

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 953

Session of
1979

INTRODUCED BY VROON, CORNELL, NAHILL, PITTS, E. R. LYNCH,
E. H. SMITH, E. Z. TAYLOR, MOEHLMANN, STAIRS, LEVI, KNEPPER,
F. TAYLOR, TADDONIO, POTT AND RAPPAPORT, MARCH 28, 1979

REFERRED TO COMMITTEE ON FINANCE, MARCH 28, 1979

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. Clause (3) of subsection (a) of section 303, act
15 of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of
16 1971," added August 31, 1971 (P.L.362, No.93), and amended June
17 17, 1974 (P.L.325, No.105), is amended to read:

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

20 * * *

21 (3) Net gains or income from disposition of property. Net
22 gains or net income, less net losses, derived from the sale,

1 exchange or other disposition of property, including real or
2 personal, whether tangible or intangible as determined in
3 accordance with accepted accounting principles and practices.
4 Whenever net losses shall exceed net gains in any year, those
5 net losses which exceed net gains may be carried over into the
6 next and succeeding years and may be applied against subsequent
7 net gains until such net losses are exhausted. For the purpose
8 of this act, for the determination of the basis of any property,
9 real and personal, if acquired prior to June 1, 1971, the date
10 of acquisition shall be adjusted to June 1, 1971 as if the
11 property had been acquired on that date. If the property was
12 acquired after June 1, 1971, the actual date of acquisition
13 shall be used in determination of the basis.

14 The term "net gains or income" shall not include gains or
15 income derived from obligations which are statutorily free from
16 State or local taxation under any other act of the General
17 Assembly of the Commonwealth of Pennsylvania or under the laws
18 of the United States. The term "sale, exchange or other
19 disposition" shall not include the exchange of stock or
20 securities in a corporation a party to a reorganization in
21 pursuance of a plan of reorganization, solely for stock or
22 securities in such corporation or in another corporation a party
23 to the reorganization and the transfer of property to a
24 corporation by one or more persons solely in exchange for stock
25 or securities in such corporation if immediately after the
26 exchange such person or persons are in control of the
27 corporation. For purposes of this clause, stock or securities
28 issued for services shall not be considered as issued in return
29 for property.

30 For purposes of this clause, the term "reorganization"

1 means--

2 (i) a statutory merger or consolidation;

3 (ii) the acquisition by one corporation, in exchange solely
4 for all or a part of its voting stock (or in exchange solely for
5 all or a part of the voting stock of a corporation which is in
6 control of the acquiring corporation) of stock of another
7 corporation if, immediately after the acquisition, the acquiring
8 corporation has control of such other corporation (whether or
9 not such acquiring corporation had control immediately before
10 the acquisition);

11 (iii) the acquisition by one corporation, in exchange solely
12 for all or a part of its voting stock (or in exchange solely for
13 all or a part of the voting stock of a corporation which is in
14 control of the acquiring corporation), of substantially all of
15 the properties of another corporation, but in determining
16 whether the exchange is solely for stock the assumption by the
17 acquiring corporation of a liability of the other, or the fact
18 that property acquired is subject to a liability, shall be
19 disregarded;

20 (iv) a transfer by a corporation of all or a part of its
21 assets to another corporation if immediately after the transfer
22 the transferor, or one or more of its shareholders (including
23 persons who were shareholders immediately before the transfer),
24 or any combination thereof, is in control of the corporation to
25 which the assets are transferred;

26 (v) a recapitalization;

27 (vi) a mere change in indentify, form, or place of
28 organization however effected; or

29 (vii) the acquisition by one corporation, in exchange for
30 stock of a corporation (referred to in this subclause as

1 "controlling corporation") which is in control of the acquiring
2 corporation, of substantially all of the properties of another
3 corporation which in the transaction is merged into the
4 acquiring corporation shall not disqualify a transaction under
5 subclause (i) if such transaction would have qualified under
6 subclause (i) if the merger had been into the controlling
7 corporation, and no stock of the acquiring corporation is used
8 in the transaction;

9 (viii) a transaction otherwise qualifying under subclause
10 (i) shall not be disqualified by reason of the fact that stock
11 of a corporation (referred to in this subclause as the
12 "controlling corporation") which before the merger was in
13 control of the merged corporation is used in the transaction, if
14 after the transaction, the corporation surviving the merger
15 holds substantially all of its properties and of the properties
16 of the merged corporation (other than stock of the controlling
17 corporation distributed in the transaction); and in the
18 transaction, former shareholders of the surviving corporation
19 exchanged, for an amount of voting stock of the controlling
20 corporation, an amount of stock in the surviving corporation
21 which constitutes control of such corporation.

22 For purposes of this clause, the term "control" means the
23 ownership of stock possessing at least eighty per cent of the
24 total combined voting power of all classes of stock entitled to
25 vote and at least eighty per cent of the total number of shares
26 of all other classes of stock of the corporation.

27 For purposes of this clause, the term "a party to a
28 reorganization" includes a corporation resulting from a
29 reorganization, and both corporations, in the case of a
30 reorganization resulting from the acquisition by one corporation

1 of stock or properties of another. In the case of a
2 reorganization qualifying under subclause (i) by reason of
3 subclause (vii) the term "a party to a reorganization" includes
4 the controlling corporation referred to in such subclause (vii).

5 Notwithstanding any provisions hereof, upon every such
6 exchange or conversion, the taxpayer's base for the stock or
7 securities received shall be the same as the taxpayer's actual
8 or attributed base for the stock, securities or property
9 surrendered in exchange therefor.

10 * * *

11 Section 2. Irrespective of its time of final enactment, this
12 act shall take effect January 1, 1979.