

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1588 Session of
2007

INTRODUCED BY D. EVANS, JUNE 18, 2007

REFERRED TO COMMITTEE ON APPROPRIATIONS, JUNE 18, 2007

AN ACT

1 Amending Title 74 (Transportation) of the Pennsylvania
2 Consolidated Statutes, providing for an oil company gross
3 profits tax; and making an appropriation.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 74 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 5

9 OIL COMPANY GROSS PROFITS TAX

10 Sec.

11 501. Definitions.

12 502. Imposition of tax.

13 503. Reports and payment of tax.

14 504. Restricted revenue account.

15 505. Procedure; enforcement; penalties.

16 506. Cost of tax and penalties.

17 § 501. Definitions.

18 The following words and phrases when used in this chapter

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Account." The Oil Company Gross Profits Tax Account
4 established in section 504 (relating to restricted revenue
5 account).

6 "Apportioned gross profits." The gross profits apportioned
7 to Pennsylvania by the apportionment fraction set forth in
8 section 502(d) (relating to imposition of tax).

9 "Business entity." All oil companies of a unitary business.

10 "Gross profits." If an oil company files an income tax
11 return with the Federal Government, gross profits as set forth
12 on such return. If an oil company does not file an income tax
13 return with the Federal Government, gross profits that would
14 have been returned to the Federal Government if such return had
15 been made. Gross profits of a business entity are calculated on
16 single entity basis, if a business entity is comprised of one
17 oil company, or a combined entity basis, if a business entity is
18 comprised of two or more oil companies.

19 "Gross receipts." All gross receipts of a business entity.
20 If an oil company files an income tax return with the Federal
21 Government, its gross receipts as set forth on such return. If
22 an oil company does not file an income tax return with the
23 Federal Government, gross receipts that would have been returned
24 to the Federal Government if such return had been made.

25 "Oil company." An entity that engages in the exploration,
26 drilling, importation, refining or wholesale distribution of
27 petroleum products.

28 "Petroleum products." Any product of the industrial
29 processing of crude oil and its fractionation products
30 manufactured or refined or used for the generation of power used

1 in an internal combustion engine to propel motor vehicles of any
2 kind or character and to generate heat. Petroleum products
3 include, but are not limited to, gasoline, diesel fuel,
4 kerosene, propane and any other product of crude oil used for
5 such purpose.

6 "Taxable year." The taxable year which an oil company, or
7 any consolidated group with which an oil company participates in
8 the filing of consolidated returns, actually uses in reporting
9 taxable income to the Federal Government. The terms "annual
10 year," "fiscal year," "annual or fiscal year," "tax year" and
11 "tax period" shall be the same as the oil company's taxable year
12 as defined in this definition.

13 "Unitary business." A single economic enterprise that is
14 made up either of separate parts of a single entity or of a
15 commonly controlled group of entities that are sufficiently
16 interdependent, integrated and interrelated through their
17 activities so as to provide a synergy and mutual benefit that
18 produces a sharing or exchange of value among them and a
19 significant flow of value to the separate parts.

20 "Wholesale distribution." The making of one or more
21 nonretail sales of petroleum products.

22 § 502. Imposition of tax.

23 (a) Imposition.--A business entity shall pay an excise tax
24 on its apportioned gross profits for exercising, whether in its
25 own name or through any person, association, business trust,
26 corporation, joint venture, limited liability company, limited
27 partnership, partnership or other entity, any of the following
28 privileges:

29 (1) Doing business within this Commonwealth.

30 (2) Carrying on activities within this Commonwealth.

1 (3) Having capital or property employed or used in this
2 Commonwealth.

3 (4) Owning property in this Commonwealth.

4 (5) Engaging in or transacting any activity in this
5 Commonwealth for the purpose of financial gain or profit.

6 (b) Rate.--The annual rate of tax on gross profits imposed
7 by subsection (a) shall be 6.17% for calendar years or fiscal
8 years beginning after December 31, 2007.

9 (c) Tax in lieu of corporate net income tax.--The tax
10 imposed by this chapter shall be in lieu of the tax imposed by
11 Article IV of the act of March 4, 1971 (P.L.6, No.2), known as
12 the Tax Reform Code of 1971.

13 (d) Apportionment fraction.--If at least one oil company of
14 a business entity transacts part of its business outside
15 Pennsylvania, the apportionment fraction of a business entity is
16 Pennsylvania gross receipts divided by gross receipts
17 everywhere. Gross receipts from the sale of tangible personal
18 property are Pennsylvania gross receipts based on the sourcing
19 rule set forth in section 401(3)2(a)(16) of the Tax Reform Code
20 of 1971. All other gross receipts are Pennsylvania gross
21 receipts based on the sourcing rule set forth in section
22 401(3)2(a)(17) of the Tax Reform Code of 1971. All transactions
23 among oil companies of a unitary business are eliminated in
24 computing the numerator and the denominator of the apportionment
25 fraction of a business entity. If all oil companies of a
26 business entity transact all of their business within
27 Pennsylvania, the business entity is not entitled to apportion
28 its gross profits.

29 § 503. Reports and payment of tax.

30 A business entity liable to tax under this chapter shall file

a report of gross profits taxable under this chapter and pay tax due as set forth in section 403 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. The oil companies of a business entity liable to tax under this chapter shall designate one oil company to act as agent on behalf of the business entity. The agent shall file the report and pay the tax required by this section. A person authorized to file tax returns or tax reports on behalf of the oil company that is the agent of the business entity shall file the report under oath or affirmation.

§ 504. Restricted revenue account.

(a) Establishment of account.--There is established a restricted account in the General Fund to be known as the Oil Company Gross Profits Tax Account. Except as provided in subsection (c), money paid into the account shall be appropriated annually for mass transportation purposes.

(b) Deposit.--The tax collected pursuant to this chapter shall be deposited and paid into the account.

(c) Transfer.--On June 15, 2008, \$17,000,000 shall be transferred from the account to the General Fund. On September 15, 2008, December 15, 2009, March 15, 2009, and June 15, 2009, and on each September 15, December 15, March 15 and June 15, thereafter, \$17,500,000 shall be transferred from the account to the General Fund.

§ 505. Procedure; enforcement; penalties.

(a) Applicability of Tax Reform Code.--Except as set forth in subsection (b), Parts III, IV, V, VI and VII of Article IV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, shall apply to the tax imposed under this chapter.

(b) Exception.--Section 404 of the Tax Reform Code of 1971

1 shall not apply to the tax imposed by this chapter.

2 (c) Underpayment.--In addition to any other penalty provided
3 by law, if the amount of any estimated payment of tax due or
4 payment of tax due is underpaid, a penalty shall be imposed in
5 the amount of 5% of the underpayment per month for the period of
6 the underpayment, up to a maximum of 25% of the underpayment.

7 (d) Failure to file.--In addition to any other penalty
8 provided by law, if a business entity fails to file the report
9 required by section 503 (relating to reports and payment of tax)
10 within 270 days of the original due date of the report, a
11 penalty of \$500 shall be imposed on the business entity.

12 § 506. Cost of tax and penalties.

13 (a) Cost.--The cost of the tax imposed in section 502
14 (relating to imposition of tax), or any portion thereof, shall
15 not be added to, separately stated with or included in the
16 purchase price charged to a purchaser of petroleum products.

17 (b) Penalties.--An individual who willfully violates
18 subsection (a) commits a misdemeanor of the third degree. In
19 addition, the seller of the petroleum products shall be required
20 to pay a penalty equal to the amount added to, separately stated
21 with or included with the purchase price charged to the
22 purchaser.

23 (c) Attorney General.--In addition to the authority
24 conferred upon the Attorney General by the act of October 15,
25 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act,
26 the Attorney General shall have the authority to investigate and
27 to institute criminal proceedings for any violation of this
28 section. No persons charged with a violation of this section by
29 the Attorney General shall have standing to challenge the
30 authority of the Attorney General to investigate or prosecute

1 the case. If a challenge is made, the challenge shall be
2 dismissed and no relief shall be made available in the courts of
3 this Commonwealth to the person making the challenge.

4 Section 2. The sum of \$1,000,000, or as much thereof as may
5 be necessary, is hereby appropriated to the Office of Attorney
6 General for the fiscal year July 1, 2007, to June 30, 2008, from
7 the Oil Company Gross Profits Tax Account to carry out the
8 provisions of 74 Pa.C.S. § 506(c).

9 Section 3. The addition of 74 Pa.C.S. Ch. 5 shall apply to
10 taxable years beginning after December 31, 2007.

11 Section 4. This act shall take effect immediately.