

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1610 Session of
2008

INTRODUCED BY McILHINNEY, FONTANA, M. WHITE, COSTA, TARTAGLIONE,
ERICKSON, O'PAKE, RHOADES, MUSTO, RAFFERTY, BOSCOLA, WAUGH
AND LOGAN, OCTOBER 8, 2008

REFERRED TO FINANCE, OCTOBER 8, 2008

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 definitions and for classes
11 of income.

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

14 Section 1. Section 301(d) of the act of March 4, 1971
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended
16 July 7, 2005 (P.L.149, No.40), is amended to read:

17 Section 301. Definitions.--Any reference in this article to
18 the Internal Revenue Code of 1986 shall mean the Internal
19 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.),
20 as amended to January 1, 1997, unless the reference contains the
21 phrase "as amended" and refers to no other date, in which case
22 the reference shall be to the Internal Revenue Code of 1986 as

1 it exists as of the time of application of this article. The
2 following words, terms and phrases when used in this article
3 shall have the meaning ascribed to them in this section except
4 where the context clearly indicates a different meaning:

5 * * *

6 (d) "Compensation" means and shall include salaries, wages,
7 commissions, bonuses and incentive payments whether based on
8 profits or otherwise, fees, tips and similar remuneration
9 received for services rendered, whether directly or through an
10 agent, and whether in cash or in property. The term
11 "compensation" shall include any part of a distribution under a
12 plan described in section 409A(d)(1) of the Internal Revenue
13 Code of 1986 (Public Law 99-514, 26 U.S.C. § 409A(d)(1)), as
14 amended, attributable to an elective deferral of income or the
15 income on any elective deferral of income, whether paid or
16 payable during employment or to a retired person upon or after
17 retirement from service.

18 The term "compensation" shall not mean or include: (i)
19 periodic payments for sickness and disability other than regular
20 wages received during a period of sickness or disability; or
21 (ii) disability, retirement or other payments arising under
22 workmen's compensation acts, occupational disease acts and
23 similar legislation by any government; or (iii) payments
24 commonly recognized as old age or retirement benefits paid to
25 persons retired from service after reaching a specific age or
26 after a stated period of employment; or (iv) payments commonly
27 known as public assistance, or unemployment compensation
28 payments by any governmental agency; or (v) payments to
29 reimburse actual expenses; or (vi) payments made by employers or
30 labor unions, including payments made pursuant to a cafeteria

1 plan qualifying under section 125 of the Internal Revenue Code
2 of 1986 (Public Law 99-514, 26 U.S.C. § 125), for employe
3 benefit programs covering hospitalization, sickness, disability
4 or death, supplemental unemployment benefits or strike benefits:
5 Provided, That the program does not discriminate in favor of
6 highly compensated individuals as to eligibility to participate,
7 payments or program benefits; or (vii) any compensation received
8 by United States servicemen serving in a combat zone; or (viii)
9 payments received by a foster parent for in-home care of foster
10 children from an agency of the Commonwealth or a political
11 subdivision thereof or an organization exempt from Federal tax
12 under section 501(c)(3) of the Internal Revenue Code of 1954
13 which is licensed by the Commonwealth or a political subdivision
14 thereof as a placement agency; or (ix) payments made by
15 employers or labor unions for employe benefit programs covering
16 social security or retirement; or (x) personal use of an
17 employer's owned or leased property or of employer-provided
18 services[.]; or (xi) payments by an employe or self-employed
19 individual made pursuant to a plan under sections 401(k), 403(b)
20 and 457 of the Internal Revenue Code of 1986, as amended.

21 * * *

22 Section 2. Section 303(a)(1) of the act, amended November
23 29, 2006 (P.L.1613, No.182), is amended to read:

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

26 (1) Compensation.

27 (i) All salaries, wages, commissions, bonuses and incentive
28 payments whether based on profits or otherwise, fees, tips and
29 similar remuneration received for services rendered whether
30 directly or through an agent and whether in cash or in property

1 except income derived from the United States Government for
2 active duty outside the Commonwealth of Pennsylvania as a member
3 of its armed forces and income from the United States Government
4 or the Commonwealth of Pennsylvania for active State duty for
5 emergency within or outside the Commonwealth of Pennsylvania,
6 including duty ordered pursuant to 35 Pa.C.S. Ch. 76 (relating
7 to Emergency Management Assistance Compact).

8 (ii) Compensation of a cash-basis taxpayer shall be
9 considered as received if the compensation is actually or
10 constructively received for Federal income tax purposes as
11 determined consistent with the United States Treasury
12 regulations and rulings under the Internal Revenue Code of 1986,
13 as amended, except that, for purposes of computing tax under
14 this article:

15 (A) Amounts lawfully deducted, not deferred, and withheld
16 from the compensation of employes shall be considered to have
17 been received by the employe as compensation at the time the
18 deduction is made.

19 (B) Contributions to an employes' trust, pooled fund or
20 other arrangement which is not subject to the claims of
21 creditors of the employer made by an employer on behalf of an
22 employe or self-employed individual at the election of the
23 employe or self-employed individual pursuant to a cash or
24 deferred arrangement or salary reduction agreement shall be
25 deemed to have been received by the employe or individual as
26 compensation at the time the contribution is made, regardless of
27 when the election is made or a payment is received, provided
28 that the contributions are not made pursuant to a plan under the
29 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
30 401(k)), as amended.

1 (C) Any contribution to a plan by, on behalf of or
2 attributable to a self-employed person, which was not made
3 pursuant to a plan under sections 401(k) and 403(b) of the
4 Internal Revenue Code of 1986, as amended, shall be deemed to
5 have been received at the time the contribution is made.

6 (D) Employer contributions to a Roth IRA custodial account
7 or employe annuity shall be deemed received, earned or acquired
8 only when distributed, when the plan fails to meet the
9 requirements of section 408A of the Internal Revenue Code of
10 1986 (26 U.S.C. § 408A), as amended, or when the plan is not
11 operated in accordance with such requirements.

12 (E) Employe contributions to an employes' trust or pooled
13 fund or custodial account or contract or employe annuity, which
14 are not contributions made pursuant to a plan under sections
15 401(k), 403(b) and 457 of the Internal Revenue Code of 1986, as
16 amended, shall not be deducted or excluded from compensation.

17 (iii) For purposes of determining when deferred compensation
18 of employes other than employes of exempt organizations and
19 State and local governments is required to be included in
20 income, the following apply:

21 (A) The rules of sections 83 and 451 of the Internal Revenue
22 Code of 1986 (26 U.S.C. §§ 83 and 451), as amended, shall apply.

23 (B) The rules of section 409A of the Internal Revenue Code
24 of 1986 (26 U.S.C. § 409A), as amended, shall apply.

25 (iv) For purposes of determining when deferred compensation
26 of employes of exempt organizations and State and local
27 governments is required to be included in income, the following
28 apply:

29 (A) The rules of sections 83, 451 and 457 of the Internal
30 Revenue Code of 1986, as amended, shall apply.

1 (B) The rules of section 409A of the Internal Revenue Code
2 of 1986, as amended, shall apply.

3 * * *

4 Section 3. The amendment of sections 301(d) and 303(a)(1) of
5 the act shall apply to taxable years beginning after December
6 31, 2008.

7 Section 4. This act shall take effect in 60 days.