

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1229 Session of
2007

INTRODUCED BY BROWNE, FONTANA, BAKER, ORIE, ARMSTRONG, BOSCOLA,
KITCHEN, GORDNER, LAVALLE, WOZNIAK, FOLMER, STACK,
WASHINGTON, COSTA, PIPPY, FERLO, WONDERLING, CORMAN, WAUGH,
BRUBAKER AND PICCOLA, DECEMBER 21, 2007

REFERRED TO FINANCE, DECEMBER 21, 2007

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," further providing, in corporate net income, for
11 the definition of "taxable income."

12 The General Assembly finds and declares as follows:

13 (1) That the Commonwealth's high tech and manufacturing
14 sectors, which generate 16.1% of the gross State product,
15 employ 670,000 Pennsylvanians and directly add over \$75
16 billion in value to the Commonwealth every year, are in a
17 state of crisis that demands immediate attention.

18 (2) Despite certain nonmanufacturing sectors of
19 Pennsylvania's economy keeping pace with national economic
20 growth and generating significant increased revenues for the
21 General Fund budget, Pennsylvania's high tech and

1 manufacturing employers have lost in excess of 200,000 high-
2 paying, high-value manufacturing jobs since 2000, even as
3 competitor states have continued to add manufacturing and
4 high tech jobs.

5 (3) After seeking and receiving the recommendations from
6 an unprecedented coalition of Pennsylvania employers, called
7 CompetePA, representing small and large companies competing
8 in every sector of the State's economy and every geographic
9 region of this Commonwealth, its support for the unified and
10 targeted solution to the manufacturing crisis recommended by
11 Pennsylvania employers that would reverse longstanding,
12 Pennsylvania-specific, job-crushing State economic policies
13 that punish investment and reinvestment in domestic
14 manufacturing facilities.

15 (4) In recognition that Pennsylvania employers, not
16 policymakers, are best positioned to recommend reforms to
17 enhance high tech and manufacturing competitiveness for the
18 Commonwealth, its support for the unified Pennsylvania
19 business community recommendations to all of the following:

20 (i) Eliminate over time the current policy that
21 restricts companies from offsetting current income with
22 prior net operating losses.

23 (ii) Eliminate the "penalty" that increases an
24 employer's tax liability as that employer invests more in
25 its employees and property.

26 (5) Having determined that Pennsylvania's net operating
27 loss tax policy continues to force cyclical, high tech and
28 manufacturing companies to pay a much higher effective tax
29 rate than their counterparts in competing neighboring states
30 over a multiyear period and that its current tax policy to

1 penalize employers based upon their relative investment in
2 payroll and property creates a perverse incentive for
3 manufacturers to reduce such investments in this
4 Commonwealth, that Pennsylvania's current tax policy
5 specifically targets domestic, high tech and manufacturing
6 companies for this unfair treatment and places Pennsylvania
7 in an uncompetitive position in relation to other states
8 competing for manufacturing investments.

9 (6) Having acknowledged that State tax policy should be
10 designed to encourage in-State job creation and capital
11 growth and recognizing that, by adopting changes to the
12 State's corporate net income tax apportionment formula to
13 move toward a single sales factor, that the Commonwealth can
14 create an incentive for companies that have demonstrated a
15 commitment to the State to grow and expand in Pennsylvania.

16 (7) Having previously adopted the multiyear phaseout of
17 the capital stock and franchise tax, that the structural
18 changes to the net operating loss and sales factor
19 apportionment formula should be enacted in a similar fiscally
20 responsible manner.

21 (8) Having determined that the high tech and
22 manufacturing stimulus initiatives contained in this act
23 assist only those companies that are paying significantly
24 more than their fair share of business taxes, that these
25 inherent, anticompetitive deficiencies within Pennsylvania's
26 business tax structure should be reversed immediately.

27 (9) Having determined that the fiscal impact of this act
28 is less than \$50 million in the first fiscal year or 0.20 of
29 1% of the General Fund budget and, in light of the
30 significant and unexpected business tax revenues emanating

1 from industry sectors in the current fiscal year, that the
2 modest fiscal impact of this critical high tech and
3 manufacturing stimulus act is readily accommodated in the
4 General Fund budget.

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

7 Section 1. Section 401(3)2(a)(9) and 4(c) of the act of
8 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
9 1971, amended July 12, 2006 (P.L.1137, No.116), are amended to
10 read:

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

15 * * *

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

17 2. In case the entire business of any corporation, other
18 than a corporation engaged in doing business as a regulated
19 investment company as defined by the Internal Revenue Code of
20 1986, is not transacted within this Commonwealth, the tax
21 imposed by this article shall be based upon such portion of the
22 taxable income of such corporation for the fiscal or calendar
23 year, as defined in subclause 1 hereof, and may be determined as
24 follows:

25 (a) Division of Income.

26 * * *

27 (9) (A) Except as provided in subparagraph (B):

28 (i) For taxable years beginning before January 1, 2007, all
29 business income shall be apportioned to this State by
30 multiplying the income by a fraction, the numerator of which is

1 the property factor plus the payroll factor plus three times the
2 sales factor and the denominator of which is five.

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

9 (iii) For taxable years beginning after December 31, 2007,
10 and before January 1, 2009, all business income shall be
11 apportioned to this State by multiplying the income by a
12 fraction: the numerator of which is the sum of seven and a half
13 times the property factor, seven and a half times the payroll
14 factor and eighty-five times the sales factor; and the
15 denominator of which is one hundred.

16 (iv) For taxable years beginning after December 31, 2008,
17 all business income shall be apportioned by this State by
18 multiplying incomes by the sales factor.

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

24 * * *

25 4. * * *

26 (c) (1) The net loss deduction shall be the lesser of:

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

29 (II) For taxable years beginning after December 31, 2006,
30 the greater of twelve and one-half per cent of taxable income as

1 determined under subclause 1 or, if applicable, subclause 2 or
2 three million dollars (\$3,000,000); [or]

3 (III) For taxable years beginning after December 31, 2007,
4 the greater of fifty per cent of the taxable income as
5 determined under subclause 1 or, if applicable, subclause 2 or
6 three million dollars (\$3,000,000);

7 (IV) For taxable years beginning after December 31, 2008,
8 one hundred per cent of the taxable income as determined under
9 subclause 1 or, if applicable, subclause 2; or

10 (B) The amount of the net loss or losses which may be
11 carried over to the taxable year or taxable income as determined
12 under subclause 1 or, if applicable, subclause 2.

13 (1.1) In no event shall the net loss deduction include more
14 than five hundred thousand dollars (\$500,000), in the aggregate,
15 of net losses from taxable years 1988 through 1994.

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

18	Taxable Year	Carryover
19	1981	1 taxable year
20	1982	2 taxable years
21	1983-1987	3 taxable years
22	1988	2 taxable years plus
23		1 taxable year
24		starting with the
25		1995 taxable year
26	1989	1 taxable year plus
27		2 taxable years
28		starting with the
29		1995 taxable year
30	1990-1993	3 taxable years

1		starting with the
2		1995 taxable year
3	1994	1 taxable year
4	1995-1997	10 taxable years
5	1998 and thereafter	20 taxable years

6 (B) The earliest net loss shall be carried over to the
7 earliest taxable year to which it may be carried under this
8 schedule. The total net loss deduction allowed in any taxable
9 year shall not exceed:

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

12 (II) The greater of twelve and one-half per cent of the
13 taxable income as determined under subclause 1 or, if
14 applicable, subclause 2 or three million dollars (\$3,000,000)
15 for taxable years beginning after December 31, 2006.

16 (III) The greater of fifty per cent of the taxable income as
17 determined under subclause 1 or, if applicable, subclause 2 or
18 three million dollars (\$3,000,000) for taxable years beginning
19 after December 31, 2007, and before January 1, 2009.

20 (IV) The greater of one hundred per cent of the taxable
21 income as determined under subclause 1 or, if applicable,
22 subclause 2 or three million dollars (\$3,000,000) for taxable
23 years beginning after December 31, 2008.

24 * * *

25 Section 2. The amendment of section 401(3)2(a)(9) and 4(c)
26 of the act shall apply to taxable years beginning after December
27 31, 2007.

28 Section 3. This act shall take effect immediately.