

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

**SENATE BILL****No. 1490** Session of  
2012

INTRODUCED BY BRUBAKER, PILEGGI, HUGHES, EARLL, RAFFERTY,  
M. WHITE, GREENLEAF, BOSCOLA, FONTANA, YUDICHAK, MENSCH AND  
WARD, APRIL 5, 2012

SENATOR BRUBAKER, FINANCE, AS AMENDED, MAY 9, 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," further providing for extension of time to file  
11 reports, for changes made by Federal Government and for  
12 petition for reassessment; providing for compromise by  
13 secretary and for dispute resolution procedures; and further  
14 providing and for petitions for refunds.

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

17 Section 1. Section 405 of the act of March 4, 1971 (P.L.6,  
18 No.2), known as the Tax Reform Code of 1971, is amended to read:

19 Section 405. Extension of Time to File Reports.--The  
20 department may, upon application made to it, in such form as it  
21 shall prescribe, on or prior to the last day for filing any  
22 annual report, and upon proper cause shown, grant to the  
23 corporation, required to file such report, an extension of not

1 more than sixty days within which such report may be filed[, and  
2 in case the Federal income tax authorities at any time grant a  
3 longer extension of time for filing such reports with the  
4 Federal Government, the department may grant an additional  
5 extension of time for filing the annual report under this  
6 article of not more than]. If the Federal income tax authorities  
7 grant an extension of time for filing the reports with the  
8 Federal Government, the department shall automatically grant an  
9 extension of time for filing the annual report under this  
10 article of thirty days after the termination of the Federal  
11 extension, but the amount of tax due shall, in such cases,  
12 nevertheless, be subject to interest from the due dates and at  
13 the rates fixed by this article.

14 Section 2. Section ~~406~~ 406(A) of the act, amended October ←  
15 18, 2006 (P.L.1149, No.119), is amended to read:

16 Section 406. Changes Made by Federal Government.--(a) If  
17 the amount of the taxable income, as returned by any corporation  
18 to the Federal Government, is finally changed or corrected by  
19 the Commission of Internal Revenue or by any other agency or  
20 court of the United States, such corporation, within [thirty  
21 days] six months after the receipt of such final change or  
22 correction, shall make a report of change, under oath or  
23 affirmation, to the department showing such finally changed or  
24 corrected taxable income, upon which the tax is required to be  
25 paid to the United States. In case a corporation fails to file a  
26 report of change, which results in an increase in taxable income  
27 within the time prescribed, there shall be added to the tax, a  
28 penalty of five dollars (\$5) for every day during which such  
29 corporation is in default, but the department may abate any such  
30 penalty in whole or in part.



1     ~~(b) If, as a result of such final change or correction, a~~  
2     ~~corporation should report any change in the amount of the~~  
3     ~~taxable income of any corporation upon which tax is imposed by~~  
4     ~~this article, the department shall adjust the corporation's tax~~  
5     ~~on the department's records to conform to the revised tax as~~  
6     ~~reported and shall credit the taxpayer's account to the extent~~  
7     ~~of any overpayment resulting from the adjustment. The department~~  
8     ~~shall then have the power, and its duty shall be, to determine~~  
9     ~~and assess the taxpayer's unpaid and unreported liability for~~  
10    ~~tax, interest or penalty due the Commonwealth, or to credit the~~  
11    ~~taxpayer's account.~~

12    ~~(c) Where a report of change, of Federal income, or Federal~~  
13    ~~tax, has been filed after an administrative or judicial appeal~~  
14    ~~has been taken, the report shall be deemed a part of the~~  
15    ~~original annual report upon petition of the taxpayer at any~~  
16    ~~subsequent proceeding as though it had been filed with the~~  
17    ~~original report, and no separate appeal from an assessment~~  
18    ~~resulting from the report of change, correction, or~~  
19    ~~redetermination shall be necessary to the extent the identical~~  
20    ~~issues for the taxable year have been raised in the appeal.~~

21    ~~(d) The provisions of this section shall not be construed so~~  
22    ~~as to permit an assessment based upon the allowance of any~~  
23    ~~deduction on account of net operating losses, sustained in other~~  
24    ~~fiscal or calendar years, that are not allowed as deductions~~  
25    ~~under the definition of "taxable income" as contained in this~~  
26    ~~article.~~

27    ~~(e) The provisions of this section shall apply to every~~  
28    ~~corporation which was doing business in Pennsylvania in the year~~  
29    ~~for which the Federal income has been changed, irrespective of~~  
30    ~~whether or not such corporation has thereafter merged,~~

1 ~~consolidated, withdrawn or dissolved. Any clearance certificate~~  
2 ~~issued by the department shall be conditioned upon the~~  
3 ~~requirement that in the event of a change in Federal income for~~  
4 ~~any year for which taxes have been paid to the Commonwealth, the~~  
5 ~~corporation or its successor or its officers or its directors~~  
6 ~~shall file with the department a report of change and pay any~~  
7 ~~additional State tax resulting therefrom.~~

8 Section 3. Section 2702 of the act is amended by adding a  
9 subsection to read:

10 Section 2702. Petition for reassessment.

11 \* \* \*

12 (a.1) Petition for review of tax adjustment not resulting in  
13 an increase in liability.--

14 (1) A petition for reassessment under subsection (a) may  
15 include a request for review of the department's adjustment  
16 of a tax item if the adjustment did not result in a tax  
17 increase in the year of adjustment but may increase the tax  
18 due in a subsequent year. A request for review may include:

19 (i) Recalculation of the taxpayer's corporate net  
20 income tax net loss under Article IV as adjusted by the  
21 department.

22 (ii) Recalculation of the taxpayer's capital stock  
23 franchise tax average net income under Article VI as  
24 adjusted by the department.

25 (iii) Recalculation of the personal net income tax  
26 basis of an asset under Article III as adjusted by the  
27 department.

28 (2) A taxpayer shall file a petition for review under  
29 this subsection within 90 days of the mailing date of the  
30 department's notice of adjustment. A taxpayer's failure to

1 file a petition under this subsection shall not prejudice the  
2 taxpayer's right to file a petition in a subsequent tax year.

3 \* \* \*

4 Section 4. Section 2703(a) of the act, added October 18,  
5 2006 (P.L.1149, No.119), is amended and the section is amended  
6 by adding a subsection to read:

7 Section 2703. Petition procedure.

8 (a) Content of petition.--

9 (1) A petition for reassessment shall state:

10 (i) The tax type and tax periods included within the  
11 petition.

12 (ii) The amount of the tax that the taxpayer claims  
13 to have been erroneously assessed.

14 (iii) The basis upon which the taxpayer claims that  
15 the assessment is erroneous.

16 (iv) The basis upon which the taxpayer claims that  
17 the adjustment of a tax item is erroneous.

18 (2) A petition for refund shall state:

19 (i) The tax type and tax periods included within the  
20 petition.

21 (ii) The amount of the tax that the taxpayer claims  
22 to have been overpaid.

23 (iii) The basis of the taxpayer's claim for refund.

24 (3) The petition shall be supported by an affidavit by  
25 the petitioner or the petitioner's authorized representative  
26 that the petition is not made for the purpose of delay and  
27 that the facts set forth in the petition are true.

28 (a.1) Bifurcation of petition.--If a petition for  
29 reassessment raises issues outside of the assessment, the  
30 department, upon notification to the taxpayer, shall divide the

1 issues into a separate petition for reassessment addressing  
2 issues raised by the assessment and a separate petition for  
3 refund. The petition for refund must include all issues not  
4 properly before the department in a petition for reassessment as  
5 permitted under this section. The petition for refund must  
6 satisfy the statute of limitations for refunds to be considered  
7 timely.

8 \* \* \*

9 Section 5. The act is amended by adding a section to read:  
10 Section 2707. Compromise by secretary.

11 The secretary may compromise on any civil tax matter within  
12 the jurisdiction of the department arising under the laws of  
13 this Commonwealth. The department shall promulgate guidelines  
14 for the approval of compromises in Commonwealth tax matters.

15 Section 6. Section 3003.1 of the act, amended May 7, 1997  
16 (P.L.85, No.7) and repealed in part June 29, 2002 (P.L.559,  
17 No.89), is amended to read:

18 Section 3003.1. Petitions for Refunds.--(a) For a tax  
19 collected by the Department of Revenue, a taxpayer who has  
20 actually paid tax, interest or penalty to the Commonwealth or to  
21 an agent or licensee of the Commonwealth authorized to collect  
22 taxes may petition the Department of Revenue for refund or  
23 credit of the tax, interest or penalty. Except as otherwise  
24 provided by statute, a petition for refund must be made to the  
25 department within three years of actual payment of the tax,  
26 interest or penalty.

27 (b) The department may grant a refund or credit to a  
28 taxpayer for all tax periods covered by a departmental audit. If  
29 a credit is not granted by the department in the audit report,  
30 the taxpayer must file a petition for refund for taxes paid with

1 respect to the audit period within six months of the mailing  
2 date of the notice of assessment, determination or settlement or  
3 within three years of actual payment of the tax, whichever is  
4 later.

5 (d) In the case of amounts paid as a result of an  
6 assessment, determination, settlement or appraisal, a  
7 petition for refund must be filed with the department within six  
8 months of the [mailing date of the notice of assessment,  
9 determination, settlement or appraisal] actual payment of the  
10 tax.

11 (e) A taxpayer may petition the Board of Finance and Revenue  
12 to review the decision and order of the department on a petition  
13 for refund. The petition for review must be filed with the board  
14 within ninety days of the mailing date of a decision and order  
15 of the department upon a petition for refund.

16 Section 7. This act shall take effect immediately.