

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** House Bill 952

**PRINTER NO.** 1934

**AMOUNT**

FY 2021-22: (\$35,800,000)

**FUND**

General Fund

**DATE INTRODUCED**

March 17, 2021

**PRIME SPONSOR**

Representative Oberlander

**DESCRIPTION AND PURPOSE OF BILL**

House Bill 952, as amended, amends the Tax Reform Code of 1971 (Act of March 4, 1971, P.L.6, No.2) by serving as the omnibus tax bill with regard to fiscal year 2021-22 budget implementation. The legislation amends various articles of the Tax Reform Code of 1971 (TRC) as follows:

**SALES AND USE TAX (ARTICLES II AND XXIX)**

**SUT on Computer Data Center Equipment - Exemption**

- Amends Article XXIX of the TRC to provide a sales and use tax exemption for the sale at retail or use of computer data center equipment for installation in a computer data center.
- Eligible computer data centers must meet certain criteria regarding payroll and investment in order to qualify for an exemption from SUT on equipment as follows:
  - Must pay annual compensation of at least \$1 million to employees at the certified computer data center site within four years of program certification.
  - Must have at least \$75 million of new investment within four years of program certification if the data center is located in a county with a population not exceeding 250,000.
  - Must have at least \$100 million of new investment within four years of program certification if the data center is located in a county with a population exceeding 250,000.
- Replaces the existing computer data center sales and use tax refund program currently capped at \$7 million per year and increases the required investment level threshold by \$50 million (i.e., from \$25M to \$75M and from \$50M to \$100M).
- Existing computer data centers that were certified under the previous refund program are deemed to meet the new certification requirements (i.e., grandfather clause).

*Fiscal impact: FY 2021-22: -\$14 million; FY 2022-23: -\$41.3 million*

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### SUT on Helicopters and Similar Rotorcraft – Expansion of Existing Exclusion

- Expands the existing SUT exclusion for helicopter repair or replacement parts to include software or software upgrades and flight simulators and their components for use in helicopters or similar rotorcraft.
- Expands the existing SUT exclusion for the sale at retail or use of helicopters and similar rotorcraft to include flight simulators, as well as training materials, operational documents and publications relating to the use or operation of helicopters and similar rotorcraft and flight simulators.
- Defines “flight simulator” as a device used for the training or instruction of an individual on a helicopter and similar rotorcraft.

*Fiscal impact: FY 2021-22: -\$2.6 million; FY 2022-23 -\$2.2 million*

### SUT on Multipurpose Agricultural Vehicles – Exclusion

- Excludes from SUT a multipurpose agricultural vehicle, which is defined in 75 Pa.C.S. § 102 as “a motor vehicle which is 62 inches or less in width and 2,000 pounds or less in dry weight and which is used exclusively for agricultural operations and only incidentally operated or moved upon the highways.”
- According to the definition, this would generally exclude from sales and use tax vehicles that are commonly referred to as ATVs or UTVs only if the vehicle is operated for the benefit of or pursuant to the operation of a farm owned or operated by the owner of the vehicle or a business whose enterprises and activities are considered part of farming.

*Fiscal impact: FY 2021-22: -\$800,000; FY 2022-23 -\$900,000*

### SUT on Durable Medical Equipment Used for Breastfeeding – Exclusion

- Excludes from SUT tangible personal property manufactured for the purpose of initiating, supporting or sustaining breastfeeding.

*Fiscal impact: FY 2021-22: -\$1.3 million; FY 2022-23: -\$2.9 million*

## **PERSONAL INCOME TAX (ARTICLE III)**

### Crop Insurance Proceeds – Federal Conformity

- Conforms Article III (PIT) with Federal Internal Revenue Code § 451(f) such that in the case of insurance proceeds received as a result of destruction or damage to crops, a taxpayer may elect to include such proceeds in income for the taxable year following the taxable year of destruction or damage, if it is established that income from such crops would have been reported in a following taxable year.
- The new provision defers the recognition of income from crop insurance proceeds but does not reduce or eliminate it.

*Fiscal impact: FY 2021-22 and FY 2022-23: No fiscal impact*

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## Federal Form 1099-NEC

- Includes needed references in Article III with regard to the filing of Federal Form 1099-NEC (i.e., nonemployee compensation), which was created in the Federal Tax Cuts and Jobs Act of 2017.

*Fiscal impact: FY 2021-22 and FY 2022-23: No fiscal impact*

## Electronic Payment Thresholds

- Requires that PIT payments remitted in the amount of \$15,000 or more shall be made electronically as prescribed by the department.
- A PIT liability of \$15,000 corresponds to taxable income of nearly \$489,000, so EFT payments will only be required on income of at least this amount.
- Imposes a penalty equal to 3% of the PIT payment amount, not to exceed \$500, for non-compliance with the new electronic payment requirement.
- Does not apply to employer withholding payments.

*Fiscal impact: FY 2021-22 and FY 2022-23: No fiscal impact*

## **CORPORATE NET INCOME TAX (ARTICLE IV)**

### Qualified Manufacturing Innovation and Reinvestment Deduction

- Provides that the existing Manufacturing Innovation and Reinvestment Deduction contained within the corporate net income tax (CNIT) may be taken following the allocation and apportionment of income.
- A deduction taken before the allocation and apportionment of multi-state income to Pennsylvania is worth significantly less than a deduction applied to income as allocated or apportioned to Pennsylvania.

*Fiscal impact: FY 2021-22: -\$23.9 million; FY 2022-23: -\$50.4 million*

## **BANK AND TRUST COMPANY SHARES TAX (ARTICLE VII)**

### Receipts Factor

- In the case of combinations or mergers, clarifies that the receipts factor used to apportion income from more than one state includes the total of all items of income from the institutions as if a single institution had been in existence for the taxable year.
- Change ensures that the apportionment factor used to apportion combined income matches up with the merged value of the bank shares that are being taxed.

*Fiscal impact: FY 2021-22 and FY 2022-23: No fiscal impact*

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### **REALTY TRANSFER TAX (ARTICLE XI-C)**

#### Scrivener's Error Correction

- Corrects an error that appears in § 1103-C(c) of the Tax Reform Code of 1971.
- An error appeared in the publication of section 12 of the act of July 2, 1986 (P.L.318, No.77) in which the words "devise and "devised" were published in the official copies of the act instead of the words "demise" and "demised".

*Fiscal impact: FY 2021-22 and FY 2022-23: No fiscal impact*

### **TABLE GAMES TAX (ARTICLE XXV)**

#### Sunset Repeal

- Repeals the August 1, 2021, expiration of the 2% table games tax, which is deposited into the General Fund.

*Fiscal impact: FY 2021-22: \$18.3 million; FY 2022-23: \$20 million*

### **TAX CREDIT PROGRAMS (VARIOUS ARTICLES)**

#### Tax Credit and Tax Benefit Administration and Appeals Process

- Requires the department or an administering agency to make a finding that an applicant or a recipient of a tax credit or tax benefit has filed all required state tax reports and returns and paid any balance of state tax due. For the purposes of the Educational Improvement Tax Credit program, the department, within 30 days of receiving a completed application, must notify the Department of Community and Economic of any findings.
- Increases the accountability of tax credit and tax benefit programs by giving agencies sufficient tools to properly verify applications and requires agencies to adequately train their employees in the operation of the programs.
- Establishes a tax credit broker registration requirement.
  - A broker registered must post a \$50,000 bond with the department.
  - A violation of any of the requirements will result in a civil fine of up to \$25,000 for the first offense and up to \$50,000 for each additional offense.
- Provides insight into the use of the tax credit and tax benefit programs through the standardization of annual reports that discloses the recipients, the amount of benefits awarded, and increased jobs and economic activity attributable to the programs.
- Allows the department or administering agency to require electronic applications for tax credits and tax benefits.
- Amends Article XXVII of the TRC (Procedure and Administration) to provide applicants of tax credit programs an avenue to appeal an agency's denial of a tax credit application.

*Fiscal impact: FY 2021-22 and FY 2022-23: No fiscal impact*

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### Research and Development Tax Credit

- Revises and streamlines the application and approval dates of the R&D Tax Credit to better align with the filing of tax returns and reports.

*Fiscal impact: FY 2021-22 and FY 2022-23: No fiscal impact*

### Film Production Tax Credit

- Adds a definition of "multifilm", which is defined as a series of separate and distinct films produced by the same taxpayer over a period of no less than one year and no more than four years from the time of application.
- Allows DCED to consider a taxpayer's ability to produce multiple films within this Commonwealth and the potential economic impact, including tourism impact, of the multiple films to the state when reviewing and approving applications.
- If an individual film included in a multifilm application is canceled, the tax credit may be reissued to another applicant only after DCED allows the taxpayer 90 days to apply for an alternative individual film produced by the taxpayer.

*Fiscal impact: FY 2021-22 and FY 2022-23: No fiscal impact*

### Entertainment Economic Enhancement Program Tax Credit

- Creates new definitions for "Pennsylvania live events industry", "personal protective equipment", and "streaming performance."
- Provides that for fiscal years beginning July 1, 2021, and ending June 30, 2023, the term "taxpayer" also includes a management company of a professional sports league, a news broadcasting station, a production company, a creative agency or a broadcaster subject to income tax in PA.
- Provides that for fiscal years beginning July 1, 2021, and ending June 30, 2023, the term "tour" also includes a streaming performance, which is defined as a live performance at a qualified rehearsal facility located in Pennsylvania to be remotely viewed by individuals.
- Allows unused credits not awarded in a prior fiscal year to be carried forward to the immediately succeeding fiscal year.
- Creates a new section relating to Pennsylvania live events industry COVID-19 emergency assistance to provide temporary procedures to encourage streaming performances, which will qualify for a tax credit.

*Fiscal impact: FY 2021-22 and FY 2022-23: No fiscal impact*

### Local Resource Manufacturing Tax Credit

- Provides that no more than two qualified taxpayers shall receive a tax credit annually. Under current law, four taxpayers may receive a tax credit.

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- Provides for the use of unallocated tax credits by no more than one qualified taxpayer if a qualified taxpayer meets the following conditions:
  - Has made a total capital investment of at least \$1 billion in order to construct the project facility and place the project facility into service;
  - Has created a minimum aggregate total of 1,800 new jobs and permanent jobs; and
  - Has satisfied all other eligibility requirements for a qualified taxpayer under the article.
- Maintains the overall program cap of \$26.7 million per year.

*Fiscal impact: FY 2021-22 and FY 2022-23: No fiscal impact*

### Keystone Innovation Zone Tax Credit

- Revises and streamlines the application and approval dates of the KIZ Tax Credit to better align with the filing of tax returns and reports.

*Fiscal impact: FY 2021-22 and FY 2022-23: No fiscal impact*

### Mixed-Use Development Tax Credit

- Increases the annual cap of the existing Mixed-Use Development Tax Credit from \$3 million per fiscal year to \$4.5 million per fiscal year, beginning in fiscal year 2021-22.

*Fiscal impact: FY 2021-22: -\$1.5 million; FY 2022-23: -\$1.5 million*

### Pennsylvania Housing Tax Credit

- Funds the Pennsylvania Housing Tax Credit enacted by Act 107 of 2020 (SB 30) at \$10 million per fiscal year, beginning with fiscal year 2021-22.
- The maximum tax credit per taxpayer for a qualified low-income housing project may not exceed \$1.5 million.
- Makes the program's reporting requirements compatible with the new funding procedures.

*Fiscal impact: FY 2021-22: -\$10 million; FY 2022-23: -\$10 million*

## **ECONOMIC DEVELOPMENT ZONES (ARTICLE XIX-D)**

### Keystone Opportunity Expansion Zones (KOEZs)

- Allows DCED to approve an application by an existing KOEZ located in Westmoreland County for an extension of five years.
- Extends the existing application deadline for potential new KOEZs allowed under Act 13 of 2019 from October 2021 to October 2022 (Cambria, Clearfield and Lancaster Counties).

*Fiscal impact: FY 2021-22 and FY 2022-23: No fiscal impact*

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### **MISCELLANEOUS PROVISIONS (ARTICLE XXX)**

#### Charges for Insufficient Funds

- Decreases the penalty for bad checks and electronic funds transfers (EFTs) to 10% of the amount of the tax liability, up to a maximum of \$100.
- Under current law, the penalty for attempting to make a tax payment with insufficient funds is 10% of the amount of the tax liability, up to a maximum of \$1,000. Generally, the penalty applies to all tax types collected by the Department of Revenue.

*Fiscal impact: FY 2021-22 and FY 2022-23: No fiscal impact*

The legislation takes effect under various effective and applicability dates depending on the provision being added or amended in the TRC.

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## **FISCAL IMPACT:**

The fiscal impact of House Bill 952, as amended, on Commonwealth funds is enumerated in the following table:

House Bill 952, as amended	FY 2021-22	FY 2022-23
	<i>(amounts in millions)</i>	
<b>Sales and Use Tax</b>		
<i>SUT - Exemption for computer data center equipment (SB 463 &amp; HB 952)</i>	(\$14.0)	(\$41.3)
<i>SUT - Exemption for helicopter flight simulators, software, training manuals, etc.</i>	(\$2.8)	(\$2.2)
<i>SUT - Exemption for ATVs used in farming (SB 325)</i>	(\$0.8)	(\$0.9)
<i>SUT - Exemption for Breastfeeding Equipment (HB 725)</i>	(\$1.3)	(\$2.9)
<i>Subtotal - SUT Changes</i>	(\$18.7)	(\$47.3)
<b>Personal Income Tax</b>		
<i>PIT - Federal conformity for crop insurance proceeds (HB 1006)</i>	\$ -	\$ -
<i>PIT - Electronic payments &gt;\$15K (HB 1059)</i>	\$ -	\$ -
<i>PIT - Federal Form 1099-NEC (HB 1059)</i>	\$ -	\$ -
<i>Subtotal - PIT Changes</i>	\$0.0	\$0.0
<b>Corporate Net Income Tax</b>		
<i>GNIT - Manufacturing Innovation and Reinvestment Deduction fix (SB 288)</i>	(\$23.9)	(\$50.4)
<i>Subtotal - CNIT Changes</i>	(\$23.9)	(\$50.4)
<b>Bank Shares Tax</b>		
<i>Apportionment (Receipts Factor) fix for mergers and combinations</i>	\$ -	\$ -
<i>Subtotal - BST Changes</i>	\$0.0	\$0.0
<b>Realty Transfer Tax</b>		
<i>Scrivener's error fix - change "devise" to "demise" (HB 273)</i>	\$ -	\$ -
<i>Subtotal - RTT Changes</i>	\$0.0	\$0.0
<b>Table Games Tax</b>		
<i>Table Games Tax - Permanently extend 2% tax scheduled to sunset August 1, 2021</i>	\$18.3	\$20.0
<i>Subtotal - Table Games Tax Changes</i>	\$18.3	\$20.0
<b>Other Tax Changes</b>		
<i>Reduce charge for insufficient funds to maximum of \$100</i>	\$ -	\$ -
<i>Tax credit administration procedure response to Grand Jury to prevent fraud (HB 1303)</i>	\$ -	\$ -
<i>Petitions for reassessment related to tax credit appeals (HB 1303)</i>	\$ -	\$ -
<i>Subtotal - Other Tax Changes</i>	\$0.0	\$0.0
<i>Subtotal - Total Tax Changes</i>	(\$24.3)	(\$77.7)
<b>Tax Credits and Zones</b>		
<i>Research and Development Tax Credit Technical Fixes (HB 1303)</i>	\$ -	\$ -
<i>Film Production Tax Credit - additional utilization for multifilms</i>	\$ -	\$ -
<i>Entertainment Tax Credit (concerts) - livestream and other changes</i>	\$ -	\$ -
<i>Local Resource Manufacturing Tax Credit - unallocated credits under certain conditions</i>	\$ -	\$ -
<i>Keystone Innovation Zone Tax Credit Fixes (HB 1303)</i>	\$ -	\$ -
<i>KOEZ - Extension for existing parcel in Westmoreland County</i>	\$ -	\$ -
<i>KOEZ - Extend application deadline from Oct. 2021 to Oct. 2022 for Cambria County</i>	\$ -	\$ -
<i>Mixed-Use Development Tax Credit - annual cap increase</i>	(\$1.5)	(\$1.5)
<i>Pennsylvania Housing Tax Credit - \$10M cap; \$1.5M individual credit cap (SB 763)</i>	(\$10.0)	(\$10.0)
<i>Subtotal - Tax Credit and Zone Changes</i>	(\$11.5)	(\$11.5)
<b>TOTAL - General Fund</b>	<b>(\$35.8)</b>	<b>(\$89.2)</b>