

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 258 Session of
1997

INTRODUCED BY TRAVAGLIO, BELARDI, STURLA, DeLUCA, WALKO, TIGUE,
MUNDY, TRELLO, SHANER, SAINATO, READSHAW, VAN HORNE,
TANGRETTI, FAIRCHILD, MELIO, LEVDANSKY, GEIST, DALEY,
BOSCOLA, McCALL, ROONEY, PESCI, COLAFELLA, L. I. COHEN AND
STEELMAN, FEBRUARY 5, 1997

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 5, 1997

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," eliminating the minimum capital stock and
11 franchise tax.

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

14 Section 1. Section 602 of the act of March 4, 1971 (P.L.6,
15 No.2), known as the Tax Reform Code of 1971, amended August 4,
16 1991 (P.L.97, No.22), is amended to read:

17 Section 602. Imposition of Tax.--(a) That every domestic
18 entity from which a report is required under section 601 hereof,
19 shall be subject to, and pay to the department annually, a tax
20 which is [the greater of (i) three hundred dollars (\$300) or
21 (ii)] the amount computed at the rate of ten mills upon each

1 dollar of the capital stock value as defined in section 601(a)
2 for the calendar year 1971 and the fiscal year beginning in 1971
3 through calendar year 1986 and fiscal years beginning in 1986,
4 at the rate of nine mills upon each dollar of the capital stock
5 value as defined in section 601(a) for the calendar year 1987
6 and fiscal years beginning in 1987, at the rate of nine and one-
7 half mills upon each dollar of the capital stock value as
8 defined in section 601(a) for the calendar year 1988 and fiscal
9 years beginning in 1988 through calendar year 1990 and fiscal
10 years beginning in 1990 and at the rate of eleven mills upon
11 each dollar of the capital stock value as defined in section
12 601(a) for the calendar year 1991 and fiscal years beginning in
13 1991 and each year thereafter, with an additional surtax equal
14 to two mills upon each dollar of the capital stock value as
15 defined in section 601(a) for the calendar year 1991 and fiscal
16 years beginning in 1991 and with an additional surtax equal to
17 one and three-quarters mills upon each dollar of the capital
18 stock value as defined in section 601(a) for the calendar year
19 1992 and fiscal years beginning in 1992 and each year
20 thereafter, except that any domestic entity or company subject
21 to the tax prescribed herein may elect to compute and pay its
22 tax under and in accordance with the provisions of subsection
23 (b) of this section 602: Provided, That[, except for the
24 imposition of the three hundred dollar (\$300) minimum tax,] the
25 provisions of this section shall not apply to the taxation of
26 the capital stock of entities organized for manufacturing,
27 processing, research or development purposes, which is invested
28 in and actually and exclusively employed in carrying on
29 manufacturing, processing, research or development within the
30 State, except such entities as enjoy and exercise the right of

1 eminent domain, but every entity organized for the purpose of
2 manufacturing, processing, research or development except such
3 entities as enjoy and exercise the right of eminent domain shall
4 pay the State tax of [the greater of (i) three hundred dollars
5 (\$300) or (ii)] the amount computed at the rate of ten mills
6 upon each dollar of the capital stock value as defined in
7 section 601(a) for the calendar year 1971 and the fiscal year
8 beginning in 1971 through calendar year 1986 and fiscal years
9 beginning in 1986, at the rate of nine mills upon each dollar of
10 the capital stock value as defined in section 601(a) for the
11 calendar year 1987 and fiscal years beginning in 1987 and at the
12 rate of nine and one-half mills upon each dollar of the capital
13 stock value as defined in section 601(a) for the calendar year
14 1988 and fiscal years beginning in 1988 through calendar year
15 1990 and fiscal years beginning in 1990 and at the rate of
16 eleven mills upon each dollar of the capital stock value as
17 defined in section 601(a) for the calendar year 1991 and each
18 year thereafter, with an additional surtax equal to two mills
19 upon each dollar of the capital stock value as defined in
20 section 601(a) for the calendar year 1991 and fiscal years
21 beginning in 1991 and with an additional surtax equal to one and
22 three-quarters mills upon each dollar of the capital stock value
23 as defined in section 601(a) for the calendar year 1992 and
24 fiscal years beginning in 1992 and each year thereafter, upon
25 such proportion of its capital stock, if any, as may be invested
26 in any property or business not strictly incident or appurtenant
27 to the manufacturing, processing, research or development
28 business, in addition to the local taxes assessed upon its
29 property in the district where located, it being the object of
30 this provision to relieve from State taxation[, except for

1 imposition of the three hundred dollar (\$300) minimum tax under
2 this section,] only so much of the capital stock as is invested
3 purely in the manufacturing, processing, research or development
4 plant and business.

5 (b) (1) Every foreign entity from which a report is
6 required under section 601 hereof, shall be subject to and pay
7 to the department annually, a franchise tax which is [the
8 greater of (i) three hundred dollars (\$300) or (ii)] the amount
9 computed at the rate of ten mills for the calendar year 1971 and
10 the fiscal years beginning in 1971 through calendar year 1986
11 and fiscal years beginning in 1986, at the rate of nine mills
12 for the calendar year 1987 and for fiscal years beginning in
13 1987, at the rate of nine and one-half mills for calendar year
14 1988 and fiscal years beginning in 1988 through calendar year
15 1990 and fiscal years beginning in 1990 and at the rate of
16 eleven mills upon each dollar of the capital stock value as
17 defined in section 601(a) for the calendar year 1991 and fiscal
18 years beginning in 1991 and each year thereafter, with an
19 additional surtax equal to two mills upon each dollar of the
20 capital stock value as defined in section 601(a) for the
21 calendar year 1991 and fiscal years beginning in 1991 and with
22 an additional surtax equal to one and three-quarters mills upon
23 each dollar of the capital stock value as defined in section
24 601(a) for the calendar year 1992 and fiscal years beginning in
25 1992 and each year thereafter, upon a taxable value to be
26 determined in the following manner. The capital stock value
27 shall be ascertained in the manner prescribed in section 601(a)
28 of this article. The taxable value shall then be determined by
29 employing the relevant apportionment factors set forth in
30 Article IV: Provided, That the manufacturing, processing,

1 research and development exemptions contained under section
2 602(a) shall also apply to foreign corporations and in
3 determining the relevant apportionment factors the numerator of
4 the property, payroll, or sales factors shall not include any
5 property, payroll or sales attributable to manufacturing,
6 processing, research or development activities in the
7 Commonwealth. Any foreign corporation, joint-stock association,
8 limited partnership or company subject to the tax prescribed
9 herein may elect to compute and pay its tax under section
10 602(a): Provided, That any foreign corporation, joint-stock
11 association, limited partnership or company electing to compute
12 and pay its tax under section 602(a) shall be treated as if it
13 were a domestic corporation for the purpose of determining which
14 of its assets are exempt from taxation and for the purpose of
15 determining the proportion of the value of its capital stock
16 which is subject to taxation.

17 (2) The provisions of this article shall apply to the
18 taxation of entities organized for manufacturing, processing,
19 research or development purposes, but shall not apply to such
20 entities as enjoy and exercise the right of eminent domain.

21 (d) It shall be the duty of the treasurer or other officers
22 having charge of any domestic or foreign entity, upon which a
23 tax is imposed by this section, to transmit the amount of tax to
24 the department within the time prescribed by law: Provided, That
25 for the purposes of this act interest in limited partnerships or
26 joint-stock associations shall be deemed to be capital stock,
27 and taxable accordingly: Provided, further, That entities liable
28 to a tax under this section, shall not be required to pay any
29 further tax on the mortgages, bonds, and other securities owned
30 by them and in which the whole body of stockholders or members,

1 as such, have the entire equitable interest in remainder; but
2 entities owning or holding such securities as trustees,
3 executors, administrators, guardians, or in any other manner
4 than for the whole body of stockholders or members thereof as
5 sole equitable owners in remainder, shall return and pay the tax
6 imposed by this act upon all securities so owned or held by
7 them, as in the case of individuals.

8 (e) Any holding company subject to the capital stock tax or
9 the franchise tax imposed by this section may elect to compute
10 the capital stock or franchise tax by applying the rate of tax
11 of ten mills for the calendar year 1971 and the fiscal year
12 beginning in 1971 through the calendar year 1986 and fiscal
13 years beginning in 1986, at the rate of nine mills for the
14 calendar year 1987 and fiscal years beginning in 1987, at the
15 rate of nine and one-half mills for calendar year 1988 and
16 fiscal years beginning in 1988 through calendar year 1990 and
17 fiscal years beginning in 1990 and at the rate of eleven mills
18 for calendar year 1991 and fiscal years beginning in 1991 and
19 each year thereafter, with an additional surtax equal to two
20 mills for calendar year 1991 and fiscal years beginning in 1991
21 and with an additional surtax equal to one and three-quarters
22 mills upon each dollar of the capital stock value as defined in
23 section 601(a) for the calendar year 1992 and fiscal years
24 beginning in 1992 and each year thereafter, upon each dollar to
25 ten per cent of the capital stock value[, but in no case shall
26 the tax so computed be less than three hundred dollars (\$300)].
27 If exercised, this election shall be in lieu of any other
28 apportionment or allocation to which such company would
29 otherwise be entitled.

30 (f) Every domestic corporation and every foreign corporation

1 (i) registered to do business in Pennsylvania; (ii) which
2 maintains an office in Pennsylvania; (iii) which has filed a
3 timely election to be taxed as a regulated investment company
4 with the Federal Government; and (iv) which duly qualifies to be
5 taxed as a regulated investment company under the provisions of
6 the Internal Revenue Code of 1954 as amended, shall be taxed as
7 a regulated investment company and shall be subject to the
8 capital stock or franchise tax imposed by section 602, in either
9 case for the privilege of having an office in Pennsylvania,
10 which tax shall be computed pursuant to the provisions of this
11 subsection in lieu of all other provisions of this section 602.
12 The tax shall be in an amount which is [the greater of three
13 hundred dollars (\$300) or] the sum of the amounts determined
14 pursuant to clauses (1) and (2):

15 (1) The amount determined pursuant to this clause shall be
16 seventy-five dollars (\$75) times that number which is the result
17 of dividing the net asset value of the regulated investment
18 company by one million, rounded to the nearest multiple of
19 seventy-five dollars (\$75). Net asset value shall be determined
20 by adding the monthly net asset values as of the last day of
21 each month during the taxable period and dividing the total sum
22 by the number of months involved. Each such monthly net asset
23 value shall be the actual market value of all assets owned
24 without any exemptions or exclusions, less all liabilities,
25 debts and other obligations.

26 (2) The amount determined pursuant to this clause shall be
27 the amount which is the result of multiplying the rate of
28 taxation applicable for purposes of the personal income tax
29 during the same taxable year times the apportioned undistributed
30 personal income tax income of the regulated investment company.

1 For the purposes of this clause:

2 (A) Personal income tax income shall mean income to the
3 extent enumerated and classified in section 303.

4 (B) Undistributed personal income tax income shall mean all
5 personal income tax income other than personal income tax income
6 undistributed on account of the capital stock or foreign
7 franchise tax, less all personal income tax income distributed
8 to shareholders. At the election of the company, income
9 distributed after the close of a taxable year, but deemed
10 distributed during the taxable year for Federal income tax
11 purposes, shall be deemed distributed during that year for
12 purposes of this clause. If a company in a taxable year has both
13 current income and income accumulated from a prior year,
14 distributions during the year shall be deemed to have been made
15 first from current income.

16 (C) Undistributed personal income tax income shall be
17 apportioned to Pennsylvania by a fraction, the numerator of
18 which is all income distributed during the taxable period to
19 shareholders who are resident individuals, estates or trusts and
20 the denominator of which is all income distributed during the
21 taxable period. Resident trusts shall not include charitable,
22 pension or profit-sharing, or retirement trusts.

23 (D) Personal income tax income and other income of a company
24 shall each be deemed to be either distributed to shareholders or
25 undistributed in the proportion each category bears to all
26 income received by the company during the taxable year.

27 (g) In the event that a domestic or foreign entity is
28 required to file a report pursuant to section 601(b) on other
29 than an annual basis, the tax imposed by this section[,
30 including the three hundred dollar (\$300) minimum tax,] shall be

1 prorated to reflect the portion of a taxable year for which the
2 report is filed by multiplying the tax liability by a fraction
3 equal to the number of days in the taxable year divided by three
4 hundred sixty-five days.

5 Section 2. The amendment of section 602 of the act shall be
6 applicable to the tax year beginning January 1, 1997, and each
7 tax year thereafter.

8 Section 3. This act shall take effect immediately.