

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 345 Session of 2017

INTRODUCED BY BROWNE, MENSCH AND RAFFERTY, FEBRUARY 15, 2017

REFERRED TO FINANCE, FEBRUARY 15, 2017

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 personal income tax, further providing for
 11 definitions; in corporate net income tax, further providing
 12 for definitions, for interests in unincorporated entities and
 13 for additional withholding requirements; and, in capital
 14 stock franchise tax, further providing for interest in
 15 unincorporated entities.

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

18 Section 1. Section 301(k) of the act of March 4, 1971
 19 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended
 20 July 13, 2016 (P.L.526, No.84), is amended to read:

21 Section 301. Definitions.--Any reference in this article to
 22 the Internal Revenue Code of 1986 shall mean the Internal
 23 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.),
 24 as amended to January 1, 1997, unless the reference contains the
 25 phrase "as amended" and refers to no other date, in which case

1 the reference shall be to the Internal Revenue Code of 1986 as
2 it exists as of the time of application of this article. The
3 following words, terms and phrases when used in this article
4 shall have the meaning ascribed to them in this section except
5 where the context clearly indicates a different meaning:

6 * * *

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

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

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

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

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

28 (5) As gambling and lottery winnings by reason of a wager
29 placed in this Commonwealth, the conduct of a game of chance or
30 other gambling activity located in this Commonwealth or the

1 redemption of a lottery prize from a lottery conducted in this
2 Commonwealth, other than noncash prizes of the Pennsylvania
3 State Lottery.

4 Provided, however, That "income from sources within this
5 Commonwealth" for a nonresident individual, estate or trust
6 shall not include any items of income enumerated above received
7 or acquired from an investment company registered with the
8 Federal Securities and Exchange Commission under the Investment
9 Company Act of 1940[.] and shall not include any items of income
10 received from an investment fund as defined in Article IV except
11 to the extent that the items represent income other than
12 investment fund income as defined in Article IV.

13 * * *

14 Section 2. Section 401(3) of the act is amended by adding a
15 subclause and the section is amended by adding clauses to read:

16 Section 401. Definitions.--The following words, terms, and
17 phrases, when used in this article, shall have the meaning
18 ascribed to them in this section, except where the context
19 clearly indicates a different meaning:

20 * * *

21 (3) "Taxable income." * * *

22 5. The taxable income of a corporation directly or
23 indirectly owning an interest in an unincorporated investment
24 fund shall be allocated and apportioned to this State pursuant
25 to this subclause as follows:

26 (a) That portion of the corporation's income attributable to
27 an investment fund that constitutes other than investment fund
28 income shall be allocated by the corporation to this State to
29 the extent that the unincorporated entity generating the income
30 attributes the income to this State under subclause 1 or

1 apportions the income to this State under subclause 2, as
2 required under section 402.2(d).

3 (b) That portion of the corporation's income that
4 constitutes investment fund income shall be allocated and
5 apportioned by the corporation as provided under subclause 1 or
6 2 and by section 402.2(c).

7 (c) The balance of the corporation's income shall be
8 allocated and apportioned by the corporation as provided by
9 subclauses 1 and 2 and section 402.2(a) and (b).

10 * * *

11 (11) "Investment business." The acquisition, maintenance,
12 management and disposition of intangible investments. For the
13 purpose of this clause, intangible investments shall include
14 interests in unincorporated entities.

15 (12) "Investment fund." An entity:

16 1. the sole business of which is an investment business and
17 in which all of the owners, other than a general partner of a
18 partnership, a managing member of a limited liability company
19 and any similar owner;

20 (a) are passive investors;

21 (b) neither have nor exercise management rights; and

22 (c) do not participate in management decisions to acquire,
23 hold or dispose of assets of the entity; and

24 (d) is owned to the extent of fifty per cent or more in the
25 aggregate by owners other than the general partner, managing
26 member or similar owner and all other owners, each of which is
27 owned directly or indirectly to the extent of more than fifty
28 per cent by the general partner, managing member or similar
29 owner or by an owner that similarly owns the general partner,
30 managing member or similar owner;

1 2. which is an investment company as defined in section 3(a)
2 (1) of the Investment Company Act of 1940 (15 U.S.C. § 80a-3(a)
3 (1)) or as exempt from the Investment Company Act of 1940 under
4 section 3(c)(1) (15 U.S.C. § 80a-3(c)(1)) or section 3(c)(7) (15
5 U.S.C. § 80a-3(c)(7)); or

6 3. which is a common trust fund as described in section 3(c)
7 (3) of the Investment Company Act of 1940 (54 Stat. 789, 15
8 U.S.C. § 80a-3(C)(3)).

9 (13) "Investment fund income." Income from the investment
10 business of an investment fund except to the extent that the
11 income is attributable to income from business conducted by an
12 unincorporated entity that is not an investment fund in which
13 the investment fund holds a direct or indirect interest.

14 Section 3. Section 402.2 of the act is amended to read:

15 Section 402.2. Interests in Unincorporated Entities.--(a)
16 Except as set forth in [subsection (b)] subsections (b) and (c),
17 for purposes of this article, a corporation's interest in an
18 entity which is not a corporation shall be considered a direct
19 ownership interest in the assets of the entity rather than an
20 intangible interest.

21 (b) Subsection (a) does not apply to a corporation's
22 interest in an entity described in section 401(1)1 or section
23 401(1)2 other than:

24 (1) A business trust which is a real estate investment trust
25 as defined in section 856 of the Internal Revenue Code of 1986
26 (Public Law 99-514, 26 U.S.C. § 856) more than fifty per cent of
27 the voting power or value of the beneficial interests or shares
28 of which are owned or controlled, directly or indirectly, by a
29 single corporation that is not:

30 (i) a real estate investment trust as defined in section 856

1 of the Internal Revenue Code of 1986;

2 (ii) a qualified real estate investment trust subsidiary
3 under section 856(i) of the Internal Revenue Code of 1986;

4 (iii) a regulated financial institution; or

5 (iv) formed as a holding company, subsidiary or affiliate of
6 a regulated financial institution prior to December 1, 2003.

7 (2) A business trust which is a qualified real estate trust
8 subsidiary under section 856(i) of the Internal Revenue Code of
9 1986 owned, directly or indirectly, by a real estate investment
10 trust as defined in section 856 of the Internal Revenue Code of
11 1986 more than fifty per cent of the voting power or value of
12 the beneficial interests or shares of which are owned or
13 controlled, directly or indirectly, by a single corporation that
14 is not:

15 (i) a real estate investment trust as defined in section 856
16 of the Internal Revenue Code of 1986;

17 (ii) a qualified real estate investment trust subsidiary
18 under section 856(i) of the Internal Revenue Code of 1986;

19 (iii) a regulated financial institution; or

20 (iv) formed as a holding company, subsidiary or affiliate of
21 a regulated financial institution prior to December 1, 2003.

22 (c) Subsection (a) shall not apply to assets of an
23 unincorporated investment fund in which a corporation owns a
24 direct or indirect interest nor to assets of any unincorporated
25 fund in which the investment fund owns a direct or indirect
26 interest, except to the extent that the assets are used in other
27 than an investment fund business. A corporation's interest in
28 the assets shall not be considered a direct ownership interest
29 but shall be considered an interest in an intangible.

30 (d) An unincorporated entity owned directly or indirectly by

1 an investment fund shall attribute its income to this State
2 under section 401(3)1 or shall apportion its income to this
3 State under section 401(3)2 and shall report the attribution or
4 apportionment to the department, to the investment fund and upon
5 request to any entity directly or indirectly owing an interest
6 in the investment fund.

7 Section 4. Section 403.2 of the act is amended by adding a
8 subsection to read:

9 Section 403.2. Additional Withholding Requirements.--* * *

10 (d.1) This section shall not apply to a partnership that is
11 owned directly or indirectly by an investment fund if the
12 partnership reports the information as required under section
13 402.2(d).

14 * * *

15 Section 5. Section 602.6 of the act is amended to read:

16 Section 602.6. Interest in Unincorporated Entities.--(a)
17 Except as set forth in [subsection (b)] subsections (b) and (c),
18 for purposes of this article, a corporation's interest in an
19 entity which is not a corporation shall be considered a direct
20 ownership interest in the assets of the entity rather than an
21 intangible interest.

22 (b) Subsection (a) does not apply to a corporation's
23 interest in an entity described in section 601(a)(B)(1) or (2)
24 of the definition of "corporation."

25 (c) Subsection (a) shall not apply to a corporation's
26 interest in an entity that is an investment fund as defined in
27 section 401(9) nor to an entity owned directly or indirectly by
28 the investment fund except with respect to assets of the entity
29 which are used in other than an investment business as defined
30 in section 401(8).

1 Section 6. This act shall take effect in 60 days.