

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 665 Session of  
2011

INTRODUCED BY REICHLEY, CALTAGIRONE, CARROLL, EVERETT, FLECK,  
GEIST, GOODMAN, GRELL, HARHART, HESS, HORNAMAN, KILLION,  
LONGIETTI, MANN, MARSICO, MILNE, O'NEILL, PETRI, READSHAW,  
SWANGER, VULAKOVICH, WAGNER, WATSON, GILLEN, BOYD, ROCK,  
YOUNGBLOOD, MICOZZIE, MURT, FARRY AND BEAR, FEBRUARY 14, 2011

AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES,  
AS AMENDED, MAY 23, 2011

## 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 income tax returns.

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

13 Section 1. Section 331(e) of the act of March 4, 1971  
14 (P.L.6, No.2), known as the Tax Reform Code of 1971, added  
15 August 31, 1971 (P.L.362, No.93), is amended and the section is  
16 amended by adding subsections to read:

17 Section 331. Returns of Married Individuals, Deceased or  
18 Disabled Individuals and Fiduciaries.--\* \* \*

19 (e) [The] Except as provided under subsections (e.1) and  
20 (e.2), the final return for any deceased individual shall be

1 made, SIGNED and filed by his executor, administrator, or other  
2 [person] personal representative charged with his property. ←

3 ~~(e.1) (1) A surviving spouse may file a joint return for~~ ←  
4 ~~the year in which his or her spouse died if the joint return~~  
5 ~~could have been filed if both spouses were living for the entire~~  
6 ~~taxable year.~~

7 ~~(2) If a personal representative, executor or administrator~~  
8 ~~is appointed on behalf of the deceased spouse before the tax~~  
9 ~~return is filed, the surviving spouse may not file a joint~~  
10 ~~return without the consent of the fiduciary. Both the fiduciary~~  
11 ~~and the surviving spouse must sign the joint return. The~~  
12 ~~surviving spouse may file a joint return with the deceased~~  
13 ~~spouse if the deceased spouse did not previously file a return~~  
14 ~~for that taxable year and if a personal representative, executor~~  
15 ~~or administrator has not been appointed by the time the joint~~  
16 ~~return is made or before the due date for filing the return of~~  
17 ~~the surviving spouse, including extensions. If the surviving~~  
18 ~~spouse properly files a joint return under this paragraph, the~~  
19 ~~fiduciary may supersede the surviving spouse by filing a~~  
20 ~~separate return for the decedent within one year after the due~~  
21 ~~date, including extensions. Any joint return improperly filed by~~  
22 ~~the surviving spouse or disaffirmed by the fiduciary shall be~~  
23 ~~treated as a separate return of the survivor. The surviving~~  
24 ~~spouse shall be required to file an amended return.~~

25 ~~(e.2) If both taxpayers die during the same tax year, a~~  
26 ~~joint final return may be filed if a joint return could have~~  
27 ~~been filed had both spouses lived for the entire taxable year~~  
28 ~~and with the consent of the personal representatives, executors~~  
29 ~~or administrators of both deceased spouses under subsection~~  
30 ~~(e.1) by the due date, including extensions, of the joint tax~~

1 ~~return. Both fiduciaries must sign the joint return.~~

2 (E.1) (1) DURING THE YEAR IN WHICH A SPOUSE DIES, A  
3 SURVIVING SPOUSE MAY FILE HIS OR HER RETURN FOR THE YEAR JOINTLY  
4 WITH THE FINAL RETURN OF HIS OR HER DECEASED SPOUSE IF THE JOINT  
5 RETURN COULD HAVE BEEN FILED IF BOTH SPOUSES WERE LIVING FOR THE  
6 ENTIRE TAXABLE YEAR. IF A PERSONAL REPRESENTATIVE, EXECUTOR OR  
7 ADMINISTRATOR OR OTHER FIDUCIARY IS APPOINTED ON BEHALF OF THE  
8 DECEASED SPOUSE BEFORE THE DECEASED SPOUSE'S TAX RETURN IS  
9 FILED, THE SURVIVING SPOUSE MAY NOT FILE A JOINT RETURN WITHOUT  
10 THE CONSENT OF THE FIDUCIARY. IF A JOINT RETURN IS FILED, BOTH  
11 THE FIDUCIARY OF THE DECEASED SPOUSE'S ESTATE AND THE SURVIVING  
12 SPOUSE MUST SIGN THE JOINT RETURN.

13 (2) A SURVIVING SPOUSE MAY MAKE, SIGN AND FILE THE FINAL TAX  
14 RETURN OF HIS OR HER DECEASED SPOUSE IF THE DECEASED SPOUSE DID  
15 NOT PREVIOUSLY FILE A RETURN FOR THAT TAXABLE YEAR AND IF A  
16 PERSONAL REPRESENTATIVE, EXECUTOR OR ADMINISTRATOR HAS NOT BEEN  
17 APPOINTED BY THE TIME THE RETURN IS MADE, SIGNED AND FILED. IF  
18 THE SURVIVING SPOUSE PROPERLY FILES A FINAL RETURN FOR THE  
19 DECEASED SPOUSE UNDER THIS PARAGRAPH, A FIDUCIARY WHO IS LATER  
20 APPOINTED FOR THE DECEASED SPOUSE MAY SUPERSEDE THE FINAL RETURN  
21 FILED BY THE SURVIVING SPOUSE BY FILING A SEPARATE RETURN FOR  
22 THE DECEASED SPOUSE. ANY JOINT RETURN IMPROPERLY FILED BY THE  
23 SURVIVING SPOUSE OR SUPERSEDED BY THE FIDUCIARY SHALL BE TREATED  
24 AS VOID. IF THE SURVIVING SPOUSE FILES HIS OR HER OWN TAX RETURN  
25 JOINTLY WITH THE DECEASED SPOUSE'S RETURN UNDER THIS PARAGRAPH  
26 AND THE RETURN IS SUPERSEDED BY THE FILING OF A RETURN BY THE  
27 DECEASED SPOUSE'S FIDUCIARY, THE SURVIVING SPOUSE SHALL BE  
28 REQUIRED TO FILE SEPARATE RETURN WITHIN 90 DAYS OF THE FILING OF  
29 THE FIDUCIARY'S RETURN. THE SURVIVING SPOUSE'S SEPARATE RETURN  
30 SHALL BE DEEMED TO BE FILED:

1 (I) ON THE DAY THE JOINT RETURN WAS FILED IF IT IS FILED  
2 WITHIN SUCH TIME; OR

3 (II) THE DATE THE DEPARTMENT RECEIVES IT.

4 (E.2) IF BOTH TAXPAYERS DIE DURING THE SAME TAX YEAR, A  
5 FINAL RETURN FOR EACH DECEASED SPOUSE MAY BE JOINTLY FILED IF A  
6 JOINT RETURN COULD HAVE BEEN FILED HAD BOTH SPOUSES LIVED FOR  
7 THE ENTIRE TAXABLE YEAR AND WITH THE CONSENT OF THE PERSONAL  
8 REPRESENTATIVES, EXECUTORS OR ADMINISTRATORS OF BOTH DECEASED  
9 SPOUSES UNDER SUBSECTION (E.1) BY THE DUE DATE, INCLUDING  
10 EXTENSIONS, OF THE JOINT TAX RETURN. BOTH FIDUCIARIES MUST SIGN  
11 THE JOINT RETURN.

12 \* \* \*

13 Section 2. This act shall apply to taxable years beginning  
14 after December 31, ~~2009~~ 2011. ←

15 Section 3. This act shall take effect immediately.