

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2150 Session of 2012

INTRODUCED BY REED, DePASQUALE, CHRISTIANA, BENNINGHOFF, VULAKOVICH, AUMENT, BAKER, BOBACK, BOYD, CALTAGIRONE, CLYMER, CREIGHTON, CUTLER, DALEY, DUNBAR, D. EVANS, J. EVANS, EVERETT, FLECK, GEIST, GERGELY, GIBBONS, GINGRICH, GROVE, HALUSKA, HARHART, HARPER, HARRIS, HELM, HENNESSEY, HESS, M. K. KELLER, KILLION, KNOWLES, MAJOR, MALONEY, MANN, MARSICO, MICOZZIE, MILLARD, MIRABITO, MOUL, MURPHY, OBERLANDER, O'NEILL, PAYNE, PETRI, PICKETT, QUIGLEY, QUINN, READSHAW, REESE, ROCK, SAYLOR, SIMMONS, S. H. SMITH, STEPHENS, STEVENSON, STURLA, SWANGER, TALLMAN, TOBASH, VEREB AND WATSON, JANUARY 26, 2012

REFERRED TO COMMITTEE ON FINANCE, JANUARY 26, 2012

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," in corporate net income, further providing for  
 11 definitions and for imposition of tax.

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

14 Section 1. Section 401(3)2(a)(9) and 4(c) of the act of  
 15 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of  
 16 1971, amended October 9, 2009 (P.L.451, No.48), are amended,  
 17 clause (3)1 is amended by adding a paragraph and the section is  
 18 amended by adding clauses to read:

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

5 \* \* \*

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

7 (t) For taxable years beginning after December 31, 2012, no  
8 deduction shall be allowed for an intangible expense or cost  
9 paid, accrued or incurred in connection with one or more  
10 transactions with an affiliated entity. The following apply:

11 (i) The adjustment required by this term shall not apply to  
12 a transaction that was directly related to a valid business  
13 purpose.

14 (ii) In calculating taxable income, when the taxpayer is  
15 engaged in one or more transactions with an affiliated entity  
16 that was subject to tax in this Commonwealth or another state or  
17 possession of the United States on a tax base that included the  
18 intangible expense or cost paid, accrued or incurred by the  
19 taxpayer, the taxpayer shall receive a credit against tax due in  
20 this Commonwealth in an amount equal to the tax paid by the  
21 affiliated entity with respect to the portion of its income  
22 representing the intangible expense paid, accrued or incurred by  
23 the taxpayer multiplied by the apportionment factor of the  
24 taxpayer in this Commonwealth. The credit shall not exceed the  
25 taxpayer's liability in this Commonwealth attributable to the  
26 net income taxed as a result of the adjustment required by this  
27 term.

28 2. In case the entire business of any corporation, other  
29 than a corporation engaged in doing business as a regulated  
30 investment company as defined by the Internal Revenue Code of

1 1986, is not transacted within this Commonwealth, the tax  
2 imposed by this article shall be based upon such portion of the  
3 taxable income of such corporation for the fiscal or calendar  
4 year, as defined in subclause 1 hereof, and may be determined as  
5 follows:

6 (a) Division of Income.

7 \* \* \*

8 (9) (A) Except as provided in subparagraph (B):

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

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

20 (iii) For taxable years beginning after December 31, 2008,  
21 all business income shall be apportioned to this State by  
22 multiplying the income by a fraction, the numerator of which is  
23 the sum of eight and a half times the property factor, eight and  
24 a half times the payroll factor and eighty-three times the sales  
25 factor and the denominator of which is one hundred.

26 (iv) For taxable years beginning after December 31, 2009,  
27 all business income shall be apportioned to this State by  
28 multiplying the income by a fraction, the numerator of which is  
29 the sum of five times the property factor, five times the  
30 payroll factor and ninety times the sales factor and the

1 denominator of which is one hundred.

2 (v) For taxable years beginning after December 31, 2012, all  
3 business income shall be apportioned to this State by  
4 multiplying the income by the sales factor.

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

10 \* \* \*

11 4. \* \* \*

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

13 (A) (I) For taxable years beginning before January 1, 2007,  
14 two million dollars (\$2,000,000);

15 (II) For taxable years beginning after December 31, 2006,  
16 the greater of twelve and one-half per cent of taxable income as  
17 determined under subclause 1 or, if applicable, subclause 2 or  
18 three million dollars (\$3,000,000);

19 (III) For taxable years beginning after December 31, 2008,  
20 the greater of fifteen per cent of taxable income as determined  
21 under subclause 1 or, if applicable, subclause 2 or three  
22 million dollars (\$3,000,000);

23 (IV) For taxable years beginning after December 31, 2009,  
24 the greater of twenty per cent of taxable income as determined  
25 under subclause 1 or, if applicable, subclause 2 or three  
26 million dollars (\$3,000,000); [or]

27 (V) For taxable years beginning after December 31, 2013, the  
28 greater of twenty-nine per cent of taxable income as determined  
29 under subclause 1 or, if applicable, subclause 2 or four million  
30 dollars (\$4,000,000);

1 (VI) For taxable years beginning after December 31, 2014,  
2 the greater of thirty-eight per cent of taxable income as  
3 determined under subclause 1 or, if applicable, subclause 2 or  
4 five million dollars (\$5,000,000);

5 (VII) For taxable years beginning after December 31, 2015,  
6 the greater of forty-seven per cent of taxable income as  
7 determined under subclause 1 or, if applicable, subclause 2 or  
8 six million dollars (\$6,000,000);

9 (VIII) For taxable years beginning after December 31, 2016,  
10 the greater of fifty-six per cent of taxable income as  
11 determined under subclause 1 or, if applicable, subclause 2 or  
12 seven million dollars (\$7,000,000);

13 (IX) For taxable years beginning after December 31, 2017,  
14 the greater of sixty-four per cent of taxable income as  
15 determined under subclause 1 or, if applicable, subclause 2 or  
16 eight million dollars (\$8,000,000);

17 (X) For taxable years beginning after December 31, 2018, the  
18 greater of seventy-three per cent of taxable income as  
19 determined under subclause 1 or, if applicable, subclause 2 or  
20 nine million dollars (\$9,000,000);

21 (XI) For taxable years beginning after December 31, 2019,  
22 the greater of eighty-two per cent of taxable income as  
23 determined under subclause 1 or, if applicable, subclause 2 or  
24 ten million dollars (\$10,000,000);

25 (XII) For taxable years beginning after December 31, 2020,  
26 the greater of ninety-one per cent of taxable income as  
27 determined under subclause 1 or, if applicable, subclause 2 or  
28 eleven million dollars (\$11,000,000);

29 (XIII) For taxable years beginning after December 31, 2021,  
30 taxable income as determined under subclause 1 or, if

1 applicable, subclause 2; or

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

5 (1.1) In no event shall the net loss deduction include more  
6 than five hundred thousand dollars (\$500,000), in the aggregate,  
7 of net losses from taxable years 1988 through 1994.

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

10	Taxable Year	Carryover
11	1981	1 taxable year
12	1982	2 taxable years
13	1983-1987	3 taxable years
14	1988	2 taxable years plus 1
15		taxable year starting
16		with the 1995 taxable
17		year
18	1989	1 taxable year plus 2
19		taxable years starting
20		with the 1995 taxable
21		year
22	1990-1993	3 taxable years starting
23		with the 1995 taxable
24		year
25	1994	1 taxable year
26	1995-1997	10 taxable years
27	1998 and thereafter	20 taxable years

28 (B) The earliest net loss shall be carried over to the  
29 earliest taxable year to which it may be carried under this  
30 schedule. The total net loss deduction allowed in any taxable

1 year shall not exceed:

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

4 (II) The greater of twelve and one-half per cent of the  
5 taxable income as determined under subclause 1 or, if  
6 applicable, subclause 2 or three million dollars (\$3,000,000)  
7 for taxable years beginning after December 31, 2006.

8 (III) The greater of fifteen per cent of the taxable income  
9 as determined under subclause 1 or, if applicable, subclause 2  
10 or three million dollars (\$3,000,000) for taxable years  
11 beginning after December 31, 2008.

12 (IV) The greater of twenty per cent of the taxable income as  
13 determined under subclause 1 or, if applicable, subclause 2 or  
14 three million dollars (\$3,000,000) for taxable years beginning  
15 after December 31, 2009.

16 (V) The greater of twenty-nine per cent of taxable income as  
17 determined under subclause 1 or, if applicable, subclause 2 or  
18 four million dollars (\$4,000,000) for taxable years beginning  
19 after December 31, 2013.

20 (VI) The greater of thirty-eight per cent of taxable income  
21 as determined under subclause 1 or, if applicable, subclause 2  
22 or five million dollars (\$5,000,000) for taxable years beginning  
23 after December 31, 2014.

24 (VII) The greater of forty-seven per cent of taxable income  
25 as determined under subclause 1 or, if applicable, subclause 2  
26 or six million dollars (\$6,000,000) for taxable years beginning  
27 after December 31, 2015.

28 (VIII) The greater of fifty-six per cent of taxable income  
29 as determined under subclause 1 or, if applicable, subclause 2  
30 or seven million dollars (\$7,000,000) for taxable years

1 beginning after December 31, 2016.

2 (IX) The greater of sixty-four per cent of taxable income as  
3 determined under subclause 1 or, if applicable, subclause 2 or  
4 eight million dollars (\$8,000,000) for taxable years beginning  
5 after December 31, 2017.

6 (X) The greater of seventy-three per cent of taxable income  
7 as determined under subclause 1 or, if applicable, subclause 2  
8 or nine million dollars (\$9,000,000) for taxable years beginning  
9 after December 31, 2018.

10 (XI) The greater of eighty-two per cent of taxable income as  
11 determined under subclause 1 or, if applicable, subclause 2 or  
12 ten million dollars (\$10,000,000) for taxable years beginning  
13 after December 31, 2019.

14 (XII) The greater of ninety-one per cent of taxable income  
15 as determined under subclause 1 or, if applicable, subclause 2  
16 or eleven million dollars (\$11,000,000) for taxable years  
17 beginning after December 31, 2020.

18 (XIII) For taxable years beginning after December 31, 2021,  
19 taxable income as determined under subclause 1 or, if  
20 applicable, subclause 2.

21 \* \* \*

22 (8) "Intangible expense or cost." Royalties, licenses or  
23 fees paid for the acquisition, use, maintenance, management,  
24 ownership, sale, exchange or other disposition of patents,  
25 patent applications, trade names, trademarks, service marks,  
26 copyrights, mask works or other similar expenses or costs.

27 (9) "Affiliated entity." A person with a relationship to  
28 the taxpayer during all or any portion of the taxable year that  
29 is any of the following:

30 (i) a stockholder who is an individual, or a member of the



1 stockholder's family as set forth in section 318 of the Internal  
2 Revenue Code of 1986 (26 U.S.C. § 318), if the stockholder and  
3 the members of the stockholder's family own, directly,  
4 indirectly, beneficially or constructively, in the aggregate, at  
5 least fifty per cent of the value of the taxpayer's outstanding  
6 stock;

7 (ii) a stockholder, or a stockholder's partnership, limited  
8 liability company, estate, trust or corporation, if the  
9 stockholder and the stockholder's partnerships, limited  
10 liability companies, estates, trusts and corporations own  
11 directly, indirectly, beneficially or constructively, in the  
12 aggregate, at least fifty per cent of the value of the  
13 taxpayer's outstanding stock;

14 (iii) a corporation, or a party related to the corporation  
15 in a manner that would require an attribution of stock from the  
16 corporation to the party or from the party to the corporation  
17 under the attribution rules of the Internal Revenue Code of  
18 1986, if the taxpayer owns, directly, indirectly, beneficially  
19 or constructively, at least fifty per cent of the value of the  
20 corporation's outstanding stock. The attribution rules of  
21 section 318 of the Internal Revenue Code of 1986 shall apply for  
22 purposes of determining whether the ownership requirements of  
23 this definition have been met;

24 (iv) a component member as defined in section 1563(b) of the  
25 Internal Revenue Code of 1986; or

26 (v) a person to or from whom there is attribution of stock  
27 ownership in accordance with section 1563(e) of the Internal  
28 Revenue Code of 1986.

29 (10) "Valid business purpose." A purpose, other than the  
30 avoidance or reduction of taxation, which alone or in

1 combination with other purposes constitute the primary  
2 motivation for a business activity or transaction which changes  
3 in a meaningful way, apart from a reduction of taxation, the  
4 economic position of a taxpayer. The economic position of the  
5 taxpayer includes an increase in the market share of the  
6 taxpayer or the entry of the taxpayer into new business markets.  
7 A transaction done at arm's length shall be presumed to be  
8 directly related to a valid business purpose.

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

11 Section 402. Imposition of Tax.--\* \* \*

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

16 Taxable Year	Tax Rate
17 [January 1, 1995, and each	
18 taxable year thereafter	9.99%]
19 <u>January 1, 1995, and each</u>	
20 <u>taxable year through December</u>	
21 <u>31, 2013</u>	<u>9.99%</u>
22 <u>January 1, 2014, through</u>	
23 <u>December 31, 2014</u>	<u>9.49%</u>
24 <u>January 1, 2015, through</u>	
25 <u>December 31, 2015</u>	<u>8.99%</u>
26 <u>January 1, 2016, through</u>	
27 <u>December 31, 2016</u>	<u>8.49%</u>
28 <u>January 1, 2017, through</u>	
29 <u>December 31, 2017</u>	<u>7.99%</u>
30 <u>January 1, 2018, through</u>	

