

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 and for imposition of tax.

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

14 Section 1. Section 401(3)1(t) and 2(a)(17) and (9) of the
 15 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
 16 of 1971, are amended, clause (3)2(a) is amended by adding a
 17 phrase and the section is amended by adding a clause to read:

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

22 * * *

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

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

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

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

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

1 paragraph.

2 (2) The adjustment required by paragraph (1) shall not apply
3 [to a transaction that did not have as the principal purpose the
4 avoidance of tax due under this article and was done at arm's
5 length rates and terms.] where the taxpayer establishes, as
6 determined by the Secretary of Revenue, that the adjustment is
7 unreasonable.

8 (3) The adjustment required by paragraph (1) shall not apply
9 to a transaction between a taxpayer and an affiliated entity
10 domiciled in a foreign nation which has in force a comprehensive
11 income tax treaty with the United States [providing] where the
12 affiliated entity is subject to tax in the foreign nation, at a
13 rate that equals or exceeds the rate set in section 402(b), on a
14 tax base that includes the management fees, intangible expense
15 or cost, or the interest expense or cost paid, accrued or
16 incurred by the taxpayer. The comprehensive income tax treaty
17 must provide for the allocation of all categories of income
18 subject to taxation, or the withholding of tax, on royalties,
19 licenses, fees and interest for the prevention of double
20 taxation of the respective nations' residents and the sharing of
21 information.

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

1 (5) The adjustment required under paragraph (1) shall not
2 apply to a transaction where the affiliated entity derives at
3 least one-third of its sales from entities that are not
4 affiliated entities and the transaction giving rise to the
5 adjustment was done at arm's length rates and terms.

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), 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.] as follows:

24 (C) Gross receipts from the lease or license of intangible
25 property, including a sale or exchange of property where the
26 receipts from the sale or exchange derive from payments that are
27 contingent on the productivity, use or disposition of the
28 property, if and to the extent the property is used in this
29 State.

30 (D) Gross receipts from the sale of intangible property

1 where the holder property sold is a contract right, government
2 license or similar property that authorizes the holder to
3 conduct a business activity in a specific geographic area, if
4 and to the extent the property is used in or otherwise
5 associated with this State.

6 (E) Gross receipts from the sale, redemption, maturity or
7 exchange of securities, held by the taxpayer primarily for sale
8 to customers in the ordinary course of its trade or business, if
9 the customers are in this State.

10 (F) Gross receipts received from interest, fees and
11 penalties imposed in connection with loans secured by real
12 property, if the property is located within this State.

13 (G) Gross receipts received from interest, fees and
14 penalties imposed in connection with loans related to the sale
15 of tangible personal property, if the property is delivered or
16 shipped to a purchaser in this State.

17 (H) Gross receipts received from interest, fees and
18 penalties imposed in connection with loans not described in
19 subparagraph (F) or (G), if the borrower is located in this
20 State.

21 (I) Gross receipts received from interest, fees and
22 penalties in the nature of interest from credit card receivables
23 and receipts from fees charged to cardholders, such as annual
24 fees, if the billing address of the cardholder is in this State.

25 (J) Gross receipts received from intangible property, not
26 otherwise described in this paragraph, shall be excluded from
27 the numerator and the denominator of the sales factor.

28 * * *

29 (19) For purposes of this subclause relating to division of
30 income, gross receipts received from the sale of an interest in

1 a partnership, joint venture, association or other
2 unincorporated enterprise shall be considered a sale of the
3 assets of the partnership, joint venture, association or other
4 unincorporated enterprise and shall be sourced based on
5 subparagraphs (16), (16.1) and (17) by the type of asset of the
6 partnership, joint venture, association or other unincorporated
7 enterprise.

8 * * *

9 (9) "Interest expense or cost." A deduction allowed under
10 section 163 of the Internal Revenue Code of 1986 (26 U.S.C. §
11 163) [to the extent that such deduction is directly related to
12 an intangible expense or cost].

13 * * *

14 (11) "Management fees." Expenses and costs paid for
15 services pertaining to accounts receivable and payable, employe
16 benefit plans, insurance, legal, payroll, data processing,
17 purchasing, tax, financial and securities, accounting, research,
18 management, reporting and compliance services or similar
19 services, only to the extent the amounts of the expenses and
20 costs are allowed as a deduction or cost in determining taxable
21 income.

22 Section 2. Section 402 of the act is amended to read:

23 Section 402. Imposition of Tax.--(a) A corporation shall be
24 subject to and shall pay an excise tax for exercising, whether
25 in its own name or through any person, association, business
26 trust, corporation, joint venture, limited liability company,
27 limited partnership, partnership or other entity, any of the
28 following privileges:

29 (1) Doing business in this Commonwealth.

30 (2) Carrying on activities in this Commonwealth, including

1 solicitation which is not protected activity under the act of
2 September 14, 1959 (Public Law 86-272, 15 U.S.C. § 381 et seq.).

3 (3) Having capital or property employed or used in this
4 Commonwealth.

5 (4) Owning property in this Commonwealth.

6 (5) (A) Having substantial nexus in this Commonwealth.

7 Substantial nexus in this Commonwealth means a direct or
8 indirect business activity that is sufficient to grant the
9 Commonwealth authority under the Constitution of the United
10 States to impose tax under this article and for which a basis
11 exists under section 401 to apportion or allocate the
12 corporation's income to this Commonwealth.

13 (B) For purposes of this section, business activity,
14 including, but not limited to:

15 (i) the leasing or licensing of intangible property that is
16 utilized in this Commonwealth;

17 (ii) regularly engaging in transactions with customers in
18 this Commonwealth involving intangible property, including
19 loans; or

20 (iii) sales of intangible property that was utilized by the
21 corporation within this Commonwealth.

22 (C) There shall be a rebuttable presumption that a
23 corporation with \$500,000 or more of sales sourced to this
24 Commonwealth under section 401 has substantial nexus in this
25 Commonwealth without regard to physical presence in this
26 Commonwealth.

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

Taxable Year	Tax Rate
January 1, 1995[, and each taxable year thereafter] through December 31, 2022	9.99%
January 1, 2023, through December 31, 2025	7.99%
January 1, 2026, through December 31, 2026	6.99%
January 1, 2027, and each taxable year there	5.99%

(c) An entity subject to taxation under Article VII, VIII, IX or XV shall not be subject to the tax imposed by this article.

Section 3. This act shall apply as follows:

(1) The amendment of section 402(a) of the act shall apply to taxable years beginning after December 31, 2019.

(2) The remainder of this act shall apply to taxable years beginning after December 31, 2022.

Section 4. This act shall take effect immediately.