

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL  
No. 2064 Session of  
1979

INTRODUCED BY McCLATCHY, DECEMBER 5, 1979

REFERRED TO COMMITTEE ON FINANCE, DECEMBER 5, 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 from income certain gains.

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 to read:

17 Section 303. Classes of Income.--(a) The classes of income  
18 referred to above are as follows:

19 \* \* \*

20 (3) Net gains or income from disposition of property. Net  
21 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 At the election of the taxpayer, net gains shall not include  
11 gains from the sale or exchange of property to the extent such  
12 gains are excludable under section 121 of the Internal Revenue  
13 Code of 1954, as amended.

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

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

1 means--

2 (i) a statutory merger or consolidation;

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

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

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

26 (v) a recapitalization;

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

29 (vii) the acquisition by one corporation, in exchange for  
30 stock of a corporation (referred to in this subclause as

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

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

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

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

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

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

10 \* \* \*

11 Section 2. This act shall take effect immediately and be  
12 applicable to tax years commencing January 1, 1980 and  
13 thereafter.