

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1130 Session of  
1993

INTRODUCED BY GEIST, CAWLEY, BELFANTI, PETRARCA, HERMAN,  
FAIRCHILD, FAJT, PHILLIPS, KASUNIC, PETRONE, STERN, KING,  
PESCI, STABACK, CIVERA, CLARK, MASLAND, MELIO, O'BRIEN AND  
TOMLINSON, APRIL 19, 1993

REFERRED TO COMMITTEE ON FINANCE, APRIL 19, 1993

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," providing a deferment for the taxation of certain  
11 income derived from the sale of real property occupied as a  
12 principal residence.

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

15 Section 1. Section 303(a)(3) of the act of March 4, 1971  
16 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended  
17 July 13, 1987 (P.L.325, No.59), is amended to read:

18 Section 303. Classes of Income.--(a) The classes of income  
19 referred to above are as follows:

20 \* \* \*

21 (3) Net gains or income from disposition of real property.

22 Net gains or net income, less net losses, derived from the sale,

1 exchange or other disposition of real property[, including real  
2 or personal, whether tangible or intangible] as determined in  
3 accordance with accepted accounting principles and practices.  
4 For the purpose of this act, for the determination of the basis  
5 of any real property[, real and personal,] if acquired prior to  
6 June 1, 1971, the date of acquisition shall be adjusted to June  
7 1, 1971, as if the real property had been acquired on that date.  
8 If the real property was acquired after June 1, 1971, the actual  
9 date of acquisition shall be used in determination of the basis.

10 (i) At the election of the taxpayer, the term "net gains or  
11 income" shall not include net gain in an amount not to exceed  
12 one hundred thousand dollars (\$100,000), or a pro rata part of  
13 one hundred thousand dollars (\$100,000) if the real property is  
14 owned by more than one taxpayer, from the sale or exchange of  
15 the taxpayer's principal residence if the taxpayer has attained  
16 fifty-five years of age before the date of the sale or exchange.  
17 If the real property is held by a husband and wife and they make  
18 a joint return for the taxable year of the sale or exchange and  
19 one spouse satisfies the age, ownership and use requirements of  
20 this clause with respect to the real property, then both husband  
21 and wife shall be treated as satisfying the age, ownership and  
22 use requirements of this clause. For purposes of this [clause]  
23 subclause, in the case of an unremarried individual whose spouse  
24 is deceased on the date of sale or exchange of the real  
25 property, if the deceased spouse, during the five-year period  
26 ending on the date of sale or exchange satisfied the holding and  
27 use requirements with respect to such real property, then such  
28 individual shall be treated as satisfying holding and use  
29 requirements with respect to such property. For the purposes of  
30 this [clause] subclause, the term "sale or exchange" shall

1 include involuntary conversions such as the destruction, theft,  
2 seizure, requisition or condemnation of the property. For the  
3 purposes of this [clause] subclause, the term "principal  
4 residence" shall mean the real property that has been owned and  
5 used by the taxpayer as his principal residence for periods  
6 aggregating three years or more during the five-year period  
7 ending on the date of the sale or exchange. In the case of real  
8 property only a portion of which, during the five-year period  
9 ending on the date of the sale or exchange, has been owned or  
10 used by the taxpayer as the taxpayer's principal residence for  
11 periods aggregating three years or more, this [section]  
12 subclause shall apply with respect to so much of the gain from  
13 the sale or exchange of such real property as is determined  
14 under regulations prescribed by the department to be  
15 attributable to the portion of the real property so owned and  
16 used by the taxpayer. The term "used" shall include time the  
17 real property was not used for rental purposes and was  
18 unoccupied by the taxpayer due to the taxpayer being in a  
19 hospital, nursing home or personal care facility, or for a  
20 period of less than ninety consecutive days. The provisions of  
21 this [clause] subclause shall not apply to any sale or exchange  
22 made prior to July 1, 1987. An election under this [clause]  
23 subclause may be made or revoked at any time before the  
24 expiration of the period for making a claim for a refund of the  
25 tax imposed by this article for the taxable year in which the  
26 sale or exchange occurred. The provisions of this [clause]  
27 subclause shall be used only once during the lifetime of the  
28 taxpayer.

29 (ii) In accordance with section 2(b)(ii) of Article VIII of  
30 the Constitution of Pennsylvania, the department shall allow any

1 taxpayer who loses his or her principal employment during the  
2 tax year, without obtaining new employment, to defer paying tax  
3 on the gain of the sale of his or her real property occupied as  
4 a principal residence, as defined in subclause (i), until the  
5 tax year in which new employment is obtained. The department  
6 shall promulgate any rules and regulations which may be  
7 necessary to implement this subclause.

8 (3.1) Net gains or income from disposition of personal  
9 property. Net gains or net income, less net losses, derived from  
10 the sale, exchange or other disposition of personal property,  
11 whether tangible or intangible as determined in accordance with  
12 accepted accounting principles and practices. For the purpose of  
13 this act, for the determination of the basis of any personal  
14 property, if acquired prior to June 1, 1971, the date of  
15 acquisition shall be adjusted to June 1, 1971, as if the  
16 personal property had been acquired on that date. If the  
17 personal property was acquired after June 1, 1971, the actual  
18 date of acquisition shall be used in determination of the basis.

19 The term "net gains or income" shall not include gains or  
20 income derived from obligations which are statutorily free from  
21 State or local taxation under any other act of the General  
22 Assembly of the Commonwealth of Pennsylvania or under the laws  
23 of the United States. The term "sale, exchange or other  
24 disposition" shall not include the exchange of stock or  
25 securities in a corporation a party to a reorganization in  
26 pursuance of a plan of reorganization, solely for stock or  
27 securities in such corporation or in another corporation a party  
28 to the reorganization and the transfer of property to a  
29 corporation by one or more persons solely in exchange for stock  
30 or securities in such corporation if immediately after the

1 exchange such person or persons are in control of the  
2 corporation. For purposes of this clause, stock or securities  
3 issued for services shall not be considered as issued in return  
4 for property.

5 For purposes of this clause, the term "reorganization"  
6 means--

7 (i) a statutory merger or consolidation;

8 (ii) the acquisition by one corporation, in exchange solely  
9 for all or a part of its voting stock (or in exchange solely for  
10 all or a part of the voting stock of a corporation which is in  
11 control of the acquiring corporation) of stock of another  
12 corporation if, immediately after the acquisition, the acquiring  
13 corporation has control of such other corporation (whether or  
14 not such acquiring corporation had control immediately before  
15 the acquisition);

16 (iii) the acquisition by one corporation, in exchange solely  
17 for all or a part of its voting stock (or in exchange solely for  
18 all or a part of the voting stock of a corporation which is in  
19 control of the acquiring corporation), of substantially all of  
20 the properties of another corporation, but in determining  
21 whether the exchange is solely for stock the assumption by the  
22 acquiring corporation of a liability of the other, or the fact  
23 that property acquired is subject to a liability, shall be  
24 disregarded;

25 (iv) a transfer by a corporation of all or a part of its  
26 assets to another corporation if immediately after the transfer  
27 the transferor, or one or more of its shareholders (including  
28 persons who were shareholders immediately before the transfer),  
29 or any combination thereof, is in control of the corporation to  
30 which the assets are transferred;

1 (v) a recapitalization;

2 (vi) a mere change in identity, form, or place of  
3 organization however effected; or

4 (vii) the acquisition by one corporation, in exchange for  
5 stock of a corporation (referred to in this subclause as  
6 "controlling corporation") which is in control of the acquiring  
7 corporation, of substantially all of the properties of another  
8 corporation which in the transaction is merged into the  
9 acquiring corporation shall not disqualify a transaction under  
10 subclause (i) if such transaction would have qualified under  
11 subclause (i) if the merger had been into the controlling  
12 corporation, and no stock of the acquiring corporation is used  
13 in the transaction;

14 (viii) a transaction otherwise qualifying under subclause  
15 (i) shall not be disqualified by reason of the fact that stock  
16 of a corporation (referred to in this subclause as the  
17 "controlling corporation") which before the merger was in  
18 control of the merged corporation is used in the transaction, if  
19 after the transaction, the corporation surviving the merger  
20 holds substantially all of its properties and of the properties  
21 of the merged corporation (other than stock of the controlling  
22 corporation distributed in the transaction); and in the  
23 transaction, former shareholders of the surviving corporation  
24 exchanged, for an amount of voting stock of the controlling  
25 corporation, an amount of stock in the surviving corporation  
26 which constitutes control of such corporation.

27 For purposes of this clause, the term "control" means the  
28 ownership of stock possessing at least eighty per cent of the  
29 total combined voting power of all classes of stock entitled to  
30 vote and at least eighty per cent of the total number of shares

1 of all other classes of stock of the corporation.

2 For purposes of this clause, the term "a party to a  
3 reorganization" includes a corporation resulting from a  
4 reorganization, and both corporations, in the case of a  
5 reorganization resulting from the acquisition by one corporation  
6 of stock or properties of another. In the case of a  
7 reorganization qualifying under subclause (i) by reason of  
8 subclause (vii) the term "a party to a reorganization" includes  
9 the controlling corporation referred to in such subclause (vii).

10 Notwithstanding any provisions hereof, upon every such  
11 exchange or conversion, the taxpayer's base for the stock or  
12 securities received shall be the same as the taxpayer's actual  
13 or attributed base for the stock, securities or property  
14 surrendered in exchange therefor.

15 \* \* \*

16 Section 2. This act shall apply to the tax year beginning  
17 January 1, 1993.

18 Section 3. This act shall take effect in 60 days.