

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2903 Session of  
1998

INTRODUCED BY BOYES, BENNINGHOFF, CORRIGAN, ADOLPH, ARGALL,  
ARMSTRONG, BAKER, BARD, BARRAR, BELFANTI, BOSCOLA, BROWNE,  
CALTAGIRONE, L. I. COHEN, COLAFELLA, COLAIZZO, CORNELL, COY,  
DALLY, DEMPSEY, EGOLF, FAIRCHILD, FARGO, FICHTER, FLICK,  
GANNON, GEIST, GEORGE, GIGLIOTTI, GODSHALL, GORDNER, GRUITZA,  
HALUSKA, HARHART, HENNESSEY, HERMAN, HERSHEY, HESS,  
HUTCHINSON, KENNEY, LAUGHLIN, LEDERER, MAHER, MAITLAND,  
MARSICO, MASLAND, McCALL, McILHINNEY, MELIO, MICOZZIE,  
MILLER, NAILOR, NICKOL, OLASZ, ORIE, PESCI, PETRARCA,  
PETRONE, PHILLIPS, PIPPY, PRESTON, READSHAW, ROBERTS, ROSS,  
RUBLEY, SANTONI, SATHER, SCHRODER, SCHULER, SEMMEL, SERAFINI,  
SEYFERT, SHANER, S. H. SMITH, STABACK, STAIRS, STERN,  
STEVENSON, E. Z. TAYLOR, THOMAS, TRUE, VANCE, WALKO, WAUGH,  
WILT, M. N. WRIGHT AND ZUG, OCTOBER 20, 1998

REFERRED TO COMMITTEE ON FINANCE, OCTOBER 20, 1998

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 definitions, for transfers  
11 subject to inheritance tax and for transfers not subject to  
12 inheritance tax; and providing for taxation of transfers to  
13 members of the same family and for taxation of a qualified  
14 family-owned business interest.

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

17 Section 1. Section 2102 of the act of March 4, 1971 (P.L.6,  
18 No.2), known as the Tax Reform Code of 1971, is amended by

1 adding definitions to read:

2 Section 2102. Definitions.--The following words, terms and  
3 phrases, when used in this article, shall have the meanings  
4 ascribed to them in this section, except where the context  
5 clearly indicates a different meaning:

6 \* \* \*

7 Members of the same family." A transferor, the transferor's  
8 brothers and sisters, the brothers and sisters of the  
9 transferor's parents and grandparents, their ancestors, lineal  
10 descendants, spouses and their estates. Individuals related by  
11 the half blood or legal adoption shall be treated as if they  
12 were related by the whole blood.

13 \* \* \*

14 "Qualified family-owned business interest." A qualified  
15 family-owned business interest as defined in section 2033A(e) of  
16 the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.  
17 § 1 et seq.).

18 "Qualified heir." A qualified heir as defined in section  
19 2033A(I)(1) of the Internal Revenue Code of 1986 (Public Law 99-  
20 514, 26 U.S.C. § 1 et seq.).

21 \* \* \*

22 Section 2. Section 2107 of the act, added August 4, 1991  
23 (P.L.97, No.22) and reenacted June 30, 1995 (P.L.139, No.21), is  
24 amended to read:

25 Section 2107. Transfers Subject to Tax.--(a) The transfers  
26 enumerated in this section are subject to the tax imposed by  
27 section 2106.

28 (b) All transfers of property by will, by the intestate laws  
29 of this Commonwealth or, in the case of a transfer from a  
30 nonresident, by the laws of succession of another jurisdiction

1 are subject to tax. The transfer of property of a person  
2 determined by decree of a court of competent jurisdiction to be  
3 a presumed decedent is subject to tax within the meaning of this  
4 section and section 2108.

5 (c) (1) All transfers of property specified in subclauses  
6 (3) through (7) which are made by a resident or a nonresident  
7 during his lifetime are subject to tax to the extent that they  
8 are made without valuable and adequate consideration in money or  
9 money's worth at the time of transfer.

10 (2) When the decedent retained or reserved an interest or  
11 power with respect to only a part of the property transferred,  
12 in consequence of which a tax is imposed under subclauses (4)  
13 through (7), the amount of the taxable transfer is only the  
14 value of that portion of the property transferred which is  
15 subject to the retained or reserved interest or power.

16 (3) A transfer conforming to subclause (1) and made within  
17 one year of the death of the transferor is subject to tax only  
18 to the extent that the value at the time of the transfer or  
19 transfers in the aggregate to or for the benefit of the  
20 transferee exceeds [three thousand dollars (\$3,000)] ten  
21 thousand dollars (\$10,000) during any calendar year.

22 (4) A transfer conforming to subclause (1) which takes  
23 effect in possession or enjoyment at or after the death of the  
24 transferor and under which the transferor has retained a  
25 reversionary interest in the property, the value of which  
26 interest immediately before the death of the transferor exceeds  
27 five per cent of the value of the property transferred, is  
28 subject to tax. The term "reversionary interest" includes a  
29 possibility that property transferred may return to the  
30 transferor or his estate or may be subject to a power of

1 disposition by him, but the term does not include a possibility  
2 that the income alone from the property may return to him or  
3 become subject to a power of disposition by him.

4 (5) A transfer conforming to subclause (1), and under which  
5 the transferor expressly or impliedly reserves for his life or  
6 any period which does not in fact end before his death, the  
7 possession or enjoyment of, or the right to the income from, the  
8 property transferred, or the right, either alone or in  
9 conjunction with any person not having an adverse interest, to  
10 designate the persons who shall possess or enjoy the property  
11 transferred or the income from the property, is subject to tax.

12 (6) A transfer conforming to subclause (1), and under which  
13 the transferee promises to make payments to, or for the benefit  
14 of, the transferor or to care for the transferor during the  
15 remainder of the transferor's life, is subject to tax.

16 (7) A transfer conforming to subclause (1), and under which  
17 the transferor has at his death, either in himself alone or in  
18 conjunction with any person not having an adverse interest, a  
19 power to alter, amend or revoke the interest of the beneficiary,  
20 is subject to tax. Similarly, the relinquishment of such a power  
21 within one year of the death of the transferor is a transfer  
22 subject to tax except as otherwise provided in subclause (3).

23 (d) All succeeding interests which follow the interest of a  
24 surviving spouse in a trust or similar arrangement, to the  
25 extent specified in section 2113, are transfers subject to tax  
26 as if the surviving spouse were the transferor.

27 Section 3. Section 2111 of the act is amended by adding a  
28 subsection to read:

29 Section 2111. Transfers Not Subject to Tax.\* \* \*

30 (s) Subject to the provisions of section 2118, transfers of

a qualified family-owned business interest shall be exempt from inheritance tax to the extent that such interest is exempt from Federal estate tax under section 2033A of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) except that the exemption shall not be allowed if the principal place of business of the qualified family-owned business interest is not located in this Commonwealth.

Section 4. The act is amended by adding sections to read:

Section 2114. Taxation of Transfers to Members of the Same Family.--(a) Notwithstanding the provisions of section 2107, a transfer or transfers to a member of the same family is subject to tax only to the extent that the value at the time of the transfer or transfers in the aggregate for all members of the same family exceeds one hundred fifty thousand dollars (\$150,000).

(b) When the value at the time of transfer or transfers in the aggregate for all members of the same family exceeds one hundred fifty thousand dollars (\$150,000), the value of the transfer or transfers subject to tax shall be determined by multiplying the fraction calculated in subclause (1) by the value calculated in subclause (2), as follows:

(1) The value of the transfer or transfers to a member of the same family divided by the aggregate value of transfers to all members of the same family.

(2) The aggregate value of transfers to all members of the same family less one hundred fifty thousand dollars (\$150,000).

Section 2118. Taxation of a Qualified Family-Owned Business Interest.--(a) There is imposed an inheritance tax on the value of a qualified family-owned business interest not subject to tax under section 2111(s) if, within ten years after the date of the

decedent's death and before the date of the qualified heir's death:

(1) the material participation requirements described in section 2032A(C)(6)(B) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) are not met with respect to the qualified family-owned business interest which was acquired or passed from the decedent;

(2) the qualified heir disposes of any portion of a qualified family-owned business interest to a person other than a member of the same family of the qualified heir; or

(3) the principal place of business of a trade or business of the qualified family-owned business interest ceases to be located in this Commonwealth.

(b) The amount of the inheritance tax imposed under subsection (a) shall be equal to the value of the exclusion provided under section 2111(s) calculated at the rates applicable to the qualified heirs under section 2106.

(c) The tax calculated under subsection (b) shall bear interest from nine months after the date of the decedent's death to the date of payment of the tax as provided under section 806 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

(d) The provisions of section 2114 shall not apply to the tax calculated under this section.

Section 5. The amendment or addition of sections 2102, 2107, 2111(s), 2114 and 2118 shall apply to the estates of decedents dying on or after January 1, 1999 and to inter vivos transfers made by decedents dying on or after January 1, 1998, regardless of the date of transfer.

Section 6. This act shall take effect immediately.