

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 767

Session of
1979

INTRODUCED BY POTT, BORSKI, BRUNNER, MOEHLMANN AND VROON,
MARCH 20, 1979

REFERRED TO COMMITTEE ON FINANCE, MARCH 20, 1979

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 defining the term "net gains or income."

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

13 Section 1. Clause (3) of subsection (a) of section 303, act
14 of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of
15 1971," added August 31, 1971 (P.L.362, No.93) and amended June
16 17, 1974 (P.L.325, No.105), is amended by adding paragraphs to
17 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 property. Net
22 gains or net income, less net losses, derived from the sale,

1 exchange or other disposition of property, including real or
2 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 property, real and personal, if acquired prior to June 1,
6 1971, the date of acquisition shall be adjusted to June 1, 1971
7 as if the property had been acquired on that date. If the
8 property was acquired after June 1, 1971, the actual date of
9 acquisition shall be used in determination of the basis.

10 The term "net gains or income" shall not include gains or
11 income derived from obligations which are statutorily free from
12 State or local taxation under any other act of the General
13 Assembly of the Commonwealth of Pennsylvania or under the laws
14 of the United States. The term "sale, exchange or other
15 disposition" shall not include the exchange of stock or
16 securities in a corporation a party to a reorganization in
17 pursuance of a plan of reorganization, solely for stock or
18 securities in such corporation or in another corporation a party
19 to the reorganization and the transfer of property to a
20 corporation by one or more persons solely in exchange for stock
21 or securities in such corporation if immediately after the
22 exchange such person or persons are in control of the
23 corporation. For purposes of this clause, stock or securities
24 issued for services shall not be considered as issued in return
25 for property.

26 For purposes of this clause, the term "reorganization"
27 means--

28 (i) a statutory merger or consolidation;

29 (ii) the acquisition by one corporation, in exchange solely
30 for all or a part of its voting stock (or in exchange solely for

1 all or a part of the voting stock of a corporation which is in
2 control of the acquiring corporation) of stock of another
3 corporation if, immediately after the acquisition, the acquiring
4 corporation has control of such other corporation (whether or
5 not such acquiring corporation had control immediately before
6 the acquisition);

7 (iii) the acquisition by one corporation, in exchange solely
8 for all or a part of its voting stock (or in exchange solely for
9 all or a part of the voting stock of a corporation which is in
10 control of the acquiring corporation), of substantially all of
11 the properties of another corporation, but in determining
12 whether the exchange is solely for stock the assumption by the
13 acquiring corporation of a liability of the other, or the fact
14 that property acquired is subject to a liability, shall be
15 disregarded;

16 (iv) a transfer by a corporation of all or a part of its
17 assets to another corporation if immediately after the transfer
18 the transferor, or one or more of its shareholders (including
19 persons who were shareholders immediately before the transfer),
20 or any combination thereof, is in control of the corporation to
21 which the assets are transferred;

22 (v) a recapitalization;

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

25 (vii) the acquisition by one corporation, in exchange for
26 stock of a corporation (referred to in this subclause as
27 "controlling corporation") which is in control of the acquiring
28 corporation, of substantially all of the properties of another
29 corporation which in the transaction is merged into the
30 acquiring corporation shall not disqualify a transaction under

1 subclause (i) if such transaction would have qualified under
2 subclause (i) if the merger had been into the controlling
3 corporation, and no stock of the acquiring corporation is used
4 in the transaction;

5 (viii) a transaction otherwise qualifying under subclause
6 (i) shall not be disqualified by reason of the fact that stock
7 of a corporation (referred to in this subclause as the
8 "controlling corporation") which before the merger was in
9 control of the merged corporation is used in the transaction, if
10 after the transaction, the corporation surviving the merger
11 holds substantially all of its properties and of the properties
12 of the merged corporation (other than stock of the controlling
13 corporation distributed in the transaction); and in the
14 transaction, former shareholders of the surviving corporation
15 exchanged, for an amount of voting stock of the controlling
16 corporation, an amount of stock in the surviving corporation
17 which constitutes control of such corporation.

18 For purposes of this clause, the term "control" means the
19 ownership of stock possessing at least eighty per cent of the
20 total combined voting power of all classes of stock entitled to
21 vote and at least eighty per cent of the total number of shares
22 of all other classes of stock of the corporation.

23 For purposes of this clause, the term "a party to a
24 reorganization" includes a corporation resulting from a
25 reorganization, and both corporations, in the case of a
26 reorganization resulting from the acquisition by one corporation
27 of stock or properties of another. In the case of a
28 reorganization qualifying under subclause (i) by reason of
29 subclause (vii) the term "a party to a reorganization" includes
30 the controlling corporation referred to in such subclause (vii).

1 Notwithstanding any provisions hereof, upon every such
2 exchange or conversion, the taxpayer's base for the stock or
3 securities received shall be the same as the taxpayer's actual
4 or attributed base for the stock, securities or property
5 surrendered in exchange therefor.

6 The term "net gains or income" shall not include gains
7 derived from the sale of the taxpayers principal personal
8 residence provided that he purchased another one during the year
9 prior to the sale, or he purchases another one within one year
10 after the sale or he starts construction on another one within
11 one year after the sale and resides therein within eighteen
12 months after the sale. To the extent that any of the gains from
13 the sale of the old residence are not reinvested in the new
14 residence, such gains shall be considered net gains or income
15 for the purposes of this article.

16 Where the purchase of a new residence results in the
17 nonrecognition of gain on the sale of an old residence, in
18 determining the adjusted basis of the new residence as of any
19 time following the sale of the old residence, the adjustments to
20 basis shall include a reduction by an amount equal to the amount
21 of the gain not so recognized on the sale of the old residence.
22 For this purpose, the amount of the gain not so recognized on
23 the sale of the old residence includes only so much of such gain
24 as is not recognized by reason of the cost, up to such time, of
25 purchasing the new residence.

26 The term "net gains or income" shall not include gains
27 derived from the sale of property whether or not he purchases or
28 constructs another if:

29 (i) the taxpayer has attained the age of sixty-five before
30 the date of such sale; and

1 (ii) during the eight year period ending on the date of sale
2 such property has been owned by the taxpayer as his principal
3 residence for periods aggregating five years or more.
4 If the adjusted sales price of the property sold exceeds thirty-
5 five thousand dollars (\$35,000) then the term "net gains or
6 income" in so far as it relates to this paragraph shall not
7 include that portion of the gain which bears the same ratio to
8 the total amount of such gains as thirty-five thousand dollars
9 (\$35,000) bears to such adjusted sales price. For purposes of
10 this paragraph, the term "adjusted sales price" means the amount
11 realized, reduced by the aggregate of the expenses for work
12 performed on the old residence in order to assist in its sale.

13 If the property is held by husband and wife as joint tenants
14 or tenants by the entirety, if such husband and wife made a
15 joint return for the taxable year of the sale, and if one spouse
16 satisfies the age, holding and use requirements with respect to
17 such property then both husband and wife shall be treated as
18 satisfying the requirements of the above paragraph.

19 If property (as a result of its destruction in whole or in
20 part, theft, seizure, or requisition or condemnation or threat
21 or imminence thereof) is compulsorily or involuntarily converted
22 into money or into property not similar or related in service or
23 use to the converted property the gains (if any) shall be "net
24 gains or income" except if the taxpayer, during the period
25 beginning with the date of the disposition of the converted
26 property, or the earliest date of the threat or imminence of
27 requisition or condemnation of the converted property, whichever
28 is earlier and ending two years after the close of the first
29 taxable year in which any part of the gain upon the conversion
30 is realized, for the purpose of replacing the property so

1 converted, purchases other property similar or related in
2 service or use to the property so converted, or purchases stock
3 in the acquisition of control of a corporation owning such other
4 property, then, at the election of the taxpayer, the gains (if
5 any) shall only be "net gains or income" to the extent that the
6 amount realized upon such conversion (regardless of whether such
7 amount is received in one or more taxable years) exceeds the
8 cost of such other property or such stock.

9 * * *

10 Section 2. This act shall take effect immediately and shall
11 be applicable to tax years beginning January 1, 1979 and
12 thereafter.