

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 936 Session of
2001

INTRODUCED BY WANSACZ, DALEY, BELARDI, BUNT, BARRAR, CREIGHTON,
J. EVANS, FEESE, MANDERINO, MANN, McNAUGHTON, MUNDY,
PETRARCA, PIPPY, PRESTON, ROBERTS, CAPPABIANCA, COLAFELLA,
COY, FREEMAN, GRUCELA, HARHAI, HERMAN, HORSEY, LaGROTTA,
MAJOR, McILHATTAN, HERSHEY, HESS, SAINATO, SATHER, SAYLOR,
SHANER, SOLOBAY, STURLA, SURRA, TRICH, WALKO, WATERS,
C. WILLIAMS, J. WILLIAMS, YEWIC, ARMSTRONG, BELFANTI,
CALTAGIRONE, McCALL, STABACK, GEORGE AND FAIRCHILD,
MARCH 13, 2001

REFERRED TO COMMITTEE ON FINANCE, MARCH 13, 2001

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 alternative valuation of farm and
11 closely held business property.

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

14 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
15 the Tax Reform Code of 1971, is amended by adding a section to
16 read:

17 Section 2123. Alternative Valuation of Farm and Closely Held
18 Business Property.--(a) (1) If the decedent was, at the time
19 of his death, a resident of this Commonwealth, and the executor

elects the application of this section and files the agreement described in subsection (c)(2), then, for the purposes of this article, the value of qualified real property shall be its value for the use under which it qualifies as qualified real property.

(2) The aggregate decrease in the value of qualified real property taken into account for purposes of this section which results from the application of paragraph (1) with respect to any decedent shall not exceed seven hundred thousand dollars (\$700,000).

(b) (1) There is hereby imposed an additional estate tax if, within seven years after the decedent's death and before the death of the qualified heir:

(i) The qualified heir disposes of any interest in qualified real property, other than a disposition to a member of his family.

(ii) The qualified heir ceases to use for the qualified use the qualified real property which was acquired, or passed, from the decedent.

(2) (i) The amount of the additional tax imposed under paragraph (1) with respect to any interest shall be the amount equal to the lesser of:

(A) the adjusted tax difference attributable to the interest; or

(B) the excess of the amount realized with respect to the interest, or, in any case other than a sale or exchange at arm's length, the fair market value of the interest, divided by the value of the interest determined under subsection (a).

(ii) For purposes of subparagraph (i)(A), the adjusted tax difference attributable to an interest is the amount which bears the same ratio to the adjusted tax difference with respect to

1 the estate as the excess of the value of the interest for
2 purposes of this article, determined without regard to
3 subsection (a), divided by the value of the interest determined
4 under subsection (a), bears to a similar excess determined for
5 all qualified real property.

6 (iii) For purposes of subparagraph (ii), the adjusted tax
7 difference with respect to the estate is the excess of what
8 would have been the estate tax liability but for subsection (a)
9 over the estate tax liability. For purposes of this subsection,
10 the estate tax liability is the tax imposed under section 2116
11 reduced by the exemptions and deductions allowable against the
12 tax.

13 (iv) For purposes of this subsection, if the qualified heir
14 disposes of a portion of the interest acquired by or passed to
15 the heir, or to a predecessor qualified heir, or there is a
16 cessation of use of the portion:

17 (A) The value determined under subsection (a), taken into
18 account under subsection (b)(2)(i)(B) with respect to the
19 portion, shall be its pro rata share of the value of the
20 interest.

21 (B) The adjusted tax difference attributable to the interest
22 taken into account with respect to the transaction involving the
23 second or any succeeding portion shall be reduced by the amount
24 of the tax imposed under this subsection with respect to all
25 prior transactions involving portions of the interest.

26 (3) If the date of the disposition or cessation referred to
27 in subsection (b)(1) occurs more than one hundred twenty months
28 and less than one hundred eighty months after the date of the
29 death of the decedent, the amount of the tax imposed under this
30 subsection shall be reduced, but not below zero, by an amount

determined by multiplying the amount of the tax, determined
without regard to this paragraph, by a fraction:

(i) the numerator of which is the number of full months
after the death in excess of one hundred twenty; and

(ii) the denominator of which is sixty.

(4) In the case of an interest acquired from, or passing
from, any decedent, if paragraph (1)(i) or (ii) applies to any
portion of an interest, the other subparagraph shall not apply
with respect to the same portion of the interest.

(5) The additional tax imposed under this subsection shall
become due and payable on the day which is six months after the
date of the disposition or cessation referred to in paragraph
(1).

(6) The qualified heir shall be personally liable for the
additional tax imposed under this subsection with respect to his
interest.

(7) For purposes of paragraph (1)(ii), real property shall
cease to be used for the qualified use if:

(i) The property ceases to be used for the qualified use
under which the property qualified.

(ii) During any period of eight years ending after the date
of the decedent's death and before the date of the death of the
qualified heir, there were periods aggregating three years or
more during which:

(A) In the case of periods during which the property was
held by the decedent, there was no material participation by the
decedent or any member of the decedent's family in the operation
of the farm or other business.

(B) In the case of periods during which the property was
held by a qualified heir, there was no material participation by

the qualified heir or a member of his family in the operation of the farm or other business.

(c) (1) The election under this section shall be made not later than the time prescribed for filing the return of tax imposed under section 2116, including extensions thereof, and shall be made in the manner which the department prescribes by regulation.

(2) The agreement referred to in subsection (a)(1) and in the definition of "qualified real property" in subsection (g) is a written agreement signed by each person in being who has an interest, whether or not in possession, in any property designated in the agreement, consenting to the application of this section with respect to the property.

(d) (1) In the case of real property which meets the requirements of subparagraph (3) of the definition of "qualified real property," residential buildings and related improvements on the real property, occupied on a regular basis by the owner or lessee or by persons employed by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings and other structures and improvements functionally related to the qualified use, shall be treated as real property devoted to the qualified use.

(2) (i) Except as provided in subparagraph (ii), the value of a farm for farming purposes shall be determined by dividing the excess of the average annual gross cash rental for comparable land, used for farming purposes and located in the locality of the farm, over the average annual State and local real estate taxes for the comparable land by the average annual effective interest rate for all new Federal land bank loans. For purposes of the preceding sentence, each average annual

computation shall be made on the basis of the five most recent
calendar years ending before the date of the decedent's death.

(ii) The formula provided under subparagraph (i) shall not
be used:

(A) Where it is established that there is no comparable land
from which the average annual gross cash rental may be
determined.

(B) Where the executor elects to have the value of the farm
for farming purposes determined under paragraph (3).

(3) In any case to which paragraph (2)(i) does not apply or
in which the executor elects to apply this paragraph under
paragraph (2)(ii)(B), the following factors shall apply in
determining the value of qualified real property:

(i) The capitalization of income which the property can be
expected to yield for farming or closely held business purposes
over a reasonable period of time under prudent management using
traditional cropping patterns for the area, taking into account
soil capacity, terrain configuration and similar factors.

(ii) The capitalization of the fair rental value of the land
for farmland or closely held business purposes.

(iii) Assessed land values if a differential or use value
assessment law exists for farmland or closely held business.

(iv) Comparable sales of other farm or closely held business
land in the same geographical area far enough removed from a
metropolitan or resort area so that nonagricultural use is not a
significant factor in the sale price.

(v) Any other factor which fairly values the farm or closely
held business value of the property.

(e) If qualified real property is disposed of or ceases to
be used for a qualified use:

1 (1) The statutory period for the assessment of any
2 additional tax under subsection (c) attributable to the
3 disposition or cessation shall not expire before the expiration
4 of three years from the date the department is notified, in such
5 manner as the department may by regulation prescribe, of the
6 disposition or cessation.

7 (2) Additional tax may be assessed before the expiration of
8 the three-year period notwithstanding the provisions of any
9 other law or rule of law which would otherwise prevent an
10 assessment.

11 (f) The department shall promulgate regulations setting
12 forth the application of this section in the case of an interest
13 in a partnership, corporation or trust which, with respect to
14 the decedent, is an interest in a closely held business.

15 (g) Definitions.--As used in this section, the following
16 words and phrases shall have the meanings given to them in this
17 subsection:

18 "Adjusted value."

19 (1) In the case of the gross estate, the value of the gross
20 estate for purposes of this article, determined without regard
21 to this section, reduced by any amounts allowable as a deduction
22 under the Internal Revenue Code of 1986 (Public Law 99-514, 26
23 U.S.C. § 2053(a)(4)).

24 (2) In the case of any real or personal property, its value
25 for purposes of this article, determined without regard to this
26 section, reduced by any amounts allowable as a deduction in
27 respect of the property under the Internal Revenue Code of 1986.

28 "Farm." Includes stock, dairy, poultry, fruit, fur-bearing
29 animal and truck farms, plantations, ranches, nurseries, ranges,
30 greenhouses or similar structures used primarily for the raising

1 of agricultural or horticultural commodities and orchards and
2 woodlands.

3 "Farming purposes."

4 (1) Cultivating the soil or raising or harvesting an
5 agricultural or horticultural commodity, including the raising,
6 shearing, feeding, caring for, training and management of
7 animals, on a farm.

8 (2) Handling, drying, packing, grading or storing on a farm
9 any agricultural or horticultural commodity in its
10 unmanufactured state, but only if the owner, tenant or operator
11 of the farm regularly produces more than one-half of the
12 commodity so treated.

13 (3) (i) The planting, cultivation, caring for or cutting of
14 trees.

15 (ii) The preparation, other than milling, of trees for
16 market.

17 "Member of the family."

18 (1) With respect to an individual, only the individual's
19 ancestor or lineal descendant.

20 (2) A lineal descendant of a grandparent of the individual,
21 the individual's spouse or the spouse of a lineal descendant
22 enumerated in subparagraph (1) or this subparagraph. For
23 purposes of this definition, a legally adopted child of an
24 individual shall be treated as a child of the individual.

25 "Qualified heir." With respect to any property, a member of
26 the decedent's family who acquired the property, or to whom the
27 property passed, from the decedent. If a qualified heir disposes
28 of an interest in qualified real property to a member of the
29 qualified heir's family, the family member shall thereafter be
30 treated as the qualified heir with respect to the interest.

1 "Qualified real property." Real property located in this
2 Commonwealth which, on the date of the decedent's death, was
3 being used for a qualified use, but only if:

4 (1) Fifty percent or more of the adjusted value of the gross
5 estate consists of the adjusted value of real or personal
6 property which:

7 (i) on the date of the decedent's death, was being used for
8 a qualified use; and

9 (ii) was acquired from or passed from the decedent to a
10 qualified heir of the decedent.

11 (2) Twenty-five percent or more of the adjusted value of the
12 gross estate consists of the adjusted value of real property
13 which meets the requirements of subparagraphs (1)(ii) and (3).

14 (3) During the period of eight years ending on the date of
15 the decedent's death there have been periods aggregating five
16 years or more during which:

17 (i) the real property was owned by the decedent or a member
18 of the decedent's family and used for a qualified use; and

19 (ii) there was material participation by the decedent or a
20 member of the decedent's family in the operation of the farm or
21 other business.

22 (4) The real property is designated in the agreement
23 referred to in subsections (a)(1) and (c)(2).

24 "Qualified use." The devotion of a property to any of the
25 following:

26 (1) Use as a farm for farming purposes.

27 (2) Use in a trade or business other than the trade or
28 business of farming.

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