

No. 1983-90

AN ACT

HB 743

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 exclusions from sales tax, for a minimum tax for capital stock and foreign franchise tax purposes, for an election in computing franchise tax and for the calculation of tax when tax rates are changed during a tax year; providing for the tax treatment of Pennsylvania S corporations and their shareholders; defining the phrase "installment sales method of reporting"; and further defining "sales" for the purpose of apportionment of income and, in certain cases, apportionment of capital stock value.

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

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(44) The sale at retail or use of firewood. For the purpose of this clause, firewood shall mean the product of trees when severed from the land and cut into proper lengths for burning and used for fuel for cooking, hot water production or to heat residential dwellings.

Section 2. Section 301(a), (c), (k), (l) and (w) of the act, added August 31, 1971 (P.L.362, No.93) and clause (k) amended November 23, 1976 (P.L.1158, No.256), are amended and clauses are added to read:

Section 301. Definitions.—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. Any reference in this article to the Internal Revenue Code shall include the Internal Revenue Code of 1954, as amended to the date on which this article is effective:

(a) "Accepted accounting principles and practices" means those accounting principles, systems or practices, *including the installment sales method of reporting*, which are acceptable by standards of the accounting profession and which are not inconsistent with the regulations of the department setting forth such principles and practices.

* * *

(c) "Business" means an enterprise, activity, profession, vocation, trade, joint venture, commerce or any other undertaking of any nature when engaged in as commercial enterprise and conducted for profit or ordinarily

conducted for profit, whether by an individual, partnership, *Pennsylvania S corporation*, association or other unincorporated entity.

* * *

(k) "Income from sources within this Commonwealth" for a nonresident individual, estate or trust means the same as compensation, net profits, gains, dividends, interest or income enumerated and classified under section 303 of this article to the extent that it is earned, received or acquired from sources within this Commonwealth:

(1) By reason or ownership or disposition of any interest in real or tangible personal property in this Commonwealth; or

(2) In connection with a trade, profession, occupation carried on in this Commonwealth or for the rendition of personal services performed in this Commonwealth; or

(3) As a distributive share of the income of an unincorporated business, *Pennsylvania S corporation*, profession, enterprise, undertaking or other activity as the result of work done, services rendered or other business activities conducted in this Commonwealth, except as allocated to another state pursuant to regulations promulgated by the department under this article; or

(4) From intangible personal property employed in a trade, profession, occupation or business carried on in this Commonwealth.

Provided, however, That "income from sources within this Commonwealth" for a nonresident individual, estate or trust shall not include any items of income enumerated above received or acquired from an investment company registered with the Federal Securities and Exchange Commission under the Investment Company Act of 1940.

(l) "Individual" means a natural person and shall include the members of a partnership or association *and the shareholders of a Pennsylvania S corporation*.

(l.1) "Installment sales method of reporting" means the method by which a taxpayer reports the gain upon the sale of tangible personal property or real property when at least one payment is to be received in any taxable year following the taxable year of sale, whether such property is sold or otherwise disposed of in an isolated transaction or from the inventory of a dealer or broker. Taxpayers may elect to allocate the gain upon such transactions in equal proportion to each payment to be received. Taxpayers who do not elect to allocate the gain upon such transactions in equal proportion to each payment received shall report all gains upon the sale in the taxable year in which the transaction occurred. For the purposes of this definition: (i) the gain upon the transaction shall be the difference between the sales price and the seller's basis in the property; and (ii) the sales price shall be the face amount of the evidence of indebtedness given in exchange for the property sold or otherwise disposed of together with the value of any other consideration received by the seller. Where the evidence of indebtedness fails to state a price, the evidence of indebtedness will be valued at the fair market value of the property sold, less the value of other property or cash received in the same transaction. The installment sales method of reporting shall not be used for transactions the object of which is the lending of money or the rendering of services.

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(n.1) "Pennsylvania S corporation" means any small corporation as defined in section 301(s.2) which has a valid election under section 307 in effect.

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(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 1954, as amended as of January 1, 1983, and which does not have passive investment income in excess of twenty-five per cent of its gross receipts. For purposes of this clause, "passive investment income" means gross receipts derived from royalties, rents, dividends, interest, annuities and sales or exchanges of stock or securities (gross receipts from such sales or exchanges being taken into account only to the extent of gains therefrom).

* * *

(w) "Taxpayer" means any individual, estate or trust subject to the tax imposed by this article, any partnership having a partner who is a taxpayer under this act, any Pennsylvania S corporation having a shareholder who is a taxpayer under this act and any employer required to withhold tax on compensation paid.

Section 3. The act is amended by adding a section to read:

Section 302.1. Rate Changes Occurring During the Taxable Year.—Notwithstanding the provisions of section 302, the tax rate to be used for the computation of tax for any taxable year where the rate changes during the taxable year shall be the monthly weighted average of the rates applicable during the taxable year, regardless of when during the taxable year the income is received. The rate imposed by section 302 will be used to determine withholding tax liability under section 316.

Section 4. Article III of the act is amended by adding a part to read:

ARTICLE III
PERSONAL INCOME TAX

* * *

PART IV-A
PENNSYLVANIA S CORPORATIONS

Section 307. Election by Small Corporation.—Except as provided in section 307.6, any small corporation may elect not to be subject to the tax imposed under Article IV. Such election shall be valid only if all the shareholders of the corporation on the day on which the election is made consent to the election.

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.

Section 307.2. Effective Years of Election.—*An election made pursuant to section 307 shall be effective for the taxable year for which the election is made and for each succeeding taxable year unless revoked or terminated.*

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.*

(b) Except as provided in subsection (c), 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 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 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 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 307.7. Taxable Year of a Pennsylvania S Corporation.—*The taxable year of a Pennsylvania S corporation shall be the same taxable year which the corporation uses for Federal income tax purposes.*

Section 307.8. Income of a Pennsylvania S Corporation.—*(a) A Pennsylvania S corporation as such shall not be subject to the tax imposed by this article, but the shareholders of the Pennsylvania S corporation shall be subject to the tax imposed under this article as provided in this article.*

(b) No deduction shall be allowed for taxes based on income or taxes paid by the Pennsylvania S corporation pursuant to subchapter S of Chapter I or section 58(d) of the Internal Revenue Code of 1954, as amended as of January 1, 1983.

(c) *If a Pennsylvania S corporation makes a distribution of property, other than an obligation of such corporation, with respect to its stock and the fair market value of such property exceeds its adjusted basis in the hands of the corporation, then gain shall be recognized on the distribution as if the property had been sold to the distributee at its fair market value.*

(d) *Any election which may affect the computation of items derived from a Pennsylvania S corporation shall be made by the corporation.*

(e) *Any deduction, except a net loss deduction, which was disallowed when a corporation was subject to the tax imposed under Article IV shall be allowed in years in which the corporation is a Pennsylvania S corporation to the same extent and in the same manner that the deduction would have been allowed if the corporation had remained subject to the tax imposed under Article IV.*

Section 307.9. Income of Pennsylvania S Corporations Taxed to Shareholders.—(a) *Each shareholder of a Pennsylvania S corporation shall take into income such shareholder's pro rata share of the income or loss in each applicable class of income received by the corporation for its taxable year ending within or with the shareholder's taxable year.*

(b) *Each shareholder's pro rata share of any item for any taxable year shall be the sum of the amounts determined with respect to the shareholder by assigning an equal portion of all items to each day of the taxable year and then by dividing that portion pro rata among the shares outstanding on such day.*

(c) *The character of any item included in the shareholder's pro rata share shall be determined as if such item were realized directly by the shareholder from the source from which it was realized by the corporation or incurred in the same manner as incurred by the corporation.*

(d) *With respect to any deduction allowed pursuant to section 307.8(e), any nonresident shareholder shall be allowed such deduction only to the extent that the previously disallowed deduction would have been considered a deduction related to income from sources within this Commonwealth, within the meaning of section 301(k), during the taxable year when the deduction was disallowed.*

Section 307.10. Limitation on Pass-thru of Losses to Shareholders.—

(a) *The aggregate amount of losses taken into account by a shareholder of a Pennsylvania S corporation under section 307.9 shall not exceed the sum of the adjusted basis of the shareholder's stock in the Pennsylvania S corporation, determined after applying section 307.11(a) for the taxable year and the shareholder's adjusted basis of any indebtedness of the Pennsylvania S corporation to the shareholder, determined before applying section 307.11(d) for the taxable year.*

(b) *There shall be no carryover of losses by the shareholders of the Pennsylvania S corporation.*

Section 307.11. Adjustments to the Basis of the Stock of Shareholders.—(a) *The basis of the stock of any shareholder in a Pennsylvania S corporation shall be increased for any period by his share of the corporation's income, including nontaxable income, as determined under section 307.9.*

(b) The basis of any shareholder's stock in a Pennsylvania S corporation shall be decreased for any period, but not below zero, by any distribution by the corporation to the shareholder which was not included in the income of the shareholder pursuant to section 307.12 and by his share of the corporation's losses as determined under section 307.9 to the extent that the loss reduced the shareholder's income subject to the tax imposed under this article or a tax measured by net income, imposed on the shareholder by any other state.

(c) If for any taxable year any shareholder's basis in the stock of a Pennsylvania S corporation is reduced to zero, any excess losses will reduce the shareholder's basis, but not below zero, in any indebtedness of the Pennsylvania S corporation to the shareholder.

(d) If a shareholder's basis in any indebtedness is reduced under subsection (c) of this section, then such reduction shall be restored before the shareholder's basis in the Pennsylvania S corporation's stock is increased.

Section 307.12. Distributions.—(a) A distribution of property by a Pennsylvania S corporation which has no accumulated earnings and profits to a shareholder of the corporation shall not be included in the shareholder's income to the extent that it does not exceed the shareholder's adjusted basis in the stock. Any amount of the distribution in excess of the adjusted basis in the stock shall be treated as a gain from the sale, exchange or other disposition of property.

(b) A distribution of property by a Pennsylvania S corporation which has accumulated earnings and profits shall be treated in the same manner as a distribution by a Pennsylvania S corporation without earnings and profits to the extent of the corporation's accumulated adjustment account. That portion of the distribution in excess of the accumulated adjustment account will be treated as a dividend to the extent of the accumulated earnings and profits of the corporation. Any portion of the distribution in excess of the accumulated earnings and profits of the corporation shall be treated in the same manner as a distribution from a Pennsylvania S corporation without accumulated earnings and profits.

(c) Accumulated adjustment account means an account of the Pennsylvania S corporation which is cumulatively adjusted for the most recent continuous period during which the corporation has been a Pennsylvania S corporation by increasing the account for corporate income and decreasing the account for corporate losses and all distributions of property by the corporation to the shareholders which were not included in the income of the shareholders: Provided, That no adjustment shall be made for any income or loss not in any of the classes of income enumerated in section 303 or for any non-deductible expense.

(d) In the case of a non-pro rata distribution of property, the adjustment shall be limited to an amount which bears the same ratio to the balance in such account as the number of shares sold, exchanged or otherwise disposed of bears to the number of shares in the corporation outstanding immediately before such sale, exchange or disposition.

Section 5. Section 314 of the act, added August 31, 1971 (P.L.362, No.93), is amended to read:

Section 314. Income Taxes Imposed by Other States.—(a) A resident taxpayer before allowance of any credit under section 312 shall be allowed a credit against the tax otherwise due under this article for the amount of any income tax, wage tax or tax on or measured by gross or net earned or unearned income imposed on him *or on a Pennsylvania S corporation in which he is a shareholder, to the extent of his pro rata share thereof determined in accordance with section 307.9*, by another state with respect to income which is also subject to tax under this article.

(b) The credit provided under this section shall not exceed the proportion of the tax otherwise due under this article that the amount of the taxpayer's income subject to tax by the other jurisdiction bears to his entire taxable income.

Section 6. The act is amended by adding a section to read:

Section 330.1. Return of Pennsylvania S Corporation.—(a) *Every Pennsylvania S corporation shall make a return for each taxable year, stating specifically all items of gross income and deductions, the names and addresses of all persons owning stock in the corporation at any time during the taxable year, the number of shares of stock owned by each shareholder at all times during the taxable year, the amount of money and other property distributed by the corporation during the taxable year to each shareholder, the date of each distribution, each shareholder's pro rata share of each item of the corporation for the taxable year and such other information as the department may require.*

(b) *The return shall be filed on or before the date when the corporation's Federal income tax return is due.*

(c) *Every Pennsylvania S corporation shall also submit to the department a true copy of the income tax return filed with the Federal Government at the time the return required under subsection (a) is filed.*

Section 7. Sections 401(1), 401(3)1. and 401(3)2.(a)(1)(E) of the act, amended September 9, 1971 (P.L.437, No.105) and December 21, 1981 (P.L.482, No.141), are amended and a subclause is added to read:

Section 401. Definitions.—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:

(1) "Corporation." A corporation having capital stock, joint-stock association, or limited partnership either organized under the laws of this Commonwealth, the United States, or any other state, territory, or foreign country, or dependency, and (i) doing business in this Commonwealth; or (ii) carrying on activities in this Commonwealth; (iii) having capital or property employed or used in this Commonwealth; or (iv) owning property in this Commonwealth, by or in the name of itself, or any person, partnership, association, limited partnership, joint-stock association or corporation. The word "corporation" shall not include building and loan associations, banks, bank and trust companies, national banks, savings institutions, trust companies, insurance and surety companies *and Pennsylvania S corporations.*

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(3) "Taxable income." 1. (a) In case the entire business of the corporation is transacted within this Commonwealth, for any taxable year which begins on or after January 1, 1971, taxable income for the calendar year or fiscal year as returned to and ascertained by the Federal Government, or in the case of a corporation participating in the filing of consolidated returns to the Federal Government, the taxable income which would have been returned to and ascertained by the Federal Government if separate returns had been made to the Federal Government for the current and prior taxable years, subject, however, to any correction thereof, for fraud, evasion, or error as finally ascertained by the Federal Government.

(b) Additional deductions shall be allowed from taxable income on account of any dividends received from any other corporation ~~but only to the extent that such dividends are included in taxable income as returned to and ascertained by the Federal Government.~~

(c) Further additional deductions shall be allowed from taxable income in an amount equal to the amount of any reduction in an employer's deduction for wages and salaries as a result of the employer taking a credit for "new jobs" or "targeted jobs" pursuant to section 44B or section 51 of the Internal Revenue Code.

(d) Taxable income will include the sum of the following tax preference items as defined in section 57 of the Internal Revenue Code, as amended, (i) excess investment interest; (ii) accelerated depreciation on real property; (iii) accelerated depreciation on personal property subject to a net lease; (iv) amortization of certified pollution control facilities; (v) amortization of railroad rolling stock; (vi) stock options; (vii) reserves for losses on bad debts of financial institutions; (viii) capital gains; and (ix) accelerated cost recovery deduction under section 57(a)(12)(B) of the Internal Revenue Code, but only to the extent that such preference items are not included in "taxable income" as returned to and ascertained by the Federal Government.

(e) Taxable income for tax years ending in 1981, 1982 and 1983 will also include the amount of the deduction related to depreciation claimed and allowable under section 168, accelerated cost recovery system, Internal Revenue Code of 1954, as amended by the Economic Recovery Tax Act of 1981, other than items of tax preference under section 57 which have been included in taxable income.

(f) For the tax years beginning and ending in 1981 and 1982 a deduction shall be allowed from taxable income to the extent of the deduction for depreciation which would have been allowable on such recovery property under section 167 of the Internal Revenue Code of 1954, as amended, prior to amendment by the Economic Recovery Tax Act of 1981.

(g) For the tax year beginning and ending in 1983 a deduction shall be allowed from taxable income to the extent of the deduction for depreciation which would have been allowable on such recovery property under section 167 of the Internal Revenue Code of 1954, as amended, prior to amendment by the Economic Recovery Tax Act of 1981, plus an additional deduction to the extent of one-half of the deduction related to depreciation claimed and allowable on such recovery property under section 168 of the

Internal Revenue Code of 1954, as amended, in excess of the deduction for depreciation which would have been allowable on such recovery property under section 167 of the Internal Revenue Code of 1954, as amended, prior to amendment by the Economic Recovery Tax Act of 1981, if any.

(h) For tax years beginning in 1984, and for subsequent years, there shall be allowed as a deduction related to depreciation the amount allowable under section 168 of the Internal Revenue Code, as amended, with respect to recovery property.

(i) For all recovery property the amounts disallowed as a consequence of the aforesaid adjustments shall be recovered by an additional deduction from taxable income returned to and ascertained by the Federal Government in tax years commencing in 1984 of one-fourth of the sum per year or ten thousand dollars (\$10,000) per year, whichever is greater, until the total amount has been recovered.

(j) In the case of fiscal year taxpayers, the deduction from taxable income related to depreciation shall be prorated so as to reflect the relative portions of each of the calendar years 1981, 1982 and 1983 included in the taxpayer's fiscal year, in a manner pursuant to regulations to be promulgated by the secretary.

(k) A taxpayer reporting on a 52-53 week basis which closes its fiscal year on any of the last seven days in December or the first seven days of January is deemed a calendar year taxpayer with a year ending date of December 31.

(l) For the purpose of computing the depreciation deduction which would have been allowable under section 167 of the Internal Revenue Code of 1954, as amended, prior to amendment by the Economic Recovery Tax Act of 1981: (i) tax preference items as set forth above shall not be included; (ii) property shall be depreciated for a period and with a method consistent with that employed for similar property in prior years; and (iii) for taxable years 1982 and 1983, no deduction shall be allowed for additional first year depreciation on section 179 property.

(m) No deduction shall be allowed for **[net operating losses sustained by the corporation during any other fiscal or calendar year: Provided, That for the calendar year 1981 and fiscal years beginning in 1981 and thereafter, a] the amount of the net operating loss[, as provided by] deduction taken under section 172 of the Internal Revenue Code[, shall be allowed as a deduction and a carryover pursuant to the following schedule:**

Net Operating Loss for Year	Carryover
1981	1 year
1982	2 years
1983 and thereafter	3 years

The net operating loss shall be carried to the earliest of the taxable years to which, under this schedule, such loss may first be carried].

(n) In the case of regulated investment companies as defined by the Internal Revenue Code of 1954, as amended, "taxable income" shall be investment company taxable income as defined in the aforesaid Internal Revenue Code of 1954, as amended.

(o) In arriving at "taxable income" for Federal tax purposes for any taxable year beginning on or after January 1, 1981, no deduction shall be allowed for taxes imposed on or measured by net income.

2. In case the entire business of any corporation, other than a corporation engaged in doing business as a regulated investment company as defined by the Internal Revenue Code of 1954, as amended, is not transacted within this Commonwealth, the tax imposed by this article shall be based upon such portion of the taxable income of such corporation for the fiscal or calendar year, as defined in subclause 1 hereof, and may be determined as follows:

(a) Division of Income.

(1) As used in this definition, unless the context otherwise requires:

* * *

(E) "Sales" means all gross receipts of the taxpayer not allocated under this definition other than *dividends received, interest on United States, State or political subdivision obligations and* gross receipts heretofore or hereafter received 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.

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4. (a) *For taxable years beginning in 1982 and thereafter, a net loss deduction shall be allowed from taxable income as arrived at under subclause 1 or, if applicable, subclause 2.*

(b) *A net loss for a taxable year is the negative amount for said taxable year determined under subclause 1 or, if applicable, subclause 2. Negative amounts under subclause 1 shall be allocated and apportioned in the same manner as positive amounts.*

(c) *The net loss deduction shall be the lesser of the amount of the net loss or losses which may be carried over to the taxable year or taxable income as determined under subclause 1 or, if applicable, subclause 2. A net loss for a taxable year may only be carried over pursuant to the following schedule:*

<i>Taxable Year</i>	<i>Carryover</i>
<i>1981</i>	<i>1 year</i>
<i>1982</i>	<i>2 years</i>
<i>1983 and thereafter</i>	<i>3 years</i>

The earliest net loss shall be carried over to the earliest taxable year to which it may be carried under this schedule.

(d) *No loss shall be a carryover from a taxable year when the corporation elects to be treated as a Pennsylvania S corporation pursuant to section 307 of Article III of this act to a taxable year when the corporation is subject to the tax imposed under this article.*

(e) *Paragraph (d) shall not prevent a taxable year when a corporation is a Pennsylvania S corporation from being considered a taxable year for determining the number of years to which a net loss may be a carryover.*

(f) *For purposes of the net loss deduction, the short taxable year of a corporation, after the revocation or termination of an election to be treated as a Pennsylvania S corporation pursuant to sections 307.3 and 307.4 of Article III of this act, shall be treated as a taxable year.*

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Section 8. 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, 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, a tax *which is the greater of (i) seventy-five dollars (\$75) or (ii) the amount computed* 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, 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 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, except for the imposition of the seventy-five dollar (\$75) minimum tax*, 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, 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 as enjoy and exercise the right of eminent domain, but every corporation, limited partnership or joint-stock association organized for the purpose of manufacturing, processing, research or development except such companies as enjoy and exercise the right of eminent domain shall pay the State tax of *the greater of (i) seventy-five dollars (\$75) or (ii) the amount computed at the rate 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 to relieve from State taxation, *except for imposition of the seventy-five dollar (\$75) minimum tax under this section*, 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, 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, a franchise tax *which is the greater of (i) seventy-five dollars (\$75) or (ii) the amount computed* 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, shall be ascertained in

the manner prescribed in section 601 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. *Any foreign corporation, joint-stock association, limited partnership or company subject to the tax prescribed herein may elect to compute and pay its tax under section 602(a): Provided, That any foreign corporation, joint-stock association, limited partnership or company electing to compute and pay its tax under section 602(a) shall be treated as if it were a domestic corporation for the purpose of determining which of its assets are exempt from taxation and for the purpose of determining the proportion of the value of its capital stock which is subject to taxation.*

(2) The provisions of this article shall apply to the taxation of corporations, limited partnerships and joint-stock associations organized for manufacturing, processing, research or development purposes, but shall not apply to such companies 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.

(e) It shall be the duty of the treasurer or other officers having charge of any such corporation, joint-stock association, or limited partnership, upon which a tax is imposed by this section, to transmit the amount of said tax to the Department of Revenue 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, 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, 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) (1) Any holding company subject to the capital stock tax or the franchise tax imposed by this section may elect to compute said 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, *but in no case shall the tax so computed be less than seventy-five dollars (\$75)*. If exercised, this election shall be in lieu of any other apportionment or allocation to which such company would otherwise be entitled.

(2) (i) 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.

(ii) 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) Notwithstanding any other provisions contained in this section 602, relating to the appraisal, allocation or apportionment of the value of the capital stock of a corporation subject to tax in the 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 *the greater of (i) seventy-five dollars (\$75) or (ii) the amount* computed in the following manner:

(1) The value of its capital stock 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 value taxable in this Commonwealth at the rate of ten mills, shall be determined by applying to such 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 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 9. Section 8 of this act (Section 602) shall apply to the calendar year 1983 and fiscal years beginning in 1983 and each year thereafter.

Section 10. Nothing contained in section 7 (Section 401(3)2.(a)(1)(E)) shall affect or impair litigation relating to tax years prior to tax years to which this act applies. This act shall not be construed to indicate the intent of the General Assembly with regard to the status of the relevant law of the Commonwealth prior to this act. Provided, it is the intent of the General Assembly that, for tax years prior to tax years to which this act applies, for purposes of the tax imposed by Article IV of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971, the term "sales" shall exclude dividends received and interest on United States obligations, and for purposes of the tax imposed by Article VI of the Tax Reform Code of 1971,

the term "sales" shall include dividends received and interest on United States obligations.

Section 11. For purposes of the tax imposed under Article IV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, section 7 (Section 401(3)2.(a)(1)(E)) shall apply to tax years beginning on or after January 1, 1981; and for purposes of the tax imposed by Article VI of the Tax Reform Code of 1971, section 7 (Section 401(3)2.(a)(1)(E)) shall apply to tax years beginning on or after January 1, 1983.

Section 12. Section 7 (Section 401(3)1.(m), (n) and (o) and 401(3)4.) of this act shall apply to taxable years beginning on or after January 1, 1982.

Section 13. This act as it relates to S corporations shall be applicable for corporation tax years beginning after December 31, 1983.

Section 14. The provisions of this act relating to the taxation of Pennsylvania S corporations and the shareholders thereof are nonseverable. If any provision of this act relating to the taxation of Pennsylvania S corporations and the shareholders thereof or the application of any such provision to any person or circumstance is held invalid, the remaining provisions or applications of this act relating to the taxation of Pennsylvania S corporations and the shareholders thereof are void.

Section 15. (a) Sections 7 (Section 401(3)2.(a)(1)(E)) and 8 (Section 602(b)(1) last sentence) shall take effect immediately.

(b) The remainder of this act shall take effect January 1, 1984.

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

DICK THORNBURGH