

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1038 Session of
1997

INTRODUCED BY HUTCHINSON, DENT, WALKO, ARMSTRONG, GEORGE, STERN,
SCHRODER, LYNCH, BAKER, RUBLEY, FICHTER, MILLER, COY,
MARKOSEK, READSHAW, ZUG, TRAVAGLIO, WAUGH, SCHULER, BARRAR,
HERSHEY, ROBERTS, FAIRCHILD, KENNEY, B. SMITH, SEMMEL, FARGO,
BATTISTO, SAYLOR, VAN HORNE, WILT, RAYMOND, EGOLF, SATHER,
PHILLIPS, STEELMAN, TIGUE, L. I. COHEN, FLEAGLE, HASAY,
ROONEY, SURRA, PETTIT, PLATTS, ITKIN, SEYFERT, CORNELL,
ROHRER, TRELLO, CAPPABIANCA, CORRIGAN, EACHUS, BOSCOLA,
E. Z. TAYLOR, GEIST, STEVENSON, DEMPSEY, BROWNE, ROSS,
HENNESSEY, SHANER, MARSICO, McNAUGHTON, LAUGHLIN, COLAFELLA
AND BENNINGHOFF, MARCH 25, 1997

REFERRED TO COMMITTEE ON FINANCE, MARCH 25, 1997

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 30, 1995 (P.L.139, No.21), is amended to read:

16 Section 401. Definitions.--The following words, terms, and
17 phrases, when used in this article, shall have the meaning

1 ascribed to them in this section, except where the context
2 clearly indicates a different meaning:

3 * * *

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

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

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

23 (c) (1) The net loss deduction shall be the lesser of one
24 million dollars (\$1,000,000) or the amount of the net loss or
25 losses which may be carried over to the taxable year or taxable
26 income as determined under subclause 1 or, if applicable,
27 subclause 2. In no event shall the net loss deduction include
28 more than five hundred thousand dollars (\$500,000), in the
29 aggregate, of net losses from taxable years 1988 through 1994.

30 (2) A net loss for a taxable year may only be carried over

1 pursuant to the following schedule:

2	Taxable Year	Carryover
3	1981	1 taxable year
4	1982	2 taxable years
5	1983-1987	3 taxable years
6	1988	2 taxable years plus
7		1 taxable year
8		starting with the
9		1995 taxable year
10	1989	1 taxable year plus
11		2 taxable years
12		starting with the
13		1995 taxable year
14	1990-1993	3 taxable years
15		starting with the
16		1995 taxable year
17	1994	1 taxable year
18	1995	2 taxable years
19	[1996 and thereafter	3 taxable years]
20	<u>1996-1997</u>	<u>3 taxable years</u>
21	<u>1998</u>	<u>6 taxable years</u>
22	<u>1999</u>	<u>9 taxable years</u>
23	<u>2000</u>	<u>12 taxable years</u>
24	<u>2001 and thereafter</u>	<u>15 taxable years</u>

25 The earliest net loss shall be carried over to the earliest
26 taxable year to which it may be carried under this schedule. The
27 total net loss deduction allowed in any taxable year shall not
28 exceed one million dollars (\$1,000,000).

29 (d) No loss shall be a carryover from a taxable year when
30 the corporation elects to be treated as a Pennsylvania S

1 corporation pursuant to section 307 of Article III of this act
2 to a taxable year when the corporation is subject to the tax
3 imposed under this article.

4 (e) Paragraph (d) shall not prevent a taxable year when a
5 corporation is a Pennsylvania S corporation from being
6 considered a taxable year for determining the number of taxable
7 years to which a net loss may be a carryover.

8 (f) For purposes of the net loss deduction, the short
9 taxable year of a corporation, after the revocation or
10 termination of an election to be treated as a Pennsylvania S
11 corporation pursuant to sections 307.3 and 307.4 of Article III
12 of this act, shall be treated as a taxable year.

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

29 * * *

30 Section 2. This act shall take effect January 1, 1998.