

Section 3. This act shall take effect immediately.

Act effective
immediately.

APPROVED—The 13th day of August, A. D. 1963.

WILLIAM W. SCRANTON

No. 397

AN ACT

Amending the act of June 1, 1889 (P. L. 420), entitled "A further supplement to an act entitled 'An act to provide revenue by taxation' approved the seventh day of June, Anno Domini one thousand eight hundred and seventy-nine," creating an exemption for research and development with regard to capital stock tax and franchise tax on domestic and foreign corporations, joint-stock associations, limited partnerships and companies.

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

Taxation.

Section 1. Subsections (a) and (b) of section 21, act of June 1, 1889 (P. L. 420), entitled "A further supplement to an act entitled 'An act to provide revenue by taxation' approved the seventh day of June, Anno Domini one thousand eight hundred and seventy-nine," amended August 23, 1961 (P. L. 1100), are amended to read:

Subsections (a) and (b), section 21, act of June 1, 1889, P. L. 420, amended August 23, 1961, P. L. 1100, further amended.

Section 21. (a) That every domestic corporation other than corporations of the first class, non-profit corporations, and cooperative agricultural associations not having capital stock and not conducted for profit, and every joint-stock association, limited partnership, and company whatsoever, from which a report is required under the twentieth section hereof, shall be subject to, and pay into the treasury of the Commonwealth annually, through the Department of Revenue, a tax at the rate of five mills upon each dollar of the actual value of its whole capital stock of all kinds, including common, special, and preferred, as ascertained in the manner prescribed in said twentieth section: Provided, That the tax of five mills imposed by this subsection on reports filed for the calendar years one thousand nine hundred forty-seven, one thousand nine hundred forty-eight, one thousand nine hundred forty-nine, one thousand nine hundred fifty, one thousand nine hundred fifty-one, one thousand nine hundred fifty-two, one thousand nine hundred fifty-three, one thousand nine hundred fifty-four, one thousand nine hundred fifty-five, one thousand nine hundred fifty-six, and one thousand nine hundred fifty-seven, or for the fiscal years beginning in the calendar years one thousand nine hundred forty-seven, one thousand nine hundred forty-eight, one

Tax of five mills on capital stock of certain domestic corporations, etc.

Proviso.

thousand nine hundred forty-nine, one thousand nine hundred fifty, one thousand nine hundred fifty-one, one thousand nine hundred fifty-two, one thousand nine hundred fifty-three, one thousand nine hundred fifty-four, one thousand nine hundred fifty-five, one thousand nine hundred fifty-six and one thousand nine hundred fifty-seven, shall apply to the taxation of capital stock of corporations, limited partnerships and joint-stock associations organized for manufacturing purposes, excepting companies engaged in the distilling of liquors: Provided further, That after said eleven year period the provisions of this section shall not apply to the taxation of the capital stock of corporations, limited partnerships and joint-stock associations organized for manufacturing, [or] processing, *research or development* purposes, which is invested in and actually and exclusively employed in carrying on manufacturing, [or] processing, *research or development* within the State, excepting companies engaged in the distilling of liquors and such as enjoy and exercise the right of eminent domain, but every corporation, limited partnership or joint-stock association organized for the purpose of manufacturing, [or] processing, *research or development* shall pay the State tax of five mills herein provided, upon such proportion of its capital stock, if any, as may be invested in any property or business not strictly incident or appurtenant to the manufacturing, [or] processing, *research or development* business, in addition to the local taxes assessed upon its property in the district where located, it being the object of this proviso to relieve from State taxation only so much of the capital stock as is invested purely in the manufacturing, [or] processing, *research or development* plant and business.

Exception.

Proviso.

Tax of five mills on capital stock of foreign corporations, etc.

Actual value of whole capital stock to be ascertained and then be divided into three equal parts.

(b) Every foreign corporation, joint-stock association, limited partnership, and company whatsoever, from which a report is required under the twentieth section hereof, shall be subject to and pay into the treasury of the Commonwealth annually, through the Department of Revenue, a franchise tax at the rate of five mills upon a taxable value to be determined in the following manner. The actual value of its whole capital stock of all kinds, including common, special, and preferred, shall be ascertained in the manner prescribed in the twentieth section of this act, and shall then be divided into three equal parts.

(1) Of one third, such portion shall be attributed to business carried on within the Commonwealth, as shall be found by multiplying said third by a fraction, whose numerator is the value of the taxpayer's tangible property not actually and exclusively used in manufacturing, [or] processing, *research or development*, situated

within the Commonwealth, and whose denominator is the value of all the taxpayer's tangible property wherever situated.

(2) Of another third, such portion shall be attributed to business carried on within the Commonwealth, as shall be found by multiplying said third by a fraction, whose numerator is the expenditures of the taxpayer for wages, salaries, commissions, or other compensation to its employes not exclusively engaged in manufacturing, [or] processing, *research or development* in this Commonwealth and assignable to this Commonwealth as hereinafter provided, and whose denominator is the total expenditures of the taxpayer for wages, salaries, commissions, or other compensation to all its employes.

(3) Of the remaining third, such portion shall be attributed to business carried on within the Commonwealth, as shall be found by multiplying said third by a fraction, whose numerator is the amount of the taxpayer's gross receipts from business not strictly incident or appurtenant to manufacturing, [or] processing, *research or development* in this Commonwealth assignable to this Commonwealth as hereinafter provided, and whose denominator is the amount of the taxpayer's gross receipts from all its business. For the purpose of this section, gross receipts shall not include receipts from the sale, redemption, maturity or exchange of securities, except those held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

The sum of the amounts, determined in accordance with the foregoing three rules, shall be the taxable value. In a case where only two of the foregoing three rules are applicable, the remaining third equal part of the value of the entire capital stock shall be divided into two equal parts, each of which shall be apportioned in accordance with one of the remaining two rules. If only one of the three rules is applicable, that part of the entire capital stock attributed to business carried on within the Commonwealth shall be determined solely by that rule.

The amount assignable to this Commonwealth of expenditures of the taxpayers for wages, salaries, commissions, or other compensation to its employes, shall be such expenditures for the taxable year as represent the wages, salaries, commissions, or other compensation of employes not chiefly situated at, connected with, or sent out from premises for the transaction of business maintained by the taxpayer outside the Commonwealth.

The amount of the taxpayer's gross receipts from business assignable to this Commonwealth shall be, (1) the amount of its gross receipts for the taxable year except those negotiated or effected in behalf of the tax-

Taxable value.

Where only two rules applicable.

Where only one rule applies.

Amount assignable to Commonwealth of expenditures of taxpayers for compensation to its employes.

Amount of taxpayer's gross receipts from business assignable to Commonwealth.

payer by agents or agencies chiefly situated at, connected with, or sent out from premises for the transaction of business maintained by the taxpayer outside the Commonwealth, and except rents and royalties, and interests and dividends, (2) rentals or royalties from property situated or from the use of patents within this Commonwealth, and (3) dividends and interest, except such dividends and interest attributable to the business conducted on premises maintained by the taxpayer outside the Commonwealth. If a taxpayer maintains an office, warehouse, or other place of business in a state other than this Commonwealth for the purpose of reducing its tax under this subsection, the Department of Revenue shall, in determining the amount of its gross receipts from business assignable to this Commonwealth, include therein the gross receipts attributed by the taxpayer to the business conducted at such place of business in another state.

Maintenance of office outside Commonwealth for purpose of reducing tax.

Construction contracts negotiated or effected in Pennsylvania, but performed outside State.

In the case of construction contracts negotiated or effected at an office in the State of Pennsylvania, but performed outside the State, the gross receipts under such contracts shall be assignable outside the State, except that if the activities under any such contract to which the gross receipts are attributable shall occur partly within the State and partly outside the State, such proportion of the gross receipts under said contract shall be assignable to Pennsylvania as the direct and indirect costs incurred in Pennsylvania under the contract for the taxable year bear to the total costs incurred thereunder for the taxable year. In the case of construction contracts negotiated or effected at an office outside the State, but performed in the State, the gross receipts under such contract shall be assignable to the State, except that if the activities under any such contract to which the gross receipts are attributable shall occur partly within the State and partly outside the State, such proportion of the gross receipts under said contract shall be assignable to Pennsylvania as the direct and indirect costs incurred in the State under the contract for the taxable year bear to the total cost incurred thereunder for the taxable year.

Construction contracts negotiated or effected outside State, but performed in Pennsylvania.

Where all tangible property and expenditures of a taxpayer are outside State.

A rule shall not be deemed to be inapplicable merely because all the tangible property or the expenditures of a taxpayer for wages, salaries, commissions, or other compensation, or the gross receipts of the taxpayer are found to be situated, incurred, or received without the Commonwealth.

Applicability of franchise tax of five mills.

Notwithstanding the foregoing provisions of this subsection (b), the franchise tax of five mills imposed by subsection (b) on reports filed for the calendar years one thousand nine hundred forty-seven, one thousand nine hundred forty-eight, one thousand nine hundred

forty-nine, one thousand nine hundred fifty, one thousand nine hundred fifty-one, one thousand nine hundred fifty-two, one thousand nine hundred fifty-three, one thousand nine hundred fifty-four, one thousand nine hundred fifty-five, one thousand nine hundred fifty-six and one thousand nine hundred fifty-seven, and for fiscal years beginning in the calendar year one thousand nine hundred forty-seven, one thousand nine hundred forty-eight, one thousand nine hundred forty-nine, one thousand nine hundred fifty, one thousand nine hundred fifty-one, one thousand nine hundred fifty-two, one thousand nine hundred fifty-three, one thousand nine hundred fifty-four, one thousand nine hundred fifty-five, one thousand nine hundred fifty-six and one thousand nine hundred fifty-seven, shall apply to the taxation of corporations, limited partnerships and joint-stock associations organized for manufacturing [or] processing *research or development* purposes excepting companies engaged in the distilling of liquors, without excluding from the numerators of the applicable fractions tangible property actually and exclusively used in manufacturing, [or] processing, *research or development*, compensation of employes exclusively engaged in manufacturing, and gross receipts from business strictly incident or appurtenant to manufacturing.

Tax to be computed without certain exclusions.

After said eleven year period the provisions of this subsection shall apply to the taxation of corporations, limited partnerships and joint-stock associations organized for manufacturing, [or] processing, *research or development* purposes.

Applicability of subsection after eleven years.

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Section 2. Section 21 of the act is amended by adding, after subsection (c), a new subsection to read:

Section 21 of act, amended by adding a new subsection (c.1).

Section 21. * * *

(c.1) "*Research and development*" shall mean activities relating to the discovery of new and the refinement of known substances, products, processes, theories and ideas, but shall not include activities directed primarily to the accumulation or analysis of commercial, financial or mercantile data.

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Section 3. This act shall take effect immediately, and shall apply to taxes imposed for calendar year 1963 and thereafter, or for fiscal years beginning in 1963 and thereafter.

Effective date and applicability.

APPROVED—The 13th day of August, A. D. 1963.

WILLIAM W. SCRANTON