

HB _____

Legislative Reference Bureau

INTRODUCED _____

By Dunbar, George District NO. 56

By _____ District NO. _____

By _____ District NO. _____

By _____ District NO. _____

See next page for additional co-sponsors.

Prior Session _____

Referred to Committee on	
Date	_____
Reported	_____
As Committed-Amended	
Recomendation	_____
By Hon.	_____

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.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Section 401(3)1(t) of the act of March 4, 1971
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended
16 to read:

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

21 * * *

22 (3) "Taxable income." 1. * * *

1 (t) (1) Except as provided in paragraph (2), (3) or (4) for
2 taxable years beginning after December 31, 2014, and in addition
3 to any authority the department has on the effective date of
4 this paragraph to deny a deduction related to a fraudulent or
5 sham transaction, no deduction shall be allowed for an
6 intangible expense or cost, or an interest expense or cost,
7 paid, accrued or incurred directly or indirectly in connection
8 with one or more transactions with an affiliated entity. [In
9 calculating taxable income under this paragraph, when the
10 taxpayer is engaged in one or more transactions with an
11 affiliated entity that was subject to tax in this Commonwealth
12 or another state or possession of the United States on a tax
13 base that included the intangible expense or cost, or the
14 interest expense or cost, paid, accrued or incurred by the
15 taxpayer, the taxpayer shall receive a credit against tax due in
16 this Commonwealth in an amount equal to the apportionment factor
17 of the taxpayer in this Commonwealth multiplied by the greater
18 of the following:

19 (A) the tax liability of the affiliated entity with respect
20 to the portion of its income representing the intangible expense
21 or cost, or the interest expense or cost, paid, accrued or
22 incurred by the taxpayer; or

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

26 The credit issued under this paragraph shall not exceed the
27 taxpayer's liability in this Commonwealth attributable to the
28 net income taxed as a result of the adjustment required by this
29 paragraph.]

30 (2) The adjustment required by paragraph (1) shall not apply

1 to a transaction that did not have as the principal purpose the
2 avoidance of tax due under this article and was done at arm's
3 length rates and terms.

4 (3) The adjustment required by paragraph (1) shall not apply
5 to a transaction between a taxpayer and an affiliated entity
6 domiciled in a foreign nation which has in force a comprehensive
7 income tax treaty with the United States providing for the
8 allocation of all categories of income subject to taxation, or
9 the withholding of tax, on royalties, licenses, fees and
10 interest for the prevention of double taxation of the respective
11 nations' residents and the sharing of information.

12 (4) The adjustment required by paragraph (1) shall not apply
13 to a transaction where an affiliated entity directly or
14 indirectly paid, accrued or incurred a payment to a person who
15 is not an affiliated entity, if the payment is paid, accrued or
16 incurred on the intangible expense or cost, or interest expense
17 or cost, and is equal to or less than the taxpayer's
18 proportional share of the transaction. The taxpayer's
19 proportional share shall be based on relative sales, assets,
20 liabilities or another reasonable method.

21 (5) If an affiliated entity is subject to tax under this
22 article on a tax base that includes the intangible expense or
23 cost, or the interest expense or cost, paid, accrued or incurred
24 by the taxpayer, the taxpayer may annually elect to either:

25 (A) reduce the adjustment required by paragraphs (1), (2),
26 (3) and (4) to the extent the affiliated entity includes in the
27 entity's tax base the intangible expense or cost, or the
28 interest expense or cost, paid, accrued or incurred by the
29 taxpayer as follows:

30 (i) Divide the tax computed under this article for the

1 affiliated entity related to the intangible expense or cost, or
2 the interest expense or cost, paid, accrued or incurred by the
3 taxpayer; by the tax rate; and the apportionment factor of the
4 taxpayer used to calculate such tax.

5 (ii) In no case shall the reduction exceed the adjustment
6 required by paragraph (1), (2), (3) or (4); or

7 (B) apply the adjustment required by paragraph (1), (2), (3)
8 or (4) and the affiliated entity shall exclude the intangible
9 expense or cost, or the interest expense or cost, paid, accrued
10 or incurred by the taxpayer from the entity's tax base as
11 follows:

12 (i) Divide the tax computed under this article for the
13 taxpayer, including the adjustment required by paragraphs (1),
14 (2), (3) and (4); by the tax rate; and apportionment factor used
15 by the affiliated entity to calculate such tax.

16 (ii) In no case shall the exclusion exceed the intangible
17 expense or cost, or the interest expense or cost, paid, accrued
18 or incurred by the taxpayer.

19 (6) The election under paragraph (5) shall be made by the
20 taxpayer with the filing of a return and the consistent
21 application of this election on the return of the affiliated
22 entity for the same tax year. The taxpayer shall identify the
23 name and Federal EIN of the affiliated entity to which the
24 election applies. The affiliated entity shall identify the name
25 and Federal EIN of the taxpayer to which the election applies.
26 Nothing in this paragraph shall otherwise impact nexus or
27 apportionment of the taxpayer or affiliated entity.

28 * * *

29 Section 2. This act shall apply to taxable years beginning
30 after December 31, 2022.

1 Section 3. This act shall take effect immediately.