

## No. 182

## AN ACT

HB 1418

Amending the act of June 1, 1889 (P. L. 420), entitled "A further supplement to an act entitled 'An act to provide revenue by taxation,' approved the seventh day of June, Anno Domini one thousand eight hundred and seventy-nine," defining the term "manufacturing," raising the rate of the tax.

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

Section 1. Section 21, act of June 1, 1889 (P. L. 420), entitled "A further supplement to an act entitled 'An act to provide revenue by taxation,' approved the seventh day of June, Anno Domini one thousand eight hundred and seventy-nine," amended July 31, 1968 (Act No. 277), is amended to read:

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

thousand nine hundred forty-eight, one thousand nine hundred forty-nine, one thousand nine hundred fifty, one thousand nine hundred fifty-one, one thousand nine hundred fifty-two, one thousand nine hundred fifty-three, one thousand nine hundred fifty-four, one thousand nine hundred fifty-five, one thousand nine hundred fifty-six and one thousand nine hundred fifty-seven, shall apply to the taxation of capital stock of corporations, limited partnerships and joint-stock associations organized for manufacturing purposes, excepting companies engaged in the distilling of liquors: Provided further, That after said eleven year period the provisions of this section shall not apply to the taxation of the capital stock of corporations, limited partnerships and joint-stock associations organized for manufacturing, 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, excepting such companies as enjoy and exercise the right of eminent domain, and until the calendar or fiscal year beginning on or after January 1, 1968, excepting companies engaged in the distilling of liquors, but every corporation, limited partnership or joint-stock association organized for the purpose of manufacturing, processing, research or development shall pay the State tax *of seven 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 only so much of the capital stock as is invested purely in the manufacturing, processing, research or development plant and business.

(b) Every foreign corporation, joint-stock association, limited partnership, and company whatsoever, from which a report is required under the twentieth section hereof, shall be subject to and pay into the treasury of the Commonwealth annually, through the Department of Revenue, a franchise tax at the rate of five mills, through and including the calendar year one thousand nine hundred sixty-six, and the fiscal year beginning in one thousand nine hundred sixty-six, *and through and including the year one thousand nine hundred sixty-eight*, and at the rate of [six mills] *seven mills for the calendar year one thousand nine hundred sixty-nine and the fiscal year beginning in one thousand nine hundred sixty-nine 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 the twentieth section of this act, and shall then be divided into three equal parts.

(1) Of one third, such portion shall be attributed to business carried on within the Commonwealth, as shall be found by multiplying said third by a fraction, whose numerator is the value of the taxpayer's tangible

property not actually and exclusively used in manufacturing, processing, research or development, situated within the Commonwealth, and whose denominator is the value of all the taxpayer's tangible property wherever situated.

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

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

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

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

The amount of the taxpayer's gross receipts from business assignable to this Commonwealth shall be, (1) the amount of its gross receipts for the taxable year except those negotiated or effected in behalf of the taxpayer by agents or agencies chiefly situated at, connected with, or sent out from premises for the transaction of business maintained by the taxpayer outside the Commonwealth, and except rents and royalties, and interests

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

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

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

Notwithstanding the foregoing provisions of this subsection (b), the franchise tax of five mills imposed by subsection (b) on reports, filed for the calendar years one thousand nine hundred forty-seven, one thousand nine hundred forty-eight, one thousand nine hundred forty-nine, one thousand nine hundred fifty, one thousand nine hundred fifty-one, one thousand nine hundred fifty-two, one thousand nine hundred fifty-three, one thousand nine hundred fifty-four, one thousand nine hundred fifty-five, one thousand nine hundred fifty-six and one thousand nine hundred fifty-seven, and for fiscal years beginning in the calendar year one thousand nine hundred forty-seven, one thousand nine hundred forty-eight, one thousand nine hundred forty-nine, one thousand nine hundred fifty, one thousand nine hundred fifty-one, one thousand nine

hundred fifty-two, one thousand nine hundred fifty-three, one thousand nine hundred fifty-four, one thousand nine hundred fifty-five, one thousand nine hundred fifty-six and one thousand nine hundred fifty-seven, shall apply to the taxation of corporations, limited partnerships and joint-stock associations organized for manufacturing, processing, research or development purposes excepting until the calendar or fiscal year beginning on or after January 1, 1968 companies engaged in the distilling of liquors, without excluding from the numerators, of the applicable fractions tangible property actually and exclusively used in manufacturing, processing, research or development, compensation of employes exclusively engaged in manufacturing, and gross receipts from business strictly incident or appurtenant to manufacturing.

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

(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 non-ferrous 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 non-alcoholic 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.

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

(d) 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 Treasury of the Commonwealth 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: Provided further, That the tax imposed by this section on reports filed for the calendar years one thousand nine hundred and thirty-five and one thousand nine hundred and thirty-six, and for each calendar year thereafter, or for the fiscal years beginning in the calendar years one thousand nine hundred and thirty-five and one thousand nine hundred and thirty-six, and for each fiscal year thereafter, shall apply to the taxation of the capital stock of corporations, limited partnerships; and joint-stock associations, organized for laundering and for the processing and curing of meats, their products and by products: Provided further, That in case of fire and marine insurance companies, the tax imposed by this section shall be at the rate of five mills upon each dollar of the actual value of the whole capital stock, through and including the calendar year one thousand nine hundred sixty-six, and the fiscal year beginning in one thousand nine hundred sixty-six, *and through and including the year one thousand nine hundred and sixty-eight*, and at the rate of [six mills] *seven mills for the calendar year one thousand nine hundred and sixty-nine and the fiscal year beginning in one thousand nine hundred and sixty-nine and for*

each year thereafter: Provided, That nothing in this act shall be so construed as to apply to building and loan associations chartered by the State of Pennsylvania.

(e) 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 five mills, through and including the calendar year one thousand nine hundred sixty-six, and the fiscal year beginning in one thousand nine hundred sixty-six, and at the rate of six mills for each year thereafter, upon each dollar to ten per cent of the actual value of its whole capital stock. 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.

(f) Notwithstanding any other provisions contained in this section 21, 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 (1) which maintains an office in Pennsylvania and (2) which has filed a timely election to be taxed as a regulated investment company with the Federal Government and (3) 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 21, which tax shall be 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 [~~six~~] *seven* 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 (a) sales of its own shares to Pennsylvania investors and (b)

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 (a) sales of its own shares and (b) 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 [six] *seven* 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 2. This act shall take effect immediately and shall impose the increased tax rate for the calendar year beginning January 1, 1969, and each year thereafter, but the balance of the amount due based on the increased rate for the year 1969 shall be payable on April 15, 1970.

APPROVED—The 31st day of December, A. D. 1969.

RAYMOND P. SHAFER

The foregoing is a true and correct copy of Act of the General Assembly No. 182.



*Secretary of the Commonwealth.*