

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**SENATE BILL**

**No. 1191** Session of  
1993

INTRODUCED BY LINCOLN, MELLOW, FUMO, REIBMAN, AFFLERBACH,  
STAPLETON, O'PAKE, STEWART, PORTERFIELD, SCHWARTZ, LAVALLE,  
MUSTO, ANDREZESKI, STOUT, WILLIAMS, DAWIDA, FATTAH, LEWIS,  
BELAN, LYNCH, JONES, SCANLON AND MOWERY, JUNE 2, 1993

REFERRED TO FINANCE, JUNE 2, 1993

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 defining "taxable income" and "average  
11 net income" for capital stock and franchise tax computations.

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

14 Section 1. Section 401(3)4(a) and (c) of the act of March 4,  
15 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971,  
16 amended July 1, 1985 (P.L.78, No.29) and August 4, 1991 (P.L.97,  
17 No.22), are amended to read:

18 Section 401. Definitions.--The following words, terms, and  
19 phrases, when used in this article, shall have the meaning  
20 ascribed to them in this section, except where the context  
21 clearly indicates a different meaning:

1 \* \* \*

2 (3) "Taxable income." \* \* \*

3 4. (a) For taxable years beginning in 1982 through taxable  
4 years beginning in 1990 and for the taxable year beginning in  
5 1993 and each year thereafter, a net loss deduction shall be  
6 allowed from taxable income as arrived at under subclause 1 or,  
7 if applicable, subclause 2. For taxable years beginning in 1991  
8 [and thereafter] through taxable years beginning in 1992, the  
9 net loss deduction allowed for years prior to 1991 shall be  
10 suspended, and no carryover of net losses from taxable years  
11 1988, 1989 and 1990 shall be utilized in calculating net income.

12 \* \* \*

13 (c) The net loss deduction shall be the lesser of the amount  
14 of the net loss or losses which may be carried over to the  
15 taxable year or taxable income as determined under subclause 1  
16 or, if applicable, subclause 2. A net loss for a taxable year  
17 may only be carried over pursuant to the following schedule:

18	Taxable Year	Carryover
19	1981	1 taxable year
20	1982	2 taxable years
21	[1983 and thereafter	3 taxable years]
22	<u>1983 through 1987</u>	<u>3 taxable years</u>
23	<u>1988</u>	<u>2 taxable years</u>
24	<u>1989</u>	<u>1 taxable year</u>
25	<u>1990-1991</u>	<u>No carryover allowed</u>
26	<u>1992 and thereafter</u>	<u>1 taxable year</u>

27 The earliest net loss shall be carried over to the earliest  
28 taxable year to which it may be carried under this schedule.

29 \* \* \*

30 Section 2. The definition of "average net income" in section

1 601(a) of the act, amended December 23, 1983 (P.L.360, No.89),  
2 is amended to read:

3 Section 601. Definitions and Reports.--(a) The following  
4 words, terms and phrases when used in this Article VI shall have  
5 the meaning ascribed to them in this section, except where the  
6 context clearly indicates a different meaning:

7 "Average net income." The sum of the net income or loss for  
8 each of the current and immediately preceding four years,  
9 divided by five. If the entity has not been in existence for a  
10 period of five years, the average net income shall be the  
11 average net income for the number of years that the entity has  
12 actually been in existence. In computing average net income,  
13 losses shall be entered as computed, but in no case shall  
14 average net income be less than zero. The net income or loss of  
15 the entity for any taxable year shall be computed by taking the  
16 amount set forth as income per books on the income tax return  
17 filed by the entity with the Federal Government for such taxable  
18 year, or if no such return is made, as would have been set forth  
19 had such a return been made, subject, however, in either case to  
20 any correction thereof, for fraud, evasion or error[.] and  
21 adding to such amount the amount of any dividends received from  
22 any subsidiary or investee corporation, which dividends are not  
23 already included in said income per books due to the application  
24 of consolidation or use of, the equity method of accounting or  
25 any other accounting method which would under value average net  
26 income unless such dividends are not specifically added to the  
27 income. In the case of any entity which has an investment in  
28 another corporation, the net income or loss shall be computed on  
29 an unconsolidated basis exclusive of the net income or loss of  
30 such other corporation.

1       Section 3. This act shall be retroactive to the tax years  
2 beginning on or after January 1, 1993.

3       Section 4. This act shall take effect immediately.