

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 845 Session of  
2003

INTRODUCED BY GREENLEAF, C. WILLIAMS, PUNT, COSTA, RAFFERTY,  
ERICKSON, PILEGGI AND TARTAGLIONE, JULY 8, 2003

REFERRED TO FINANCE, JULY 8, 2003

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 classes of income and for  
11 spousal income tax returns; and abrogating regulations.

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

14 Section 1. Section 303 of the act of March 4, 1971 (P.L.6,  
15 No.2), known as the Tax Reform Code of 1971, is amended by  
16 adding a subsection to read:

17 Section 303. Classes of Income.--\* \* \*

18 (a.4) A taxpayer may offset a gain in one class of income  
19 with a loss in another class of income.

20 \* \* \*

21 Section 2. Section 331 of the act, added August 31, 1971  
22 (P.L.362, No.93), is amended to read:

Section 331. Returns of Married Individuals, Deceased or Disabled Individuals and Fiduciaries.--(a) If the income tax liability of husband or wife is determined on a separate return, their income tax liabilities under this article shall be separate.

(b) If the income tax liabilities of husband and wife are determined on a joint return, [their] all of the following apply:

(1) Their tax liabilities shall be joint and several.

(2) A spouse may offset a gain in a class of income with a loss of the other spouse in the same class of income.

(3) A spouse may offset a gain in one class of income with a loss of the other spouse in another class of income.

(c) If either husband or wife is a resident and the other is a nonresident, they shall file separate tax returns under this article on such single or separate forms as may be required by the department, in which event their tax liabilities shall be separate except as provided in subsection (d) unless both elect to determine their joint taxable income as if both were residents, in which event their tax liabilities shall be joint and several.

(d) If husband and wife file separate tax returns under this article on a single form pursuant to subsections (b) or (c) and:

(1) If the sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of the tax for which such spouse is separately liable, the excess may be applied by the department to the credit of the other spouse if the sum of the payments by such other spouse, including withheld and estimated taxes, is less than the amount of the tax for which such other spouse is separately liable.

1       (2) If the sum of the payments made by both spouses with  
2 respect to the taxes for which they are separately liable,  
3 including withheld and estimated taxes, exceeds the total of the  
4 taxes due, refund of the excess may be made payable to both  
5 spouses, or if either is deceased, to the survivor.

6       Provided, however, That the provisions of this subsection (d)  
7 shall not apply if the return of either spouse includes a demand  
8 that any overpayment made by him or her shall be applied only on  
9 account of his or her separate liability.

10       (e) The return for any deceased individual shall be made and  
11 filed by his executor, administrator, or other person charged  
12 with his property.

13       (f) The return for an individual who is unable to make a  
14 return by reason of minority or other disability shall be made  
15 and filed by his guardian, committee, fiduciary or other person  
16 charged with the care of his person or property, or by his duly  
17 authorized agent.

18       (g) The return for an estate or trust shall be made and  
19 filed by the fiduciary. If two or more fiduciaries are acting  
20 jointly, the return may be made by any one of them.

21       Section 3. The following provisions of 61 Pa. Code are  
22 abrogated:

23           (1) Section 115.5(d).

24           (2) Section 121.15(c) and (d).

25       Section 4. The following provisions shall apply to taxable  
26 years beginning after December 31, 2002:

27           (1) The addition of section 303(a.4) of the act.

28           (2) The amendment of section 331(b) of the act.

29           (3) Section 3 of this act.

30       Section 5. This act shall take effect July 1, 2003, or

1 immediately, whichever is later.