

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 492 Session of 1991

INTRODUCED BY ADOLPH, NAILOR, BUSH, FARGO, MICOZZIE, FARMER, COWELL, CARONE, NOYE, MARSICO, ALLEN, BELFANTI, STABACK, RAYMOND, TRELLO, BARLEY, GEIST, GODSHALL, WOZNIAK, WOGAN, BILLOW, GANNON, JOHNSON, MERRY, G. SNYDER, KING, HALUSKA, SAURMAN, DEMPSEY, DeLUCA, NAHILL, CORNELL, CARLSON, BUNT, HERMAN, E. Z. TAYLOR, ITKIN, TANGRETTI, D. W. SNYDER, CIVERA, FLICK, MICHLOVIC, FOX AND VANCE, MARCH 11, 1991

REFERRED TO COMMITTEE ON FINANCE, MARCH 11, 1991

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 limitations on determining gains
11 from disposition of real property.

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 July 13, 1987 (P.L.325, No.59), 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]

1 Subject to the limitations set forth in section 303.1, net gains
2 or net income, less net losses, derived from the sale, exchange
3 or other disposition of property, including real or personal,
4 whether tangible or intangible as determined in accordance with
5 accepted accounting principles and practices. For the purpose of
6 this act, for the determination of the basis of any property,
7 real and personal, if acquired prior to June 1, 1971, the date
8 of acquisition shall be adjusted to June 1, 1971, as if the
9 property had been acquired on that date. If the property was
10 acquired after June 1, 1971, the actual date of acquisition
11 shall be used in determination of the basis.

12 [At the election of the taxpayer, the term "net gains or
13 income" shall not include net gain in an amount not to exceed
14 one hundred thousand dollars (\$100,000), or a pro rata part of
15 one hundred thousand dollars (\$100,000) if the property is owned
16 by more than one taxpayer, from the sale or exchange of the
17 taxpayer's principal residence if the taxpayer has attained
18 fifty-five years of age before the date of the sale or exchange.
19 If the property is held by a husband and wife and they make a
20 joint return for the taxable year of the sale or exchange and
21 one spouse satisfies the age, ownership and use requirements of
22 this clause with respect to the property, then both husband and
23 wife shall be treated as satisfying the age, ownership and use
24 requirements of this clause. For purposes of this clause, in the
25 case of an unremarried individual whose spouse is deceased on
26 the date of sale or exchange of the property, if the deceased
27 spouse, during the five-year period ending on the date of sale
28 or exchange satisfied the holding and use requirements with
29 respect to such property, then such individual shall be treated
30 as satisfying holding and use requirements with respect to such

1 property. For the purposes of this clause, the term "sale or
2 exchange" shall include involuntary conversions such as the
3 destruction, theft, seizure, requisition or condemnation of the
4 property. For the purposes of this clause, the term "principal
5 residence" shall mean the property that has been owned and used
6 by the taxpayer as his principal residence for periods
7 aggregating three years or more during the five-year period
8 ending on the date of the sale or exchange. In the case of
9 property only a portion of which, during the five-year period
10 ending on the date of the sale or exchange, has been owned or
11 used by the taxpayer as the taxpayer's principal residence for
12 periods aggregating three years or more, this section shall
13 apply with respect to so much of the gain from the sale or
14 exchange of such property as is determined under regulations
15 prescribed by the department to be attributable to the portion
16 of the property so owned and used by the taxpayer. The term
17 "used" shall include time the property was not used for rental
18 purposes and was unoccupied by the taxpayer due to the taxpayer
19 being in a hospital, nursing home or personal care facility, or
20 for a period of less than ninety consecutive days. The
21 provisions of this clause shall not apply to any sale or
22 exchange made prior to July 1, 1987. An election under this
23 clause may be made or revoked at any time before the expiration
24 of the period for making a claim for a refund of the tax imposed
25 by this article for the taxable year in which the sale or
26 exchange occurred. The provisions of this clause shall be used
27 only once during the lifetime of the taxpayer.

28 The term "net gains or income" shall not include gains or
29 income derived from obligations which are statutorily free from
30 State or local taxation under any other act of the General

1 Assembly of the Commonwealth of Pennsylvania or under the laws
2 of the United States. The term "sale, exchange or other
3 disposition" shall not include the exchange of stock or
4 securities in a corporation a party to a reorganization in
5 pursuance of a plan of reorganization, solely for stock or
6 securities in such corporation or in another corporation a party
7 to the reorganization and the transfer of property to a
8 corporation by one or more persons solely in exchange for stock
9 or securities in such corporation if immediately after the
10 exchange such person or persons are in control of the
11 corporation. For purposes of this clause, stock or securities
12 issued for services shall not be considered as issued in return
13 for property.

14 For purposes of this clause, the term "reorganization"
15 means--

16 (i) a statutory merger or consolidation;

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

25 (iii) the acquisition by one corporation, in exchange solely
26 for all or a part of its voting stock (or in exchange solely for
27 all or a part of the voting stock of a corporation which is in
28 control of the acquiring corporation), of substantially all of
29 the properties of another corporation, but in determining
30 whether the exchange is solely for stock the assumption by the

1 acquiring corporation of a liability of the other, or the fact
2 that property acquired is subject to a liability, shall be
3 disregarded;

4 (iv) a transfer by a corporation of all or a part of its
5 assets to another corporation if immediately after the transfer
6 the transferor, or one or more of its shareholders (including
7 persons who were shareholders immediately before the transfer),
8 or any combination thereof, is in control of the corporation to
9 which the assets are transferred;

10 (v) a recapitalization;

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

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

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

1 corporation distributed in the transaction); and in the
2 transaction, former shareholders of the surviving corporation
3 exchanged, for an amount of voting stock of the controlling
4 corporation, an amount of stock in the surviving corporation
5 which constitutes control of such corporation.

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

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

19 Notwithstanding any provisions hereof, upon every such
20 exchange or conversion, the taxpayer's base for the stock or
21 securities received shall be the same as the taxpayer's actual
22 or attributed base for the stock, securities or property
23 surrendered in exchange therefor.]

24 * * *

25 Section 2. The act is amended by adding a section to read:

26 Section 303.1. Limitations on Determination of Net Gains or
27 Net Income.--In determining taxable income on net gains or net
28 income from a disposition of property under section 303(a)(3),
29 the following limitations shall apply:

30 (1) At the election of the taxpayer, the term "net gains or

1 income" as used in section 303(a)(3) shall not include net gain
2 in an amount not to exceed one hundred thousand dollars
3 (\$100,000), or a pro rata part of one hundred thousand dollars
4 (\$100,000) if the property is owned by more than one taxpayer,
5 from the sale or exchange of the taxpayer's principal residence
6 if the taxpayer has attained fifty-five years of age before the
7 date of the sale or exchange. If the property is held by a
8 husband and wife and they make a joint return for the taxable
9 year of the sale or exchange and one spouse satisfies the age,
10 ownership and use requirements of this clause with respect to
11 the property, then both husband and wife shall be treated as
12 satisfying the age, ownership and use requirements of this
13 clause. For purposes of this clause, in the case of an
14 unremarried individual whose spouse is deceased on the date of
15 sale or exchange of the property, if the deceased spouse, during
16 the five-year period ending on the date of sale or exchange
17 satisfied the holding and use requirements with respect to such
18 property, then such individual shall be treated as satisfying
19 holding and use requirements with respect to such property. The
20 provisions of this clause shall not apply to any sale or
21 exchange made prior to July 1, 1987. An election under this
22 clause may be made or revoked at any time before the expiration
23 of the period for making a claim for a refund of the tax imposed
24 by this article for the taxable year in which the sale or
25 exchange occurred. The provisions of this clause shall be used
26 only once during the lifetime of the taxpayer.

27 (2) For the purposes of clause (1):

28 (i) The term "sale or exchange" shall include involuntary
29 conversions such as the destruction, theft, seizure, requisition
30 or condemnation of the property.

1 (ii) The term "principal residence" shall mean the property
2 that has been owned and used by the taxpayer as his principal
3 residence for periods aggregating three years or more during the
4 five-year period ending on the date of the sale or exchange. In
5 the case of property only a portion of which, during the five-
6 year period ending on the date of the sale or exchange, has been
7 owned or used by the taxpayer as the taxpayer's principal
8 residence for periods aggregating three years or more, this
9 section shall apply with respect to so much of the gain from the
10 sale or exchange of such property as is determined under
11 regulations prescribed by the department to be attributable to
12 the portion of the property so owned and used by the taxpayer.

13 (iii) The term "used" shall include time the property was
14 not used for rental purposes and was unoccupied by the taxpayer
15 due to the taxpayer being in a hospital, nursing home or
16 personal care facility, or for a period of less than ninety
17 consecutive days.

18 (3) The term "net gains or income" as used in section
19 303(a)(3) shall not include gains or income derived from
20 obligations which are statutorily free from State or local
21 taxation under any other act of the General Assembly of the
22 Commonwealth of Pennsylvania or under the laws of the United
23 States. The term "sale, exchange or other disposition" shall not
24 include the exchange of stock or securities in a corporation a
25 party to a reorganization in pursuance of a plan of
26 reorganization, solely for stock or securities in such
27 corporation or in another corporation a party to the
28 reorganization and the transfer of property to a corporation by
29 one or more persons solely in exchange for stock or securities
30 in such corporation if immediately after the exchange such

person or persons are in control of the corporation. For purposes of this clause, stock or securities issued for services shall not be considered as issued in return for property.

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

(4) For purposes of clause (3):

(i) The term "reorganization" means--

(A) a statutory merger or consolidation;

(B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation) of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(C) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded;

(D) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer

the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred;

(E) a recapitalization;

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

(G) the acquisition by one corporation, in exchange for stock of a corporation (referred to in this subclause as "controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under subclause (i)(A) if such transaction would have qualified under subclause (i)(A) if the merger had been into the controlling corporation, and no stock of the acquiring corporation is used in the transaction; or

(H) a transaction otherwise qualifying under subclause (i)(A) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subclause as the "controlling corporation") which before the merger was in control of the merged corporation is used in the transaction, if after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

1 (ii) The term "control" means the ownership of stock
2 possessing at least eighty per cent of the total combined voting
3 power of all classes of stock entitled to vote and at least
4 eighty per cent of the total number of shares of all other
5 classes of stock of the corporation.

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

14 (5) If property (in this clause and clause (6) called "old
15 residence") used by the taxpayer as his principal residence is
16 sold by him and, within a period beginning two years before the
17 date of such sale and ending two years after such date, property
18 (in this clause and clause (6) called "new residence") is
19 purchased and used by the taxpayer as his principal residence,
20 gain, if any, from such sale shall be recognized only to the
21 extent that the taxpayer's adjusted sales price of the old
22 residence exceeds the taxpayer's cost of purchasing the new
23 residence.

24 (6) For purposes of clause (5), the adjusted basis of the
25 new residence shall be reduced by the gain not recognized on the
26 sale of the old residence.

27 Section 3. This act shall take effect in 60 days.