No. 2006-116

AN ACT

HB 859

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 definitions and for alternate imposition; further providing, in corporate net income tax, for definitions; and further providing, in research and development tax credit, for credit for research and development expenses, for time limitations, for limitations on credit and for termination.

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

Section 1. Section 201(c) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended May 7, 1997 (P.L.85, No.7), is amended to read:

Section 201. Definitions.—The following words, terms and phrases when used in this Article II shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

(c) "Manufacture." The performance of manufacturing, fabricating, compounding, processing or other operations, engaged in as a business, which place any tangible personal property in a form, composition or character different from that in which it is acquired whether for sale or use by the manufacturer, and shall include, but not be limited to—

(1) Every operation commencing with the first production stage and ending with the completion of tangible personal property having the physical qualities (including packaging, if any, passing to the ultimate consumer) which it has when transferred by the manufacturer to another[;]. ***For purposes of this clause, "operation" shall include clean rooms and their component systems, including: environmental control systems, antistatic vertical walls and manufacturing platforms and floors, which are independent of the real estate; process piping systems; specialized lighting systems; deionized water systems; process vacuum and compressed air systems; process and specialty gases; and alarm or warning devices specifically designed to warn of threats to the integrity of the product or people. For purposes of this clause, a "clean room" is a location with a self-contained, sealed environment with a controlled, closed air system independent from the facility's general environmental control system.***

(2) The publishing of books, newspapers, magazines and other periodicals and printing[;].

(3) Refining, blasting, exploring, mining and quarrying for, or otherwise extracting from the earth or from waste or stock piles or from pits or banks any natural resources, minerals and mineral aggregates including blast furnace slag[;].

(4) Building, rebuilding, repairing and making additions to, or replacements in or upon vessels designed for commercial use of registered tonnage of fifty tons or more when produced upon special order of the purchaser, or when rebuilt, repaired or enlarged, or when replacements are made upon order of, or for the account of the owner[;].

(5) Research having as its objective the production of a new or an improved (i) product or utility service, or (ii) method of producing a product or utility service, but in either case not including market research or research having as its objective the improvement of administrative efficiency.

(6) Remanufacture for wholesale distribution by a remanufacturer of motor vehicle parts from used parts acquired in bulk by the remanufacturer using an assembly line process which involves the complete disassembly of such parts and integration of the components of such parts with other used or new components of parts, including the salvaging, recycling or reclaiming of used parts by the remanufacturer.

(7) Remanufacture or retrofit by a manufacturer or remanufacturer of aircraft, armored vehicles, other defense-related vehicles having a finished value of at least fifty thousand dollars ($50,000). Remanufacture or retrofit involves the disassembly of such aircraft, vehicles, parts or components, including electric or electronic components, the integration of those parts and components with other used or new parts or components, including the salvaging, recycling or reclaiming of the used parts or components and the assembly of the new or used aircraft, vehicles, parts or components. For purposes of this clause, the following terms or phrases have the following meanings:

(i) "aircraft" means fixed-wing aircraft, helicopters, powered aircraft, tilt-rotor or tilt-wing aircraft, unmanned aircraft and gliders;

(ii) "armored vehicles" means tanks, armed personnel carriers and all other armed track or semitrack vehicles; or

(iii) "other defense-related vehicles" means trucks, truck-tractors, trailers, jeeps and other utility vehicles, including any unmanned vehicles.

The term "manufacture" shall not include constructing, altering, servicing, repairing or improving real estate or repairing, servicing or installing tangible personal property, nor the cooking, freezing or baking of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products.

* * *

Section 1.1. Section 205(a) of the act, amended July 7, 2005 (P.L.149, No.40), is amended to read:

Section 205. Alternate Imposition of Tax; Credits.—(a) If any person actively and principally engaged in the business of selling new or used motor vehicles, trailers or semi-trailers, and registered with the department in the "dealer's class," acquires a motor vehicle, trailer or semi-trailer for the purpose of resale, and prior to such resale, uses the motor vehicle, trailer or semi-trailer for a taxable use under this act, **[such]** ***the*** person may pay a tax equal to six per cent of the fair rental value of the motor vehicle, trailer or semi-trailer during such use. This section shall not apply to the use of a vehicle as a wrecker, parts truck, delivery truck or courtesy car.

* * *

Section 2. Section 401(3)2(a)(9) and 4(c) of the act, amended May 12, 1999 (P.L.26, No.4) and June 29, 2002 (P.L.559, No.89), are amended 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:

* * *

(3) "Taxable 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 1986, 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.

* * *

(9) (A) Except as provided in subparagraph (B)**[, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus three times the sales factor, and the denominator of which is five.]**:

(i) For taxable years beginning before January 1, 2007, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus three times the sales factor and the denominator of which is five.

(ii) For taxable years beginning after December 31, 2006, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the sum of fifteen times the property factor, fifteen times the payroll factor and seventy times the sales factor and the denominator of which is one hundred.

(B) For purposes of apportionment of the capital stock - franchise tax as provided in section 602 of Article VI of this act, the apportionment fraction shall be the property factor plus the payroll factor plus the sales factor as the numerator, and the denominator shall be three.

* * *

4. * * *

(c) (1) The net loss deduction shall be the lesser of **[two million dollars ($2,000,000) or the]***:*

(A) (I) For taxable years beginning before January 1, 2007, two million dollars ($2,000,000);

(II) For taxable years beginning after December 31, 2006, the greater of twelve and one-half per cent of taxable income as determined under subclause 1 or, if applicable, subclause 2 or three million dollars ($3,000,000); or

(B) 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.

(1.1) In no event shall the net loss deduction include more than five hundred thousand dollars ($500,000), in the aggregate, of net losses from taxable years 1988 through 1994.

(2) ***(A)*** A net loss for a taxable year may only be carried over pursuant to the following schedule:

Taxable Year	Carryover
1981	1 taxable year
1982	2 taxable years
1983-1987	3 taxable years
1988	2 taxable years plus 1 taxable year starting with the 1995 taxable year
1989	1 taxable year plus 2 taxable years starting with the 1995 taxable year
1990-1993	3 taxable years starting with the 1995 taxable year
1994	1 taxable year
1995-1997	10 taxable years
1998 and thereafter	20 taxable years

(B) The earliest net loss shall be carried over to the earliest taxable year to which it may be carried under this schedule. The total net loss deduction allowed in any taxable year shall not exceed **[two million dollars ($2,000,000).]***:*

(I) Two million dollars ($2,000,000) for taxable years beginning before January 1, 2007.

(II) The greater of twelve and one-half per cent of the taxable income as determined under subclause 1 or, if applicable, subclause 2 or three

million dollars ($3,000,000) for taxable years beginning after December 31, 2006.

* * *

Section 3. Section 1703-B of the act, added May 7, 1997 (P.L.85, No.7), is amended to read:

Section 1703-B. Credit for Research and Development Expenses.—(a) A taxpayer who incurs Pennsylvania qualified research and development expense in a taxable year may apply for a research and development tax credit as provided in this article. By September 15, a taxpayer must submit an application to the department for Pennsylvania qualified research and development expense incurred in the taxable year that ended in the prior calendar year.

(b) **[A]** ***The following apply:***

(1) Except as provided in paragraph (2), a taxpayer that is qualified under subsection (a) shall receive a research and development tax credit for the taxable year in the amount of ten per cent of the excess of the taxpayer's total Pennsylvania qualified research and development expense for the taxable year over the taxpayer's Pennsylvania base amount.

(2) A taxpayer that is a small business and is qualified under subsection (a) shall receive a research and development tax credit for the taxable year in the amount of twenty per cent of the excess of the taxpayer's total Pennsylvania qualified research and development expense for the taxable year over the taxpayer's Pennsylvania base amount.

(c) By December 15 of the calendar year following the close of the taxable year during which the Pennsylvania qualified research and development expense was incurred, the department shall notify the taxpayer of the amount of the taxpayer's research and development tax credit approved by the department.

Section 4. Section 1707-B of the act, amended June 29, 2002 (P.L.559, No.89), is amended to read:

Section 1707-B. Time Limitations.—A taxpayer is not entitled to a research and development tax credit for Pennsylvania qualified research and development expenses incurred in taxable years ending after December 31, **[2006]** ***2015***. The termination date in section 41(h) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 41(h)) does not apply to a taxpayer who is eligible for the research and development tax credit under this article for the taxable year in which the Pennsylvania qualified research and development expense is incurred.

Section 5. Section 1709-B(a) of the act, amended December 23, 2003 (P.L.250, No.46), is amended to read:

Section 1709-B. Limitation on Credits.—(a) The total amount of credits approved by the department shall not exceed **[thirty million dollars ($30,000,000)]** ***forty million dollars ($40,000,000)*** in any fiscal year. Of that amount, **[six million dollars ($6,000,000)]** ***eight million dollars ($8,000,000)*** shall be allocated exclusively for small businesses. However, if

the total amounts allocated to either the group of applicants exclusive of small businesses or the group of small business applicants is not approved in any fiscal year, the unused portion will become available for use by the other group of qualifying taxpayers.

* * *

Section 6. Section 1712-B of the act, amended June 29, 2002 (P.L.559, No.89), is amended to read:

Section 1712-B. Termination.—The department shall not approve a research and development tax credit under this article for taxable years ending after December 31, **[2006]** ***2015***.

Section 7. This act shall apply as follows:

(1) The following provisions shall apply to all credits awarded after June 30, 2006:

(i) The amendment of section 1703-B of the act.

(ii) The amendment of section 1707-B of the act.

(iii) The amendment of section 1709-B(a) of the act.

(iv) The amendment of section 1712-B of the act.

(2) The amendment of section 401(3)2(a)(9) and 4(c) of the act shall apply to taxable years beginning after December 31, 2006.

Section 8. This act shall take effect July 1, 2006, or immediately, whichever is later.

APPROVED—The 12th day of July, A.D. 2006.

EDWARD G. RENDELL