

No. 2006-67

AN ACT

SB 300

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, in sales and use tax, for exclusions; further providing, in personal income tax, for definitions, for classes of income, for election by small corporation, for manner of making election, for revocation of election, for termination by corporation ceasing to be a small corporation, for revocation or termination year and for election after revocation or termination; further providing, in capital stock franchise tax, for the definitions of "average net income," "capital stock value" and "corporation" and for imposition; further providing, in realty transfer tax, for stamps, commissions, payments and transfers; further providing, in inheritance tax, for valuation of certain farmland; and making related repeals and repealing a provision relating to taxation of restricted professional companies.

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

Section 1. Section 204 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended by adding a clause to read:

Section 204. Exclusions from Tax.—The tax imposed by section 202 shall not be imposed upon any of the following:

* * *

(65) The sale at retail or use of investment metal bullion and investment coins. "Investment metal bullion" means any elementary precious metal which has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum and palladium, and which is in such state or condition that its value depends upon its content and not its form. "Investment metal bullion" does not include precious metal which has been assembled, fabricated, manufactured or processed in one or more specific and customary industrial, professional, aesthetic or artistic uses. "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium or other metal and of the United States or any foreign nation with a fair market value greater than any nominal value of such coins. "Investment coins" does not include jewelry or works of art made of coins, nor does it include commemorative medallions.

Section 2. Section 301(n.1), (o.3) and (s.2) of the act, amended or added December 23, 1983 (P.L.370, No.90), May 7, 1997 (P.L.85, No.7), May 12, 1999 (P.L.26, No.4) and July 7, 2005 (P.L.149, No.40), are amended to read:

Section 301. Definitions.—Any reference in this article to the Internal Revenue Code of 1986 shall mean the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended to January 1, 1997, unless the reference contains the phrase “as amended” and refers to no other date, in which case the reference shall be to the Internal Revenue Code of 1986 as it exists as of the time of application of this article. The following words, terms and phrases when used in this article shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning:

* * *

(n.1) “Pennsylvania S corporation” means any small corporation as defined in section 301(s.2) which **[has] does not have** a valid election under section 307 in effect. ***A qualified Subchapter S subsidiary owned by a Pennsylvania S corporation shall be treated as a Pennsylvania S corporation without regard to whether an election under section 307 has been made with respect to the subsidiary.***

* * *

(o.3) “Qualified Subchapter S subsidiary” means a domestic or foreign corporation which for Federal income tax purposes is treated as a qualified Subchapter S subsidiary, as defined in section 1361(b)(3)(B) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1361), as amended to January 1, **[1997] 2005.**

* * *

(s.2) “Small corporation” means any corporation which has a valid election in effect under Subchapter S of Chapter 1 of the Internal Revenue Code of 1986, as amended to January 1, **[1997] 2005.**

* * *

Section 3. Section 303(a)(6) of the act, amended July 7, 2005 (P.L.149, No.40), is amended and the section is amended by adding subsections to read:

Section 303. Classes of Income.—(a) The classes of income referred to above are as follows:

* * *

(6) Interest derived from obligations which are not statutorily free from State or local taxation under any other act of the General Assembly of the Commonwealth of Pennsylvania or under the laws of the United States **[and]**, any amount paid under contract of life insurance or endowment or annuity contract[,] which is includable in gross income for Federal income tax purposes[,] **and any amount paid out of the Archer Medical Savings Account (Archer MSA) or health savings account that is includable in the gross income of an account beneficiary for Federal income tax purposes.**

* * *

(a.6) Except as provided in this article and without regard to sections 220(f)(4) and 223(f)(4) of the Internal Revenue Code of 1986, the requirements of sections 106(b) and (d), 220 and 223 of the Internal

Revenue Code of 1986, as amended to January 1, 2005, shall be applicable.

(a.7) The following apply:

(1) An amount paid as a contribution into a qualified tuition program shall be deductible from taxable income on the annual personal income tax return. The amount paid as a contribution to a qualified tuition program allowable as a deduction under this subsection shall be subject to an annual limitation not to exceed the threshold for exclusion from gifts as provided in section 2503(b) of the Internal Revenue Code of 1986, as amended, per designated beneficiary. The deduction shall not result in taxable income being less than zero.

(2) (i) The following shall not be subject to tax under this article:

(A) Any amount distributed from a qualified tuition program that is excludable from tax under section 529(c)(3)(B) of the Internal Revenue Code of 1986, as amended.

(B) Any rollover that is excludable from tax under section 529(c)(3)(C) of the Internal Revenue Code of 1986, as amended.

(C) Undistributed earnings on a qualified tuition program.

(ii) A change in designated beneficiaries under section 529(c)(3)(C) of the Internal Revenue Code of 1986, as amended, shall not constitute a taxable event under this article.

(3) Any amount distributed from a qualified tuition program that is not described under paragraph (2) shall be taxable under this article.

(4) For purposes of this subsection:

(i) The term "designated beneficiary" shall have the same meaning as provided in section 529(e)(1) of the Internal Revenue Code of 1986, as amended.

(ii) The term "qualified tuition program" shall have the same meaning as provided in section 529(b)(1) of the Internal Revenue Code of 1986, as amended.

** * **

Section 4. Section 307 of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

Section 307. Election by Small Corporation.—[Except as provided in section 307.6, any] *Any* small corporation [that is subject to the tax imposed under Article IV or owns a qualified S corporation subsidiary that is subject to the tax imposed under Article IV] may elect *not* to be taxed as a Pennsylvania S corporation. Such election [shall be valid only if all the shareholders] *requires the consent of one hundred per cent of the outstanding shares* of the *small* corporation on the day on which the election is made [consent to the election]. A qualified Subchapter S subsidiary owned by a Pennsylvania S corporation shall be treated as a Pennsylvania S corporation whether or not an election has been made with respect to such subsidiary.

Section 5. Sections 307.1, 307.3, 307.4, 307.5 and 307.6 of the act, added December 23, 1983 (P.L.370, No.90), are amended to read:

Section 307.1. Manner of Making Election.—(a) An election made pursuant to section 307 shall be made in such manner as prescribed by the department.

(b) An election under section 307 may be made for any taxable year at any time during the preceding taxable year or at any time on or before the **[fifteenth day of the third month of the current taxable year] due date or extended due date of the small corporation's tax return under Article IV.**

Section 307.3. Revocation of Election.—(a) An election under section 307 may be revoked if shareholders holding more than one-half of the shares of stock of the corporation on the day on which the revocation is made consent to the revocation. ***The corporation and any successor corporation shall not be eligible to revoke an election under this section for any taxable year prior to its fifth taxable year which begins after the first taxable year for which an election is effective unless the corporation becomes a qualified Subchapter S subsidiary.***

(b) **[Except as provided in subsection (c), a] A revocation under subsection (a) shall be effective on the first day of the taxable year if made on or before the fifteenth day of the third month thereof; if the revocation is made after such date, it shall be effective for the following taxable year.**

[(c) If the revocation specifies a date for revocation which is on or after the day on which the revocation is made, the revocation shall be effective on and after the date so specified.]

Section 307.4. Termination by Corporation Ceasing to be a Small Corporation.—(a) If a corporation ceases to be a small corporation, as defined in section 301(s.2), the **[election under section 307] corporation's status as a Pennsylvania S corporation** shall terminate.

(b) Such termination shall be effective on the date on which the corporation ceases to be a small corporation, as defined in section 301(s.2).

Section 307.5. **[Revocation or] Termination Year.**—(a) The portion of the **[revocation or] termination year** of a Pennsylvania S corporation ending before the first day for which the **[revocation or] termination** is effective shall be treated as a short taxable year for which the corporation is a Pennsylvania S corporation.

(b) The portion of such year beginning on the first day for which the **[revocation or] termination** is effective shall be treated as a short taxable year for **[which the corporation is subject to] purposes of** the tax imposed by Article IV.

(c) The allocation of income and expense items to be taken into consideration in each short year shall be made in accordance with such regulations as may be issued by the department.

[Section 307.6. Election after Revocation or Termination.—If a corporation has made an election under section 307 and if such election has been revoked pursuant to section 307.3 or terminated, such

corporation, and any successor corporation, shall not be eligible to make an election under section 307 for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such revocation or termination is effective.]

Section 6. The definitions of “average net income,” “capital stock value” and “corporation” in section 601 of the act, amended May 7, 1997 (P.L.85, No.7) and July 7, 2005 (P.L.149, No.40), are amended to read:

Section 601. 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 *without regard to how the corporation is treated for Federal income tax purposes*. In the case of a limited liability company or business trust *that is not* taxable as a [partnership] corporation for Federal income tax purposes, the net income or loss of the limited liability company or business trust for any given year shall be reduced by the amount of distributions made by such limited liability company or business trust to any member of such limited liability company or business trust who is deemed to be materially participating in the activities conducted by such limited liability company or business trust for purposes of section 469 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 469). *In the case of a limited liability company or business trust that for Federal income tax purposes is a disregarded entity of a natural person, the net income or loss of the limited liability company or business trust for any given year shall be reduced by the amount of distributions made by the limited liability company or business trust to a natural person.* For this purpose, distributions which are made to a member of a limited liability company or business trust within thirty (30) days of the end of a given year may be treated as having been made in the preceding year and not in the year in which such distribution is actually made.

* * *

“Capital stock value.” The amount computed pursuant to the following formula: the product of 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, from which product shall be subtracted [**one hundred twenty-five thousand dollars (\$125,000)**] *one hundred fifty thousand dollars (\$150,000)*, the algebraic equivalent of which is

$$(.5 \times (\text{average net income} / .095 + (.75) (\text{net worth}))) - [\mathbf{\$125,000}] \text{ } \mathbf{\$150,000}$$

“Corporation.” (A) Any of the following entities:

- (1) A corporation.
- (2) A joint-stock association.
- (3) A business trust.
- (4) A limited liability company. This clause excludes a restricted professional company which is subject to 15 Pa.C.S. Ch. 89 Subch. L (relating to restricted professional companies) [**and which is deemed to be a limited partnership pursuant to 15 Pa.C.S. § 8997 (relating to taxation of restricted professional companies)**].

(5) An entity which for Federal income tax purposes is classified as a corporation.

(6) A business trust which is a real estate investment trust as defined in section 856 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 856) more than fifty per cent of the voting power or value of the beneficial interests or shares of which are owned or controlled, directly or indirectly, by a single corporation that is not:

(i) a real estate investment trust as defined in section 856 of the Internal Revenue Code of 1986;

(ii) a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code of 1986;

(iii) a regulated financial institution as defined by section 401(6) of Article IV; or

(iv) formed as a holding company, subsidiary or affiliate of a regulated financial institution prior to December 1, 2003.

(7) A business trust which is a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code of 1986 owned, directly or indirectly, by a real estate investment trust as defined in section 856 of the Internal Revenue Code of 1986 more than fifty per cent of the voting power or value of the beneficial interests or shares of which are owned or controlled, directly or indirectly, by a single corporation that is not:

(i) a real estate investment trust as defined in section 856 of the Internal Revenue Code of 1986;

(ii) a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code of 1986;

(iii) a regulated financial institution as defined by section 401(6) of Article IV; or

(iv) formed as a holding company, subsidiary or affiliate of a regulated financial institution prior to December 1, 2003.

(B) The term does not include any of the following:

(1) A business trust which qualifies as a real estate investment trust under section 856 of the Internal Revenue Code of 1986 (26 U.S.C. § 856) or which is a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code of 1986 (26 U.S.C. § 856(i)).

(2) A business trust which qualifies as a regulated investment company under section 851 of the Internal Revenue Code of 1986 (26 U.S.C. § 851) and which is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.) or a related business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of regulated investment companies.

(3) A corporation, trust or other entity which is an exempt organization as defined by section 501 of the Internal Revenue Code of 1986 (26 U.S.C. § 501).

(4) A corporation, trust or other entity organized as a not-for-profit organization under the laws of this Commonwealth or the laws of any other state which:

(i) would qualify as an exempt organization as defined by section 501 of the Internal Revenue Code of 1986 (26 U.S.C. § 501);

(ii) would qualify as a homeowners association as defined by section 528(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 528(c));

(iii) is a membership organization subject to the Federal limitations on deductions from taxable income under section 277 of the Internal Revenue Code of 1986 (26 U.S.C. § 277) but only if no pecuniary gain or profit inures to any member or related entity from the membership organization; or

(iv) is a nonstock commodity or a nonstock stock exchange.

(5) A cooperative agricultural association subject to 15 Pa.C.S. Ch. 75 (relating to cooperative agricultural associations).

(6) A business trust if the trust is all of the following:

(i) Created or managed by an entity which is subject to the tax imposed by Article VII or XV or which is an affiliate of the entity which shares at least eighty per cent common ownership.

(ii) Created and managed for the purpose of facilitating the securitization of intangible assets.

(iii) Classified as a partnership or a disregarded entity for Federal income tax purposes.

* * *

Section 7. Section 602(h) of the act, amended December 23, 2003 (P.L.250, No.46), is amended to read:

Section 602. Imposition of Tax.—* * *

(h) The rate of tax for purposes of the capital stock and franchise tax for taxable years beginning within the dates set forth shall be as follows:

Taxable Year	Regular Rate	Surtax	Total Rate
January 1, 1971, to December 31, 1986	10 mills	0	10 mills
January 1, 1987, to December 31, 1987	9 mills	0	9 mills
January 1, 1988, to December 31, 1990	9.5 mills	0	9.5 mills
January 1, 1991, to December 31, 1991	11 mills	2 mills	13 mills
January 1, 1992, to December 31, 1997	11 mills	1.75 mills	12.75 mills
January 1, 1998, to December 31, 1998	11 mills	.99 mills	11.99 mills
January 1, 1999, to December 31, 1999	10.99 mills	0	10.99 mills
January 1, 2000, to December 31, 2000	8.99 mills	0	8.99 mills
January 1, 2001, to December 31, 2001	7.49 mills	0	7.49 mills
January 1, 2002, to December 31, 2003	7.24 mills	0	7.24 mills
January 1, 2004, to December 31, 2004	6.99 mills	0	6.99 mills
January 1, 2005, to December 31, 2005	5.99 mills	0	5.99 mills
[January 1, 2006, to December 31, 2006	4.99 mills	0	4.99 mills
January 1, 2007, to December 31, 2007	3.99 mills	0	3.99 mills
January 1, 2008, to December 31, 2008	2.99 mills	0	2.99 mills
January 1, 2009, to December 31, 2009	1.99 mills	0	1.99 mills
January 1, 2010, to December 31, 2010	.99 mills	0	.99 mills]
<i>January 1, 2006, to December 31, 2006</i>	<i>4.89 mills</i>	<i>0</i>	<i>4.89 mills</i>
<i>January 1, 2007, to December 31, 2007</i>	<i>3.89 mills</i>	<i>0</i>	<i>3.89 mills</i>
<i>January 1, 2008, to</i>			

<i>December 31, 2008</i>	<i>2.89 mills</i>	<i>0</i>	<i>2.89 mills</i>
<i>January 1, 2009, to</i>			
<i>December 31, 2009</i>	<i>1.89 mills</i>	<i>0</i>	<i>1.89 mills</i>
<i>January 1, 2010, to</i>			
<i>December 31, 2010</i>	<i>.89 mills</i>	<i>0</i>	<i>.89 mills</i>

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Section 8. Section 1106-C of the act, amended June 29, 2002, (P.L.559, No.89), is amended to read:

Section 1106-C. Stamps, Commissions, Payments and Transfers.—(a) The department shall prescribe, prepare and furnish stamps to each recorder of deeds, of such denominations and quantities as may be necessary, for the payment of the tax imposed and assessed by this article.

(b) The department shall allow each county a commission equal to one per cent of the face value of the stamps sold or two hundred fifty dollars (\$250) whichever is greater. The recorder of deeds shall pay the commission herein allowed to the general fund of the county. The department shall pay the premium or premiums on any bond or bonds required by law to be procured by recorder of deeds for the performance of their duties under this article.

(c) All moneys paid in accordance with this article shall be credited to the General Fund.

(d) At the end of each month, the State Treasurer shall transfer from the General Fund to the Keystone Recreation, Park and Conservation Fund an amount equal to the tax credited to the General Fund under subsection (c) for the previous month multiplied by the applicable transfer factor. The applicable transfer factor for each month shall be as follows:

Month	Transfer Factor
July 1994 through December 2001	0.15
January 2002 through June 2002	0.10
July 2002 through June 2003	0.075
July 2003 [and each month thereafter] <i>through June 2006</i>	0.15
<i>July 2006 through June 2007</i>	<i>0.021</i>
<i>July 2007 and each month thereafter</i>	<i>0.15</i>

[The State Treasurer shall transfer from the Keystone Recreation, Park and Conservation Fund to the General Fund an amount equal to the difference between the amount transferred to the Keystone Recreation, Park and Conservation Fund from January 1, 2002, and the effective date of this subsection and the amount authorized by this subsection.]

Section 9. Section 2122(a) of the act is amended by adding a definition and the section is amended by adding a subsection to read:

Section 2122. Valuation of Certain Farmland.—(a) The following words and phrases, when used in this section, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

“Agricultural conservation easement.” As defined in section 3 of the act of June 30, 1981 (P.L.128, No.43), known as the “Agricultural Area Security Law.”

* * *

(e) The value for transfer inheritance tax purposes of land or an interest in land which is part of an agricultural conservation easement shall be at fifty per cent of the value otherwise determined under this section.

Section 10. Repeals are as follows:

- (1) The provisions of 15 Pa.C.S. § 8997(b)(2) are repealed.
- (2) The General Assembly declares that the following repeals are necessary to effectuate the amendment of section 303 of the act:
 - (i) Sections 2 and 3 of the act of December 19, 1996 (P.L.1335, No.179), known as the Medical Care Savings Account Act, are repealed.
 - (ii) Section 4 of the act of July 14, 2005 (P.L.278, No.48), known as the Health Savings Account Act, is repealed.

Section 11. This act shall apply as follows:

- (1) The following provisions shall apply to taxable years beginning after December 31, 2005:
 - (i) The amendment of section 301(n.1), (o.3) and (s.2) of the act.
 - (ii) The amendment or addition of section 303(a)(6), (a.6) and (a.7) of the act.
 - (iii) The amendment of section 307 of the act.
 - (iv) The amendment of section 307.1 of the act.
 - (v) The amendment of section 307.3 of the act.
 - (vi) The amendment of section 307.4 of the act.
 - (vii) The amendment of section 307.5 of the act.
 - (viii) The amendment of section 307.6 of the act.
 - (ix) The amendment of the definitions of “average net income” and “corporation” in section 601 of the act.
 - (x) The amendment of section 602(h) of the act.
- (2) The amendment of the definition of “capital stock value” in section 601 of the act shall apply to taxable years beginning after December 31, 2006.
- (3) The amendment or addition of section 2122(a) and (e) of the act shall apply to estates of decedents who die on or after the effective date of this paragraph.

Section 12. This act shall take effect as follows:

(1) The addition of section 204(65) of the act shall take effect in 60 days.

(2) The remainder of this act shall take effect July 1, 2006, or immediately, whichever is later.

APPROVED—The 6th day of July, A.D. 2006.

EDWARD G. RENDELL