

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 440 Session of 2013

INTRODUCED BY REED, BAKER, BLOOM, KOTIK, NEUMAN, LUCAS, SAYLOR, AUMENT, MILLARD, MICOZZIE, TALLMAN, PICKETT, SCHLEGEL CULVER, STEPHENS, MUSTIO, DAVIS, O'NEILL, M. K. KELLER, VEREB, CUTLER, FLECK, DUNBAR, C. HARRIS, MACKENZIE, KNOWLES, SIMMONS, OBERLANDER, CLYMER, SWANGER, HAHN, HESS, PETRI, HENNESSEY, MASSER, MAJOR, HEFFLEY, HICKERNELL, BENNINGHOFF, ROCK, GROVE, ROSS, GINGRICH, WATSON, MARSICO, GRELL, EVERETT, S. H. SMITH, MOUL, GILLEN, REESE, QUINN AND SABATINA, FEBRUARY 4, 2013

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 4, 2013

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 corporate net income, further providing for
 11 definitions and for imposition of tax.

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

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

19 Section 401. Definitions.--The following words, terms, and

1 phrases, when used in this article, shall have the meaning
2 ascribed to them in this section, except where the context
3 clearly indicates a different meaning:

4 * * *

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

6 (t) (1) Except as provided in paragraph (2), (3) or (4) for
7 taxable years beginning after December 31, 2013, no deduction
8 shall be allowed for an intangible expense or cost, or an
9 interest expense or cost, paid, accrued or incurred directly or
10 indirectly in connection with one or more transactions with an
11 affiliated entity. In calculating taxable income under this
12 paragraph, when the taxpayer is engaged in one or more
13 transactions with an affiliated entity that was subject to tax
14 in this Commonwealth or another state or possession of the
15 United States on a tax base that included the intangible expense
16 or cost, or the interest expense or cost, paid, accrued or
17 incurred by the taxpayer, the taxpayer shall receive a credit
18 against tax due in this Commonwealth in an amount equal to the
19 apportionment factor of the taxpayer in this Commonwealth
20 multiplied by the greater of the following:

21 (A) the tax liability of the affiliated entity with respect
22 to the portion of its income representing the intangible expense
23 or cost, or the interest expense or cost, paid, accrued or
24 incurred by the taxpayer; or

25 (B) the tax liability that would have been paid by the
26 affiliated entity under subparagraph (A) if that tax liability
27 had not been offset by a credit.

28 The credit issued under this paragraph shall not exceed the
29 taxpayer's liability in this Commonwealth attributable to the
30 net income taxed as a result of the adjustment required by this

1 paragraph.

2 (2) The adjustment required by paragraph (1) shall not apply
3 to a transaction that was directly related to a valid business
4 purpose.

5 (3) The adjustment required by paragraph (1) shall not apply
6 to a transaction between a taxpayer and an affiliated entity
7 domiciled in a foreign nation which has in force a comprehensive
8 income tax treaty with the United States providing for the
9 allocation of all categories of income subject to taxation, or
10 the withholding of tax, on royalties, licenses, fees and
11 interest for the prevention of double taxation of the respective
12 nations' residents and the sharing of information.

13 (4) The adjustment required by paragraph (1) shall not apply
14 to a transaction where an affiliated entity directly or
15 indirectly paid, accrued or incurred a payment to a person who
16 is not an affiliated entity, if the payment is paid, accrued or
17 incurred on the intangible expense or cost, or interest expense
18 or cost, and is equal to or less than the taxpayer's
19 proportional share of the transaction. The taxpayer's
20 proportional share shall be based on relative sales, assets,
21 liabilities or another reasonable method.

22 * * *

23 4. * * *

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

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

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

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

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

9 (V) For taxable years beginning after December 31, 2014, the
10 greater of twenty-nine per cent of taxable income as determined
11 under subclause 1 or, if applicable, subclause 2 or four million
12 dollars (\$4,000,000);

13 (VI) For taxable years beginning after December 31, 2015,
14 the greater of thirty-eight per cent of taxable income as
15 determined under subclause 1 or, if applicable, subclause 2 or
16 five million dollars (\$5,000,000);

17 (VII) For taxable years beginning after December 31, 2016,
18 the greater of forty-seven per cent of taxable income as
19 determined under subclause 1 or, if applicable, subclause 2 or
20 six million dollars (\$6,000,000);

21 (VIII) For taxable years beginning after December 31, 2017,
22 the greater of fifty-six per cent of taxable income as
23 determined under subclause 1 or, if applicable, subclause 2 or
24 seven million dollars (\$7,000,000);

25 (IX) For taxable years beginning after December 31, 2018,
26 the greater of sixty-four per cent of taxable income as
27 determined under subclause 1 or, if applicable, subclause 2 or
28 eight million dollars (\$8,000,000);

29 (X) For taxable years beginning after December 31, 2019, the
30 greater of seventy-three per cent of taxable income as

1 determined under subclause 1 or, if applicable, subclause 2 or
2 nine million dollars (\$9,000,000);

3 (XI) For taxable years beginning after December 31, 2020,
4 the greater of eighty-two per cent of taxable income as
5 determined under subclause 1 or, if applicable, subclause 2 or
6 ten million dollars (\$10,000,000);

7 (XII) For taxable years beginning after December 31, 2021,
8 the greater of ninety-one per cent of taxable income as
9 determined under subclause 1 or, if applicable, subclause 2 or
10 eleven million dollars (\$11,000,000);

11 (XIII) For taxable years beginning after December 31, 2022,
12 taxable income as determined under subclause 1 or, if
13 applicable, subclause 2; or

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

17 (1.1) In no event shall the net loss deduction include more
18 than five hundred thousand dollars (\$500,000), in the aggregate,
19 of net losses from taxable years 1988 through 1994.

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

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

| | | |
|---|---------------------|--------------------------|
| 1 | | taxable years starting |
| 2 | | with the 1995 taxable |
| 3 | | year |
| 4 | 1990-1993 | 3 taxable years starting |
| 5 | | with the 1995 taxable |
| 6 | | year |
| 7 | 1994 | 1 taxable year |
| 8 | 1995-1997 | 10 taxable years |
| 9 | 1998 and thereafter | 20 taxable years |

10 (B) The earliest net loss shall be carried over to the
11 earliest taxable year to which it may be carried under this
12 schedule. The total net loss deduction allowed in any taxable
13 year shall not exceed:

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

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

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

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

28 (V) The greater of twenty-nine per cent of taxable income as
29 determined under subclause 1 or, if applicable, subclause 2 or
30 four million dollars (\$4,000,000) for taxable years beginning

1 after December 31, 2014.

2 (VI) The greater of thirty-eight per cent of taxable income
3 as determined under subclause 1 or, if applicable, subclause 2
4 or five million dollars (\$5,000,000) for taxable years beginning
5 after December 31, 2015.

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

10 (VIII) The greater of fifty-six per cent of taxable income
11 as determined under subclause 1 or, if applicable, subclause 2
12 or seven million dollars (\$7,000,000) for taxable years
13 beginning after December 31, 2017.

14 (IX) The greater of sixty-four per cent of taxable income as
15 determined under subclause 1 or, if applicable, subclause 2 or
16 eight million dollars (\$8,000,000) for taxable years beginning
17 after December 31, 2018.

18 (X) The greater of seventy-three per cent of taxable income
19 as determined under subclause 1 or, if applicable, subclause 2
20 or nine million dollars (\$9,000,000) for taxable years beginning
21 after December 31, 2019.

22 (XI) The greater of eighty-two per cent of taxable income as
23 determined under subclause 1 or, if applicable, subclause 2 or
24 ten million dollars (\$10,000,000) for taxable years beginning
25 after December 31, 2020.

26 (XII) The greater of ninety-one per cent of taxable income
27 as determined under subclause 1 or, if applicable, subclause 2
28 or eleven million dollars (\$11,000,000) for taxable years
29 beginning after December 31, 2021.

30 (XIII) For taxable years beginning after December 31, 2022,

1 taxable income as determined under subclause 1 or, if
2 applicable, subclause 2.

3 * * *

4 (8) "Intangible expense or cost." Royalties, licenses or
5 fees paid for the acquisition, use, maintenance, management,
6 ownership, sale, exchange or other disposition of patents,
7 patent applications, trade names, trademarks, service marks,
8 copyrights, mask works or other similar expenses or costs.

9 (9) "Interest expense or cost." A deduction allowed under
10 section 163 of the Internal Revenue Code of 1986 (26 U.S.C. §
11 163) to the extent that such deduction is directly related to an
12 intangible expense or cost.

13 (10) "Affiliated entity." A person with a relationship to
14 the taxpayer during all or any portion of the taxable year that
15 is any of the following:

16 (i) a stockholder who is an individual, or a member of the
17 stockholder's family as set forth in section 318 of the Internal
18 Revenue Code of 1986 (26 U.S.C. § 318), if the stockholder and
19 the members of the stockholder's family own, directly,
20 indirectly, beneficially or constructively, in the aggregate,
21 more than fifty per cent of the value of the taxpayer's
22 outstanding stock;

23 (ii) a stockholder, or a stockholder's partnership, limited
24 liability company, estate, trust or corporation, if the
25 stockholder and the stockholder's partnerships, limited
26 liability companies, estates, trusts and corporations own
27 directly, indirectly, beneficially or constructively, in the
28 aggregate, more than fifty per cent of the value of the
29 taxpayer's outstanding stock;

30 (iii) a corporation, or a party related to the corporation

1 in a manner that would require an attribution of stock from the
2 corporation to the party or from the party to the corporation
3 under the attribution rules of the Internal Revenue Code of
4 1986, if the taxpayer owns, directly, indirectly, beneficially
5 or constructively, more than fifty per cent of the value of the
6 corporation's outstanding stock. The attribution rules of
7 section 318 of the Internal Revenue Code of 1986 shall apply for
8 purposes of determining whether the ownership requirements of
9 this definition have been met;

10 (iv) a component member as defined in section 1563(b) of the
11 Internal Revenue Code of 1986 (26 U.S.C. § 1563(b)); or

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

15 (11) "Valid business purpose." A purpose, other than the
16 avoidance or reduction of taxation, which alone or in
17 combination with other purposes constitute the primary
18 motivation for a business activity or transaction. A transaction
19 done at arm's length terms shall be presumed to be directly
20 related to a valid business purpose.

21 Section 2. Section 402(b) of the act, amended June 29, 2002
22 (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:

| 28 Taxable Year | Tax Rate |
|-------------------------------|----------|
| 29 [January 1, 1995, and each | |
| 30 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>9.75%</u> |
| 6 | <u>January 1, 2015, through</u> | |
| 7 | <u>December 31, 2015</u> | <u>9.25%</u> |
| 8 | <u>January 1, 2016, through</u> | |
| 9 | <u>December 31, 2016</u> | <u>8.75%</u> |
| 10 | <u>January 1, 2017, through</u> | |
| 11 | <u>December 31, 2017</u> | <u>8.25%</u> |
| 12 | <u>January 1, 2018, through</u> | |
| 13 | <u>December 31, 2018</u> | <u>7.75%</u> |
| 14 | <u>January 1, 2019, and each</u> | |
| 15 | <u>taxable year thereafter</u> | <u>6.99%</u> |

16 * * *

17 Section 3. This act shall take effect immediately.