

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2199 Session of
1995

INTRODUCED BY MAITLAND, FARGO, E. Z. TAYLOR, FLEAGLE, GODSHALL,
NICKOL, WAUGH, HERMAN, BROWNE, DALEY, COLAIZZO, FAJT AND
RUBLEY, NOVEMBER 14, 1995

REFERRED TO COMMITTEE ON FINANCE, NOVEMBER 14, 1995

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 minimum amount of
11 capital stock and franchise tax; and making editorial
12 changes.

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

15 Section 1. Section 402 of the act of March 4, 1971 (P.L.6,
16 No.2), known as the Tax Reform Code of 1971, amended June 30,
17 1995 (P.L.139, No.21), is amended to read:

18 Section 402. Imposition of Tax.--Every corporation shall be
19 subject to, and shall pay for the privilege of (i) doing
20 business in this Commonwealth; or (ii) carrying on activities in
21 this Commonwealth; (iii) having capital or property employed or
22 used in this Commonwealth; or (iv) owning property in this

1 Commonwealth, by or in the name of itself, or any person,
2 partnership, association, limited partnership, joint-stock
3 association, or corporation, a State excise tax at the rate [of
4 twelve per cent per annum upon each dollar of taxable income of
5 such corporation received by, and accruing to, such corporation
6 during the calendar year 1971 and the first six months of 1972
7 and at the rate of eleven per cent per annum upon each dollar of
8 taxable income of such corporation received by, and accruing to,
9 such corporation during the second six months of calendar year
10 1972 through the calendar year 1973 and at the rate of nine and
11 one-half per cent per annum upon each dollar of taxable income
12 of such corporation received by, and accruing to, such
13 corporation during the calendar years 1974, 1975 and 1976 and at
14 the rate of ten and one-half per cent per annum upon each dollar
15 of taxable income of such corporation received by, and accruing
16 to, such corporation during the calendar year 1977 through the
17 calendar year 1984 and at the rate of nine and one-half per cent
18 per annum upon each dollar of taxable income of such corporation
19 received by and accruing to such corporation during the calendar
20 year 1985 through calendar year 1986 and at the rate of eight
21 and one-half per cent per annum upon each dollar of taxable
22 income of such corporation received by and accruing to such
23 corporation during the calendar year 1987 through the calendar
24 year 1990 and at the rate of ten and one-half per cent per annum
25 upon each dollar of taxable income of such corporation received
26 by and accruing to such corporation during calendar year 1991
27 through the calendar year 1994 and at the rate of nine and
28 ninety-nine hundredths per cent per annum upon each dollar of
29 taxable income of such corporation received by and accruing to
30 such corporation during the calendar year 1995 and during each

1 calendar year thereafter, with an additional surtax equal to one
2 and seventy-five hundredths per cent per annum upon each dollar
3 of taxable income of such corporation received by and accruing
4 to such corporation during calendar year 1991 and through
5 calendar year 1993 and with an additional surtax equal to one
6 and forty-nine hundredths per cent per annum upon each dollar of
7 taxable income of such corporation received by and accruing to
8 such corporation during calendar year 1994 and with no surtax
9 during calendar year 1995 and each calendar year thereafter] set
10 forth in section 402.2, except where a corporation reports to
11 the Federal Government on the basis of a fiscal year, and has
12 certified such fact to the department as required by section 403
13 of this article, in which case, such tax[, at the rate of twelve
14 per cent, shall be levied, collected, and paid upon all taxable
15 income received by, and accruing to, such corporation during the
16 first six months of the fiscal year commencing in the calendar
17 year 1972 and at the rate of eleven per cent, shall be levied,
18 collected, and paid upon all taxable income received by, and
19 accruing to, such corporation during the second six months of
20 the fiscal year commencing in the calendar year 1972 and during
21 the fiscal year commencing in the calendar year 1973 and at the
22 rate of nine and one-half per cent, shall be levied, collected,
23 and paid upon all taxable income received by, and accruing to,
24 such corporation during the fiscal year commencing in the
25 calendar years 1974, 1975 and 1976 and at the rate of ten and
26 one-half per cent, shall be levied, collected, and paid upon all
27 taxable income received by, and accruing to, such corporation
28 during the fiscal year commencing in the calendar year 1977
29 through the fiscal year commencing in 1984 and at the rate of
30 nine and one-half per cent, shall be levied, collected, and paid

1 upon all taxable income received by and accruing to such
2 corporation during the fiscal year commencing in 1985 through
3 the fiscal year commencing in 1986 and at the rate of eight and
4 one-half per cent per annum upon each dollar of taxable income
5 of such corporation received by and accruing to such corporation
6 during the fiscal year commencing in 1987 through the fiscal
7 year commencing in 1990 and at the rate of ten and one-half per
8 cent per annum upon each dollar of taxable income of such
9 corporation received by and accruing to such corporation during
10 the fiscal year commencing in 1991 through the fiscal year
11 commencing in 1994 and at the rate of nine and ninety-nine
12 hundredths per cent per annum upon each dollar of taxable income
13 of such corporation received by and accruing to such corporation
14 during the fiscal year commencing in 1995 and during each fiscal
15 year thereafter, with an additional surtax equal to one and
16 seventy-five hundredths per cent per annum upon each dollar of
17 taxable income of such corporation received by and accruing to
18 such corporation during the fiscal year commencing in 1991 and
19 through fiscal year 1993 and with an additional surtax equal to
20 one and forty-nine hundredths per cent per annum upon each
21 dollar of taxable income of such corporation received by and
22 accruing to such corporation during fiscal year 1994 and with no
23 surtax during the fiscal year commencing in 1995 and each fiscal
24 year thereafter] shall be at the rate set forth in section
25 402.2. No penalty prescribed by subsection (e) of section 3003
26 shall be assessed against a corporation for the additional tax
27 which may be due as a result of the increase in tax rate from
28 nine and one-half per cent to ten and one-half per cent imposed
29 retroactively by this section for the calendar year 1977 or for
30 the fiscal year commencing in 1977.

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

Section 402.1. Corporate Net Income Tax Rates.--The rate of tax on corporate net income for taxable years beginning for the calendar year or fiscal year on or after the dates set forth shall be as follows:

	<u>Regular</u>	<u>Surtax</u>	<u>Total</u>
<u>Year</u>	<u>Rate</u>	<u>Rate</u>	<u>Rate</u>
<u>January 1, 1971 to June 30, 1972</u>	<u>12%</u>	<u>0%</u>	<u>12%</u>
<u>June 30, 1972 to December 31, 1973</u>	<u>11%</u>	<u>0%</u>	<u>11%</u>
<u>January 1, 1974 to December 31, 1976</u>	<u>9.5%</u>	<u>0%</u>	<u>9.5%</u>
<u>January 1, 1977 to December 31, 1984</u>	<u>10.5%</u>	<u>0%</u>	<u>10.5%</u>
<u>January 1, 1985 to December 31, 1986</u>	<u>9.5%</u>	<u>0%</u>	<u>9.5%</u>
<u>January 1, 1987 to December 31, 1990</u>	<u>8.5%</u>	<u>0%</u>	<u>8.5%</u>
<u>January 1, 1991 to December 31, 1993</u>	<u>10.5%</u>	<u>1.75%</u>	<u>12.25%</u>
<u>January 1, 1994 to December 31, 1994</u>	<u>10.5%</u>	<u>1.49%</u>	<u>11.99%</u>
<u>January 1, 1995 and each taxable</u> <u>year thereafter</u>	<u>9.99%</u>	<u>0%</u>	<u>9.99%</u>

Section 3. Section 602 of the act, amended August 4, 1991 (P.L.97, No.22), is amended to read:

Section 602. Imposition of Tax.--(a) That every domestic entity from which a report is required under section 601 hereof, shall be subject to, and pay to the department annually, a tax which is the greater of (i) [three hundred dollars (\$300) or (ii) the amount computed at the rate of ten mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1971 and the fiscal year beginning in 1971 through calendar year 1986 and fiscal years beginning in 1986, at the rate of nine mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1987 and fiscal years beginning in 1987, at the rate of nine and one-

1 half mills upon each dollar of the capital stock value as
2 defined in section 601(a) for the calendar year 1988 and fiscal
3 years beginning in 1988 through calendar year 1990 and fiscal
4 years beginning in 1990 and at the rate of eleven mills upon
5 each dollar of the capital stock value as defined in section
6 601(a) for the calendar year 1991 and fiscal years beginning in
7 1991 and each year thereafter, with an additional surtax equal
8 to two mills upon each dollar of the capital stock value as
9 defined in section 601(a) for the calendar year 1991 and fiscal
10 years beginning in 1991 and with an additional surtax equal to
11 one and three-quarters mills upon each dollar of the capital
12 stock value as defined in section 601(a) for the calendar year
13 1992 and fiscal years beginning in 1992 and each year
14 thereafter] the amount computed by multiplying each dollar of
15 the capital stock value as defined in section 601(a) by the
16 appropriate rate of tax as set forth in section 602.4; or (ii)
17 the rate of minimum tax set forth in section 602.5, except that
18 any domestic entity or company subject to the tax prescribed
19 herein may elect to compute and pay its tax under and in
20 accordance with the provisions of subsection (b) of this section
21 602: Provided, That, except for the imposition of the [three
22 hundred dollar (\$300)] minimum tax set forth in section 602.5,
23 the provisions of this section shall not apply to the taxation
24 of the capital stock of entities organized for manufacturing,
25 processing, research or development purposes, which is invested
26 in and actually and exclusively employed in carrying on
27 manufacturing, processing, research or development within the
28 State, except such entities as enjoy and exercise the right of
29 eminent domain, but every entity organized for the purpose of
30 manufacturing, processing, research or development except such

1 entities as enjoy and exercise the right of eminent domain shall
2 pay the State tax of the greater of (i) [three hundred dollars
3 (\$300) or (ii) the amount computed at the rate of ten mills upon
4 each dollar of the capital stock value as defined in section
5 601(a) for the calendar year 1971 and the fiscal year beginning
6 in 1971 through calendar year 1986 and fiscal years beginning in
7 1986, at the rate of nine mills upon each dollar of the capital
8 stock value as defined in section 601(a) for the calendar year
9 1987 and fiscal years beginning in 1987 and at the rate of nine
10 and one-half mills upon each dollar of the capital stock value
11 as defined in section 601(a) for the calendar year 1988 and
12 fiscal years beginning in 1988 through calendar year 1990 and
13 fiscal years beginning in 1990 and at the rate of eleven mills
14 upon each dollar of the capital stock value as defined in
15 section 601(a) for the calendar year 1991 and each year
16 thereafter, with an additional surtax equal to two mills upon
17 each dollar of the capital stock value as defined in section
18 601(a) for the calendar year 1991 and fiscal years beginning in
19 1991 and with an additional surtax equal to one and three-
20 quarters mills upon each dollar of the capital stock value as
21 defined in section 601(a) for the calendar year 1992 and fiscal
22 years beginning in 1992 and each year thereafter] the amount
23 computed by multiplying each dollar of the capital stock value
24 as defined in section 601(a) by the appropriate rate of tax as
25 set forth in section 602.4; or (ii) the rate of minimum tax set
26 forth in section 602.5, upon such proportion of its capital
27 stock, if any, as may be invested in any property or business
28 not strictly incident or appurtenant to the manufacturing,
29 processing, research or development business, in addition to the
30 local taxes assessed upon its property in the district where

1 located, it being the object of this provision to relieve from
2 State taxation, except for imposition of the [three hundred
3 dollar (\$300)] minimum tax under [this section] section 602.5,
4 only so much of the capital stock as is invested purely in the
5 manufacturing, processing, research or development plant and
6 business.

7 (b) (1) Every foreign entity from which a report is
8 required under section 601 hereof, shall be subject to and pay
9 to the department annually, a franchise tax which is the greater
10 of (i) [three hundred dollars (\$300) or (ii) the amount computed
11 at the rate of ten mills for the calendar year 1971 and the
12 fiscal years beginning in 1971 through calendar year 1986 and
13 fiscal years beginning in 1986, at the rate of nine mills for
14 the calendar year 1987 and for fiscal years beginning in 1987,
15 at the rate of nine and one-half mills for calendar year 1988
16 and fiscal years beginning in 1988 through calendar year 1990
17 and fiscal years beginning in 1990 and at the rate of eleven
18 mills upon each dollar of the capital stock value as defined in
19 section 601(a) for the calendar year 1991 and fiscal years
20 beginning in 1991 and each year thereafter, with an additional
21 surtax equal to two mills upon each dollar of the capital stock
22 value as defined in section 601(a) for the calendar year 1991
23 and fiscal years beginning in 1991 and with an additional surtax
24 equal to one and three-quarters mills upon each dollar of the
25 capital stock value as defined in section 601(a) for the
26 calendar year 1992 and fiscal years beginning in 1992 and each
27 year thereafter] the amount computed by multiplying each dollar
28 of the capital stock value as defined in section 601(a) by the
29 appropriate rate of tax as set forth in section 602.4; or (ii)
30 the rate of minimum tax set forth in section 602.5, upon a

1 taxable value to be determined in the following manner. The
2 capital stock value shall be ascertained in the manner
3 prescribed in section 601(a) of this article. The taxable value
4 shall then be determined by employing the relevant apportionment
5 factors set forth in Article IV: Provided, That the
6 manufacturing, processing, research and development exemptions
7 contained under section 602(a) shall also apply to foreign
8 corporations and in determining the relevant apportionment
9 factors the numerator of the property, payroll, or sales factors
10 shall not include any property, payroll or sales attributable to
11 manufacturing, processing, research or development activities in
12 the Commonwealth. Any foreign corporation, joint-stock
13 association, limited partnership or company subject to the tax
14 prescribed herein may elect to compute and pay its tax under
15 section 602(a): Provided, That any foreign corporation, joint-
16 stock association, limited partnership or company electing to
17 compute and pay its tax under section 602(a) shall be treated as
18 if it were a domestic corporation for the purpose of determining
19 which of its assets are exempt from taxation and for the purpose
20 of determining the proportion of the value of its capital stock
21 which is subject to taxation.

22 (2) The provisions of this article shall apply to the
23 taxation of entities organized for manufacturing, processing,
24 research or development purposes, but shall not apply to such
25 entities as enjoy and exercise the right of eminent domain.

26 (d) It shall be the duty of the treasurer or other officers
27 having charge of any domestic or foreign entity, upon which a
28 tax is imposed by this section, to transmit the amount of tax to
29 the department within the time prescribed by law: Provided, That
30 for the purposes of this act interest in limited partnerships or

1 joint-stock associations shall be deemed to be capital stock,
2 and taxable accordingly: Provided, further, That entities liable
3 to a tax under this section, shall not be required to pay any
4 further tax on the mortgages, bonds, and other securities owned
5 by them and in which the whole body of stockholders or members,
6 as such, have the entire equitable interest in remainder; but
7 entities owning or holding such securities as trustees,
8 executors, administrators, guardians, or in any other manner
9 than for the whole body of stockholders or members thereof as
10 sole equitable owners in remainder, shall return and pay the tax
11 imposed by this act upon all securities so owned or held by
12 them, as in the case of individuals.

13 (e) Any holding company subject to the capital stock tax or
14 the franchise tax imposed by this section may elect to compute
15 the capital stock or franchise tax by applying the rate of tax
16 [of ten mills for the calendar year 1971 and the fiscal year
17 beginning in 1971 through the calendar year 1986 and fiscal
18 years beginning in 1986, at the rate of nine mills for the
19 calendar year 1987 and fiscal years beginning in 1987, at the
20 rate of nine and one-half mills for calendar year 1988 and
21 fiscal years beginning in 1988 through calendar year 1990 and
22 fiscal years beginning in 1990 and at the rate of eleven mills
23 for calendar year 1991 and fiscal years beginning in 1991 and
24 each year thereafter, with an additional surtax equal to two
25 mills for calendar year 1991 and fiscal years beginning in 1991
26 and with an additional surtax equal to one and three-quarters
27 mills upon each dollar of the capital stock value as defined in
28 section 601(a) for the calendar year 1992 and fiscal years
29 beginning in 1992 and each year thereafter] set forth in section
30 602.4, upon each dollar to ten per cent of the capital stock

1 value, but in no case shall the tax so computed be less than
2 [three hundred dollars (\$300)] the appropriate minimum tax set
3 forth in section 602.5. If exercised, this election shall be in
4 lieu of any other apportionment or allocation to which such
5 company would otherwise be entitled.

6 (f) Every domestic corporation and every foreign corporation
7 (i) registered to do business in Pennsylvania; (ii) which
8 maintains an office in Pennsylvania; (iii) which has filed a
9 timely election to be taxed as a regulated investment company
10 with the Federal Government; and (iv) which duly qualifies to be
11 taxed as a regulated investment company under the provisions of
12 the Internal Revenue Code of 1954 as amended, shall be taxed as
13 a regulated investment company and shall be subject to the
14 capital stock or franchise tax imposed by section 602, in either
15 case for the privilege of having an office in Pennsylvania,
16 which tax shall be computed pursuant to the provisions of this
17 subsection in lieu of all other provisions of this section 602.
18 The tax shall be in an amount which is the greater of [three
19 hundred dollars (\$300)] the appropriate minimum tax set forth in
20 section 602.5 or the sum of the amounts determined pursuant to
21 clauses (1) and (2):

22 (1) The amount determined pursuant to this clause shall be
23 seventy-five dollars (\$75) times that number which is the result
24 of dividing the net asset value of the regulated investment
25 company by one million, rounded to the nearest multiple of
26 seventy-five dollars (\$75). Net asset value shall be determined
27 by adding the monthly net asset values as of the last day of
28 each month during the taxable period and dividing the total sum
29 by the number of months involved. Each such monthly net asset
30 value shall be the actual market value of all assets owned

1 without any exemptions or exclusions, less all liabilities,
2 debts and other obligations.

3 (2) The amount determined pursuant to this clause shall be
4 the amount which is the result of multiplying the rate of
5 taxation applicable for purposes of the personal income tax
6 during the same taxable year times the apportioned undistributed
7 personal income tax income of the regulated investment company.
8 For the purposes of this clause:

9 (A) Personal income tax income shall mean income to the
10 extent enumerated and classified in section 303.

11 (B) Undistributed personal income tax income shall mean all
12 personal income tax income other than personal income tax income
13 undistributed on account of the capital stock or foreign
14 franchise tax, less all personal income tax income distributed
15 to shareholders. At the election of the company, income
16 distributed after the close of a taxable year, but deemed
17 distributed during the taxable year for Federal income tax
18 purposes, shall be deemed distributed during that year for
19 purposes of this clause. If a company in a taxable year has both
20 current income and income accumulated from a prior year,
21 distributions during the year shall be deemed to have been made
22 first from current income.

23 (C) Undistributed personal income tax income shall be
24 apportioned to Pennsylvania by a fraction, the numerator of
25 which is all income distributed during the taxable period to
26 shareholders who are resident individuals, estates or trusts and
27 the denominator of which is all income distributed during the
28 taxable period. Resident trusts shall not include charitable,
29 pension or profit-sharing, or retirement trusts.

30 (D) Personal income tax income and other income of a company

1 shall each be deemed to be either distributed to shareholders or
2 undistributed in the proportion each category bears to all
3 income received by the company during the taxable year.

4 (g) In the event that a domestic or foreign entity is
5 required to file a report pursuant to section 601(b) on other
6 than an annual basis, the tax imposed by this section, including
7 the [three hundred dollar (\$300)] minimum tax, shall be prorated
8 to reflect the portion of a taxable year for which the report is
9 filed by multiplying the tax liability by a fraction equal to
10 the number of days in the taxable year divided by three hundred
11 sixty-five days.

12 Section 4. The act is amended by adding sections to read:

13 Section 602.4. Capital Stock and Franchise Tax Rates.--The
14 rate of tax for purposes of the capital stock and franchise tax
15 for taxable years beginning for the calendar year or fiscal year
16 on or after the dates set forth shall be as follows:

<u>Taxable</u>	<u>Regular</u>	<u>Surtax</u>	<u>Total</u>
<u>Year</u>	<u>Rate</u>	<u>Rate</u>	<u>Rate</u>
<u>January 1, 1971 to</u>			
<u>December 31, 1986</u>	<u>10 mills</u>	<u>0</u>	<u>10 mills</u>
<u>January 1, 1987 to</u>			
<u>December 31, 1987</u>	<u>9 mills</u>	<u>0</u>	<u>9 mills</u>
<u>January 1, 1988 to</u>			
<u>December 31, 1990</u>	<u>9.5 mills</u>	<u>0</u>	<u>9.5 mills</u>
<u>January 1, 1991 to</u>			
<u>December 31, 1991</u>	<u>11 mills</u>	<u>2 mills</u>	<u>13 mills</u>
<u>January 1, 1992 and</u>	<u>11 mills</u>	<u>1.75 mills</u>	<u>12.75 mills</u>
<u>each year</u>			
<u>thereafter</u>			

30 Section 602.5. Minimum Capital Stock and Franchise Tax.--The

1 minimum amount of capital stock and franchise tax for the
2 taxable years beginning for the calendar year or the fiscal year
3 on or after the dates set forth shall be as follows:

<u>Taxable</u>	<u>Minimum</u>
<u>Year</u>	<u>Tax</u>
4 <u>January 1, 1971 to December 31, 1983</u>	<u>No minimum tax imposed</u>
5 <u>January 1, 1984 to December 31, 1990</u>	<u>\$75 minimum tax</u>
6 <u>January 1, 1991 to December 31, 1995</u>	<u>\$300 minimum tax</u>
7 <u>January 1, 1996 and</u>	<u>\$75 minimum tax</u>
8 <u>each taxable year thereafter</u>	

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10
11 Section 5. This act shall take effect January 1, 1996.