
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 161 Session of
2023

INTRODUCED BY TARTAGLIONE, HAYWOOD, HUGHES, KEARNEY, FONTANA,
BREWSTER, KANE, COLLETT, DILLON, STREET, CAPPELLETTI,
SANTARSIERO AND COMITTA, JANUARY 19, 2023

REFERRED TO FINANCE, JANUARY 19, 2023

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; and, in general
13 provisions, further providing for underpayment of estimated
14 tax.

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

17 Section 1. Section 401(3)1(a), (b), (t) and (5) of the act
18 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
19 1971, are amended, (3)2(a) (9) (A) is amended by adding a unit,
20 (3)1 and (3)4 are amended by adding phrases and the section is
21 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

1 ascribed to them in this section, except where the context
2 clearly indicates a different meaning:

3 * * *

4 (3) "Taxable income." 1. (a) In case the entire business
5 of the corporation is transacted within this Commonwealth, for
6 any taxable year which begins on or after January 1, 1971,
7 taxable income for the calendar year or fiscal year as returned
8 to and ascertained by the Federal Government before special
9 deductions provided for in 26 U.S.C. Pt. VIII (relating to
10 special deductions for corporations), or in the case of a
11 corporation participating in the filing of consolidated returns
12 to the Federal Government or that is not required to file a
13 return with the Federal Government, the taxable income which
14 would have been returned to and ascertained by the Federal
15 Government before special deductions provided for in 26 U.S.C.
16 §§ 241, 242, 243, 244, 245, 246, 247, 248, 249 and 250 if
17 separate returns had been made to the Federal Government for the
18 current and prior taxable years, subject, however, to any
19 correction thereof, for fraud, evasion, or error as finally
20 ascertained by the Federal Government.

21 (b) Additional deductions shall be allowed from taxable
22 income on account of any dividends received from any other
23 corporation but only to the extent that such dividends are
24 included in taxable income as returned to and ascertained by the
25 Federal Government. For tax years beginning on or after January
26 1, 1991, additional deductions shall only be allowed for amounts
27 included, under section 78 of the Internal Revenue Code of 1986
28 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned
29 to and ascertained by the Federal Government and for the amount
30 of any dividends received from a foreign corporation included in

1 taxable income to the extent such dividends would be deductible
2 in arriving at Federal taxable income if received from a
3 domestic corporation. For taxable years beginning after December
4 31, 2023, the additional deduction with respect to dividends
5 shall not be allowed for dividends between members of a unitary
6 group.

7 * * *

8 (p.1) For taxable years after December 31, 2023, in the case
9 of a corporation that is a member of a unitary business, the
10 term "taxable income" shall mean the combined unitary income of
11 the unitary business, as determined on a water's-edge basis.

12 * * *

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

1 (A) the tax liability of the affiliated entity with respect
2 to the portion of its income representing the intangible expense
3 or cost, or the interest expense or cost, paid, accrued or
4 incurred by the taxpayer; or

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

8 The credit issued under this paragraph shall not exceed the
9 taxpayer's liability in this Commonwealth attributable to the
10 net income taxed as a result of the adjustment required by this
11 paragraph.

12 (2) The adjustment required by paragraph (1) shall not apply
13 to a transaction that did not have as [the] a principal purpose
14 the avoidance of tax due under this article and was done at
15 arm's length rates and terms.

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

24 (4) The adjustment required by paragraph (1) shall not apply
25 to a transaction where an affiliated entity directly or
26 indirectly paid, accrued or incurred a payment to a person who
27 is not an affiliated entity, if the payment is paid, accrued or
28 incurred on the intangible expense or cost, or interest expense
29 or cost, and is equal to or less than the taxpayer's
30 proportional share of the transaction. The taxpayer's

1 proportional share shall be based on relative sales, assets,
2 liabilities or another reasonable method.

3 (5) The adjustment required under paragraph (1) shall not
4 apply to a transaction between the taxpayer and an affiliated
5 entity, where the taxpayer and the affiliated entity file a
6 combined annual report in this State.

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

15 (a) Division of Income.

16 * * *

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

18 * * *

19 (vi) (a) For taxable years beginning after December 31,
20 2023, all business income of a unitary business shall be
21 apportioned to this State by multiplying the income by the
22 member's sales factor, the numerator of which shall be the
23 member's total sales in this State, and the denominator of which
24 shall be the combined total sales of all members of the unitary
25 business everywhere. In computing the sales of each member for
26 purposes of apportionment, the following sales are excluded from
27 the numerator and denominator:

28 (I) sales from transactions between or among members of the
29 unitary business that are deferred under 26 CFR 1.1502-13
30 (relating to intercompany transactions) for Federal taxable

1 income purposes; and

2 (II) the sales of each member that are excluded from the
3 unitary business pursuant to the definition of water's-edge
4 basis.

5 (b) The Pennsylvania sales of each nontaxable member shall
6 be determined based upon the apportionment rules applicable to
7 the member and shall be aggregated. Each taxable member of the
8 group shall include in its sales factor numerator a portion of
9 the aggregate Pennsylvania sales of nontaxable members based on
10 a ratio, the numerator of which is the taxable member's
11 Pennsylvania sales and the denominator of which is the aggregate
12 Pennsylvania sales of all the taxable members of the group.

13 (c) Nonbusiness income of each member of a unitary business
14 shall be allocated as provided in paragraphs (5) through (8) of
15 phrase (a) of subclause 2 of this definition. A member of the
16 unitary business is subject to tax on its apportioned share of
17 all business income of the unitary business, plus its
18 nonbusiness income or loss allocated to this State, minus the
19 member's net loss deduction.

20 (d) The Secretary of Revenue has the authority to
21 distribute, apportion or allocate gross income, deductions,
22 credits or allowances between and among two or more
23 corporations, persons, entities, members or unitary businesses,
24 whether or not incorporated, whether or not organized in the
25 United States and whether or not affiliated, if:

26 (I) the corporations, persons, entities, members or unitary
27 businesses are owned or controlled directly or indirectly by the
28 same interests within the meaning of 26 U.S.C. § 482 (relating
29 to allocation of income and deductions among taxpayers); and

30 (II) the Secretary of Revenue determines that the

1 distribution, apportionment or allocation is necessary in order
2 to reflect an arm's length standard within the meaning of 26 CFR
3 1.482-1 (relating to allocation of income and deductions among
4 taxpayers) and to reflect clearly the income of those
5 corporations, persons, entities, members or unitary businesses.

6 (e) The Secretary of Revenue shall apply the administrative
7 and judicial interpretations of 26 U.S.C. § 482 in administering
8 this section.

9 (f) For taxable years beginning after December 31, 2023, any
10 member of a unitary group that would otherwise apportion its
11 business income under phrase (b), (c), (d) or (e) of subclause 2
12 of this definition shall determine its apportionment formula
13 using a single sales fraction.

14 * * *

15 4. * * *

16 (h) Subject to the limitations of this subclause, any member
17 of a unitary business that has unused net loss from taxable
18 years that began prior to January 1, 2024, or that generates net
19 losses while a member of a unitary business may only take the
20 net loss deduction for taxable years beginning after December
21 31, 2023, to the extent of the member's share of combined
22 unitary income after apportionment and the net losses may not be
23 used by other members of the same unitary business.

24 (i) Any net loss realized for a taxable year unused by a
25 corporation which subsequently becomes a member of another
26 unitary business, may only be used by that corporation.

27 * * *

28 (5) "Taxable year." [The taxable year which the
29 corporation, or any consolidated group with which the
30 corporation participates in the filing of consolidated returns,

1 actually uses in reporting taxable income to the Federal
2 Government. With regard to the tax imposed by Article IV of this
3 act (relating to the Corporate Net Income Tax), the terms
4 "annual year," "fiscal year," "annual or fiscal year," "tax
5 year" and "tax period" shall be the same as the corporation's
6 taxable year, as defined in this paragraph.]

7 1. Except as set forth in subclause 2, the taxable year
8 which the corporation, or any consolidated group with which the
9 corporation participates in the filing of consolidated returns,
10 actually uses in reporting taxable income to the Federal
11 Government, or which the corporation would have used in
12 reporting taxable income to the Federal Government had it been
13 required to report its taxable income to the Federal Government.
14 With regard to the tax imposed by Article IV, the terms "annual
15 year," "fiscal year," "annual or fiscal year," "tax year" and
16 "tax period" shall be the same as the corporation's taxable
17 year, as defined in this subclause or subclause 2.

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

26 * * *

27 (12) "Tax haven." Means any of the following:

28 (A) Andorra.

29 (B) Anguilla.

30 (C) Antigua and Barbuda.

- 1 (D) Aruba.
- 2 (E) The Bahamas.
- 3 (F) Bahrain.
- 4 (G) Barbados.
- 5 (H) Belize.
- 6 (I) Bermuda.
- 7 (J) The British Virgin Islands.
- 8 (K) The Cayman Islands.
- 9 (L) The Cook Islands.
- 10 (M) Cyprus.
- 11 (N) Dominica.
- 12 (O) Gibraltar.
- 13 (P) Grenada.
- 14 (Q) Guernsey-Sark-Alderney.
- 15 (R) The Isle of Man.
- 16 (S) Jersey.
- 17 (T) Liberia.
- 18 (U) Liechtenstein.
- 19 (V) Luxembourg.
- 20 (W) Malta.
- 21 (X) The Marshall Islands.
- 22 (Y) Mauritius.
- 23 (Z) Monaco.
- 24 (AA) Montserrat.
- 25 (BB) Nauru.
- 26 (CC) Netherlands Antilles.
- 27 (DD) Niue.
- 28 (EE) Panama.
- 29 (FF) Samoa.
- 30 (GG) San Marino.

1 (HH) Seychelles.

2 (II) St. Kitts and Nevis.

3 (JJ) St. Lucia.

4 (KK) St. Vincent and the Grenadines.

5 (LL) Turks and Caicos Islands.

6 (MM) Vanuatu.

7 (NN) A jurisdiction that is identified as a tax haven by the
8 Organization for Economic Co-operation and Development.

9 (13) "Unitary business." A single economic enterprise that
10 is made up of separate parts of a single corporation, of a
11 commonly controlled group of corporations, or both, that are
12 sufficiently interdependent, integrated and interrelated through
13 their activities so as to provide a synergy and mutual benefit
14 that produces a sharing or exchange of value among them and a
15 flow of value to the separate parts. A unitary business includes
16 all those parts and corporations that are included in a unitary
17 business under the Constitution of the United States.

18 (14) "Water's-edge basis." A system of reporting that
19 includes the income and apportionment factors of certain members
20 of a unitary business, described as follows:

21 (A) Any member incorporated in the United States or formed
22 under the laws of any state of the United States, the District
23 of Columbia, any territory or possession of the United States or
24 the Commonwealth of Puerto Rico.

25 (B) Any member, regardless of the place incorporated or
26 formed, if at least twenty per cent of the member's sales factor
27 is within the United States, and the following shall apply:

28 (i) For purposes of determining whether at least twenty per
29 cent of a member's sales factor is within the United States, the
30 calculation must be performed on a stand-alone basis. Sales

1 shall be gross figures without eliminations for transactions
2 with other members of any unitary business.

3 (ii) Whether sales are within the United States is based on
4 the sales factor sourcing rules contained in section 401(3).

5 (C) Any member which is one of the following:

6 (i) A domestic international sales corporation as described
7 in 26 U.S.C. Pt. IV Subpt. A (relating to treatment of
8 qualifying corporations).

9 (ii) A foreign sales corporation as described in 26 U.S.C.
10 §§ 921, 922, 923, 924, 925, 926 and 927.

11 (iii) An export trade corporation as described in 26 U.S.C.
12 Pt. IV Subpt. G (relating to export trade corporations).

13 (D) Any member not described in subparagraph (A), (B) or (C)
14 shall include the portion of the member's taxable income derived
15 from or attributable to sources within the United States, as
16 determined under 26 U.S.C. (relating to Internal Revenue Code)
17 without regard to Federal treaties, and its apportionment
18 factors related thereto.

19 (E) Any member that is a "controlled foreign corporation" as
20 defined in 26 U.S.C. § 957 (relating to foreign corporations;
21 United States persons), to the extent the income of that member
22 is income defined in 26 U.S.C. § 952 (relating to Subpart F
23 income defined) as Subpart F income, not excluding lower-tier
24 subsidiaries' distributions of such income which were previously
25 taxed, determined without regard to Federal treaties, and the
26 apportionment factors related to that income; any item of income
27 received by a controlled foreign corporation and the
28 apportionment factors related to such income shall be excluded
29 if the corporation establishes to the satisfaction of the
30 Secretary of Revenue that such income was subject to an

1 effective rate of income tax imposed by a foreign country
2 greater than ninety per cent of the maximum rate of tax
3 specified in 26 U.S.C. § 11 (relating to tax imposed). The
4 effective rate of income tax determination shall be based upon
5 the methodology set forth under 26 CFR 1.954-1 (relating to
6 foreign base company income).

7 (F) Any member that is incorporated in or is doing business
8 in a tax haven. The income and apportionment factors of a member
9 doing business in a tax haven shall be excluded if the member
10 establishes to the satisfaction of the Secretary of Revenue that
11 the member's income was subject to an effective rate of income
12 tax imposed by a country greater than ninety per cent of the
13 maximum rate of tax specified in 26 U.S.C. § 11.

14 (15) "Commonly controlled group." For a corporation, the
15 corporation is a member of a group of two or more corporations
16 and more than fifty per cent of the voting stock or controlling
17 interest of each member of the group is directly or indirectly
18 owned by a common owner or by common owners, either corporate or
19 noncorporate, or by one or more of the member corporations of
20 the group.

21 (16) "Combined unitary income." The aggregate taxable
22 income or loss of all members of a unitary business, subject to
23 apportionment, except:

24 (A) Income from an intercompany transaction between members
25 of a unitary business shall be deferred in a manner similar to
26 26 CFR 1.1502-13 (relating to intercompany transactions) for
27 Federal taxable income purposes.

28 (B) Dividends paid by one member of a unitary business to
29 another.

30 (C) Income of the following members is not included in the

1 determination of combined unitary income:

2 (i) any member subject to taxation under Article VII, VIII,
3 IX or XV;

4 (ii) any member specified in the definition of "institution"
5 in section 701.5 that would be subject to taxation under Article
6 VII, were it doing business in this State, as defined in section
7 701.5;

8 (iii) any member commonly known as a title insurance company
9 that would be subject to taxation under Article VIII, were it
10 incorporated in this State;

11 (iv) any member specified as an insurance company,
12 association or exchange in Article IX that would be subject to
13 taxation under Article IX, were it transacting insurance
14 business in this State;

15 (v) any member specified in the definition of "institution"
16 in section 1501 that would be subject to taxation under Article
17 XV, were it located, as defined in section 1501, in this State;
18 or

19 (vi) any member that is a small corporation as defined in
20 section 301(s.2) except to the extent of such small
21 corporation's net recognized built-in gain to the extent of and
22 as determined for Federal income tax purposes under 26 U.S.C. §
23 1374(d)(2) (relating to tax imposed on certain built-in gains).

24 (17) "Member." A corporation that is a member of a unitary
25 business. The term does not include a corporation listed in
26 clause (15)(C).

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

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

29 (b) The annual rate of tax on corporate net income imposed
30 by subsection (a) for taxable years beginning for the calendar

1 year or fiscal year on or after the dates set forth shall be as
2 follows:

3 Taxable Year Tax Rate

4 January 1, 1995, [and
5 each taxable year
6 thereafter] through

7 December 31, 2023 9.99%

8 January 1, 2024,
9 through December

10 31, 2024 8.99%

11 January 1, 2025,
12 through December

13 31, 2025 7.99%

14 January 1, 2026,
15 through December

16 31, 2026, and each 6.99%

17 taxable year

18 thereafter

19 * * *

20 Section 3. Section 403 of the act is amended by adding
21 subsections to read:

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

23 (a.1) (1) Each corporation that is a member of a unitary

24 business that consists of two or more corporations, unless

25 excluded by the provisions of this article, shall file as part

26 of a combined annual report. The member of the unitary business

27 shall designate one member that is subject to tax under this

28 article to file the combined annual report and to act as agent

29 on behalf of all other members of the unitary business. Each

30 corporation that is a member of a unitary business is liable for

1 its tax liability under this article. The agent is also liable
2 for the aggregate amount of the unitary business' tax liability
3 pursuant to this article.

4 (2) The oath or affirmation of the designated member's
5 president, vice president, treasurer, assistant treasurer or
6 other authorized officer shall constitute the oath or
7 affirmation of each corporation that is a member of that unitary
8 business.

9 (3) The designated member shall transmit to the department
10 upon a form prescribed by the department a combined annual
11 report under oath or affirmation of the member's president, vice
12 president, treasurer, assistant treasurer or other authorized
13 officer.

14 (4) In addition to the information required in subsection
15 (a), the combined annual report shall set forth:

16 (i) All members included in the unitary business.

17 (ii) All necessary data, both in the aggregate and for each
18 member of the unitary business, that sets forth the
19 determination of tax liability for each member of the unitary
20 business.

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

22 (a.2) A member of a unitary business of two or more
23 corporations must determine the member's income and
24 apportionment factors on a water's-edge basis.

25 * * *

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

27 Section 404. Consolidated Reports.--The department shall not
28 permit any corporation owning or controlling, directly or
29 indirectly, any of the voting capital stock of another
30 corporation or of other corporations, subject to the provisions

1 of this article, to make a consolidated report[, showing the
2 combined net income].

3 Section 5. Section 3003.3(d) of the act is amended and the
4 section is amended by adding a subsection to read:

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

6 (d) Notwithstanding the provisions of [the preceding
7 subsections,] this section, other than as set forth in
8 subsection (d.1), interest with respect to any underpayment of
9 any installment of estimated tax shall not be imposed if the
10 total amount of all payments of estimated tax made on or before
11 the last date prescribed for the payment of such installment
12 equals or exceeds the amount which would have been required to
13 be paid on or before such date if the estimated tax were an
14 amount equal to the tax computed at the rates applicable to the
15 taxable year, including any minimum tax imposed, but otherwise
16 on the basis of the facts shown on the report of the taxpayer
17 for, and the law applicable to, the safe harbor base year,
18 adjusted for any changes to sections 401, 601, 602 and 1101
19 enacted for the taxable year, if a report showing a liability
20 for tax was filed by the taxpayer for the safe harbor base year.
21 If the total amount of all payments of estimated tax made on or
22 before the last date prescribed for the payment of such
23 installment does not equal or exceed the amount required to be
24 paid per the preceding sentence, but such amount is paid after
25 the date the installment was required to be paid, then the
26 period of underpayment shall run from the date the installment
27 was required to be paid to the date the amount required to be
28 paid per the preceding sentence is paid. Provided, that if the
29 total tax for the safe harbor base year exceeds the tax shown on
30 such report by ten per cent or more, the total tax adjusted to

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

19 (d.1) With respect to any underpayment of an installment of
20 estimated corporate net income tax for any tax year that begins
21 in taxable year 2024 or 2025 by a corporation required to file a
22 combined annual report pursuant to section 403(a.1)(1), interest
23 shall not be imposed if the total amount of all payments of
24 estimated corporate net income tax made on or before the last
25 date prescribed for the payment of such installment equals or
26 exceeds the amount which would have been required to be paid on
27 or before such date if the estimated tax were an amount equal to
28 the combined tax shown on the reports of all the members of the
29 unitary business for the safe harbor base year computed at the
30 rate applicable to the taxable year.

1 Section 6. The amendment of sections 401, 402, 403, 404 and
2 3003.3 of the act shall apply to taxable years beginning after
3 December 31, 2023.

4 Section 7. This act shall take effect immediately.