

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1577 Session of  
1979

INTRODUCED BY LEVI, W. D. HUTCHINSON, GOODMAN AND O'DONNELL,  
JUNE 28, 1979

REFERRED TO COMMITTEE ON FINANCE, JUNE 29, 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," further providing for acquisition date of  
11 property from a decedent for capital gains taxation.

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," amended June 17, 1974 (P.L.325, No.105), is amended to  
17 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 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. If the  
10 property was acquired by devise or bequest from a decedent, the  
11 date of acquisition shall be the date of death of the decedent.

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

28 For purposes of this clause, the term "reorganization"  
29 means--

30 (i) a statutory merger or consolidation;

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

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

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

24       (v) a recapitalization;

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

27       (vii) the acquisition by one corporation, in exchange for  
28 stock of a corporation (referred to in this subclause as  
29 "controlling corporation") which is in control of the acquiring  
30 corporation, of substantially all of the properties of another

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

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

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

25 For purposes of this clause, the term "a party to a  
26 reorganization" includes a corporation resulting from a  
27 reorganization, and both corporations, in the case of a  
28 reorganization resulting from the acquisition by one corporation  
29 of stock or properties of another. In the case of a  
30 reorganization qualifying under subclause (i) by reason of

1 subclause (vii) the term "a party to a reorganization" includes  
2 the controlling corporation referred to in such subclause (vii).

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

8       \* \* \*

9       Section 2. This act shall take effect in 60 days.