

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1775 Session of
2009

INTRODUCED BY LEVDANSKY, D. EVANS, McCALL, EACHUS,
McILVAINE SMITH, CARROLL, FREEMAN, GIBBONS, GOODMAN, GRUCELA,
HALUSKA, HOUGHTON, JOSEPHS, KESSLER, KORTZ, MANDERINO,
McGEEHAN, MELIO, MUNDY, PASHINSKI, READSHAW, SIPTROTH,
SOLOBAY, STURLA, WHITE AND YOUNGBLOOD, JUNE 24, 2009

REFERRED TO COMMITTEE ON FINANCE, JUNE 24, 2009

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 corporate net income tax,
11 for definitions, for reports and payment and for consolidated
12 reports; and further providing, in general provisions, for
13 underpayment of estimated tax.

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

16 Section 1. Section 401(3)1(a) and (b), 2(a) and 4(c) and (5)
17 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
18 Reform Code of 1971, amended or added December 23, 1983
19 (P.L.370, No.90), July 1, 1985 (P.L.78, No.29), August 4, 1991
20 (P.L.97, No.22), May 12, 1999 (P.L.26, No.4), June 22, 2001
21 (P.L.353, No.23), June 29, 2002 (P.L.559, No.89) and July 12,
22 2006 (P.L.1137, No.116) are amended, clause (3)2 is amended by

1 adding a phrase and the section is amended by adding clauses to
2 read:

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

7 * * *

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

21 (b) Additional deductions shall be allowed from taxable
22 income on account of any dividends received from any other
23 corporation but only to the extent that such dividends are
24 included in taxable income as returned to and ascertained by the
25 Federal Government. For tax years beginning on or after January
26 1, 1991, additional deductions shall only be allowed for amounts
27 included, under section 78 of the Internal Revenue Code of 1986
28 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned
29 to and ascertained by the Federal Government and for the amount
30 of any dividends received from a foreign corporation included in

1 taxable income to the extent such dividends would be deductible
2 in arriving at Federal taxable income if received from a
3 domestic corporation. For taxable years beginning on or after
4 January 1, 2011, if not otherwise allowed as a deduction, an
5 additional deduction is allowed for all dividends paid by one to
6 another of the included corporations of a unitary business to
7 the extent those dividends are included in business income of a
8 corporation that is required to determine its business income
9 pursuant to paragraph (1) of phrase (e) of subclause (2).

10 * * *

11 2. In case the entire business of any corporation, other
12 than a corporation engaged in doing business as a regulated
13 investment company as defined by the Internal Revenue Code of
14 1986, is not transacted within this Commonwealth, the tax
15 imposed by this article shall be based upon such portion of the
16 taxable income of such corporation for the fiscal or calendar
17 year, as defined in subclause 1 hereof, and may be determined as
18 follows:

19 (a) Division of Income.

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

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

30 (B) "Commercial domicile" means the principal place from

1 which the trade or business of the taxpayer is directed or
2 managed.

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

6 (D) "Nonbusiness income" means all income other than
7 business income. The term does not include income which is
8 apportionable under the Constitution of the United States.

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

16 (F) "State" means any state of the United States, the
17 District of Columbia, the Commonwealth of Puerto Rico, any
18 territory or possession of the United States, and any foreign
19 country or political subdivision thereof.

20 (G) "This state" means the Commonwealth of Pennsylvania or,
21 in the case of application of this definition to the
22 apportionment and allocation of income for local tax purposes,
23 the subdivision or local taxing district in which the relevant
24 tax return is filed.

25 (H) "Electric light company" has the same meaning given to
26 it under section 1101(b).

27 (I) "Transition bonds" means bonds issued by an electric
28 light company under 66 Pa.C.S. § 2812 (relating to approval of
29 transition bonds).

30 (2) Any taxpayer having income from business activity which

1 is taxable both within and without this State other than
2 activity as a corporation whose allocation and apportionment of
3 income is specifically provided for in section 401(3)2(b)(c) and
4 (d) shall allocate and apportion taxable income as provided in
5 this definition.

6 (3) For purposes of allocation and apportionment of income
7 under this definition, a taxpayer is taxable in another state if
8 in that state the taxpayer is subject to a net income tax, a
9 franchise tax measured by net income, a franchise tax for the
10 privilege of doing business, or a corporate stock tax or if that
11 state has jurisdiction to subject the taxpayer to a net income
12 tax regardless of whether, in fact, the state does or does not.

13 (4) Rents and royalties from real or tangible personal
14 property, gains, interest, patent or copyright royalties, to the
15 extent that they constitute nonbusiness income, shall be
16 allocated as provided in paragraphs (5) through (8).

17 (5) (A) Net rents and royalties from real property located
18 in this State are allocable to this State.

19 (B) Net rents and royalties from tangible personal property
20 are allocable to this State if and to the extent that the
21 property is utilized in this State, or in their entirety if the
22 taxpayer's commercial domicile is in this State and the taxpayer
23 is not organized under the laws of or taxable in the state in
24 which the property is utilized.

25 (C) The extent of utilization of tangible personal property
26 in a state is determined by multiplying the rents and royalties
27 by a fraction, the numerator of which is the number of days of
28 physical location of the property in the state during the rental
29 or royalty period in the taxable year and the denominator of
30 which is the number of days of physical location of the property

1 everywhere during all rental or royalty periods in the taxable
2 year. If the physical location of the property during the rental
3 or royalty period is unknown or unascertainable by the taxpayer,
4 tangible personal property is utilized in the state in which the
5 property was located at the time the rental or royalty payer
6 obtained possession.

7 (6) (A) Gains and losses from sales or other disposition of
8 real property located in this State are allocable to this State.

9 (B) Gains and losses from sales or other disposition of
10 tangible personal property are allocable to this State if the
11 property had a situs in this State at the time of the sale, or
12 the taxpayer's commercial domicile is in this State and the
13 taxpayer is not taxable in the state in which the property had a
14 situs.

15 (C) Gains and losses from sales or other disposition of
16 intangible personal property are allocable to this State if the
17 taxpayer's commercial domicile is in this State.

18 (7) Interest is allocable to this State if the taxpayer's
19 commercial domicile is in this State.

20 (8) (A) Patent and copyright royalties are allocable to
21 this State if and to the extent that the patent or copyright is
22 utilized by the payer in this State, or if and to the extent
23 that the patent copyright is utilized by the payer in a state in
24 which the taxpayer is not taxable and the taxpayer's commercial
25 domicile is in this State.

26 (B) A patent is utilized in a state to the extent that it is
27 employed in production, fabrication, manufacturing, or other
28 processing in the state or to the extent that a patented product
29 is produced in the state. If the basis of receipts from patent
30 royalties does not permit allocation to states or if the

1 accounting procedures do not reflect states of utilization, the
2 patent is utilized in the state in which the taxpayer's
3 commercial domicile is located.

4 (C) A copyright is utilized in a state to the extent that
5 printing or other publication originates in the state. If the
6 basis of receipts from copyright royalties does not permit
7 allocation to states or if the accounting procedures do not
8 reflect states of utilization, the copyright is utilized in the
9 state in which the taxpayer's commercial domicile is located.

10 (9) (A) Except as provided in subparagraph (B):

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

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

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

27 (10) The property factor is a fraction, the numerator of
28 which is the average value of the taxpayer's real and tangible
29 personal property owned or rented and used in this State during
30 the tax period and the denominator of which is the average value

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

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

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

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

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

24 (A) The individual's service is performed entirely within
25 the State;

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

29 (C) Some of the service is performed in this State and the
30 base of operations or if there is no base of operations, the

1 place from which the service is directed or controlled is in
2 this State, or the base of operations or the place from which
3 the service is directed or controlled is not in any state in
4 which some part of the service is performed, but the
5 individual's residence is in this State.

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

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

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

17 (A) The income-producing activity is performed in this
18 State; or

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

23 (17.1) Sales of services are in this State if sales are
24 derived from customers within this State. If part of the sales
25 with respect to a specific contract or other agreement to
26 perform services is derived from customers from within this
27 State, sales are in this State in proportion to the sales
28 derived from customers within this State to total sales with
29 respect to that contract or agreement.

30 (17.2) In order to determine sales in this State of any

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

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

15 (A) Separate accounting;

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

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

20 (D) The employment of any other method to effectuate an
21 equitable allocation and apportionment of the taxpayer's income.

22 In determining the fairness of any allocation or apportionment,
23 the Secretary of Revenue may give consideration to the
24 taxpayer's previous reporting and its consistency with the
25 requested relief.

26 * * *

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

28 (1) Notwithstanding any contrary provisions of this article,
29 for taxable years that begin on or after January 1, 2011,
30 business income of a corporation that is a member of a unitary

1 business that consists of two or more corporations, at least one
2 of which does not transact its entire business in this State, is
3 determined by combining the business income of either all
4 corporations, other than as set forth below, that are water's-
5 edge basis members or all corporations, other than as set forth
6 below, that are worldwide members of the unitary business.
7 Business income from an intercompany transaction between
8 included corporations of a unitary business shall be deferred in
9 the manner set forth under 26 CFR 1.1502-13 (relating to
10 intercompany transactions) in determining the business income of
11 a corporation that is a member of that unitary business.
12 Business income of the following corporations is not included in
13 the determination of combined business income:

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

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

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

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

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

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

4 (vii) any electric light company, including its
5 subsidiaries, regulated by the Pennsylvania Public Utility
6 Commission that as of the effective date of this paragraph has
7 outstanding transition bonds. This exemption shall apply only to
8 the period up to and including the tax year in which the
9 transition bonds expire. During such period, the electric light
10 company, including its subsidiaries, shall be subject to the tax
11 imposed under and the provisions of Article IV that are in
12 effect on the day prior to the effective date of this paragraph.

13 (2) Notwithstanding any contrary provisions of this article,
14 all corporations that are required to compute business income
15 under paragraph (1) are entitled to apportion such business
16 income when one corporation of the same unitary business is
17 entitled to apportion such business income. Notwithstanding any
18 contrary provisions of this article, for taxable years that
19 begin on or after January 1, 2011, the denominator of the
20 apportionment fraction of a corporation that is required to
21 compute its business income under paragraph (1) shall be
22 computed on a combined basis for all included corporations of
23 the unitary business. Gross receipts from an intercompany
24 transaction between included corporations of a unitary business
25 are eliminated unless the gross receipts are derived from
26 transactions that are deferred in the manner set forth under 26
27 CFR 1.1502-13 in computing the numerator and denominator of the
28 apportionment fraction of a corporation that is required to
29 compute its business income under paragraph (1). Gross receipts
30 from transactions that had been deferred in the manner set forth

1 in 26 CFR 1.1502-13 are included in a corporation's
2 apportionment fraction during the same taxable year that it
3 realizes business income that had been deferred due to the
4 transaction. The apportionment fraction of the following
5 corporations is not included in the determination of the
6 combined apportionment fraction:

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

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

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

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

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

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

27 (vii) any electric light company, including its
28 subsidiaries, regulated by the Pennsylvania Public Utility
29 Commission that as of the effective date of this paragraph has
30 outstanding transition bonds. This exemption shall apply only to

1 the period up to and including the tax year in which the
2 transition bonds expire.

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

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

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

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

28 (7) The Secretary of Revenue has the authority and
29 responsibility to make adjustments to insure that a corporation
30 does not incur an unfair penalty nor realize an unfair benefit

1 because it is required to compute its business income under
2 paragraph (1). Fairness shall be measured by whether the
3 corporation's income allocated and apportioned to this State
4 fairly reflects the corporation's share of the unitary business
5 conducted in this State in the taxable year.

6 * * *

7 4. * * *

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

9 (A) (I) For taxable years beginning before January 1, 2007,
10 two million dollars (\$2,000,000) [;] or the amount of the net
11 loss or losses which may be carried over to the taxable year or
12 taxable income as determined under subclause 1 or, if
13 applicable, subclause 2;

14 (II) For taxable years beginning after December 31, 2006,
15 the greater of twelve and one-half per cent of taxable income as
16 determined under subclause 1 or, if applicable, subclause 2 or
17 three million dollars (\$3,000,000) [; or] or the amount of the
18 net loss or losses which may be carried over to the taxable year
19 or taxable income as determined under subclause 1 or, if
20 applicable, subclause 2; or

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

24 (1.1) In no event shall the net loss deduction include more
25 than five hundred thousand dollars (\$500,000), in the aggregate,
26 of net losses from taxable years 1988 through 1994.

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

29	Taxable Year	Carryover
30	1981	1 taxable year

1	1982	2 taxable years
2	1983-1987	3 taxable years
3	1988	2 taxable years plus
4		1 taxable year
5		starting with the
6		1995 taxable year
7	1989	1 taxable year plus
8		2 taxable years
9		starting with the
10		1995 taxable year
11	1990-1993	3 taxable years
12		starting with the
13		1995 taxable year
14	1994	1 taxable year
15	1995-1997	10 taxable years
16	1998 and thereafter	20 taxable years

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

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

23 (II) The greater of twelve and one-half per cent of the
24 taxable income as determined under subclause 1 or, if
25 applicable, subclause 2 or three million dollars (\$3,000,000)
26 for taxable years beginning after December 31, 2006.

27 (3) The amount of unused net loss from all taxable years
28 that begin prior to January 1, 2011, that may be carried over to
29 any taxable year that begins on or after January 1, 2011, is
30 limited to two million dollars (\$2,000,000) per taxable year and

1 may only be used by the corporation that realized the net loss.
2 If a corporation is required to determine its business income
3 pursuant to paragraph (1) of phrase (e) of subclause 2, it may
4 only use such loss in a year to the extent that it has taxable
5 income before use of such loss determined as if it were a
6 separate company.

7 (4) Any net loss realized for a taxable year that begins on
8 or after January 1, 2011, by one corporation of a unitary
9 business may be used by other corporations of the same unitary
10 business, provided that the corporation that realized the net
11 loss must first use the portion of such net loss to reduce its
12 taxable income to zero. Other corporations of the same unitary
13 business that have insufficient net losses of their own to
14 reduce their tax liabilities to zero may then use the remainder
15 of such net loss in proportion to their remaining taxable
16 incomes before the application of such loss.

17 (5) Any net loss realized for a taxable year that begins on
18 or after January 1, 2011, unused by a corporation which
19 subsequently becomes a member of another unitary business may
20 only be used by that corporation.

21 * * *

22 (5) "Taxable year." [The] 1. Except as set forth in
23 subclause 2, the taxable year which the corporation, or any
24 consolidated group with which the corporation participates in
25 the filing of consolidated returns, actually uses in reporting
26 taxable income to the Federal Government[.], or which the
27 corporation would have used in reporting taxable income to the
28 Federal Government had it been required to report its taxable
29 income to the Federal Government. With regard to the tax imposed
30 by Article IV of this act (relating to the Corporate Net Income

1 Tax), the terms "annual year," "fiscal year," "annual or fiscal
2 year," "tax year" and "tax period" shall be the same as the
3 corporation's taxable year, as defined in this [paragraph.]
4 subclause or subclause 2.

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

13 * * *

14 (8) "Tax haven." A jurisdiction that at the beginning of a
15 taxable year is a tax haven as identified by the Organization
16 for Economic Co-operation and Development, plus the
17 sovereignties of Bermuda, the Cayman Islands, the Bailiwick of
18 Jersey and the Grand Duchy of Luxembourg.

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

29 (10) "Water's-edge basis." A system of reporting that
30 includes the business income and apportionment factor of certain

1 corporations of a unitary business, described as follows:

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

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

11 3. The business income and apportionment factor of any
12 member which is a domestic international sales corporation as
13 described in sections 991, 992, 993 and 994 of the Internal
14 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 991, 992,
15 993 and 994); a foreign sales corporation as described in former
16 sections 921, 922, 923, 924, 925, 926 and 927 of the Internal
17 Revenue Code of 1986 (26 U.S.C. §§ 921, 922, 923, 924, 925, 926
18 and 927); or any member which is an export trade corporation, as
19 described in sections 970 and 971 of the Internal Revenue Code
20 of 1986 (26 U.S.C. §§ 970 and 971).

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

26 5. Any member that is a "controlled foreign corporation" as
27 defined in section 957 of the Internal Revenue Code of 1986 (26
28 U.S.C. § 957), to the extent the business income of that member
29 is income defined in section 952 of the Internal Revenue Code of
30 1986 (26 U.S.C. § 952), Subpart F income, not excluding lower-

1 tier subsidiaries' distributions of such income which were
2 previously taxed, determined without regard to Federal treaties,
3 and the apportionment factor related to that income; any item of
4 income received by a controlled foreign corporation and the
5 apportionment factor related to such income shall be excluded if
6 the corporation establishes to the satisfaction of the Secretary
7 of Revenue that such income was subject to an effective rate of
8 income tax imposed by a foreign country greater than ninety per
9 cent of the maximum rate of tax specified in section 11 of the
10 Internal Revenue Code of 1986 (26 U.S.C. § 11). The effective
11 rate of income tax determination shall be based upon the
12 methodology set forth under 26 CFR 1.954-1 (relating to foreign
13 base company income).

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

24 (11) "Commonly controlled group." For a corporation, the
25 corporation is a member of a group of two or more corporations
26 and more than fifty per cent of the voting stock of each member
27 of the group is directly or indirectly owned by a common owner
28 or by common owners, either corporate or noncorporate, or by one
29 or more of the member corporations of the group.

30 (12) "Separate company." A corporation that is not a member

1 of a unitary business that consists of two or more corporations.

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

4 Section 2. Section 403 of the act is amended by adding
5 subsections to read:

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

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

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

24 (3) The designated member shall transmit to the department
25 upon a form prescribed by the department, an annual combined
26 report under oath or affirmation of its president, vice
27 president or other principal officer, and of its treasurer or
28 assistant treasurer. Such report shall set forth:

29 (i) All corporations included in the unitary business.

30 (ii) All necessary data, both in the aggregate and for each

1 corporation of the unitary business, that sets forth the
2 determination of tax liability for each corporation of the
3 unitary business.

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

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

8 (i) Assisting in the acquisition of equipment.

9 (ii) Assisting with filling personnel needs.

10 (iii) Lending funds or guaranteeing loans.

11 (iv) Interplay in the area of corporate expansion.

12 (v) Providing technical assistance.

13 (vi) Supervising.

14 (vii) Providing general operational guidance.

15 (viii) Providing overall operational strategic advice.

16 (ix) Common use of trade names and patents.

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

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

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

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

26 (iii) Strong centralized management of corporations.

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

30 (3) A corporation that owns a controlling interest in two or

1 more corporations of a unitary business is rebuttably presumed
2 to be a member of the unitary business.

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

11 (a.4) As far as applicable to a specific unitary business,
12 unless there is a revision of applicable State law or unless a
13 corporation is not included under the provisions of this
14 article, there is a rebuttable presumption for all tax years
15 that begin in years 2011 and 2012 that a unitary business of two
16 or more corporations includes at least all corporations that are
17 part of a unitary business under the law of any state of the
18 United States in which the corporation files a tax report or tax
19 return of combined net income for the same tax year.

20 (a.5) Unless an election is made to use a worldwide basis of
21 accounting, a corporation that is a member of a unitary business
22 of two or more corporations must determine its business income
23 and apportionment factor upon a water's-edge basis. This basis
24 applies to all corporations of the unitary business. If an
25 election is made to use a worldwide basis of accounting, all
26 corporations of the unitary business must make the election,
27 upon a form, prescribed, prepared and furnished by the
28 department. This election binds all corporations of the unitary
29 business for the period of time that the election remains in
30 effect. An initial election is binding for a period of seven

1 years. Subsequent elections are binding for a period of five
2 years.

3 * * *

4 Section 3. Section 404 of the act is amended to read:

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

11 Section 4. Section 3003.3(d) of the act, amended October 18,
12 2006 (P.L.1149, No.119), is amended and the section is amended
13 by adding subsections to read:

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

15 (d) Notwithstanding the provisions of the preceding
16 subsections, other than as set forth in subsection (d.1),
17 interest with respect to any underpayment of any installment of
18 estimated tax shall not be imposed if the total amount of all
19 payments of estimated tax made on or before the last date
20 prescribed for the payment of such installment equals or exceeds
21 the amount which would have been required to be paid on or
22 before such date if the estimated tax were an amount equal to
23 the tax computed at the rates applicable to the taxable year,
24 including any minimum tax imposed, but otherwise on the basis of
25 the facts shown on the report of the taxpayer for, and the law
26 applicable to, the safe harbor base year, adjusted for any
27 changes to sections 401, 601, 602 and 1101 enacted for the
28 taxable year, if a report showing a liability for tax was filed
29 by the taxpayer for the safe harbor base year. If the total
30 amount of all payments of estimated tax made on or before the

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

28 (d.1) (1) Notwithstanding the provisions of subsections
29 (a), (b) and (c), interest with respect to any underpayment of
30 any installment of estimated corporate net income tax for any

1 tax year that begins in year 2009 or 2010 shall not be imposed
2 if the total amount of all payments of estimated corporate net
3 income tax made on or before the last date prescribed for the
4 payment of such installment equals or exceeds the amount which
5 would have been required to be paid on or before such date if
6 the estimated tax were an amount equal to the tax shown on the
7 report of the taxpayer for the safe harbor base year, if a
8 report showing a liability for tax was filed by the taxpayer for
9 the safe harbor base year.

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

18 (3) If the total tax for the safe harbor base year exceeds
19 the tax shown on such report by ten per cent or more, the total
20 tax shall be used for purposes of this subsection. In the event
21 that the total tax for the safe harbor base year exceeds the tax
22 shown on the report by ten per cent or more, interest resulting
23 from the utilization of the total tax in the application of the
24 provisions of this subsection shall not be imposed if, within
25 forty-five days of the mailing date of a notice from the
26 department increasing the total tax, payments are made such that
27 the total amount of all payments of estimated tax equals or
28 exceeds the amount which would have been required to be paid on
29 or before such date if the estimated tax were an amount equal to
30 the total tax.

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

9 (d.2) (1) If there is a substantial underpayment, as
10 defined in subsection (a), of any installment of estimated
11 corporate net income tax for any taxable year beginning in 2011
12 or 2012, there shall be imposed additional interest in an amount
13 determined at one hundred twenty per cent of the annual rate as
14 provided by law upon the entire underpayment for the period of
15 the substantial underpayment.

16 (2) The additional interest imposed by this subsection is in
17 addition to any other interest imposed on underpayments by this
18 section.

19 Section 5. The amendment or addition of the following
20 provisions shall apply to taxable years beginning after December
21 31, 2008:

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

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

26 (3) Section 404 of the act.

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

28 Section 6. This act shall take effect July 1, 2009, or
29 immediately, whichever is later.