

MEMO



DEC 14 2010

Senate of Pennsylvania

December 13, 2010

TO: ALL SENATORS

FROM: Stewart J. Greenleaf

Stewart

SUBJECT: Cosponsorship -- **Personal income tax: offsetting gains and losses**

I am reintroducing **Senate Bill 355**, amending the Tax Reform Code of 1971 (Act 2) to permit a spouse filing jointly to offset a gain in a class of income with a loss by the other spouse in the same class of income or in another class of income. The proposal also permits an individual taxpayer to offset a gain in one class of income with a loss in another class of income.

Under a current regulation a Pennsylvania taxpayer, whether filing an individual or a joint tax return, may not offset a gain in one class of income (i.e., interest income) with a loss in another class of income (i.e., disposition of property). My revision to the personal income tax provisions of the tax reform code will permit both types of filers to offset between classes of income, similar to what is allowed under the federal tax system. It only seems fair to give both types of filers the ability to offset any gains with losses that they may have in other classes of income.

The regulation (61 Pa. Code §115.5) also prohibits a spouse from offsetting a gain in a class of income with a loss by the other spouse in the same class of income. According to another regulation (§121.15) the filing of a joint tax return is more for the convenience of the taxpayer and does not provide any tax benefits under the state personal income tax law. The state essentially treats everyone as an individual taxpayer, even when filing a joint tax return. However, the regulation is unfair as married couples having both capital gains and losses (same class of income) may incur a different tax liability depending on whether the assets were jointly owned. My legislation would remove this ban and allow joint filers to offset income within the same class.

For example, if both husband and wife jointly own assets and receive capital gains of \$6,000 and losses of \$4,000, they would report a net gain of \$2,000. The husband's net gain is \$1,000 (his half of the \$6,000 gain less his share of the \$4,000 loss) and the wife's net gain is \$1,000 (same as above). However, if a husband and wife jointly owned one asset which realized a gain of \$6,000 but the wife individually owned another asset which realized a \$4,000 loss, their tax liability (net gain) would be \$3,000. The husband's net gain is \$3,000 (his half of the \$6,000 gain) while the wife incurred a net loss of \$1,000 (her half of the \$6,000 gain less the \$4,000 loss). Since the wife's separate loss may not reduce her husband's gain, they must report a gain of \$3,000. The tax liability for a married couple can be different simply because of how the assets are titled. My legislation corrects this inconsistent result.

If you would like to cosponsor this legislation, please contact Pat Snively of my office by e-mailing her at psnively@pasen.gov.