

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1922 Session of  
1993

INTRODUCED BY FAJT, FARGO, MARKOSEK, FAIRCHILD, STURLA, FARMER, DENT, FLEAGLE, MASLAND, GORDNER, McNALLY, ROBINSON, PESCI, KUKOVICH, SAYLOR, VAN HORNE, COY, DEMPSEY, STISH, ROONEY, STETTLER, STAIRS, DURHAM, SEMMEL, S. H. SMITH, CLARK, NAILOR, KREBS, KASUNIC, CESSAR, PETTIT, ROBERTS, SCHEETZ, ARGALL, HERSHEY, MIHALICH, MERRY, KING, RUBLEY, SURRA, LEVDANSKY, PHILLIPS, GODSHALL, BUNT, L. I. COHEN, RAYMOND, O'BRIEN, M. N. WRIGHT, HARLEY, MILLER, STEIL, PRESTON, LYNCH, CLYMER, TULLI, STERN, OLASZ, GEIST, TRICH, TIGUE, DRUCE, ROHRER, BUXTON, McCALL, BROWN, GAMBLE, SAURMAN, HUTCHINSON, HANNA, WOGAN, DERMODY, ADOLPH, YEWIC, NYCE AND MUNDY, JUNE 23, 1993

REFERRED TO COMMITTEE ON FINANCE, JUNE 23, 1993

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 treatment of net  
11 operating losses.

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

14 Section 1. Section 401(3)4. of the act of March 4, 1971  
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended  
16 September 9, 1971 (P.L.437, No.105), July 1, 1985 (P.L.78,  
17 No.29) and August 4, 1991 (P.L.97, No.22), is amended to read:

18 Section 401. Definitions.--The following words, terms, and

1 phrases, when used in this article, shall have the meaning  
2 ascribed to them in this section, except where the context  
3 clearly indicates a different meaning:

4 (3) "Taxable income." \* \* \*

5 4. (a) For taxable years beginning in 1982 through taxable  
6 years beginning in 1990 and for the taxable year beginning in  
7 1993 and each taxable year thereafter, a net loss deduction  
8 shall be allowed from taxable income as arrived at under  
9 subclause 1 or, if applicable, subclause 2. For taxable years  
10 beginning in 1991 and [thereafter] 1992, the net loss deduction  
11 allowed for years prior to 1991 and 1992 shall be suspended, and  
12 no carryover of net losses from taxable years 1988, 1989 [and  
13 1990], 1990 and 1991 shall be utilized in calculating net income  
14 for the 1991 and 1992 taxable years.

15 (b) A net loss for a taxable year is the negative amount for  
16 said taxable year determined under subclause 1 or, if  
17 applicable, subclause 2. Negative amounts under subclause 1  
18 shall be allocated and apportioned in the same manner as  
19 positive amounts.

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>-1987</u>	
30	<u>1988-1992</u>	<u>No carryover</u>

1	<u>1993</u>	<u>1 taxable year</u>
2	<u>1994</u>	<u>2 taxable years</u>
3	<u>1995 and thereafter</u>	<u>3 taxable years</u>

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

6 (d) No loss shall be a carryover from a taxable year when  
7 the corporation elects to be treated as a Pennsylvania S  
8 corporation pursuant to section 307 of Article III of this act  
9 to a taxable year when the corporation is subject to the tax  
10 imposed under this article.

11 (e) Paragraph (d) shall not prevent a taxable year when a  
12 corporation is a Pennsylvania S corporation from being  
13 considered a taxable year for determining the number of taxable  
14 years to which a net loss may be a carryover.

15 (f) For purposes of the net loss deduction, the short  
16 taxable year of a corporation, after the revocation or  
17 termination of an election to be treated as a Pennsylvania S  
18 corporation pursuant to sections 307.3 and 307.4 of Article III  
19 of this act, shall be treated as a taxable year.

20 (g) In the case of a change in ownership by purchase,  
21 liquidation, acquisition of stock or reorganization of a  
22 corporation in the manner described in section 381 or 382 of the  
23 Internal Revenue Code of 1954, as amended, the limitations  
24 provided in the Internal Revenue Code with respect to net  
25 operating losses shall apply for the purpose of computing the  
26 portion of a net loss carryover recognized under paragraph  
27 (3)4(c) of this section. When any acquiring corporation or a  
28 transferor corporation participated in the filing of  
29 consolidated returns to the Federal Government, the entitlement  
30 of the acquiring corporation to the Pennsylvania net loss

1 carryover of the acquiring corporation or the transferor  
2 corporation will be determined as if separate returns to the  
3 Federal Government had been filed prior to the change in  
4 ownership by purchase, liquidation, acquisition of stock or  
5 reorganization.

6 \* \* \*

7 Section 2. This act shall take effect in 60 days.