

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 870 Session of
2005

INTRODUCED BY D. WHITE, ROBBINS, RHOADES, JUBELIRER, WENGER,
ORIE, MELLOW, ERICKSON, C. WILLIAMS, RAFFERTY, BROWNE,
PILEGGI, WOZNIAK, LOGAN, PUNT, PIPPY, BOSCOLA, KASUNIC,
COSTA, GORDNER, MUSTO, STOUT, GREENLEAF AND WAUGH,
SEPTEMBER 21, 2005

REFERRED TO FINANCE, SEPTEMBER 21, 2005

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, in personal income tax, for
11 classes of income.

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

14 Section 1. Section 303(a)(1) of the act of March 4, 1971
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended
16 July 7, 2005 (P.L.149, No.40), is amended to read:

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

19 (1) Compensation.

20 (i) All salaries, wages, commissions, bonuses and incentive
21 payments whether based on profits or otherwise, fees, tips and

1 similar remuneration received for services rendered whether
2 directly or through an agent and whether in cash or in property
3 except income derived from the United States Government for
4 active duty outside the Commonwealth of Pennsylvania as a member
5 of its armed forces[.] and income from the United States
6 Government or the Commonwealth of Pennsylvania for active State
7 duty for emergency within or outside the Commonwealth of
8 Pennsylvania, including duty ordered pursuant to 35 Pa.C.S. Ch.
9 76 (relating to Emergency Management Assistance Compact).

10 (ii) Compensation of a cash-basis taxpayer shall be
11 considered as received if the compensation is actually or
12 constructively received for Federal income tax purposes as
13 determined consistent with the United States Treasury
14 regulations and rulings under the Internal Revenue Code of 1986,
15 as amended, except that, for purposes of computing tax under
16 this article:

17 (A) Amounts lawfully deducted, not deferred, and withheld
18 from the compensation of employes shall be considered to have
19 been received by the employe as compensation at the time the
20 deduction is made.

21 (B) Contributions to an employes' trust, pooled fund or
22 other arrangement which is not subject to the claims of
23 creditors of the employer made by an employer on behalf of an
24 employe or self-employed individual at the election of the
25 employe or self-employed individual pursuant to a cash or
26 deferred arrangement or salary reduction agreement shall be
27 deemed to have been received by the employe or individual as
28 compensation at the time the contribution is made, regardless of
29 when the election is made or a payment is received.

30 (C) Any contribution to a plan by, on behalf of or

1 attributable to a self-employed person shall be deemed to have
2 been received at the time the contribution is made.

3 (D) Employer contributions to a Roth IRA custodial account
4 or employe annuity shall be deemed received, earned or acquired
5 only when distributed, when the plan fails to meet the
6 requirements of section 408A of the Internal Revenue Code of
7 1986 (26 U.S.C. § 408A), as amended, or when the plan is not
8 operated in accordance with such requirements.

9 (E) Employe contributions to an employes' trust or pooled
10 fund or custodial account or contract or employe annuity shall
11 not be deducted or excluded from compensation.

12 (iii) For purposes of determining when deferred compensation
13 of employes other than employes of exempt organizations and
14 State and local governments is required to be included in
15 income, the following apply:

16 (A) The rules of sections 83 and 451 of the Internal Revenue
17 Code of 1986 (26 U.S.C. §§ 83 and 451), as amended, shall apply.

18 (B) The rules of section 409A of the Internal Revenue Code
19 of 1986 (26 U.S.C. § 409A), as amended, shall apply.

20 (iv) For purposes of determining when deferred compensation
21 of employes of exempt organizations and State and local
22 governments is required to be included in income, the following
23 apply:

24 (A) The rules of sections 83, 451 and 457 of the Internal
25 Revenue Code of 1986, as amended, shall apply.

26 (B) The rules of section 409A of the Internal Revenue Code
27 of 1986, as amended, shall apply.

28 * * *

29 Section 2. The amendment of section 303(a) of the act shall
30 apply to taxable years beginning after December 31, 2005.

1 Section 3. This act shall take effect immediately.