

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 329 Session of
1997

INTRODUCED BY SALVATORE AND HECKLER, FEBRUARY 3, 1997

REFERRED TO FINANCE, FEBRUARY 3, 1997

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 of penalties
11 relating to capital stock tax and corporate net income tax.

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

14 Section 1. Section 3003.3 of the act of March 4, 1971
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended
16 October 14, 1988 (P.L.737, No.106) and August 4, 1991 (P.L.97,
17 No.22), is amended to read:

18 Section 3003.3. Underpayment of Estimated Tax.--(a) [In]
19 Except as provided in subsection (f), in case of any
20 underpayment of an installment of estimated tax by a taxpayer,
21 there shall be imposed an addition to the tax for the taxable
22 year in an amount determined at the annual rate as provided by

1 law for the payment of interest upon the amount of the
2 underpayment for the period of the underpayment, except that, in
3 case of any substantial underpayment of estimated tax by a
4 taxpayer, such addition to the tax for the taxable year shall be
5 imposed in an amount determined at one hundred twenty per cent
6 of the annual rate as provided by law for the payment of
7 interest upon the entire underpayment for the period of the
8 substantial underpayment. For the purpose of this subsection, a
9 substantial underpayment shall be deemed to exist for any period
10 during which the amount of the underpayment equals or exceeds
11 twenty-five per cent of the cumulative amount of installments of
12 estimated tax which would be required to be paid if the
13 estimated tax were equal to the amount as determined in
14 subsection (b)(1).

15 (b) (1) For purposes of this section, the amount of the
16 underpayment, if any, shall be the excess of:

17 (i) the cumulative amount of installments which would be
18 required to be paid as of each installment date as defined in
19 section 3003.2(c) if the estimated tax were equal to ninety per
20 cent of the tax shown on the report for the taxable year, except
21 that, if the settled tax or, if the tax is resettled, the
22 resettled tax exceeds the tax shown on the report by ten per
23 cent or more, the amount of the underpayment shall be based on
24 ninety per cent of the amount of such settled or resettled tax;
25 over

26 (ii) the cumulative amount of installments paid on or before
27 the last date prescribed for payment.

28 (2) If the settled or resettled tax is used in calculating
29 the amount of underpayment, the amount of tax as settled or
30 resettled shall be utilized in determining the amount of

1 underpayment without the necessity of the filing of any petition
2 by the department or by the taxpayer.

3 (c) The period of the underpayment shall run from the date
4 the installment was required to be paid to whichever of the
5 following dates is the earlier:

6 (1) The fifteenth day of the fourth month following the
7 close of the taxable year.

8 (2) With respect to any portion of the underpayment, the
9 date on which such portion is paid.

10 (d) Notwithstanding the provisions of the preceding
11 subsections, the addition to the tax with respect to any
12 underpayment of any installment of estimated tax shall not be
13 imposed if the total amount of all payments of estimated tax
14 made on or before the last date prescribed for the payment of
15 such installment equals or exceeds the amount which would have
16 been required to be paid on or before such date if the estimated
17 tax were an amount equal to the tax computed at the rates
18 applicable to the taxable year, including any minimum tax
19 imposed, but otherwise on the basis of the facts shown on the
20 report of the taxpayer for, and the law applicable to, the
21 second preceding taxable year, adjusted for any changes to
22 sections 401, 601 and 602 enacted for tax years beginning on or
23 after January 1, 1991, if a report showing a liability for tax
24 was filed by the taxpayer for the second preceding taxable year
25 and such second preceding year was a taxable year of twelve
26 months. If the total amount of all payments of estimated tax
27 made on or before the last date prescribed for the payment of
28 such installment does not equal or exceed the amount required to
29 be paid per the preceding sentence, but such amount is paid
30 after the date the installment was required to be paid, then the

1 period of underpayment shall run from the date the installment
2 was required to be paid to the date the amount required to be
3 paid per the preceding sentence is paid. For taxpayers that have
4 filed only one or two previous returns, if the second preceding
5 taxable year is less than twelve months, then the first
6 preceding taxable year shall be used; or, if there is no second
7 preceding taxable year, then the first preceding taxable year
8 shall be used. If the first preceding taxable year is less than
9 twelve months, then the annualized first preceding taxable year
10 shall be used. Provided, however, that if the settled tax for
11 the second preceding year exceeds the tax shown on such report
12 by ten per cent or more, the settled tax adjusted to reflect the
13 current tax rate shall be used for purposes of this subsection,
14 except that, if the settled tax is subsequently resettled, the
15 amount of tax as resettled shall be utilized in the application
16 of this subsection without the necessity of the filing of any
17 petition by the department or by the taxpayer. In the event that
18 the settled or resettled tax for the second preceding year
19 exceeds the tax shown on the report by ten per cent or more, an
20 addition to the tax resulting from the utilization of such
21 settled or resettled tax in the application of the provisions of
22 this subsection shall not be imposed if, within forty-five days
23 of the mailing date of such settlement or resettlement, payments
24 are made such that the total amount of all payments of estimated
25 tax equals or exceeds the amount which would have been required
26 to be paid on or before such date if the estimated tax were an
27 amount equal to such settled or resettled tax adjusted to
28 reflect the current tax rate. In any case in which the taxable
29 year for which an underpayment of estimated tax may exist is a
30 short taxable year, in determining the tax shown on the report

1 or the settled or resettled tax for the second preceding taxable
2 year, the tax will be reduced by multiplying it by the number of
3 days in the short taxable year and dividing the resulting amount
4 by three hundred sixty-five.

5 (e) (1) When the amendments to sections 401, 601 and 602
6 and subsection (d) result in an increase of a taxpayer's
7 estimated taxes for 1991 and 1992 or the required safe harbor
8 amount, the additional required installment payments of
9 estimated tax as well as the additional amount of the required
10 installment payments to meet the "safe harbor" shall be treated
11 as provided by this subsection for additional estimated
12 payments, safe harbor payments and the recomputation and
13 preservation of the "safe harbor."

14 (2) (i) For purposes of computing the estimated tax "safe
15 harbor" pursuant to subsection (d) for tax years 1991 and 1992,
16 the second preceding taxable year (base year) shall be
17 recomputed with the amended sections 401, 601 and 602.

18 (ii) Any taxpayer whose "safe harbor" is affected by this
19 section must file a recomputation of its safe harbor year within
20 sixty days of the effective date of this act for calendar year
21 1991 or taxable years beginning in 1991 and within seventy-five
22 days of the beginning of its taxable year for calendar year 1992
23 or taxable years beginning in 1992. The recomputation shall be
24 on forms as prescribed by the Department of Revenue. Any
25 taxpayer failing to file a recomputation as required shall be
26 denied the use of the "safe harbor" provisions of subsection
27 (d).

28 (3) To the extent the amendments to sections 401, 601 and
29 602 and subsection (d) result in an increase in the
30 corporation's estimated tax or the safe harbor amount,

installments due after the effective date of this act shall be made pursuant to section 3003.2 and this section except:

(i) Additional amounts associated with installment payment of estimated tax due prior to the effective date of this act under section 3003.2 or subsection (d) shall be considered timely paid if paid within sixty days of the effective date of this act or on the due date of the next installment.

(ii) Additional amounts associated with installment payment of estimated tax due within sixty days of the effective date of this act under section 3003.2 or subsection (d) shall be considered timely paid if paid within sixty days of the effective date of this act or on the due date of the next installment.

(f) Notwithstanding any provision of this act to the contrary, all penalties, except for substantial underpayments, of estimated corporate net income tax and capital stock franchise tax shall be assessed and computed only from the date of the new assessment and not from the original due date of the tax.

Section 2. This act shall take effect in 60 days.