# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** House Bill 1342

**PRINTER NO.** 3370

**AMOUNT**

See Fiscal Impact

**FUND**

General Fund
Public Transportation Assistance Fund
Fire Insurance Tax Fund
Municipal Pension Aid Fund
Property Tax Relief Fund

**DATE INTRODUCED**

May 5, 2021

**PRIME SPONSOR**

Representative Rader

**DESCRIPTION**

House Bill 1342, 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 2022-23 budget implementation. The legislation amends various articles of the Tax Reform Code of 1971 (TRC) as follows:

**Corporate Net Income Tax**

Rate Reduction

- Provides for an annual phase-down of the corporate net income tax rate of one percentage point in the first year and one-half percentage point each year thereafter until it reaches 4.99% in 2031, as follows:
  - January 1, 1995, through December 31, 2022; 9.99%
  - January 1, 2023, through December 31, 2023; 8.99%
  - January 1, 2024, through December 31, 2024; 8.49%
  - January 1, 2025, through December 31, 2025; 7.99%
  - January 1, 2026, through December 31, 2026; 7.49%
  - January 1, 2027, through December 31, 2027; 6.99%
  - January 1, 2028, through December 31, 2028; 6.49%
  - January 1, 2029, through December 31, 2029; 5.99%
  - January 1, 2030, through December 31, 2030; 5.49%
  - January 1, 2031, and each year thereafter; 4.99%

Sales Factor Market Sourcing for the Sales of Intangibles

- Modifies the sales factor used for apportioning the income of multi-state corporations related to the sale of intangible property by applying market sourcing rules to intangible-related receipts.
- Examples of sales of intangible property include, but are not limited to, receipts from patents, royalties, franchise agreements, sale or exchange of securities, and interest in connection with loans. Under current law, receipts from the sale of such property are not apportioned based upon the location of the marketplace where the purchaser receives or uses the property.
- Aligns the apportionment rules governing sales of intangible property with the sales of tangible personal property, real property and services to be consistent with market sourcing (i.e., where the purchaser paying for the sale or using the property is located).
- Sources more sales of out-of-state companies to Pennsylvania (i.e., increases their Pennsylvania sales factor percentage) and may result in Pennsylvania-based companies reducing their single sales factor apportionment percentage on a case-by-case basis.
- Under current law, sales, other than sales of tangible personal property, real property and services, commonly referred to as intangible sales, are in this state if:
    - The income-producing activity is performed in this state; or
    - The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

Economic Nexus Standards

- Codifies economic nexus rules currently in place as Department of Revenue tax policy issued through Corporation Tax Bulletin 2019-04.
- The economic nexus standards will require certain out-of-state corporations who previously did not file to file corporate tax reports in Pennsylvania.
- Includes a rebuttable presumption that a corporation with $500,000 or more of sales sourced to Pennsylvania has substantial nexus in the Commonwealth without regard to physical presence in the state.
- Adopts the legal theory posited in the U.S. Supreme Court decision in *Wayfair v. South Dakota*, which gives states the ability to collect sales and use tax based on an in-state dollar value sales threshold or number of transactions by a business located out-of-state.
- The economic nexus standard and market sourcing rules work in tandem to capture more out-of-state companies doing business in Pennsylvania and require them to report sales based upon the location of their customers or use of intangible property in Pennsylvania.

*Total combined CNIT fiscal impact: FY 2022-23: -$202.3 million; FY 2023-24: -$225.3 million*

## Personal Income Tax

Conformity with Federal IRC § 179 Expense Deductions

- Increases the limit from $25,000 to match the federal limit (currently $1,080,000 for 2022) on Internal Revenue Code (IRC) § 179 property that may be treated as a deductible expense in calculating the personal income tax.
- Under IRC § 179, an election to recover all or part of the cost of certain qualifying property, up to a limit, can be made by deducting it in the year the property is placed in service instead of writing off the property's cost over its depreciable life.
- The Pennsylvania Tax Reform Code of 1971 (TRC) currently limits the § 179 expense deduction to $25,000, which was the limit of the allowable amount under the federal Internal Revenue Code as of 1997 when the provision was last updated in the TRC.
- Going forward, the section 179 expense deduction allowable under Pennsylvania's PIT will conform to federal tax law.
- Deducting expenses upfront results in smaller depreciation deductions in later years, so the overall cost to General Fund tax revenues declines in future years because the provision is simply a timing difference between smaller, prolonged deductions under current law and accelerated deductions under the change.

*Fiscal impact: FY 2022-23: -$3 million; FY 2023-24: -$18.7 million*

Conformity with Federal IRC § 1031 Like-Kind Exchange Income Recognition Rules

- Conforms Pennsylvania's personal income tax to federal Internal Revenue Code (IRC) § 1031 with regard to the exchange of property held for productive use or investment.
- IRC § 1031 allows tax on the gain from real property to be postponed, or deferred, if the proceeds are re-invested in similar property as part of a qualifying like-kind exchange. Gain deferred in a like-kind exchange under IRC § 1031 is tax-deferred, but it is not tax-free.
- Under current Pennsylvania law, gain resulting from like-kind exchanges of property that occur in the Commonwealth are generally subject to personal income tax at the time of sale.
- Allows gain resulting from a qualifying like-kind exchange of real property to be tax-deferred for personal income tax as it is for federal tax purposes.

*Fiscal impact: FY 2022-23: -$12.6 million; FY 2023-24: -$15.1 million*

COVID-19 Emergency Tax Filing Provisions – Technical Cleanups

- Recodifies into the TRC provisions in the Fiscal Code with regard to the nontaxability of federal economic impact payments and payroll protection loan forgiveness.

- Repeals from the TRC COVID-19 emergency local tax filing deadline extensions, which have since been properly enacted into the Local Tax Enabling Act.

*Fiscal impact: FY 2022-23 and FY 2023-24: No fiscal impact*

## Sales and Use Tax

Peer-to-Peer Car Sharing Rentals – Administration

- Adds relevant definitions such as "shared vehicle", "peer-to-peer car sharing" and "peer-to-peer car sharing program marketplace facilitator" to ensure that sales and use tax is collected and remitted on shared vehicle rentals as it is on traditional rental vehicles.
- The term "peer-to-peer car sharing program marketplace facilitator" is incorporated into Article II so that persons or companies who facilitate car sharing through online platforms are responsible for collecting and remitting the sales tax as opposed to each individual vehicle owner being required to collect and remit tax.
- Clarifies that a "peer-to-peer car sharing program marketplace facilitator" such as Turo and Getaround will be treated in the same manner as other marketplace facilitator's such as Amazon, eBay, Airbnb and VRBO whereby the facilitator collects and remits the sales tax on behalf of its platform participants.
- Ensures a level playing field between shared vehicle platforms and traditional rental car companies, whose transactions are subject to sales tax under current law.

*Fiscal impact: FY 2022-23: $300,000; FY 2023-24: $500,000*

Definitions and Exclusions – Technical Cleanups

- Removes a definition embedded into section 204 SUT exclusion clauses and moves it to section 201 (relating to definitions).

*Fiscal impact: FY 2022-23 and FY 2023-24: No fiscal impact*

## Insurance Premiums Tax

Transfer of Funds

- Modernizes and stabilizes the methodology used to fund the Fire Insurance Tax Fund (FITF) and Municipal Pension Aid Fund (MPAF) through the collection and transfer of certain insurance premiums taxes and charges (IPT) under current law.
- Deposits all IPT into the General Fund and then transfers the greater of a fixed dollar amount or fixed percentage of total revenue to these two special funds.

This proposal provides a reliable stream of funds for volunteer fire companies and municipalities that rely on revenue from the FITF and MPAF.

- Directs the greater of $85 million, or 8.5%, of total IPT revenue to the FITF. Under current law cash flow projections, the FITF is projected to receive $85 million in FY 2022-23. Under this change, the FITF is locked in at no less than $85 million per year.
- Money in the Fire Insurance Tax Fund is allocated through the Department of the Auditor General and local municipalities to nearly 2,000 volunteer firefighter relief associations to enable the purchase of training, equipment and insurance and to pay death benefits for volunteer firefighters.
- Directs the greater of $345 million, or 38%, of total IPT revenue to the MPAF. Under current law cash flow projections, the MPAF is projected to receive disproportionately larger amounts of money in future years compared to the FITF. Under this change, the MPAF is locked in at no less than $345 million but will realize growth in FY 2022-23 and future fiscal years based on projections from the Department of Revenue.
- Money in the Municipal Pension Aid Fund helps local governments defray the cost of employee, police and firefighter pension plans maintained by municipalities, regional police forces and councils of government.
- The General Fund would realize a slight revenue increase under the change in the first year and a slight decrease in later fiscal years.

*General Fund fiscal impact: FY 2022-23: $600,000; FY 2023-24: -$2.2 million*

*FITF fiscal impact: FY 2022-23: no change from current year; FY 2023-24: no change from current year*

*MPAF fiscal impact: FY 2022-23: $4.1 million; FY 2023-24: $4.6 million*

## Vehicle Rental Tax

Exclusion

- Excludes the rental of vehicles through a peer-to-peer car sharing program from the 2% vehicle rental tax.

*Fiscal impact: FY 2022-23 and FY 2023-24: No fiscal impact*

## Inheritance Tax

Decedent Military Members - Exemption

- Exempts from the inheritance tax the transfer of personal property, whether tangible or intangible, that is the result of a decedent military member.
- Defines "decedent military member" as an individual who, while serving in the armed forces, a reserve component or the National Guard of the United States,

died as a result of injury or illness received while on active duty, including active duty for training.

*Fiscal impact: FY 2022-23 and FY 2023-24: Nominal fiscal impact*

**Public Transportation Assistance Fund**

Peer-to-Peer Car Sharing

- Imposes the prorated $2 per day PTAF fee on vehicle rentals through a peer-to-peer car-sharing program or through a shared vehicle owner.
- Increases from 4 hours to 6 hours the prorated rental interval schedule at which the maximum $2 fee per day is applicable.

*PTAF fiscal impact: FY 2022-23: $1 million; FY 2023-24: $2 million*

**Table Games Tax**

Maintains Table Games Tax Revenue in the General Fund

- Effective June 30, 2022, repeals the requirement under current law that table games taxes be deposited into the Property Tax Relief Fund (PTRF) once the Rainy Day Fund balance exceeds $750 million on the last day of a fiscal year.
- Current Rainy Day Fund balance triggers the provision in current law (i.e., Title 4 – Pennsylvania Race Horse Development and Gaming Act) that redirects table games taxes from the General Fund to the PTRF.
- Maintains the status quo, since inception, with regard to the deposit of table games taxes into the General Fund.

*General Fund fiscal impact: FY 2022-23: $133.5 million; FY 2023-24: $130.9 million*

*Property Tax Relief Fund fiscal impact: FY 2022-23: -$133.5 million; FY 2023-24: -$130.9 million*

**Tax Credit Programs**

Research and Development Tax Credit

- Increases the annual cap of the R&D tax credit program by $5 million, from $55 million per fiscal year to $60 million.
- Maintains the longstanding 80/20 split with regard to the small business carve-out by dedicating $1 million of the $5 million increase to the small business set-aside, thereby increasing it from $11 million to $12 million.

*Fiscal impact: FY 2022-23: -$5 million; FY 2023-24: -$5 million*

Film Production Tax Credit

- Increases the annual cap of the tax credit program by $30 million, from $70 million per fiscal year to $100 million.
- Updates the definition of "multifilm" to "multifilm production", which now includes productions with taxpayers who have no less than 80% common ownership.
- Allows DCED to annually extend a multifilm production's application period before the expiration of the period of production.
- Adds a new definition of "Pennsylvania film producer", which is a Pennsylvania domiciled film production company whose principal tax jurisdiction is the Commonwealth, a majority of its owners are Pennsylvania residents and that employs fewer than 15 full-time employees.
- Of the $100 million annual cap, $5 million is reserved for allocation to Pennsylvania film producers. If the $5 million reserve is not awarded, any unused amount will be available for use by other film production companies.

*Fiscal impact: FY 2022-23: -$30 million; FY 2023-24: -$30 million*

Entertainment Economic Enhancement Program Tax Credit

- Increases the annual cap of the tax credit program by $16 million, from $8 million per fiscal year to $24 million.

*Fiscal impact: FY 2022-23: -$16 million; FY 2023-24: -$16 million*

Waterfront Development Tax Credit

- Increases the annual cap of the tax credit program by $3.5 million, from $1.5 million per fiscal year to $5 million.

*Fiscal impact: FY 2022-23: -$3.5 million; FY 2023-24: -$3.5 million*

Pennsylvania Child and Dependent Care Enhancement Program

- Establishes a new tax credit to be applied against an individual's personal income tax liability for employment-related expenses incurred for dependent-care costs while working or seeking employment.
- The tax credit piggybacks on, and is equal to, 30% of the amount of tax credit received by the taxpayer under section 21 of the Internal Revenue Code for the federal Child and Dependent Care Credit.
- The Pennsylvania tax credit will be claimed on an annual personal income tax return and will be refundable to the taxpayer if the credit exceeds the tax liability.

- The federal credit is available for child and dependent care costs necessary for gainful employment.
- The Pennsylvania Child and Dependent Care Enhancement Tax Credit is linked to Internal Revenue Code rules in place for 2022, so any increases or decreases to the federal program will not automatically impact the Commonwealth.
- Both the federal and Pennsylvania credits are available to middle-income households.
- Approximately two-thirds of the federal tax credits are claimed by individuals with annual income at or above $60,000, which is approximately the median household income in Pennsylvania.

*Fiscal impact: FY 2022-23: -$24.6 million; FY 2023-24: -$35.1 million*

Allocation of Tax Credits

- Adds a new section 3003.25 to the General Provisions of the Tax Reform Code relating to the allocation of tax credits.
- The tax credit programs receiving a cap increase in this act and the new Airport Land Development Zone tax credit shall remain at the levels contained in HB 1342, as amended, through fiscal year 2024-25.
- Reversing these allocation provisions would require a majority vote of the General Assembly and approval by the Governor.

*Fiscal impact: No fiscal impact*

## Economic Development Zones

City Revitalization and Improvement Zones

- Updates existing penalty provisions by requiring the Department of Revenue to notify the zone's contracting authority of all qualified businesses subject to penalty.
- Allows financial assistance in the form of a grant or loan to a qualified business acquiring property for the business constructing a new facility, reconstructing or renovating an existing facility or acquiring new equipment to be used in a zone. Under current law, only loans from the revolving fund are an allowable use of money.
- Updates confidentiality provisions to clarify that a zone contracting authority may use zone reports or certifications to verify the state tax certification and the amount allocated to any allowable uses specified under the program.

*Fiscal impact: FY 2022-23 and FY 2023-24: No fiscal impact*

Neighborhood Improvement Zones

- Updates confidentiality provisions to clarify that a zone contracting authority may use zone reports or certifications to verify tax certifications and the amount allocated to any allowable uses specified under the program.

*Fiscal impact: FY 2022-23 and FY 2023-24: No fiscal impact*

Keystone Opportunity Zones

- Clarifies that an affiliate of a qualified business located within a KOZ is entitled to the same tax exemptions, deductions, abatements and credits available to the qualified business.
- Extends the existing application deadline for potential new KOEZs allowed under Act 13 of 2019 from October 2021 to October 2023 (Cambria, Clearfield and Lancaster Counties).

*Fiscal impact: FY 2022-23 and FY 2023-24: No fiscal impact*

Airport Land Development Zones

- Establishes the Airport Land Development Zone (ALDZ) program to encourage and promote the creation of new jobs on land and buildings owned by airports within the Commonwealth and to accelerate economic activity at and around airports on undeveloped land or vacant buildings owned by airports that can provide new revenue sources for airports.
- An ALDZ located at a commercial service airport can be no more than 300 acres. The total acres for all commercial service airports in the program may not exceed 2,000 acres.
- An ALDZ located at a noncommercial service airport can be no more than 50 acres. The total acres for all noncommercial service airports in the program may not exceed 2,000 acres.
- Requires an airport to submit an airport land development zone plan to the Department of Community and Economic Development for approval. A plan shall include the following information:
    - A legal description, identification number and acreage of each parcel included in the zone.
    - Certification by an airport that any building in the zone was vacant and any parcel in the zone had no permanent, vertical structures affixed to the parcel on or after December 31, 2021.
    - A map and diagram of each parcel included in the plan.
- Airport land development zone employers that create new jobs may earn a tax credit equal to $2,100 for each full-time equivalent employee in excess of the number of full-time equivalent employees employed by the ALDZ employer prior to January 1, 2021.

- The ALDZ employer must agree to maintain operations related to the ALDZ tax credits for a period of five years from the date the zone employer first submits a tax credit certificate to the Department of Revenue, and failure to do so may result in a refund to the Commonwealth of the total amount of tax credits granted.

*Fiscal impact: FY 2022-23: -$4.0 million; FY 2023-24: -$9.4 million*

Computer Data Center Equipment Exemption Program – Extension

- Extends the qualification period for computer data center program participants from 15 years, as enacted in Act 25 of 2021, to 25 years.
- Adds an additional definition of "qualification period" to effectuate the program extension from 15 years to 25 years.

*Fiscal impact: FY 2022-23 and FY 2023-24: No fiscal impact*