

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2542 Session of
1998

INTRODUCED BY ADOLPH, RAYMOND, BARRAR, ARMSTRONG, BARD, ALLEN,
BENNINGHOFF, BOSCOLA, FORCIER, BROWNE, CALTAGIRONE,
CAPPABIANCA, CARONE, CHADWICK, CLARK, CLYMER, L. I. COHEN,
COLAIZZO, COY, DALEY, DALLY, DEMPSEY, EGOLF, FARGO, FICHTER,
GEIST, GEORGE, GIGLIOTTI, GODSHALL, HARHART, HENNESSEY,
HERSHEY, HESS, ITKIN, KENNEY, LEH, McILHINNEY, LYNCH,
MAITLAND, MANDERINO, MARKOSEK, MARSICO, McCALL, MCGILL,
McILHATTAN, McNAUGHTON, MICOZZIE, MILLER, NAILOR, ORIE,
PIPPY, READSHAW, ROHRER, ROSS, SATHER, SAYLOR, SCHRODER,
SEMMELE, STEELMAN, STEIL, STERN, STEVENSON, E. Z. TAYLOR,
TIGUE, TRAVAGLIO, TRELLO, TRICH, TRUE, WALKO, WAUGH,
C. WILLIAMS, YOUNGBLOOD, ZUG AND MAHER, APRIL 22, 1998

REFERRED TO COMMITTEE ON FINANCE, APRIL 22, 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," reducing the capital stock and franchise tax.

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

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

16 Section 602. Imposition of Tax.--(a) That every domestic
17 entity from which a report is required under section 601 hereof,

1 shall be subject to, and pay to the department annually, a tax
2 which is the greater of (i) [three hundred dollars (\$300)]
3 seventy-five dollars (\$75) or (ii) the amount computed at the
4 rate of ten mills upon each dollar of the capital stock value as
5 defined in section 601(a) for the calendar year 1971 and the
6 fiscal year beginning in 1971 through calendar year 1986 and
7 fiscal years beginning in 1986, at the rate of nine mills upon
8 each dollar of the capital stock value as defined in section
9 601(a) for the calendar year 1987 and fiscal years beginning in
10 1987, at the rate of nine and one-half mills upon each dollar of
11 the capital stock value as defined in section 601(a) for the
12 calendar year 1988 and fiscal years beginning in 1988 through
13 calendar year 1990 and fiscal years beginning in 1990 and at the
14 rate of eleven mills upon each dollar of the capital stock value
15 as defined in section 601(a) for the calendar year 1991 and
16 fiscal years beginning in 1991 and each year thereafter, with an
17 additional surtax equal to two mills upon each dollar of the
18 capital stock value as defined in section 601(a) for the
19 calendar year 1991 and fiscal years beginning in 1991 and with
20 an additional surtax equal to one and three-quarters mills upon
21 each dollar of the capital stock value as defined in section
22 601(a) for the calendar year 1992 and fiscal years beginning in
23 1992 and each year thereafter, except that any domestic entity
24 or company subject to the tax prescribed herein may elect to
25 compute and pay its tax under and in accordance with the
26 provisions of subsection (b) of this section 602: Provided,
27 That, except for the imposition of the [three hundred dollar
28 (\$300)] seventy-five dollar (\$75) minimum tax, the provisions of
29 this section shall not apply to the taxation of the capital
30 stock of entities organized for manufacturing, processing,

1 research or development purposes, which is invested in and
2 actually and exclusively employed in carrying on manufacturing,
3 processing, research or development within the State, except
4 such entities as enjoy and exercise the right of eminent domain,
5 but every entity organized for the purpose of manufacturing,
6 processing, research or development except such entities as
7 enjoy and exercise the right of eminent domain shall pay the
8 State tax of the greater of (i) [three hundred dollars (\$300)]
9 seventy-five dollars (\$75) or (ii) the amount computed at the
10 rate of ten mills upon each dollar of the capital stock value as
11 defined in section 601(a) for the calendar year 1971 and the
12 fiscal year beginning in 1971 through calendar year 1986 and
13 fiscal years beginning in 1986, at the rate of nine mills upon
14 each dollar of the capital stock value as defined in section
15 601(a) for the calendar year 1987 and fiscal years beginning in
16 1987 and at the rate of nine and one-half mills upon each dollar
17 of the capital stock value as defined in section 601(a) for the
18 calendar year 1988 and fiscal years beginning in 1988 through
19 calendar year 1990 and fiscal years beginning in 1990 and at the
20 rate of eleven mills upon each dollar of the capital stock value
21 as defined in section 601(a) for the calendar year 1991 and each
22 year thereafter, with an additional surtax equal to two mills
23 upon each dollar of the capital stock value as defined in
24 section 601(a) for the calendar year 1991 and fiscal years
25 beginning in 1991 and with an additional surtax equal to one and
26 three-quarters mills upon each dollar of the capital stock value
27 as defined in section 601(a) for the calendar year 1992 and
28 fiscal years beginning in 1992 and each year thereafter, upon
29 such proportion of its capital stock, if any, as may be invested
30 in any property or business not strictly incident or appurtenant

1 to the manufacturing, processing, research or development
2 business, in addition to the local taxes assessed upon its
3 property in the district where located, it being the object of
4 this provision to relieve from State taxation, except for
5 imposition of the [three hundred dollar (\$300)] seventy-five
6 dollar (\$75) minimum tax under this section, only so much of the
7 capital stock as is invested purely in the manufacturing,
8 processing, research or development plant and business.

9 (b) (1) Every foreign entity from which a report is
10 required under section 601 hereof, shall be subject to and pay
11 to the department annually, a franchise tax which is the greater
12 of (i) [three hundred dollars (\$300)] seventy-five dollars (\$75)
13 or (ii) the amount computed at the rate of ten mills for the
14 calendar year 1971 and the fiscal years beginning in 1971
15 through calendar year 1986 and fiscal years beginning in 1986,
16 at the rate of nine mills for the calendar year 1987 and for
17 fiscal years beginning in 1987, at the rate of nine and one-half
18 mills for calendar year 1988 and fiscal years beginning in 1988
19 through calendar year 1990 and fiscal years beginning in 1990
20 and at the rate of eleven mills upon each dollar of the capital
21 stock value as defined in section 601(a) for the calendar year
22 1991 and fiscal years beginning in 1991 and each year
23 thereafter, with an additional surtax equal to two mills upon
24 each dollar of the capital stock value as defined in section
25 601(a) for the calendar year 1991 and fiscal years beginning in
26 1991 and with an additional surtax equal to one and three-
27 quarters mills upon each dollar of the capital stock value as
28 defined in section 601(a) for the calendar year 1992 and fiscal
29 years beginning in 1992 and each year thereafter, upon a taxable
30 value to be determined in the following manner. The capital

1 stock value shall be ascertained in the manner prescribed in
2 section 601(a) of this article. The taxable value shall then be
3 determined by employing the relevant apportionment factors set
4 forth in Article IV: Provided, That the manufacturing,
5 processing, research and development exemptions contained under
6 section 602(a) shall also apply to foreign corporations and in
7 determining the relevant apportionment factors the numerator of
8 the property, payroll, or sales factors shall not include any
9 property, payroll or sales attributable to manufacturing,
10 processing, research or development activities in the
11 Commonwealth. Any foreign corporation, joint-stock association,
12 limited partnership or company subject to the tax prescribed
13 herein may elect to compute and pay its tax under section
14 602(a): Provided, That any foreign corporation, joint-stock
15 association, limited partnership or company electing to compute
16 and pay its tax under section 602(a) shall be treated as if it
17 were a domestic corporation for the purpose of determining which
18 of its assets are exempt from taxation and for the purpose of
19 determining the proportion of the value of its capital stock
20 which is subject to taxation.

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

25 (d) It shall be the duty of the treasurer or other officers
26 having charge of any domestic or foreign entity, upon which a
27 tax is imposed by this section, to transmit the amount of tax to
28 the department within the time prescribed by law: Provided, That
29 for the purposes of this act interest in limited partnerships or
30 joint-stock associations shall be deemed to be capital stock,

1 and taxable accordingly: Provided, further, That entities liable
2 to a tax under this section, shall not be required to pay any
3 further tax on the mortgages, bonds, and other securities owned
4 by them and in which the whole body of stockholders or members,
5 as such, have the entire equitable interest in remainder; but
6 entities owning or holding such securities as trustees,
7 executors, administrators, guardians, or in any other manner
8 than for the whole body of stockholders or members thereof as
9 sole equitable owners in remainder, shall return and pay the tax
10 imposed by this act upon all securities so owned or held by
11 them, as in the case of individuals.

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

1 If exercised, this election shall be in lieu of any other
2 apportionment or allocation to which such company would
3 otherwise be entitled.

4 (f) Every domestic corporation and every foreign corporation
5 (i) registered to do business in Pennsylvania; (ii) which
6 maintains an office in Pennsylvania; (iii) which has filed a
7 timely election to be taxed as a regulated investment company
8 with the Federal Government; and (iv) which duly qualifies to be
9 taxed as a regulated investment company under the provisions of
10 the Internal Revenue Code of 1954 as amended, shall be taxed as
11 a regulated investment company and shall be subject to the
12 capital stock or franchise tax imposed by section 602, in either
13 case for the privilege of having an office in Pennsylvania,
14 which tax shall be computed pursuant to the provisions of this
15 subsection in lieu of all other provisions of this section 602.
16 The tax shall be in an amount which is the greater of [three
17 hundred dollars (\$300)] seventy-five dollars (\$75) or the sum of
18 the amounts determined pursuant to clauses (1) and (2):

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

30 (2) The amount determined pursuant to this clause shall be

1 the amount which is the result of multiplying the rate of
2 taxation applicable for purposes of the personal income tax
3 during the same taxable year times the apportioned undistributed
4 personal income tax income of the regulated investment company.

5 For the purposes of this clause:

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

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

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

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

1 (g) In the event that a domestic or foreign entity is
2 required to file a report pursuant to section 601(b) on other
3 than an annual basis, the tax imposed by this section, including
4 the [three hundred dollar (\$300)] seventy-five dollar (\$75)
5 minimum tax, shall be prorated to reflect the portion of a
6 taxable year for which the report is filed by multiplying the
7 tax liability by a fraction equal to the number of days in the
8 taxable year divided by three hundred sixty-five days.

9 Section 2. This act shall be applicable to tax years
10 beginning on or after January 1, 1998.

11 Section 3. This act shall be retroactive to January 1, 1998.

12 Section 4. This act shall take effect immediately.