

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**

**No. 361**      Session of  
1995

INTRODUCED BY HUTCHINSON, WAUGH, FICHTER, COY, HERSHEY, FLEAGLE,  
DEMPSEY, CARONE, L. I. COHEN, ROBERTS, PLATTS, BAKER, ZUG,  
TRELLO, GODSHALL, PHILLIPS, LYNCH, SCHRODER, RAYMOND, McCALL,  
BROWN, E. Z. TAYLOR, TIGUE, D. W. SNYDER, S. H. SMITH,  
CORRIGAN, CIVERA, GEIST, MARKOSEK, CLYMER, REBER, EGOLF,  
JADLOWIEC, FARGO, PETTIT, BELFANTI, ARMSTRONG, KING, LEH,  
STERN, DIGIROLAMO, SATHER AND MARSICO, JANUARY 26, 1995

REFERRED TO COMMITTEE ON FINANCE, JANUARY 26, 1995

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 for net loss carryover.

11 The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

13 Section 1. Section 401(3)4 of the act of March 4, 1971  
14 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended  
15 June 16, 1994 (P.L.279, No.48), is amended 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:

1 \* \* \*

2 (3) "Taxable income." \* \* \*

3 4. (a) For taxable years beginning in 1982 through taxable  
4 years beginning in 1990 and for the taxable year beginning in  
5 1995 and each taxable year thereafter, a net loss deduction  
6 shall be allowed from taxable income as arrived at under  
7 subclause 1 or, if applicable, subclause 2. For taxable years  
8 beginning in 1991, 1992, 1993 and 1994, the net loss deduction  
9 allowed for years prior to 1991 shall be suspended, and no  
10 carryover of net losses from taxable years 1988, 1989, 1990,  
11 1991, 1992 and 1993 shall be utilized in calculating net income  
12 for the 1991, 1992, 1993 and 1994 taxable years, but such net  
13 losses may be used as provided in paragraph (c) in calculating  
14 net income for the 1995 taxable year and for two taxable years  
15 thereafter.

16 (b) A net loss for a taxable year is the negative amount for  
17 said taxable year determined under subclause 1 or, if  
18 applicable, subclause 2. Negative amounts under subclause 1  
19 shall be allocated and apportioned in the same manner as  
20 positive amounts.

21 (c) The net loss deduction shall be the lesser of \$500,000  
22 or the amount of the net loss or losses which may be carried  
23 over to the taxable year or taxable income as determined under  
24 subclause 1 or, if applicable, subclause 2. A net loss for a  
25 taxable year may only be carried over pursuant to the following  
26 schedule:

| 27 | Taxable Year | Carryover       |
|----|--------------|-----------------|
| 28 | 1981         | 1 taxable year  |
| 29 | 1982         | 2 taxable years |
| 30 | 1983-1987    | 3 taxable years |

|    |                            |                         |
|----|----------------------------|-------------------------|
| 1  | 1988                       | 2 taxable years plus    |
| 2  |                            | 1 taxable year          |
| 3  |                            | starting with the       |
| 4  |                            | 1995 taxable year       |
| 5  | 1989                       | 1 taxable year plus     |
| 6  |                            | 2 taxable years         |
| 7  |                            | starting with the       |
| 8  |                            | 1995 taxable year       |
| 9  | 1990-1993                  | 3 taxable years         |
| 10 |                            | starting with the       |
| 11 |                            | 1995 taxable year       |
| 12 | 1994                       | 1 taxable year          |
| 13 | 1995                       | 2 taxable years         |
| 14 | 1996 [and thereafter]      | 3 taxable years         |
| 15 | <u>1997</u>                | <u>6 taxable years</u>  |
| 16 | <u>1998</u>                | <u>9 taxable years</u>  |
| 17 | <u>1999</u>                | <u>12 taxable years</u> |
| 18 | <u>2000 and thereafter</u> | <u>15 taxable years</u> |

19 The earliest net loss shall be carried over to the earliest  
20 taxable year to which it may be carried under this schedule. The  
21 total net loss deduction allowed in any taxable year shall not  
22 exceed five hundred thousand dollars (\$500,000).

23 (d) No loss shall be a carryover from a taxable year when  
24 the corporation elects to be treated as a Pennsylvania S  
25 corporation pursuant to section 307 of Article III of this act  
26 to a taxable year when the corporation is subject to the tax  
27 imposed under this article.

28 (e) Paragraph (d) shall not prevent a taxable year when a  
29 corporation is a Pennsylvania S corporation from being  
30 considered a taxable year for determining the number of taxable

1 years to which a net loss may be a carryover.

2 (f) For purposes of the net loss deduction, the short  
3 taxable year of a corporation, after the revocation or  
4 termination of an election to be treated as a Pennsylvania S  
5 corporation pursuant to sections 307.3 and 307.4 of Article III  
6 of this act, shall be treated as a taxable year.

7 (g) In the case of a change in ownership by purchase,  
8 liquidation, acquisition of stock or reorganization of a  
9 corporation in the manner described in section 381 or 382 of the  
10 Internal Revenue Code of 1954, as amended, the limitations  
11 provided in the Internal Revenue Code with respect to net  
12 operating losses shall apply for the purpose of computing the  
13 portion of a net loss carryover recognized under paragraph  
14 (3)4(c) of this section. When any acquiring corporation or a  
15 transferor corporation participated in the filing of  
16 consolidated returns to the Federal Government, the entitlement  
17 of the acquiring corporation to the Pennsylvania net loss  
18 carryover of the acquiring corporation or the transferor  
19 corporation will be determined as if separate returns to the  
20 Federal Government had been filed prior to the change in  
21 ownership by purchase, liquidation, acquisition of stock or  
22 reorganization.

23 \* \* \*

24 Section 2. This act shall take effect January 1, 1996.