

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1305 Session of  
2003

INTRODUCED BY LEVDANSKY, MAY 5, 2003

REFERRED TO COMMITTEE ON FINANCE, MAY 5, 2003

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, in corporate net income tax,  
11 for the definition and determination of "taxable income."

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

14 Section 1. Section 401(3)1 and 4 of the act of March 4, 1971  
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, are amended  
16 by adding paragraphs to read:

17 Section 401. Definitions.--The following words, terms, and  
18 phrases, when used in this article, shall have the meaning  
19 ascribed to them in this section, except where the context  
20 clearly indicates a different meaning:

21 \* \* \*

22 (3) "Taxable income." 1. \* \* \*

1       (t) (1) Notwithstanding paragraph (a), taxable income shall  
2 include the amount of the deduction for interest expenses and  
3 costs and intangible expenses and costs paid, accrued or  
4 incurred to, or in connection with one or more transactions  
5 unless the corporation proves by clear and cogent evidence that  
6 the transaction or transactions giving rise to the expenses and  
7 costs did not have as a principal purpose the avoidance of any  
8 tax due under this article. There shall be a presumption that a  
9 transaction between a corporation and a person that is not a  
10 related member as defined in this paragraph (t) did not have as  
11 a principal purpose the avoidance of any tax due under this  
12 article.

13       (2) Proof that the principal purpose of the transaction was  
14 not tax avoidance may be required with the tax report for the  
15 applicable taxable year and shall consist of:

16       (A) proof that the transaction had a substantial business  
17 purpose and economic substance and that the transaction involved  
18 was based upon terms and conditions that are arm's length in  
19 nature; and

20       (B) proof that the other party to the transaction reported  
21 the corresponding income item on a corporate tax report filed in  
22 this Commonwealth or any other state and that the reported tax  
23 was imposed on or measured by net income. This requirement is  
24 not met when the corresponding income item is offset or  
25 eliminated in a combined or consolidated return or report that  
26 includes the corporation.

27       (3) For the purposes of this paragraph (t) the following  
28 words, terms and phrases shall have the meanings given to them  
29 in this subparagraph unless the context clearly indicates  
30 otherwise:

1     (A) "Intangible expenses and costs" includes all of the  
2     following:

3     (i) Expenses and costs for, related to or in connection with  
4     the acquisition, use, maintenance or management, ownership,  
5     sale, exchange or any other disposition of intangible property  
6     to the extent such amounts are allowed as deductions or costs in  
7     determining taxable income before the operating loss deduction  
8     and special deductions for the taxable year under the Internal  
9     Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

10    (ii) Royalty, patent, technical and copyright fees.

11    (iii) Licensing fees.

12    (iv) Other similar expenses and costs.

13    (B) "Intangible property" means patents, patent  
14    applications, trade names, trademarks, service marks,  
15    copyrights, mask works, trade secrets and similar types of  
16    intangible assets.

17    (C) "Interest expenses and costs" means amounts allowed as  
18    deductions under section 163 of the Internal Revenue Code of  
19    1986 (Public Law 99-514, 26 U.S.C. § 163) for purposes of  
20    determining taxable income under the Internal Revenue Code of  
21    1986.

22    (D) "Related entity" means any of the following:

23    (i) A stockholder who is an individual or a member of the  
24    stockholder's family enumerated in section 318 of the Internal  
25    Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 318), if  
26    the stockholder and the members of the stockholder's family own,  
27    directly, indirectly, beneficially or constructively, in the  
28    aggregate, at least fifty per cent of the value of the  
29    corporation's outstanding stock.

30    (ii) A stockholder or a stockholder's partnership, limited

liability company, estate, trust or corporation, if the  
stockholder and the stockholder's partnerships, limited  
liability companies, estates, trusts and corporations own  
directly, indirectly, beneficially or constructively, in the  
aggregate, at least fifty per cent of the value of the  
corporation's outstanding stock.

(iii) A corporation or a party related to the corporation in  
a manner that would require an attribution of stock from the  
corporation to the party or from the party to the corporation  
under the attribution rules contained in section 318 of the  
Internal Revenue Code of 1986, if the corporation owns,  
directly, indirectly, beneficially or constructively, at least  
fifty per cent of the value of the corporation's outstanding  
stock. The attribution rules contained in section 318 of the  
Internal Revenue Code of 1986 shall apply for purposes of  
determining whether the ownership requirements of this  
definition have been met.

(E) "Related member" means a person that, with respect to  
the corporation during all or any portion of the taxable year is  
any of the following:

(i) A related entity as defined in (D) of this paragraph  
(t).

(ii) A component member as defined in section 1563(b) of the  
Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
1563(b)).

(iii) A person to or from whom there is the attribution of  
stock ownership in accordance with section 1563(e) of the  
Internal Revenue Code of 1986.

(iv) A person that, notwithstanding its form of  
organization, bears the same relationship to the taxpayer as a

1 person described in (i) through (iii) of this definition.

2 (u) Whenever it shall appear that a corporation conducts its  
3 business or enters into transactions that distort its taxable  
4 income, the Secretary of Revenue is authorized and empowered to  
5 adjust items of income or deductions so as to make a fair and  
6 equitable determination of taxable income.

7 \* \* \*

8 4. \* \* \*

9 (h) Notwithstanding any other paragraph of this subclause,  
10 no portion of a net loss deduction that is attributable to a  
11 transaction that would require an add back of intangible  
12 expenses and costs or interest expenses and costs as set forth  
13 in subclause 1 shall be allowed as a deduction for the purpose  
14 of computing taxable income for the taxable year beginning in  
15 2003 and each taxable year thereafter.

16 Section 2. The addition of section 401(3)1(t) and (u) and  
17 4(h) of the act shall apply to taxable years beginning after  
18 December 31, 2002.

19 Section 3. This act shall take effect immediately.