

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 323

Session of  
1981

INTRODUCED BY E. Z. TAYLOR, J. L. WRIGHT, TRELLO, NOYE, COCHRAN,  
MICOZZIE, ARTY, LETTERMAN, BURD AND MCINTYRE,  
FEBRUARY 2, 1981

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 2, 1981

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. Clause (3) of subsection (a) of section 303, act  
15 of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of  
16 1971," added August 31, 1971 (P.L.362, No.93), and amended June  
17 17, 1974 (P.L.325, No.105), is amended to read:

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

20 \* \* \*

21 (3) Net gains or income from disposition of property. Net  
22 gains or net income, less net losses, derived from the sale,

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

10 The term "net gains or income" shall not include gains or  
11 income derived from obligations which are statutorily free from  
12 State or local taxation under any other act of the General  
13 Assembly of the Commonwealth of Pennsylvania or under the laws  
14 of the United States and shall not include capital gains of  
15 persons entitled to property tax rebate under the act of March  
16 11, 1971 (P.L.104, No.3), known as the "Senior Citizens Property  
17 Tax or Rent Rebate Act and Older Persons Inflation Needs Act."

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

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

1 (i) a statutory merger or consolidation;

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

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

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

25 (v) a recapitalization;

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

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

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

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

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

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

1 reorganization qualifying under subclause (i) by reason of  
2 subclause (vii) the term "a party to a reorganization" includes  
3 the controlling corporation referred to in such subclause (vii).

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

9 \* \* \*

10 Section 2. This act shall take effect immediately.