

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2542 Session of  
1998

INTRODUCED BY ADOLPH, RAYMOND, BARRAR, ARMSTRONG, BARD, ALLEN, BENNINGHOFF, BOSCOLA, FORCIER, BROWNE, CALTAGIRONE, CAPPABIANCA, CARONE, CHADWICK, CLARK, CLYMER, L. I. COHEN, COLAIZZO, COY, DALEY, DALLY, DEMPSEY, EGOLF, FARGO, FICHTER, GEIST, GEORGE, GIGLIOTTI, GODSHALL, HARHART, HENNESSEY, HERSHEY, HESS, ITKIN, KENNEY, LEH, McILHINNEY, LYNCH, MAITLAND, MANDERINO, MARKOSEK, MARSICO, McCALL, McGILL, McILHATTAN, McNAUGHTON, MICOZZIE, MILLER, NAILOR, ORIE, PIPPY, READSHAW, ROHRER, ROSS, SATHER, SAYLOR, SCHRODER, SEMMEL, STEELMAN, STEIL, STERN, STEVENSON, E. Z. TAYLOR, TIGUE, TRAVAGLIO, TRELLO, TRICH, TRUE, WALKO, WAUGH, C. WILLIAMS, YOUNGBLOOD, ZUG AND MAHER, APRIL 22, 1998

REFERRED TO COMMITTEE ON FINANCE, APRIL 22, 1998

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," reducing the capital stock and franchise tax.

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

13 Section 1. Section 602 of the act of March 4, 1971 (P.L.6,  
14 No.2), known as the Tax Reform Code of 1971, amended August 4,  
15 1991 (P.L.97, No.22), is amended to read:

16 Section 602. Imposition of Tax.--(a) That every domestic  
17 entity from which a report is required under section 601 hereof,

1 shall be subject to, and pay to the department annually, a tax  
2 which is the greater of (i) [three hundred dollars (\$300)]  
3 seventy-five dollars (\$75) or (ii) the amount computed at the  
4 rate of ten mills upon each dollar of the capital stock value as  
5 defined in section 601(a) for the calendar year 1971 and the  
6 fiscal year beginning in 1971 through calendar year 1986 and  
7 fiscal years beginning in 1986, at the rate of nine mills upon  
8 each dollar of the capital stock value as defined in section  
9 601(a) for the calendar year 1987 and fiscal years beginning in  
10 1987, at the rate of nine and one-half mills upon each dollar of  
11 the capital stock value as defined in section 601(a) for the  
12 calendar year 1988 and fiscal years beginning in 1988 through  
13 calendar year 1990 and fiscal years beginning in 1990 and at the  
14 rate of eleven mills upon each dollar of the capital stock value  
15 as defined in section 601(a) for the calendar year 1991 and  
16 fiscal years beginning in 1991 and each year thereafter, with an  
17 additional surtax equal to two mills upon each dollar of the  
18 capital stock value as defined in section 601(a) for the  
19 calendar year 1991 and fiscal years beginning in 1991 and with  
20 an additional surtax equal to one and three-quarters mills upon  
21 each dollar of the capital stock value as defined in section  
22 601(a) for the calendar year 1992 and fiscal years beginning in  
23 1992 and each year thereafter, except that any domestic entity  
24 or company subject to the tax prescribed herein may elect to  
25 compute and pay its tax under and in accordance with the  
26 provisions of subsection (b) of this section 602: Provided,  
27 That, except for the imposition of the [three hundred dollar  
28 (\$300)] seventy-five dollar (\$75) minimum tax, the provisions of  
29 this section shall not apply to the taxation of the capital  
30 stock of entities organized for manufacturing, processing,

1 research or development purposes, which is invested in and  
2 actually and exclusively employed in carrying on manufacturing,  
3 processing, research or development within the State, except  
4 such entities as enjoy and exercise the right of eminent domain,  
5 but every entity organized for the purpose of manufacturing,  
6 processing, research or development except such entities as  
7 enjoy and exercise the right of eminent domain shall pay the  
8 State tax of the greater of (i) [three hundred dollars (\$300)]  
9 seventy-five dollars (\$75) or (ii) the amount computed at the  
10 rate of ten mills upon each dollar of the capital stock value as  
11 defined in section 601(a) for the calendar year 1971 and the  
12 fiscal year beginning in 1971 through calendar year 1986 and  
13 fiscal years beginning in 1986, at the rate of nine mills upon  
14 each dollar of the capital stock value as defined in section  
15 601(a) for the calendar year 1987 and fiscal years beginning in  
16 1987 and at the rate of nine and one-half mills upon each dollar  
17 of the capital stock value as defined in section 601(a) for the  
18 calendar year 1988 and fiscal years beginning in 1988 through  
19 calendar year 1990 and fiscal years beginning in 1990 and at the  
20 rate of eleven mills upon each dollar of the capital stock value  
21 as defined in section 601(a) for the calendar year 1991 and each  
22 year thereafter, with an additional surtax equal to two mills  
23 upon each dollar of the capital stock value as defined in  
24 section 601(a) for the calendar year 1991 and fiscal years  
25 beginning in 1991 and with an additional surtax equal to one and  
26 three-quarters mills upon each dollar of the capital stock value  
27 as defined in section 601(a) for the calendar year 1992 and  
28 fiscal years beginning in 1992 and each year thereafter, upon  
29 such proportion of its capital stock, if any, as may be invested  
30 in any property or business not strictly incident or appurtenant

1 to the manufacturing, processing, research or development  
2 business, in addition to the local taxes assessed upon its  
3 property in the district where located, it being the object of  
4 this provision to relieve from State taxation, except for  
5 imposition of the [three hundred dollar (\$300)] seventy-five  
6 dollar (\$75) minimum tax under this section, only so much of the  
7 capital stock as is invested purely in the manufacturing,  
8 processing, research or development plant and business.

9 (b) (1) Every foreign entity from which a report is  
10 required under section 601 hereof, shall be subject to and pay  
11 to the department annually, a franchise tax which is the greater  
12 of (i) [three hundred dollars (\$300)] seventy-five dollars (\$75)  
13 or (ii) the amount computed at the rate of ten mills for the  
14 calendar year 1971 and the fiscal years beginning in 1971  
15 through calendar year 1986 and fiscal years beginning in 1986,  
16 at the rate of nine mills for the calendar year 1987 and for  
17 fiscal years beginning in 1987, at the rate of nine and one-half  
18 mills for calendar year 1988 and fiscal years beginning in 1988  
19 through calendar year 1990 and fiscal years beginning in 1990  
20 and at the rate of eleven mills upon each dollar of the capital  
21 stock value as defined in section 601(a) for the calendar year  
22 1991 and fiscal years beginning in 1991 and each year  
23 thereafter, with an additional surtax equal to two mills upon  
24 each dollar of the capital stock value as defined in section  
25 601(a) for the calendar year 1991 and fiscal years beginning in  
26 1991 and with an additional surtax equal to one and three-  
27 quarters mills upon each dollar of the capital stock value as  
28 defined in section 601(a) for the calendar year 1992 and fiscal  
29 years beginning in 1992 and each year thereafter, upon a taxable  
30 value to be determined in the following manner. The capital

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

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

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

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

12 (e) Any holding company subject to the capital stock tax or  
13 the franchise tax imposed by this section may elect to compute  
14 the capital stock or franchise tax by applying the rate of tax  
15 of ten mills for the calendar year 1971 and the fiscal year  
16 beginning in 1971 through the calendar year 1986 and fiscal  
17 years beginning in 1986, at the rate of nine mills for the  
18 calendar year 1987 and fiscal years beginning in 1987, at the  
19 rate of nine and one-half mills for calendar year 1988 and  
20 fiscal years beginning in 1988 through calendar year 1990 and  
21 fiscal years beginning in 1990 and at the rate of eleven mills  
22 for calendar year 1991 and fiscal years beginning in 1991 and  
23 each year thereafter, with an additional surtax equal to two  
24 mills for calendar year 1991 and fiscal years beginning in 1991  
25 and with an additional surtax equal to one and three-quarters  
26 mills upon each dollar of the capital stock value as defined in  
27 section 601(a) for the calendar year 1992 and fiscal years  
28 beginning in 1992 and each year thereafter, upon each dollar to  
29 ten per cent of the capital stock value, but in no case shall  
30 the tax so computed be less than three hundred dollars (\$300).

1 If exercised, this election shall be in lieu of any other  
2 apportionment or allocation to which such company would  
3 otherwise be entitled.

4 (f) Every domestic corporation and every foreign corporation  
5 (i) registered to do business in Pennsylvania; (ii) which  
6 maintains an office in Pennsylvania; (iii) which has filed a  
7 timely election to be taxed as a regulated investment company  
8 with the Federal Government; and (iv) which duly qualifies to be  
9 taxed as a regulated investment company under the provisions of  
10 the Internal Revenue Code of 1954 as amended, shall be taxed as  
11 a regulated investment company and shall be subject to the  
12 capital stock or franchise tax imposed by section 602, in either  
13 case for the privilege of having an office in Pennsylvania,  
14 which tax shall be computed pursuant to the provisions of this  
15 subsection in lieu of all other provisions of this section 602.  
16 The tax shall be in an amount which is the greater of [three  
17 hundred dollars (\$300)] seventy-five dollars (\$75) or the sum of  
18 the amounts determined pursuant to clauses (1) and (2):

19 (1) The amount determined pursuant to this clause shall be  
20 seventy-five dollars (\$75) times that number which is the result  
21 of dividing the net asset value of the regulated investment  
22 company by one million, rounded to the nearest multiple of  
23 seventy-five dollars (\$75). Net asset value shall be determined  
24 by adding the monthly net asset values as of the last day of  
25 each month during the taxable period and dividing the total sum  
26 by the number of months involved. Each such monthly net asset  
27 value shall be the actual market value of all assets owned  
28 without any exemptions or exclusions, less all liabilities,  
29 debts and other obligations.

30 (2) The amount determined pursuant to this clause shall be

1 the amount which is the result of multiplying the rate of  
2 taxation applicable for purposes of the personal income tax  
3 during the same taxable year times the apportioned undistributed  
4 personal income tax income of the regulated investment company.

5 For the purposes of this clause:

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

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

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

27 (D) Personal income tax income and other income of a company  
28 shall each be deemed to be either distributed to shareholders or  
29 undistributed in the proportion each category bears to all  
30 income received by the company during the taxable year.

1 (g) In the event that a domestic or foreign entity is  
2 required to file a report pursuant to section 601(b) on other  
3 than an annual basis, the tax imposed by this section, including  
4 the [three hundred dollar (\$300)] seventy-five dollar (\$75)  
5 minimum tax, shall be prorated to reflect the portion of a  
6 taxable year for which the report is filed by multiplying the  
7 tax liability by a fraction equal to the number of days in the  
8 taxable year divided by three hundred sixty-five days.

9 Section 2. This act shall be applicable to tax years  
10 beginning on or after January 1, 1998.

11 Section 3. This act shall be retroactive to January 1, 1998.

12 Section 4. This act shall take effect immediately.