

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, OBERLANDER,
O'NEILL, PAYNE, PETRI, PICKETT, QUIGLEY, QUINN, REESE, ROCK,
SAYLOR, SIMMONS, S. H. SMITH, STEPHENS, STEVENSON, SWANGER,
TALLMAN, TOBASH, VEREB, WATSON, DELOZIER, SONNEY AND
DAVIDSON, JANUARY 26, 2012

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
MAY 1, 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 sales and use tax, further providing for~~ ←
11 ~~discount; and, in corporate net income, further providing for~~
12 definitions and for imposition of tax.

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

15 ~~Section 1. Section 227 of the act of March 4, 1971 (P.L.6,~~ ←
16 ~~No.2), known as the Tax Reform Code of 1971, is amended to read:~~
17 ~~Section 227. Discount. (a) If a return is filed by a~~
18 ~~licensee and the tax shown to be due thereon less any discount~~

1 ~~is paid all within the time prescribed, the licensee shall be~~
2 ~~entitled to credit and apply against the tax payable by him a~~
3 ~~discount of one per cent of the amount of the tax collected by~~
4 ~~him on and after the effective date of this article, as~~
5 ~~compensation for the expense of collecting and remitting the~~
6 ~~[same] tax due by him and as a consideration of the prompt~~
7 ~~payment thereof.~~

8 ~~(b) For returns filed on or after the effective date of this~~
9 ~~subsection, the discount under subsection (a) shall be limited~~
10 ~~to the following:~~

11 ~~(i) For a monthly filer, twenty five dollars (\$25) per~~
12 ~~return.~~

13 ~~(ii) For a quarterly filer, seventy five dollars (\$75) per~~
14 ~~return.~~

15 ~~(iii) For a semi annual filer, one hundred fifty dollars~~
16 ~~(\$150) per return.~~

17 ~~Section 2. Section 401(3)2(a) (9) and 4(c) of the act,~~
18 ~~amended October 9, 2009 (P.L.451, No.48), are amended, clause~~
19 ~~(3)1 is amended by adding a paragraph and the section is amended~~
20 ~~by adding clauses to read:~~

21 SECTION 1. SECTION 401(3)2(A) (9) AND 4(C) OF THE ACT OF
22 MARCH 4, 1971 (P.L.6, NO.2), KNOWN AS THE TAX REFORM CODE OF
23 1971, AMENDED OCTOBER 9, 2009 (P.L.451, NO.48), ARE AMENDED,
24 CLAUSE (3)1 IS AMENDED BY ADDING A PHRASE AND THE SECTION IS
25 AMENDED BY ADDING CLAUSES TO READ:

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

30 * * *



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

2 (t) (1) Except as provided in paragraph (2), (3) or (4) for
3 taxable years beginning after December 31, 2012, no deduction
4 shall be allowed for an intangible expense or cost, or an
5 interest expense or cost, paid, accrued or incurred directly or
6 indirectly in connection with one or more transactions with an
7 affiliated entity. In calculating taxable income under this
8 paragraph, when the taxpayer is engaged in one or more
9 transactions with an affiliated entity that was subject to tax
10 in this Commonwealth or another state or possession of the
11 United States on a tax base that included the intangible expense
12 or cost, or the interest expense or cost, paid, accrued or
13 incurred by the taxpayer, the taxpayer shall receive a credit
14 against tax due in this Commonwealth in an amount equal to the
15 apportionment factor of the taxpayer in this Commonwealth
16 multiplied by the greater of the following:

17 (A) the tax liability of the affiliated entity with respect
18 to the portion of its income representing the intangible expense
19 or cost, or the interest expense or cost, paid, accrued or
20 incurred by the taxpayer; or

21 (B) the tax liability that would have been paid by the
22 affiliated entity under subparagraph (A) if that tax liability
23 had not been offset by a credit.

24 The credit issued under this paragraph 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 paragraph.

28 (2) The adjustment required by paragraph (1) shall not apply
29 to a transaction that was directly related to a valid business
30 purpose.

1 (3) The adjustment required by paragraph (1) shall not apply
2 to a transaction between a taxpayer and an affiliated entity
3 domiciled in a foreign nation which has in force a comprehensive
4 income tax treaty with the United States providing for the
5 allocation of all categories of income subject to taxation, or
6 the withholding of tax, on royalties, licenses, fees and
7 interest for the prevention of double taxation of the respective
8 nations' residents and the sharing of information.

9 (4) The adjustment required by paragraph (1) shall not apply
10 to a transaction where an affiliated entity directly or
11 indirectly paid, accrued or incurred a payment to a person who
12 is not an affiliated entity, if the ~~transaction~~ PAYMENT is paid, ←
13 accrued or incurred on the intangible expense or cost, or
14 interest expense or cost-, AND IS EQUAL TO OR LESS THAN THE ←
15 TAXPAYER'S PROPORTIONAL SHARE OF THE TRANSACTION. THE TAXPAYER'S
16 PROPORTIONAL SHARE SHALL BE BASED ON RELATIVE SALES, ASSETS,
17 LIABILITIES OR ANOTHER REASONABLE METHOD.

18 2. In case the entire business of any corporation, other
19 than a corporation engaged in doing business as a regulated
20 investment company as defined by the Internal Revenue Code of
21 1986, is not transacted within this Commonwealth, the tax
22 imposed by this article shall be based upon such portion of the
23 taxable income of such corporation for the fiscal or calendar
24 year, as defined in subclause 1 hereof, and may be determined as
25 follows:

26 (a) Division of Income.

27 * * *

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

29 (i) For taxable years beginning before January 1, 2007, all
30 business income shall be apportioned to this State by

1 multiplying the income by a fraction, the numerator of which is
2 the property factor plus the payroll factor plus three times the
3 sales factor and the denominator of which is five.

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

10 (iii) For taxable years beginning after December 31, 2008,
11 all business income shall be apportioned to this State by
12 multiplying the income by a fraction, the numerator of which is
13 the sum of eight and a half times the property factor, eight and
14 a half times the payroll factor and eighty-three times the sales
15 factor and the denominator of which is one hundred.

16 (iv) For taxable years beginning after December 31, 2009,
17 all business income shall be apportioned to this State by
18 multiplying the income by a fraction, the numerator of which is
19 the sum of five times the property factor, five times the
20 payroll factor and ninety times the sales factor and the
21 denominator of which is one hundred.

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

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

30 * * *

1 4. * * *

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

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

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

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

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

17 (V) For taxable years beginning after December 31, 2013, the
18 greater of thirty-three per cent of taxable income as determined
19 under subclause 1 or, if applicable, subclause 2 or four million
20 dollars (\$4,000,000);

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

25 (VII) For taxable years beginning after December 31, 2015,
26 the greater of fifty-six per cent of taxable income as
27 determined under subclause 1 or, if applicable, subclause 2 or
28 six million dollars (\$6,000,000);

29 (VIII) For taxable years beginning after December 31, 2016,
30 the greater of sixty-six per cent of taxable income as

1 determined under subclause 1 or, if applicable, subclause 2 or
2 seven million dollars (\$7,000,000);

3 (IX) For taxable years beginning after December 31, 2017,
4 the greater of seventy-five per cent of taxable income as
5 determined under subclause 1 or, if applicable, subclause 2 or
6 eight million dollars (\$8,000,000);

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

11 (XI) For taxable years beginning after December 31, 2019,
12 the greater of ninety per cent of taxable income as determined
13 under subclause 1 or, if applicable, subclause 2 or ten million
14 dollars (\$10,000,000);

15 (XII) For taxable years beginning after December 31, 2020,
16 the greater of ninety-six per cent of taxable income as
17 determined under subclause 1 or, if applicable, subclause 2 or
18 eleven million dollars (\$11,000,000);

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

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

25 (1.1) In no event shall the net loss deduction include more
26 than five hundred thousand dollars (\$500,000), in the aggregate,
27 of net losses from taxable years 1988 through 1994.

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

30	Taxable Year	Carryover
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1	1981	1 taxable year
2	1982	2 taxable years
3	1983-1987	3 taxable years
4	1988	2 taxable years plus 1
5		taxable year starting
6		with the 1995 taxable
7		year
8	1989	1 taxable year plus 2
9		taxable years starting
10		with the 1995 taxable
11		year
12	1990-1993	3 taxable years starting
13		with the 1995 taxable
14		year
15	1994	1 taxable year
16	1995-1997	10 taxable years
17	1998 and thereafter	20 taxable years

18 (B) The earliest net loss shall be carried over to the
19 earliest taxable year to which it may be carried under this
20 schedule. The total net loss deduction allowed in any taxable
21 year shall not exceed:

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

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

28 (III) The greater of fifteen per cent of the taxable income
29 as determined under subclause 1 or, if applicable, subclause 2
30 or three million dollars (\$3,000,000) for taxable years

1 beginning after December 31, 2008.

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

6 (V) The greater of thirty-three per cent of taxable income
7 as determined under subclause 1 or, if applicable, subclause 2
8 or four million dollars (\$4,000,000) for taxable years beginning
9 after December 31, 2013.

10 (VI) The greater of forty-five per cent of taxable income as
11 determined under subclause 1 or, if applicable, subclause 2 or
12 five million dollars (\$5,000,000) for taxable years beginning
13 after December 31, 2014.

14 (VII) The greater of fifty-six per cent of taxable income as
15 determined under subclause 1 or, if applicable, subclause 2 or
16 six million dollars (\$6,000,000) for taxable years beginning
17 after December 31, 2015.

18 (VIII) The greater of sixty-six per cent of taxable income
19 as determined under subclause 1 or, if applicable, subclause 2
20 or seven million dollars (\$7,000,000) for taxable years
21 beginning after December 31, 2016.

22 (IX) The greater of seventy-five per cent of taxable income
23 as determined under subclause 1 or, if applicable, subclause 2
24 or eight million dollars (\$8,000,000) for taxable years
25 beginning after December 31, 2017.

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

30 (XI) The greater of ninety per cent of taxable income as

1 determined under subclause 1 or, if applicable, subclause 2 or
2 ten million dollars (\$10,000,000) for taxable years beginning
3 after December 31, 2019.

4 (XII) The greater of ninety-six per cent of taxable income
5 as determined under subclause 1 or, if applicable, subclause 2
6 or eleven million dollars (\$11,000,000) for taxable years
7 beginning after December 31, 2020.

8 (XIII) For taxable years beginning after December 31, 2021,
9 taxable income as determined under subclause 1 or, if
10 applicable, subclause 2.

11 * * *

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

17 (9) "Interest expense or cost." A deduction allowed under
18 section 163 of the Internal Revenue Code of 1986 (26 U.S.C. §
19 163) to the extent that such deduction is directly related to an
20 intangible expense or cost.

21 (10) "Affiliated entity." A person with a relationship to
22 the taxpayer during all or any portion of the taxable year that
23 is any of the following:

24 (i) a stockholder who is an individual, or a member of the
25 stockholder's family as set forth in section 318 of the Internal
26 Revenue Code of 1986 (26 U.S.C. § 318), if the stockholder and
27 the members of the stockholder's family own, directly,
28 indirectly, beneficially or constructively, in the aggregate,
29 more than fifty per cent of the value of the taxpayer's
30 outstanding stock;

1 (ii) a stockholder, or a stockholder's partnership, limited
2 liability company, estate, trust or corporation, if the
3 stockholder and the stockholder's partnerships, limited
4 liability companies, estates, trusts and corporations own
5 directly, indirectly, beneficially or constructively, in the
6 aggregate, more than fifty per cent of the value of the
7 taxpayer's outstanding stock;

8 (iii) a corporation, or a party related to the corporation
9 in a manner that would require an attribution of stock from the
10 corporation to the party or from the party to the corporation
11 under the attribution rules of the Internal Revenue Code of
12 1986, if the taxpayer owns, directly, indirectly, beneficially
13 or constructively, more than fifty per cent of the value of the
14 corporation's outstanding stock. The attribution rules of
15 section 318 of the Internal Revenue Code of 1986 shall apply for
16 purposes of determining whether the ownership requirements of
17 this definition have been met;

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

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

23 (11) "Valid business purpose." A purpose, other than the
24 avoidance or reduction of taxation, which alone or in
25 combination with other purposes constitute the primary
26 motivation for a business activity or transaction. A transaction
27 done at arm's length terms shall be presumed to be directly
28 related to a valid business purpose.

29 Section 3 2. Section 402(b) of the act, amended June 29,
30 2002 (P.L.559, No.89), is amended to read:



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

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

6 Taxable Year	Tax Rate
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7 [January 1, 1995, and each 8 taxable year thereafter	9.99%]
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9 <u>January 1, 1995, and each</u> 10 <u>taxable year through December</u> 11 <u>31, 2013</u>	<u>9.99%</u>
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12 <u>January 1, 2014, through</u> 13 <u>December 31, 2014</u>	<u>9.49%</u>
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14 <u>January 1, 2015, through</u> 15 <u>December 31, 2015</u>	<u>8.75%</u>
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16 <u>January 1, 2016, through</u> 17 <u>December 31, 2016</u>	<u>8.25%</u>
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18 <u>January 1, 2017, through</u> 19 <u>December 31, 2017</u>	<u>7.75%</u>
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20 <u>January 1, 2018, through</u> 21 <u>December 31, 2018</u>	<u>7.25%</u>
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22 <u>January 1, 2019, and each</u> 23 <u>taxable year thereafter</u>	<u>6.99%</u>
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24 * * *

25 Section 4 3. This act shall take effect immediately.

