

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1320 Session of 2022

INTRODUCED BY AUMENT, MENSCH, YUDICHAK, PHILLIPS-HILL, PITTMAN AND STEFANO, SEPTEMBER 12, 2022

REFERRED TO FINANCE, SEPTEMBER 12, 2022

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 personal income tax, further providing for
 11 definitions, providing for elective tax imposed at pass-
 12 through entity level and further providing for taxability of
 13 partners, for income of a Pennsylvania S corporation and for
 14 income taxes imposed by other states.

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

17 Section 1. Section 301(w) of the act of March 4, 1971
 18 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended
 19 to read:

20 Section 301. Definitions.--Any reference in this article to
 21 the Internal Revenue Code of 1986 shall mean the Internal
 22 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.),
 23 as amended to January 1, 1997, unless the reference contains the
 24 phrase "as amended" and refers to no other date, in which case

1 the reference shall be to the Internal Revenue Code of 1986 as
2 it exists as of the time of application of this article. The
3 following words, terms and phrases when used in this article
4 shall have the meaning ascribed to them in this section except
5 where the context clearly indicates a different meaning:

6 * * *

7 (w) "Taxpayer" means any individual, estate or trust subject
8 to the tax imposed by this article, any partnership having a
9 partner who is a taxpayer under this act, any Pennsylvania S
10 corporation having a shareholder who is a taxpayer under this
11 act [and], any person required to withhold tax under this
12 article and, unless otherwise provided, a pass-through entity
13 that elects to pay the tax imposed under section 302.3.

14 Section 2. The act is amended by adding a section to read:

15 Section 302.3. Elective Tax Imposed at Pass-Through Entity
16 Level.--(a) Notwithstanding any other provision of this
17 article, a pass-through entity may elect, on an annual basis, to
18 have the tax imposed under this article applied to the income of
19 the pass-through entity. The following shall apply:

20 (1) An electing pass-through entity shall be subject to and
21 shall pay a tax imposed at the rate provided in section 302(b)
22 on:

23 (i) Each resident taxable owner's share of each class of
24 income and gain enumerated in section 303 for the taxable year.

25 (ii) Each nonresident taxable owner's share of each class of
26 income and gain enumerated in section 303 from sources within
27 this Commonwealth for the taxable year.

28 (2) An electing resident Pennsylvania S corporation shall be
29 subject to and shall pay a tax imposed at the rate provided in
30 section 302(b) on each resident taxable owner's share of each

1 class of income and gain enumerated in section 303 for the
2 taxable year.

3 (3) An electing standard Pennsylvania S corporation shall be
4 subject to and shall pay a tax imposed at the rate provided in
5 section 302(b) on each taxable owner's share of each class of
6 income and gain enumerated in section 303 from sources within
7 this Commonwealth for the taxable year.

8 (4) An entity that is disregarded for tax purposes under
9 this article shall be disregarded for the purposes of this
10 section.

11 (5) In determining its tax under this section, a pass-
12 through entity that owns a direct or indirect ownership interest
13 in one or more pass-through entities shall include its share of
14 each class of income enumerated in section 303 received from
15 those pass-through entities. The pass-through entity that
16 generates an item of income, gain or loss shall determine its
17 classification and whether that item of income, gain or loss
18 constitutes income or loss from sources within this
19 Commonwealth.

20 (6) Guaranteed payments made to a partner in a partnership
21 shall be treated as additional income allocated to the partner.
22 With respect to a nonresident taxable owner, only guaranteed
23 payments that constitute income from sources within this
24 Commonwealth shall be subject to the tax under this section.

25 (7) In determining the tax due under this section, a pass-
26 through entity shall not be permitted to use any tax credits
27 otherwise available to the pass-through entity except a credit
28 for estimated taxes paid for the current taxable year under this
29 section or an overpayment of a prior-year tax paid under this
30 section.

1 (b) (1) Any election described under subsection (a) shall
2 be made by an individual with authority to bind the pass-through
3 entity or sign returns under this article or who is authorized
4 to make the election and represents to having the authorization
5 under penalty of perjury on or before the fifteenth day of the
6 fourth month of the pass-through entity's taxable year in a
7 manner prescribed by the department.

8 (2) In instances where a pass-through entity does not have
9 either a resident individual, estate or trust as a partner,
10 member, shareholder or beneficiary, or income or loss from
11 sources within this Commonwealth as of the fifteenth day of the
12 fourth month of its taxable year, the pass-through entity may
13 make an election no later than ninety days from the date the
14 pass-through entity meets the requirements specified under
15 section 335(c)(1) to file a return, or the last day of the pass-
16 through entity's taxable year, whichever is earlier. For the
17 purpose of determining the filing requirements of a pass-through
18 entity under this clause, the reference to partnership in
19 section 335(c)(1) shall include a Pennsylvania S corporation.

20 (3) An election under this section shall take effect for the
21 taxable year in which the election is submitted to the
22 department. Only one election may be submitted by an individual
23 identified under clause (1) on behalf of the pass-through entity
24 to the department for the taxable year.

25 (4) An election made under this section shall be irrevocable
26 for the taxable year.

27 (5) An election under this section may be made only for tax
28 years that the limitation on individual deductions applies under
29 section 164(b)(6) of the Internal Revenue Code of 1986 (Public
30 Law 99-514, 26 U.S.C. § 164(b)(6)).

1 (c) (1) A taxable owner of an interest in a pass-through
2 entity that elects to pay tax under subsection (a) shall be
3 allowed a refundable credit against the tax imposed under
4 section 302 in the amount of the taxable owner's share of the
5 tax that the pass-through entity actually paid under this
6 section. A taxable owner's share of the tax shall take into
7 account guaranteed payments and other special allocations made
8 to the owner.

9 (2) A taxable owner shall be entitled to claim the credit
10 under clause (1) on the taxable owner's tax return that includes
11 the last day of the taxable year of the pass-through entity.

12 (3) The credit allowed under this subsection shall be
13 applied after the application of all other tax credits available
14 to the owner for the taxable year. If the amount of the credit
15 allowable under this subsection for any taxable year exceeds the
16 tax due for the year under this article, the excess amount shall
17 be treated as an overpayment, to be credited or refunded.

18 (4) No credit shall be allowed to a taxable owner under
19 clause (1) unless the electing pass-through entity paid the tax
20 imposed under this article and provides the department on its
21 tax return all the information required in subsection (e)(2) and
22 (3).

23 (5) The aggregate amount of credits claimed by all taxable
24 owners of a pass-through entity under clause (1) may not exceed
25 the tax that the pass-through entity paid under subsection (a)
26 for the taxable year.

27 (d) A pass-through entity that elects to pay tax under
28 subsection (a) shall be required to make estimated tax payments
29 in four equal installments on or before the fifteenth day of the
30 fourth, sixth and ninth month of its taxable year, and the

1 fifteenth day of the first month of its subsequent taxable year.

2 (e) (1) On or before the date provided under section
3 330(a), each pass-through entity that elects to pay tax under
4 subsection (a) shall file a return for the taxable year
5 reporting the information required under this article.

6 (2) The return filed under clause (1) shall include, in a
7 format as prescribed by the department, a certification by an
8 individual authorized to act on behalf of the pass-through
9 entity, which includes the following:

10 (i) A timely, valid election to be subject to the tax under
11 this article and whether a Pennsylvania S corporation is
12 electing to be treated as a resident Pennsylvania S corporation
13 or standard Pennsylvania S corporation.

14 (ii) That all statements contained in the certification are
15 true.

16 (3) Each pass-through entity that elects to pay tax under
17 subsection (a) shall report on a return required under this
18 article the following:

19 (i) Any tax due under this article. The balance of any tax
20 shown on the return, not previously paid as installments of
21 estimated tax or an overpayment of a prior-year tax, shall be
22 paid with the return.

23 (ii) Identifying information of each taxable owner eligible
24 to receive a credit under subsection (c), including a Social
25 Security number or tax identification number and status as a
26 resident or nonresident. The pass-through entity must provide
27 information sufficient to identify a disregarded entity and its
28 taxable owners.

29 (iii) For each taxable owner who will be entitled to claim a
30 credit on a tax return, the taxable owner's share of the tax

1 imposed on the pass-through entity under this section.

2 (iv) Each resident taxable owner's share of the pass-through
3 entity's income and each nonresident taxable owner's share of
4 income from sources from within this Commonwealth included in
5 the tax base under this section.

6 (v) The classification of each owner as a taxable resident
7 or nonresident for purposes of calculating the pass-through
8 entity's tax liability under this section.

9 (vi) Any other information as required by the department.

10 (4) A pass-through entity that elects to pay tax under
11 subsection (a) shall not be required to withhold tax from a
12 nonresident taxable owner under section 324.

13 (5) To meet the requirements of this section, if a taxable
14 owner holds an interest in the pass-through entity through an
15 entity that is a disregarded entity for purposes of this
16 article, the pass-through entity must provide information
17 sufficient to identify both the disregarded entity that holds an
18 interest in the pass-through entity and the taxable owner that
19 owns the disregarded entity and is eligible for a credit under
20 subsection (c).

21 (6) Each pass-through entity paying tax under this section
22 shall report to each taxable owner required to file a return
23 under this article a statement that contains the following
24 information:

25 (i) Classification as a resident taxable owner or a
26 nonresident taxable owner for purposes of calculating the pass-
27 through entity's tax under subsection (a).

28 (ii) The taxable owner's allocable share of the pass-through
29 entity's income included in the tax base for purposes of
30 computing the tax under subsection (a).

1 (iii) The owner's allocable share of the tax paid under
2 subsection (a).

3 (iv) Any other information, as required by the department.

4 (f) (1) Any assessment of tax imposed under this section,
5 including interest, penalties and additions, shall be assessed
6 against the pass-through entity at the tax rate applicable to
7 the tax year. The department may not assess any additional tax,
8 including interest, penalties and additions, against the taxable
9 owners.

10 (2) Any determination of an overpayment or refund of tax
11 imposed under this section made subsequent to the filing of the
12 return under subsection (e) shall be made at the pass-through
13 entity level at the tax rate applicable to the tax year.

14 (3) The pass-through entity shall be required to provide
15 each owner a statement of any adjustment of the taxable owner's
16 credit within ninety days of an assessment, overpayment or
17 refund becoming final.

18 (4) The taxable owner shall report the adjustment of the
19 credit on an amended return for the taxable owner's taxable year
20 that includes the pass-through entity's taxable year for which
21 the tax was assessed.

22 (5) Only the pass-through entity may appeal or settle an
23 assessment or overpayment of tax issued under this section or
24 petition for a refund of tax imposed under this section.

25 (g) The basis of both a resident taxable owner and
26 nonresident taxable owner of a pass-through entity that elects
27 to pay tax under subsection (a) shall be determined as if the
28 election under subsection (b) had not been made and each of the
29 taxable owners of the taxed pass-through entity had properly
30 taken into account each taxable owner's pro rata share of the

1 taxed pass-through entity's items of income, gain, loss and
2 deduction in the manner required with respect to a pass-through
3 entity for which no such election is in effect.

4 (h) (1) Unless otherwise provided in, or inconsistent with,
5 this section, the provisions of this article shall apply to this
6 section.

7 (2) The department may issue guidelines and promulgate
8 regulations necessary for the implementation of this section.

9 (i) (1) In the case of any taxable year that includes the
10 effective date of this section, a pass-through entity may file
11 an election under subsection (b) (1) at any time within ninety
12 days of the effective date of this section provided that if the
13 election is made, the pass-through entity must, on or before the
14 date the next estimated tax payment is due after the election,
15 make an estimated tax payment equal to the total estimated tax
16 that would have been due for the tax year had the election been
17 made for the full tax year, and any nonresident withholding made
18 under section 324 by the pass-through entity for the current tax
19 year may be applied by the pass-through entity against its
20 estimated tax liability.

21 (2) In the case of any taxable year that includes the
22 effective date of this section, any nonresident withholding made
23 under section 324 by the pass-through entity for the current tax
24 year for an owner shall be applied by the pass-through entity
25 against its estimated tax liability.

26 (3) In the case of any taxable year that includes the
27 effective date of this section, the department may not assess
28 interest and penalties against an eligible pass-through entity
29 for any underpayment of estimated tax due under subsection (d),
30 so long as the eligible pass-through entity acted in good faith

1 with no intent to defraud the Commonwealth.

2 (j) As used in this section, the following words and phrases
3 shall have the meanings given to them in this subsection unless
4 the context clearly indicates otherwise:

5 "Electing pass-through entity." A pass-through entity that
6 elects at the time it makes its election to be subject to the
7 tax under this section to determine its tax in accordance with
8 subsection (a).

9 "Electing resident Pennsylvania S corporation." A
10 Pennsylvania S corporation that is a pass-through entity whose
11 shareholders only include resident individuals, estates or
12 trusts, and disregarded entities whose owners only include
13 resident individuals, estates or trusts that elects at the time
14 it makes its election to be subject to the tax under this
15 section to determine its tax in accordance with subsection (a).

16 "Electing standard Pennsylvania S corporation." A
17 Pennsylvania S corporation that is a pass-through entity whose
18 shareholders only include resident and nonresident individuals,
19 estates or trusts, and disregarded entities whose owners only
20 include resident and nonresident individuals, estates or trusts
21 that elects at the time it makes its election to be subject to
22 the tax under this section to determine its tax in accordance
23 with subsection (a).

24 "Nonresident taxable owner." An individual, estate or trust
25 subject to the tax imposed under this article, other than a
26 resident taxable owner, that is a partner, shareholder, member
27 or other owner of an interest in a pass-through entity that has
28 income from sources within this Commonwealth.

29 "Partnership." A domestic or foreign general partnership,
30 joint venture, limited partnership, limited liability company,

1 business trust or other unincorporated entity that for Federal
2 income tax purposes is classified as a partnership. The term
3 does not include a publicly traded partnership.

4 "Pass-through entity." A partnership or Pennsylvania S
5 corporation.

6 "Resident taxable owner." A resident individual, resident
7 trust or resident estate that is a partner, shareholder, member
8 or other owner of an interest in a pass-through entity.

9 "Taxable owner." A resident taxable owner or nonresident
10 taxable owner.

11 Section 3. Sections 306, 307.8(a) and 314 of the act are
12 amended to read:

13 Section 306. Taxability of Partners.--Except as provided
14 under [section] sections 302.3 and 306.2, a partnership as an
15 entity shall not be subject to the tax imposed by this article,
16 but the income or gain of a member of a partnership in respect
17 of said partnership shall be subject to the tax and the tax
18 shall be imposed on his share, whether or not distributed, of
19 the income or gain received by the partnership for its taxable
20 year ending within or with the member's taxable year.

21 Section 307.8. Income of a Pennsylvania S Corporation.--(a)
22 A Pennsylvania S corporation shall not be subject to the tax
23 imposed by this article, except as provided under subsection (f)
24 and section 302.3, but the shareholders of the Pennsylvania S
25 corporation shall be subject to the tax imposed under this
26 article as provided in this article.

27 * * *

28 Section 314. Income Taxes Imposed by Other States.--(a) A
29 resident taxpayer before allowance of any credit under section
30 302.3 or 312 shall be allowed a credit against the tax otherwise

1 due under this article for the amount of any income tax, wage
2 tax or tax on or measured by gross or net earned or unearned
3 income imposed on him or on a Pennsylvania S corporation or
4 partnership in which he is a direct or indirect shareholder or
5 partner, to the extent [of his pro rata share thereof determined
6 in accordance with section 307.9,] that the tax was imposed on
7 the taxpayer's distributive share or other share thereof by
8 another state with respect to income which is also subject to
9 tax under this article. For purposes of this subsection, the
10 term "state" shall only include a state of the United States,
11 the District of Columbia, the Commonwealth of Puerto Rico and
12 any territory or possession of the United States.

13 (b) The credit provided under this section shall not exceed
14 the proportion of the tax otherwise due under this article that
15 the amount of the taxpayer's income subject to tax by the other
16 jurisdiction bears to his entire taxable income.

17 (c) In lieu of submitting a copy of each State return in
18 which a tax liability is reported and tax is paid, a partner,
19 shareholder, partnership or Pennsylvania S corporation may
20 provide a certified statement that reflects each partner's or
21 shareholder's share of taxable income, amount of State income
22 tax paid and other information that the department requires.

23 Section 4. This act shall apply as follows:

24 (1) The amendment or addition of sections 301(w), 302.3,
25 306 and 307.8(a) of the act shall apply to taxable years
26 beginning after December 31, 2021.

27 (2) The amendment of section 314(a) shall apply to
28 taxable years beginning after December 31, 2020.

29 Section 5. This act shall take effect immediately.