

No. 1985-102

## AN ACT

HB 567

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 computation of the capital stock or franchise tax on regulated investment companies and the tax on real estate transfers; and continuing the employment incentive payment program.

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

Section 1. Section 602(f) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended December 23, 1983 (P.L.360, No.89) and December 23, 1983 (P.L.370, No.90), is amended to read:

Section 602. Imposition of Tax.—\* \* \*

(f) **[Notwithstanding any other provisions contained in this section 602, relating to the computation of the capital stock value of an entity subject to tax in this Commonwealth, every] Every** domestic corporation and every foreign corporation **(i)** registered to do business in Pennsylvania **{and (i)}; (ii)** which maintains an office in Pennsylvania **[and (ii)]; (iii)** which has filed a timely election to be taxed as a regulated investment company with the Federal Government**[, and (iii)]; and (iv)** 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, *in either case for the privilege of having an office in Pennsylvania, which tax shall be [the greater of (i) seventy-five dollars (\$75) or (ii) the amount computed in the following manner:*

(1) The capital stock value shall be determined by adding its net asset values as of the last day of each month during the taxable period or year and dividing the total sum by the number of months involved, for which purpose net asset value means the actual market value of all assets owned by such corporation without any exemptions or exclusions, less all liabilities, debts and other obligations.

(2) The proportion of the capital stock value taxable in this Commonwealth at the rate of ten mills, shall be determined by applying to the capital stock value a fraction, the numerator of which is the sum of the corporation's gross receipts from (i) sales of its own shares to Pennsylvania investors and (ii) sales of its portfolio securities where the orders for such sales are placed with or credited to Pennsylvania offices of registered securities dealers.

and the denominator of which fraction is the corporation's total gross receipts from (i) sales of its own shares and (ii) sales of its portfolio securities. Pennsylvania investors shall mean individuals residing in Pennsylvania at the time of the sale or corporations or other entities having their principal place of business located in Pennsylvania at such time.

(3) Any regulated investment company shall have the right annually, to elect to compute its capital stock or franchise tax by applying the rate of tax of ten mills, upon each dollar to ten per cent of the capital stock value, as defined in clause (1) of this subsection, of such corporation. If exercised this election shall be in lieu of any other apportionment or allocation to which such corporation would otherwise be entitled.] *computed pursuant to the provisions of this subsection in lieu of all other provisions of this section 602. The tax shall be in an amount which is the sum of the amounts determined pursuant to clauses (1) and (2):*

(1) *The amount determined pursuant to this clause shall be seventy-five dollars (\$75) times that number which is the result of dividing the net asset value of the regulated investment company by one million, rounded to the nearest multiple of seventy-five dollars (\$75). Net asset value shall be determined by adding the monthly net asset values as of the last day of each month during the taxable period and dividing the total sum by the number of months involved. Each such monthly net asset value shall be the actual market value of all assets owned without any exemptions or exclusions, less all liabilities, debts and other obligations.*

(2) *The amount determined pursuant to this clause shall be the amount which is the result of multiplying the rate of taxation applicable for purposes of the personal income tax during the same taxable year times the apportioned undistributed personal income tax income of the regulated investment company. For the purposes of this clause:*

(A) *Personal income tax income shall mean income to the extent enumerated and classified in section 303.*

(B) *Undistributed personal income tax income shall mean all personal income tax income other than personal income tax income undistributed on account of the capital stock or foreign franchise tax, less all personal income tax income distributed to shareholders. At the election of the company, income distributed after the close of a taxable year, but deemed distributed during the taxable year for Federal income tax purposes, shall be deemed distributed during that year for purposes of this clause. If a company in a taxable year has both current income and income accumulated from a prior year, distributions during the year shall be deemed to have been made first from current income.*

(C) *Undistributed personal income tax income shall be apportioned to Pennsylvania by a fraction, the numerator of which is all income distributed during the taxable period to shareholders who are resident individuals, estates or trusts and the denominator of which is all income distributed during the taxable period. Resident trusts shall not include charitable, pension or profit-sharing, or retirement trusts.*

*(D) Personal income tax income and other income of a company shall each be deemed to be either distributed to shareholders or undistributed in the proportion each category bears to all income received by the company during the taxable year.*

\* \* \*

Section 2. The definition of "document" in section 1101-C of the act, amended December 9, 1982 (P.L.1047, No.246), is amended and the section is amended by adding definitions to read:

Section 1101-C. Definitions.—The following words when used in this article shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

\* \* \*

"Document." Any deed, instrument or writing whereby any lands, tenements or hereditaments within this Commonwealth or any interest therein shall be quitclaimed, granted, bargained, sold, or otherwise conveyed to the grantee, purchaser, or any other person, but does not include wills, mortgages, transfers between corporations operating housing projects pursuant to the Housing and Redevelopment Assistance Law and the shareholders thereof, transfers between nonprofit industrial development agencies and industrial corporations purchasing from them, any transfers to nonprofit industrial development agencies, transfers to a nature conservancy or similar organization which possesses a tax-exempt status pursuant to section 501(c)(3) of the Internal Revenue Code, and which has as its primary purpose the preservation of land for historic, recreational, scenic, agricultural or open space opportunities, and transfers between husband and wife, transfers between persons who were previously husband and wife but who have since been divorced provided such transfer is made within three months of the date of the granting of the final decree in divorce, or the decree of equitable distribution of marital property, whichever is later, and the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, transfers between parent and child or the spouse of such a child or between parent and trustee for the benefit of a child or the spouse of such child, transfers between a grandparent and grandchild or the spouse of such grandchild, by and between a principal and straw party for the purpose of placing a mortgage or ground rent upon the premises, correctional deeds without consideration, transfers to the United States, the Commonwealth of Pennsylvania, or to any of their instrumentalities, agencies or political subdivisions, by gift, dedication or deed in lieu of condemnation, or deed of confirmation in connection with condemnation proceedings, or reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation which reconveyance may include property line adjustments provided said reconveyance is made within one year from the date of condemnation, leases, a conveyance to a trustee under a recorded trust agreement for the express purpose of holding title in trust as security for a debt contracted at the time of the conveyance under which the trustee is not the lender and requiring the trustee to make reconveyance to the grantor-borrower upon the

repayment of the debt, or a transfer by the owner of previously occupied residential premises to a builder of new residential premises when such previously occupied residential premises is taken in trade by such builder as part of the consideration from the purchaser of a new previously unoccupied residential premises or any transfer from a mortgagor to the mortgagee whether pursuant to a foreclosure or in lieu thereof, or conveyances to municipalities, townships, school districts and counties pursuant to acquisition by municipalities, townships, school districts and counties of tax delinquent properties at sheriff sale or tax claim bureau, or any transfer between religious organizations or other bodies or persons holding title to real estate for a religious organization if such real estate is not being or has not been used by such transferor for commercial purposes, *or a transfer within a family from a sole proprietor family member to a family farm corporation* or in any sheriff sale instituted by a mortgagee in which the purchaser of said sheriff sale is the mortgagee who instituted said sale.

*“Family farm corporation.” A Pennsylvania corporation at least seventy-five per cent of the assets of which are devoted to the business of agriculture, which business, for the purposes of this definition, shall not be deemed to include:*

*(1) Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;*

*(2) The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets, or animals intended for use in sporting or recreational activities;*

*(3) Fur farming;*

*(4) Stockyard and slaughterhouse operations; or*

*(5) Manufacturing or processing operations of any kind: Provided, however, That at least seventy-five per cent of all of the stock of the corporation must be owned by members of the same family.*

*“Members of the same family.” Any individual, such individual’s brothers and sisters, the brothers and sisters of such individual’s parents and grandparents, the ancestors and lineal descendants of any of the foregoing and a spouse of any of the foregoing. Individuals related by the half blood or legal adoption shall be treated as if they were related by the whole blood.*

\* \* \*

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

*Section 1102-C.1. Recapture of Tax.—Notwithstanding the definition of “document” in section 1101-C, if any stock of a family farm corporation is transferred to a person who is not a family member within ten years from the date of the conveyance from a sole proprietor family member to a family farm corporation, the tax imposed by this article shall become immediately due and payable.*

Section 4. The act is amended by adding an article to read:

**ARTICLE XVII-A**  
**EMPLOYMENT INCENTIVE PAYMENTS**

**Section 1701-A. Employment Incentive Payments.**—(a) *Any corporation, bank, savings institution, company, insurance company, or mutual thrift institution employing persons, who prior to their employment were recipients of aid to families with dependent children or who are classified as chronically or transitionally needy, pursuant to section 432 of the act of June 13, 1967 (P.L.31, No.21), known as the “Public Welfare Code,” shall be entitled to employment incentive payments to be provided as a credit against taxes imposed by Article IV, VII, VIII, IX or XV of this act, and any person, partnership or proprietorship employing such persons shall be entitled to payments to be provided as a credit against taxes imposed by Article III of this act. For the purposes of computing any tax liabilities against which the credit may be applied, deductions from taxable income shall be reduced by employment incentive payments. Employment incentive payments unused as a tax credit in any taxable year may be carried over against tax liabilities of the employer in the three immediately subsequent taxable years.*

(b) *An employment incentive payment may be claimed by an employer who hires any person who is receiving aid to families with dependent children or who is classified as chronically or transitionally needy at the time of employment except that payments shall not be provided for:*

(1) *The employment of any person who displaces any other individual from employment, except persons discharged for cause as certified by the Office of Employment Security.*

(2) *The employment of any person closely related, as defined by paragraphs (1) through (8) of section 152(a) of the Internal Revenue Code, to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly more than fifty per cent of the outstanding stock of the corporation, bank, savings institution, company, insurance company, or mutual thrift institution.*

(3) *The employment of an individual for whom the employer is simultaneously receiving federally or State funded job training payments.*

(4) *The employment of an individual as a domestic or other household employe in the home of the employer.*

(c) (1) *The employment incentive payment shall be the sum of thirty per cent of the first six thousand dollars (\$6,000) of qualified first year wages for such year, twenty per cent of the first six thousand dollars (\$6,000) of qualified second year wages for such year and ten per cent of the first six thousand dollars (\$6,000) of the qualified third year wages for such year.*

(2) *If the employer provides or pays for day care services for the children of the employe, the employer shall be eligible to receive an additional employment incentive payment of up to six hundred dollars (\$600) during the first year of employment, five hundred dollars (\$500) during the second year of employment and four hundred dollars (\$400) during the third year of employment.*

(3) *Total employment incentive payments shall not exceed ninety per cent of total taxes paid by the employer against which the incentive payments may be claimed as a credit. Qualified wages must be cash remuneration to the employe, including any amounts deducted or withheld.*

(d) *To be eligible for employment incentive payments, the employment must continue for at least one year unless the employe voluntarily leaves the employment of the employer, becomes disabled or is terminated for cause. If the employe leaves his position voluntarily, becomes disabled, or is terminated for cause in less than one year, the employment incentive payment shall be reduced by the proportion of the year not worked. Employment initiated during the year may be claimed as an employment incentive payment in the subsequent year.*

(e) *The Department of Revenue, in cooperation with the Department of Public Welfare and the Department of Labor and Industry, shall administer the provisions of this section, promulgate appropriate rules, regulations and forms for that purpose and make such determinations as may be required. Determinations made with respect to the employment incentive payment provided in this section may be reviewed and appealed in the manner provided by law for other corporate or personal tax credits. The Department of Public Welfare shall conduct a program of employer education to inform employers of the benefits available under this section as well as to inform them of any similar tax credits for hiring welfare recipients available under Federal law.*

(f) *The total amount of employment incentive payments authorized by this section shall not exceed twenty-five million dollars (\$25,000,000) in any fiscal year. To insure that credits are not claimed in excess of this amount, an employer may claim the incentive payments only upon presentation of an authorizing certificate. Certificates will be issued to the employe by the Department of Public Welfare upon presentation to the Department of Public Welfare of evidence of a qualifying offer of employment. The department shall advise the Department of Public Welfare of the total number of certificates which may be issued in each calendar quarter consistent with the limitation on total incentive payments. If an employe does not accept the job for which the certificate is authorized, the certificate shall be returned by the employe to the Department of Public Welfare. If an employe terminates employment for any reason prior to the expiration of three years, the employer shall return the certificate, noting the date of the employe's hiring and termination, to the department. The Department of Public Welfare may issue certificates through the Office of Employment Security and may promulgate regulations to allocate certificates.*

(g) *Employment incentive payments shall not be available for employes hired after June 30, 1989, unless reenacted by the General Assembly. Not later than July 1, 1986, and July 1 each year thereafter, the Department of Public Welfare shall report to the General Assembly on the effectiveness of incentive payments to encourage the employment of cash assistance recipients and recommend whether changes are needed in the program and whether the program should be continued. The report shall contain information, including the number of authorizing certificates issued by the Depart-*

*ment of Public Welfare, the number of authorizing certificates returned because the welfare recipient did not accept the job, the number of certificates returned because the employe left employment voluntarily, the number returned because the employe became disabled and the number returned because the employe was terminated from employment for cause. The report shall also contain the number and dollar amounts of first, second and third year tax credits claimed by employers in each tax year, the number and dollar amounts of first, second and third year tax credits approved by the Department of Revenue in each tax year, the length of time employes retained their jobs, the types of jobs obtained, the average wage of employes hired and the category of assistance received previously by employes hired. The report shall also include an analysis of the types of businesses which have been issued authorizing certificates during the tax year, and the types of businesses which have had tax credits approved by the Department of Revenue by category of business as indicated by Standard Industrial Classification Codes and by size of business as indicated by the number of employes, and a discussion of outreach and publicity efforts by the Department of Public Welfare. The report shall contain similar information about the day care tax credit authorized in subsection (c)(2). Credits may be claimed against taxes payable for tax years beginning January 1, 1986, and thereafter, and may be claimed for employes hired on or after January 1, 1986.*

*(h) This section shall be deemed to be a continuation of the employment incentive payment program authorized heretofore by section 491 of the "Public Welfare Code."*

Section 5. Section 1 of this act shall apply retroactively to the calendar year beginning January 1, 1985, and to all corporate fiscal years beginning on or after that date.

Section 6. (a) Sections 2 and 3 of this act shall take effect in 60 days.

(b) Section 4 of this act shall take effect January 1, 1986.

(c) The remainder of this act shall take effect immediately.

APPROVED—The 19th day of December, A. D. 1985.

DICK THORNBURGH