

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 164 Session of 2017

INTRODUCED BY TARTAGLIONE, LEACH, FONTANA, SCHWANK, COSTA, BREWSTER, YUDICHAK, BLAKE, HAYWOOD, FARNESE AND HUGHES, JANUARY 20, 2017

REFERRED TO FINANCE, JANUARY 20, 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 imposition of tax, for reports and
 12 payment of tax and for consolidated reports; and, in general
 13 provisions, further providing for underpayment of estimated
 14 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, are amended, clause (3)2 is amended by adding a
 20 phrase and the section is amended by adding clauses to read:

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

1 clearly indicates a different meaning:

2 * * *

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

16 (b) Additional deductions shall be allowed from taxable
17 income on account of any dividends received from any other
18 corporation but only to the extent that such dividends are
19 included in taxable income as returned to and ascertained by the
20 Federal Government. For tax years beginning on or after January
21 1, 1991, additional deductions shall only be allowed for amounts
22 included, under section 78 of the Internal Revenue Code of 1986
23 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned
24 to and ascertained by the Federal Government and for the amount
25 of any dividends received from a foreign corporation included in
26 taxable income to the extent such dividends would be deductible
27 in arriving at Federal taxable income if received from a
28 domestic corporation. For taxable years beginning on or after
29 January 1, 2017, if not otherwise allowed as a deduction, an
30 additional deduction is allowed for all dividends paid by one to

1 another of the included corporations of a unitary business to
2 the extent those dividends are included in business income of a
3 corporation that is required to determine its business income
4 pursuant to paragraph (1) of phrase (e) of subclause (2).

5 * * *

6 2. In case the entire business of any corporation, other
7 than a corporation engaged in doing business as a regulated
8 investment company as defined by the Internal Revenue Code of
9 1986, is not transacted within this Commonwealth, the tax
10 imposed by this article shall be based upon such portion of the
11 taxable income of such corporation for the fiscal or calendar
12 year, as defined in subclause 1 hereof, and may be determined as
13 follows:

14 (a) Division of Income.

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

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

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

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

1 (D) "Nonbusiness income" means all income other than
2 business income. The term does not include income which is
3 apportionable under the Constitution of the United States.

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

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

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

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

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

1 state has jurisdiction to subject the taxpayer to a net income
2 tax regardless of whether, in fact, the state does or does not.

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

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

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

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

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

29 (B) Gains and losses from sales or other disposition of
30 tangible personal property are allocable to this State if the

1 property had a situs in this State at the time of the sale, or
2 the taxpayer's commercial domicile is in this State and the
3 taxpayer is not taxable in the state in which the property had a
4 situs.

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

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

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

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

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

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

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

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

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

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

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

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

1 and the denominator shall be three.

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

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

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

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

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

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

1 (B) The individual's service is performed both within and
2 without this State, but the service performed without the State
3 is incidental to the individual's service within this State; or

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

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

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

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

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

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

1 in this State.

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

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

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

19 (17) Sales, other than sales under paragraphs (16) [and],
20 (16.1), (17.1) and (17.2), are in this State if:

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

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

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

1 State, sales are in this State in proportion to the sales
2 derived from customers within this State to total sales with
3 respect to that contract or agreement.

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

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

19 (A) Separate accounting;

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

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

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

30 * * *

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

2 (1) Notwithstanding any contrary provisions of this article,
3 for taxable years that begin on or after January 1, 2017,
4 business income of a corporation that is a member of a unitary
5 business that consists of two or more corporations, at least one
6 of which does not transact its entire business in this State, is
7 determined by combining the business income of either all
8 corporations, other than as provided under this paragraph, that
9 are water's-edge basis members or all corporations, other than
10 as provided under this paragraph, that are worldwide members of
11 the unitary business. Business income from an intercompany
12 transaction between included corporations of a unitary business
13 shall be deferred in the manner set forth under 26 CFR 1.1502-13
14 (relating to intercompany transactions) in determining the
15 business income of a corporation that is a member of that
16 unitary business. Business income of the following corporations
17 is not included in the determination of combined business
18 income:

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

21 (ii) any corporation specified in the definition of
22 "institution" in section 701.5 that would be subject to taxation
23 under Article VII if it was doing business in this Commonwealth
24 as defined in section 701.5;

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

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

1 transacted in this State;

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

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

9 (2) Notwithstanding any contrary provisions of this article,
10 all corporations that are required to compute business income
11 under paragraph (1) are entitled to apportion the business
12 income when one corporation of the same unitary business is
13 entitled to apportion the business income. Notwithstanding any
14 contrary provisions of this article, for taxable years that
15 begin on or after January 1, 2017, the denominator of the
16 apportionment fraction of a corporation that is required to
17 compute its business income under paragraph (1) shall be
18 computed on a combined basis for all included corporations of
19 the unitary business. Gross receipts from an intercompany
20 transaction between included corporations of a unitary business
21 shall be eliminated unless the gross receipts are derived from
22 transactions that are deferred in the manner set forth under 26
23 CFR 1.1502-13 in computing the numerator and denominator of the
24 apportionment fraction of a corporation that is required to
25 compute its business income under paragraph (1). Gross receipts
26 from transactions that had been deferred in the manner set forth
27 under 26 CFR 1.1502-13 are included in a corporation's
28 apportionment fraction during the same taxable year that it
29 realizes business income that had been deferred due to the
30 transaction. The apportionment fraction of the following

1 corporations shall not be included in the determination of the
2 combined apportionment fraction:

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

5 (ii) any corporation specified in the definition of
6 "institution" in section 701.5 that would be subject to taxation
7 under Article VII if it was doing business in this Commonwealth
8 as defined in section 701.5;

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

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

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

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

23 (3) A corporation that is required to compute its business
24 income under paragraph (1) shall apportion the combined business
25 income by multiplying the combined business income by a fraction
26 which is the combined apportionment fraction set forth under
27 paragraph (2).

28 (4) Nonbusiness income of a corporation that is required to
29 compute business income under paragraph (1) shall be allocated
30 as provided in paragraphs (5), (6), (7) and (8) of phrase (a) of

1 subclause 2 of the definition of "taxable income."

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

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

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

25 * * *

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

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

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

17 * * *

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

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

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

1 (iii) Facilitates the establishment of foreign-owned
2 entities without the need for a local substantive presence or
3 prohibits these entities from having any commercial impact on
4 the local economy.

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

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

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

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

27 (i) The business income and apportionment factor of any
28 member incorporated in the United States or formed under the
29 laws of any state of the United States, the District of
30 Columbia, any territory or possession of the United States or

1 the Commonwealth of Puerto Rico.

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

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

16 (iv) Any member not described in subclauses (i), (ii) and
17 (iii) shall include the portion of its business income derived
18 from or attributable to sources within the United States, as
19 determined under the Internal Revenue Code of 1986 without
20 regard to Federal treaties, and its apportionment factor related
21 thereto.

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

1 apportionment factor related to the income shall be excluded if
2 the corporation establishes to the satisfaction of the Secretary
3 of Revenue that the income was subject to an effective rate of
4 income tax imposed by a foreign country greater than ninety per
5 cent of the maximum rate of tax specified in section 11 of the
6 Internal Revenue Code of 1986 (26 U.S.C. § 11). The effective
7 rate of income tax determination shall be based upon the
8 methodology set forth under 26 CFR 1.954-1 (relating to foreign
9 base company income).

10 (vi) The business income and apportionment factor of any
11 member that is not described in subclauses (i), (ii), (iii),
12 (iv) and (v) and that is doing business in a tax haven. The
13 business income and apportionment factor of a corporation doing
14 business in a tax haven shall be excluded if the corporation
15 establishes to the satisfaction of the Secretary of Revenue that
16 its income was subject to an effective rate of income tax
17 imposed by a country greater than ninety per cent of the maximum
18 rate of tax specified in section 11 of the Internal Revenue Code
19 of 1986 (26 U.S.C. § 11).

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

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

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

30 Section 2. Section 402(b) of the act is amended to read:

1 Section 402. Imposition of Tax.--* * *

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

6 Taxable Year	Tax Rate
----------------	----------

7 [January 1, 1995, and each 8 taxable year thereafter	9.99%]
---	--------

9 <u>January 1, 1995, through taxable</u> 10 <u>years ending December 31,</u>	
--	--

11 <u>2015</u>	<u>9.99%</u>
----------------	--------------

12 <u>January 1, 2016, to December 31,</u>	
--	--

13 <u>2016</u>	<u>8.99%</u>
----------------	--------------

14 <u>January 1, 2017, to December 31,</u>	
--	--

15 <u>2017</u>	<u>7.99%</u>
----------------	--------------

16 <u>January 1, 2018, to December 31,</u>	
--	--

17 <u>2018, and each taxable year</u> 18 <u>thereafter</u>	<u>6.99%</u>
---	--------------

19 * * *

20 Section 3. Section 403 of the act is amended by adding
21 subsections to read:

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

23 (a.1) (1) Each corporation subject to tax under this
24 article shall file an annual report in accordance with this
25 section. Each corporation that is a member of a unitary business
26 that consists of two or more corporations, unless excluded by
27 the provisions of this article, shall file as part of a combined
28 annual report. The corporations of the unitary business shall
29 designate one member that is subject to tax under this article
30 to file the combined annual report and to act as agent on behalf

1 of all other corporations that are members of the unitary
2 business. Each corporation that is a member of a unitary
3 business shall be responsible for its tax liability under this
4 article.

5 (2) The oath or affirmation of the designated member's
6 president, vice president or other principal officer, and of its
7 treasurer or assistant treasurer shall constitute the oath or
8 affirmation of each corporation that is a member of that unitary
9 business.

10 (3) The designated member shall transmit to the department
11 upon a form prescribed by the department, an annual combined
12 report under oath or affirmation of its president, vice
13 president or other principal officer, and of its treasurer or
14 assistant treasurer. The report shall set forth:

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

16 (ii) All necessary data, both in the aggregate and for each
17 corporation of the unitary business, that sets forth the
18 determination of tax liability for each corporation of the
19 unitary business.

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

21 (a.2) (1) Activities that evidence a significant flow of
22 value among commonly controlled corporations shall include the
23 following:

24 (i) Assisting in the acquisition of equipment.

25 (ii) Assisting with filling personnel needs.

26 (iii) Lending funds or guaranteeing loans.

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

28 (v) Providing technical assistance.

29 (vi) Supervising.

30 (vii) Providing general operational guidance.

1 (viii) Providing overall operational strategic advice.

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

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

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

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

10 (ii) Corporations engaged in different steps in a vertically
11 structured enterprise.

12 (iii) Strong centralized management of corporations.

13 (2) A corporation newly formed by a corporation that is a
14 member of a unitary business is rebuttably presumed to be a
15 member of the unitary business.

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

19 (4) A corporation that permits one or more other
20 corporations of a unitary business to substantially use its
21 patents, trademarks, service marks, logo-types, trade secrets,
22 copyrights or other proprietary assets or that is principally
23 engaged in loaning money to one or more other corporations of a
24 unitary business is rebuttably presumed to be a member of the
25 unitary business. This presumption only applies to a commonly
26 controlled group of corporations.

27 (a.4) As far as applicable to a specific unitary business,
28 unless there is a revision of applicable State law or unless a
29 corporation is not included under the provisions of this
30 article, there is a rebuttable presumption for all tax years

1 that begin in years 2017 and 2018 that a unitary business of two
2 or more corporations includes at least all corporations that are
3 part of a unitary business under the law of any state of the
4 United States in which the corporation files a tax report or tax
5 return of combined net income for the same tax year.

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

19 * * *

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

21 Section 404. Consolidated Reports.--The department shall not
22 permit any corporation owning or controlling, directly or
23 indirectly, any of the voting capital stock of another
24 corporation or of other corporations, subject to the provisions
25 of this article, to make a consolidated report[, showing the
26 combined net income].

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

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

30 (d) Notwithstanding the provisions of the preceding

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

1 each assessment, payments are made such that the total amount of
2 all payments of estimated tax equals or exceeds the amount which
3 would have been required to be paid on or before such date if
4 the estimated tax were an amount equal to the total tax adjusted
5 to reflect the current tax rate. In any case in which the
6 taxable year for which an underpayment of estimated tax may
7 exist is a short taxable year, in determining the tax shown on
8 the report or the total tax for the safe harbor base year, the
9 tax will be reduced by multiplying it by the ratio of the number
10 of installment payments made in the short taxable year to the
11 number of installment payments required to be made for the full
12 taxable year.

13 (d.1) (1) Notwithstanding subsections (a), (b) and (c),
14 interest with respect to any underpayment of any installment of
15 estimated corporate net income tax for any tax year that begins
16 in year 2017 or 2018 shall not be imposed if the total amount of
17 all payments of estimated corporate net income tax made on or
18 before the last date prescribed for the payment of the
19 installment equals or exceeds the amount which would have been
20 required to be paid on or before that date if the estimated tax
21 were an amount equal to the tax shown on the report of the
22 taxpayer for the safe harbor base year, if a report showing a
23 liability for tax was filed by the taxpayer for the safe harbor
24 base year.

25 (2) If the total amount of all payments of estimated tax
26 made on or before the last date prescribed for the payment of
27 the installment does not equal or exceed the amount required to
28 be paid under paragraph (1), but the amount is paid after the
29 date the installment was required to be paid, the period of
30 underpayment shall run from the date the installment was

1 required to be paid to the date the amount required to be paid
2 under paragraph (1) is paid.

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

16 (4) If the taxable year for which an underpayment of
17 estimated tax may exist is a short taxable year, in determining
18 the tax shown on the report or the total tax for the safe harbor
19 base year, the tax shall be reduced by multiplying it by the
20 ratio of the number of installment payments made in the short
21 taxable year to the number of installment payments required to
22 be made for the full taxable year.

23 (d.2) (1) If there is a substantial underpayment, as
24 defined in subsection (a), of any installment of estimated
25 corporate net income tax or estimated capital stock/franchise
26 tax for any taxable year beginning in 2017 or 2018, there shall
27 be imposed additional interest in an amount determined at one
28 hundred twenty per cent of the annual rate as provided by law
29 upon the entire underpayment for the period of the substantial
30 underpayment.

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

4 Section 6. The amendment or addition of the following
5 provisions shall apply to taxable years beginning after December
6 31, 2016:

7 (1) Section 401(3)1(a) and (b) and 2(a) and (f), (5),
8 (11), (12), (13), (14), (15) and (16) of the act.

9 (2) Section 402(b) of the act.

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

12 (4) Section 404 of the act.

13 (5) Section 3003.3(d), (d.1) and (d.2) of the act.

14 Section 7. This act shall take effect immediately.