

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 693 Session of 2011

INTRODUCED BY COSTA, HUGHES, KASUNIC, FONTANA, TARTAGLIONE,  
SOLOBAY, BREWSTER, FARNESE AND WASHINGTON, APRIL 25, 2011

REFERRED TO FINANCE, APRIL 25, 2011

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," providing for alternative payment; in capital  
11 stock and franchise tax, further providing for imposition of  
12 tax and for expiration; and providing for alternative minimum  
13 tax.

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

16 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as  
17 the Tax Reform Code of 1971, is amended by adding a section to  
18 read:

19 Section 403.3. Alternative Payment.--Any taxpayer whose tax  
20 liability for a tax year is less than \$100 shall be liable for  
21 the tax imposed under Article VI-A. For purposes of determining  
22 the application of this section, a taxpayer shall not include  
23 any reduction for net loss otherwise permitted under section

1 401(3)4(c) in calculating tax liability.

2 Section 2. Sections 602(h) and 607 of the act, amended  
3 October 9, 2009 (P.L.451, No.48), are amended to read:

4 Section 602. Imposition of Tax.--\* \* \*

5 (h) The rate of tax for purposes of the capital stock and  
6 franchise tax for taxable years beginning within the dates set  
7 forth shall be as follows:

8	Taxable Year	Regular Rate	Surtax	Total Rate
9	January 1, 1971, to			
10	December 31, 1986	10 mills	0	10 mills
11	January 1, 1987, to			
12	December 31, 1987	9 mills	0	9 mills
13	January 1, 1988, to			
14	December 31, 1990	9.5 mills	0	9.5 mills
15	January 1, 1991, to			
16	December 31, 1991	11 mills	2 mills	13 mills
17	January 1, 1992, to			
18	December 31, 1997	11 mills	1.75 mills	12.75 mills
19	January 1, 1998, to			
20	December 31, 1998	11 mills	.99 mills	11.99 mills
21	January 1, 1999, to			
22	December 31, 1999	10.99 mills	0	10.99 mills
23	January 1, 2000, to			
24	December 31, 2000	8.99 mills	0	8.99 mills
25	January 1, 2001, to			
26	December 31, 2001	7.49 mills	0	7.49 mills
27	January 1, 2002, to			
28	December 31, 2003	7.24 mills	0	7.24 mills
29	January 1, 2004, to			
30	December 31, 2004	6.99 mills	0	6.99 mills

January 1, 2005, to		
December 31, 2005	5.99 mills 0	5.99 mills
January 1, 2006, to		
December 31, 2006	4.89 mills 0	4.89 mills
January 1, 2007, to		
December 31, 2007	3.89 mills 0	3.89 mills
[January 1, 2008, to		
December 31, 2011	2.89 mills 0	2.89 mills
January 1, 2012, to		
December 31, 2012	1.89 mills 0	1.89 mills
January 1, 2013, to		
December 31, 2013	.89 mills 0	.89 mills]
<u>January 1, 2008, to</u>		
<u>December 31, 2012</u>	<u>2.89 mills 0</u>	<u>2.89 mills</u>
<u>January 1, 2013, to</u>		
<u>December 31, 2013</u>	<u>1.89 mills 0</u>	<u>1.89 mills</u>
<u>January 1, 2014, to</u>		
<u>December 31, 2014</u>	<u>.89 mills 0</u>	<u>.89 mills</u>

Section 607. Expiration.--This article shall expire for taxable years beginning after December 31, [2013] 2014.

Section 3. The act is amended by adding an article to read:

Article VI-A

Alternative Minimum Tax

Section 601-A. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Average net income."

(1) The sum of the net income or loss for each of the current and immediately preceding four years, divided by

1 five. If the entity has not been in existence for a period of  
2 five years, the average net income shall be the average net  
3 income for the number of years that the entity has actually  
4 been in existence.

5 (2) In computing average net income, losses shall be  
6 entered as computed, but the average net income shall not be  
7 less than zero.

8 (3) The net income or loss of the entity for any taxable  
9 year shall be the amount set forth as income per books on the  
10 income tax return filed by the entity with the Federal  
11 Government for the taxable year, or if no return is made, as  
12 it would have been set forth had the return been made,  
13 subject to correction for fraud, evasion or error.

14 (4) In the case of any entity which has an investment in  
15 another corporation, the net income or loss shall be computed  
16 on an unconsolidated basis exclusive of the net income or  
17 loss of the other corporation without regard to how the  
18 corporation is treated for Federal income tax purposes.

19 (5) In the case of a limited liability company or  
20 business trust that is not taxable as a corporation for  
21 Federal income tax purposes, the net income or loss of the  
22 limited liability company or business trust for any given  
23 year shall be reduced by the amount of distributions made by  
24 the limited liability company or business trust to any member  
25 of the limited liability company or business trust who is  
26 deemed to be materially participating in the activities  
27 conducted by the limited liability company or business trust  
28 for purposes of section 469 of the Internal Revenue Code of  
29 1986 (Public Law 99-514, 26 U.S.C. § 469).

30 (6) In the case of a limited liability company or

1 business trust that for Federal income tax purposes is a  
2 disregarded entity of a natural person, the net income or  
3 loss of the limited liability company or business trust for  
4 any given year shall be reduced by the amount of  
5 distributions made by the limited liability company or  
6 business trust to a natural person. For this purpose,  
7 distributions which are made to a member of a limited  
8 liability company or business trust within 30 days of the end  
9 of a given year may be treated as having been made in the  
10 preceding year and not in the year in which such distribution  
11 is actually made.

12 "Capital stock." The capital stock, certificates,  
13 memberships and all other interests in a domestic or foreign  
14 entity.

15 "Capital stock value." The amount computed pursuant to the  
16 following formula:

17 the product of one-half times the sum of the average net  
18 income capitalized at the rate of 9.5% plus 75% of net worth,  
19 the algebraic equivalent of which is .5 X (average net  
20 income/.095 + (.75)(net worth)).

21 "Corporation."

22 (1) Any of the following:

23 (i) A corporation.

24 (ii) A joint-stock association.

25 (iii) A business trust, limited liability company or  
26 other entity which for Federal income tax purposes is  
27 classified as a corporation.

28 (2) The term does not include:

29 (i) A business trust which qualifies as a real  
30 estate investment trust under section 856 of the Internal

1 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 856)  
2 or which is a qualified real estate investment trust  
3 subsidiary under section 856(i) of the Internal Revenue  
4 Code of 1986 (26 U.S.C. §856(i)).

5 (ii) A business trust which qualifies as a regulated  
6 investment company under section 851 of the Internal  
7 Revenue Code of 1986 (26 U.S.C. § 856(i)) and which is  
8 registered with the United States Securities and Exchange  
9 Commission under the Investment Company Act of 1940 or a  
10 related business trust which confines its activities in  
11 this Commonwealth to the maintenance, administration and  
12 management of intangible investments and activities of  
13 regulated investment companies.

14 (iii) A corporation, trust or other entity which is  
15 an exempt organization as defined by section 501 of the  
16 Internal Revenue Code of 1986 (26 U.S.C. § 501).

17 (iv) A corporation, trust or other entity organized  
18 as not-for-profit under the laws of this Commonwealth or  
19 the laws of any other state which meet one of the  
20 following:

21 (A) would qualify as an exempt organization as  
22 defined by section 501 of the Internal Revenue Code  
23 of 1986 (26 U.S.C. § 501);

24 (B) would qualify as a homeowners association as  
25 defined by section 528(c) of the Internal Revenue  
26 Code of 1986 (26 U.S.C. § 528(c));

27 (C) is a membership organization subject to the  
28 Federal limitations on deductions from taxable income  
29 under section 277 of the Internal Revenue Code of  
30 1986 (26 U.S.C. § 277) but only if no pecuniary gain

1           or profit inures to any member or related entity from  
2           the membership organization; or  
3           (D) is a nonstock commodity or nonstock stock  
4           exchange.

5       "Department." The Department of Revenue of the Commonwealth.

6       "Domestic entity." A corporation organized under the laws of  
7       the Commonwealth.

8       "Foreign entity." A corporation organized by or under the  
9       laws of any jurisdiction other than the Commonwealth which  
10       exercises, whether in its own name or through any individual,  
11       association, business trust, corporation, joint venture, limited  
12       liability company, limited partnership, partnership or other  
13       entity, any of the following privileges:

14           (1) Doing business in this Commonwealth.

15           (2) Carrying on activities in this Commonwealth,  
16           including solicitation.

17           (3) Having capital or property employed or used in this  
18           Commonwealth.

19           (4) Owning property in this Commonwealth.

20       "Holding company." Any corporation:

21           (1) at least 90% of the gross income of which for the  
22           taxable year is derived from dividends, interest, gains from  
23           the sale, exchange or other disposition of stock or  
24           securities and the rendition of management and administrative  
25           services to subsidiary corporations; and

26           (2) at least 60% of the actual value of the total assets  
27           of which consists of stock securities or indebtedness of  
28           subsidiary corporations.

29       "Net worth." As follows:

30           (1) Net worth shall be the sum of the entity's issued

1 and outstanding capital stock, surplus and undivided profits  
2 as per books set forth for the close of the tax year on the  
3 income tax return filed by the entity with the Federal  
4 Government, or if no the return is made, as would have been  
5 set forth had the return been made, subject to any correction  
6 for fraud, evasion or error. In the case of any entity which  
7 has investments in other corporations, the net worth shall be  
8 the consolidated net worth of the entity computed in  
9 accordance with generally accepted accounting principles. In  
10 the case of a limited liability company or a business trust,  
11 net worth for any tax year shall be the entity's assets minus  
12 its liabilities as of the close of such tax year. Net worth  
13 shall in no case be less than zero.

14 (2) If net worth as arrived at under paragraph (1) for  
15 the current tax year is greater than twice or less than one-  
16 half of the net worth which would have been calculated under  
17 paragraph (1) as of the first day of the current tax year,  
18 then net worth for the current tax year shall be the average  
19 of these two amounts.

20 "Processing." The following activities when engaged in as a  
21 business enterprise:

22 (1) The filtering or heating of honey, the cooking or  
23 freezing of fruits, vegetables, mushrooms, fish, seafood,  
24 meats or poultry, when the person engaged in the business  
25 packages the property in sealed containers for wholesale  
26 distribution.

27 (1.1) The processing of fruits or vegetables by  
28 cleaning, cutting, coring, peeling or chopping and treating  
29 to preserve, sterilize or purify and substantially extend the  
30 useful shelf life of the fruits or vegetables, when the



1 person engaged in the activity packages the property in  
2 sealed containers for wholesale distribution.

3 (2) The scouring, carbonizing, cording, combing,  
4 throwing, twisting or winding of natural or synthetic fibers,  
5 or the spinning, bleaching, dyeing, printing or finishing of  
6 yarns or fabrics, when the activities are performed prior to  
7 sale to the ultimate consumer.

8 (3) The electroplating, galvanizing, enameling,  
9 anodizing, coloring, finishing, impregnating or heat treating  
10 of metals or plastics for sale or in the process of  
11 manufacturing.

12 (3.1) The blanking, shearing, leveling, slitting or  
13 burning of metals for sale to or use by a manufacturer or  
14 processor.

15 (4) The rolling, drawing or extruding of ferrous and  
16 nonferrous metals.

17 (5) The fabrication for sale of ornamental or structural  
18 metal or metal stairs, staircases, gratings, fire escapes or  
19 railings. The term does not include fabrication work done at  
20 the construction site.

21 (6) The preparation of animal feed or poultry feed for  
22 sale.

23 (7) The production, processing and bottling of  
24 nonalcoholic beverages for wholesale distribution.

25 (8) The slaughtering and dressing of animals for meat to  
26 be sold or to be used in preparing meat products for sale,  
27 and the preparation of meat products, including lard, tallow,  
28 grease, cooking and inedible oils for wholesale distribution.

29 (9) The operation of a saw mill or planing mill for the  
30 production of lumber or lumber products for sale. The

1 operation of a saw mill or planing mill begins with the  
2 unloading by the operator of the saw mill or planing mill of  
3 logs, timber, pulpwood or other forms of wood material to be  
4 used in the saw mill or planing mill.

5 (10) The milling for sale of flour or meal from grains.

6 (10.1) The aging, stripping, conditioning, crushing and  
7 blending of tobacco leaves for use as cigar filler or as  
8 components of smokeless tobacco products for sale to  
9 manufacturers of tobacco products.

10 (11) The publishing of books, newspapers, magazines or  
11 other periodicals, printing and broadcasting radio and  
12 television programs by licensed commercial or educational  
13 stations.

14 (12) The processing of used lubricating oils.

15 (13) The blending, rectification or production by  
16 distillation or otherwise of alcohol or alcoholic liquors,  
17 except the distillation of alcohol from byproducts of  
18 winemaking for the sole purpose of fortifying wine.

19 (14) The salvaging, recycling or reclaiming of used  
20 materials to be recycled into a manufacturing process.

21 (15) The development or substantial modification of  
22 computer programs or software for sale to unrelated persons  
23 for their direct and independent use.

24 (16) The cleaning and roasting and the blending,  
25 grinding or packaging for sale of coffee from green coffee  
26 beans or the production of coffee extract.

27 (17) The refining, blasting, exploring, mining and  
28 quarrying for or otherwise extracting limestone, sand, gravel  
29 or slag from the earth or from waste or stock piles or from  
30 pits or banks and the cleaning, crushing, grinding,

pulverizing, sizing or screening of limestone, sand, gravel or slag, including blast furnace slag.

(18) The preparation of dry or liquid fertilizer for sale.

(19) The production, processing and packaging of ice for wholesale distribution.

"Research and development." The activities relating to the discovery of new and the refinement of known substances, products, processes, theories and ideas. The term does not include activities directed primarily to the accumulation or analysis of commercial, financial or mercantile data.

"Student loan assets." The term includes the following assets:

(1) Student loan notes.

(2) Federal, State or private subsidies or guarantees of student loans.

(3) Instruments that represent a guarantee of debt, certificates or other securities issued by an entity created for the securitization of student loans or by a trustee on its behalf.

(4) Contract rights to acquire or dispose of student loans and interest rate-swap agreements related to student loans.

(5) Interests in or debt obligations of other student loan securitization trusts or entities.

(6) Cash or cash equivalents representing reserve funds or payments on or with respect to student loan notes, the securities issued by an entity created for the securitization of student loans or the other student loan-related assets. Solely for purposes of this definition, "cash or cash

1 equivalents" shall include direct obligations of the United  
2 States Department of the Treasury, obligations of Federal  
3 agencies, which obligations represent the full faith and  
4 credit of the United States, investment grade debt  
5 obligations or commercial paper, deposit accounts, Federal  
6 funds and banker's acceptances, prefunded municipal  
7 obligations, money market instruments and money market funds.

8 "Subsidiary corporation." Any corporation, a majority of the  
9 total issued and outstanding shares of voting stock of which are  
10 owned by the taxpayer corporation directly or through one or  
11 more intervening subsidiary corporations.

12 Section 601.1-A. Reporting requirements.

13 It shall be the duty of every domestic and foreign entity to  
14 make for each taxable year, as defined in section 401(5), a  
15 written report verified in accordance with the requirements of  
16 the department on a form or forms to be prescribed and furnished  
17 by it setting forth the information required. The time for  
18 filing reports may be extended. The procedure if the department  
19 is not satisfied with the reports for the entity and the  
20 penalties for failing to file reports and pay taxes shall be as  
21 prescribed by law.

22 Section 602-A. Imposition of tax.

23 (a) General rule.--

24 (1) Except as provided in paragraph (2), every domestic  
25 entity from which a report is required under section 601-A  
26 shall be subject to, and pay to the department annually, a  
27 tax which is the amount computed by multiplying each dollar  
28 of the capital stock value by the appropriate rate of tax  
29 under subsection (f).

30 (2) Any domestic entity or company subject to the tax

1 imposed under this subsection may elect to compute and pay  
2 its tax in accordance with subsection (b).

3 (3) (i) Except as provided under subparagraph (ii),  
4 this section shall not apply to the taxation of the  
5 capital stock of entities organized for manufacturing,  
6 processing, research or development purposes, which is  
7 invested in and actually and exclusively employed in  
8 carrying on manufacturing, processing, research or  
9 development within this Commonwealth, except as those  
10 entities enjoy and exercise the right of eminent domain.

11 (ii) Every entity organized for the purpose of  
12 manufacturing, processing, research or development except  
13 as those entities enjoy and exercise the right of eminent  
14 domain shall pay the State tax the amount computed by  
15 multiplying each dollar of the capital stock value by the  
16 appropriate rate of tax under subsection (f) upon the  
17 proportion of its capital stock, if any, as may be  
18 invested in any property or business not strictly  
19 incident or appurtenant to the manufacturing, processing,  
20 research or development business, in addition to the  
21 local taxes assessed upon its property in the district  
22 where located.

23 (iii) The purpose of this paragraph is to relieve  
24 from State taxation only so much of the capital stock as  
25 is invested purely in the manufacturing, processing,  
26 research or development plant and business.

27 (4) This section shall not apply to the taxation of so  
28 much of the capital stock value attributable to student loan  
29 assets owned or held by an entity created for the  
30 securitization of student loans or by a trustee on its

1 behalf.

2 (b) Entities.--The following shall apply:

3 (1) (i) Every foreign entity from which a report is  
4 required under section 601.1-A shall be subject to and  
5 pay to the department annually a franchise tax which is  
6 the amount computed by multiplying each dollar of the  
7 capital stock value by the appropriate rate of tax under  
8 subsection (f) upon a taxable value to be determined  
9 under subparagraph (ii).

10 (ii) The taxable value shall be determined by  
11 employing the relevant apportionment factors under  
12 Article IV. The manufacturing, processing, research and  
13 development exemptions contained under subsection (a)  
14 shall apply to foreign corporations. In determining the  
15 relevant apportionment factors, the numerator of the  
16 property or payroll factors shall not include any  
17 property or payroll attributable to manufacturing,  
18 processing, research or development activities in this  
19 Commonwealth; and any property or payroll attributable to  
20 manufacturing, processing, research or development  
21 activities outside this Commonwealth shall also be  
22 excluded from the numerator of the property or payroll  
23 factors.

24 (2) The provisions of this section shall not apply to  
25 the taxation of the capital stock value attributable to  
26 student loan assets owned or held by an entity created for  
27 the securitization of student loans or by a trustee on its  
28 behalf.

29 (3) Any foreign corporation, joint-stock association,  
30 limited partnership or company subject to the tax imposed

1 under this section may elect to compute and pay its tax under  
2 subsection (a), except that any foreign corporation, joint-  
3 stock association, limited partnership or company electing to  
4 compute and pay its tax under subsection (a) shall be treated  
5 as if it were a domestic corporation for the purpose of  
6 determining which of its assets are exempt from taxation and  
7 for the purpose of determining the proportion of the value of  
8 its capital stock which is subject to taxation.

9 (4) The provisions of this article shall apply to the  
10 taxation of entities organized for manufacturing, processing,  
11 research or development purposes, but shall not apply as  
12 these entities enjoy and exercise the right of eminent  
13 domain.

14 (c) Duties.--

15 (1) Except as provided under paragraph (2), it shall be  
16 the duty of the treasurer or other officers having charge of  
17 any domestic or foreign entity, upon which a tax is imposed  
18 under this section, to transmit the amount of tax to the  
19 department within the time prescribed by law.

20 (2) (i) For the purposes of this article interest in  
21 limited partnerships or joint-stock associations shall be  
22 deemed to be capital stock, and taxable accordingly.

23 (ii) Entities liable to a tax under this section  
24 shall not be required to pay any further tax on the  
25 mortgages, bonds and other securities owned by them and  
26 in which the whole body of stockholders or members, as  
27 such, have the entire equitable interest in remainder.  
28 Entities owning or holding the securities as trustees,  
29 executors, administrators, guardians, or in any other  
30 manner than for the whole body of stockholders or members

1       thereof as sole equitable owners in remainder, shall  
2       return and pay the tax imposed by this article upon all  
3       securities owned or held by them, as in the case of  
4       individuals.

5       (d) Holding companies.--Any holding company subject to the  
6       capital stock tax or the franchise tax imposed under this  
7       section may elect to compute the capital stock or franchise tax  
8       by applying the rate of tax provided under subsection (f) to 10%  
9       of the capital stock value. If exercised, this election shall be  
10      in lieu of any other apportionment or allocation to which the  
11      company would otherwise be entitled.

12      (e) Proration.--If a domestic or foreign entity is required  
13      to file a report under section 601.1-A on other than an annual  
14      basis, the tax imposed under this section shall be prorated to  
15      reflect the portion of a taxable year for which the report is  
16      filed by multiplying the tax liability by a fraction equal to  
17      the number of days in the taxable year divided by 365 days.

18      (f) Rate.--The rate of tax for purposes of the capital stock  
19      and franchise tax shall be five mills for all tax years  
20      beginning after January 1, 2012.

21      Section 602.1-A. Family farm corporation exemption.

22      (a) Exemption.--Section 602-A shall not apply to family farm  
23      corporations.

24      (b) Family farm corporation.--The following shall apply:

25          (1) A family farm corporation is a Pennsylvania  
26          corporation that meets all of the following:

27              (i) at least 75% of the assets of the corporation  
28              are devoted to the business of agriculture.

29              (ii) At least 75% of all of the stock of the  
30              corporation must be owned by members of the same family.



1       (1.1) The business of agriculture under paragraph (1)  
2       shall not include:

3               (i) recreational activities, such as hunting,  
4               fishing, camping, skiing, show competition or racing;

5               (ii) the raising, breeding or training of game  
6               animals or game birds, fish, cats, dogs or pets, or  
7               animals intended for use in sporting or recreational  
8               activities;

9               (iii) fur farming;

10              (iv) stockyard and slaughterhouse operations; or

11              (v) manufacturing or processing operations of any  
12              kind.

13       (2) Members of the same family shall mean an individual,  
14       the individual's brothers and sisters, the brothers and  
15       sisters of the individual's parents and grandparents, the  
16       ancestors and lineal descendants of any of the members listed  
17       under this paragraph and a spouse of any of the members  
18       listed under this paragraph. Individuals related by the half  
19       blood or by legal adoption shall be treated as if they were  
20       related by the whole blood.

21       (3) Assets devoted to the business of agriculture shall  
22       include leasing to members of the same family of assets which  
23       are directly and principally used for agricultural purposes.

24       Section 602.2-A. (Reserved).

25       Section 602.3-A. Interest in unincorporated entities.

26       (a) General rule.--Except as provided under subsection (b),  
27       for purposes of this article, a corporation's interest in an  
28       entity which is not a corporation shall be considered a direct  
29       ownership interest in the assets of the entity rather than an  
30       intangible interest.

1     (b) Exception.--Subsection (a) shall not apply to a  
2     corporation's interest in an entity described in paragraph  
3     (2) (i) and (ii) of the definition of "corporation."

4     Section 603-A. Procedure, enforcement and penalties.

5     Parts III, IV, V, VI and VII of Article IV are incorporated  
6     by reference into this article insofar as they are applicable to  
7     the tax imposed under this article.

8     Section 604-A. Deposit of proceeds.

9     The proceeds resulting from the tax imposed under this  
10    article shall be transferred to the PA Works Fund.

11    Section 605-A. Applicability.

12    The tax imposed under this article shall apply to taxable  
13    years beginning after December 31, 2014.

14    Section 4. This act shall take effect in 60 days.