

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1518 Session of
2007

INTRODUCED BY D. EVANS, JUNE 7, 2007

REFERRED TO COMMITTEE ON APPROPRIATIONS, JUNE 7, 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," providing for the imposition, rate, computation
11 and collection of an oil company gross profits tax;
12 establishing the Oil Company Gross Profits Tax Account;
13 imposing penalties; further providing for estimated tax; and
14 making an appropriation.

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

17 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
18 the Tax Reform Code of 1971, is amended by adding an article to
19 read:

20 ARTICLE XXII

21 OIL COMPANY GROSS PROFITS TAX

22 Section 2201. Definitions.

23 The following words and phrases when used in this article

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Account." The Oil Company Gross Profits Tax Account
4 established in section 2204.

5 "Apportioned gross profits." The gross profits apportioned
6 to Pennsylvania by the apportionment fraction set forth in
7 section 2202(d).

8 "Business entity." All oil companies of a unitary business.

9 "Gross profits." If an oil company files an income tax
10 return with the Federal Government, gross profits as set forth
11 on such return. If an oil company does not file an income tax
12 return with the Federal Government, gross profits that would
13 have been returned to the Federal Government if such return had
14 been made. Gross profits of a business entity are calculated on
15 single entity basis, if a business entity is comprised of one
16 oil company, or a combined entity basis, if a business entity is
17 comprised of two or more oil companies.

18 "Gross receipts." All gross receipts of a business entity.
19 If an oil company files an income tax return with the Federal
20 Government, its gross receipts as set forth on such return. If
21 an oil company does not file an income tax return with the
22 Federal Government, gross receipts that would have been returned
23 to the Federal Government if such return had been made.

24 "Oil company." An entity that engages in the exploration,
25 drilling, importation, refining or wholesale distribution of
26 petroleum products.

27 "Petroleum products." Any product of the industrial
28 processing of crude oil and its fractionation products
29 manufactured or refined or used for the generation of power used
30 in an internal combustion engine to propel motor vehicles of any

1 kind or character and to generate heat. Petroleum products
2 include, but are not limited to, gasoline, diesel fuel,
3 kerosene, propane and any other product of crude oil used for
4 such purpose.

5 "Taxable year." The taxable year which an oil company, or
6 any consolidated group with which an oil company participates in
7 the filing of consolidated returns, actually uses in reporting
8 taxable income to the Federal Government. The terms "annual
9 year," "fiscal year," "annual or fiscal year," "tax year" and
10 "tax period" shall be the same as the oil company's taxable year
11 as defined in this definition.

12 "Unitary business." A single economic enterprise that is
13 made up either of separate parts of a single entity or of a
14 commonly controlled group of entities that are sufficiently
15 interdependent, integrated and interrelated through their
16 activities so as to provide a synergy and mutual benefit that
17 produces a sharing or exchange of value among them and a
18 significant flow of value to the separate parts.

19 "Wholesale distribution." The making of one or more
20 nonretail sales of petroleum products.

21 Section 2202. Imposition of tax.

22 (a) Imposition.--A business entity shall pay an excise tax
23 on its apportioned gross profits for exercising, whether in its
24 own name or through any person, association, business trust,
25 corporation, joint venture, limited liability company, limited
26 partnership, partnership or other entity, any of the following
27 privileges:

28 (1) Doing business within this Commonwealth.

29 (2) Carrying on activities within this Commonwealth.

30 (3) Having capital or property employed or used in this

1 Commonwealth.

2 (4) Owning property in this Commonwealth.

3 (5) Engaging in or transacting any activity in this
4 Commonwealth for the purpose of financial gain or profit.

5 (b) Rate.--The annual rate of tax on gross profits imposed
6 by subsection (a) shall be 6.17% for calendar years or fiscal
7 years beginning after December 31, 2007.

8 (c) Tax in lieu of corporate net income tax.--The tax
9 imposed by this article shall be in lieu of the tax imposed by
10 Article IV.

11 (d) Apportionment fraction.--If at least one oil company of
12 a business entity transacts part of its business outside
13 Pennsylvania, the apportionment fraction of a business entity is
14 Pennsylvania gross receipts divided by gross receipts
15 everywhere. Gross receipts from the sale of tangible personal
16 property are Pennsylvania gross receipts based on the sourcing
17 rule set forth in section 401(3)2(a)(16). All other gross
18 receipts are Pennsylvania gross receipts based on the sourcing
19 rule set forth in section 401(3)2(a)(17). All transactions among
20 oil companies of a unitary business are eliminated in computing
21 the numerator and the denominator of the apportionment fraction
22 of a business entity. If all oil companies of a business entity
23 transact all of their business within Pennsylvania, the business
24 entity is not entitled to apportion its gross profits.

25 Section 2203. Reports and payment of tax.

26 A business entity liable to tax under this article shall file
27 a report of gross profits taxable under this article and pay tax
28 due as set forth in section 403. The oil companies of a business
29 entity liable to tax under this article shall designate one oil
30 company to act as agent on behalf of the business entity. The

1 agent shall file the report and pay the tax required by this
2 section. A person authorized to file tax returns or tax reports
3 on behalf of the oil company that is the agent of the business
4 entity shall file the report under oath or affirmation.

5 Section 2204. Restricted revenue account.

6 (a) Establishment of account.--There is established a
7 restricted account in the General Fund to be known as the Oil
8 Company Gross Profits Tax Account. Except as provided in
9 subsection (c), money paid into the account shall be
10 appropriated annually for mass transportation purposes.

11 (b) Deposit.--The tax collected pursuant to this article
12 shall be deposited and paid into the account.

13 (c) Transfer.--On June 15, 2008, \$17,000,000 shall be
14 transferred from the account to the General Fund. On September
15 15, 2008, December 15, 2009, March 15, 2009, and June 15, 2009,
16 and on each September 15, December 15, March 15 and June 15,
17 thereafter, \$17,500,000 shall be transferred from the account to
18 the General Fund.

19 Section 2205. Procedure; enforcement; penalties.

20 (a) Incorporation by reference.--Parts III, IV, V, VI and
21 VII of Article IV are incorporated by reference into this
22 article insofar as they are applicable to the tax imposed under
23 this article.

24 (b) Inapplicability.--Section 404 shall not apply to the tax
25 imposed by this article.

26 (c) Underpayment.--In addition to any other penalty provided
27 by law, if the amount of any estimated payment of tax due or
28 payment of tax due is underpaid, a penalty shall be imposed in
29 the amount of 5% of the underpayment per month for the period of
30 the underpayment, up to a maximum of 25% of the underpayment.

1 (d) Failure to file.--In addition to any other penalty
2 provided by law, if a business entity fails to file the report
3 required by section 2203 within 270 days of the original due
4 date of the report, a penalty of \$500 shall be imposed on the
5 business entity.

6 Section 2206. Cost of tax and penalties.

7 (a) Cost.--The cost of the tax imposed in section 2202, or
8 any portion thereof, shall not be added to, separately stated
9 with or included in the purchase price charged to a purchaser of
10 petroleum products.

11 (b) Penalties.--An individual who willfully violates
12 subsection (a) commits a misdemeanor of the third degree. In
13 addition, the seller of the petroleum products shall be required
14 to pay a penalty equal to the amount added to, separately stated
15 with or included with the purchase price charged to the
16 purchaser.

17 (c) Attorney General.--In addition to the authority
18 conferred upon the Attorney General by the act of October 15,
19 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act,
20 the Attorney General shall have the authority to investigate and
21 to institute criminal proceedings for any violation of this
22 section. No persons charged with a violation of this section by
23 the Attorney General shall have standing to challenge the
24 authority of the Attorney General to investigate or prosecute
25 the case. If a challenge is made, the challenge shall be
26 dismissed and no relief shall be made available in the courts of
27 this Commonwealth to the person making the challenge.

28 Section 2. Section 3003.2(g) of the act, amended December
29 23, 2003 (P.L.250, No.46), is amended and subsections (a), (b)
30 and (c) are amended by adding paragraphs to read:

Section 3003.2. Estimated Tax.--(a) The following taxpayers are required to pay estimated tax:

* * *

(7) Every person subject to the tax imposed by Article XXII of this act shall make payments of estimated oil company gross profits tax during its taxable year.

(b) The following words, terms and phrases when used in this section and section 3003.3 shall have the following meanings ascribed to them:

* * *

(4.6) "Estimated oil company gross profits tax." The amount which the taxpayer estimates as the amount of tax imposed by section 2202 of Article XXII for the taxable year.

* * *

(c) Estimated tax shall be paid as follows:

* * *

(7) Payment of the estimated oil company gross profits tax shall be made in a single installment on or before the fifteenth day of the third month of the taxable year. The remaining portion of the oil company gross profits tax due, if any, shall be paid upon the date the annual report is required to be filed without reference to any extension of time for filing the report.

* * *

(g) For all purposes of this section and section 3003.3, estimated corporate net income tax, estimated capital stock and franchise tax, estimated mutual thrift institutions tax, estimated insurance premiums tax, estimated gross receipts tax [and], estimated public utility realty surcharge and estimated oil company gross profits tax shall be separately reported,

1 determined and treated.

2 * * *

3 Section 3. The sum of \$1,000,000, or as much thereof as may
4 be necessary, is hereby appropriated to the Office of Attorney
5 General for the fiscal year July 1, 2007, to June 30, 2008, from
6 the Oil Company Gross Profits Tax Account to carry out the
7 provisions of section 2206(c) of the act.

8 Section 4. The addition of Article XXII of the act shall
9 apply to taxable years beginning after December 31, 2007.

10 Section 5. This act shall take effect immediately.