
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 463 Session of
2017

INTRODUCED BY BLAKE, SCHWANK, FONTANA, COSTA, HAYWOOD, BREWSTER
AND HUGHES, MARCH 1, 2017

REFERRED TO FINANCE, MARCH 1, 2017

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

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

17 Section 1. Section 401(3)1(a) and (b) and 2(a)(17) and (5)
18 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
19 Reform Code of 1971, are amended, clause (3)2 is amended by
20 adding a phrase, clause (3)2(a) is amended by adding paragraphs
21 and the section is amended by adding clauses to read:

22 Section 401. Definitions.--The following words, terms, and
23 phrases, when used in this article, shall have the meaning
24 ascribed to them in this section, except where the context

1 clearly indicates a different meaning:

2 * * *

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

16 (b) Additional deductions shall be allowed from taxable
17 income on account of any dividends received from any other
18 corporation but only to the extent that such dividends are
19 included in taxable income as returned to and ascertained by the
20 Federal Government. For tax years beginning on or after January
21 1, 1991, additional deductions shall only be allowed for amounts
22 included, under section 78 of the Internal Revenue Code of 1986
23 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned
24 to and ascertained by the Federal Government and for the amount
25 of any dividends received from a foreign corporation included in
26 taxable income to the extent such dividends would be deductible
27 in arriving at Federal taxable income if received from a
28 domestic corporation. For taxable years beginning after December
29 31, 2022, if not otherwise allowed as a deduction, an additional
30 deduction is allowed for all dividends paid by one to another of

1 the included corporations of a unitary business to the extent
2 that those dividends are included in business income of a
3 corporation that is required to determine its business income
4 under paragraph (1) of phrase (e) of subclause (2).

5 * * *

6 2. In case the entire business of any corporation, other
7 than a corporation engaged in doing business as a regulated
8 investment company as defined by the Internal Revenue Code of
9 1986, is not transacted within this Commonwealth, the tax
10 imposed by this article shall be based upon such portion of the
11 taxable income of such corporation for the fiscal or calendar
12 year, as defined in subclause 1 hereof, and may be determined as
13 follows:

14 (a) Division of Income.

15 * * *

16 (17) Sales, other than sales under paragraphs (16) [and],
17 (16.1), (17.1) and (17.2), are in this State if:

18 (A) The income-producing activity is performed in this
19 State; or

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

24 (17.1) Sales of services are in this State if sales are
25 derived from customers within this State. If part of the sales
26 with respect to a specific contract or other agreement to
27 perform services is derived from customers from within this
28 State, sales are in this State in proportion to the sales
29 derived from customers within this State to total sales with
30 respect to that contract or agreement.

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

11 * * *

12 (f) Corporations That are Members of a Unitary Business.

13 (1) Notwithstanding any contrary provisions of this article,
14 for taxable years that begin after December 31, 2022, business
15 income of a corporation that is a member of a unitary business
16 that consists of two or more corporations, at least one of which
17 does not transact its entire business in this State, is
18 determined by combining the business income of either all
19 corporations, other than as provided under this paragraph, that
20 are water's-edge basis members or all corporations, other than
21 as provided under this paragraph, that are worldwide members of
22 the unitary business. Business income from an intercompany
23 transaction between included corporations of a unitary business
24 shall be deferred in the manner set forth under 26 CFR 1.1502-13
25 (relating to intercompany transactions) in determining the
26 business income of a corporation that is a member of that
27 unitary business. Business income of the following corporations
28 is not included in the determination of combined business
29 income:

30 (A) a corporation subject to taxation under Article VII,

1 VIII, IX or XV;

2 (B) a corporation specified in the definition of
3 "institution" in section 1501 that would be subject to taxation
4 under Article VII if it was located, as defined in section 1501,
5 in this State;

6 (C) a corporation commonly known as a title insurance
7 company that would be subject to taxation under Article VIII if
8 it was incorporated in this State;

9 (D) a corporation specified as an insurance company,
10 association or exchange in Article IX that would be subject to
11 taxation under Article IX if its insurance business was
12 transacted in this State;

13 (E) a corporation specified in the definition of
14 "institution" in section 1501 that would be subject to taxation
15 under Article XV if it was located, as defined in section 1501,
16 in this State; or

17 (F) a corporation that is a small corporation, as defined in
18 section 301(s.2), or a qualified Subchapter S subsidiary, as
19 defined in section 301(o.3).

20 (2) Notwithstanding any contrary provisions of this article,
21 all corporations that are required to compute business income
22 under paragraph (1) are entitled to apportion the business
23 income when one corporation of the same unitary business is
24 entitled to apportion the business income. Notwithstanding any
25 contrary provisions of this article, for taxable years that
26 begin after December 31, 2022, the denominator of the
27 apportionment fraction of a corporation that is required to
28 compute its business income under paragraph (1) shall be
29 computed on a combined basis for all included corporations of
30 the unitary business. Gross receipts from an intercompany

1 transaction between included corporations of a unitary business
2 shall be eliminated unless the gross receipts are derived from
3 transactions that are deferred in the manner set forth under 26
4 CFR 1.1502-13 in computing the numerator and denominator of the
5 apportionment fraction of a corporation that is required to
6 compute its business income under paragraph (1). Gross receipts
7 from transactions that had been deferred in the manner set forth
8 under 26 CFR 1.1502-13 are included in a corporation's
9 apportionment fraction during the same taxable year that it
10 realizes business income that had been deferred due to the
11 transaction. The apportionment fraction of the following
12 corporations shall not be included in the determination of the
13 combined apportionment fraction:

14 (A) a corporation subject to taxation under Article VII,
15 VIII, IX or XV;

16 (B) a corporation specified in the definition of
17 "institution" in section 1501 that would be subject to taxation
18 under Article VII if it was located, as defined in section 1501,
19 in this State;

20 (C) a corporation commonly known as a title insurance
21 company that would be subject to taxation under Article VIII if
22 it was incorporated in this State;

23 (D) a corporation specified as an insurance company,
24 association or exchange in Article IX that would be subject to
25 taxation under Article IX if its insurance business was
26 transacted in this State;

27 (E) a corporation specified in the definition of
28 "institution" in section 1501 that would be subject to taxation
29 under Article XV if it was located, as defined in section 1501,
30 in this State;

1 (F) a corporation that is a small corporation, as defined in
2 section 301(s.2), or a qualified Subchapter S subsidiary, as
3 defined in section 301(o.3).

4 (3) A corporation that is required to compute its business
5 income under paragraph (1) shall apportion the combined business
6 income by multiplying the combined business income by a fraction
7 which is the combined apportionment fraction set forth under
8 paragraph (2).

9 (4) Nonbusiness income of a corporation that is required to
10 compute business income under paragraph (1) shall be allocated
11 as provided in paragraphs (5), (6), (7) and (8) of phrase (a) of
12 this subclause.

13 (5) Each corporation that is a member of a unitary business
14 that consists of two or more corporations shall determine its
15 tax liability based on its apportioned share of the combined
16 business income of the unitary business plus its nonbusiness
17 income or loss allocated to this State, minus its net loss
18 deduction.

19 (6) If any provision of this phrase operates so that an
20 amount is added to or deducted from taxable income for a taxable
21 year for any corporation of a unitary business that previously
22 had been added to or deducted from taxable income of any
23 corporation of the same unitary business, an appropriate
24 adjustment shall be made for the taxable year in order to
25 prevent double taxation or double deduction. If this adjustment
26 is not made by the appropriate corporation of the unitary
27 business, the Secretary of Revenue is authorized to make this
28 adjustment.

29 (7) The Secretary of Revenue shall have the authority and
30 responsibility to make adjustments to insure that a corporation

1 does not incur an unfair penalty nor realize an unfair benefit
2 because it is required to compute its business income under
3 paragraph (1). Fairness shall be measured by whether the
4 corporation's income allocated and apportioned to this State
5 fairly reflects the corporation's share of the unitary business
6 conducted in this State in the taxable year.

7 * * *

8 (5) "Taxable year." [The] 1. Except as set forth in
9 subclause 2, the taxable year which the corporation, or any
10 consolidated group with which the corporation participates in
11 the filing of consolidated returns, actually uses in reporting
12 taxable income to the Federal Government[.], or which the
13 corporation would have used in reporting taxable income to the
14 Federal Government had it been required to report its taxable
15 income to the Federal Government. With regard to the tax imposed
16 by Article IV of this act (relating to the Corporate Net Income
17 Tax), the terms "annual year," "fiscal year," "annual or fiscal
18 year," "tax year" and "tax period" shall be the same as the
19 corporation's taxable year, as defined in this [paragraph.]
20 subclause or subclause 2.

21 2. All corporations of a unitary business shall have a
22 common taxable year for purposes of computing tax due under this
23 article. The taxable year for the purposes of computing tax
24 shall be the common taxable year adopted, in a manner prescribed
25 by the department, by all corporations of a unitary business.
26 The common taxable year must be used by all corporations of that
27 unitary business in the year of adoption and all future years
28 unless otherwise permitted by the department.

29 * * *

30 (11) "Tax haven." A jurisdiction that at the beginning of a

1 taxable year is a tax haven as identified by the Organization
2 for Economic Co-operation and Development, plus the
3 sovereignties of Bermuda, the Cayman Islands, the Bailiwick of
4 Jersey and the Grand Duchy of Luxembourg.

5 (12) "Unitary business." A single economic enterprise that
6 is made up of separate parts of a single corporation, of a
7 commonly controlled group of corporations, or both, that are
8 sufficiently interdependent, integrated and interrelated through
9 their activities so as to provide a synergy and mutual benefit
10 that produces a sharing or exchange of value among them and a
11 significant flow of value to the separate parts. A unitary
12 business shall include only those parts and corporations which
13 may be included as a unitary business under the Constitution of
14 the United States.

15 (13) "Water's-edge basis." A system of reporting that
16 includes the business income and apportionment factor of certain
17 corporations of a unitary business, described as follows:

18 1. The business income and apportionment factor of any
19 member incorporated in the United States or formed under the
20 laws of any state of the United States, the District of
21 Columbia, any territory or possession of the United States or
22 the Commonwealth of Puerto Rico.

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

27 3. The business income and apportionment factor of any
28 member which is a domestic international sales corporation as
29 described in sections 991, 992, 993 and 994 of the Internal
30 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 991, 992,

1 993 and 994); a foreign sales corporation as described in former
2 sections 921, 922, 923, 924, 925, 926 and 927 of the Internal
3 Revenue Code of 1986 (formerly 26 U.S.C. §§ 921, 922, 923, 924,
4 925, 926 and 927); or any member which is an export trade
5 corporation, as described in sections 970 and 971 of the
6 Internal Revenue Code of 1986 (26 U.S.C. §§ 970 and 971).

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

12 5. Any member that is a "controlled foreign corporation" as
13 defined in section 957 of the Internal Revenue Code of 1986 (26
14 U.S.C. § 957), to the extent the business income of that member
15 is income defined in section 952 of the Internal Revenue Code of
16 1986 (26 U.S.C. § 952), not excluding lower-tier subsidiaries'
17 distributions of the income which were previously taxed,
18 determined without regard to Federal treaties, and the
19 apportionment factor related to that income; any item of income
20 received by a controlled foreign corporation and the
21 apportionment factor related to the income shall be excluded if
22 the corporation establishes to the satisfaction of the Secretary
23 of Revenue that the income was subject to an effective rate of
24 income tax imposed by a foreign country greater than ninety per
25 cent of the maximum rate of tax specified in section 11 of the
26 Internal Revenue Code of 1986 (26 U.S.C. § 11). The effective
27 rate of income tax determination shall be based upon the
28 methodology set forth under 26 CFR 1.954-1 (relating to foreign
29 base company income).

30 6. The business income and apportionment factor of any

1 member that is not described in subclauses 1, 2, 3, 4 and 5 and
2 that is doing business in a tax haven. The business income and
3 apportionment factor of a corporation doing business in a tax
4 haven shall be excluded if the corporation establishes to the
5 satisfaction of the Secretary of Revenue that its income was
6 subject to an effective rate of income tax imposed by a foreign
7 country greater than ninety per cent of the maximum rate of tax
8 specified in section 11 of the Internal Revenue Code of 1986.

9 (14) "Commonly controlled group." For a corporation, the
10 corporation is a member of a group of two or more corporations
11 and more than fifty per cent of the voting stock of each member
12 of the group is directly or indirectly owned by a common owner
13 or by common owners, either corporate or noncorporate, or by one
14 or more of the member corporations of the group.

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

17 (16) "Tax." Includes interest, penalties and additions to
18 tax unless a more limited meaning is disclosed by the context.

19 Section 2. Section 402(b) of the act is amended to read:

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

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

Taxable Year	Tax Rate
[January 1, 1995, and each taxable year thereafter	9.99%]
<u>January 1, 1995, through taxable</u> <u>years ending December 31,</u>	
<u>2018</u>	<u>9.99%</u>

1	<u>January 1, 2019, to December 31,</u>	
2	<u>2019</u>	<u>9.39%</u>
3	<u>January 1, 2020, to December 31,</u>	
4	<u>2020</u>	<u>8.79%</u>
5	<u>January 1, 2021, to December 31,</u>	
6	<u>2021</u>	<u>8.19%</u>
7	<u>January 1, 2022, to December 31,</u>	
8	<u>2022</u>	<u>7.59%</u>
9	<u>January 1, 2023, to December 31,</u>	
10	<u>2023, and each taxable year</u>	
11	<u>thereafter</u>	<u>6.99%</u>
12	* * *	

13 Section 3. Section 403 of the act is amended by adding
14 subsections to read:

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

16 (a.1) The following apply regarding an annual report:

17 (1) Each corporation subject to tax under this article shall
18 file an annual report in accordance with this section. Each
19 corporation that is a member of a unitary business that consists
20 of two or more corporations, unless excluded by the provisions
21 of this article, shall file as part of a combined annual report.
22 The corporations of the unitary business shall designate one
23 member that is subject to tax under this article to file the
24 combined annual report and to act as agent on behalf of all
25 other corporations that are members of the unitary business.
26 Each corporation that is a member of a unitary business shall be
27 responsible for its tax liability under this article.

28 (2) The oath or affirmation of the designated member's
29 president, vice president or other principal officer and of its
30 treasurer or assistant treasurer shall constitute the oath or

1 affirmation of each corporation that is a member of that unitary
2 business.

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

8 (i) All corporations included in the unitary business.

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

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

14 (a.2) The following apply regarding a significant flow of
15 value:

16 (1) Activities that evidence a significant flow of value
17 among commonly controlled corporations shall include the
18 following:

19 (i) Assisting in the acquisition of equipment.

20 (ii) Assisting with filling personnel needs.

21 (iii) Lending funds or guaranteeing loans.

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

23 (v) Providing technical assistance.

24 (vi) Supervising.

25 (vii) Providing general operational guidance.

26 (viii) Providing overall operational strategic advice.

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

28 (2) Significant flow of value must be more than the flow of
29 funds arising out of passive investment and shall consist of
30 more than periodic financial oversight.

1 (a.3) The following apply regarding a unitary business:

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

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

6 (ii) Corporations engaged in different steps in a vertically
7 structured enterprise.

8 (iii) Strong centralized management of corporations.

9 (2) A corporation newly formed by a corporation that is a
10 member of a unitary business is rebuttably presumed to be a
11 member of the unitary business.

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

15 (4) A corporation that permits one or more other
16 corporations of a unitary business to substantially use its
17 patents, trademarks, service marks, logo-types, trade secrets,
18 copyrights or other proprietary assets or that is principally
19 engaged in loaning money to one or more other corporations of a
20 unitary business is rebuttably presumed to be a member of the
21 unitary business. This presumption only applies to a commonly
22 controlled group of corporations.

23 (a.4) As far as applicable to a specific unitary business,
24 unless there is a revision of applicable State law or unless a
25 corporation is not included under the provisions of this
26 article, there is a rebuttable presumption for all tax years
27 that begin in years 2023 and 2024 that a unitary business of two
28 or more corporations includes at least all corporations that are
29 part of a unitary business under the law of any state of the
30 United States in which the corporation files a tax report or tax

1 return of combined net income for the same tax year.

2 (a.5) Unless an election is made to use a worldwide basis of
3 accounting, a corporation that is a member of a unitary business
4 of two or more corporations must determine its business income
5 and apportionment factor upon a water's-edge basis. This basis
6 shall apply to all corporations of the unitary business. If an
7 election is made to use a worldwide basis of accounting, all
8 corporations of the unitary business must make the election,
9 upon a form prescribed, prepared and furnished by the
10 department. This election shall bind all corporations of the
11 unitary business for the period of time that the election
12 remains in effect. An initial election is binding for a period
13 of seven years. Subsequent elections shall be binding for a
14 period of five years.

15 * * *

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

17 Section 404. Consolidated Reports.--The department shall not
18 permit any corporation owning or controlling, directly or
19 indirectly, any of the voting capital stock of another
20 corporation or of other corporations, subject to the provisions
21 of this article, to make a consolidated report[, showing the
22 combined net income].

23 Section 5. The act is amended by adding an article to read:

24 ARTICLE IV-A

25 MANDATORY COMBINED REPORTING

26 Section 401-A. Definitions.

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

30 "Commonly controlled group." For a corporation, the

1 corporation is a member of a group of two or more corporations
2 and more than 50% of the voting stock of each member of the
3 group is directly or indirectly owned by a common owner or by
4 common owners, either corporate or noncorporate, or by one or
5 more of the member corporations of the group.

6 "Corporation." As defined in section 401.

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

8 "Secretary." The Secretary of Revenue of the Commonwealth.

9 "Separate company." A corporation that is not a member of a
10 unitary business that consists of two or more corporations.

11 "Tax." Includes interest, penalties and additions to tax,
12 unless a more limited meaning is disclosed by the context.

13 "Tax haven." Any of the following:

14 (1) A jurisdiction which, at the beginning of a taxable
15 year, is a tax haven as identified by the Organization for
16 Economic Co-operation and Development.

17 (2) Bermuda.

18 (3) The Cayman Islands.

19 (4) The Bailiwick of Jersey.

20 (5) The Grand Duchy of Luxembourg.

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

1 "Water's-edge basis." The system of reporting required under
2 section 402-A.

3 Section 402-A. Water's-edge basis.

4 A unitary business shall report as follows:

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

10 (2) The business income and apportionment factor of
11 every member, regardless of the place incorporated or formed,
12 if the average of the corporation's or unitary business's
13 property, payroll and sales factors within the United States
14 is at least 20%.

15 (3) The business income and apportionment factor of each
16 member which is:

17 (i) a domestic international sales corporation, as
18 described in sections 991, 992, 993 and 994 of the
19 Internal Revenue Code of 1986 (Public Law 99-514, 26
20 U.S.C. §§ 991, 992, 993 and 994);

21 (ii) a foreign sales corporation as described in
22 former sections 921, 922, 923, 924, 925, 926 and 927 of
23 the Internal Revenue Code of 1986 (114 Stat. 2423); or

24 (iii) an export trade corporation, as described in
25 sections 970 and 971 of the Internal Revenue Code of 1986
26 (26 U.S.C. §§ 970 and 971).

27 (4) For each member which is a "controlled foreign
28 corporation," as defined in section 957 of the Internal
29 Revenue Code of 1986 (26 U.S.C. § 957), to the extent the
30 business income of that member is income defined in section

1 952 of the Internal Revenue Code of 1986 (26 U.S.C. § 952),
2 all of the following:

3 (i) Subpart F income, not excluding lower-tier
4 subsidiaries' distributions of the income which were
5 previously taxed, determined without regard to a Federal
6 treaty, and the apportionment factor related to that
7 income.

8 (ii) Any item of income received by a controlled
9 foreign corporation and the apportionment factor related
10 to the income shall be excluded if the corporation
11 establishes to the satisfaction of the secretary that the
12 income was subject to an effective rate of income tax
13 imposed by a foreign country greater than 90% of the
14 maximum rate of tax specified in section 11 of the
15 Internal Revenue Code of 1986 (26 U.S.C. § 11). The
16 effective rate of income tax determination shall be based
17 upon the methodology set forth under 26 CFR 1.954-1
18 (relating to foreign base company income).

19 (5) For each member that is not described in paragraph
20 (1), (2) or (3):

21 (i) the portion of its business income derived from
22 or attributable to sources within the United States, as
23 determined under the Internal Revenue Code of 1986,
24 without regard to a Federal treaty; and

25 (ii) its apportionment factor related to the portion
26 of income under subparagraph (i).

27 (6) For each member that is not described in paragraph
28 (1), (2), (3) or (4) and which is doing business in a tax
29 haven:

30 (i) Except as set forth in subparagraph (ii), the

1 business income and apportionment factor.

2 (ii) If the member establishes to the satisfaction
3 of the secretary that its income was subject to an
4 effective rate of income tax imposed by a foreign country
5 greater than 90% of the maximum rate of tax specified in
6 section 11 of the Internal Revenue Code of 1986,
7 subparagraph (i) shall not apply.

8 Section 403-A. Corporate members of unitary businesses.

9 (a) Scope.--This section applies to a corporation that is a
10 member of a unitary business which consists of two or more
11 corporations, at least one of which does not transact its entire
12 business in this Commonwealth.

13 (b) Returns.--For taxable years beginning after December 31,
14 2016, a corporation subject to this section shall, in addition
15 to the tax return filed under Article IV, file a return in
16 accordance with this section. For a taxable year which begins
17 after December 31, 2017, and ends before January 1, 2019, the
18 return filed under this subsection shall be for informational
19 purposes only and shall not be subject to section 404-A(b) or
20 (c).

21 (c) Business income.--

22 (1) For purposes of the return under subsection (b),
23 business income of a corporation shall be computed, subject
24 to paragraph (2) and subsections (d), (e) and (f), by
25 combining the business income of:

26 (i) each corporation required to report on a
27 water's-edge basis; or

28 (ii) each corporation that is a worldwide member of
29 the unitary business.

30 (2) The following shall apply:

1 (i) Business income from an intercompany transaction
2 between included corporations of a unitary business shall
3 be deferred in the manner set forth under 26 CFR 1.1502-
4 13 (relating to intercompany transactions) in determining
5 the business income of a corporation which is a member of
6 that unitary business.

7 (ii) Business income of the following corporations
8 shall not be included in the determination of combined
9 business income:

10 (A) A corporation subject to taxation under
11 Article VII, VIII, IX or XV.

12 (B) An institution, as defined in section 1501,
13 that would be subject to taxation under Article VII
14 if it was located, as defined in section 1501, in
15 this Commonwealth.

16 (C) A corporation commonly known as a title
17 insurance company that would be subject to taxation
18 under Article VIII if it was incorporated in this
19 Commonwealth.

20 (D) A corporation specified as an insurance
21 company, association or exchange in Article IX that
22 would be subject to taxation under Article IX if its
23 insurance business was transacted in this
24 Commonwealth.

25 (E) A mutual thrift institution, as defined in
26 section 1501, that would be subject to taxation under
27 Article XV if it was located, as defined in section
28 1501, in this Commonwealth.

29 (F) A small corporation, as defined in section
30 301(s.2).

1 (G) A qualified Subchapter S subsidiary, as
2 defined in section 301(o.3).

3 (d) Apportionment.--Notwithstanding any provision of this
4 act, a corporation computing business income under subsection
5 (c) may apportion the business income when one corporation of
6 the same unitary business is entitled to apportion the business
7 income.

8 (e) Apportionment fraction.--For a corporation computing
9 business income under subsection (c), subject to subsection (f),
10 the following apply:

11 (1) Computation shall be as follows:

12 (i) The denominator of the apportionment fraction
13 shall be computed on a combined basis for all included
14 corporations of the unitary business.

15 (ii) Gross receipts from an intercompany transaction
16 between included corporations of a unitary business shall
17 be eliminated unless the gross receipts are derived from
18 transactions that are deferred in the manner set forth
19 under 26 CFR 1.1502-13, in computing the numerator and
20 denominator of the apportionment fraction.

21 (iii) Gross receipts from transactions which were
22 deferred under 26 CFR 1.1502-13 shall be included in a
23 corporation's apportionment fraction during the same
24 taxable year in which it realizes business income which
25 was deferred due to the transaction.

26 (2) Apportionment shall be accomplished by multiplying:

27 (i) the combined business income; by

28 (ii) a fraction which is the combined apportionment
29 fraction under paragraph (1).

30 (f) Exclusions.--For purposes of subsection (e), the

1 apportionment fraction of the following corporations shall not
2 be included in the determination of the combined apportionment
3 fraction:

4 (1) A corporation subject to taxation under Article VII,
5 VIII, IX or XV.

6 (2) An institution, as defined in section 1501, that
7 would be subject to taxation under Article VII if it was
8 located, as defined in section 1501, in this Commonwealth.

9 (3) A corporation commonly known as a title insurance
10 company that would be subject to taxation under Article VIII
11 if it was incorporated in this Commonwealth.

12 (4) A corporation specified as an insurance company,
13 association or exchange in Article IX that would be subject
14 to taxation under Article IX if its insurance business was
15 transacted in this Commonwealth.

16 (5) A mutual thrift institution, as defined in section
17 1501, that would be subject to taxation under Article XV if
18 it was located, as defined in section 1501, in this
19 Commonwealth.

20 (6) A small corporation, as defined in section 301(s.2).

21 (7) A qualified Subchapter S subsidiary, as defined in
22 section 301(o.3).

23 (g) Nonbusiness income.--A corporation subject to this
24 section shall allocate nonbusiness income as provided in section
25 401(3)2(a)(5), (6), (7) and (8).

26 Section 404-A. Surtax.

27 (a) Estimated tax liability.--Each corporation that is
28 required to submit a return under this article shall determine
29 its estimated tax liability under this article based on its
30 apportioned share of the combined business income of the unitary

1 business plus its nonbusiness income or loss allocated to this
2 State, minus its net loss deduction, multiplied by the tax rate
3 applicable to the taxable year being reported in Article IV.

4 (b) Surtax.--If, after determining its estimated tax
5 liability under subsection (a), the corporation determines that
6 its estimated tax liability calculated under subsection (a) is
7 greater than the corporation's tax liability calculated under
8 Article IV, the corporation shall pay a surtax to the department
9 in an amount equal to the following:

10 (1) For a taxable year which begins after December 31,
11 2017, and ends before January 1, 2019, 20% of the difference
12 between the tax liability calculated under subsection (a) and
13 the tax paid to the department for that taxable year as set
14 forth in the return filed under Article IV.

15 (2) For a taxable year which begins after December 31,
16 2018, and ends before January 1, 2020, 40% of the difference
17 between the tax liability calculated under subsection (a) and
18 the tax paid to the department for that taxable year as set
19 forth in the return filed under Article IV.

20 (3) For a taxable year which begins after December 31,
21 2019, and ends before January 1, 2021, 60% of the difference
22 between the tax liability calculated under subsection (a) and
23 the tax paid to the department for that taxable year as set
24 forth in the return filed under Article IV.

25 (4) For a taxable year which begins after December 31,
26 2020, and ends before January 1, 2022, 80% of the difference
27 between the tax liability calculated under subsection (a) and
28 the tax paid to the department for that taxable year as set
29 forth in the return filed under Article IV.

30 (5) For a taxable year which begins after December 31,

1 2021, and ends before January 1, 2023, 100% of the difference
2 between the tax liability calculated under subsection (a) and
3 the tax paid to the department for that taxable year as set
4 forth in the return filed under Article IV.

5 (c) Credit.--If, after determining its estimated tax
6 liability under subsection (a), the corporation determines that
7 its estimated tax liability calculated under subsection (a) is
8 less than the corporation's tax liability calculated under
9 Article IV, the corporation shall be entitled to a credit
10 against the tax paid under Article IV in an amount equal to the
11 difference between the two calculations.

12 (d) Unitary business adjustment.--If any provision of this
13 article operates so that an amount is added to or deducted from
14 taxable income for a taxable year for any corporation of a
15 unitary business that previously had been added to or deducted
16 from taxable income of any corporation of the same unitary
17 business, an appropriate adjustment shall be made for the
18 taxable year in order to prevent double taxation or double
19 deduction. If the adjustment is not made by the appropriate
20 corporation of the unitary business, the secretary is authorized
21 to make the adjustment.

22 (e) Secretary.--The secretary shall have the duty to make
23 adjustments to ensure that a corporation does not incur an
24 unfair penalty nor realize an unfair benefit because it is
25 required to compute its business income under this article.
26 Fairness shall be measured by whether the corporation's income
27 allocated and apportioned to this Commonwealth fairly reflects
28 the corporation's share of the unitary business conducted in
29 this Commonwealth in the taxable year.

30 Section 405-A. Common tax year.

1 All corporations of a unitary business shall have a common
2 taxable year for purposes of computing tax due under this
3 article. The taxable year shall be the common taxable year
4 adopted, in a manner prescribed by the department, by all
5 corporations of a unitary business. The common taxable year must
6 be used by all corporations of that unitary business in the year
7 of adoption and all future years unless otherwise permitted by
8 the department.

9 Section 406-A. Reports and payment of surtax.

10 (a) Designation.--The corporations of a unitary business
11 shall designate one member that is subject to tax under Article
12 IV to file the annual report and remit the surtax required under
13 this article and to act as agent on behalf of all other
14 corporations that are members of the unitary business. Each
15 corporation that is a member of a unitary business shall be
16 responsible for its tax liability under Article IV and the
17 surtax under this article.

18 (b) Oath or affirmation.--The oath or affirmation of the
19 designated member's president, vice president or other principal
20 officer and of its treasurer or assistant treasurer shall
21 constitute the oath or affirmation of each corporation that is a
22 member of that unitary business.

23 (c) Annual report.--The designated member shall transmit to
24 the department upon a form prescribed by the department an
25 annual report under oath or affirmation of its president, vice
26 president or other principal officer and of its treasurer or
27 assistant treasurer. The report shall set forth:

28 (1) All corporations included in the unitary business.

29 (2) All necessary data, both in the aggregate and for
30 each corporation of the unitary business, that sets forth the

1 determination of tax liability for each corporation of the
2 unitary business.

3 (3) Any other information that the department may
4 require.

5 (d) Activities.--

6 (1) Activities that evidence a significant flow of value
7 among commonly controlled corporations shall include the
8 following:

9 (i) Assisting in the acquisition of equipment.

10 (ii) Assisting with filling personnel needs.

11 (iii) Lending funds or guaranteeing loans.

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

13 (v) Providing technical assistance.

14 (vi) Supervising.

15 (vii) Providing general operational guidance.

16 (viii) Providing overall operational strategic
17 advice.

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

19 (2) Significant flow of value must be more than the flow
20 of funds arising out of passive investment and must consist
21 of more than periodic financial oversight.

22 Section 407-A. Rebuttable presumptions for unitary business.

23 (a) Commonly controlled group of corporations.--With respect
24 to a commonly controlled group of corporations, the presence of
25 any of these factors creates a presumption of a unitary
26 business:

27 (1) Corporations engaged in the same type of business.

28 (2) Corporations engaged in different steps in a
29 vertically structured enterprise.

30 (3) Strong centralized management of corporations.

1 (b) Newly formed corporation.--A corporation newly formed by
2 a corporation that is a member of a unitary business shall be
3 rebuttably presumed to be a member of the unitary business.

4 (c) Controlling interest.--A corporation that owns a
5 controlling interest in at least two corporations of a unitary
6 business shall be rebuttably presumed to be a member of the
7 unitary business.

8 (d) Substantial use.--A corporation that permits at least
9 one other corporation of a unitary business to substantially use
10 its patents, trademarks, service marks, logo-types, trade
11 secrets, copyrights or other proprietary assets or that is
12 principally engaged in loaning money to at least one other
13 corporation of a unitary business shall be rebuttably presumed
14 to be a member of the unitary business. The presumption under
15 this subsection shall only apply to a commonly controlled group
16 of corporations.

17 (e) Specific unitary business.--As far as applicable to a
18 specific unitary business, unless there is a revision of
19 applicable State law or unless a corporation is not included
20 under the provisions of this article, there is a rebuttable
21 presumption for all tax years that begin in years 2017 and 2018
22 that a unitary business of at least two corporations includes at
23 least all of the corporations that are part of a unitary
24 business under the law of any state in which the corporation
25 files a tax report or tax return of combined net income for the
26 same tax year.

27 Section 408-A. Election.

28 (a) Nonworldwide basis.--Unless an election is made to use a
29 worldwide basis of accounting, a corporation that is a member of
30 a unitary business of at least two corporations shall determine

1 its business income and apportionment factor upon a water's-edge
2 basis. The basis shall apply to all corporations of the unitary
3 business.

4 (b) Worldwide basis.--If an election is made to use a
5 worldwide basis of accounting, all corporations of the unitary
6 business must make the election, upon a form prescribed,
7 prepared and furnished by the department. The election shall
8 bind all corporations of the unitary business for the period of
9 time that the election remains in effect. An initial election
10 shall be binding for a period of seven years. Subsequent
11 elections shall be binding for a period of five years.

12 Section 409-A. Expiration.

13 This article shall expire January 1, 2024.

14 Section 6. Section 3003.3(d) of the act is amended and the
15 section is amended by adding subsections to read:

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

17 (d) Notwithstanding the provisions of the preceding
18 subsections, other than as set forth under subsection (e),
19 interest with respect to any underpayment of any installment of
20 estimated tax shall not be imposed if the total amount of all
21 payments of estimated tax made on or before the last date
22 prescribed for the payment of such installment equals or exceeds
23 the amount which would have been required to be paid on or
24 before such date if the estimated tax were an amount equal to
25 the tax computed at the rates applicable to the taxable year,
26 including any minimum tax imposed, but otherwise on the basis of
27 the facts shown on the report of the taxpayer for, and the law
28 applicable to, the safe harbor base year, adjusted for any
29 changes to sections 401, 601, 602 and 1101 enacted for the
30 taxable year, if a report showing a liability for tax was filed

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

30 (e) (1) Notwithstanding subsections (a), (b) and (c),

1 interest with respect to any underpayment of any installment of
2 estimated corporate net income tax for any tax year that begins
3 in year 2019 or 2020 shall not be imposed if the total amount of
4 all payments of estimated corporate net income tax made on or
5 before the last date prescribed for the payment of the
6 installment equals or exceeds the amount which would have been
7 required to be paid on or before that date if the estimated tax
8 were an amount equal to the tax shown on the report of the
9 taxpayer for the safe harbor base year, if a report showing a
10 liability for tax was filed by the taxpayer for the safe harbor
11 base year.

12 (2) If the total amount of all payments of estimated tax
13 made on or before the last date prescribed for the payment of
14 the installment does not equal or exceed the amount required to
15 be paid under paragraph (1), but the amount is paid after the
16 date the installment was required to be paid, the period of
17 underpayment shall run from the date the installment was
18 required to be paid to the date the amount required to be paid
19 under paragraph (1) is paid.

20 (3) If the total tax for the safe harbor base year exceeds
21 the tax shown on the report by ten per cent or more, the total
22 tax shall be used for purposes of this subsection. If the total
23 tax for the safe harbor base year exceeds the tax shown on the
24 report by ten per cent or more, interest resulting from the
25 utilization of the total tax in the application of the
26 provisions of this subsection shall not be imposed if, within
27 forty-five days of the mailing date of a notice from the
28 department increasing the total tax, payments are made such that
29 the total amount of all payments of estimated tax equals or
30 exceeds the amount which would have been required to be paid on

1 or before the required date if the estimated tax were an amount
2 equal to the total tax.

3 (4) If the taxable year for which an underpayment of
4 estimated tax may exist is a short taxable year, in determining
5 the tax shown on the report or the total tax for the safe harbor
6 base year, the tax shall be reduced by multiplying it by the
7 ratio of the number of installment payments made in the short
8 taxable year to the number of installment payments required to
9 be made for the full taxable year.

10 (f) (1) If there is a substantial underpayment, as
11 described in subsection (a), of any installment of estimated
12 corporate net income tax or estimated capital stock franchise
13 tax for any taxable year beginning in 2023 or 2024, there shall
14 be imposed additional interest in an amount determined at one
15 hundred twenty per cent of the annual rate as provided by law
16 upon the entire underpayment for the period of the substantial
17 underpayment.

18 (2) The additional interest imposed under this subsection
19 shall be in addition to any other interest imposed on
20 underpayments under this section.

21 Section 7. This act shall apply as follows:

22 (1) The amendment or addition of the following
23 provisions shall apply to taxable years beginning after
24 December 31, 2016:

25 (i) Section 402(b) of the act.

26 (ii) Article IV-A of the act.

27 (2) The amendment or addition of the following
28 provisions shall apply to taxable years beginning after
29 December 31, 2022:

30 (i) Section 401(3)1(a) and (b) and 2(a) and (f),

1 (5), (11), (12), (13), (14), (15) and (16) of the act.

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

4 (iii) Section 404 of the act.

5 (iv) Section 3003.3(d), (e) and (f) of the act.

6 Section 8. This act shall take effect as follows:

7 (1) The following provisions shall take effect
8 immediately:

9 (i) The amendment of section 402(b) of the act.

10 (ii) The addition of Article IV-A of the act.

11 (iii) Section 7 of this act.

12 (iv) This section.

13 (2) The remainder of this act shall take effect January
14 1, 2024.