

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2150 Session of
2012

INTRODUCED BY REED, DePASQUALE, CHRISTIANA, BENNINGHOFF,
VULAKOVICH, AUMENT, BAKER, BOBACK, BOYD, CALTAGIRONE, CLYMER,
CREIGHTON, CUTLER, DALEY, DUNBAR, D. EVANS, J. EVANS,
EVERETT, FLECK, GEIST, GERGELY, GIBBONS, GINGRICH, GROVE,
HALUSKA, HARHART, HARPER, HARRIS, HELM, HENNESSEY, HESS,
M. K. KELLER, KILLION, KNOWLES, MAJOR, MALONEY, MANN,
MARSICO, MICOZZIE, MILLARD, MIRABITO, MOUL, MURPHY,
OBERLANDER, O'NEILL, PAYNE, PETRI, PICKETT, QUIGLEY, QUINN,
READSHAW, REESE, ROCK, SAYLOR, SIMMONS, S. H. SMITH,
STEPHENS, STEVENSON, STURLA, SWANGER, TALLMAN, TOBASH, VEREB,
WATSON, DELOZIER, SONNEY AND DAVIDSON, JANUARY 26, 2012

AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES,
AS AMENDED, APRIL 3, 2012

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," IN SALES AND USE TAX, FURTHER PROVIDING FOR ←
11 DISCOUNT; AND, in corporate net income, further providing for
12 definitions and for imposition of tax.

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

15 ~~Section 1. Section 401(3)2(a)(9) and 4(c) of the act of ←~~
16 ~~March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of~~
17 ~~1971, amended October 9, 2009 (P.L.451, No.48), are amended,~~
18 ~~clause (3)1 is amended by adding a paragraph and the section is~~

1 ~~amended by adding clauses to read:~~

2 SECTION 1. SECTION 227 OF THE ACT OF MARCH 4, 1971 (P.L.6, ←
3 NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, IS AMENDED TO READ:

4 SECTION 227. DISCOUNT.--(A) IF A RETURN IS FILED BY A
5 LICENSEE AND THE TAX SHOWN TO BE DUE THEREON LESS ANY DISCOUNT
6 IS PAID ALL WITHIN THE TIME PRESCRIBED, THE LICENSEE SHALL BE
7 ENTITLED TO CREDIT AND APPLY AGAINST THE TAX PAYABLE BY HIM A
8 DISCOUNT OF ONE PER CENT OF THE AMOUNT OF THE TAX COLLECTED BY
9 HIM ON AND AFTER THE EFFECTIVE DATE OF THIS ARTICLE, AS
10 COMPENSATION FOR THE EXPENSE OF COLLECTING AND REMITTING THE
11 [SAME] TAX DUE BY HIM AND AS A CONSIDERATION OF THE PROMPT
12 PAYMENT THEREOF.

13 (B) FOR RETURNS FILED ON OR AFTER THE EFFECTIVE DATE OF THIS
14 SUBSECTION, THE DISCOUNT UNDER SUBSECTION (A) SHALL BE LIMITED
15 TO THE FOLLOWING:

16 (I) FOR A MONTHLY FILER, TWENTY-FIVE DOLLARS (\$25) PER
17 RETURN.

18 (II) FOR A QUARTERLY FILER, SEVENTY-FIVE DOLLARS (\$75) PER
19 RETURN.

20 (III) FOR A SEMI-ANNUAL FILER, ONE HUNDRED FIFTY DOLLARS
21 (\$150) PER RETURN.

22 SECTION 2. SECTION 401(3)2(A)(9) AND 4(C) OF THE ACT,
23 AMENDED OCTOBER 9, 2009 (P.L.451, NO.48), ARE AMENDED, CLAUSE
24 (3)1 IS AMENDED BY ADDING A PARAGRAPH AND THE SECTION IS AMENDED
25 BY ADDING CLAUSES TO READ:

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

30 * * *

1 (3) "Taxable income." 1. * * *

2 ~~(t) For taxable years beginning after December 31, 2012, no~~ ←
3 ~~deduction shall be allowed for an intangible expense or cost~~
4 ~~paid, accrued or incurred in connection with one or more~~
5 ~~transactions with an affiliated entity. The following apply:~~

6 ~~(i) The adjustment required by this term shall not apply to~~
7 ~~a transaction that was directly related to a valid business~~
8 ~~purpose.~~

9 ~~(ii) In calculating taxable income, when the taxpayer is~~
10 ~~engaged in one or more transactions with an affiliated entity~~
11 ~~that was subject to tax in this Commonwealth or another state or~~
12 ~~possession of the United States on a tax base that included the~~
13 ~~intangible expense or cost paid, accrued or incurred by the~~
14 ~~taxpayer, the taxpayer shall receive a credit against tax due in~~
15 ~~this Commonwealth in an amount equal to the tax paid by the~~
16 ~~affiliated entity with respect to the portion of its income~~
17 ~~representing the intangible expense paid, accrued or incurred by~~
18 ~~the taxpayer multiplied by the apportionment factor of the~~
19 ~~taxpayer in this Commonwealth. The credit shall not exceed the~~
20 ~~taxpayer's liability in this Commonwealth attributable to the~~
21 ~~net income taxed as a result of the adjustment required by this~~
22 ~~term.~~

23 ~~(T) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2), (3) OR (4) FOR~~ ←
24 ~~TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2012, NO DEDUCTION~~
25 ~~SHALL BE ALLOWED FOR AN INTANGIBLE EXPENSE OR COST, OR AN~~
26 ~~INTEREST EXPENSE OR COST, PAID, ACCRUED OR INCURRED DIRECTLY OR~~
27 ~~INDIRECTLY IN CONNECTION WITH ONE OR MORE TRANSACTIONS WITH AN~~
28 ~~AFFILIATED ENTITY. IN CALCULATING TAXABLE INCOME UNDER THIS~~
29 ~~PARAGRAPH, WHEN THE TAXPAYER IS ENGAGED IN ONE OR MORE~~
30 ~~TRANSACTIONS WITH AN AFFILIATED ENTITY THAT WAS SUBJECT TO TAX~~

1 IN THIS COMMONWEALTH OR ANOTHER STATE OR POSSESSION OF THE
2 UNITED STATES ON A TAX BASE THAT INCLUDED THE INTANGIBLE EXPENSE
3 OR COST, OR THE INTEREST EXPENSE OR COST, PAID, ACCRUED OR
4 INCURRED BY THE TAXPAYER, THE TAXPAYER SHALL RECEIVE A CREDIT
5 AGAINST TAX DUE IN THIS COMMONWEALTH IN AN AMOUNT EQUAL TO THE
6 APPORTIONMENT FACTOR OF THE TAXPAYER IN THIS COMMONWEALTH
7 MULTIPLIED BY THE GREATER OF THE FOLLOWING:

8 (A) THE TAX LIABILITY OF THE AFFILIATED ENTITY WITH RESPECT
9 TO THE PORTION OF ITS INCOME REPRESENTING THE INTANGIBLE EXPENSE
10 OR COST, OR THE INTEREST EXPENSE OR COST, PAID, ACCRUED OR
11 INCURRED BY THE TAXPAYER; OR

12 (B) THE TAX LIABILITY THAT WOULD HAVE BEEN PAID BY THE
13 AFFILIATED ENTITY UNDER SUBPARAGRAPH (A) IF THAT TAX LIABILITY
14 HAD NOT BEEN OFFSET BY A CREDIT.

15 THE CREDIT ISSUED UNDER THIS PARAGRAPH SHALL NOT EXCEED THE
16 TAXPAYER'S LIABILITY IN THIS COMMONWEALTH ATTRIBUTABLE TO THE
17 NET INCOME TAXED AS A RESULT OF THE ADJUSTMENT REQUIRED BY THIS
18 PARAGRAPH.

19 (2) THE ADJUSTMENT REQUIRED BY PARAGRAPH (1) SHALL NOT APPLY
20 TO A TRANSACTION THAT WAS DIRECTLY RELATED TO A VALID BUSINESS
21 PURPOSE.

22 (3) THE ADJUSTMENT REQUIRED BY PARAGRAPH (1) SHALL NOT APPLY
23 TO A TRANSACTION BETWEEN A TAXPAYER AND AN AFFILIATED ENTITY
24 DOMICILED IN A FOREIGN NATION WHICH HAS IN FORCE A COMPREHENSIVE
25 INCOME TAX TREATY WITH THE UNITED STATES PROVIDING FOR THE
26 ALLOCATION OF ALL CATEGORIES OF INCOME SUBJECT TO TAXATION, OR
27 THE WITHHOLDING OF TAX, ON ROYALTIES, LICENSES, FEES AND
28 INTEREST FOR THE PREVENTION OF DOUBLE TAXATION OF THE RESPECTIVE
29 NATIONS' RESIDENTS AND THE SHARING OF INFORMATION.

30 (4) THE ADJUSTMENT REQUIRED BY PARAGRAPH (1) SHALL NOT APPLY

1 TO A TRANSACTION WHERE AN AFFILIATED ENTITY DIRECTLY OR
2 INDIRECTLY PAID, ACCRUED OR INCURRED A PAYMENT TO A PERSON WHO
3 IS NOT AN AFFILIATED ENTITY, IF THE TRANSACTION IS PAID, ACCRUED
4 OR INCURRED ON THE INTANGIBLE EXPENSE OR COST, OR INTEREST
5 EXPENSE OR COST.

6 2. In case the entire business of any corporation, other
7 than a corporation engaged in doing business as a regulated
8 investment company as defined by the Internal Revenue Code of
9 1986, is not transacted within this Commonwealth, the tax
10 imposed by this article shall be based upon such portion of the
11 taxable income of such corporation for the fiscal or calendar
12 year, as defined in subclause 1 hereof, and may be determined as
13 follows:

14 (a) Division of Income.

15 * * *

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

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

22 (ii) For taxable years beginning after December 31, 2006,
23 all business income shall be apportioned to this State by
24 multiplying the income by a fraction, the numerator of which is
25 the sum of fifteen times the property factor, fifteen times the
26 payroll factor and seventy times the sales factor and the
27 denominator of which is one hundred.

28 (iii) For taxable years beginning after December 31, 2008,
29 all business income shall be apportioned to this State by
30 multiplying the income by a fraction, the numerator of which is

1 the sum of eight and a half times the property factor, eight and
2 a half times the payroll factor and eighty-three times the sales
3 factor and the denominator of which is one hundred.

4 (iv) For taxable years beginning after December 31, 2009,
5 all business income shall be apportioned to this State by
6 multiplying the income by a fraction, the numerator of which is
7 the sum of five times the property factor, five times the
8 payroll factor and ninety times the sales factor and the
9 denominator of which is one hundred.

10 (v) For taxable years beginning after December 31, 2012, all
11 business income shall be apportioned to this State by
12 multiplying the income by the sales factor.

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

18 * * *

19 4. * * *

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

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

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

27 (III) For taxable years beginning after December 31, 2008,
28 the greater of fifteen per cent of taxable income as determined
29 under subclause 1 or, if applicable, subclause 2 or three
30 million dollars (\$3,000,000);

1 (IV) For taxable years beginning after December 31, 2009,
2 the greater of twenty per cent of taxable income as determined
3 under subclause 1 or, if applicable, subclause 2 or three
4 million dollars (\$3,000,000); [or]

5 (V) For taxable years beginning after December 31, 2013, the
6 greater of ~~twenty nine~~ THIRTY-THREE per cent of taxable income ←
7 as determined under subclause 1 or, if applicable, subclause 2
8 or four million dollars (\$4,000,000);

9 (VI) For taxable years beginning after December 31, 2014,
10 the greater of ~~thirty eight~~ FORTY-FIVE per cent of taxable ←
11 income as determined under subclause 1 or, if applicable,
12 subclause 2 or five million dollars (\$5,000,000);

13 (VII) For taxable years beginning after December 31, 2015,
14 the greater of ~~forty seven~~ FIFTY-SIX per cent of taxable income ←
15 as determined under subclause 1 or, if applicable, subclause 2
16 or six million dollars (\$6,000,000);

17 (VIII) For taxable years beginning after December 31, 2016,
18 the greater of ~~fifty six~~ SIXTY-SIX per cent of taxable income as ←
19 determined under subclause 1 or, if applicable, subclause 2 or
20 seven million dollars (\$7,000,000);

21 (IX) For taxable years beginning after December 31, 2017,
22 the greater of ~~sixty four~~ SEVENTY-FIVE per cent of taxable ←
23 income as determined under subclause 1 or, if applicable,
24 subclause 2 or eight million dollars (\$8,000,000);

25 (X) For taxable years beginning after December 31, 2018, the
26 greater of ~~seventy three~~ EIGHTY-THREE per cent of taxable income ←
27 as determined under subclause 1 or, if applicable, subclause 2
28 or nine million dollars (\$9,000,000);

29 (XI) For taxable years beginning after December 31, 2019,
30 the greater of ~~eighty two~~ NINETY per cent of taxable income as ←

1 determined under subclause 1 or, if applicable, subclause 2 or
2 ten million dollars (\$10,000,000);

3 (XII) For taxable years beginning after December 31, 2020,
4 the greater of ~~ninety one~~ NINETY-SIX per cent of taxable income ←
5 as determined under subclause 1 or, if applicable, subclause 2
6 or eleven million dollars (\$11,000,000);

7 (XIII) For taxable years beginning after December 31, 2021,
8 taxable income as determined under subclause 1 or, if
9 applicable, subclause 2; or

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

13 (1.1) In no event shall the net loss deduction include more
14 than five hundred thousand dollars (\$500,000), in the aggregate,
15 of net losses from taxable years 1988 through 1994.

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

18	Taxable Year	Carryover
19	1981	1 taxable year
20	1982	2 taxable years
21	1983-1987	3 taxable years
22	1988	2 taxable years plus 1
23		taxable year starting
24		with the 1995 taxable
25		year
26	1989	1 taxable year plus 2
27		taxable years starting
28		with the 1995 taxable
29		year
30	1990-1993	3 taxable years starting

1		with the 1995 taxable
2		year
3	1994	1 taxable year
4	1995-1997	10 taxable years
5	1998 and thereafter	20 taxable years

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

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

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

16 (III) The greater of fifteen per cent of the taxable income
17 as determined under subclause 1 or, if applicable, subclause 2
18 or three million dollars (\$3,000,000) for taxable years
19 beginning after December 31, 2008.

20 (IV) The greater of twenty per cent of the taxable income as
21 determined under subclause 1 or, if applicable, subclause 2 or
22 three million dollars (\$3,000,000) for taxable years beginning
23 after December 31, 2009.

24 (V) The greater of ~~twenty-nine~~ THIRTY-THREE per cent of ←
25 taxable income as determined under subclause 1 or, if
26 applicable, subclause 2 or four million dollars (\$4,000,000) for
27 taxable years beginning after December 31, 2013.

28 (VI) The greater of ~~thirty-eight~~ FORTY-FIVE per cent of ←
29 taxable income as determined under subclause 1 or, if
30 applicable, subclause 2 or five million dollars (\$5,000,000) for

1 taxable years beginning after December 31, 2014.

2 (VII) The greater of ~~forty-seven~~ FIFTY-SIX per cent of ←
3 taxable income as determined under subclause 1 or, if
4 applicable, subclause 2 or six million dollars (\$6,000,000) for
5 taxable years beginning after December 31, 2015.

6 (VIII) The greater of ~~fifty-six~~ SIXTY-SIX per cent of ←
7 taxable income as determined under subclause 1 or, if
8 applicable, subclause 2 or seven million dollars (\$7,000,000)
9 for taxable years beginning after December 31, 2016.

10 (IX) The greater of ~~sixty-four~~ SEVENTY-FIVE per cent of ←
11 taxable income as determined under subclause 1 or, if
12 applicable, subclause 2 or eight million dollars (\$8,000,000)
13 for taxable years beginning after December 31, 2017.

14 (X) The greater of ~~seventy-three~~ EIGHTY-THREE per cent of ←
15 taxable income as determined under subclause 1 or, if
16 applicable, subclause 2 or nine million dollars (\$9,000,000) for
17 taxable years beginning after December 31, 2018.

18 (XI) The greater of ~~eighty-two~~ NINETY per cent of taxable ←
19 income as determined under subclause 1 or, if applicable,
20 subclause 2 or ten million dollars (\$10,000,000) for taxable
21 years beginning after December 31, 2019.

22 (XII) The greater of ~~ninety-one~~ NINETY-SIX per cent of ←
23 taxable income as determined under subclause 1 or, if
24 applicable, subclause 2 or eleven million dollars (\$11,000,000)
25 for taxable years beginning after December 31, 2020.

26 (XIII) For taxable years beginning after December 31, 2021,
27 taxable income as determined under subclause 1 or, if
28 applicable, subclause 2.

29 * * *

30 (8) "Intangible expense or cost." Royalties, licenses or

1 fees paid for the acquisition, use, maintenance, management,
2 ownership, sale, exchange or other disposition of patents,
3 patent applications, trade names, trademarks, service marks,
4 copyrights, mask works or other similar expenses or costs.

5 (9) "INTEREST EXPENSE OR COST." A DEDUCTION ALLOWED UNDER ←
6 SECTION 163 OF THE INTERNAL REVENUE CODE OF 1986 (26 U.S.C. §
7 163) TO THE EXTENT THAT SUCH DEDUCTION IS DIRECTLY RELATED TO AN
8 INTANGIBLE EXPENSE OR COST.

9 ~~(9)~~ (10) "Affiliated entity." A person with a relationship ←
10 to the taxpayer during all or any portion of the taxable year
11 that is any of the following:

12 (i) a stockholder who is an individual, or a member of the
13 stockholder's family as set forth in section 318 of the Internal
14 Revenue Code of 1986 (26 U.S.C. § 318), if the stockholder and
15 the members of the stockholder's family own, directly,
16 indirectly, beneficially or constructively, in the aggregate, at ←
17 ~~least~~ MORE THAN fifty per cent of the value of the taxpayer's ←
18 outstanding stock;

19 (ii) a stockholder, or a stockholder's partnership, limited
20 liability company, estate, trust or corporation, if the
21 stockholder and the stockholder's partnerships, limited
22 liability companies, estates, trusts and corporations own
23 directly, indirectly, beneficially or constructively, in the
24 aggregate, at ~~least~~ MORE THAN fifty per cent of the value of the ←
25 taxpayer's outstanding stock;

26 (iii) a corporation, or a party related to the corporation
27 in a manner that would require an attribution of stock from the
28 corporation to the party or from the party to the corporation
29 under the attribution rules of the Internal Revenue Code of
30 1986, if the taxpayer owns, directly, indirectly, beneficially

1 or constructively, at least MORE THAN fifty per cent of the ←
2 value of the corporation's outstanding stock. The attribution
3 rules of section 318 of the Internal Revenue Code of 1986 shall
4 apply for purposes of determining whether the ownership
5 requirements of this definition have been met;

6 (iv) a component member as defined in section 1563(b) of the
7 Internal Revenue Code of 1986; or

8 (v) a person to or from whom there is attribution of stock
9 ownership in accordance with section 1563(e) of the Internal
10 Revenue Code of 1986.

11 ~~(10)~~ (11) "Valid business purpose." A purpose, other than ←
12 the avoidance or reduction of taxation, which alone or in
13 combination with other purposes constitute the primary
14 motivation for a business activity or transaction which changes ←
15 in a meaningful way, apart from a reduction of taxation, the
16 economic position of a taxpayer. The economic position of the
17 taxpayer includes an increase in the market share of the
18 taxpayer or the entry of the taxpayer into new business markets.

19 A transaction done at arm's length TERMS shall be presumed to be ←
20 directly related to a valid business purpose.

21 Section ~~2~~ 3. Section 402(b) of the act, amended June 29, ←
22 2002 (P.L.559, No.89), is amended to read:

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

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

Taxable Year	Tax Rate
[January 1, 1995, and each	
taxable year thereafter	9.99%]

1	<u>January 1, 1995, and each</u>		
2	<u>taxable year through December</u>		
3	<u>31, 2013</u>	<u>9.99%</u>	
4	<u>January 1, 2014, through</u>		
5	<u>December 31, 2014</u>	<u>9.49%</u>	
6	<u>January 1, 2015, through</u>		←
7	<u>December 31, 2015</u>	<u>8.99%</u>	
8	<u>January 1, 2016, through</u>		
9	<u>December 31, 2016</u>	<u>8.49%</u>	
10	<u>January 1, 2017, through</u>		
11	<u>December 31, 2017</u>	<u>7.99%</u>	
12	<u>January 1, 2018, through</u>		
13	<u>December 31, 2018</u>	<u>7.49%</u>	
14	<u>JANUARY 1, 2015, THROUGH</u>		←
15	<u>DECEMBER 31, 2015</u>	<u>8.75%</u>	
16	<u>JANUARY 1, 2016, THROUGH</u>		
17	<u>DECEMBER 31, 2016</u>	<u>8.25%</u>	
18	<u>JANUARY 1, 2017, THROUGH</u>		
19	<u>DECEMBER 31, 2017</u>	<u>7.75%</u>	
20	<u>JANUARY 1, 2018, THROUGH</u>		
21	<u>DECEMBER 31, 2018</u>	<u>7.25%</u>	
22	<u>January 1, 2019, and each</u>		
23	<u>taxable year thereafter</u>	<u>6.99%</u>	
24	* * *		
25	Section 3 4. This act shall take effect immediately.		←