

No. 1983-89

AN ACT

HB 533

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," further providing for the capital stock-franchise tax; and further providing for penalties on the utilities gross receipts tax; and clarifying certain provisions in the mutual thrift institutions tax.

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

Section 1. Section 601 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended to read:

Section 601. [Valuation of Capital Stock.—Hereafter, except in the case of corporations of the first class, nonprofit corporations, and cooperative agricultural associations not having capital stock and not conducted for profit, banks, savings institutions, title insurance, or trust companies, building and loan associations, and insurance companies, it shall be the duty of every corporation having capital stock, every joint-stock association, limited partnership, and every company whatsoever, now or hereafter organized or incorporated by or under any laws of this Commonwealth, and of every corporation, joint-stock association, limited partnership, and company whatsoever, now or hereafter incorporated or organized by or under the law of any other state or territory of the United States, or by the United States, or by any foreign government, and doing business in and liable to taxation within this Commonwealth or having capital or property employed or used in this Commonwealth by or in the name of any limited partnership or joint-stock association, company, or corporation whatsoever, association or associations, copartnership or copartnerships, person or persons, or in any other manner, to make annually a report in writing to the Department of Revenue on a form or forms to be prescribed and furnished by it setting forth in addition to any other information required by the Department of Revenue:

First. The amount of its capital stock at the close of the year for which report is made, together with the highest selling price per share, and the average selling price thereof during said year.

Second. Its debt account.

Third. Its income account, together with the disposition of any net income, and its profit and loss statement.

Fourth. Its general balance sheet.

Fifth. Its real estate and tangible personal property, if any, owned and permanently located outside of the Commonwealth, and value of the same; and the value of the property, if any, exempt from taxation.

Sixth. A valuation and appraisal, in the manner hereinafter provided, of the capital stock of the said corporation, company, joint-stock association, or limited partnership, at its actual value in cash as it existed at the close of the year for which the report is made.

The affidavit of two of the officers of such corporation, limited partnership, joint-stock association or company, shall be attached to said report. Such affidavit shall be in the form required by the Department of Revenue, but shall state, in addition to any other averments required by the department, that, with fidelity and according to the best of their knowledge and belief, the affiants have estimated, valued and appraised, as shown in said report, the capital stock of the said corporation at its actual value in cash as it existed at the close of the year for which report is made; taking into consideration, first, the average which said stock sold for during the year; and second, the price or value indicated or measured by net earnings or by the amount of profit made and either declared in dividends, expended in betterments, or carried into the surplus or sinking fund; and third, the actual value indicated or measured by consideration of the intrinsic value of its tangible property and assets, and of the value of its good will and franchises and privileges, as indicated by the material results of their exercise, taking also into consideration the amount of its indebtedness.

The time for filing annual reports may be extended; taxpayers may be permitted to file their annual and tentative reports on a fiscal year basis; the procedure in case the Department of Revenue is not satisfied with the appraisalment made by the officers of the taxpayer, and the penalties for failing to file reports and pay taxes shall be as prescribed by law.] *Definitions and Reports.*—(a) *The following words, terms and phrases when used in this Article VI shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:*

“Average net income.” *The sum of the net income or loss for each of the current and immediately preceding four years, divided by five. If the entity has not been in existence for a period of five years, the average net income shall be the average net income for the number of years that the entity has actually been in existence. In computing average net income, losses shall be entered as computed, but in no case shall average net income be less than zero. The net income or loss of the entity for any taxable year shall be the amount set forth as income per books on the income tax return filed by the entity with the Federal Government for such taxable year, or if no such return is made, as would have been set forth had such a return been made, subject, however, in either case to any correction thereof, for fraud, evasion or error. In the case of any entity which has an investment in another corporation, the net income or loss shall be computed on an unconsolidated basis exclusive of the net income or loss of such other corporation.*

“Capital stock.” *The capital stock of an entity and all other interests in a domestic or foreign corporation.*

“Capital stock value.” *The amount computed pursuant to the following formula: one-half times the sum of the average net income capitalized at the rate of nine and one-half per cent plus seventy-five per cent of net worth, the algebraic equivalent of which is*

$$.5 X (\text{average net income} / .095 + (.75) (\text{net worth}))$$

“Department.” *The Department of Revenue.*

“Domestic entity.” *Every corporation having capital stock, every joint-stock association, limited partnership and every company whatsoever, now or hereafter organized or incorporated by or under any laws of the Commonwealth, other than corporations of the first class, nonprofit corporations and cooperative agricultural associations not having capital stock and not conducted for profit, banks, savings institutions, title insurance or trust companies, building and loan associations and insurance companies is a domestic entity.*

“Entity.” *Any domestic or foreign entity.*

“Foreign entity.” *Every corporation, joint-stock association, limited partnership and company whatsoever, now or hereafter incorporated or organized by or under the law of any other state or territory of the United States, or by the United States, or by or under the law of any foreign government, and doing business in and liable to taxation within the Commonwealth or having capital or property employed or used in the Commonwealth by or in the name of any limited partnership or joint-stock association, copartnership or copartnerships, person or persons, or in any other manner doing business within and liable to taxation within the Commonwealth other than nonprofit corporations, banks, savings institutions, title insurance or trust companies, building and loan associations and insurance companies is a foreign entity.*

“Holding company.” *Any corporation (i) at least ninety per cent of the gross income of which for the taxable year is derived from dividends, interest, gains from the sale, exchange or other disposition of stock or securities and the rendition of management and administrative services to subsidiary corporations, and (ii) at least sixty per cent of the actual value of the total assets of which consists of stock securities or indebtedness of subsidiary corporations.*

“Net worth.” *Net worth shall be the sum of the entity’s issued and outstanding capital stock, surplus and undivided profits as per books set forth for the close of such tax year on the income tax return filed by the entity with the Federal Government, or if no such return is made, as would have been set forth had such return been made, subject, however, in either case to any correction thereof for fraud, evasion or error. In the case of any entity which has investments in the common stock of other corporations, the net worth shall be the consolidated net worth of such entity computed in accordance with generally accepted accounting principles. Net worth shall in no case be less than zero.*

“Processing.” *The following activities when engaged in as a business enterprise:*

(1) *The cooking or freezing of fruits, vegetables, mushrooms, fish, seafood, meats or poultry, when the person engaged in such business packages such property in sealed containers for wholesale distribution.*

(2) *The scouring, carbonizing, cording, combing, throwing, twisting or winding of natural or synthetic fibers, or the spinning, bleaching, dyeing, printing or finishing of yarns or fabrics, when such activities are performed prior to sale to the ultimate consumer.*

(3) *The electroplating, galvanizing, enameling, anodizing, coloring, finishing, impregnating or heat treating of metals or plastics for sale or in the process of manufacturing.*

(4) *The rolling, drawing or extruding of ferrous and nonferrous metals.*

(5) *The fabrication for sale of ornamental or structural metal or metal stairs, staircases, gratings, fire escapes or railings (not including fabrication work done at the construction site).*

(6) *The preparation of animal feed or poultry feed for sale.*

(7) *The production, processing and bottling of nonalcoholic beverages for wholesale distribution.*

(8) *The slaughtering and dressing of animals for meat to be sold or to be used in preparing meat products for sale, and the preparation of meat products, including lard, tallow, grease, cooking and inedible oils for wholesale distribution.*

(9) *The operation of a sawmill or planing mill for the production of lumber or lumber products for sale.*

(10) *The milling for sale of flour or meal from grains.*

(11) *The publishing of books, newspapers, magazines or other periodicals, printing and broadcasting radio and television programs by licensed commercial or educational stations.*

(12) *The processing of used lubricating oils.*

(13) *The blending, rectification or production by distillation or otherwise of alcohol or alcoholic liquors, except the distillation of alcohol from byproducts of winemaking for the sole purpose of fortifying wine.*

(14) *The salvaging, recycling or reclaiming of used materials to be recycled into a manufacturing process.*

“Research and development.” The activities relating to the discovery of new and the refinement of known substances, products, processes, theories and ideas, but not including activities directed primarily to the accumulation or analysis of commercial, financial or mercantile data.

“Subsidiary corporation.” Any corporation, a majority of the total issued and outstanding shares of voting stock of which are owned by the taxpayer corporation directly or through one or more intervening subsidiary corporations.

(b) *It shall be the duty of every domestic and foreign entity to make annually a written report verified in accordance with the requirements of the department on a form or forms to be prescribed and furnished by it setting forth the information required. The time for filing annual reports may be extended; an entity may be permitted to file its annual and tentative reports on a fiscal year basis; the procedure in case the department is not satisfied*

with the reports for the entity, and the penalties for failing to file reports and pay taxes shall be as prescribed by law.

Section 2. Section 602 of the act, amended August 31, 1971 (P.L.362, No.93), July 20, 1974 (P.L.542, No.186) and July 1, 1978 (P.L.594, No.114), is amended to read:

Section 602. Imposition of Tax.—(a) That every domestic [**corporation other than corporations of the first class, nonprofit corporations, and cooperative agricultural associations not having capital stock and not conducted for profit, and every joint-stock association, limited partnership, and company whatsoever,**] *entity* from which a report is required under section 601 hereof, shall be subject to, and pay [**into the treasury of the Commonwealth annually, through the Department of Revenue**] *to the department annually*, a tax at the rate of ten 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 section 601,**] *capital stock value as defined in section 601(a)* for the calendar year 1971 and the fiscal year beginning in 1971 and each year thereafter, except that any domestic [**corporation, limited partnership, joint-stock association**] *entity* or company subject to the tax prescribed herein may elect to compute and pay its tax under and in accordance with the provisions of subsection (b) of this section 602: Provided, That the provisions of this section shall not apply to the taxation of the capital stock of [**corporations, limited partnerships and joint-stock associations**] *entities* organized for manufacturing, processing, research or development purposes, which is invested in and actually and exclusively employed in carrying on manufacturing, processing, research or development within the State, except such [**companies**] *entities* as enjoy and exercise the right of eminent domain, but every [**corporation, limited partnership or joint-stock association**] *entity* organized for the purpose of manufacturing, processing, research or development except such [**companies**] *entities* as enjoy and exercise the right of eminent domain shall pay the State tax of ten 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, 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**] *provision* to relieve from State taxation only so much of the capital stock as is invested purely in the manufacturing, processing, research or development plant and business.

(b) (1) Every foreign [**corporation, joint-stock association, limited partnership, and company whatsoever,**] *entity* from which a report is required under section 601 hereof, shall be subject to and pay [**into the treasury of the Commonwealth annually, through the Department of Revenue**] *to the department annually*, a franchise tax at the rate of ten mills for the calendar year 1971 and the fiscal year beginning in 1971 and each year thereafter, 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,**] *capital stock value* shall be ascertained in the manner

prescribed in section 601(a) of this article. The taxable value shall then be determined by employing the relevant apportionment factors set forth in Article IV: Provided, That the manufacturing, processing, research and development exemptions [as] contained under section 602 (a) shall also apply to foreign corporations and in determining the relevant apportionment factors the numerator of the property, payroll, or sales factors shall not include any property, payroll or sales attributable to manufacturing, processing, research or development activities in the Commonwealth.

(2) The provisions of this article shall apply to the taxation of [corporations, limited partnerships and joint-stock associations] entities organized for manufacturing, processing, research or development purposes, but shall not apply to such [companies] entities as enjoy and exercise the right of eminent domain.

(c) The term processing, as used in this section, shall mean and be limited to the following activities when engaged in as a business enterprise:

(1) The cooking or freezing of fruits, vegetables, mushrooms, fish, seafood, meats or poultry, when the person engaged in such business packages such property in sealed containers for wholesale distribution.

(2) The scouring, carbonizing, cording, combing, throwing, twisting or winding of natural or synthetic fibers, or the spinning, bleaching, dyeing, printing or finishing of yarns or fabrics, when such activities are performed prior to sale to the ultimate consumer.

(3) The electroplating, galvanizing, enameling, anodizing, coloring, finishing, impregnating or heat treating of metals or plastics for sale or in the process of manufacturing.

(4) The rolling, drawing or extruding of ferrous and nonferrous metals.

(5) The fabrication for sale of ornamental or structural metal or metal stairs, staircases, gratings, fire escapes or railings, (not including fabrication work done at the construction site).

(6) The preparation of animal feed or poultry feed for sale.

(7) The production, processing and bottling of nonalcoholic beverages for wholesale distribution.

(8) The slaughtering and dressing of animals for meat to be sold or to be used in preparing meat products for sale, and the preparation of meat products, including lard, tallow, grease, cooking and inedible oils for wholesale distribution.

(9) The operation of a saw mill or planing mill for the production of lumber or lumber products for sale.

(10) The milling for sale of flour or meal from grains.

(11) The publishing of books, newspapers, magazines or other periodicals, printing and broadcasting radio and television programs by licensed commercial or educational stations.

(12) The processing of used lubricating oils.

(13) The blending, rectification or production by distillation or otherwise of alcohol or alcoholic liquors, except the distillation of alcohol from by-products of wine-making for the sole purpose of fortifying wine.

(14) The salvaging, recycling or reclaiming used materials to be recycled into a manufacturing process.

(d) "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.]

(c) *Any entity subject to a tax imposed by this article shall be permitted to elect an alternative capital stock value, which shall be used in lieu of the capital stock value defined in section 601(a) for purposes of subsections (a) and (b) hereof, for calendar years 1984, 1985 and 1986, and for fiscal years beginning in 1984, 1985 and 1986. The election shall be available to all entities, subject to the limitations of this subsection and shall be available for each such year without regard to whether the alternative capital stock value was elected in any other year. For the calendar year 1984 and fiscal years beginning in 1984, the alternative capital stock value shall be one hundred and thirty per cent of the value of such entity's capital stock as was settled by the department prior to any apportionment or exemption for the calendar year 1982 or the fiscal year beginning in 1982. For the calendar year 1985 and fiscal years beginning in 1985, the alternative capital stock value shall be one hundred and thirty per cent of the value of such entity's capital stock as was settled by the department prior to any apportionment or exemption for the calendar year 1983 or the fiscal year beginning in 1983. For the calendar year 1986 and fiscal years beginning in 1986, the alternative capital stock value shall be one hundred and thirty per cent of such entity's capital stock value as was settled by the department prior to any apportionment or exemption for the calendar year 1984 or the fiscal year beginning in 1984: Provided, That in no case shall the tax due using the alternative capital stock value be reduced more than five hundred dollars (\$500) from that obtained by using the formula set forth in section 601(a), and in no case shall the tax due be less than seventy-five dollars (\$75). The election to use the alternative capital stock value for the calendar year 1984 and fiscal years beginning in 1984 shall be limited to those entities which were subject to a tax imposed by this article for the calendar year 1982 or fiscal years beginning in 1982, the election of the alternative capital stock value for the calendar year 1985 and fiscal years beginning in 1985 shall be limited to entities which were subject to a tax imposed by this article for the calendar year 1983 or fiscal years beginning in 1983 and the election to use the alternative capital stock value for the calendar year 1986 and fiscal years beginning in 1986 shall be limited to those entities which were subject to a tax imposed by this article for the calendar year 1984 or fiscal years beginning in 1984. The Secretary of Revenue is hereby directed to undertake a study of the incidence of the fixed-formula tax on various sizes and types of businesses which incur significantly greater tax liability under the fixed formula. The findings and conclusions of the secretary shall be submitted to the General Assembly not later than September 15, 1986.*

(e) (d) It shall be the duty of the treasurer or other officers having charge of any [such corporation, joint-stock association, or limited partner-

ship] *domestic or foreign entity*, upon which a tax is imposed by this section, to transmit the amount of [said] tax to the [Department of Revenue] *department* within the time prescribed by law: Provided, That for the purposes of this act interest in limited partnerships or joint-stock associations shall be deemed to be capital stock, and taxable accordingly: Provided, further, That [corporations, limited partnerships, and joint-stock associations,] *entities* liable to a tax under this section, shall not be required to pay any further tax on the mortgages, bonds, and other securities owned by them and in which the whole body of stockholders or members, as such, have the entire equitable interest in remainder; but [corporations, limited partnerships, and joint-stock associations,] *entities* owning or holding such securities as trustees, executors, administrators, guardians, or in any other manner than for the whole body of stockholders or members thereof as sole equitable owners in remainder, shall return and pay the tax imposed by this act upon all securities so owned or held by them, as in the case of individuals.

[(f)] (e) Any holding company subject to the capital stock tax or the franchise tax imposed by this section may elect to compute [said] *the capital stock or franchise* tax by applying the rate of tax of ten mills, upon each dollar to ten per cent of the [actual value of its whole] capital stock *value*. If exercised, this election shall be in lieu of any other apportionment or allocation to which such company would otherwise be entitled.

[The term "holding company" shall mean any corporation (i) at least ninety per cent of the gross income of which for the taxable year is derived from dividends, interest, gains from the sale or other disposition of stock or securities and the rendition of management and administrative services to subsidiary corporations, and (ii) at least sixty per cent of the actual value of the total assets of which consists of stock securities or indebtedness of subsidiary corporations.]

The term "subsidiary corporation" shall mean any corporation, a majority of the total issued and outstanding shares of voting stock of which are owned by the taxpayer corporation directly or through one or more intervening subsidiary corporations.]

[(g)] (f) Notwithstanding any other provisions contained in this section 602, relating to the [appraisal, allocation or apportionment of the value] *computation* of the capital stock *value* of [a corporation] *an entity* subject to tax in [the] *this* Commonwealth [of Pennsylvania], every domestic corporation and every foreign corporation registered to do business in Pennsylvania and (i) which maintains an office in Pennsylvania and (ii) which has filed a timely election to be taxed as a regulated investment company with the Federal Government, and (iii) which duly qualifies to be taxed as a regulated investment company under the provisions of the Internal Revenue Code of 1954 as amended, shall be taxed as a regulated investment company and shall be subject to the capital stock or franchise tax imposed by section 602, which tax shall be computed in the following manner:

(1) The [value of its] capital stock *value* shall be determined by adding its net asset values as of the last day of each month during the taxable period or year and dividing the total sum by the number of months involved, for which

purpose net asset value means the actual market value of all assets owned by such corporation without any exemptions or exclusions, less all [of its] liabilities, debts and other obligations.

(2) The proportion of [such] *the capital stock* value taxable in this Commonwealth at the rate of ten mills, shall be determined by applying to [such] *the capital stock* value a fraction, the numerator of which is the sum of the corporation's gross receipts from (i) sales of its own shares to Pennsylvania investors and (ii) sales of its portfolio securities where the orders for such sales are placed with or credited to Pennsylvania offices of registered securities dealers and the denominator of which fraction is the corporation's total gross receipts from (i) sales of its own shares and (ii) sales of its portfolio securities. Pennsylvania investors shall mean individuals residing in Pennsylvania at the time of the sale or corporations or other entities having their principal place of business located in Pennsylvania at such time.

(3) Any regulated investment company shall have the right annually, to elect to compute its capital stock or franchise tax by applying the rate of tax of ten mills, upon each dollar to ten per cent of the capital stock value, *as defined in clause (1) of this subsection*, of such corporation. If exercised this election shall be in lieu of any other apportionment or allocation to which such corporation would otherwise be entitled.

Section 3. Section 1102 of the act is amended to read:

Section 1102. Procedure; Enforcement; Penalties.—Parts III, IV, VI, and VII of Article IV are incorporated by reference into this article in so far as they are consistent with this article and applicable to the tax imposed hereunder. *However, notwithstanding the provisions of subsection (d) of section 403 of this act, if the officers of any corporation subject to tax under this article shall neglect or refuse to make any report as herein required or shall knowingly make any false report, there shall be added by the department to the tax determined to be due a penalty of five per cent of the amount of tax due for each month or fraction thereof until the penalty has reached twenty-five per cent, and thereafter at the rate of one per cent per month. No such amounts added to the tax shall bear any interest whatsoever.*

Section 4. Section 1502(e) of the act, added December 1, 1983 (P.L.228, No.66), is amended to read:

Section 1502. Imposition; Report and Payment of Tax; Exemptions.—

* * *

(e) Mutual thrift institutions subject to the provisions of this article shall be exempt from all other corporate taxes imposed by the Commonwealth for State purposes[, and]. *Such institutions, any shares of stock in such institutions and the property of such institutions shall be exempt* from all local taxation imposed by political subdivisions of this Commonwealth under the authority of the laws of this Commonwealth, except taxes on real estate or transfers thereof.

Section 5. This act shall apply to utilities gross receipts taxes due and payable on and after the effective date of this act. Nothing in this act shall be construed to override the provisions of section 806 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

Section 6. If any provision of this act relating to the election of an alternative capital stock value is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable.

Section 7. This act shall take effect immediately and shall apply to the calendar year 1984 and fiscal years beginning in 1984 and each year thereafter.

APPROVED—The 23rd day of December, A. D. 1983.

DICK THORNBURGH