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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2742 Session of 2006

INTRODUCED BY TURZAI, REED, GERBER, EACHUS, ADOLPH, ALLEN, ARGALL, BAKER, BALDWIN, BASTIAN, BEBKO-JONES, BELARDI, BELFANTI, BENNINGHOFF, BEYER, BIANCUCCI, BIRMELIN, BISHOP, BLACKWELL, BLAUM, BOYD, BUXTON, CALTAGIRONE, CAPPELLI, CAUSER, CAWLEY, CLYMER, COHEN, CORRIGAN, COSTA, CRAHALLA, CREIGHTON, CRUZ, DALEY, DALLY, DeLUCA, DENLINGER, DERMODY, ELLIS, J. EVANS, FABRIZIO, FAIRCHILD, FEESE, FLAHERTY, FLICK, FORCIER, FRANKEL, GABIG, GANNON, GEIST, GEORGE, GERGELY, GILLESPIE, GINGRICH, GODSHALL, GOOD, GOODMAN, GRELL, GRUCELA, HALUSKA, HANNA, HARHAI, HARHART, HENNESSEY, HERMAN, HERSHEY, HICKERNELL, HUTCHINSON, JOSEPHS, KAUFFMAN, M. KELLER, W. KELLER, KENNEY, KILLION, KIRKLAND, KOTIK, LEACH, LEDERER, LESCOVITZ, MACKERETH, MAJOR, MANDERINO, MARKOSEK, MARSICO, McCALL, McILHATTAN, MELIO, METCALFE, MICOZZIE, MILLARD, R. MILLER, MUNDY, MUSTIO, MYERS, NAILOR, NICKOL, OLIVER, PAYNE, PERZEL, PETRARCA, PETRONE, PHILLIPS, PICKETT, PRESTON, PYLE, QUIGLEY, RAMALEY, RAPP, RAYMOND, READSHAW, REICHLEY, ROBERTS, ROEBUCK, ROHRER, ROONEY, ROSS, RUBLEY, SAINATO, SANTONI, SATHER, SCAVELLO, SHANER, SHAPIRO, SIPTROTH, S. H. SMITH, SOLOBAY, SONNEY, STABACK, STEIL, STERN, STETLER, R. STEVENSON, T. STEVENSON, STURLA, SURRA, TANGRETTI, E. Z. TAYLOR, J. TAYLOR, TIGUE, TRUE, WALKO, WANSACZ, WATERS, WILLIAMS, WILT, YEWCIC, YOUNGBLOOD AND YUDICHAK, JUNE 12, 2006

REFERRED TO COMMITTEE ON FINANCE, JUNE 12, 2006

AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," further providing, in corporate net income, for the definition of "taxable income."

The General Assembly finds and declares as follows:

(1) That the Commonwealth's high tech and manufacturing sectors, which generate 16.1% of the gross State product, employ 670,000 Pennsylvanians and directly add over $75 billion in value to the Commonwealth every year, are in a state of crisis that demands immediate attention.

(2) Despite certain nonmanufacturing sectors of Pennsylvania's economy keeping pace with national economic growth and generating significant increased revenues for the General Fund budget, Pennsylvania's high tech and manufacturing employers have lost in excess of 200,000 high-paying, high-value manufacturing jobs since 2000, even as competitor states have continued to add manufacturing and high tech jobs.

(3) After seeking and receiving the recommendations from an unprecedented coalition of Pennsylvania employers, called CompetePA, representing small and large companies competing in every sector of the State's economy and every geographic region of this Commonwealth, its support for the unified and targeted solution to the manufacturing crisis recommended by Pennsylvania employers that would reverse longstanding, Pennsylvania-specific, job-crushing State economic policies that punish investment and reinvestment in domestic manufacturing facilities.

(4) In recognition that Pennsylvania employers, not policymakers, are best positioned to recommend reforms to enhance high tech and manufacturing competitiveness for the Commonwealth, its support for the unified Pennsylvania business community recommendations to all of the following:

(i) Eliminate over time the current policy that restricts companies from offsetting current income with prior net operating losses.

(ii) Eliminate the "penalty" that increases an employer's tax liability as that employer invests more in its employees and property.

(5) Having determined that Pennsylvania's net operating loss tax policy continues to force cyclical, high tech and manufacturing companies to pay a much higher effective tax rate than their counterparts in competing neighboring states over a multiyear period and that its current tax policy to penalize employers based upon their relative investment in payroll and property creates a perverse incentive for manufacturers to reduce such investments in this Commonwealth, that Pennsylvania's current tax policy specifically targets domestic, high tech and manufacturing companies for this unfair treatment and places Pennsylvania in an uncompetitive position in relation to other states competing for manufacturing investments.

(6) Having acknowledged that State tax policy should be designed to encourage in-State job creation and capital growth and recognizing that, by adopting changes to the State's corporate net income tax apportionment formula to move toward a single sales factor, that the Commonwealth can create an incentive for companies that have demonstrated a commitment to the State to grow and expand in Pennsylvania.

(7) Having previously adopted the multiyear phaseout of the capital stock and franchise tax, that the structural changes to the net operating loss and sales factor apportionment formula should be enacted in a similar fiscally responsible manner.

(8) Having determined that the high tech and

manufacturing stimulus initiatives contained in this act assist only those companies that are paying significantly more than their fair share of business taxes, that these inherent, anticompetitive deficiencies within Pennsylvania's business tax structure should be reversed immediately.

(9) Having determined that the fiscal impact of this act is less than $50 million in the first fiscal year or 0.20 of 1% of the General Fund budget and, in light of the significant and unexpected business tax revenues emanating from industry sectors in the current fiscal year, that the modest fiscal impact of this critical high tech and manufacturing strategy is readily accommodated in the General Fund budget.

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

Section 1. Section 401(3)2(a)(9) and 4(c) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended May 12, 1999 (P.L.26, No.4) and June 29, 2002 (P.L.559, No.89), are amended to read:

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

* * *

(3) "Taxable income." * * *

2. In case the entire business of any corporation, other than a corporation engaged in doing business as a regulated investment company as defined by the Internal Revenue Code of 1986, is not transacted within this Commonwealth, the tax imposed by this article shall be based upon such portion of the

taxable income of such corporation for the fiscal or calendar year, as defined in subclause 1 hereof, and may be determined as follows:

(a) Division of Income.

* * *

(9) (A) Except as provided in subparagraph (B)[, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus three times the sales factor, and the denominator of which is five.]:

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

(II) For taxable years beginning after December 31, 2006, and before January 1, 2008, all business income shall be apportioned to this State by multiplying the income by a fraction: the numerator of which is the sum of fifteen times the property factor, fifteen times the payroll factor and seventy times the sales factor; and the denominator of which is one hundred.

(III) For taxable years beginning after December 31, 2007, and before January 1, 2009, all business income shall be apportioned to this State by multiplying the income by a fraction: the numerator of which is the sum of the property factor, the payroll factor and eight times the sales factor; and the denominator of which is ten.

(IV) For taxable years beginning after December 31, 2008, and before January 1, 2010, all business income shall be apportioned to this State by multiplying the income by a fraction: the numerator of which is the sum of one-half times the property factor, one-half times the payroll factor and nine times the sales factor; and the denominator of which is ten.

(V) For taxable years beginning after December 31, 2009, all business income shall be apportioned by this State by multiplying incomes by the sales factor.

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

* * *

4. * * *

(c) (1) (A) The net loss deduction shall be the lesser of:

(I) two million dollars ($2,000,000) [or] for taxable years ending before January 1, 2007;

(II) the greater of fifteen per cent of taxable income or three million dollars ($3,000,000) for taxable years beginning after December 31, 2006, and before January 1, 2008;

(III) the greater of thirty per cent of taxable income or four million dollars ($4,000,000) for taxable years beginning after December 31, 2007, and before January 1, 2009;

(IV) the greater of fifty per cent of taxable income or five million dollars ($5,000,000) for taxable years beginning after December 31, 2008, and before January 1, 2010;

(V) one hundred per cent of taxable income for taxable years beginning after December 31, 2009; or

(VI) the amount of the net loss or losses which may be carried over to the taxable year or taxable income as determined under subclause 1 or, if applicable, subclause 2.

(B) In no event shall the net loss deduction include more than five hundred thousand dollars ($500,000), in the aggregate, of net losses from taxable years 1988 through 1994.

(2) (A) A net loss for a taxable year may only be carried over pursuant to the following schedule:

Taxable Year	Carryover
1981	1 taxable year
1982	2 taxable years
1983-1987	3 taxable years
1988	2 taxable years plus 1 taxable year starting with the 1995 taxable year
1989	1 taxable year plus 2 taxable years starting with the 1995 taxable year
1990-1993	3 taxable years starting with the 1995 taxable year
1994	1 taxable year
1995 -1997	10 taxable years
1998 and thereafter	20 taxable years

(B) The earliest net loss shall be carried over to the earliest taxable year to which it may be carried under this schedule. The total net loss deduction allowed in any taxable year shall not exceed [two]:

(I) Two million dollars ($2,000,000)[.] for taxable years ending before January 1, 2007.

(II) The greater of fifteen per cent of taxable income or three million dollars ($3,000,000) for taxable years beginning after December 31, 2006, and ending before January 1, 2008.

(III) The greater of thirty per cent of taxable income or four million dollars ($4,000,000) for taxable years beginning after December 31, 2007, and ending before January 1, 2009.

(IV) The greater of fifty percent of taxable income or five million dollars ($5,000,000) for taxable years beginning after December 31, 2008, and ending before January 1, 2010.

(V) One hundred per cent of taxable income for taxable years beginning after December 31, 2009.

* * *

Section 2. This amendatory act shall be known and may be cited as the High Tech and Manufacturing Stimulus Act.

Section 3. This act shall take effect immediately.