

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 730 Session of
1995

INTRODUCED BY ADOLPH, KING, CONTI, FARMER, DONATUCCI, SANTONI, FAIRCHILD, GEIST, PESCI, RUBLEY, ROONEY, NAILOR, HUTCHINSON, FLICK, ARMSTRONG, SCHULER, TRELLO, DeLUCA, RAYMOND, LAWLESS, HERSHEY, HENNESSEY, DEMPSEY, PLATTS, STEIL, CURRY, J. TAYLOR, PETTIT, MICOZZIE, STURLA, LAUGHLIN, SERAFINI, ITKIN, WAUGH, WOZNIAK, D. W. SNYDER, COWELL, WOGAN, MERRY, BELFANTI, E. Z. TAYLOR, YOUNGBLOOD, SCHRODER, L. I. COHEN, MICHLOVIC, LEH, VAN HORNE, PISTELLA, SEMMEL, THOMAS, CIVERA, BAKER, RICHARDSON, STABACK, BROWNE AND CARONE, FEBRUARY 14, 1995

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 14, 1995

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) and December 3, 1993 (P.L.473,
17 No.68), is amended to read:

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

1 * * *

2 (3) Net gains or income from disposition of property. [Net]
3 Subject to the limitations set forth in section 303.1, net gains
4 or net income, less net losses, derived from the sale, exchange
5 or other disposition of property, including real property,
6 tangible personal property, intangible personal property or
7 obligations issued on or after the effective date of this
8 amendatory act by the Commonwealth; any public authority,
9 commission, board or other agency created by the Commonwealth;
10 any political subdivision of the Commonwealth or any public
11 authority created by any such political subdivision; or by the
12 Federal Government as determined in accordance with accepted
13 accounting principles and practices. For the purpose of this
14 act, for the determination of the basis of any property, real
15 and personal, if acquired prior to June 1, 1971, the date of
16 acquisition shall be adjusted to June 1, 1971, as if the
17 property had been acquired on that date. If the property was
18 acquired after June 1, 1971, the actual date of acquisition
19 shall be used in determination of the basis.

20 [At the election of the taxpayer, the term "net gains or
21 income" shall not include net gain in an amount not to exceed
22 one hundred thousand dollars (\$100,000), or a pro rata part of
23 one hundred thousand dollars (\$100,000) if the property is owned
24 by more than one taxpayer, from the sale or exchange of the
25 taxpayer's principal residence if the taxpayer has attained
26 fifty-five years of age before the date of the sale or exchange.
27 If the property is held by a husband and wife and they make a
28 joint return for the taxable year of the sale or exchange and
29 one spouse satisfies the age, ownership and use requirements of
30 this clause with respect to the property, then both husband and

1 wife shall be treated as satisfying the age, ownership and use
2 requirements of this clause. For purposes of this clause, in the
3 case of an unremarried individual whose spouse is deceased on
4 the date of sale or exchange of the property, if the deceased
5 spouse, during the five-year period ending on the date of sale
6 or exchange satisfied the holding and use requirements with
7 respect to such property, then such individual shall be treated
8 as satisfying holding and use requirements with respect to such
9 property. For the purposes of this clause, the term "sale or
10 exchange" shall include involuntary conversions such as the
11 destruction, theft, seizure, requisition or condemnation of the
12 property. For the purposes of this clause, the term "principal
13 residence" shall mean the property that has been owned and used
14 by the taxpayer as his principal residence for periods
15 aggregating three years or more during the five-year period
16 ending on the date of the sale or exchange. In the case of
17 property only a portion of which, during the five-year period
18 ending on the date of the sale or exchange, has been owned or
19 used by the taxpayer as the taxpayer's principal residence for
20 periods aggregating three years or more, this section shall
21 apply with respect to so much of the gain from the sale or
22 exchange of such property as is determined under regulations
23 prescribed by the department to be attributable to the portion
24 of the property so owned and used by the taxpayer. The term
25 "used" shall include time the property was not used for rental
26 purposes and was unoccupied by the taxpayer due to the taxpayer
27 being in a hospital, nursing home or personal care facility, or
28 for a period of less than ninety consecutive days. The
29 provisions of this clause shall not apply to any sale or
30 exchange made prior to July 1, 1987. An election under this

1 clause may be made or revoked at any time before the expiration
2 of the period for making a claim for a refund of the tax imposed
3 by this article for the taxable year in which the sale or
4 exchange occurred. The provisions of this clause shall be used
5 only once during the lifetime of the taxpayer.

6 The term "net gains or income" and "net losses" shall not
7 include gains or income or loss derived from obligations which
8 are statutorily free from State or local taxation under the act
9 of August 31, 1971 (P.L.395, No.94), entitled "An act exempting
10 from taxation for State and local purposes within the
11 Commonwealth certain obligations, their transfer and the income
12 therefrom (including any profits made on the sale thereof),
13 issued by the Commonwealth, any public authority, commission,
14 board or other agency created by the Commonwealth, any political
15 subdivision of the Commonwealth or any public authority created
16 by any such political subdivision," or under the laws of the
17 United States. The term "sale, exchange or other disposition"
18 shall not include the exchange of stock or securities in a
19 corporation a party to a reorganization in pursuance of a plan
20 of reorganization, solely for stock or securities in such
21 corporation or in another corporation a party to the
22 reorganization and the transfer of property to a corporation by
23 one or more persons solely in exchange for stock or securities
24 in such corporation if immediately after the exchange such
25 person or persons are in control of the corporation. For
26 purposes of this clause, stock or securities issued for services
27 shall not be considered as issued in return for property.

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

30 (i) a statutory merger or consolidation;

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

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

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

24 (v) a recapitalization;

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

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

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

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

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

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

subclause (vii) the term "a party to a reorganization" includes the controlling corporation referred to in such subclause (vii).

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

* * *

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

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

(1) At the election of the taxpayer, the term "net gains or income" as used in section 303(a)(3) shall not include net gain in an amount not to exceed one hundred thousand dollars (\$100,000), or a pro rata part of one hundred thousand dollars (\$100,000) if the property is owned by more than one taxpayer, from the sale or exchange of the taxpayer's principal residence if the taxpayer has attained fifty-five years of age before the date of the sale or exchange. If the property is held by a husband and wife and they make a joint return for the taxable year of the sale or exchange and one spouse satisfies the age, ownership and use requirements of this clause with respect to the property, then both husband and wife shall be treated as satisfying the age, ownership and use requirements of this clause. For purposes of this clause, in the case of an unremarried individual whose spouse is deceased on the date of sale or exchange of the property, if the deceased spouse, during the five-year period ending on the date of sale or exchange

1 satisfied the holding and use requirements with respect to the
2 property, then the individual shall be treated as satisfying
3 holding and use requirements with respect to the property. The
4 provisions of this clause shall not apply to any sale or
5 exchange made prior to July 1, 1987. An election under this
6 clause may be made or revoked at any time before the expiration
7 of the period for making a claim for a refund of the tax imposed
8 by this article for the taxable year in which the sale or
9 exchange occurred. The provisions of this clause shall be used
10 only once during the lifetime of the taxpayer.

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

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

15 (ii) The term "principal residence" shall mean property that
16 has been owned and used as a principal residence by the taxpayer
17 for periods aggregating three years or more during the five-year
18 period ending on the date of the sale or exchange. In the case
19 of property only a portion of which, during the five-year period
20 ending on the date of the sale or exchange, has been owned or
21 used by the taxpayer as the taxpayer's principal residence for
22 periods aggregating three years or more, this section shall
23 apply with respect to so much of the gain from the sale or
24 exchange of the property as is determined under regulations
25 prescribed by the department to be attributable to the portion
26 of the property so owned and used by the taxpayer.

27 (iii) The term "used" shall include time the property was
28 not used for rental purposes and was unoccupied by the taxpayer
29 due to the taxpayer being in a hospital, nursing home or
30 personal care facility for a period of less than ninety

1 consecutive days.

2 (3) The term "net gains or income" as used in section
3 303(a)(3) shall not include gains or income derived from
4 obligations which are statutorily free from State or local
5 taxation under any other act of the General Assembly of the
6 Commonwealth of Pennsylvania or under the laws of the United
7 States. The term "sale, exchange or other disposition" shall not
8 include the exchange of stock or securities, in a corporation
9 which was a party to a reorganization pursuant to a plan of
10 reorganization, solely for stock or securities in the
11 corporation or in another corporation which was a party to the
12 reorganization and the transfer of property to a corporation by
13 one or more persons solely in exchange for stock or securities
14 in the corporation if immediately after the exchange the person
15 or persons are in control of the corporation. For purposes of
16 this clause, stock or securities issued for services shall not
17 be considered as issued in return for property.

18 Notwithstanding any other provisions of this section, upon
19 every exchange or conversion, the taxpayer's base for the stock
20 or securities received shall be the same as the taxpayer's
21 actual or attributed base for the stock, securities or property
22 surrendered.

23 (4) For purposes of clause (3):

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

25 (A) a statutory merger or consolidation;

26 (B) the acquisition by one corporation, in exchange solely
27 for all or a part of its voting stock (or in exchange solely for
28 all or a part of the voting stock of a corporation which is in
29 control of the acquiring corporation) of stock of another
30 corporation if, immediately after the acquisition, the acquiring

corporation has control of the other corporation (whether or not the acquiring corporation had control immediately before the acquisition);

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

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

(E) a recapitalization;

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

(G) the acquisition by one corporation, in exchange for stock of a corporation (referred to in this subclause as "controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under paragraph (A) if the transaction would have qualified under paragraph (A) if the merger had been into the controlling corporation, and no stock of the acquiring corporation is used

1 in the transaction; or

2 (H) a transaction otherwise qualifying under paragraph (A)
3 shall not be disqualified by reason of the fact that stock of a
4 corporation (referred to in this subclause as the "controlling
5 corporation") which before the merger was in control of the
6 merged corporation is used in the transaction, if after the
7 transaction, the corporation surviving the merger holds
8 substantially all of its properties and of the properties of the
9 merged corporation (other than stock of the controlling
10 corporation distributed in the transaction); and in the
11 transaction, former shareholders of the surviving corporation
12 exchanged, for an amount of voting stock of the controlling
13 corporation, an amount of stock in the surviving corporation
14 which constitutes control of the corporation.

15 (ii) The term "control" means the ownership of stock
16 possessing at least eighty per cent of the total combined voting
17 power of all classes of stock entitled to vote and at least
18 eighty per cent of the total number of shares of all other
19 classes of stock of the corporation.

20 (iii) The term "a party to a reorganization" includes a
21 corporation resulting from a reorganization, and both
22 corporations, in the case of a reorganization resulting from the
23 acquisition by one corporation of stock or properties of
24 another. In the case of a reorganization qualifying under
25 subclause (i)(A) by reason of subclause (i)(G) the term "a party
26 to a reorganization" includes the controlling corporation
27 referred to in subclause (i)(G).

28 (5) If property (in this clause and clause (6) called "old
29 residence") used by the taxpayer as a principal residence is
30 sold by the taxpayer and, within a period beginning two years

1 before the date of the sale and ending two years after the sale
2 date, property (in this clause and clause (6) called "new
3 residence") is purchased and used by the taxpayer as a principal
4 residence, gain, if any, from the sale shall be recognized only
5 to the extent that the taxpayer's adjusted sales price of the
6 old residence exceeds the taxpayer's cost of purchasing the new
7 residence.

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

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