

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 184 Session of 2013

INTRODUCED BY GREENLEAF, TARTAGLIONE, BROWNE, WASHINGTON, STACK,  
ERICKSON, RAFFERTY, FONTANA, SOLOBAY AND WAUGH,  
JANUARY 16, 2013

REFERRED TO FINANCE, JANUARY 16, 2013

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," in personal income tax, further providing for  
11 classes of income.

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

14 Section 1. Section 303(a)(1) of the act of March 4, 1971  
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended  
16 November 29, 2006 (P.L.1613, No.182), is amended to read:

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

19 (1) Compensation.

20 (i) All salaries, wages, commissions, bonuses and incentive  
21 payments whether based on profits or otherwise, fees, tips and  
22 similar remuneration received for services rendered whether

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

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

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

20 (B) Contributions to an employees' trust, pooled fund or  
21 other arrangement which is not subject to the claims of  
22 creditors of the employer made by an employer on behalf of an  
23 employee or self-employed individual at the election of the  
24 employee or self-employed individual pursuant to a cash or  
25 deferred arrangement or salary reduction agreement shall be  
26 deemed to have been received by the employee or individual as  
27 compensation at the time the contribution is made, regardless of  
28 when the election is made or a payment is received.

29 (C) Any contribution to a plan by, on behalf of or  
30 attributable to a self-employed person shall be deemed to have

1   been received at the time the contribution is made.

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

8       (E)   Employe contributions to an employees' trust or pooled  
9   fund or custodial account or contract or employe annuity shall  
10   not be deducted or excluded from compensation.

11       (iii)   For purposes of determining when deferred compensation  
12   of employes other than employes of exempt organizations and  
13   State and local governments is required to be included in  
14   income, the following apply:

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

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

19       (iv)   For purposes of determining when deferred compensation  
20   of employes of exempt organizations and State and local  
21   governments is required to be included in income, the following  
22   apply:

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

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

27       (v)   Notwithstanding any other provision of this act,  
28   unreimbursed child and dependent care expenses which are used in  
29   calculating the Federal child and dependent care credit in  
30   accordance with section 21 of the Internal Revenue Code of 1986

1 (Public Law 99-514, 26 U.S.C. § 1 et seq.) shall be excluded  
2 from the definition of the term "compensation" provided that the  
3 taxpayer submits a copy of the requisite Federal tax form on  
4 which the child and dependent care expenses are claimed when  
5 filing the tax return under section 330.

6 \* \* \*

7 Section 2. This act shall apply to the taxable years  
8 beginning after December 31, 2013.

9 Section 3. This act shall take effect immediately.