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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 368 Session of  
2021

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INTRODUCED BY BARTOLOTTA, J. WARD, ARGALL, PHILLIPS-HILL,  
MENSCH, AUMENT, MASTRIANO, REGAN AND STEFANO, MARCH 10, 2021

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REFERRED TO FINANCE, MARCH 10, 2021

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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, providing for small  
11 businesses.

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

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

17 Section 304.3. Small Businesses.--(a) There shall be  
18 allowed as a deduction from income for the taxable year an  
19 amount equal to the net operating loss of a small business.

20 (b) In the case of any net operating loss arising in a  
21 taxable year beginning after December 31, 2017, and before  
22 January 1, 2022, the following shall apply:

1 (1) The loss shall be a net operating loss carryback to each  
2 of the five taxable years preceding the taxable year of such  
3 loss.

4 (2) Any unused amounts shall be carried forward to each  
5 succeeding taxable year.

6 (c) The entire amount of the net operating loss for any  
7 taxable year shall be carried to the earliest of the taxable  
8 years to which, by reason of subsection (b), the loss may be  
9 carried. The portion of the loss which shall be carried to each  
10 of the other taxable years shall be the excess, if any, of the  
11 amount of the loss over the sum of the taxable income for each  
12 of the prior taxable years to which the loss may be carried. A  
13 net loss for a taxable year may only be carried over from 2021  
14 and thereafter for twenty taxable years. The following shall  
15 apply:

16 (1) The portion of the loss which shall be carried to each  
17 of the other taxable years shall be the excess, if any, of the  
18 amount of the loss over the sum of the taxable income for each  
19 of the prior taxable years to which the loss may be carried.

20 (2) Upon the cessation of operation of a small business, any  
21 carryover loss may be carried forward by the taxpayer against  
22 subsequent taxable income for twenty taxable years.

23 (d) The amount deductible on account of losses from sales or  
24 exchanges of assets used in a trade or business shall not exceed  
25 the amount includable on account of gains from sales or  
26 exchanges of assets used in trade or business.

27 (e) The deductions allowable by this subsection which are  
28 not attributable to a taxpayer's trade or business shall be  
29 allowed only to the extent of the amount of the income not  
30 derived from the trade or business. For purposes of this

1 subsection, any gain or loss from the sale or other  
2 disposition of:

3 (1) property, used in the trade or business, of a character  
4 which is subject to the allowance for depreciation provided in  
5 section 167 of the Internal Revenue Code of 1986 (Public Law 99-  
6 514, 26 U.S.C. § 167); or

7 (2) real property, used in the trade or business, shall be  
8 treated as attributable to the trade or business.

9 (f) As used in this section, the following words and phrases  
10 shall have the meanings given to them in this subsection unless  
11 the context clearly indicates otherwise:

12 "Net gain" means the sum of the gain for such year from each  
13 class of compensation, net profits, gains, dividends, interest  
14 or income enumerated under section 303.

15 "Net loss" means the sum of the loss for such year from each  
16 class of compensation, net profits, gains, dividends, interest  
17 or income enumerated under this section.

18 "Net operating loss" means the excess of the sum of the net  
19 loss over the sum of the net gain for such year.

20 "Net operating loss carryback" means a net operating loss  
21 that applies to a prior year's tax return.

22 "Net operating loss carryover" means the net operating loss  
23 properly reported on an original or amended tax return that  
24 applies the current year's net operating loss to future years'  
25 net income.

26 "Small business" means an interest in an operating trade or  
27 business entity, the principal purpose of which is not the  
28 management of investments or income producing assets owned by  
29 the entity which has employed an average of less than fifty (50)  
30 full-time equivalent employes, or a net book value of assets

1 totaling less than five million dollars (\$5,000,000) as of  
2 December 31 of the taxable year in which the net operating loss  
3 arose, and which has less than ten proprietors, partners or  
4 shareholders.

5 "Taxable income" means a taxpayer's net income minus the net  
6 operating loss deduction for the taxable year.

7 Section 2. This act shall take effect immediately.