

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2111 Session of
1995

INTRODUCED BY BROWNE, FAIRCHILD, FICHTER, ROONEY, ARMSTRONG,
MELIO, NAILOR, HENNESSEY, TRELLO, STEELMAN, LEH, STEIL,
MICOZZIE, E. Z. TAYLOR, CLYMER, GEIST, BUNT, ADOLPH, ITKIN,
MAITLAND AND SEMMEL, OCTOBER 18, 1995

REFERRED TO COMMITTEE ON FINANCE, OCTOBER 18, 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," further providing for the imposition of personal
11 income tax on certain old-age or retirement benefits.

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

14 Section 1. Section 301(d) of the act of March 4, 1971
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended
16 June 30, 1995 (P.L.139, No.21), is amended and the section is
17 amended by adding a clause to read:

18 Section 301. Definitions.--The following words, terms and
19 phrases when used in this article shall have the meaning
20 ascribed to them in this section except where the context
21 clearly indicates a different meaning. Any reference in this

1 article to the Internal Revenue Code shall include the Internal
2 Revenue Code of 1954, as amended to the date on which this
3 article is effective:

4 * * *

5 (d) "Compensation" means and shall include salaries, wages,
6 commissions, bonuses and incentive payments whether based on
7 profits or otherwise, fees, tips and similar remuneration
8 received for services rendered, whether directly or through an
9 agent, and whether in cash or in property.

10 The term "compensation" shall not mean or include: (i)
11 periodic payments for sickness and disability other than regular
12 wages received during a period of sickness or disability; or
13 (ii) disability, retirement or other payments arising under
14 workmen's compensation acts, occupational disease acts and
15 similar legislation by any government; or [(iii) payments
16 commonly recognized as old age or retirement benefits paid to
17 persons retired from service after reaching a specific age or
18 after a stated period of employment; or] (iv) payments commonly
19 known as public assistance, or unemployment compensation
20 payments by any governmental agency; or (v) payments to
21 reimburse actual expenses; or (vi) payments made by employers or
22 labor unions for programs covering hospitalization, sickness,
23 disability or death, supplemental unemployment benefits, strike
24 benefits, social security and retirement; or (vii) any
25 compensation received by United States servicemen serving in a
26 combat zone; or (viii) payments received by a foster parent for
27 in-home care of foster children from an agency of the
28 Commonwealth or a political subdivision thereof or an
29 organization exempt from Federal tax under section 501(c)(3) of
30 the Internal Revenue Code of 1954 which is licensed by the

1 Commonwealth or a political subdivision thereof as a placement
2 agency.

3 * * *

4 (x) "Old age or retirement benefit plan" means and includes:

5 (i) any federally deferred payment program authorized under
6 Subtitle A, Chapter I, Subchapter D, Parts I and II of the
7 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1
8 et seq.), including any pension plan, profit sharing plan, stock
9 bonus plan, money purchase plan or Federal Employee's Thrift
10 Savings Plan; (ii) Internal Revenue Code of 1986 section 401(k)
11 plan; (iii) Internal Revenue Code of 1986 section 403(b) plan;
12 (iv) simplified employee pension plan; (v) Keogh plan; or (vi)
13 any other old age or retirement benefit plan.

14 Section 2. Section 303(a) of the act is amended by adding a
15 clause to read:

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

18 * * *

19 (9) Old age or retirement benefit plans to be taxed as
20 provided in section 304.1.

21 * * *

22 Section 3. The act is amended by adding a section to read:

23 Section 304.1. Taxability of Old Age or Retirement Benefit
24 Plans.--(a) Contributions to old age or retirement benefit
25 plans shall be subject to taxation as follows:

26 (1) Contributions to an old age or retirement benefit plan
27 made by an employer or a collective bargaining unit on behalf of
28 an employee are excluded from the income of the employee except as
29 may be otherwise provided in this article.

30 (2) Contributions to an old age or retirement benefit plan

made by an employe or by another individual, directly or indirectly, whether through payroll deduction, a salary reduction agreement, payment direct to an employe in cash or any other program on behalf of the employe, are excludable from income of the employe.

(3) Contributions to an old age or retirement benefit plan by or on behalf of or attributable to a self-employed person are excludable from the income of the self-employed individual.

(b) (1) Except as provided in clause (2), (3) or (4), amounts distributed from an old age or retirement benefit plan to an individual shall be included in the income of that individual to the extent that contributions to the old age or retirement benefit plan were not previously included in income.

(2) Any distribution made on or after the retirement of an individual from employment after reaching a specified age or after a stated period of employment shall not be included in the income of that individual to the extent that the amount of the distribution represents a return of employer contributions.

(3) Any distribution made on or after the retirement of an individual from employment after reaching a specified age or after a stated period of employment shall not be included in the income of that individual to the extent that the amount of the distribution represents income on all classes of assets held in the old age or retirement benefit plan.

(4) Any distribution made for transfer into another old age or retirement benefit plan where the transferred amounts are not included in income under section 403(a)(4) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

(c) (1) Except as provided in clause (2), any premature distribution of employe contributions to an old age or

retirement benefit plan will be subject to an additional tax penalty equal to one per cent and calculated by adding to the amount of the individual's tax determined under section 302(a)(1) for the taxable year an amount equal to one per cent of the amount of the premature distribution which is included in the income of that individual and is a return of that individual's contributions to the old age or retirement benefit plan.

(2) The provisions of clause (1) shall not apply to any premature distribution which satisfies any of the following criteria:

(i) The distribution is made on or after retirement from service after reaching a specified age or after a stated period of employment.

(ii) The distribution is made on or after the death of the holder.

(iii) The distribution is attributable to the taxpayer's becoming permanently disabled, as defined by regulations promulgated by the Secretary of Revenue.

(iv) The distribution is made for the purpose of purchasing long-term care coverage or a long-term care insurance policy.

(v) The distribution is made for the purpose of purchasing the taxpayer's first primary residence.

(vi) The distribution is made by reason of financial hardship of the taxpayer, as defined by regulations promulgated by the Secretary of Revenue.

Section 4. This act shall take effect January 1, 1996.