

No. 1993-68

## AN ACT

SB 565

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 an additional exclusion from sales tax; defining "investment company"; further defining "dividends" and "taxable income"; further providing for net gains or income from disposition of property; providing for the taxation of certain government obligations; and making a repeal.

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

Section 1. Section 204 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended by adding a clause to read:

Section 204. Exclusions from Tax.—The tax imposed by section 202 shall not be imposed upon

\* \* \*

*(49) The sale at retail or use of food and beverages by nonprofit associations which support sports programs and which operate at fixed locations on public property. For purposes of this clause, the phrases:*

*(i) "nonprofit association" means an entity which is organized as a nonprofit corporation or nonprofit unincorporated association under the laws of this Commonwealth or the United States or any entity which is authorized to do business in this Commonwealth as a nonprofit corporation or unincorporated association under the laws of this Commonwealth, including, but not limited to, youth or athletic associations, volunteer fire, ambulance, religious, charitable, fraternal, veterans, civic, or any separately chartered auxiliary of the foregoing, if organized and operated on a nonprofit basis;*

*(ii) "fixed location" means a permanent structure or building;*

*(iii) "public property" means real property which is owned or leased by a county, municipality or school district or any authority of a county or municipality;*

*(iv) "sports program" means baseball (including softball), football, basketball, soccer and any other competitive sport formally recognized as a sport by the United States Olympic Committee as specified by and under the jurisdiction of the Amateur Sports Act of 1978 (Public Law 95-606, 36 U.S.C. § 371 et seq.), the Amateur Athletic Union or the National*

**Collegiate Athletic Association. The term shall be limited to a program or that portion of a program that is organized for recreational purposes and whose activities are substantially for such purposes and which is primarily for participants who are 18 years of age or younger or whose 19th birthday occurs during the year of participation or the competitive season, whichever is longer. There shall, however, be no age limitation for programs operated for persons with physical handicaps or persons with mental retardation;**

**(v) "support" means the funds raised from sales are used to pay the expenses of a sports program or the nonprofit association sells the food and beverages at a fixed location where a sports program is being conducted under this act.**

Section 2. Section 301(f) of the act, amended March 17, 1978 (P.L.20, No.10), is amended and the section is amended by adding a clause 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:

\* \* \*

**(f) "Dividends" means any distribution in cash or property made by a corporation, association [or], business trust[, (i)] or investment company with respect to its stock out of accumulated earnings and profits[, or [(ii)] out of earnings and profits of the year in which such dividend is paid: Provided, however, That the term "dividends" shall not include:**

**(i) a distribution of the stock of a corporation made by the corporation originally issuing same to its own stockholders if such distribution is not treated as personal income for Federal individual income tax purposes[.]; or**

**(ii) for taxable years beginning on or after January 1, 1993, a distribution made by an investment company out of earnings and profits derived from interest that is statutorily free from State and local taxation under Article XXIX of this act or the act of August 31, 1971 (P.L.395, No.94), entitled "An act exempting from taxation for State and local purposes within the Commonwealth certain obligations, their transfer and the income therefrom (including any profits made on the sale thereof), issued by the Commonwealth, any public authority, commission, board or other agency created by the Commonwealth, any political subdivision of the Commonwealth or any public authority created by any such political subdivision," or the laws of the United States.**

\* \* \*

**(l.2) "Investment company" includes any incorporated or unincorporated enterprise registered with the Federal Securities and Exchange Commission under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.).**

\* \* \*

Section 3. The first and third paragraphs of clause (3) of subsection (a)

of section 303 of the act, amended July 13, 1987 (P.L.325, No.59), are 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**] *property, tangible personal property, intangible personal property or obligations issued on or after the effective date of this amendatory act by the Commonwealth; any public authority, commission, board or other agency created by the Commonwealth; any political subdivision of the Commonwealth or any public authority created by any such political subdivision; or by the Federal Government* 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” *and* “**net losses**” shall not include gains or income *or loss* 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] *the act of August 31, 1971 (P.L.395, No.94), entitled “An act exempting from taxation for State and local purposes within the Commonwealth certain obligations, their transfer and the income therefrom (including any profits made on the sale thereof), issued by the Commonwealth, any public authority, commission, board or other agency created by the Commonwealth, any political subdivision of the Commonwealth or any public authority created by any such political subdivision,”* 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.

\* \* \*

Section 4. Section 401(3)1(b.1) of the act, added August 4, 1991 (P.L.97, No.22), is amended to read:

Section 401. 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:

\* \* \*

(3) "Taxable income." 1. \* \* \*

(b.1) An additional deduction shall be allowed from taxable income in the amount of any interest income from securities issued by the United States or agencies or instrumentalities thereof, to the extent included in Federal taxable income but exempt from the tax imposed by this article under the laws of the United States, but reduced by any interest on indebtedness incurred to carry the securities, any expenses incurred in the production of such interest income and any other expenses deducted on the Federal income tax return that would not have been allowed under section 265 of the Internal Revenue Code of 1986 (26 U.S.C. § 265) if the interest were exempt from Federal income tax. *As used in the preceding sentence, "interest income" includes any amount received as a distribution or dividend from a regulated investment company, as defined in section 851 of the Internal Revenue Code, to the extent such distribution or dividend is derived from obligations free from State taxation under Article XXIX of this act or securities issued by the United States or agencies or instrumentalities thereof.*

\* \* \*

Section 5. The act is amended by adding an article to read:

**ARTICLE XXIX  
GOVERNMENTAL OBLIGATIONS**

*Section 2901. Taxability of Government Obligations.—(a) Except as provided in subsections (b) and (c), all obligations, interest on obligations and income from obligations issued on or after the effective date of this section by the Commonwealth, any public authority, commission, board or other agency created by the Commonwealth or any political subdivision of the Commonwealth or any public authority created by any political subdivision of the Commonwealth shall at all times be free from taxation for State and local purposes within the Commonwealth.*

*(b) Government obligations described in subsection (a) shall continue to be subject to inheritance and estate taxes imposed by Article XXI.*

*(c) Profits, gains or income derived from the sale, exchange or other disposition of government obligations described in subsection (a) shall be subject to State or local taxation.*

Section 6. The Department of Revenue shall not take any action to collect or enforce any unpaid tax liability incurred on or after January 1, 1991, for retail sales of food and beverages by nonprofit corporations which would be excluded from tax under section 204(49) of the act.

Section 7. The act of August 31, 1971 (P.L.395, No.94), entitled "An act exempting from taxation for State and local purposes within the Commonwealth certain obligations, their transfer and the income therefrom (including any profits made on the sale thereof), issued by the

Commonwealth, any public authority, commission, board or other agency created by the Commonwealth, any political subdivision of the Commonwealth or any public authority created by any such political subdivision," is repealed with respect to obligations issued on or after the effective date of this section.

Section 8. This act shall take effect as follows:

- (1) The amendment or addition of sections 301, 303, 401 and Article XXIX of the act and section 7 of this act shall take effect in 60 days.
- (2) The remainder of this act shall take effect immediately.

APPROVED—The 3rd day of December, A.D. 1993.

MARK S. SINGEL  
ACTING GOVERNOR