

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2159 Session of  
1993

INTRODUCED BY ROBERTS, MASLAND, GORDNER, MIHALICH, SATHER,  
NAILOR, TULLI, KREBS, FICHTER, ZUG, HUTCHINSON, BIRMELIN,  
STETLER, CAPPABIANCA, MERRY, D. W. SNYDER, LAUGHLIN, PITTS,  
PETTIT, HERSHEY, HERMAN, KING, BUXTON, FARGO, SCHEETZ,  
VAN HORNE, MILLER, GODSHALL, COLAIZZO, ARGALL, SERAFINI,  
DEMPSEY, M. N. WRIGHT, L. I. COHEN, ARMSTRONG, STEELMAN,  
RUBLEY, GERLACH, WAUGH, LAUB, BROWN, S. H. SMITH, MUNDY,  
FAIRCHILD, FLICK, HENNESSEY, GEIST, DeLUCA, CLYMER, PHILLIPS,  
WOGAN, MARSICO, McCALL, SAYLOR, RAYMOND, CESSAR, LEE, CAWLEY,  
LYNCH, DRUCE, EGOLF, COY, TIGUE, CURRY, HASAY, ROONEY AND  
LEH, OCTOBER 13, 1993

REFERRED TO COMMITTEE ON FINANCE, OCTOBER 13, 1993

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," further providing for the treatment of net  
11 operating losses.

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

14 Section 1. Section 401(3)4 of the act of March 4, 1971  
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended  
16 September 9, 1971 (P.L.437, No.105), July 1, 1985 (P.L.78,  
17 No.29) and August 4, 1991 (P.L.97, No.22), is amended to read:

18 Section 401. Definitions.--The following words, terms, and

1 phrases, when used in this article, shall have the meaning  
2 ascribed to them in this section, except where the context  
3 clearly indicates a different meaning:

4 (3) "Taxable income." \* \* \*

5 4. (a) For taxable years beginning in 1982 through taxable  
6 years beginning in 1990 and for the taxable year beginning in  
7 1994 and each taxable year thereafter, a net loss deduction  
8 shall be allowed from taxable income as arrived at under  
9 subclause 1 or, if applicable, subclause 2. For taxable years  
10 beginning in 1991 [and thereafter], 1992 and 1993, the net loss  
11 deduction allowed for years prior to 1991, 1992 and 1993 shall  
12 be suspended, and no carryover of net losses from taxable years  
13 1988, 1989 [and 1990], 1990, 1991, 1992 and 1993 shall be  
14 utilized in calculating net income for the 1991, 1992 and 1993  
15 taxable years.

16 (b) A net loss for a taxable year is the negative amount for  
17 said taxable year determined under subclause 1 or, if  
18 applicable, subclause 2. Negative amounts under subclause 1  
19 shall be allocated and apportioned in the same manner as  
20 positive amounts.

21 (c) The net loss deduction shall be the lesser of the amount  
22 of the net loss or losses which may be carried over to the  
23 taxable year or taxable income as determined under subclause 1  
24 or, if applicable, subclause 2. A net loss for a taxable year  
25 may only be carried over pursuant to the following schedule:

26	Taxable Year	Carryover
27	1981	1 taxable year
28	1982	2 taxable years
29	1983 [and thereafter]	3 taxable years
30	<u>-1987</u>	

1	<u>1988-1993</u>	<u>No carryover</u>
2	<u>1994</u>	<u>1 taxable year</u>
3	<u>1995</u>	<u>2 taxable years</u>
4	<u>1996 and thereafter</u>	<u>3 taxable years</u>

5 The earliest net loss shall be carried over to the earliest  
6 taxable year to which it may be carried under this schedule.

7 (d) No loss shall be a carryover from a taxable year when  
8 the corporation elects to be treated as a Pennsylvania S  
9 corporation pursuant to section 307 of Article III of this act  
10 to a taxable year when the corporation is subject to the tax  
11 imposed under this article.

12 (e) Paragraph (d) shall not prevent a taxable year when a  
13 corporation is a Pennsylvania S corporation from being  
14 considered a taxable year for determining the number of taxable  
15 years to which a net loss may be a carryover.

16 (f) For purposes of the net loss deduction, the short  
17 taxable year of a corporation, after the revocation or  
18 termination of an election to be treated as a Pennsylvania S  
19 corporation pursuant to sections 307.3 and 307.4 of Article III  
20 of this act, shall be treated as a taxable year.

21 (g) In the case of a change in ownership by purchase,  
22 liquidation, acquisition of stock or reorganization of a  
23 corporation in the manner described in section 381 or 382 of the  
24 Internal Revenue Code of 1954, as amended, the limitations  
25 provided in the Internal Revenue Code with respect to net  
26 operating losses shall apply for the purpose of computing the  
27 portion of a net loss carryover recognized under paragraph  
28 (3)4(c) of this section. When any acquiring corporation or a  
29 transferor corporation participated in the filing of  
30 consolidated returns to the Federal Government, the entitlement

1 of the acquiring corporation to the Pennsylvania net loss  
2 carryover of the acquiring corporation or the transferor  
3 corporation will be determined as if separate returns to the  
4 Federal Government had been filed prior to the change in  
5 ownership by purchase, liquidation, acquisition of stock or  
6 reorganization.

7 \* \* \*

8 Section 2. This act shall take effect in 60 days.