

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 465

Session of
1985

INTRODUCED BY CORNELL, BUNT, LASHINGER, NAHILL, FOX, GODSHALL,
REBER, SAURMAN, J. L. WRIGHT, SCHULER, MILLER, SEVENTY,
WOGAN, TELEK, WILSON, NOYE, D. W. SNYDER, ARTY, DeLUCA, DEAL,
TRELLO, COY, MRKONIC, BUSH, GEIST, MORRIS, CIMINI, PETRARCA,
JOHNSON, E. Z. TAYLOR AND MICOZZIE, FEBRUARY 27, 1985

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 27, 1985

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 the gain from the sale of
11 the principal residence by an individual age 55 or over.

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

14 Section 1. Section 303(a)(3) of the act of March 4, 1971
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended
16 June 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 does not include
11 gain from the sale or exchange of property if the taxpayer has
12 attained the age of fifty-five before the date of such sale or
13 exchange, and during the five-year period ending on the date of
14 the sale or exchange, such property has been owned and used by
15 the taxpayer as his principal residence for periods aggregating
16 three years or more. The amount of the gain excluded from net
17 gain shall not exceed one hundred and twenty-five thousand
18 dollars (\$125,000) or sixty-two thousand five hundred dollars
19 (\$62,500) in the case of a separate return by a married
20 individual. This provision shall apply to only one sale or
21 exchange, and its construction and application shall be in
22 accordance with section 121 of the Internal Revenue Code of 1954
23 (Public Law 83-591, 26 U.S.C. § 121), as amended by section 123
24 of the Economic Recovery Tax Act of 1981 (Public Law 97-34, 95
25 Stat. 197).

26 The term "net gains or income" shall not include gains or
27 income derived from obligations which are statutorily free from
28 State or local taxation under any other act of the General
29 Assembly of the Commonwealth of Pennsylvania or under the laws
30 of the United States. The term "sale, exchange or other

1 disposition" shall not include the exchange of stock or
2 securities in a corporation a party to a reorganization in
3 pursuance of a plan of reorganization, solely for stock or
4 securities in such corporation or in another corporation a party
5 to the reorganization and the transfer of property to a
6 corporation by one or more persons solely in exchange for stock
7 or securities in such corporation if immediately after the
8 exchange such person or persons are in control of the
9 corporation. For purposes of this clause, stock or securities
10 issued for services shall not be considered as issued in return
11 for property.

12 For purposes of this clause, the term "reorganization"
13 means--

14 (i) a statutory merger or consolidation;

15 (ii) the acquisition by one corporation, in exchange solely
16 for all or a part of its voting stock (or in exchange solely for
17 all or a part of the voting stock of a corporation which is in
18 control of the acquiring corporation) of stock of another
19 corporation if, immediately after the acquisition, the acquiring
20 corporation has control of such other corporation (whether or
21 not such acquiring corporation had control immediately before
22 the acquisition);

23 (iii) the acquisition by one corporation, in exchange solely
24 for all or a part of its voting stock (or in exchange solely for
25 all or a part of the voting stock of a corporation which is in
26 control of the acquiring corporation), of substantially all of
27 the properties of another corporation, but in determining
28 whether the exchange is solely for stock the assumption by the
29 acquiring corporation of a liability of the other, or the fact
30 that property acquired is subject to a liability, shall be

1 disregarded;

2 (iv) a transfer by a corporation of all or a part of its
3 assets to another corporation if immediately after the transfer
4 the transferor, or one or more of its shareholders (including
5 persons who were shareholders immediately before the transfer),
6 or any combination thereof, is in control of the corporation to
7 which the assets are transferred;

8 (v) a recapitalization;

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

11 (vii) the acquisition by one corporation, in exchange for
12 stock of a corporation (referred to in this subclause as
13 "controlling corporation") which is in control of the acquiring
14 corporation, of substantially all of the properties of another
15 corporation which in the transaction is merged into the
16 acquiring corporation shall not disqualify a transaction under
17 subclause (i) if such transaction would have qualified under
18 subclause (i) if the merger had been into the controlling
19 corporation, and no stock of the acquiring corporation is used
20 in the transaction;

21 (viii) a transaction otherwise qualifying under subclause
22 (i) shall not be disqualified by reason of the fact that stock
23 of a corporation (referred to in this subclause as the
24 "controlling corporation") which before the merger was in
25 control of the merged corporation is used in the transaction, if
26 after the transaction, the corporation surviving the merger
27 holds substantially all of its properties and of the properties
28 of the merged corporation (other than stock of the controlling
29 corporation distributed in the transaction); and in the
30 transaction, former shareholders of the surviving corporation

1 exchanged, for an amount of voting stock of the controlling
2 corporation, an amount of stock in the surviving corporation
3 which constitutes control of such corporation.

4 For purposes of this clause, the term "control" means the
5 ownership of stock possessing at least eighty per cent of the
6 total combined voting power of all classes of stock entitled to
7 vote and at least eighty per cent of the total number of shares
8 of all other classes of stock of the corporation.

9 For purposes of this clause, the term "a party to a
10 reorganization" includes a corporation resulting from a
11 reorganization, and both corporations, in the case of a
12 reorganization resulting from the acquisition by one corporation
13 of stock or properties of another. In the case of a
14 reorganization qualifying under subclause (i) by reason of
15 subclause (vii) the term "a party to a reorganization" includes
16 the controlling corporation referred to in such subclause (vii).

17 Notwithstanding any provisions hereof, upon every such
18 exchange or conversion, the taxpayer's base for the stock or
19 securities received shall be the same as the taxpayer's actual
20 or attributed base for the stock, securities or property
21 surrendered in exchange therefor.

22 * * *

23 Section 2. Notwithstanding the provisions of section 12 of
24 the act of August 26, 1971 (P.L.351, No.91), known as the State
25 Lottery Law, funds shall be transferred to the General Fund from
26 the State Lottery Fund in an amount calculated so as to prevent
27 any loss in revenues to the General Fund as a result of the
28 provisions of this act.

29 Section 3. This act shall apply to tax years commencing on
30 and after January 1, 1985.

1 Section 4. This act shall take effect immediately.