

## No. 66

## AN ACT

## HB 1063

Amending the act of March 4, 1971 (P.L.6), 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 defining compensation, including the propagation of game birds for commercial purposes within the term "farming" as to tax for education and redefining net gains or income from disposition of property as to income tax.

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

Section 1. Subdivision (B) of the second paragraph of subclause (8) of clause (k) of section 201, act of March 4, 1971 (P.L.6), known as the "Tax Reform Code of 1971," is amended to read:

Section 201. Definitions.—The following words, terms and phrases when used in this Article II shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

\* \* \*

(k) "Sale at retail."

\* \* \*

(8) \* \* \*

The term "sale at retail" shall not include (i) any such transfer of tangible personal property or rendition of services for the purpose of resale, or (ii) such rendition of services or the transfer of tangible personal property including, but not limited to, machinery and equipment and parts therefor and supplies to be used or consumed by the purchaser directly in any of the operations of—

\* \* \*

(B) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term "farming" shall include the propagation and raising of ranch raised fur-bearing animals *and the propagation of game birds for commercial purposes by holders of propagation permits issued under the act of June 3, 1937 (P.L.1225), known as "The Game Law"*;

\* \* \*

Section 2. Clause (d) of section 301 of the act, added August 31, 1971 (P.L.362), is amended to read:

Section 301. Definitions.—The following words, terms and phrases when used in this article shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning.

Any reference in this article to the Internal Revenue Code shall include the Internal Revenue Code of 1954, as amended to the date on which this article is effective.

\* \* \*

(d) "Compensation" means and shall include salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered, whether directly or through an agent, and whether in cash or in property.

The term "compensation" shall not mean or include: (i) periodic payments for sickness and disability other than regular wages received during a period of sickness or disability; or (ii) disability, retirement or other payments arising under workmen's compensation acts, occupational disease acts and similar legislation by any government; or (iii) payments commonly recognized as old age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment; or (iv) payments commonly known as public assistance, or unemployment compensation payments by any governmental agency; or (v) payments to reimburse actual expenses; or (vi) payments made by employers or labor unions for programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, social security and retirement; *or (vii) any compensation received by United States servicemen serving in a combat zone.*

\* \* \*

Section 3. Clause (3) of subsection (a) of section 303 of the act, added August 31, 1971 (P.L.362), 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 [**but only to the extent that the amount of such net gain or income exceeds the taxpayer's actual or attributed base**] as determined in accordance with accepted accounting principles and practices.

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.*

\* \* \*

Section 4. This act shall take effect immediately. The amendments to sections 301 and 303 made by this act shall be retroactive to the effective date of Article III of the act (relating to personal income tax), added August 31, 1971 (P.L.362).

APPROVED—The 9th day of May, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 66.



Secretary of the Commonwealth.