

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 325 Session of 2009

INTRODUCED BY PRIME SPONSOR WITHDREW, FABRIZIO, GEORGE, GRUCELA, KILLION, SIPTROTH, LENTZ AND EACHUS, FEBRUARY 10, 2009

AS AMENDED, COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES, JUNE 9, 2010

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," further providing for exclusions from sales tax,
11 FOR DISCOUNT and for exemption certificates, for incidence ←
12 and rate of tax, for floor tax and for commissions on sales;
13 providing for the taxation of tobacco products; imposing a
14 tax on the extraction of natural gas; providing for natural
15 gas severance registration certificate, for duties of the
16 Department of Revenue, for tax assessments and tax liens;
17 imposing penalties; providing for service of process, for
18 rulemaking, for cooperation with other governments and for
19 bonds; and making an appropriation.

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

22 Section 1. Section 204(10) of the act of March 4, 1971 (P.L.
23 6, No.2), known as the Tax Reform Code of 1971, amended April
24 23, 1998 (P.L.239, No.45), is amended to read:

25 Section 204. Exclusions from Tax.--The tax imposed by
26 section 202 shall not be imposed upon any of the following:

1 * * *

2 (10) The sale at retail to or use by (i) any charitable
3 organization, volunteer firemen's organization, volunteer
4 firefighters' relief association as defined in section 2 of the
5 act of June 11, 1968 (P.L.149, No.84), known as the "Volunteer
6 Firefighters' Relief Association Act," or nonprofit educational
7 institution, or (ii) a religious organization for religious
8 purposes of tangible personal property or services other than
9 pursuant to a construction contract: Provided, however, That the
10 exclusion of this clause shall not apply with respect to any
11 tangible personal property or services used in any unrelated
12 trade or business carried on by such organization or institution
13 or with respect to any materials, supplies and equipment used
14 and transferred to such organization or institution in the
15 construction, reconstruction, remodeling, renovation, repairs
16 and maintenance of any real estate structure, other than
17 building machinery and equipment, except materials and supplies
18 when purchased by such organizations or institutions for routine
19 maintenance and repairs.

20 * * *

21 SECTION 1.1. SECTION 227 OF THE ACT IS AMENDED TO READ: 

22 SECTION 227. DISCOUNT.--(A) IF A RETURN IS FILED BY A
23 LICENSEE AND THE TAX SHOWN TO BE DUE THEREON LESS ANY DISCOUNT
24 IS PAID ALL WITHIN THE TIME PRESCRIBED, THE LICENSEE SHALL BE
25 ENTITLED TO CREDIT AND APPLY AGAINST THE TAX PAYABLE BY HIM A
26 DISCOUNT OF ONE PER CENT OF THE AMOUNT OF THE TAX COLLECTED BY
27 HIM ON AND AFTER THE EFFECTIVE DATE OF THIS ARTICLE, AS
28 COMPENSATION FOR THE EXPENSE OF COLLECTING AND REMITTING THE
29 [SAME] TAX DUE BY HIM AND AS A CONSIDERATION OF THE PROMPT
30 PAYMENT THEREOF.

1 (B) FOR RETURNS FILED ON OR AFTER THE EFFECTIVE DATE OF THIS
2 SUBSECTION, THE DISCOUNT UNDER SUBSECTION (A) SHALL BE LIMITED
3 TO THE FOLLOWING:

4 (I) FOR A SEMI-MONTHLY FILER, \$12.50 PER RETURN.

5 (II) FOR A MONTHLY FILER, \$25 PER RETURN.

6 (III) FOR A QUARTERLY FILER, \$75 PER RETURN.

7 (IV) FOR A SEMI-ANNUAL FILER, \$150 PER RETURN.

8 Section 2. Section 237(c) of the act, amended July 1, 1985
9 (P.L.78, No.29), is amended and the section is amended by adding
10 a subsection to read:

11 Section 237. Collection of Tax.--* * *

12 (c) Exemption Certificates. If the tax does not apply to the
13 sale or lease of tangible personal property or services, the
14 purchaser or lessee shall furnish to the vendor a certificate
15 indicating that the sale is not legally subject to the tax. The
16 certificate shall be in substantially such form as the
17 department may, by regulation, prescribe. Where the tangible
18 personal property or service is of a type which is never subject
19 to the tax imposed or where the sale or lease is in interstate
20 commerce, such certificate need not be furnished. Where a series
21 of transactions are not subject to tax, a purchaser or user may
22 furnish the vendor with a single exemption certificate in
23 substantially such form and valid for such period of time as the
24 department may, by regulation, prescribe[.], provided that an
25 exemption certificate furnished to a volunteer firefighters'
26 relief association or volunteer firemen's organization shall be
27 considered permanent. The department shall provide all school
28 districts and intermediate units with a permanent tax exemption
29 number. An exemption certificate, which is complete and regular
30 and on its face discloses a valid basis of exemption if taken in

1 good faith, shall relieve the vendor from the liability imposed
2 by this section. An exemption certificate accepted by a vendor
3 from a natural person domiciled within this Commonwealth or any
4 association, fiduciary, partnership, corporation or other
5 entity, either authorized to do business within this
6 Commonwealth or having an established place of business within
7 this Commonwealth, in the ordinary course of the vendor's
8 business, which on its face discloses a valid basis of exemption
9 consistent with the activity of the purchaser and character of
10 the property or service being purchased or which is provided to
11 the vendor by a charitable, religious, educational, volunteer
12 firefighters' relief association or volunteer firemen's
13 organization and contains the organization's charitable
14 exemption number and which, in the case of any purchase costing
15 two hundred dollars (\$200) or more, is accompanied by a sworn
16 declaration on a form to be provided by the department of an
17 intended usage of the property or service which would render it
18 nontaxable, shall be presumed to be taken in good faith and the
19 burden of proving otherwise shall be on the Department of
20 Revenue.

21 (c.1) Surrender of Exemption Certificate.--If a volunteer
22 firefighters' relief association or volunteer firemen's
23 organization that has been furnished an exemption certificate
24 dissolves, the association or organization shall have sixty days
25 to surrender the exemption certificate to the department.

26 * * *

27 Section 2.1. Sections 1206, 1206.1 and 1216 of the act,
28 amended October 9, 2009 (P.L.451, No.48), are amended to read:

29 Section 1206. Incidence and Rate of Tax.--An excise tax is
30 hereby imposed and assessed upon the sale or possession of

1 cigarettes within this Commonwealth at the rate of ~~eight~~nine ←
2 and one-half cents per cigarette.

3 Section 1206.1. Floor Tax.--(a) The following apply:

4 (1) A person who possesses cigarettes on which the tax
5 imposed by section 1206 has been paid as of the effective date
6 of this section shall pay an additional tax at a rate of [one ←
7 and ~~twenty-five hundredths~~one-half cents] ONE-HALF CENT per ←
8 cigarette. The tax shall be paid and reported on a form
9 prescribed by the department [within ninety days of the ←
10 effective date of this section]. ←

11 (2) On or after the effective date of this paragraph, a
12 person that possesses little cigars in a package which is
13 similar to a package of cigarettes other than little cigars and
14 which contains twenty to twenty-five little cigars shall pay a
15 tax at the rate of ~~eight~~nine and one-half cents per little ←
16 cigar. The tax shall be paid and reported on a form prescribed
17 by the department [within ninety days of the effective date of ←
18 this paragraph]. ←

19 (3) After January 3, 2010, a retailer that possesses little
20 cigars on which the tax imposed by this article has not been
21 paid shall pay a tax at the rate of ~~eight~~nine and one-half ←
22 cents per little cigar. The tax shall be paid and reported on a
23 form prescribed by the department [within ninety days of the ←
24 effective date of this paragraph]. ←

25 (b) If a cigarette dealer fails to file the report required
26 by subsection (a) or fails to pay the tax imposed by subsection
27 (a), the department may, in addition to the interest and
28 penalties provided in section 1278, do any of the following:

29 (1) Impose an administrative penalty equal to the amount of
30 tax evaded or not paid. The penalty shall be added to the tax

1 evaded or not paid and assessed and collected at the same time
2 and in the same manner as the tax.

3 (2) Suspend or revoke a cigarette dealer's license.

4 (c) In addition to any penalty imposed under subsection (b),
5 a person who wilfully omits, neglects or refuses to comply with
6 a duty imposed under subsection (a) commits a misdemeanor and
7 shall, upon conviction, be sentenced to pay a fine of not less
8 than two thousand five hundred dollars (\$2,500) nor more than
9 five thousand dollars (\$5,000), to serve a term of imprisonment
10 not to exceed thirty days or both.

11 Section 1216. Commissions on Sales.--A cigarette stamping
12 agent shall be entitled to a commission for the agent's services
13 and expenses in affixing cigarette tax stamps. The commission
14 shall be equal to [eighty-seven] ~~seventy three~~ EIGHTY-TWO ←
15 hundredths per cent of the total value of Pennsylvania cigarette
16 tax stamps purchased by the agent from the department or its
17 authorized agents to be used in the stamping of unstamped
18 cigarettes for sale within this Commonwealth. The cigarette
19 stamping agent may deduct from the moneys to be paid to the
20 department or its authorized agents for the stamps an amount
21 equal to [eighty-seven] ~~seventy three~~ EIGHTY-TWO ←
22 hundredths per cent of the value of the stamps purchased. This section shall
23 not apply to purchases of stamps by a cigarette stamping agent
24 in an amount less than one hundred dollars (\$100).

25 Section 2.2. The act is amended by adding articles to read:

26 ARTICLE XII-A

27 TOBACCO PRODUCTS TAX

28 Section 1201-A. Definitions.

29 The following words and phrases when used in this article
30 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Cigar." Any roll of tobacco wrapped in tobacco, not
3 including little cigars.

4 "Cigarette." Includes any roll for smoking made wholly or in
5 part of tobacco, irrespective of size or shape, and whether or
6 not such tobacco is flavored, adulterated or mixed with any
7 other ingredient, the wrapper or cover of which is made of paper
8 or any other substance or material, excepting tobacco, and shall
9 not include cigars or roll your own tobacco. The term shall
10 include little cigars.

11 "Consumer." An individual who purchases tobacco products for
12 personal use and not for resale.

13 "Contraband." Any tobacco product for which the tax imposed
14 by this article has not been paid.

15 "Dealer." A wholesaler or retailer. Nothing in this article
16 shall preclude any person from being a wholesaler or retailer,
17 provided the person meets the requirements for a license in each
18 category of dealer.

19 "Department." The Department of Revenue of the Commonwealth.

20 "Little cigar." Any roll for smoking that weighs not more
21 than four pounds per thousand, where the wrapper or cover is
22 made of natural leaf tobacco or any substance containing
23 tobacco.

24 "Manufacturer." A person that produces tobacco products.

25 "Person." An individual, unincorporated association,
26 company, corporation, joint stock company, group, agency,
27 syndicate, trust or trustee, receiver, fiduciary, partnership,
28 conservator, any political subdivision of the Commonwealth or
29 any other state. Whenever used in any of the provisions of this
30 article prescribing or imposing penalties, the word "person" as

1 applied to a partnership, unincorporated association or other
2 joint venture, means the partners or members thereof, and as
3 applied to a corporation, means all the officers and directors
4 thereof.

5 "Purchase price." The total value of anything paid or
6 delivered, or promised to be paid or delivered, whether it be
7 money or otherwise, in complete performance of a sale or
8 purchase, without any deduction on account of the cost or value
9 of the property sold, cost or value of transportation, cost or
10 value of labor or service, interest or discount paid or allowed
11 after the sale is consummated, any other taxes imposed by the
12 Commonwealth or any other expense.

13 "Retailer." A person that purchases or receives tobacco
14 products from any source for the purpose of sale to a consumer,
15 or who owns, leases or otherwise operates one or more vending
16 machines for the purpose of sale of tobacco products to the
17 ultimate consumer. The term includes a vending machine operator
18 or a person that buys, sells, transfers or deals in tobacco
19 products and is not licensed as a tobacco products wholesaler
20 under this article.

21 "Roll-your-own tobacco." Any tobacco which, because of its
22 appearance, type, packaging or labeling, is suitable for use and
23 is likely to be offered to, or purchased by, consumers as
24 tobacco for making cigarettes. For purposes of reporting sales
25 of this product under the act of June 22, 2000 (P.L.394, No.54),
26 known as the Tobacco Settlement Agreement Act, 0.09 ounces of
27 tobacco shall constitute one individual unit sold.

28 "Sale." Any transfer of ownership, custody or possession of
29 tobacco products for consideration; any exchange, barter or
30 gift; or any offer to sell or transfer the ownership, custody or

1 possession of tobacco products for consideration.

2 "Taxpayer." Any person subject to tax under this article.

3 "Tobacco products." Granulated CIGARS, CHERROOTS, STOGIES, ←

4 PERIQUES, GRANULATED, plug cut, crimp cut, ready rubbed and

5 other smoking tobacco, roll-your-own tobacco, snuff, dry snuff,

6 snuff flour, cavendish, plug and twist tobacco, fine-cut and

7 other chewing tobaccos, shorts, refuse scraps, clippings,

8 cuttings and sweepings of tobacco and other kinds and forms of

9 tobacco, prepared in such manner as to be suitable for chewing

10 or ingesting or for smoking in a pipe or otherwise, or both for

11 chewing and smoking. The term does not include cigarettes ~~or~~ ←

12 eigars.

13 "Unclassified importer." A person in this Commonwealth that

14 acquires a tobacco product from any source on which the tax

15 imposed by this article was not paid and that is not a person

16 otherwise required to be licensed under the provisions of this

17 article. The term includes, but is not limited to, consumers who

18 purchase tobacco products using the Internet or mail order

19 catalogs for personal possession or use in this Commonwealth.

20 "Vending machine operator." A person who places or services

21 one or more tobacco product vending machines whether owned,

22 leased or otherwise operated by the person at locations from

23 which tobacco products are sold to the consumer. The owner or

24 tenant of the premises upon which a vending machine is placed

25 shall not be considered a vending machine operator if the

26 owner's or tenant's sole remuneration therefrom is a flat rental

27 fee or commission based upon the number or value of tobacco

28 products sold from the machine, unless the owner or tenant

29 actually owns the vending machine or leases the vending machine

30 under an agreement whereby any profits from the sale of the

1 tobacco products directly inure to the owner's or tenant's
2 benefit.

3 "Wholesaler." A person engaged in the business of selling
4 tobacco products that receives, stores, sells, exchanges or
5 distributes tobacco products to retailers or other wholesalers
6 in this Commonwealth or retailers who purchase from a
7 manufacturer or from another wholesaler who has not paid the tax
8 imposed by this article.

9 Section 1202-A. Incidence and rate of tax.

10 (a) Imposition.--A tobacco products tax is hereby imposed on
11 the dealer, manufacturer or any person at the time the tobacco
12 product is first sold to a retailer in this Commonwealth at the
13 rate of 30% on the purchase price charged to the retailer for
14 the purchase of any tobacco product. The tax shall be collected
15 from the retailer by whomever sells the tobacco product to the
16 retailer and remitted to the department. Any person required to
17 collect this tax shall separately state the amount of tax on an
18 invoice or other sales document.

19 (b) Retailer.--If the tax is not collected by the seller
20 from the retailer, the tax is imposed on the retailer at the
21 time of purchase at the same rate as in subsection (a) based on
22 the retailer's purchase price of the tobacco products. The
23 retailer shall remit the tax to the department.

24 (c) Unclassified importer.--The tax is imposed on an
25 unclassified importer at the time of purchase at the same rate
26 as in subsection (a) based on the unclassified importer's
27 purchase price of the tobacco products. The unclassified
28 importer shall remit the tax to the department.

29 (d) Exceptions.--The tax shall not be imposed on any tobacco
30 products that:

1 (1) are exported for sale outside this Commonwealth; or
2 (2) are not subject to taxation by the Commonwealth
3 pursuant to any laws of the United States.

4 (e) Article II.--Unless otherwise specifically noted, the
5 provisions of Article II shall apply to the returns, payment,
6 penalties, enforcement, collections and appeals of the tax
7 imposed on other tobacco products.

8 Section 1203-A. Floor tax.

9 (a) Payment.--Any retailer that, as of the effective date of
10 this article, possesses tobacco products subject to the tax
11 imposed by section 1202-A, shall pay the tax on the tobacco
12 products in accordance with the rates specified in section 1202-
13 A. The tax shall be paid and reported on a form prescribed by
14 the department within 90 days of the effective date of this
15 section.

16 (b) Administrative penalty; license.--If a retailer fails to
17 file the report required by subsection (a) or fails to pay the
18 tax imposed by subsection (a), the department may, in addition
19 to the interest and penalties provided in section 1215-A, do any
20 of the following:

21 (1) Impose an administrative penalty equal to the amount
22 of tax evaded or not paid. The penalty shall be added to the
23 tax evaded or not paid and assessed and collected at the same
24 time and in the same manner as the tax.

25 (2) Suspend, revoke or refuse to issue the retailer's
26 license.

27 (c) Criminal penalty.--In addition to any penalty imposed
28 under subsection (b), a person that willfully omits, neglects or
29 refuses to comply with a duty imposed under subsection (a)
30 commits a misdemeanor and shall, if convicted, be sentenced to

1 pay a fine of not less than \$2,500 nor more than \$5,000, to
2 serve a term of imprisonment not to exceed 30 days, or both.

3 Section 1204-A. Remittance of tax to department.

4 Wholesalers, retailers, unclassified importers and
5 manufacturers shall file monthly reports on a form prescribed by
6 the department by the 20th day of the month following the sale
7 or purchase of tobacco products from any other source on which
8 the tax levied by this article has not been paid. The tax is due
9 at the time the report is due. The department may required the
10 filing of reports and payment of tax on a less frequent basis at
11 its discretion.

12 Section 1205-A. (Reserved).

13 Section 1206-A. Procedures for claiming refund.

14 A claim for a refund of tax imposed by this article under
15 section 3003.1 and Article XXVII shall be in the form and
16 contain the information prescribed by the department by
17 regulation.

18 Section 1207-A. Sales or possession of tobacco product when tax
19 not paid.

20 (a) Sales or possession.--Any person who sells or possesses
21 any tobacco product for which the proper tax has not been paid
22 commits a summary offense and shall, upon conviction, be
23 sentenced to pay costs of prosecution and a fine of not less
24 than \$100 not more than \$1,000 or to imprisonment for not more
25 than 60 days, or both, at the discretion of the court. Any
26 tobacco products purchased from a wholesaler properly licensed
27 under this article shall be presumed to have the proper taxes
28 paid.

29 (b) Tax evasion.--Any person that shall falsely or
30 fraudulently, maliciously, intentionally or willfully with

1 intent to evade the payment of the tax imposed by this article
2 sells or possesses any tobacco product for which the proper tax
3 has not been paid commits a felony and shall, upon conviction,
4 be sentenced to pay costs of prosecution and a fine of not more
5 than \$15,000 or to imprisonment for not more than five years, or
6 both, at the discretion of the court.

7 Section 1208-A. Assessment.

8 The department is authorized to make the inquiries,
9 determinations and assessments of the tax, including interest,
10 additions and penalties, imposed by this article.

11 Section 1209-A. (Reserved).

12 Section 1210-A. (Reserved).

13 Section 1211-A. Failure to file return.

14 Where no return is filed, the amount of the tax due may be
15 assessed and collected at any time as to taxable transactions
16 not reported.

17 Section 1212-A. False or fraudulent return.

18 Where the taxpayer willfully files a false or fraudulent
19 return with intent to evade the tax imposed by this article, the
20 amount of tax due may be assessed and collected at any time.

21 Section 1213-A. Extension of limitation period.

22 Notwithstanding any other provision of this article, where,
23 before the expiration of the period prescribed for the
24 assessment of a tax, a taxpayer has consented, in writing, that
25 the period be extended, the amount of tax due may be assessed at
26 any time within the extended period. The period so extended may
27 be extended further by subsequent consents, in writing, made
28 before the expiration of the extended period.

29 Section 1214-A. Failure to furnish information, returning false
30 information or failure to permit inspection.

1 (a) Penalty.--Any taxpayer who fails to keep or make any
2 record, return, report, inventory or statement, or keeps or
3 makes any false or fraudulent record, return, report, inventory
4 or statement required by this article commits a misdemeanor and
5 shall, upon conviction, be sentenced to pay costs of prosecution
6 and a fine of \$500 and to imprisonment for not more than one
7 year, or both, at the discretion of the court.

8 (b) Examination.--The department is authorized to examine
9 the books and records, the stock of tobacco products and the
10 premises and equipment of any taxpayer in order to verify the
11 accuracy of the payment of the tax imposed by this article. The
12 person subject to an examination shall give to the department or
13 its duly authorized representative, the means, facilities and
14 opportunity for the examination. Willful refusal to cooperate
15 with or permit an examination to the satisfaction of the
16 department shall be sufficient grounds for the suspension or
17 revocation of a taxpayer's license. In addition, a person who
18 willfully refuses to cooperate with or permit an examination to
19 the satisfaction of the department commits a misdemeanor and
20 shall, upon conviction, be sentenced to pay costs of prosecution
21 and a fine of \$500 or to imprisonment for not more than one
22 year, or both, at the discretion of the court.

23 (c) Records; dealer or manufacturer.--A dealer or
24 manufacturer shall keep and maintain for a period of four years
25 records in the form prescribed by the department. The records
26 shall be maintained at the location for which the license is
27 issued.

28 (d) Reports.--A dealer or manufacturer shall file reports at
29 times and in the form prescribed by the department.

30 (e) Records; manufacturer or wholesaler.--A manufacturer or

1 wholesaler located or doing business in this Commonwealth who
2 sells tobacco products to a wholesale license holder in this
3 Commonwealth shall keep records showing:

4 (1) The number and kind of tobacco products sold.

5 (2) The date the tobacco products were sold.

6 (3) The name and license number of the dealer the
7 tobacco products were sold to.

8 (4) The total weight of each of the tobacco products
9 sold to the license holder.

10 (5) The place where the tobacco products were shipped.

11 (6) The name of the common carrier.

12 (f) Manufacturer or wholesaler.--A manufacturer or
13 wholesaler shall file with the department, on or before the 20th
14 of each month, a report showing the information listed in
15 subsection (e) for the previous month.

16 Section 1215-A. Other violations; peace officers; fines.

17 Sections 1278, 1279, 1280 and 1291 are incorporated by
18 reference into and shall apply to the tax imposed by this
19 article.

20 Section 1216-A. (Reserved).

21 Section 1217-A. (Reserved).

22 Section 1218-A. (Reserved).

23 Section 1219-A. Records of shipments and receipts of tobacco
24 products required.

25 The department may, in its discretion, require reports from
26 any common or contract carrier who transports tobacco products
27 to any point or points within this Commonwealth, and from any
28 bonded warehouseman or bailee who has in the possession of the
29 warehouseman or bailee any tobacco products. The reports shall
30 contain the information concerning shipments of tobacco products

1 that the department determines to be necessary for the
2 administration of this article. All common and contract
3 carriers, bailees and warehousemen shall permit the examination
4 by the department or its authorized agents of any records
5 relating to the shipment or receipt of tobacco products.

6 Section 1220-A. Licensing of dealers and manufacturers.

7 (a) Prohibition.--No person, unless all sales of tobacco
8 products are exempt from Pennsylvania tobacco products tax,
9 shall sell, transfer or deliver any tobacco products in this
10 Commonwealth without first obtaining the proper license provided
11 for in this article.

12 (b) Application.--An applicant for a dealer's or
13 manufacturer's license shall complete and file an application
14 with the department. The application shall be in the form and
15 contain information prescribed by the department and shall set
16 forth truthfully and accurately the information desired by the
17 department. If the application is approved, the department shall
18 license the dealer or manufacturer for a period of one year and
19 the license may be renewed annually thereafter.

20 Section 1221-A. Licensing of manufacturers.

21 Any manufacturer doing business within this Commonwealth
22 shall first obtain a license to sell tobacco products by
23 submitting an application to the department containing the
24 information requested by the department and designating a
25 process agent. If a manufacturer designates no process agent,
26 the manufacturer shall be deemed to have made the Secretary of
27 State its agent for the service of process in this Commonwealth.

28 Section 1222-A. Licensing of wholesalers.

29 (a) Requirements.--Applicants for a wholesale license or
30 renewal of that license shall meet the following requirements:

1 (1) The premises on which the applicant proposes to
2 conduct business are adequate to protect the revenue.

3 (2) The applicant is a person of reasonable financial
4 stability and reasonable business experience.

5 (3) The applicant, or any shareholder controlling more
6 than 10% of the stock if the applicant is a corporation or
7 any officer or director if the applicant is a corporation,
8 shall not have been convicted of any crime involving moral
9 turpitude.

10 (4) The applicant shall not have failed to disclose any
11 material information required by the department, including
12 information that the applicant has complied with this article
13 by providing a signed statement under penalty of perjury.

14 (5) The applicant shall not have made any material false
15 statement in the application.

16 (6) The applicant shall not have violated any provision
17 of this article.

18 (7) The applicant shall have filed all required State
19 tax reports and paid any State taxes not subject to a timely
20 perfected administrative or judicial appeal or subject to a
21 duly authorized deferred payment plan.

22 (b) Multiple locations.--The wholesale license shall be
23 valid for one specific location only. Wholesalers with more than
24 one location shall obtain a license for each location.

25 Section 1223-A. Licensing of retailers.

26 Applicants for retail license or renewal of that license
27 shall meet the following requirements:

28 (1) The premises in which the applicant proposes to
29 conduct business are adequate to protect the revenues.

30 (2) The applicant shall not have failed to disclose any

1 material information required by the department.

2 (3) The applicant shall not have any material false
3 statement in the application.

4 (4) The applicant shall not have violated any provision
5 of this article.

6 (5) The applicant shall have filed all required State
7 tax reports and paid any State taxes not subject to a timely
8 perfected administrative or judicial appeal or subject to a
9 duly authorized deferred payment plan.

10 Section 1224-A. License for tobacco products vending machines.

11 Each tobacco products vending machine shall have a current
12 retail license which shall be conspicuously and visibly placed
13 on the machine. There shall be conspicuously and visibly placed
14 on every tobacco products vending machine the name and address
15 of the owner and the name and address of the operator.

16 Section 1225-A. License fees and issuance and display of
17 license.

18 (a) At the time of making any application or license renewal
19 application:

20 (1) An applicant for a tobacco products manufacturers
21 license shall pay the department a license fee of \$1,500.

22 (2) An applicant for a wholesale tobacco products
23 dealer's license shall pay to the department a license fee of
24 \$1,500.

25 (3) An applicant for a retail tobacco products dealer's
26 license shall pay to the department a license fee of \$25.

27 (4) An applicant for a vending machine tobacco products
28 dealer's license shall pay to the department a license fee of
29 \$25.

30 (b) Proration.--Fees shall not be prorated.

1 (c) Issuance and display.--On approval of the application
2 and payment of the fees, the department shall issue the proper
3 license which must be conspicuously displayed at the location
4 for which it has been issued.

5 Section 1226-A. Electronic filing.

6 The department may at its discretion require that any or all
7 returns, reports or registrations that are required to be filed
8 under this article be filed electronically. Failure to
9 electronically file any return, report, registration or other
10 information the department may direct to be filed electronically
11 shall subject the taxpayer to a penalty of 5% of the tax due on
12 the return, up to a maximum of \$1,000, but not less than \$10.
13 This penalty shall be assessed at any time and collected in the
14 manner provided in this article. This penalty shall be in
15 addition to any civil penalty imposed in this article for
16 failure to furnish information or file a return. The criminal
17 penalty for failure to file a return electronically shall be the
18 same as the criminal penalty for failure to furnish information
19 or file a return under this article.

20 Section 1227-A. Expiration of license.

21 (a) Expiration.--A license shall expire on the last day of
22 June next succeeding the date upon which it was issued unless
23 the department at an earlier date suspends, surrenders or
24 revokes the license.

25 (b) Violation.--After the expiration date of the license or
26 sooner if the license is suspended, surrendered or revoked, it
27 shall be illegal for any dealer to engage directly or indirectly
28 in the business heretofore conducted by the dealer for which the
29 license was issued. Any licensee who shall, after the expiration
30 date of the license, engage in the business theretofore

1 conducted by the licensee either by way of purchase, sale,
2 distribution or in any other manner directly or indirectly
3 engaged in the business of dealing with tobacco products for
4 profit shall be in violation of this article and be subject to
5 the penalties provided in this article.

6 Section 1228-A. Administration powers and duties.

7 (a) Department.--The administration of this article is
8 hereby vested in the department. The department shall adopt
9 rules and regulations for the enforcement of this article. The
10 department may impose fees as may be necessary to cover the
11 costs incurred in administering this section.

12 (b) Joint administration.--The department is authorized to
13 jointly administer this article with other provisions of this
14 act, including joint reporting of information, forms, returns,
15 statements, documents or other information submitted to the
16 department.

17 Section 1229-A. Sales without license.

18 (a) Penalty.--Any person who shall, without being the holder
19 of a proper unexpired dealer's license, engage in purchasing,
20 selling, distributing or in any other manner directly or
21 indirectly engaging in the business of dealing with tobacco
22 products for profit commits a summary offense and shall, upon
23 conviction, be sentenced to pay costs of prosecution and a fine
24 of not less than \$250 nor more than \$1,000, or to imprisonment
25 for not more than 30 days, or both, at the discretion of the
26 court.

27 (b) Prima facie evidence.--Open display of tobacco products
28 in any manner shall be prima facie evidence that the person
29 displaying such tobacco products is directly or indirectly
30 engaging in the business of dealing with tobacco products for

1 profit.

2 Section 1230-A. Violations and penalties.

3 (a) Suspension.--The license of any person who violates this
4 article may be suspended after due notice and opportunity for a
5 hearing for a period of not less than five days or more than 30
6 days for a first violation and shall be revoked or suspended for
7 any subsequent violation.

8 (b) Fine.--In addition to the provisions of subsection (a),
9 upon adjudication of a first violation, the person shall be
10 fined not less than \$2,500 nor more than \$5,000. For subsequent
11 violations, the person shall, upon adjudication thereof, be
12 fined not less than \$5,000 nor more than \$15,000.

13 (c) Civil penalty.--A person who violates section 1214-A
14 (b), (c), or (d), or 1225-A(c), shall be subject to a civil
15 penalty not to exceed \$300 per violation but shall not be
16 subject to subsections (a) and (b).

17 Section 1231-A. Property rights.

18 (a) Incorporation.--Subject to subsection (b), section 1285
19 is incorporated by reference into and shall apply to this
20 article.

21 (b) Alterations.--

22 (1) References in section 1285 to cigarettes shall apply
23 to tobacco products in this article.

24 (2) References in section 1285 to 2,000 or more
25 unstamped cigarettes shall apply to tobacco products worth at
26 least \$500 in this article.

27 (3) References in section 1285 to more than 200
28 unstamped cigarettes shall apply to tobacco products worth at
29 least \$50 in this article.

30 Section 1232-A. Sample of tobacco products.

1 (a) Samples.--The department shall, by regulation, govern
2 the receipt, distribution of and payment of tax on sample
3 tobacco products issued for free distribution.

4 (b) Construction.--Nothing in this article or the
5 regulations promulgated under this article shall prohibit the
6 bringing into this Commonwealth by a manufacturer samples of
7 tobacco products to be delivered and distributed only through
8 licensed dealers or the manufacturers or their sales
9 representatives. The tax shall be paid by the manufacturer
10 provided all such packs bear the legend "all applicable State
11 taxes have been paid." Under no circumstances shall any untaxed
12 tobacco products be sold within this Commonwealth.

13 Section 1233-A. Labeling and packaging.

14 It shall be unlawful to knowingly possess, sell, give,
15 transfer or deliver to any person, any tobacco product where the
16 packaging of which has been modified or altered by a person
17 other than the original manufacturer. Modification or alteration
18 shall include the placement of a sticker, writing or mark to
19 cover information on the packages. For purposes of this section,
20 a tobacco product package shall not be construed to have been
21 modified or altered by a person other than the manufacturer if
22 the most recent modification or alteration was made by the
23 manufacturer or person authorized by the manufacturer and
24 approved by the department.

25 Section 1234-A. Information exchange.

26 The department is authorized to exchange information with any
27 other Federal, State or local enforcement agency for purposes of
28 enforcing this article.

29 ARTICLE XXII

30 SEVERANCE TAX

1 Section 2201. Short title of article.

2 This article shall be known and may be cited as the Natural
3 Gas Severance Tax Act.

4 Section 2202. Definitions.

5 The following words and phrases when used in this article
6 shall have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

8 "Accredited laboratory." A facility engaged in the testing
9 and calibration of scientific measurement devices and certified
10 by the Department of Environmental Protection as having met the
11 department's standards for accreditation.

12 "Association." A partnership, limited partnership or any
13 other form of unincorporated enterprise owned or conducted by
14 two or more persons.

15 "Corporation." A corporation, joint stock association,
16 limited liability company, business trust or any other
17 incorporated enterprise organized under the laws of this
18 Commonwealth, the United States or any other state, territory or
19 foreign country or dependency.

20 "Department." The Department of Revenue of the Commonwealth.

21 "Gross value." The volume-weighted average market price for
22 all arms-length transactions that a producer receives at the
23 sales meter for natural gas during a reporting period.

24 "Meter." A device to measure the passage of volumes of gases
25 or liquids past a certain point.

26 "Municipality." A city, borough, incorporated town or a
27 township.

28 "Natural gas." A fossil fuel consisting of a mixture of
29 hydrocarbon gases, primarily methane, possibly including ethane,
30 propane, butane, pentane, carbon dioxide, oxygen, nitrogen and

1 hydrogen sulfide and other gas species. The term includes
2 natural gas from oil fields known as associated gas or casing
3 head gas, natural gas fields known as nonassociated gas, coal
4 beds, shale beds and other formations.

5 "Nonproducing site." A point of severance that is not
6 capable of producing natural gas in paying quantities.

7 "Paying quantities." Profit to the producer, however small,
8 over the producer's current operating expenses.

9 "Person." A natural person or a corporation, fiduciary,
10 association or other entity, including the Commonwealth, its
11 political subdivisions, instrumentalities and authorities. When
12 the term is used in a clause prescribing and imposing a penalty
13 or imposing a fine or imprisonment, or both, the term shall
14 include the members, as applied to an association, and the
15 officers, as applied to a corporation.

16 "Producer." A person who engages or continues within this
17 Commonwealth in the business of severing natural gas for sale,
18 profit or commercial use. The term does not include a person who
19 severs natural gas from a storage field.

20 "Producing site." A point of severance capable of producing
21 natural gas in paying quantities.

22 "Reporting period." A calendar month in which natural gas is
23 severed.

24 "Sales meter." A meter at the point where natural gas is
25 sold or transported to a purchaser or market.

26 "Sever," "severing" or "severance." The extraction or other
27 removal of natural gas from the soil or water of this
28 Commonwealth.

29 "Storage field." A natural formation or other site that is
30 used to store natural gas that did not originate from and has

1 been injected into the formation or site.

2 "Stripper well." A producing site or a nonproducing site
3 that is not capable of producing and does not produce more than
4 60,000 cubic feet of natural gas per day.

5 "Tax." The tax imposed under this article.

6 "Taxpayer." A person subject to the tax imposed by this
7 article.

8 "Unit." A thousand cubic feet of natural gas measured at the
9 wellhead at a temperature of 60 degrees Fahrenheit and an
10 absolute pressure of 14.73 pounds per square inch in accordance
11 with American Gas Association Standards and according to Boyle's
12 law for the measurement of gas under varying pressures with
13 deviations as follows:

14 (1) The average absolute atmospheric pressure shall be
15 assumed to be 14.4 pounds to the square inch, regardless of
16 elevation or location of point of delivery above sea level or
17 variations in atmospheric pressure from time to time.

18 (2) The temperature of the gas passing the meters shall
19 be determined by the continuous use of a recording
20 thermometer installed to properly record the temperature of
21 gas flowing through the meters. The arithmetic average of the
22 temperature recorded each 24-hour day shall be used in
23 computing gas volumes. If a recording thermometer is not
24 installed, or if installed and not operating properly, an
25 average flowing temperature of 60 degrees Fahrenheit shall be
26 used in computing gas volume.

27 (3) The specific gravity of the gas shall be determined
28 annually by tests made by the use of an Edwards or Acme
29 gravity balance, or at intervals as found necessary in
30 practice. Specific gravity determinations shall be used in

1 computing gas volumes.

2 (4) The deviation of the natural gas from Boyle's Law
3 shall be determined by annual tests or at other shorter
4 intervals as found necessary in practice. The apparatus and
5 method used in making the test shall be in accordance with
6 recommendations of the National Bureau of Standards or Report
7 No. 3 of the Gas Measurement Committee of the American Gas
8 Association, or amendments thereto. The results of the tests
9 shall be used in computing the volume of gas delivered under
10 this article.

11 "Wellhead meter." A meter placed at a producing or
12 nonproducing site to measure the volume of natural gas severed
13 for which a wellhead meter certification has been issued.

14 "Wellhead meter certification." A report issued by an
15 accredited laboratory certifying the accuracy of a wellhead
16 meter.

17 Section 2203. Imposition of tax.

18 (a) Establishment.--There is levied a natural gas severance
19 tax on every producer.

20 (b) Rate.--The tax imposed in subsection (a) shall be 8% of
21 the gross value of units severed at the wellhead during a
22 reporting period, plus 7 EIGHT cents per unit severed, but shall ←
23 not be imposed on units severed from a stripper well.

24 Section 2204. Return and payment.

25 (a) Requirement.--Every producer is required to file a
26 return with the department, on a form to be prescribed by the
27 department, reporting all severed natural gas per reporting
28 period and the tax due under section 2203.

29 (a.1) Additional information.--The department may require
30 information necessary for compliance with the act of December

1 19, 1984 (P.L.1140, No.223), known as the Oil and Gas Act, on
2 the returns required under this section or the applications
3 required under section 2205. Information on the returns or
4 applications may be provided to the Department of Environmental
5 Protection.

6 (a.2) Other required submissions by applicant.--

7 (1) An applicant for the grant, renewal or transfer of a
8 permit issued under section 201 of the Oil and Gas Act shall
9 provide to the Department of Environmental Protection, upon
10 forms approved by the department, the following:

11 (i) The applicant's State personal income tax
12 identification number.

13 (ii) The applicant's State sales tax number.

14 (iii) The applicant's State corporation tax number.

15 (iv) The applicant's State employer withholding tax
16 number.

17 (v) The applicant's unemployment compensation
18 account number.

19 (vi) A statement that:

20 (A) State tax reports have been filed and State
21 taxes paid;

22 (B) State taxes are subject to a timely
23 administrative or judicial appeal; or

24 (C) State taxes are subject to a duly approved
25 deferred payment plan.

26 (2) An applicant for the grant, renewal or transfer of a
27 permit referred to in paragraph (1) issued shall, by the
28 filing of an application as it relates to the Department of
29 Environmental Protection waive confidentiality regarding
30 State tax information regarding the application in the

1 possession of the department, the Office of Attorney General
2 or the Department of Labor and Industry, regardless of the
3 source of that information and shall consent to the providing
4 of the information to the board by the department, the Office
5 of Attorney General or the Department of Labor and Industry.

6 (3) Upon receipt of an application for the grant,
7 renewal or transfer of a permit referred to in paragraph (1),
8 the Department of Environmental Protection shall review the
9 State tax status of the applicant. The Department of
10 Environmental Protection shall request State tax information
11 regarding the applicant from the department, the Office of
12 Attorney General or the Department of Labor and Industry and
13 said information shall be provided.

14 (4) The Department of Environmental Protection shall not
15 approve an application for the grant, renewal or transfer of
16 a license issued under this article where the applicant has
17 failed to:

18 (i) provide the information required by paragraph

19 (1);

20 (ii) file required State tax reports; or

21 (iii) pay State taxes not subject to a timely
22 administrative or judicial appeal or subject to a duly
23 authorized deferred payment plan.

24 (5) For the purpose of this section, the term
25 "applicant" shall include the transferor and transferee of a
26 permit referred to in paragraph (1).

27 (6) Upon the required submission of the permit fee or
28 upon issuance or transfer of any permit referred to in
29 paragraph (1), if the department or the Department of Labor
30 and Industry notifies the board of noncompliance with the

1 provisions of this subsection, the board shall not issue or
2 transfer the permit. An appeal filed therefrom shall not act
3 as a supersedeas.

4 (7) This section shall also be applicable to a
5 management company utilized by the applicant.

6 (b) Filing.--The return required by subsection (a) shall be
7 filed with the department within 15 days following the end of
8 the second calendar month after a reporting period.

9 (c) Deadline.--The tax imposed under section 2203 is due on
10 the day the return is required to be filed and becomes
11 delinquent if not remitted to the department by that date.

12 Section 2205. Natural gas severance tax registration.

13 (a) Application.--Before a producer severs natural gas in
14 this Commonwealth, the producer shall apply to the department
15 for a natural gas severance tax registration certificate.

16 (a.1) Application fee.--The department may charge an
17 application fee to cover the administrative costs associated
18 with the application and registration process. If the department
19 charges an application fee, the department shall not issue a
20 registration certificate until the producer has paid the
21 application fee.

22 (a.2) Declaration.--The producer shall include in its
23 application a declaration of all sites in this Commonwealth used
24 by the producer for the severance of natural gas. The
25 declaration is to include all producing sites and nonproducing
26 sites as well as wellhead meter certification for each. The
27 producer is required to update the declaration when the producer
28 adds or removes a producing site or nonproducing site in this
29 Commonwealth or when there is a change in the status of a
30 producing site or nonproducing site or when the producer uses a

1 different accredited laboratory to certify the accuracy of the
2 producer's wellhead meters. The producer shall update the
3 declaration within 30 days after a calendar month in which a
4 change to the declaration occurs.

5 (b) Issuance.--Except as provided in subsection (c), after
6 the receipt of an application, the department shall issue a
7 registration certificate under subsection (a). The registration
8 certificate shall be nonassignable. All registrants shall be
9 required to renew their registration certificates and wellhead
10 meter certifications on a staggered renewal system established
11 by the department. After the initial staggered renewal period, a
12 registration certificate or a wellhead meter certification
13 issued shall be valid for a period of five years.

14 (c) Refusal, suspension or revocation.--The department may
15 refuse to issue, suspend or revoke a registration certificate if
16 the applicant or registrant has not filed required State tax
17 reports and paid State taxes not subject to a timely perfected
18 administrative or judicial appeal or subject to a duly
19 authorized deferred payment plan. The department shall notify
20 the applicant or registrant of any refusal, suspension or
21 revocation. The notice shall contain a statement that the
22 refusal, suspension or revocation may be made public. The notice
23 shall be made by first class mail. An applicant or registrant
24 aggrieved by the determination of the department may file an
25 appeal under the provisions for administrative appeals of this
26 act. In the case of a suspension or revocation which is
27 appealed, the registration certificate shall remain valid
28 pending a final outcome of the appeals process. Notwithstanding
29 sections 274, 353(f), 408(b), 603, 702, 802, 904 and 1102 or any
30 other provision of law, if no appeal is taken or if an appeal is

1 taken and denied at the conclusion of the appeal process the
2 department may disclose, by publication or otherwise, the
3 identity of a producer and the fact that the producer's
4 registration certificate has been refused, suspended or revoked
5 under this subsection. Disclosure may include the basis for
6 refusal, suspension or revocation.

7 (d) Violation.--A person severing natural gas in this
8 Commonwealth without holding a valid registration certificate
9 under subsection (b) shall be guilty of a summary offense and
10 shall, upon conviction, be sentenced to pay a fine of not less
11 than \$300 nor more than \$1,500. In the event the person
12 convicted defaults, he shall be sentenced to imprisonment for
13 not less than five days nor more than 30 days. The penalties
14 imposed by this subsection shall be in addition to any other
15 penalties imposed by this article. For purposes of this
16 subsection, the severing of natural gas during any calendar day
17 shall constitute a separate violation. The Secretary of Revenue
18 may designate employees of the department to enforce the
19 provisions of this subsection. The employees shall exhibit proof
20 of and be within the scope of the designation when instituting
21 proceedings as provided by the Pennsylvania Rules of Criminal
22 Procedure.

23 (e) Failure to obtain registration certificate.--Failure to
24 obtain or hold a valid registration certificate does not relieve
25 a person from liability for the tax imposed by this article.
26 Section 2205.1. Meters.

27 A producer shall provide for and maintain a discrete wellhead
28 meter and a discrete sales meter. A producer shall ensure that
29 the meters are maintained according to industry standards. Any
30 wellhead meter installed after the effective date of this

1 section shall be a digital meter.

2 Section 2206. Assessments.

3 (a) Authorization and requirement.--The department is
4 authorized and shall make the inquiries, determinations and
5 assessments of the natural gas severance tax, including
6 interest, additions and penalties imposed under this article.

7 (b) Notice.--The notice of assessment and demand for payment
8 shall be mailed to the taxpayer. The notice shall set forth the
9 basis of the assessment. The department shall send the notice of
10 assessment to the taxpayer at its registered address via
11 certified mail if the assessment increases the taxpayer's tax
12 liability by \$300. Otherwise, the notice of assessment may be
13 sent via regular mail.

14 Section 2207. Time for assessment.

15 (a) Requirement.--An assessment as provided under section
16 2206 shall be made within three years after the date when the
17 return provided for by section 2204 is filed or the end of the
18 year in which the tax liability arises, whichever shall occur
19 last. For the purposes of this subsection and subsection (b), a
20 return filed before the last day prescribed for the filing
21 period shall be considered as filed on the last day.

22 (b) Exception.--If the taxpayer underpays the correct amount
23 of the tax due by 25% or more, the tax may be assessed within
24 six years after the date the return was filed.

25 (c) Intent to evade.--Where no return is filed or where the
26 taxpayer files a false or fraudulent return with intent to evade
27 the tax imposed by this article, the assessment may be made at
28 any time.

29 (d) Erroneous credit or refund.--Within three years of the
30 granting of a refund or credit or within the period in which an

1 assessment or reassessment may have been issued by the
2 department for the taxable period for which the refund was
3 granted, whichever period shall last occur, the department may
4 issue an assessment to recover a refund or credit made or
5 allowed erroneously.

6 Section 2208. Extension of limitation period.

7 Notwithstanding the provisions of this article, the
8 assessment period may be extended in the event a taxpayer has
9 provided written consent before the expiration of the period
10 provided in section 2207 for a tax assessment. The amount of tax
11 due may be assessed at any time within the extended period. The
12 period may be extended further by subsequent written consents
13 made before the expiration of the extended period.

14 Section 2209. Reassessments.

15 A taxpayer against whom an assessment is made may petition
16 the department for a reassessment under Article XXVII.

17 Section 2210. Interest.

18 The department shall assess interest on any delinquent tax at
19 the rate prescribed under section 806 of the act of April 9,
20 1929 (P.L.343, No. 176), known as The Fiscal Code.

21 Section 2211. Penalties.

22 The department shall enforce the following penalties:

23 (1) A penalty against a valid producer without a natural
24 gas severance tax registration certificate. The penalty shall
25 be \$1 for every unit severed without a valid registration
26 certificate. The department may assess this penalty
27 separately from or in conjunction with any assessment of the
28 natural gas severance tax.

29 (2) A penalty against a producer for failure to timely
30 file a return as required under section 2204. The penalty

1 shall be 5% of the tax liability to be reported on the return
2 for each day beyond the due date that the return is not
3 filed.

4 (3) In addition to the penalty under paragraph (2), a
5 penalty against the producer for a willful failure to timely
6 file a return. The penalty shall be 200% of the tax liability
7 required to be reported on the return.

8 (4) A penalty against a producer for failure to timely
9 pay the tax as required by section 2204(c). The penalty shall
10 be 5% of the amount of tax due for each day beyond the
11 payment date that the tax is not paid.

12 Section 2212. Criminal acts.

13 (a) Fraudulent return.--Any person with intent to defraud
14 the Commonwealth, who willfully makes or causes to be made a
15 return required by this article which is false, is guilty of a
16 misdemeanor and shall, upon conviction, be sentenced to pay a
17 fine of not more than \$2,000 or to imprisonment for not more
18 than three years, or both.

19 (b) Other crimes.--

20 (1) Except as otherwise provided by subsection (a), a
21 person is guilty of a misdemeanor and shall, upon conviction,
22 be sentenced to pay a fine of not more than \$1,000 and costs
23 of prosecution or to imprisonment for not more than one year,
24 or both, for any of the following:

25 (i) Willfully failing to timely remit the tax to the
26 department.

27 (ii) Willfully failing or neglecting to timely file
28 a return or report required by this article.

29 (iii) Refusing to timely pay a tax, penalty or
30 interest imposed or provided for by this article.

1 (iv) Willfully failing to preserve its books, papers
2 and records as directed by the department.

3 (v) Refusing to permit the department or its
4 authorized agents to examine its books, records or
5 papers.

6 (vi) Knowingly make any incomplete, false or
7 fraudulent return or report.

8 (vii) Preventing or attempting to prevent the full
9 disclosure of the amount of natural gas severance tax
10 due.

11 (viii) Providing any person with a false statement
12 as to the payment of natural gas severance tax with
13 respect to any pertinent facts.

14 (ix) Making, uttering or issuing a false or
15 fraudulent statement.

16 (2) The penalties imposed by this section shall be in
17 addition to other penalties imposed by this article.

18 Section 2213. Abatement of additions or penalties.

19 Upon the filing of a petition for reassessment or a petition
20 for refund by a taxpayer as provided under this article,
21 additions or penalties imposed upon the taxpayer by this article
22 may be waived or abated in whole or in part where the petitioner
23 establishes that he acted in good faith, without negligence and
24 with no intent to defraud.

25 Section 2214. Bulk and auction sales.

26 A person that sells or causes to be sold at auction, or that
27 sells or transfers in bulk, 51% or more of a stock of goods,
28 wares or merchandise of any kind, fixtures, machinery,
29 equipment, buildings or real estate involved in a business for
30 which the person holds a registration certificate or is required

1 to obtain a registration certificate under the provisions of
2 this article shall be subject to the provisions of section 1403
3 of the act of April 9, 1929 (P.L.343, No.176), known as The
4 Fiscal Code.

5 Section 2215. Collection upon failure to request reassessment,
6 review or appeal.

7 (a) Power of department.--The department may collect the
8 natural gas severance tax:

9 (1) If an assessment of the tax is not paid within 30
10 days after notice to the taxpayer when no petition for
11 reassessment has been filed.

12 (2) Within 60 days of the reassessment, if no petition
13 for review has been filed.

14 (3) If no appeal has been made, within 30 days of:

15 (i) the Board of Finance and Revenue's decision of a
16 petition for review; or

17 (ii) the expiration of the board's time for acting
18 upon the petition.

19 (4) In all cases of judicial sales, receiverships,
20 assignments or bankruptcies.

21 (b) Prohibition.--In a case for the collection of taxes
22 under subsection (a), the taxpayer against whom they were
23 assessed shall not be permitted to set up a ground of defense
24 that might have been determined by the department, the Board of
25 Finance and Revenue or the courts, provided that the defense of
26 failure of the department to mail notice of assessment or
27 reassessment to the taxpayer and the defense of payment of
28 assessment or reassessment may be raised in proceedings for
29 collection by a motion to stay the proceedings.

30 Section 2216. Tax liens.

1 (a) Lien imposed.--If any taxpayer neglects or refuses to
2 pay the natural gas severance tax for which the taxpayer is
3 liable under this article after demand, the amount, including
4 interest, addition or penalty, together with additional costs
5 that may accrue, shall be a lien in favor of the Commonwealth
6 upon the real and personal property of the taxpayer but only
7 after the same has been entered and docketed of record by the
8 prothonotary of the county where the property is situated. The
9 department may, at any time, transmit to the prothonotaries of
10 the respective counties certified copies of all liens imposed by
11 this section. It shall be the duty of the prothonotary receiving
12 the lien to enter and docket the same of record to the office of
13 the prothonotary. The lien shall be indexed as judgments are now
14 indexed. No prothonotary shall require as a condition precedent
15 to the entry of the lien the payment of costs incidental to its
16 entry.

17 (b) Priority of lien and effect on judicial sale.--Except
18 for the costs of the sale and the writ upon which the sale was
19 made and real estate taxes and municipal claims against the
20 property, a lien imposed under this section shall have priority
21 from the date of its recording and shall be fully paid and
22 satisfied out of the proceeds of any judicial sale of property
23 subject to the lien, before any other obligation, judgment,
24 claim, lien or estate to which the property may subsequently
25 become subject, but shall be subordinate to mortgages and other
26 liens existing and duly recorded or entered of record prior to
27 the recording of the lien.

28 (c) No discharge by sale on junior lien.--In the case of a
29 judicial sale of property subject to a lien imposed under this
30 section, upon a lien or claim over which the lien imposed under

1 this section has priority, the sale shall discharge the lien
2 imposed under this section to the extent only that the proceeds
3 are applied to its payment, and the lien shall continue in full
4 force and effect as to the balance remaining unpaid. There shall
5 be no inquisition or condemnation upon any judicial sale of real
6 estate made by the Commonwealth under the provisions of this
7 article. The lien shall continue as provided in the act of April
8 9, 1929 (P.L.343, No.176), known as The Fiscal Code, and a writ
9 of execution may directly issue upon the lien without the
10 issuance and prosecution to judgment of a writ of scire facias,
11 provided that not less than ten days before issuance of any
12 execution on the lien, notice of the filing and the effect of
13 the lien shall be sent by registered mail to the taxpayer at its
14 last known post office address, provided further that the lien
15 shall have no effect upon any stock of goods, wares or
16 merchandise regularly sold or leased in the ordinary course of
17 business by the taxpayer against whom the lien has been entered,
18 unless and until a writ of execution has been issued and a levy
19 made upon said stock of goods, wares and merchandise.

20 (d) Duty of prothonotary.--Any willful failure of any
21 prothonotary to carry out any duty imposed upon him by this
22 section shall be a misdemeanor. Upon conviction, he shall be
23 sentenced to pay a fine of not more than \$1,000 and costs of
24 prosecution or to imprisonment for not more than one year, or
25 both.

26 (e) Priority.--Except as provided in this article, the
27 distribution, voluntary or compulsory, in receivership,
28 bankruptcy or otherwise of the property or estate of any person,
29 all taxes imposed by this article which are due and unpaid and
30 are not collectible under the provisions of section 225, shall

1 be paid from the first money available for distribution in
2 priority to all other claims and liens, except as the laws of
3 the United States may give priority to a claim to the Federal
4 Government. A person charged with the administration or
5 distribution of the property or estate who violates the
6 provisions of this section shall be personally liable for the
7 taxes imposed by this article which are accrued and unpaid and
8 chargeable against the person whose property or estate is being
9 administered or distributed.

10 (f) Other remedies.--Subject to the limitations contained in
11 this article as to the assessment of taxes, nothing contained in
12 this section shall be construed to restrict, prohibit or limit
13 the use by the department in collecting taxes due and payable of
14 another remedy or procedure available at law or equity for the
15 collection of debts.

16 Section 2217. Tax suit reciprocity.

17 The courts of this Commonwealth shall recognize and enforce
18 liabilities for natural gas severance taxes lawfully imposed by
19 any other state, provided that the other state recognizes and
20 enforces the tax set forth in this article.

21 Section 2218. Service.

22 A producer is deemed to have appointed the Secretary of the
23 Commonwealth its agent for the acceptance of service of process
24 or notice in a proceeding for the enforcement of the civil
25 provisions of this article and service made upon the Secretary
26 of the Commonwealth as agent shall be of the same legal force
27 and validity as if the service had been personally made upon the
28 producer. Where service cannot be made upon the producer in the
29 manner provided by other laws of this Commonwealth relating to
30 service of process, service may be made upon the Secretary of

1 the Commonwealth. In that case, a copy of the process or notice
2 shall be personally served upon any agent or representative of
3 the producer who may be found within this Commonwealth or, where
4 no agent or representative may be found, a copy of the process
5 or notice shall be sent via registered mail to the producer at
6 the last known address of its principal place of business, home
7 office or residence.

8 Section 2219. Refunds.

9 Under Article XXVII, the department shall refund all taxes,
10 interest and penalties paid to the Commonwealth under the
11 provisions of this article to which the Commonwealth is not
12 rightfully entitled. The refunds shall be made to the person or
13 the person's heirs, successors, assigns or other personal
14 representatives who paid the tax, provided that no refund shall
15 be made under this section regarding a payment made by reason of
16 an assessment where a taxpayer has filed a petition for
17 reassessment under section 2702 to the extent the petition is
18 adverse to the taxpayer by a decision which is no longer subject
19 to further review or appeal. Nothing in this article shall
20 prohibit a taxpayer who has filed a timely petition for
21 reassessment from amending it to a petition for refund where the
22 petitioner paid the tax assessed.

23 Section 2220. Refund petition.

24 (a) General rule.--Except as provided for in subsection (b),
25 the refund or credit of tax, interest or penalty provided for by
26 section 2219 shall be made only where the person who has paid
27 the tax files a petition for refund with the department under
28 Article XXVII, within the time limits of section 3003.1.

29 (b) Natural gas severance tax.--A refund or credit of tax,
30 interest or penalty paid as a result of an assessment made by

1 the department under section 2205 shall be made only where the
2 person who has paid the tax files with the department a petition
3 for a refund with the department under Article XXVII within the
4 time limits of section 3003.1. The filing of a petition for
5 refund, under the provisions of this subsection, shall not
6 affect the abatement of interest, additions or penalties to
7 which the person may be entitled by reason of his payment of the
8 assessment.

9 Section 2221. Rules and regulations.

10 The department is charged with the enforcement of the
11 provisions of this article and is authorized and empowered to
12 prescribe, adopt, promulgate and enforce rules and regulations
13 not inconsistent with the provisions of this article relating to
14 any matter or thing pertaining to the administration and
15 enforcement of the provisions of this article and the collection
16 of taxes, penalties and interest imposed by this article. The
17 department may prescribe the extent, if any, to which any of the
18 rules and regulations shall be applied without retroactive
19 effect.

20 Section 2222. Recordkeeping.

21 (a) General rule.--Every person liable for any tax imposed
22 by this article, or for the collection of such tax, shall keep
23 records, including those enumerated in subsection (b), render
24 statements, make returns and comply with the rules and
25 regulations as the department may prescribe regarding matters
26 pertinent to the person's business. Whenever it is necessary,
27 the department may require a person, by notice served upon the
28 person or by regulations, to make returns, render statements or
29 keep records as the department deems sufficient to show whether
30 or not a person is liable to pay tax under this article.

1 (a.1) Records.--Records to be maintained are:

2 (1) Wellhead meter and sales meter charts for each
3 reporting period and the meter calibration and maintenance
4 records. If turbine meters are in use, the maintenance
5 records will be made available to the department upon
6 request.

7 (2) Records, statements and other instruments furnished
8 to a producer by a person to whom the producer delivers for
9 sale, transport or delivery of natural gas.

10 (3) Records, statements and other instruments as the
11 department may prescribe by regulation.

12 (b) Records of nonresidents.--A nonresident who does
13 business in this Commonwealth as a producer shall keep adequate
14 records of the business and of the tax due as a result. The
15 records shall be retained within this Commonwealth unless
16 retention outside this Commonwealth is authorized by the
17 department. The department may require a taxpayer who desires to
18 retain records outside this Commonwealth to assume reasonable
19 out-of-State audit expenses.

20 (c) Keeping of separate records.--A producer who is engaged
21 in another business or businesses which do not involve the
22 severing of natural gas taxable under this article, shall keep
23 separate books and records of the businesses so as to show the
24 taxable severing of natural gas under this article separately
25 from other business activities not taxable hereunder. If any
26 person fails to keep separate books and records, the person
27 shall be liable for a penalty equaling 100% of tax due under
28 this article for the period where separate records were not
29 maintained.

30 Section 2223. Examinations.

1 The department or any of its authorized agents are authorized
2 to examine the books, papers and records of any taxpayer in
3 order to verify the accuracy and completeness of any return made
4 or, if no return was made, to ascertain and assess the tax
5 imposed by this article. The department may require the
6 preservation of all books, papers and records for any period
7 deemed proper by it but not to exceed three years from the end
8 of the calendar year to which the records relate. Every taxpayer
9 is required to give to the department or its agent the means,
10 facilities and opportunity for examinations and investigation
11 under this section. The department is further authorized to
12 examine any person, under oath, concerning the taxable severing
13 of natural gas by any taxpayer or concerning any other matter
14 relating to the enforcement or administration of this article,
15 and to this end may compel the production of books, papers and
16 records and the attendance of all persons whether as parties or
17 witnesses whom it believes to have knowledge of relevant
18 matters. The procedure for the hearings or examinations shall be
19 the same as that provided by the act of April 9, 1929 (P.L.343,
20 No. 176), known as The Fiscal Code.

21 Section 2224. Unauthorized disclosure.

22 Any information gained by the department as a result of any
23 return, examination, investigation, hearing or verification
24 required or authorized by this article shall be confidential
25 except for official purposes and except in accordance with
26 proper judicial order or as otherwise provided by law, and any
27 person unlawfully divulging the information shall be guilty of a
28 misdemeanor and shall, upon conviction, be sentenced to pay a
29 fine of not more than \$1000 and costs of prosecution or to
30 imprisonment for not more than one year, or both.

1 Section 2225. Cooperation with other governments.

2 Notwithstanding the provisions of section 2217, the
3 department may permit the Commissioner of the Internal Revenue
4 Service of the United States, the proper officer of any state or
5 the authorized representative of either of them to inspect the
6 tax returns of any taxpayer, or may furnish to the commissioner
7 or officer or to either of their authorized representative an
8 abstract of the return of any taxpayer, or supply him with
9 information concerning any item contained in any return or
10 disclosed by the report of any examination or investigation of
11 the return of any taxpayer. This permission shall be granted
12 only if the laws of the United States or another state grant
13 substantially similar privileges to the proper officer of the
14 Commonwealth charged with the administration of this article.

15 Section 2226. Bonds.

16 (a) Taxpayer to file bond.--The department may require a
17 nonresident natural person or any foreign corporation,
18 association, fiduciary or other entity, not authorized to do
19 business within this Commonwealth or not having an established
20 place of business in this Commonwealth and subject to the tax
21 imposed by section 2203, to file a bond issued by a surety
22 company authorized to do business in this Commonwealth and
23 approved by the Insurance Commissioner as to solvency and
24 responsibility, in amounts as it may fix, to secure the payment
25 of any tax or penalties due or which may become due from a
26 nonresident natural person, corporation, association, fiduciary
27 or other entity whenever it deems it necessary to protect the
28 revenues obtained under this article. The department may also
29 require a bond of a person petitioning the department for
30 reassessment in the case of any assessment over \$500 or where,

1 in its opinion, the ultimate collection is in jeopardy. For a
2 period of three years, the department may require a bond of any
3 person who has, on three or more occasions within a 12-month
4 period, either filed a return or made payment to the department
5 more than 30 days late. In the event the department determines a
6 taxpayer is required to file a bond, it shall give notice to the
7 taxpayer specifying the amount of the bond required. The
8 taxpayer shall file the bond within five days after notice is
9 given by the department unless, within five days, the taxpayer
10 shall request in writing a hearing before the Secretary of
11 Revenue or his representative. At the hearing, the necessity,
12 propriety and amount of the bond shall be determined by the
13 secretary or the secretary's representative. The determination
14 shall be final and the taxpayer shall comply with it within 15
15 days after notice is mailed to the taxpayer.

16 (b) Securities in lieu of bond.--In lieu of the bond
17 required by this section securities approved by the department
18 or cash in a prescribed amount may be deposited. The securities
19 or cash shall be kept in the custody of the department. The
20 department may apply the securities or cash to the tax imposed
21 by this article and interest or penalties due without notice to
22 the depositor. The securities may be sold by the department to
23 pay the tax and/or interest or penalties due at public or
24 private sale upon five days' written notice to the depositor.

25 (c) Failure to file bond.--The department may file a lien
26 under section 2216 against any taxpayer who fails to file a bond
27 when required to do so under this section. All funds received
28 upon execution of the judgment on the lien shall be refunded to
29 the taxpayer with 3% interest, should a final determination be
30 made that it does not owe any payment to the department.

1 Section 2227. Revenue deposits and distributions.

2 (a) Deposit.--

3 (1) Eighty percent of the proceeds of the natural gas
4 severance tax, penalties and interest imposed by this
5 article, less the amounts appropriated under section 2228,
6 shall be deposited into the General Fund.

7 (2) Twelve percent of the proceeds of the natural gas
8 severance tax, penalties and interest imposed by this
9 article, less the amounts appropriated under section 2228,
10 shall be deposited into a restricted receipts account
11 established within the General Fund.

12 (3) Four percent of the proceeds of the natural gas
13 severance tax, penalties and interest imposed by this
14 article, less the amounts appropriated under section 2228,
15 shall be deposited into the Environmental Stewardship Fund.

16 (4) Two percent of the proceeds of the natural gas
17 severance tax, penalties and interest imposed by this
18 article, less the amounts appropriated under section 2228,
19 shall be deposited into the Conservation District Fund for
20 distribution to county conservation districts pursuant to
21 guidelines established by the State Conservation Commission.

22 (5) One-half percent of the proceeds of the natural gas
23 severance tax, penalties and interest imposed by this
24 article, less the amounts appropriated under section 2228,
25 shall be deposited into the Hazardous Sites Cleanup Fund.

26 (6) One-half percent of the proceeds of the natural gas
27 severance tax, penalties and interest imposed by this
28 article, less the amounts appropriated under section 2228,
29 shall be deposited into the Pennsylvania Game Commission.

30 (7) One-half percent of the proceeds of the natural gas

1 severance tax, penalties and interest imposed by this
2 article, less the amounts appropriated under section 2228,
3 shall be deposited into the Pennsylvania Fish and Boat
4 Commission.

5 (8) One-half percent of the proceeds of the natural gas
6 severance tax, penalties and interest imposed by this
7 article, less the amounts appropriated under section 2228,
8 shall be deposited into the Department of Public Welfare to
9 provide cash crisis grants to low-income households under the
10 Low Income Home Energy Assistance Program.

11 (b) Distributions.--

12 (1) Fifty percent of the funds in the restricted
13 receipts account established under subsection (a)(2) shall be
14 distributed to municipalities where natural gas has been
15 severed and taxed under this article. The amount distributed
16 shall be determined on a pro rata basis as follows: The total
17 amount to be distributed under this paragraph is divided by
18 the total number of taxable gas units severed in this
19 Commonwealth; this quotient is then multiplied by the total
20 number of taxable gas units severed in the municipality. The
21 result equals the amount of money to be distributed to the
22 municipality, which shall be used solely for any of the
23 following:

24 (i) Reconstruction, maintenance and repair of
25 municipal roadways and bridges which the municipality has
26 determined have been or are being used extensively to
27 transport natural gas or equipment related to the
28 production thereof.

29 (ii) Parks and recreation.

30 (iii) Industrial and commercial development.

1 (iv) Preservation and improvement of municipal water
2 supplies.

3 (v) Maintenance and capital improvements to the
4 municipal waste and sewage systems.

5 (vi) Preservation and reclamation of the surface
6 waters of the municipality.

7 (vii) Other lawful purposes reasonably related to
8 the consequences of severing natural gas in the
9 municipality.

10 (2) Fifty percent of the funds in the restricted
11 receipts account established under subsection (a) (2) shall be
12 distributed to counties where natural gas has been severed
13 and taxed under this article. The amount distributed to a
14 county shall be determined on a pro rata basis as follows:
15 The total amount to be distributed under this paragraph is
16 divided by the total number of taxable gas units severed in
17 this Commonwealth; this quotient is then multiplied by the
18 total number of taxable gas units severed in the county. The
19 result equals the amount of money to be distributed to the
20 county, which shall be administered by a board comprised of
21 the chairperson of the board of county commissioners, a
22 representative from the natural gas producing municipalities
23 within the county and a county commissioner selected by the
24 representative of the natural gas producing municipalities.
25 The board shall give priority to the reconstruction, repair
26 and maintenance of county roadways and bridges determined by
27 the board to have been and are being used to transport
28 natural gas or equipment related to the production thereof
29 and may allocate the remainder to the county or its
30 municipalities for any of the purposes enumerated in

1 paragraph (1). A simple majority vote of all the members of
2 the board shall be required for any action under this
3 paragraph.

4 (3) The transfers in paragraphs (1) and (2) shall occur
5 semiannually. The transfer in April will be tax revenue from
6 gas severed from July to October. The transfer in October
7 will be tax revenue from gas severed from January to July.

8 Section 2228. Appropriation.

9 The amount of the proceeds from the tax imposed by this
10 article as shall be necessary for the payment of refunds,
11 enforcement or administration under this article, is hereby
12 appropriated for such purposes.

13 Section 3. This act shall take effect as follows:

14 (1) This section shall take effect immediately.

15 (2) The amendment of sections 1206, 1206.1 and 1216 of
16 the act shall take effect in 30 days.

17 (3) The amendment or addition of sections 204(10), 227 ←
18 and 237(c) and (c.1) of the act shall take effect in 60 days.

19 (4) The remainder of this act shall take effect in 90
20 days.