
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2172 Session of
2015

INTRODUCED BY THOMAS, JUNE 16, 2016

REFERRED TO COMMITTEE ON FINANCE, JUNE 16, 2016

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," in bank and trust company shares tax, further
11 providing for imposition of tax, for ascertainment of taxable
12 amount and exclusion of United States obligations, for
13 apportionment and for definitions.

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

16 Section 1. Sections 701, 701.1 and 701.4(3)(xiii) of the act
17 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
18 1971, amended July 9, 2013 (P.L.270, No.52), are amended to
19 read:

20 Section 701. Imposition of Tax.--(a) Every institution
21 doing business in this Commonwealth shall, on or before March 15
22 in each and every year, make to the Department of Revenue a
23 report in writing, verified as required by law, setting forth
24 the full number of shares of the capital stock subscribed for or

1 issued, as of the preceding January 1, by such institution, and
2 the taxable amount of such shares of capital stock determined
3 pursuant to section 701.1.

4 (b) It shall be the duty of the Department of Revenue to
5 assess such shares for the calendar years beginning January 1,
6 1971 through January 1, 1983, at the rate of fifteen mills and
7 for the calendar years beginning January 1, 1984 through January
8 1, 1988, at the rate of one and seventy-five one thousandths per
9 cent and for the calendar year beginning January 1, 1989, at the
10 rate of 10.77 per cent and for the calendar years beginning
11 January 1, 1990, through January 1, 2013, at the rate of 1.25
12 per cent and for the calendar [year] years beginning January 1,
13 2014, [and each calendar year thereafter at the rate of 0.89 per
14 cent] through January 1, 2016, at the rate of 0.89 per cent and
15 for the calendar year beginning January 1, 2017, and each
16 calendar year thereafter at the rate of 0.99 per cent upon each
17 dollar of taxable amount thereof, the taxable amount of each
18 share of stock to be ascertained and fixed pursuant to section
19 701.1, and dividing this amount by the number of shares.

20 (c) It shall be the duty of every institution doing business
21 in this Commonwealth, at the time of making every report
22 required by this section, to compute the tax and to pay the
23 amount of said tax to the State Treasurer, through the
24 Department of Revenue either from its general fund, or from the
25 amount of said tax collected from its shareholders. Provided,
26 That in case any institution shall collect, annually, from the
27 shareholders thereof said tax, according to the provisions of
28 this article, that have been subscribed for or issued, and pay
29 the same into the State Treasury, through the Department of
30 Revenue, the shares, and so much of the capital and profits of

1 such institution as shall not be invested in real estate, shall
2 be exempt from local taxation under the laws of this
3 Commonwealth; and such institution shall not be required to make
4 any report to the local assessor or county commissioners of its
5 personal property owned by it in its own right for purposes of
6 taxation and shall not be required to pay any tax thereon.

7 Section 701.1. Ascertainment of Taxable Amount; Exclusion of
8 United States Obligations.--(a) The taxable amount of shares
9 shall be ascertained and fixed by the book value of total bank
10 equity capital as determined by the Reports of Condition at the
11 end of the preceding calendar year in accordance with the
12 requirements of the Board of Governors of the Federal Reserve
13 System, the Comptroller of the Currency, the Federal Deposit
14 Insurance Corporation or other applicable regulatory authority.
15 If an institution does not file the Reports of Condition, book
16 values shall be determined by generally accepted accounting
17 principles as of the end of the preceding calendar year.

18 (b) A deduction for the value of United States obligations
19 shall be provided from the taxable amount of shares in an amount
20 equal to the same percentage of total bank equity capital as the
21 book value of obligations of the United States bears to the book
22 value of the total assets[, except that, for the value of shares
23 reported on tax returns due on March 15, 2008, and thereafter].
24 In computing the deduction for United States obligations, any
25 goodwill recorded as a result of the use of purchase accounting
26 for an acquisition or combination as described in this section
27 and occurring after June 30, 2001, [may] shall be subtracted
28 from the book value of total bank equity capital and disregarded
29 in determining the deduction provided for obligations of the
30 United States. For purposes of this article, United States

1 obligations shall be obligations coming within the scope of 31
2 U.S.C. § 3124 (relating to exemption from taxation). [In the
3 case of institutions which do not file such Reports of
4 Condition, book values shall be determined by generally accepted
5 accounting principles as of the end of the preceding calendar
6 year.]

7 (b.1) A deduction for goodwill shall be provided from the
8 taxable amount of shares in an amount equal to the value of any
9 goodwill recorded as a result of the use of purchase accounting
10 for an acquisition or combination as described in this section
11 and occurring after June 30, 2001.

12 (c) For purposes of this section:

13 (1) a mere change in identity, form or place of organization
14 of one institution, however effected, shall be treated as if a
15 single institution had been in existence prior to as well as
16 after such change; and

17 (2) if there is a combination of two or more institutions
18 into one, the book values and deductions for United States
19 obligations from the Reports of Condition of the constituent
20 institutions shall be combined. For purposes of this section, a
21 combination shall include any acquisition required to be
22 accounted for by using the purchase method in accordance with
23 generally accepted accounting principles or a statutory merger
24 or consolidation.

25 Section 701.4. Apportionment.--An institution may apportion
26 its taxable amount of shares determined under section 701.1 in
27 accordance with this subsection if the institution is subject to
28 tax in another state based on or measured by net worth, gross
29 receipts, net income or some similar base of taxation, or if it
30 could be subject to such tax, whether or not such a tax has in

1 fact been enacted. The following shall apply:

2 * * *

3 (3) The receipts factor is a fraction, the numerator of
4 which is total receipts located in this Commonwealth and the
5 denominator of which is the total receipts located in all
6 states. The method of calculating receipts for purposes of the
7 denominator shall be the same as the method used in determining
8 receipts for purposes of the numerator. The location of receipts
9 shall be determined as follows:

10 * * *

11 (xiii) The following shall apply to receipts from an
12 institution's investment assets and activity and trading assets
13 and activity:

14 (A) Interest, dividends, net gains equal to zero or above,
15 and other income from investment assets and activities and from
16 trading assets and activities shall be included in the receipts
17 factor. Investment assets and activities and trading assets and
18 activities shall include investment securities, trading account
19 assets, Federal funds, securities purchased and sold under
20 agreements to resell or repurchase, options, futures contracts,
21 forward contracts and notional principal contracts such as
22 swaps, equities and foreign currency transactions. For the
23 investment and trading assets and activities under subclauses
24 (I) and (II), the receipts factor shall include the amounts
25 under subclauses (I) and (II). The following shall apply:

26 (I) The receipts factor shall include the amount by which
27 interest from Federal funds sold and securities purchased under
28 resale agreements exceeds interest expense on Federal funds
29 purchased and securities sold under repurchase agreements.

30 (II) The receipts factor shall include the amount by which

1 interest, dividends, gains and other income from investment and
2 trading assets and activities, including assets and activities
3 in the matched book, in the arbitrage book and foreign currency
4 transactions, exceed amounts paid in lieu of interest, amounts
5 paid in lieu of dividends and losses from the assets and
6 activities.

7 (B) The numerator of the receipts factor shall include
8 [interest, dividends, net gains, equal to zero or above, and
9 other income from investment assets and activities and from
10 trading assets and activities] the receipts under clause (A)
11 that are attributable to this Commonwealth using one of the
12 following alternative methods:

13 (I) Method 1. The numerator shall be determined by
14 multiplying the total amount of receipts [from trading assets
15 and activities] under clause (A) by a fraction, the numerator of
16 which is the total amount of all other receipts attributable to
17 this Commonwealth and the denominator of which is the total
18 amount of all other receipts.

19 (II) Method 2. The numerator shall be determined by
20 multiplying the total amount of receipts under clause (A) by a
21 fraction, the numerator of which is the average value of the
22 assets which generate the receipts which are properly assigned
23 to a regular place of business of the institution within this
24 Commonwealth and the denominator of which is the average value
25 of all such assets.

26 (C) Upon the election by the institution to use one of the
27 methods under clause (B) for the tax imposed for a taxable year
28 beginning after December 31, 2015, the institution shall use the
29 method on all subsequent returns unless the institution receives
30 prior permission from the Department of Revenue to use a

1 different method.

2 (D) The following shall apply:

3 (I) An institution electing to use Method 2 shall have the
4 burden of proving that an investment asset or activity or
5 trading asset or activity was properly assigned to a regular
6 place of business outside of this Commonwealth by demonstrating
7 that the day-to-day decisions regarding the asset or activity
8 occurred at a regular place of business outside this
9 Commonwealth.

10 (II) If the day-to-day decisions regarding an investment
11 asset or activity or trading asset or activity occur at more
12 than one regular place of business and one regular place of
13 business is in this Commonwealth and one regular place of
14 business is outside this Commonwealth, the asset or activity
15 shall be considered to be located at the regular place of
16 business of the institution where the investment or trading
17 policies or guidelines with respect to the asset or activity are
18 established.

19 (III) Unless the institution demonstrates to the contrary,
20 the investment or trading policies and guidelines under
21 subclause (II) shall be presumed to be established at the
22 commercial domicile of the institution.

23 [(E) Receipts apportioned under this subparagraph shall be
24 separately apportioned for:

25 (I) interest, dividends, net gains and other income from
26 investment assets and activities in an investment account;

27 (II) interest from Federal funds sold and purchased and from
28 securities purchased under resale agreements and securities sold
29 under repurchase agreements; and

30 (III) interest, dividends, gains and other income from

1 trading assets and activities, including assets and activities
2 in the matched book, in the arbitrage book and foreign currency
3 transactions.]

4 * * *

5 Section 2. The definitions of "doing business in this
6 Commonwealth" and "receipts" in section 701.5 of the act,
7 amended July 9, 2013 (P.L.270, No.52), are amended to read:

8 Section 701.5. Definitions.--The following words, terms and
9 phrases when used in this article shall have the meaning
10 ascribed to them in this section, except where the context
11 clearly indicates a different meaning:

12 * * *

13 "Doing business in this Commonwealth." As follows:

14 (1) An institution is engaged in doing business in this
15 Commonwealth and is subject to the tax imposed under this
16 article if it satisfies any of the following requirements [and
17 generates gross receipts apportioned to this Commonwealth under
18 section 701.4 in excess of \$100,000]:

19 (i) The institution has an office or branch in this
20 Commonwealth.

21 (ii) One or more employes, representatives, independent
22 contractors or agents of the institution conduct business
23 activities of the institution in this Commonwealth.

24 (iii) A person, including an employe, representative,
25 independent contractor, agent or affiliate of the institution,
26 or an employe, representative, independent contractor or agent
27 of an affiliate of the institution, directly or indirectly
28 solicits business in this Commonwealth by or for the benefit of
29 the institution, through:

30 (A) person-to-person contact, mail, telephone or other

1 electronic means; or

2 (B) the use of advertising published, produced or
3 distributed in this Commonwealth.

4 (iv) The institution owns, leases or uses real or personal
5 property in this Commonwealth to conduct its business
6 activities.

7 (v) The institution holds a security interest, mortgage or
8 lien in real or personal property located in this Commonwealth.

9 (vi) A basis exists under section 701.4 to apportion the
10 institution's receipts to this Commonwealth.

11 (vii) The institution has a physical presence in this
12 Commonwealth for a period of more than one day during the tax
13 year or conducts an activity sufficient to create a nexus in
14 this Commonwealth for tax purposes under the Constitution of the
15 United States.

16 (2) The term shall not include:

17 (i) The use by the institution of a professional performing
18 a service on behalf of the institution in this Commonwealth if
19 the services are not significantly associated with the
20 institution's ability to establish and maintain a market in this
21 Commonwealth.

22 (ii) The mere use of financial intermediaries in this
23 Commonwealth by an institution for the processing or transfer of
24 checks, credit card receivables, commercial paper and similar
25 items.

26 * * *

27 "Receipts." [As follows:

28 (1) Except as provided under paragraph (2), an item included
29 in taxable income returned to and ascertained by the Federal
30 Government.

1 (2) If consolidated returns are filed with the Federal
2 Government, an item that would be included in taxable income
3 returned to and ascertained by the Federal Government if a
4 separate return had been made to the Federal Government by the
5 institution, including the taxable income of a subsidiary of the
6 institution that are disregarded entities for purposes of
7 Federal taxation.] The total of all items of income reported on
8 the income statement of the institution's Reports of Condition
9 or, if the institution does not file a Reports of Condition, on
10 an income statement completed in accordance with generally
11 accepted accounting principles.

12 Section 3. This act shall apply as follows:

13 (1) The following provisions shall apply retroactively
14 to January 1, 2014:

15 (i) The amendment of section 701.1 of the act.

16 (ii) The amendment of section 701.4(3)(xiii) of the
17 act.

18 (2) The amendment of the definitions of "doing business
19 in this Commonwealth" and "receipts" in section 701.5 of the
20 act shall apply to taxable years beginning after December 31,
21 2016.

22 Section 4. This act shall take effect immediately.