

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2229 Session of
1991

INTRODUCED BY PICCOLA, MAYERNIK, FLEAGLE, SCHULER, FAIRCHILD,
ALLEN, CHADWICK, WILSON, NOYE, SAURMAN, NAHILL, BIRMELIN,
JADLOWIEC, CLARK, LANGTRY, FARMER, HERSHEY, GEIST, O'BRIEN,
D. W. SNYDER, GLADECK, HECKLER, E. Z. TAYLOR, MICOZZIE,
REBER, MARSICO, DEMPSEY, REINARD, NAILOR, LEH, BUSH, CORNELL,
BUNT, KING, VROON, CLYMER, M. N. WRIGHT, TOMLINSON, ANGSTADT,
FARGO, CARLSON, BARLEY, BLACK, PITTS, STAIRS, RAYMOND, MERRY,
GERLACH, KENNEY, FLICK, ARMSTRONG, TULLI, LAWLESS, SCHEETZ,
JOHNSON, TELEK, DURHAM, BROUJOS, ROBINSON, S. H. SMITH AND
LEE, NOVEMBER 25, 1991

REFERRED TO COMMITTEE ON FINANCE, NOVEMBER 25, 1991

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 the exclusion of certain
11 services from sales tax.

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

14 Section 1. Section 204 of the act of March 4, 1971 (P.L.6,
15 No.2), known as the Tax Reform Code of 1971, is amended by
16 adding a clause to read:

17 Section 204. Exclusions from Tax.--The tax imposed by
18 section 202 shall not be imposed upon

1 * * *

2 (49) The sale at retail or use of the services enumerated in
3 section 201(k)(11) through 23 or 201(o)(9) through (20) which
4 represents an allocation, reimbursement or charge for services
5 provided or rendered between persons specified in any of the
6 paragraphs of subsection 267(b) or 269B(c)(2) of the Internal
7 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.),
8 as amended.

9 Section 2. Section 401(3)1(b) and 4(a) and (c) of the act,
10 amended July 1, 1985 (P.L.78, No.29) and August 4, 1991 (P.L.97,
11 No.22), are amended to read:

12 Section 401. Definitions.--The following words, terms, and
13 phrases, when used in this article, shall have the meaning
14 ascribed to them in this section, except where the context
15 clearly indicates a different meaning:

16 * * *

17 (3) "Taxable income." 1. * * *

18 (b) Additional deductions shall be allowed from taxable
19 income (i) on account of any dividends received from any other
20 corporation, other than thirty per cent of dividends received
21 from a corporation in which the taxpayer owns less than ten per
22 cent of the voting stock of such corporation, but only to the
23 extent that such dividends are included in taxable income as
24 returned to and ascertained by the Federal Government[. For tax
25 years beginning on or after January 1, 1991, an additional
26 deduction shall only be allowed]; and (ii) for amounts
27 included, under section 78 of the Internal Revenue Code of 1986
28 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned
29 to and ascertained by the Federal Government.

30 * * *

1 4. (a) For taxable years beginning in 1982 [through taxable
2 years beginning in 1990] and thereafter, except for taxable
3 years beginning in 1991 and 1992, a net loss deduction shall be
4 allowed from taxable income as arrived at under subclause 1 or,
5 if applicable, subclause 2. [For taxable years beginning in 1991
6 and thereafter, the net loss deduction allowed for years prior
7 to 1991 shall be suspended; and no carryover of net losses from
8 taxable years 1988, 1989, and 1990 shall be utilized in
9 calculating net income.] For any carryover of a net loss from
10 taxable years beginning in 1988, 1989 and 1990, to taxable years
11 beginning in 1991 and 1992, for which a net loss deduction has
12 been disallowed by this paragraph, the three taxable years
13 carryover period is extended by two taxable years, as shown in
14 paragraph (c). For any carryover of a net loss from the taxable
15 year beginning in 1991, to the taxable year beginning in 1992,
16 for which a net loss deduction has been disallowed by this
17 paragraph, the three taxable years carryover period is extended
18 by one taxable year, as shown in paragraph (c).

19 * * *

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

25	Taxable Year	Carryover
26	1981	1 taxable year
27	1982	2 taxable years
28	[1983 and thereafter	3 taxable years]
29	<u>1983 - 1987</u>	<u>3 taxable years</u>
30	<u>1988 - 1990</u>	<u>5 taxable years</u>

1	<u>1991</u>	<u>4 taxable years</u>
2	<u>1992 and thereafter</u>	<u>3 taxable years</u>

3 The earliest net loss shall be carried over to the earliest
4 taxable year to which it may be carried under this schedule.

5 * * *

6 Section 3. Section 407 (b) and (e) of the act, amended or
7 added August 4, 1991 (P.L.97, No.22), are amended to read:

8 Section 407. Settlement and Resettlement.--* * *

9 (b) If, within a period of [three years] eighteen months
10 after the date of any settlement, the department is not
11 satisfied with such settlement, or if at any time the net income
12 as returned by any corporation to the Federal Government is
13 finally changed or corrected by the Commissioner of Internal
14 Revenue or by any other agency or court of the United States
15 with the result that tax, in addition to the amount paid, is due
16 under this article, the department is hereby authorized and
17 empowered to make a resettlement of the tax due by such
18 corporation, based upon the facts contained in the report, or
19 upon any information within its possession or that shall come
20 into its possession.

21 Whenever a resettlement shall have been made hereunder, the
22 department shall resettle the account according to law and shall
23 credit or charge, as the case may be, the amount resulting from
24 such resettlement upon the current accounts of the corporation
25 with which it is made.

26 The resettlement shall be subject to audit and approval by
27 the Department of the Auditor General as in the case of original
28 settlement, and in case of the failure of the two departments to
29 agree, the resettlement shall be submitted to the Board of
30 Finance and Revenue as in the case of original settlements.

1 * * *

2 [(e) If any taxpayer, pursuant to petition or appeal, is
3 granted a resettlement or issued an order of court or a judgment
4 basing the taxpayer's tax for any taxable year upon the
5 principles of multifirmity or unrelated assets resulting from a
6 final decision upon the taxpayer's petition or appeal, or any
7 stipulation for judgment in settlement of litigation thereon,
8 then any taxable year of the taxpayer within a three-year period
9 prior to the taxable year in issue or any taxable year
10 thereafter may be resettled consistent with such principles
11 within one year of such resettlement, order of court or
12 judgment.]

13 Section 4. This act shall be retroactive as follows:

14 (1) The amendment of section 204 of the act shall be
15 retroactive to August 4, 1991.

16 (2) The amendment of sections 401 and 407 of the act
17 shall be retroactive to January 1, 1991.

18 Section 5. This act shall take effect immediately.