

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1550 Session of 2023

INTRODUCED BY FRIEL, FIEDLER AND SAMUELSON, JUNE 28, 2023

REFERRED TO COMMITTEE ON FINANCE, JUNE 28, 2023

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), (b), (t) and (5) of the act
18 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
19 1971, are amended, (3)2(a)(9)(A) is amended by adding a unit,
20 (3)1 and (3)4 are amended by adding phrases and the section is
21 amended by adding clauses to read:

22 Section 401. Definitions.--The following words, terms, and
23 phrases, when used in this article, shall have the meaning
24 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 before special
8 deductions provided for in 26 U.S.C. Ch. 1 Subch. B Pt. VIII
9 (relating to special deductions for corporations), not including
10 the deductions provided for in 26 U.S.C. § 243 (relating to
11 dividends received by corporations), or in the case of a
12 corporation participating in the filing of consolidated returns
13 to the Federal Government or that is not required to file a
14 return with the Federal Government, the taxable income which
15 would have been returned to and ascertained by the Federal
16 Government before special deductions provided for in 26 U.S.C.
17 Ch. 1 Subch. B Pt. VIII, not including the deductions provided
18 for in 26 U.S.C. § 243, if separate returns had been made to the
19 Federal Government for the current and prior taxable years,
20 subject, however, to any correction thereof, for fraud, evasion,
21 or error as finally ascertained by the Federal Government.

22 (b) Additional deductions shall be allowed from taxable
23 income on account of any dividends received from any other
24 corporation but only to the extent that such dividends are
25 included in taxable income as returned to and ascertained by the
26 Federal Government. For tax years beginning on or after January
27 1, 1991, additional deductions shall only be allowed for amounts
28 included, under [section 78 of the Internal Revenue Code of 1986
29 (Public Law 99-514, 26 U.S.C. § 78)] 26 U.S.C. § 78 (relating to
30 gross up for deemed paid foreign tax credit), in taxable income

1 returned to and ascertained by the Federal Government and for
2 the amount of any dividends received from a foreign corporation
3 included in taxable income to the extent such dividends would be
4 deductible in arriving at Federal taxable income if received
5 from a domestic corporation. For taxable years beginning after
6 December 31, 2024, the additional deduction with respect to
7 dividends shall not be allowed for dividends between members of
8 a unitary group.

9 * * *

10 (p.1) For taxable years after December 31, 2024, in the case
11 of a corporation that is a member of a unitary business, the
12 term "taxable income" shall mean the combined unitary income of
13 the unitary business, as determined on a water's-edge basis.

14 * * *

15 (t) (1) Except as provided in paragraph (2), (3) or (4) for
16 taxable years beginning after December 31, 2014, and in addition
17 to any authority the department has on the effective date of
18 this paragraph to deny a deduction related to a fraudulent or
19 sham transaction, no deduction shall be allowed for an
20 intangible expense or cost, or an interest expense or cost,
21 paid, accrued or incurred directly or indirectly in connection
22 with one or more transactions with an affiliated entity. In
23 calculating taxable income under this paragraph, when the
24 taxpayer is engaged in one or more transactions with an
25 affiliated entity that was subject to tax in this Commonwealth
26 or another state or possession of the United States on a tax
27 base that included the intangible expense or cost, or the
28 interest expense or cost, paid, accrued or incurred by the
29 taxpayer, the taxpayer shall receive a credit against tax due in
30 this Commonwealth in an amount equal to the apportionment factor

1 of the taxpayer in this Commonwealth multiplied by the greater
2 of the following:

3 (A) the tax liability of the affiliated entity with respect
4 to the portion of its income representing the intangible expense
5 or cost, or the interest expense or cost, paid, accrued or
6 incurred by the taxpayer; or

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

10 The credit issued under this paragraph shall not exceed the
11 taxpayer's liability in this Commonwealth attributable to the
12 net income taxed as a result of the adjustment required by this
13 paragraph.

14 (2) The adjustment required by paragraph (1) shall not apply
15 to a transaction that did not have as [the] a principal purpose
16 the avoidance of tax due under this article and was done at
17 arm's length rates and terms.

18 (3) The adjustment required by paragraph (1) shall not apply
19 to a transaction between a taxpayer and an affiliated entity
20 domiciled in a foreign nation which has in force a comprehensive
21 income tax treaty with the United States providing for the
22 allocation of all categories of income subject to taxation, or
23 the withholding of tax, on royalties, licenses, fees and
24 interest for the prevention of double taxation of the respective
25 nations' residents and the sharing of information.

26 (4) The adjustment required by paragraph (1) shall not apply
27 to a transaction where an affiliated entity directly or
28 indirectly paid, accrued or incurred a payment to a person who
29 is not an affiliated entity, if the payment is paid, accrued or
30 incurred on the intangible expense or cost, or interest expense

or cost, and is equal to or less than the taxpayer's proportional share of the transaction. The taxpayer's proportional share shall be based on relative sales, assets, liabilities or another reasonable method.

(5) The adjustment required under paragraph (1) shall not apply to a transaction between the taxpayer and an affiliated entity, where the taxpayer and the affiliated entity file a combined annual report in this State.

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.

* * *

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

* * *

(vi) (a) For taxable years beginning after December 31, 2024, all business income of a unitary business shall be apportioned to this State by multiplying the income by the member's sales factor, the numerator of which shall be the member's total sales in this State, and the denominator of which shall be the combined total sales of all members of the unitary business everywhere. In computing the sales of each member for purposes of apportionment, the following sales are excluded from the numerator and denominator:

(I) sales from transactions between or among members of the

unitary business that are deferred under 26 CFR 1.1502-13
(relating to intercompany transactions) for Federal taxable
income purposes; and

(II) the sales of each member that are excluded from the
unitary business pursuant to the definition of water's-edge
basis.

(b) The Pennsylvania sales of each nontaxable member shall
be determined based upon the apportionment rules applicable to
the member and shall be aggregated. Each taxable member of the
group shall include in its sales factor numerator a portion of
the aggregate Pennsylvania sales of nontaxable members based on
a ratio, the numerator of which is the taxable member's
Pennsylvania sales and the denominator of which is the aggregate
Pennsylvania sales of all the taxable members of the group.

(c) Nonbusiness income of each member of a unitary business
shall be allocated as provided in paragraphs (5) through (8) of
phrase (a) of subclause 2 of this definition. A member of the
unitary business is subject to tax on its apportioned share of
all business income of the unitary business, plus its
nonbusiness income or loss allocated to this State, minus the
member's net loss deduction.

(d) The Secretary of Revenue shall apply the administrative
and judicial interpretations of 26 U.S.C. § 482 (relating to
allocation of income and deductions among taxpayers) in
administering this section.

(e) For taxable years beginning after December 31, 2024, any
member of a unitary group that would otherwise apportion its
business income under phrase (b), (c), (d) or (e) of subclause 2
of this definition shall determine its apportionment formula
using a single sales fraction.

1 * * *

2 4. * * *

3 (h) Subject to the limitations of this subclause, any member
4 of a unitary business that has unused net loss from taxable
5 years that began prior to January 1, 2024, or that generates net
6 losses while a member of a unitary business may only take the
7 net loss deduction for taxable years beginning after December
8 31, 2023, to the extent of the member's share of combined
9 unitary income after apportionment and the net losses may not be
10 used by other members of the same unitary business.

11 (i) Any net loss realized for a taxable year unused by a
12 corporation which subsequently becomes a member of another
13 unitary business, may only be used by that corporation.

14 * * *

15 (5) "Taxable year." [The taxable year which the
16 corporation, or any consolidated group with which the
17 corporation participates in the filing of consolidated returns,
18 actually uses in reporting taxable income to the Federal
19 Government. With regard to the tax imposed by Article IV of this
20 act (relating to the Corporate Net Income Tax), the terms
21 "annual year," "fiscal year," "annual or fiscal year," "tax
22 year" and "tax period" shall be the same as the corporation's
23 taxable year, as defined in this paragraph.]

24 1. Except as set forth in subclause 2, the taxable year
25 which the corporation, or any consolidated group with which the
26 corporation participates in the filing of consolidated returns,
27 actually uses in reporting taxable income to the Federal
28 Government, or which the corporation would have used in
29 reporting taxable income to the Federal Government had it been
30 required to report its taxable income to the Federal Government.

1 With regard to the tax imposed by Article IV, the terms "annual
2 year," "fiscal year," "annual or fiscal year," "tax year" and
3 "tax period" shall be the same as the corporation's taxable
4 year, as defined in this subclause or subclause 2.

5 2. All members of a unitary business shall have a common
6 taxable year for purposes of computing tax due under this
7 article. The taxable year for such purposes is the common
8 taxable year adopted, in a manner prescribed by the department,
9 by all members of the unitary business. The common taxable year
10 must be used by all members of the unitary business in the year
11 of adoption and all future years unless otherwise permitted by
12 the department.

13 * * *

14 (12) "Tax haven." Means any of the following:

15 (A) Andorra.

16 (B) Anguilla.

17 (C) Antigua and Barbuda.

18 (D) Aruba.

19 (E) The Bahamas.

20 (F) Bahrain.

21 (G) Barbados.

22 (H) Belize.

23 (I) Bermuda.

24 (J) The British Virgin Islands.

25 (K) The Cayman Islands.

26 (L) The Cook Islands.

27 (M) Cyprus.

28 (N) Dominica.

29 (O) Gibraltar.

30 (P) Grenada.

1 (Q) Guernsey-Sark-Alderney.
2 (R) The Isle of Man.
3 (S) Jersey.
4 (T) Liberia.
5 (U) Liechtenstein.
6 (V) Luxembourg.
7 (W) Malta.
8 (X) The Marshall Islands.
9 (Y) Mauritius.
10 (Z) Monaco.
11 (AA) Montserrat.
12 (BB) Nauru.
13 (CC) Netherlands Antilles.
14 (DD) Niue.
15 (EE) Panama.
16 (FF) Samoa.
17 (GG) San Marino.
18 (HH) Seychelles.
19 (II) St. Kitts and Nevis.
20 (JJ) St. Lucia.
21 (KK) St. Vincent and the Grenadines.
22 (LL) Turks and Caicos Islands.
23 (MM) Vanuatu.
24 (NN) A jurisdiction that is identified as a tax haven by the
25 Organization for Economic Co-operation and Development.
26 (13) "Unitary business." A single economic enterprise that
27 is made up of separate parts of a single corporation, of a
28 commonly controlled group of corporations, or both, that are
29 sufficiently interdependent, integrated and interrelated through
30 their activities so as to provide a synergy and mutual benefit

1 that produces a sharing or exchange of value among them and a
2 flow of value to the separate parts. A unitary business includes
3 all those parts and corporations that are included in a unitary
4 business under the Constitution of the United States.

5 (14) "Water's-edge basis." A system of reporting that
6 includes the income and apportionment factors of certain members
7 of a unitary business, described as follows:

8 (A) Any member incorporated in the United States or formed
9 under the laws of any state of the United States, the District
10 of Columbia, any territory or possession of the United States or
11 the Commonwealth of Puerto Rico.

12 (B) Any member, regardless of the place incorporated or
13 formed, if at least twenty per cent of the member's sales factor
14 is within the United States, and the following shall apply:

15 (i) For purposes of determining whether at least twenty per
16 cent of a member's sales factor is within the United States, the
17 calculation must be performed on a stand-alone basis. Sales
18 shall be gross figures without eliminations for transactions
19 with other members of any unitary business.

20 (ii) Whether sales are within the United States is based on
21 the sales factor sourcing rules contained in section 401(3).

22 (C) Any member which is one of the following:

23 (i) A domestic international sales corporation as described
24 in 26 U.S.C. Ch. 1 Subch. N Pt. IV Subpt. A (relating to
25 treatment of qualifying corporations).

26 (ii) A foreign sales corporation as described in 26 U.S.C.
27 Ch. 1 Subch. N Pt. IV Subpts. A and B (relating to treatment of
28 distributions to shareholders).

29 (iii) An export trade corporation as described in 26 U.S.C.
30 §§ 970 (relating to reduction of subpart F income of export

1 trade corporations) and 971 (relating to definitions).

2 (D) Any member not described in subparagraph (A), (B) or (C)
3 shall include the portion of the member's taxable income derived
4 from or attributable to sources within the United States, as
5 determined under 26 U.S.C. (relating to Internal Revenue Code)
6 without regard to Federal treaties, and its apportionment
7 factors related thereto.

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

26 (F) Any member that is incorporated in or is doing business
27 in a tax haven. The income and apportionment factors of a member
28 doing business in a tax haven shall be excluded if the member
29 establishes to the satisfaction of the Secretary of Revenue that
30 the member's income was subject to an effective rate of income

1 tax imposed by a country greater than ninety per cent of the
2 maximum rate of tax specified in 26 U.S.C. § 11.

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

10 (16) "Combined unitary income." The aggregate taxable
11 income or loss of all members of a unitary business, subject to
12 apportionment, except:

13 (A) Income from an intercompany transaction between members
14 of a unitary business shall be deferred in a manner similar to
15 26 CFR 1.1502-13 (relating to intercompany transactions) for
16 Federal taxable income purposes.

17 (B) Dividends paid by one member of a unitary business to
18 another.

19 (C) Income of the following members is not included in the
20 determination of combined unitary income:

21 (i) any member subject to taxation under Article VII, VIII,
22 IX or XV;

23 (ii) any member specified in the definition of "institution"
24 in section 701.5 that would be subject to taxation under Article
25 VII, were it doing business in this State, as defined in section
26 701.5;

27 (iii) any member commonly known as a title insurance company
28 that would be subject to taxation under Article VIII, were it
29 incorporated in this State;

30 (iv) any member specified as an insurance company,

association or exchange in Article IX that would be subject to
taxation under Article IX, were it transacting insurance
business in this State;

(v) any member specified in the definition of "institution"
in section 1501 that would be subject to taxation under Article
XV, were it located, as defined in section 1501, in this State;
or

(vi) any member that is a small corporation as defined in
section 301(s.2) except to the extent of such small
corporation's net recognized built-in gain to the extent of and
as determined for Federal income tax purposes under 26 U.S.C. §
1374(d) (2) (relating to tax imposed on certain built-in gains).

(17) "Member." A corporation that is a member of a unitary
business. The term does not include a corporation listed in
clause (15) (C).

Section 2. Section 402(b) of the act, amended July 8, 2022
(P.L.513, No.53), is amended to read:

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

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

Taxable Year	Tax Rate
January 1, 1995,	
through December	
31, 2022	9.99%
January 1, 2023,	
through December	
31, 2023	[8.99%] <u>7.99%</u>
January 1, 2024,	

1 through December
 2 31, 2024 [8.49%] 6.99%
 3 January 1, 2025,
 4 through December
 5 31, 2025 [7.99%] 5.99%
 6 January 1, 2026,
 7 [through December
 8 31, 2026] and each [7.49%] 4.99%
 9 taxable year
 10 thereafter
 11 [January 1, 2027,
 12 through December
 13 31, 2027 6.99%
 14 January 1, 2028,
 15 through December
 16 31, 2028 6.49%
 17 January 1, 2029,
 18 through December
 19 31, 2029 5.99%
 20 January 1, 2030,
 21 through December
 22 31, 2030 5.49%
 23 January 1, 2031, and
 24 each taxable year
 25 thereafter 4.99%]
 26 * * *

27 Section 3. Section 403 of the act is amended by adding
 28 subsections to read:

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

30 (a.1) (1) Each corporation that is a member of a unitary

business that consists of two or more corporations, unless
excluded by the provisions of this article, shall file as part
of a combined annual report. The member of the unitary business
shall designate one member that is subject to tax under this
article to file the combined annual report and to act as agent
on behalf of all other members of the unitary business. Each
corporation that is a member of a unitary business is liable for
its tax liability under this article. The agent is also liable
for the aggregate amount of the unitary business' tax liability
pursuant to this article.

(2) The oath or affirmation of the designated member's
president, vice president, treasurer, assistant treasurer or
other authorized officer shall constitute the oath or
affirmation of each corporation that is a member of that unitary
business.

(3) The designated member shall transmit to the department
upon a form prescribed by the department a combined annual
report under oath or affirmation of the member's president, vice
president, treasurer, assistant treasurer or other authorized
officer.

(4) In addition to the information required in subsection
(a), the combined annual report shall set forth:

(i) All members included in the unitary business.

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

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

(a.2) A member of a unitary business of two or more
corporations must determine the member's income and

1 apportionment factors on a water's-edge basis.

2 * * *

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

4 Section 404. Consolidated Reports.--The department shall not
5 permit any corporation owning or controlling, directly or
6 indirectly, any of the voting capital stock of another
7 corporation or of other corporations, subject to the provisions
8 of this article, to make a consolidated report[, showing the
9 combined net income].

10 Section 5. Section 3003.3(d) of the act is amended and the
11 section is amended by adding a subsection to read:

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

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

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

26 (d.1) With respect to any underpayment of an installment of
27 estimated corporate net income tax for any tax year that begins
28 in taxable year 2025 or 2026 by a corporation required to file a
29 combined annual report pursuant to section 403(a.1)(1), interest
30 shall not be imposed if the total amount of all payments of

1 estimated corporate net income tax made on or before the last
2 date prescribed for the payment of such installment equals or
3 exceeds the amount which would have been required to be paid on
4 or before such date if the estimated tax were an amount equal to
5 the combined tax shown on the reports of all the members of the
6 unitary business for the safe harbor base year computed at the
7 rate applicable to the taxable year.

8 Section 6. This act shall apply to taxable years beginning
9 after December 31, 2024.

10 Section 7. This act shall take effect immediately.