

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 492 Session of 1991

INTRODUCED BY ADOLPH, NAILOR, BUSH, FARGO, MICOZZIE, FARMER, COWELL, CARONE, NOYE, MARSICO, ALLEN, BELFANTI, STABACK, RAYMOND, TRELLO, BARLEY, GEIST, GODSHALL, WOZNIAK, WOGAN, BILLOW, GANNON, JOHNSON, MERRY, G. SNYDER, KING, HALUSKA, SAURMAN, DEMPSEY, DeLUCA, NAHILL, CORNELL, CARLSON, BUNT, HERMAN, E. Z. TAYLOR, ITKIN, TANGRETTI, D. W. SNYDER, CIVERA, FLICK, MICHLOVIC, FOX AND VANCE, MARCH 11, 1991

REFERRED TO COMMITTEE ON FINANCE, MARCH 11, 1991

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," providing for limitations on determining gains  
 11 from disposition of real property.

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 July 13, 1987 (P.L.325, No.59), 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]

1 Subject to the limitations set forth in section 303.1, net gains  
2 or net income, less net losses, derived from the sale, exchange  
3 or other disposition of property, including real or personal,  
4 whether tangible or intangible as determined in accordance with  
5 accepted accounting principles and practices. For the purpose of  
6 this act, for the determination of the basis of any property,  
7 real and personal, if acquired prior to June 1, 1971, the date  
8 of acquisition shall be adjusted to June 1, 1971, as if the  
9 property had been acquired on that date. If the property was  
10 acquired after June 1, 1971, the actual date of acquisition  
11 shall be used in determination of the basis.

12 [At the election of the taxpayer, the term "net gains or  
13 income" shall not include net gain in an amount not to exceed  
14 one hundred thousand dollars (\$100,000), or a pro rata part of  
15 one hundred thousand dollars (\$100,000) if the property is owned  
16 by more than one taxpayer, from the sale or exchange of the  
17 taxpayer's principal residence if the taxpayer has attained  
18 fifty-five years of age before the date of the sale or exchange.  
19 If the property is held by a husband and wife and they make a  
20 joint return for the taxable year of the sale or exchange and  
21 one spouse satisfies the age, ownership and use requirements of  
22 this clause with respect to the property, then both husband and  
23 wife shall be treated as satisfying the age, ownership and use  
24 requirements of this clause. For purposes of this clause, in the  
25 case of an unremarried individual whose spouse is deceased on  
26 the date of sale or exchange of the property, if the deceased  
27 spouse, during the five-year period ending on the date of sale  
28 or exchange satisfied the holding and use requirements with  
29 respect to such property, then such individual shall be treated  
30 as satisfying holding and use requirements with respect to such

1 property. For the purposes of this clause, the term "sale or  
2 exchange" shall include involuntary conversions such as the  
3 destruction, theft, seizure, requisition or condemnation of the  
4 property. For the purposes of this clause, the term "principal  
5 residence" shall mean the property that has been owned and used  
6 by the taxpayer as his principal residence for periods  
7 aggregating three years or more during the five-year period  
8 ending on the date of the sale or exchange. In the case of  
9 property only a portion of which, during the five-year period  
10 ending on the date of the sale or exchange, has been owned or  
11 used by the taxpayer as the taxpayer's principal residence for  
12 periods aggregating three years or more, this section shall  
13 apply with respect to so much of the gain from the sale or  
14 exchange of such property as is determined under regulations  
15 prescribed by the department to be attributable to the portion  
16 of the property so owned and used by the taxpayer. The term  
17 "used" shall include time the property was not used for rental  
18 purposes and was unoccupied by the taxpayer due to the taxpayer  
19 being in a hospital, nursing home or personal care facility, or  
20 for a period of less than ninety consecutive days. The  
21 provisions of this clause shall not apply to any sale or  
22 exchange made prior to July 1, 1987. An election under this  
23 clause may be made or revoked at any time before the expiration  
24 of the period for making a claim for a refund of the tax imposed  
25 by this article for the taxable year in which the sale or  
26 exchange occurred. The provisions of this clause shall be used  
27 only once during the lifetime of the taxpayer.

28 The term "net gains or income" shall not include gains or  
29 income derived from obligations which are statutorily free from  
30 State or local taxation under any other act of the General

1 Assembly of the Commonwealth of Pennsylvania or under the laws  
2 of the United States. The term "sale, exchange or other  
3 disposition" shall not include the exchange of stock or  
4 securities in a corporation a party to a reorganization in  
5 pursuance of a plan of reorganization, solely for stock or  
6 securities in such corporation or in another corporation a party  
7 to the reorganization and the transfer of property to a  
8 corporation by one or more persons solely in exchange for stock  
9 or securities in such corporation if immediately after the  
10 exchange such person or persons are in control of the  
11 corporation. For purposes of this clause, stock or securities  
12 issued for services shall not be considered as issued in return  
13 for property.

14 For purposes of this clause, the term "reorganization"  
15 means--

16 (i) a statutory merger or consolidation;

17 (ii) the acquisition by one corporation, in exchange solely  
18 for all or a part of its voting stock (or in exchange solely for  
19 all or a part of the voting stock of a corporation which is in  
20 control of the acquiring corporation) of stock of another  
21 corporation if, immediately after the acquisition, the acquiring  
22 corporation has control of such other corporation (whether or  
23 not such acquiring corporation had control immediately before  
24 the acquisition);

25 (iii) the acquisition by one corporation, in exchange solely  
26 for all or a part of its voting stock (or in exchange solely for  
27 all or a part of the voting stock of a corporation which is in  
28 control of the acquiring corporation), of substantially all of  
29 the properties of another corporation, but in determining  
30 whether the exchange is solely for stock the assumption by the

1 acquiring corporation of a liability of the other, or the fact  
2 that property acquired is subject to a liability, shall be  
3 disregarded;

4 (iv) a transfer by a corporation of all or a part of its  
5 assets to another corporation if immediately after the transfer  
6 the transferor, or one or more of its shareholders (including  
7 persons who were shareholders immediately before the transfer),  
8 or any combination thereof, is in control of the corporation to  
9 which the assets are transferred;

10 (v) a recapitalization;

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

13 (vii) the acquisition by one corporation, in exchange for  
14 stock of a corporation (referred to in this subclause as  
15 "controlling corporation") which is in control of the acquiring  
16 corporation, of substantially all of the properties of another  
17 corporation which in the transaction is merged into the  
18 acquiring corporation shall not disqualify a transaction under  
19 subclause (i) if such transaction would have qualified under  
20 subclause (i) if the merger had been into the controlling  
21 corporation, and no stock of the acquiring corporation is used  
22 in the transaction;

23 (viii) a transaction otherwise qualifying under subclause  
24 (i) shall not be disqualified by reason of the fact that stock  
25 of a corporation (referred to in this subclause as the  
26 "controlling corporation") which before the merger was in  
27 control of the merged corporation is used in the transaction, if  
28 after the transaction, the corporation surviving the merger  
29 holds substantially all of its properties and of the properties  
30 of the merged corporation (other than stock of the controlling

1 corporation distributed in the transaction); and in the  
2 transaction, former shareholders of the surviving corporation  
3 exchanged, for an amount of voting stock of the controlling  
4 corporation, an amount of stock in the surviving corporation  
5 which constitutes control of such corporation.

6 For purposes of this clause, the term "control" means the  
7 ownership of stock possessing at least eighty per cent of the  
8 total combined voting power of all classes of stock entitled to  
9 vote and at least eighty per cent of the total number of shares  
10 of all other classes of stock of the corporation.

11 For purposes of this clause, the term "a party to a  
12 reorganization" includes a corporation resulting from a  
13 reorganization, and both corporations, in the case of a  
14 reorganization resulting from the acquisition by one corporation  
15 of stock or properties of another. In the case of a  
16 reorganization qualifying under subclause (i) by reason of  
17 subclause (vii) the term "a party to a reorganization" includes  
18 the controlling corporation referred to in such subclause (vii).

19 Notwithstanding any provisions hereof, upon every such  
20 exchange or conversion, the taxpayer's base for the stock or  
21 securities received shall be the same as the taxpayer's actual  
22 or attributed base for the stock, securities or property  
23 surrendered in exchange therefor.]

24 \* \* \*

25 Section 2. The act is amended by adding a section to read:

26 Section 303.1. Limitations on Determination of Net Gains or  
27 Net Income.--In determining taxable income on net gains or net  
28 income from a disposition of property under section 303(a)(3),  
29 the following limitations shall apply:

30 (1) At the election of the taxpayer, the term "net gains or

1 income" as used in section 303(a)(3) shall not include net gain  
2 in an amount not to exceed one hundred thousand dollars  
3 (\$100,000), or a pro rata part of one hundred thousand dollars  
4 (\$100,000) if the property is owned by more than one taxpayer,  
5 from the sale or exchange of the taxpayer's principal residence  
6 if the taxpayer has attained fifty-five years of age before the  
7 date of the sale or exchange. If the property is held by a  
8 husband and wife and they make a joint return for the taxable  
9 year of the sale or exchange and one spouse satisfies the age,  
10 ownership and use requirements of this clause with respect to  
11 the property, then both husband and wife shall be treated as  
12 satisfying the age, ownership and use requirements of this  
13 clause. For purposes of this clause, in the case of an  
14 unremarried individual whose spouse is deceased on the date of  
15 sale or exchange of the property, if the deceased spouse, during  
16 the five-year period ending on the date of sale or exchange  
17 satisfied the holding and use requirements with respect to such  
18 property, then such individual shall be treated as satisfying  
19 holding and use requirements with respect to such property. The  
20 provisions of this clause shall not apply to any sale or  
21 exchange made prior to July 1, 1987. An election under this  
22 clause may be made or revoked at any time before the expiration  
23 of the period for making a claim for a refund of the tax imposed  
24 by this article for the taxable year in which the sale or  
25 exchange occurred. The provisions of this clause shall be used  
26 only once during the lifetime of the taxpayer.

27 (2) For the purposes of clause (1):

28 (i) The term "sale or exchange" shall include involuntary  
29 conversions such as the destruction, theft, seizure, requisition  
30 or condemnation of the property.

1       (ii) The term "principal residence" shall mean the property  
2 that has been owned and used by the taxpayer as his principal  
3 residence for periods aggregating three years or more during the  
4 five-year period ending on the date of the sale or exchange. In  
5 the case of property only a portion of which, during the five-  
6 year period ending on the date of the sale or exchange, has been  
7 owned or used by the taxpayer as the taxpayer's principal  
8 residence for periods aggregating three years or more, this  
9 section shall apply with respect to so much of the gain from the  
10 sale or exchange of such property as is determined under  
11 regulations prescribed by the department to be attributable to  
12 the portion of the property so owned and used by the taxpayer.

13       (iii) The term "used" shall include time the property was  
14 not used for rental purposes and was unoccupied by the taxpayer  
15 due to the taxpayer being in a hospital, nursing home or  
16 personal care facility, or for a period of less than ninety  
17 consecutive days.

18       (3) The term "net gains or income" as used in section  
19 303(a)(3) shall not include gains or income derived from  
20 obligations which are statutorily free from State or local  
21 taxation under any other act of the General Assembly of the  
22 Commonwealth of Pennsylvania or under the laws of the United  
23 States. The term "sale, exchange or other disposition" shall not  
24 include the exchange of stock or securities in a corporation a  
25 party to a reorganization in pursuance of a plan of  
26 reorganization, solely for stock or securities in such  
27 corporation or in another corporation a party to the  
28 reorganization and the transfer of property to a corporation by  
29 one or more persons solely in exchange for stock or securities  
30 in such corporation if immediately after the exchange such

1 person or persons are in control of the corporation. For  
2 purposes of this clause, stock or securities issued for services  
3 shall not be considered as issued in return for property.

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 (4) For purposes of clause (3):

10 (i) The term "reorganization" means--

11 (A) a statutory merger or consolidation;

12 (B) the acquisition by one corporation, in exchange solely  
13 for all or a part of its voting stock (or in exchange solely for  
14 all or a part of the voting stock of a corporation which is in  
15 control of the acquiring corporation) of stock of another  
16 corporation if, immediately after the acquisition, the acquiring  
17 corporation has control of such other corporation (whether or  
18 not such acquiring corporation had control immediately before  
19 the acquisition);

20 (C) the acquisition by one corporation, in exchange solely  
21 for all or a part of its voting stock (or in exchange solely for  
22 all or a part of the voting stock of a corporation which is in  
23 control of the acquiring corporation), of substantially all of  
24 the properties of another corporation, but in determining  
25 whether the exchange is solely for stock the assumption by the  
26 acquiring corporation of a liability of the other, or the fact  
27 that property acquired is subject to a liability, shall be  
28 disregarded;

29 (D) a transfer by a corporation of all or a part of its  
30 assets to another corporation if immediately after the transfer

1 the transferor, or one or more of its shareholders (including  
2 persons who were shareholders immediately before the transfer),  
3 or any combination thereof, is in control of the corporation to  
4 which the assets are transferred;

5 (E) a recapitalization;

6 (F) a mere change in identity, form, or place of  
7 organization however effected;

8 (G) the acquisition by one corporation, in exchange for  
9 stock of a corporation (referred to in this subclause as  
10 "controlling corporation") which is in control of the acquiring  
11 corporation, of substantially all of the properties of another  
12 corporation which in the transaction is merged into the  
13 acquiring corporation shall not disqualify a transaction under  
14 subclause (i)(A) if such transaction would have qualified under  
15 subclause (i)(A) if the merger had been into the controlling  
16 corporation, and no stock of the acquiring corporation is used  
17 in the transaction; or

18 (H) a transaction otherwise qualifying under subclause  
19 (i)(A) shall not be disqualified by reason of the fact that  
20 stock of a corporation (referred to in this subclause as the  
21 "controlling corporation") which before the merger was in  
22 control of the merged corporation is used in the transaction, if  
23 after the transaction, the corporation surviving the merger  
24 holds substantially all of its properties and of the properties  
25 of the merged corporation (other than stock of the controlling  
26 corporation distributed in the transaction); and in the  
27 transaction, former shareholders of the surviving corporation  
28 exchanged, for an amount of voting stock of the controlling  
29 corporation, an amount of stock in the surviving corporation  
30 which constitutes control of such corporation.

1       (ii) The term "control" means the ownership of stock  
2 possessing at least eighty per cent of the total combined voting  
3 power of all classes of stock entitled to vote and at least  
4 eighty per cent of the total number of shares of all other  
5 classes of stock of the corporation.

6       (iii) The term "a party to a reorganization" includes a  
7 corporation resulting from a reorganization, and both  
8 corporations, in the case of a reorganization resulting from the  
9 acquisition by one corporation of stock or properties of  
10 another. In the case of a reorganization qualifying under  
11 subclause (i)(A) by reason of subclause (i)(G) the term "a party  
12 to a reorganization" includes the controlling corporation  
13 referred to in such subclause (i)(G).

14       (5) If property (in this clause and clause (6) called "old  
15 residence") used by the taxpayer as his principal residence is  
16 sold by him and, within a period beginning two years before the  
17 date of such sale and ending two years after such date, property  
18 (in this clause and clause (6) called "new residence") is  
19 purchased and used by the taxpayer as his principal residence,  
20 gain, if any, from such sale shall be recognized only to the  
21 extent that the taxpayer's adjusted sales price of the old  
22 residence exceeds the taxpayer's cost of purchasing the new  
23 residence.

24       (6) For purposes of clause (5), the adjusted basis of the  
25 new residence shall be reduced by the gain not recognized on the  
26 sale of the old residence.

27       Section 3. This act shall take effect in 60 days.