

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1253 Session of
1979

INTRODUCED BY KNEPPER, BURNS, DeWEESE, PISTELLA, TADDONIO,
KOWALYSHYN, ZORD, BRUNNER, C. GEORGE, CIMINI, GRUPPO, POTT,
CIANCIULLI, J. J. JOHNSON, OLIVER, VROON, MOEHLMANN AND
SPITZ, MAY 9, 1979

REFERRED TO COMMITTEE ON FINANCE, MAY 9, 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," excluding capital gains of certain persons from
11 income.

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

14 Section 1. Clause (3) of subsection (a) of section 303, act
15 of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of
16 1971," amended June 17, 1974 (P.L.325, No.105), is amended 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

1 gains or net income, less net losses, derived from the sale,
2 exchange or other disposition of property, including real or
3 personal, whether tangible or intangible as determined in
4 accordance with accepted accounting principles and practices.
5 For the purpose of this act, for the determination of the basis
6 of any property, real and personal, if acquired prior to June 1,
7 1971, the date of acquisition shall be adjusted to June 1, 1971
8 as if the property had been acquired on that date. If the
9 property was acquired after June 1, 1971, the actual date of
10 acquisition shall be used in determination of the basis.

11 The term "net gains or income" shall not include gains or
12 income derived from obligations which are statutorily free from
13 State or local taxation under any other act of the General
14 Assembly of the Commonwealth of Pennsylvania or under the laws
15 of the United States and shall not include fifty thousand
16 dollars (\$50,000) of net capital gains from the sale of real
17 property, or that part of real property, used by a taxpayer age
18 sixty-two or over as his or her principal residence during five
19 of the eight years immediately preceding the date the property
20 was sold. The term "sale, exchange or other disposition" shall
21 not include the exchange of stock or securities in a corporation
22 a party to a reorganization in pursuance of a plan of
23 reorganization, solely for stock or securities in such
24 corporation or in another corporation a party to the
25 reorganization and the transfer of property to a corporation by
26 one or more persons solely in exchange for stock or securities
27 in such corporation if immediately after the exchange such
28 person or persons are in control of the corporation. For
29 purposes of this clause, stock or securities issued for services
30 shall not be considered as issued in return for property.

1 For purposes of this clause, the term "reorganization"

2 means--

3 (i) a statutory merger or consolidation;

4 (ii) the acquisition by one corporation, in exchange solely
5 for all or a part of its voting stock (or in exchange solely for
6 all or a part of the voting stock of a corporation which is in
7 control of the acquiring corporation) of stock of another
8 corporation if, immediately after the acquisition, the acquiring
9 corporation has control of such other corporation (whether or
10 not such acquiring corporation had control immediately before
11 the acquisition);

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

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

27 (v) a recapitalization;

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

30 (vii) the acquisition by one corporation, in exchange for

1 stock of a corporation (referred to in this subclause as
2 "controlling corporation") which is in control of the acquiring
3 corporation, of substantially all of the properties of another
4 corporation which in the transaction is merged into the
5 acquiring corporation shall not disqualify a transaction under
6 subclause (i) if such transaction would have qualified under
7 subclause (i) if the merger had been into the controlling
8 corporation, and no stock of the acquiring corporation is used
9 in the transaction;

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

23 For purposes of this clause, the term "control" means the
24 ownership of stock possessing at least eighty percent of the
25 total combined voting power of all classes of stock entitled to
26 vote and at least eighty per cent of the total number of shares
27 of all other classes of stock of the corporation.

28 For purposes of this clause, the term "a party to a
29 reorganization" includes a corporation resulting from a
30 reorganization, and both corporations, in the case of a

1 reorganization resulting from the acquisition by one corporation
2 of stock or properties of another. In the case of a
3 reorganization qualifying under subclause (i) by reason of
4 subclause (vii) the term "a party to a reorganization" includes
5 the controlling corporation referred to in such subclause (vii).

6 Notwithstanding any provisions hereof, upon every such
7 exchange or conversion, the taxpayer's base for the stock or
8 securities received shall be the same as the taxpayer's actual
9 or attributed base for the stock, securities or property
10 surrendered in exchange therefor.

11 * * *

12 Section 2. This act shall take effect immediately.