

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2457 Session of
1998

INTRODUCED BY ROBERTS, PESCI, GIGLIOTTI, COY, TRELLO, READSHAW,
HUTCHINSON, SAINATO, BOSCOLA, BELFANTI, TRAVAGLIO, STEELMAN,
SEYFERT, RAMOS AND L. I. COHEN, MARCH 24, 1998

REFERRED TO COMMITTEE ON FINANCE, MARCH 24, 1998

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," further defining "average net income" for
11 valuation of capital stock-franchise tax.

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

14 Section 1. The definition of "average net income" in section
15 601 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
16 Reform Code of 1971, amended May 7, 1997 (P.L.85, No.7) is
17 amended to read:

18 Section 601. Definitions and Reports.--(a) The following
19 words, terms and phrases when used in this Article VI shall have
20 the meaning ascribed to them in this section, except where the
21 context clearly indicates a different meaning:

22 "Average net income." The sum of the net income or loss for

1 each of the current and immediately preceding four years,
2 divided by five. If the entity has not been in existence for a
3 period of five years, the average net income shall be the
4 average net income for [the number of years that the entity has
5 actually been in existence.] five years with nonoperating years
6 counted as zero income and operating years counted as specified
7 in this section. In computing average net income, losses shall
8 be entered as computed, but in no case shall average net income
9 be less than zero. The net income or loss of the entity for any
10 taxable year shall be the amount set forth as income per books
11 on the income tax return filed by the entity with the Federal
12 Government for such taxable year, or if no such return is made,
13 as would have been set forth had such a return been made,
14 subject, however, in either case to any correction thereof, for
15 fraud, evasion or error. In the case of any entity which has an
16 investment in another corporation, the net income or loss shall
17 be computed on an unconsolidated basis exclusive of the net
18 income or loss of such other corporation. In the case of a
19 limited liability company or business trust taxable as a
20 partnership for Federal income tax purposes, the net income or
21 loss of the limited liability company or business trust for any
22 given year shall be reduced by the amount of distributions made
23 by such limited liability company or business trust to any
24 member of such limited liability company or business trust who
25 is deemed to be materially participating in the activities
26 conducted by such limited liability company or business trust
27 for purposes of section 469 of the Internal Revenue Code of 1986
28 (Public Law 99-514, 26 U.S.C. § 469). For this purpose,
29 distributions which are made to a member of a limited liability
30 company or business trust within thirty (30) days of the end of

1 a given year may be treated as having been made in the preceding
2 year and not in the year in which such distribution is actually
3 made.

4 * * *

5 Section 2. This act shall take effect in 60 days.