

## No. 2006-182

## AN ACT

SB 1139

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, in personal income tax, for classes of income.

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

Section 1. Section 303(a)(1) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended July 7, 2005 (P.L.149, No.40), is amended to read:

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

(1) Compensation.

(i) All 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 except income derived from the United States Government for active duty outside the Commonwealth of Pennsylvania as a member of its armed forces[,] *and income from the United States Government or the Commonwealth of Pennsylvania for active State duty for emergency within or outside the Commonwealth of Pennsylvania, including duty ordered pursuant to 35 Pa.C.S. Ch. 76 (relating to Emergency Management Assistance Compact).*

(ii) Compensation of a cash-basis taxpayer shall be considered as received if the compensation is actually or constructively received for Federal income tax purposes as determined consistent with the United States Treasury regulations and rulings under the Internal Revenue Code of 1986, as amended, except that, for purposes of computing tax under this article:

(A) Amounts lawfully deducted, not deferred, and withheld from the compensation of employes shall be considered to have been received by the employe as compensation at the time the deduction is made.

(B) Contributions to an employes' trust, pooled fund or other arrangement which is not subject to the claims of creditors of the employer made by an employer on behalf of an employe or self-employed individual at the election of the employe or self-employed individual pursuant to a cash or deferred arrangement or salary reduction agreement shall be deemed to have been received by the employe or individual as compensation at the time the

contribution is made, regardless of when the election is made or a payment is received.

(C) Any contribution to a plan by, on behalf of or attributable to a self-employed person shall be deemed to have been received at the time the contribution is made.

(D) Employer contributions to a Roth IRA custodial account or employe annuity shall be deemed received, earned or acquired only when distributed, when the plan fails to meet the requirements of section 408A of the Internal Revenue Code of 1986 (26 U.S.C. § 408A), as amended, or when the plan is not operated in accordance with such requirements.

(E) Employe contributions to an employes' trust or pooled fund or custodial account or contract or employe annuity shall not be deducted or excluded from compensation.

(iii) For purposes of determining when deferred compensation of employes other than employes of exempt organizations and State and local governments is required to be included in income, the following apply:

(A) The rules of sections 83 and 451 of the Internal Revenue Code of 1986 (26 U.S.C. §§ 83 and 451), as amended, shall apply.

(B) The rules of section 409A of the Internal Revenue Code of 1986 (26 U.S.C. § 409A), as amended, shall apply.

(iv) For purposes of determining when deferred compensation of employes of exempt organizations and State and local governments is required to be included in income, the following apply:

(A) The rules of sections 83, 451 and 457 of the Internal Revenue Code of 1986, as amended, shall apply.

(B) The rules of section 409A of the Internal Revenue Code of 1986, as amended, shall apply.

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Section 2. The amendment of section 303(a) of the act shall apply to taxable years beginning after December 31, 2006.

Section 3. This act shall take effect immediately.

APPROVED—The 29th day of November, A.D. 2006.

EDWARD G. RENDELL