

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 90

Session of
2001

INTRODUCED BY TANGRETTI, ARGALL, CORRIGAN, MAITLAND, THOMAS,
PETRARCA, McCALL, FREEMAN, CAPPABIANCA, CURRY, HERMAN, MUNDY,
SOLOBAY, YUDICHAK, COSTA, HENNESSEY, MICHLOVIC, SHANER,
YOUNGBLOOD, COLAFELLA, HARHAI, MELIO, SCHULER, WOJNAROSKI,
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LEDERER, SANTONI, C. WILLIAMS, BEBKO-JONES, DAILEY,
HUTCHINSON, NICKOL, STABACK, BELARDI, DALEY, JAMES, PETRONE,
STEELMAN, BELFANTI, DeLUCA, JOSEPHS, PISTELLA, STEIL, BISHOP,
DeWEESE, KELLER, PRESTON, STERN, BOYES, EACHUS, LAUGHLIN,
READSHAW, E. Z. TAYLOR, WASHINGTON, SAINATO, GORDNER,
FAIRCHILD, ROEBUCK, ROONEY, TRAVAGLIO, WALKO, TRICH, VANCE,
TRELLO, GEORGE, RUBLEY, FICHTER, FRANKEL, GEIST, ROSS,
WANSACZ, KREBS, B. SMITH AND DALLY, JANUARY 23, 2001

REFERRED TO COMMITTEE ON FINANCE, JANUARY 23, 2001

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 sales and use tax
11 definitions, for sales and use tax exclusions, for sales and
12 use tax penalties, for personal income tax definitions and
13 for classes of personal income; providing for a credit
14 against personal income tax; further providing for personal
15 income tax penalties, for realty transfer tax definitions,
16 for realty transfer tax exclusions and for realty transfer
17 tax penalties; and conferring powers and duties on the
18 Pennsylvania Historical and Museum Commission.

19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

1 Section 1. Section 201 of the act of March 4, 1971 (P.L.6,
2 No.2), known as the Tax Reform Code of 1971, is amended by
3 adding a clause to read:

4 Section 201. Definitions.--The following words, terms and
5 phrases when used in this Article II shall have the meaning
6 ascribed to them in this section, except where the context
7 clearly indicates a different meaning:

8 * * *

9 (aaa) "Historic homesite." A building which complies with
10 all of the following:

11 (1) The building has been in existence for at least fifty
12 years.

13 (2) The building is divided into no more than four units,
14 one of which is used as the owner's principal residence. The
15 requirements of this clause shall be satisfied if the purchaser
16 of a building has entered into a covenant with the Pennsylvania
17 Historical and Museum Commission to divide the building into no
18 more than four units, one of which will be used as the
19 purchaser's principal residence beginning no later than four
20 months after the date of the transfer of title to the real
21 property.

22 (3) The building:

23 (i) has been designated by Federal or State government as a
24 historic property;

25 (ii) is located in an area designated by Federal or State
26 government as a historic district;

27 (iii) is located in an area designated as a historic
28 district under section 2 of the act of June 13, 1961 (P.L.282,
29 No.167), entitled "An act authorizing counties, cities,
30 boroughs, incorporated towns and townships to create historic

districts within their geographic boundaries; providing for the appointment of Boards of Historical Architectural Review; empowering governing bodies of political subdivisions to protect the distinctive historical character of these districts and to regulate the erection, reconstruction, alteration, restoration, demolition or razing of buildings within the historic districts";

(iv) has been designated as a historic property or is located in an area designated as a historic district pursuant to the Historic Preservation Ordinance, Section 14-2007 of the Philadelphia City Code; or

(v) has been designated as a historic property or is located in an area designated as a historic district pursuant to Title 11 of the Pittsburgh City Code, chapter 1, section 3, as amended by City Council on July 22, 1997.

(4) The owner or purchaser of the building has entered into a covenant with the Pennsylvania Historical and Museum Commission providing that:

(i) rehabilitation or restoration work, with a total cost of rehabilitation or restoration valued in excess of one thousand dollars (\$1,000), will be completed to the satisfaction of the Pennsylvania Historical and Museum Commission in accordance with 36 CFR 67.7 (relating to standards for rehabilitation) within five years of the date the covenant was entered into with the Pennsylvania Historical and Museum Commission; and

(ii) the building:

(A) has been or will be occupied as the principal residence of the owner or successor in interest for at least five consecutive years, including the date the covenant was entered into with the Pennsylvania Historical and Museum Commission; or

1 (B) will be occupied as the principal residence of the
2 purchaser or successor in interest for at least five consecutive
3 years, beginning no later than four months after the date of
4 transfer of title to the real property.

5 (bbb) "Cost of rehabilitation or restoration." Costs
6 attributed to the rehabilitation or restoration of a historic
7 homesite, including historic decorative elements; upgrading of
8 the structural, mechanical, electrical and plumbing systems to
9 applicable code; and alterations associated with the conversion
10 of the building to residential use. The term shall not include
11 costs attributable to the acquisition of the real property; the
12 enlargement of an existing building; landscaping, driveways and
13 other site features; outbuildings or garages; and personal labor
14 performed by the owner.

15 Section 2. Section 204 of the act is amended by adding a
16 clause to read:

17 Section 204. Exclusions from Tax.--The tax imposed by
18 section 202 shall not be imposed upon

19 * * *

20 (61) The sale at retail or use of tangible personal property
21 or services which are costs of rehabilitation or restoration of
22 a historic homesite. The purchaser shall furnish to the vendor a
23 certificate substantially in the form as the Pennsylvania
24 Historical and Museum Commission, in conjunction with the
25 department, shall prescribe stating that the sale is exempt from
26 tax pursuant to this clause.

27 Section 3. Section 301 of the act is amended by adding a
28 clause to read:

29 Section 301. Definitions.--The following words, terms and
30 phrases when used in this article shall have the meaning

1 ascribed to them in this section except where the context
2 clearly indicates a different meaning. Unless specifically
3 provided otherwise, any reference in this article to the
4 Internal Revenue Code shall include the Internal Revenue Code of
5 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended to
6 January 1, 1997:

7 * * *

8 (i.3) "Historic homesite" means a historic homesite as
9 defined in section 201(aaa).

10 Section 4. Section 303(a)(3) of the act is amended by adding
11 a subparagraph to read:

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

14 * * *

15 (3) Net gains or income from disposition of property. Net
16 gains or net income, less net losses, derived from the sale,
17 exchange or other disposition of property, including real
18 property, tangible personal property, intangible personal
19 property or obligations issued on or after the effective date of
20 this amendatory act by the Commonwealth; any public authority,
21 commission, board or other agency created by the Commonwealth;
22 any political subdivision of the Commonwealth or any public
23 authority created by any such political subdivision; or by the
24 Federal Government as determined in accordance with accepted
25 accounting principles and practices. For the purpose of this
26 article:

27 * * *

28 (viii) The term "net gains or income" shall not include the
29 net gain on the sale of a historic homesite. No later than the
30 date of transfer of title to the real property, the purchaser

1 shall provide a copy of the covenant with the Pennsylvania
2 Historical and Museum Commission to the seller.

3 * * *

4 Section 5. The act is amended by adding a section to read:

5 Section 314.1. Historic Homesite Rehabilitation Credit.--(a)
6 An individual shall be allowed a credit against the tax
7 otherwise due under this article for the rehabilitation or
8 restoration of a historic homesite.

9 (b) Subject to subsection (c), the credit authorized under
10 this section shall be twenty per cent of the amount expended by
11 the individual during the taxable year on tangible personal
12 property or services that qualify for a sales and use tax
13 exclusion under section 204(61) as certified by the Pennsylvania
14 Historical and Museum Commission.

15 (c) The cumulative credit for rehabilitation or restoration
16 of a historic homesite shall not exceed six thousand dollars
17 (\$6,000), regardless of the number of years over which the
18 qualifying expenditures take place.

19 (d) If the taxpayer cannot use the entire amount of the
20 historic homesite rehabilitation credit for the taxable year in
21 which the expenditures are first made, then the excess may be
22 carried over to succeeding taxable years. Each time that the
23 historic homesite rehabilitation credit is carried over to a
24 succeeding taxable year, it shall be reduced by the amount that
25 was used as a credit during the immediately preceding taxable
26 year. The credit may be carried over and applied to succeeding
27 taxable years for no more than five taxable years following the
28 first taxable year for which the taxpayer was entitled to claim
29 the credit.

30 Section 6. Section 1101-C of the act is amended by adding a

1 definition to read:

2 Section 1101-C. Definitions.--The following words when used
3 in this article shall have the meanings ascribed to them in this
4 section:

5 * * *

6 "Historic homesite." A historic homesite as defined in
7 section 201(aaa).

8 * * *

9 Section 7. Section 1102-C.3 of the act, amended or added
10 July 2, 1986 (P.L.318, No.77), June 16, 1994 (P.L.279, No.48)
11 and May 7, 1997 (P.L.85, No.7), is amended to read:

12 Section 1102-C.3. Excluded Transactions.--The tax imposed by
13 section 1102-C shall not be imposed upon:

14 (1) A transfer to the Commonwealth or to any of its
15 instrumentalities, agencies or political subdivisions by gift,
16 dedication or deed in lieu of condemnation or deed of
17 confirmation in connection with condemnation proceedings, or a
18 reconveyance by the condemning body of the property condemned to
19 the owner of record at the time of condemnation, which
20 reconveyance may include property line adjustments provided said
21 reconveyance is made within one year from the date of
22 condemnation.

23 (2) A document which the Commonwealth is prohibited from
24 taxing under the Constitution or statutes of the United States.

25 (3) A conveyance to a municipality, township, school
26 district or county pursuant to acquisition by the municipality,
27 township, school district or county of a tax delinquent property
28 at sheriff sale or tax claim bureau sale.

29 (4) A transfer for no or nominal actual consideration which
30 corrects or confirms a transfer previously recorded, but which

1 does not extend or limit existing record legal title or
2 interest.

3 (5) A transfer of division in kind for no or nominal actual
4 consideration of property passed by testate or intestate
5 succession and held by cotenants; however, if any of the parties
6 take shares greater in value than their undivided interest, tax
7 is due on the excess.

8 (6) A transfer between husband and wife, between persons who
9 were previously husband and wife who have since been divorced,
10 provided the property or interest therein subject to such
11 transfer was acquired by the husband and wife or husband or wife
12 prior to the granting of the final decree in divorce, between
13 parent and child or the spouse of such child, between brother or
14 sister or spouse of a brother or sister and brother or sister or
15 the spouse of a brother or sister and between a grandparent and
16 grandchild or the spouse of such grandchild, except that a
17 subsequent transfer by the grantee within one year shall be
18 subject to tax as if the grantor were making such transfer.

19 (7) A transfer for no or nominal actual consideration of
20 property passing by testate or intestate succession from a
21 personal representative of a decedent to the decedent's devisee
22 or heir.

23 (8) A transfer for no or nominal actual consideration to a
24 trustee of an ordinary trust where the transfer of the same
25 property would be exempt if the transfer was made directly from
26 the grantor to all of the possible beneficiaries that are
27 entitled to receive the property or proceeds from the sale of
28 the property under the trust, whether or not such beneficiaries
29 are contingent or specifically named. A trust clause which
30 identifies the contingent beneficiaries by reference to the

1 heirs of the trust settlor as determined by the laws of the
2 intestate succession shall not disqualify a transfer from the
3 exclusion provided by this clause. No such exemption shall be
4 granted unless the recorder of deeds is presented with a copy of
5 the trust instrument that clearly identifies the grantor and all
6 possible beneficiaries.

7 (8.1) A transfer for no or nominal actual consideration to a
8 trustee of a living trust from the settlor of the living trust.
9 No such exemption shall be granted unless the recorder of deeds
10 is presented with a copy of the living trust instrument.

11 (9) A transfer for no or nominal actual consideration from a
12 trustee of an ordinary trust to a specifically named beneficiary
13 that is entitled to receive the property under the recorded
14 trust instrument or to a contingent beneficiary where the
15 transfer of the same property would be exempt if the transfer
16 was made by the grantor of the property into the trust to that
17 beneficiary. However, any transfer of real estate from a living
18 trust during the settlor's lifetime shall be considered for the
19 purposes of this article as if such transfer were made directly
20 from the settlor to the grantee.

21 (9.1) A transfer for no or nominal actual consideration from
22 a trustee of a living trust after the death of the settlor of
23 the trust or from a trustee of a trust created pursuant to the
24 will of a decedent to a beneficiary to whom the property is
25 devised or bequeathed.

26 (9.2) A transfer for no or nominal actual consideration from
27 the trustee of a living trust to the settlor of the living trust
28 if such property was originally conveyed to the trustee by the
29 settlor.

30 (10) A transfer for no or nominal actual consideration from

1 trustee to successor trustee.

2 (11) A transfer:

3 (i) for no or nominal actual consideration between principal
4 and agent or straw party; or

5 (ii) from or to an agent or straw party where, if the agent
6 or straw party were his principal, no tax would be imposed under
7 this article.

8 Where the document by which title is acquired by a grantee or
9 statement of value fails to set forth that the property was
10 acquired by the grantee from, or for the benefit of, his
11 principal, there is a rebuttable presumption that the property
12 is the property of the grantee in his individual capacity if the
13 grantee claims an exemption from taxation under this clause.

14 (12) A transfer made pursuant to the statutory merger or
15 consolidation of a corporation or statutory division of a
16 nonprofit corporation, except where the department reasonably
17 determines that the primary intent for such merger,
18 consolidation or division is avoidance of the tax imposed by
19 this article.

20 (13) A transfer from a corporation or association of real
21 estate held of record in the name of the corporation or
22 association where the grantee owns stock of the corporation or
23 an interest in the association in the same proportion as his
24 interest in or ownership of the real estate being conveyed and
25 where the stock of the corporation or the interest in the
26 association has been held by the grantee for more than two
27 years.

28 (14) A transfer from a nonprofit industrial development
29 agency or authority to a grantee of property conveyed by the
30 grantee to that agency or authority as security for a debt of

1 the grantee or a transfer to a nonprofit industrial development
2 agency or authority.

3 (15) A transfer from a nonprofit industrial development
4 agency or authority to a grantee purchasing directly from it,
5 but only if:

6 (i) the grantee shall directly use such real estate for the
7 primary purpose of manufacturing, fabricating, compounding,
8 processing, publishing, research and development,
9 transportation, energy conversion, energy production, pollution
10 control, warehousing or agriculture; and

11 (ii) the agency or authority has the full ownership interest
12 in the real estate transferred.

13 (16) A transfer by a mortgagor to the holder of a bona fide
14 mortgage in default in lieu of a foreclosure or a transfer
15 pursuant to a judicial sale in which the successful bidder is
16 the bona fide holder of a mortgage, unless the holder assigns
17 the bid to another person.

18 (17) Any transfer between religious organizations or other
19 bodies or persons holding title for a religious organization if
20 such real estate is not being or has not been used by such
21 transferor for commercial purposes.

22 (18) A transfer to a conservancy which possesses a tax-
23 exempt status pursuant to section 501(c)(3) of the Internal
24 Revenue Code of 1954 (68A Stat. 3, 26 U.S.C. § 501(c)(3)) and
25 which has as its primary purpose preservation of land for
26 historic, recreational, scenic, agricultural or open-space
27 opportunities; or a transfer from such a conservancy to the
28 United States, the Commonwealth or to any of their
29 instrumentalities, agencies or political subdivisions; or any
30 transfer from such a conservancy where the real estate is

1 encumbered by a perpetual agricultural conservation easement as
2 defined by the act of June 30, 1981 (P.L.128, No.43), known as
3 the "Agricultural Area Security Law," and such conservancy has
4 owned the real estate for at least two years immediately prior
5 to the transfer.

6 (19) A transfer of real estate devoted to the business of
7 agriculture to a family farm corporation by a member of the same
8 family which directly owns at least seventy-five per cent of
9 each class of the stock thereof.

10 (19.1) A transfer of real estate devoted to the business of
11 agriculture to a family farm partnership by a member of the same
12 family, which family directly owns at least seventy-five per
13 cent of the interests in the partnership.

14 (20) A transfer between members of the same family of an
15 ownership interest in a real estate company, family farm
16 corporation or family farm partnership which owns real estate.

17 (21) A transaction wherein the tax due is one dollar (\$1) or
18 less.

19 (22) Leases for the production or extraction of coal, oil,
20 natural gas or minerals and assignments thereof.

21 In order to exercise any exclusion provided in this section, the
22 true, full and complete value of the transfer shall be shown on
23 the statement of value. For leases of coal, oil, natural gas or
24 minerals, the statement of value may be limited to an
25 explanation of the reason such document is not subject to tax
26 under this article.

27 (23) A transfer of a historic homesite. No later than the
28 date of transfer of title to the real property, the purchaser
29 shall provide a copy of the covenant with the Pennsylvania
30 Historical and Museum Commission to the seller.

Section 8. The act is amended by adding a section to read:

Section 3003.14. Failure to Fulfill Historic Homesite

Covenant.--(a) The Pennsylvania Historical and Museum

Commission shall notify the department when an individual who

has entered into a covenant to rehabilitate or restore a

historic homesite under section 201(aaa), 301(i.3) or 1101-C

fails to abide by the terms of the covenant.

(b) Upon notification by the Pennsylvania Historical and

Museum Commission that the individual has failed to abide by the

terms of the covenant, the department shall levy a penalty

against that individual equal to two hundred per cent of the tax

benefits granted under sections 204(61), 303(a)(3)(viii), 314.1

and 1102-C.3 with respect to the historic homesite to which the

covenant applied.

(c) The penalty provided by subsection (b), or any portion

thereof, may be abated if the failure to abide by the terms of

the covenant is justified by reason of change in employment,

health or, to the extent provided in regulation, unforeseen

circumstances. The department and the Pennsylvania Historical

and Museum Commission shall promulgate regulations to implement

this subsection.

Section 9. This act shall apply to covenants with the

Pennsylvania Historical and Museum Commission which are entered

into after June 30, 2001.

Section 10. This act shall be known and may be cited as the

Historic Home and Neighborhood Preservation Act.

Section 11. This act shall take effect July 1, 2001, or

immediately, whichever is later.