

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 659 Session of 2023

INTRODUCED BY AUMENT, ROTHMAN, CULVER AND A. WILLIAMS, MAY 3, 2023

SENATOR HUTCHINSON, FINANCE, AS AMENDED, MARCH 20, 2024

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, providing for elective tax imposed at pass-
12 through entity level and further providing for taxability of
13 partners and for income of a Pennsylvania S corporation.

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

16 Section 1. Section 301(w) of the act of March 4, 1971
17 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended
18 to read:

19 Section 301. Definitions.--Any reference in this article to
20 the Internal Revenue Code of 1986 shall mean the Internal
21 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.),
22 as amended to January 1, 1997, unless the reference contains the
23 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 (w) "Taxpayer" means any individual, estate or trust subject
8 to the tax imposed by this article, any partnership having a
9 partner who is a taxpayer under this act, any Pennsylvania S
10 corporation having a shareholder who is a taxpayer under this
11 act [and], any person required to withhold tax under this
12 article and, unless otherwise provided, a pass-through entity
13 that elects to pay the tax imposed under section 302.3.

14 Section 2. The act is amended by adding a section to read:

15 Section 302.3. Elective Tax Imposed at Pass-Through Entity
16 Level.--(a) Notwithstanding any other provision of this
17 article, a pass-through entity may elect, on an annual basis, to
18 have the tax imposed under this article applied to the income of
19 the pass-through entity. The following shall apply:

20 (1) An electing ~~pass through entity~~ PARTNERSHIP shall be <--
21 subject to and shall pay a tax imposed at the rate provided in
22 section 302(b) on:

23 (i) Each resident taxable owner's share of each class of
24 income and gain enumerated in section 303 for the taxable year.

25 (ii) Each nonresident taxable owner's share of each class of
26 income and gain enumerated in section 303 from sources within
27 this Commonwealth for the taxable year.

28 (2) AN ELECTING PENNSYLVANIA S CORPORATION WITH ALL RESIDENT <--
29 SHAREHOLDERS SHALL BE SUBJECT TO AND SHALL PAY A TAX IMPOSED AT
30 THE RATE PROVIDED IN SECTION 302(B) ON EACH RESIDENT TAXABLE

1 OWNER'S SHARE OF EACH CLASS OF INCOME AND GAIN ENUMERATED IN
2 SECTION 303 FROM SOURCES WITHIN THIS COMMONWEALTH FOR THE
3 TAXABLE YEAR.

4 (3) AN ELECTING PENNSYLVANIA S CORPORATION WHOSE
5 SHAREHOLDERS ARE COMPRISED OF EITHER NONRESIDENT SHAREHOLDERS,
6 OR RESIDENT AND NONRESIDENT SHAREHOLDERS SHALL BE SUBJECT TO AND
7 SHALL PAY A TAX IMPOSED AT THE RATE PROVIDED IN SECTION 302(B)
8 ON EACH TAXABLE OWNER'S SHARE OF EACH CLASS OF INCOME AND GAIN
9 ENUMERATED IN SECTION 303 FROM SOURCES WITHIN THIS COMMONWEALTH
10 FOR THE TAXABLE YEAR.

11 ~~(2)~~ (4) An entity that is disregarded for tax purposes under <--
12 this article shall be disregarded for the purposes of this
13 section.

14 ~~(3)~~ (5) In determining its tax under this section, a pass- <--
15 through entity that owns a direct or indirect ownership interest
16 in one or more pass-through entities shall include its share of
17 each class of income enumerated in section 303 received from
18 those pass-through entities. The pass-through entity that
19 generates an item of income, gain or loss shall determine its
20 classification and whether that item of income, gain or loss
21 constitutes income or loss from sources within this
22 Commonwealth.

23 ~~(4)~~ (6) Guaranteed payments made to a partner in a <--
24 partnership shall be treated as additional income allocated to
25 the partner. With respect to a nonresident taxable owner, only
26 guaranteed payments that constitute income from sources within
27 this Commonwealth shall be subject to the tax under this
28 section.

29 ~~(5)~~ (7) In determining the tax due under this section, a <--
30 pass-through entity shall not be permitted to use any tax

1 credits otherwise available to the pass-through entity except a
2 credit for estimated taxes paid for the current taxable year
3 under this section or an overpayment of a prior-year tax paid
4 under this section.

5 (b) (1) Any election described under subsection (a) shall
6 be made by an individual with authority to bind the pass-through
7 entity or sign returns under this article or who is authorized
8 to make the election and represents to having the authorization
9 under penalty of perjury ~~before or with~~ ON OR BEFORE THE <--
10 ORIGINAL DUE DATE OF the pass-through entity's return under this
11 article for the taxable year in a manner prescribed by the
12 department.

13 (2) Only one election may be submitted by an individual
14 identified under clause (1) on behalf of the pass-through entity
15 to the department for the taxable year.

16 (3) An election made under this section shall be irrevocable
17 for the taxable year.

18 (4) An election under this section may be made only for tax
19 years that the limitation on individual deductions applies under
20 26 U.S.C. § 164(b)(6) (relating to taxes).

21 (c) (1) A taxable owner of an interest in a pass-through
22 entity that elects to pay tax under subsection (a) shall be
23 allowed a refundable credit against the tax imposed under
24 section 302 in the amount of the taxable owner's share of the
25 tax that the pass-through entity actually paid under this
26 section. A taxable owner's share of the tax shall take into
27 account guaranteed payments and other special allocations made
28 to the owner.

29 (2) A taxable owner shall be entitled to claim the credit
30 under clause (1) on the taxable owner's tax return that includes

1 the corresponding income and gain of the pass-through entity.

2 (3) The credit allowed under this subsection shall be
3 applied after the application of all other tax credits available
4 to the owner for the taxable year. If the amount of the credit
5 allowable under this subsection for any taxable year exceeds the
6 tax due for the year under this article, the excess amount shall
7 be treated as an overpayment, to be credited or refunded.

8 (4) No credit shall be allowed to a taxable owner under
9 clause (1) unless the electing pass-through entity paid the tax
10 imposed under this article and provides the department on its
11 tax return all the information required in subsection (e) (2) and <--
12 (3) (D) (3) AND (4). <--

13 (5) The aggregate amount of credits claimed by all taxable
14 owners of a pass-through entity under clause (1) may not exceed
15 the tax that the pass-through entity paid under subsection (a)
16 for the taxable year.

17 (d) A pass-through entity that elects to pay tax under <--
18 subsection (a) shall be required to make estimated tax payments
19 in four equal installments on or before the fifteenth day of the
20 fourth, sixth and ninth month of its taxable year, and the
21 fifteenth day of the first month of its subsequent taxable year.

22 (e) (1) On or before the date provided under section 330(a) <--
23 330.1(B) OR 335(C), each pass-through entity that elects to pay <--
24 tax under subsection (a) shall file a return for the taxable
25 year reporting the information required under this article <--
26 SUBSECTION AND PAY THE TAX DUE. <--

27 (2) IF A PASS-THROUGH ENTITY IS GRANTED AN EXTENSION TO FILE <--
28 A RETURN REQUIRED TO BE FILED UNDER SECTION 330.1(B) OR 335(C),
29 THE EXTENSION SHALL APPLY FOR PURPOSES OF FILING THE RETURN
30 UNDER THIS SECTION, BUT NOT FOR THE PAYMENT OF ANY TAX DUE UNDER

1 SUBSECTION (A).

2 ~~(2)~~ (3) The return filed under clause (1) shall include, in <--
3 a format as prescribed by the department, a certification by an
4 individual authorized to act on behalf of the pass-through
5 entity, which includes that all statements contained in the
6 certification are true RETURN ARE TRUE AND CORRECT. <--

7 ~~(3)~~ (4) Each pass-through entity that elects to pay tax <--
8 under subsection (a) shall report on a return required under
9 this article the following:

10 (i) Any tax due under this article. The balance of any tax
11 shown on the return, not previously paid as installments of
12 estimated tax or an overpayment of a prior-year tax, shall be
13 paid with the return.

14 (ii) Identifying information of each taxable owner eligible
15 to receive a credit under subsection (c), including a Social
16 Security number or tax identification number and status as a
17 resident or nonresident. The pass-through entity must provide
18 information sufficient to identify a disregarded entity and its
19 taxable owners.

20 (iii) For each taxable owner who will be entitled to claim a
21 credit on a tax return, the taxable owner's share of the tax
22 imposed on the pass-through entity under this section.

23 (iv) Each resident taxable owner's share of the pass-through
24 entity's income and each nonresident taxable owner's share of
25 income from sources from within this Commonwealth included in
26 the tax base under this section.

27 (v) The classification of each owner as a taxable resident
28 or nonresident for purposes of calculating the pass-through
29 entity's tax liability under this section.

30 (vi) Any other information as required by the department.

1 ~~(4)~~ (5) A pass-through entity that elects to pay tax under <--
2 subsection (a) shall not be required to withhold tax from a
3 nonresident taxable owner under section 324.

4 ~~(5)~~ (6) To meet the requirements of this section, if a <--
5 taxable owner holds an interest in the pass-through entity
6 through an entity that is a disregarded entity for purposes of
7 this article, the pass-through entity must provide information
8 sufficient to identify both the disregarded entity that holds an
9 interest in the pass-through entity and the taxable owner that
10 owns the disregarded entity and is eligible for a credit under
11 subsection (c).

12 ~~(6)~~ (7) Each pass-through entity paying tax under this <--
13 section shall report to each taxable owner required to file a
14 return under this article a statement that contains the
15 following information:

16 (i) Classification as a resident taxable owner or a
17 nonresident taxable owner for purposes of calculating the pass-
18 through entity's tax under subsection (a).

19 (ii) The taxable owner's allocable share of the pass-through
20 entity's income included in the tax base for purposes of
21 computing the tax under subsection (a).

22 (iii) The owner's allocable share of the tax paid under
23 subsection (a).

24 (iv) Any other information, as required by the department.

25 ~~(f)~~ (E) (1) Any assessment of tax imposed under this <--
26 section, including interest, penalties and additions, shall be
27 assessed against the pass-through entity at the tax rate
28 applicable to the tax year. The department may not assess any
29 additional tax, including interest, penalties and additions,
30 against the taxable owners.

1 (2) Any determination of an overpayment or refund of tax
2 imposed under this section made subsequent to the filing of the
3 return under subsection ~~(e)~~ (D) shall be made at the pass- <--
4 through entity level at the tax rate applicable to the tax year.

5 (3) The pass-through entity shall be required to provide
6 each owner a statement of any adjustment of the taxable owner's
7 credit within ninety days of an assessment, overpayment or
8 refund becoming final.

9 (4) The taxable owner shall report the adjustment of the
10 credit on an amended return for the taxable owner's taxable year
11 that includes the pass-through entity's taxable year for which
12 the tax was assessed.

13 (5) Only the pass-through entity may appeal or settle an
14 assessment or overpayment of tax issued under this section or
15 petition for a refund of tax imposed under this section.

16 ~~(g)~~ (F) The basis of both a resident taxable owner and <--
17 nonresident taxable owner of a pass-through entity that elects
18 to pay tax under subsection (a) shall be determined as if the
19 election under subsection (b) had not been made and each of the
20 taxable owners of the taxed pass-through entity had properly
21 taken into account each taxable owner's pro rata share of the
22 taxed pass-through entity's items of income, gain, loss and
23 deduction in the manner required with respect to a pass-through
24 entity for which no such election is in effect.

25 ~~(h)~~ (G) (1) Unless otherwise provided in, or inconsistent <--
26 with, this section, the provisions of this article shall apply
27 to this section.

28 (2) The department may issue ~~guidelines~~ GUIDANCE and <--
29 promulgate regulations necessary for the implementation of this
30 section.

1 ~~(i) (H) (1) If the election is made, the pass-through~~ <--
2 ~~entity must, on or before the date the next estimated tax~~
3 ~~payment is due after the election, make an estimated tax payment~~
4 ~~equal to the total estimated tax that would have been due for~~
5 ~~the tax year had the election been made for the full tax year,~~
6 ~~and any nonresident withholding made under section 324 by the~~
7 ~~pass-through entity for the current tax year may be applied by~~
8 ~~the pass-through entity against its estimated tax liability.~~

9 ~~(2) In the case of any taxable year that includes the~~
10 ~~effective date of this section~~ CLAUSE, any nonresident <--
11 ~~withholding made under section 324 by the pass-through entity~~
12 ~~for the current tax year for an owner shall be applied by the~~
13 ~~pass-through entity against its estimated tax liability.~~

14 ~~(3) (2) In the case of any taxable year that includes the~~ <--
15 ~~effective date of this section~~ CLAUSE, the department may not <--
16 ~~assess interest and penalties against an eligible pass-through~~
17 ~~entity for any underpayment of estimated tax due under~~
18 ~~subsection (d), so long as the eligible pass-through entity~~
19 ~~acted in good faith with no intent to defraud the Commonwealth.~~

20 ~~(j) (I) As used in this section, the following words and~~ <--
21 ~~phrases shall have the meanings given to them in this subsection~~
22 ~~unless the context clearly indicates otherwise:~~

23 "Electing pass-through entity." A pass-through entity that
24 elects for a taxable year to be subject to the tax under this
25 section to determine its tax in accordance with subsection (a).

26 "Nonresident taxable owner." An individual, estate or trust
27 subject to the tax imposed under this article, other than a
28 resident taxable owner, that is a partner, shareholder, member
29 or other owner of an interest in a pass-through entity that has
30 income from sources within this Commonwealth.

1 "Partnership." A domestic or foreign general partnership,
2 joint venture, limited partnership, limited liability company,
3 business trust or other unincorporated entity that for Federal
4 income tax purposes is classified as a partnership. The term
5 does not include a publicly traded partnership.

6 "Pass-through entity." A partnership or Pennsylvania S
7 corporation.

8 "Resident taxable owner." A resident individual, resident
9 trust or resident estate that is a partner, shareholder, member
10 or other owner of an interest in a pass-through entity.

11 "Taxable owner." A resident taxable owner or nonresident
12 taxable owner.

13 Section 3. Sections 306 and 307.8(a) of the act are amended
14 to read:

15 Section 306. Taxability of Partners.--Except as provided
16 under [section] sections 302.3 and 306.2, a partnership as an
17 entity shall not be subject to the tax imposed by this article,
18 but the income or gain of a member of a partnership in respect
19 of said partnership shall be subject to the tax and the tax
20 shall be imposed on his share, whether or not distributed, of
21 the income or gain received by the partnership for its taxable
22 year ending within or with the member's taxable year.

23 Section 307.8. Income of a Pennsylvania S Corporation.--(a)
24 A Pennsylvania S corporation shall not be subject to the tax
25 imposed by this article, except as provided under subsection (f)
26 and section 302.3, but the shareholders of the Pennsylvania S
27 corporation shall be subject to the tax imposed under this
28 article as provided in this article.

29 * * *

30 Section 4. The amendment or addition of sections 301(w),

1 302.3, 306 and 307.8(a) of the act shall apply to taxable years
2 beginning after December 31, ~~2022~~ 2020. <--

3 Section 5. This act shall take effect immediately.