

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 659 Session of 2023

INTRODUCED BY AUMENT, ROTHMAN AND CULVER, MAY 3, 2023

REFERRED TO FINANCE, MAY 3, 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 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 and for income of a Pennsylvania S corporation.

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

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

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

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

5 * * *

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

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

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

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

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

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

27 (2) An entity that is disregarded for tax purposes under
28 this article shall be disregarded for the purposes of this
29 section.

30 (3) In determining its tax under this section, a pass-

1 through entity that owns a direct or indirect ownership interest
2 in one or more pass-through entities shall include its share of
3 each class of income enumerated in section 303 received from
4 those pass-through entities. The pass-through entity that
5 generates an item of income, gain or loss shall determine its
6 classification and whether that item of income, gain or loss
7 constitutes income or loss from sources within this
8 Commonwealth.

9 (4) Guaranteed payments made to a partner in a partnership
10 shall be treated as additional income allocated to the partner.
11 With respect to a nonresident taxable owner, only guaranteed
12 payments that constitute income from sources within this
13 Commonwealth shall be subject to the tax under this section.

14 (5) In determining the tax due under this section, a pass-
15 through entity shall not be permitted to use any tax credits
16 otherwise available to the pass-through entity except a credit
17 for estimated taxes paid for the current taxable year under this
18 section or an overpayment of a prior-year tax paid under this
19 section.

20 (b) (1) Any election described under subsection (a) shall
21 be made by an individual with authority to bind the pass-through
22 entity or sign returns under this article or who is authorized
23 to make the election and represents to having the authorization
24 under penalty of perjury before or with the pass-through
25 entity's return under this article for the taxable year in a
26 manner prescribed by the department.

27 (2) Only one election may be submitted by an individual
28 identified under clause (1) on behalf of the pass-through entity
29 to the department for the taxable year.

30 (3) An election made under this section shall be irrevocable

1 for the taxable year.

2 (4) An election under this section may be made only for tax
3 years that the limitation on individual deductions applies under
4 26 U.S.C. § 164(b) (6) (relating to taxes).

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

13 (2) A taxable owner shall be entitled to claim the credit
14 under clause (1) on the taxable owner's tax return that includes
15 the corresponding income and gain of the pass-through entity.

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

22 (4) No credit shall be allowed to a taxable owner under
23 clause (1) unless the electing pass-through entity paid the tax
24 imposed under this article and provides the department on its
25 tax return all the information required in subsection (e) (2) and
26 (3).

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

1 (d) A pass-through entity that elects to pay tax under
2 subsection (a) shall be required to make estimated tax payments
3 in four equal installments on or before the fifteenth day of the
4 fourth, sixth and ninth month of its taxable year, and the
5 fifteenth day of the first month of its subsequent taxable year.

6 (e) (1) On or before the date provided under section
7 330(a), each pass-through entity that elects to pay tax under
8 subsection (a) shall file a return for the taxable year
9 reporting the information required under this article.

10 (2) The return filed under clause (1) shall include, in a
11 format as prescribed by the department, a certification by an
12 individual authorized to act on behalf of the pass-through
13 entity, which includes that all statements contained in the
14 certification are true.

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

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

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

28 (iii) For each taxable owner who will be entitled to claim a
29 credit on a tax return, the taxable owner's share of the tax
30 imposed on the pass-through entity under this section.

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

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

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

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

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

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

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

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

30 (iii) The owner's allocable share of the tax paid under

1 subsection (a).

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

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

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

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

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

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

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

1 deduction in the manner required with respect to a pass-through
2 entity for which no such election is in effect.

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

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

8 (i) (1) If the election is made, the pass-through entity
9 must, on or before the date the next estimated tax payment is
10 due after the election, make an estimated tax payment equal to
11 the total estimated tax that would have been due for the tax
12 year had the election been made for the full tax year, and any
13 nonresident withholding made under section 324 by the pass-
14 through entity for the current tax year may be applied by the
15 pass-through entity against its estimated tax liability.

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

21 (3) In the case of any taxable year that includes the
22 effective date of this section, the department may not assess
23 interest and penalties against an eligible pass-through entity
24 for any underpayment of estimated tax due under subsection (d),
25 so long as the eligible pass-through entity acted in good faith
26 with no intent to defraud the Commonwealth.

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

30 "Electing pass-through entity." A pass-through entity that

1 elects for a taxable year to be subject to the tax under this
2 section to determine its tax in accordance with subsection (a).

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

8 "Partnership." A domestic or foreign general partnership,
9 joint venture, limited partnership, limited liability company,
10 business trust or other unincorporated entity that for Federal
11 income tax purposes is classified as a partnership. The term
12 does not include a publicly traded partnership.

13 "Pass-through entity." A partnership or Pennsylvania S
14 corporation.

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

18 "Taxable owner." A resident taxable owner or nonresident
19 taxable owner.

20 Section 3. Sections 306 and 307.8(a) of the act are amended
21 to read:

22 Section 306. Taxability of Partners.--Except as provided
23 under [section] sections 302.3 and 306.2, a partnership as an
24 entity shall not be subject to the tax imposed by this article,
25 but the income or gain of a member of a partnership in respect
26 of said partnership shall be subject to the tax and the tax
27 shall be imposed on his share, whether or not distributed, of
28 the income or gain received by the partnership for its taxable
29 year ending within or with the member's taxable year.

30 Section 307.8. Income of a Pennsylvania S Corporation.--(a)

1 A Pennsylvania S corporation shall not be subject to the tax
2 imposed by this article, except as provided under subsection (f)
3 and section 302.3, but the shareholders of the Pennsylvania S
4 corporation shall be subject to the tax imposed under this
5 article as provided in this article.

6 * * *

7 Section 4. The amendment or addition of sections 301(w),
8 302.3, 306 and 307.8(a) of the act shall apply to taxable years
9 beginning after December 31, 2022.

10 Section 5. This act shall take effect immediately.