

No. 1987-59

AN ACT

SB 445

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," further providing for net gains or income from disposition of property for purposes of taxes on personal income; further providing for the filing date of tax returns of Pennsylvania S corporations; further providing for the imposition of the mutual thrift institutions tax; providing for voluntary contributions to the United States Olympics Committee, Pennsylvania Division; and making a repeal.

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

Section 1. Section 303(a)(3) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended July 2, 1986 (P.L.318, No.77), is amended to read:

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

* * *

(3) Net gains or income from disposition of property. Net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real or personal, whether tangible or intangible as determined in accordance with accepted accounting principles and practices. For the purpose of this act, for the determination of the basis of any property, real and personal, if acquired prior to June 1, 1971, the date of acquisition shall be adjusted to June 1, 1971, as if the property had been acquired on that date. If the property was acquired after June 1, 1971, the actual date of acquisition shall be used in determination of the basis.

At the election of the taxpayer, the term "net gains or income" shall not include net gain in an amount not to exceed one hundred thousand dollars (\$100,000), [or fifty thousand dollars (\$50,000) in the case of a separate return by a married individual] or a pro rata part of one hundred thousand dollars (\$100,000) if the property is owned by more than one taxpayer, from the sale or exchange of the taxpayer's principal residence if the taxpayer has attained fifty-five years of age before the date of the sale or exchange. If the property is held by a husband and wife and they make a joint return for the taxable year of the sale or exchange and one spouse satisfies the age, ownership and use requirements of this clause with respect to the property, then both husband and wife shall be treated as satisfying the age, ownership and use requirements of this clause. *For purposes of this clause, in the case of an*

unremarried individual whose spouse is deceased on the date of sale or exchange of the property, if the deceased spouse, during the five-year period ending on the date of sale or exchange satisfied the holding and use requirements with respect to such property, then such individual shall be treated as satisfying holding and use requirements with respect to such property. For the purposes of this clause, the term "sale or exchange" shall include involuntary conversions such as the destruction, theft, seizure, requisition or condemnation of the property. For the purposes of this clause, the term "principal residence" shall mean the property that has been owned and used by the taxpayer as his principal residence for periods aggregating three years or more during the five-year period ending on the date of the sale or exchange. *In the case of property only a portion of which, during the five-year period ending on the date of the sale or exchange, has been owned or used by the taxpayer as the taxpayer's principal residence for periods aggregating three years or more, this section shall apply with respect to so much of the gain from the sale or exchange of such property as is determined under regulations prescribed by the department to be attributable to the portion of the property so owned and used by the taxpayer.* The term "used" shall include time the property was *not used for rental purposes* and was unoccupied by the taxpayer due to the taxpayer being in a hospital, nursing home or personal care facility **[and the property was not used for rental purposes], or for a period of less than ninety consecutive days.** The provisions of this clause shall not apply to any sale or exchange made prior to July 1, 1987. An election under this clause may be made or revoked at any time before the expiration of the period for making a claim for a refund of the tax imposed by this article for the taxable year in which the sale or exchange occurred. The provisions of this clause shall be used only once during the lifetime of the taxpayer **[or a spouse or a surviving spouse of any deceased taxpayer].**

The term "net gains or income" shall not include gains or income derived from obligations which are statutorily free from State or local taxation under any other act of the General Assembly of the Commonwealth of Pennsylvania or under the laws of the United States. The term "sale, exchange or other disposition" shall not include the exchange of stock or securities in a corporation a party to a reorganization in pursuance of a plan of reorganization, solely for stock or securities in such corporation or in another corporation a party to the reorganization and the transfer of property to a corporation by one or more persons solely in exchange for stock or securities 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.

For purposes of this clause, the term "reorganization" means—

- (i) a statutory merger or consolidation;
- (ii) 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);

(iii) 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;

(iv) 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;

(v) a recapitalization;

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

(vii) 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) if such transaction would have qualified under subclause (i) if the merger had been into the controlling corporation, and no stock of the acquiring corporation is used in the transaction;

(viii) a transaction otherwise qualifying under subclause (i) 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.

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

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

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.

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

Section 315. Space on Form for Contributions.—(a) The department shall provide a space on the face of the individual income tax return form whereby an individual may voluntarily designate a contribution of any amount desired to the United States Olympics Committee, Pennsylvania Division.

(b) The amount so designated by an individual on the income tax return form shall be deducted from the tax refund to which such individual is entitled and shall not constitute a charge against the income tax revenues due the Commonwealth.

(c) The department shall determine annually the total amount designated pursuant to this section, less reasonable administrative costs, and shall report such amount to the State Treasurer, who shall transfer such amount from the General Fund to the United States Olympics Committee, Pennsylvania Division.

(d) This section shall apply only to the tax year ending December 31, 1987.

Section 3. Section 330.1(b) of the act, added December 23, 1983 (P.L.370, No.90), is amended to read:

Section 330.1. Return of Pennsylvania S Corporation.—* * *

(b) The return shall be filed on or before *thirty days after* the date when the corporation's Federal income tax return is due.

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Section 4. Section 1502(c) of the act, added December 1, 1983 (P.L.228, No.66), is amended to read:

Section 1502. Imposition; Report and Payment of Tax; Exemptions.—* * *

(c) Net earnings or income or net operating loss shall be determined in accordance with generally accepted principles of accounting, [either on a cash or accrual or combined cash and accrual basis, depending on the method of bookkeeping employed by each mutual thrift institution, and in computing such net earnings or income or net operating loss, amounts credited or paid as dividends or interest to shareholders, holders of accounts or depositors shall be included among the allowable deductions.] *except that:*

(1) Net earnings or income or operating loss shall be determined on a separate company unconsolidated basis, using cost in lieu of equity accounting for investments in a subsidiary.

(2) The accounting method may be on a cash, combined cash and accrual, or accrual basis, depending on the method of bookkeeping employed by the institution.

(3) In the case of a business combination treated as a reorganization for purposes of section 368 of the Internal Revenue Code of 1986, or a similar successor provision, and accounted for under the purchase accounting method, net earnings or income or net operating loss shall be determined as

though the acquisition had been accounted for under the pooling of interest method.

(4) Net earnings or income or net operating loss shall exclude amounts credited or paid as interest to holders of accounts or depositors or as dividends to shareholders, except that no deduction shall be permitted for dividends paid by an institution having capital stock to its stockholders with regard to their stock.

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Section 5. Section 12 of the act of June 23, 1982 (P.L.597, No.170), known as the Wild Resource Conservation Act, is repealed insofar as it is inconsistent with this act.

Section 6. Section 3 of this act shall apply to taxable years commencing after December 31, 1987.

Section 7. This act shall take effect immediately.

APPROVED—The 13th day of July, A. D. 1987.

ROBERT P. CASEY