

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1351 Session of
1997

INTRODUCED BY L. I. COHEN, YOUNGBLOOD, HENNESSEY, READSHAW,
RUBLEY, MILLER, TRELLO, JAMES, LEVDANSKY, WAUGH, SCHRODER,
HERSHEY, E. Z. TAYLOR, ZUG, BARD, SEMMEL, BROWNE, CURRY,
BENNINGHOFF, STEELMAN, BOSCOLA, PRESTON, COY AND ROBERTS,
APRIL 17, 1997

REFERRED TO COMMITTEE ON FINANCE, APRIL 17, 1997

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 the carryover into succeeding years
11 of unexhausted capital losses.

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

14 Section 1. Section 303(a)(2) and (3) of the act of March 4,
15 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971,
16 amended or added August 31, 1971 (P.L.362, No.93), July 13, 1987
17 (P.L.325, No.59) and December 3, 1993 (P.L.473, No.68), are
18 amended to read:

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

21 * * *

1 (2) Net profits. The net income from the operation of a
2 business, profession, or other activity, after provision for all
3 costs and expenses incurred in the conduct thereof, determined
4 either on a cash or accrual basis in accordance with accepted
5 accounting principles and practices but without deduction of
6 taxes based on income. Whenever net losses shall exceed net
7 gains in any year, those net losses which exceed net gains may
8 be carried over into the next and succeeding years and may be
9 applied against subsequent net gains until such net losses are
10 exhausted.

11 (3) Net gains or income from disposition of property. Net
12 gains or net income, less net losses, derived from the sale,
13 exchange or other disposition of property, including real
14 property, tangible personal property, intangible personal
15 property or obligations issued on or after the effective date of
16 this amendatory act by the Commonwealth; any public authority,
17 commission, board or other agency created by the Commonwealth;
18 any political subdivision of the Commonwealth or any public
19 authority created by any such political subdivision; or by the
20 Federal Government as determined in accordance with accepted
21 accounting principles and practices. Whenever net losses shall
22 exceed net gains in any year, those net losses which exceed net
23 gains may be carried over into the next and succeeding years and
24 may be applied against subsequent net gains until such net
25 losses are exhausted. For the purpose of this act, for the
26 determination of the basis of any property, real and personal,
27 if acquired prior to June 1, 1971, the date of acquisition shall
28 be adjusted to June 1, 1971, as if the property had been
29 acquired on that date. If the property was acquired after June
30 1, 1971, the actual date of acquisition shall be used in

1 determination of the basis.

2 At the election of the taxpayer, the term "net gains or
3 income" shall not include net gain in an amount not to exceed
4 one hundred thousand dollars (\$100,000), or a pro rata part of
5 one hundred thousand dollars (\$100,000) if the property is owned
6 by more than one taxpayer, from the sale or exchange of the
7 taxpayer's principal residence if the taxpayer has attained
8 fifty-five years of age before the date of the sale or exchange.
9 If the property is held by a husband and wife and they make a
10 joint return for the taxable year of the sale or exchange and
11 one spouse satisfies the age, ownership and use requirements of
12 this clause with respect to the property, then both husband and
13 wife shall be treated as satisfying the age, ownership and use
14 requirements of this clause. For purposes of this clause, in the
15 case of an unremarried individual whose spouse is deceased on
16 the date of sale or exchange of the property, if the deceased
17 spouse, during the five-year period ending on the date of sale
18 or exchange satisfied the holding and use requirements with
19 respect to such property, then such individual shall be treated
20 as satisfying holding and use requirements with respect to such
21 property. For the purposes of this clause, the term "sale or
22 exchange" shall include involuntary conversions such as the
23 destruction, theft, seizure, requisition or condemnation of the
24 property. For the purposes of this clause, the term "principal
25 residence" shall mean the property that has been owned and used
26 by the taxpayer as his principal residence for periods
27 aggregating three years or more during the five-year period
28 ending on the date of the sale or exchange. In the case of
29 property only a portion of which, during the five-year period
30 ending on the date of the sale or exchange, has been owned or

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

18 The term "net gains or income" and "net losses" shall not
19 include gains or income or loss derived from obligations which
20 are statutorily free from State or local taxation under the act
21 of August 31, 1971 (P.L.395, No.94), entitled "An act exempting
22 from taxation for State and local purposes within the
23 Commonwealth certain obligations, their transfer and the income
24 therefrom (including any profits made on the sale thereof),
25 issued by the Commonwealth, any public authority, commission,
26 board or other agency created by the Commonwealth, any political
27 subdivision of the Commonwealth or any public authority created
28 by any such political subdivision," or under the laws of the
29 United States. The term "sale, exchange or other disposition"
30 shall not include the exchange of stock or securities in a

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

10 For purposes of this clause, the term "reorganization"
11 means--

12 (i) a statutory merger or consolidation;

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

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

30 (iv) a transfer by a corporation of all or a part of its

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

6 (v) a recapitalization;

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

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

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

1 which constitutes control of such corporation.

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

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

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

20 * * *

21 Section 2. This act shall take effect January 1, 1998.