

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 69 Session of 2019

INTRODUCED BY RYAN, BERNSTINE, GROVE, IRVIN, KEEFER, LONGIETTI, MILLARD, OBERLANDER, PICKETT, ROTHMAN AND ZIMMERMAN, JANUARY 28, 2019

REFERRED TO COMMITTEE ON FINANCE, JANUARY 28, 2019

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," in personal income tax, further providing for
 11 definitions and for classes of income.

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

14 Section 1. The General Assembly finds and declares as
 15 follows:

16 (1) Pennsylvania instituted the Personal Income Tax
 17 (PIT) in 1971 after a constitutional amendment in the late
 18 1960s.

19 (2) Pennsylvania's PIT is levied against the taxable
 20 income of resident and nonresident individuals, estates and
 21 trusts, partnerships, S corporations, business trusts and
 22 limited liability companies that are not taxed as

1 corporations for Federal income tax purposes.

2 (3) Pennsylvania, at the time of the adoption of the
3 constitutional amendment, adopted a "necessary, ordinary and
4 reasonable" rule for the deduction of "all expenses" whether
5 they were for business, farming or unreimbursed employee
6 business expenses.

7 (4) At the time of the adoption of the constitutional
8 amendment, the Federal Government applied the same
9 "necessary, ordinary and reasonable" rule but currently
10 permits the use of "per diems" to allow business to
11 streamline recordkeeping and to eliminate wasted time during
12 Internal Revenue Service (IRS) audits on businesses and
13 taxpayers.

14 (5) IRS regulations allow businesses to reimburse their
15 employees for work-related expenses by providing businesses
16 with the option to account for each expenditure or use a per
17 diem rate plan that is based on IRS-established per diem
18 rates for lodging and meals plus incidental expenses.

19 (6) The Department of Revenue has concluded that "per
20 diems" as adopted by the United States Treasury for the IRS
21 and other branches of the Federal Government are excessive in
22 nature and do not constitute necessary, ordinary and
23 reasonable deductions, which create a financial hardship on
24 Pennsylvania businesses and Commonwealth employees.

25 (7) It is the intent of the General Assembly to rectify
26 the Department of Revenue's interpretation of the necessary,
27 ordinary and reasonable rule by requiring that the Department
28 of Revenue allow the constitutionally mandated deduction for
29 all ordinary, reasonable and necessary business expenses,
30 including the use of per diems established by the Federal

1 Government and to promulgate regulations accordingly.

2 Section 2. Sections 301(d) and 303(a)(1)(i) of the act of
3 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
4 1971, are amended to read:

5 Section 301. Definitions.--Any reference in this article to
6 the Internal Revenue Code of 1986 shall mean the Internal
7 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.),
8 as amended to January 1, 1997, unless the reference contains the
9 phrase "as amended" and refers to no other date, in which case
10 the reference shall be to the Internal Revenue Code of 1986 as
11 it exists as of the time of application of this article. The
12 following words, terms and phrases when used in this article
13 shall have the meaning ascribed to them in this section except
14 where the context clearly indicates a different meaning:

15 * * *

16 (d) "Compensation" means and shall include salaries, wages,
17 commissions, bonuses and incentive payments whether based on
18 profits or otherwise, fees, tips and similar remuneration
19 received for services rendered, whether directly or through an
20 agent, and whether in cash or in property. The term
21 "compensation" shall include any part of a distribution under a
22 plan described in section 409A(d)(1) of the Internal Revenue
23 Code of 1986 (Public Law 99-514, 26 U.S.C. § 409A(d)(1)), as
24 amended, attributable to an elective deferral of income or the
25 income on any elective deferral of income, whether paid or
26 payable during employment or to a retired person upon or after
27 retirement from service.

28 The term "compensation" shall not mean or include: (i)
29 periodic payments for sickness and disability other than regular
30 wages received during a period of sickness or disability; or

1 (ii) disability, retirement or other payments arising under
2 workmen's compensation acts, occupational disease acts and
3 similar legislation by any government; or (iii) payments
4 commonly recognized as old age or retirement benefits paid to
5 persons retired from service after reaching a specific age or
6 after a stated period of employment; or (iv) payments commonly
7 known as public assistance, or unemployment compensation
8 payments by any governmental agency; or (v) payments to
9 reimburse actual expenses, including per diem reimbursements
10 made pursuant to an accountable plan operated in accordance with
11 Federal law; or (vi) payments made by employers or labor unions,
12 including payments made pursuant to a cafeteria plan qualifying
13 under section 125 of the Internal Revenue Code of 1986 (Public
14 Law 99-514, 26 U.S.C. § 125), for employe benefit programs
15 covering hospitalization, sickness, disability or death,
16 supplemental unemployment benefits or strike benefits: Provided,
17 That the program does not discriminate in favor of highly
18 compensated individuals as to eligibility to participate,
19 payments or program benefits; or (vii) any compensation received
20 by United States servicemen serving in a combat zone; or (viii)
21 payments received by a foster parent for in-home care of foster
22 children from an agency of the Commonwealth or a political
23 subdivision thereof or an organization exempt from Federal tax
24 under section 501(c)(3) of the Internal Revenue Code of 1954
25 which is licensed by the Commonwealth or a political subdivision
26 thereof as a placement agency; or (ix) payments made by
27 employers or labor unions for employe benefit programs covering
28 social security or retirement; or (x) personal use of an
29 employer's owned or leased property or of employer-provided
30 services[.]; or (xi) amounts that are ordinary, reasonable or

1 necessary business expenses incurred by the taxpayer to the
2 extent the expenses are not reimbursed or are not eligible to be
3 reimbursed by the employer.

4 * * *

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

7 (1) Compensation.

8 (i) All salaries, wages, commissions, bonuses and incentive
9 payments whether based on profits or otherwise, fees, tips and
10 similar remuneration received for services rendered whether
11 directly or through an agent and whether in cash or in property
12 except income derived from the United States Government for
13 active duty outside the Commonwealth of Pennsylvania as a member
14 of its armed forces and income from the United States Government
15 or the Commonwealth of Pennsylvania for active State duty for
16 emergency within or outside the Commonwealth of Pennsylvania,
17 including duty ordered pursuant to 35 Pa.C.S. Ch. 76 (relating
18 to Emergency Management Assistance Compact). For the purposes of
19 this subparagraph, the term "compensation" shall not include
20 costs and expenses lawfully deducted.

21 * * *

22 Section 3. The following shall apply:

23 (1) The Department of Revenue shall, within 90 days of
24 the effective date of this section, promulgate temporary
25 regulations that effectively incorporate the regulations at 5
26 U.S.C. § 5702 and sections 162 and 274(d) of the Internal
27 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 162 and
28 274(d)) to effectuate the amendment of sections 301(d) and
29 303(a)(1)(i) of the act. The temporary regulations shall not
30 be subject to the following:

1 (i) Sections 201, 202, 203, 204 and 205 of the act
2 of July 31, 1968 (P.L.769, No.240), referred to as the
3 Commonwealth Documents Law.

4 (ii) Sections 204(b) and 301(10) of the act of
5 October 15, 1980 (P.L.950, No.164), known as the
6 Commonwealth Attorneys Act.

7 (iii) The act of June 25, 1982 (P.L.633, No.181),
8 known as the Regulatory Review Act.

9 (2) The temporary regulations shall expire upon the
10 promulgation of final-form regulations or two years following
11 the effective date of this section, whichever is later.
12 Section 4. This act shall take effect immediately.