

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1278 Session of 2011

INTRODUCED BY BROWNE, RAFFERTY AND MENSCH, OCTOBER 4, 2011

REFERRED TO FINANCE, OCTOBER 4, 2011

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 for definitions, for interests
11 in unincorporated entities, for additional withholding
12 requirements and for interest in unincorporated entities.

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

15 Section 1. Section 301(k) of the act of March 4, 1971
16 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended
17 December 23, 2003 (P.L.250, No.46), is amended to read:

18 Section 301. Definitions.--* * *

19 (k) "Income from sources within this Commonwealth" for a
20 nonresident individual, estate or trust means the same as
21 compensation, net profits, gains, dividends, interest or income
22 enumerated and classified under section 303 of this article to
23 the extent that it is earned, received or acquired from sources

1 within this Commonwealth:

2 (1) By reason of ownership or disposition of any interest in
3 real or tangible personal property in this Commonwealth; or

4 (2) In connection with a trade, profession, occupation
5 carried on in this Commonwealth or for the rendition of personal
6 services performed in this Commonwealth; or

7 (3) As a distributive share of the income of an
8 unincorporated business, Pennsylvania S corporation, profession,
9 enterprise, undertaking or other activity as the result of work
10 done, services rendered or other business activities conducted
11 in this Commonwealth, except as allocated to another state
12 pursuant to regulations promulgated by the department under this
13 article; or

14 (4) From intangible personal property employed in a trade,
15 profession, occupation or business carried on in this
16 Commonwealth; or

17 (5) As gambling and lottery winnings by reason of a wager
18 placed in this Commonwealth, the conduct of a game of chance or
19 other gambling activity located in this Commonwealth or the
20 redemption of a lottery prize from a lottery conducted in this
21 Commonwealth, other than prizes of the Pennsylvania State
22 Lottery.

23 Provided, however, That "income from sources within this
24 Commonwealth" for a nonresident individual, estate or trust
25 shall not include any items of income enumerated above received
26 or acquired from an investment company registered with the
27 Federal Securities and Exchange Commission under the Investment
28 Company Act of 1940 and shall not include any items of income
29 received from an investment fund as defined in Article IV except
30 to the extent that the items represent income other than

1 investment fund income as defined in Article IV.

2 * * *

3 Section 2. Section 401(1) and (3) of the act are amended by
4 adding subclauses and the section is amended by adding clauses
5 to read:

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

10 (1) "Corporation." Any of the following:

11 (i) A corporation.

12 (ii) A joint-stock association.

13 (iii) A business trust, limited liability company or other
14 entity which for Federal income tax purposes is classified as a
15 corporation.

16 The term does not include:

17 * * *

18 5. An investment fund.

19 * * *

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

21 5. The taxable income of a corporation directly or
22 indirectly owning an interest in an unincorporated investment
23 fund shall be allocated and apportioned to this State pursuant
24 to this subclause as follows:

25 (a) That portion of the corporation's income attributable to
26 an investment fund that constitutes other than investment fund
27 income shall be allocated by the corporation to this State to
28 the extent that the unincorporated entity generating the income
29 attributes the income to this State under subclause 1 or
30 apportions the income to this State under subclause 2, as

1 required under section 402.2(d).

2 (b) That portion of the corporation's income that
3 constitutes investment fund income shall be allocated and
4 apportioned by the corporation as provided under subclause 1 or
5 2 and by section 402.2(c).

6 (c) The balance of the corporation's income shall be
7 allocated and apportioned by the corporation as provided by
8 subclauses 1 and 2 and section 402.2(a) and (b).

9 * * *

10 (8) "Investment fund business." The acquisition,
11 maintenance, management and disposition of intangible
12 investments by an investment fund. Intangible investments
13 include interests in unincorporated entities.

14 (9) "Investment fund." An entity:

15 (a) the sole business of which is an investment business and
16 in which all of the owners, other than a general partner of a
17 partnership, a managing member of a limited liability company
18 and any similar owner;

19 (i) are passive investors;

20 (ii) neither have nor exercise management rights; and

21 (iii) do not participate in management decisions to acquire,
22 hold or dispose of assets of the entity;

23 (b) which is an investment company as defined in section
24 3(a)(1) of the Investment Company Act of 1940 (15 U.S.C. §
25 80a-3(a)(1)) or as exempt from the Investment Company Act of
26 1940 under section 3(c)(1) (15 U.S.C. § 80a-3(c)(1)) or section
27 3(c)(7) (15 U.S.C. § 80a-3(c)(7)); or

28 (c) which is a common trust fund as described in section
29 3(c)(3) of the Investment Company Act of 1940 (54 Stat. 789, 15
30 U.S.C. § 80a-3(C)(3)).

1 (10) "Investment fund income." Income from an investment
2 fund business except to the extent that the income is
3 attributable to income from business conducted by an
4 unincorporated entity that is not an investment fund in which
5 the investment fund holds a direct or indirect interest.

6 Section 3. Section 402.2 of the act, amended December 30,
7 2002 (P.L.2080, No.232) and December 23, 2003 (P.L.250, No.46)
8 is amended to read:

9 Section 402.2. Interests in Unincorporated Entities.--(a)
10 Except as set forth in [subsection (b)] subsections (b) and (c),
11 for purposes of this article, a corporation's interest in an
12 entity which is not a corporation shall be considered a direct
13 ownership interest in the assets of the entity rather than an
14 intangible interest.

15 (b) Subsection (a) does not apply to a corporation's
16 interest in an entity described in section 401(1)1 or section
17 401(1)2 other than:

18 (1) A business trust which is a real estate investment trust
19 as defined in section 856 of the Internal Revenue Code of 1986
20 (Public Law 99-514, 26 U.S.C. § 856) more than fifty per cent of
21 the voting power or value of the beneficial interests or shares
22 of which are owned or controlled, directly or indirectly, by a
23 single corporation that is not:

24 (i) a real estate investment trust as defined in section 856
25 of the Internal Revenue Code of 1986;

26 (ii) a qualified real estate investment trust subsidiary
27 under section 856(i) of the Internal Revenue Code of 1986;

28 (iii) a regulated financial institution; or

29 (iv) formed as a holding company, subsidiary or affiliate of
30 a regulated financial institution prior to December 1, 2003.

1 (2) A business trust which is a qualified real estate trust
2 subsidiary under section 856(i) of the Internal Revenue Code of
3 1986 owned, directly or indirectly, by a real estate investment
4 trust as defined in section 856 of the Internal Revenue Code of
5 1986 more than fifty per cent of the voting power or value of
6 the beneficial interests or shares of which are owned or
7 controlled, directly or indirectly, by a single corporation that
8 is not:

9 (i) a real estate investment trust as defined in section 856
10 of the Internal Revenue Code of 1986;

11 (ii) a qualified real estate investment trust subsidiary
12 under section 856(i) of the Internal Revenue Code of 1986;

13 (iii) a regulated financial institution; or

14 (iv) formed as a holding company, subsidiary or affiliate of
15 a regulated financial institution prior to December 1, 2003.

16 (c) Subsection (a) shall not apply to assets of an
17 unincorporated investment fund in which a corporation owns a
18 direct or indirect interest nor to assets of any unincorporated
19 fund in which the investment fund owns a direct or indirect
20 interest, except to the extent that the assets are used in other
21 than an investment fund business. A corporation's interest in
22 the assets shall not be considered a direct ownership interest
23 but shall be considered an interest in an intangible.

24 (d) An unincorporated entity owned directly or indirectly by
25 an investment fund shall attribute its income to this State
26 under section 401(3)1 or shall apportion its income to this
27 State under section 401(3)2 and shall report the attribution or
28 apportionment to the department, to the investment fund and upon
29 request to any entity directly or indirectly owing an interest
30 in the investment fund.

1 Section 4. Section 403.2 of the act is amended by adding a
2 subsection to read:

3 Section 403.2. Additional Withholding Requirements.--* * *

4 (d.1) This section shall not apply to a partnership that is
5 owned directly or indirectly by an investment fund if the
6 partnership reports the information as required under section
7 402.2(d).

8 * * *

9 Section 5. Section 602.6 of the act, amended December 30,
10 2002 (P.L.2080, No.232), is amended to read:

11 Section 602.6. Interest in Unincorporated Entities.--(a)
12 Except as set forth in [subsection (b)] subsections (b) and (c),
13 for purposes of this article, a corporation's interest in an
14 entity which is not a corporation shall be considered a direct
15 ownership interest in the assets of the entity rather than an
16 intangible interest.

17 (b) Subsection (a) does not apply to a corporation's
18 interest in an entity described in section 601(a)(B)(1) or (2)
19 of the definition of "corporation."

20 (c) Subsection (a) shall not apply to a corporation's
21 interest in an entity that is an investment fund as defined in
22 section 401(9) nor to an entity owned directly or indirectly by
23 the investment fund except with respect to assets of the entity
24 which are used in other than an investment business as defined
25 in section 401(8).

26 Section 6. This act shall take effect in 60 days.