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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2422 Session of  
2024

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INTRODUCED BY DUNBAR, PISCIOTTANO, GREINER, SANCHEZ, JOZWIAK AND  
KUZMA, JUNE 20, 2024

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REFERRED TO COMMITTEE ON FINANCE, JUNE 20, 2024

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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.

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

14 Section 1. Section 401(3)1(t) of the act of March 4, 1971  
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended  
16 to read:

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

21 \* \* \*

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

1 (t) (1) Except as provided in paragraph (2), (3) or (4) for  
2 taxable years beginning after December 31, 2014, and in addition  
3 to any authority the department has on the effective date of  
4 this paragraph to deny a deduction related to a fraudulent or  
5 sham transaction, no deduction shall be allowed for an  
6 intangible expense or cost, or an interest expense or cost,  
7 paid, accrued or incurred directly or indirectly in connection  
8 with one or more transactions with an affiliated entity. [In  
9 calculating taxable income under this paragraph, when the  
10 taxpayer is engaged in one or more transactions with an  
11 affiliated entity that was subject to tax in this Commonwealth  
12 or another state or possession of the United States on a tax  
13 base that included the intangible expense or cost, or the  
14 interest expense or cost, paid, accrued or incurred by the  
15 taxpayer, the taxpayer shall receive a credit against tax due in  
16 this Commonwealth in an amount equal to the apportionment factor  
17 of the taxpayer in this Commonwealth multiplied by the greater  
18 of the following:

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

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

26 The credit issued under this paragraph shall not exceed the  
27 taxpayer's liability in this Commonwealth attributable to the  
28 net income taxed as a result of the adjustment required by this  
29 paragraph.]

30 (2) The adjustment required by paragraph (1) shall not apply

1 to a transaction that did not have as the principal purpose the  
2 avoidance of tax due under this article and was done at arm's  
3 length rates and terms.

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

12 (4) The adjustment required by paragraph (1) shall not apply  
13 to a transaction where an affiliated entity directly or  
14 indirectly paid, accrued or incurred a payment to a person who  
15 is not an affiliated entity, if the payment is paid, accrued or  
16 incurred on the intangible expense or cost, or interest expense  
17 or cost, and is equal to or less than the taxpayer's  
18 proportional share of the transaction. The taxpayer's  
19 proportional share shall be based on relative sales, assets,  
20 liabilities or another reasonable method.

21 (5) If an affiliated entity is subject to tax under this  
22 article on a tax base that includes the intangible expense or  
23 cost, or the interest expense or cost, paid, accrued or incurred  
24 by the taxpayer, the taxpayer may annually elect to either:

25 (A) reduce the adjustment required by paragraphs (1), (2),  
26 (3) and (4) to the extent the affiliated entity includes in the  
27 entity's tax base the intangible expense or cost, or the  
28 interest expense or cost, paid, accrued or incurred by the  
29 taxpayer as follows:

30 (i) Divide the tax computed under this article for the

1 affiliated entity related to the intangible expense or cost, or  
2 the interest expense or cost, paid, accrued or incurred by the  
3 taxpayer; by the tax rate; and the apportionment factor of the  
4 taxpayer used to calculate such tax.

5 (ii) In no case shall the reduction exceed the adjustment  
6 required by paragraph (1), (2), (3) or (4); or

7 (B) apply the adjustment required by paragraph (1), (2), (3)  
8 or (4) and the affiliated entity shall exclude the intangible  
9 expense or cost, or the interest expense or cost, paid, accrued  
10 or incurred by the taxpayer from the entity's tax base as  
11 follows:

12 (i) Divide the tax computed under this article for the  
13 taxpayer, including the adjustment required by paragraphs (1),  
14 (2), (3) and (4); by the tax rate; and apportionment factor used  
15 by the affiliated entity to calculate such tax.

16 (ii) In no case shall the exclusion exceed the intangible  
17 expense or cost, or the interest expense or cost, paid, accrued  
18 or incurred by the taxpayer.

19 (6) The election under paragraph (5) shall be made by the  
20 taxpayer with the filing of a return and the consistent  
21 application of this election on the return of the affiliated  
22 entity for the same tax year. The taxpayer shall identify the  
23 name and Federal EIN of the affiliated entity to which the  
24 election applies. The affiliated entity shall identify the name  
25 and Federal EIN of the taxpayer to which the election applies.  
26 Nothing in this paragraph shall otherwise impact nexus or  
27 apportionment of the taxpayer or affiliated entity.

28 \* \* \*

29 Section 2. This act shall apply to taxable years beginning  
30 after December 31, 2022.

1 Section 3. This act shall take effect immediately.