

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 97 Session of 2011

INTRODUCED BY GREENLEAF, TARTAGLIONE, WASHINGTON, BROWNE,
ERICKSON, KASUNIC, RAFFERTY AND WAUGH, JANUARY 12, 2011

REFERRED TO FINANCE, JANUARY 12, 2011

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," in personal income tax, further providing for
11 classes of income.

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

14 Section 1. Section 303(a)(1) of the act of March 4, 1971
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended
16 November 29, 2006 (P.L.1613, No.182), is amended to read:

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

19 (1) Compensation.

20 (i) All salaries, wages, commissions, bonuses and incentive
21 payments whether based on profits or otherwise, fees, tips and
22 similar remuneration received for services rendered whether

1 directly or through an agent and whether in cash or in property
2 except income derived from the United States Government for
3 active duty outside the Commonwealth of Pennsylvania as a member
4 of its armed forces and income from the United States Government
5 or the Commonwealth of Pennsylvania for active State duty for
6 emergency within or outside the Commonwealth of Pennsylvania,
7 including duty ordered pursuant to 35 Pa.C.S. Ch. 76 (relating
8 to Emergency Management Assistance Compact).

9 (ii) Compensation of a cash-basis taxpayer shall be
10 considered as received if the compensation is actually or
11 constructively received for Federal income tax purposes as
12 determined consistent with the United States Treasury
13 regulations and rulings under the Internal Revenue Code of 1986,
14 as amended, except that, for purposes of computing tax under
15 this article:

16 (A) Amounts lawfully deducted, not deferred, and withheld
17 from the compensation of employees shall be considered to have
18 been received by the employee as compensation at the time the
19 deduction is made.

20 (B) Contributions to an employees' trust, pooled fund or
21 other arrangement which is not subject to the claims of
22 creditors of the employer made by an employer on behalf of an
23 employee or self-employed individual at the election of the
24 employee or self-employed individual pursuant to a cash or
25 deferred arrangement or salary reduction agreement shall be
26 deemed to have been received by the employee or individual as
27 compensation at the time the contribution is made, regardless of
28 when the election is made or a payment is received.

29 (C) Any contribution to a plan by, on behalf of or
30 attributable to a self-employed person shall be deemed to have

1 been received at the time the contribution is made.

2 (D) Employer contributions to a Roth IRA custodial account
3 or employee annuity shall be deemed received, earned or acquired
4 only when distributed, when the plan fails to meet the
5 requirements of section 408A of the Internal Revenue Code of
6 1986 (26 U.S.C. § 408A), as amended, or when the plan is not
7 operated in accordance with such requirements.

8 (E) Employee contributions to an employees' trust or pooled
9 fund or custodial account or contract or employee annuity shall
10 not be deducted or excluded from compensation.

11 (iii) For purposes of determining when deferred compensation
12 of employees other than employees of exempt organizations and
13 State and local governments is required to be included in
14 income, the following apply:

15 (A) The rules of sections 83 and 451 of the Internal Revenue
16 Code of 1986 (26 U.S.C. §§ 83 and 451), as amended, shall apply.

17 (B) The rules of section 409A of the Internal Revenue Code
18 of 1986 (26 U.S.C. § 409A), as amended, shall apply.

19 (iv) For purposes of determining when deferred compensation
20 of employees of exempt organizations and State and local
21 governments is required to be included in income, the following
22 apply:

23 (A) The rules of sections 83, 451 and 457 of the Internal
24 Revenue Code of 1986, as amended, shall apply.

25 (B) The rules of section 409A of the Internal Revenue Code
26 of 1986, as amended, shall apply.

27 (v) Notwithstanding any other provision of this act,
28 unreimbursed child and dependent care expenses which are used in
29 calculating the Federal child and dependent care credit in
30 accordance with section 21 of the Internal Revenue Code of 1986

1 (Public Law 99-514, 26 U.S.C. § 1 et seq.) shall be excluded
2 from the definition of the term "compensation" provided that the
3 taxpayer submits a copy of the requisite Federal tax form on
4 which the child and dependent care expenses are claimed when
5 filing the tax return under section 330.

6 * * *

7 Section 2. This act shall apply to the taxable years
8 beginning after December 31, 2011.

9 Section 3. This act shall take effect immediately.