501. Definitions.--[As used in this article "mutual  
18 thrift institution" shall be construed to mean every savings  
19 bank without capital stock incorporated by or under any law of  
20 this Commonwealth, every building and loan association, every  
21 savings and loan association incorporated under the laws of this  
22 Commonwealth, every Federal savings and loan association

1 incorporated under the laws of the United States and every  
2 savings institution having capital stock incorporated by or  
3 under any law of this Commonwealth or under any law of the  
4 United States and located within this Commonwealth.] The  
5 following words, terms and phrases, when used in this article,  
6 shall have the meaning ascribed to them in this section, except  
7 where the context clearly indicates a different meaning:

8     (1) "Employee." An individual to whom wages are paid within  
9 the meaning of section 3401 of the Internal Revenue Code of 1986  
10 (Public Law 99-514, 26 U.S.C. § 3401).

11     (2) "Lease." A leasing transaction in which the lessor  
12 would be treated as owner of the lease property under the  
13 provisions of the Internal Revenue Code of 1954 (68A Stat. 3, 26  
14 U.S.C. § 1 et seq.) prior to the enactment of the Economic  
15 Recovery Tax Act of 1981 (Public Law 97-34, 95 Stat. 172). All  
16 other transactions purporting to be leases shall be treated as  
17 loans for purposes of this article.

18     (3) "Located."

19     (i) An institution is located in this Commonwealth in a  
20 taxable year only if:

21     (A) such institution maintains an office in this  
22 Commonwealth;

23     (B) one or more employees of the institution has or have a  
24 regular presence in this Commonwealth; or

25     (C) such institution owns tangible property located in this  
26 Commonwealth which it leases to others for their use, or such  
27 institution owns or leases tangible property located in this  
28 Commonwealth which it uses in connection with its activities in  
29 this Commonwealth.

30     (ii) No employee shall be deemed to have a regular presence

in this Commonwealth if the only activities engaged in by such  
employee in this Commonwealth are, or are in connection with, one  
or more of the following:

(A) Acquisition or purchase of loans, secured or unsecured,  
or any interest therein.

(B) Participation in loans made by other depositories having  
offices in this Commonwealth.

(C) Soliciting applications for loans which are sent outside  
this Commonwealth for approval, deposits which are received and  
maintained at an office outside this Commonwealth, or financial  
or depository services which are performed outside this  
Commonwealth.

(D) Making credit investigations and physical inspections  
and appraisals of real and personal property securing or  
proposed to secure any loan, or collecting and servicing loans  
in any manner whatsoever.

(iii) Notwithstanding any other provision of this article,  
unless the institution maintains an office in this Commonwealth,  
an institution shall not be deemed to be located in this  
Commonwealth if the only activities of the institution within  
this Commonwealth are, or are in connection with:

(A) maintaining or defending any action or suit;

(B) filing, modifying, renewing, extending or transferring a  
mortgage, deed of trust, or security interest;

(C) acquiring, holding, leasing, mortgaging, foreclosing,  
contracting with respect to, or otherwise protecting or  
conveying property in this Commonwealth as a result of default  
under the terms of a mortgage, deed or trust, or other security  
instrument relating thereto; or

(D) acting as an executor of an estate, trustee of a benefit

plan, employees' pension, profit-sharing or other retirement plan, testamentary or inter vivos trust; corporate indenture, or in any other fiduciary capacity, including, but not limited to, holding title to real property in this Commonwealth.

(4) "Maintains an office." An institution maintains an office wherever it has established a regular, continuous and fixed place of business.

(5) "Mutual thrift institution" or "institution." Every savings bank without capital stock; building and loan association; savings and loan association; and savings institution having capital stock; located within this Commonwealth, whether the institution is incorporated under any law of this Commonwealth, under the law of the United States or under the law of any other jurisdiction.

(6) "Net income or net loss." The net income or net loss received or accrued by an institution, determined in accordance with generally accepted principles of accounting, except that:

(i) Net income or net loss shall be determined on a separate company unconsolidated basis, using cost in lieu of equity accounting for investments in a subsidiary.

(ii) The accounting method may be on a cash, combined cash and accrual, or accrual basis, depending on the method of bookkeeping employed by the institution.

(iii) In the case of a business combination treated as a reorganization for purposes of section 368 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 368) (or any similar successor provision) and accounted for under the purchase accounting method, net income or net loss shall be determined as though the acquisition had been accounted for under the pooling of interest method.

The term "net income or net loss" shall exclude amounts credited or paid as interest to holders of accounts or depositors or as dividends to shareholders, except that no deduction shall be permitted for dividends paid by an institution having capital stock to its stockholders with regard to their stock.

(7) "Origination of loans." A loan is deemed to have originated in the state in which the office is located which properly treats the loan as an asset on its books. However, if an institution maintains an office within a state, loans made to borrowers residing or having their commercial domicile within the state are deemed to have originated at such office within the state, unless neither negotiation, approval, nor administrative responsibility of or for the loan by the depository occurs in the state.

(8) "Property located in a state."

(i) Except as otherwise provided in this definition, tangible property, including leased property, shall be deemed to be located in the state in which such property is physically situated.

(ii) Tangible personal property which is characteristically moving property, such as motor vehicles, rolling stock, aircraft, vessels, mobile equipment, and the like, shall be deemed to be located in a state if:

(A) the operation of the property is entirely within the state, or the operation without the state is occasional or incidental to its operation within the state;

(B) the operation of the property is in two or more states, but the principal base of operations from which the property is sent out is in the state; or

(C) the state is the commercial domicile of the lessee or

1 other user of the property, where there is no principal base of  
2 operations and the operation of the property is in two or more  
3 states.

4 (9) "Regular presence of employees." An employee shall be  
5 deemed to have a regular presence in a state if:

6 (i) a majority of the employee's service is performed within  
7 the state; or

8 (ii) the office from which his activities are directed or  
9 controlled is located in the state, where a majority of the  
10 employee's service is not performed in any one state.

11 (10) "State." Any of the several states of the United  
12 States, the District of Columbia and any foreign state.

13 (11) "Taxable net income." The net income of an institution  
14 after allocation and apportionment and after any deduction for a  
15 net loss carryover.

16 (12) "Taxable year." The calendar year, fiscal year or  
17 other period upon which an institution's taxable income is  
18 computed for purposes of Federal income tax.

19 Section 2. Section 1502 of the act, added December 1, 1983  
20 (P.L.228, No.66) and amended December 23, 1983 (P.L.360, No.89)  
21 and July 1, 1985 (P.L.78, No.29), is amended to read:

22 Section 1502. Imposition; Report and Payment of Tax;  
23 Exemptions.--(a) Every [mutual thrift] institution shall  
24 [annually, upon April 15 of each year beginning in the year  
25 1984], for each taxable year, make a report to the Department of  
26 Revenue, setting forth the entire amount of net [earnings or]  
27 income received or accrued by said [mutual thrift] institution  
28 from all sources during the [preceding] taxable year, and such  
29 other information as the department may require, and upon such  
30 taxable net [earnings or] income the said [mutual thrift]

1 institution shall pay into the State Treasury, through the  
2 Department of Revenue, for the use of the Commonwealth, a State  
3 excise tax at the rate of eleven and one-half per cent upon such  
4 [annual net earnings or] taxable net income, for the privilege  
5 of doing business in the Commonwealth. [Every mutual thrift  
6 institution shall be required to make payment of tentative tax  
7 pursuant to the provisions of Article XXX. The remaining portion  
8 of the tax due shall be paid at the time the report prescribed  
9 herein is required to be made.

10 (b) If, however, any such mutual thrift institution closes  
11 its fiscal year, not upon December 31 but upon some other date,  
12 the tax shall be imposed upon such annual net earnings or income  
13 received or accrued during its fiscal year beginning in the year  
14 1983 and during each fiscal year thereafter, and the annual  
15 report of net earnings or income received or accrued during each  
16 fiscal year shall be made, and the remaining tax due thereon  
17 shall be paid within one hundred five days after the close of  
18 such fiscal year. Each such mutual thrift institution shall be  
19 required to make payment of tentative tax pursuant to the  
20 provision of Article XXX.

21 (c) Net earnings or income or net operating loss shall be  
22 determined in accordance with generally accepted principles of  
23 accounting, either on a cash or accrual or combined cash and  
24 accrual basis, depending on the method of bookkeeping employed  
25 by each mutual thrift institution, and in computing such net  
26 earnings or income or net operating loss, amounts credited or  
27 paid as dividends or interest to shareholders, holders of  
28 accounts or depositors shall be included among the allowable  
29 deductions.

30 (d) For the calendar year 1983 and fiscal years beginning in

1 1983 and thereafter, a net operating loss, as defined under  
2 subsection (c), shall be allowed as a deduction and can be  
3 carried forward three succeeding years. The net operating loss  
4 shall be carried to the earliest taxable year to which such loss  
5 may first be carried.

6 (e) Mutual thrift institutions subject to the provisions of  
7 this article shall be exempt from all other corporate taxes  
8 imposed by the Commonwealth for State purposes. Such  
9 institutions, any shares of stock in such institutions and the  
10 property of such institutions shall be exempt from all local  
11 taxation imposed by political subdivisions of this Commonwealth  
12 under the authority of the laws of this Commonwealth, except  
13 taxes on real estate or transfers thereof.]

14 (b) Every institution shall be required to make payment of  
15 estimated tax pursuant to the provisions of sections 3003.2 and  
16 3003.3 of Article XXX. The remaining portion of the tax due  
17 shall be paid at the time the report prescribed herein is  
18 required to be made.

19 (c) The report shall be made, and the remaining tax due  
20 thereon shall be paid, within one hundred five days after the  
21 close of the institution's taxable year. For this purpose a  
22 fifty-two or fifty-three week fiscal year shall be deemed to  
23 have ended on the end of the month nearest the end of the fiscal  
24 year.

25 (d) For taxable years beginning after December 31, 1985, in  
26 determining taxable net income, there shall be allowed a  
27 deduction to the extent of net income in the amount of any net  
28 losses from the prior three taxable years, beginning with the  
29 earliest year, except to the extent that any such loss has been  
30 allowed as a deduction in a prior taxable year.



1     (e) Institutions subject to the provisions of this article  
2     shall be exempt from all other corporate taxes imposed by the  
3     Commonwealth for State purposes, including the corporate loans  
4     tax. Such institutions, any shares of stock in such institutions  
5     and the property of such institutions shall be exempt from all  
6     local taxation imposed by political subdivisions of this  
7     Commonwealth, under the authority of the laws of this  
8     Commonwealth, except taxes on real estate or transfers thereof.

9     (e.1) In the case of a change in ownership by purchase,  
10    liquidation, acquisition of stock or reorganization of a mutual  
11    thrift institution in the manner described in section 381 or 382  
12    of the Internal Revenue Code of 1954, as amended, [the] certain  
13    limitations provided in the Internal Revenue Code with respect  
14    to net operating losses shall apply for the purpose of computing  
15    the portion of a net loss carryover recognized pursuant to this  
16    article. The applicable limitations shall include all those  
17    limitations imposed solely on account of a change in ownership,  
18    including, but not limited to, sections 269, 318 (insofar as it  
19    defines the scope of section 382), 381 and 382 of the Internal  
20    Revenue Code of 1954. The carryover of tax losses shall not be  
21    limited by the Federal consolidated return regulations or  
22    section 338 of the Internal Revenue Code of 1954, providing for  
23    the deemed termination of corporate existence upon the making of  
24    certain elections for Federal income tax purposes. When any  
25    acquiring institution or a transferor institution participated  
26    in the filing of consolidated returns to the Federal Government,  
27    the entitlement of the acquiring institution to the Pennsylvania  
28    net loss carryover of the acquiring institution or the  
29    transferor institution will be determined as if separate returns  
30    to the Federal Government had been filed prior to the change in

ownership by purchase, liquidation, acquisition of stock or reorganization.

Section 3. The act is amended by adding a section to read:

Section 1502.1. Allocation and Apportionment.--(a) Net income or net loss shall be allocated and apportioned in accordance with this section.

(b) An institution may allocate and apportion its net income or net loss if the institution is subject to tax in another state based on or measured by net worth, gross receipts, net income or some similar base of taxation, or if it could be subject to such a tax, whether or not such a tax has in fact been enacted.

(c) Net income or loss which would constitute nonbusiness income or loss within the meaning of Article IV shall be allocated according to the relevant provisions of Article IV.

(d) Income or loss not allocated shall be apportioned in accordance with a fraction, the numerator of which is the sum of the payroll factor and the receipts factor, and the denominator of which is two.

(e) The payroll factor is a fraction, the numerator of which is the total wages paid in this Commonwealth and the denominator of which is the total wages paid in all states. Wages are paid in a state if paid to an employee having a regular presence therein.

(f) The receipts factor is a fraction, the numerator of which is total receipts located in this Commonwealth and the denominator of which is the total receipts located in all states. The location of receipts shall be determined as follows:

(1) Receipts from loans secured primarily by real property are located in the state in which the predominant part of the

1 security real property is or will be located. All receipts from  
2 other loans are located at the place of origination except as  
3 otherwise provided. Receipts from loans do not include principal  
4 repayments.

5 (2) All receipts from performance of services are located in  
6 a state to the extent the services are performed in the state.  
7 If services are performed partly within two or more states, the  
8 receipts located in each state shall be measured by the ratio  
9 which the time spent in performing such services in the state  
10 bears to the total time spent in performing such services in all  
11 states. Time spent in performing services in a state is the time  
12 spent by employees having a regular presence in the state in  
13 performing such services.

14 (3) Receipts from lease transactions are located in the  
15 state in which the leased property is deemed located.

16 (4) Interest or service charges (excluding merchant  
17 discounts) from bank, travel and entertainment card receivables  
18 and credit card holders' fees are located in the state in which  
19 the credit card holder resides in the case of an individual or,  
20 if a corporation, in the state of the card holder's commercial  
21 domicile.

22 (5) Interest, dividends and net gains from sale or  
23 disposition of securities are located in the state in which the  
24 depository maintains an office which treats such securities as  
25 assets on its books or records.

26 (6) Fees or charges from the issuance of travelers checks  
27 and money orders are located in the state in which such  
28 travelers checks or money orders are issued.

29 Section 4. Section 1505 of the act, added December 1, 1983  
30 (P.L.228, No.66), is amended to read:

1       Section 1505. Tax Credits; Legislative Intent.--Any tax paid  
2 by any [mutual thrift] institution under the provisions of the  
3 act of June 22, 1964 (P.L.16, No.2), known as "The Mutual Thrift  
4 Institutions Tax Act," as amended, the act of June 25, 1982  
5 (P.L.652, No.184), entitled "An act amending the act of June 22,  
6 1964 (P.L.16, No.2), entitled 'An act imposing a State excise  
7 tax on net earnings or income of mutual thrift institutions;  
8 requiring the filing of reports and payment of the tax;  
9 providing certain exemptions from the tax and repealing part of  
10 an act imposing other taxes,' providing for the deduction and  
11 carryover of net operating losses in determining net earnings  
12 for the tax on mutual thrift institutions," for taxable years  
13 beginning during 1983 shall be credited to and applied against  
14 the tax imposed by this article without the necessity for the  
15 filing of any petition or request by the taxpayer with the  
16 Department of Revenue, it being the intention of the General  
17 Assembly that this article be a reenactment of such act,  
18 although amending such act to include "savings institutions with  
19 capital stock" within the definition of "mutual thrift  
20 institution." Any institution which would have been entitled to  
21 a net operating loss carryforward under the provisions of the  
22 act of June 22, 1964 (P.L.16, No.2), known as "The Mutual Thrift  
23 Institutions Tax Act," as amended, to calendar year 1983 and  
24 fiscal years beginning after January 1, 1983 shall remain  
25 entitled to such loss carryforward.

26       Section 5. Except as otherwise provided, sections 1 through  
27 4 of this act shall apply to taxable years beginning after 1986.  
28 The definition of "net income or net loss" (relating to pooling  
29 of interest accounting) in section 1 (section 1501) shall apply  
30 with respect to income generated after business combinations

1 entered into after 1986.

2 Section 6. Institutions entitled to a loss carryforward  
3 under the provisions of section 2 (section 1502(d)) in effect  
4 prior to the amendments made by this act shall remain so  
5 entitled, the amendments made by this act with respect to loss  
6 carryforward deductions being intended as a clarification and  
7 restatement of such entitlements. In the case of a conflict  
8 between the prior loss carryforward provisions and the deduction  
9 provided by this act, the provisions of this act shall govern.

10 Section 7. This act shall take effect immediately.