

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 321

Session of  
1985

INTRODUCED BY E. Z. TAYLOR, GREENWOOD, AFFLERBACH, FLICK,  
SEVENTY, HERSHEY, J. L. WRIGHT, ARTY, TRELLO, MORRIS,  
PETRARCA, REBER, JOHNSON AND WASS, FEBRUARY 13, 1985

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 13, 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 capital gains of certain persons from  
11 income.

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,  
22 exchange or other disposition of property, including real or

1 personal, whether tangible or intangible as determined in  
2 accordance with accepted accounting principles and practices.  
3 For the purpose of this act, for the determination of the basis  
4 of any property, real and personal, if acquired prior to June 1,  
5 1971, the date of acquisition shall be adjusted to June 1, 1971  
6 as if the property had been acquired on that date. If the  
7 property was acquired after June 1, 1971, the actual date of  
8 acquisition shall be used in determination of the basis.

9 The term "net gains or income" shall not include gains or  
10 income derived from obligations which are statutorily free from  
11 State or local taxation under any other act of the General  
12 Assembly of the Commonwealth of Pennsylvania or under the laws  
13 of the United States and shall not include any capital gain up  
14 to seventy-five thousand dollars (\$75,000) derived from the sale  
15 of any real property owned and occupied for at least five years  
16 prior to sale by any person sixty (60) years of age or older.

17 The term "sale, exchange or other disposition" shall not include  
18 the exchange of stock or securities in a corporation a party to  
19 a reorganization in pursuance of a plan of reorganization,  
20 solely for stock or securities in such corporation or in another  
21 corporation a party to the reorganization and the transfer of  
22 property to a corporation by one or more persons solely in  
23 exchange for stock or securities in such corporation if  
24 immediately after the exchange such person or persons are in  
25 control of the corporation. For purposes of this clause, stock  
26 or securities issued for services shall not be considered as  
27 issued in return for property.

28 For purposes of this clause, the term "reorganization"  
29 means--

30 (i) a statutory merger or consolidation;

1       (ii) the acquisition by one corporation, in exchange solely  
2 for all or a part of its voting stock (or in exchange solely for  
3 all or a part of the voting stock of a corporation which is in  
4 control of the acquiring corporation) of stock of another  
5 corporation if, immediately after the acquisition, the acquiring  
6 corporation has control of such other corporation (whether or  
7 not such acquiring corporation had control immediately before  
8 the acquisition);

9       (iii) the acquisition by one corporation, in exchange solely  
10 for all or a part of its voting stock (or in exchange solely for  
11 all or a part of the voting stock of a corporation which is in  
12 control of the acquiring corporation), of substantially all of  
13 the properties of another corporation, but in determining  
14 whether the exchange is solely for stock the assumption by the  
15 acquiring corporation of a liability of the other, or the fact  
16 that property acquired is subject to a liability, shall be  
17 disregarded;

18       (iv) a transfer by a corporation of all or a part of its  
19 assets to another corporation if immediately after the transfer  
20 the transferor, or one or more of its shareholders (including  
21 persons who were shareholders immediately before the transfer),  
22 or any combination thereof, is in control of the corporation to  
23 which the assets are transferred;

24       (v) a recapitalization;

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

27       (vii) the acquisition by one corporation, in exchange for  
28 stock of a corporation (referred to in this subclause as  
29 "controlling corporation") which is in control of the acquiring  
30 corporation, of substantially all of the properties of another

1 corporation which in the transaction is merged into the  
2 acquiring corporation shall not disqualify a transaction under  
3 subclause (i) if such transaction would have qualified under  
4 subclause (i) if the merger had been into the controlling  
5 corporation, and no stock of the acquiring corporation is used  
6 in the transaction;

7 (viii) a transaction otherwise qualifying under subclause  
8 (i) shall not be disqualified by reason of the fact that stock  
9 of a corporation (referred to in this subclause as the  
10 "controlling corporation") which before the merger was in  
11 control of the merged corporation is used in the transaction, if  
12 after the transaction, the corporation surviving the merger  
13 holds substantially all of its properties and of the properties  
14 of the merged corporation (other than stock of the controlling  
15 corporation distributed in the transaction); and in the  
16 transaction, former shareholders of the surviving corporation  
17 exchanged, for an amount of voting stock of the controlling  
18 corporation, an amount of stock in the surviving corporation  
19 which constitutes control of such corporation.

20 For purposes of this clause, the term "control" means the  
21 ownership of stock possessing at least eighty percent of the  
22 total combined voting power of all classes of stock entitled to  
23 vote and at least eighty per cent of the total number of shares  
24 of all other classes of stock of the corporation.

25 For purposes of this clause, the term "a party to a  
26 reorganization" includes a corporation resulting from a  
27 reorganization, and both corporations, in the case of a  
28 reorganization resulting from the acquisition by one corporation  
29 of stock or properties of another. In the case of a  
30 reorganization qualifying under subclause (i) by reason of

1 subclause (vii) the term "a party to a reorganization" includes  
2 the controlling corporation referred to in such subclause (vii).

3       Notwithstanding any provisions hereof, upon every such  
4 exchange or conversion, the taxpayer's base for the stock or  
5 securities received shall be the same as the taxpayer's actual  
6 or attributed base for the stock, securities or property  
7 surrendered in exchange therefor.

8       \* \* \*

9       Section 2. This act shall take effect immediately.