

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 518 Session of  
2005

INTRODUCED BY LEVDANSKY, VEON, GRUCELA, BELARDI, BEBKO-JONES,  
BELFANTI, BLAUM, CALTAGIRONE, DeWEESE, FABRIZIO, FREEMAN,  
GERGELY, HALUSKA, LaGROTTA, McCALL, MUNDY, ROONEY, SOLOBAY,  
SURRA, THOMAS, WANSACZ, WILLIAMS, GOODMAN, JOSEPHS,  
MANDERINO, McGEEHAN, PISTELLA, RUFFING, STURLA, TANGRETTI,  
WALKO AND WASHINGTON, FEBRUARY 15, 2005

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 15, 2005

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 of "taxable income."

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

14 Section 1. Section 401(3)1(a) of the act of March 4, 1971  
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended May  
16 12, 1999 (P.L.26, No.4), is amended and clause (3)1 is amended  
17 by adding a paragraph to read:

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

1 clearly indicates a different meaning:

2 \* \* \*

3 (3) "Taxable income." 1. (a) In case the entire business  
4 of the corporation is transacted within this Commonwealth, for  
5 any taxable year which begins on or after January 1, 1971,  
6 taxable income for the calendar year or fiscal year as returned  
7 to and ascertained by the Federal Government, or in the case of  
8 a corporation participating in the filing of consolidated  
9 returns to the Federal Government, the taxable income which  
10 would have been returned to and ascertained by the Federal  
11 Government if separate returns had been made to the Federal  
12 Government for the current and prior taxable years, subject,  
13 however, to any correction thereof, for fraud, evasion, [or  
14 error as finally ascertained by the Federal Government] error,  
15 or addback as provided pursuant to paragraph (t)(1).

16 \* \* \*

17 (t) (1) In accordance with paragraph (a), taxable income  
18 shall include the amount of the deduction for interest expenses  
19 and costs and intangible expenses and costs paid, accrued or  
20 incurred to or in connection with one or more transactions with  
21 related members of the corporation.

22 (2) The following transactions between related members of a  
23 corporation shall not be subjected to the addback provided for  
24 in this paragraph:

25 (A) An arm's-length transaction between a corporation and a  
26 related member resident in a foreign nation that has in force a  
27 comprehensive income tax treaty with the United States when the  
28 transaction involves the licensing or sublicensing of intangible  
29 property owned by the related member and used by the corporation  
30 in its business operation.

1 (B) A transaction that produces interest expenses and costs  
2 paid, accrued or incurred in connection with an arm's-length  
3 loan from an institution defined in section 701.5 or section  
4 1501.

5 (C) A transaction that produces interest expenses and costs  
6 paid, accrued or incurred in connection with payments of  
7 transition bonds issued pursuant to 66 Pa.C.S. § 2812 (relating  
8 to approval of transition bonds).

9 (D) A transaction that produces interest, expenses and costs  
10 paid, accrued or incurred in connection with an arm's-length  
11 loan made in connection with a centralized treasury function or  
12 a centralized cash management function of related members.

13 (3) The following words, terms and phrases when used in this  
14 paragraph, shall have the meaning ascribed to them in this  
15 subparagraph, except where the context clearly indicates a  
16 different meaning:

17 (A) "Intangible expenses and costs" includes all of the  
18 following:

19 (I) Expenses and costs for, related to or in connection with  
20 the acquisition, use, maintenance or management, ownership sale,  
21 exchange or any other disposition of tangible property to the  
22 extent such amounts are allowed as deductions or costs in  
23 determining taxable income before the operating loss deduction  
24 and special deductions for the taxable year under the Internal  
25 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

26 (II) Royalty, patent, technical and copyright fees.

27 (III) Licensing fees.

28 (IV) Other similar expenses and costs.

29 (B) "Intangible property" means patents, patent  
30 applications, trade names, trademarks, service marks,

copyrights, mask works, trade secrets and similar types of  
intangible assets.

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

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

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

(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

1 Internal Revenue Code of 1986 shall apply for the purposes of  
2 determining whether the ownership requirements of this  
3 definition have been met.

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

7 (I) A related entity as defined in this subparagraph.

8 (II) A component member as defined in section 1563(b) of the  
9 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
10 1563(b)).

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

14 (IV) A person that, notwithstanding its form of  
15 organization, bears the same relationship to the taxpayer as a  
16 person described in subclauses (I), (II) and (III).

17 \* \* \*

18 Section 2. The amendment or addition of section 401(3)1(a)  
19 and (t) of the act shall apply to taxable years beginning after  
20 December 31, 2004.

21 Section 3. This act shall take effect immediately.