

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 185

Session of
1983

INTRODUCED BY LEVI, HUTCHINSON, A. C. FOSTER, JR., DOMBROWSKI,
MACKOWSKI AND DININNI, FEBRUARY 8, 1983

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 8, 1983

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 the acquisition date for
11 income tax purposes of property sold by a decedent's estate.

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

14 Section 1. Section 303(a)(3) of the act of March 4, 1971
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended
16 June 17, 1974 (P.L.325, No.105), is amended to read:

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

19 * * *

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

1 personal, whether tangible or intangible as determined in
2 accordance with accepted accounting principles and practices.
3 For the purpose of this act, for the determination of the basis
4 of any property, real and personal, if acquired prior to June 1,
5 1971, the date of acquisition shall be adjusted to June 1, 1971
6 as if the property had been acquired on that date. If the
7 property was acquired after June 1, 1971, the actual date of
8 acquisition shall be used in determination of the basis. If the
9 property is sold by a decedent's estate, the date of acquisition
10 for the estate shall be the date of death of the decedent.

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

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

29 (i) a statutory merger or consolidation;

30 (ii) the acquisition by one corporation, in exchange solely

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

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

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

23 (v) a recapitalization;

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

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

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

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

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

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

1 the controlling corporation referred to in such subclause (vii).

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

7 * * *

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