

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1186 Session of
2007

INTRODUCED BY LEVDANSKY, DeWEESE, McCALL, BELFANTI, BRENNAN,
CALTAGIRONE, CARROLL, DALEY, DeLUCA, FABRIZIO, FRANKEL,
FREEMAN, GOODMAN, HALUSKA, HANNA, HORNAMAN, JOSEPHS, KORTZ,
LEACH, MUNDY, MYERS, PETRARCA, PETRONE, MARSHALL, SABATINA,
SIPTROTH, SOLOBAY, STABACK, STURLA, TANGRETTI, WALKO, WANSACZ
AND DENLINGER, MAY 1, 2007

AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES,
AS AMENDED, JUNE 14, 2007

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 PROVIDING, IN SALES AND USE TAX, FOR <—
11 EXCLUSIONS; further providing, in corporate net income tax,
12 for definitions, for imposition, for reports and payment and
13 for consolidated reports; and further providing, in general
14 provisions, for underpayment of estimated tax.

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

17 ~~Section 1. Section 401(3)1(a) and (b), 2(a) and 4(c) and (5) <—~~
18 ~~of the act of March 4, 1971 (P.L.6, No.2), known as the Tax~~
19 ~~Reform Code of 1971,~~

20 SECTION 1. SECTION 204 OF THE ACT OF MARCH 4, 1971 (P.L.6, <—
21 NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, IS AMENDED BY

1 ADDING A CLAUSE TO READ:

2 SECTION 204. EXCLUSIONS FROM TAX.--THE TAX IMPOSED BY
3 SECTION 202 SHALL NOT BE IMPOSED UPON ANY OF THE FOLLOWING:

4 * * *

5 (67) THE SALE AT RETAIL OR USE OF A CLOTHES WASHER,
6 DISHWASHER, REFRIGERATOR, ROOM AIR CONDITIONER AND CEILING FAN
7 PURCHASED DURING THE EXCLUSION PERIOD BY AN INDIVIDUAL PURCHASER
8 FOR NONBUSINESS USE; PROVIDED THE PROPERTY QUALIFIES AS AN
9 "ENERGY STAR" PRODUCT PURSUANT TO THE UNITED STATES
10 ENVIRONMENTAL PROTECTION AGENCY ENERGY STAR PROGRAM AS EVIDENCED
11 BY THE PROPERTY BEARING AN "ENERGY STAR" LABEL. THE EXCLUSION
12 DOES NOT INCLUDE THE LEASING, RENTAL, REPAIR OR SERVICING OF
13 THIS PROPERTY. FOR PURPOSES OF THIS CLAUSE, THE PHRASE
14 "EXCLUSION PERIOD" MEANS THE FIRST FULL CALENDAR WEEK OF
15 DECEMBER 2007 AND MAY 2008. FOR PURPOSES OF THIS CLAUSE,
16 "PURCHASER" MEANS AN INDIVIDUAL WHO PLACES AN ORDER AND PAYS THE
17 PURCHASE PRICE BY CASH OR CREDIT DURING THE EXCLUSION PERIOD
18 EVEN IF DELIVERY TAKES PLACE AFTER THE EXCLUSION PERIOD.

19 SECTION 1.1. SECTION 401(3)1(A) AND (B), 2(A) AND 4(C) AND
20 (5) OF THE ACT, amended or added December 23, 1983 (P.L.370,
21 No.90), July 1, 1985 (P.L.78, No.29), August 4, 1991 (P.L.97,
22 No.22), May 12, 1999 (P.L.26, No.4), June 22, 2001 (P.L.353,
23 No.23), June 29, 2002 (P.L.559, No.89) and July 12, 2006
24 (P.L.1137, No.116), are amended, clause (3)2 is amended by
25 adding a phrase and the section is amended by adding clauses to
26 read:

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

1 * * *

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

15 (b) Additional deductions shall be allowed from taxable
16 income on account of any dividends received from any other
17 corporation but only to the extent that such dividends are
18 included in taxable income as returned to and ascertained by the
19 Federal Government. For tax years beginning on or after January
20 1, 1991, additional deductions shall only be allowed for amounts
21 included, under section 78 of the Internal Revenue Code of 1986
22 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned
23 to and ascertained by the Federal Government and for the amount
24 of any dividends received from a foreign corporation included in
25 taxable income to the extent such dividends would be deductible
26 in arriving at Federal taxable income if received from a
27 domestic corporation. For taxable years beginning on or after
28 January 1, 2009, if not otherwise allowed as a deduction, an
29 additional deduction is allowed for all dividends paid by one to
30 another of the included corporations of a unitary business to

the extent those dividends are included in business income of a corporation that is required to determine its business income pursuant to paragraph (1) of phrase (e) of subclause (2).

* * *

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.

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

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

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

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

(D) "Nonbusiness income" means all income other than

1 business income. The term does not include income which is
2 apportionable under the Constitution of the United States.

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

10 (F) "State" means any state of the United States, the
11 District of Columbia, the Commonwealth of Puerto Rico, any
12 territory or possession of the United States, and any foreign
13 country or political subdivision thereof.

14 (G) "This state" means the Commonwealth of Pennsylvania or,
15 in the case of application of this definition to the
16 apportionment and allocation of income for local tax purposes,
17 the subdivision or local taxing district in which the relevant
18 tax return is filed.

19 (H) "ELECTRIC LIGHT COMPANY" HAS THE SAME MEANING GIVEN TO
20 IT UNDER SECTION 1101(B).

<—

21 (I) "TRANSITION BONDS" MEANS BONDS ISSUED BY AN ELECTRIC
22 LIGHT COMPANY UNDER 66 PA.C.S. § 2812 (RELATING TO APPROVAL OF
23 TRANSITION BONDS).

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 subparagraphs (B) and (C):

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

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

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

22 (C) For taxable years that begin on or after January 1,
23 2009, all business income shall be apportioned to this State by
24 a fraction, which is the sales factor. This includes any
25 railroad, truck, bus, airline, pipeline, natural gas or water
26 transportation company that is required to determine its
27 business income pursuant to paragraph (1) of phrase (e) of this
28 subclause.

29 (10) The property factor is a fraction, the numerator of
30 which is the average value of the taxpayer's real and tangible

1 personal property owned or rented and used in this State during
2 the tax period and the denominator of which is the average value
3 of all the taxpayer's real and tangible personal property owned
4 or rented and used during the tax period but shall not include
5 the security interest of any corporation as seller or lessor in
6 personal property sold or leased under a conditional sale,
7 bailment lease, chattel mortgage or other contract providing for
8 the retention of a lien or title as security for the sales price
9 of the property.

10 (11) Property owned by the taxpayer is valued at its
11 original cost. Property rented by the taxpayer is valued at
12 eight times the net annual rental rate. Net annual rental rate
13 is the annual rental rate paid by the taxpayer less any annual
14 rental rate received by the taxpayer from subrentals.

15 (12) The average value of property shall be determined by
16 averaging the values at the beginning and ending of the tax
17 period but the tax administrator may require the averaging of
18 monthly values during the tax period if reasonably required to
19 reflect properly the average value of the taxpayer's property.

20 (13) The payroll factor is a fraction, the numerator of
21 which is the total amount paid in this State during the tax
22 period by the taxpayer for compensation and the denominator of
23 which is the total compensation paid everywhere during the tax
24 period.

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

26 (A) The individual's service is performed entirely within
27 the State;

28 (B) The individual's service is performed both within and
29 without this State, but the service performed without the State
30 is incidental to the individual's service within this State; or

1 (C) Some of the service is performed in this State and the
2 base of operations or if there is no base of operations, the
3 place from which the service is directed or controlled is in
4 this State, or the base of operations or the place from which
5 the service is directed or controlled is not in any state in
6 which some part of the service is performed, but the
7 individual's residence is in this State.

8 (15) The sales factor is a fraction, the numerator of which
9 is the total sales of the taxpayer in this State during the tax
10 period, and the denominator of which is the total sales of the
11 taxpayer everywhere during the tax period.

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

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

19 (A) The income-producing activity is performed in this
20 State; or

21 (B) The income-producing activity is performed both in and
22 outside this State and a greater proportion of the income-
23 producing activity is performed in this State than in any other
24 state, based on costs of performance.

25 (17.1) Sales of services are in this State if sales are
26 derived from customers within this State. If part of the sales
27 with respect to a specific contract or other agreement to
28 perform services is derived from customers from within this
29 State, sales are in this State in proportion to the sales
30 derived from customers within this State to total sales with

1 respect to that contract or agreement.

2 (17.2) In order to determine sales in this State of any
3 railroad, truck, bus, airline, pipeline, natural gas or water
4 transportation company that is required to determine its
5 business income pursuant to paragraph (1) of phrase (e) of this
6 subclause such company must convert the relevant fraction set
7 forth in phrase (b), (c) or (d) of this subclause to gross
8 receipts. Sales in this State are the result of multiplying
9 total gross receipts from relevant transportation activities by
10 the decimal equivalent of the relevant fraction set forth in
11 phrase (b), (c) or (d) of this subclause.

12 (18) If the allocation and apportionment provisions of this
13 definition do not fairly represent the extent of the taxpayer's
14 business activity in this State, the taxpayer may petition the
15 Secretary of Revenue or the Secretary of Revenue may require, in
16 respect to all or any part of the taxpayer's business activity:

17 (A) Separate accounting;

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

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

22 (D) The employment of any other method to effectuate an
23 equitable allocation and apportionment of the taxpayer's income.
24 In determining the fairness of any allocation or apportionment,
25 the Secretary of Revenue may give consideration to the
26 taxpayer's previous reporting and its consistency with the
27 requested relief.

28 * * *

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

30 (1) Notwithstanding any contrary provisions of this article,

for taxable years that begin on or after January 1, 2009,
business income of a corporation that is a member of a unitary
business that consists of two or more corporations, at least one
of which does not transact its entire business in this State, is
determined by combining the business income of either all
corporations, other than as set forth below, that are water's-
edge basis members or all corporations, other than as set forth
below, that are worldwide members of the unitary business.

Business income from an intercompany transaction between
included corporations of a unitary business shall be deferred in
the manner set forth under 26 CFR 1.1502-13 (relating to
intercompany transactions) in determining the business income of
a corporation that is a member of that unitary business.

Business income of the following corporations is not included in
the determination of combined business income:

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

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

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

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

(v) any corporation specified in the definition of
"institution" in section 1501 that would be subject to taxation

under Article XV were it located, as defined in section 1501, in this State; ~~or~~

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

(VII) ANY ELECTRIC LIGHT COMPANY, INCLUDING ITS SUBSIDIARIES, REGULATED BY THE PENNSYLVANIA PUBLIC UTILITY COMMISSION THAT AS OF THE EFFECTIVE DATE OF THIS PARAGRAPH HAS OUTSTANDING TRANSITION BONDS. THIS EXEMPTION SHALL APPLY ONLY TO THE PERIOD UP TO AND INCLUDING THE TAX YEAR IN WHICH THE TRANSITION BONDS EXPIRE. DURING SUCH PERIOD, THE ELECTRIC LIGHT COMPANY, INCLUDING ITS SUBSIDIARIES, SHALL BE SUBJECT TO THE TAX IMPOSED UNDER AND THE PROVISIONS OF ARTICLE IV THAT ARE IN EFFECT ON THE DAY PRIOR TO THE EFFECTIVE DATE OF THIS PARAGRAPH.

(2) Notwithstanding any contrary provisions of this article, all corporations that are required to compute business income under paragraph (1) are entitled to apportion such business income when one corporation of the same unitary business is entitled to apportion such business income. Notwithstanding any contrary provisions of this article, for taxable years that begin on or after January 1, 2009, the denominator of the apportionment fraction of a corporation that is required to compute its business income under paragraph (1) shall be computed on a combined basis for all included corporations of the unitary business. Gross receipts from an intercompany transaction between included corporations of a unitary business are eliminated unless the gross receipts are derived from transactions that are deferred in the manner set forth under 26 CFR 1.1502-13 in computing the numerator and denominator of the apportionment fraction of a corporation that is required to

compute its business income under paragraph (1). Gross receipts from transactions that had been deferred in the manner set forth in 26 CFR 1.1502-13 are included in a corporation's apportionment fraction during the same taxable year that it realizes business income that had been deferred due to the transaction. The apportionment fraction of the following corporations is not included in the determination of the combined apportionment fraction:

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

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

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

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

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

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

(VII) ANY ELECTRIC LIGHT COMPANY, INCLUDING ITS SUBSIDIARIES, REGULATED BY THE PENNSYLVANIA PUBLIC UTILITY

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1 COMMISSION THAT AS OF THE EFFECTIVE DATE OF THIS PARAGRAPH HAS
2 OUTSTANDING TRANSITION BONDS. THIS EXEMPTION SHALL APPLY ONLY TO
3 THE PERIOD UP TO AND INCLUDING THE TAX YEAR IN WHICH THE
4 TRANSITION BONDS EXPIRE.

5 (3) A corporation that is required to compute its business
6 income under paragraph (1) shall apportion such combined
7 business income by multiplying such combined business income by
8 a fraction which is the combined apportionment fraction set
9 forth in paragraph (2).

10 (4) Nonbusiness income of a corporation that is required to
11 compute business income under paragraph (1) shall be allocated
12 as provided in paragraphs (5) through (8) of phrase (a) of
13 subclause 2 of the definition of "taxable income."

14 (5) Each corporation that is a member of a unitary business
15 that consists of two or more corporations determines its tax
16 liability based on its apportioned share of the combined
17 business income of the unitary business plus its nonbusiness
18 income or loss allocated to this State, minus its net loss
19 deduction.

20 (6) If any provision of this phrase operates so that an
21 amount is added to or deducted from taxable income for a taxable
22 year for any corporation of a unitary business that previously
23 had been added to or deducted from taxable income of any
24 corporation of the same unitary business, an appropriate
25 adjustment shall be made for the taxable year in order to
26 prevent double taxation or double deduction. If this adjustment
27 is not made by the appropriate corporation of the unitary
28 business, the Secretary of Revenue is authorized to make this
29 adjustment.

30 (7) The Secretary of Revenue has the authority and

responsibility to make adjustments to insure that a corporation does not incur an unfair penalty nor realize an unfair benefit because it is required to compute its business income under paragraph (1). Fairness shall be measured by whether the corporation's income allocated and apportioned to this State fairly reflects the corporation's share of the unitary business conducted in this State in the taxable year.

* * *

4. * * *

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

(A) (I) For taxable years beginning before January 1, 2007, two million dollars (\$2,000,000)[;] or 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;

(II) For taxable years beginning after December 31, 2006, through taxable years beginning on or before December 31, 2008, the greater of twelve and one-half per cent of taxable income as determined under subclause 1 or, if applicable, subclause 2 or three million dollars (\$3,000,000)[; or] or 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; or

(III) Except as set forth in paragraph (4), there is no maximum on the amount of the net loss deduction allowed for taxable years beginning on or after January 1, 2009.

[(B) 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.]

(1.1) In no event shall the net loss deduction include more

1 than five hundred thousand dollars (\$500,000), in the aggregate,
2 of net losses from taxable years 1988 through 1994.

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

5	Taxable Year	Carryover
6	1981	1 taxable year
7	1982	2 taxable years
8	1983-1987	3 taxable years
9	1988	2 taxable years plus
10		1 taxable year
11		starting with the
12		1995 taxable year
13	1989	1 taxable year plus
14		2 taxable years
15		starting with the
16		1995 taxable year
17	1990-1993	3 taxable years
18		starting with the
19		1995 taxable year
20	1994	1 taxable year
21	1995-1997	10 taxable years
22	1998 and thereafter	20 taxable years

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

27 (I) Two million dollars (\$2,000,000) for taxable years
28 beginning before January 1, 2007.

29 (II) The greater of twelve and one-half per cent of the
30 taxable income as determined under subclause 1 or, if

1 applicable, subclause 2 or three million dollars (\$3,000,000)
2 for taxable years beginning after December 31, 2006[.], through
3 taxable years beginning on or before December 31, 2008.

4 (III) Except as set forth in paragraph (4), there is no
5 maximum on the amount of the net loss deduction allowed for
6 taxable years beginning on or after January 1, 2009.

7 (3) The entire net loss for a taxable year that begins on or
8 after January 1, 2009, is available to be carried over to a
9 taxable year that begins on or after January 1, 2010, pursuant
10 to the schedule set forth in paragraph (2) and shall be carried
11 over to the earliest taxable year to which it may be carried
12 pursuant to the schedule set forth in paragraph (2).

13 (4) The amount of unused net loss from all taxable years
14 that begin prior to January 1, 2009, that may be carried over to
15 any taxable year that begins on or after January 1, 2009, is
16 limited to two million dollars (\$2,000,000) per taxable year and
17 may only be used by the corporation that realized the net loss.
18 If a corporation is required to determine its business income
19 pursuant to paragraph (1) of phrase (e) of subclause 2, it may
20 only use such loss in a year to the extent that it has taxable
21 income before use of such loss determined as if it were a
22 separate company.

23 (5) Any net loss realized for a taxable year that begins on
24 or after January 1, 2009, by one corporation of a unitary
25 business may be used by other corporations of the same unitary
26 business, provided that the corporation that realized the net
27 loss must first use the portion of such net loss to reduce its
28 taxable income to zero. Other corporations of the same unitary
29 business that have insufficient net losses of their own to
30 reduce their tax liabilities to zero may then use the remainder

of such net loss in proportion to their remaining taxable incomes before the application of such loss.

(6) Any net loss realized for a taxable year that begins on or after January 1, 2009, unused by a corporation which subsequently becomes a member of another unitary business may only be used by that corporation.

* * *

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

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

* * *

(8) "Tax haven." A jurisdiction that at the beginning of a

taxable year is a tax haven as identified by the Organization for Economic Co-operation and Development, plus the sovereignties of Bermuda, the Cayman Islands, the Bailiwick of Jersey and the Grand Duchy of Luxembourg.

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

(10) "Water's-edge basis." A system of reporting that includes the business income and apportionment factor of certain corporations of a unitary business, described as follows:

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

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

3. The business income and apportionment factor of any member which is a domestic international sales corporation as described in sections 991, 992, 993 and 994 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 991, 992,

1 993 and 994); a foreign sales corporation as described in
2 sections 921, 922, 923, 924, 925, 926 and 927 of the Internal
3 Revenue Code of 1986 (26 U.S.C. §§ 921, 922, 923, 924, 925, 926
4 and 927); or any member which is an export trade corporation, as
5 described in sections 970 and 971 of the Internal Revenue Code
6 of 1986 (26 U.S.C. §§ 970 and 971).

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

12 5. Any member that is a "controlled foreign corporation" as
13 defined in section 957 of the Internal Revenue Code of 1986 (26
14 U.S.C. § 957), to the extent the business income of that member
15 is income defined in section 952 of the Internal Revenue Code of
16 1986 (26 U.S.C. § 952), Subpart F income, not excluding lower-
17 tier subsidiaries' distributions of such income which were
18 previously taxed, determined without regard to Federal treaties,
19 and the apportionment factor related to that income; any item of
20 income received by a controlled foreign corporation and the
21 apportionment factor related to such income shall be excluded if
22 the corporation establishes to the satisfaction of the Secretary
23 of Revenue that such income was subject to an effective rate of
24 income tax imposed by a foreign country greater than ninety per
25 cent of the maximum rate of tax specified in section 11 of the
26 Internal Revenue Code of 1986 (26 U.S.C. § 11). The effective
27 rate of income tax determination shall be based upon the
28 methodology set forth under 26 CFR 1.954-1 (relating to foreign
29 base company income).

30 6. The business income and apportionment factor of any

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

10 (11) "Commonly controlled group." For a corporation, the
11 corporation is a member of a group of two or more corporations
12 and more than fifty per cent of the voting stock of each member
13 of the group is directly or indirectly owned by a common owner
14 or by common owners, either corporate or noncorporate, or by one
15 or more of the member corporations of the group.

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

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

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

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

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

Taxable Year	Tax Rate
January 1, 1995, [and	
each taxable	
year thereafter]	

<—

through taxable

years beginning

ON OR BEFORE

December 31, 2008 9.99%

January 1, 2009, and

each taxable

year thereafter 7.90%

* * *

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

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

(a.1) (1) Each corporation subject to tax under this article is required to file an annual report in accordance with this section. Each corporation that is a member of a unitary business that consists of two or more corporations, unless excluded by the provisions of this article, shall file as part of a combined annual report. The corporations of the unitary business shall designate one member that is subject to tax under this article to file the combined annual report and to act as agent on behalf of all other corporations that are members of the unitary business. Each corporation that is a member of a unitary business is responsible for its tax liability under this article.

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

(3) The designated member shall transmit to the department upon a form prescribed by the department, an annual combined

report under oath or affirmation of its president, vice president or other principal officer, and of its treasurer or assistant treasurer. Such report shall set forth:

(i) All corporations included in the unitary business.

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

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

(a.2) (1) Activities that evidence a significant flow of value among commonly controlled corporations, include, but are not limited to, the following:

(i) Assisting in the acquisition of equipment.

(ii) Assisting with filling personnel needs.

(iii) Lending funds or guaranteeing loans.

(iv) Interplay in the area of corporate expansion.

(v) Providing technical assistance.

(vi) Supervising.

(vii) Providing general operational guidance.

(viii) Providing overall operational strategic advice.

(ix) Common use of trade names and patents.

(2) Significant flow of value must be more than the flow of funds arising out of passive investment and consists of more than periodic financial oversight.

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

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

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

1 (iii) Strong centralized management of corporations.

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

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

8 (4) A corporation that permits one or more other
9 corporations of a unitary business to substantially use its
10 patents, trademarks, service marks, logo-types, trade secrets,
11 copyrights or other proprietary assets or that is principally
12 engaged in loaning money to one or more other corporations of a
13 unitary business is rebuttably presumed to be a member of the
14 unitary business. This presumption only applies to a commonly
15 controlled group of corporations.

16 (a.4) As far as applicable to a specific unitary business,
17 unless there is a revision of applicable State law or unless a
18 corporation is not included under the provisions of this
19 article, there is a rebuttable presumption for all tax years
20 that begin in years 2009 and 2010 that a unitary business of two
21 or more corporations includes at least all corporations that are
22 part of a unitary business under the law of any state of the
23 United States in which the corporation files a tax report or tax
24 return of combined net income for the same tax year.

25 (a.5) Unless an election is made to use a worldwide basis of
26 accounting, a corporation that is a member of a unitary business
27 of two or more corporations must determine its business income
28 and apportionment factor upon a water's-edge basis. This basis
29 applies to all corporations of the unitary business. If an
30 election is made to use a worldwide basis of accounting, all

1 corporations of the unitary business must make the election,
2 upon a form, prescribed, prepared and furnished by the
3 department. This election binds all corporations of the unitary
4 business for the period of time that the election remains in
5 effect. An initial election is binding for a period of seven
6 years. Subsequent elections are binding for a period of five
7 years.

8 * * *

9 Section 4. Section 404 of the act is amended to read:

10 Section 404. Consolidated Reports.--The department shall not
11 permit any corporation owning or controlling, directly or
12 indirectly, any of the voting capital stock of another
13 corporation or of other corporations, subject to the provisions
14 of this article, to make a consolidated report[, showing the
15 combined net income].

16 Section 5. Section 3003.3(d) of the act, amended October 18,
17 2006 (P.L.1149, No.119), is amended and the section is amended
18 by adding subsections to read:

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

20 (d) Notwithstanding the provisions of the preceding
21 subsections, other than as set forth in subsection (d.1),
22 interest with respect to any underpayment of any installment of
23 estimated tax shall not be imposed if the total amount of all
24 payments of estimated tax made on or before the last date
25 prescribed for the payment of such installment equals or exceeds
26 the amount which would have been required to be paid on or
27 before such date if the estimated tax were an amount equal to
28 the tax computed at the rates applicable to the taxable year,
29 including any minimum tax imposed, but otherwise on the basis of
30 the facts shown on the report of the taxpayer for, and the law

1 applicable to, the safe harbor base year, adjusted for any
2 changes to sections 401, 601, 602 and 1101 enacted for the
3 taxable year, if a report showing a liability for tax was filed
4 by the taxpayer for the safe harbor base year. If the total
5 amount of all payments of estimated tax made on or before the
6 last date prescribed for the payment of such installment does
7 not equal or exceed the amount required to be paid per the
8 preceding sentence, but such amount is paid after the date the
9 installment was required to be paid, then the period of
10 underpayment shall run from the date the installment was
11 required to be paid to the date the amount required to be paid
12 per the preceding sentence is paid. Provided, that if the total
13 tax for the safe harbor base year exceeds the tax shown on such
14 report by ten per cent or more, the total tax adjusted to
15 reflect the current tax rate shall be used for purposes of this
16 subsection. In the event that the total tax for the safe harbor
17 base year exceeds the tax shown on the report by ten per cent or
18 more, interest resulting from the utilization of such total tax
19 in the application of the provisions of this subsection shall
20 not be imposed if, within forty-five days of the mailing date of
21 each assessment, payments are made such that the total amount of
22 all payments of estimated tax equals or exceeds the amount which
23 would have been required to be paid on or before such date if
24 the estimated tax were an amount equal to the total tax adjusted
25 to reflect the current tax rate. In any case in which the
26 taxable year for which an underpayment of estimated tax may
27 exist is a short taxable year, in determining the tax shown on
28 the report or the total tax for the safe harbor base year, the
29 tax will be reduced by multiplying it by the ratio of the number
30 of installment payments made in the short taxable year to the

number of installment payments required to be made for the full taxable year.

(d.1) (1) Notwithstanding the provisions of subsections (a), (b) and (c), interest with respect to any underpayment of any installment of estimated corporate net income tax for any tax year that begins in year 2009 or 2010 shall not be imposed if the total amount of all payments of estimated corporate net income tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to the tax shown on the report of the taxpayer for the safe harbor base year, if a report showing a liability for tax was filed by the taxpayer for the safe harbor base year.

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

(3) If the total tax for the safe harbor base year exceeds the tax shown on such report by ten per cent or more, the total tax shall be used for purposes of this subsection. In the event that the total tax for the safe harbor base year exceeds the tax shown on the report by ten per cent or more, interest resulting from the utilization of the total tax in the application of the provisions of this subsection shall not be imposed if, within forty-five days of the mailing date of a notice from the

1 department increasing the total tax, payments are made such that
2 the total amount of all payments of estimated tax equals or
3 exceeds the amount which would have been required to be paid on
4 or before such date if the estimated tax were an amount equal to
5 the total tax.

6 (4) In any case in which the taxable year for which an
7 underpayment of estimated tax may exist is a short taxable year,
8 in determining the tax shown on the report or the total tax for
9 the safe harbor base year, the tax shall be reduced by
10 multiplying it by the ratio of the number of installment
11 payments made in the short taxable year to the number of
12 installment payments required to be made for the full taxable
13 year.

14 (d.2) (1) If there is a substantial underpayment, as
15 defined in subsection (a), of any installment of estimated
16 corporate net income tax or estimated capital stock/franchise
17 tax for any taxable year beginning in 2009 or 2010, there shall
18 be imposed additional interest in an amount determined at one
19 hundred twenty per cent of the annual rate as provided by law
20 upon the entire underpayment for the period of the substantial
21 underpayment.

22 (2) The additional interest imposed by this subsection is in
23 addition to any other interest imposed on underpayments by this
24 section.

25 Section 6. The amendment or addition of the following
26 provisions shall apply to taxable years beginning after December
27 31, 2008:

28 (1) Section 401(3)1(a) and (b), 2(a) and (e) and 4(c)
29 and (5), (8), (9), (10), (11), (12) and (13) of the act.

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

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

3 (4) Section 404 of the act.

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

5 Section 7. This act shall take effect July 1, 2007, or
6 immediately, whichever is later.