

No. 105

AN ACT

HB 1254

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," providing for adjustment of acquisition date of property for capital gains taxation.

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

Section 1. Clause (3) of subsection (a) of section 303, act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," added August 31, 1971 (P.L.362, No.93) and amended May 9, 1972 (P.L.273, No.66), 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.***

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 2. This act shall take effect immediately and be retroactive to June 1, 1971.

APPROVED—The 17th day of June, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 105.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive, flowing style.

Secretary of the Commonwealth.