

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

SENATE BILL

No. 662 Session of  
2023

---

INTRODUCED BY J. WARD, BARTOLOTTA, PHILLIPS-HILL, DUSH, BROOKS,  
DISANTO, STEFANO, ROTHMAN, AUMENT, GEBHARD, ARGALL,  
HUTCHINSON AND PENNYCUICK, MAY 3, 2023

---

REFERRED TO FINANCE, MAY 3, 2023

---

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An  
2 act relating to tax reform and State taxation by codifying  
3 and enumerating certain subjects of taxation and imposing  
4 taxes thereon; providing procedures for the payment,  
5 collection, administration and enforcement thereof; providing  
6 for tax credits in certain cases; conferring powers and  
7 imposing duties upon the Department of Revenue, certain  
8 employers, fiduciaries, individuals, persons, corporations  
9 and other entities; prescribing crimes, offenses and  
10 penalties," in personal income tax, further providing for  
11 classes of income.

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

14 Section 1. Section 303(a)(2) of the act of March 4, 1971  
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended  
16 to read:

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

19 \* \* \*

20 (2) Net profits. The net income from the operation of a  
21 business, profession, or other activity, after provision for all  
22 costs and expenses incurred in the conduct thereof, determined

1 either on a cash or accrual basis in accordance with accepted  
2 accounting principles and practices but without deduction of  
3 taxes based on income. For purposes of calculating net income  
4 under this paragraph, to the extent a taxpayer properly deducts  
5 an amount under [section 195(b)(1)(A) of the Internal Revenue  
6 Code of 1986 (26 U.S.C. § 195(b)(1)(A))] 26 U.S.C. § 195(b)(1)  
7 (A) (relating to start-up expenditures), as amended, and the  
8 regulations promulgated [under section 195(b)(1)(A) of the  
9 Internal Revenue Code of 1986] thereunder, the taxpayer shall be  
10 permitted a deduction in equal amount in the same taxable year.  
11 The following apply:

12 (i) Net profits from this class of income, if any, shall be  
13 determined after adding the net profits from all businesses,  
14 including small businesses. For purposes of calculating net  
15 profits under this subparagraph:

16 (A) Net loss from nonsmall businesses shall be netted  
17 against net profits from other nonsmall businesses.

18 (B) Net loss from small businesses shall be netted against  
19 net profits from other small businesses after netting against  
20 any net profits determined in clause (i)(A).

21 (ii) The excess of the amount of net loss for a taxable year  
22 for small businesses determined in clause (i)(B) after netting  
23 against any net profits determined in clause (i)(A) shall carry  
24 over for twenty taxable years. In a subsequent taxable year, the  
25 net loss carryover shall be applied against any profits  
26 resulting from netting the net profits and net losses of  
27 nonsmall and small businesses in clauses (i)(A) and (B).

28 (iii) Any unused net loss carryovers expire after twenty  
29 years.

30 (iv) In determining whether there is a net loss carryover,

1 and in applying the net loss carry-over provisions, the net  
2 profits and net losses of spouses who file a joint return shall  
3 not be combined.

4 (v) Unless treated differently for Federal income tax  
5 purposes, if an interest in a business is jointly owned, each  
6 taxpayer is deemed to own an equal share in the profits, losses,  
7 gains and capital for purposes of applying this subsection.

8 (vi) Upon the death, liquidation, dissolution, winding up or  
9 other termination of a taxpayer, a net loss carryover expires  
10 and does not transfer to another taxpayer.

11 (vii) For purposes of this subparagraph, the term "small  
12 business" means an interest in an operating trade or business  
13 entity, the principal purpose of which is not the management of  
14 investments or income-producing assets owned by an entity which  
15 has employed an average of less than fifty full-time equivalent  
16 employees, and a net book value of assets totaling less than five  
17 million dollars (\$5,000,000) as of December 31 of the taxable  
18 year in which the net operating loss arose, and which is  
19 directly or indirectly owned by fewer than ten proprietors,  
20 partners or shareholders. The rules in 26 U.S.C. § 318 (relating  
21 to constructive ownership of stock) shall be used to determine  
22 whether the small business is owned by fewer than ten persons.  
23 In applying 26 U.S.C. § 318, a reference to "stock" shall mean  
24 any interest in a small or nonsmall business, except for 26  
25 U.S.C. § 318(a)(2)(C) and (3)(C).

26 \* \* \*

27 Section 2. The amendment of section 303(a)(2) of the act  
28 shall apply to tax years beginning after December 31, 2022.

29 Section 3. This act shall take effect immediately.