

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL  
No. 1168 Session of  
1979

INTRODUCED BY CORNELL, NAHILL, LEWIS, GLADECK, McKELVEY AND  
VROON, MAY 2, 1979

REFERRED TO COMMITTEE ON FINANCE, MAY 2, 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," excluding from income the gain from the sale of  
11 the principal residence by an individual age fifty-five or  
12 over.

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

15 Section 1. Clause (3) of subsection (a) of section 303, act  
16 of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of  
17 1971," added August 31, 1971 (P.L.362, No.93) and amended June  
18 17, 1974 (P.L.325, No.105), is amended to read:

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

21 \* \* \*

22 (3) Net gains or income from disposition of property. Net  
23 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 For the purpose of this act, for the determination of the basis  
5 of any property, real and personal, if acquired prior to June 1,  
6 1971, the date of acquisition shall be adjusted to June 1, 1971  
7 as if the property had been acquired on that date. If the  
8 property was acquired after June 1, 1971, the actual date of  
9 acquisition shall be used in determination of the basis.

10 At the election of the taxpayer, net gains does not include  
11 gain from the sale or exchange of property if the taxpayer has  
12 attained the age of fifty-five before the date of such sale or  
13 exchange, and during the five-year period ending on the date of  
14 the sale or exchange, such property has been owned and used by  
15 the taxpayer as his principal residence for periods aggregating  
16 three years or more. The amount of the gain excluded from net  
17 gain shall not exceed one hundred thousand dollars (\$100,000) or  
18 fifty thousand dollars (\$50,000) in the case of a separate  
19 return by a married individual. This provision shall apply to  
20 only one sale or exchange; however, in the case of any sale or  
21 exchange after July 26, 1978, this section shall be applied by  
22 not taking into account any election made with respect to a sale  
23 or exchange on or before such date.

24 The term "net gains or income" shall not include gains or  
25 income derived from obligations which are statutorily free from  
26 State or local taxation under any other act of the General  
27 Assembly of the Commonwealth of Pennsylvania or under the laws  
28 of the United States. The term "sale, exchange or other  
29 disposition" shall not include the exchange of stock or  
30 securities in a corporation a party to a reorganization in

1   pursuance of a plan of reorganization, solely for stock or  
2   securities in such corporation or in another corporation a party  
3   to the reorganization and the transfer of property to a  
4   corporation by one or more persons solely in exchange for stock  
5   or securities in such corporation if immediately after the  
6   exchange such person or persons are in control of the  
7   corporation. For purposes of this clause, stock or securities  
8   issued for services shall not be considered as issued in return  
9   for property.

10       For purposes of this clause, the term "reorganization"  
11   means--

12       (i)   a statutory merger or consolidation;

13       (ii)   the acquisition by one corporation, in exchange solely  
14   for all or a part of its voting stock (or in exchange solely for  
15   all or a part of the voting stock of a corporation which is in  
16   control of the acquiring corporation) of stock of another  
17   corporation if, immediately after the acquisition, the acquiring  
18   corporation has control of such other corporation (whether or  
19   not such acquiring corporation had control immediately before  
20   the acquisition);

21       (iii)  the acquisition by one corporation, in exchange solely  
22   for all or a part of its voting stock (or in exchange solely for  
23   all or a part of the voting stock of a corporation which is in  
24   control of the acquiring corporation), of substantially all of  
25   the properties of another corporation, but in determining  
26   whether the exchange is solely for stock the assumption by the  
27   acquiring corporation of a liability of the other, or the fact  
28   that property acquired is subject to a liability, shall be  
29   disregarded;

30       (iv)   a transfer by a corporation of all or a part of its

1 assets to another corporation if immediately after the transfer  
2 the transferor, or one or more of its shareholders (including  
3 persons who were shareholders immediately before the transfer),  
4 or any combination thereof, is in control of the corporation to  
5 which the assets are transferred;

6 (v) a recapitalization;

7 (vi) a mere change in identity, form, or place of  
8 organization however effected; or

9 (vii) the acquisition by one corporation, in exchange for  
10 stock of a corporation (referred to in this subclause as  
11 "controlling corporation") which is in control of the acquiring  
12 corporation, of substantially all of the properties of another  
13 corporation which in the transaction is merged into the  
14 acquiring corporation shall not disqualify a transaction under  
15 subclause (i) if such transaction would have qualified under  
16 subclause (i) if the merger had been into the controlling  
17 corporation, and no stock of the acquiring corporation is used  
18 in the transaction;

19 (viii) a transaction otherwise qualifying under subclause  
20 (i) shall not be disqualified by reason of the fact that stock  
21 of a corporation (referred to in this subclause as the  
22 "controlling corporation") which before the merger was in  
23 control of the merged corporation is used in the transaction, if  
24 after the transaction, the corporation surviving the merger  
25 holds substantially all of its properties and of the properties  
26 of the merged corporation (other than stock of the controlling  
27 corporation distributed in the transaction); and in the  
28 transaction, former shareholders of the surviving corporation  
29 exchanged, for an amount of voting stock of the controlling  
30 corporation, an amount of stock in the surviving corporation

1   which constitutes control of such corporation.

2       For purposes of this clause, the term "control" means the  
3   ownership of stock possessing at least eighty per cent of the  
4   total combined voting power of all classes of stock entitled to  
5   vote and at least eighty per cent of the total number of shares  
6   of all other classes of stock of the corporation.

7       For purposes of this clause, the term "a party to a  
8   reorganization" includes a corporation resulting from a  
9   reorganization, and both corporations, in the case of a  
10   reorganization resulting from the acquisition by one corporation  
11   of stock or properties of another. In the case of a  
12   reorganization qualifying under subclause (i) by reason of  
13   subclause (vii) the term "a party to a reorganization" includes  
14   the controlling corporation referred to in such subclause (vii).

15       Notwithstanding any provisions hereof, upon every such  
16   exchange or conversion, the taxpayer's base for the stock or  
17   securities received shall be the same as the taxpayer's actual  
18   or attributed base for the stock, securities or property  
19   surrendered in exchange therefor.

20       \* \* \*

21       Section 2. This act shall take effect immediately and be  
22   retroactive to July 26, 1978.