
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 204 Session of
2013

INTRODUCED BY TARTAGLIONE, KASUNIC, FARNESE, HUGHES, FERLO,
SOLOBAY, YUDICHAK, FONTANA, COSTA, LEACH AND BREWSTER,
MAY 16, 2013

REFERRED TO FINANCE, MAY 16, 2013

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, for reports and payment and
12 for consolidated reports; and, in general provisions, further
13 providing for underpayment of estimated tax.

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

16 Section 1. Section 401(3)1(a) and (b) and 2(a) and (5) of
17 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
18 Code of 1971, amended or added December 23, 1983 (P.L.370,
19 No.90), July 1, 1985 (P.L.78, No.29), August 4, 1991 (P.L.97,
20 No.22), May 12, 1999 (P.L.26, No.4), June 22, 2001 (P.L.353,
21 No.23), June 29, 2002 (P.L.559, No.89), October 9, 2009
22 (P.L.451, No.48) and July 2, 2012 (P.L.751, No.85) are amended,
23 clause (3)2 is amended by adding a phrase and the section is

1 amended by adding clauses to read:

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

6 * * *

7 (3) "Taxable income." 1. (a) In case the entire business
8 of the corporation is transacted within this Commonwealth, for
9 any taxable year which begins on or after January 1, 1971,
10 taxable income for the calendar year or fiscal year as returned
11 to and ascertained by the Federal Government, or in the case of
12 a corporation participating in the filing of consolidated
13 returns to the Federal Government or that is not required to
14 file a return with the Federal Government, the taxable income
15 which would have been returned to and ascertained by the Federal
16 Government if separate returns had been made to the Federal
17 Government for the current and prior taxable years, subject,
18 however, to any correction thereof, for fraud, evasion, or error
19 as finally ascertained by the Federal Government.

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

1 in arriving at Federal taxable income if received from a
2 domestic corporation. For taxable years beginning on or after
3 January 1, 2012, if not otherwise allowed as a deduction, an
4 additional deduction is allowed for all dividends paid by one to
5 another of the included corporations of a unitary business to
6 the extent those dividends are included in business income of a
7 corporation that is required to determine its business income
8 pursuant to paragraph (1) of phrase (e) of subclause (2).

9 * * *

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

18 (a) Division of Income.

19 (1) As used in this definition, unless the context otherwise
20 requires:

21 (A) "Business income" means income arising from transactions
22 and activity in the regular course of the taxpayer's trade or
23 business and includes income from tangible and intangible
24 property if either the acquisition, the management or the
25 disposition of the property constitutes an integral part of the
26 taxpayer's regular trade or business operations. The term
27 includes all income which is apportionable under the
28 Constitution of the United States.

29 (B) "Commercial domicile" means the principal place from
30 which the trade or business of the taxpayer is directed or

1 managed.

2 (C) "Compensation" means wages, salaries, commissions and
3 any other form of remuneration paid to employes for personal
4 services.

5 (D) "Nonbusiness income" means all income other than
6 business income. The term does not include income which is
7 apportionable under the Constitution of the United States.

8 (E) "Sales" means all gross receipts of the taxpayer not
9 allocated under this definition other than dividends received,
10 interest on United States, state or political subdivision
11 obligations and gross receipts heretofore or hereafter received
12 from the sale, redemption, maturity or exchange of securities,
13 except those held by the taxpayer primarily for sale to
14 customers in the ordinary course of its trade or business.

15 (F) "State" means any state of the United States, the
16 District of Columbia, the Commonwealth of Puerto Rico, any
17 territory or possession of the United States, and any foreign
18 country or political subdivision thereof.

19 (G) "This state" means the Commonwealth of Pennsylvania or,
20 in the case of application of this definition to the
21 apportionment and allocation of income for local tax purposes,
22 the subdivision or local taxing district in which the relevant
23 tax return is filed.

24 (2) Any taxpayer having income from business activity which
25 is taxable both within and without this State other than
26 activity as a corporation whose allocation and apportionment of
27 income is specifically provided for in section 401(3)2(b)(c) and
28 (d) shall allocate and apportion taxable income as provided in
29 this definition.

30 (3) For purposes of allocation and apportionment of income

1 under this definition, a taxpayer is taxable in another state if
2 in that state the taxpayer is subject to a net income tax, a
3 franchise tax measured by net income, a franchise tax for the
4 privilege of doing business, or a corporate stock tax or if that
5 state has jurisdiction to subject the taxpayer to a net income
6 tax regardless of whether, in fact, the state does or does not.

7 (4) Rents and royalties from real or tangible personal
8 property, gains, interest, patent or copyright royalties, to the
9 extent that they constitute nonbusiness income, shall be
10 allocated as provided in paragraphs (5) through (8).

11 (5) (A) Net rents and royalties from real property located
12 in this State are allocable to this State.

13 (B) Net rents and royalties from tangible personal property
14 are allocable to this State if and to the extent that the
15 property is utilized in this State, or in their entirety if the
16 taxpayer's commercial domicile is in this State and the taxpayer
17 is not organized under the laws of or taxable in the state in
18 which the property is utilized.

19 (C) The extent of utilization of tangible personal property
20 in a state is determined by multiplying the rents and royalties
21 by a fraction, the numerator of which is the number of days of
22 physical location of the property in the state during the rental
23 or royalty period in the taxable year and the denominator of
24 which is the number of days of physical location of the property
25 everywhere during all rental or royalty periods in the taxable
26 year. If the physical location of the property during the rental
27 or royalty period is unknown or unascertainable by the taxpayer,
28 tangible personal property is utilized in the state in which the
29 property was located at the time the rental or royalty payer
30 obtained possession.

1 (6) (A) Gains and losses from sales or other disposition of
2 real property located in this State are allocable to this State.

3 (B) Gains and losses from sales or other disposition of
4 tangible personal property are allocable to this State if the
5 property had a situs in this State at the time of the sale, or
6 the taxpayer's commercial domicile is in this State and the
7 taxpayer is not taxable in the state in which the property had a
8 situs.

9 (C) Gains and losses from sales or other disposition of
10 intangible personal property are allocable to this State if the
11 taxpayer's commercial domicile is in this State.

12 (7) Interest is allocable to this State if the taxpayer's
13 commercial domicile is in this State.

14 (8) (A) Patent and copyright royalties are allocable to
15 this State if and to the extent that the patent or copyright is
16 utilized by the payer in this State, or if and to the extent
17 that the patent copyright is utilized by the payer in a state in
18 which the taxpayer is not taxable and the taxpayer's commercial
19 domicile is in this State.

20 (B) A patent is utilized in a state to the extent that it is
21 employed in production, fabrication, manufacturing, or other
22 processing in the state or to the extent that a patented product
23 is produced in the state. If the basis of receipts from patent
24 royalties does not permit allocation to states or if the
25 accounting procedures do not reflect states of utilization, the
26 patent is utilized in the state in which the taxpayer's
27 commercial domicile is located.

28 (C) A copyright is utilized in a state to the extent that
29 printing or other publication originates in the state. If the
30 basis of receipts from copyright royalties does not permit

1 allocation to states or if the accounting procedures do not
2 reflect states of utilization, the copyright is utilized in the
3 state in which the taxpayer's commercial domicile is located.

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

5 (i) For taxable years beginning before January 1, 2007, all
6 business income shall be apportioned to this State by
7 multiplying the income by a fraction, the numerator of which is
8 the property factor plus the payroll factor plus three times the
9 sales factor and the denominator of which is five.

10 (ii) For taxable years beginning after December 31, 2006,
11 all business income shall be apportioned to this State by
12 multiplying the income by a fraction, the numerator of which is
13 the sum of fifteen times the property factor, fifteen times the
14 payroll factor and seventy times the sales factor and the
15 denominator of which is one hundred.

16 (iii) For taxable years beginning after December 31, 2008,
17 all business income shall be apportioned to this State by
18 multiplying the income by a fraction, the numerator of which is
19 the sum of eight and a half times the property factor, eight and
20 a half times the payroll factor and eighty-three times the sales
21 factor and the denominator of which is one hundred.

22 (iv) For taxable years beginning after December 31, 2009,
23 all business income shall be apportioned to this State by
24 multiplying the income by a fraction, the numerator of which is
25 the sum of five times the property factor, five times the
26 payroll factor and ninety times the sales factor and the
27 denominator of which is one hundred.

28 (v) For taxable years beginning after December 31, 2012, all
29 business income shall be apportioned to this State by
30 multiplying the income by the sales factor.

1 (B) For purposes of apportionment of the capital stock -
2 franchise tax as provided in section 602 of Article VI of this
3 act, the apportionment fraction shall be the property factor
4 plus the payroll factor plus the sales factor as the numerator,
5 and the denominator shall be three.

6 (10) The property factor is a fraction, the numerator of
7 which is the average value of the taxpayer's real and tangible
8 personal property owned or rented and used in this State during
9 the tax period and the denominator of which is the average value
10 of all the taxpayer's real and tangible personal property owned
11 or rented and used during the tax period but shall not include
12 the security interest of any corporation as seller or lessor in
13 personal property sold or leased under a conditional sale,
14 bailment lease, chattel mortgage or other contract providing for
15 the retention of a lien or title as security for the sales price
16 of the property.

17 (11) Property owned by the taxpayer is valued at its
18 original cost. Property rented by the taxpayer is valued at
19 eight times the net annual rental rate. Net annual rental rate
20 is the annual rental rate paid by the taxpayer less any annual
21 rental rate received by the taxpayer from subrentals.

22 (12) The average value of property shall be determined by
23 averaging the values at the beginning and ending of the tax
24 period but the tax administrator may require the averaging of
25 monthly values during the tax period if reasonably required to
26 reflect properly the average value of the taxpayer's property.

27 (13) The payroll factor is a fraction, the numerator of
28 which is the total amount paid in this State during the tax
29 period by the taxpayer for compensation and the denominator of
30 which is the total compensation paid everywhere during the tax

1 period.

2 (14) Compensation is paid in this State if:

3 (A) The individual's service is performed entirely within
4 the State;

5 (B) The individual's service is performed both within and
6 without this State, but the service performed without the State
7 is incidental to the individual's service within this State; or

8 (C) Some of the service is performed in this State and the
9 base of operations or if there is no base of operations, the
10 place from which the service is directed or controlled is in
11 this State, or the base of operations or the place from which
12 the service is directed or controlled is not in any state in
13 which some part of the service is performed, but the
14 individual's residence is in this State.

15 (15) The sales factor is a fraction, the numerator of which
16 is the total sales of the taxpayer in this State during the tax
17 period, and the denominator of which is the total sales of the
18 taxpayer everywhere during the tax period.

19 (16) Sales of tangible personal property are in this State
20 if the property is delivered or shipped to a purchaser, within
21 this State regardless of the f.o.b. point or other conditions of
22 the sale.

23 (17) Sales, other than sales of tangible personal property
24 and sales set forth under paragraphs (17.1) and (17.2), are in
25 this State if:

26 (A) The income-producing activity is performed in this
27 State; or

28 (B) The income-producing activity is performed both in and
29 outside this State and a greater proportion of the income-
30 producing activity is performed in this State than in any other

1 state, based on costs of performance.

2 (17.1) Sales of services are in this State if sales are
3 derived from customers within this State. If part of the sales
4 with respect to a specific contract or other agreement to
5 perform services is derived from customers from within this
6 State, sales are in this State in proportion to the sales
7 derived from customers within this State to total sales with
8 respect to that contract or agreement.

9 (17.2) In order to determine sales in this State of any
10 railroad, truck, bus, airline, pipeline, natural gas or water
11 transportation company that is required to determine its
12 business income under paragraph (1) of phrase (e) of this
13 subclause the company must convert the relevant fraction set
14 forth under phrase (b), (c) or (d) of this subclause to gross
15 receipts. Sales in this State are the result of multiplying
16 total gross receipts from relevant transportation activities by
17 the decimal equivalent of the relevant fraction set forth under
18 phrase (b), (c) or (d) of this subclause.

19 (18) If the allocation and apportionment provisions of this
20 definition do not fairly represent the extent of the taxpayer's
21 business activity in this State, the taxpayer may petition the
22 Secretary of Revenue or the Secretary of Revenue may require, in
23 respect to all or any part of the taxpayer's business activity:

24 (A) Separate accounting;

25 (B) The exclusion of any one or more of the factors;

26 (C) The inclusion of one or more additional factors which
27 will fairly represent the taxpayer's business activity in this
28 State; or

29 (D) The employment of any other method to effectuate an
30 equitable allocation and apportionment of the taxpayer's income.

1 In determining the fairness of any allocation or apportionment,
2 the Secretary of Revenue may give consideration to the
3 taxpayer's previous reporting and its consistency with the
4 requested relief.

5 * * *

6 (e) Corporations That are Members of a Unitary Business.

7 (1) Notwithstanding any contrary provisions of this article,
8 for taxable years that begin on or after January 1, 2012,
9 business income of a corporation that is a member of a unitary
10 business that consists of two or more corporations, at least one
11 of which does not transact its entire business in this State, is
12 determined by combining the business income of either all
13 corporations, other than as provided under this paragraph, that
14 are water's-edge basis members or all corporations, other than
15 as provided under this paragraph, that are worldwide members of
16 the unitary business. Business income from an intercompany
17 transaction between included corporations of a unitary business
18 shall be deferred in the manner set forth under 26 CFR 1.1502-13
19 (relating to intercompany transactions) in determining the
20 business income of a corporation that is a member of that
21 unitary business. Business income of the following corporations
22 is not included in the determination of combined business
23 income:

24 (i) any corporation subject to taxation under Article VII,
25 VIII, IX or XV;

26 (ii) any corporation specified in the definition of
27 "institution" in section 701.5 that would be subject to taxation
28 under Article VII if it was located, as defined in section
29 701.5, in this State;

30 (iii) any corporation commonly known as a title insurance

1 company that would be subject to taxation under Article VIII if
2 it was incorporated in this State;

3 (iv) any corporation specified as an insurance company,
4 association or exchange in Article IX that would be subject to
5 taxation under Article IX if its insurance business was
6 transacted in this State;

7 (v) any corporation specified in the definition of
8 "institution" in section 1501 that would be subject to taxation
9 under Article XV if it was located, as defined in section 1501,
10 in this State; or

11 (vi) any corporation that is a small corporation, as defined
12 in section 301(s.2), or a qualified Subchapter S subsidiary, as
13 defined in section 301(o.3).

14 (2) Notwithstanding any contrary provisions of this article,
15 all corporations that are required to compute business income
16 under paragraph (1) are entitled to apportion the business
17 income when one corporation of the same unitary business is
18 entitled to apportion the business income. Notwithstanding any
19 contrary provisions of this article, for taxable years that
20 begin on or after January 1, 2012, the denominator of the
21 apportionment fraction of a corporation that is required to
22 compute its business income under paragraph (1) shall be
23 computed on a combined basis for all included corporations of
24 the unitary business. Gross receipts from an intercompany
25 transaction between included corporations of a unitary business
26 shall be eliminated unless the gross receipts are derived from
27 transactions that are deferred in the manner set forth under 26
28 CFR 1.1502-13 in computing the numerator and denominator of the
29 apportionment fraction of a corporation that is required to
30 compute its business income under paragraph (1). Gross receipts

1 from transactions that had been deferred in the manner set forth
2 under 26 CFR 1.1502-13 are included in a corporation's
3 apportionment fraction during the same taxable year that it
4 realizes business income that had been deferred due to the
5 transaction. The apportionment fraction of the following
6 corporations shall not be included in the determination of the
7 combined apportionment fraction:

8 (i) any corporation subject to taxation under Article VII,
9 VIII, IX or XV;

10 (ii) any corporation specified in the definition of
11 "institution" in section 701.5 that would be subject to taxation
12 under Article VII if it was located, as defined in section
13 701.5, in this State;

14 (iii) any corporation commonly known as a title insurance
15 company that would be subject to taxation under Article VIII if
16 it was incorporated in this State;

17 (iv) any corporation specified as an insurance company,
18 association or exchange in Article IX that would be subject to
19 taxation under Article IX if its insurance business was
20 transacted in this State;

21 (v) any corporation specified in the definition of
22 "institution" in section 1501 that would be subject to taxation
23 under Article XV if it was located, as defined in section 1501,
24 in this State;

25 (vi) any corporation that is a small corporation, as defined
26 in section 301(s.2), or a qualified Subchapter S subsidiary, as
27 defined in section 301(o.3).

28 (3) A corporation that is required to compute its business
29 income under paragraph (1) shall apportion the combined business
30 income by multiplying the combined business income by a fraction

1 which is the combined apportionment fraction set forth under
2 paragraph (2).

3 (4) Nonbusiness income of a corporation that is required to
4 compute business income under paragraph (1) shall be allocated
5 as provided in paragraphs (5), (6), (7) and (8) of phrase (a) of
6 subclause 2 of the definition of "taxable income."

7 (5) Each corporation that is a member of a unitary business
8 that consists of two or more corporation shall determine its tax
9 liability based on its apportioned share of the combined
10 business income of the unitary business plus its nonbusiness
11 income or loss allocated to this State, minus its net loss
12 deduction.

13 (6) If any provision of this phrase operates so that an
14 amount is added to or deducted from taxable income for a taxable
15 year for any corporation of a unitary business that previously
16 had been added to or deducted from taxable income of any
17 corporation of the same unitary business, an appropriate
18 adjustment shall be made for the taxable year in order to
19 prevent double taxation or double deduction. If this adjustment
20 is not made by the appropriate corporation of the unitary
21 business, the Secretary of Revenue is authorized to make this
22 adjustment.

23 (7) The Secretary of Revenue shall have the authority and
24 responsibility to make adjustments to insure that a corporation
25 does not incur an unfair penalty nor realize an unfair benefit
26 because it is required to compute its business income under
27 paragraph (1). Fairness shall be measured by whether the
28 corporation's income allocated and apportioned to this State
29 fairly reflects the corporation's share of the unitary business
30 conducted in this State in the taxable year.

1 * * *

2 (5) "Taxable year." [The] 1. Except as set forth in
3 subclause 2, the taxable year which the corporation, or any
4 consolidated group with which the corporation participates in
5 the filing of consolidated returns, actually uses in reporting
6 taxable income to the Federal Government[.], or which the
7 corporation would have used in reporting taxable income to the
8 Federal Government had it been required to report its taxable
9 income to the Federal Government. With regard to the tax imposed
10 by Article IV of this act (relating to the Corporate Net Income
11 Tax), the terms "annual year," "fiscal year," "annual or fiscal
12 year," "tax year" and "tax period" shall be the same as the
13 corporation's taxable year, as defined in this [paragraph.]
14 subclause or subclause 2.

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

23 * * *

24 (8) "Tax haven." A jurisdiction that, during the tax year
25 in question, has no or nominal effective tax on the relevant
26 income and meets any of the following:

27 (i) Has laws or practices that prevent effective exchange of
28 information for tax purposes with other governments on taxpayers
29 benefiting from the tax regime.

30 (ii) Has tax regime which lacks transparency. A tax regime

1 lacks transparency if the details of legislative, legal or
2 administrative provisions are not open and apparent or are not
3 consistently applied among similarly situated taxpayers, or if
4 the information needed by tax authorities to determine a
5 taxpayer's correct tax liability, such as accounting records and
6 underlying documentation, is not adequately available.

7 (iii) Facilitates the establishment of foreign-owned
8 entities without the need for a local substantive presence or
9 prohibits these entities from having any commercial impact on
10 the local economy.

11 (iv) Explicitly or implicitly excludes the jurisdiction's
12 resident taxpayers from taking advantage of the tax regime's
13 benefits or prohibits enterprises that benefit from the regime
14 operating in the jurisdiction's domestic market.

15 (v) Has created a tax regime which is favorable for tax
16 avoidance based upon an overall assessment of relevant factors,
17 including whether the jurisdiction has a significant untaxed
18 off-shore financial and other services sector relative to its
19 overall economy.

20 (9) "Unitary business." A single economic enterprise that
21 is made up of separate parts of a single corporation, of a
22 commonly controlled group of corporations, or both, that are
23 sufficiently interdependent, integrated and interrelated through
24 their activities so as to provide a synergy and mutual benefit
25 that produces a sharing or exchange of value among them and a
26 significant flow of value to the separate parts. A unitary
27 business shall include only those parts and corporations which
28 may be included as a unitary business under the Constitution of
29 the United States.

30 (10) "Water's-edge basis." A system of reporting that

1 includes the business income and apportionment factor of certain
2 corporations of a unitary business, described as follows:

3 1. The business income and apportionment factor of any
4 member incorporated in the United States or formed under the
5 laws of any state of the United States, the District of
6 Columbia, any territory or possession of the United States or
7 the Commonwealth of Puerto Rico.

8 2. The business income and apportionment factor of any
9 member, regardless of the place incorporated or formed, if the
10 average of its property, payroll and sales factors within the
11 United States is twenty per cent or more.

12 3. The business income and apportionment factor of any
13 member which is a domestic international sales corporation as
14 described in sections 991, 992, 993 and 994 of the Internal
15 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 991, 992,
16 993 and 994); a foreign sales corporation as described in former
17 sections 921, 922, 923, 924, 925, 926 and 927 of the Internal
18 Revenue Code of 1986 (formerly 26 U.S.C. §§ 921, 922, 923, 924,
19 925, 926 and 927); or any member which is an export trade
20 corporation, as described in sections 970 and 971 of the
21 Internal Revenue Code of 1986 (26 U.S.C. §§ 970 and 971).

22 4. Any member not described in subclauses 1, 2 and 3 shall
23 include the portion of its business income derived from or
24 attributable to sources within the United States, as determined
25 under the Internal Revenue Code of 1986 without regard to
26 Federal treaties, and its apportionment factor related thereto.

27 5. Any member that is a "controlled foreign corporation" as
28 defined in section 957 of the Internal Revenue Code of 1986 (26
29 U.S.C. § 957), to the extent the business income of that member
30 is income defined in section 952 of the Internal Revenue Code of

1 1986 (26 U.S.C. § 952), Subpart F income, not excluding lower-
2 tier subsidiaries' distributions of the income which were
3 previously taxed, determined without regard to Federal treaties,
4 and the apportionment factor related to that income; any item of
5 income received by a controlled foreign corporation and the
6 apportionment factor related to the income shall be excluded if
7 the corporation establishes to the satisfaction of the Secretary
8 of Revenue that the income was subject to an effective rate of
9 income tax imposed by a foreign country greater than ninety per
10 cent of the maximum rate of tax specified in section 11 of the
11 Internal Revenue Code of 1986 (26 U.S.C. § 11). The effective
12 rate of income tax determination shall be based upon the
13 methodology set forth under 26 CFR 1.954-1 (relating to foreign
14 base company income).

15 6. The business income and apportionment factor of any
16 member that is not described in subclause 1, 2, 3, 4 and 5 and
17 that is doing business in a tax haven. The business income and
18 apportionment factor of a corporation doing business in a tax
19 haven shall be excluded if the corporation establishes to the
20 satisfaction of the Secretary of Revenue that its income was
21 subject to an effective rate of income tax imposed by a country
22 greater than ninety per cent of the maximum rate of tax
23 specified in section 11 of the Internal Revenue Code of 1986 (26
24 U.S.C. § 11).

25 (11) "Commonly controlled group." For a corporation, the
26 corporation is a member of a group of two or more corporations
27 and more than fifty per cent of the voting stock of each member
28 of the group is directly or indirectly owned by a common owner
29 or by common owners, either corporate or noncorporate, or by one
30 or more of the member corporations of the group.

1 (12) "Separate company." A corporation that is not a member
2 of a unitary business that consists of two or more corporations.

3 (13) "Tax." Includes interest, penalties and additions to
4 tax unless a more limited meaning is disclosed by the context.

5 Section 2. Section 402(b) of the act, amended June 29, 2002
6 (P.L.559, No.89), is amended to read:

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

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

12 Taxable Year	Tax Rate
13 [January 1, 1995, and each	
14 taxable year thereafter	9.99%]
15 <u>January 1, 1995, through taxable</u>	
16 <u>years ending December 31,</u>	
17 <u>2013</u>	<u>9.99%</u>
18 <u>January 1, 2014, to December 31,</u>	
19 <u>2014</u>	<u>8.99%</u>
20 <u>January 1, 2015, to December 31,</u>	
21 <u>2015</u>	<u>7.99%</u>
22 <u>January 1, 2016, to December 31,</u>	
23 <u>2016, and each taxable year</u>	
24 <u>thereafter</u>	<u>6.99%</u>

25 * * *

26 Section 3. Section 403 of the act is amended by adding
27 subsections to read:

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

29 (a.1) (1) Each corporation subject to tax under this
30 article shall file an annual report in accordance with this

1 section. Each corporation that is a member of a unitary business
2 that consists of two or more corporations, unless excluded by
3 the provisions of this article, shall file as part of a combined
4 annual report. The corporations of the unitary business shall
5 designate one member that is subject to tax under this article
6 to file the combined annual report and to act as agent on behalf
7 of all other corporations that are members of the unitary
8 business. Each corporation that is a member of a unitary
9 business shall be responsible for its tax liability under this
10 article.

11 (2) The oath or affirmation of the designated member's
12 president, vice president or other principal officer, and of its
13 treasurer or assistant treasurer shall constitute the oath or
14 affirmation of each corporation that is a member of that unitary
15 business.

16 (3) The designated member shall transmit to the department
17 upon a form prescribed by the department, an annual combined
18 report under oath or affirmation of its president, vice
19 president or other principal officer, and of its treasurer or
20 assistant treasurer. The report shall set forth:

21 (i) All corporations included in the unitary business.

22 (ii) All necessary data, both in the aggregate and for each
23 corporation of the unitary business, that sets forth the
24 determination of tax liability for each corporation of the
25 unitary business.

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

27 (a.2) (1) Activities that evidence a significant flow of
28 value among commonly controlled corporations shall include the
29 following:

30 (i) Assisting in the acquisition of equipment.

- 1 (ii) Assisting with filling personnel needs.
- 2 (iii) Lending funds or guaranteeing loans.
- 3 (iv) Interplay in the area of corporate expansion.
- 4 (v) Providing technical assistance.
- 5 (vi) Supervising.
- 6 (vii) Providing general operational guidance.
- 7 (viii) Providing overall operational strategic advice.
- 8 (ix) Common use of trade names and patents.

9 (2) Significant flow of value must be more than the flow of
10 funds arising out of passive investment and shall consist of
11 more than periodic financial oversight.

12 (a.3) (1) With respect to a commonly controlled group of
13 corporations, the presence of any of these factors creates a
14 presumption of a unitary business:

15 (i) Corporations engaged in the same type of business.

16 (ii) Corporations engaged in different steps in a vertically
17 structured enterprise.

18 (iii) Strong centralized management of corporations.

19 (2) A corporation newly formed by a corporation that is a
20 member of a unitary business is rebuttably presumed to be a
21 member of the unitary business.

22 (3) A corporation that owns a controlling interest in two or
23 more corporations of a unitary business is rebuttably presumed
24 to be a member of the unitary business.

25 (4) A corporation that permits one or more other
26 corporations of a unitary business to substantially use its
27 patents, trademarks, service marks, logo-types, trade secrets,
28 copyrights or other proprietary assets or that is principally
29 engaged in loaning money to one or more other corporations of a
30 unitary business is rebuttably presumed to be a member of the

1 unitary business. This presumption only applies to a commonly
2 controlled group of corporations.

3 (a.4) As far as applicable to a specific unitary business,
4 unless there is a revision of applicable State law or unless a
5 corporation is not included under the provisions of this
6 article, there is a rebuttable presumption for all tax years
7 that begin in years 2012 and 2013 that a unitary business of two
8 or more corporations includes at least all corporations that are
9 part of a unitary business under the law of any state of the
10 United States in which the corporation files a tax report or tax
11 return of combined net income for the same tax year.

12 (a.5) Unless an election is made to use a worldwide basis of
13 accounting, a corporation that is a member of a unitary business
14 of two or more corporations must determine its business income
15 and apportionment factor upon a water's-edge basis. This basis
16 shall apply to all corporations of the unitary business. If an
17 election is made to use a worldwide basis of accounting, all
18 corporations of the unitary business must make the election,
19 upon a form, prescribed, prepared and furnished by the
20 department. This election shall bind all corporations of the
21 unitary business for the period of time that the election
22 remains in effect. An initial election is binding for a period
23 of seven years. Subsequent elections shall be binding for a
24 period of five years.

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, amended October 18,
4 2006 (P.L.1149, No.119), is amended and the section is amended
5 by adding subsections to read:

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

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

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

20 (d.1) (1) Notwithstanding subsections (a), (b) and (c),
21 interest with respect to any underpayment of any installment of
22 estimated corporate net income tax for any tax year that begins
23 in year 2012 or 2013 shall not be imposed if the total amount of
24 all payments of estimated corporate net income tax made on or
25 before the last date prescribed for the payment of the
26 installment equals or exceeds the amount which would have been
27 required to be paid on or before that date if the estimated tax
28 were an amount equal to the tax shown on the report of the
29 taxpayer for the safe harbor base year, if a report showing a
30 liability for tax was filed by the taxpayer for the safe harbor

1 base year.

2 (2) If the total amount of all payments of estimated tax
3 made on or before the last date prescribed for the payment of
4 the installment does not equal or exceed the amount required to
5 be paid under paragraph (1), but the amount is paid after the
6 date the installment was required to be paid, the period of
7 underpayment shall run from the date the installment was
8 required to be paid to the date the amount required to be paid
9 under paragraph (1) is paid.

10 (3) If the total tax for the safe harbor base year exceeds
11 the tax shown on the report by ten per cent or more, the total
12 tax shall be used for purposes of this subsection. If the total
13 tax for the safe harbor base year exceeds the tax shown on the
14 report by ten per cent or more, interest resulting from the
15 utilization of the total tax in the application of the
16 provisions of this subsection shall not be imposed if, within
17 forty-five days of the mailing date of a notice from the
18 department increasing the total tax, payments are made such that
19 the total amount of all payments of estimated tax equals or
20 exceeds the amount which would have been required to be paid on
21 or before the date if the estimated tax were an amount equal to
22 the total tax.

23 (4) If the taxable year for which an underpayment of
24 estimated tax may exist is a short taxable year, in determining
25 the tax shown on the report or the total tax for the safe harbor
26 base year, the tax shall be reduced by multiplying it by the
27 ratio of the number of installment payments made in the short
28 taxable year to the number of installment payments required to
29 be made for the full taxable year.

30 (d.2) (1) If there is a substantial underpayment, as

1 defined in subsection (a), of any installment of estimated
2 corporate net income tax or estimated capital stock/franchise
3 tax for any taxable year beginning in 2012 or 2013, there shall
4 be imposed additional interest in an amount determined at one
5 hundred twenty per cent of the annual rate as provided by law
6 upon the entire underpayment for the period of the substantial
7 underpayment.

8 (2) The additional interest imposed under this subsection
9 shall be in addition to any other interest imposed on
10 underpayments under this section.

11 Section 6. The amendment or addition of the following
12 provisions shall apply to taxable years beginning after December
13 31, 2013:

14 (1) Section 401(3)1(a) and (b) and 2(a) and (e), (5),
15 (8), (9), (10), (11), (12) and (13) of the act.

16 (2) Section 402(b) of the act.

17 (3) Section 403(a.1), (a.2), (a.3), (a.4) and (a.5) of
18 the act.

19 (4) Section 404 of the act.

20 (5) Section 3003.3(d), (d.1) and (d.2) of the act.

21 Section 7. This act shall take effect immediately.