

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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INTRODUCED BY CONKLIN, V. BROWN, BULLOCK, D. COSTA, DEAN,
DeLUCA, DRISCOLL, FREEMAN, McNEILL, MULLERY, NEILSON, SOLOMON
AND THOMAS, AUGUST 16, 2017

REFERRED TO COMMITTEE ON FINANCE, AUGUST 16, 2017

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 reports and payment and for consolidated
12 reports; and, in general provisions, further providing for
13 underpayment of estimated tax.

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

16 Section 1. Section 401(3)1(a) and (b) and 2(a) and (5) of
17 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
18 Code of 1971, are amended, clause (3)2 is amended by adding a
19 phrase and the section is amended by adding clauses to read:

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

1 * * *

2 (3) "Taxable income." 1. (a) In case the entire business
3 of the corporation is transacted within this Commonwealth, for
4 any taxable year which begins on or after January 1, 1971,
5 taxable income for the calendar year or fiscal year as returned
6 to and ascertained by the Federal Government, or in the case of
7 a corporation participating in the filing of consolidated
8 returns to the Federal Government or that is not required to
9 file a return with the Federal Government, the taxable income
10 which would have been returned to and ascertained by the Federal
11 Government if separate returns had been made to the Federal
12 Government for the current and prior taxable years, subject,
13 however, to any correction thereof, for fraud, evasion, or error
14 as finally ascertained by the Federal Government.

15 (b) Additional deductions shall be allowed from taxable
16 income on account of any dividends received from any other
17 corporation but only to the extent that such dividends are
18 included in taxable income as returned to and ascertained by the
19 Federal Government. For tax years beginning on or after January
20 1, 1991, additional deductions shall only be allowed for amounts
21 included, under section 78 of the Internal Revenue Code of 1986
22 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned
23 to and ascertained by the Federal Government and for the amount
24 of any dividends received from a foreign corporation included in
25 taxable income to the extent such dividends would be deductible
26 in arriving at Federal taxable income if received from a
27 domestic corporation. For taxable years beginning on or after
28 January 1, 2018, if not otherwise allowed as a deduction, an
29 additional deduction is allowed for all dividends paid by one to
30 another of the included corporations of a unitary business to

the extent those dividends are included in business income of a corporation that is required to determine its business income under paragraph (1) of phrase (e) of subclause 2.

* * *

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

(a) Division of Income.

(1) As used in this definition, unless the context otherwise requires:

(A) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if either the acquisition, the management or the disposition of the property constitutes an integral part of the taxpayer's regular trade or business operations. The term includes all income which is apportionable under the Constitution of the United States.

(B) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(C) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(D) "Nonbusiness income" means all income other than

business income. The term does not include income which is apportionable under the Constitution of the United States.

(E) "Sales" means all gross receipts of the taxpayer not allocated under this definition other than dividends received, interest on United States, state or political subdivision obligations and gross receipts heretofore or hereafter received from the sale, redemption, maturity or exchange of securities, except those held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

(F) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(G) "This state" means the Commonwealth of Pennsylvania or, in the case of application of this definition to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

(2) Any taxpayer having income from business activity which is taxable both within and without this State other than activity as a corporation whose allocation and apportionment of income is specifically provided for in section 401(3)2(b)(c) and (d) shall allocate and apportion taxable income as provided in this definition.

(3) For purposes of allocation and apportionment of income under this definition, a taxpayer is taxable in another state if in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax or if that state has jurisdiction to subject the taxpayer to a net income

1 tax regardless of whether, in fact, the state does or does not.

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

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

8 (B) Net rents and royalties from tangible personal property
9 are allocable to this State if and to the extent that the
10 property is utilized in this State, or in their entirety if the
11 taxpayer's commercial domicile is in this State and the taxpayer
12 is not organized under the laws of or taxable in the state in
13 which the property is utilized.

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

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

28 (B) Gains and losses from sales or other disposition of
29 tangible personal property are allocable to this State if the
30 property had a situs in this State at the time of the sale, or

1 the taxpayer's commercial domicile is in this State and the
2 taxpayer is not taxable in the state in which the property had a
3 situs.

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

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

9 (8) (A) Patent and copyright royalties are allocable to
10 this State if and to the extent that the patent or copyright is
11 utilized by the payer in this State, or if and to the extent
12 that the patent copyright is utilized by the payer in a state in
13 which the taxpayer is not taxable and the taxpayer's commercial
14 domicile is in this State.

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

23 (C) A copyright is utilized in a state to the extent that
24 printing or other publication originates in the state. If the
25 basis of receipts from copyright royalties does not permit
26 allocation to states or if the accounting procedures do not
27 reflect states of utilization, the copyright is utilized in the
28 state in which the taxpayer's commercial domicile is located.

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

30 (i) For taxable years beginning before January 1, 2007, all

1 business income shall be apportioned to this State by
2 multiplying the income by a fraction, the numerator of which is
3 the property factor plus the payroll factor plus three times the
4 sales factor and the denominator of which is five.

5 (ii) For taxable years beginning after December 31, 2006,
6 all business income shall be apportioned to this State by
7 multiplying the income by a fraction, the numerator of which is
8 the sum of fifteen times the property factor, fifteen times the
9 payroll factor and seventy times the sales factor and the
10 denominator of which is one hundred.

11 (iii) For taxable years beginning after December 31, 2008,
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 eight and a half times the property factor, eight and
15 a half times the payroll factor and eighty-three times the sales
16 factor and the denominator of which is one hundred.

17 (iv) For taxable years beginning after December 31, 2009,
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 five times the property factor, five times the
21 payroll factor and ninety times the sales factor and the
22 denominator of which is one hundred.

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

26 (B) For purposes of apportionment of the capital stock -
27 franchise tax as provided in section 602 of Article VI of this
28 act, the apportionment fraction shall be the property factor
29 plus the payroll factor plus the sales factor as the numerator,
30 and the denominator shall be three.

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

12 (11) Property owned by the taxpayer is valued at its
13 original cost. Property rented by the taxpayer is valued at
14 eight times the net annual rental rate. Net annual rental rate
15 is the annual rental rate paid by the taxpayer less any annual
16 rental rate received by the taxpayer from subrentals.

17 (12) The average value of property shall be determined by
18 averaging the values at the beginning and ending of the tax
19 period but the tax administrator may require the averaging of
20 monthly values during the tax period if reasonably required to
21 reflect properly the average value of the taxpayer's property.

22 (13) The payroll factor is a fraction, the numerator of
23 which is the total amount paid in this State during the tax
24 period by the taxpayer for compensation and the denominator of
25 which is the total compensation paid everywhere during the tax
26 period.

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

28 (A) The individual's service is performed entirely within
29 the State;

30 (B) The individual's service is performed both within and

1 without this State, but the service performed without the State
2 is incidental to the individual's service within this State; or

3 (C) Some of the service is performed in this State and the
4 base of operations or if there is no base of operations, the
5 place from which the service is directed or controlled is in
6 this State, or the base of operations or the place from which
7 the service is directed or controlled is not in any state in
8 which some part of the service is performed, but the
9 individual's residence is in this State.

10 (15) The sales factor is a fraction, the numerator of which
11 is the total sales of the taxpayer in this State during the tax
12 period, and the denominator of which is the total sales of the
13 taxpayer everywhere during the tax period.

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

18 (16.1) (A) Sales from the sale, lease, rental or other use
19 of real property, if the real property is located in this State.
20 If a single parcel of real property is located both in and
21 outside this State, the sale is in this State based upon the
22 percentage of original cost of the real property located in this
23 State.

24 (B) (I) Sales from the rental, lease or licensing of
25 tangible personal property, if the customer first obtained
26 possession of the tangible personal property in this State.

27 (II) If the tangible personal property is subsequently taken
28 out of this State, the taxpayer may use a reasonably determined
29 estimate of usage in this State to determine the extent of sale
30 in this State.

1 (C) (I) Sales from the sale of service, if the service is
2 delivered to a location in this State. If the service is
3 delivered both to a location in and outside this State, the sale
4 is in this State based upon the percentage of total value of the
5 service delivered to a location in this State.

6 (II) If the state or states of assignment under unit (I)
7 cannot be determined for a customer who is an individual that is
8 not a sole proprietor, a service is deemed to be delivered at
9 the customer's billing address.

10 (III) If the state or states of assignment under unit (I)
11 cannot be determined for a customer, except for a customer under
12 unit (II), a service is deemed to be delivered at the location
13 from which the services were ordered in the customer's regular
14 course of operations. If the location from which the services
15 were ordered in the customer's regular course of operations
16 cannot be determined, a service is deemed to be delivered at the
17 customer's billing address.

18 (17) Sales, other than sales under paragraphs (16) [and],
19 (16.1), (17.1) and (17.2) are in this State if:

20 (A) The income-producing activity is performed in this
21 State; or

22 (B) The income-producing activity is performed both in and
23 outside this State and a greater proportion of the income-
24 producing activity is performed in this State than in any other
25 state, based on costs of performance.

26 (17.1) Sales of services are in this State if sales are
27 derived from customers within this State. If part of the sales
28 with respect to a specific contract or other agreement to
29 perform services is derived from customers from within this
30 State, sales are in this State in proportion to the sales

1 derived from customers within this State to total sales with
2 respect to that contract or agreement.

3 (17.2) In order to determine sales in this State of any
4 railroad, truck, bus, airline, pipeline, natural gas or water
5 transportation company that is required to determine its
6 business income under paragraph (1) of phrase (e) of this
7 subclause the company must convert the relevant fraction
8 provided under phrase (b), (c) or (d) of this subclause to gross
9 receipts. Sales in this State are the result of multiplying
10 total gross receipts from relevant transportation activities by
11 the decimal equivalent of the relevant fraction provided under
12 phrase (b), (c) or (d) of this subclause.

13 (18) If the allocation and apportionment provisions of this
14 definition do not fairly represent the extent of the taxpayer's
15 business activity in this State, the taxpayer may petition the
16 Secretary of Revenue or the Secretary of Revenue may require, in
17 respect to all or any part of the taxpayer's business activity:

18 (A) Separate accounting;

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

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

23 (D) The employment of any other method to effectuate an
24 equitable allocation and apportionment of the taxpayer's income.
25 In determining the fairness of any allocation or apportionment,
26 the Secretary of Revenue may give consideration to the
27 taxpayer's previous reporting and its consistency with the
28 requested relief.

29 * * *

30 (f) Corporations That are Members of a Unitary Business.

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

18 (i) a corporation subject to taxation under Article VII,
19 VIII, IX or XV;

20 (ii) a corporation specified in the definition of
21 "institution" in section 701.5 that would be subject to taxation
22 under Article VII if it was located, as defined in section
23 701.5, in this State;

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

27 (iv) a corporation specified as an insurance company,
28 association or exchange in Article IX that would be subject to
29 taxation under Article IX if its insurance business was
30 transacted in this State;

1 (v) a corporation specified in the definition of
2 "institution" in section 1501 that would be subject to taxation
3 under Article XV if it was located, as defined in section 1501,
4 in this State; or

5 (vi) a corporation that is a small corporation, as defined
6 in section 301(s.2), or a qualified Subchapter S subsidiary, as
7 defined in section 301(o.3).

8 (2) Notwithstanding any contrary provisions of this article,
9 all corporations that are required to compute business income
10 under paragraph (1) are entitled to apportion the business
11 income when one corporation of the same unitary business is
12 entitled to apportion the business income. Notwithstanding any
13 contrary provisions of this article, for taxable years that
14 begin on or after January 1, 2018, the denominator of the
15 apportionment fraction of a corporation that is required to
16 compute its business income under paragraph (1) shall be
17 computed on a combined basis for all included corporations of
18 the unitary business. Gross receipts from an intercompany
19 transaction between included corporations of a unitary business
20 shall be eliminated unless the gross receipts are derived from
21 transactions that are deferred in the manner set forth under 26
22 CFR 1.1502-13 in computing the numerator and denominator of the
23 apportionment fraction of a corporation that is required to
24 compute its business income under paragraph (1). Gross receipts
25 from transactions that had been deferred in the manner provided
26 under 26 CFR 1.1502-13 are included in a corporation's
27 apportionment fraction during the same taxable year that it
28 realizes business income that had been deferred due to the
29 transaction. The apportionment fraction of the following
30 corporations shall not be included in the determination of the

combined apportionment fraction:

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

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

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

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

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

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

(3) A corporation that is required to compute its business
income under paragraph (1) shall apportion the combined business
income by multiplying the combined business income by a fraction
which is the combined apportionment fraction provided under
paragraph (2).

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

1 (5) Each corporation that is a member of a unitary business
2 that consists of two or more corporations shall determine its
3 tax liability based on its apportioned share of the combined
4 business income of the unitary business plus its nonbusiness
5 income or loss allocated to this State, minus its net loss
6 deduction.

7 (6) If any provision of this phrase operates so that an
8 amount is added to or deducted from taxable income for a taxable
9 year for a corporation of a unitary business that previously had
10 been added to or deducted from taxable income of a corporation
11 of the same unitary business, an appropriate adjustment shall be
12 made for the taxable year in order to prevent double taxation or
13 double deduction. If this adjustment is not made by the
14 appropriate corporation of the unitary business, the Secretary
15 of Revenue is authorized to make this adjustment.

16 (7) The Secretary of Revenue shall have the authority and
17 responsibility to make adjustments to insure that a corporation
18 does not incur an unfair penalty nor realize an unfair benefit
19 because it is required to compute its business income under
20 paragraph (1). Fairness shall be measured by whether the
21 corporation's income allocated and apportioned to this State
22 fairly reflects the corporation's share of the unitary business
23 conducted in this State in the taxable year.

24 * * *

25 (5) "Taxable year." [The] 1. Except as provided in
26 subclause 2, the taxable year which the corporation, or any
27 consolidated group with which the corporation participates in
28 the filing of consolidated returns, actually uses in reporting
29 taxable income to the Federal Government[.], or which the
30 corporation would have used in reporting taxable income to the

Federal Government had it been required to report its taxable
income to the Federal Government. With regard to the tax imposed
by Article IV of this act (relating to the Corporate Net Income
Tax), the terms "annual year," "fiscal year," "annual or fiscal
year," "tax year" and "tax period" shall be the same as the
corporation's taxable year, as defined in this [paragraph.]
subclause or subclause 2.

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

* * *

(8) "Tax haven." A jurisdiction that, during the tax year
in question, has no or nominal effective tax on the relevant
income and meets any of the following:

(i) Has laws or practices that prevent effective exchange of
information for tax purposes with other governments on taxpayers
benefiting from the tax regime.

(ii) Has a tax regime which lacks transparency. A tax regime
lacks transparency if the details of legislative, legal or
administrative provisions are not open and apparent or are not
consistently applied among similarly situated taxpayers, or if
the information needed by tax authorities to determine a
taxpayer's correct tax liability, including accounting records
and underlying documentation, is not adequately available.

(iii) Facilitates the establishment of foreign-owned

1 entities without the need for a local substantive presence or
2 prohibits these entities from having a commercial impact on the
3 local economy.

4 (iv) Explicitly or implicitly excludes the jurisdiction's
5 resident taxpayers from taking advantage of the tax regime's
6 benefits or prohibits enterprises that benefit from the regime
7 operating in the jurisdiction's domestic market.

8 (v) Has created a tax regime which is favorable for tax
9 avoidance, based upon an overall assessment of relevant factors,
10 including whether the jurisdiction has a significant untaxed
11 off-shore financial and other services sector relative to its
12 overall economy.

13 (9) "Unitary business." A single economic enterprise that
14 is made up of separate parts of a single corporation, of a
15 commonly controlled group of corporations, or both, that are
16 sufficiently interdependent, integrated and interrelated through
17 their activities so as to provide a synergy and mutual benefit
18 that produces a sharing or exchange of value among them and a
19 significant flow of value to the separate parts. A unitary
20 business shall include only those parts and corporations which
21 may be included as a unitary business under the Constitution of
22 the United States.

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

26 1. The business income and apportionment factor of any
27 member incorporated in the United States or formed under the
28 laws of any state of the United States, the District of
29 Columbia, any territory or possession of the United States or
30 the Commonwealth of Puerto Rico.

1 2. The business income and apportionment factor of a member,
2 regardless of the place incorporated or formed, if the average
3 of its property, payroll and sales factors within the United
4 States is twenty per cent or more.

5 3. The business income and apportionment factor of a member
6 which is a domestic international sales corporation as described
7 in sections 991, 992, 993 and 994 of the Internal Revenue Code
8 of 1986 (Public Law 99-514, 26 U.S.C. §§ 991, 992, 993 and 994);
9 a foreign sales corporation as described in former sections 921,
10 922, 923, 924, 925, 926 and 927 of the Internal Revenue Code of
11 1986 (formerly 26 U.S.C. §§ 921, 922, 923, 924, 925, 926 and
12 927); or a member which is an export trade corporation, as
13 described in sections 970 and 971 of the Internal Revenue Code
14 of 1986 (26 U.S.C. §§ 970 and 971).

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

20 5. A member that is a "controlled foreign corporation" as
21 defined in section 957 of the Internal Revenue Code of 1986 (26
22 U.S.C. § 957), to the extent the business income of that member
23 is income defined in section 952 of the Internal Revenue Code of
24 1986 (26 U.S.C. § 952), Subpart F income, not excluding lower-
25 tier subsidiaries' distributions of the income which were
26 previously taxed, determined without regard to Federal treaties,
27 and the apportionment factor related to that income; any item of
28 income received by a controlled foreign corporation and the
29 apportionment factor related to the income shall be excluded if
30 the corporation establishes to the satisfaction of the Secretary

of Revenue that the income was subject to an effective rate of
income tax imposed by a foreign country greater than ninety per
cent of the maximum rate of tax specified in section 11 of the
Internal Revenue Code of 1986 (26 U.S.C. § 11). The effective
rate of income tax determination shall be based upon the
methodology provided under 26 CFR 1.954-1 (relating to foreign
base company income).

6. The business income and apportionment factor of any
member that is not described in subclause 1, 2, 3, 4 and 5 and
that is doing business in a tax haven. The business income and
apportionment factor of a corporation doing business in a tax
haven shall be excluded if the corporation establishes to the
satisfaction of the Secretary of Revenue that its income was
subject to an effective rate of income tax imposed by a country
greater than ninety per cent of the maximum rate of tax
specified in section 11 of the Internal Revenue Code of 1986 (26
U.S.C. § 11).

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

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

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

Section 2. Section 403 of the act is amended by adding
subsections to read:

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

1 (a.1) (1) Each corporation subject to tax under this
2 article shall file an annual report in accordance with this
3 section. Each corporation that is a member of a unitary business
4 that consists of two or more corporations, unless excluded by
5 the provisions of this article, shall file as part of a combined
6 annual report. The corporations of the unitary business shall
7 designate one member that is subject to tax under this article
8 to file the combined annual report and to act as agent on behalf
9 of all other corporations that are members of the unitary
10 business. Each corporation that is a member of a unitary
11 business shall be responsible for its tax liability under this
12 article.

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

18 (3) The designated member shall transmit to the department
19 upon a form prescribed by the department, an annual combined
20 report under oath or affirmation of its president, vice
21 president or other principal officer, and of its treasurer or
22 assistant treasurer. The report shall provide the following:

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

24 (ii) All necessary data, both in the aggregate and for each
25 corporation of the unitary business, that provides the
26 determination of tax liability for each corporation of the
27 unitary business.

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

29 (a.2) (1) Activities that evidence a significant flow of
30 value among commonly controlled corporations shall include the

1 following:

2 (i) Assisting in the acquisition of equipment.

3 (ii) Assisting with filling personnel needs.

4 (iii) Lending funds or guaranteeing loans.

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

6 (v) Providing technical assistance.

7 (vi) Supervising.

8 (vii) Providing general operational guidance.

9 (viii) Providing overall operational strategic advice.

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

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

14 (a.3) (1) With respect to a commonly controlled group of
15 corporations, the presence of any of these factors creates a
16 presumption of a unitary business:

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

18 (ii) Corporations engaged in different steps in a vertically
19 structured enterprise.

20 (iii) Strong centralized management of corporations.

21 (2) A corporation newly formed by a corporation that is a
22 member of a unitary business is rebuttably presumed to be a
23 member of the unitary business.

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

27 (4) A corporation that permits one or more other
28 corporations of a unitary business to substantially use its
29 patents, trademarks, service marks, logo-types, trade secrets,
30 copyrights or other proprietary assets or that is principally

1 engaged in loaning money to one or more other corporations of a
2 unitary business is rebuttably presumed to be a member of the
3 unitary business. This presumption only applies to a commonly
4 controlled group of corporations.

5 (a.4) As far as applicable to a specific unitary business,
6 unless there is a revision of applicable State law or unless a
7 corporation is not included under the provisions of this
8 article, there is a rebuttable presumption for all tax years
9 that begin in years 2017 and 2018 that a unitary business of two
10 or more corporations includes at least all corporations that are
11 part of a unitary business under the law of any state of the
12 United States in which the corporation files a tax report or tax
13 return of combined net income for the same tax year.

14 (a.5) Unless an election is made to use a worldwide basis of
15 accounting, a corporation that is a member of a unitary business
16 of two or more corporations must determine its business income
17 and apportionment factor upon a water's-edge basis. This basis
18 shall apply to all corporations of the unitary business. If an
19 election is made to use a worldwide basis of accounting, all
20 corporations of the unitary business must make the election,
21 upon a form, prescribed, prepared and furnished by the
22 department. This election shall bind all corporations of the
23 unitary business for the period of time that the election
24 remains in effect. An initial election is binding for a period
25 of seven years. Subsequent elections shall be binding for a
26 period of five years.

27 * * *

28 Section 3. Section 404 of the act is amended to read:

29 Section 404. Consolidated Reports.--The department shall not
30 permit any corporation owning or controlling, directly or

1 indirectly, any of the voting capital stock of another
2 corporation or of other corporations, subject to the provisions
3 of this article, to make a consolidated report[, showing the
4 combined net income].

5 Section 4. Section 3003.3(d) of the act is amended and the
6 section is amended by adding subsections to read:

7 Section 3003.3. Underpayment of Estimated Tax.--* * *

8 (d) Notwithstanding the provisions of the preceding
9 subsections, other than as provided under subsection (d.1),
10 interest with respect to any underpayment of any installment of
11 estimated tax shall not be imposed if the total amount of all
12 payments of estimated tax made on or before the last date
13 prescribed for the payment of such installment equals or exceeds
14 the amount which would have been required to be paid on or
15 before such date if the estimated tax were an amount equal to
16 the tax computed at the rates applicable to the taxable year,
17 including any minimum tax imposed, but otherwise on the basis of
18 the facts shown on the report of the taxpayer for, and the law
19 applicable to, the safe harbor base year, adjusted for any
20 changes to sections 401, 601, 602 and 1101 enacted for the
21 taxable year, if a report showing a liability for tax was filed
22 by the taxpayer for the safe harbor base year. If the total
23 amount of all payments of estimated tax made on or before the
24 last date prescribed for the payment of such installment does
25 not equal or exceed the amount required to be paid per the
26 preceding sentence, but such amount is paid after the date the
27 installment was required to be paid, then the period of
28 underpayment shall run from the date the installment was
29 required to be paid to the date the amount required to be paid
30 per the preceding sentence is paid. Provided, that if the total

1 tax for the safe harbor base year exceeds the tax shown on such
2 report by ten per cent or more, the total tax adjusted to
3 reflect the current tax rate shall be used for purposes of this
4 subsection. In the event that the total tax for the safe harbor
5 base year exceeds the tax shown on the report by ten per cent or
6 more, interest resulting from the utilization of such total tax
7 in the application of the provisions of this subsection shall
8 not be imposed if, within forty-five days of the mailing date of
9 each assessment, payments are made such that the total amount of
10 all payments of estimated tax equals or exceeds the amount which
11 would have been required to be paid on or before such date if
12 the estimated tax were an amount equal to the total tax adjusted
13 to reflect the current tax rate. In any case in which the
14 taxable year for which an underpayment of estimated tax may
15 exist is a short taxable year, in determining the tax shown on
16 the report or the total tax for the safe harbor base year, the
17 tax will be reduced by multiplying it by the ratio of the number
18 of installment payments made in the short taxable year to the
19 number of installment payments required to be made for the full
20 taxable year.

21 (d.1) (1) Notwithstanding subsections (a), (b) and (c),
22 interest with respect to an underpayment of an installment of
23 estimated corporate net income tax for a tax year that begins in
24 year 2017 or 2018 shall not be imposed if the total amount of
25 all payments of estimated corporate net income tax made on or
26 before the last date prescribed for the payment of the
27 installment equals or exceeds the amount which would have been
28 required to be paid on or before that date if the estimated tax
29 were an amount equal to the tax shown on the report of the
30 taxpayer for the safe harbor base year, if a report showing a

1 liability for tax was filed by the taxpayer for the safe harbor
2 base year.

3 (2) If the total amount of all payments of estimated tax
4 made on or before the last date prescribed for the payment of
5 the installment does not equal or exceed the amount required to
6 be paid under paragraph (1), but the amount is paid after the
7 date the installment was required to be paid, the period of
8 underpayment shall run from the date the installment was
9 required to be paid to the date the amount required to be paid
10 under paragraph (1) is paid.

11 (3) If the total tax for the safe harbor base year exceeds
12 the tax shown on the report by ten per cent or more, the total
13 tax shall be used for purposes of this subsection. If the total
14 tax for the safe harbor base year exceeds the tax shown on the
15 report by ten per cent or more, interest resulting from the
16 utilization of the total tax in the application of the
17 provisions of this subsection shall not be imposed if, within
18 forty-five days of the mailing date of a notice from the
19 department increasing the total tax, payments are made such that
20 the total amount of all payments of estimated tax equals or
21 exceeds the amount which would have been required to be paid on
22 or before the date if the estimated tax were an amount equal to
23 the total tax.

24 (4) If the taxable year for which an underpayment of
25 estimated tax may exist is a short taxable year, in determining
26 the tax shown on the report or the total tax for the safe harbor
27 base year, the tax shall be reduced by multiplying it by the
28 ratio of the number of installment payments made in the short
29 taxable year to the number of installment payments required to
30 be made for the full taxable year.

1 (d.2) (1) If there is a substantial underpayment, as
2 defined in subsection (a), of an installment of estimated
3 corporate net income tax or estimated capital stock and
4 franchise tax for a taxable year beginning in 2017 or 2018,
5 there shall be imposed additional interest in an amount
6 determined at one hundred twenty per cent of the annual rate as
7 provided by law upon the entire underpayment for the period of
8 the substantial underpayment.

9 (2) The additional interest imposed under this subsection
10 shall be in addition to any other interest imposed on
11 underpayments under this section.

12 Section 5. The amendment or addition of the following
13 provisions shall apply to taxable years beginning after December
14 31, 2017:

15 (1) Section 401(3)1(a) and (b) and 2(a) and (5), (8),
16 (9), (10), (11), (12) and (13) of the act.

17 (2) Section 403(a.1), (a.2), (a.3), (a.4) and (a.5) of
18 the act.

19 (3) Section 404 of the act.

20 (4) Section 3003.3(d), (d.1) and (d.2) of the act.

21 Section 6. This act shall take effect immediately.