

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1186 Session of
2007

INTRODUCED BY LEVDANSKY, DeWEESE, McCALL, BELFANTI, BRENNAN,
CALTAGIRONE, CARROLL, DALEY, DeLUCA, FABRIZIO, FRANKEL,
FREEMAN, GOODMAN, HALUSKA, HANNA, HORNAMAN, JOSEPHS, KORTZ,
LEACH, MUNDY, MYERS, PETRARCA, PETRONE, MARSHALL, SABATINA,
SIPTROTH, SOLOBAY, STABACK, STURLA, TANGRETTI, WALKO AND
WANSACZ, MAY 1, 2007

REFERRED TO COMMITTEE ON FINANCE, MAY 1, 2007

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 definitions, for imposition, for reports and payment and
12 for consolidated reports; and further providing, in general
13 provisions, for underpayment of estimated tax.

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

16 Section 1. Section 401(3)1(a) and (b), 2(a) and 4(c) and (5)
17 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
18 Reform Code of 1971, amended or added December 23, 1983
19 (P.L.370, No.90), July 1, 1985 (P.L.78, No.29), August 4, 1991
20 (P.L.97, No.22), May 12, 1999 (P.L.26, No.4), June 22, 2001
21 (P.L.353, No.23), June 29, 2002 (P.L.559, No.89) and July 12,

1 2006 (P.L.1137, No.116) are amended, clause (3)2 is amended by
2 adding a phrase and the section is amended by adding clauses to
3 read:

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

8 * * *

9 (3) "Taxable income." 1. (a) In case the entire business
10 of the corporation is transacted within this Commonwealth, for
11 any taxable year which begins on or after January 1, 1971,
12 taxable income for the calendar year or fiscal year as returned
13 to and ascertained by the Federal Government, or in the case of
14 a corporation participating in the filing of consolidated
15 returns to the Federal Government or that is not required to
16 file a return with the Federal Government, the taxable income
17 which would have been returned to and ascertained by the Federal
18 Government if separate returns had been made to the Federal
19 Government for the current and prior taxable years, subject,
20 however, to any correction thereof, for fraud, evasion, or error
21 as finally ascertained by the Federal Government.

22 (b) Additional deductions shall be allowed from taxable
23 income on account of any dividends received from any other
24 corporation but only to the extent that such dividends are
25 included in taxable income as returned to and ascertained by the
26 Federal Government. For tax years beginning on or after January
27 1, 1991, additional deductions shall only be allowed for amounts
28 included, under section 78 of the Internal Revenue Code of 1986
29 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned
30 to and ascertained by the Federal Government and for the amount

1 of any dividends received from a foreign corporation included in
2 taxable income to the extent such dividends would be deductible
3 in arriving at Federal taxable income if received from a
4 domestic corporation. For taxable years beginning on or after
5 January 1, 2009, if not otherwise allowed as a deduction, an
6 additional deduction is allowed for all dividends paid by one to
7 another of the included corporations of a unitary business to
8 the extent those dividends are included in business income of a
9 corporation that is required to determine its business income
10 pursuant to paragraph (1) of phrase (e) of subclause (2).

11 * * *

12 2. In case the entire business of any corporation, other
13 than a corporation engaged in doing business as a regulated
14 investment company as defined by the Internal Revenue Code of
15 1986, is not transacted within this Commonwealth, the tax
16 imposed by this article shall be based upon such portion of the
17 taxable income of such corporation for the fiscal or calendar
18 year, as defined in subclause 1 hereof, and may be determined as
19 follows:

20 (a) Division of Income.

21 (1) As used in this definition, unless the context otherwise
22 requires:

23 (A) "Business income" means income arising from transactions
24 and activity in the regular course of the taxpayer's trade or
25 business and includes income from tangible and intangible
26 property if either the acquisition, the management or the
27 disposition of the property constitutes an integral part of the
28 taxpayer's regular trade or business operations. The term
29 includes all income which is apportionable under the
30 Constitution of the United States.

1 (B) "Commercial domicile" means the principal place from
2 which the trade or business of the taxpayer is directed or
3 managed.

4 (C) "Compensation" means wages, salaries, commissions and
5 any other form of remuneration paid to employes for personal
6 services.

7 (D) "Nonbusiness income" means all income other than
8 business income. The term does not include income which is
9 apportionable under the Constitution of the United States.

10 (E) "Sales" means all gross receipts of the taxpayer not
11 allocated under this definition other than dividends received,
12 interest on United States, state or political subdivision
13 obligations and gross receipts heretofore or hereafter received
14 from the sale, redemption, maturity or exchange of securities,
15 except those held by the taxpayer primarily for sale to
16 customers in the ordinary course of its trade or business.

17 (F) "State" means any state of the United States, the
18 District of Columbia, the Commonwealth of Puerto Rico, any
19 territory or possession of the United States, and any foreign
20 country or political subdivision thereof.

21 (G) "This state" means the Commonwealth of Pennsylvania or,
22 in the case of application of this definition to the
23 apportionment and allocation of income for local tax purposes,
24 the subdivision or local taxing district in which the relevant
25 tax return is filed.

26 (2) Any taxpayer having income from business activity which
27 is taxable both within and without this State other than
28 activity as a corporation whose allocation and apportionment of
29 income is specifically provided for in section 401(3)2(b)(c) and
30 (d) shall allocate and apportion taxable income as provided in

1 this definition.

2 (3) For purposes of allocation and apportionment of income
3 under this definition, a taxpayer is taxable in another state if
4 in that state the taxpayer is subject to a net income tax, a
5 franchise tax measured by net income, a franchise tax for the
6 privilege of doing business, or a corporate stock tax or if that
7 state has jurisdiction to subject the taxpayer to a net income
8 tax regardless of whether, in fact, the state does or does not.

9 (4) Rents and royalties from real or tangible personal
10 property, gains, interest, patent or copyright royalties, to the
11 extent that they constitute nonbusiness income, shall be
12 allocated as provided in paragraphs (5) through (8).

13 (5) (A) Net rents and royalties from real property located
14 in this State are allocable to this State.

15 (B) Net rents and royalties from tangible personal property
16 are allocable to this State if and to the extent that the
17 property is utilized in this State, or in their entirety if the
18 taxpayer's commercial domicile is in this State and the taxpayer
19 is not organized under the laws of or taxable in the state in
20 which the property is utilized.

21 (C) The extent of utilization of tangible personal property
22 in a state is determined by multiplying the rents and royalties
23 by a fraction, the numerator of which is the number of days of
24 physical location of the property in the state during the rental
25 or royalty period in the taxable year and the denominator of
26 which is the number of days of physical location of the property
27 everywhere during all rental or royalty periods in the taxable
28 year. If the physical location of the property during the rental
29 or royalty period is unknown or unascertainable by the taxpayer,
30 tangible personal property is utilized in the state in which the

1 property was located at the time the rental or royalty payer
2 obtained possession.

3 (6) (A) Gains and losses from sales or other disposition of
4 real property located in this State are allocable to this State.

5 (B) Gains and losses from sales or other disposition of
6 tangible personal property are allocable to this State if the
7 property had a situs in this State at the time of the sale, or
8 the taxpayer's commercial domicile is in this State and the
9 taxpayer is not taxable in the state in which the property had a
10 situs.

11 (C) Gains and losses from sales or other disposition of
12 intangible personal property are allocable to this State if the
13 taxpayer's commercial domicile is in this State.

14 (7) Interest is allocable to this State if the taxpayer's
15 commercial domicile is in this State.

16 (8) (A) Patent and copyright royalties are allocable to
17 this State if and to the extent that the patent or copyright is
18 utilized by the payer in this State, or if and to the extent
19 that the patent copyright is utilized by the payer in a state in
20 which the taxpayer is not taxable and the taxpayer's commercial
21 domicile is in this State.

22 (B) A patent is utilized in a state to the extent that it is
23 employed in production, fabrication, manufacturing, or other
24 processing in the state or to the extent that a patented product
25 is produced in the state. If the basis of receipts from patent
26 royalties does not permit allocation to states or if the
27 accounting procedures do not reflect states of utilization, the
28 patent is utilized in the state in which the taxpayer's
29 commercial domicile is located.

30 (C) A copyright is utilized in a state to the extent that

printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) (A) Except as provided in [subparagraph (B)]
subparagraphs (B) and (C):

(i) For taxable years beginning before January 1, 2007, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus three times the sales factor and the denominator of which is five.

(ii) For taxable years beginning after December 31, 2006, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the sum of fifteen times the property factor, fifteen times the payroll factor and seventy times the sales factor and the denominator of which is one hundred.

(B) For purposes of apportionment of the capital stock - franchise tax as provided in section 602 of Article VI of this act, the apportionment fraction shall be the property factor plus the payroll factor plus the sales factor as the numerator, and the denominator shall be three.

(C) For taxable years that begin on or after January 1, 2009, all business income shall be apportioned to this State by a fraction, which is the sales factor. This includes any railroad, truck, bus, airline, pipeline, natural gas or water transportation company that is required to determine its business income pursuant to paragraph (1) of phrase (e) of this subclause.

1 (10) The property factor is a fraction, the numerator of
2 which is the average value of the taxpayer's real and tangible
3 personal property owned or rented and used in this State during
4 the tax period and the denominator of which is the average value
5 of all the taxpayer's real and tangible personal property owned
6 or rented and used during the tax period but shall not include
7 the security interest of any corporation as seller or lessor in
8 personal property sold or leased under a conditional sale,
9 bailment lease, chattel mortgage or other contract providing for
10 the retention of a lien or title as security for the sales price
11 of the property.

12 (11) Property owned by the taxpayer is valued at its
13 original cost. Property rented by the taxpayer is valued at
14 eight times the net annual rental rate. Net annual rental rate
15 is the annual rental rate paid by the taxpayer less any annual
16 rental rate received by the taxpayer from subrentals.

17 (12) The average value of property shall be determined by
18 averaging the values at the beginning and ending of the tax
19 period but the tax administrator may require the averaging of
20 monthly values during the tax period if reasonably required to
21 reflect properly the average value of the taxpayer's property.

22 (13) The payroll factor is a fraction, the numerator of
23 which is the total amount paid in this State during the tax
24 period by the taxpayer for compensation and the denominator of
25 which is the total compensation paid everywhere during the tax
26 period.

27 (14) Compensation is paid in this State if:

28 (A) The individual's service is performed entirely within
29 the State;

30 (B) The individual's service is performed both within and

1 without this State, but the service performed without the State
2 is incidental to the individual's service within this State; or

3 (C) Some of the service is performed in this State and the
4 base of operations or if there is no base of operations, the
5 place from which the service is directed or controlled is in
6 this State, or the base of operations or the place from which
7 the service is directed or controlled is not in any state in
8 which some part of the service is performed, but the
9 individual's residence is in this State.

10 (15) The sales factor is a fraction, the numerator of which
11 is the total sales of the taxpayer in this State during the tax
12 period, and the denominator of which is the total sales of the
13 taxpayer everywhere during the tax period.

14 (16) Sales of tangible personal property are in this State
15 if the property is delivered or shipped to a purchaser, within
16 this State regardless of the f.o.b. point or other conditions of
17 the sale.

18 (17) Sales, other than sales of tangible personal property
19 and sales set forth in paragraphs (17.1) and (17.2), are in this
20 State if:

21 (A) The income-producing activity is performed in this
22 State; or

23 (B) The income-producing activity is performed both in and
24 outside this State and a greater proportion of the income-
25 producing activity is performed in this State than in any other
26 state, based on costs of performance.

27 (17.1) Sales of services are in this State if sales are
28 derived from customers within this State. If part of the sales
29 with respect to a specific contract or other agreement to
30 perform services is derived from customers from within this

1 State, sales are in this State in proportion to the sales
2 derived from customers within this State to total sales with
3 respect to that contract or agreement.

4 (17.2) In order to determine sales in this State of any
5 railroad, truck, bus, airline, pipeline, natural gas or water
6 transportation company that is required to determine its
7 business income pursuant to paragraph (1) of phrase (e) of this
8 subclause such company must convert the relevant fraction set
9 forth in phrase (b), (c) or (d) of this subclause to gross
10 receipts. Sales in this State are the result of multiplying
11 total gross receipts from relevant transportation activities by
12 the decimal equivalent of the relevant fraction set forth in
13 phrase (b), (c) or (d) of this subclause.

14 (18) If the allocation and apportionment provisions of this
15 definition do not fairly represent the extent of the taxpayer's
16 business activity in this State, the taxpayer may petition the
17 Secretary of Revenue or the Secretary of Revenue may require, in
18 respect to all or any part of the taxpayer's business activity:

19 (A) Separate accounting;

20 (B) The exclusion of any one or more of the factors;

21 (C) The inclusion of one or more additional factors which
22 will fairly represent the taxpayer's business activity in this
23 State; or

24 (D) The employment of any other method to effectuate an
25 equitable allocation and apportionment of the taxpayer's income.
26 In determining the fairness of any allocation or apportionment,
27 the Secretary of Revenue may give consideration to the
28 taxpayer's previous reporting and its consistency with the
29 requested relief.

30 * * *

1 (e) Corporations That are Members of a Unitary Business.

2 (1) Notwithstanding any contrary provisions of this article,
3 for taxable years that begin on or after January 1, 2009,
4 business income of a corporation that is a member of a unitary
5 business that consists of two or more corporations, at least one
6 of which does not transact its entire business in this State, is
7 determined by combining the business income of either all
8 corporations, other than as set forth below, that are water's-
9 edge basis members or all corporations, other than as set forth
10 below, that are worldwide members of the unitary business.

11 Business income from an intercompany transaction between
12 included corporations of a unitary business shall be deferred in
13 the manner set forth under 26 CFR 1.1502-13 (relating to
14 intercompany transactions) in determining the business income of
15 a corporation that is a member of that unitary business.
16 Business income of the following corporations is not included in
17 the determination of combined business income:

18 (i) any corporation subject to taxation under Article VII,
19 VIII, IX or XV;

20 (ii) any corporation specified in the definition of
21 "institution" in section 701.5 that would be subject to taxation
22 under Article VII were it located, as defined in section 701.5,
23 in this State;

24 (iii) any corporation commonly known as a title insurance
25 company that would be subject to taxation under Article VIII
26 were it incorporated in this State;

27 (iv) any corporation specified as an insurance company,
28 association or exchange in Article IX that would be subject to
29 taxation under Article IX were its insurance business transacted
30 in this State;

1 (v) any corporation specified in the definition of
2 "institution" in section 1501 that would be subject to taxation
3 under Article XV were it located, as defined in section 1501, in
4 this State; or

5 (vi) any corporation that is a small corporation, as defined
6 in section 301(s.2), or a qualified Subchapter S subsidiary, as
7 defined in section 301(o.3).

8 (2) Notwithstanding any contrary provisions of this article,
9 all corporations that are required to compute business income
10 under paragraph (1) are entitled to apportion such business
11 income when one corporation of the same unitary business is
12 entitled to apportion such business income. Notwithstanding any
13 contrary provisions of this article, for taxable years that
14 begin on or after January 1, 2009, the denominator of the
15 apportionment fraction of a corporation that is required to
16 compute its business income under paragraph (1) shall be
17 computed on a combined basis for all included corporations of
18 the unitary business. Gross receipts from an intercompany
19 transaction between included corporations of a unitary business
20 are eliminated unless the gross receipts are derived from
21 transactions that are deferred in the manner set forth under 26
22 CFR 1.1502-13 in computing the numerator and denominator of the
23 apportionment fraction of a corporation that is required to
24 compute its business income under paragraph (1). Gross receipts
25 from transactions that had been deferred in the manner set forth
26 in 26 CFR 1.1502-13 are included in a corporation's
27 apportionment fraction during the same taxable year that it
28 realizes business income that had been deferred due to the
29 transaction. The apportionment fraction of the following
30 corporations is not included in the determination of the

1 combined apportionment fraction:

2 (i) any corporation subject to taxation under Article VII,
3 VIII, IX or XV;

4 (ii) any corporation specified in the definition of
5 "institution" in section 701.5 that would be subject to taxation
6 under Article VII were it located, as defined in section 701.5,
7 in this State;

8 (iii) any corporation commonly known as a title insurance
9 company that would be subject to taxation under Article VIII
10 were it incorporated in this State;

11 (iv) any corporation specified as an insurance company,
12 association or exchange in Article IX that would be subject to
13 taxation under Article IX were its insurance business transacted
14 in this State;

15 (v) any corporation specified in the definition of
16 "institution" in section 1501 that would be subject to taxation
17 under Article XV were it located, as defined in section 1501, in
18 this State;

19 (vi) any corporation that is a small corporation, as defined
20 in section 301(s.2), or a qualified Subchapter S subsidiary, as
21 defined in section 301(o.3).

22 (3) A corporation that is required to compute its business
23 income under paragraph (1) shall apportion such combined
24 business income by multiplying such combined business income by
25 a fraction which is the combined apportionment fraction set
26 forth in paragraph (2).

27 (4) Nonbusiness income of a corporation that is required to
28 compute business income under paragraph (1) shall be allocated
29 as provided in paragraphs (5) through (8) of phrase (a) of
30 subclause 2 of the definition of "taxable income."

1 (5) Each corporation that is a member of a unitary business
2 that consists of two or more corporations determines its tax
3 liability based on its apportioned share of the combined
4 business income of the unitary business plus its nonbusiness
5 income or loss allocated to this State, minus its net loss
6 deduction.

7 (6) If any provision of this phrase operates so that an
8 amount is added to or deducted from taxable income for a taxable
9 year for any corporation of a unitary business that previously
10 had been added to or deducted from taxable income of any
11 corporation of the same unitary business, an appropriate
12 adjustment shall be made for the taxable year in order to
13 prevent double taxation or double deduction. If this adjustment
14 is not made by the appropriate corporation of the unitary
15 business, the Secretary of Revenue is authorized to make this
16 adjustment.

17 (7) The Secretary of Revenue has the authority and
18 responsibility to make adjustments to insure that a corporation
19 does not incur an unfair penalty nor realize an unfair benefit
20 because it is required to compute its business income under
21 paragraph (1). Fairness shall be measured by whether the
22 corporation's income allocated and apportioned to this State
23 fairly reflects the corporation's share of the unitary business
24 conducted in this State in the taxable year.

25 * * *

26 4. * * *

27 (c) (1) The net loss deduction shall be the lesser of:

28 (A) (I) For taxable years beginning before January 1, 2007,
29 two million dollars (\$2,000,000)[;] or the amount of the net
30 loss or losses which may be carried over to the taxable year or

1 taxable income as determined under subclause 1 or, if
2 applicable, subclause 2;

3 (II) For taxable years beginning after December 31, 2006,
4 through taxable years beginning on or before December 31, 2008,
5 the greater of twelve and one-half per cent of taxable income as
6 determined under subclause 1 or, if applicable, subclause 2 or
7 three million dollars (\$3,000,000)[; or] or the amount of the
8 net loss or losses which may be carried over to the taxable year
9 or taxable income as determined under subclause 1 or, if
10 applicable, subclause 2; or

11 (III) Except as set forth in paragraph (4), there is no
12 maximum on the amount of the net loss deduction allowed for
13 taxable years beginning on or after January 1, 2009.

14 [(B) The amount of the net loss or losses which may be
15 carried over to the taxable year or taxable income as determined
16 under subclause 1 or, if applicable, subclause 2.]

17 (1.1) In no event shall the net loss deduction include more
18 than five hundred thousand dollars (\$500,000), in the aggregate,
19 of net losses from taxable years 1988 through 1994.

20 (2) (A) A net loss for a taxable year may only be carried
21 over pursuant to the following schedule:

Taxable Year	Carryover
1981	1 taxable year
1982	2 taxable years
1983-1987	3 taxable years
1988	2 taxable years plus
	1 taxable year
	starting with the
	1995 taxable year
1989	1 taxable year plus

1		2 taxable years
2		starting with the
3		1995 taxable year
4	1990-1993	3 taxable years
5		starting with the
6		1995 taxable year
7	1994	1 taxable year
8	1995-1997	10 taxable years
9	1998 and thereafter	20 taxable years

10 (B) The earliest net loss shall be carried over to the
11 earliest taxable year to which it may be carried under this
12 schedule. The total net loss deduction allowed in any taxable
13 year shall not exceed:

14 (I) Two million dollars (\$2,000,000) for taxable years
15 beginning before January 1, 2007.

16 (II) The greater of twelve and one-half per cent of the
17 taxable income as determined under subclause 1 or, if
18 applicable, subclause 2 or three million dollars (\$3,000,000)
19 for taxable years beginning after December 31, 2006[.], through
20 taxable years beginning on or before December 31, 2008.

21 (III) Except as set forth in paragraph (4), there is no
22 maximum on the amount of the net loss deduction allowed for
23 taxable years beginning on or after January 1, 2009.

24 (3) The entire net loss for a taxable year that begins on or
25 after January 1, 2009, is available to be carried over to a
26 taxable year that begins on or after January 1, 2010, pursuant
27 to the schedule set forth in paragraph (2) and shall be carried
28 over to the earliest taxable year to which it may be carried
29 pursuant to the schedule set forth in paragraph (2).

30 (4) The amount of unused net loss from all taxable years

1 that begin prior to January 1, 2009, that may be carried over to
2 any taxable year that begins on or after January 1, 2009, is
3 limited to two million dollars (\$2,000,000) per taxable year and
4 may only be used by the corporation that realized the net loss.
5 If a corporation is required to determine its business income
6 pursuant to paragraph (1) of phrase (e) of subclause 2, it may
7 only use such loss in a year to the extent that it has taxable
8 income before use of such loss determined as if it were a
9 separate company.

10 (5) Any net loss realized for a taxable year that begins on
11 or after January 1, 2009, by one corporation of a unitary
12 business may be used by other corporations of the same unitary
13 business, provided that the corporation that realized the net
14 loss must first use the portion of such net loss to reduce its
15 taxable income to zero. Other corporations of the same unitary
16 business that have insufficient net losses of their own to
17 reduce their tax liabilities to zero may then use the remainder
18 of such net loss in proportion to their remaining taxable
19 incomes before the application of such loss.

20 (6) Any net loss realized for a taxable year that begins on
21 or after January 1, 2009, unused by a corporation which
22 subsequently becomes a member of another unitary business may
23 only be used by that corporation.

24 * * *

25 (5) "Taxable year." [The] 1. Except as set forth in
26 subclause 2, the taxable year which the corporation, or any
27 consolidated group with which the corporation participates in
28 the filing of consolidated returns, actually uses in reporting
29 taxable income to the Federal Government[.], or which the
30 corporation would have used in reporting taxable income to the

1 Federal Government had it been required to report its taxable
2 income to the Federal Government. With regard to the tax imposed
3 by Article IV of this act (relating to the Corporate Net Income
4 Tax), the terms "annual year," "fiscal year," "annual or fiscal
5 year," "tax year" and "tax period" shall be the same as the
6 corporation's taxable year, as defined in this [paragraph.]
7 subclause or subclause 2.

8 2. All corporations of a unitary business shall have a
9 common taxable year for purposes of computing tax due under this
10 article. The taxable year for such purposes is the common
11 taxable year adopted, in a manner prescribed by the department,
12 by all corporations of a unitary business. The common taxable
13 year must be used by all corporations of that unitary business
14 in the year of adoption and all future years unless otherwise
15 permitted by the department.

16 * * *

17 (8) "Tax haven." A jurisdiction that at the beginning of a
18 taxable year is a tax haven as identified by the Organization
19 for Economic Co-operation and Development, plus the
20 sovereignities of Bermuda, the Cayman Islands, the Bailiwick of
21 Jersey and the Grand Duchy of Luxembourg.

22 (9) "Unitary business." A single economic enterprise that
23 is made up of separate parts of a single corporation, of a
24 commonly controlled group of corporations, or both, that are
25 sufficiently interdependent, integrated and interrelated through
26 their activities so as to provide a synergy and mutual benefit
27 that produces a sharing or exchange of value among them and a
28 significant flow of value to the separate parts. A unitary
29 business includes only those parts and corporations which may be
30 included as a unitary business under the Constitution of the

1 United States.

2 (10) "Water's-edge basis." A system of reporting that
3 includes the business income and apportionment factor of certain
4 corporations of a unitary business, described as follows:

5 1. The business income and apportionment factor of any
6 member incorporated in the United States or formed under the
7 laws of any state of the United States, the District of
8 Columbia, any territory or possession of the United States or
9 the Commonwealth of Puerto Rico.

10 2. The business income and apportionment factor of any
11 member, regardless of the place incorporated or formed, if the
12 average of its property, payroll and sales factors within the
13 United States is twenty per cent or more.

14 3. The business income and apportionment factor of any
15 member which is a domestic international sales corporation as
16 described in sections 991, 992, 993 and 994 of the Internal
17 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 991, 992,
18 993 and 994); a foreign sales corporation as described in
19 sections 921, 922, 923, 924, 925, 926 and 927 of the Internal
20 Revenue Code of 1986 (26 U.S.C. §§ 921, 922, 923, 924, 925, 926
21 and 927); or any member which is an export trade corporation, as
22 described in sections 970 and 971 of the Internal Revenue Code
23 of 1986 (26 U.S.C. §§ 970 and 971).

24 4. Any member not described in subclauses 1, 2 and 3 shall
25 include the portion of its business income derived from or
26 attributable to sources within the United States, as determined
27 under the Internal Revenue Code of 1986 without regard to
28 Federal treaties, and its apportionment factor related thereto.

29 5. Any member that is a "controlled foreign corporation" as
30 defined in section 957 of the Internal Revenue Code of 1986 (26

1 U.S.C. § 957), to the extent the business income of that member
2 is income defined in section 952 of the Internal Revenue Code of
3 1986 (26 U.S.C. § 952), Subpart F income, not excluding lower-
4 tier subsidiaries' distributions of such income which were
5 previously taxed, determined without regard to Federal treaties,
6 and the apportionment factor related to that income; any item of
7 income received by a controlled foreign corporation and the
8 apportionment factor related to such income shall be excluded if
9 the corporation establishes to the satisfaction of the Secretary
10 of Revenue that such income was subject to an effective rate of
11 income tax imposed by a foreign country greater than ninety per
12 cent of the maximum rate of tax specified in section 11 of the
13 Internal Revenue Code of 1986 (26 U.S.C. § 11). The effective
14 rate of income tax determination shall be based upon the
15 methodology set forth under 26 CFR 1.954-1 (relating to foreign
16 base company income).

17 6. The business income and apportionment factor of any
18 member that is not described in subclause 1, 2, 3, 4 and 5 and
19 that is doing business in a tax haven. The business income and
20 apportionment factor of a corporation doing business in a tax
21 haven shall be excluded if the corporation establishes to the
22 satisfaction of the Secretary of Revenue that its income was
23 subject to an effective rate of income tax imposed by a country
24 greater than ninety per cent of the maximum rate of tax
25 specified in section 11 of the Internal Revenue Code of 1986 (26
26 U.S.C. § 11).

27 (11) "Commonly controlled group." For a corporation, the
28 corporation is a member of a group of two or more corporations
29 and more than fifty per cent of the voting stock of each member
30 of the group is directly or indirectly owned by a common owner

1 or by common owners, either corporate or noncorporate, or by one
2 or more of the member corporations of the group.

3 (12) "Separate company." A corporation that is not a member
4 of a unitary business that consists of two or more corporations.

5 (13) "Tax." Includes interest, penalties and additions to
6 tax unless a more limited meaning is disclosed by the context.

7 Section 2. Section 402(b) of the act, amended June 29, 2002
8 (P.L.559, No.89), is amended to read:

9 Section 402. Imposition of Tax.--* * *

10 (b) The annual rate of tax on corporate net income imposed
11 by subsection (a) for taxable years beginning for the calendar
12 year or fiscal year on or after the dates set forth shall be as
13 follows:

14	Taxable Year	Tax Rate
----	--------------	----------

15	January 1, 1995, [and	
----	-----------------------	--

16	each taxable	
----	--------------	--

17	year thereafter]	
----	------------------	--

18	<u>through taxable</u>	
----	------------------------	--

19	<u>years beginning</u>	
----	------------------------	--

20	<u>December 31, 2008</u>	9.99%
----	--------------------------	-------

21	<u>January 1, 2009, and</u>	
----	-----------------------------	--

22	<u>each taxable</u>	
----	---------------------	--

23	<u>year thereafter</u>	<u>7.90%</u>
----	------------------------	--------------

24	* * *	
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25 Section 3. Section 403 of the act is amended by adding
26 subsections to read:

27 Section 403. Reports and Payment of Tax.--* * *

28 (a.1) (1) Each corporation subject to tax under this
29 article is required to file an annual report in accordance with
30 this section. Each corporation that is a member of a unitary

business that consists of two or more corporations, unless excluded by the provisions of this article, shall file as part of a combined annual report. The corporations of the unitary business shall designate one member that is subject to tax under this article to file the combined annual report and to act as agent on behalf of all other corporations that are members of the unitary business. Each corporation that is a member of a unitary business is responsible for its tax liability under this article.

(2) The oath or affirmation of the designated member's president, vice president or other principal officer, and of its treasurer or assistant treasurer shall constitute the oath or affirmation of each corporation that is a member of that unitary business.

(3) The designated member shall transmit to the department upon a form prescribed by the department, an annual combined report under oath or affirmation of its president, vice president or other principal officer, and of its treasurer or assistant treasurer. Such report shall set forth:

(i) All corporations included in the unitary business.

(ii) All necessary data, both in the aggregate and for each corporation of the unitary business, that sets forth the determination of tax liability for each corporation of the unitary business.

(iii) Any other information that the department may require.

(a.2) (1) Activities that evidence a significant flow of value among commonly controlled corporations, include, but are not limited to, the following:

(i) Assisting in the acquisition of equipment.

(ii) Assisting with filling personnel needs.

1 (iii) Lending funds or guaranteeing loans.

2 (iv) Interplay in the area of corporate expansion.

3 (v) Providing technical assistance.

4 (vi) Supervising.

5 (vii) Providing general operational guidance.

6 (viii) Providing overall operational strategic advice.

7 (ix) Common use of trade names and patents.

8 (2) Significant flow of value must be more than the flow of
9 funds arising out of passive investment and consists of more
10 than periodic financial oversight.

11 (a.3) (1) With respect to a commonly controlled group of
12 corporations, the presence of any of these factors creates a
13 presumption of a unitary business:

14 (i) Corporations engaged in the same type of business.

15 (ii) Corporations engaged in different steps in a vertically
16 structured enterprise.

17 (iii) Strong centralized management of corporations.

18 (2) A corporation newly formed by a corporation that is a
19 member of a unitary business is rebuttably presumed to be a
20 member of the unitary business.

21 (3) A corporation that owns a controlling interest in two or
22 more corporations of a unitary business is rebuttably presumed
23 to be a member of the unitary business.

24 (4) A corporation that permits one or more other
25 corporations of a unitary business to substantially use its
26 patents, trademarks, service marks, logo-types, trade secrets,
27 copyrights or other proprietary assets or that is principally
28 engaged in loaning money to one or more other corporations of a
29 unitary business is rebuttably presumed to be a member of the
30 unitary business. This presumption only applies to a commonly

1 controlled group of corporations.

2 (a.4) As far as applicable to a specific unitary business,
3 unless there is a revision of applicable State law or unless a
4 corporation is not included under the provisions of this
5 article, there is a rebuttable presumption for all tax years
6 that begin in years 2009 and 2010 that a unitary business of two
7 or more corporations includes at least all corporations that are
8 part of a unitary business under the law of any state of the
9 United States in which the corporation files a tax report or tax
10 return of combined net income for the same tax year.

11 (a.5) Unless an election is made to use a worldwide basis of
12 accounting, a corporation that is a member of a unitary business
13 of two or more corporations must determine its business income
14 and apportionment factor upon a water's-edge basis. This basis
15 applies to all corporations of the unitary business. If an
16 election is made to use a worldwide basis of accounting, all
17 corporations of the unitary business must make the election,
18 upon a form, prescribed, prepared and furnished by the
19 department. This election binds all corporations of the unitary
20 business for the period of time that the election remains in
21 effect. An initial election is binding for a period of seven
22 years. Subsequent elections are binding for a period of five
23 years.

24 * * *

25 Section 4. Section 404 of the act is amended to read:

26 Section 404. Consolidated Reports.--The department shall not
27 permit any corporation owning or controlling, directly or
28 indirectly, any of the voting capital stock of another
29 corporation or of other corporations, subject to the provisions
30 of this article, to make a consolidated report[, showing the

1 combined net income].

2 Section 5. Section 3003.3(d) of the act, amended October 18,
3 2006 (P.L.1149, No.119), is amended and the section is amended
4 by adding subsections to read:

5 Section 3003.3. Underpayment of Estimated Tax.--* * *

6 (d) Notwithstanding the provisions of the preceding
7 subsections, other than as set forth in subsection (d.1).
8 interest with respect to any underpayment of any installment of
9 estimated tax shall not be imposed if the total amount of all
10 payments of estimated tax made on or before the last date
11 prescribed for the payment of such installment equals or exceeds
12 the amount which would have been required to be paid on or
13 before such date if the estimated tax were an amount equal to
14 the tax computed at the rates applicable to the taxable year,
15 including any minimum tax imposed, but otherwise on the basis of
16 the facts shown on the report of the taxpayer for, and the law
17 applicable to, the safe harbor base year, adjusted for any
18 changes to sections 401, 601, 602 and 1101 enacted for the
19 taxable year, if a report showing a liability for tax was filed
20 by the taxpayer for the safe harbor base year. If the total
21 amount of all payments of estimated tax made on or before the
22 last date prescribed for the payment of such installment does
23 not equal or exceed the amount required to be paid per the
24 preceding sentence, but such amount is paid after the date the
25 installment was required to be paid, then the period of
26 underpayment shall run from the date the installment was
27 required to be paid to the date the amount required to be paid
28 per the preceding sentence is paid. Provided, that if the total
29 tax for the safe harbor base year exceeds the tax shown on such
30 report by ten per cent or more, the total tax adjusted to

1 reflect the current tax rate shall be used for purposes of this
2 subsection. In the event that the total tax for the safe harbor
3 base year exceeds the tax shown on the report by ten per cent or
4 more, interest resulting from the utilization of such total tax
5 in the application of the provisions of this subsection shall
6 not be imposed if, within forty-five days of the mailing date of
7 each assessment, payments are made such that the total amount of
8 all payments of estimated tax equals or exceeds the amount which
9 would have been required to be paid on or before such date if
10 the estimated tax were an amount equal to the total tax adjusted
11 to reflect the current tax rate. In any case in which the
12 taxable year for which an underpayment of estimated tax may
13 exist is a short taxable year, in determining the tax shown on
14 the report or the total tax for the safe harbor base year, the
15 tax will be reduced by multiplying it by the ratio of the number
16 of installment payments made in the short taxable year to the
17 number of installment payments required to be made for the full
18 taxable year.

19 (d.1) (1) Notwithstanding the provisions of subsections
20 (a), (b) and (c), interest with respect to any underpayment of
21 any installment of estimated corporate net income tax for any
22 tax year that begins in year 2009 or 2010 shall not be imposed
23 if the total amount of all payments of estimated corporate net
24 income tax made on or before the last date prescribed for the
25 payment of such installment equals or exceeds the amount which
26 would have been required to be paid on or before such date if
27 the estimated tax were an amount equal to the tax shown on the
28 report of the taxpayer for the safe harbor base year, if a
29 report showing a liability for tax was filed by the taxpayer for
30 the safe harbor base year.

1 (2) If the total amount of all payments of estimated tax
2 made on or before the last date prescribed for the payment of
3 such installment does not equal or exceed the amount required to
4 be paid under paragraph (1), but such amount is paid after the
5 date the installment was required to be paid, then the period of
6 underpayment shall run from the date the installment was
7 required to be paid to the date the amount required to be paid
8 under paragraph (1) is paid.

9 (3) If the total tax for the safe harbor base year exceeds
10 the tax shown on such report by ten per cent or more, the total
11 tax shall be used for purposes of this subsection. In the event
12 that the total tax for the safe harbor base year exceeds the tax
13 shown on the report by ten per cent or more, interest resulting
14 from the utilization of the total tax in the application of the
15 provisions of this subsection shall not be imposed if, within
16 forty-five days of the mailing date of a notice from the
17 department increasing the total tax, payments are made such that
18 the total amount of all payments of estimated tax equals or
19 exceeds the amount which would have been required to be paid on
20 or before such date if the estimated tax were an amount equal to
21 the total tax.

22 (4) In any case in which the taxable year for which an
23 underpayment of estimated tax may exist is a short taxable year,
24 in determining the tax shown on the report or the total tax for
25 the safe harbor base year, the tax shall be reduced by
26 multiplying it by the ratio of the number of installment
27 payments made in the short taxable year to the number of
28 installment payments required to be made for the full taxable
29 year.

30 (d.2) (1) If there is a substantial underpayment, as

1 defined in subsection (a), of any installment of estimated
2 corporate net income tax or estimated capital stock/franchise
3 tax for any taxable year beginning in 2009 or 2010, there shall
4 be imposed additional interest in an amount determined at one
5 hundred twenty per cent of the annual rate as provided by law
6 upon the entire underpayment for the period of the substantial
7 underpayment.

8 (2) The additional interest imposed by this subsection is in
9 addition to any other interest imposed on underpayments by this
10 section.

11 Section 6. The amendment or addition of the following
12 provisions shall apply to taxable years beginning after December
13 31, 2008:

14 (1) Section 401(3)1(a) and (b), 2(a) and (e) and 4(c)
15 and (5), (8), (9), (10), (11), (12) and (13) of the act.

16 (2) Section 402(b) of the act.

17 (3) Section 403(a.1), (a.2), (a.3), (a.4) and (a.5) of
18 the act.

19 (4) Section 404 of the act.

20 (5) Section 3003.3(d), (d.1) and (d.2) of the act.

21 Section 7. This act shall take effect July 1, 2007, or
22 immediately, whichever is later.