

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2552 Session of
1994

INTRODUCED BY MASLAND, GORDNER, STEIL, HERSHEY, ROONEY, BARLEY,
SEMMELE, CARONE, E. Z. TAYLOR, KING, GODSHALL, HENNESSEY,
BELFANTI, GERLACH, SERAFINI, COY, BUNT, STERN, BAKER, NICKOL
AND STABACK, MARCH 7, 1994

REFERRED TO COMMITTEE ON FINANCE, MARCH 7, 1994

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 net gains or income from the sale
11 of agricultural conservation easements for purposes of taxes
12 on personal income.

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

15 Section 1. Section 303(a)(3) of the act of March 4, 1971
16 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended
17 July 13, 1987 (P.L.325, No.59), 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 At the election of the taxpayer, the term "net gains or
11 income" shall not include net gain in an amount not to exceed
12 one hundred thousand dollars (\$100,000), or a pro rata part of
13 one hundred thousand dollars (\$100,000) if the property is owned
14 by more than one taxpayer, from the sale or exchange of the
15 taxpayer's principal residence if the taxpayer has attained
16 fifty-five years of age before the date of the sale or exchange.
17 If the property is held by a husband and wife and they make a
18 joint return for the taxable year of the sale or exchange and
19 one spouse satisfies the age, ownership and use requirements of
20 this clause with respect to the property, then both husband and
21 wife shall be treated as satisfying the age, ownership and use
22 requirements of this clause. For purposes of this clause, in the
23 case of an unremarried individual whose spouse is deceased on
24 the date of sale or exchange of the property, if the deceased
25 spouse, during the five-year period ending on the date of sale
26 or exchange satisfied the holding and use requirements with
27 respect to such property, then such individual shall be treated
28 as satisfying holding and use requirements with respect to such
29 property. For the purposes of this clause, the term "sale or
30 exchange" shall include involuntary conversions such as the

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

26 The term "net gains or income" shall not include gains or
27 income derived from obligations which are statutorily free from
28 State or local taxation under any other act of the General
29 Assembly of the Commonwealth of Pennsylvania or under the laws
30 of the United States. The term "sale, exchange or other

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

12 For purposes of this clause, the term "reorganization"
13 means--

14 (i) a statutory merger or consolidation;

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

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

1 disregarded;

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

8 (v) a recapitalization;

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

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

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

1 exchanged, for an amount of voting stock of the controlling
2 corporation, an amount of stock in the surviving corporation
3 which constitutes control of such corporation.

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

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

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

22 For purposes of this clause, in accordance with Article VIII,
23 section 2(b)(i) of the Constitution of Pennsylvania, the term
24 "net gains or income" shall not include gains or income derived
25 from the sale of agricultural conservation easements as provided
26 under the act of June 30, 1981 (P.L.128, No.43), known as the
27 "Agricultural Area Security Law."

28 * * *

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