

AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," further providing for certain corporate taxes; providing for the exclusion of construction of hydroelectric generating facilities from the tax on utilities; and further providing for the realty transfer tax.

The General Assembly of the Commonwealth of Pennsylvania

hereby enacts as follows:

Section 1. The introductory paragraph and clause (s.2) of section 301 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, added August 31, 1971 (P.L.362, No.93) and December 23, 1983 (P.L.370, No.90), are amended to read:

Section 301. Definitions.--The following words, terms and phrases when used in this article shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning. Any reference in this article to the Internal Revenue Code shall include the Internal Revenue Code of 1954, [as amended to the date on which this article is effective] or the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), whichever would be applicable to the taxpayer for Federal income tax purposes for a particular taxable year:

* * *

(s.2) "Small corporation" means any corporation which has a valid election in effect under subchapter S of Chapter 1 of the

1 Internal Revenue Code [of 1954, as amended as of January 1,
2 1983], and which does not have passive investment income in
3 excess of twenty-five per cent of its gross receipts. For
4 purposes of this clause, "passive investment income" means gross
5 receipts derived from royalties, rents, dividends, interest,
6 annuities and sales or exchanges of stock or securities (gross
7 receipts from such sales or exchanges being taken into account
8 only to the extent of gains therefrom[.], provided that "passive
9 investment income" shall not include income derived from any
10 options dealer, commodities dealer or equity specialist in the
11 normal course of the taxpayer's activity of dealing in or
12 trading options, commodities, or stock or securities. For the
13 purposes of this clause, the term "options dealer" means any
14 person registered with an appropriate securities exchange as a
15 market maker or specialist in listed options; the term
16 "commodities dealer" means a person who is actively engaged in
17 trading on and is registered with a domestic board of trade
18 which is designated as a contract market by the Commodities
19 Futures Trading Commission; and the term "equity specialist"
20 means any person registered with an appropriate securities
21 exchange as a specialist in listed stocks or securities.

22 * * *

23 Section 2. Section 1101-A(3)(iv) of the act, amended
24 December 9, 1982 (P.L.1047, No.246), is amended to read:

25 Section 1101-A. Definitions.--The following words, terms and
26 phrases when used in this article shall have the meaning
27 ascribed to them in this section, except where the context
28 clearly indicates a different meaning:

29 * * *

30 (3) "Utility realty." All lands, together with all

1 buildings, towers, smokestacks, dams, dikes, canals, cooling
2 towers, storage tanks, reactor structures, pump houses,
3 supporting foundations, enclosing structures, supporting
4 structures, containment structures, reactor containment outer
5 shells, reactor containment vessels, turbine buildings, recovery
6 tanks, solid waste area enclosures, primary auxiliary buildings,
7 containment auxiliary safeguard structures, fuel buildings,
8 decontamination buildings, and, all other structures and
9 enclosures whatsoever which are physically affixed to the land,
10 no matter how such structures and enclosures are designated and
11 without regard to the classification thereof for local real
12 estate taxation purposes, but not including machinery and
13 equipment, whether or not housed within such building, structure
14 or enclosure, located within this Commonwealth and owned by a
15 public utility either directly or by or through a subsidiary,
16 which are used or are in the course of development or
17 construction for use, in the furnishing, including producing,
18 storing, distributing or transporting, of public utility service
19 and which are not subject to local real estate taxation under
20 any law in effect on April 23, 1968: Provided, however, That the
21 following specified items shall be exempt from the tax hereby
22 imposed:

23 * * *

24 (iv) All lands, together with all buildings, dams, dikes,
25 canals, pump houses, supporting structures, supporting
26 foundations, turbine buildings and all other structures and
27 enclosures whatsoever which are physically affixed to the land,
28 no matter how such structures and enclosures are designated and
29 without regard to the classification thereof for local real
30 estate taxation purposes which are used or useful in the

1 furnishing, including producing, storing, distributing or
2 transporting, of hydroelectric power and energy: Provided,
3 however, That the exemptions under this subclause shall not
4 apply to items and lands which on the effective date of this act
5 were used to furnish hydroelectric power and energy; and that
6 the exemptions under this subclause shall commence [in the first
7 year in which the item or land is used and useful in furnishing
8 hydroelectric power and energy, and shall remain in effect for a
9 period of ten consecutive years thereafter.] with the initiation
10 of construction of the hydroelectric generating facilities and
11 shall remain in effect for a period of ten consecutive years
12 after the year in which the item or land first becomes used and
13 useful in furnishing hydroelectric power and energy.

14 * * *

15 Section 3. The definitions of "title to real estate" and
16 "value" in section 1101-C of the act, amended July 2, 1986
17 (P.L.318, No.77), are amended and the section is amended by
18 adding a definition to read:

19 Section 1101-C. Definitions.--The following words when used
20 in this article shall have the meanings ascribed to them in this
21 section:

22 * * *

23 "Family farm partnership." A partnership of which at least
24 seventy-five percent of its assets are devoted to the business
25 of agriculture and at least seventy-five percent of the
26 interests in the partnership are continuously owned by members
27 of the same family. The business of agriculture shall not be
28 deemed to include:

29 (1) Recreational activities such as, but not limited to,
30 hunting, fishing, camping, skiing, show competition or racing;

1 (2) The raising, breeding or training of game animals or
2 game birds, fish, cats, dogs or pets or animals intended for use
3 in sporting or recreational activities;

4 (3) Fur farming;

5 (4) Stockyard and slaughterhouse operations; or

6 (5) Manufacturing or processing operations of any kind.

7 * * *

8 "Title to real estate."

9 [(1)] Any interest in real estate which endures for a period
10 of time, the termination of which is not fixed or ascertained by
11 a specific number of years, including, without limitation, an
12 estate in fee simple, life estate or perpetual leasehold; [or

13 (2)] any interest in real estate enduring for a fixed period
14 of years but which, either by reason of the length of the term
15 or the grant of a right to extend the term by renewal or
16 otherwise, consists of a group of rights approximating those of
17 an estate in fee simple, life estate or perpetual leasehold,
18 including, without limitation, a leasehold interest or
19 possessory interest under a lease or occupancy agreement for a
20 term of thirty years or more or a leasehold interest or
21 possessory interest in real estate in which the lessee has
22 equity.

23 * * *

24 "Value."

25 (1) In the case of any bona fide sale of real estate at
26 arm's length for actual monetary worth, the amount of the actual
27 consideration therefor, paid or to be paid, including liens or
28 other encumbrances thereon existing before the transfer and not
29 removed thereby, whether or not the underlying indebtedness is
30 assumed, and ground rents, or a commensurate part thereof where

1 such liens or other encumbrances and ground rents also encumber
2 or are charged against other real estate: Provided, That where
3 such documents shall set forth a nominal consideration, the
4 "value" thereof shall be determined from the price set forth in
5 or actual consideration for the contract of sale;

6 (2) in the case of a gift, sale by execution upon a judgment
7 or upon the foreclosure of a mortgage by a judicial officer,
8 transactions without consideration or for consideration less
9 than the actual monetary worth of the real estate, a taxable
10 lease, an occupancy agreement, a leasehold or possessory
11 interest, any exchange of properties, or the real estate of an
12 acquired company, the actual monetary worth of the real estate
13 determined by adjusting the assessed value of the real estate
14 for local real estate tax purposes for the common level ratio of
15 assessed values to market values of the taxing district as
16 established by the State Tax Equalization Board, or a
17 commensurate part of the assessment where the assessment
18 includes other real estate; or

19 (3) in the case of an easement or other interest in real
20 estate the value of which is not determinable under clause (1)
21 or (2), the actual monetary worth of such interest_[]; or

22 (4) the actual consideration for or actual monetary worth of
23 any executory agreement for the construction of buildings,
24 structures or other permanent improvements to real estate
25 between the grantor and other persons existing before the
26 transfer and not removed thereby or between the grantor, the
27 agent or principal of the grantor or a related corporation,
28 association or partnership and the grantee existing before or
29 effective with the transfer.]

30 Section 4. Section 1102-C.3(18) and (20) of the act, added

1 July 2, 1986 (P.L.318, No.77), are amended and the section is
2 amended by adding a clause to read:

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

5 * * *

6 (18) A transfer to a conservancy which possesses a tax-
7 exempt status pursuant to section 501(c)(3) of the Internal
8 Revenue Code of 1954 (68A Stat. 3, 26 U.S.C. § 501(c)(3)) and
9 which has as its primary purpose preservation of land for
10 historic, recreational, scenic, agricultural or open-space
11 opportunities, or a transfer from such a conservancy to the
12 United States, the Commonwealth or to any of their
13 instrumentalities, agencies or political subdivisions.

14 * * *

15 (19.1) A transfer of real estate devoted to the business of
16 agriculture to a family farm partnership by a member of the same
17 family which directly owns at least seventy-five per cent of the
18 interests in the partnership.

19 (20) A transfer between members of the same family of an
20 ownership interest in a real estate company [or], family farm
21 corporation or family farm partnership.

22 * * *

23 Section 5. This act shall apply as follows:

24 (1) Section 1 (section 301) shall apply to corporation
25 tax years commencing on or after January 1, 1989.

26 (2) Section 3 (section 1101-C) and section 4 (section
27 1102-C) shall be retroactive to and shall apply to all
28 transfers occurring on or after July 1, 1988.

29 Section 6. This act shall take effect as follows:

30 (1) Section 1 (section 301) shall take effect January 1,

1 1989.

2 (2) Section 2 (section 1101-A) shall take effect January
3 1, 1990.

4 (3) The remainder of this act shall take effect
5 immediately.