

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 882 Session of 2013

INTRODUCED BY BLAKE, FERLO, FONTANA, BREWSTER, YUDICHAK,  
KASUNIC, SOLOBAY, COSTA, FARNESE, WASHINGTON, HUGHES, SCHWANK  
AND BOSCOLA, APRIL 24, 2013

REFERRED TO FINANCE, APRIL 24, 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 tax, further providing  
11 for definitions, for imposition, for reports and payment and  
12 for consolidated reports; providing for mandatory combined  
13 reporting; and, in general provisions, further providing for  
14 underpayment of estimated tax.

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

17 Section 1. Section 401(3)1(a) and (b) and 2(a) and (5) of  
18 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform  
19 Code of 1971, amended or added December 23, 1983 (P.L.370,  
20 No.90), July 1, 1985 (P.L.78, No.29), August 4, 1991 (P.L.97,  
21 No.22), May 12, 1999 (P.L.26, No.4), June 22, 2001 (P.L.353,  
22 No.23), June 29, 2002 (P.L.559, No.89), October 9, 2009  
23 (P.L.451, No.48) and July 2, 2012 (P.L.751, No.85), are amended,

1 clause (3)2 is amended by adding a phrase and the section is  
2 amended by adding clauses to 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 after December  
4 31, 2018, if not otherwise allowed as a deduction, an additional  
5 deduction is allowed for all dividends paid by one to another of  
6 the included corporations of a unitary business to the extent  
7 those dividends are included in business income of a corporation  
8 that is required to determine its business income pursuant to  
9 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 (2) Any taxpayer having income from business activity which  
26 is taxable both within and without this State other than  
27 activity as a corporation whose allocation and apportionment of  
28 income is specifically provided for in section 401(3)2(b)(c) and  
29 (d) shall allocate and apportion taxable income as provided in  
30 this definition.

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

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

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

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

20 (C) The extent of utilization of tangible personal property  
21 in a state is determined by multiplying the rents and royalties  
22 by a fraction, the numerator of which is the number of days of  
23 physical location of the property in the state during the rental  
24 or royalty period in the taxable year and the denominator of  
25 which is the number of days of physical location of the property  
26 everywhere during all rental or royalty periods in the taxable  
27 year. If the physical location of the property during the rental  
28 or royalty period is unknown or unascertainable by the taxpayer,  
29 tangible personal property is utilized in the state in which the  
30 property was located at the time the rental or royalty payer

1 obtained possession.

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

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

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

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

15 (8) (A) Patent and copyright royalties are allocable to  
16 this State if and to the extent that the patent or copyright is  
17 utilized by the payer in this State, or if and to the extent  
18 that the patent copyright is utilized by the payer in a state in  
19 which the taxpayer is not taxable and the taxpayer's commercial  
20 domicile is in this State.

21 (B) A patent is utilized in a state to the extent that it is  
22 employed in production, fabrication, manufacturing, or other  
23 processing in the state or to the extent that a patented product  
24 is produced in the state. If the basis of receipts from patent  
25 royalties does not permit allocation to states or if the  
26 accounting procedures do not reflect states of utilization, the  
27 patent is utilized in the state in which the taxpayer's  
28 commercial domicile is located.

29 (C) A copyright is utilized in a state to the extent that  
30 printing or other publication originates in the state. If the

1 basis of receipts from copyright royalties does not permit  
2 allocation to states or if the accounting procedures do not  
3 reflect states of utilization, the copyright is utilized in the  
4 state in which the taxpayer's commercial domicile is located.

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

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

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

17 (iii) For taxable years beginning after December 31, 2008,  
18 all business income shall be apportioned to this State by  
19 multiplying the income by a fraction, the numerator of which is  
20 the sum of eight and a half times the property factor, eight and  
21 a half times the payroll factor and eighty-three times the sales  
22 factor and the denominator of which is one hundred.

23 (iv) For taxable years beginning after December 31, 2009,  
24 all business income shall be apportioned to this State by  
25 multiplying the income by a fraction, the numerator of which is  
26 the sum of five times the property factor, five times the  
27 payroll factor and ninety times the sales factor and the  
28 denominator of which is one hundred.

29 (v) For taxable years beginning after December 31, 2012, all  
30 business income shall be apportioned to this State by

1 multiplying the income by the sales factor.

2 (B) For purposes of apportionment of the capital stock -  
3 franchise tax as provided in section 602 of Article VI of this  
4 act, the apportionment fraction shall be the property factor  
5 plus the payroll factor plus the sales factor as the numerator,  
6 and the denominator shall be three.

7 (10) The property factor is a fraction, the numerator of  
8 which is the average value of the taxpayer's real and tangible  
9 personal property owned or rented and used in this State during  
10 the tax period and the denominator of which is the average value  
11 of all the taxpayer's real and tangible personal property owned  
12 or rented and used during the tax period but shall not include  
13 the security interest of any corporation as seller or lessor in  
14 personal property sold or leased under a conditional sale,  
15 bailment lease, chattel mortgage or other contract providing for  
16 the retention of a lien or title as security for the sales price  
17 of the property.

18 (11) Property owned by the taxpayer is valued at its  
19 original cost. Property rented by the taxpayer is valued at  
20 eight times the net annual rental rate. Net annual rental rate  
21 is the annual rental rate paid by the taxpayer less any annual  
22 rental rate received by the taxpayer from subrentals.

23 (12) The average value of property shall be determined by  
24 averaging the values at the beginning and ending of the tax  
25 period but the tax administrator may require the averaging of  
26 monthly values during the tax period if reasonably required to  
27 reflect properly the average value of the taxpayer's property.

28 (13) The payroll factor is a fraction, the numerator of  
29 which is the total amount paid in this State during the tax  
30 period by the taxpayer for compensation and the denominator of



1 which is the total compensation paid everywhere during the tax  
2 period.

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

4 (A) The individual's service is performed entirely within  
5 the State;

6 (B) The individual's service is performed both within and  
7 without this State, but the service performed without the State  
8 is incidental to the individual's service within this State; or

9 (C) Some of the service is performed in this State and the  
10 base of operations or if there is no base of operations, the  
11 place from which the service is directed or controlled is in  
12 this State, or the base of operations or the place from which  
13 the service is directed or controlled is not in any state in  
14 which some part of the service is performed, but the  
15 individual's residence is in this State.

16 (15) The sales factor is a fraction, the numerator of which  
17 is the total sales of the taxpayer in this State during the tax  
18 period, and the denominator of which is the total sales of the  
19 taxpayer everywhere during the tax period.

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

24 (17) Sales, other than sales of tangible personal property  
25 and sales set forth under paragraphs (17.1) and (17.2), are in  
26 this State if:

27 (A) The income-producing activity is performed in this  
28 State; or

29 (B) The income-producing activity is performed both in and  
30 outside this State and a greater proportion of the income-

1 producing activity is performed in this State than in any other  
2 state, based on costs of performance.

3 (17.1) Sales of services are in this State if sales are  
4 derived from customers within this State. If part of the sales  
5 with respect to a specific contract or other agreement to  
6 perform services is derived from customers from within this  
7 State, sales are in this State in proportion to the sales  
8 derived from customers within this State to total sales with  
9 respect to that contract or agreement.

10 (17.2) In order to determine sales in this State of any  
11 railroad, truck, bus, airline, pipeline, natural gas or water  
12 transportation company that is required to determine its  
13 business income under paragraph (1) of phrase (e) of this  
14 subclause, the company must convert the relevant fraction set  
15 forth under phrase (b), (c) or (d) of this subclause to gross  
16 receipts. Sales in this State are the result of multiplying  
17 total gross receipts from relevant transportation activities by  
18 the decimal equivalent of the relevant fraction set forth under  
19 phrase (b), (c) or (d) of this subclause.

20 (18) If the allocation and apportionment provisions of this  
21 definition do not fairly represent the extent of the taxpayer's  
22 business activity in this State, the taxpayer may petition the  
23 Secretary of Revenue or the Secretary of Revenue may require, in  
24 respect to all or any part of the taxpayer's business activity:

25 (A) Separate accounting;

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

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

30 (D) The employment of any other method to effectuate an

1 equitable allocation and apportionment of the taxpayer's income.  
2 In determining the fairness of any allocation or apportionment,  
3 the Secretary of Revenue may give consideration to the  
4 taxpayer's previous reporting and its consistency with the  
5 requested relief.

6 \* \* \*

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

8 (1) Notwithstanding any contrary provisions of this article,  
9 for taxable years that begin after December 31, 2018, business  
10 income of a corporation that is a member of a unitary business  
11 that consists of two or more corporations, at least one of which  
12 does not transact its entire business in this State, is  
13 determined by combining the business income of either all  
14 corporations, other than as provided under this paragraph, that  
15 are water's-edge basis members or all corporations, other than  
16 as provided under this paragraph, that are worldwide members of  
17 the unitary business. Business income from an intercompany  
18 transaction between included corporations of a unitary business  
19 shall be deferred in the manner set forth under 26 CFR 1.1502-13  
20 (relating to intercompany transactions) in determining the  
21 business income of a corporation that is a member of that  
22 unitary business. Business income of the following corporations  
23 is not included in the determination of combined business  
24 income:

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

27 (ii) any corporation specified in the definition of  
28 "institution" in section 701.5 that would be subject to taxation  
29 under Article VII if it was located, as defined in section  
30 701.5, in this State;

1 (iii) any corporation commonly known as a title insurance  
2 company that would be subject to taxation under Article VIII if  
3 it was incorporated in this State;

4 (iv) any corporation specified as an insurance company,  
5 association or exchange in Article IX that would be subject to  
6 taxation under Article IX if its insurance business was  
7 transacted in this State;

8 (v) any corporation specified in the definition of  
9 "institution" in section 1501 that would be subject to taxation  
10 under Article XV if it was located, as defined in section 1501,  
11 in this State; or

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

15 (2) Notwithstanding any contrary provisions of this article,  
16 all corporations that are required to compute business income  
17 under paragraph (1) are entitled to apportion the business  
18 income when one corporation of the same unitary business is  
19 entitled to apportion the business income. Notwithstanding any  
20 contrary provisions of this article, for taxable years that  
21 begin after December 31, 2018, the denominator of the  
22 apportionment fraction of a corporation that is required to  
23 compute its business income under paragraph (1) shall be  
24 computed on a combined basis for all included corporations of  
25 the unitary business. Gross receipts from an intercompany  
26 transaction between included corporations of a unitary business  
27 shall be eliminated unless the gross receipts are derived from  
28 transactions that are deferred in the manner set forth under 26  
29 CFR 1.1502-13 in computing the numerator and denominator of the  
30 apportionment fraction of a corporation that is required to

1 compute its business income under paragraph (1). Gross receipts  
2 from transactions that had been deferred in the manner set forth  
3 under 26 CFR 1.1502-13 are included in a corporation's  
4 apportionment fraction during the same taxable year that it  
5 realizes business income that had been deferred due to the  
6 transaction. The apportionment fraction of the following  
7 corporations shall not be included in the determination of the  
8 combined apportionment fraction:

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

11 (ii) any corporation specified in the definition of  
12 "institution" in section 701.5 that would be subject to taxation  
13 under Article VII if it was located, as defined in section  
14 701.5, in this State;

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

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

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

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

29 (3) A corporation that is required to compute its business  
30 income under paragraph (1) shall apportion the combined business

1 income by multiplying the combined business income by a fraction  
2 which is the combined apportionment fraction set forth under  
3 paragraph (2).

4 (4) Nonbusiness income of a corporation that is required to  
5 compute business income under paragraph (1) shall be allocated  
6 as provided in paragraphs (5), (6), (7) and (8) of phrase (a) of  
7 subclause 2 of the definition of "taxable income."

8 (5) Each corporation that is a member of a unitary business  
9 that consists of two or more corporation shall determine its tax  
10 liability based on its apportioned share of the combined  
11 business income of the unitary business plus its nonbusiness  
12 income or loss allocated to this State, minus its net loss  
13 deduction.

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

24 (7) The Secretary of Revenue shall have the authority and  
25 responsibility to make adjustments to insure that a corporation  
26 does not incur an unfair penalty nor realize an unfair benefit  
27 because it is required to compute its business income under  
28 paragraph (1). Fairness shall be measured by whether the  
29 corporation's income allocated and apportioned to this State  
30 fairly reflects the corporation's share of the unitary business

1 conducted in this State in the taxable year.

2 \* \* \*

3 (5) "Taxable year." [The] 1. Except as set forth in  
4 subclause 2, the taxable year which the corporation, or any  
5 consolidated group with which the corporation participates in  
6 the filing of consolidated returns, actually uses in reporting  
7 taxable income to the Federal Government[.], or which the  
8 corporation would have used in reporting taxable income to the  
9 Federal Government had it been required to report its taxable  
10 income to the Federal Government. With regard to the tax imposed  
11 by Article IV of this act (relating to the Corporate Net Income  
12 Tax), the terms "annual year," "fiscal year," "annual or fiscal  
13 year," "tax year" and "tax period" shall be the same as the  
14 corporation's taxable year, as defined in this [paragraph.]  
15 subclause or subclause 2.

16 2. All corporations of a unitary business shall have a  
17 common taxable year for purposes of computing tax due under this  
18 article. The taxable year for the purposes shall be the common  
19 taxable year adopted, in a manner prescribed by the department,  
20 by all corporations of a unitary business. The common taxable  
21 year must be used by all corporations of that unitary business  
22 in the year of adoption and all future years unless otherwise  
23 permitted by the department.

24 \* \* \*

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

30 (9) "Unitary business." A single economic enterprise that

1 is made up of separate parts of a single corporation, of a  
2 commonly controlled group of corporations, or both, that are  
3 sufficiently interdependent, integrated and interrelated through  
4 their activities so as to provide a synergy and mutual benefit  
5 that produces a sharing or exchange of value among them and a  
6 significant flow of value to the separate parts. A unitary  
7 business shall include only those parts and corporations which  
8 may be included as a unitary business under the Constitution of  
9 the United States.

10 (10) "Water's-edge basis." A system of reporting that  
11 includes the business income and apportionment factor of certain  
12 corporations of a unitary business, described as follows:

13 1. The business income and apportionment factor of any  
14 member incorporated in the United States or formed under the  
15 laws of any state of the United States, the District of  
16 Columbia, any territory or possession of the United States or  
17 the Commonwealth of Puerto Rico.

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

22 3. The business income and apportionment factor of any  
23 member which is a domestic international sales corporation as  
24 described in sections 991, 992, 993 and 994 of the Internal  
25 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 991, 992,  
26 993 and 994); a foreign sales corporation as described in former  
27 sections 921, 922, 923, 924, 925, 926 and 927 of the Internal  
28 Revenue Code of 1986 (formerly 26 U.S.C. §§ 921, 922, 923, 924,  
29 925, 926 and 927); or any member which is an export trade  
30 corporation, as described in sections 970 and 971 of the



1 Internal Revenue Code of 1986 (26 U.S.C. §§ 970 and 971).

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

7 5. Any member that is a "controlled foreign corporation" as  
8 defined in section 957 of the Internal Revenue Code of 1986 (26  
9 U.S.C. § 957), to the extent the business income of that member  
10 is income defined in section 952 of the Internal Revenue Code of  
11 1986 (26 U.S.C. § 952), Subpart F income, not excluding lower-  
12 tier subsidiaries' distributions of the income which were  
13 previously taxed, determined without regard to Federal treaties,  
14 and the apportionment factor related to that income; any item of  
15 income received by a controlled foreign corporation and the  
16 apportionment factor related to the income shall be excluded if  
17 the corporation establishes to the satisfaction of the Secretary  
18 of Revenue that the income was subject to an effective rate of  
19 income tax imposed by a foreign country greater than ninety per  
20 cent of the maximum rate of tax specified in section 11 of the  
21 Internal Revenue Code of 1986 (26 U.S.C. § 11). The effective  
22 rate of income tax determination shall be based upon the  
23 methodology set forth under 26 CFR 1.954-1 (relating to foreign  
24 base company income).

25 6. The business income and apportionment factor of any  
26 member that is not described in subclause 1, 2, 3, 4 and 5 and  
27 that is doing business in a tax haven. The business income and  
28 apportionment factor of a corporation doing business in a tax  
29 haven shall be excluded if the corporation establishes to the  
30 satisfaction of the Secretary of Revenue that its income was

1 subject to an effective rate of income tax imposed by a country  
2 greater than ninety per cent of the maximum rate of tax  
3 specified in section 11 of the Internal Revenue Code of 1986 (26  
4 U.S.C. § 11).

5 (11) "Commonly controlled group." For a corporation, the  
6 corporation is a member of a group of two or more corporations  
7 and more than fifty per cent of the voting stock of each member  
8 of the group is directly or indirectly owned by a common owner  
9 or by common owners, either corporate or noncorporate, or by one  
10 or more of the member corporations of the group.

11 (12) "Separate company." A corporation that is not a member  
12 of a unitary business that consists of two or more corporations.

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

15 Section 2. Section 402(b) of the act, amended June 29, 2002  
16 (P.L.559, No.89), is amended to read:

17 Section 402. Imposition of Tax.--\* \* \*

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

Taxable Year	Tax Rate
[January 1, 1995, and each taxable year thereafter	9.99%]
<u>January 1, 1995, through taxable</u> <u>years ending December 31,</u> <u>2014</u>	<u>9.99%</u>
<u>January 1, 2015, to December 31,</u> <u>2015</u>	<u>9.39%</u>
<u>January 1, 2016, to December 31,</u>	

1	<u>2016</u>	<u>8.79%</u>
2	<u>January 1, 2017, to December 31,</u>	
3	<u>2017</u>	<u>8.19%</u>
4	<u>January 1, 2018, to December 31,</u>	
5	<u>2018</u>	<u>7.59%</u>
6	<u>January 1, 2019, to December 31,</u>	
7	<u>2019, and each taxable year</u>	
8	<u>thereafter</u>	<u>6.99%</u>
9	* * *	

10 Section 3. Section 403 of the act is amended by adding  
11 subsections to read:

12 Section 403. Reports and Payment of Tax.--\* \* \*

13 (a.1) The following apply:

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

25 (2) The oath or affirmation of the designated member's  
26 president, vice president or other principal officer, and of its  
27 treasurer or assistant treasurer shall constitute the oath or  
28 affirmation of each corporation that is a member of that unitary  
29 business.

30 (3) The designated member shall transmit to the department

1 upon a form prescribed by the department, an annual combined  
2 report under oath or affirmation of its president, vice  
3 president or other principal officer, and of its treasurer or  
4 assistant treasurer. The report shall set forth:

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

6 (ii) All necessary data, both in the aggregate and for each  
7 corporation of the unitary business, that sets forth the  
8 determination of tax liability for each corporation of the  
9 unitary business.

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

11 (a.2) The following apply:

12 (1) Activities that evidence a significant flow of value  
13 among commonly controlled corporations shall include the  
14 following:

15 (i) Assisting in the acquisition of equipment.

16 (ii) Assisting with filling personnel needs.

17 (iii) Lending funds or guaranteeing loans.

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

19 (v) Providing technical assistance.

20 (vi) Supervising.

21 (vii) Providing general operational guidance.

22 (viii) Providing overall operational strategic advice.

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

24 (2) Significant flow of value must be more than the flow of  
25 funds arising out of passive investment and shall consist of  
26 more than periodic financial oversight.

27 (a.3) The following apply:

28 (1) With respect to a commonly controlled group of  
29 corporations, the presence of any of these factors creates a  
30 presumption of a unitary business:

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

2 (ii) Corporations engaged in different steps in a vertically  
3 structured enterprise.

4 (iii) Strong centralized management of corporations.

5 (2) A corporation newly formed by a corporation that is a  
6 member of a unitary business is rebuttably presumed to be a  
7 member of the unitary business.

8 (3) A corporation that owns a controlling interest in two or  
9 more corporations of a unitary business is rebuttably presumed  
10 to be a member of the unitary business.

11 (4) A corporation that permits one or more other  
12 corporations of a unitary business to substantially use its  
13 patents, trademarks, service marks, logo-types, trade secrets,  
14 copyrights or other proprietary assets or that is principally  
15 engaged in loaning money to one or more other corporations of a  
16 unitary business is rebuttably presumed to be a member of the  
17 unitary business. This presumption only applies to a commonly  
18 controlled group of corporations.

19 (a.4) As far as applicable to a specific unitary business,  
20 unless there is a revision of applicable State law or unless a  
21 corporation is not included under the provisions of this  
22 article, there is a rebuttable presumption for all tax years  
23 that begin in years 2019 and 2020 that a unitary business of two  
24 or more corporations includes at least all corporations that are  
25 part of a unitary business under the law of any state of the  
26 United States in which the corporation files a tax report or tax  
27 return of combined net income for the same tax year.

28 (a.5) Unless an election is made to use a worldwide basis of  
29 accounting, a corporation that is a member of a unitary business  
30 of two or more corporations must determine its business income

1 and apportionment factor upon a water's-edge basis. This basis  
2 shall apply to all corporations of the unitary business. If an  
3 election is made to use a worldwide basis of accounting, all  
4 corporations of the unitary business must make the election,  
5 upon a form, prescribed, prepared and furnished by the  
6 department. This election shall bind all corporations of the  
7 unitary business for the period of time that the election  
8 remains in effect. An initial election is binding for a period  
9 of seven years. Subsequent elections shall be binding for a  
10 period of five years.

11 \* \* \*

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

13 Section 404. Consolidated Reports.--The department shall not  
14 permit any corporation owning or controlling, directly or  
15 indirectly, any of the voting capital stock of another  
16 corporation or of other corporations, subject to the provisions  
17 of this article, to make a consolidated report[, showing the  
18 combined net income].

19 Section 4.1. The act is amended by adding an article to  
20 read:

21 ARTICLE IV-A

22 MANDATORY COMBINED REPORTING

23 Section 401-A. Definitions.

24 The following words and phrases when used in this article  
25 shall have the meanings given to them in this section unless the  
26 context clearly indicates otherwise:

27 "Commonly controlled group." For a corporation, the  
28 corporation is a member of a group of two or more corporations  
29 and more than 50% of the voting stock of each member of the  
30 group is directly or indirectly owned by a common owner or by

1 common owners, either corporate or noncorporate, or by one or  
2 more of the member corporations of the group.

3 "Corporation." As defined in section 401.

4 "Department." The Department of Revenue of the Commonwealth.

5 "Secretary." The Secretary of Revenue of the Commonwealth.

6 "Separate company." A corporation that is not a member of a  
7 unitary business that consists of two or more corporations.

8 "Tax." Includes interest, penalties and additions to tax,  
9 unless a more limited meaning is disclosed by the context.

10 "Tax haven." Any of the following:

11 (1) A jurisdiction which, at the beginning of a taxable  
12 year, is a tax haven as identified by the Organization for  
13 Economic Co-operation and Development.

14 (2) Bermuda.

15 (3) The Cayman Islands.

16 (4) The Bailiwick of Jersey.

17 (5) The Grand Duchy of Luxembourg.

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

28 "Water's-edge basis." The system of reporting required under  
29 section 402-A.

30 Section 402-A. Water's-edge basis.

1 A unitary business shall report as follows:

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

7 (2) The business income and apportionment factor of  
8 every member, regardless of the place incorporated or formed,  
9 if the average of the corporation's or unitary business's  
10 property, payroll and sales factors within the United States  
11 is at least 20%.

12 (3) The business income and apportionment factor of each  
13 member which is:

14 (i) a domestic international sales corporation, as  
15 described in sections 991, 992, 993 and 994 of the  
16 Internal Revenue Code of 1986 (Public Law 99-514, 26  
17 U.S.C. §§ 991, 992, 993 and 994);

18 (ii) a foreign sales corporation as described in  
19 former sections 921, 922, 923, 924, 925, 926 and 927 of  
20 the Internal Revenue Code of 1986 (98 Stat. 985); or

21 (iii) an export trade corporation, as described in  
22 sections 970 and 971 of the Internal Revenue Code of 1986  
23 (26 U.S.C. §§ 970 and 971).

24 (4) For each member which is a "controlled foreign  
25 corporation," as defined in section 957 of the Internal  
26 Revenue Code of 1986 (26 U.S.C. § 957), to the extent the  
27 business income of that member is income defined in section  
28 952 of the Internal Revenue Code of 1986 (26 U.S.C. § 952),  
29 all of the following:

30 (i) Subpart F income, not excluding lower-tier



1 subsidiaries' distributions of the income which were  
2 previously taxed, determined without regard to a Federal  
3 treaty, and the apportionment factor related to that  
4 income.

5 (ii) Any item of income received by a controlled  
6 foreign corporation and the apportionment factor related  
7 to the income shall be excluded if the corporation  
8 establishes to the satisfaction of the secretary that the  
9 income was subject to an effective rate of income tax  
10 imposed by a foreign country greater than 90% of the  
11 maximum rate of tax specified in section 11 of the  
12 Internal Revenue Code of 1986 (26 U.S.C. § 11). The  
13 effective rate of income tax determination shall be based  
14 upon the methodology set forth under 26 CFR 1.954-1  
15 (relating to foreign base company income).

16 (5) For each member which is not described in paragraph  
17 (1), (2) or (3):

18 (i) the portion of its business income derived from  
19 or attributable to sources within the United States, as  
20 determined under the Internal Revenue Code of 1986,  
21 without regard to a Federal treaty; and

22 (ii) its apportionment factor related to the portion  
23 of income under subparagraph (i).

24 (6) For each member which is not described in paragraph  
25 (1), (2), (3) or (4) and which is doing business in a tax  
26 haven:

27 (i) Except as set forth in subparagraph (ii), the  
28 business income and apportionment factor.

29 (ii) If the member establishes to the satisfaction  
30 of the secretary that its income was subject to an

1 effective rate of income tax imposed by a country greater  
2 than 90% of the maximum rate of tax specified in section  
3 11 of the Internal Revenue Code of 1986 (26 U.S.C. § 11),  
4 subparagraph (i) shall not apply.

5 Section 403-A. Corporate members of unitary businesses.

6 (a) Scope.--This section applies to a corporation that is a  
7 member of a unitary business which consists of two or more  
8 corporations, at least one of which does not transact its entire  
9 business in this Commonwealth.

10 (b) Returns.--For taxable years beginning after December 31,  
11 2012, a corporation subject to this section shall, in addition  
12 to the tax return filed under Article IV, file a return in  
13 accordance with this section. For a taxable year which begins  
14 after December 31, 2013, and ends before January 1, 2015, the  
15 return filed under this subsection shall be for informational  
16 purposes only and shall not be subject to section 404-A(b) or  
17 (c).

18 (c) Business income.--

19 (1) For purposes of the return under subsection (b),  
20 business income of a corporation shall be computed, subject  
21 to paragraph (2) and subsections (d), (e) and (f), by  
22 combining the business income of:

23 (i) each corporation required to report on a  
24 water's-edge basis; or

25 (ii) each corporation that is a worldwide member of  
26 the unitary business.

27 (2) The following shall apply:

28 (i) Business income from an intercompany transaction  
29 between included corporations of a unitary business shall  
30 be deferred in the manner set forth under 26 CFR 1.1502-

1 13 (relating to intercompany transactions) in determining  
2 the business income of a corporation which is a member of  
3 that unitary business.

4 (ii) Business income of the following corporations  
5 shall not be included in the determination of combined  
6 business income:

7 (A) A corporation subject to taxation under  
8 Article VII, VIII, IX or XV.

9 (B) An institution, as defined in section 701.5,  
10 that would be subject to taxation under Article VII  
11 if it was located, as defined in section 701.5, in  
12 this Commonwealth.

13 (C) A corporation commonly known as a title  
14 insurance company that would be subject to taxation  
15 under Article VIII if it was incorporated in this  
16 Commonwealth.

17 (D) A corporation specified as an insurance  
18 company, association or exchange in Article IX that  
19 would be subject to taxation under Article IX if its  
20 insurance business was transacted in this  
21 Commonwealth.

22 (E) A mutual thrift institution, as defined in  
23 section 1501, that would be subject to taxation under  
24 Article XV if it was located, as defined in section  
25 1501, in this Commonwealth.

26 (F) A small corporation, as defined in section  
27 301(s.2).

28 (G) A qualified Subchapter S subsidiary, as  
29 defined in section 301(o.3).

30 (d) Apportionment.--Notwithstanding any provision of this

1 act, a corporation computing business income under subsection  
2 (c) may apportion the business income when one corporation of  
3 the same unitary business is entitled to apportion the business  
4 income.

5 (e) Apportionment fraction.--For a corporation computing  
6 business income under subsection (c), subject to subsection (f),  
7 the following apply:

8 (1) Computation shall be as follows:

9 (i) The denominator of the apportionment fraction  
10 shall be computed on a combined basis for all included  
11 corporations of the unitary business.

12 (ii) Gross receipts from an intercompany transaction  
13 between included corporations of a unitary business shall  
14 be eliminated unless the gross receipts are derived from  
15 transactions that are deferred in the manner set forth  
16 under 26 CFR 1.1502-13, in computing the numerator and  
17 denominator of the apportionment fraction.

18 (iii) Gross receipts from transactions which were  
19 deferred under 26 CFR 1.1502-13 shall be included in a  
20 corporation's apportionment fraction during the same  
21 taxable year in which it realizes business income which  
22 was deferred due to the transaction.

23 (2) Apportionment shall be accomplished by multiplying:

24 (i) the combined business income; by

25 (ii) a fraction which is the combined apportionment  
26 fraction under paragraph (1).

27 (f) Exclusions.--For purposes of subsection (e), the  
28 apportionment fraction of the following corporations shall not  
29 be included in the determination of the combined apportionment  
30 fraction:

1       (1) A corporation subject to taxation under Article VII,  
2       VIII, IX or XV.

3       (2) An institution, as defined in section 701.5, that  
4       would be subject to taxation under Article VII if it was  
5       located, as defined in section 701.5, in this Commonwealth.

6       (3) A corporation commonly known as a title insurance  
7       company that would be subject to taxation under Article VIII  
8       if it was incorporated in this Commonwealth.

9       (4) A corporation specified as an insurance company,  
10       association or exchange in Article IX that would be subject  
11       to taxation under Article IX if its insurance business was  
12       transacted in this Commonwealth.

13       (5) A mutual thrift institution, as defined in section  
14       1501, that would be subject to taxation under Article XV if  
15       it was located, as defined in section 1501, in this  
16       Commonwealth.

17       (6) A small corporation, as defined in section 301(s.2).

18       (7) A qualified Subchapter S subsidiary, as defined in  
19       section 301(o.3).

20       (g) Nonbusiness income.--A corporation subject to this  
21       section shall allocate nonbusiness income as provided in section  
22       401(3)2(a)(5), (6), (7) and (8).

23       Section 404-A. Surtax.

24       (a) Estimated tax liability.--Each corporation that is  
25       required to submit a return under this article shall determine  
26       its estimated tax liability under this article based on its  
27       apportioned share of the combined business income of the unitary  
28       business plus its nonbusiness income or loss allocated to this  
29       State, minus its net loss deduction, multiplied by the tax rate  
30       applicable to the taxable year being reported in Article IV.

1 (b) Surtax.--If, after determining its estimated tax  
2 liability under subsection (a), the corporation determines that  
3 its estimated tax liability calculated under subsection (a) is  
4 greater than the corporation's tax liability calculated under  
5 Article IV, the corporation shall pay a surtax to the department  
6 in an amount equal to the following:

7 (1) For a taxable year which begins after December 31,  
8 2013, and ends before January 1, 2015, 20% of the difference  
9 between the tax liability calculated under subsection (a) and  
10 the tax paid to the department for that taxable year as set  
11 forth in the return filed under Article IV.

12 (2) For a taxable year which begins after December 31,  
13 2014, and ends before January 1, 2016, 40% of the difference  
14 between the tax liability calculated under subsection (a) and  
15 the tax paid to the department for that taxable year as set  
16 forth in the return filed under Article IV.

17 (3) For a taxable year which begins after December 31,  
18 2015, and ends before January 1, 2017, 60% of the difference  
19 between the tax liability calculated under subsection (a) and  
20 the tax paid to the department for that taxable year as set  
21 forth in the return filed under Article IV.

22 (4) For a taxable year which begins after December 31,  
23 2016, and ends before January 1, 2018, 80% of the difference  
24 between the tax liability calculated under subsection (a) and  
25 the tax paid to the department for that taxable year as set  
26 forth in the return filed under Article IV.

27 (5) For a taxable year which begins after December 31,  
28 2017, and ends before January 1, 2019, 100% of the difference  
29 between the tax liability calculated under subsection (a) and  
30 the tax paid to the department for that taxable year as set

1 forth in the return filed under Article IV.

2 (c) Credit.--If, after determining its estimated tax  
3 liability under subsection (a), the corporation determines that  
4 its estimated tax liability calculated under subsection (a) is  
5 less than the corporation's tax liability calculated under  
6 Article IV, the corporation shall be entitled to a credit  
7 against the tax paid under Article IV in an amount equal to the  
8 difference between the two calculations.

9 (d) Unitary business adjustment.--If any provision of this  
10 article operates so that an amount is added to or deducted from  
11 taxable income for a taxable year for any corporation of a  
12 unitary business that previously had been added to or deducted  
13 from taxable income of any corporation of the same unitary  
14 business, an appropriate adjustment shall be made for the  
15 taxable year in order to prevent double taxation or double  
16 deduction. If the adjustment is not made by the appropriate  
17 corporation of the unitary business, the secretary is authorized  
18 to make the adjustment.

19 (e) Secretary.--The secretary shall have the duty to make  
20 adjustments to insure that a corporation does not incur an  
21 unfair penalty nor realize an unfair benefit because it is  
22 required to compute its business income under this article.  
23 Fairness shall be measured by whether the corporation's income  
24 allocated and apportioned to this Commonwealth fairly reflects  
25 the corporation's share of the unitary business conducted in  
26 this Commonwealth in the taxable year.

27 Section 405-A. Common tax year.

28 All corporations of a unitary business shall have a common  
29 taxable year for purposes of computing tax due under this  
30 article. The taxable year shall be the common taxable year

1 adopted, in a manner prescribed by the department, by all  
2 corporations of a unitary business. The common taxable year must  
3 be used by all corporations of that unitary business in the year  
4 of adoption and all future years unless otherwise permitted by  
5 the department.

6 Section 406-A. Reports and payment of surtax.

7 (a) Designation.--The corporations of the unitary business  
8 shall designate one member that is subject to tax under Article  
9 IV to file the annual report and remit the surtax required under  
10 this article and to act as agent on behalf of all other  
11 corporations that are members of the unitary business. Each  
12 corporation that is a member of a unitary business shall be  
13 responsible for its tax liability under Article IV and the  
14 surtax under this article.

15 (b) Oath or affirmation.--The oath or affirmation of the  
16 designated member's president, vice president or other principal  
17 officer, and of its treasurer or assistant treasurer shall  
18 constitute the oath or affirmation of each corporation that is a  
19 member of that unitary business.

20 (c) Annual report.--The designated member shall transmit to  
21 the department upon a form prescribed by the department, an  
22 annual report under oath or affirmation of its president, vice  
23 president or other principal officer, and of its treasurer or  
24 assistant treasurer. The report shall set forth:

25 (1) All corporations included in the unitary business.

26 (2) All necessary data, both in the aggregate and for  
27 each corporation of the unitary business, that sets forth the  
28 determination of tax liability for each corporation of the  
29 unitary business.

30 (3) Any other information that the department may



1 require.

2 (d) Activities.--

3 (1) Activities that evidence a significant flow of value  
4 among commonly controlled corporations shall include the  
5 following:

6 (i) Assisting in the acquisition of equipment.

7 (ii) Assisting with filling personnel needs.

8 (iii) Lending funds or guaranteeing loans.

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

10 (v) Providing technical assistance.

11 (vi) Supervising.

12 (vii) Providing general operational guidance.

13 (viii) Providing overall operational strategic  
14 advice.

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

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

19 Section 407-A. Rebuttable presumptions for unitary business.

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

24 (1) Corporations engaged in the same type of business.

25 (2) Corporations engaged in different steps in a  
26 vertically structured enterprise.

27 (3) Strong centralized management of corporations.

28 (b) Newly formed corporation.--A corporation newly formed by  
29 a corporation that is a member of a unitary business shall be  
30 rebuttably presumed to be a member of the unitary business.

1 (c) Controlling interest.--A corporation that owns a  
2 controlling interest in at least two corporations of a unitary  
3 business shall be rebuttably presumed to be a member of the  
4 unitary business.

5 (d) Substantial use.--A corporation that permits at least  
6 one other corporation of a unitary business to substantially use  
7 its patents, trademarks, service marks, logo-types, trade  
8 secrets, copyrights or other proprietary assets or that is  
9 principally engaged in loaning money to at least one other  
10 corporation of a unitary business shall be rebuttably presumed  
11 to be a member of the unitary business. The presumption under  
12 this subsection shall only apply to a commonly controlled group  
13 of corporations.

14 (e) Specific unitary business.--As far as applicable to a  
15 specific unitary business, unless there is a revision of  
16 applicable State law or unless a corporation is not included  
17 under the provisions of this article, there is a rebuttable  
18 presumption for all tax years that begin in years 2013 and 2014  
19 that a unitary business of at least two corporations includes at  
20 least all of the corporations that are part of a unitary  
21 business under the law of any state in which the corporation  
22 files a tax report or tax return of combined net income for the  
23 same tax year.

24 Section 408-A. Election.

25 (a) Nonworldwide basis.--Unless an election is made to use a  
26 worldwide basis of accounting, a corporation that is a member of  
27 a unitary business of at least two corporations shall determine  
28 its business income and apportionment factor upon a water's-edge  
29 basis. The basis shall apply to all corporations of the unitary  
30 business.

1 (b) Worldwide basis.--If an election is made to use a  
2 worldwide basis of accounting, all corporations of the unitary  
3 business must make the election, upon a form, prescribed,  
4 prepared and furnished by the department. The election shall  
5 bind all corporations of the unitary business for the period of  
6 time that the election remains in effect. An initial election  
7 shall be binding for a period of seven years. Subsequent  
8 elections shall be binding for a period of five years.

9 Section 409-A. Expiration.

10 This article shall expire January 1, 2020.

11 Section 5. 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 under 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 subsections (a), (b) and (c),  
29 interest with respect to any underpayment of any installment of  
30 estimated corporate net income tax for any tax year that begins

1 in year 2019 or 2020 shall not be imposed if the total amount of  
2 all payments of estimated corporate net income tax made on or  
3 before the last date prescribed for the payment of the  
4 installment equals or exceeds the amount which would have been  
5 required to be paid on or before that date if the estimated tax  
6 were an amount equal to the tax shown on the report of the  
7 taxpayer for the safe harbor base year, if a report showing a  
8 liability for tax was filed by the taxpayer for the safe harbor  
9 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 the installment does not equal or exceed the amount required to  
13 be paid under paragraph (1), but the amount is paid after the  
14 date the installment was required to be paid, 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 the report by ten per cent or more, the total  
20 tax shall be used for purposes of this subsection. If the total  
21 tax for the safe harbor base year exceeds the tax shown on the  
22 report by ten per cent or more, interest resulting from the  
23 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 the date if the estimated tax were an amount equal to  
30 the total tax.

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

8     (d.2) (1) If there is a substantial underpayment, as  
9 defined in subsection (a), of any installment of estimated  
10 corporate net income tax or estimated capital stock/franchise  
11 tax for any taxable year beginning in 2019 or 2020, there shall  
12 be imposed additional interest in an amount determined at one  
13 hundred twenty per cent of the annual rate as provided by law  
14 upon the entire underpayment for the period of the substantial  
15 underpayment.

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

19     Section 6. This act shall apply as follows:

20         (1) The amendment or addition of the following  
21         provisions shall apply to taxable years beginning after  
22         December 31, 2012:

23             (i) Section 402(b) of the act.

24             (ii) Article IV-A of the act.

25         (2) The amendment or addition of the following  
26         provisions shall apply to taxable years beginning after  
27         December 31, 2018:

28             (i) Section 401(3)1(a) and (b) and 2(a) and (e),  
29             (5), (8), (9), (10), (11), (12) and (13) of the act.

30             (ii) Section 403(a.1), (a.2), (a.3), (a.4) and (a.5)

1 of the act.

2 (iii) Section 404 of the act.

3 (iv) Section 3003.3(d), (d.1) and (d.2) of the act.

4 Section 7. This act shall take effect as follows:

5 (1) The following provisions shall take effect  
6 immediately:

7 (i) The amendment of section 402(b) of the act.

8 (ii) The addition of Article IV-A of the act.

9 (iii) Section 6 of this act.

10 (iv) This section.

11 (2) The remainder of this act shall take effect January  
12 1, 2020.