

COMMONWEALTH OF PENNSYLVANIA

LEGISLATIVE JOURNAL

TUESDAY, DECEMBER 20, 2005

SESSION OF 2005

189TH OF THE GENERAL ASSEMBLY

No. 80

HOUSE OF REPRESENTATIVES

The House convened at 11 a.m., e.s.t.

THE SPEAKER PRO TEMPORE (MATTHEW E. BAKER) PRESIDING

PRAYER

HON. LOUISE WILLIAMS BISHOP, member of the House of Representatives, offered the following prayer:

Let us pray:

Dear God, our Heavenly Father, we once again enter into Your awesome presence. You are the power that spoke the universe into existence, hung the stars in the sky, scooped out the bed for the ocean, and bulged up the mountains. You are an awesome God, able to do all things. So as we come this morning, we thank You for all of Your gifts – Your gifts of life; Your gifts of health; Your gifts of strength; Your gifts of family, friends, and this wonderful opportunity to serve as Your servants.

God, we thank You for the precious gift that You gave us, that we celebrate at this particular time. So as we come into Your awesome power, we ask that You will continue to guide us as You guided our founding forefathers, with Your wisdom and with Your knowledge. Help us as we do the business of the Commonwealth of Pennsylvania and the people's business. Help us to lean not unto our own understanding but unto Your understanding, for we know that You do all things well.

Surmount us up as we move forward with brand-new mercies today and with brand-new grace and another brand-new opportunity to make a difference in the lives of those citizens in the Commonwealth of Pennsylvania.

We thank You and offer You our praise and ask these blessings in Your name. Amen.

PLEDGE OF ALLEGIANCE

(The Pledge of Allegiance was recited by members and visitors.)

JOURNAL APPROVAL POSTPONED

The SPEAKER pro tempore. Without objection, the approval of the Journal of Thursday, December 15, 2005, will be postponed until printed.

JOURNALS APPROVED

The SPEAKER pro tempore. However, the following Journals are in print: Wednesday, June 29; Thursday, June 30; and Friday, July 1, 2005. Without objection, they will be approved.

HOUSE BILLS INTRODUCED AND REFERRED

No. 1250 By Representatives SEMMEL, MUNDY, B. SMITH, MANDERINO, ARGALL, BARRAR, BELARDI, BELFANTI, BEYER, BOYD, BUNT, CALTAGIRONE, CAWLEY, CRAHALLA, FABRIZIO, FLEAGLE, GEIST, GEORGE, GINGRICH, GOODMAN, GRUCELA, HANNA, HARPER, HERMAN, HERSHEY, HESS, LEH, MARKOSEK, S. MILLER, MUSTIO, RAPP, READSHAW, REICHLEY, RUBLEY, SIPTROTH, SONNEY, STAIRS, STERN, SURRA, E. Z. TAYLOR, THOMAS, TIGUE, WALKO, WANSACZ, YOUNGBLOOD and McILHINNEY

An Act amending the act of December 18, 1996 (P.L.1066, No.159), known as the Accident and Health Filing Reform Act, further providing for definitions, for required filings, for review procedure and for public comment; and providing for procedure before department.

Referred to Committee on HEALTH AND HUMAN SERVICES, December 20, 2005.

No. 2334 By Representatives VEON, DeWEESE, BEBKO-JONES, BELARDI, BIANCUCCI, CASORIO, COSTA, CRAHALLA, DALEY, DeLUCA, FABRIZIO, GOODMAN, JAMES, LaGROTTA, MANN, McGEEHAN, MYERS, PARKER, PRESTON, ROEBUCK, SATHER, SOLOBAY, TIGUE, WANSACZ, GRUCELA, KOTIK, LEVDANSKY, McCALL, MUNDY, PALLONE, PHILLIPS, RAMALEY, ROONEY, SIPTROTH, STABACK, WALKO, WOJNAROSKI, GEIST, BLACKWELL, CALTAGIRONE and BENNINGHOFF

An Act amending the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, providing for residency requirements for administrative agencies.

Referred to Committee on STATE GOVERNMENT, December 20, 2005.

No. 2335 By Representative R. MILLER

An Act amending Title 72 (Taxation and Fiscal Affairs) of the Pennsylvania Consolidated Statutes, establishing a fund for supplemental funding for new public school students; and making an appropriation.

Referred to Committee on EDUCATION, December 20, 2005.

No. 2336 By Representatives KILLION, BARRAR, BUNT, CLYMER, CORNELL, FREEMAN, GINGRICH, GRUCELA, HARPER, LEACH, LEVDANSKY, MANN, MARKOSEK, McILHATTAN, MUSTIO, RAPP, RAYMOND, REICHLEY, ROSS, SIPTROTH, E. Z. TAYLOR, THOMAS, TIGUE, WATSON, YOUNGBLOOD and GERBER

An Act amending Titles 23 (Domestic Relations) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for funding for victims of domestic violence from marriage and divorce fees; and making a related repeal.

Referred to Committee on JUDICIARY, December 20, 2005.

**HOUSE RESOLUTION
INTRODUCED AND REFERRED**

No. 542 By Representatives COHEN, BENNINGHOFF, DeWEESE, VITALI, THOMAS, GEORGE, JAMES, MANDERINO, HALUSKA, BEBKO-JONES, JOSEPHS, LaGROTTA, FREEMAN, TANGRETTI, YOUNGBLOOD, HARHAI, LEVDANSKY, COSTA, SIPTROTH and CURRY

A Resolution urging the termination of the deployment of United States forces in Iraq.

Referred to Committee on VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, December 20, 2005.

SENATE MESSAGE

AMENDED HOUSE BILL RETURNED
FOR CONCURRENCE AND
REFERRED TO COMMITTEE ON RULES

The clerk of the Senate, being introduced, returned **HB 894, PN 2133**, with information that the Senate has passed the same with amendment in which the concurrence of the House of Representatives is requested.

SENATE MESSAGE

HOUSE BILLS
CONCURRED IN BY SENATE

The clerk of the Senate, being introduced, returned **HB 477, PN 1076**; and **HB 1826, PN 2440**, with information that the Senate has passed the same without amendment.

SENATE MESSAGE

HOUSE AMENDMENTS
CONCURRED IN BY SENATE

The clerk of the Senate, being introduced, informed that the Senate has concurred in the amendments made by the House of Representatives to **SB 895, PN 1417**.

SENATE MESSAGE

HOUSE AMENDMENTS
TO SENATE AMENDMENTS
CONCURRED IN BY SENATE

The clerk of the Senate, being introduced, informed that the Senate has concurred in the amendments made by the House of Representatives to the Senate amendments to **HB 111, PN 3291**.

CALENDAR

**BILL ON CONCURRENCE
IN SENATE AMENDMENTS**

The House proceeded to consideration of concurrence in Senate amendments to **HB 1318, PN 3328**, entitled:

An Act amending the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, providing for requirements relating to voter identification; further providing for powers and duties of county boards, for polling places selected by county boards, for public buildings to be used where possible and portable polling places and for prohibiting polling places in buildings where malt or brewed beverages or liquors are sold; providing for polling places in other buildings; and further providing for nominations by political bodies, for affidavits of candidates, for opening of polls, posting cards of instruction and notices of penalties and voters' rights and examination of voting machines, for voting procedures, for manner of applying to vote, for date of application for absentee ballots, for canvassing of official absentee ballots and for violation of provisions relating to absentee voting.

On the question,
Will the House concur in Senate amendments?

BILL RECOMMITTED

The SPEAKER pro tempore. The Chair recognizes the majority leader.

Mr. S. SMITH. Mr. Speaker, I move that **HB 1318** be recommitted to the Rules Committee.

On the question,
Will the House agree to the motion?
Motion was agreed to.

**BILL ON CONCURRENCE
IN SENATE AMENDMENTS
TO HOUSE AMENDMENTS**

The House proceeded to consideration of concurrence in Senate amendments to House amendments to **SB 157, PN 1422**, entitled:

An Act amending the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, further providing for delegation of taxing powers and restrictions thereon; providing for local services taxes; repealing provisions relating to emergency and municipal services taxes and to continuation of occupational privilege taxes; further providing for collection of and restricted use of certain taxes; and making editorial changes.

On the question,
Will the House concur in Senate amendments to House amendments?

BILL RECOMMITTED

The SPEAKER pro tempore. The Chair recognizes the majority leader.

Mr. S. SMITH. Mr. Speaker, I move that SB 157 be recommitted to the Rules Committee.

On the question,
Will the House agree to the motion?
Motion was agreed to.

BILL ON THIRD CONSIDERATION

The House proceeded to third consideration of **SB 300, PN 710**, entitled:

An Act authorizing the establishment and maintenance of health savings accounts; providing for special tax provisions; and imposing restrictions on health savings accounts.

On the question,
Will the House agree to the bill on third consideration?

BILL RECOMMITTED

The SPEAKER pro tempore. The Chair recognizes the majority leader.

Mr. S. SMITH. Mr. Speaker, I move that SB 300 be recommitted to the Insurance Committee.

On the question,
Will the House agree to the motion?
Motion was agreed to.

PETITION REFERRED

The SPEAKER pro tempore. Pursuant to Article VI, section 4, of the Constitution, the Speaker is hereby referring the attached petition for impeachment to the Judiciary Committee.

RESIGNATION OF MEMBER

The SPEAKER pro tempore. The clerk will read the following correspondence from the gentleman, Mr. Butkovitz.

The following communication was read:

House of Representatives
Commonwealth of Pennsylvania
Harrisburg

December 14, 2005

The Honorable John M. Perzel
The Speaker
PA House of Representatives
139 Main Capitol Building
Harrisburg, PA 17120

Dear Speaker Perzel:

I respectfully submit my resignation from the Pennsylvania House of Representatives effective Noon, December 31, 2005, as the State Representative of the 174th Legislative District.

Very truly yours,
Alan L. Butkovitz

RULES COMMITTEE MEETING

The SPEAKER pro tempore. The Chair recognizes the majority leader, who calls for an immediate meeting of the Rules Committee.

**BILL ON CONCURRENCE
REPORTED FROM COMMITTEE**

HB 894, PN 2133

By Rep. S. SMITH

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, further providing for program of continuing professional development.

RULES.

LEAVES OF ABSENCE

The SPEAKER pro tempore. The Chair recognizes the majority whip, who requests a leave of absence for the day for the gentlelady, Mrs. WATSON, from Bucks County; the gentleman, Mr. O'BRIEN, from Philadelphia County; the gentleman, Mr. SMITH, from York County; and the gentleman, Mr. HABAY, from Allegheny County. Without objection, the leaves of absence will be granted.

The Chair recognizes the minority whip, who requests a leave of absence for the day for the gentleman, Mr. HALUSKA, from Cambria County; the gentleman, Mr. PALLONE, from Westmoreland County; the gentleman, Mr. LaGROTTA, from Lawrence County; and for the week, the gentleman, Mr. WOJNAROSKI, from Cambria County; the gentleman, Mr. RIEGER, from Philadelphia County; the gentleman, Mr. KOTIK, from Allegheny County; the gentlelady, Ms. MUNDY, from Luzerne County; and the gentleman,

Mr. SHANER, from Fayette County. Without objection, the leaves of absence are granted.

MASTER ROLL CALL

The SPEAKER pro tempore. The Chair is about to take the master roll. Members will proceed to vote.

The following roll call was recorded:

PRESENT—191

Adolph	Evans, J.	Levdansky	Ross
Allen	Fabrizio	Mackereth	Rubley
Argall	Fairchild	Maher	Ruffing
Armstrong	Feese	Maitland	Sainato
Baker	Fichter	Major	Samuelson
Baldwin	Fleagle	Manderson	Santoni
Barrar	Flick	Mann	Sather
Bastian	Forcier	Markosek	Saylor
Bebko-Jones	Frankel	Marsico	Scavello
Belardi	Freeman	McCall	Schroder
Belfanti	Gabig	McGeehan	Semmel
Benninghoff	Gannon	McGill	Shapiro
Beyer	Geist	McIlhattan	Siptroth
Biancucci	George	McIlhinney	Smith, S. H.
Birmelin	Gerber	McNaughton	Solobay
Bishop	Gergely	Melio	Sonney
Blackwell	Gillespie	Metcalfe	Staback
Blaum	Gingrich	Micozzie	Stairs
Boyd	Godshall	Millard	Steil
Bunt	Good	Miller, R.	Stern
Butkovitz	Goodman	Miller, S.	Stetler
Buxton	Grell	Mustio	Stevenson, R.
Caltagirone	Grucela	Myers	Stevenson, T.
Cappelli	Gruitza	Nailor	Sturla
Casorio	Hanna	Nickol	Surra
Causar	Harhai	Oliver	Tangretti
Cawley	Harhart	O'Neill	Taylor, E. Z.
Civera	Harper	Parker	Taylor, J.
Clymer	Harris	Payne	Thomas
Cohen	Hasay	Petrarca	Tigue
Cornell	Hennessey	Petri	True
Corrigan	Herman	Petrone	Turzai
Costa	Hershey	Phillips	Veon
Crahalla	Hess	Pickett	Vitali
Creighton	Hickernell	Pistella	Walko
Cruz	Hutchinson	Preston	Wansacz
Curry	James	Pyle	Waters
Daley	Josephs	Quigley	Wheatley
Dally	Kauffman	Ramaley	Williams
DeLuca	Keller, M.	Rapp	Wilt
Denlinger	Keller, W.	Raymond	Wright
Dermody	Kenney	Readshaw	Yewcic
DeWeese	Killion	Reed	Youngblood
DiGirolamo	Kirkland	Reichley	Yudichak
Diven	Leach	Roberts	Zug
Donatucci	Lederer	Roebuck	
Eachus	Leh	Rohrer	Perzel,
Ellis	Lescovitz	Rooney	Speaker
Evans, D.			

ADDITIONS—0

NOT VOTING—0

EXCUSED—12

Habay	LaGrotta	Pallone	Smith, B.
Haluska	Mundy	Rieger	Watson
Kotik	O'Brien	Shaner	Wojnaroski

LEAVES CANCELED—4

Habay	LaGrotta	O'Brien	Watson
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REPUBLICAN CAUCUS

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Bunt, for a caucus announcement.

Mr. BUNT. Thank you, Mr. Speaker.

Mr. Speaker, the Republicans will caucus at 12 noon.

The SPEAKER pro tempore. The Chair thanks the gentleman.

DEMOCRATIC CAUCUS

The SPEAKER pro tempore. The gentleman, Mr. Casorio, is recognized.

Mr. CASORIO. Thank you, Mr. Speaker.

Mr. Speaker, the House Democrats will caucus also beginning at 11:30. We will have informal discussions, formal discussions to follow on the voting calendar today.

Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman.

LEAVE OF ABSENCE CANCELED

The SPEAKER pro tempore. Without objection, the Chair returns to leaves of absence and notes the presence of the gentelady, Mrs. Watson, on the floor of the House, and she is removed from the leaves of absence.

RECESS

The SPEAKER pro tempore. Are there any other announcements in regular session?

Seeing none, this House now stands in recess until the call of the Chair.

AFTER RECESS

The time of recess having expired, the House was called to order.

EDUCATION COMMITTEE MEETING

The SPEAKER pro tempore. And the gentleman, Mr. Stairs, if he would like to make that announcement once again, is recognized.

Mr. STAIRS. Yes. Thank you. We will do it right this time.

We will meet at 1 o'clock in room 60. So, the members of the Education Committee, we have some unfinished business to do and we want to get it done before Christmas. So room 60 at 1 o'clock.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. Thank you, sir.

Education will meet in room 60 at 1 p.m.

Are there any other announcements in regular session?

STATEMENT BY MR. GABIG

The SPEAKER pro tempore. For what purpose does the gentleman, Mr. Gabig, rise?

Mr. GABIG. Thank you, Mr. Speaker.

I guess this would be in the nature of a personal privilege, if I could.

The SPEAKER pro tempore. The gentleman will state his personal privilege.

Mr. GABIG. I just wanted to make a statement that I have been getting calls in my district office for the last 2 days – they are computerized calls – and they tell the people to push a button which sends the calls up to my Capitol office. It is just ringing off the hook up in my Capitol office saying that we are going to vote today for a \$3 billion tax increase and send all the money to Philadelphia, and I am sure my friends from Philadelphia would think that might be a great idea, but I just want to let the people of my district know that that is an absolute falsehood. There is nothing on the calendar that I have heard of today, and I would also like to tell them that I think it is harassment by communication. We are going to report it to the Attorney General's Office as such, and I appreciate the Speaker's indulgence for that statement.

Thank you very much.

The SPEAKER pro tempore. The Chair thanks the gentleman.

We will be making an announcement at a later date when we will be returning to the floor of the House.

STATEMENT BY MR. TANGRETTI

The SPEAKER pro tempore. For what purpose does the gentleman, Mr. Tangretti, rise?

Mr. TANGRETTI. Unanimous consent, Mr. Speaker.

The SPEAKER pro tempore. The gentleman may proceed.

Mr. TANGRETTI. I just want to respond to the gentleman from Carlisle and suggest to the gentleman that he does not have a monopoly on that situation. Those robo calls, as we have announced before on this floor, have happened in all of our districts for various means, and those of us who think it is a horrible way to do business would agree, and I would support the gentleman that that ought not to be a part of what we do in this House. And those on the political side of this operation ought to rethink that, because it is a horrible way, an absolute horrible way to get a message out.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman for his bipartisan opinion.

RECESS

The SPEAKER pro tempore. The House now stands in recess until the call of the Chair.

AFTER RECESS

The time of recess having expired, the House was called to order.

**THE SPEAKER (JOHN M. PERZEL)
PRESIDING****BILLS SIGNED BY SPEAKER**

Bills numbered and entitled as follows having been prepared for presentation to the Governor, and the same being correct, the titles were publicly read as follows:

HB 111, PN 3291

An Act amending the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, further defining "eligible entity"; providing for extension of existing license to cover additional area; and further providing for breweries, for surrender of certain licenses for benefit of licensee, for unlawful acts relative to malt or brewed beverages and licensees, for hours of operation relative to manufacturers, importing distributors and distributors and for unlawful acts relative to liquor, malt and brewed beverages and licensees.

HB 477, PN 1076

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, establishing a civil action to recover damages caused by terrorism.

HB 1826, PN 2440

An Act amending Title 68 (Real and Personal Property) of the Pennsylvania Consolidated Statutes, further providing for escrow of deposits or posting of surety bond or letter of credit.

SB 394, PN 1400

An Act amending the act of May 29, 1956 (1955 P.L.1804, No.600), referred to as the Municipal Police Pension Law, further providing for payments under existing pension plans for service increments to pensions of police officers.

SB 736, PN 1411

An Act amending the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act, further providing for definitions and for regulations; and providing for applicability on certain uncertified buildings.

SB 895, PN 1417

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for police animals.

Whereupon, the Speaker, in the presence of the House, signed the same.

**BILL REPORTED FROM COMMITTEE,
CONSIDERED FIRST TIME, AND TABLED****HB 1421, PN 3341 (Amended)**

By Rep. STAIRS

An Act providing for sexual violence awareness education programs for new students matriculating to institutions of higher education or private licensed schools that receive public funding and for duties of the Department of Education.

EDUCATION.

SUPPLEMENTAL CALENDAR B

RESOLUTION PURSUANT TO RULE 35

Mr. KENNEY called up **HR 543, PN 3336**, entitled:

A Resolution congratulating the Pennsylvania Department of Health on the occasion of the 100th anniversary of its founding and recognizing the Department of Health's centennial celebration from April 27, 2005, through April 26, 2006.

On the question,
Will the House adopt the resolution?

(Members proceeded to vote.)

LEAVES OF ABSENCE CANCELED

The SPEAKER. The Chair notes the presence on the floor of the House of the gentleman, Mr. Habay. His name will be added to the master roll.

The Chair recognizes the gentleman, Mr. O'Brien, and notes his presence on the floor of the hall of the House.

CONSIDERATION OF HR 543 CONTINUED

On the question recurring,
Will the House adopt the resolution?

The following roll call was recorded:

YEAS—195

Adolph	Fabrizio	Levdansky	Ross
Allen	Fairchild	Mackereth	Rubley
Argall	Feese	Maher	Ruffing
Armstrong	Fichter	Maitland	Sainato
Baker	Fleagle	Major	Samuelson
Baldwin	Flick	Manderino	Santoni
Barrar	Forcier	Mann	Sather
Bastian	Frankel	Markosek	Saylor
Bebko-Jones	Freeman	Marsico	Scavello
Belardi	Gabig	McCall	Schroder
Belfanti	Gannon	McGeehan	Semmel
Benninghoff	Geist	McGill	Shapiro
Beyer	George	McIlhattan	Siptroth
Biancucci	Gerber	McIlhinney	Smith, S. H.
Birmelin	Gergely	McNaughton	Solobay
Bishop	Gillespie	Melio	Sonney
Blackwell	Gingrich	Metcalfe	Staback
Blaum	Godshall	Micozzie	Stairs
Boyd	Good	Millard	Steil
Bunt	Goodman	Miller, R.	Stern
Butkovitz	Grell	Miller, S.	Stetler
Buxton	Grucela	Mustio	Stevenson, R.
Caltagirone	Gruitza	Myers	Stevenson, T.
Cappelli	Habay	Nailor	Sturla
Casorio	Hanna	Nickol	Surra
Causer	Harhai	O'Brien	Tangretti
Cawley	Harhart	Oliver	Taylor, E. Z.
Civera	Harper	O'Neill	Taylor, J.
Clymer	Harris	Parker	Thomas
Cohen	Hasay	Payne	Tigue
Cornell	Hennessey	Petrarca	True
Corrigan	Herman	Petri	Turzai
Costa	Hershey	Petrone	Veon
Crahalla	Hess	Phillips	Vitali
Creighton	Hickernell	Pickett	Walko
Cruz	Hutchinson	Pistella	Wansacz

Curry	James	Preston	Waters
Daley	Josephs	Pyle	Watson
Dally	Kauffman	Quigley	Wheatley
DeLuca	Keller, M.	Ramaley	Williams
Denlinger	Keller, W.	Rapp	Wilt
Dermody	Kenney	Raymond	Wright
DeWeese	Killion	Readshaw	Yewcic
DiGirolamo	Kirkland	Reed	Youngblood
Diven	LaGrotta	Reichley	Yudichak
Donatucci	Leach	Roberts	Zug
Eachus	Lederer	Roebuck	
Ellis	Leh	Rohrer	Perzel,
Evans, D.	Lescovitz	Rooney	Speaker
Evans, J.			

NAYS—0

NOT VOTING—0

EXCUSED—8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

POINT OF ORDER

Mr. VITALI. Point of order, Mr. Speaker. Mr. Speaker, a point of order.

The SPEAKER. For what purpose does the gentleman, Mr. Vitali, rise?

Mr. VITALI. The House Democrats are in active caucus right now. I would like some assurance by the Speaker that we will not be proceeding with session until they are informed that we are proceeding.

The SPEAKER. The House Democrats were informed of the fact we would be on the floor. There will be no substantive votes cast until after the Appropriations meeting is concluded.

Mr. VITALI. Mr. Speaker, the Appropriations meeting has concluded. The House Democrats, an announcement was made we would start at 6. I think there are those of us on the horns of a dilemma right now as to whether to proceed to caucus or to stay here.

The SPEAKER. The Democrat leaders said they would be on the floor at 5:30, Mr. Vitali. Maybe you should give them a call in the caucus room and ask what is going on.

Mr. VITALI. I would be happy to go up there. Could the leader—

CALENDAR CONTINUED

BILL ON THIRD CONSIDERATION

The House proceeded to third consideration of **SB 854, PN 1231**, entitled:

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing, in personal income tax, for medical and health savings accounts; and repealing provisions relating to taxation of medical and health savings accounts.

On the question,
Will the House agree to the bill on third consideration?

Mr. **SCAVELLO** offered the following amendment No. **A05363**:

Amend Bill, page 1, lines 6 through 22, by striking out all of said lines and inserting
Amending Titles 53 (Municipalities Generally) and 72 (Taxation and Fiscal Affairs) of the Pennsylvania Consolidated Statutes, further providing for taxation and assessment definitions and applicability; consolidating the sales and use tax provisions of the Tax Reform Code of 1971 and further providing for definitions, for imposition, for exclusions, for credit, for crimes, for transfers to Public Transportation Assistance Fund and for transfers to Property Tax Relief Fund; consolidating the special situs for local sales tax provisions of the Tax Reform Code of 1971; consolidating the personal income tax provisions of the Tax Reform Code of 1971 and further providing for imposition and for classes of income; consolidating and extensively revising the Homeowner Tax Relief Act; consolidating the Senior Citizens Rebate and Assistance Act and further providing for property tax, rent rebate and inflation costs and for funds for payment of claims; and making related repeals.

Amend Bill, page 2, lines 23 through 30; page 3, lines 1 through 28, by striking out all of said lines on said pages and inserting

Section 1. The definition of “governing body” and “school district” in section 8401 of Title 53 of the Pennsylvania Consolidated Statutes are amended to read:

§ 8401. Definitions.

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

* * *

“Governing body.” A board of school directors of a school district or the governing body of a city of the first class.

* * *

“School district.” A school district of the first class, first class A, second class, third class or fourth class, including any independent school district.

* * *

Section 1.1. Section 8405 of Title 53 is amended to read:
[§ 8405. Applicability.

It is the intent of the General Assembly that no provision of this subpart shall apply to any city of the first class, a county of the first class coterminous with a city of the first class and any school district of the first class located within a city of the first class.]

Section 1.2. The definitions of “assessor” and “board” in section 8582 of Title 53 are amended to read:

§ 8582. Definitions.

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

“Assessor.” The chief assessor of the county[,] or the equivalent [position] officer in a home rule county [or the equivalent position in], a city of the third class [that] or a city of the first class which performs its own assessments of real property.

“Board.” Any of the following:

(1) [“Board.” As] A board as defined in the act of June 26, 1931, (P.L.1379, No.348), referred to as the Third Class County Assessment Board Law.

(2) [“Board.” As] A board as defined in the act of May 21, 1943 (P.L.571, No.254), known as The Fourth to Eighth Class County Assessment Law.

(3) [“Board of Property Assessment, Appeals and Review.”] The Board of Property Assessment, Appeals and Review in a county of the second class under the act of June 21,

1939 (P.L.626, No.294), referred to as the Second Class County Assessment Law.

(4) [“Board of Revision of Tax and Appeals.”] The board of revision of taxes and appeals in cities of the third class.

(5) The board or office responsible for revision of taxes and appeals in cities of the first class.

* * *

Section 1.3. Title 72 is amended by adding parts to read:

PART I
PRELIMINARY PROVISIONS
(RESERVED)
PART II
TAXES

Chapter

- 12. Sales and Use Tax.
- 13. Special Situs for Local Sales Tax.
- 15. Personal Income Tax.

CHAPTER 12
SALES AND USE TAX

Subchapter

- A. General Provisions
- B. Imposition of Tax
- C. Exclusions from Tax
- D. Licenses
- E. Hotel Occupancy Tax
- F. Returns
- G. Payment
- H. Assessment and Reassessment
- I. Collection
- J. Nonpayment
- K. Miscellaneous Provisions
- L. Refunds and Credits
- M. Limitations
- N. Interest, Additions, Penalties and Crimes
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SUBCHAPTER A
GENERAL PROVISIONS

Sec.

1201. Definitions.

§ 1201. Definitions.

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

“Adjustment services, collection services or credit reporting services.” Providing collection or adjustments of accounts receivable or mercantile or consumer credit reporting, including, but not limited to, services of the type provided by adjustment bureaus or collection agencies, consumer or mercantile credit reporting bureaus, credit bureaus or agencies, credit clearinghouses or credit investigation services. Such services do not include providing credit card service with collection by a central agency, providing debt counseling or adjustment services to individuals or billing or collection services provided by local exchange telephone companies.

“Advertising services.” Publishing, broadcasting or disseminating promotional information or notices via newspaper, television, radio or any other medium.

“Blasting.” The use of any combustible or explosive composition in the removal of material resources, minerals and mineral aggregates from the earth and the separation of the dirt, waste and refuse in which the resources, minerals and mineral aggregates are found.

“Building machinery and equipment.” Includes, without limitation, boilers, chillers, air cleaners, humidifiers, fans, switchgear, pumps, telephones, speakers, horns, motion detectors, dampers, actuators, grills, registers, traffic signals, sensors, card access devices, guardrails, medial devices, floor troughs and grates and laundry equipment, together with integral coverings and enclosures, whether or

not the item constitutes a fixture or is otherwise affixed to the real estate, whether or not damage would be done to the item or its surroundings upon removal or whether or not the item is physically located within a real estate structure. The term also includes generation equipment, storage equipment, conditioning equipment, distribution equipment and termination equipment, which shall be limited to the following:

- (1) air conditioning, limited to heating, cooling, purification, humidification, dehumidification and ventilation;
- (2) electrical;
- (3) plumbing;
- (4) communications limited to voice, video, data, sound, master clock and noise abatement;
- (5) alarms limited to fire, security and detection;
- (6) control system limited to energy management, traffic and parking lot and building access;
- (7) medical system limited to diagnosis and treatment equipment, medical gas, nurse call and doctor paging;
- (8) laboratory system;
- (9) cathodic protection system; or
- (10) furniture, cabinetry and kitchen equipment.

The term shall not include guardrail posts, pipes, fittings, pipe supports and hangers, valves, underground tanks, wire, conduit, receptacle and junction boxes, insulation, ductwork and coverings thereof.

“Building maintenance or cleaning services.” Providing services which include, but are not limited to, janitorial, maid or housekeeping service, office or interior building cleaning or maintenance service, window cleaning service, floor waxing service, lighting maintenance service such as bulb replacement, cleaning, chimney cleaning service, acoustical tile cleaning service, venetian blind cleaning, cleaning and maintenance of telephone booths or cleaning and degreasing of service stations. The term shall not include repairs on buildings and other structures; nor shall this term include the maintenance or repair of boilers, furnaces and residential air conditioning equipment or parts thereof; the painting, wallpapering or applying other like coverings to interior walls, ceilings or floors; or the exterior painting of buildings.

“Call center.” The physical location in this Commonwealth:

- (1) where at least 150 employees are employed to initiate or answer telephone calls;
- (2) where there are at least two hundred telephone lines; and
- (3) which utilizes an automated call distribution system for customer telephone calls in one or more of the following activities:
 - (i) customer service and support;
 - (ii) technical assistance;
 - (iii) help desk service;
 - (iv) providing information;
 - (v) conducting surveys;
 - (vi) revenue collections; or
 - (vii) receiving orders or reservations.

For purposes of this clause, a physical location may include multiple buildings utilized by a taxpayer located within this Commonwealth.

“Commercial aircraft operator.” A person, excluding scheduled airlines, that engages in any or all of the following: charter of aircraft, leasing of aircraft, aircraft sales, aircraft rental, flight instruction, air freight or any other flight activities for compensation.

“Commercial racing activities.” Any of the following:

- (1) Thoroughbred and harness racing at which pari-mutuel wagering is conducted under the act of December 17, 1981 (P.L.435, No.135), known as the Race Horse Industry Reform Act.
- (2) Fair racing sanctioned by the State Harness Racing Commission.

“Computer software.” A set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

“Construction contract.” A written or oral contract or agreement for the construction, reconstruction, remodeling, renovation or repair of real estate or a real estate structure. The term shall not apply to services which are taxable under paragraphs (14) and (17) of the definition of “sale at retail” and paragraphs (12) and (15) of the definition of “use.”

“Construction contractor.” A person who performs an activity pursuant to a construction contract, including a subcontractor.

“Delivered electronically.” Delivered to the purchaser by means other than tangible storage media.

“Department.” The Department of Revenue of the Commonwealth.

“Detective services.” Providing investigation and detective services.

“Disinfecting or pest control services.” Providing disinfecting, termite control, insect control, rodent control or other pest control services, including, but not limited to, deodorant servicing of restrooms, washroom sanitation service, restroom cleaning service, extermination service or fumigating service. The term “fumigating service” shall not include the fumigation of agricultural commodities or containers used for agricultural commodities, and the term “insect control” shall not include the spraying of trees which are harvested for commercial purposes for gypsy moth control.

“Employment agency services.” Providing employment services to a prospective employer or employee other than employment services provided by theatrical employment agencies and motion picture casting bureaus. These services shall include, but not be limited to, services of the type provided by employment agencies, executive placing services and labor contractor employment agencies other than farm labor.

“Fiscal Code.” The act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

“Gratuity.” Any amount paid or remitted for services performed in conjunction with any sale of food or beverages, or hotel or motel accommodations which amount is in excess of the charges and the tax thereon for such food, beverages or accommodations regardless of the method of billing or payment.

“Help supply services.” Providing temporary or continuing help where the help supplied is on the payroll of the supplying person or entity, but is under the supervision of the individual or business to which help is furnished. These services shall include, but not be limited to, service of a type provided by labor and manpower pools, employee leasing services, office help supply services, temporary help services, usher services, modeling services or fashion show model supply services. Such services shall not include providing farm labor services. The term shall not include nursing, home health care and personal care services and other human health-related services. As used in this definition, “personal care” shall include providing at least one of the following types of assistance to persons with limited ability for self-care:

- (1) dressing, bathing or feeding;
- (2) supervising self-administered medication;
- (3) transferring a person to or from a bed or wheelchair;

or

- (4) routine housekeeping chores when provided in conjunction with and supplied by the same provider of the assistance listed in paragraph (1), (2) or (3).

“Internet.” The international nonproprietary computer network of both Federal and non-Federal interoperable packet switched data networks.

“Lawn care service.” Providing services for lawn upkeep, including, but not limited to, fertilizing, lawn mowing, shrubbery trimming or other lawn treatment services.

“Lobbying services.” Providing the services of a lobbyist, as defined in the definition of “lobbyist” in 65 Pa.C.S. § 1303 (relating to definitions).

“Lodging service.” Providing services including rentals, hookups and rental grounds services at campgrounds, vacation camps, youth hostels, trailer parks and recreational vehicle parks.

“Maintaining a place of business in this Commonwealth.” As follows:

(1) Having, maintaining or using within this Commonwealth, either directly or through a subsidiary, representative or an agent, an office, distribution house, sales house, warehouse, service enterprise or other place of business; or any agent of general or restricted authority, or representative, irrespective of whether the place of business, representative or agent is located in this Commonwealth, permanently or temporarily, or whether the person or subsidiary maintaining the place of business, representative or agent is authorized to do business within this Commonwealth.

(2) Engagement in any activity as a business within this Commonwealth by any person, either directly or through a subsidiary, representative or an agent, in connection with the lease, sale or delivery of tangible personal property or the performance of services thereon for use, storage or consumption or in connection with the sale or delivery for use of the services described in paragraphs (11) through (27) of the definition of sale at retail, including, but not limited to, having, maintaining or using any office, distribution house, sales house, warehouse or other place of business, any stock of goods or any solicitor, canvasser, salesman, representative or agent under its authority, at its direction or with its permission, regardless of whether the person or subsidiary is authorized to do business in this Commonwealth.

(3) Regularly or substantially soliciting orders within this Commonwealth in connection with the lease, sale or delivery of tangible personal property to or the performance thereon of services or in connection with the sale or delivery of the services described in paragraphs (11) through (27) of the definition of sale at retail for residents of this Commonwealth by means of catalogs or other advertising, whether the orders are accepted within or without this Commonwealth.

(3.1) The entering of this Commonwealth by any person to provide assembly, service or repair of tangible personal property, either directly or through a subsidiary, representative or an agent.

(3.2) Delivering tangible personal property to locations within this Commonwealth if the delivery includes the unpacking, positioning, placing or assembling of the tangible personal property.

(3.3) Having any contact within this Commonwealth which would allow the Commonwealth to require a person to collect and remit tax under the Constitution of the United States.

(3.4) Providing a customer’s mobile telecommunications service deemed to be provided by the customer’s home service provider under the Mobile Telecommunications Sourcing Act (Public Law 106-252, 114 Stat. 626). For purposes of this paragraph, words and phrases used in this paragraph shall have the meanings given to them in the Mobile Telecommunications Sourcing Act.

(4) The term shall not include:

(i) Owning or leasing of tangible or intangible property by a person who has contracted with an unaffiliated commercial printer for printing, provided that:

(A) the property is for use by the commercial printer; and

(B) the property is located at the Pennsylvania premises of the commercial printer.

(ii) Visits by a person’s employees or agents to the premises in this Commonwealth of an unaffiliated commercial printer with whom the person has contracted for printing in connection with the contract.

“Management consulting service.” Providing advice and assistance to businesses and other organizations in any of the following areas:

(1) Management and operating advice, such as strategic and organizational planning, financial planning and budgeting, equity and asset management, office planning, site selection, new business startup and business process improvement.

(2) Developing and conducting marketing research or public opinion polling.

(3) Developing and implementing public relations plans.

(4) Human resources and executive search consulting services, including human resource and personnel policies, practices and procedures; employee benefits planning, communication and administration; compensation systems planning; wage and salary administration; and executive search and recruitment.

(5) Environmental advice and assistance, including the control of environmental contamination from pollutants, toxic substances and hazardous materials; and sanitation or site remediation consulting services.

(6) Scientific and technical advice and assistance, including biological, energy, chemical, security and safety consulting services.

“Manufacture.” The performance of manufacturing, fabricating, compounding, processing or other operations, engaged in as a business, which place any tangible personal property in a form, composition or character different from that in which it is acquired whether for sale or use by the manufacturer, and shall include, but not be limited to:

(1) Every operation commencing with the first production stage and ending with the completion of tangible personal property having the physical qualities, including packaging, if any, passing to the ultimate consumer, which it has when transferred by the manufacturer to another.

(2) The publishing of books, newspapers, magazines and other periodicals and printing.

(3) Refining, blasting, exploring, mining and quarrying for, or otherwise extracting from the earth or from waste or stockpiles or from pits or banks any natural resources, minerals and mineral aggregates including blast furnace slag.

(4) Building, rebuilding, repairing and making additions to, or replacements in or upon vessels designed for commercial use of registered tonnage of 50 tons or more when produced upon special order of the purchaser, or when rebuilt, repaired or enlarged, or when replacements are made upon order of, or for the account of the owner.

(5) Research having as its objective the production of a new or an improved:

(i) product or utility service; or

(ii) method of producing a product or utility service.

The term does not include market research or research having as its objective the improvement of administrative efficiency.

(6) Remanufacture for wholesale distribution by a remanufacturer of motor vehicle parts from used parts acquired in bulk by the remanufacturer using an assembly line process which involves the complete disassembly of such parts and integration of the components of such parts with other used or new components of parts, including the salvaging, recycling or reclaiming of used parts by the remanufacturer.

(7) Remanufacture or retrofit by a manufacturer or remanufacturer of aircraft, armored vehicles, other defense-related vehicles having a finished value of at least \$50,000. Remanufacture or retrofit involves the disassembly of such aircraft, vehicles, parts or components, including electric or electronic components, the integration of those parts and components with other used or new parts or components, including the salvaging, recycling or reclaiming of the used parts or components and the assembly of the new or used aircraft,

vehicles, parts or components. For purposes of this definition, the following terms or phrases have the following meanings:

(i) "aircraft" means fixed-wing aircraft, helicopters, powered aircraft, tilt-rotor or tilt-wing aircraft, unmanned aircraft and gliders;

(ii) "armored vehicles" means tanks, armed personnel carriers and all other armed track or semitrack vehicles; or

(iii) "other defense-related vehicles" means trucks, truck-tractors, trailers, jeeps and other utility vehicles, including any unmanned vehicles.

(8) The term does not include constructing, altering, servicing, repairing or improving real estate or repairing, servicing or installing tangible personal property, nor the cooking, freezing or baking of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products.

"Mobile telecommunications service." Mobile telecommunications service as that term is defined in the Mobile Telecommunications Sourcing Act (Public Law 106-252, 114 Stat. 626).

"Person." A natural person, association, fiduciary, partnership, corporation or other entity, including the Commonwealth of Pennsylvania, its political subdivisions and instrumentalities and public authorities. Whenever used in any provision prescribing and imposing a penalty or imposing a fine or imprisonment, or both, the term, as applied to an association, shall include the members of these listed classes and, as applied to a corporation, the officers of the corporation.

"Personal service." Providing services for all of the following:

(1) Providing coin-operated or similar self-service laundry and dry-cleaning equipment for customer use on the premises or supplying and servicing coin-operated or similar self-service laundry and drycleaning equipment for customer use in places of business operated by others, such as apartments and dormitories.

(2) Dry cleaning and laundry services, including:

(i) Linen and uniform supply and cleaning services.

(ii) Drop-off and pickup services for laundries or dry cleaners.

(iii) Specialty cleaning services for specific types of garments and other textile items such as fur garments, leather garments, suede garments, wedding gowns, hats, draperies and pillows. This subparagraph does not include coin-operated dry-cleaning services, linen and uniform supply, coin-operated linen and uniform services or specialty cleaning services for specific carpets or upholstery.

"Prebuilt housing." Either of the following:

(1) Manufactured housing, including mobile homes, which bears a label as required by and referred to in the act of November 17, 1982 (P.L.676, No.192), known as the Manufactured Housing Construction and Safety Standards Authorization Act.

(2) Industrialized housing as defined in the act of May 11, 1972 (P.L.286, No.70), known as the Industrialized Housing Act.

"Prebuilt housing builder." A person who makes a prebuilt housing sale to a prebuilt housing purchaser.

"Prebuilt housing purchaser." A person who purchases prebuilt housing in a transaction and who intends to occupy the unit for residential purposes in this Commonwealth.

"Prebuilt housing sale." A sale of prebuilt housing to a prebuilt housing purchaser, including a sale to a landlord, without regard to whether the person making the sale is responsible for installing the prebuilt housing or whether the prebuilt housing becomes a real estate structure upon installation. Temporary installation by a prebuilt housing builder for display purposes of a unit held for resale shall not be considered occupancy for residential purposes.

"Premium cable or premium video programming service."

(1) That portion of cable television services, video programming services, community antenna television services or any other distribution of television, video, audio or radio services which meets all of the following criteria:

(i) Is transmitted with or without the use of wires to purchasers.

(ii) Consists substantially of programming uninterrupted by paid commercial advertising which includes programming primarily composed of uninterrupted full-length motion pictures or sporting events, pay-per-view, paid programming or like audio or radio broadcasting.

(iii) Does not constitute a component of a basic service tier provided by a cable television system or a cable programming service tier provided by a cable television system.

(A) A basic service tier shall include:

(I) all signals of domestic television broadcast stations;

(II) any public, educational, governmental or religious programming; and

(III) any additional video programming signals or service added to the basic service tier by the cable operator.

(B) The basic service tier shall include a single additional lower-priced package of broadcast channels and access information channels which is a subset of the basic service tier as set forth in this paragraph.

(C) A cable programming service tier includes any video programming other than:

(I) the basic service tier;

(II) video programming offered on a pay-per-channel or pay-per-view basis; or

(III) a combination of multiple channels of pay-per-channel or pay-per-view programming offered as a package.

(2) If a purchaser receives or agrees to receive premium cable or premium video programming service, then the following charges are included in the purchase price:

(i) Charges for installation or repair of any premium cable or premium video programming service.

(ii) Upgrade to include additional premium cable or premium video programming service.

(iii) Downgrade to exclude all or some premium cable or premium video programming service.

(iv) Additional premium cable outlets in excess of ten.

(v) Any other charge or fee related to premium cable or premium video programming services.

(3) The term shall not apply to any of the following:

(i) Transmissions by public television.

(ii) Public radio services.

(iii) Official Federal, State or local government cable services.

(iv) Local origination programming which provides a variety of public service programs unique to the community.

(v) Programming which provides coverage of public affairs issues which are presented without commentary or analysis. This subparagraph includes United States Congressional proceedings.

(vi) Programming which is substantially related to religious subjects.

(vii) Subscriber charges for access to a video dial tone system or charges by a common carrier to a video programmer for the transport of video programming.

“Prepaid mobile telecommunications service.” Mobile telecommunications service which is paid for in advance and which enables the origination of calls using an access number, authorization code or both, whether manually or electronically dialed, if the remaining amount of units of the prepaid mobile telecommunications service is known by the service provider of the prepaid mobile telecommunications service on a continuous basis. The term does not include the advance purchase of mobile telecommunications service if the purchase is pursuant to a service contract between the service provider and customer and if the service contract requires the customer to make periodic payments to maintain the mobile telecommunications service.

“Prepaid telecommunications.” A tangible item containing a prepaid authorization number that can be used solely to obtain telecommunications service, including any renewal or increases in the prepaid amount.

“Prewritten computer software.” The term shall have the same meaning as the term “computer software,” including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions of those programs shall not cause the combination to be considered to be other than prewritten computer software. The term includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of the person’s modifications or enhancements. Prewritten computer software or a prewritten portion of the software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, shall be considered to be prewritten computer software except that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.

“Processing.” The performance of the following activities when engaged in as a business enterprise:

(1) The filtering or heating of honey, the cooking, baking or freezing of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products, when the person engaged in such business packages such property in sealed containers for wholesale distribution.

(1.1) The processing of fruits or vegetables by cleaning, cutting, coring, peeling or chopping and treating to preserve, sterilize or purify and substantially extend the useful shelf life of the fruits or vegetables, when the person engaged in such activity packages such property in sealed containers for wholesale distribution.

(2) The scouring, carbonizing, cording, combing, throwing, twisting or winding of natural or synthetic fibers, or the spinning, bleaching, dyeing, printing or finishing of yarns or fabrics, when such activities are performed prior to sale to the ultimate consumer.

(3) The electroplating, galvanizing, enameling, anodizing, coloring, finishing, impregnating or heat treating of metals or plastics for sale or in the process of manufacturing.

(3.1) The blanking, shearing, leveling, slitting or burning of metals for sale to or use by a manufacturer or processor.

(4) The rolling, drawing or extruding of ferrous and nonferrous metals.

(5) The fabrication for sale of ornamental or structural metal or of metal stairs, staircases, gratings, fire escapes or railings, not including fabrication work done at the construction site.

(6) The preparation of animal feed or poultry feed for sale.

(7) The production, processing and bottling of nonalcoholic beverages for wholesale distribution.

(8) The operation of a saw mill or planning mill for the production of lumber or lumber products for sale. The operation of a saw mill or planning mill begins with the unloading by the operator of the saw mill or planning mill of logs, timber, pulpwood or other forms of wood material to be used in the saw mill or planning mill.

(9) The milling for sale of flour or meal from grains.

(9.1) The aging, stripping, conditioning, crushing and blending of tobacco leaves for use as cigar filler or as components of smokeless tobacco products for sale to manufacturers of tobacco products.

(10) The slaughtering and dressing of animals for meat to be sold or to be used in preparing meat products for sale, and the preparation of meat products including lard, tallow, grease, cooking and inedible oils for wholesale distribution.

(11) The processing of used lubricating oils.

(12) The broadcasting of radio and television programs of licensed commercial or educational stations.

(13) The cooking or baking of bread, pastries, cakes, cookies, muffins and donuts when the person engaged in such activity sells such items at retail at locations that do not constitute an establishment from which ready-to-eat food and beverages are sold. For purposes of this paragraph, a bakery, a pastry shop and a donut shop shall not be considered an establishment from which ready-to-eat food and beverages are sold.

(14) The cleaning and roasting and the blending, grinding or packaging for sale of coffee from green coffee beans or the production of coffee extract.

(15) The preparation of dry or liquid fertilizer for sale.

(16) The production, processing and packaging of ice for wholesale distribution.

(17) The producing of mobile telecommunications services.

“Promoter.” A person who either, directly or indirectly, rents, leases or otherwise operates or grants permission to any person to use space at a show for the display for sale or for the sale of tangible personal property or services subject to tax under section 1202 (relating to imposition of tax).

“Purchase at retail.” Any of the following:

(1) The acquisition for a consideration of the ownership, custody or possession of tangible personal property other than for resale by the person acquiring the same when such acquisition is made for the purpose of consumption or use, whether such acquisition shall be absolute or conditional, and by whatsoever means the same shall have been effected.

(2) The acquisition of a license to use or consume, and the rental or lease of tangible personal property, other than for resale regardless of the period of time the lessee has possession or custody of the property.

(3) The obtaining for a consideration any of those services set forth under paragraphs (2), (3) and (4) of the definition of sale at retail other than for resale.

(4) A retention after March 7, 1956, of possession, custody or a license to use or consume pursuant to a rental contract or other lease arrangement, other than as security, other than for resale.

(5) The obtaining for a consideration any of those services set forth under paragraphs (11) through (27) of the definition of sale at retail.

(6) With respect to liquor and malt or brewed beverages, the term includes purchase of liquor from a Pennsylvania Liquor Store by a person for any purpose, and purchase of malt or brewed beverages from a manufacturer of malt or brewed beverages, distributor or importing distributor by a person for any purpose, except purchases from a manufacturer of malt or brewed beverages by a distributor or importing distributor or purchases from an importing distributor by a distributor within the meaning of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code. The term does not include purchase of malt or brewed beverages from a retail dispenser or purchase of liquor or malt or brewed beverages from a person holding a retail liquor license within the meaning of and pursuant to the provisions of the Liquor Code, but shall include purchase or acquisition of liquor or malt or brewed beverages other than pursuant to the provisions of the Liquor Code.

“Purchase price.” As follows:

(1) The total value of anything paid or delivered, or promised to be paid or delivered, whether it be money or otherwise, in complete performance of a sale at retail or purchase at retail, without any deduction on account of the cost or value of the property sold, cost or value of transportation, cost or value of labor or service, interest or discount paid or allowed after the sale is consummated, any other taxes imposed by the Commonwealth or any other expense except that there shall be excluded any gratuity or separately stated deposit charge for returnable containers.

(2) (Reserved).

(3) In determining the purchase price on the sale or use of taxable tangible personal property or a service where, because of affiliation of interests between the vendor and purchaser, or irrespective of any such affiliation, if for any other reason the purchase price declared by the vendor or taxpayer on the taxable sale or use of such tangible personal property or service is, in the opinion of the Department of Revenue, not indicative of the true value of the article or service or the fair price thereof, the department shall, pursuant to uniform and equitable rules, determine the amount of constructive purchase price upon the basis of which the tax shall be computed and levied. Such rules shall provide for a constructive amount of purchase price for each sale or use which would naturally and fairly be charged in an arms-length transaction in which the element of common interest between the vendor or purchaser is absent or if no common interest exists, any other element causing a distortion of the price or value is likewise absent. For the purpose of this paragraph where a taxable sale or purchase at retail transaction occurs between a parent and a subsidiary, affiliate or controlled corporation of such parent corporation, there shall be a rebuttable presumption, that because of such common interest such transaction was not at arms-length.

(4) Where there is a transfer or retention of possession or custody, whether it be termed a rental, lease, service or otherwise, of tangible personal property including, but not limited to, linens, aprons, motor vehicles, trailers, tires, industrial office and construction equipment, and business machines the full consideration paid or delivered to the vendor or lessor shall be considered the purchase price, even though such consideration be separately stated and be designated as payment for processing, laundering, service, maintenance, insurance, repairs, depreciation or otherwise. There shall also be included as part of the purchase price the value of anything paid or delivered, or promised to be paid or delivered by a lessee, whether it be money or otherwise, to any person other than the vendor or lessor by reason of the maintenance, insurance or repair of the tangible personal property which a lessee has the possession or custody of under a rental contract or lease arrangement.

(5) With respect to the tax imposed by section 1202(b) (relating to imposition of tax) upon any tangible personal

property originally purchased by the user of the property six months or longer prior to the first taxable use of the property within this Commonwealth. The user may elect to pay tax on a substituted base determined by considering the purchase price of the property for tax purposes to be equal to the prevailing market price of similar tangible personal property at the time and place of the first use within this Commonwealth. The election must be made at the time of filing a tax return with the department and reporting the tax liability and paying the tax due plus accrued penalties and interest within six months of the due date of the report and payment under section 1217(a) and (c) (relating to time for filing returns).

(6) The purchase price of employment agency services and help supply services shall be the service fee paid by the purchaser to the vendor or supplying entity. The term “service fee,” as used in this paragraph, shall be the total charge or fee of the vendor or supplying entity minus the costs of the supplied employee which costs are wages, salaries, bonuses and commissions, employment benefits, expense reimbursements and payroll and withholding taxes, to the extent that these costs are specifically itemized or that these costs in aggregate are stated in billings from the vendor or supplying entity. To the extent that these costs are not itemized or stated on the billings, then the service fee shall be the total charge or fee of the vendor or supplying entity.

(7) Unless the vendor separately states which portion of the billing applies to premium cable services, the total bill for the provision of all cable services shall be the purchase price.

(8) The purchase price of prebuilt housing shall be 60% of the manufacturer’s selling price, but a manufacturer of prebuilt housing who precollects tax from a prebuilt housing builder at the time of the sale to the prebuilt housing builder shall have the option to collect tax on 60% of the selling price or on 100% of the actual cost of the supplies and materials used in the manufacture of the prebuilt housing.

“Purchaser.” A person who acquires, for a consideration, the ownership, custody or possession by sale, lease or otherwise, of tangible personal property, or who obtains services in exchange for a purchase price, but not including an employer who obtains services from employees of the employer in exchange for wages or salaries when the services are rendered in the ordinary scope of their employment.

“Real estate structure.” A structure or item purchased by a construction contractor pursuant to a construction contract with:

(1) a charitable organization, a volunteer firemen’s organization, a nonprofit educational institution or a religious organization for religious purposes and which qualifies as an institution of purely public charity under the act of November 26, 1997 (P.L.508, No.55), known as the Institutions of Purely Public Charity Act;

(2) the United States; or

(3) the Commonwealth, its instrumentalities or political subdivisions.

The term includes building machinery and equipment; developed or undeveloped land; streets; roads; highways; parking lots; stadiums and stadium seating; recreational courts; sidewalks; foundations; structural supports; walls; floors; ceilings; roofs; doors; canopies; millwork; elevators; windows and external window coverings; outdoor advertising boards or signs; airport runways; bridges; dams; dikes; traffic control devices, including traffic signs; satellite dishes; antennas; guardrail posts; pipes; fittings; pipe supports and hangers; valves; underground tanks; wire; conduit; receptacle and junction boxes; insulation; ductwork and coverings thereof; and any structure or item similar to any of the foregoing, whether or not the structure or item constitutes a fixture or is affixed to the real estate, or whether or not damage would be done to the structure or item or its surroundings upon removal.

“Recreation service.” Providing services which provide or allow for an activity that diverts, amuses, stimulates and renews individual health and spirits, including all of the following:

- (1) Admission to commercial sports, whether live or broadcasted.
- (2) Admission to live presentations involving the performances of actors and actresses, singers, dancers, musical groups and artists and other performing artists.
- (3) Physical fitness facility services. Services provided by health clubs, spas, fitness or recreational sports facilities. The term includes exercise and other active physical fitness conditioning or recreational sports activities, such as swimming, skating, or racquet sports, whether or not on a membership basis.
- (4) Bicycle rental services. The rental or lease of bicycles.
- (5) Golf course and country club membership fees.
- (6) Other memberships and admissions.

“Resale.” As follows:

(1) Any transfer of ownership, custody or possession of tangible personal property for a consideration, including the grant of a license to use or consume and transactions where the possession of the property is transferred but where the transferor retains title only as security for payment of the selling price whether the transaction be designated as bailment lease, conditional sale or otherwise.

(2) The physical incorporation of tangible personal property as an ingredient or constituent into other tangible personal property, which is to be sold in the regular course of business or the performance of those services described in paragraphs (2), (3) and (4) of the definition of sale at retail upon tangible personal property which is to be sold in the regular course of business or where the person incorporating such property has undertaken at the time of purchase to cause it to be transported in interstate commerce to a destination outside this Commonwealth. The term shall include telecommunications services purchased by a cable operator or video programmer that are used to transport or deliver cable or video programming services which are sold in the regular course of business.

(3) The term shall also include tangible personal property purchased or having a situs within this Commonwealth solely for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into tangible personal property and thereafter transported outside this Commonwealth for use exclusively outside this Commonwealth.

(4) The term “resale” does not include a sale of malt or brewed beverages by a retail dispenser, or a sale of liquor or malt or brewed beverages by a person holding a retail liquor license within the meaning of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.

(5) The physical incorporation of tangible personal property as an ingredient or constituent in the construction of foundations for machinery or equipment the sale or use of which is excluded from tax under the provisions of paragraph (8)(ii)(A), (B) and (D) of the definition of sale at retail and paragraph (4)(ii)(B)(I), (II) and (IV) of the definition of use, whether the foundations at the time of construction or transfer constitute tangible personal property or real estate.

“Resident.” As follows:

- (1) Any natural person:
 - (i) who is domiciled in this Commonwealth; or
 - (ii) who maintains a permanent place of abode within this Commonwealth and spends in the aggregate more than 60 days of the year within this Commonwealth.
- (2) Any corporation:
 - (i) incorporated under the laws of this Commonwealth;

(ii) authorized to do business or doing business within this Commonwealth; or

(iii) maintaining a place of business within this Commonwealth.

(3) Any association, fiduciary, partnership or other entity:

(i) domiciled in this Commonwealth;

(ii) authorized to do business or doing business within this Commonwealth; or

(iii) maintaining a place of business within this Commonwealth.

“Sale at retail.” As follows:

(1) Any transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the grant of a license to use or consume whether the transfer be absolute or conditional and by whatsoever means the same shall have been effected.

(2) The rendition of the service of printing or imprinting of tangible personal property for a consideration for persons who furnish, either directly or indirectly, the materials used in the printing or imprinting.

(3) The rendition for a consideration of the service of:

(i) Washing, cleaning, waxing, polishing or lubricating of motor vehicles of another, whether or not any tangible personal property is transferred in conjunction therewith.

(ii) Inspecting motor vehicles pursuant to the mandatory requirements of 75 Pa.C.S. (relating to vehicles).

(4) The rendition for a consideration of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property including wearing apparel or shoes, or applying or installing tangible personal property as a repair or replacement part of other tangible personal property including wearing apparel or shoes for a consideration, whether or not the services are performed directly or by any means including by coin-operated self-service laundry equipment and whether or not any tangible personal property is transferred in conjunction therewith, except such services as are rendered in the construction, reconstruction, remodeling, repair or maintenance of real estate, except that this paragraph shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under section 1204(26) (relating to exclusions from tax) or on diaper service.

(5) (Reserved).

(6) (Reserved).

(7) (Reserved).

(8) (i) Any retention of possession, custody or a license to use or consume tangible personal property or any further obtaining of services described in paragraphs (2), (3) and (4) pursuant to a rental or service contract or other arrangement, other than as security.

(ii) The term does not include any such transfer of tangible personal property or rendition of services for the purpose of resale or such rendition of services or the transfer of tangible personal property, including, but not limited to, machinery and equipment and parts therefor and supplies to be used or consumed by the purchaser directly in the operations of:

(A) The manufacture of tangible personal property.

(B) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term “farming” shall include the propagation and raising of ranch raised furbearing animals and the propagation of game birds for commercial purposes by holders

of propagation permits issued under 34 Pa.C.S. (relating to game) and the propagation and raising of horses to be used exclusively for commercial racing activities.

(C) The producing, delivering or rendering of a public utility service, or in constructing, reconstructing, remodeling, repairing or maintaining the facilities which are directly used in producing, delivering or rendering such service.

(D) Processing as defined in this section.

(iii) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to any vehicle required to be registered under 75 Pa.C.S., except those vehicles used directly by a public utility engaged in business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used machinery, equipment, parts or foundations therefor that may be fixed to the real estate.

(iv) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or services by any person other than the person directly using the same in the operations described in subparagraph (ii)(A), (B), (C) and (D).

(v) The exclusion provided in subparagraph(ii)(C) shall not apply to:

(A) construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain facilities not used directly by the purchaser in the production, delivering or rendition of public utility service;

(ii) construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain a building, road or similar structure; or

(iii) tools and equipment used but not installed in the maintenance of facilities used directly in the production, delivering or rendition of a public utility service.

(vi) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to the services enumerated in paragraphs (11) through (27) nor to lobbying services, adjustment services, collection services or credit reporting services, secretarial or editing services, disinfecting or pest control services, building maintenance or cleaning services, employment agency services, help supply services, lawn care service or self-storage service, except that the exclusion provided in subparagraph (ii)(B) for farming, dairying and agriculture shall apply to the service enumerated in the definition of disinfecting or pest control services.

(9) Where tangible personal property or services are utilized for purposes constituting a sale at retail and for purposes excluded from the definition of sale at retail, it shall be presumed that the tangible personal property or services are utilized for purposes constituting a sale at retail and subject to tax unless the user thereof proves to the Department of Revenue that the predominant purposes for which the tangible personal property or services are utilized do not constitute a sale at retail.

(10) With respect to liquor and malt or brewed beverages, the term includes sale of liquor by a Pennsylvania liquor store to a person for any purpose, and sale of malt or brewed beverages by a manufacturer of malt or brewed beverages, distributor or importing distributor to a person for any

purpose, except sales by a manufacturer of malt or brewed beverages to a distributor or importing distributor or sales by an importing distributor to a distributor within the meaning of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code. The term does not include sale of malt or brewed beverages by a retail dispenser or sale of liquor or malt or brewed beverages by a person holding a retail liquor license within the meaning of and pursuant to the provisions of the Liquor Code, but shall include sale of liquor or malt or brewed beverages other than pursuant to the provisions of the Liquor Code.

(11) The rendition for a consideration of lobbying services.

(12) The rendition for a consideration of adjustment services, collection services or credit reporting services.

(13) The rendition for a consideration of secretarial or editing services.

(14) The rendition for a consideration of disinfecting or pest control services, building maintenance or cleaning services.

(15) The rendition for a consideration of employment agency services or help supply services.

(16) (Reserved).

(17) The rendition for a consideration of lawn care service.

(18) The rendition for a consideration of storage and self-storage service.

(19) The rendition for a consideration of a mobile telecommunications service.

(20) The rendition for a consideration of lodging services.

(21) The rendition for a consideration of personal services.

(22) (Reserved).

(23) The rendition for a consideration of recreational services.

(24) (Reserved).

(25) (Reserved).

(26) (Reserved).

(27) (Reserved).

(28) (Reserved).

(29) The rendition for a consideration of advertising services.

(30) The rendition for a consideration of detective services.

(31) The rendition for a consideration of management consulting services.

“Secretarial or editing services.” Providing services which include, but are not limited to, editing, letter writing, proofreading, resume writing, typing or word processing. Such services shall not include court reporting and stenographic services.

“Self-storage service.” Providing a building, a room in a building or a secured area within a building with separate access provided for each purchaser of self-storage service, primarily for the purpose of storing personal property.

“Show.” An event, the primary purpose of which involves the display or exhibition of any tangible personal property or services for sale, including, but not limited to, a flea market, antique show, coin show, stamp show, comic book show, hobby show, automobile show, fair or any similar show, whether held regularly or of a temporary nature, at which more than one vendor displays for sale or sells tangible personal property or services subject to tax under section 1202 (relating to imposition of tax).

“Soft drinks.” All nonalcoholic beverages, whether carbonated or not, such as soda water, ginger ale, Coca Cola, lime cola, Pepsi Cola, Dr Pepper, fruit juice when plain or carbonated water, flavoring or syrup is added, carbonated water, orangeade, lemonade, root beer or any and all preparations, commonly referred to as soft drinks, of whatsoever kind, and are further described as including any and all beverages, commonly referred to as soft drinks, which are

made with or without the use of any syrup. The term shall not include natural fruit or vegetable juices or their concentrates, or noncarbonated fruit juice drinks containing not less than 25% by volume of natural fruit juices or of fruit juice which has been reconstituted to its original state, or natural concentrated fruit or vegetable juices reconstituted to their original state, whether any of the foregoing natural juices are frozen or unfrozen, sweetened or unsweetened, seasoned with salt or spice or unseasoned, nor shall the term include coffee, coffee substitutes, tea, cocoa, natural fluid milk or noncarbonated drinks made from milk derivatives.

“Storage.” Any keeping or retention of tangible personal property within this Commonwealth for any purpose including the interim keeping, retaining or exercising any right or power over such tangible personal property. This term is in no way limited to the provision of self-storage service.

“Tangible personal property.” Corporeal personal property including, but not limited to, goods, wares, merchandise, steam and natural and manufactured and bottled gas, electricity, prepaid telecommunications, premium cable or premium video programming service, spirituous or vinous liquor and malt or brewed beverages and soft drinks, interstate telecommunications service originating or terminating in this Commonwealth and charged to a service address in this Commonwealth, intrastate telecommunications service. The service address of any intrastate telecommunications service is deemed to be within this Commonwealth or within a political subdivision, regardless of how or where billed or paid. In the case of any such interstate or intrastate telecommunications service, any charge paid through a credit or payment mechanism which does not relate to a service address, such as a bank, travel, credit or debit card, but not including prepaid telecommunications, is deemed attributable to the address of origination of the telecommunications service. The term shall not include:

(1) Computer software, other than prewritten computer software, delivered to the purchaser by tangible storage media.

(2) Digital products delivered electronically, including software, music, video, reading materials or ring tones.

“Tax Reform Code.” The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Taxpayer.” Any person required to pay or collect the tax imposed by this chapter.

“Telecommunications service.” Any one-way transmission or any two-way, interactive transmission of sounds, signals or other intelligence converted to like form which effects or is intended to effect meaningful communications by electronic or electromagnetic means via wire, cable, satellite, light waves, microwaves, radio waves or other transmission media. The term includes all types of telecommunication transmissions, such as local, toll, wide-area or any other type of telephone service; private line service; telegraph service; radio repeater service; wireless communication service; personal communications system service; cellular telecommunication service; specialized mobile radio service; stationary two-way radio service; and paging service. The term does not include any of the following:

(1) Subscriber charges for access to a video dial tone system.

(2) Charges to video programmers for the transport of video programming.

(3) Charges for access to the Internet. Access to the Internet does not include any of the following:

(i) The transport over the Internet or any proprietary network using the Internet protocol of telephone calls, facsimile transmissions or other telecommunications traffic to or from end users on the public switched telephone network if the signal sent from or received by an end user is not in an Internet protocol.

(ii) Telecommunications services purchased by an Internet service provider to deliver access to the Internet to its customers.

(4) Mobile telecommunications services.

“Transient vendor.” As follows:

(1) Any person who:

(i) brings into this Commonwealth, by automobile, truck or other means of transportation, or purchases in this Commonwealth tangible personal property the sale or use of which is subject to the tax imposed by this chapter or comes into this Commonwealth to perform services the sale or use of which is subject to the tax imposed by this chapter;

(ii) offers or intends to offer such tangible personal property or services for sale at retail within this Commonwealth; and

(iii) does not maintain an established office, distribution house, sales house, warehouse, service enterprise, residence from which business is conducted or other place of business within this Commonwealth.

(2) The term shall not include a person who delivers tangible personal property within this Commonwealth pursuant to orders for the property which were solicited or placed by mail or other means.

(3) The term shall not include a person who handcrafts items for sale at special events, including, but not limited to, fairs, carnivals, art and craft shows and other festivals and celebrations within this Commonwealth.

“Use.” As follows:

(1) The exercise of any right or power incidental to the ownership, custody or possession of tangible personal property and shall include, but not be limited to, transportation, storage or consumption.

(2) The obtaining by a purchaser of the service of printing or imprinting of tangible personal property when such purchaser furnishes, either directly or indirectly, the articles used in the printing or imprinting.

(3) The obtaining by a purchaser of the services of:

(i) Washing, cleaning, waxing, polishing or lubricating of motor vehicles whether or not any tangible personal property is transferred to the purchaser in conjunction with such services.

(ii) Inspecting motor vehicles pursuant to the mandatory requirements of 75 Pa.C.S. (relating to vehicles).

(4) (i) The obtaining by a purchaser of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property including wearing apparel or shoes or applying or installing tangible personal property as a repair or replacement part of other tangible personal property including wearing apparel or shoes, whether or not the services are performed directly or by any means including by coin-operated self-service laundry equipment for wearing apparel or household goods, and whether or not any tangible personal property is transferred to the purchaser in conjunction therewith, except such services as are obtained in the construction, reconstruction, remodeling, repair or maintenance of real estate, except that this paragraph shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under section 1204(26) (relating to exclusions from tax) or on diaper service.

(ii) The term shall not include:

(A) Any tangible personal property acquired and kept, retained or over which power is exercised within this Commonwealth on which the taxing of the storage, use or other consumption thereof is expressly prohibited by the Constitution of the United States or which is

excluded from tax under other provisions of this chapter.

(B) The use or consumption of tangible personal property, including, but not limited to, machinery and equipment and parts therefor, and supplies or the obtaining of the services described in this paragraph and paragraphs (2) and (3) directly in the operations of:

(I) The manufacture of tangible personal property.

(II) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term “farming” shall include the propagation and raising of ranch-raised furbearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. (relating to game) and the propagation and raising of horses to be used exclusively for commercial racing activities.

(III) The producing, delivering or rendering of a public utility service, or the constructing, reconstructing, remodeling, repairing or maintaining the facilities which are directly used in producing, delivering or rendering a public utility service.

(IV) Processing as defined in this section.

(iii) The exclusions provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to any vehicle required to be registered under 75 Pa.C.S. except those vehicles directly used by a public utility engaged in the business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used machinery, equipment, parts or foundations therefor that may be affixed to such real estate.

(iv) The exclusions provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or services by any person other than the person directly using the same in the operations described in subparagraph (ii)(B)(I), (II), (III) and (IV).

(v) The exclusion provided in subparagraph (iii) shall not apply to:

(A) construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain facilities not used directly by the purchaser in the production, delivering or rendition of public utility service; or

(B) tools and equipment used but not installed in the maintenance of facilities used directly in the production, delivering or rendition of a public utility service.

(vi) The exclusion provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to the services enumerated in paragraphs (9) through (26) nor to lobbying services, adjustment services, collection services or credit reporting services, secretarial or editing services, disinfecting or pest control services, building maintenance or cleaning services, employment agency

services, help supply services, lawn care service or self-storage service, except that the exclusion provided in subparagraph (ii)(B)(II) for farming, dairying and agriculture shall apply to the service enumerated in the definition of “disinfecting or pest control services.”

(5) Where tangible personal property or services are utilized for purposes constituting a use, and for purposes excluded from this definition, it shall be presumed that the property or services are utilized for purposes constituting a sale at retail and subject to tax unless the user thereof proves to the Department of Revenue that the predominant purposes for which the property or services are utilized do not constitute a sale at retail.

(6) The term “use” with respect to “liquor” and “malt or brewed beverages” shall include the purchase of “liquor” from any “Pennsylvania liquor store” by any person for any purpose and the purchase of “malt or brewed beverages” from a “manufacturer of malt or brewed beverages,” “distributor” or “importing distributor” by any person for any purpose, except purchases from a “manufacturer of malt or brewed beverages” by a “distributor” or “importing distributor,” or purchases from an “importing distributor” by a “distributor” within the meaning of the Liquor Code. The term “use” shall not include any purchase of “malt or brewed beverages” from a “retail dispenser” or any purchase of “liquor” or “malt or brewed beverages” from a person holding a “retail liquor license” within the meaning of and pursuant to the provisions of the Liquor Code, but shall include the exercise of any right or power incidental to the ownership, custody or possession of “liquor” or “malt or brewed beverages” obtained by the person exercising such right or power in any manner other than pursuant to the provisions of the Liquor Code.

(7) The use of tangible personal property purchased at retail upon which the services described in paragraphs (2), (3) and (4) have been performed shall be deemed to be a use of the services by the person using the property.

(8) The term shall not include the providing of a motor vehicle to a nonprofit private or public school to be used by the school for the sole purpose of driver education.

(9) The obtaining by the purchaser of lobbying services.

(10) The obtaining by the purchaser of adjustment services, collection services or credit reporting services.

(11) The obtaining by the purchaser of secretarial or editing services.

(12) The obtaining by the purchaser of disinfecting or pest control services, building maintenance or cleaning services.

(13) The obtaining by the purchaser of employment agency services or help supply services.

(14) (Reserved).

(15) The obtaining by the purchaser of lawn care service.

(16) The obtaining by the purchaser of storage and self-storage service.

(17) The obtaining by a construction contractor of tangible personal property or services provided to tangible personal property which will be used pursuant to a construction contract whether or not the tangible personal property or services are transferred.

(18) The obtaining of mobile telecommunications service by a customer.

(19) The obtaining by the purchaser of lodging services.

(20) The obtaining by the purchaser of personal services.

(21) (Reserved).

(22) The obtaining by the purchaser of recreation services.

(23) (Reserved).

(24) (Reserved).

(25) (Reserved).

(26) (Reserved).

(27) (Reserved).

(28) The obtaining by the purchaser of advertising services.

(29) The obtaining by the purchaser of detective services.

(30) The obtaining by the purchaser of management consulting services.

“Used prebuilt housing.” Prebuilt housing that was previously subject to a sale to a prebuilt housing purchaser.

“Vendor.” Any person maintaining a place of business in this Commonwealth, selling or leasing tangible personal property, or rendering services, the sale or use of which is subject to the tax imposed by this chapter, but not including any employee who in the ordinary scope of employment renders services to the employer of the employee in exchange for wages and salaries.

SUBCHAPTER B IMPOSITION OF TAX

Sec.

1202. Imposition of tax.

1203. Computation of tax.

§ 1202. Imposition of tax.

(a) Sales tax.—There is hereby imposed upon each separate sale at retail of tangible personal property or services within this Commonwealth a tax of 6% of the purchase price. The tax shall be collected by the vendor from the purchaser and shall be paid over to this Commonwealth as provided in this chapter.

(b) Use tax.—There is hereby imposed upon the use within this Commonwealth of tangible personal property purchased at retail and on those services purchased at retail a tax of 6% of the purchase price. The tax shall be paid to the Commonwealth by the person who makes such use, except that such tax shall not be paid to the Commonwealth by that person where that person has paid the tax imposed by subsection (a) or has paid the tax imposed by this subsection to the vendor with respect to such use.

(c) Telecommunications services.—

(1) Notwithstanding any other provision of this chapter, the tax with respect to telecommunications service shall be computed at the rate of 6% upon the total amount charged to customers for such services, irrespective of whether that charge is based upon a flat rate or upon a message unit charge.

(2) A telecommunications service provider shall have no responsibility or liability to the Commonwealth for billing, collecting or remitting taxes that apply to services, products or other commerce sold over telecommunications lines by third-party vendors.

(3) To prevent actual multistate taxation of interstate telecommunications service, a taxpayer, upon proof that the taxpayer has paid a similar tax to another state on the same interstate telecommunications service, shall be allowed a credit against the tax imposed by this section on the same interstate telecommunications service to the extent of the amount of the tax properly due and paid to the other state.

(d) Vending machine sales of food and beverages.—Notwithstanding any other provisions of this chapter, the sale or use of food and beverages dispensed by means of coin operated vending machines shall be taxed at the rate of 6% of the receipts collected from the machine.

(e) Prepaid telecommunications.—

(1) Notwithstanding any provisions of this chapter, the sale or use of prepaid telecommunications evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b).

(2) The sale or use of prepaid telecommunications not evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b) and shall be deemed to occur at the purchaser’s billing address.

(3) (i) Notwithstanding paragraph (2), the sale or use of prepaid telecommunications service not evidenced

by the transfer of tangible personal property shall be taxed at the rate of 6% of the receipts collected on each sale if the service provider elects to collect the tax imposed by this chapter on receipts of each sale.

(ii) The service provider shall notify the department of its election and shall collect the tax on receipts of each sale until the service provider notifies the department otherwise.

(e.1) Prepaid mobile telecommunications services.—

(1) Notwithstanding any other provision of this chapter, the sale or use of prepaid mobile telecommunications service evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b).

(2) The sale or use of prepaid mobile telecommunications service not evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b) and shall be deemed to occur at the purchaser’s billing address or the location associated with the mobile telephone number or the point of sale, whichever is applicable.

(3) (i) Notwithstanding paragraph (2), the sale or use of prepaid mobile telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of 6% of the receipts collected on each sale if the service provider elects to collect the tax imposed by this chapter on receipts of each sale.

(ii) The service provider shall notify the department of its election and shall collect the tax on receipts of each sale until the service provider notifies the department otherwise.

(f) Prebuilt housing.—

(1) Notwithstanding any other provision of this chapter, tax with respect to sales of prebuilt housing shall be imposed, subject to the provisions of paragraph (2), on the prebuilt housing builder at the time of the prebuilt housing sale within this Commonwealth and shall be paid and reported by the prebuilt housing builder to the department in the time and manner provided in this chapter.

(2) A manufacturer of prebuilt housing may, at its option, precollect the tax from the prebuilt housing builder at the time of sale to the prebuilt housing builder.

(3) In any case where prebuilt housing is purchased and the tax is not paid by the prebuilt housing builder or precollected by the manufacturer, the prebuilt housing purchaser shall remit tax directly to the department if the prebuilt housing is used in this Commonwealth without regard to whether the prebuilt housing becomes a real estate structure.

(g) Mobile telecommunications services provided by home service provider.—Notwithstanding any other provisions of this chapter and in accordance with the Mobile Telecommunications Sourcing Act (Public Law 106-252, 4 U.S.C. § 116), the sale or use of mobile telecommunications services which are deemed to be provided to a customer by a home service provider under section 4 U.S.C. § 117(a) and (b) shall be subject to the tax of 6% of the purchase price. The tax shall be collected by the home service provider from the customer and shall be paid over to the Commonwealth as provided in this chapter if the customer’s place of primary use is located within this Commonwealth, regardless of where the mobile telecommunications services originate, terminate or pass through. The words and phrases used in this subsection shall have the same meanings given to them in the Mobile Telecommunications Sourcing Act.

§ 1203. Computation of tax.

The amount of tax imposed by section 1202 (relating to imposition of tax) shall be computed as follows:

(1) If the purchase price is 10¢ or less, no tax shall be collected.

(2) If the purchase price is 11¢ or more but less than 18¢, 1¢ shall be collected.

(3) If the purchase price is 18¢ or more but less than 35¢, 2¢ shall be collected.

(4) If the purchase price is 35¢ or more but less than 51¢, 3¢ shall be collected.

(5) If the purchase price is 51¢ or more but less than 68¢ cents, 4¢ shall be collected.

(6) If the purchase price is 68¢ or more but less than 85¢, 5¢ shall be collected.

(7) If the purchase price is 85¢ or more but less than \$1.01, 6¢ shall be collected.

(8) If the purchase price is more than \$1.00, 6% of each dollar of purchase price plus the charges set forth in this section upon any fractional part of a dollar in excess of even dollars shall be collected.

SUBCHAPTER C EXCLUSIONS FROM TAX

Sec.

1204. Exclusions from tax.

1205. Alternate imposition of tax.

1206. Credit against tax.

§ 1204. Exclusions from tax.

The tax imposed by section 1202 (relating to imposition of tax) shall not be imposed upon any of the following:

(1) The sale at retail or use of tangible personal property or services sold by or purchased from a person that is not a vendor in an isolated transaction or sold by or purchased from a person that is a vendor but is not a vendor with respect to the tangible personal property or services sold or purchased in the transaction. This paragraph does not apply to motor vehicles, trailers, semitrailers, motor boats, aircraft or other similar tangible personal property required under either Federal law or the law of this Commonwealth to be registered or licensed. Inventory and stock in trade sold at retail or used shall not be excluded from the tax by this paragraph.

(2) The use of tangible personal property purchased by a nonresident person outside of, and brought into, this Commonwealth for use in this Commonwealth for a period not to exceed seven days or for a period of time when the nonresident is a tourist or vacationer, as long as the tangible personal property is not consumed within this Commonwealth.

(3) The use of tangible personal property in accordance with the following:

(i) The property is purchased outside this Commonwealth for use outside this Commonwealth by an individual or business entity that, at the time of purchase, is not:

(A) a resident of this Commonwealth;
nor

(B) actually doing business within this Commonwealth.

(ii) The purchaser later brings the tangible personal property into this Commonwealth in connection with the establishment of a permanent business or residence in this Commonwealth.

(iii) The property has been purchased more than six months prior to the earlier of:

(A) the date it was first brought into this Commonwealth; or

(B) the establishment of a business or residence under subparagraph (ii).

(iv) This paragraph does not apply to tangible personal property temporarily brought into this Commonwealth for the performance of contracts for the construction, reconstruction, remodeling, repairing and maintenance of real estate.

(4) (Reserved).

(5) The sale at retail or use of steam, natural and manufactured and bottled gas, fuel oil, electricity or intrastate

subscriber line charges, basic local telephone service or telegraph service when purchased directly by the user thereof solely for his own residential use and charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate.

(6) (Reserved).

(7) (Reserved).

(8) (Reserved).

(9) (Reserved).

(10) (i) The sale at retail to or use by:

(A) any charitable organization, volunteer firemen's organization or nonprofit educational institution; or

(B) a religious organization for religious purposes of tangible personal property or services other than pursuant to a construction contract.

(ii) The exclusion under this paragraph shall not apply with respect to any tangible personal property or services used in any unrelated trade or business carried on by such organization or institution or with respect to any materials, supplies and equipment used and transferred to the organization or institution in the construction, reconstruction, remodeling, renovation, repairs and maintenance of any real estate structure, other than building machinery and equipment, except materials and supplies when purchased by such organizations or institutions for routine maintenance and repairs.

(11) The sale at retail or use of gasoline and other motor fuels, the sales of which are otherwise subject to excise taxes under 75 Pa.C.S. Ch. 90 (relating to liquid fuels and fuels tax).

(12) The sale at retail to, or use by the United States, this Commonwealth or its instrumentalities or political subdivisions of tangible personal property or services.

(13) The sale at retail or use of wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, nonreturnable containers and all other wrapping supplies, if the use is incidental to the delivery of personal property. This paragraph does not apply to a charge for wrapping or packaging.

(14) Sale at retail or use of vessels designed for commercial use of registered tonnage of 50 tons or more when produced by the builders thereof upon special order of the purchaser.

(15) Sale at retail of tangible personal property or services used or consumed in building, rebuilding, repairing and making additions to or replacements in and upon vessels designed for commercial use of registered tonnage of 50 tons or more upon special order of the purchaser, or when rebuilt, repaired or enlarged, or when replacements are made upon order of or for the account of the owner.

(16) The sale at retail or use of tangible personal property or services to be used or consumed for ship cleaning or maintenance or as fuel, supplies, ships' equipment, ships' stores or sea stores on vessels designed for commercial use of registered tonnage of 50 tons or more to be operated principally outside the limits of this Commonwealth.

(17) The sale at retail or use of any of the following:

(i) Prescription or nonprescription medicines, drugs or medical supplies.

(ii) Crutches and wheelchairs for the use of persons who are walking impaired.

(iii) Artificial limbs, artificial eyes and artificial hearing devices when designed to be worn on the person of the purchaser or user.

(iv) False teeth and materials used by a dentist in dental treatment.

(v) Eyeglasses when especially designed or prescribed by an ophthalmologist, oculist or optometrist for the personal use of the owner or purchaser.

(vi) Artificial braces and supports designed solely for the use of persons who are walking impaired or any other therapeutic, prosthetic or artificial device designed for the use of a particular individual to correct or alleviate a physical incapacity, including, but not limited to, hospital beds, iron lungs and kidney machines.

(18) The sale at retail or use of coal.

(19) (Reserved).

(20) (Reserved).

(21) (Reserved).

(22) (Reserved).

(23) (Reserved).

(24) The sale at retail or use of motor vehicles, trailers and semi-trailers, or bodies attached to the chassis of motor vehicles, trailers or semi-trailers which are:

(i) sold to a nonresident;

(ii) to be used outside of this Commonwealth; and

(iii) registered in another state within 20 days after delivery to the vendee.

(25) The sale at retail or use of water.

(26) (i) The sale at retail or use of all vesture, wearing apparel, raiments, garments, footwear and other articles of clothing, including clothing patterns and items that are to be a component part of clothing, worn or carried on or about the human body.

(ii) This paragraph does not include accessories, ornamental wear, formal day or evening apparel, and articles made of fur on the hide or pelt or any material imitative of fur and articles of which such fur, real, imitation or synthetic, is the component material of chief value, but only if such value is more than three times the value of the next most valuable component material, and sporting goods and clothing not normally used or worn when not engaged in sports.

(27) (Reserved).

(28) (Reserved).

(29) (i) The sale at retail or use of food and beverages for human consumption.

(ii) This paragraph shall not apply to any of the following:

(A) Soft drinks.

(B) Malt and brewed beverages and spirituous and vinous liquors.

(iii) Food or beverages, whether sold for consumption on or off the premises or on a "take-out" or "to go" basis or delivered to the purchaser or consumer, when purchased from persons engaged in the business of catering; or from persons engaged in the business of operating establishments from which ready-to-eat food and beverages are sold.

(iv) (A) For purposes of this paragraph the term "establishments" includes, but is not limited to, restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels, night clubs, fast food operations, pizzerias, fairs, carnivals, lunch carts, ice cream stands, snack bars, cafeterias, employee cafeterias, theaters, stadiums, arenas, amusement parks, carryout shops, coffee shops and other establishments whether mobile or immobile.

(B) The term does not include bakeries, pastry shops, donut shops, delicatessens, grocery stores, supermarkets, farmer's markets, convenience stores or vending machines from

which food or beverages ready to eat are sold except for the sale of meals, sandwiches, food from salad bars, hand-dipped or hand-served ice-based products, including ice cream and yogurt, hot soup, hot pizza and other hot food items, brewed coffee and hot beverages.

(C) The term "beverages" does not include malt and brewed beverages and spirituous and vinous liquors, but shall include soft drinks.

(v) This paragraph does not apply to the sale at retail of food and beverages at or from a school or church in the ordinary course of the activities of such organization.

(30) (i) The sale at retail or use of newspapers.

(ii) For purposes of this paragraph, the term "newspaper" shall mean a legal newspaper or publication containing matters of general interest and reports of current events which qualifies as a newspaper of general circulation qualified to carry a legal advertisement as those terms are defined in 45 Pa.C.S. § 101 (relating to definitions), not including magazines.

(iii) This paragraph includes any printed advertising materials circulated with such newspaper regardless of where or by whom the advertising material was produced.

(31) The sale at retail or use of caskets and burial vaults for human remains and markers and tombstones for human graves.

(32) The sale at retail or use of flags of the United States of America and the Commonwealth.

(33) The sale at retail or use of textbooks for use in schools, colleges and universities, either public or private, that are recognized by the Department of Education, when the textbooks are purchased on behalf of or through such schools, colleges or universities.

(34) The sale at retail, or use of motion picture film rented or licensed from a distributor for the purpose of commercial exhibition.

(35) (Reserved).

(36) The sale at retail or use of rail transportation equipment used in the movement of personalty.

(37) (Reserved).

(38) The sale at retail of horses, if at the time of purchase, the seller is directed to ship or deliver the horse to an out-of-State location, whether or not the charges for shipment are paid for by the seller or the purchaser. The seller must obtain a bill of lading, either from the carrier or from the purchaser, who, in turn has obtained the bill of lading from the carrier, reflecting delivery to the out-of-State address to which the horse has been shipped. The seller must execute a "Certificate of Delivery to Destination Outside of the Commonwealth" for each bill of lading reflecting out-of-State delivery. The seller shall retain the certificate of delivery form to justify the noncollection of sales tax with respect to the transaction to which the form relates. In transactions where a horse is sold by the seller and delivered to a domiciled person, agent or corporation prior to its being delivered to an out-of-State location, the "Certificate of Delivery to Destination Outside of the Commonwealth" form must have attached to it bills of lading both for the transfer to the domiciled person, agent or corporation and from the aforementioned to the out-of-State location.

(39) The sale at retail or use of fish feed purchased by or on behalf of sportsmen's clubs, fish cooperatives or nurseries approved by the Pennsylvania Fish Commission.

(40) (Reserved).

(41) The sale at retail of supplies and materials to tourist promotion agencies which receive grants from the

Commonwealth for distribution to the public as promotional material and the use of supplies and materials by the agencies for the purposes set forth in this paragraph.

(42) The sale or use of brook trout (*salvelinus fontinalis*), brown trout (*Salmo trutta*) or rainbow trout (*Salmo gairdneri*).

(43) The sale at retail or use of buses to be used exclusively for the transportation of children for school purposes.

(44) The sale at retail or use of firewood. For the purpose of this paragraph, “firewood” means the product of trees when severed from the land and cut into proper lengths for burning and pellets made from pure wood sawdust if used for fuel for cooking, hot water production or to heat residential dwellings.

(45) The sale at retail or use of materials used in the construction and erection of objects purchased by not-for-profit organizations for purposes of commemoration and memorialization of historical events, provided that the object is erected upon publicly owned property or property to be conveyed to a public entity upon the commemoration or memorialization of the historical event.

(46) The sale at retail or use of tangible personal property purchased in accordance with the Food Stamp Act of 1977 (Public Law 95-113, 7 U.S.C. §§ 2011-2029).

(47) (Reserved).

(48) (Reserved).

(49) The sale at retail or use of food and beverages by nonprofit associations which support sports programs. For purposes of this paragraph, the words and phrases shall have the following meanings:

“Nonprofit association.” An entity which is organized as a nonprofit corporation or nonprofit unincorporated association under the laws of this Commonwealth or the United States or any entity which is authorized to do business in this Commonwealth as a nonprofit corporation or unincorporated association under the laws of this Commonwealth, including youth or athletic, volunteer fire, ambulance, religious, charitable, fraternal, veterans or civic, or any separately chartered auxiliary of the association, if organized and operated on a nonprofit basis.

“Sports program.” Baseball (including softball), football, basketball, soccer and any other competitive sport formally recognized as a sport by the United States Olympic Committee as specified by and under the jurisdiction of the Amateur Sports Act of 1978 (Public Law 95-606, 36 U.S.C. § 371 et seq.), the Amateur Athletic Union or the National Collegiate Athletic Association. The term shall be limited to a program or that portion of a program that is organized for recreational purposes. The term shall be limited to a program or that portion of a program which is organized for recreational purposes and the activities of which are substantially for such purposes and which is primarily for participants who are 18 years of age or younger or whose 19th birthdays occur during the year of participation or the competitive season, whichever is longer. There shall, however, be no age limitation for programs operated for persons with physical disabilities or persons with mental retardation.

“Support.” The funds raised from sales are used to pay the expenses of a sports program or the nonprofit association sells the food and beverages at a location where a sports program is being conducted under this act.

(50) The sale at retail or use of subscriptions for magazines. The term “magazine” refers to a periodical published at regular intervals not exceeding three months and which are circulated among the general public, containing matters of general interest and reports of current events published for the purpose of disseminating information of a public character or devoted to literature, the sciences, art or some special industry. This paragraph includes any printed advertising material

circulated with the periodical or publication, regardless of where or by whom the printed advertising material was produced.

(51) (Reserved).

(52) (Reserved).

(53) (Reserved).

(54) The sale at retail to or use by a producer of commercial motion pictures of any tangible personal property directly used in the production of a feature-length commercial motion picture distributed to a national audience as long as:

(i) the production of any motion picture for which the property will be used does not violate any Federal or State law; and

(ii) the purchaser furnishes to the vendor a certificate substantially in the form as the Department of Community and Economic Development may, by regulation, prescribe, stating that the sale is exempt from tax under this paragraph.

(55) The sale at retail or use of horses to be used exclusively for commercial racing activities and the sale at retail and use of feed, bedding, grooming supplies, riding tack, farrier services, portable stalls and sulkies for horses used exclusively for commercial racing activities.

(56) The sale at retail or use of tangible personal property or services used, transferred or consumed in installing or repairing equipment or devices designed to assist persons in ascending or descending a stairway when:

(i) The equipment or devices are used by a person who, by virtue of a physical disability, is unable to ascend or descend stairs without the aid of such equipment or device.

(ii) The equipment or device is installed or used in the person’s place of residence.

(iii) A physician has certified the physical disability of the person in whose residence the equipment or device is installed or used.

(57) The sale at retail to or use by a construction contractor of building machinery and equipment and services thereto that are:

(i) Transferred pursuant to a construction contract for any charitable organization, volunteer firemen’s organization, nonprofit educational institution or religious organization for religious purposes, if:

(A) The building machinery and equipment and services thereto are not used in any unrelated trade or business.

(B) Transferred to the United States or the Commonwealth or its instrumentalities or political subdivisions.

(58) (Reserved).

(59) The sale at retail or use of molds and related mold equipment used directly and predominantly in the manufacture of products, regardless of whether the person that holds title to the equipment manufactures a product.

(60) The sale or use of used prebuilt housing.

(61) (Reserved).

(62) The sale at retail or use of tangible personal property or services which are directly used in farming, dairying or agriculture when engaged in as a business enterprise whether or not the sale is made to the person directly engaged in the business enterprise or to a person contracting with the person directly engaged in the business enterprise for the production of food.

(63) The sale at retail or use of separately stated fees paid pursuant to 13 Pa.C.S. § 9525 (relating to fees).

(64) The sale at retail to or use by a construction contractor, employed by a public school district pursuant to a construction contract, of any materials and building supplies which, during construction or reconstruction, are made part of

any public school building utilized for instructional classroom education within this Commonwealth, if the construction or reconstruction:

- (i) Is necessitated by a disaster emergency, as defined in 35 Pa.C.S. § 7102 (relating to definitions); and
- (ii) takes place during the period when there is a declaration of disaster emergency under 35 Pa.C.S. § 7301(c) (relating to general authority of Governor).

§ 1205. Alternate imposition of tax.

(a) Dealers of motor vehicles.—A person actively and principally engaged in the business of selling new or used motor vehicles, trailers or semitrailers, and registered with the department in the dealer's class who:

- (1) acquires a motor vehicle, trailer or semitrailer for the purpose of resale; and
- (2) prior to the resale, uses the motor vehicle, trailer or semitrailer for a taxable use under this chapter

may pay a tax equal to 6% of the fair rental value of the motor vehicle, trailer or semitrailer during that use.

(b) Commercial aircraft operators.—A commercial aircraft operator who:

- (1) acquires an aircraft for the purpose of resale, or lease, or is entitled to claim another valid exemption at the time of purchase; and
- (2) subsequent to the purchase, periodically uses the same aircraft for a taxable use under this chapter

may elect to pay a tax equal to 6% of the fair rental value of the aircraft during that use.

(c) Nonapplicability.—This section shall not apply to the use of a vehicle as a wrecker, parts truck, delivery truck or courtesy car.

§ 1206. Credit against tax.

(a) Prerequisites.—

(1) Subject to the provisions of paragraph (2), a credit against the tax imposed by section 1202 (relating to imposition of tax) shall be granted with respect to tangible personal property or services purchased for use outside this Commonwealth equal to the tax paid to another state by reason of the imposition by the other state of a tax similar to the tax imposed by this chapter.

(2) No credit shall be granted under this section unless the other state grants substantially similar tax relief by reason of the payment of tax under this chapter.

(b) Call center credit.—A credit against the tax imposed by section 1202 (relating to imposition of tax) on telecommunications services shall be granted to a call center for gross receipts tax paid by a telephone company on the receipts derived from the sale of incoming and outgoing interstate telecommunications services to the call center under section 1101(a)(2) of the Tax Reform Code of 1971. The following apply:

(1) A telephone company, upon request, shall notify a call center of the amount of gross receipts tax paid by the telephone company on the receipts derived from the sale of incoming and outgoing interstate telecommunications services to the call center.

(2) A call center that is eligible for the credit in this subsection may apply for a tax credit as set forth in this subsection.

(3) By February 15, a taxpayer must submit an application to the department for gross receipts tax paid on the receipts derived from the sale of incoming and outgoing interstate telecommunications services incurred in the prior calendar year.

(4) By April 15 of the calendar year following the close of the calendar year during which the gross receipts tax was incurred, the department shall notify the applicant of the amount of the applicant's tax credit approved by the department.

(5) The total amount of tax credits provided for in this subsection and approved by the department shall not exceed \$30,000,000 in any fiscal year. If the total amount of tax credits

applied for by all applicants exceeds the amount allocated for those credits, then the credit to be received by each applicant shall be determined as follows:

(i) Divide:

(A) the tax credit applied for by the applicant; by

(B) the total of all tax credits applied for by all applicants.

(ii) Multiply:

(A) the quotient under subparagraph (i); by

(B) the amount allocated for all tax credits.

SUBCHAPTER D LICENSES

Sec.

1208. Licenses.

§ 1208. Licenses.

(a) General rule.—Every person maintaining a place of business in this Commonwealth, selling or leasing services or tangible personal property, the sale or use of which is subject to tax and who has not obtained a license from the department, shall, prior to the beginning of business, make application to the department, on a form prescribed by the department, for a license. If the person maintains more than one place of business in this Commonwealth, the license shall be issued for the principal place of business in this Commonwealth.

(b) Conditions of licensure.—The department shall, after the receipt of an application, issue the license applied for under subsection (a), if the applicant has filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan. The license shall be nonassignable and valid for a period of five years.

(b.1) Grounds for refusal to issue license.—

(1) If an applicant for a license or any person holding a license has not filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan, the department may refuse to issue, may suspend or may revoke said license.

(2) The department shall notify the applicant or licensee of any refusal, suspension or revocation. The notice shall contain a statement that the refusal, suspension or revocation may be made public and shall be sent by first class mail.

(3) An applicant or licensee aggrieved by the determination of the department may file an appeal pursuant to the provisions for administrative appeals in this chapter.

(4) In the case of a suspension or revocation which is appealed, the license shall remain valid pending a final outcome of the appeals process. Notwithstanding sections 274, 353(f), 408(b), 603, 702, 802, 904 and 1102 of the Tax Reform Code or any other provision of law to the contrary, if no appeal is taken or if an appeal is taken and denied at the conclusion of the appeal process, the department may disclose, by publication or otherwise, the identity of a person and the fact that the person's license has been refused, suspended or revoked under this subsection. The department may include the basis for refusal, suspension or revocation in the disclosure.

(c) Penalties.—

(1) A person who maintains a place of business in this Commonwealth for the purpose of selling or leasing services or tangible personal property, the sale or use of which is subject to tax, without having first been licensed by the department shall be guilty of a summary offense and, upon conviction thereof, be sentenced to pay a fine of not less than \$300 nor more than \$1,500 and, in default thereof, to undergo imprisonment of not less than five days nor more than 30 days.

(2) The penalties imposed under this subsection shall be in addition to any other penalties imposed by this chapter.

(3) For purposes of this subsection, the offering for sale or lease of any service or tangible personal property, the sale or use of which is subject to tax, during any calendar day shall constitute a separate violation.

(4) The Secretary of Revenue may designate employees of the department to enforce the provisions of this subsection. Those employees shall exhibit proof of and be within the scope of the designation when instituting proceedings as provided by the Pennsylvania Rules of Criminal Procedure.

(d) Liability to pay tax remains.—The failure of any person to obtain a license shall not relieve that person of liability to pay the tax imposed by this chapter.

SUBCHAPTER E HOTEL OCCUPANCY TAX

Sec.

1209. Definitions.

1210. Imposition of tax.

1211. Seasonal tax returns.

§ 1209. Definitions.

(a) General rule.—For the purposes of this subchapter, the following words, terms and phrases shall have the meaning given to them in this subsection, unless the context clearly indicates otherwise:

“Hotel.” A building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term shall not include any charitable, educational or religious institution summer camp for children, hospital or nursing home.

“Occupancy.” The use or possession or the right to the use or possession by any person of any room or rooms in a hotel for any purpose or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms.

“Occupant.” A person who for a consideration, uses, possesses or has a right to use or possess any room or rooms in a hotel under a lease, concession, permit, right of access, license or agreement.

“Operator.” A person who operates a hotel.

“Rent.” The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever. The term shall not include a gratuity.

(b) Special definitions.—The following words and phrases, when used in Subchapters D (relating to licenses) and F (relating to returns), for the purposes of those subchapters only, shall, in addition to the meaning ascribed to them in section 1201 (relating to definitions), have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

“Maintaining a place of business in this Commonwealth.” Being the operator of a hotel in this Commonwealth.

“Purchase at retail.” Occupancy.

“Purchase price.” Rent.

“Purchaser.” An occupant.

“Sale at retail.” The providing of occupancy to an occupant by an operator.

“Services.” Occupancy.

“Tangible personal property.” Occupancy.

“Use.” Occupancy.

“Vendor.” Operator.

§ 1210. Imposition of tax.

There is hereby imposed an excise tax of 6% of the rent upon every occupancy of a room or rooms in a hotel in this Commonwealth, which tax shall be collected by the operator from the occupant and paid to the Commonwealth as provided by this chapter and the Tax Reform Code.

§ 1211. Seasonal tax returns.

Notwithstanding any other provision of this chapter or the Tax Reform Code, the department may, by regulation, waive the requirement for the filing of quarterly returns in the case of an operator whose hotel is operated only during certain seasons of the year, and may provide for the filing of returns by such persons at times other than those provided by section 1221 of the Tax Reform Code.

SUBCHAPTER F RETURNS

Sec.

1215. Persons required to make returns.

1216. Form of returns.

1217. Time for filing returns.

1218. Extension of time for filing returns.

1219. Place for filing returns.

1220. Timely mailing treated as timely filing and payment.

§ 1215. Persons required to make returns.

A person required to pay tax to the department or collect and remit tax to the department shall file returns with respect to such tax.

§ 1216. Form of returns.

The returns required by section 1215 (relating to persons required to make returns) shall be on forms prescribed by the department and shall show such information with respect to the taxes imposed by this chapter as the department may reasonably require.

§ 1217. Time for filing returns.

(a) Quarterly and monthly returns.—

(1) A return shall be filed quarterly by every licensee on or before the 20th day of April, July, October and January for the three months ending the last day of March, June, September and December.

(2) A return shall be filed monthly with respect to each month by every licensee whose total tax reported, or in the event no report is filed, the total tax which should have been reported, for the third calendar quarter of the preceding year equals or exceeds \$600. The returns shall be filed on or before the 20th day of the next succeeding month with respect to which the return is made. Any licensee required to file monthly returns under this section shall be relieved from filing quarterly returns.

(b) Annual returns.—For the calendar year 1971 and for each year thereafter no annual return shall be filed except as may be required by rules and regulations of the department promulgated and published at least 60 days prior to the end of the year with respect to which the returns are made. Where annual returns are required, licensees shall not be required to file the returns prior to the 20th day of the year succeeding the year with respect to which the returns are made.

(c) Other returns.—A person, other than a licensee, who is liable to pay to the department any tax under this chapter, shall file a return on or before the 20th day of the month succeeding the month in which the person becomes liable for the tax.

(d) Small taxpayers.—The department, by regulation, may waive the requirement for the filing of a quarterly return in the case of any licensee whose individual tax collections do not exceed \$75 per calendar quarter and may provide for reporting on a less frequent basis in such cases.

§ 1218. Extension of time for filing returns.

The department may on written application and for good cause shown grant a reasonable extension of time for filing any return required under this chapter. The time for making a return shall not be extended for more than three months.

§ 1219. Place for filing returns.

Returns shall be filed with the department at its main office or at any branch office which it may designate for filing returns.

§ 1220. Timely mailing treated as timely filing and payment.

(a) General rule.—Notwithstanding the provisions of any State tax law to the contrary, when a report or payment of all or any portion of a State tax is required by law to be received by the department or other agency of this Commonwealth on or before a day certain, the taxpayer shall be deemed to have complied with that law if the letter

transmitting the report or payment of the tax which has been received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

(b) Presentation of receipt.—For the purposes of this chapter, presentation of a receipt indicating that the report or payment was mailed by registered or certified mail on or before the due date shall be evidence of timely filing and payment.

SUBCHAPTER G PAYMENT

Sec.

1221. Payment.

1222. Time of payment.

1223. Other times for payment.

1224. Place for payment.

1225. Tax held in trust for Commonwealth.

1226. Local receivers of use tax.

1227. Discount.

§ 1221. Payment.

When a return of tax is required under this subchapter, the person required to make the return shall pay the tax to the department.

§ 1222. Time of payment.

(a) Monthly, bimonthly and quarterly payments.—The tax imposed by this chapter and incurred or collected by a licensee shall be due and payable by the licensee on the day the return is required to be filed under the provisions of section 1217 (relating to time for filing returns) and the payment must accompany the return for the preceding period.

(b) Annual payments.—If the amount of tax due for the preceding year as shown by the annual return of any taxpayer is greater than the amount already paid by the taxpayer in connection with the taxpayer's monthly or quarterly returns, the taxpayer shall send with such annual return a remittance for the unpaid amount of tax for the year.

(c) Other payments.—A person other than a licensee liable to pay any tax under this chapter shall remit the tax at the time of filing the return required by this chapter.

§ 1223. Other times for payment.

In the event that the department authorizes a taxpayer to file a return at other times than those specified in section 1217 (relating to time for filing returns), the tax due shall be paid at the time the return is filed.

§ 1224. Place for payment.

The tax imposed by this chapter shall be paid to the department at the place fixed for filing the return.

§ 1225. Tax held in trust for Commonwealth.

(a) General rule.—All taxes collected by any person from purchasers in accordance with this chapter and all taxes collected by any person from purchasers under color of this chapter which have not been properly refunded by the person to the purchaser shall constitute a trust fund for the Commonwealth. The trust shall be enforceable against that person, his representatives and any person, other than a purchaser to whom a refund has been made properly, receiving any part of the fund without consideration, or knowing that the taxpayer is committing a breach of trust.

(b) Presumption.—A person who receives payment of a lawful obligation of the taxpayer from the fund shall be presumed to have received the same in good faith and without any knowledge of the breach of trust.

(c) Appeal.—A person, other than a taxpayer, against whom the department makes any claim under this section shall have the same right to petition and appeal as is given taxpayers by any provisions of this subchapter.

§ 1226. Local receivers of use tax.

(a) County treasurers.—

(1) A county treasurer may receive use tax due and payable under the provisions of this chapter from any person other than a licensee. The receiving of the taxes shall be pursuant to rules and regulations promulgated by the department and upon forms furnished by the department.

(2) Each county treasurer shall remit to the department all use taxes received under the authority of this section minus the costs of administering this provision not to exceed 1% of the amount of use taxes received, which amount shall be retained in lieu of any commission otherwise allowable by law for the collection of the tax.

(b) Nonapplicability.—This section shall not apply to counties of the first class.

§ 1227. Discount.

If a return is filed by a licensee and the tax shown to be due thereon less any discount is paid all within the time prescribed, the licensee shall be entitled to credit and apply against the tax payable by the licensee a discount of 1% of the amount of the tax collected by the licensee as compensation for the expense of collecting and remitting the same and as a consideration of the prompt payment thereof.

SUBCHAPTER H ASSESSMENT AND REASSESSMENT

Sec.

1230. Assessment.

1231. Mode and time of assessment.

1232. Reassessment.

1233. Assessment to recover erroneous refunds.

1234. Review by Board of Finance and Revenue.

1235. Appeal to Commonwealth Court.

1236. Burden of proof.

§ 1230. Assessment.

The department is authorized and required to make the inquiries, determinations and assessments of the tax, including interest, additions and penalties, imposed by this chapter.

§ 1231. Mode and time of assessment.

(a) Underpayment of tax.—Within a reasonable time after any return is filed, the department shall examine it and, if the return shows a greater tax due or collected than the amount of tax remitted with the return, the department shall issue an assessment for the difference, together with an addition of 3% of such difference, which shall be paid to the department within ten days after a notice of the assessment has been mailed to the taxpayer. If such assessment is not paid within ten days, there shall be added to the assessment and paid to the department an additional 3% of the difference for each month during which the assessment remains unpaid, but the total of all additions shall not exceed 18% of the difference shown on the assessment.

(b) Understatement of tax.—If the department determines that any return or returns of any taxpayer understates the amount of tax due, it shall determine the proper amount and shall ascertain the difference between the amount of tax shown in the return and the amount determined, the difference being hereafter sometimes referred to as the "deficiency." A notice of assessment for the deficiency and the reasons for the deficiency shall then be sent to the taxpayer. The deficiency shall be paid to the department within 30 days after a notice of the assessment has been mailed to the taxpayer.

(c) Failure to file return.—In the event that any taxpayer fails to file a return required by this chapter, the department may make an estimated assessment, based on information available, of the proper amount of tax owing by the taxpayer. A notice of assessment in the estimated amount shall be sent to the taxpayer. The tax shall be paid within 30 days after a notice of the estimated assessment has been mailed to the taxpayer.

(d) Authority to establish effective rates by business classification.—The department is authorized to make the studies necessary to compute effective rates by business classification, based upon the ratio between the tax required to be collected and taxable sales and to use the rates in arriving at the apparent tax liability of a taxpayer. Any assessment based upon such rates shall be prima facie correct, except that the rate shall not be considered where a taxpayer establishes that the rate is based on a sample inapplicable to the taxpayer.

§ 1232. Reassessment.

(a) Notice of intention to file petition.—Any taxpayer against whom an assessment is made may petition the department for a reassessment. Notice of an intention to file such a petition shall be given to the department within 30 days of the date the notice of assessment was mailed to the taxpayer, except that the department for due cause may accept the notice within 90 days of the date the notice of assessment was mailed. The department by registered mail shall supply the taxpayer with a statement setting forth in reasonable detail the basis of the assessment within 30 days after receipt of the taxpayer's notice of intention to file a petition for reassessment.

(b) Petition for reassessment.—A petition for reassessment shall be filed within 30 days after the basis of assessment has been mailed to the taxpayer. Such petition shall set forth in reasonable detail the grounds upon which the taxpayer claims that the assessment is erroneous or unlawful, in whole or in part, and shall be accompanied by an affidavit or affirmation that the facts contained in the petition are true and correct and that the petition is not interposed for delay. An extension of time for filing the petition may be allowed for cause but in no case shall the extension exceed 120 days.

(c) Hearing.—The department shall hold such hearings as may be necessary for the purpose, at such times and places as it may determine. Each taxpayer who has duly filed a petition for reassessment shall be notified by the department of the time when, and the place where, the hearing in the taxpayer's case will be held.

(d) Decision by department.—It shall be the duty of the department, within six months after receiving a filed petition for reassessment, to dispose of the issue raised by the petition and mail notice of the department's decision to the petitioner. The taxpayer and the department may, however, by stipulation, extend such disposal time by not more than six additional months.

§ 1233. Assessment to recover erroneous refunds.

The department may, within two years of the granting of any refund or credit, or within the period in which an assessment could have been filed by the department with respect to the transaction pertaining to which the refund was granted, whichever period occurs last, file an assessment to recover any refund or part thereof or credit or part thereof which was erroneously made or allowed.

§ 1234. Review by Board of Finance and Revenue.

(a) Time limit.—Within 60 days after the date of mailing of notice by the department of the decision on any petition for reassessment filed with it, the person against whom such assessment was made may, by petition, request the Board of Finance and Revenue to review such decision. The failure of the department to notify the petitioner of a decision within the time provided for by section 1232 (relating to reassessment) shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within 120 days of the date prior to which the department should have mailed to the petitioner its notice of decision.

(b) Petition for review.—Every petition for review filed hereunder shall state specifically the reasons on which the petitioner relies, or shall incorporate by reference the petition for reassessment in which the reasons are stated. The petition shall be supported by affidavit that it is not made for the purpose of delay and that the facts set forth therein are true.

(c) Decision by Board of Finance and Revenue.—The Board of Finance and Revenue shall act finally in disposing of petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department, upon the petition for reassessment, shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on the petition for reassessment, or it may reassess the tax due on such basis as it deems according to law. The board shall give notice of its action to the department and to the petitioner.

§ 1235. Appeal to Commonwealth Court.

Any person aggrieved by the decision of the Board of Finance and Revenue or by the board's failure to act upon a petition for review

within six months may appeal in the manner now or hereafter provided by law for appeals in the case of tax settlements.

§ 1236. Burden of proof.

In all cases of petitions for reassessment, review or appeal, the burden of proof shall be upon the petitioner or appellant, as the case may be.

SUBCHAPTER I
COLLECTION

Sec.

1237. Collection of tax.

1238. Collection of tax on motor vehicles, trailers and semitrailers.

1239. Precollection of tax.

1240. Bulk and auction sales.

1241. Collection upon failure to request reassessment, review or appeal.

§ 1237. Collection of tax.

(a) Collection by department.—The department shall collect the tax in the manner provided by law for the collection of taxes imposed by the laws of this Commonwealth.

(b) Collection by persons maintaining a place of business in this Commonwealth.—Every person maintaining a place of business in this Commonwealth and selling or leasing tangible personal property or services, the sale or use of which is subject to tax shall collect the tax from the purchaser or lessee at the time of making the sale or lease, and shall remit the tax to the department, unless such collection and remittance is otherwise provided for in this chapter.

(c) Collection by persons delivering property in this Commonwealth.—Every person not otherwise required to collect tax that delivers tangible personal property to a location within this Commonwealth and that unpacks, positions, places or assembles the tangible personal property shall collect the tax from the purchaser at the time of delivery and shall remit the tax to the department if the person delivering the tangible personal property is responsible for collecting any portion of the purchase price of the tangible personal property delivered and the purchaser has not provided the person with proof that the tax imposed by this chapter has been or will be collected by the seller or that the purchaser provided the seller with a valid exemption certificate. Every person required to collect tax under this paragraph shall be deemed to be selling or leasing tangible personal property or services, the sale or use of which is subject to the tax imposed under section 1202 (relating to imposition of tax).

(d) Failure to collect tax.—Any person required under this chapter to collect tax from another person, who shall fail to collect the proper amount of such tax, shall be liable for the full amount of the tax which the person should have collected.

(e) Exemption certificates.—If the tax does not apply to the sale or lease of tangible personal property or services, the purchaser or lessee shall furnish to the vendor a certificate indicating that the sale is not legally subject to the tax. The certificate shall be in substantially the form as the department may, by regulation, prescribe. Where the tangible personal property or service is of a type that is never subject to the tax imposed or where the sale or lease is in interstate commerce, a certificate need not be furnished. Where a series of transactions are not subject to tax, a purchaser or user may furnish the vendor with a single exemption certificate in substantially such form and valid for such period of time as the department may, by regulation, prescribe. The department shall provide all school districts and intermediate units with a permanent tax exemption number.

(f) Good faith reliance on exemption certificate.—An exemption certificate, which is complete and regular and on its face discloses a valid basis of exemption if taken in good faith, shall relieve the vendor from the liability imposed by this section. An exemption certificate accepted by a vendor from a natural person domiciled within this Commonwealth or any association, fiduciary, partnership, corporation or other entity, either authorized to do business within this Commonwealth or having an established place of business within this Commonwealth, in the ordinary course of the vendor's business, which on its face discloses a valid basis of exemption consistent with the

activity of the purchaser and character of the property or service being purchased or which is provided to the vendor by a charitable, religious, educational or volunteer firemen's organization and contains the organization's charitable exemption number and which, in the case of any purchase costing \$200 or more, is accompanied by a sworn declaration on a form to be provided by the department of an intended usage of the property or service which would render it nontaxable, shall be presumed to be taken in good faith and the burden of proving otherwise shall be on the department.

(g) Direct payment permits.—The department may authorize a purchaser or lessee who acquires tangible personal property or services under circumstances that make it impossible at the time of acquisition to determine the manner in which the tangible personal property or service will be used, to pay the tax directly to the department, and waive the collection of the tax by the vendor. No such authority shall be granted or exercised, except upon application to the department and the issuance by the department, in its discretion, of a direct payment permit. If a direct payment permit is granted, its use shall be subject to conditions specified by the department, and the payment of tax on all acquisitions pursuant to the permit shall be made directly to the department by the permit holder.

§ 1238. Collection of tax on motor vehicles, trailers and semitrailers.

(a) Direct payment of tax.—Notwithstanding the provisions of section 1237(b)(relating to collection of tax), tax due on the sale at retail or use of a motor vehicle, trailer or semitrailer, except mobile homes as defined in 75 Pa.C.S. § 102 (relating to definitions) required by law to be registered with the department, shall be paid by the purchaser or user directly to the department upon application to the department for an issuance of a certificate of title upon such motor vehicle, trailer or semitrailer. The department shall not issue a certificate of title until the tax has been paid, or evidence satisfactory to the department has been given to establish that tax is not due.

(b) Failure to pay tax.—The department may cancel or suspend any record of certificate of title or registration of a motor vehicle, trailer or semitrailer when the check received in payment of the tax on such vehicle is not paid upon demand. Such tax shall be considered as a first encumbrance against such vehicle and the vehicle may not be transferred without first payment in full of such tax and any interest additions or penalties which shall accrue thereon in accordance with this chapter.

§ 1239. Precollection of tax.

(a) General rule.—The department may, by regulation, authorize or require particular categories of vendors selling tangible personal property for resale to precollect from the purchaser the tax which the purchaser will collect upon making a sale at retail of such tangible personal property. The department, however, may not pursuant to this section require a vendor to precollect tax from a purchaser who purchases for resale more than \$1,000 worth of tangible personal property from such vendor per year.

(b) License exception.—In any case in which a vendor has been authorized to prepay the tax to the person from whom the vendor purchased the tangible personal property for resale, the vendor so authorized to prepay the tax may, under the regulations of the department, be relieved from his duty to secure a license if the duty shall arise only by reason of the vendor's sale of the tangible personal property with respect to which the vendor is, under authorization of the department, to prepay the tax.

(c) Sale at retail.—The vendor, on making a sale at retail of tangible personal property with respect to which the vendor has prepaid the tax, must separately state at the time of resale the proper amount of tax on the transaction, and reimburse himself on account of the taxes which he has previously prepaid. Should such vendor collect a greater amount of tax in any reporting period than the vendor had previously prepaid upon purchase of the goods with respect to which he prepaid the tax, the vendor must file a return and remit the balance to the Commonwealth at the time at which a return would otherwise be due with respect to such sales.

§ 1240. Bulk and auction sales.

A person that sells or causes to be sold at auction, or that sells or transfers in bulk, 51% or more of any stock of goods, wares or merchandise of any kind, fixtures, machinery, equipment, buildings or real estate, involved in a business for which the person is licensed or required to be licensed under the provisions of this chapter, or is liable for filing use tax returns in accordance with the provisions of this chapter, shall be subject to the provisions of section 1403 of the Fiscal Code.

§ 1241. Collection upon failure to request reassessment, review or appeal.

(a) General rule.—The department may collect any tax:

(1) If an assessment of tax is not paid within ten days or 30 days as the case may be after notice thereof to the taxpayer, and no petition for reassessment has been filed.

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

(3) Within 30 days from the date of the decision of the Board of Finance and Revenue upon a petition for review, or of the expiration of the board's time for acting upon such petition, if no appeal has been made.

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

(b) Defenses.—In any such case in a proceeding for the collection of such taxes, the person against whom they were assessed shall not be permitted to set up any ground of defense that might have been determined by the department, the Board of Finance and Revenue or the courts. The defense of failure of the department to mail notice of assessment or reassessment to the taxpayer and the defense of payment of assessment or reassessment, however, may be raised in proceedings for collection by a motion to stay the proceedings.

SUBCHAPTER J NONPAYMENT

Sec.

1242. Lien for taxes.

1243. Suit for taxes.

1244. Tax suit comity.

1245. Service.

§ 1242. Lien for taxes.

(a) Lien imposed.—If any person liable to pay any tax neglects or refuses to pay the tax after demand, the amount, including any interest, addition or penalty, together with any costs that may accrue in addition thereto, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of the person but only after the lien has been entered and docketed of record by the prothonotary of the county where the property is situated. The department may, at any time, transmit, to the prothonotaries of the respective counties, certified copies of all liens for taxes imposed by this chapter and penalties and interest. It shall be the duty of each prothonotary receiving the lien to enter and docket the lien of record in the prothonotary's office, which lien shall be indexed as judgments are indexed. No prothonotary shall require, as a condition precedent to the entry of the liens, the payment of the costs incident to the liens.

(b) Priority of lien and effect on judicial date; no discharge by sale on junior lien.—The lien imposed under this section shall have priority from the date of its recording under subsection (a), and shall be fully paid and satisfied out of the proceeds of any judicial sale of property subject to the lien before any other obligation, judgment, claim, lien or estate to which the property may subsequently become subject, except costs of the sale and of the writ upon which the sale was made, and real estate taxes and municipal claims against the property, but shall be subordinate to mortgages and other liens existing and duly recorded or entered of record prior to the recording of the tax lien. In the case of a judicial sale of property, subject to a lien imposed under this section, upon a lien or claim over which the lien imposed under this section has priority, the sale shall discharge the lien imposed under this section to the extent only that the proceeds are applied to its payment, and the lien shall continue in full force and effect as to the

balance remaining unpaid. There shall be no inquisition or condemnation upon any judicial sale of real estate made by the Commonwealth pursuant to the provisions hereof. The lien of the taxes, interest and penalties shall continue for five years from the date of entry, and may be revived and continued in the manner now or hereafter provided for renewal of judgments, or as may be provided in the Fiscal Code, and a writ of execution may directly issue upon the lien without the issuance and prosecution to judgment of a writ of scire facias. Not less than ten days before issuance of any execution on the lien, however, notice of the filing and the effect of the lien shall be sent by registered mail to the taxpayer at his last known post office address. The lien shall have no effect upon any stock of goods, wares or merchandise regularly sold or leased in the ordinary course of business by the person against whom the lien has been entered, unless a writ of execution has been issued and a levy made upon the stock of goods, wares and merchandise.

(c) Duty of prothonotary.—Any willful failure of any prothonotary to carry out any duty imposed upon the prothonotary by this section shall be a misdemeanor and, upon conviction, the prothonotary shall be sentenced to pay a fine not exceeding \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both.

(d) Priority of tax.—Except as otherwise provided in this section, in the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes imposed by this chapter which are due and unpaid and are not collectible under the provisions of section 1225 (relating to tax held in trust for Commonwealth) shall be paid from the first money available for distribution in priority to all other claims and liens, except insofar as the laws of the United States may give a prior claim to the Federal Government. Any person charged with the administration or distribution of any such property or estate, who shall violate the provisions of this section, shall be personally liable for any taxes imposed by this chapter, which are accrued and unpaid and are chargeable against the person whose property or estate is being administered or distributed.

(e) Other remedies.—Subject to the limitations contained in this chapter as to the assessment of taxes, nothing contained in this section shall be construed to restrict, prohibit or limit the use by the department in collecting taxes finally due and payable of any other remedy or procedure available at law or equity for the collection of debts.

§ 1243. Suit for taxes.

(a) Commencement.—At any time within three years after any tax or any amount of tax shall be finally due and payable, the department may commence an action in the courts of this Commonwealth, of any state or of the United States, in the name of the Commonwealth of Pennsylvania, to collect the amount of tax due together with additions, interest, penalties and costs in the manner provided at law or in equity for the collection of ordinary debts.

(b) Procedure.—The Attorney General shall prosecute the action and, except as provided in this chapter, the provisions of the Rules of Civil Procedure and the provisions of the laws of this Commonwealth relating to civil procedures and remedies shall, to the extent that they are applicable, be available in such proceedings.

(c) Other remedies.—The provisions of this section are in addition to any process, remedy or procedure for the collection of taxes provided by this chapter or by the laws of this Commonwealth, and this section is neither limited by nor intended to limit any such process, remedy or procedure.

§ 1244. Tax suit comity.

The courts of this Commonwealth shall recognize and enforce liabilities for sales and use taxes, lawfully imposed by any other state, provided that the other state extends a like comity to this Commonwealth.

§ 1245. Service.

Any person maintaining a place of business within this Commonwealth is deemed to have appointed the Secretary of the Commonwealth his agent for the acceptance of service of process or

notice in any proceedings for the enforcement of the civil provisions of this chapter, and any service made upon the Secretary of the Commonwealth as such agent shall be of the same legal force and validity as if such service had been personally made upon such person. Where service cannot be made upon such person in the manner provided by other laws of this Commonwealth relating to service of process, service may be made upon the Secretary of the Commonwealth and, in such case, a copy of the process or notice shall also be personally served upon any agent or representative of such person who may be found within this Commonwealth, or where no such agent or representative may be found a copy of the process or notice shall be sent by registered mail to such person at the last known address of his principal place of business, home office or residence.

SUBCHAPTER K MISCELLANEOUS PROVISIONS

Sec.

1246. Collection and payment of tax on credit sales.

1247. Prepayment of tax.

1247.1. Refund of sales tax attributed to bad debt.

1248. Registration of transient vendors.

1248.1. Bond.

1248.2. Notification to department; inspection of records.

1248.3. Seizure of property.

1248.4. Fines.

1248.5. Transient vendors subject to chapter.

1248.6. Promoters.

§ 1246. Collection and payment of tax on credit sales.

If any sale subject to tax under this chapter is wholly or partly on credit, the vendor shall require the purchaser to pay in cash at the time the sale is made, or within 30 days thereafter, the total amount of tax due upon the entire purchase price. The vendor shall remit the tax to the department, regardless of whether payment was made by the purchaser to the vendor, with the next return required to be filed under section 1217 (relating to time for filing returns).

§ 1247. Prepayment of tax.

(a) General rule.—Whenever a vendor is forbidden by law or governmental regulation to charge and collect the purchase price in advance of or at the time of delivery, the vendor shall prepay the tax as required by section 1222 (relating to time of payment), but in such case if the purchaser fails to pay to the vendor the total amount of the purchase price and the tax, and such amount is written off as uncollectible by the vendor, the vendor shall not be liable for the tax and shall be entitled to a credit or refund of the tax paid. If the purchase price is thereafter collected, in whole or in part, the amount collected shall be applied first to the payment of the entire tax portion of the bill, and shall be remitted to the department by the vendor with the first return filed after the collection.

(b) Petition for refund.—Tax prepaid shall be subject to refund upon petition to the department under the provisions of section 1252 (relating to refunds) filed within 105 days of the close of the fiscal year in which the accounts are written off.

§ 1247.1. Refund of sales tax attributed to bad debt.

(a) Petition for refund.—A vendor may file a petition for refund of sales tax paid to the department that is attributed to a bad debt if all of the following apply:

(1) The purchaser fails to pay the vendor the total purchase price.

(2) The purchase price is written off, either in whole or in part, as a bad debt on the vendor's books and records.

(3) The bad debt has been deducted for Federal income tax purposes under section 166 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 166). The petition shall be filed with the department within the time limitations prescribed by section 3003.1 of the Tax Reform Code.

(b) Amount of refund.—The refund authorized by this section shall be limited to the sales tax paid to the department that is attributed to the bad debt, less any discount under section 1227 (relating to discount). Partial payments by the purchaser to the vendor shall be

prorated between the original purchase price and the sales tax due on the sale. Payments made to a vendor on any transaction that includes both taxable and nontaxable components shall be allocated proportionally between the taxable and nontaxable components.

(c) Assignment of right to petition.—A vendor may assign its right to petition and receive a refund of sales tax attributed to a bad debt to an affiliated entity. A vendor may not assign its right to petition and receive a refund of sales tax attributed to a bad debt to any other person.

(d) Exclusions.—No refund shall be granted under this section for any of the following:

- (1) Interest.
- (2) Finance charges.
- (3) Expenses incurred in attempting to collect any amount receivable.

(e) Refund procedure.—The documentation, procedures and methods for claiming and calculating the refund allowed under this section shall be in such form as the department may prescribe.

(f) Return of refund.—If the purchase price that is attributed to a prior bad debt refund is thereafter collected, in whole or in part, the vendor or affiliated entity shall remit the proportional tax to the department with the first return filed after the collection.

(g) Interest.—Notwithstanding the provisions of section 806.1 of the Fiscal Code, no interest shall be paid by the Commonwealth on refunds of sales tax attributed to bad debt under this section.

(h) Exclusive remedy.—No refund or credit of sales tax shall be made for any uncollected purchase price or bad debt except as authorized by this section. No deduction or credit for bad debt may be taken on any return filed with the department. This section shall provide the exclusive procedure for claiming a refund or credit of sales tax attributed to uncollected purchase price or bad debt.

(i) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Affiliated entity.” Any corporation that is part of the same affiliated group as the vendor as defined by section 1504(a)(1) of the Internal Revenue Code of 1986.

§ 1248. Registration of transient vendors.

(a) General rule.—Prior to conducting business or otherwise commencing operations within this Commonwealth, a transient vendor shall register with the department. The application for registration shall be in such form and contain such information as the department, by regulation, shall prescribe and shall set forth truthfully and accurately the information desired by the department. This registration shall be renewed and updated annually.

(b) Issuance of certificate.—Upon registration and the posting of the bond required by section 1248.1 (relating to bond), the department shall issue to the transient vendor a certificate, valid for one year. Upon renewal of registration, the department shall issue a new certificate, valid for one year, providing the department is satisfied that the transient vendor has complied with the provisions of this chapter.

(c) Possession of certificate.—The transient vendor shall possess the certificate at all times when conducting business within this Commonwealth and shall exhibit the certificate upon demand by authorized employees of the department or any law enforcement officer.

(d) Notice on certificate.—The certificate issued by the department shall state that the transient vendor named therein has registered with the department and shall provide notice to the transient vendor that:

(1) The transient vendor must notify the department in writing before it enters this Commonwealth to conduct business, of the location or locations where it intends to conduct business and the date or dates on which it intends to conduct business.

(2) Failure to notify or giving false information to the department may result in suspension or revocation of the transient vendor’s certificate.

(3) Conducting business within this Commonwealth after a certificate has been suspended or revoked may result in criminal conviction and the imposition of fines or other penalties.

§ 1248.1. Bond.

(a) Bond required.—Upon registration with the department, a transient vendor shall also post a bond with the department in the amount of \$500 as surety for compliance with the provisions of this chapter. After a period of demonstrated compliance with these provisions, or, if the transient vendor provides the license number of a promoter who has notified the department of a show, in accordance with the provisions of section 1248.6(a) (relating to promoters), the department may reduce the amount of bond required of a transient vendor or may eliminate the bond entirely.

(b) Request for voluntary suspension of certificate.—A transient vendor may file a request for voluntary suspension of certificate with the department. If the department is satisfied that the provisions of this chapter have been complied with and has possession of the transient vendor’s certificate, it shall return the bond posted to the transient vendor.

§ 1248.2. Notification to department; inspection of records.

(a) Notification to department.—Prior to entering this Commonwealth to conduct business, a transient vendor shall notify the department in writing of the location or locations where it intends to conduct business and the date or dates on which it intends to conduct business.

(b) Inspection of records.—While conducting business within this Commonwealth, the transient vendor shall permit authorized employees of the department to inspect its sales records, including, but not limited to, sales receipts and inventory or price lists and to permit inspection of the tangible personal property offered for sale at retail.

(c) Suspension or revocation of certificate.—The department may suspend or revoke a certificate issued to a transient vendor if the transient vendor:

- (1) fails to notify the department as required by subsection (a);
- (2) provides the department with false information regarding the conduct of business within this Commonwealth;
- (3) fails to collect sales tax on all tangible personal property or services sold subject to the sales tax; or
- (4) fails to file with the department a tax return as required by section 1217 (relating to time for filing returns).

(d) Rules and regulations.—The department shall promulgate the rules and regulations necessary to implement this section.

§ 1248.3. Seizure of property.

(a) General rule.—If a transient vendor conducting business within this Commonwealth fails to exhibit a valid certificate upon demand by authorized employees of the department, those authorized employees shall have the authority to seize, without warrant, the tangible personal property and the automobile, truck or other means of transportation used to transport or carry that property. All property seized shall be deemed contraband and shall be subject to immediate forfeiture proceedings instituted by the department pursuant to procedures adopted by regulation, except as otherwise provided by this section.

(b) Release of seized property.—Property seized pursuant to subsection (a) shall be released upon:

- (1) presentation of a valid certificate to authorized employees of the department; or
- (2) registration by the transient vendor with the department and the posting of a bond in the amount of \$500, either immediately or within 15 days after the property is seized.

§ 1248.4. Fines.

Any transient vendor conducting business within this Commonwealth while its certificate is suspended or revoked, as provided by sections 1248.1(b) (relating to bond) and 1248.2(c) (relating to notification to department; inspection of records), commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$2,500 for each offense.

§ 1248.5. Transient vendors subject to chapter.

Except as otherwise provided, a transient vendor shall be subject to the provisions of this chapter in the same manner as a vendor who maintains a place of business within this Commonwealth.

§ 1248.6. Promoters.

(a) License application.—A promoter of a show or shows within this Commonwealth may annually file with the department an application for a promoter's license stating the location and dates of such show or shows. The application shall be filed at least 30 days prior to the opening of the first show and shall be in such form as the department may prescribe.

(b) Issuance of license.—Except as provided in this section, the department shall, within 15 days after receipt of an application for a license, issue to the promoter without charge a license to operate such shows. If application for a license under this section has been timely filed and if the license has not been received by the promoter prior to the opening of the show, the authorization contained in this section with respect to the obtaining of a promoter's license shall be deemed to have been complied with, unless or until the promoter receives notice from the department denying the application for a promoter's license.

(c) Compliance with vendor provisions.—Any promoter who is a vendor under the provisions of section 1201 (relating to definitions) shall comply with all the provisions of this chapter applicable to vendors and with the provisions of this section applicable to promoters.

(d) Duty of promoters at show.—No licensed promoter shall permit any person to display for sale or to sell tangible personal property or services subject to tax under section 1202 (relating to imposition of tax) at a show unless such person is licensed under section 1208 (relating to licenses) and provides to the promoter the information required under section 1271.1 (relating to reports and records of promoters).

(e) Denial or revocation of license.—Any licensed promoter who permits any person to display for sale or to sell tangible personal property or service without first having been licensed under section 1208 fails to maintain records of a show under section 1271.1, knowingly maintains false records or fails to comply with any provision contained in this section or any regulation promulgated by the department pertaining to shows shall be subject to denial of a license or the revocation of any existing license issued pursuant to this section. In addition, the department may deny such promoter a license certificate to operate a show for a period of not more than six months from the date of such denial. Such penalty shall be in addition to any other penalty imposed by this chapter. Within 20 days of notice of denial or revocation of a license by the department, the promoter may petition the department for a hearing, pursuant to 2 Pa.C.S. (relating to administrative law and procedure).

SUBCHAPTER L REFUNDS AND CREDITS

Sec.

1250. Refund or credit for overpayment.

1251. Restriction on refunds.

1252. Refunds.

1253. Refund petition.

1254. Review by Board of Finance and Revenue.

1255. Appeal to Commonwealth Court.

1256. Extended time for filing special petition for refund.

§ 1250. Refund or credit for overpayment.

With respect to all taxes paid to a vendor or to the Commonwealth prior to April 5, 1957, in the case of any overpayment, the department, within the applicable period of limitations, may credit the amount of such overpayment against any liability in respect of the tax imposed by this chapter on the part of the person who made the overpayment, and shall refund any balance to such person.

§ 1251. Restriction on refunds.

No refund shall be made under section 1250 (relating to refund or credit for overpayment) without the approval of the Board of Finance and Revenue.

§ 1252. Refunds.

The department shall, pursuant to the provisions of sections 1253 (relating to refund petition) and 1254 (relating to review by Board of Finance and Revenue), refund all taxes, interest and penalties paid to the Commonwealth under the provisions of this chapter and to which the Commonwealth is not rightfully entitled. Refunds shall be made to the person, his heirs, successors, assigns or other personal representatives, who actually paid the tax. No refund shall be made under this section with respect to any payment made by reason of an assessment with respect to which a taxpayer has filed a petition for reassessment pursuant to section 1232 (relating to reassessment) to the extent that the petition has been determined adversely to the taxpayer by a decision which is no longer subject to further review or appeal. Nothing contained herein shall be deemed to prohibit a taxpayer who has filed a timely petition for reassessment from amending it to a petition for refund where the petitioner has paid the tax assessed.

§ 1253. Refund petition.

(a) Petition requirements and hearing.—Except as provided for in section 1256 (relating to extended time for filing special petition for refund) and in subsections (b) and (d), the refund or credit of tax, interest or penalty provided for by section 1252 (relating to refunds) shall be made only where the person who has actually paid the tax files a petition for refund with the department under section 3003.1 of the Tax Reform Code. The petition for refund must set forth in reasonable detail the grounds upon which the taxpayer claims that the Commonwealth is not rightfully entitled to such tax, interest or penalty, in whole or in part, and shall be accompanied by an affidavit affirming that the facts contained in the petition are true and correct. The department may hold hearings as necessary for the purpose at the times and places as it may determine, and each person who has filed a refund petition shall be notified by the department of the time when, and the place where, the hearing will be held.

(b) Refund upon assessment.—A refund or credit of tax, interest or penalty, paid as a result of an assessment made by the department under section 1231 (relating to mode and time of assessment), shall be made only where the person who has actually paid the tax files with the department a petition for a refund with the department under section 3003.1(d) of the Tax Reform Code. The filing of a petition for refund, under the provisions of this subsection, shall not affect the abatement of interest, additions or penalties to which the person may be entitled by reason of his payment of the assessment.

(c) Decision by department.—It shall be the duty of the department, within six months after receiving a petition for refund, to dispose of the issue raised by the petition, and mail notice of the department's decision to the petitioner. The taxpayer and the department may, however, by stipulation, extend such disposal time by not more than six additional months.

(d) Unconstitutional tax provision or erroneous interpretation of provision.—Notwithstanding any other provision of this section, where any tax, interest or penalty has been paid under a provision of this chapter subsequently held by final judgment of a court of competent jurisdiction to be unconstitutional, or under an interpretation of such provision subsequently held by such court to be erroneous, a petition for refund may be filed either before or subsequent to final judgment, but such petition must be filed under section 3003.1 of the Tax Reform Code. The department shall have jurisdiction to hear and determine any such petition filed prior to such final judgment only if, at the time of filing of the petition, proceedings are pending in a court of competent jurisdiction wherein the claim of unconstitutionality or of erroneous interpretation, made in the petition for refund may be established, and in such case, the department shall not take final action upon the petition for refund until the judgment determining the question involved in such petition has become final.

§ 1254. Review by Board of Finance and Revenue.

Within 90 days after the date of mailing of notice by the department of the decision upon a petition for refund filed with it, pursuant to section 1253 (relating to refund petition), the petitioner may further petition the Board of Finance and Revenue to review the

decision of the department. The failure of the department to notify the petitioner of its decision within the time provided for by section 1253 shall act as a denial of the petition, and a petition for review may be filed with the Board of Finance and Revenue within 120 days of the date prior to which the department should have mailed to the petitioner its notice of decision. Every petition for review filed with the Board of Finance and Revenue under the provisions of this section shall incorporate by reference the petition for refund. The petitioner may, in his petition for review, elect to withdraw one or more grounds as set out in the original refund petition. The Board of Finance and Revenue shall act finally in disposing of such petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department upon the petition for refund shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on a petition for refund, or it may redetermine whether a lesser or greater amount of refund is proper. Under no circumstances may the Board of Finance and Revenue authorize a refund greater than that originally applied for by the petitioner. The Board of Finance and Revenue shall give notice of its action to the department and to the petitioner.

§ 1255. Appeal to Commonwealth Court.

Any person aggrieved by the decision of the Board of Finance and Revenue under section 1254 (relating to review by Board of Finance and Revenue) or by the board's failure to act upon a petition for review within six months may appeal in the manner now or hereafter provided for by law for appeals in the case of tax settlements.

§ 1256. Extended time for filing special petition for refund.

Any party to a transaction who has paid tax by reason of a transaction with respect to which the department is assessing tax against another person may, within six months after the filing by the department of the assessment against such other person, file a special petition for refund, notwithstanding his failure to file a regular petition within three years of the payment. The provisions of sections 1253 (relating to refund petition), 1254 (relating to review by Board of Finance and Revenue) and 1255 (relating to appeal to Commonwealth Court) shall be applicable to such special petition for refund, except that the department need not act on such petition until there is a final determination as to the propriety of the assessment filed against the other party to the transaction. Where a petition is filed under this provision in order to take advantage of the extended period of limitations, overpayments by the petitioner shall be refunded but only to the extent of the actual tax, without consideration of interest and penalties, paid by the other party to the transaction. The purpose of this section is to avoid duplicate payment of tax where a determination is made by the department that one party to a transaction is subject to tax, and another party to the transaction has previously paid tax with respect to such transaction; and this section shall be construed as extending right beyond that provided for by section 1253, and not to limit such other section.

SUBCHAPTER M
LIMITATIONS

Sec.

1258. Limitation on assessment and collection.

1259. Failure to file return.

1260. False or fraudulent return.

1261. Extension of limitation period.

§ 1258. Limitation on assessment and collection.

The amount of the tax imposed by this chapter shall be assessed within three years after the date when the return provided for by section 1217(a) or (c) (relating to time for filing returns) is filed or the end of the year in which the tax liability arises, whichever occurs last. The assessment may be made at any time during such period notwithstanding that the department may have made one or more previous assessments against the taxpayer for the year in question, or for any part of such year. In any such case, no credit shall be given for any penalty previously assessed or paid.

§ 1259. Failure to file return.

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

§ 1260. False or fraudulent return.

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

§ 1261. Extension of limitation period.

Notwithstanding any of the foregoing provisions of this chapter, where, before the expiration of the period prescribed therein for the assessment of a tax, a taxpayer has consented in writing that the period be extended, the amount of tax due may be assessed at any time within the extended period. The period so extended may be extended further by subsequent consents in writing made before the expiration of the extended period.

SUBCHAPTER N
INTEREST, ADDITIONS, PENALTIES AND CRIMES

Sec.

1265. Interest.

1266. Additions to tax.

1267. Penalties.

1268. Crimes.

1269. Abatement of additions or penalties.

§ 1265. Interest.

If any amount of tax imposed by this chapter is not paid to the department on or before the last date prescribed for payment, interest on the amount at the rate of .75% per month for each month, or fraction thereof, from such date, shall be paid for the period from the last date to the date paid. The last date prescribed for payment shall be determined under section 1222(a) or (c) (relating to time of payment) without regard to any extension of time for payment. In the case of any amount assessed as a deficiency or as an estimated assessment, the date prescribed for payment shall be 30 days after notice of the assessment.

§ 1266. Additions to tax.

(a) Failure to file return.—In the case of failure to file any return required by section 1215 (relating to persons required to make returns) on the date prescribed for filing, determined with regard to any extension of time for filing, and in the case in which a return filed understates the true amount due by more than 50%, there shall be added to the amount of tax actually due 5% of the amount of such tax if the failure to file a proper return is for not more than one month, with an additional 5% for each additional month, or fraction thereof, during which the failure continues, not exceeding 25% in the aggregate. In every such case at least \$2 shall be added.

(b) Addition for understatement.—There shall be added to every assessment under section 1231(b) (relating to mode and time of assessment) an addition equal to 5% of the amount of the understatement and no addition to the tax shall be paid under section 1231(a).

(c) Interest.—If the department assesses a tax according to section 1231(a), (b) or (c), there shall be added to the amount of the deficiency interest at the rate of .75% per month for each month, or fraction thereof, from the date prescribed by section 1222(a) or (c) (relating to time of payment) for the payment of the tax to the date of notice of the assessment.

§ 1267. Penalties.

(a) Penalty assessed as tax.—The penalties, additions, interest and liabilities provided by this chapter shall be paid upon notice and demand by the department, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this chapter to "tax" imposed by this chapter shall be deemed also to refer to the penalties, additions, interest and liabilities provided by this chapter.

(b) Attempt to evade or defeat tax.—Any person who willfully attempts, in any manner, to evade or defeat the tax imposed by this chapter, or the payment thereof, or to assist any other person to evade or defeat the tax imposed by this chapter, or the payment thereof, or to

receive a refund improperly, shall, in addition to other penalties provided by law, be liable for a penalty equal to one-half of the total amount of the tax evaded.

(c) Burden of proof.—In any direct proceeding arising out of a petition for reassessment or refund as provided in this chapter, in which an issue of fact is raised with respect to whether a return is fraudulent or with respect to the propriety of the imposition by the department of the penalty prescribed in subsection (b), the burden of proof with respect to such issue shall be upon the department.

§ 1268. Crimes.

(a) Fraudulent return.—Any person who with intent to defraud the Commonwealth shall willfully make, or cause to be made, any return required by this chapter, which is false, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding \$2,000 or to imprisonment for not more than three years, or both.

(b) Other crimes.—Except as otherwise provided by subsection (a), the following persons commit a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both:

(1) Any person who advertises or holds out or states to the public or to any purchaser or user, directly or indirectly, that the tax or any part thereof imposed by this chapter will be absorbed by such person, or that it will not be added to the purchase price of the tangible personal property or services described in paragraphs (2), (3), (4) and (11) through (27) under the definition of “sale at retail” in section 1201 (relating to definitions) sold or, if added, that the tax or any part thereof will be refunded, other than when the person refunds the purchase price because of the property being returned to the vendor.

(2) Any person selling or leasing tangible personal property or services the sale or use of which by the purchaser is subject to tax under this chapter, who shall willfully fail to collect the tax from the purchaser and timely remit the same to the department.

(3) Any person who shall willfully fail or neglect to timely file any return or report required by this chapter or any taxpayer who shall refuse to timely pay any tax, penalty or interest imposed or provided for by this chapter, or who shall willfully fail to preserve his books, papers and records as directed by the department.

(4) Any person who shall refuse to permit the department or any of its authorized agents to examine his books, records or papers, or who shall knowingly make any incomplete, false or fraudulent return or report, or who shall do, or attempt to do, anything whatever to prevent the full disclosure of the amount or character of taxable sales purchases or use made by himself or any other person, or shall provide any person with a false statement as to the payment of tax with respect to particular tangible personal property or services, or shall make, utter or issue a false or fraudulent exemption certificate.

(c) Place of business outside Commonwealth.—Any person maintaining a place of business outside this Commonwealth may absorb the tax with respect to taxable sales made in the normal course of business to customers present at the place of business without being subject to the penalty and fines under subsection (b).

(d) Prepaid mobile telecommunications services.—Advertising tax-included prices shall be permissible, if the prepaid services are sold by the service provider, for prepaid telecommunications services not evidenced by the transfer of tangible personal property or for prepaid mobile telecommunications services.

(e) Other penalties.—The penalties imposed by this section shall be in addition to any other penalties imposed by any provision of this chapter.

§ 1269. Abatement of additions or penalties.

Upon the filing of a petition for reassessment or a petition for refund as provided under this chapter by a taxpayer, additions or penalties imposed upon such taxpayer by this chapter may be waived

or abated, in whole or in part, where the petitioner has established that he has acted in good faith, without negligence and with no intent to defraud.

SUBCHAPTER O ENFORCEMENT AND EXAMINATIONS

Sec.

1270. Rules and regulations.

1271. Keeping of records.

1271.1. Reports and records of promoters.

1272. Examinations.

1273. Records and examinations of delivery agents.

1274. Unauthorized disclosure.

1275. Cooperation with other governments.

1276. Interstate compacts.

1277. Bonds.

§ 1270. Rules and regulations.

(a) General rule.—The department is charged with the enforcement of this chapter, and is authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations not inconsistent with the provisions of this chapter, relating to any matter or thing pertaining to the administration and enforcement of this chapter, and the collection of taxes, penalties and interest imposed by this chapter. The department may prescribe the extent, if any, to which its rules and regulations shall be applied without retroactive effect.

(b) Sales between affiliated interests.—In determining the purchase price of taxable sales where, because of affiliation of interests between the vendor and the purchaser or irrespective of any affiliation, if for any other reason, the purchase price of the sale is in the opinion of the department not indicative of the true value of the article or the fair price thereof, the department shall, pursuant to uniform and equitable rules, determine the amount of constructive purchase price upon the basis of which the tax shall be computed and levied. The rules shall provide for a constructive amount of a purchase price for each sale, which price shall equal a price for the article which would naturally and fairly be charged in an arm’s-length transaction in which the element of common interests between vendor and purchaser, or, if no common interest exists, any other element causing a distortion of the price or value is absent. For the purpose of this chapter where a taxable sale occurs between a parent corporation and a subsidiary affiliate or controlled corporation of the parent, there shall be a rebuttable presumption that because of the common interest the transaction was not at arm’s-length.

§ 1271. Keeping of records.

(a) General rule.—Each person liable for any tax imposed by this chapter, or for the collection of any tax imposed by this chapter, shall keep the records, render the statements, make the returns and comply with the rules and regulations that the department may, from time to time, prescribe regarding matters pertinent to the persons business. Whenever in the judgment of the department it is necessary, it may require any person, by notice served upon the person, or by regulations, to make returns, render statements or keep records as the department deems sufficient to show whether or not the person is liable to pay or collect tax under this chapter.

(b) Persons collecting tax from others.—Any person liable to collect tax from another person under this chapter shall file reports, keep records, make payments and be subject to interest and penalties as provided for under this chapter, in the same manner as if the person were directly subject to the tax.

(c) Records of nonresidents.—A nonresident who does business in this Commonwealth as a retail dealer shall keep adequate records of the business or businesses and of the tax due with respect to the business or businesses, which records shall at all times be retained within this Commonwealth unless retention outside this Commonwealth is authorized by the department. No taxes collected from purchasers shall be sent outside this Commonwealth without the written consent of and in accordance with conditions prescribed by the department. The department may require a taxpayer who desires to

retain records or tax collections outside this Commonwealth to assume reasonable out-of-State audit expenses.

(d) Keeping of separate records.—Any person doing business as a retail dealer who at the same time is engaged in another business or businesses which do not involve the making of sales taxable under this chapter shall keep separate books and records of the person's businesses so as to show the sales taxable under this chapter separately from the person's sales not taxable under this chapter. If the person fails to keep separate books and records, the person shall be liable for tax at the rate designated in section 1202 (relating to imposition of tax) upon the entire purchase price of sales from both or all of the person's businesses.

(e) Other methods.—

(1) In those instances where a vendor gives no sales memoranda or uses registers showing only total sales, the vendor must adopt some method of segregating tax from sales receipts and keep records showing the segregation, all in accordance with proper accounting and business practices.

(2) A vendor may apply to the department for permission to use a collection and recording procedure which will show the information as the law requires with reasonable accuracy and simplicity. A vendor's application must contain a detailed description of the procedure to be adopted. Permission to use the proposed procedure is not to be construed as relieving the vendor from remitting the full amount of tax collected. The department may revoke permission upon 30 days' notice to the vendor. Refusal of the department to grant permission in advance to use the procedure shall not be construed to invalidate a procedure which upon examination shows the information as the law requires.

§ 1271.1. Reports and records of promoters.

Each licensed promoter shall keep a record of the date and place of each show and the name, address, sales, use and hotel occupancy license number of each person whom the licensed promoter permits to display for sale or to sell tangible personal property or services subject to tax under section 1202 (relating to imposition of tax) at the show. The records shall be open for inspection and examination at any reasonable time by the department or its authorized representative, and the records shall, unless the department consents in writing to an earlier destruction, be preserved for three years after the date the report was filed or the date it was due, whichever occurs later, except that the department may by regulation require that they be kept for a longer period of time.

§ 1272. Examinations.

The department or any of its authorized agents are authorized to examine the books, papers and records of any taxpayer in order to verify the accuracy and completeness of any return made or, if no return was made, to ascertain and assess the tax imposed by this chapter. The department may require the preservation of any books, papers and records for any period deemed proper by it but not to exceed three years from the end of the calendar year to which the records relate. Each taxpayer is required to give to the department, or its agent, the means, facilities and opportunity for examinations and investigation. The department is further authorized to examine any person, under oath, concerning taxable sales or use by any taxpayer or concerning any other matter relating to the enforcement or administration of this chapter, and to this end may compel the production of books, papers and records and the attendance of all persons whether as parties or witnesses whom it believes to have knowledge of such matters. The procedure for hearings or examinations shall be the same as that provided by the Fiscal Code, relating to inquisitorial powers of fiscal officers.

§ 1273. Records and examinations of delivery agents.

Each agent for the purpose of delivery of goods shipped into this Commonwealth by a nonresident including, but not limited to, common carriers, shall maintain adequate records of the deliveries pursuant to rules and regulations adopted by the department and shall make the records available to the department upon request after due notice.

§ 1274. Unauthorized disclosure.

Any information gained by the department as a result of any return, examination, investigation, hearing or verification, required or authorized by this chapter, shall be confidential, except for official purposes and except in accordance with proper judicial order or as otherwise provided by law, and any person unlawfully divulging the information commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both.

§ 1275. Cooperation with other governments.

Notwithstanding the provisions of section 1274 (relating to unauthorized disclosure), the department may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any state, or the authorized representative of either, to inspect the tax returns of any taxpayer, or may furnish to such officer or to an authorized representative an abstract of the return of any taxpayer, or supply the officer with information concerning any item contained in any return or disclosed by the report of any examination or investigation of the return of any taxpayer. This permission shall be granted only if the statutes of the United States or of the other state, as the case may be, grant substantially similar privileges to the proper officer of the Commonwealth charged with the administration of this chapter.

§ 1276. Interstate compacts.

The Governor, or an authorized representative, has the authority to confer with the governors and the authorized representatives of other states with respect to reciprocal use tax collection between Pennsylvania and the other states. The Governor, or a representative, is authorized to join with the authorities of other states to conduct joint investigations, to exchange information, to hold joint hearings and to enter into compacts or interstate agreements with the other states to accomplish uniform reciprocal use tax collections between those states who are parties to any compact or interstate agreement and the Commonwealth of Pennsylvania.

§ 1277. Bonds.

(a) Taxpayer to file bond.—

(1) Whenever the department, in its discretion, deems it necessary to protect the revenues to be obtained under this chapter, it may require any nonresident natural person or any foreign corporation, association, fiduciary, partnership or other entity not authorized to do business within this Commonwealth or not having an established place of business in this Commonwealth and subject to the tax imposed by section 1202 (relating to imposition of tax) to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in an amount as the department may fix, to secure the payment of any tax or penalties due, or which may become due, from the natural person or corporation.

(2) In order to protect the revenues to be obtained under this chapter, the department shall require any nonresident natural person or any foreign corporation, association, fiduciary, partnership or entity, who or which is a building contractor, or who or which is a supplier delivering building materials for work in this Commonwealth and is not authorized to do business within this Commonwealth or does not have an established place of business in this Commonwealth and is subject to the tax imposed by section 1202 to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in an amount as the department may fix, to secure the payments of any tax or penalties due, or which may become due, from the natural person, corporation or other entity.

(3) The department may also require a bond of any person petitioning the department for reassessment, in the case of any assessment over \$500 or where it is of the opinion that the ultimate collection is in jeopardy. The department may, for a period of three years, require a bond of any person who has on

three or more occasions within a 12-month period either filed a return or made payment to the department more than 30 days late.

(4) In the event that the department determines that a taxpayer is to file a bond, it shall give notice to the taxpayer to that effect, specifying the amount of the bond required. The taxpayer shall file the bond within five days after the giving of notice by the department unless, within the five days, the taxpayer shall request, in writing, a hearing before the Secretary of Revenue or a representative at which hearing the necessity, propriety and amount of the bond shall be determined by the secretary or representative. The determination shall be final and shall be complied with within 15 days after notice of the determination is mailed to the taxpayer.

(b) Securities in lieu of bond.—In lieu of the bond required by this section, securities approved by the department, or cash in an amount as prescribed by the department, may be deposited. The securities or cash shall be kept in the custody of the department, which may, at any time, without notice to the depositor, apply them to any tax, interest or penalties due, and for that purpose the securities may be sold by the department, at public or private sale, upon five days' written notice to the depositor.

(c) Failure to file bond.—The department may file a lien pursuant to section 1242 (relating to lien for taxes) against any taxpayer who fails to file a bond when required to do so under this section. All funds received upon execution of the judgment on a lien shall be refunded to the taxpayer with 3% interest should a final determination be made that the taxpayer does not owe any payment to the department.

SUBCHAPTER P

APPROPRIATION; EFFECTIVE DATE

Sec.

1281. Appropriation for refunds.

1281.1. Construction of chapter.

1281.2. Transfers to Public Transportation Assistance Fund.

1281.3. Transfer to Property Tax Relief Fund.

§ 1281. Appropriation for refunds.

So much of the proceeds of the tax imposed by this chapter as shall be necessary for the payment of refunds, enforcement or administration under this chapter is hereby appropriated for such purposes.

§ 1281.1. Construction of chapter.

To the extent that the language of this chapter is identical to that of equivalent provisions in the act of March 6, 1956 (P.L.1228, No.381), known as the Tax Act of 1963 for Education, the language shall be deemed a reenactment of the identical provisions.

§ 1281.2. Transfers to Public Transportation Assistance Fund.

(a) Transfer from imposition of tax on periodicals.—All revenues received on or after July 1, 1992, from the imposition of the tax on periodicals shall be transferred to the Public Transportation Assistance Fund according to the formula set forth in subsection (b).

(b) Transfer to Public Transportation Assistance Fund.—Within 30 days of the close of any calendar month, 0.44% of the taxes received in the previous month under this chapter, less any amounts collected in that previous calendar month under former 74 Pa.C.S. § 1314(d) (relating to Public Transportation Assistance Fund), shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code.

(c) Other transfer.—Within 30 days of the close of any calendar month, 0.09% of the taxes received in the previous month under this chapter shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code.

(d) Transfer after June 30, 2003.—Within 30 days of the close of a calendar month, 0.417% of the taxes received in the previous month under this chapter shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code. This subsection applies to deposits into the Public Transportation Assistance Fund made after June 30, 2003.

§ 1281.3. Transfer to Property Tax Relief Fund.

Within 30 days of the close of any calendar month, 17.5% of the taxes received in the previous month under this chapter shall be transferred to the Property Tax Relief Fund.

CHAPTER 13

SPECIAL SITUS FOR LOCAL SALES TAX

Sec.

1301. Definitions.

1302. Leased or rental vehicles or crafts.

1303. Construction materials.

1304. Mobile telecommunications services.

§ 1301. Definitions.

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

“Lease.” A contract for the use of a motor vehicle or other tangible personal property referred to in section 1302(a) (relating to leased or rental vehicles or crafts) for a period of 30 days or more.

“Rental.” A contract for the use of a motor vehicle or other tangible personal property referred to in section 1302(b) (relating to leased or rental vehicles or crafts) for a period of less than 30 days.

§ 1302. Leased or rental vehicles or crafts.

(a) Lease.—For purposes of this chapter, the lease of a motor vehicle, trailer, semitrailer or mobile home, as defined in 75 Pa.C.S. (relating to vehicles), or of a motorboat, aircraft or other similar tangible personal property required under either Federal or State laws to be registered or licensed shall be deemed to have been completed or used at the address of the lessee. In the case of a lease, the tax shall be paid by the lessee to the lessor.

(b) Rental.—For purposes of this chapter, the rental of a motor vehicle, trailer, semitrailer or mobile home, as defined in 75 Pa.C.S., or of a motorboat, aircraft or other similar tangible personal property required under either Federal or State laws to be registered or licensed shall be deemed to be consummated at the place of business of the retailer. In the case of a rental, the tax due shall be paid by the renter to the retailer.

(c) Applicability.—This chapter shall only apply to any sales tax imposed under Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code, and under the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

§ 1303. Construction materials.

(a) Final destination.—Notwithstanding the provisions of section 504 of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, the sale or use of road construction material, including recycled asphalt, recycled concrete, asphalt, concrete and road aggregates, shall be deemed to have been consummated at the location of its final destination. Final destination will be determined by reference to delivery or shipping documents relating to such sales.

(b) Applicability.—This section shall apply to taxes levied under Chapter 5 of the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class. This section shall not apply to taxes levied under Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

§ 1304. Mobile telecommunications services.

(a) Primary use.—For purposes of this chapter, the situs of the sales or use of mobile telecommunications services which are deemed to be provided to a customer by a home service provider under section 117(a) and (b) of the Mobile Telecommunications Sourcing Act (4 U.S.C. § 116) shall be the customer's place of primary use regardless of where the mobile telecommunications services originate, terminate or pass through.

(b) Definitions.—For purposes of this section, words and phrases used in this section shall have the meanings given to them in the Mobile Telecommunications Sourcing Act.

CHAPTER 15
PERSONAL INCOME TAX

Subchapter

- A. Preliminary Provisions
- B. Imposition of Tax
- C. Estates and Trusts
- D. Partnerships
- E. Pennsylvania S Corporations
- F. Other Entities
- G. Nonresident Individuals
- H. Credits Against Tax
- I. Contributions of Refunds by Checkoff
- J. Withholding of Tax
- K. Withholding Tax on Shares on Income from Sources within this Commonwealth
- L. Estimated Tax
- M. Returns and Payment of Tax
- N. Procedure and Administration
- O. Miscellaneous Provisions

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

1501. Definitions.

§ 1501. Definitions.

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

“Accepted accounting principles and practices.” Unless otherwise explicitly provided for in this chapter, those accounting principles, systems or practices, including the installment sales method of reporting, which are acceptable by standards of the accounting profession and which are not inconsistent with the regulations of the department setting forth such principles and practices.

“Association.” Any form of unincorporated enterprise which:

(1) is subject to the tax imposed under Article IV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971; or

(2) is required to make a return under section 6042 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 6042).

The term shall not include a partnership or investment company.

“Business.” An enterprise, activity, profession, vocation, trade, joint venture, commerce or any other undertaking of any nature when engaged in as commercial enterprise and conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, Pennsylvania S corporation, association or other unincorporated entity.

“Charitable trust.” A trust operated exclusively for religious, charitable, scientific, literary or educational purposes.

“Claimant.” A person who is subject to the tax imposed under this chapter, is not a dependent of another taxpayer for purposes of section 151 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 151), but is entitled to claim against such tax the poverty tax provisions as provided by the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Compensation.”

(1) The term shall include salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered, whether directly or through an agent, and whether in cash or in property. The term shall also include any part of a distribution under a plan described in section 409A(d)(1) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 409A(d)(1)), as amended, attributable to an elective deferral of income or the income on any elective deferral of income, whether paid or payable during employment or to a retired person upon or after retirement from service.

(2) The term shall not include:

(i) periodic payments for sickness and disability other than regular wages received during a period of sickness or disability;

(ii) disability, retirement or other payments arising under worker’s compensation acts, occupational disease acts and similar legislation by any government;

(iii) payments commonly recognized as old age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment;

(iv) payments commonly known as public assistance, or unemployment compensation payments by any governmental agency;

(v) payments to reimburse actual expenses;

(vi) payments made by employers or labor unions, including payments made pursuant to a cafeteria plan qualifying under section 125 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 125), for employee benefit programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits or strike benefits if the program does not discriminate in favor of highly compensated individuals as to eligibility to participate, payments or program benefits;

(vii) any compensation received by United States servicemen serving in a combat zone;

(viii) payments received by a foster parent for in-home care of foster children from an agency of the Commonwealth or a political subdivision thereof or an organization exempt from Federal tax under section 501(c)(3) of the Internal Revenue Code of 1986 which is licensed by the Commonwealth or a political subdivision of the Commonwealth as a placement agency;

(ix) payments made by employers or labor unions for employee benefit programs covering Social Security or retirement; or

(x) personal use of an employer’s owned or leased property or of employer-provided services.

“Corporation.” For purposes of applying the provisions of section 1503(a) (relating to classes of income) with respect to a “reorganization” as defined in that section, the term shall include a business trust to which 15 Pa.C.S. Ch. 95 (relating to business trusts) applies, a common law business trust or a limited liability company that for Federal income tax purposes is taxable as a corporation or an investment company.

“Department.” The Department of Revenue of the Commonwealth.

“Dependent.” A child who is the dependent of a claimant for purposes of section 151 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 151).

“Dividends.” Any distribution in cash or property made by a corporation, association, business trust or investment company with respect to its stock out of accumulated earnings and profits or out of earnings and profits of the year in which such dividend is paid. The term shall not include:

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

(2) for taxable years beginning on or after January 1, 1993, a distribution made by an investment company out of earnings and profits derived from interest that is statutorily free from State and local taxation under Article XXIX of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, or the act of August 31, 1971 (P.L.395, No.94), entitled “An act exempting from taxation for State and local purposes

within the Commonwealth certain obligations, their transfer and the income therefrom (including any profits made on the sale thereof), issued by the Commonwealth, any public authority, commission, board or other agency created by the Commonwealth, any political subdivision of the Commonwealth or any public authority created by any such political subdivision," or the laws of the United States.

"Employee." Any individual from whose wages an employer is required under the Internal Revenue Code of 1986 (P.L.99-514, 26 U.S.C. § 1 et seq.) to withhold Federal income tax.

"Employer." An individual, partnership, association, corporation, governmental body or unit or agency, or any other entity who or that is required under the Internal Revenue Code of 1986 (P.L.99-514, 26 U.S.C. § 1 et seq.) to withhold Federal income tax from wages paid to an employee.

"Fiduciary." A guardian, trustee, executor, administrator, receiver, conservator or any person acting in any trust or similar capacity, whether domiciliary or ancillary.

"Income." For a resident individual, estate or trust the term means the same as compensation, net profits, gains, dividends, interest or income enumerated and classified under section 1503 (relating to classes of income).

"Income from sources within this Commonwealth."

(1) For a nonresident individual, estate or trust the term means the same as compensation, net profits, gains, dividends, interest or income enumerated and classified under section 1503 (relating to classes of income) to the extent that it is earned, received or acquired from sources within this Commonwealth:

(i) by reason of ownership or disposition of any interest in real or tangible personal property in this Commonwealth;

(ii) in connection with a trade, profession, occupation carried on in this Commonwealth or for the rendition of personal services performed in this Commonwealth;

(iii) as a distributive share of the income of an unincorporated business, Pennsylvania S corporation, profession, enterprise, undertaking or other activity as the result of work done, services rendered or other business activities conducted in this Commonwealth, except as allocated to another state pursuant to regulations promulgated by the Department of Revenue under this chapter; or

(iv) from intangible personal property employed in a trade, profession, occupation or business carried on in this Commonwealth; or

(v) as gambling and lottery winnings by reason of a wager placed in this Commonwealth, the conduct of a game of chance or other gambling activity located in this Commonwealth or the redemption of a lottery prize from a lottery conducted in this Commonwealth, other than prizes of the Pennsylvania State Lottery.

(2) The term shall not include any items of income enumerated in paragraph (1) received or acquired from an investment company registered with the Federal Securities and Exchange Commission under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.).

"Individual." A natural person including the members of a partnership or association and the shareholders of a Pennsylvania S corporation.

"Installment sales method of reporting." The method by which a taxpayer reports the gain upon the sale of tangible personal property or real property when at least one payment is to be received in any taxable year following the taxable year of sale, whether the property is sold or otherwise disposed of in an isolated transaction or from the inventory of a dealer or broker. Taxpayers may elect to allocate the gain upon the transactions in equal proportion to each payment to be received. Taxpayers who do not elect to allocate the gain upon the transactions in

equal proportion to each payment received shall report all gains upon the sale in the taxable year in which the transaction occurred. For the purposes of this definition, the gain upon the transaction shall be the difference between the sales price and the seller's basis in the property, and the sales price shall be the face amount of the evidence of indebtedness given in exchange for the property sold or otherwise disposed of together with the value of any other consideration received by the seller. Where the evidence of indebtedness fails to state a price, the evidence of indebtedness will be valued at the fair market value of the property sold, less the value of other property or cash received in the same transaction. The installment sales method of reporting shall not be used for transactions the object of which is the lending of money or the rendering of services.

"Internal Revenue Code." The Internal Revenue Code of 1986 (P.L.99-514, 26 U.S.C. § 1 et seq.), as amended to January 1, 1997, unless the reference contains the phrase "as amended" and refers to no other date, in which case the reference shall be to the Internal Revenue Code of 1986 as it exists as of the time of application of this chapter.

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

"Nonresident individual." Any individual who is not a resident of this Commonwealth.

"Nonresident estate or trust." Any estate or trust which is not a resident estate or trust. The term shall not include charitable trusts or pension or profit sharing trusts.

"Partnership." A domestic or foreign general partnership, joint venture, limited partnership, limited liability company, business trust or other unincorporated entity that for Federal income tax purposes is classified as a partnership.

"Pennsylvania S corporation." Any small corporation as defined in this section which has a valid election under section 1507 (relating to election by small corporation) in effect.

"Person." Any individual employer, association, fiduciary, partnership, corporation or other entity, estate or trust, resident or nonresident, and the plural as well as the singular number. For the purpose of determining eligibility for special tax provisions, the term means a natural individual.

"Poverty." An economic condition wherein the total amount of poverty income is insufficient to adequately provide the claimant, his spouse and dependent children with the necessities of life.

"Poverty income." For the purpose of determining eligibility for special tax provisions all moneys or property, including interest, gains or income derived from obligations which are statutorily free from State or local taxation under any other act of the General Assembly of the Commonwealth of Pennsylvania or under the laws of the United States, received of whatever nature and from whatever source derived, but not including:

(1) periodic payments for sickness and disability other than regular wages received during a period of sickness or disability;

(2) disability, retirement or other payments arising under workers' compensation acts, occupational disease acts and similar legislation by any government;

(3) payments commonly recognized as old age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment;

(4) payments commonly known as public assistance or unemployment compensation payments by any governmental agency;

(5) payments to reimburse actual expenses;

(6) payments made by employers or labor unions for programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, Social Security and retirement; or

(7) any compensation received by United States servicemen serving in a combat zone.

“Qualified Subchapter S subsidiary.” A domestic or foreign corporation which for Federal income tax purposes is treated as a qualified Subchapter S subsidiary, as defined in section 1361(b)(3)(B) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1361), as amended to January 1, 1997.

“Resident individual.” An individual who is domiciled in this Commonwealth unless he maintains no permanent place of abode in this Commonwealth and does maintain a permanent place of abode elsewhere and spends in the aggregate not more than 30 days of the taxable year in this Commonwealth; or who is not domiciled in this Commonwealth but maintains a permanent place of abode in this Commonwealth and spends in the aggregate more than 183 days of the taxable year in this Commonwealth.

“Received.” For the purpose of computation of income subject to tax under this chapter the term means “received, earned or acquired” and the phrase “received, earned or acquired” shall be construed according to the method of accounting required by the Department of Revenue under this article for computing and reporting income subject to the tax.

“Resident estate.” The estate of a decedent who at the time of his death was a resident individual.

“Resident trust.” The term shall include any of the following:

(1) A trust created by the will of a decedent who at the time of his death was a resident individual.

(2) Any trust created by, or consisting in whole or in part of property transferred to a trust by a person who at the time of such creation or transfer was a resident. The term under this paragraph shall not include charitable trusts or pension or profit-sharing trusts.

“Special tax provisions.” A refund or forgiveness of all or part of the claimant’s liability under the provisions of this chapter.

“Small corporation.” Any corporation which has a valid election in effect under Subchapter S of Chapter 1 of the Internal Revenue Code of 1986 (P.L.99-514, 26 U.S.C. § 1 et seq.), as amended to January 1, 1997.

“State.” Any state or commonwealth of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States and any foreign country.

“Tax.” The term includes interest, penalties and additions to tax, and the tax required to be withheld by an employer on compensation paid, unless a more limited meaning is disclosed by the context.

“Tax Reform Code.” The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Taxable year.” As follows:

(1) Either the:

(i) taxable period on the basis of which a taxpayer or a claimant is required to file a Federal income tax return pursuant to the Internal Revenue Code of 1986 (P.L.99-514, 26 U.S.C. § 1 et seq.); or

(ii) if a taxpayer or claimant is not required to or does not file a Federal income tax return, the calendar year.

(2) For the initial period during which the tax is imposed, the period beginning June 1, 1971, and ending on:

(i) the last day of the taxable period on the basis of which a taxpayer or claimant is required to file a Federal income tax return pursuant to the Internal Revenue Code of 1986; or

(ii) if a taxpayer or claimant is not required to or does not file a Federal income tax return, December 31, 1971.

“Taxpayer.” Any individual, estate or trust subject to the tax imposed by this chapter, any partnership having a partner who is a taxpayer under the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, any Pennsylvania S corporation having a shareholder who is a taxpayer under the Tax Reform Code of 1971 and any employer required to withhold tax on compensation paid.

SUBCHAPTER B IMPOSITION OF TAX

Sec.

1502. Imposition of tax.

1502.1. Rate changes occurring during the taxable year.

1502.2. (Reserved).

1503. Classes of income.

1504. Special tax provisions for poverty.

§ 1502. Imposition of tax.

(a) Resident tax.—Every resident individual, estate or trust shall be subject to, and shall pay for the privilege of receiving each of the classes of income enumerated in section 1503 (relating to classes of income), a tax upon each dollar of income received by that resident during that resident’s taxable year at the rate of 3.29%.

(b) Nonresident tax.—Every nonresident individual, estate or trust shall be subject to, and shall pay for the privilege of receiving each of the classes of income enumerated in section 1503 from sources within this Commonwealth, a tax upon each dollar of income received by that nonresident during that nonresident’s taxable year at the rate of 3.29%.

§ 1502.1. Rate changes occurring during the taxable year.

Notwithstanding the provisions of section 1502 (relating to imposition of tax), the tax rate to be used for the computation of tax for any taxable year where the rate changes during the taxable year shall be the monthly weighted average of the rates applicable during the taxable year, regardless of when during the taxable year the income is received.

§ 1502.2. (Reserved).

§ 1503. Classes of income.

(a) Classes.—The classes of income referred to in section 1502(b) (relating to imposition of tax) are as follows:

(1) Compensation, which shall include all of the following:

(i) All salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered whether directly or through an agent and whether in cash or in property except income derived from the United States Government for active duty outside this Commonwealth as a member of the armed forces.

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

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

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

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

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

(E) Employee contributions to an employees' trust or pooled fund or custodial account or contract or employee annuity shall not be deducted or excluded from compensation.

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

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

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

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

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

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

(2) Net profits, which shall include the net income from the operation of a business, profession, or other activity, after provision for all costs and expenses incurred in the conduct of the operation or activity, determined either on a cash or accrual basis in accordance with accepted accounting principles and practices but without deduction of taxes based on income.

(3) Net gains or income from disposition of property, which shall include net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real property, tangible personal property, intangible personal property or obligations issued on or after February 1, 1994; any public authority, commission, board or other agency created by the Commonwealth; any political subdivision of the Commonwealth or any public authority created by any such political subdivision; or by the Federal Government as determined in accordance with accepted accounting principles and practices. For the purpose of this chapter the following shall apply:

(i) For the determination of the basis of any property, real and personal, if acquired prior to June 1, 1971, the date of acquisition shall be adjusted to June 1, 1971, as if the property had been acquired on that date. If the property was acquired after June 1, 1971, the actual date of acquisition shall be used in determination of the basis.

(ii) (Reserved).

(iii) The term "net gains or income" and "net losses" shall not include gains or income or loss derived from obligations which are statutorily free from State or local taxation under the act of August 31, 1971 (P.L.395, No.94), entitled "An act exempting from taxation for State and local purposes within the Commonwealth certain obligations, their transfer and the income therefrom (including any profits made on the sale thereof), issued by the Commonwealth, any public authority, commission, board or other agency created by

the Commonwealth, any political subdivision of the Commonwealth or any public authority created by any such political subdivision," or under the laws of the United States.

(iv) The term "sale, exchange or other disposition" shall not include the exchange of stock or securities in a corporation a party to a reorganization in pursuance of a plan of reorganization, solely for stock or securities in the corporation or in another corporation a party to the reorganization and the transfer of property to a corporation by one or more persons solely in exchange for stock or securities in the corporation if immediately after the exchange the person or persons are in control of the corporation. The following shall apply:

(A) For purposes of this subparagraph, stock or securities issued for services shall not be considered as issued in return for property.

(B) For purposes of this subparagraph, the term "reorganization" shall mean any of the following:

(I) A statutory merger or consolidation.

(II) The acquisition by one corporation, in exchange solely for all or a part of its voting stock, or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation, of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of the other corporation, whether or not the acquiring corporation had control immediately before the acquisition.

(III) The acquisition by one corporation, in exchange solely for all or a part of its voting stock, or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation, of substantially all of the properties of another corporation. In determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded.

(IV) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders, including persons who were shareholders immediately before the transfer, or any combination of transferor or shareholders, is in control of the corporation to which the assets are transferred.

(V) A recapitalization.

(VI) A mere change in identity, form or place of organization however effected.

(C) The acquisition by one corporation, in exchange for the stock of a controlling corporation which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under subclause (B)(I) if the transaction would have qualified under

subclause (B)(I) if the merger had been into the controlling corporation and no stock of the acquiring corporation is used in the transaction.

(D) A transaction otherwise qualifying under subclause (B)(I) shall not be disqualified by reason of the fact that the stock of the controlling corporation which before the merger was in control of the merged corporation, is used in the transaction, if:

(I) after the transaction, the corporation surviving the merger holds substantially all of its properties and the properties of the merged corporation, other than stock of the controlling corporation distributed in the transaction; and

(II) in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

(E) For purposes of this subparagraph:

(I) The term “control” means the ownership of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of the corporation.

(II) The term “a party to a reorganization” includes a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization qualifying under clause (B)(I) by reason of clause (C) the term “a party to a reorganization” includes the controlling corporation referred to in clause (C).

(F) Notwithstanding any other provision of this section, upon every exchange or conversion, the taxpayer’s base for the stock or securities received shall be the same as the taxpayer’s actual or attributed base for the stock, securities or property surrendered in exchange.

(v) The term “sale, exchange or other disposition” shall not include a transfer by a common trust fund described in section 584 of the Internal Revenue Code of all or substantially all of its assets to one or more companies described in section 851 of the Internal Revenue Code in exchange for stock or units of beneficial interest in the company or companies to which the assets are transferred and the distribution of the stock or units by the fund to its participants in exchange for their interest in the fund, if no gain or loss is recognized on the transfer or distribution for Federal income tax purposes. Upon every such exchange, the taxpayer’s base for the stock or units or assets received shall be the same as the taxpayer’s actual or attributed base for the assets, stock, units or interest surrendered in exchange.

(vi) The term “sale, exchange or other disposition” shall not include a transfer of an interest in an enterprise treated as a partnership for purposes of this chapter in exchange for an interest in any other enterprise

treated as a partnership for purposes of this chapter, a liquidation made in connection therewith or an exchange made pursuant to a statutory merger, consolidation or division of enterprises so treated unless taxable income or gain is recognized for Federal income tax purposes. Upon every such exchange, the taxpayer’s base for the interest received shall be the same as the taxpayer’s actual or attributed base for the interest surrendered in exchange.

(vii) The term “net gains or net income, less net losses,” shall not include any gain or loss from the sale, exchange or other disposition of the taxpayer’s principal residence.

(A) For purposes of this subparagraph, the term “principal residence” shall mean the property that has been owned and used by the taxpayer as the taxpayer’s principal residence for periods aggregating two years or more during the five-year period ending on the date of the sale, exchange or disposition, except that the following shall apply:

(I) In the case of property only a portion of which, during the five-year period ending on the date of the sale, exchange or disposition, has been owned or used by the taxpayer as the taxpayer’s principal residence for periods aggregating two years or more, this subparagraph shall apply with respect to so much of the gain from the sale, exchange or disposition of the property as is determined under regulations prescribed by the department to be attributable to that portion.

(II) In the case of a principal residence only a portion of which has never been subject to the allowance for depreciation, this subparagraph shall apply with respect to so much of the gain from the sale, exchange or disposition of the property as is determined under regulations prescribed by the department to be attributable to that portion.

(B) The provisions of this subparagraph shall not apply to a sale, exchange or disposition if, during the two-year period ending upon the date of the sale, exchange or disposition, there was a prior sale, exchange or disposition by the taxpayer of a principal residence, unless the sale, exchange or disposition is by reason of a change in employment, health or, to the extent provided in regulations, unforeseen circumstances.

(C) The provisions of this subparagraph shall not apply to any sale, exchange or disposition made prior to January 1, 1998.

(4) Net gains or income derived from or in the form of rents, royalties, patents and copyrights.

(5) Dividends.

(6) Interest derived from obligations which are not statutorily free from State or local taxation under any other act of the General Assembly of the Commonwealth of Pennsylvania or under the laws of the United States and any amount paid under contract of life insurance or endowment or annuity contract, which is includable in gross income for Federal income tax purposes and any amount paid out of the archer medical savings account or health savings account that is includable in the gross income of an account beneficiary for Federal income tax purposes.

(7) Gambling and lottery winnings other than prizes of the Pennsylvania State Lottery.

(8) Net gains or income derived through estates or trusts. To the extent that income or gain is subject to tax under one of the classes of income enumerated in this section the income or gain shall not be subject to tax under another of the enumerated classes.

(a.1) Compensation.—Income shall be computed under the method of accounting on the basis of which the taxpayer regularly computes income in keeping the taxpayer's books. If the department determines that no method has been regularly used or the method used does not clearly reflect income, the computation of income shall be made under a method which, in the opinion of the department, clearly reflects income.

(a.2) Depreciation.—In computing income, a depreciation deduction shall be allowed for the exhaustion, wear and tear and obsolescence of property being employed in the operation of a business or held for the production of income. The deduction must be reasonable and shall be computed in accordance with the property's adjusted basis at the time placed in service, reasonably estimated useful life and net salvage value at the end of its reasonably estimated useful economic life under the straight-line method or other method prescribed by the department, except that a taxpayer may use any depreciation method, recovery method or convention that is also used by the taxpayer in determining Federal net taxable income if, when placed in service, the property has the same adjusted basis for Federal income tax purposes and the method or convention is allowable for Federal income tax purposes at the time the property is placed in service or under the Internal Revenue Code, whichever is earlier. The basis of property shall be reduced, but not below zero, for depreciation by the greater of:

(1) the amount deducted on a return and not disallowed, but only to the extent the deduction results in a reduction of income; and

(2) the amount allowable using the straight-line method of depreciation computed on the basis of the property's adjusted basis at the time placed in service, reasonably estimated useful life and net salvage value at the end of its reasonably estimated useful economic life, regardless of whether the deduction results in a reduction of income.

(a.3) Section 179 Property.—The cost of property commonly referred to as Section 179 Property may be treated as a deductible expense only to the extent allowable under the version of section 179 of the Internal Revenue Code in effect at the time the property is placed in service or under section 179 of the Internal Revenue Code of 1986 (26 U.S.C. § 179), whichever is earlier. The basis of Section 179 Property shall be reduced, but not below zero, for costs treated as a deductible expense. The amount of the reduction shall be the amount deducted on a return and not disallowed, regardless of whether the deduction results in a reduction of income.

(a.4) Federal limitation applicability.—This chapter shall be subject to applicable Federal limitations on state income taxation.

(a.5) Section 1035 applicability.—The requirements of section 1035 of the Internal Revenue Code of 1986 (26 U.S.C. § 1035), as amended, shall be applicable.

(a.6) Applicability.—Except as provided in this chapter and without regard to sections 220(f)(4) and 223(f)(4) of the Internal Revenue Code, the requirements of sections 106(b) and (d), 220 and 223 of the Internal Revenue Code of 1986, as amended to January 1, 2005, shall be applicable.

(b) Intent.—It is hereby declared to be the intent of the General Assembly that if one or more or part of one or more of the classes of income enumerated in subsection (a) are, for any reason, held to be unconstitutional by a final decision of a court of last resort, the unconstitutional class or classes or part of a class or classes of income shall be deemed severable, and the tax imposed by this chapter shall apply with respect to all the remaining classes of income or parts of classes of income enumerated in subsection (a) as if the

unconstitutional class or classes of income or part or parts of classes of income had not been included.

§ 1504. Special tax provisions for poverty.

(a) Declaration of intent.—The General Assembly, in recognition of the powers contained in section 2(b)(ii) of Article III of the Constitution of Pennsylvania which provides for the establishing as a class or classes of subjects of taxation the property or privileges of persons who, because of poverty are determined to be in need of special tax provisions declares as its legislative intent and purpose to implement such power under such constitutional provision by establishing special tax provisions as provided in this chapter.

(b) Public policy.—The General Assembly having determined that there are persons within this Commonwealth whose incomes are such that imposition of a tax thereon would deprive them and their dependents of the bare necessities of life and having further determined that poverty is a relative concept inextricably joined with actual income and the number of people dependent upon such income deems it to be a matter of public policy to provide special tax provisions for that class of persons designated in this section to relieve their economic burden.

(c) Standards of eligibility.—For the taxable year 1974 and each year thereafter any claimant who meets the following standards of eligibility established by this chapter as the test for poverty shall be deemed a separate class of subject of taxation, and, as such, shall be entitled to the benefit of the special provisions of this chapter.

(d) Specific standards.—Any claim for special tax provisions under this section shall be determined in accordance with the following:

(1) (i) If the poverty income of the claimant during an entire taxable year is \$6,500 or less, or, in the case of a married claimant, if the joint poverty income of the claimant and the claimant's spouse during an entire taxable year is \$13,000 or less, the claimant shall be entitled to a refund or forgiveness of all moneys which have been paid over to, or would except for the provisions of this chapter be payable to, the Commonwealth under the provisions of this chapter, with an additional income allowance of \$9,500 for each dependent of the claimant.

(ii) For purposes of this subsection, a claimant shall not be considered to be married if:

(A) The claimant and the claimant's spouse file separate returns.

(B) The claimant and the claimant's spouse live apart at all times during the last six months of the taxable year or are separated pursuant to a written separation agreement.

(2) If the poverty income of the claimant during an entire taxable year does not exceed the poverty income limitations prescribed by paragraph (1) by more than the dollar category contained in subparagraphs (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) or (ix), the claimant shall be entitled to a refund or forgiveness based on the percentage prescribed in those subparagraphs of any moneys which have been paid over to, or would have been except for the provisions in this subsection be payable to, the Commonwealth under this chapter:

(i) 90% if not in excess of \$250.

(ii) 80% if not in excess of \$500.

(iii) 70% if not in excess of \$750.

(iv) 60% if not in excess of \$1,000.

(v) 50% if not in excess of \$1,250.

(vi) 40% if not in excess of \$1,500.

(vii) 30% if not in excess of \$1,750.

(viii) 20% if not in excess of \$2,000.

(ix) 10% if not in excess of \$2,250.

(3) If an individual has a taxable year of less than 12 months, the poverty income thereof shall be annualized in the manner as the department may prescribe.

SUBCHAPTER C
ESTATES AND TRUSTS

Sec.

1505. Taxability of estates, trusts and their beneficiaries.

§ 1505. Taxability of estates, trusts and their beneficiaries.

The income of a beneficiary of an estate or trust in respect of the estate or trust shall consist of that part of the income or gains received by the estate or trust for its taxable year ending within or with the beneficiary's taxable year which, under the governing instrument and applicable State law, is required to be distributed currently or is in fact paid or credited to the beneficiary. The income or gains of the estate or trust, if any, taxable to the estate or trust shall consist of the income or gains received by it which has not been distributed or credited to its beneficiaries.

SUBCHAPTER D
PARTNERSHIPS

Sec.

1506. Taxability of partners.

§ 1506. Taxability of partners.

A partnership as an entity shall not be subject to the tax imposed by this chapter but the income or gain of a member of a partnership in respect of the partnership shall be subject to the tax and the tax shall be imposed on the member's share, whether or not distributed, of the income or gain received by the partnership for its taxable year ending within or with the member's taxable year.

SUBCHAPTER E
PENNSYLVANIA S CORPORATIONS

Sec.

1507. Election by small corporation.

1507.1. Manner of making election.

1507.2. Effective years of election.

1507.3. Revocation of election.

1507.4. Termination by corporation ceasing to be a small corporation.

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1507.7. Taxable year of a Pennsylvania S corporation.

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1507.9. Income of Pennsylvania S corporations taxed to shareholders.

1507.10. Limitation on pass-thru of losses to shareholders.

1507.11. Adjustments to basis of stock of shareholders.

1507.12. Distributions.

§ 1507. Election by small corporation.

Except as provided in section 1507.6 (relating to election after revocation or termination), any small corporation that is subject to the tax imposed under Article IV of the Tax Reform Code or owns a qualified S corporation subsidiary that is subject to the tax imposed under Article IV of the Tax Reform Code may elect to be taxed as a Pennsylvania S corporation. The election shall be valid only if all the shareholders of the corporation on the day on which the election is made consent to the election. A qualified Subchapter S subsidiary owned by a Pennsylvania S corporation shall be treated as a Pennsylvania S corporation whether or not an election has been made with respect to the subsidiary.

§ 1507.1. Manner of making election.

(a) General rule.—An election made pursuant to section 1507 (relating to election by small corporation) shall be made in the manner prescribed by the department.

(b) Time of making election.—An election under section 1507 may be made for any taxable year at any time during the preceding taxable year or at any time on or before the 15th day of the third month of the current taxable year.

§ 1507.2. Effective years of election.

An election made pursuant to section 1507 (relating to election by small corporation) shall be effective for the taxable year for which the election is made and for each succeeding taxable year unless revoked or terminated.

§ 1507.3. Revocation of election.

(a) General rule.—An election under section 1507 (relating to election by small corporation) may be revoked if shareholders holding more than one-half of the shares of stock of the corporation on the day on which the revocation is made consent to the revocation.

(b) Effective date of revocation.—Except as provided in subsection (c), a revocation under subsection (a) shall be effective:

(1) on the first day of the taxable year, if made on or before the 15th day of the third month of that taxable year; or

(2) if the revocation is made after that date, it shall be effective for the following taxable year.

(c) Special rule.—If the revocation specifies a date for revocation which is on or after the day on which the revocation is made, the revocation shall be effective on and after that date.

§ 1507.4. Termination by corporation ceasing to be a small corporation.

(a) General rule.—If a corporation ceases to be a small corporation, the election under section 1507 (relating to election by small corporation) shall terminate.

(b) Effective date of termination.—A termination under subsection (a) shall be effective on the date on which the corporation ceases to be a small corporation.

§ 1507.5. Revocation or termination year.

(a) General rule.—The portion of the revocation or termination year of a Pennsylvania S corporation ending before the first day for which the revocation or termination is effective shall be treated as a short taxable year for which the corporation is a Pennsylvania S corporation.

(b) Short taxable year.—The portion of the year beginning on the first day for which the revocation or termination is effective shall be treated as a short taxable year for which the corporation is subject to the tax imposed by Article IV of the Tax Reform Code.

(c) Allocation of income and expense items.—The allocation of income and expense items to be taken into consideration in each short year shall be made in accordance with such regulations as may be issued by the department.

§ 1507.6. Election after revocation or termination.

If a corporation has made an election under section 1507 (relating to election by small corporation) and if the election has been revoked pursuant to section 1507.3 (relating to revocation of election) or terminated, the corporation and any successor corporation shall not be eligible to make an election under section 1507 for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such revocation or termination is effective.

§ 1507.7. Taxable year of a Pennsylvania S corporation.

The taxable year of a Pennsylvania S corporation shall be the same taxable year which the corporation uses for Federal income tax purposes.

§ 1507.8. Income of a Pennsylvania S corporation.

(a) General rule.—A Pennsylvania S corporation shall not be subject to the tax imposed by this chapter, but the shareholders of the Pennsylvania S corporation shall be subject to the tax imposed under this chapter as provided in this chapter.

(b) Treatment of losses.—If any tax is imposed on a Pennsylvania S corporation or any qualified subsidiary owned by the Pennsylvania S corporation, pursuant to section 1374 of the Internal Revenue Code, as amended to January 1, 1997, or pursuant to Article IV or Article VI of the Tax Reform Code for any taxable year, then, for purposes of section 1507.9 (relating to income of Pennsylvania S corporations taxed to shareholders), the amount of tax so imposed shall be treated as a loss sustained by the Pennsylvania S corporation during those years. In the case of taxes imposed pursuant to section 1374 of the Internal Revenue Code, as amended to January 1, 1997, or Article IV of the Tax Reform Code, the character of the loss shall be determined by allocating the loss proportionately among the recognized built-in gains giving rise to the tax.

(c) Recognition of gain.—If a Pennsylvania S corporation makes a distribution of property, other than an obligation of the corporation, with respect to its stock and the fair market value of the property exceeds its adjusted basis in the hands of the corporation, then gain shall be recognized on the distribution as if the property had been sold to the distributee at its fair market value.

(d) Election affecting computation.—An election which may affect the computation of items derived from a Pennsylvania S corporation shall be made by the corporation.

(e) Disallowed deductions.—A deduction, except a net loss deduction, which was disallowed when a corporation was subject to the tax imposed under Article IV of the Tax Reform Code shall be allowed in years in which the corporation is a Pennsylvania S corporation to the same extent and in the same manner that the deduction would have been allowed if the corporation had remained subject to the tax imposed under Article IV of the Tax Reform Code.

§ 1507.9. Income of Pennsylvania S corporations taxed to shareholders.

(a) General rule.—Each shareholder of a Pennsylvania S corporation shall take into income the shareholder's pro rata share of the income or loss in each applicable class of income received by the corporation for its taxable year ending within or with the shareholder's taxable year.

(b) Pro rata shares.—Each shareholder's pro rata share of any item for a taxable year shall be the sum of the amounts determined with respect to the shareholder by assigning an equal portion of all items to each day of the taxable year and then by dividing that portion pro rata among the shares outstanding on that day.

(c) Determination of the character of items.—The character of any item included in the shareholder's pro rata share shall be determined as if the item was realized directly by the shareholder from the source from which it was realized by the corporation or incurred in the same manner as incurred by the corporation.

(d) Deduction allowance.—With respect to any deduction allowed pursuant to section 1507.8(e) (relating to income of a Pennsylvania S corporation), any nonresident shareholder shall be allowed the deduction only to the extent that the previously disallowed deduction would have been considered a deduction related to income from sources within this Commonwealth during the taxable year when the deduction was disallowed.

(e) Treatment of subsidiaries.—For all purposes of this chapter, a qualified Subchapter S subsidiary owned by a Pennsylvania S corporation shall not be treated as a separate corporation and all assets, liabilities and items of income, deduction and credit of the qualified Subchapter S subsidiary shall be treated as assets, liabilities and items of income, deduction and credit of the parent Pennsylvania S corporation.

§ 1507.10. Limitation on pass-thru of losses to shareholders.

(a) General rule.—The aggregate amount of losses taken into account by a shareholder of a Pennsylvania S corporation under section 1507.9 (relating to income of Pennsylvania S corporations taxed to shareholders) shall not exceed the sum of the adjusted basis of the shareholder's stock in the Pennsylvania S corporation, determined after applying section 1507.11(a) (relating to adjustments to the basis of the stock of shareholders) for the taxable year and the shareholder's adjusted basis of any indebtedness of the Pennsylvania S corporation to the shareholder, determined before applying section 1507.11(d) for the taxable year.

(b) Carryover of losses prohibited.—There shall be no carryover of losses by the shareholders of the Pennsylvania S corporation.

§ 1507.11. Adjustments to basis of stock of shareholders.

(a) Increases to basis.—The basis of a shareholder's stock in Pennsylvania S corporation shall be decreased for any period, but not below zero, by any distribution by the corporation to the shareholder which was not included in the income of the shareholder pursuant to section 1507.12 (relating to distributions) and by the shareholder's

share of the corporation's losses as determined under section 1507.9 (relating to income of Pennsylvania S corporations taxed to shareholders) the extent that the loss reduced the shareholder's share of the corporation's income, including nontaxable income, as determined under section 1507.9.

(b) Decreases to basis.—The basis of a shareholder's stock in a Pennsylvania S corporation shall be decreased for any period, but not below zero, by any distribution by the corporation to the shareholder which was not included in the income of the shareholder pursuant to section 1507.12 (relating to distributions) and by the shareholder's share of the corporation's losses as determined under section 1507.9 to the extent that the loss reduced the shareholder's income subject to the tax imposed under this chapter or a tax measured by net income, imposed on the shareholder by any other state.

(c) Reduction to zero basis.—If for any taxable year a shareholder's basis in the stock of a Pennsylvania S corporation is reduced to zero, any excess losses shall reduce the shareholder's basis, but not below zero, in any indebtedness of the Pennsylvania S corporation to the shareholder.

(d) Restoration of reduction.—If a shareholder's basis in any indebtedness is reduced under subsection (c), then this reduction shall be restored before the shareholder's basis in the Pennsylvania S corporation's stock is increased.

§ 1507.12. Distributions.

(a) General rule.—A distribution of property by a Pennsylvania S corporation which has no accumulated earnings and profits to a shareholder of the corporation shall not be included in the shareholder's income to the extent that it does not exceed the shareholder's adjusted basis in the stock. Any amount of the distribution in excess of the adjusted basis in the stock shall be treated as a gain from the sale, exchange or other disposition of property.

(b) Distribution with accumulated earnings and profits.—A distribution of property by a Pennsylvania S corporation which has accumulated earnings and profits shall be treated in the same manner as a distribution by a Pennsylvania S corporation without earnings and profits to the extent of the corporation's accumulated adjustment account. That portion of the distribution in excess of the accumulated adjustment account shall be treated as a dividend to the extent of the accumulated earnings and profits of the corporation. Any portion of the distribution in excess of the accumulated earnings and profits of the corporation shall be treated in the same manner as a distribution from a Pennsylvania S corporation without accumulated earnings and profits.

(c) Non-pro-rata distributions.—In the case of a non-pro rata distribution of property, the adjustment shall be limited to an amount which bears the same ratio to the balance in such account as the number of shares sold, exchanged or otherwise disposed of bears to the number of shares in the corporation outstanding immediately before such sale, exchange or disposition.

(d) Definition.—For purposes of this section, "accumulated adjustment account" means the account of a Pennsylvania S corporation which is cumulatively adjusted for the most recent continuous period during which the corporation has been a Pennsylvania S corporation by increasing the account for corporate income and decreasing the account for corporate losses and all distributions of property by the corporation to the shareholders which were not included in the income of the shareholders; provided, that no adjustment shall be made for any income or loss not in any of the classes of income enumerated in section 1503 (relating to classes of income) or for any nondeductible expense.

SUBCHAPTER F OTHER ENTITIES

Sec.

1507.21. Treatment of unincorporated entities with single owners.

§ 1507.21. Treatment of unincorporated entities with single owners.

Unless subject to tax under Article IV of the Tax Reform Code, an unincorporated entity that has a single owner shall be disregarded as an entity separate from its owner.

SUBCHAPTER G
NONRESIDENT INDIVIDUALS

Sec.

1508. Nonresident individuals and taxable income.

1509. Husband and wife.

1510. Allocation of income of nonresident.

§ 1508. Nonresident individuals and taxable income.

The income of a nonresident individual shall be that part of the individual's income derived from sources within this Commonwealth.

§ 1509. Husband and wife.

(a) Separate return.—If the income of husband or wife, who are both nonresidents of this Commonwealth and are subject to tax under this chapter, is determined on a separately filed return, their incomes from sources within this Commonwealth shall be separately determined.

(b) One spouse a nonresident.—If either husband or wife is a nonresident and the other is a resident, separate taxes shall be determined on their separate incomes on such forms as the department shall prescribe, unless both spouses elect to determine their joint income as if they were residents, in which event their tax liabilities shall be joint and several.

§ 1510. Allocation of income of nonresident.

Where a nonresident taxpayer:

(1) earns, receives or acquires income from sources partly within and partly without this Commonwealth; or engages in a business, trade, profession or occupation partly within and partly without this Commonwealth; and

(2) as a result thereof or for other reasons that portion of the income derived from or connected with sources within this Commonwealth cannot readily or accurately be ascertained,

the department shall by regulation prescribe uniform rules for apportionment or allocation of so much of the taxpayer's income as fairly and equitably represents income, derived from sources within this Commonwealth and subject to tax under this chapter.

SUBCHAPTER H
CREDITS AGAINST TAX

Sec.

1512. Tax withheld.

1513. Tax paid under former act.

1514. Income taxes imposed by other states.

1515. (Reserved).

§ 1512. Tax withheld.

The amount withheld under section 1516 (relating to requirement of withholding tax) shall be allowed to the recipient of the compensation as a credit against the tax imposed on him by this chapter.

§ 1513. Tax paid under former act.

The amount of tax withheld from an employee and paid over to the Commonwealth or paid over by a taxpayer as an estimated payment pursuant to former Article III of the Tax Reform Code, shall be held as a credit against the tax imposed by this chapter.

§ 1514. Income taxes imposed by other states.

(a) General rule.—A resident taxpayer before allowance of any credit under section 1512 (relating to tax withheld) shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax, wage tax or tax on or measured by gross or net earned or unearned income imposed on the taxpayer or on a Pennsylvania S corporation in which the taxpayer is a shareholder, to the extent of the taxpayer's pro rata share thereof determined in accordance with section 1507.9 (relating to income of Pennsylvania S corporations taxed to shareholders), by another state with respect to income which is also subject to tax under this chapter.

(b) Limitation.—The credit provided under this section shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the taxpayer's income subject to tax by the other jurisdiction bears to the taxpayer's entire taxable income.

§ 1515. (Reserved).

SUBCHAPTER I
CONTRIBUTIONS OF REFUNDS BY CHECKOFF

Sec.

1515.1. Definitions.

1515.2. Contributions to breast and cervical cancer research.

1515.3. Contributions for wild resource conservation.

1515.4. Contributions for organ and tissue donation awareness.

1515.5. (Reserved).

1515.6. (Reserved).

1515.7. Contributions for juvenile diabetes cure research.

1515.8. Contributions for military family relief assistance.

1515.9. Operational provisions.

§ 1515.1. Definitions.

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

"Individual income tax." The tax imposed under this chapter.

§ 1515.2. Contributions to breast and cervical cancer research.

(a) General rule.—The department shall provide a space on the Pennsylvania individual income tax return form to allow an individual to voluntarily designate a contribution of any amount desired to be utilized for breast and cervical cancer research in the Department of Health.

(b) Deduction from tax refunds.—The amount so designated on the individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) Transfer of funds.—The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State Treasurer who shall transfer the amount from the General Fund to the Pennsylvania Cancer Control, Prevention and Research Advisory Board within the Department of Health.

(d) Information to be provided.—

(1) The department shall provide adequate information concerning the checkoff for breast and cervical cancer research in its instructions which accompany State income tax return forms. The information concerning the checkoff shall include the listing of an address furnished by the Department of Health to which contributions may be sent by taxpayers wishing to contribute to this effort but who do not receive refunds.

(2) The Department of Health shall conduct a public information campaign on the availability of this opportunity to Pennsylvania taxpayers.

(e) Annual report to General Assembly.—The Department of Health shall report annually to the respective committees of the Senate and the House of Representatives which have jurisdiction over health matters on the amount received via the checkoff plan and how the funds were utilized.

(f) Appropriations.—The General Assembly may, from time to time, appropriate funds for breast and cervical cancer research within the Department of Health.

§ 1515.3. Contributions for wild resource conservation.

(a) General rule.—The department shall provide a space on the Pennsylvania individual income tax return form to allow an individual to voluntarily designate a contribution of any amount desired to the Wild Resource Conservation Fund established under section 5 of the act of June 23, 1982 (P.L.597, No.170), known as the Wild Resource Conservation Act.

(b) Deduction from refund.—The amount so designated by an individual on the income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) Transfer of funds.—The department shall determine annually the total amount designated pursuant to this section and shall report the amount to the State Treasurer who shall transfer the amount from the General Fund to the Wild Resource Conservation Fund for use as provided in the Wild Resource Conservation Act. The department shall

be reimbursed from the fund for any administrative costs incurred above and beyond the cost savings it realizes as a result of individual total refund designations.

(d) Information to be provided.—The department shall provide adequate information concerning the Wild Resource Conservation Fund in its instructions which accompany State income tax return forms, which shall include the listing of an address furnished to it by the Wild Resource Conservation Board to which contributions may be sent by those taxpayers wishing to contribute to the fund but who do not receive refunds.

(e) Applicability.—This section shall apply to taxable years beginning on or after January 1, 1997.

§ 1515.4. Contributions for organ and tissue donation awareness.

(a) General rule.—The department shall provide a space on the Pennsylvania individual income tax return form whereby an individual may voluntarily designate a contribution of any amount desired to the Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund established under 20 Pa.C.S. § 8622 (relating to the Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund).

(b) Deduction from refund.—The amount so designated by an individual on the Pennsylvania individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due the Commonwealth.

(c) Transfer of funds.—The department shall annually determine the total amount designated pursuant to this section and shall report that amount to the State Treasurer who shall transfer that amount to the Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund.

(d) Information to be provided.—The department shall, in all taxable years following the effective date of this section, provide on its forms or in its instructions which accompany Pennsylvania individual income tax return forms adequate information concerning the Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund which shall include the listing of an address furnished to it by the Organ Donation Advisory Committee to which contributions may be sent by those taxpayers wishing to contribute to the fund but who do not receive refunds.

(e) Applicability.—This section shall apply to taxable years beginning on or after January 1, 1997.

§ 1515.5. (Reserved).

§ 1515.6. (Reserved).

§ 1515.7. Contributions for juvenile diabetes cure research.

(a) General rule.—The department shall provide a space on the Pennsylvania individual income tax return form to allow an individual to voluntarily designate a contribution of any amount desired to be utilized for juvenile diabetes cure research related to:

- (1) restoring normal blood sugar levels;
- (2) preventing and reversing complications; or
- (3) preventing juvenile diabetes.

(b) Deduction from refund.—The amount so designated on the Pennsylvania individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) Transfer of funds and expenditure.—

(1) The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State Treasurer, who shall transfer the amount to a restricted revenue account within the General Fund to be used by the Department of Health for aiding juvenile diabetes cure research.

(2) The Department of Health shall distribute the amounts to institutions of higher education and independent research institutes of this Commonwealth to support projects that have been subject to an established peer and scientific review process identical or similar to the National Institutes of Health review system.

(d) Information to be provided.—The department shall provide adequate information concerning the checkoff for juvenile diabetes cure research in its instructions which accompany the Pennsylvania income tax return forms. The information concerning the checkoff shall include the listing of an address furnished by the Department of Health to which contributions may be sent by taxpayers wishing to contribute to this effort but who do not receive refunds.

(e) Annual report to General Assembly.—The Department of Health shall report annually to the respective committees of the Senate and the House of Representatives which have jurisdiction over health matters on the amount received via the checkoff plan and how the funds were utilized.

(f) Applicability.—This section shall apply to tax years beginning after December 31, 2004.

§ 1515.8. Contributions for military family relief assistance.

(a) General rule.—Beginning with taxable years ending after December 31, 2004, the department shall provide a space on the Pennsylvania individual income tax return form to allow an individual to contribute to a fund for military family relief assistance. Persons may do so by stating the amount of the contribution, not less than \$1, on the return and that the contribution will reduce the taxpayer's refund.

(b) Transfer of funds.—The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State Treasurer who shall transfer the amount to a restricted revenue account within the General Fund to be used by the Department of Military and Veterans Affairs for contributions to military family relief assistance as provided by statute.

(c) Information to be provided.—The department shall provide adequate information concerning the checkoff for military family relief assistance in its instructions which accompany the Pennsylvania income tax return forms. The information concerning the checkoff shall include the listing of an address furnished by the Department of Military and Veterans Affairs to which contributions may be sent by taxpayers wishing to contribute to this effort but who do not receive refunds.

(d) Annual report to General Assembly.—The Department of Military and Veterans Affairs shall report annually to the respective committees of the Senate and the House of Representatives which have jurisdiction over military and veterans affairs on the amount received via the checkoff plan and how the funds were utilized.

(e) Applicability.—This section shall apply to taxable years beginning after December 31, 2004.

§ 1515.9. Operational provisions.

(a) General rule.—Except for the checkoff established under sections 1515.6 (relating to contributions for Korea/Vietnam Memorial National Education Center) and 1515.7 (relating to contributions for juvenile diabetes cure research) and as otherwise provided under subsection (b), the checkoffs established under this subchapter shall apply through taxable years ending December 31, 2007.

(b) Termination of checkoffs.—Any checkoff established under this subchapter and applicable for the first time in a taxable year beginning after December 31, 2003, shall expire four years after the beginning of such first taxable year.

(c) Alternative termination of checkoffs.—Sections 1515.2 (relating to contributions to breast and cervical cancer research), 1515.3 (relating to contributions for wild resources conservation) and 1515.4 (relating to contributions for organ and tissue donation) shall expire January 1, 2008.

SUBCHAPTER J WITHHOLDING OF TAX

Sec.

1516. Requirement of withholding tax.

1517. Information statement.

1518. Time for filing employer's returns.

1519. Monthly, semi-monthly and quarterly payment of taxes withheld.

1520. Employer's liability for withheld taxes.

1521. Employer's failure to withhold.

1521.1. Bulk and auction sales, transfers and notice.

1522. Designation of third parties to perform acts required of employers.

1523. When withholding not required.

§ 1516. Requirement of withholding tax.

Every employer maintaining an office or transacting business within this Commonwealth and making payment of compensation to:

(1) a resident individual; or

(2) a nonresident individual taxpayer performing services on behalf of such employer within this Commonwealth, shall deduct and withhold from the compensation for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's compensation during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due for such year with respect to the compensation. The method of determining the amount to be withheld shall be prescribed by regulations of the department.

§ 1517. Information statement.

(a) Duty of employers.—Every employer required to deduct and withhold tax under this chapter shall furnish to each employee to whom the employer has paid compensation during the calendar year a written statement in such manner and in such form as may be prescribed by the department showing:

(1) the amount of compensation paid by the employer to the employee;

(2) the amount deducted and withheld as tax, pursuant to this chapter; and

(3) such other information as the department shall prescribe.

(b) Deadline for providing.—

(1) Each statement required by this section for a calendar year shall be furnished to the employee on or before January 31 of the year succeeding the calendar year.

(2) If the employee's employment is terminated before the close of a calendar year, the employer, at its option, shall furnish the statement to the employee at any time after the termination but no later than January 31 of the year succeeding the calendar year.

(3) If an employee whose employment is terminated before the close of a calendar year requests the employer in writing to furnish the employee with the statement at an earlier time, and, if there is no reasonable expectation on the part of both employer and employee of further employment during the calendar year, then the employer shall furnish the statement to the employee on or before the later of the 30th day after the day of the request or the 30th day after the day on which the last payment of wages is made.

§ 1518. Time for filing employers' returns.

Every employer required to deduct and withhold tax under this chapter shall file a quarterly withholding return on or before the last day of April, July, October and January for the three months ending the last day of March, June, September and December. The quarterly returns shall be filed with the department at its main office or at any branch office which it may designate for filing returns.

§ 1519. Monthly, semi-monthly and quarterly payment of taxes withheld.

(a) General rule.—Every employer withholding tax under this chapter shall pay over to the department or to a depository designated by it the tax required to be deducted and withheld under this chapter as follows:

(1) Where the aggregate amount required to be deducted and withheld by any employer for each quarterly period can reasonably be expected to be less than \$300, the employer shall file a return and pay the tax on or before the last day for filing a quarterly return under section 1518 (relating to time for filing employers' returns).

(2) Where the aggregate amount required to be deducted and withheld by any employer for each quarterly period can reasonably be expected to be \$300 or more but less than \$1,000, the employer shall pay the tax monthly, on or before the 15th day of the month succeeding the months of January to November, inclusive, and on or before the last day of January following the month of December.

(3) Where the aggregate amount required to be deducted and withheld by any employer for each quarterly period can reasonably be expected to be \$1,000 or more, the employer shall pay the tax semimonthly, within three banking days after the close of the semimonthly period.

(b) Notice to defaulting employers.—Notwithstanding anything in this section to the contrary, whenever any employer fails to deduct or truthfully account for or pay over the tax withheld or file returns as prescribed by this chapter, the department may serve a notice on such employer requiring the employer to withhold taxes which are required to be deducted under this chapter and deposit such taxes in a bank approved by the department in a separate account in trust for and payable to the department and to keep the amount of the tax in the account until payment over to the department. The notice shall remain in effect until a notice of cancellation is served on the employer by the department.

§ 1520. Employer's liability for withheld taxes.

Every employer required to deduct and withhold tax under this chapter shall be liable for the tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the department and any additions to tax penalties and interest with respect thereto shall be considered the tax of the employer. All taxes deducted and withheld from employees pursuant to this chapter or under color of this chapter shall constitute a trust fund for the Commonwealth and shall be enforceable against the employer, the employer's representative or any other person receiving any part of the fund.

§ 1521. Employer's failure to withhold.

If an employer fails to deduct and withhold tax as prescribed in this act and thereafter the tax against which the tax may be credited is paid, the tax which was required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved of the liability for any penalty, interest or additions to the tax imposed with respect to the failure to deduct and withhold.

§ 1521.1. Bulk and auction sales, transfers and notice.

An employer who is liable for filing returns in accordance with the provisions of this subchapter and either sells or causes to be sold at auction or sells or transfers in bulk 51% or more of any stock of goods, wares or merchandise of any kind, fixtures, machinery, equipment, buildings or real estate held by or on behalf of the employer shall be subject to the provisions of section 1403 of act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

§ 1522. Designation of third parties to perform acts required of employers.

In case a fiduciary, agent or other person has the control, receipt, custody or disposal of, or pays the compensation of an employee or a group of employees, employed by one or more employers, the department may designate the fiduciary, agent, or other person to perform such acts as are required of employers under this chapter as the department may by regulation prescribe. Except as may be otherwise prescribed by the department, all provisions of this chapter which are applicable to an employer shall be applicable to a fiduciary, agent or other person.

§ 1523. When withholding not required.

Notwithstanding any provision of this part to the contrary, an employer on and after January 1, 1975, shall not be required to withhold any tax upon payment of wages to an employee if such employee can certify that:

(1) The employee incurred no personal income tax liability for the preceding tax year.

(2) The employee anticipates no liability for personal income tax for the current taxable year.

SUBCHAPTER K
WITHHOLDING TAX ON SHARES
ON INCOME FROM SOURCES
WITHIN THIS COMMONWEALTH

Sec.

1524. Nonresidents.

1524.1. Amount of withholding tax.

1524.2. Treatment of nonresident partners, members or shareholders.

1524.3. Liability for tax, interest, penalties and additions.

§ 1524. Nonresidents.

(a) General rule.—When a partnership or Pennsylvania S corporation receives income from sources within this Commonwealth for any taxable year and any portion of the income is allocable to a nonresident partner, member or shareholder thereof, the partnership or Pennsylvania S corporation shall pay a withholding tax under this section at the time and in the manner prescribed by the department. Notwithstanding any other provision of this chapter, all such withholding tax shall be paid over on or before the 15th day of the fourth month following the end of the taxable year.

(b) Applicability.—This section shall not apply to any publicly traded partnership as defined under section 7704 of the Internal Revenue Code with equity securities registered with the Securities and Exchange Commission under section 12 of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a).

§ 1524.1. Amount of withholding tax.

(a) General rule.—The amount of tax withheld from nonresidents and the amount of the withholding tax payable under section 1524 (relating to nonresidents) shall be equal to the income from sources within this Commonwealth of the partnership, association or Pennsylvania S corporation which is allocable to nonresident partners, members or shareholders multiplied by the tax rate specified in section 1502(b) (relating to imposition of tax).

(b) Exception.—There shall not be taken into account any item of income, gain, loss or deduction to the extent allocable to any partner, member or shareholder who is not a nonresident.

§ 1524.2. Treatment of nonresident partners, members or shareholders.

Each nonresident partner, member, shareholder or holder of a beneficial interest shall be allowed a credit for the partner's, member's, shareholder's or holder's share of the withholding tax paid by the partnership, association or Pennsylvania S corporation. The credit shall be allowed for the partner's, member's, shareholder's or holder's taxable year in which or with which the partnership, association or Pennsylvania S corporation taxable year, for which the tax was paid, ends.

§ 1524.3. Liability for tax, interest, penalties and additions.

If a partnership, association or Pennsylvania S corporation fails to pay withholding tax as prescribed in this chapter and thereafter the tax is paid, the partnership, association or Pennsylvania S corporation shall not be relieved of the liability for any penalty, interest or addition as a result of failure to properly withhold the tax.

SUBCHAPTER L
ESTIMATED TAX

Sec.

1525. Declarations of estimated tax.

1526. Payments of estimated tax.

§ 1525. Declarations of estimated tax.

(a) General rule.—Every resident and nonresident individual, trust and estate shall at the time prescribed make a declaration of the individual's estimated tax for the taxable year, containing such information as the department may prescribe by regulations, if the individual's income, other than from compensation on which tax is withheld under this chapter, can reasonably be expected to exceed \$8,000.

(b) (Reserved).

(c) Spouses.—A husband and wife may make a joint declaration of estimated tax under this chapter as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be

joint and several. If a joint declaration is made but the spouses elect to determine their taxes separately, the estimated tax for such year may be treated as the estimated tax of either spouse, or may be divided between them, as they may elect.

(d) Filing deadline.—Except as otherwise provided in this chapter, the date for filing a declaration of estimated tax shall depend upon when the resident or nonresident individual, trust or estate determines that the individual's income on which no tax has been withheld under this chapter can reasonably be expected to exceed \$8,000 in the taxable year, as follows:

(1) If the determination is made on or before April 1 of the taxable year, a declaration of estimated tax shall be filed no later than April 15 of the taxable year.

(2) If the determination is made after April 1 but before June 2 of the taxable year, the declaration shall be filed no later than June 15 of the year.

(3) If the determination is made after June 1 but before September 2 of the taxable year, the declaration shall be filed no later than September 15 of the year.

(4) If the determination is made after September 1 of the taxable year, the declaration shall be filed no later than January 15 of the year succeeding the taxable year.

(e) Farming exception.—Notwithstanding the provisions of subsection (d), a declaration of estimated tax of an individual having an estimated gross income from farming for the taxable year which is at least two-thirds of the individual's total estimated gross income for the taxable year may be filed at any time on or before January 15 of the succeeding year, but if the farmer files a final return and pays the entire tax by March 1, the return may be considered as the individual's declaration due on or before January 15.

(f) Estimated tax under \$100.—A declaration of estimated tax of an individual, trust or estate having a total estimated tax for the taxable year of \$100 or less may be filed at any time on or before January 15 of the succeeding year under regulations of the department.

(g) Amendment of declarations.—An individual, trust or estate may amend a declaration under regulations of the department.

(h) Special circumstances.—If on or before January 31 of the year succeeding a taxable year, an individual, trust or estate files the individual's return for the entire taxable year for which a declaration was required to be filed within the time prescribed by subsection (d)(4) and pays with the declaration the full amount of the tax shown to be due on the return:

(1) The return shall be considered as the individual's declaration which was required to be filed no later than January 15.

(2) The return shall be considered as the amendment permitted by subsection (g) to be filed on or before January 15 provided the amount of the tax shown on the return is greater than the amount of the estimated tax shown in a declaration previously made.

(i) Applicability.—This chapter shall apply to:

(1) A taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(2) An individual, trust or estate having a taxable year of less than twelve months in accordance with procedures prescribed in regulations of the department.

(j) (Reserved).

(k) Definition.—For the purposes of this chapter, the term "estimated tax" means the amount which an individual, trust or estate estimates to be the individual's tax due under this chapter for the taxable year, less the amount which he or it estimates to be the sum of any credits allowable against the tax under this chapter.

§ 1526. Payments of estimated tax.

(a) General rule.—Subject to the provisions of section 1525(i)(2) (relating to declarations of estimated tax), the estimated tax with respect to which a declaration is required shall be paid as follows:

(1) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second, third and fourth installments shall be paid on or before the succeeding June 15, September 15, and January 15, respectively.

(2) If the declaration is not required to be filed on or before April 15 of the taxable year and is filed after April 15, but before June 16 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second and third installments shall be paid on the succeeding September 15 and January 15, respectively.

(3) If the declaration is not required to be filed on or before June 15 of the taxable year and is filed after June 15 but before September 16 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second shall be paid on the succeeding January 15.

(4) If the declaration is not required to be filed on or before September 15 of the taxable year and is filed after September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is not filed within the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs (2), (3) and (4) shall not apply, and there shall be paid at the time of such filing the amount of all installments of estimated tax which were due and payable on or before the date the declaration was filed and the remaining installments shall be paid at such times and in such amounts as they would have been payable if the declaration had been filed when due.

(b) Farmers.—If an individual described in section 1525(e) makes a declaration of estimated tax after September 15 of the taxable year, but before the following March 1, the estimated tax shall be paid in full at the time of the filing of the declaration.

(c) Amended declaration.—

(1) If any amendment of a declaration is filed, the remaining unpaid installments, if any, shall be ratably increased or decreased, as the case may be, to reflect any increase or decrease in the estimated tax by reason of the amendment.

(2) If an amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making the amendment.

SUBCHAPTER M

RETURNS AND PAYMENT OF TAX

Sec.

1530. Returns and liability.

1530.1. Return of Pennsylvania S corporation.

1531. Returns of married individuals, deceased or disabled individuals and fiduciaries.

1532. Time and place for filing returns and paying tax.

1533. Signing of returns and other documents.

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1535. Requirements concerning returns, notices, records and statements.

1536. Timely mailing treated as timely filing and payment.

1536.1. Procedure for claiming special tax provisions.

1536.2. Proof of eligibility.

§ 1530. Returns and liability.

(a) General rule.—On or before the date when a taxpayer's Federal income tax return is due or would be due if the taxpayer were required to file a Federal income tax return, under the Internal Revenue Code, a tax return under this chapter shall be made and filed by or for every taxpayer having income for the taxable year.

(b) Members of the armed forces.—

(1) In the case of an individual serving in the armed forces of the United States in an area designated by the

President of the United States by Executive order as a "combat zone," as described in section 7508 of the Internal Revenue Code, as amended, at any time during the period designated by the President by Executive order as the period of combatant activities in the combat zone or hospitalized as a result of injury received while serving in the combat zone during such time, or an individual serving in a military capacity as a result of a Federal call-up to active duty or civilian capacity outside the boundary of this Commonwealth in support of the armed forces, the period of service in the area, plus the period of qualified continuous hospitalization attributable to the injury, and the next 180 days thereafter shall be disregarded in determining, under this chapter, in respect of any tax liability, including any interest, penalty, additional amount or addition to the tax of such individual:

(i) Whether any of the following acts were performed within the time prescribed therefor:

(A) Filing any return of income tax, except income tax withheld at source.

(B) Payment of any income tax, except income tax withheld at source or any installment thereof or of any other liability to the Commonwealth in respect thereof.

(C) Filing a petition for redetermination of a deficiency or for review of a decision rendered by the department.

(D) Allowance of a credit or refund of any tax.

(E) Filing a claim for credit or refund of any tax.

(F) Bringing suit upon any such claim for credit.

(G) Assessment of any tax.

(H) Giving or making any notice or demand for the payment of any tax or with respect to any liability to the Commonwealth in respect of any tax.

(I) Collection by the department, by levy or otherwise, of the amount of any liability in respect of any tax.

(J) Bringing suit by the Commonwealth, or any officer on its behalf, in respect of any liability in respect of any tax.

(K) Any other act required or permitted under this chapter specified in regulations prescribed by the department.

(ii) The amount of any credit or refund, including interest.

(2) (i) The provisions of this subsection shall apply to the spouse of an individual entitled to the benefits of paragraph (1).

(ii) This paragraph shall not be construed as applying this subsection to a spouse for any taxable year beginning more than one year after the date of termination of combatant activities in a combat zone.

(3) The period of service in the area referred to in this subsection shall include the period during which an individual entitled to benefits under this subsection is in a missing status.

(4) In the event that any qualified individual under paragraph (1) is killed while serving in the combat zone, the tax liability of that decedent for both the year of death and the immediate prior year shall be waived by the Commonwealth.

(5) For purposes of paragraph (1), the phrase "period of qualified continuous hospitalization" shall mean:

(i) Any hospitalization outside the United States.

(ii) Any hospitalization inside the United States.

§ 1530.1. Return of Pennsylvania S corporation.

(a) General rule.—Every Pennsylvania S corporation shall make a return for each taxable year, stating specifically:

- (1) All items of gross income and deductions.
- (2) The names and addresses of all persons owning stock in the corporation at any time during the taxable year.
- (3) The number of shares of stock owned by each shareholder at all times during the taxable year.
- (4) The amount of money and other property distributed by the corporation during the taxable year to each shareholder.
- (5) The date of each distribution.
- (6) Each shareholder's pro rata share of each item of the corporation for the taxable year.
- (7) Such other information as the department may require.

(b) Deadline for filing.—The return shall be filed on or before 30 days after the date when the corporation's Federal income tax return is due.

(c) Copy of Federal return to be included.—Every Pennsylvania S corporation shall also submit to the department a true copy of the income tax return filed with the Federal Government at the time the return required under subsection (a) is filed.

§ 1531. Returns of married individuals, deceased or disabled individuals and fiduciaries.

(a) General rule.—If the income tax liability of husband or wife is determined on a separate return, their income tax liabilities under this chapter shall be separate.

(b) Joint and several tax liability.—If the income tax liabilities of husband and wife are determined on a joint return, their tax liabilities shall be joint and several.

(c) When separate returns to be filed.—If either husband or wife is a resident and the other is a nonresident, they shall file separate tax returns under this chapter on such single or separate forms as may be required by the department, in which event their tax liabilities shall be separate, except as provided in subsection (d), unless both elect to determine their joint taxable income as if both were residents, in which event their tax liabilities shall be joint and several.

(d) When credits permitted.—

(1) Subject to the provisions of paragraph (2), if husband and wife file separate tax returns under this chapter on a single form pursuant to subsection (b) or (c) and:

(i) The sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of the tax for which the spouse is separately liable, then the excess may be applied by the department to the credit of the other spouse if the sum of the payments by the other spouse, including withheld and estimated taxes, is less than the amount of the tax for which the other spouse is separately liable.

(ii) The sum of the payments made by both spouses with respect to the taxes for which they are separately liable, including withheld and estimated taxes, exceeds the total of the taxes due, then a refund of the excess may be made payable to both spouses or, if either is deceased, to the survivor.

(2) The provisions of this subsection shall not apply if the return of either spouse includes a demand that any overpayment made by that spouse shall be applied only on account of that spouse's separate liability.

(e) Deceased individuals.—The return for any deceased individual shall be made and filed by his executor, administrator or other person charged with the individual's property.

(f) Minors and individuals with disabilities.—The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by the individual's guardian, committee, fiduciary or other person charged with the care of the individual's person or property, or by the individual's duly authorized agent.

(g) Estates and trusts.—The return for an estate or trust shall be made and filed by the fiduciary. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

§ 1532. Time and place for filing returns and paying tax.

(a) General rule.—A person required to make and file a return under this chapter shall, without assessment, notice or demand, pay any tax due thereon to the department on or before the date fixed for filing such return, determined without regard to any extension of time for filing the return.

(b) Regulations.—The department shall prescribe by regulation the place for filing and return, declaration, statement, or other document required pursuant to this chapter and for payment of any tax.

§ 1533. Signing of returns and other documents.

(a) General rule.—Any return other than an estimated return under section 1525 (relating to declaration of estimated tax), statement or other document required to be made pursuant to this chapter shall be signed in accordance with regulations or instructions prescribed by the department.

(b) Partners to sign documents.—

(1) Any return, statement, or other document required of a partnership shall be signed by one or more partners.

(2) The fact that a partner's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Certification of veracity.—The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this chapter shall constitute a certification by the person making or filing the return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

§ 1534. Extension of time.

The department may, upon application, grant a reasonable extension of time for filing a return, declaration, statement or other document required pursuant to this chapter, on such terms and conditions as it may require. Except for a taxpayer who is outside the United States, no such extension for filing a return, declaration, statement or other document, shall exceed six months.

§ 1535. Requirements concerning returns, notices, records and statements.

(a) General rule.—The department may prescribe by regulation for the keeping of records, the content and form of returns, declarations, statements and other documents and the filing of copies of Federal income tax returns and determinations. The department may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the department may deem sufficient to show whether or not the person is liable for tax under this chapter.

(b) Identifying numbers required.—

(1) When required by regulations prescribed by the department:

(i) Any person required under the authority of this chapter to make a return, declaration, statement or other document shall include in such return, declaration, statement or other document such identifying number as may be prescribed for securing proper identification of such person.

(ii) Any person with respect to whom a return, declaration, statement or other document is required under the authority of this chapter to make a return, declaration, statement or other document with respect to another person, shall request from the other person, and shall include in any a return, declaration, statement or other document, such identifying number as may be prescribed for securing proper identification of the other person.

(2) For purposes of this section, the department is authorized to require such information as may be necessary to assign an identifying number to a person.

(c) Partnership income.—

(1) Every partnership having a resident partner or having any income derived from sources within this Commonwealth shall make a return for the taxable year setting forth all items of income, loss and deduction, and such other pertinent information as the department may by regulations prescribe. The return shall be filed on or before the 15th day of the fourth month following the close of each taxable year.

(2) For purposes of this subsection, “taxable year” means year or period which would be a taxable year of the partnership if it were subject to tax under this chapter.

(d) Regulations.—

(1) The department may prescribe regulations requiring returns of information to be made and filed on or before February 28 of each year as to the payment or crediting in any calendar year of amounts of \$10 or more to any taxpayer.

(2) The returns may be required of a person, including a lessee or mortgagor of real or personal property, fiduciary, employer and any other officer and employee of this Commonwealth or of any municipal corporation or political subdivision of this Commonwealth, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer.

(3) A duplicate of the statement as to tax withheld on compensation required to be furnished by an employer to an employee shall constitute the return of information required to be made under this section with respect to the compensation.

(e) Gambling and lottery winnings.—

(1) Any person who is required to make a form W-2G return to the Secretary of the Treasury of the United States in regard to taxable gambling or lottery winnings from sources within this Commonwealth shall file a copy of the form with the department by March 1 of each year or, if filed electronically, by March 31 of each year.

(2) This subsection shall apply to taxable years beginning after December 31, 2003.

§ 1536. Timely mailing treated as timely filing and payment.

(a) General rule.—Notwithstanding the provisions of any State tax law to the contrary, whenever a report or payment of all or any portion of a State tax is required by law to be received by the department or other agency of the Commonwealth on or before a day certain, the taxpayer shall be deemed to have complied with the law if the letter transmitting the report or payment of such tax which has been received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

(b) Evidence.—For the purposes of this chapter, presentation of a receipt indicating that the report or payment was mailed by registered or certified mail on or before the due date shall be evidence of timely filing and payment.

§ 1536.1. Procedure for claiming special tax provisions.

The following procedures shall be employed for claiming the special tax provisions:

(1) The claimant may claim the special tax provisions upon the expiration of the claimant’s taxable year in connection with the claimant’s filing of an annual return under the provisions of this chapter. Notwithstanding any other provisions of this chapter to the contrary, the department may promulgate such rules or regulations as it may deem necessary to fairly and reasonably implement the provisions of this section.

(2) If a claimant receives income, other than compensation from an employer, the claimant may claim the

special tax provisions in connection with the claimant’s filing of estimated tax returns.

§ 1536.2. Proof of eligibility.

The department shall establish such rules, regulations, schedules or other procedures as may be necessary for the submission and establishment of proof of the eligibility of persons for the special tax provisions or other matters relating to the provisions of this chapter. Such procedures may include, but not be limited to, the submission of requisite information and certifications upon forms provided by the department, including such special tax return or report forms as may be necessary.

SUBCHAPTER N PROCEDURE AND ADMINISTRATION

Sec.

1537. Payment on notice and demand.

1538. Assessment.

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1540. Procedure for reassessment.

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1553. Crimes.

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1555. Examination.

1556. Cooperation with other governmental agencies.

1557. Appropriation for refunds.

§ 1537. Payment on notice and demand.

Upon receipt of notice and demand from the department, there shall be paid the amount of any tax due under this chapter stated in the notice and demand.

§ 1538. Assessment.

(a) Department authority.—The department is authorized and required to make the inquiries, determinations and assessments of all taxes imposed by this chapter.

(b) Mode or time.—If the mode or time for the assessment of any tax is not otherwise provided for, the department may establish the same by regulations.

(c) Estimated assessment.—In the event that any taxpayer fails to file a return required by this chapter, the department may make an estimated assessment based on information available of the proper amount of tax owing by the taxpayer. A notice of assessment in the estimated amount shall be sent to the taxpayer. The tax shall be paid within 90 days after a notice of the estimated assessment has been mailed to the taxpayer, unless within that period the taxpayer has filed a petition for reassessment in the manner prescribed by section 1540 (relating to procedure for reassessment).

§ 1539. Jeopardy assessments.

(a) Jeopardy assessments, filing and notice.—If the department believes that the assessment or the collection of a deficiency will be jeopardized in whole or in part by delay, it may mail or issue notice of its finding to the taxpayer, together with a demand for immediate payment of the tax or the deficiency declared to be in jeopardy including interest and penalties and additions thereto, if any.

(b) Closing of taxable year.—If the department believes that a taxpayer designs quickly to depart from this Commonwealth or to remove the taxpayer’s property from this Commonwealth or to conceal himself or property, or to do any other act tending to prejudice or to

render wholly or partly ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless the proceedings are brought without delay, the department shall declare the taxable period for the taxpayer immediately terminated and shall cause notice of the finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired, and such taxes shall thereupon become immediately due and payable.

(c) Jeopardy assessments and collection.—A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once. The taxpayer, however, may stay collection and prevent the jeopardy assessment from becoming final by filing, within ten days after the date of the notice of jeopardy assessment, a petition for reassessment, notwithstanding the provisions of section 1540 (relating to procedure for reassessment) to the contrary, accompanied by a bond or other security in such amounts as the department may deem necessary, not exceeding double the amount, including interest and penalties and additions thereto, as to which the stay is desired.

(d) Jeopardy assessment, when final.—If a petition for reassessment, accompanied by bond or other security is not filed within the ten-day period, the assessment becomes final.

(e) Jeopardy assessments and hearing.—If the taxpayer has so requested in the petition of the taxpayer, the department shall grant the taxpayer or the taxpayer's authorized representative an oral hearing.

(f) Jeopardy assessments, action on petition for reassessment.—The department shall consider the petition for reassessment and notify the taxpayer of its decision on the petition. The department's decision as to the validity of the jeopardy assessment shall be final, unless the taxpayer within 90 days after notification of the department's decision files a petition for review authorized under section 1541 (relating to review by Board of Finance and Revenue).

(g) Jeopardy assessments and presumptive evidence of jeopardy.—In any proceeding brought to enforce payment of taxes made due and payable by this section, the belief of the department under subsection (a) whether made after notice to the taxpayer or not, is for all purposes presumptive evidence that the assessment or collection of the tax or the deficiency was in jeopardy. A certificate of the department of the mailing or issuing of the notices specified in this section is presumptive evidence that the notices were mailed or issued.

§ 1540. Procedure for reassessment.

Promptly after the date of an assessment by the department, the department shall send by mail a copy of the assessment to the person against whom it was made. Within 90 days after the date upon which the copy of the assessment was mailed, the person may file with the department a petition for reassessment of the tax. Each petition for reassessment shall state specifically the reasons which the petitioner believes entitled the petitioner to such reassessment, and it shall be supported by affidavit that it is not made for the purpose of delay and that the facts set forth in the petition are true. It shall be the duty of the department, within six months after receiving a petition for reassessment, to dispose of the petition for reassessment. Notice of the action taken upon any petition for reassessment shall be given to the petitioner promptly thereafter.

§ 1541. Review by Board of Finance and Revenue.

Within 90 days after the date of mailing of notice by the department of the action taken on any petition for reassessment filed with it, the person against whom the assessment was made may by petition request the Board of Finance and Revenue to review the action. The failure of the department to notify the petitioner of a decision within the six-month period provided for by section 1540 (relating to procedure for reassessment) shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within 120 days after written notice is mailed to petitioner that the department has failed to dispose of the petition within the six-month period prescribed by section 1540. Each petition for review filed under this section shall state specifically the reasons upon which

the petitioner relies, or shall incorporate by reference the petition for reassessment in which the reasons must be stated. The petition shall be supported by affidavit that it is not made for the purpose of delay and that the facts in the petition as set forth are true. The Board of Finance and Revenue shall act in disposition of petitions filed with it within six months after they have been received, and in the event of failure of the board to dispose of any petition within six months, the action taken by the department upon the petition for reassessment shall be deemed sustained. The Board of Finance and Revenue may sustain the action taken on the petition for reassessment, or it may reassess the tax due upon any basis as it shall deem according to law. Notice of the action of the Board of Finance and Revenue shall be given by mail to the department and to the petitioner.

§ 1542. Appeal to Commonwealth Court.

Any person, or the Commonwealth, aggrieved by the decision of the Board of Finance and Revenue may appeal in the manner now or hereafter provided by law for appeals from decisions of the board in tax cases.

§ 1543. Collection of tax.

The department shall collect the taxes imposed by this chapter in the manner provided by law for the collection of taxes imposed by the laws of this Commonwealth.

§ 1544. Collection upon failure to request reassessment, review or appeal.

(a) Collection.—The department may collect any tax:

(1) After 90 days from the date of mailing of a copy of the notice of assessment, if no petition for reassessment has been filed.

(2) After 90 days from the date of mailing of notice of the department's action thereon, if no petition for review has been filed;

(3) Within 30 days from the date of mailing of notice of the decision of the Board of Finance and Revenue upon a petition for review or from the expiration of the board's time for acting upon the petition, if no decision has been made.

(4) Immediately, in all cases of judicial sales, receiverships, assignments or bankruptcies.

(b) Defenses prescribed.—In any proceeding for the collection of the tax imposed by this chapter, the person against whom the assessment was made shall not be permitted to set up any ground of defense that might have been presented to the department, the Board of Finance and Revenue or the Commonwealth Court if the person had properly pursued his administrative remedies under this chapter.

§ 1545. Lien for tax.

(a) Amount and filing.—If any person liable to pay any tax neglects or refuses to pay the same on the date the tax becomes collectible, the amount of the tax, together with any costs that may accrue in addition to the amount of the tax, shall be a lien in favor of the Commonwealth against the real and personal property of the person but only after the lien has been duly entered and docketed of record by the prothonotary of the county where the property is situated. No prothonotary shall require, as a condition precedent to the entry of a lien, the payment of costs incident to the entry of the lien.

(b) Transmittal to prothonotaries.—The department may, at any time, transmit to the prothonotaries of the respective counties certified copies of all liens for taxes imposed by this chapter. It shall be the duty of each prothonotary receiving a lien to enter and docket the same of record in the office of the prothonotary, which lien shall be indexed as judgments are now indexed. All such liens shall have priority to, and be fully paid before, any other obligation, judgment, claim, lien or estate paid and satisfied out of the judicial sale of the real and personal property with which the property may subsequently become charged, or for which it may subsequently become liable, subject, however, to mortgage or other liens existing and duly recorded at the time the tax lien is recorded, except the cost of sale and of the writ upon which it is made and real estate taxes imposed or assessed upon the property. A writ of execution may directly issue upon such lien; however, not less than ten days before issuance of any execution on the lien, notice

of the filing and effect of the lien shall be sent by certified mail to the taxpayer at the taxpayer's last known post office address. The lien shall have no effect upon any stock of goods, ware or merchandise regularly sold or leased in the ordinary course of business by the person against whom the lien had been entered, unless and until a writ of execution has been issued and a levy made upon the stock of goods, wares and merchandise.

(c) Prothonotary.—Any willful failure of any prothonotary to carry out any duty imposed upon the prothonotary by this section shall be a misdemeanor and, upon conviction, the offender shall be sentenced to pay a fine of not more than \$1,000 and cost of prosecution, or to imprisonment for not more than one year, or both.

§ 1546. Refund or credit of overpayment.

(a) Credit and refund.—In the case of any payment of tax not due under this chapter, the department may credit the amount of the overpayment against any liability in respect of the tax imposed by this chapter on the part of the person who made the overpayment and shall refund any balance to the person.

(b) Regulations.—The department is authorized to prescribe regulations providing for the crediting against the estimated tax for any taxable year of the amount determined to be an overpayment of the tax for a preceding taxable year.

(c) Credit against installment.—If the taxpayer has paid as an installment of estimated tax more than the correct amount of the installment, the overpayment shall be credited against the unpaid installments, if any. If the amount paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in subsection (a) or (b).

§ 1547. Restrictions on refunds.

No credit or refund shall be made under section 1546 (relating to refund or credit of overpayment) without the approval of the Board of Finance and Revenue, except credits or refunds as arise:

(1) By reason of the overpayment of an installment of estimated tax.

(2) Upon reassessment or upon the filing of a final return or amended final return showing any overpayment of tax.

§ 1548. Limitations on assessment and collection.

(a) Time.—The amount of any tax imposed by this chapter shall be assessed within three years after the return is filed. For the purposes of this subsection and subsection (b), a return filed before the last day prescribed for the filing thereof, or before the last day of any extension of time for the filing thereof, shall be considered as filed on the last day.

(b) Omission.—If the taxpayer omits from income an amount properly includable in income which is in excess of 25% of the amount of income stated in the return, the tax may be assessed at any time within six years after the return was filed.

(c) Return not filed.—Where no return is filed, or if a taxpayer shall fail, when required, to file an amended return, the amount of the tax due may be assessed at any time.

(d) False or fraudulent return.—Where the taxpayer files a false or fraudulent return with intent to evade the tax imposed by this chapter, the amount of tax due may be assessed at any time.

(e) Assessment.—The department may, within three years of the granting of any refund or credit or within the period in which an assessment or reassessment could have been filed by the department with respect to the taxable period for which the refund was granted, whichever period shall last occur, file an assessment to recover any refund or part thereof or credit or part thereof which was erroneously made or allowed.

§ 1549. Extension of limitation period.

Notwithstanding section 1548 (relating to limitations on assessment and collection), where, before the expiration of the period prescribed in section 1548 a taxpayer has consented in writing that the period be extended, the amount of tax due may be assessed at any time within the extended period. The period so extended may be further

extended by subsequent consents in writing made before the expiration of the extended period.

§ 1550. Limitations on refund or credit.

Any application for refund must be filed with the department under section 3003.1 of the Tax Reform Code.

§ 1551. Interest.

(a) Interest due.—If any amount of tax imposed by Subchapter B (relating to imposition of tax) is not paid on or before the last date prescribed for payment, interest on the amount at the rate established pursuant to section 806 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, shall be paid for the period from the last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for filing the return. This section shall not apply to any failure to pay estimated tax.

(b) Underpayment.—If any amount of tax required to be withheld by an employer and paid to the department is not paid by the due date prescribed under section 1519 (relating to monthly, semimonthly and quarterly payment of taxes withheld), interest on the amount at the rate established under section 806 of The Fiscal Code shall be paid from that date for the period of underpayment.

§ 1552. Additions, penalties and fees.

(a) Failure to file.—In case of failure to file any return required under this chapter on the date prescribed for filing, determined with regard to any extension of time for filing, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on the return 5% of the amount of the tax if the failure is for not more than one month, with an additional 5% for each additional month or fraction of a month during which the failure continues, not exceeding 5%, in the aggregate, but in no case shall the amount added be less than \$5. The amount of tax required to be shown on the return shall, for purposes of computing the additions for the first month, be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return. The amount of tax required to be shown on the return shall, for purposes of computing the addition for any subsequent month, be reduced by the amount of any part of the tax which is paid by the beginning of the subsequent month and by the amount of any credit against the tax which may be claimed on the return.

(b) Subchapter C taxes.—

(1) If any part of any underpayment of any tax imposed by Subchapter C (relating to estates and trusts) is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to 5% of the underpayment.

(2) If any part of any underpayment of any tax imposed by Subchapter C is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, and the underpayment is from a taxpayer omitting from income an amount properly includable in income which is in excess of 25% of the amount of income stated on the taxpayer's return, there shall be added to the tax an amount equal to 25% of the underpayment.

(c) Fraud.—If any part of any underpayment of tax required under this chapter to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50% of the underpayment. This amount shall be in lieu of any amount determined under subsection (b) or (h).

(d) Underpayment of estimated tax.—

(1) If any taxpayer fails to pay all or any part of an installment of estimated tax, the taxpayer shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the rate established pursuant to section 806 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, upon the amount of the underpayment for the period of the underpayment but not beyond the 15th day of the fourth month following the close of

the taxable year. The amount of the underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to 90% of the tax or two-thirds in the case of an individual described in section 1525(e) (relating to declarations of estimated tax), shown on the return for the taxable year or, if no return was filed, of the tax for the year, over the amount, if any, of the installments paid on or before the last day prescribed for payment. No underpayment shall be deemed to exist with respect to an installment otherwise due on or after the taxpayer's death or, in the case of a decedent's estate or a trust created by the decedent to receive the residue of the decedent's estate, for a period of two years after the decedent's death.

(2) No addition to tax shall be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds the lesser of:

(i) the amount which would have been required to be paid on or before the date if the estimated tax were an amount equal to the tax computed, at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the taxpayer's return for, and the law applicable to, the preceding taxable year; or

(ii) an amount equal to 90% of the tax computed, at the rates applicable to the taxable year, on the basis of the actual income for the months in the taxable year ending before the month in which the installment is required to be paid, or, in the case of a trust or estate, an amount equal to 90% of the applicable percentage of the tax for the taxable year as determined pursuant to section 6654(d)(2)(C)(ii) of the Internal Revenue Code, as amended, at rates applicable to the taxable year, computed on an annualized basis in accordance with United States Treasury regulations, based upon the actual income for the months of the taxable year ending with the last day of the second preceding month prior to the month in which the installment is required to be paid.

(e) Failure to collect or account for tax.—Any person required to collect, account for and pay over any tax imposed by this chapter who willfully fails to collect the tax or truthfully account for and pay over the tax, or willfully attempts in any manner to evade or defeat any the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded or not collected or not accounted for and paid over. No penalty shall be imposed under subsection (b), (c) or (h) for any offense to which this subsection is applicable. The term "person" as used in this subsection includes an officer or employee of a corporation, or a member or employe of a partnership, who as such officer, employe or member is under a duty to perform the act in respect of which the violation occurs.

(f) Failure to furnish statement; false or fraudulent statement.—

(1) Any person required under the provisions of section 1517 (relating to information statement) to furnish a statement to an employee who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 1517 and the regulations prescribed under section 1517, shall, for each failure, be subject to a penalty of \$50 for each employee.

(2) Any person required by regulation to furnish an information return who furnishes a false or fraudulent return shall for each failure be subject to a penalty of \$250.

(3) Every Pennsylvania S corporation required to file a return with the department under the provisions of section 1530.1 (relating to return of Pennsylvania S corporation) who furnishes a false or fraudulent return or who fails to file the return in the manner and at the time required under section 1530.1 shall be subject to a penalty of \$250 for each failure.

(h) Underpayment by employer.—If any amount of tax required to be withheld by an employer and paid over to the department under section 1519 (relating to monthly, semimonthly and quarterly payment of taxes withheld) is not paid on or before the due date prescribed for filing the quarterly return under section 1518 (relating to time for filing employers' returns), determined without regard to an extension of time for filing, there shall be added to the tax and paid to the department each month 5% of the underpayment for each month or fraction of the month from the due date, for the period from the due date to the date paid, but the underpayment shall, for purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid by the beginning of that month. The total of the additions shall not exceed 50% of the amount of tax required to be shown on the return reduced by the amount of any part of the tax which is paid by the return due date and by the amount of any credit against the tax which may be claimed on the return.

(i) Incorrect information.—If any individual, estate or trust files what purports to be a return required under section 1530 (relating to returns and liability) but which does not contain information on which the substantial correctness of the self-assessment may be judged, or contains information that on its face indicates that the self-assessment is substantially incorrect and the self-assessment is due to a position which is frivolous or due to a desire, which appears on the purported return, to delay or impede the administration of Pennsylvania income tax laws, then the individual, estate or trust shall pay a penalty of \$500. The penalty imposed by this subsection shall be in addition to any other penalty provided by law.

(j) Underpayment by partnership, association or Pennsylvania S corporation.—If any amount of tax required to be withheld by a partnership, association or Pennsylvania S corporation and paid over to the department under section 1524 (relating to nonresidents) is not paid on or before the date prescribed for payment, there shall be added to the tax and paid to the department each month 5% of the underpayment for each month or fraction of the month from the due date, for the period from the due date to the date paid, but the underpayment shall, for purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid by the beginning of that month. The total of such additions shall not exceed 50% of the amount of the tax.

§ 1552.1. Abatement of additions or penalties.

Upon the filing of a petition for reassessment or petition for review by a taxpayer other than an employer, as provided by this chapter, the department may waive or abate, in whole or in part, additions or penalties of \$300 or less imposed upon the taxpayer for a taxable year, where the taxpayer has established that he acted in good faith with no negligence or intent to defraud.

§ 1553. Crimes.

(a) Tax evasion.—Any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment of the tax shall, in addition to other penalties provided by law, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$25,000, or to imprisonment for not more than two years, or both.

(b) Collections.—Any person required under this chapter to collect, account for and pay over any tax imposed by this chapter who willfully fails to collect or truthfully account for and pay over such tax, shall, in addition to other penalties provided by law, commits a misdemeanor, and shall, upon conviction, be sentenced to pay a fine of not more than \$25,000 or to imprisonment for not more than two years, or both.

(c) Payments, returns, records and information.—Any person required under this chapter to pay any tax or to make a return, keep any records or supply any information, who willfully fails to pay the tax or make the return, keep the records or supply the information at the time or times required by law or regulations, shall, in addition to other penalties provided by law, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$5,000, or to imprisonment for not more than two years, or both.

(d) Fraud.—Any person who willfully makes and subscribes any return, statement or other document which contains or is verified by a written declaration that it is made under the penalties of perjury and which the person does not believe to be true and correct as to every material matter, or willfully aids or assists in, or procures, counsels or advises the preparation or presentation, in connection with any matter arising under this chapter, of a return, affidavit, claim or other document which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim or document, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$5,000 or to imprisonment for not more than two years, or both.

(e) Additional fraud.—Any person who willfully delivers or discloses to the department any list, return, account, statement or other document known by the person to be fraudulent or to be false as to any material matter commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$5,000 or to imprisonment for not more than two years, or both.

(f) Confidential information.—It shall be unlawful for any officer, agent or employee of the Commonwealth to divulge or to make known in any manner whatever, not provided by law, except for official purposes, to any person, the amount or source of income, profits, losses, expenditures or any particular thereof set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof, to be seen or examined by any person except as provided by law, and it shall be unlawful for any person to print or publish in any manner whatsoever not provided by law, any return or any part thereof or source of income, profits, losses or expenditures appearing in any return, and any person committing an offense under this subsection commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000, or to imprisonment for not more than one year, or both, together with the costs of prosecution; and, if the offender be an officer or employee of the Commonwealth, the offender shall be dismissed from office or discharged from employment.

(g) Production of documents.—Notwithstanding subsection (f), it shall be lawful for any officer or employee of the Commonwealth having custody of returns to produce them or evidence of anything contained in them in any action or proceeding in any court on behalf of the department under the provisions of this chapter to which it is a party, or on behalf of any party to any action or proceeding under the provisions of this chapter, when the returns or facts shown thereby are directly involved in the action or proceeding, in either of which events the court may require the production of and may admit in evidence so much of the returns or the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing in this subsection shall be construed to prohibit the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return filed in connection with his tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof or the inspection by the Attorney General or other legal representatives of the Commonwealth of the return of any taxpayer who shall bring action to review the tax based thereon or against whom an action or proceeding has been instituted for the collection or recovery of the tax imposed by this chapter. Nothing in this chapter shall be construed to prohibit the delivery to the Pennsylvania Higher Education Assistance Agency of a certified copy or extract of any State income tax return requested by the agency for use in determining the eligibility of applicants for State grants, when the executive director of the agency certifies that the agency has in its possession a statement signed by the applicant and the applicant's parent, parents, guardian or guardians, as the case may be, authorizing the agency to obtain a certified copy or extract of any State income tax return from the department.

§ 1554. Rules and regulations.

The department is hereby charged with the enforcement of the provisions of this chapter, and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this chapter and the collection of taxes imposed by this chapter.

§ 1555. Examination.

The department, or any agent authorized in writing by it, is hereby authorized to examine the books, papers and records of any taxpayer or supposed taxpayer, and to require the production of a copy of his return as made to and filed with the Federal Government, if one was so made and filed in order to verify the accuracy of any return made, or if no return was made, to ascertain and assess the tax imposed by this chapter. The taxpayer or supposed taxpayer is hereby directed and required to give to the department or its duly authorized agent the means, facilities and opportunity for the examinations and investigations as are hereby provided and authorized. The department is hereby authorized to examine any person under oath concerning any income which was or should have been returned for taxation, and to this end may compel the production of books, papers and records and the attendance of all persons, whether as parties or witnesses, whom it believes have knowledge of such income. The procedure for such hearing or examination shall be the same as that provided by the act of April 9 1929 (P.L.343, No.176), known as The Fiscal Code, relating to inquisitorial powers of fiscal officers.

§ 1556. Cooperation with other governmental agencies.

(a) Cooperation.—Notwithstanding the provisions of section 1553(f) (relating to crimes), the department may permit the Commissioner of Internal Revenue Service of the United States, or the proper officer of any political subdivision of this Commonwealth or of any other state imposing tax based upon the incomes of individuals, or the authorized representative of the officer, to inspect the tax returns of any taxpayer, or may furnish to the officer or the officer's authorized representative an abstract of the return of income of any taxpayer, or supply the officer with information concerning any item of income contained in any return of any taxpayer. The permission shall be granted or the information furnished to the officer or the officer's representative only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of the Commonwealth charged with the administration of the personal income tax law of this Commonwealth. An officer or authorized agent of any county imposing a personal property tax shall be furnished the following information from the returns upon payment to the department of the cost of collecting and reproducing the requested information:

(1) Name, address and Social Security number of the taxpayer.

(2) If the taxpayer has reported dividends or interest.

(b) Agreement.—The department may enter into an agreement with the taxing authorities of any state which imposes a tax on or measured by income to provide that compensation paid in the state to residents of this Commonwealth shall be exempt from the tax. In that case any compensation paid in this Commonwealth to residents of the other state shall be exempt from Pennsylvania personal income tax. The department, in such agreements, may provide for reciprocal withholding, employer liability, exchange of information and all other matters relating to cooperation between the states.

§ 1557. Appropriation for refunds.

So much of the proceeds of the tax imposed by this chapter as shall be necessary for the payment of refunds, enforcement or administration under this chapter is hereby appropriated for such purposes.

SUBCHAPTER O MISCELLANEOUS PROVISIONS

Sec.

1558. Constitutional construction.

1559. Saving clause and limitations.

1560. Transfer to Property Tax Relief Fund.

§ 1558. Constitutional construction.

In addition to the provisions relating to legislative intent contained in section 1503(b) (relating to classes of income), if any word, phrase, clause, sentence, sections or provision of this chapter is for any reason held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this chapter. It is hereby declared as the legislative intent that this chapter would have been adopted had the unconstitutional word, phrase, clause, sentence, section or provision thereof not been included.

§ 1559. Saving clause and limitations.

(a) General rule.—Notwithstanding anything contained in any law to the contrary, including but not limited to the provisions of the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act, the validity of any ordinance or part of any ordinance or any resolution or part of any resolution, and any amendments or supplements thereto now or hereafter enacted or adopted by any political subdivision of this Commonwealth for or relating to the imposition, levy or collection of any tax, shall not be affected or impaired by anything contained in this chapter, except as hereinafter provided in subsection (b).

(b) Cities of the first class.—

(1) Notwithstanding the provisions subsection (a) to the contrary, any rate of tax imposed by ordinance of a city of the first class pursuant to the Sterling Act on salaries, wages, commissions, compensation or other income received or to be received for work done or services performed within a city of the first class by persons who are not legal residents of the city, shall not, except as provided, in this section exceed the tax imposition rate of 4.3125% for the tax year 1977 or for any tax year thereafter.

(2) In the event such city by ordinance imposes a tax rate on residents or nonresidents in excess of the tax rate under paragraph (1) on the income categories enumerated in this chapter, the provisions of the ordinance imposing the tax rate increase on income of persons who are legal residents of the city of the first class, shall be deemed valid and legally effective within the meaning and application of subsection (a). However, the provisions of the ordinance imposing a tax rate in excess of 4.3125% with respect to persons who are not legal residents of the city shall be deemed suspended and without any validity to the extent that the tax rate exceeds the tax rate of 4.3125% on income of nonresidents. The excess tax rate provisions shall remain suspended and without any validity until such date as the city of the first class, by ordinance, imposes a rate of tax on income of both legal residents or nonresidents of the city in excess of the tax rate imposition of 5.75% per year. In such case the General Assembly hereby declares such suspension to be removed and the tax rate valid as to nonresidents, provided, however, that such suspension is removed and the rate deemed valid only to the extent the tax rate imposed on income of the nonresidents does not exceed 75% of the tax rate imposed by ordinance per year on the income of legal residents of such city. It is the intention of the General Assembly by this subsection to impose certain terms and conditions with respect to the validity and legal effectiveness of the Sterling Act or of any ordinance of the city of the first class enacted pursuant thereto which imposes a tax on the income of nonresidents of the city.

(3) Notwithstanding the suspension provisions set forth in this section, each city of the first class which imposes a tax pursuant to the Sterling Act shall, by ordinance direct every employer maintaining an office or transacting business within the city and making payment of compensation to a resident individual or to a nonresident individual taxpayer performing services on behalf of such employer within such city, shall deduct and withhold from such compensation for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's compensation

during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due for such year with respect to the compensation. The method of determining the amount to be withheld shall be to withhold the highest amount of tax imposed with provision in the ordinance to provide refunds of the excess tax withheld to qualified nonresident taxpayers within four months of the end of each calendar year.

(4) In the event that all or any part of the provisions of subsection (b) are declared by a court to be unconstitutional, it shall be the duty of the court to construe the remaining provisions of this chapter in accordance with section 1558 (relating to constitutional construction).

(c) Employer duties.—

(1) Every employer having a place of business within this Commonwealth who employs one or more persons who are residents of a city of the first class shall, within 30 days after becoming such an employer, register with the revenue commissioner of a city of the first class the employer's name and address and other information as the revenue commissioner may require.

(2) Every employer having a place of business within this Commonwealth who employs one or more persons who are residents of a city of the first class shall deduct from the salary, wages, commissions or compensation due that person, at the time of payment thereof, the tax imposed by the city of the first class on any salary, wage, commission or other compensation due that employee.

(3) Employers required to withhold taxes under this subsection shall calculate the amount of salary, wages, commissions and compensation of employees as determined under the classes of income set forth in section 1503 (relating to classes of income).

(4) Every employer employing one or more persons who are residents of a city of the first class who pay any tax imposed under this chapter shall file a return and pay to the revenue commissioner the amount of taxes deducted as provided under paragraph (3). The return shall be on a form or forms furnished by the revenue commissioner and shall set forth the names and residences of each employee of that employer during all or any part of the period covered by the return, the amounts of salaries, wages, commissions or other compensation earned during such period by each employee, together with such other information as the revenue commissioner may require.

(5) The employer shall remit the return and the total tax deducted in accordance with time frames established by section 1519 (relating to monthly, semi-monthly and quarterly payment of taxes withheld).

(6) Annually, on or before February 28, every employer who has filed returns of tax withheld and remitted the tax through the year shall be required to file an Employer's Annual Reconciliation of Wage Tax Withheld, along with a copy of Form W-2 of the Internal Revenue Service for each employee, other listings or electronic data processing tapes, setting forth the following information:

- (i) name and address of employer;
- (ii) employer's Federal identification number;
- (iii) full name and residence address of each employee;
- (iv) employee's Social Security number;
- (v) total wages paid during the year before any deductions; and
- (vi) employer's city account number.

(7) Employers or their designated agents required to file with the revenue commissioner under this subsection shall not be required by the revenue commissioner to be bonded. Employer liability for taxes withheld under this subsection shall be the same as provided in sections 1520 (relating to employer's

liability for withheld taxes) and 1521 (relating to employer's failure to withhold).

(8) If an employer fails to deduct and withhold tax as prescribed in this subsection, it shall not relieve the employee from payment of such tax where payment cannot, for any reason, be obtained from the employer.

§ 1560. Transfer to Property Tax Relief Fund.

Within 30 days of the close of any calendar month, 6.687% of the taxes received in the previous month under this chapter shall be transferred to the Property Tax Relief Fund.

PART II-A
TAX RELIEF

Chapter

21. Homeowner Property Tax Relief

CHAPTER 21

HOMEOWNER PROPERTY TAX RELIEF

Subchapter

A. General Provisions

B. Formula

C. School District Homestead and Farmstead Exclusion

D. Debt

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

2101. Scope.

2102. Definitions.

§ 2101. Scope.

This chapter relates to the allocation of State funds for homestead and farmstead property tax reductions.

§ 2102. Definitions.

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

"Allocation maximum." The greater of the following:

(1) A numerical value of 0.50.

(2) Upon certification by the secretary under section 2111(b) (relating to certification) that the amount to be transferred to the fund under 4 Pa.C.S. § 1408(e) (relating to transfers from State Gaming Fund) is equal to or greater than \$800,000,000, a numerical value of 0.60.

"Allocation minimum." The greater of the following:

(1) A numerical value of 0.40.

(2) Upon certification by the secretary under section 2111(b) (relating to certification) that the amount to be transferred to the fund under 4 Pa.C.S. § 1408(e) (relating to transfers from State Gaming Fund) is equal to or greater than \$800,000,000, a numerical value of 0.45.

"Assessor." The chief assessor of a county or the equivalent officer in a home rule county, a city of the third class or a city of the first class, which performs its own assessments of real property.

"Average daily membership." As used in the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

"Department." The Department of Education of the Commonwealth.

"Equalized millage." The term shall have the same usage as defined in section 2501(9.2) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

"Farmstead." As defined in 53 Pa.C.S. § 8582 (relating to definitions).

"Farmstead property." As defined in 53 Pa.C.S. § 8582 (relating to definitions).

"Fund." The Property Tax Relief Fund.

"Homestead." As defined in 53 Pa.C.S. § 8401 (relating to definitions).

"Homestead property." As defined in 53 Pa.C.S. § 8401 (relating to definitions).

"Real property tax." The total dollar value of real property taxes paid by property owners in a school district determined by adding the

real property taxes collected by, or on behalf of, the school district plus all State allocations received pursuant to this chapter.

"Real property tax liability." The assessed value of the real property of the taxpayer multiplied by the millage rate of the school district.

"Residential property tax." The dollar value of real property taxes paid by residential property owners in a school district, determined by multiplying:

(1) the real property taxes collected by the school district; by

(2) the percentage of the total property value in the school district classified as residential by the State Tax Equalization Board.

"School district." A school district of the first class, first class A, second class, third class or fourth class.

"School district of the first class." Includes the governing body of a city of the first class.

"Secretary." The Secretary of the Budget of the Commonwealth.

"Taxpayer." A person required to pay a real property tax.

SUBCHAPTER B
FORMULA

Sec.

2111. Certification.

2112. Notification.

2113. State allocation.

§ 2111. Certification.

(a) Initial.—By April 15, 2006, the secretary shall certify the total amount of revenue that is reasonably projected to be deposited into the fund for the period through June 30, 2007.

(b) Annual.—Beginning by April 15, 2007, and each April 15 thereafter, the secretary shall certify the total amount of revenue that is reasonably expected to be deposited into the fund during the immediately following fiscal year.

(c) Excess.—If the actual revenue deposited into the fund in any one fiscal year exceeds the amount certified in this section, any revenue in excess of projections shall remain in the fund and shall be included in the certification for the subsequent fiscal year.

(d) Shortage.—If the actual revenue deposited into the fund in any one fiscal year is less than the amount certified in this section, the amount certified for the subsequent fiscal year shall be reduced by the difference between the amount certified and the actual revenue deposited.

§ 2112. Notification.

By April 20, 2006, and each April 20 thereafter, the secretary shall notify the department of the amount certified pursuant to section 2111 (relating to certification) for calculation of the allocation for each school district under section 2113 (relating to State allocation).

§ 2113. State allocation.

(a) Calculation.—The department shall calculate the State allocation for each school district as follows:

(1) For the 2006-2007 fiscal year:

(i) Multiply the school district's 2003-2004 average daily membership by the school district's 2003-2004 equalized millage.

(ii) Multiply the product under subparagraph (i) by the dollar amount necessary to allocate all of the money in the fund as certified under section 2111 (relating to certification).

(iii) If the allocation under this paragraph is less than the product of the residential property taxes collected during the 2003-2004 fiscal year and the allocation minimum for a school district, the school district shall receive an additional amount so that the total allocation under this paragraph is equal to the product of the residential property taxes collected during the 2003-2004 fiscal year and the allocation minimum.

(iv) If the allocation under this paragraph is greater than the product of the residential property taxes

collected during the 2003-2004 fiscal year and the allocation maximum for a school district, the school district shall receive a total allocation equal to the product of the residential property taxes collected during the 2003-2004 fiscal year and the allocation maximum.

(2) For subsequent fiscal year:

(i) Multiply the school district's average daily membership for the third fiscal year immediately preceding the fiscal year for which the allocation is being made by the school district's equalized millage for the third fiscal year immediately preceding the fiscal year for which the allocation is being made.

(ii) Multiply the product under subparagraph (i) by the dollar amount necessary to allocate all of the money in the fund as certified under section 2111.

(iii) If the allocation under this paragraph is less than the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation minimum for a school district, the school district shall receive an additional amount so that the total allocation under this paragraph is equal to the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation minimum.

(iv) If the allocation under this paragraph is greater than the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation maximum for a school district, the school district shall receive a total allocation equal to the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation maximum.

(b) Notice.—By May 15, 2006, and each May 15 thereafter, the department shall notify each school district of the amount of the State allocation it is eligible to receive.

(c) Payment.—For each fiscal year commencing after June 30, 2005, the department shall pay from the fund to each school district a State allocation, which shall be divided into two payments. The first payment, which shall be equal to 80% of the district's State allocation, shall be made on the last Thursday of August. The second payment, which shall equal the remainder of the State allocation, shall be made on the last Thursday of October.

(d) Cities of the first class.—In accordance with 53 Pa.C.S. § 8584 (relating to administration and procedure), the State allocation for a school district of the first class shall be paid by the department to a city of the first class for use by the city for homestead and farmstead exclusions.

SUBCHAPTER C SCHOOL DISTRICT HOMESTEAD AND FARMSTEAD EXCLUSION

Sec.

2121. Homestead and farmstead applications.

2122. Homestead and farmstead exclusion process.

2123. School district tax notices.

§ 2121. Homestead and farmstead applications.

(a) Initial notification and application.—By October 18, 2004, a board of school directors shall notify by first class mail the owner of each parcel of residential property within the district that the owner must submit a completed application in accordance with 53 Pa.C.S. § 8584(a) (relating to administration and procedure). The board shall provide a second notice by first class mail no later than 60 days prior to the application deadline in subsection (c). Each notice shall include an application to be filed with the assessor of the county where the property is located, instructions for completing the application and the

deadline to apply. A school district may limit the second notice to those owners of residential property that have not responded to the initial notification.

(b) Annual notification.—No later than 60 days prior to the application deadline in subsection (c), a board of school directors shall notify by first class mail the owner of each parcel of residential property within the district of the existence of the school district's homestead and farmstead exclusion program, the need to file an application in accordance with 53 Pa.C.S. § 8584(a) in order to qualify for the program and the application deadline. The annual notice shall include all information required under subsection (a). A school district may limit the annual notification to those owners of residential property:

(1) who are not currently approved; or

(2) whose approval is due to expire.

(c) Application deadline.—In accordance with 53 Pa.C.S. § 8584(b), the deadline for filing an application with the assessor shall be March 1.

(d) Action on application.—Real property for which an application has been filed by the application deadline shall be deemed to be a homestead or farmstead property which is eligible for a homestead or farmstead exclusion unless the assessor denies the application. Denials of application by the assessor and the right to appeal that decision shall be in accordance with 53 Pa.C.S. § 8584(d) and (e).

(e) Application review and submission.—Except as set forth in 53 Pa.C.S. § 8584(j), an assessor shall not require the owner of a previously approved property to resubmit an application more than one time every three years.

(f) Applicability.—The provisions of 53 Pa.C.S. § 8584(f), (g), (h) and (j) shall apply to any application filed under this section.

(g) Duties of assessors.—

(1) The assessor shall mail to the owner of property for which an application has been submitted and approved or denied under this section notice of such fact no later than 30 days after receipt of the application.

(2) The assessor shall notify the owner of any homestead or farmstead property designated as such under any other statute of the need, if any, to resubmit an application to maintain the property's eligibility as a homestead or farmstead property. Nothing in this paragraph shall prohibit a county assessor from designating property previously determined to be homestead or farmstead property under any other statute as homestead or farmstead property for purposes of this section.

(3) The assessor shall provide each school district with a certified report, as provided in 53 Pa.C.S. § 8584(i), no later than May 1 of each year.

(h) Uniform application and instructions.—The application to designate property as homestead or farmstead property shall be uniform and shall include instructions for completing the application. The Department of Community and Economic Development shall develop the uniform application and instructions to be used by county assessors and shall publish the uniform application and instructions by September 20, 2004.

(i) Prohibitions.—A county shall not require an application fee for the filing or review of an application submitted under this section or under 53 Pa.C.S. § 8584(a).

§ 2122. Homestead and farmstead exclusion process.

(a) Calculation.—Each year in which a school district receives a local property tax reduction allocation, the school district shall calculate a homestead and farmstead exclusion which is equal to the lesser of:

(1) the maximum amount of homestead or farmstead exclusion authorized by 53 Pa.C.S. § 8586 (relating to limitations); or

(2) the amount of State allocation the district is eligible to receive.

(b) Resolution.—The school district shall adopt a resolution implementing the homestead and farmstead exclusion calculated under subsection (a). The resolution shall state the maximum amount of homestead or farmstead exclusion an owner of a homestead or farmstead may receive. A resolution may not authorize a homestead or farmstead exclusion which exceeds the amount authorized by 53 Pa.C.S. § 8586.

§ 2123. School district tax notices.

(a) Tax notice.—School districts shall itemize the homestead and farmstead exclusion on tax bills sent to homestead and farmstead owners, indicating the original amount of tax liability, the amount of the exclusion and the net amount of tax due after the exclusion is applied. The tax bill shall be easily understandable and include a notice pursuant to subsection (b).

(b) Notice of property tax relief.—School districts shall include with the homestead or farmstead owner's tax bill a notice that the tax bill includes a homestead or farmstead exclusion. The notice shall at a minimum take the following form:

NOTICE OF PROPERTY TAX RELIEF

Your enclosed tax bill includes a tax reduction for your homestead and/or farmstead property. As an eligible homestead and/or farmstead property owner, you have received tax relief through a homestead and/or farmstead exclusion under a law passed by the Pennsylvania General Assembly designed to reduce your property taxes.

SUBCHAPTER D DEBT

Sec.

2131. Borrowing.

§ 2131. Borrowing.

Tax anticipation notes may be issued under Article XVI-A of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, in anticipation of revenue under Chapter 12 (relating to sales and use tax) which is authorized to be transferred to the fund under section 1281.3 (relating to transfer to Property Tax Relief Fund).

PART III

POLITICAL SUBDIVISION FINANCING

Chapter

31. Public School Financing

CHAPTER 31

PUBLIC SCHOOL FINANCING

Subchapter

- A. Preliminary Provisions
- B. Taxation
- C. Limitations
- D. School District Budgets
- E. Reimbursements

SUBCHAPTER A PRELIMINARY PROVISIONS

Sec.

3101. Scope.

3102. Definitions.

§ 3101. Scope.

This chapter relates to public school financing.

§ 3102. Definitions.

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

“Actual instruction expense.” The term shall have the same usage as in the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

“Average daily membership.” The term shall have the same usage as in the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

“Board of school directors.” A board of school directors of a school district of the first class, first class A, second class, third class or fourth class. The term shall include the city council of a city of the

first class for the purpose of the levying and collecting of any tax in a school district of the first class.

“Construction cost average on a square-foot basis.” An amount equal to \$128 per square foot for an elementary school building and \$133 per square foot for a secondary school building, as adjusted annually by the percentage increase in the average of the Statewide average weekly wage and the employment cost index.

“Department.” The Department of Education of the Commonwealth.

“Domicile.” As defined in section 13 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

“Earned income.” As defined in section 13 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

“Election officials.” The board of elections of a county.

“Employer.” As defined in section 301 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Employment Cost Index.” The most recent official figures for the previous 12-month period beginning July 1 and ending June 30 for the Employment Cost Index Series for Elementary and Secondary Schools, reported by the Bureau of Labor Statistics of the Federal Department of Labor.

“Fund.” The Property Tax Relief Fund established in the State Treasury.

“Income tax.” A tax on earned income and net profits or a tax on personal income imposed pursuant to this chapter.

“Index.” As follows:

(1) Except as set forth in paragraph (2), the average of the percentage increase in the Statewide average weekly wage and the Employment Cost Index.

(2) For a school district with a market value/income aid ratio greater than 0.400 for the school year prior to the school year for which the index is calculated, the value under paragraph (1) multiplied by the sum of:

(i) 0.75; and

(ii) the school district's market value/income aid ratio for the school year prior to the school year for which the index is calculated.

“Local Tax Enabling Act.” The act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

“Local tax revenue.” The revenue from taxes actually levied and assessed by a school district, including delinquent taxes. The term does not include interest or dividend earnings, Federal or State grants, contracts or appropriations, income generated from operations or any other source which is not derived from taxes levied and assessed by a school district.

“Market value/income aid ratio.” As defined in section 2501(14.1) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

“Net profits.” As defined in section 13 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

“Personal income.” Income enumerated in section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, as determined by the Department of Revenue, subject to any correction thereof for fraud, evasion or error as finally determined by the Commonwealth.

“Personal income valuation.” As defined in section 2501(9.1) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

“Resident individual.” An individual who is domiciled in a school district.

“School district.” A school district of the first class, first class A, second class, third class or fourth class. The term shall include the city council of a city of the first class for the purpose of the levying and collecting of any tax in a school district of the first class.

“Statewide average weekly wage.” That amount determined by the Department of Labor and Industry in the same manner that it determines the average weekly wage under section 404(e)(2) of the act

of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, except that it shall be calculated for the preceding calendar year.

“Tax Reform Code.” The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Taxpayer.” An individual required under this chapter to pay a tax.

SUBCHAPTER B
TAXATION

Sec.

3111. Limitations.

3112. Personal income tax.

3113. Certain rates of taxation limited.

3114. Collections.

§ 3111. Limitations.

This chapter shall not be construed to affect the power of a school district to do any of the following:

(1) To eliminate its occupation tax pursuant to the act of June 22, 2001 (P.L.374, No.24), known as the Optional Occupation Tax Elimination Act.

(2) To levy, assess or collect a tax on earned income and net profits under the Local Tax Enabling Act.

(3) To impose special purpose tax levies approved by the electorate.

§ 3112. Personal income tax.

(a) Imposition.—

(1) A board of school directors may levy, assess and collect a tax on the personal income of resident individuals at a rate determined by the board of school directors.

(2) A school district which seeks to levy the tax authorized under paragraph (1) must comply with section 3121 (relating to public referendum requirements for levying and increasing certain taxes) and the following:

(i) The school district shall convert, in a revenue-neutral manner, any existing earned income and net profits tax rates levied to a personal income tax rate.

(ii) If a school district is not, on the effective date of this subparagraph, levying an earned income and net profits tax, the school district shall levy a personal income tax at a rate which will generate an amount not more than the amount a 1% earned income and net profits tax would have generated if it had been levied.

(iii) (Reserved).

(iv) The board of school directors shall round the rate of the personal income tax levied pursuant to this subparagraph to the nearest 0.1%.

(3) (Reserved).

(4) If a board of school directors seeks to impose a personal income tax under this subsection and the referendum under section 3121 is approved by the electorate, the board of school directors shall have no authority to impose an earned income and net profits tax under any other act.

(5) A personal income tax imposed under the authority of this section shall be levied by the school district on each of the classes of income specified in section 303 of the Tax Reform Code and regulations under that section, the provisions of which are incorporated by reference into this chapter.

(i) Notwithstanding the provisions of section 353(f) of the Tax Reform Code, the Department of Revenue may permit the proper officer or an authorized agent of a school district imposing a personal income tax pursuant to this chapter to inspect the tax returns of any taxpayer of the school district or may furnish to the officer or an authorized agent an abstract of the return of income of any current or former resident of the school district, or supply information concerning any item of income contained in any tax return. The officer or authorized agent of the school district imposing a tax

under this chapter shall be furnished the requested information upon payment to the Department of Revenue of the actual cost of providing the requested information.

(ii) (A) Except for official purposes or as provided by law, it shall be unlawful for any officer or authorized agent of a school district to do any of the following:

(I) Disclose to any other individual or entity the amount or source of income, profits, losses, expenditures or any particular information concerning income, profits, losses or expenditures contained in any return.

(II) Permit any other individual or entity to view or examine any return or copy of a return or any book containing any abstract or particulars.

(III) Print, publish or publicize in any manner any return; any particular information contained in or concerning the return; any amount or source of income, profits, losses or expenditures in or concerning the return; or any particular information concerning income, profits, losses or expenditures contained in or relating to any return.

(B) Any officer or authorized agent of a school district that violates clause (A):

(I) May be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(II) May be removed from office or discharged from employment.

(6) (Reserved).

(b) Execution of tax rate.—A tax authorized under section 3121 shall be self-executing and shall be effective beginning on the first day of the fiscal year which begins after the tax is authorized. A tax rate under this subsection shall continue in force on a fiscal year basis without annual reenactment except in a year in which the rate of the tax is changed or the tax is repealed.

§ 3113. Certain rates of taxation limited.

(a) Municipal rates.—If a municipality and school district both impose an earned income and net profits tax on the same individual under the Local Tax Enabling Act and are limited to or have agreed upon a division of the tax rate in accordance with section 8 of the Local Tax Enabling Act, the municipality shall remain subject to that limitation or agreement in the event that the school district opts to impose a personal income tax authorized under section 3112 (relating to personal income tax). Nothing in this chapter shall be construed to authorize a municipality to raise the rate of earned income and net profits tax above the rate it levied under the previously agreed upon division if a school district imposes a personal income tax under this subchapter.

(b) School districts.—A school district which imposes a tax under this chapter is subject to section 688 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

§ 3114. Collections.

(a) Designation of tax collector.—A board of school directors imposing an income tax under this chapter shall designate a tax officer under section 10 of the Local Tax Enabling Act, or otherwise by law, as the collector of the tax. In the performance of the tax collection duties under this subchapter, the designated tax officer shall have all the same powers, rights, responsibilities and duties for the collection of the taxes which may be imposed under the Local Tax Enabling Act, 53 Pa.C.S. Ch. 84 Subch. C (relating to local taxpayers bill of rights) or as otherwise provided by law.

(b) Conflict.—In any situation where there is a conflict involving the authority conferred on a local tax collector by the provisions of the

Local Tax Enabling Act and the Tax Reform Code, the provisions of the Local Tax Enabling Act shall control.

SUBCHAPTER C
LIMITATIONS

Sec.

3121. Public referendum requirements for levying and increasing certain taxes.

3122. Property tax limits on reassessment.

§ 3121. Public referendum requirements for levying and increasing certain taxes.

(a) Applicability.—This section shall apply to fiscal years beginning with the 2006-2007 fiscal year.

(b) Prohibitions.—Except as set forth in subsection (f), unless there is compliance with subsection (c), a board of school directors may not do any of the following:

(1) Increase the rate of a tax levied for the support of the public schools by more than the index. For purposes of compliance with this paragraph, a school district which is situated in more than one county and which levies real estate taxes under section 672.1 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, shall apply the index to each separate rate of real estate taxes levied.

(2) Levy a tax which was not levied in a prior fiscal year for the support of the public schools.

(3) Raise the rate of the earned income and net profits tax if already imposed under the authority of the Local Tax Enabling Act.

(4) (Reserved).

(c) Referendum.—

(1) In order to take an action prohibited under subsection (b)(1), at the election immediately preceding the start of the school district fiscal year in which the proposed tax increase would take effect, a referendum stating the specific rate or rates of the tax increase must be submitted to the electors of the school district, and a majority of the electors voting on the question must approve the increase.

(2) In order to take an action under subsection (b)(2), at the election immediately preceding the start of the school district fiscal year in which the proposed tax would take effect, a referendum stating the proposed tax and the rate at which it will be levied must be submitted to the electors of the school district, and a majority of the electors voting on the question must approve the tax.

(3) Except as set forth in subsections (i) and (j), a school district acting pursuant to this subsection shall submit the referendum question required under this section to the election officials of each county in which it is situate no later than 60 days prior to the election immediately preceding the fiscal year in which the tax increase would take effect.

(4) The election officials of each county shall, in consultation with the board of school directors, draft a nonlegal interpretative statement which shall accompany the referendum question in accordance with section 201.1 of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code. The nonlegal interpretative statement shall include information that references the items of expenditure for which the tax increase is sought and the consequence of the referendum being disapproved by the electorate.

(d) Failure to approve referendum.—

(1) If a referendum question submitted under subsection (c)(1) is not approved, the board of school directors may approve an increase in the tax rate of not more than the index.

(2) If a referendum question submitted under subsection (c)(2) is not approved, the board of school directors may not levy the tax.

(e) Tax rate submissions.—A school district that has adopted a preliminary budget proposal under section 3211 (relating to adoption of preliminary budget proposals) that includes an increase in the rate of any tax levied for the support of public schools shall submit information on the increase to the department on a uniform form prepared by the department. The school district shall submit such information no later than 85 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year. The department shall compare the proposed percentage increase in the rate of any tax with the index. Within ten days of the receipt of the information required under this subsection but no later than 75 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year, the department shall inform the school district whether the proposed tax rate increase is less than or equal to the index. If the department determines that the proposed percentage increase in the rate of the tax exceeds the index, the department shall notify the school district that:

(1) the proposed tax increase must be reduced to an amount less than or equal to the index;

(2) the proposed tax increase must be approved by the electorate under subsection (c)(1); or

(3) an exception must be sought under subsection (f).

(f) Referendum exceptions.—A school district may, without seeking voter approval under subsection (c), increase the rate of a tax levied for the support of the public schools by more than the index if all of the following apply:

(1) The revenue raised by the allowable increase under the index is insufficient to balance the proposed budget due to one or more of the expenditures listed in paragraph (2).

(2) The revenue generated by increasing the rate of a tax by more than the index will be used to pay for any of the following:

(i) Costs incurred in responding to or recovering from an emergency or disaster declared pursuant to 35 Pa.C.S. § 7301 (relating to general authority of Governor) or 75 Pa.C.S. § 6108 (relating to power of Governor during emergency).

(ii) Costs to implement a court order or an administrative order from a Federal or State agency as long as the tax increase is rescinded following fulfillment of the court order or administrative order.

(iii) Costs associated with the following:

(A) To pay interest and principal on any indebtedness incurred under 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing) prior to September 3, 2004. In no case may the school district incur additional debt under this clause except for the refinancing of expenses related to such refinancing and the establishment of funding of appropriate debt service reserves. An increase under this clause shall be rescinded following the final payment of interest and principal.

(B) To pay interest and principal on any electoral debt incurred under 53 Pa.C.S. Pt. VII Subpt. B.

(C) To pay interest and principal on indebtedness for up to 60% of the construction cost average on a square-foot basis if all of the following apply:

(I) The indebtedness is for a school construction project under 22 Pa. Code Ch. 21 (relating to school buildings).

(II) The indebtedness to fund appropriate debt service reserves for the project is incurred after September 3, 2004.

(III) The increase sought under this clause is rescinded following final payment of interest and principal.

(IV) The indebtedness is incurred only after existing fund balances for school construction and any undesignated fund balances have been fully committed to fund the project.

(V) The indebtedness is for an academic elementary or academic secondary school building. For purposes of this subclause, the following shall not be considered to be an academic elementary or academic secondary school building: natatorium, stadium bleachers, athletic field, athletic field lighting equipment and apparatus used to promote and conduct interscholastic athletics.

(VI) The project has been approved by the department under section 731 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

(D) To pay interest and principal on indebtedness for up to \$250,000 of the construction cost of a nonacademic school construction project, as adjusted annually by the percentage increase in the average of the Statewide average weekly wage and the employment cost index.

(iv) Costs to respond to conditions which pose an immediate threat of serious physical harm or injury to the students, staff or residents of the school district, but only until the conditions causing the threat have been fully resolved.

(v) Costs incurred in providing special education programs and services to students with disabilities if the increase in expenditures on special education programs and services was greater than 10%. The dollar amount of this exception shall be equal to the portion of the increase that exceeds 10%.

(vi) Costs which:

(A) were incurred in the implementation of a school improvement plan required under section 1116(b) of the No Child Left Behind Act of 2001 (Public Law 89-10, 20 U.S.C. § 6316(b)); and

(B) were not offset by a State allocation.

(vii) Costs necessary to maintain:

(A) per-student local tax revenue, adjusted by the index, if the percentage growth in average daily membership between the school year determined under subsection (j)(4) and the third school year preceding the school year determined under subsection (j)(4) exceeds 7.5%; or

(B) actual instruction expense per average daily membership, adjusted by the index, if the increase in actual instruction expense per average daily membership between the school year determined under subsection (j)(4) and the school year preceding the school year determined under subsection (j)(4) is less than the index.

(viii) The maintenance of revenues derived from real property taxes, earned income and net profits taxes, personal income taxes, basic education funding allocations and special education funding allocations,

adjusted by the index, for a school district where the percentage increase in revenues derived from real property taxes, earned income and net profits taxes, personal income taxes, basic education funding allocations and special education funding allocations between the school year determined under subsection (j)(4) and the school year preceding the school year determined under subsection (j)(4) is less than the index.

(ix) Costs incurred for providing health care-related benefits which are directly attributable to a collective bargaining agreement in effect on September 3, 2004, between the school district and its employees' organization if the anticipated increase in the cost of health care-related benefits between the current year and the upcoming year is greater than the index. The dollar amount of this exception shall be equal to the portion of the increase which exceeds the index. This subparagraph shall not apply to a collective bargaining agreement renewed, extended or entered into after September 3, 2004.

(g) Revenue derived from increase.—Any revenue derived from an increase in the rate of any tax allowed pursuant to subsection (f)(2)(iii) shall not exceed the anticipated dollar amount of the expenditure.

(h) Limitation on tax rate.—The increase in the rate of any tax allowed pursuant to an exception under subsection (f)(2)(i), (ii), (iv), (v), (vi), (vii), (viii) or (ix) or (n) shall not exceed the rate increase required as determined by a court of common pleas or the department pursuant to subsection (i) or (j).

(i) Court action.—

(1) Prior to the imposition of a tax increase under subsection (f)(2)(i), (ii) and (iv) and no later than 75 days prior to the election immediately preceding the beginning of the school district's fiscal year, approval by the court of common pleas in the judicial district in which the administrative office of the school district is located must be sought. The board of school directors shall publish in a newspaper of general circulation and on the district's publicly accessible Internet website, if one is maintained, notice of its intent to file a petition under this subsection at least one week prior to the filing of the petition. The board of school directors shall also publish in a newspaper of general circulation and on the district's publicly accessible Internet website, if one is maintained, notice, as soon as possible following notification from the court that a hearing has been scheduled, stating the date, time and place of the hearing on the petition. The following shall apply to any proceedings instituted under this subsection:

(i) The school district must prove by clear and convincing evidence that it qualifies for each exception sought.

(ii) The school district must prove by clear and convincing evidence the anticipated dollar amount of the expenditure for each exception sought.

(2) The court shall rule on the school district's petition and inform the school district of its decision no later than 55 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year. If the court approves the petition, the court shall also determine the dollar amount of the expenditure for which an exception is granted, the tax rate increase required to fund the exception and the appropriate duration of the increase. If the court denies the petition, the school district may submit a referendum question under subsection (c)(1). The question must be submitted to the election officials no later than 50 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year.

(j) Department approval.—

(1) A school district that seeks to increase the rate of tax due to an expenditure under subsection (f)(2)(iii), (v), (vi), (vii), (viii) or (ix) or (n) shall obtain the approval of the department before imposing the tax increase. The department shall establish procedures for administering the provisions of this subsection, which may include an administrative hearing on the school district's submission.

(2) A school district proceeding under the provisions of this subsection shall publish in a newspaper of general circulation and on the district's publicly accessible Internet website, if one is maintained, notice of its intent to seek department approval at least one week prior to submitting its request for approval to the department. If the department schedules a hearing on the school district's request, the school district shall publish notice of the hearing in a newspaper of general circulation and on the district's publicly accessible Internet website, if one is maintained, immediately upon receiving the information from the department. The notice shall include the date, time and place of the hearing.

(3) The department shall approve a school district's request under this subsection if a review of the data under paragraph (4) demonstrates that:

(i) the school district qualifies for one or more exceptions under subsection (f)(2)(iii), (v), (vi), (vii), (viii) or (ix) or (n); and

(ii) the sum of the dollar amounts of the exceptions for which the school district qualifies makes the school district eligible under subsection (f)(1).

(4) For the purpose of determining the eligibility of a school district for an exception under subsection (f)(2)(v), (vi), (vii) or (viii), the department shall utilize data from the most recent school years for which annual financial report data required under section 2553 of the Public School Code of 1949 has been received for all school districts. The department shall inform school districts of the school years determined under this subsection no later than 30 days prior to the date on which public inspection of proposed school budgets is required under section 3131(c).

(5) The department shall rule on the school district's request and shall inform the school district of its decision no later than 55 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year. If the department approves the request, the department shall determine the dollar amount of the expenditure for which the exception is sought and the tax rate increase required to fund the exception. If the department denies the request, the school district may submit a referendum question under subsection (c)(1). The question must be submitted to the election officials no later than 50 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year.

(6) Within 30 days of the deadline under paragraph (5), the department shall submit a report to the President pro tempore of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives and the Minority Leader of the House of Representatives enumerating the school districts which sought an exception under this subsection. The department shall also publish the report on its publicly accessible Internet website. The report shall include:

(i) The name of each school district making a request under this subsection.

(ii) The specific exceptions requested by each school district and the dollar amount of the expenditure for each exception.

(iii) The department's ruling on the request for the exception.

(iv) If the exception was approved, the dollar amount of the expenditure for which the exception was

sought and the tax rate increase required to fund the exception.

(v) A statistical summary of the information in subparagraphs (ii), (iii) and (iv).

(k) Objections.—Any person that resides within or pays real property taxes to the school district filing a petition under subsection (i) may file with the court written objections to any petition filed under this section.

(l) Index calculation.—No later than August 15, 2005, and each August 15 thereafter, the department shall calculate the index. The department shall publish the index by September 1, 2005, and each September 1 thereafter, in the Pennsylvania Bulletin.

(m) Election interference prohibited.—

(1) No public funds may be used to urge any elector to vote for or against a referendum or be appropriated for political or campaign purposes.

(2) This subsection shall not prohibit the use of public funds for dissemination of factual information relative to a referendum appearing on an election ballot.

(3) As used in this subsection, the term "public funds" means any funds appropriated by the General Assembly or by a political subdivision.

(n) Treatment of certain required payments.—The provisions of subsections (f) and (j) shall apply to a school district's share of payments to the Public School Employees' Retirement System as required under 24 Pa.C.S. § 8327 (relating to payments by employers) if the actual dollar amount of payments between the current year and the upcoming year is greater than 7.5%. The dollar amount to which subsection (f) applies shall equal that portion of the increase which exceeds 7.5% of the actual dollar value of payments between the current year and the upcoming year.

§ 3122. Property tax limits on reassessment.

Notwithstanding any other provision of law, including this subpart, after any county makes a countywide revision of assessment of real property at values based upon an established predetermined ratio as required by law or after any county changes its established predetermined ratio, a board of school directors in a school district located within that county that, after September 3, 2004, for the first time levies its real estate taxes on that revised assessment or valuation shall for the first year reduce its tax rate, if necessary, for the purpose of having the percentage increase in taxes levied for that year against the real properties contained in the duplicate for the preceding year be less than or equal to the index for the preceding year notwithstanding the increased valuations of such properties under the revised assessment. For the purpose of determining the total amount of taxes to be levied for the first year, the amount to be levied on newly constructed buildings or structures or on increased valuations based on new improvements made to existing houses need not be considered. The tax rate shall be fixed for that year at a figure which will accomplish this purpose. The provisions of section 3121 (relating to public referendum requirements for levying and increasing certain taxes) shall apply to increases in the tax rate above the limits provided in this section.

SUBCHAPTER D SCHOOL DISTRICT BUDGETS

Sec.

3131. Adoption of preliminary budget proposals.

3132. Adoption of annual budgets.

3133. Information to school districts.

§ 3131. Adoption of preliminary budget proposals.

(a) Adoption.—Beginning January 1, 2006, each board of school directors shall adopt a preliminary budget proposal for the following fiscal year no later than 90 days prior to the date of the election immediately preceding the fiscal year in which the preliminary budget will take effect.

(b) Contents.—The preliminary budget proposal shall include estimated revenues and expenditures and any proposed tax rates and shall be prepared on a uniform form furnished by the department.

(c) Public inspection.—The board of school directors shall print the preliminary budget proposal and make it available for public inspection at least 20 days prior to its adoption. The board of school directors shall give public notice of its intent to adopt the preliminary budget at least ten days prior to adoption and may hold a public hearing prior to its adoption.

§ 3132. Adoption of annual budgets.

(a) Adoption.—Beginning January 1, 2006, each board of school directors shall adopt its annual budget for the following fiscal year no later than the last day of the fiscal year before the fiscal year in which the budget takes effect.

(b) Contents.—The annual budget shall include estimated revenues and expenditures and any proposed tax rates and be prepared on a uniform form furnished by the department.

(c) Public inspection.—The board of school directors shall print the annual budget and make it available for public inspection at least 20 days prior to its adoption. The board of school directors shall give public notice of its intent to adopt the annual budget at least ten days prior to adoption and may hold a public hearing prior to its adoption.

§ 3133. Information to school districts.

No later than September 30 of the year in which a State allocation is made under Chapter 21 (relating to homeowner property tax relief) and September 30 of each year thereafter, the department shall provide each school district with the following information:

(1) The dates by which actions required under this chapter shall take place.

(2) The index for the applicable fiscal year.

SUBCHAPTER E REIMBURSEMENTS

Sec.

3141. Procedure.

§ 3141. Procedure.

Notwithstanding any other provisions of law to the contrary, the following apply:

(1) This section only applies to a taxpayer who is a resident of this Commonwealth and not a resident of a city of the first class but who is subject to the tax on salaries, wages, commissions or other compensation imposed by a city of the first class under the authority of the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act.

(2) For tax years beginning after the effective date of this section, and each tax year thereafter, payment of a tax on salaries, wages, commissions or other compensation as set forth in paragraph (1) shall be credited to the school district of the taxpayer's residence at an amount no greater than the tax on salaries, wages, commissions or other compensation as set forth in paragraph (1) imposed by the school district in which the taxpayer resides.

(3) An amount equal to the aggregate amount of the tax credited under paragraph (2) shall be paid from the fund to the school district of residence of each taxpayer under paragraph (1) for the purpose of funding property tax rate reduction. The department shall prescribe procedures to calculate the amount due to each school district qualifying under this paragraph and shall publish the procedures in the Pennsylvania Bulletin.

(4) (Reserved).

PART V SENIOR CITIZENS

Chapter

51. Senior Citizens Rebate and Assistance

CHAPTER 51

SENIOR CITIZENS REBATE AND ASSISTANCE

Sec.

5101. Scope.

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§ 5101. Scope.

This chapter relates to senior citizens rebate and assistance.

§ 5102. Declaration of policy.

In recognition of the severe economic plight of certain senior citizens, widows, widowers and permanently disabled persons who are real property owners or renters with fixed and limited incomes who are faced with rising living costs and constantly increasing tax and inflation cost burdens which threaten their homesteads and self-sufficiency, the General Assembly, pursuant to the mandates of the Constitutional Convention of 1968, considers it to be a matter of sound public policy to make special provisions for property tax rebates or rent rebates in lieu of property taxes and inflation dividends to that class of senior citizens, widows, widowers and permanently disabled persons who are real property taxpayers or renters who are without adequate means of support to enable them to remain in peaceable possession of their homes and relieving their economic burden and to provide transportation assistance grants and to provide grants to area agencies on aging for services to older persons.

§ 5103. Definitions.

The following words and phrases, when used in this chapter, shall have the meanings given to them in this section, unless the context clearly indicates otherwise:

“Board.” The Board of Finance and Revenue.

“Claimant.” A person who files a claim for property tax rebate or rent rebate in lieu of property taxes and inflation dividend and was any of the following during all or a part of a calendar year in which real property taxes, rent and inflation costs were due and payable:

(1) A person 65 years of age or older or whose spouse, if a member of the household, was 65 years of age or older.

(2) A widow or widower, 50 years of age or older.

(3) A permanently disabled person 18 years of age or older.

“Department.” The Department of Revenue of the Commonwealth.

“Homestead.” As follows:

(1) The term includes any of the following:

(i) A dwelling, whether owned or rented, and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, occupied by a claimant.

(ii) Premises occupied by reason of ownership or lease in a cooperative housing corporation, mobile homes which are assessed as realty for local property tax purposes and the land, if owned or rented by the claimant, upon which the mobile home is situated, and other similar living accommodations, as well as a part of a multidwelling or multipurpose building and a part of the land upon which it is built.

(iii) Premises occupied by reason of the claimant's ownership or rental of a dwelling located on land owned by a nonprofit incorporated association, of which the claimant is a member, if the claimant is required to pay a pro rata share of the property taxes levied against the association's land.

(iv) Premises occupied by a claimant if the claimant is required by law to pay a property tax by reason of the claimant's ownership or rental, including a possessory interest, in the dwelling, the land or both.

(2) For purposes of this definition, an owner includes a person in possession under a contract of sale, deed of trust, life estate, joint tenancy or tenancy in common or by reason of statutes of descent and distribution.

“Household income.” All income received by the claimant and the claimant’s spouse while residing in the homestead during the calendar year for which a rebate and dividend are claimed.

“Income.” As follows:

(1) Except as provided in paragraph (2), all income from whatever source derived, including the following:

(i) Salaries, wages, bonuses, commissions and income from self-employment.

(ii) Alimony and support money.

(iii) Cash public assistance and relief.

(iv) The gross amount of any pensions or annuities including railroad retirement benefits for calendar years prior to 1999 and 50% of railroad retirement benefits for calendar years 1999 and thereafter.

(v) Except for Medicare benefits, all benefits received under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) for calendar years beginning prior to January 1, 2000, and 50% of all benefits received under the Social Security Act for calendar years beginning after December 31, 1999.

(vi) All benefits received under State unemployment insurance laws and veterans’ disability payments.

(vii) All interest received from the Federal or any state government, a Federal or state instrumentality or political subdivision.

(viii) Realized capital gains and rentals.

(ix) Workers’ compensation and the gross amount of loss of time insurance benefits.

(x) Life insurance benefits and proceeds, except the first \$5,000 of the total of death benefit payments.

(xi) Gifts of cash or property, other than transfers by gift between members of a household, in excess of a total value of \$300.

(2) The term does not include:

(i) Surplus food or other relief in kind supplied by a governmental agency.

(ii) Property tax or rent rebate or inflation dividend.

“Inflation dividend.” An additional amount calculated by the Department of Revenue in accordance with section 5104(b) (relating to property tax, rent rebate and inflation cost).

“Inflation expenses.” The additional costs of those essential consumer needs of senior citizens in this Commonwealth. The term includes the additional cost of medical prescriptions, energy needs, transportation and food and clothing essentials.

“Permanently disabled person.” Except as provided in section 5104(e), (f) and (g) (relating to property tax, rent rebate and inflation cost), a person who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to continue indefinitely.

“Real property taxes.” Except for municipal assessments, delinquent charges and interest, all taxes on a homestead due and payable during a calendar year.

“Rent rebate in lieu of property taxes.” Twenty percent of the gross amount actually paid in cash or its equivalent in any calendar year to a landlord in connection with the occupancy of a homestead by a claimant, regardless of whether the amount constitutes payment solely for the right of occupancy or otherwise.

“Social Security Act.” The Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.).

“Widow.” The surviving wife of a deceased individual who has not remarried, except as provided in section 5104(e), (f) and (g) (relating to property tax, rent rebate and inflation cost).

“Widower.” The surviving husband of a deceased individual who has not remarried, except as provided in section 5104(e), (f) and (g) (relating to property tax, rent rebate and inflation cost).

§ 5104. Property tax, rent rebate and inflation cost.

(a) Amount.—The following shall apply to claim amounts:

(1) The amount of any claim for property tax rebate or rent rebate in lieu of property taxes for real property taxes or rent due and payable during calendar years 1981, 1982, 1983 and 1984 shall be determined in accordance with the following schedule:

(i) If a claimant’s household income is \$0 to and including \$4,999, 100% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(ii) If a claimant’s household income is \$5,000 to and including \$5,999, 80% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(iii) If a claimant’s household income is \$6,000 to and including \$6,999, 60% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(iv) If a claimant’s household income is \$7,000 to and including \$7,999, 40% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(v) If a claimant’s household income is \$8,000 to and including \$8,999, 20% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(vi) If a claimant’s household income is \$9,000 to and including \$11,999, 10% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(2) The amount of any claim for property tax rebate or rent rebate in lieu of property taxes for real property taxes or rent due and payable during calendar year 1985 through calendar year 2006 shall be determined in accordance with the following schedule:

(i) If a claimant’s household income is \$0 to and including \$5,499, 100% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(ii) If a claimant’s household income is \$5,555 to and including \$5,999, 90% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(iii) If a claimant’s household income is \$6,000 to and including \$6,499, 80% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(iv) If a claimant’s household income is \$6,500 to and including \$6,999, 70% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(v) If a claimant’s household income is \$7,000 to and including \$7,499, 60% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(vi) If a claimant’s household income is \$7,500 to and including \$7,999, 50% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(vii) If a claimant’s household income is \$8,000 to and including \$8,499, 40% of real property taxes or

rent rebate in lieu of property taxes shall be allowed as a rebate.

(viii) If a claimant's household income is \$8,500 to and including \$8,999, 35% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(ix) If a claimant's household income is \$9,000 to and including \$9,999, 25% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(x) If a claimant's household income is \$10,000 to and including \$11,999, 20% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(xi) If a claimant's household income is \$12,000 to and including \$12,999, 15% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(xii) If a claimant's household income is \$13,000 to and including \$15,000, 10% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(3) The amount of any claim for property tax rebate or rent rebate in lieu of property taxes for real property taxes or rent due and payable during calendar year 2007 and thereafter shall be determined in accordance with the following schedule:

(i) If a claimant's household income is \$0 to and including \$7,999, 100% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(ii) If a claimant's household income is \$8,000 to and including \$8,999, 90% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(iii) If a claimant's household income is \$9,000 to and including \$9,999, 80% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(iv) If a claimant's household income is \$10,000 to and including \$10,999, 70% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(v) If a claimant's household income is \$11,000 to and including \$11,999, 60% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(vi) If a claimant's household income is \$12,000 to and including \$12,999, 50% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(vii) If a claimant's household income is \$13,000 to and including \$13,999, 40% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(viii) If a claimant's household income is \$14,000 to and including \$15,999, 35% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(ix) If a claimant's household income is \$16,000 to and including \$17,999, 25% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(x) If a claimant's household income is \$18,000 to and including \$19,999, 20% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(xi) If a claimant's household income is \$20,000 to and including \$21,999, 15% of real property taxes or

rent rebate in lieu of property taxes shall be allowed as a rebate.

(xii) If a claimant's household income is \$22,000 to and including \$25,000, 10% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(b) Inflation dividend.—The following shall apply to inflation dividend amounts:

(1) To all claimants eligible for a property tax or rent rebate pursuant to subsection (a)(1) there shall be paid an inflation dividend determined in accordance with the following schedule:

(i) If a claimant's household income is \$0 to and including \$4,999, the dividend shall be \$125.

(ii) If a claimant's household income is \$5,000 to and including \$5,999, the dividend shall be \$100.

(iii) If a claimant's household income is \$6,000 to and including \$6,999, the dividend shall be \$75.

(iv) If a claimant's household income is \$7,000 to and including \$7,999, the dividend shall be \$60.

(v) If a claimant's household income is \$8,000 to and including \$8,999, the dividend shall be \$45.

(vi) If a claimant's household income is \$9,000 to and including \$11,999, the dividend shall be \$30.

(2) To all claimants eligible for a property tax or rent rebate pursuant to subsection (a)(2) there shall be paid an inflation dividend determined in accordance with the following schedule:

(i) If a claimant's household income is \$0 to and including \$4,999, the dividend shall be \$125.

(ii) If a claimant's household income is \$5,000 to and including \$5,999, the dividend shall be \$100.

(iii) If a claimant's household income is \$6,000 to and including \$6,999, the dividend shall be \$75.

(iv) If a claimant's household income is \$7,000 to and including \$7,999, the dividend shall be \$60.

(v) If a claimant's household income is \$8,000 to and including \$8,999, the dividend shall be \$45.

(vi) If a claimant's household income is \$9,000 to and including \$12,999, the dividend shall be \$30.

(vii) If a claimant's household income is \$13,000 to and including \$15,000, the dividend shall be \$20.

(c) Additional inflation dividend for 1980.—To all claimants eligible for a property tax or rent rebate for real property taxes or rent due and payable during calendar year 1980 there shall be paid \$100 as an additional inflation dividend. The additional inflation dividend payment shall be mailed no later than the mailing of the application form for claiming a 1981 property tax or rent rebate.

(d) Limits.—

(1) No claim shall be allowed if the amount of property tax or rent rebate computed in accordance with this section is less than \$10, and the maximum amount of property tax or rent rebate payable shall not exceed \$500 for claims for calendar years up to and including calendar year 2006.

(2) For calendar years 2007 and thereafter the maximum amount of rent rebate payable shall not exceed \$750.

(e) Prohibition.—No claim shall be allowed if the claimant is a tenant of an owner of real property exempt from real property taxes.

(f) Apportionment.—The department shall apportion the real property taxes or rent in accordance with the period or degree of ownership or leasehold or eligibility of the claimant in determining the amount of rebate for which a claimant is eligible if any of the following apply:

(1) A homestead is owned or rented and occupied for only a portion of a year or is owned or rented in part by a person who does not meet the qualifications for a claimant, exclusive of any interest owned or leased by a claimant's spouse.

(2) The claimant is a widow or widower who remarries.

(3) The claimant is a permanently disabled person who is no longer disabled.

(g) Public assistance.—A claimant who receives public assistance from the Department of Public Welfare shall not be eligible for rent rebate in lieu of property taxes or an inflation dividend during those months within which the claimant receives public assistance.

(h) Subsidies.—Rent shall not include subsidies provided by or through a governmental agency.

§ 5105. Filing of claim.

(a) Time.—

(1) Except as set forth in paragraph (2), a claim for property tax or rent rebate and inflation dividend must be filed with the department by June 30 of the year next succeeding the end of the calendar year in which real property taxes or rent were due and payable.

(2) Claims filed after the deadline under paragraph (1) but by December 31 of the year next succeeding the end of the calendar year in which real property taxes or rent were due and payable shall be accepted by the Secretary of Revenue as long as funds are available to pay the benefits to the late-filing claimants.

(b) Reimbursement.—No reimbursement on a claim shall be made from the State Lottery Fund earlier than the day following the June 30 provided in this chapter on which that claim may be filed with the department.

(c) Calendar year 1977.—Rebate claims for taxes or rent paid during calendar year 1977 shall be accepted by the Secretary of Revenue if filed with the department by April 30, 1979.

(d) Entitlement.—Only one claimant from a homestead each year shall be entitled to the property tax or rent rebate and inflation dividend. If two or more persons are able to meet the qualifications for a claimant, they may determine who the claimant shall be. If they are unable to agree, the department shall determine to whom the rebate and dividend is to be paid.

§ 5106. Proof of claim.

(a) Contents.—Each claim shall include reasonable proof of household income, the size and nature of the property claimed as a homestead and the rent or tax receipt or other proof that the real property taxes on the homestead or rent in connection with the occupancy of a homestead has been paid.

(b) Declaration of status.—If the claimant is a widow or widower, a declaration of that status in the manner prescribed by the Secretary of Revenue shall be included.

(c) Eligibility.—Proof that a claimant is eligible to receive disability benefits under the Social Security Act shall constitute proof of disability under this chapter.

(d) Disability.—No person who has been found not to be disabled by the Social Security Administration shall be granted a rebate or dividend under this chapter. A claimant not covered under the Social Security Act shall be examined by a physician designated by the department and the claimant's status shall be determined using the same standards used by the Social Security Administration.

(e) Payment.—It shall not be necessary that the taxes or rent were paid directly by the claimant if the rent or taxes have been paid when the claim is filed.

(f) Initial claim.—The first claim filed shall include proof that the claimant or the claimant's spouse was age 65 or older or 50 years or older in the case of a widow or widower, during the calendar year in which real property taxes or rent were due and payable.

§ 5107. Incorrect claim.

If, on audit of a claim, the department finds the claim to have been incorrectly determined, it shall redetermine the correct amount of the claim and notify the claimant of the reason of the redetermination and the amount of the corrected claim.

§ 5108. Funds for payment of claims.

(a) Payment.—Approved claims shall be paid from the State Lottery Fund.

(b) Additional funds.—In the event sufficient funds are not available from lottery receipts to meet the expansion of this chapter as provided in section 5104(a)(3) (relating to property tax, rent rebate and inflation cost), additional funds of up to \$150,000,000 to fulfill these obligations shall be transferred from the Property Tax Relief Fund for this purpose.

§ 5109. Claim forms and rules and regulations.

(a) Duties of department.—The department shall receive all applications, determine the eligibility of claimants, hear appeals, disburse payments and make available suitable forms for the filing of claims.

(b) Regulations.—Necessary regulations shall be prescribed by a committee consisting of the Secretary of Aging, the Secretary of Community and Economic Development and the Secretary of Revenue. The Secretary of Aging shall serve as the chairman of the committee.

§ 5110. Fraudulent claim and conveyance to obtain benefits.

(a) Penalty.—In any case in which a claim is excessive and was filed with fraudulent intent, the claim shall be disallowed in full and a penalty of 25% of the amount claimed shall be imposed. The penalty and the amount of the disallowed claim, if the claim has been paid, shall bear interest at the rate of 0.5% per month from the date of the claim until repaid. The claimant and any person who assisted in the preparation or filing of a fraudulent claim commits a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine not exceeding \$1,000 or undergo imprisonment not exceeding one year, or both.

(b) Conveyance.—A claim shall be disallowed if the claimant received title to the homestead primarily for the purpose of receiving a property tax rebate.

§ 5111. Petition for redetermination.

(a) Filing.—Any claimant whose claim is denied, corrected or otherwise adversely affected by the department may file with the department a petition for redetermination on forms supplied by the department within 90 days after the date of mailing of written notice by the department of the action.

(b) Contents.—A petition filed under subsection (a) shall set forth the grounds upon which the claimant alleges that the departmental action is erroneous or unlawful, in whole or part, and shall contain an affidavit or affirmation that the facts contained in the petition are true and correct.

(c) Extension of time.—An extension of time for filing the petition may be allowed for cause but shall not exceed 120 days.

(d) Hearings.—The department shall hold hearings as may be necessary for the purpose of redetermination and each claimant who has duly filed a petition for redetermination shall be notified by the department of the time when, and the place where, the hearing will be held.

(e) Disposition.—It shall be the duty of the department, within six months after receiving a filed petition for redetermination, to dispose of the matters raised by the petition and mail notice of the department's decision to the claimant.

§ 5112. Review by Board of Finance and Revenue.

(a) Review.—Within 90 days after the date of official receipt by the claimant of the notice mailed by the department of its decision on any petition for redetermination filed with it, the claimant who is adversely affected by the decision may by petition request the board to review the action.

(b) Automatic denial.—The failure of the department to officially notify the claimant of a decision within the six-month period provided for by section 5111(e) (relating to petition for redetermination) shall act as a denial of the petition. A petition for review must be filed with the board within 120 days after written notice is officially received by the claimant that the department has failed to dispose of the petition within the six-month period prescribed by section 5111(e).

(c) Contents.—Every petition for redetermination filed under this section must state the reasons upon which the claimant relies or must incorporate by reference the petition for redetermination in which the reasons are stated. The petition must be supported by affidavit that the facts set forth in the petition are correct and true.

(d) Disposition.—The board shall act in disposition of such petitions filed with it within six months after they have been received. If the board fails to dispose of a petition within six months, the action taken by the department upon the petition for redetermination shall be deemed sustained.

(e) Action.—The board may sustain the action taken by the department on the petition for redetermination, or it may take such other action as it deems necessary and consistent with provisions of this chapter.

(f) Notice.—Notice of the action of the board shall be given by mail to the department and to the claimant.

§ 5113. Appeal.

A claimant aggrieved by the decision of the board may appeal from that decision in the manner provided by law for appeals from decisions of the board in tax cases.

§ 5114. Grants to area agencies on aging for services to older persons.

For fiscal year 1981-1982, \$6,200,000 is hereby appropriated from the Lottery Fund to the Department of Aging for service grants to area agencies on aging. The Department of Aging shall allocate these funds to area agencies on aging on the basis of each agency's proportionate share of all Federal and State funds currently available. Such funds shall not be used for costs of administration.

§ 5115. Applicability.

This chapter shall apply to tax years beginning after December 31, 1970.

Section 2. Repeals are as follows:

(1) The General Assembly declares as follows:

(i) The repeal under paragraph (2)(i) is necessary to effectuate the addition of 72 Pa.C.S. Ch. 12.

(ii) The repeal under paragraph (2)(ii) is necessary to effectuate the addition of 72 Pa.C.S. Ch. 13.

(iii) The repeal under paragraph (2)(iii) is necessary to effectuate the addition of 72 Pa.C.S. Ch. 15.

(iv) The repeals under paragraph (2)(v) and (vii) are necessary to effectuate the addition of 72 Pa.C.S. § 1503.

(v) The repeal under paragraph (2)(vi) is necessary to effectuate the addition of 72 Pa.C.S. Ch. 21.

(vi) The repeal under paragraph (2)(iv) is necessary to effectuate the addition of 72 Pa.C.S. Ch. 51.

(2) The following acts and parts of acts are repealed:

(i) Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(ii) Article II-A of the Tax Reform Code of 1971.

(iii) Article III of the Tax Reform Code of 1971.

(iv) The act of March 11, 1971 (P.L.104, No.3), known as the Senior Citizens Rebate and Assistance Act.

(v) Sections 2 and 3 of the act of December 19, 1996 (P.L.1335, No.179), known as the Medical Care Savings Account Act.

(vi) The act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act.

(vii) Section 4 of the act of July 14, 2005 (P.L.278, No.48), known as the Health Savings Account Act.

Section 2.1. A city of the first class shall use 17.5% of the tax authorized and collected pursuant to Chapter 5 of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, for reduction of the tax imposed pursuant to the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act. A city of the first class shall use no more than 50% of this amount to reduce the rate of the tax imposed on residents and no less than 50% of this amount to reduce the rate of the tax imposed on nonresidents.

Section 3. The addition of 72 Pa.C.S. Ch. 12 is a continuation of Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Ch. 12, all activities initiated under Article II of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 12. Orders, regulations, rules and decisions which were made under Article II of the Tax Reform Code of 1971 and which are in effect on the effective date of section 2(1) of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 12.

(2) Except as set forth in paragraph (3), any difference in language between 72 Pa.C.S. Ch. 12 and Article II of the Tax Reform Code of 1971 is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Article II of the Tax Reform Code of 1971.

(3) Paragraph (2) does not apply to the addition of any of the following provisions of Title 72:

(i) The definitions of "advertising services," "computer software," "delivered electronically," "detective services," "lodging service," "management consulting service," "personal service," "prewritten computer software," "purchase at retail," "recreation service," "sale at retail," "self-storage," "tangible personal property" and "use" in section 1201.

(ii) Paragraphs (2) and (3) of the definition of "maintaining a place of business in this Commonwealth" in section 1201.

(iii) Paragraphs (2), (4) and (7) of the definition of "purchase price" in section 1201.

(iv) Paragraphs (4) and (5) of the definition of "resale" in section 1201.

(v) Paragraphs (4), (8)(ii)(C), (iii), (iv), (v) and (vi), (10), (18), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (30) and (31) of the definition of "sale at retail" in section 1201.

(vi) Paragraphs (4)(i) and (ii)(B)(III), (iii), (iv), (v) and (vi), (6), (16), (19), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29) and (30) of the definition of "use" in section 1201.

(vii) Section 1202(b) and (c).

(viii) Section 1204(4), (11), (28), (30), (37), (47), (48), (51), (53), (58) and (61).

(ix) The definitions of "occupancy," "occupant" and "permanent resident" in section 1209.

(x) Section 1268(b)(1).

(xi) Section 1281.2.

(xii) Section 1281.3.

Section 4. The addition of 72 Pa.C.S. Ch. 13 is a continuation of Article II-A of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. Except as otherwise provided in 72 Pa.C.S. Ch. 13, all activities initiated under Article II-A of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 13. Orders, regulations, rules and decisions which were made under Article II-A of the Tax Reform Code of 1971 and which are in effect on the effective date of section 2(2) of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 13.

Section 4.1. The addition of 72 Pa.C.S. Ch. 15 is a continuation of Article III of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Ch. 15, all activities initiated under Article III of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 15. Orders, regulations, rules and decisions which were made under Article III of the Tax Reform Code of 1971 and which are in effect on the effective date of section 2(2)(iii) of this act shall remain in full

force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 15.

(2) Except as set forth in paragraph (3), any difference in language between 72 Pa.C.S. Ch. 15 and Article III of the Tax Reform Code of 1971 is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Article III of the Tax Reform Code of 1971.

(3) Paragraph (2) does not apply to the addition of any of the following provisions of Title 72:

- (i) Section 1502.
- (ii) Section 1503(a)(6) and (a.6).

Section 5. The addition of 72 Pa.C.S. § 2121 is a continuation of section 341 of the act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Ch. 21, all activities initiated under section 341 of the Homeowner Tax Relief Act shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 21. Orders, regulations, rules and decisions which were made under section 341 of the Homeowner Tax Relief Act and which are in effect on the effective date of section 2(3) of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 21.

(2) Any difference in language between 72 Pa.C.S. § 2121 and section 341 of the Homeowner Tax Relief Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of the Homeowner Tax Relief Act.

Section 6. The addition of 72 Pa.C.S. Ch. 51 is a continuation of the act of March 11, 1971 (P.L.104, No.3), known as the Senior Citizens Rebate and Assistance Act. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Ch. 51, all activities initiated under the Senior Citizens Rebate and Assistance Act shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 51. Orders, regulations, rules and decisions which were made under the Senior Citizens Rebate and Assistance Act and which are in effect on the effective date of section 2(4) of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 51.

(2) Except as set forth in paragraph (3), any difference in language between 72 Pa.C.S. Ch. 51 and the Senior Citizens Rebate and Assistance Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of the Senior Citizens Rebate and Assistance Act.

(3) Paragraph (2) does not apply to the addition of any of the following provisions of Title 72:

- (i) Section 5104(a)(2) and (3) and (d).
- (ii) Section 5108.

Section 6.1. The addition of section 72 Pa.C.S. § 1503(a.6) shall apply to taxable years beginning after December 31, 2005.

Section 7. This act shall take effect as follows:

(1) Except as provided in paragraph (2), the following provisions shall take effect April 1, 2006:

- (i) The addition of 72 Pa.C.S. Ch. 12.
- (ii) The addition of 72 Pa.C.S. Ch. 13.
- (iii) Except for the addition of 72 Pa.C.S. § 1503(a.6), the addition of 72 Pa.C.S. Ch. 15.
- (iv) Section 2(2)(i), (ii) and (iii) of this act.

(2) The addition of 72 Pa.C.S. § 1281.3 and 1560 shall take effect May 1, 2006.

(3) The remainder of this act shall take effect immediately.

On the question,

Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Scavello.

The gentleman is entitled to be heard. Please keep the noise levels down.

Mr. Scavello.

Mr. SCAVELLO. Thank you, Mr. Speaker.

This evening is a huge, huge step that we can take to finally, finally in this House, be able to reduce property taxes by 40 percent statewide next year for our residents, property owners, and homesteads. I have with me, I am going to hand out to the members, the items that we are going to expand the sales tax to close some loopholes, we are going to raise the personal income tax, and together we will be able to reduce property taxes across the State by 40 percent. So if I may ask if we can get those sheets distributed to the members. If I could have some of the pages up front?

Mr. Speaker, the other evening when we went through the Committee of the Whole, the items that were being taxed were handed out at that time to all the members, and I had said the only thing that would happen is we would remove more items from that list, which we have. I sat together with the chair of the Finance Committee and we were able to trim that list even further. I think we have a package here that certainly will be a huge, huge help to the property owners across the State. Not only that, but this will also increase the property tax and rent rebate program from \$500 to \$750 and raising the bar from \$17,000 to \$25,000 as far as the income levels. If you qualify for that rebate program, the seniors in our State that truly need property tax reduction, that make tough decisions today between food, drugs, prescription drugs, and paying their property tax, we will be able to help them dramatically. But this bill can remove, if they qualify, can eliminate their school property tax in many cases.

The distribution formula for all the school districts is being handed out to each and every member. The distribution formula takes into consideration \$500 million for gaming. I did not overexaggerate that number. Should gaming generate a billion, then those savings would be much, much higher.

I know that many of us would like to see 100 percent reduction. There is a group of us in this House that would like to see that occur. Unfortunately, the votes are not there for the 100 percent. I think we can strive for that 100 percent reduction. I say, let us get what we can for this year for our taxpayers, for our property owners, and then let us look forward to trying to help them even further in coming years.

Mr. Speaker, I have a newspaper article from the Pocono Record dated 2002, and it quotes my Senator, Senator Bob Mellow, who brings up the fact that the State does not fund public education by 50 percent. Well, between the gaming revenue and this increase that we are doing today, this shift, we will be funding public education to 50 percent. Then I believe the local options that many of your plans have will work. So I am asking the members for support.

The SPEAKER. The Chair thanks the gentleman.

POINT OF ORDER

The SPEAKER. The Chair recognizes the gentleman from Delaware, Mr. Vitali.

Mr. VITALI. Thank you, Mr. Speaker.

A couple points of order.

Is a rules suspension required to do the Scavello amendment now?

The SPEAKER. No. The amendment was in order. It was filed on time.

Mr. VITALI. This amendment was filed by 2 o'clock yesterday? Is that correct?

The SPEAKER. In checking the records, the gentleman is correct. Amendment 5363 was not filed on time. It would be in order tomorrow, but the gentleman, Mr. Scavello, has amendment 5336, which was filed on time. Mr. Scavello, do you wish to suspend the rules on 5363?

Mr. SCAVELLO. Yes, Mr. Speaker.

RULES SUSPENDED

The SPEAKER. The Chair recognizes the gentleman, Mr. Scavello.

Mr. SCAVELLO. Mr. Speaker, I would like to suspend the rules in order for me to submit amendment No. A06363.

The SPEAKER. Would that be 5363?

Mr. SCAVELLO. Yes.

The SPEAKER. On suspension, the gentleman, Mr. Scavello, moves that the rules of the House be immediately suspended for amendment A5363.

On the question,

Will the House agree to the motion?

The SPEAKER. On that motion, the Chair recognizes the gentleman, Mr. Veon.

The gentleman, Mr. DeWeese.

Mr. DeWEESE. Thank you.

Does the gentleman want to speak first? I am sorry. I did not mean to— I was only asking that a couple of our members get to the floor, and they are already here, so whatever is appropriate.

The SPEAKER. The motion is on suspension. Only the leaders can speak on that, unless you are yielding your time to one of the other members here.

Mr. DeWEESE. I would accede to Mr. Scavello since it is Christmas, but I do not think I have to. I am just going to support him, at least on suspension.

The SPEAKER. The Chair thanks the gentleman.

For what purpose does the gentleman, Mr. Vitali, rise?

Mr. VITALI. A point of order, Mr. Speaker.

The SPEAKER. The gentleman will state it.

Mr. VITALI. Does this amendment have a fiscal note?

The SPEAKER. This is on suspension. After suspension, if the amendment comes before the floor, the gentleman can ask the question at that time.

PARLIAMENTARY INQUIRY

Mr. VITALI. A parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. VITALI. Is it in order to suspend the rules to consider an amendment when that amendment does not have a fiscal note?

The SPEAKER. Yes. It is part of the motion to suspend the rules.

On the question recurring,

Will the House agree to the motion?

The following roll call was recorded:

YEAS—176

Adolph	Fabrizio	Lescovitz	Rooney
Allen	Fairchild	Levdansky	Ross
Argall	Feese	Mackereth	Rubley
Armstrong	Fichter	Maher	Sainato
Baker	Fleagle	Maitland	Santoni
Baldwin	Flick	Major	Sather
Barrar	Forcier	Mann	Saylor
Bastian	Gabig	Markosek	Scavello
Bebko-Jones	Gannon	Marsico	Schroder
Belardi	Geist	McCall	Semmel
Benninghoff	George	McGill	Shapiro
Beyer	Gerber	McIlhattan	Siptroth
Biancucci	Gillespie	McIlhinney	Smith, S. H.
Birmelin	Gingrich	McNaughton	Solobay
Bishop	Godshall	Metcalfe	Sonney
Blackwell	Good	Micozzie	Staback
Blaum	Goodman	Millard	Stairs
Boyd	Grell	Miller, R.	Steil
Bunt	Grucela	Miller, S.	Stern
Buxton	Gruitza	Mustio	Stetler
Caltagirone	Habay	Myers	Stevenson, R.
Cappelli	Hanna	Nailor	Stevenson, T.
Causar	Harhai	Nickol	Surra
Cawley	Harhart	O'Brien	Tangretti
Civera	Harper	Oliver	Taylor, E. Z.
Clymer	Harris	O'Neill	Taylor, J.
Cornell	Hasay	Payne	Thomas
Corrigan	Hennessey	Petrarca	Tigue
Costa	Herman	Petri	True
Crahalla	Hershey	Petrone	Turzai
Creighton	Hess	Phillips	Veon
Cruz	Hickernell	Pickett	Walko
Curry	Hutchinson	Pistella	Wansacz
Daley	James	Preston	Waters
Dally	Josephs	Pyle	Watson
DeLuca	Kauffman	Quigley	Wilt
Denlinger	Keller, M.	Ramaley	Wright
Dermody	Keller, W.	Rapp	Yewcic
DeWeese	Kenney	Raymond	Youngblood
DiGirolo	Killion	Readshaw	Yudichak
Diven	Kirkland	Reed	Zug
Donatucci	LaGrotta	Reichley	
Ellis	Leach	Roberts	
Evans, D.	Lederer	Rohrer	Perzel,
Evans, J.	Leh		Speaker

NAYS—19

Belfanti	Frankel	Melio	Sturla
Butkovitz	Freeman	Parker	Vitali
Casorio	Gergely	Roebuck	Wheatley
Cohen	Manderino	Ruffing	Williams
Eachus	McGeehan	Samuelson	

NOT VOTING—0

EXCUSED—8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

The SPEAKER. The rules are suspended for the immediate consideration of amendment 5363.

On the question recurring,
Will the House agree to the amendment?

Mr. **SCAVELLO** reoffered the following amendment No. **A05363**:

Amend Bill, page 1, lines 6 through 22, by striking out all of said lines and inserting
Amending Titles 53 (Municipalities Generally) and 72 (Taxation and Fiscal Affairs) of the Pennsylvania Consolidated Statutes, further providing for taxation and assessment definitions and applicability; consolidating the sales and use tax provisions of the Tax Reform Code of 1971 and further providing for definitions, for imposition, for exclusions, for credit, for crimes, for transfers to Public Transportation Assistance Fund and for transfers to Property Tax Relief Fund; consolidating the special situs for local sales tax provisions of the Tax Reform Code of 1971; consolidating the personal income tax provisions of the Tax Reform Code of 1971 and further providing for imposition and for classes of income; consolidating and extensively revising the Homeowner Tax Relief Act; consolidating the Senior Citizens Rebate and Assistance Act and further providing for property tax, rent rebate and inflation costs and for funds for payment of claims; and making related repeals.

Amend Bill, page 2, lines 23 through 30; page 3, lines 1 through 28, by striking out all of said lines on said pages and inserting
Section 1. The definition of “governing body” and “school district” in section 8401 of Title 53 of the Pennsylvania Consolidated Statutes are amended to read:
§ 8401. Definitions.

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

“Governing body.” A board of school directors of a school district or the governing body of a city of the first class.

“School district.” A school district of the first class, first class A, second class, third class or fourth class, including any independent school district.

Section 1.1. Section 8405 of Title 53 is amended to read:
[§ 8405. Applicability.

It is the intent of the General Assembly that no provision of this subpart shall apply to any city of the first class, a county of the first class coterminous with a city of the first class and any school district of the first class located within a city of the first class.]

Section 1.2. The definitions of “assessor” and “board” in section 8582 of Title 53 are amended to read:
§ 8582. Definitions.

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

“Assessor.” The chief assessor of the county[,] or the equivalent [position] officer in a home rule county [or the equivalent position in], a city of the third class [that] or a city of the first class which performs its own assessments of real property.

“Board.” Any of the following:

(1) [“Board.” As] A board as defined in the act of June 26, 1931, (P.L.1379, No.348), referred to as the Third Class County Assessment Board Law.

(2) [“Board.” As] A board as defined in the act of May 21, 1943 (P.L.571, No.254), known as The Fourth to Eighth Class County Assessment Law.

(3) [“Board of Property Assessment, Appeals and Review.”] The Board of Property Assessment, Appeals and Review in a county of the second class under the act of June 21, 1939 (P.L.626, No.294), referred to as the Second Class County Assessment Law.

(4) [“Board of Revision of Tax and Appeals.”] The board of revision of taxes and appeals in cities of the third class.

(5) The board or office responsible for revision of taxes and appeals in cities of the first class.

Section 1.3. Title 72 is amended by adding parts to read:

PART I
PRELIMINARY PROVISIONS
(RESERVED)
PART II
TAXES

Chapter

12. Sales and Use Tax.
13. Special Situs for Local Sales Tax.
15. Personal Income Tax.

CHAPTER 12
SALES AND USE TAX

Subchapter

- A. General Provisions
- B. Imposition of Tax
- C. Exclusions from Tax
- D. Licenses
- E. Hotel Occupancy Tax
- F. Returns
- G. Payment
- H. Assessment and Reassessment
- I. Collection
- J. Nonpayment
- K. Miscellaneous Provisions
- L. Refunds and Credits
- M. Limitations
- N. Interest, Additions, Penalties and Crimes
- O. Enforcement and Examinations
- P. Appropriation; Effective Date

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

1201. Definitions.

§ 1201. Definitions.

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

“Adjustment services, collection services or credit reporting services.” Providing collection or adjustments of accounts receivable or mercantile or consumer credit reporting, including, but not limited to, services of the type provided by adjustment bureaus or collection agencies, consumer or mercantile credit reporting bureaus, credit bureaus or agencies, credit clearinghouses or credit investigation services. Such services do not include providing credit card service with collection by a central agency, providing debt counseling or

adjustment services to individuals or billing or collection services provided by local exchange telephone companies.

“Advertising services.” Publishing, broadcasting or disseminating promotional information or notices via newspaper, television, radio or any other medium.

“Blasting.” The use of any combustible or explosive composition in the removal of material resources, minerals and mineral aggregates from the earth and the separation of the dirt, waste and refuse in which the resources, minerals and mineral aggregates are found.

“Building machinery and equipment.” Includes, without limitation, boilers, chillers, air cleaners, humidifiers, fans, switchgear, pumps, telephones, speakers, horns, motion detectors, dampers, actuators, grills, registers, traffic signals, sensors, card access devices, guardrails, medial devices, floor troughs and grates and laundry equipment, together with integral coverings and enclosures, whether or not the item constitutes a fixture or is otherwise affixed to the real estate, whether or not damage would be done to the item or its surroundings upon removal or whether or not the item is physically located within a real estate structure. The term also includes generation equipment, storage equipment, conditioning equipment, distribution equipment and termination equipment, which shall be limited to the following:

- (1) air conditioning, limited to heating, cooling, purification, humidification, dehumidification and ventilation;
- (2) electrical;
- (3) plumbing;
- (4) communications limited to voice, video, data, sound, master clock and noise abatement;
- (5) alarms limited to fire, security and detection;
- (6) control system limited to energy management, traffic and parking lot and building access;
- (7) medical system limited to diagnosis and treatment equipment, medical gas, nurse call and doctor paging;
- (8) laboratory system;
- (9) cathodic protection system; or
- (10) furniture, cabinetry and kitchen equipment.

The term shall not include guardrail posts, pipes, fittings, pipe supports and hangers, valves, underground tanks, wire, conduit, receptacle and junction boxes, insulation, ductwork and coverings thereof.

“Building maintenance or cleaning services.” Providing services which include, but are not limited to, janitorial, maid or housekeeping service, office or interior building cleaning or maintenance service, window cleaning service, floor waxing service, lighting maintenance service such as bulb replacement, cleaning, chimney cleaning service, acoustical tile cleaning service, venetian blind cleaning, cleaning and maintenance of telephone booths or cleaning and degreasing of service stations. The term shall not include repairs on buildings and other structures; nor shall this term include the maintenance or repair of boilers, furnaces and residential air conditioning equipment or parts thereof; the painting, wallpapering or applying other like coverings to interior walls, ceilings or floors; or the exterior painting of buildings.

“Call center.” The physical location in this Commonwealth:

- (1) where at least 150 employees are employed to initiate or answer telephone calls;
- (2) where there are at least two hundred telephone lines; and
- (3) which utilizes an automated call distribution system for customer telephone calls in one or more of the following activities:
 - (i) customer service and support;
 - (ii) technical assistance;
 - (iii) help desk service;
 - (iv) providing information;
 - (v) conducting surveys;
 - (vi) revenue collections; or
 - (vii) receiving orders or reservations.

For purposes of this clause, a physical location may include multiple buildings utilized by a taxpayer located within this Commonwealth.

“Commercial aircraft operator.” A person, excluding scheduled airlines, that engages in any or all of the following: charter of aircraft, leasing of aircraft, aircraft sales, aircraft rental, flight instruction, air freight or any other flight activities for compensation.

“Commercial racing activities.” Any of the following:

(1) Thoroughbred and harness racing at which pari-mutuel wagering is conducted under the act of December 17, 1981 (P.L.435, No.135), known as the Race Horse Industry Reform Act.

(2) Fair racing sanctioned by the State Harness Racing Commission.

“Computer software.” A set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

“Construction contract.” A written or oral contract or agreement for the construction, reconstruction, remodeling, renovation or repair of real estate or a real estate structure. The term shall not apply to services which are taxable under paragraphs (14) and (17) of the definition of “sale at retail” and paragraphs (12) and (15) of the definition of “use.”

“Construction contractor.” A person who performs an activity pursuant to a construction contract, including a subcontractor.

“Delivered electronically.” Delivered to the purchaser by means other than tangible storage media.

“Department.” The Department of Revenue of the Commonwealth.

“Detective services.” Providing investigation and detective services.

“Disinfecting or pest control services.” Providing disinfecting, termite control, insect control, rodent control or other pest control services, including, but not limited to, deodorant servicing of restrooms, washroom sanitation service, restroom cleaning service, extermination service or fumigating service. The term “fumigating service” shall not include the fumigation of agricultural commodities or containers used for agricultural commodities, and the term “insect control” shall not include the spraying of trees which are harvested for commercial purposes for gypsy moth control.

“Employment agency services.” Providing employment services to a prospective employer or employee other than employment services provided by theatrical employment agencies and motion picture casting bureaus. These services shall include, but not be limited to, services of the type provided by employment agencies, executive placing services and labor contractor employment agencies other than farm labor.

“Fiscal Code.” The act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

“Gratuity.” Any amount paid or remitted for services performed in conjunction with any sale of food or beverages, or hotel or motel accommodations which amount is in excess of the charges and the tax thereon for such food, beverages or accommodations regardless of the method of billing or payment.

“Help supply services.” Providing temporary or continuing help where the help supplied is on the payroll of the supplying person or entity, but is under the supervision of the individual or business to which help is furnished. These services shall include, but not be limited to, service of a type provided by labor and manpower pools, employee leasing services, office help supply services, temporary help services, usher services, modeling services or fashion show model supply services. Such services shall not include providing farm labor services. The term shall not include nursing, home health care and personal care services and other human health-related services. As used in this definition, “personal care” shall include providing at least one of the following types of assistance to persons with limited ability for self-care:

- (1) dressing, bathing or feeding;
- (2) supervising self-administered medication;
- (3) transferring a person to or from a bed or wheelchair;

or

(4) routine housekeeping chores when provided in conjunction with and supplied by the same provider of the assistance listed in paragraph (1), (2) or (3).

“Internet.” The international nonproprietary computer network of both Federal and non-Federal interoperable packet switched data networks.

“Lawn care service.” Providing services for lawn upkeep, including, but not limited to, fertilizing, lawn mowing, shrubbery trimming or other lawn treatment services.

“Lobbying services.” Providing the services of a lobbyist, as defined in the definition of “lobbyist” in 65 Pa.C.S. § 1303 (relating to definitions).

“Lodging service.” Providing services including rentals, hookups and rental grounds services at campgrounds, vacation camps, youth hostels, trailer parks and recreational vehicle parks.

“Maintaining a place of business in this Commonwealth.” As follows:

(1) Having, maintaining or using within this Commonwealth, either directly or through a subsidiary, representative or an agent, an office, distribution house, sales house, warehouse, service enterprise or other place of business; or any agent of general or restricted authority, or representative, irrespective of whether the place of business, representative or agent is located in this Commonwealth, permanently or temporarily, or whether the person or subsidiary maintaining the place of business, representative or agent is authorized to do business within this Commonwealth.

(2) Engagement in any activity as a business within this Commonwealth by any person, either directly or through a subsidiary, representative or an agent, in connection with the lease, sale or delivery of tangible personal property or the performance of services thereon for use, storage or consumption or in connection with the sale or delivery for use of the services described in paragraphs (11) through (27) of the definition of sale at retail, including, but not limited to, having, maintaining or using any office, distribution house, sales house, warehouse or other place of business, any stock of goods or any solicitor, canvasser, salesman, representative or agent under its authority, at its direction or with its permission, regardless of whether the person or subsidiary is authorized to do business in this Commonwealth.

(3) Regularly or substantially soliciting orders within this Commonwealth in connection with the lease, sale or delivery of tangible personal property to or the performance thereon of services or in connection with the sale or delivery of the services described in paragraphs (11) through (27) of the definition of sale at retail for residents of this Commonwealth by means of catalogs or other advertising, whether the orders are accepted within or without this Commonwealth.

(3.1) The entering of this Commonwealth by any person to provide assembly, service or repair of tangible personal property, either directly or through a subsidiary, representative or an agent.

(3.2) Delivering tangible personal property to locations within this Commonwealth if the delivery includes the unpacking, positioning, placing or assembling of the tangible personal property.

(3.3) Having any contact within this Commonwealth which would allow the Commonwealth to require a person to collect and remit tax under the Constitution of the United States.

(3.4) Providing a customer’s mobile telecommunications service deemed to be provided by the customer’s home service provider under the Mobile Telecommunications Sourcing Act (Public Law 106-252, 114 Stat. 626). For purposes of this paragraph, words and phrases used in this paragraph shall have the meanings given to them in the Mobile Telecommunications Sourcing Act.

(4) The term shall not include:

(i) Owning or leasing of tangible or intangible property by a person who has contracted with an unaffiliated commercial printer for printing, provided that:

(A) the property is for use by the commercial printer; and

(B) the property is located at the Pennsylvania premises of the commercial printer.

(ii) Visits by a person’s employees or agents to the premises in this Commonwealth of an unaffiliated commercial printer with whom the person has contracted for printing in connection with the contract.

“Management consulting service.” Providing advice and assistance to businesses and other organizations in any of the following areas:

(1) Management and operating advice, such as strategic and organizational planning, financial planning and budgeting, equity and asset management, office planning, site selection, new business startup and business process improvement.

(2) Developing and conducting marketing research or public opinion polling.

(3) Developing and implementing public relations plans.

(4) Human resources and executive search consulting services, including human resource and personnel policies, practices and procedures; employee benefits planning, communication and administration; compensation systems planning; wage and salary administration; and executive search and recruitment.

(5) Environmental advice and assistance, including the control of environmental contamination from pollutants, toxic substances and hazardous materials; and sanitation or site remediation consulting services.

(6) Scientific and technical advice and assistance, including biological, energy, chemical, security and safety consulting services.

“Manufacture.” The performance of manufacturing, fabricating, compounding, processing or other operations, engaged in as a business, which place any tangible personal property in a form, composition or character different from that in which it is acquired whether for sale or use by the manufacturer, and shall include, but not be limited to:

(1) Every operation commencing with the first production stage and ending with the completion of tangible personal property having the physical qualities, including packaging, if any, passing to the ultimate consumer, which it has when transferred by the manufacturer to another.

(2) The publishing of books, newspapers, magazines and other periodicals and printing.

(3) Refining, blasting, exploring, mining and quarrying for, or otherwise extracting from the earth or from waste or stockpiles or from pits or banks any natural resources, minerals and mineral aggregates including blast furnace slag.

(4) Building, rebuilding, repairing and making additions to, or replacements in or upon vessels designed for commercial use of registered tonnage of 50 tons or more when produced upon special order of the purchaser, or when rebuilt, repaired or enlarged, or when replacements are made upon order of, or for the account of the owner.

(5) Research having as its objective the production of a new or an improved:

(i) product or utility service; or

(ii) method of producing a product or utility service.

The term does not include market research or research having as its objective the improvement of administrative efficiency.

(6) Remanufacture for wholesale distribution by a remanufacturer of motor vehicle parts from used parts acquired in bulk by the remanufacturer using an assembly line process

which involves the complete disassembly of such parts and integration of the components of such parts with other used or new components of parts, including the salvaging, recycling or reclaiming of used parts by the remanufacturer.

(7) Remanufacture or retrofit by a manufacturer or remanufacturer of aircraft, armored vehicles, other defense-related vehicles having a finished value of at least \$50,000. Remanufacture or retrofit involves the disassembly of such aircraft, vehicles, parts or components, including electric or electronic components, the integration of those parts and components with other used or new parts or components, including the salvaging, recycling or reclaiming of the used parts or components and the assembly of the new or used aircraft, vehicles, parts or components. For purposes of this definition, the following terms or phrases have the following meanings:

(i) "aircraft" means fixed-wing aircraft, helicopters, powered aircraft, tilt-rotor or tilt-wing aircraft, unmanned aircraft and gliders;

(ii) "armored vehicles" means tanks, armed personnel carriers and all other armed track or semitrack vehicles; or

(iii) "other defense-related vehicles" means trucks, truck-tractors, trailers, jeeps and other utility vehicles, including any unmanned vehicles.

(8) The term does not include constructing, altering, servicing, repairing or improving real estate or repairing, servicing or installing tangible personal property, nor the cooking, freezing or baking of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products.

"Mobile telecommunications service." Mobile telecommunications service as that term is defined in the Mobile Telecommunications Sourcing Act (Public Law 106-252, 114 Stat. 626).

"Person." A natural person, association, fiduciary, partnership, corporation or other entity, including the Commonwealth of Pennsylvania, its political subdivisions and instrumentalities and public authorities. Whenever used in any provision prescribing and imposing a penalty or imposing a fine or imprisonment, or both, the term, as applied to an association, shall include the members of these listed classes and, as applied to a corporation, the officers of the corporation.

"Personal service." Providing services for all of the following:

(1) Providing coin-operated or similar self-service laundry and dry-cleaning equipment for customer use on the premises or supplying and servicing coin-operated or similar self-service laundry and drycleaning equipment for customer use in places of business operated by others, such as apartments and dormitories.

(2) Dry cleaning and laundry services, including:

(i) Linen and uniform supply and cleaning services.

(ii) Drop-off and pickup services for laundries or dry cleaners.

(iii) Specialty cleaning services for specific types of garments and other textile items such as fur garments, leather garments, suede garments, wedding gowns, hats, draperies and pillows. This subparagraph does not include coin-operated dry-cleaning services, linen and uniform supply, coin-operated linen and uniform services or specialty cleaning services for specific carpets or upholstery.

"Prebuilt housing." Either of the following:

(1) Manufactured housing, including mobile homes, which bears a label as required by and referred to in the act of November 17, 1982 (P.L.676, No.192), known as the Manufactured Housing Construction and Safety Standards Authorization Act.

(2) Industrialized housing as defined in the act of May 11, 1972 (P.L.286, No.70), known as the Industrialized Housing Act.

"Prebuilt housing builder." A person who makes a prebuilt housing sale to a prebuilt housing purchaser.

"Prebuilt housing purchaser." A person who purchases prebuilt housing in a transaction and who intends to occupy the unit for residential purposes in this Commonwealth.

"Prebuilt housing sale." A sale of prebuilt housing to a prebuilt housing purchaser, including a sale to a landlord, without regard to whether the person making the sale is responsible for installing the prebuilt housing or whether the prebuilt housing becomes a real estate structure upon installation. Temporary installation by a prebuilt housing builder for display purposes of a unit held for resale shall not be considered occupancy for residential purposes.

"Premium cable or premium video programming service."

(1) That portion of cable television services, video programming services, community antenna television services or any other distribution of television, video, audio or radio services which meets all of the following criteria:

(i) Is transmitted with or without the use of wires to purchasers.

(ii) Consists substantially of programming uninterrupted by paid commercial advertising which includes programming primarily composed of uninterrupted full-length motion pictures or sporting events, pay-per-view, paid programming or like audio or radio broadcasting.

(iii) Does not constitute a component of a basic service tier provided by a cable television system or a cable programming service tier provided by a cable television system.

(A) A basic service tier shall include:

(I) all signals of domestic television broadcast stations;

(II) any public, educational, governmental or religious programming; and

(III) any additional video programming signals or service added to the basic service tier by the cable operator.

(B) The basic service tier shall include a single additional lower-priced package of broadcast channels and access information channels which is a subset of the basic service tier as set forth in this paragraph.

(C) A cable programming service tier includes any video programming other than:

(I) the basic service tier;

(II) video programming offered on a pay-per-channel or pay-per-view basis; or

(III) a combination of multiple channels of pay-per-channel or pay-per-view programming offered as a package.

(2) If a purchaser receives or agrees to receive premium cable or premium video programming service, then the following charges are included in the purchase price:

(i) Charges for installation or repair of any premium cable or premium video programming service.

(ii) Upgrade to include additional premium cable or premium video programming service.

(iii) Downgrade to exclude all or some premium cable or premium video programming service.

(iv) Additional premium cable outlets in excess of ten.

(v) Any other charge or fee related to premium cable or premium video programming services.

(3) The term shall not apply to any of the following:

(i) Transmissions by public television.

(ii) Public radio services.

(iii) Official Federal, State or local government cable services.

(iv) Local origination programming which provides a variety of public service programs unique to the community.

(v) Programming which provides coverage of public affairs issues which are presented without commentary or analysis. This subparagraph includes United States Congressional proceedings.

(vi) Programming which is substantially related to religious subjects.

(vii) Subscriber charges for access to a video dial tone system or charges by a common carrier to a video programmer for the transport of video programming.

“Prepaid mobile telecommunications service.” Mobile telecommunications service which is paid for in advance and which enables the origination of calls using an access number, authorization code or both, whether manually or electronically dialed, if the remaining amount of units of the prepaid mobile telecommunications service is known by the service provider of the prepaid mobile telecommunications service on a continuous basis. The term does not include the advance purchase of mobile telecommunications service if the purchase is pursuant to a service contract between the service provider and customer and if the service contract requires the customer to make periodic payments to maintain the mobile telecommunications service.

“Prepaid telecommunications.” A tangible item containing a prepaid authorization number that can be used solely to obtain telecommunications service, including any renewal or increases in the prepaid amount.

“Prewritten computer software.” The term shall have the same meaning as the term “computer software,” including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions of those programs shall not cause the combination to be considered to be other than prewritten computer software. The term includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of the person’s modifications or enhancements. Prewritten computer software or a prewritten portion of the software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, shall be considered to be prewritten computer software except that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.

“Processing.” The performance of the following activities when engaged in as a business enterprise:

(1) The filtering or heating of honey, the cooking, baking or freezing of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products, when the person engaged in such business packages such property in sealed containers for wholesale distribution.

(1.1) The processing of fruits or vegetables by cleaning, cutting, coring, peeling or chopping and treating to preserve, sterilize or purify and substantially extend the useful shelf life of the fruits or vegetables, when the person engaged in such activity packages such property in sealed containers for wholesale distribution.

(2) The scouring, carbonizing, cording, combing, throwing, twisting or winding of natural or synthetic fibers, or the spinning, bleaching, dyeing, printing or finishing of yarns or fabrics, when such activities are performed prior to sale to the ultimate consumer.

(3) The electroplating, galvanizing, enameling, anodizing, coloring, finishing, impregnating or heat treating of metals or plastics for sale or in the process of manufacturing.

(3.1) The blanking, shearing, leveling, slitting or burning of metals for sale to or use by a manufacturer or processor.

(4) The rolling, drawing or extruding of ferrous and nonferrous metals.

(5) The fabrication for sale of ornamental or structural metal or of metal stairs, staircases, gratings, fire escapes or railings, not including fabrication work done at the construction site.

(6) The preparation of animal feed or poultry feed for sale.

(7) The production, processing and bottling of nonalcoholic beverages for wholesale distribution.

(8) The operation of a saw mill or planning mill for the production of lumber or lumber products for sale. The operation of a saw mill or planning mill begins with the unloading by the operator of the saw mill or planning mill of logs, timber, pulpwood or other forms of wood material to be used in the saw mill or planning mill.

(9) The milling for sale of flour or meal from grains.

(9.1) The aging, stripping, conditioning, crushing and blending of tobacco leaves for use as cigar filler or as components of smokeless tobacco products for sale to manufacturers of tobacco products.

(10) The slaughtering and dressing of animals for meat to be sold or to be used in preparing meat products for sale, and the preparation of meat products including lard, tallow, grease, cooking and inedible oils for wholesale distribution.

(11) The processing of used lubricating oils.

(12) The broadcasting of radio and television programs of licensed commercial or educational stations.

(13) The cooking or baking of bread, pastries, cakes, cookies, muffins and donuts when the person engaged in such activity sells such items at retail at locations that do not constitute an establishment from which ready-to-eat food and beverages are sold. For purposes of this paragraph, a bakery, a pastry shop and a donut shop shall not be considered an establishment from which ready-to-eat food and beverages are sold.

(14) The cleaning and roasting and the blending, grinding or packaging for sale of coffee from green coffee beans or the production of coffee extract.

(15) The preparation of dry or liquid fertilizer for sale.

(16) The production, processing and packaging of ice for wholesale distribution.

(17) The producing of mobile telecommunications services.

“Promoter.” A person who either, directly or indirectly, rents, leases or otherwise operates or grants permission to any person to use space at a show for the display for sale or for the sale of tangible personal property or services subject to tax under section 1202 (relating to imposition of tax).

“Purchase at retail.” Any of the following:

(1) The acquisition for a consideration of the ownership, custody or possession of tangible personal property other than for resale by the person acquiring the same when such acquisition is

made for the purpose of consumption or use, whether such acquisition shall be absolute or conditional, and by whatsoever means the same shall have been effected.

(2) The acquisition of a license to use or consume, and the rental or lease of tangible personal property, other than for resale regardless of the period of time the lessee has possession or custody of the property.

(3) The obtaining for a consideration any of those services set forth under paragraphs (2), (3) and (4) of the definition of sale at retail other than for resale.

(4) A retention after March 7, 1956, of possession, custody or a license to use or consume pursuant to a rental contract or other lease arrangement, other than as security, other than for resale.

(5) The obtaining for a consideration any of those services set forth under paragraphs (11) through (27) of the definition of sale at retail.

(6) With respect to liquor and malt or brewed beverages, the term includes purchase of liquor from a Pennsylvania Liquor Store by a person for any purpose, and purchase of malt or brewed beverages from a manufacturer of malt or brewed beverages, distributor or importing distributor by a person for any purpose, except purchases from a manufacturer of malt or brewed beverages by a distributor or importing distributor or purchases from an importing distributor by a distributor within the meaning of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code. The term does not include purchase of malt or brewed beverages from a retail dispenser or purchase of liquor or malt or brewed beverages from a person holding a retail liquor license within the meaning of and pursuant to the provisions of the Liquor Code, but shall include purchase or acquisition of liquor or malt or brewed beverages other than pursuant to the provisions of the Liquor Code.

“Purchase price.” As follows:

(1) The total value of anything paid or delivered, or promised to be paid or delivered, whether it be money or otherwise, in complete performance of a sale at retail or purchase at retail, without any deduction on account of the cost or value of the property sold, cost or value of transportation, cost or value of labor or service, interest or discount paid or allowed after the sale is consummated, any other taxes imposed by the Commonwealth or any other expense except that there shall be excluded any gratuity or separately stated deposit charge for returnable containers.

(2) (Reserved).

(3) In determining the purchase price on the sale or use of taxable tangible personal property or a service where, because of affiliation of interests between the vendor and purchaser, or irrespective of any such affiliation, if for any other reason the purchase price declared by the vendor or taxpayer on the taxable sale or use of such tangible personal property or service is, in the opinion of the Department of Revenue, not indicative of the true value of the article or service or the fair price thereof, the department shall, pursuant to uniform and equitable rules, determine the amount of constructive purchase price upon the basis of which the tax shall be computed and levied. Such rules shall provide for a constructive amount of purchase price for each sale or use which would naturally and fairly be charged in an arms-length transaction in which the element of common interest between the vendor or purchaser is absent or if no common interest exists, any other element causing a distortion of the price or value is likewise absent. For the purpose of this paragraph where a taxable sale or purchase at retail transaction occurs between a parent and a subsidiary, affiliate or controlled corporation of such parent corporation, there shall be a rebuttable presumption, that because of such common interest such transaction was not at arms-length.

(4) Where there is a transfer or retention of possession or custody, whether it be termed a rental, lease, service or otherwise, of tangible personal property including, but not limited to, linens, aprons, motor vehicles, trailers, tires, industrial office and construction equipment, and business machines the full consideration paid or delivered to the vendor or lessor shall be considered the purchase price, even though such consideration be separately stated and be designated as payment for processing, laundering, service, maintenance, insurance, repairs, depreciation or otherwise. There shall also be included as part of the purchase price the value of anything paid or delivered, or promised to be paid or delivered by a lessee, whether it be money or otherwise, to any person other than the vendor or lessor by reason of the maintenance, insurance or repair of the tangible personal property which a lessee has the possession or custody of under a rental contract or lease arrangement.

(5) With respect to the tax imposed by section 1202(b) (relating to imposition of tax) upon any tangible personal property originally purchased by the user of the property six months or longer prior to the first taxable use of the property within this Commonwealth. The user may elect to pay tax on a substituted base determined by considering the purchase price of the property for tax purposes to be equal to the prevailing market price of similar tangible personal property at the time and place of the first use within this Commonwealth. The election must be made at the time of filing a tax return with the department and reporting the tax liability and paying the tax due plus accrued penalties and interest within six months of the due date of the report and payment under section 1217(a) and (c) (relating to time for filing returns).

(6) The purchase price of employment agency services and help supply services shall be the service fee paid by the purchaser to the vendor or supplying entity. The term “service fee,” as used in this paragraph, shall be the total charge or fee of the vendor or supplying entity minus the costs of the supplied employee which costs are wages, salaries, bonuses and commissions, employment benefits, expense reimbursements and payroll and withholding taxes, to the extent that these costs are specifically itemized or that these costs in aggregate are stated in billings from the vendor or supplying entity. To the extent that these costs are not itemized or stated on the billings, then the service fee shall be the total charge or fee of the vendor or supplying entity.

(7) Unless the vendor separately states which portion of the billing applies to premium cable services, the total bill for the provision of all cable services shall be the purchase price.

(8) The purchase price of prebuilt housing shall be 60% of the manufacturer’s selling price, but a manufacturer of prebuilt housing who precollects tax from a prebuilt housing builder at the time of the sale to the prebuilt housing builder shall have the option to collect tax on 60% of the selling price or on 100% of the actual cost of the supplies and materials used in the manufacture of the prebuilt housing.

“Purchaser.” A person who acquires, for a consideration, the ownership, custody or possession by sale, lease or otherwise, of tangible personal property, or who obtains services in exchange for a purchase price, but not including an employer who obtains services from employees of the employer in exchange for wages or salaries when the services are rendered in the ordinary scope of their employment.

“Real estate structure.” A structure or item purchased by a construction contractor pursuant to a construction contract with:

(1) a charitable organization, a volunteer firemen’s organization, a nonprofit educational institution or a religious organization for religious purposes and which qualifies as an institution of purely public charity under the act of November 26, 1997 (P.L.508, No.55), known as the Institutions of Purely Public Charity Act;

(2) the United States; or

(3) the Commonwealth, its instrumentalities or political subdivisions.

The term includes building machinery and equipment; developed or undeveloped land; streets; roads; highways; parking lots; stadiums and stadium seating; recreational courts; sidewalks; foundations; structural supports; walls; floors; ceilings; roofs; doors; canopies; millwork; elevators; windows and external window coverings; outdoor advertising boards or signs; airport runways; bridges; dams; dikes; traffic control devices, including traffic signs; satellite dishes; antennas; guardrail posts; pipes; fittings; pipe supports and hangers; valves; underground tanks; wire; conduit; receptacle and junction boxes; insulation; ductwork and coverings thereof; and any structure or item similar to any of the foregoing, whether or not the structure or item constitutes a fixture or is affixed to the real estate, or whether or not damage would be done to the structure or item or its surroundings upon removal.

“Recreation service.” Providing services which provide or allow for an activity that diverts, amuses, stimulates and renews individual health and spirits, including all of the following:

(1) Admission to commercial sports, whether live or broadcasted.

(2) Admission to live presentations involving the performances of actors and actresses, singers, dancers, musical groups and artists and other performing artists.

(3) Physical fitness facility services. Services provided by health clubs, spas, fitness or recreational sports facilities. The term includes exercise and other active physical fitness conditioning or recreational sports activities, such as swimming, skating, or racquet sports, whether or not on a membership basis.

(4) Bicycle rental services. The rental or lease of bicycles.

(5) Golf course and country club membership fees.

(6) Other memberships and admissions.

“Resale.” As follows:

(1) Any transfer of ownership, custody or possession of tangible personal property for a consideration, including the grant of a license to use or consume and transactions where the possession of the property is transferred but where the transferor retains title only as security for payment of the selling price whether the transaction be designated as bailment lease, conditional sale or otherwise.

(2) The physical incorporation of tangible personal property as an ingredient or constituent into other tangible personal property, which is to be sold in the regular course of business or the performance of those services described in paragraphs (2), (3) and (4) of the definition of sale at retail upon tangible personal property which is to be sold in the regular course of business or where the person incorporating such property has undertaken at the time of purchase to cause it to be transported in interstate commerce to a destination outside this Commonwealth. The term shall include telecommunications services purchased by a cable operator or video programmer that are used to transport or deliver cable or video programming services which are sold in the regular course of business.

(3) The term shall also include tangible personal property purchased or having a situs within this Commonwealth solely for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into tangible personal property and thereafter transported outside this Commonwealth for use exclusively outside this Commonwealth.

(4) The term “resale” does not include a sale of malt or brewed beverages by a retail dispenser, or a sale of liquor or malt or brewed beverages by a person holding a retail liquor license within the meaning of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.

(5) The physical incorporation of tangible personal property as an ingredient or constituent in the construction of foundations for machinery or equipment the sale or use of which is excluded from tax under the provisions of paragraph (8)(ii)(A), (B) and (D) of the definition of sale at retail and paragraph (4)(ii)(B)(I), (II) and (IV) of the definition of use, whether the foundations at the time of construction or transfer constitute tangible personal property or real estate.

“Resident.” As follows:

(1) Any natural person:

(i) who is domiciled in this Commonwealth; or

(ii) who maintains a permanent place of abode within this Commonwealth and spends in the aggregate more than 60 days of the year within this Commonwealth.

(2) Any corporation:

(i) incorporated under the laws of this Commonwealth;

(ii) authorized to do business or doing business within this Commonwealth; or

(iii) maintaining a place of business within this Commonwealth.

(3) Any association, fiduciary, partnership or other entity:

(i) domiciled in this Commonwealth;

(ii) authorized to do business or doing business within this Commonwealth; or

(iii) maintaining a place of business within this Commonwealth.

“Sale at retail.” As follows:

(1) Any transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the grant of a license to use or consume whether the transfer be absolute or conditional and by whatsoever means the same shall have been effected.

(2) The rendition of the service of printing or imprinting of tangible personal property for a consideration for persons who furnish, either directly or indirectly, the materials used in the printing or imprinting.

(3) The rendition for a consideration of the service of:

(i) Washing, cleaning, waxing, polishing or lubricating of motor vehicles of another, whether or not any tangible personal property is transferred in conjunction therewith.

(ii) Inspecting motor vehicles pursuant to the mandatory requirements of 75 Pa.C.S. (relating to vehicles).

(4) The rendition for a consideration of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property including wearing apparel or shoes, or applying or installing tangible personal property as a repair or replacement part of other tangible personal property including wearing apparel or shoes for a consideration, whether or not the services are performed directly or by any means including by coin-operated self-service laundry equipment and whether or not any tangible personal property is transferred in conjunction therewith, except such services as are rendered in the construction, reconstruction, remodeling, repair or maintenance of real estate, except that this paragraph shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under section 1204(26) (relating to exclusions from tax) or on diaper service.

(5) (Reserved).

(6) (Reserved).

(7) (Reserved).

(8) (i) Any retention of possession, custody or a license to use or consume tangible personal property

or any further obtaining of services described in paragraphs (2), (3) and (4) pursuant to a rental or service contract or other arrangement, other than as security.

(ii) The term does not include any such transfer of tangible personal property or rendition of services for the purpose of resale or such rendition of services or the transfer of tangible personal property, including, but not limited to, machinery and equipment and parts therefor and supplies to be used or consumed by the purchaser directly in the operations of:

(A) The manufacture of tangible personal property.

(B) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term "farming" shall include the propagation and raising of ranch raised furbearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. (relating to game) and the propagation and raising of horses to be used exclusively for commercial racing activities.

(C) The producing, delivering or rendering of a public utility service, or in constructing, reconstructing, remodeling, repairing or maintaining the facilities which are directly used in producing, delivering or rendering such service.

(D) Processing as defined in this section.

(iii) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to any vehicle required to be registered under 75 Pa.C.S., except those vehicles used directly by a public utility engaged in business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used machinery, equipment, parts or foundations therefor that may be fixed to the real estate.

(iv) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or services by any person other than the person directly using the same in the operations described in subparagraph (ii)(A), (B), (C) and (D).

(v) The exclusion provided in subparagraph(ii)(C) shall not apply to:

(A) construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain facilities not used directly by the purchaser in the production, delivering or rendition of public utility service;

(ii) construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain a building, road or similar structure; or

(iii) tools and equipment used but not installed in the maintenance of facilities used directly in the production, delivering or rendition of a public utility service.

(vi) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to the services enumerated in paragraphs (11) through (27) nor to lobbying services, adjustment services, collection services or credit reporting services, secretarial or editing services, disinfecting or pest control services, building maintenance or cleaning services, employment agency

services, help supply services, lawn care service or self-storage service, except that the exclusion provided in subparagraph (ii)(B) for farming, dairying and agriculture shall apply to the service enumerated in the definition of disinfecting or pest control services.

(9) Where tangible personal property or services are utilized for purposes constituting a sale at retail and for purposes excluded from the definition of sale at retail, it shall be presumed that the tangible personal property or services are utilized for purposes constituting a sale at retail and subject to tax unless the user thereof proves to the Department of Revenue that the predominant purposes for which the tangible personal property or services are utilized do not constitute a sale at retail.

(10) With respect to liquor and malt or brewed beverages, the term includes sale of liquor by a Pennsylvania liquor store to a person for any purpose, and sale of malt or brewed beverages by a manufacturer of malt or brewed beverages, distributor or importing distributor to a person for any purpose, except sales by a manufacturer of malt or brewed beverages to a distributor or importing distributor or sales by an importing distributor to a distributor within the meaning of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code. The term does not include sale of malt or brewed beverages by a retail dispenser or sale of liquor or malt or brewed beverages by a person holding a retail liquor license within the meaning of and pursuant to the provisions of the Liquor Code, but shall include sale of liquor or malt or brewed beverages other than pursuant to the provisions of the Liquor Code.

(11) The rendition for a consideration of lobbying services.

(12) The rendition for a consideration of adjustment services, collection services or credit reporting services.

(13) The rendition for a consideration of secretarial or editing services.

(14) The rendition for a consideration of disinfecting or pest control services, building maintenance or cleaning services.

(15) The rendition for a consideration of employment agency services or help supply services.

(16) (Reserved).

(17) The rendition for a consideration of lawn care service.

(18) The rendition for a consideration of storage and self-storage service.

(19) The rendition for a consideration of a mobile telecommunications service.

(20) The rendition for a consideration of lodging services.

(21) The rendition for a consideration of personal services.

(22) (Reserved).

(23) The rendition for a consideration of recreational services.

(24) (Reserved).

(25) (Reserved).

(26) (Reserved).

(27) (Reserved).

(28) (Reserved).

(29) The rendition for a consideration of advertising services.

(30) The rendition for a consideration of detective services.

(31) The rendition for a consideration of management consulting services.

"Secretarial or editing services." Providing services which include, but are not limited to, editing, letter writing, proofreading, resume writing, typing or word processing. Such services shall not include court reporting and stenographic services.

“Self-storage service.” Providing a building, a room in a building or a secured area within a building with separate access provided for each purchaser of self-storage service, primarily for the purpose of storing personal property.

“Show.” An event, the primary purpose of which involves the display or exhibition of any tangible personal property or services for sale, including, but not limited to, a flea market, antique show, coin show, stamp show, comic book show, hobby show, automobile show, fair or any similar show, whether held regularly or of a temporary nature, at which more than one vendor displays for sale or sells tangible personal property or services subject to tax under section 1202 (relating to imposition of tax).

“Soft drinks.” All nonalcoholic beverages, whether carbonated or not, such as soda water, ginger ale, Coca Cola, lime cola, Pepsi Cola, Dr Pepper, fruit juice when plain or carbonated water, flavoring or syrup is added, carbonated water, orangeade, lemonade, root beer or any and all preparations, commonly referred to as soft drinks, of whatsoever kind, and are further described as including any and all beverages, commonly referred to as soft drinks, which are made with or without the use of any syrup. The term shall not include natural fruit or vegetable juices or their concentrates, or noncarbonated fruit juice drinks containing not less than 25% by volume of natural fruit juices or of fruit juice which has been reconstituted to its original state, or natural concentrated fruit or vegetable juices reconstituted to their original state, whether any of the foregoing natural juices are frozen or unfrozen, sweetened or unsweetened, seasoned with salt or spice or unseasoned, nor shall the term include coffee, coffee substitutes, tea, cocoa, natural fluid milk or noncarbonated drinks made from milk derivatives.

“Storage.” Any keeping or retention of tangible personal property within this Commonwealth for any purpose including the interim keeping, retaining or exercising any right or power over such tangible personal property. This term is in no way limited to the provision of self-storage service.

“Tangible personal property.” Corporeal personal property including, but not limited to, goods, wares, merchandise, steam and natural and manufactured and bottled gas, electricity, prepaid telecommunications, premium cable or premium video programming service, spirituous or vinous liquor and malt or brewed beverages and soft drinks, interstate telecommunications service originating or terminating in this Commonwealth and charged to a service address in this Commonwealth, intrastate telecommunications service. The service address of any intrastate telecommunications service is deemed to be within this Commonwealth or within a political subdivision, regardless of how or where billed or paid. In the case of any such interstate or intrastate telecommunications service, any charge paid through a credit or payment mechanism which does not relate to a service address, such as a bank, travel, credit or debit card, but not including prepaid telecommunications, is deemed attributable to the address of origination of the telecommunications service. The term shall not include:

(1) Computer software, other than prewritten computer software, delivered to the purchaser by tangible storage media.

(2) Digital products delivered electronically, including software, music, video, reading materials or ring tones.

“Tax Reform Code.” The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Taxpayer.” Any person required to pay or collect the tax imposed by this chapter.

“Telecommunications service.” Any one-way transmission or any two-way, interactive transmission of sounds, signals or other intelligence converted to like form which effects or is intended to effect meaningful communications by electronic or electromagnetic means via wire, cable, satellite, light waves, microwaves, radio waves or other transmission media. The term includes all types of telecommunication transmissions, such as local, toll, wide-area or any other type of telephone service; private line service; telegraph service; radio repeater service; wireless communication service; personal communications

system service; cellular telecommunication service; specialized mobile radio service; stationary two-way radio service; and paging service. The term does not include any of the following:

(1) Subscriber charges for access to a video dial tone system.

(2) Charges to video programmers for the transport of video programming.

(3) Charges for access to the Internet. Access to the Internet does not include any of the following:

(i) The transport over the Internet or any proprietary network using the Internet protocol of telephone calls, facsimile transmissions or other telecommunications traffic to or from end users on the public switched telephone network if the signal sent from or received by an end user is not in an Internet protocol.

(ii) Telecommunications services purchased by an Internet service provider to deliver access to the Internet to its customers.

(4) Mobile telecommunications services.

“Transient vendor.” As follows:

(1) Any person who:

(i) brings into this Commonwealth, by automobile, truck or other means of transportation, or purchases in this Commonwealth tangible personal property the sale or use of which is subject to the tax imposed by this chapter or comes into this Commonwealth to perform services the sale or use of which is subject to the tax imposed by this chapter;

(ii) offers or intends to offer such tangible personal property or services for sale at retail within this Commonwealth; and

(iii) does not maintain an established office, distribution house, sales house, warehouse, service enterprise, residence from which business is conducted or other place of business within this Commonwealth.

(2) The term shall not include a person who delivers tangible personal property within this Commonwealth pursuant to orders for the property which were solicited or placed by mail or other means.

(3) The term shall not include a person who handcrafts items for sale at special events, including, but not limited to, fairs, carnivals, art and craft shows and other festivals and celebrations within this Commonwealth.

“Use.” As follows:

(1) The exercise of any right or power incidental to the ownership, custody or possession of tangible personal property and shall include, but not be limited to, transportation, storage or consumption.

(2) The obtaining by a purchaser of the service of printing or imprinting of tangible personal property when such purchaser furnishes, either directly or indirectly, the articles used in the printing or imprinting.

(3) The obtaining by a purchaser of the services of:

(i) Washing, cleaning, waxing, polishing or lubricating of motor vehicles whether or not any tangible personal property is transferred to the purchaser in conjunction with such services.

(ii) Inspecting motor vehicles pursuant to the mandatory requirements of 75 Pa.C.S. (relating to vehicles).

(4) (i) The obtaining by a purchaser of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property including wearing apparel or shoes or applying or installing tangible personal property as a repair or replacement part of other tangible personal property including wearing apparel or shoes, whether or not the services are performed directly or by any means

including by coin-operated self-service laundry equipment for wearing apparel or household goods, and whether or not any tangible personal property is transferred to the purchaser in conjunction therewith, except such services as are obtained in the construction, reconstruction, remodeling, repair or maintenance of real estate, except that this paragraph shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under section 1204(26) (relating to exclusions from tax) or on diaper service.

(ii) The term shall not include:

(A) Any tangible personal property acquired and kept, retained or over which power is exercised within this Commonwealth on which the taxing of the storage, use or other consumption thereof is expressly prohibited by the Constitution of the United States or which is excluded from tax under other provisions of this chapter.

(B) The use or consumption of tangible personal property, including, but not limited to, machinery and equipment and parts therefor, and supplies or the obtaining of the services described in this paragraph and paragraphs (2) and (3) directly in the operations of:

(I) The manufacture of tangible personal property.

(II) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term "farming" shall include the propagation and raising of ranch-raised furbearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. (relating to game) and the propagation and raising of horses to be used exclusively for commercial racing activities.

(III) The producing, delivering or rendering of a public utility service, or the constructing, reconstructing, remodeling, repairing or maintaining the facilities which are directly used in producing, delivering or rendering a public utility service.

(IV) Processing as defined in this section.

(iii) The exclusions provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to any vehicle required to be registered under 75 Pa.C.S. except those vehicles directly used by a public utility engaged in the business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used machinery, equipment, parts or foundations therefor that may be affixed to such real estate.

(iv) The exclusions provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or services by any person other than the person directly using the same in the operations described in subparagraph (ii)(B)(I), (II), (III) and (IV).

(v) The exclusion provided in subparagraph (iii) shall not apply to:

(A) construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain facilities not used directly by the purchaser in the production, delivering or rendition of public utility service; or

(B) tools and equipment used but not installed in the maintenance of facilities used directly in the production, delivering or rendition of a public utility service.

(vi) The exclusion provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to the services enumerated in paragraphs (9) through (26) nor to lobbying services, adjustment services, collection services or credit reporting services, secretarial or editing services, disinfecting or pest control services, building maintenance or cleaning services, employment agency services, help supply services, lawn care service or self-storage service, except that the exclusion provided in subparagraph (ii)(B)(II) for farming, dairying and agriculture shall apply to the service enumerated in the definition of "disinfecting or pest control services."

(5) Where tangible personal property or services are utilized for purposes constituting a use, and for purposes excluded from this definition, it shall be presumed that the property or services are utilized for purposes constituting a sale at retail and subject to tax unless the user thereof proves to the Department of Revenue that the predominant purposes for which the property or services are utilized do not constitute a sale at retail.

(6) The term "use" with respect to "liquor" and "malt or brewed beverages" shall include the purchase of "liquor" from any "Pennsylvania liquor store" by any person for any purpose and the purchase of "malt or brewed beverages" from a "manufacturer of malt or brewed beverages," "distributor" or "importing distributor" by any person for any purpose, except purchases from a "manufacturer of malt or brewed beverages" by a "distributor" or "importing distributor," or purchases from an "importing distributor" by a "distributor" within the meaning of the Liquor Code. The term "use" shall not include any purchase of "malt or brewed beverages" from a "retail dispenser" or any purchase of "liquor" or "malt or brewed beverages" from a person holding a "retail liquor license" within the meaning of and pursuant to the provisions of the Liquor Code, but shall include the exercise of any right or power incidental to the ownership, custody or possession of "liquor" or "malt or brewed beverages" obtained by the person exercising such right or power in any manner other than pursuant to the provisions of the Liquor Code.

(7) The use of tangible personal property purchased at retail upon which the services described in paragraphs (2), (3) and (4) have been performed shall be deemed to be a use of the services by the person using the property.

(8) The term shall not include the providing of a motor vehicle to a nonprofit private or public school to be used by the school for the sole purpose of driver education.

(9) The obtaining by the purchaser of lobbying services.

(10) The obtaining by the purchaser of adjustment services, collection services or credit reporting services.

(11) The obtaining by the purchaser of secretarial or editing services.

(12) The obtaining by the purchaser of disinfecting or pest control services, building maintenance or cleaning services.

(13) The obtaining by the purchaser of employment agency services or help supply services.

(14) (Reserved).

(15) The obtaining by the purchaser of lawn care service.

(16) The obtaining by the purchaser of storage and self-storage service.

(17) The obtaining by a construction contractor of tangible personal property or services provided to tangible personal property which will be used pursuant to a construction contract whether or not the tangible personal property or services are transferred.

(18) The obtaining of mobile telecommunications service by a customer.

(19) The obtaining by the purchaser of lodging services.

(20) The obtaining by the purchaser of personal services.

(21) (Reserved).

(22) The obtaining by the purchaser of recreation services.

(23) (Reserved).

(24) (Reserved).

(25) (Reserved).

(26) (Reserved).

(27) (Reserved).

(28) The obtaining by the purchaser of advertising services.

(29) The obtaining by the purchaser of detective services.

(30) The obtaining by the purchaser of management consulting services.

“Used prebuilt housing.” Prebuilt housing that was previously subject to a sale to a prebuilt housing purchaser.

“Vendor.” Any person maintaining a place of business in this Commonwealth, selling or leasing tangible personal property, or rendering services, the sale or use of which is subject to the tax imposed by this chapter, but not including any employee who in the ordinary scope of employment renders services to the employer of the employee in exchange for wages and salaries.

SUBCHAPTER B IMPOSITION OF TAX

Sec.

1202. Imposition of tax.

1203. Computation of tax.

§ 1202. Imposition of tax.

(a) Sales tax.—There is hereby imposed upon each separate sale at retail of tangible personal property or services within this Commonwealth a tax of 6% of the purchase price. The tax shall be collected by the vendor from the purchaser and shall be paid over to this Commonwealth as provided in this chapter.

(b) Use tax.—There is hereby imposed upon the use within this Commonwealth of tangible personal property purchased at retail and on those services purchased at retail a tax of 6% of the purchase price. The tax shall be paid to the Commonwealth by the person who makes such use, except that such tax shall not be paid to the Commonwealth by that person where that person has paid the tax imposed by subsection (a) or has paid the tax imposed by this subsection to the vendor with respect to such use.

(c) Telecommunications services.—

(1) Notwithstanding any other provision of this chapter, the tax with respect to telecommunications service shall be computed at the rate of 6% upon the total amount charged to customers for such services, irrespective of whether that charge is based upon a flat rate or upon a message unit charge.

(2) A telecommunications service provider shall have no responsibility or liability to the Commonwealth for billing, collecting or remitting taxes that apply to services, products or other commerce sold over telecommunications lines by third-party vendors.

(3) To prevent actual multistate taxation of interstate telecommunications service, a taxpayer, upon proof that the taxpayer has paid a similar tax to another state on the same interstate telecommunications service, shall be allowed a credit against the tax imposed by this section on the same interstate

telecommunications service to the extent of the amount of the tax properly due and paid to the other state.

(d) Vending machine sales of food and beverages.—Notwithstanding any other provisions of this chapter, the sale or use of food and beverages dispensed by means of coin operated vending machines shall be taxed at the rate of 6% of the receipts collected from the machine.

(e) Prepaid telecommunications.—

(1) Notwithstanding any provisions of this chapter, the sale or use of prepaid telecommunications evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b).

(2) The sale or use of prepaid telecommunications not evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b) and shall be deemed to occur at the purchaser’s billing address.

(3) (i) Notwithstanding paragraph (2), the sale or use of prepaid telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of 6% of the receipts collected on each sale if the service provider elects to collect the tax imposed by this chapter on receipts of each sale.

(ii) The service provider shall notify the department of its election and shall collect the tax on receipts of each sale until the service provider notifies the department otherwise.

(e.1) Prepaid mobile telecommunications services.—

(1) Notwithstanding any other provision of this chapter, the sale or use of prepaid mobile telecommunications service evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b).

(2) The sale or use of prepaid mobile telecommunications service not evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b) and shall be deemed to occur at the purchaser’s billing address or the location associated with the mobile telephone number or the point of sale, whichever is applicable.

(3) (i) Notwithstanding paragraph (2), the sale or use of prepaid mobile telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of 6% of the receipts collected on each sale if the service provider elects to collect the tax imposed by this chapter on receipts of each sale.

(ii) The service provider shall notify the department of its election and shall collect the tax on receipts of each sale until the service provider notifies the department otherwise.

(f) Prebuilt housing.—

(1) Notwithstanding any other provision of this chapter, tax with respect to sales of prebuilt housing shall be imposed, subject to the provisions of paragraph (2), on the prebuilt housing builder at the time of the prebuilt housing sale within this Commonwealth and shall be paid and reported by the prebuilt housing builder to the department in the time and manner provided in this chapter.

(2) A manufacturer of prebuilt housing may, at its option, precollect the tax from the prebuilt housing builder at the time of sale to the prebuilt housing builder.

(3) In any case where prebuilt housing is purchased and the tax is not paid by the prebuilt housing builder or precollected by the manufacturer, the prebuilt housing purchaser shall remit tax directly to the department if the prebuilt housing is used in this Commonwealth without regard to whether the prebuilt housing becomes a real estate structure.

(g) Mobile telecommunications services provided by home service provider.—Notwithstanding any other provisions of this chapter and in accordance with the Mobile Telecommunications Sourcing Act

(Public Law 106-252, 4 U.S.C. § 116), the sale or use of mobile telecommunications services which are deemed to be provided to a customer by a home service provider under section 4 U.S.C. § 117(a) and (b) shall be subject to the tax of 6% of the purchase price. The tax shall be collected by the home service provider from the customer and shall be paid over to the Commonwealth as provided in this chapter if the customer's place of primary use is located within this Commonwealth, regardless of where the mobile telecommunications services originate, terminate or pass through. The words and phrases used in this subsection shall have the same meanings given to them in the Mobile Telecommunications Sourcing Act.

§ 1203. Computation of tax.

The amount of tax imposed by section 1202 (relating to imposition of tax) shall be computed as follows:

- (1) If the purchase price is 10¢ or less, no tax shall be collected.
- (2) If the purchase price is 11¢ or more but less than 18¢, 1¢ shall be collected.
- (3) If the purchase price is 18¢ or more but less than 35¢, 2¢ shall be collected.
- (4) If the purchase price is 35¢ or more but less than 51¢, 3¢ shall be collected.
- (5) If the purchase price is 51¢ or more but less than 68¢ cents, 4¢ shall be collected.
- (6) If the purchase price is 68¢ or more but less than 85¢, 5¢ shall be collected.
- (7) If the purchase price is 85¢ or more but less than \$1.01, 6¢ shall be collected.
- (8) If the purchase price is more than \$1.00, 6% of each dollar of purchase price plus the charges set forth in this section upon any fractional part of a dollar in excess of even dollars shall be collected.

SUBCHAPTER C
EXCLUSIONS FROM TAX

Sec.

1204. Exclusions from tax.

1205. Alternate imposition of tax.

1206. Credit against tax.

§ 1204. Exclusions from tax.

The tax imposed by section 1202 (relating to imposition of tax) shall not be imposed upon any of the following:

- (1) The sale at retail or use of tangible personal property or services sold by or purchased from a person that is not a vendor in an isolated transaction or sold by or purchased from a person that is a vendor but is not a vendor with respect to the tangible personal property or services sold or purchased in the transaction. This paragraph does not apply to motor vehicles, trailers, semitrailers, motor boats, aircraft or other similar tangible personal property required under either Federal law or the law of this Commonwealth to be registered or licensed. Inventory and stock in trade sold at retail or used shall not be excluded from the tax by this paragraph.
- (2) The use of tangible personal property purchased by a nonresident person outside of, and brought into, this Commonwealth for use in this Commonwealth for a period not to exceed seven days or for a period of time when the nonresident is a tourist or vacationer, as long as the tangible personal property is not consumed within this Commonwealth.
- (3) The use of tangible personal property in accordance with the following:
 - (i) The property is purchased outside this Commonwealth for use outside this Commonwealth by an individual or business entity that, at the time of purchase, is not:
 - (A) a resident of this Commonwealth;
 - (B) actually doing business within this Commonwealth.

(ii) The purchaser later brings the tangible personal property into this Commonwealth in connection with the establishment of a permanent business or residence in this Commonwealth.

(iii) The property has been purchased more than six months prior to the earlier of:

(A) the date it was first brought into this Commonwealth; or

(B) the establishment of a business or residence under subparagraph (ii).

(iv) This paragraph does not apply to tangible personal property temporarily brought into this Commonwealth for the performance of contracts for the construction, reconstruction, remodeling, repairing and maintenance of real estate.

(4) (Reserved).

(5) The sale at retail or use of steam, natural and manufactured and bottled gas, fuel oil, electricity or intrastate subscriber line charges, basic local telephone service or telegraph service when purchased directly by the user thereof solely for his own residential use and charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate.

(6) (Reserved).

(7) (Reserved).

(8) (Reserved).

(9) (Reserved).

(10) (i) The sale at retail to or use by:

(A) any charitable organization, volunteer firemen's organization or nonprofit educational institution; or

(B) a religious organization for religious purposes of tangible personal property or services other than pursuant to a construction contract.

(ii) The exclusion under this paragraph shall not apply with respect to any tangible personal property or services used in any unrelated trade or business carried on by such organization or institution or with respect to any materials, supplies and equipment used and transferred to the organization or institution in the construction, reconstruction, remodeling, renovation, repairs and maintenance of any real estate structure, other than building machinery and equipment, except materials and supplies when purchased by such organizations or institutions for routine maintenance and repairs.

(11) The sale at retail or use of gasoline and other motor fuels, the sales of which are otherwise subject to excise taxes under 75 Pa.C.S. Ch. 90 (relating to liquid fuels and fuels tax).

(12) The sale at retail to, or use by the United States, this Commonwealth or its instrumentalities or political subdivisions of tangible personal property or services.

(13) The sale at retail or use of wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, nonreturnable containers and all other wrapping supplies, if the use is incidental to the delivery of personal property. This paragraph does not apply to a charge for wrapping or packaging.

(14) Sale at retail or use of vessels designed for commercial use of registered tonnage of 50 tons or more when produced by the builders thereof upon special order of the purchaser.

(15) Sale at retail of tangible personal property or services used or consumed in building, rebuilding, repairing and making additions to or replacements in and upon vessels designed for commercial use of registered tonnage of 50 tons or more upon special order of the purchaser, or when rebuilt,

repaired or enlarged, or when replacements are made upon order of or for the account of the owner.

(16) The sale at retail or use of tangible personal property or services to be used or consumed for ship cleaning or maintenance or as fuel, supplies, ships' equipment, ships' stores or sea stores on vessels designed for commercial use of registered tonnage of 50 tons or more to be operated principally outside the limits of this Commonwealth.

(17) The sale at retail or use of any of the following:

(i) Prescription or nonprescription medicines, drugs or medical supplies.

(ii) Crutches and wheelchairs for the use of persons who are walking impaired.

(iii) Artificial limbs, artificial eyes and artificial hearing devices when designed to be worn on the person of the purchaser or user.

(iv) False teeth and materials used by a dentist in dental treatment.

(v) Eyeglasses when especially designed or prescribed by an ophthalmologist, oculist or optometrist for the personal use of the owner or purchaser.

(vi) Artificial braces and supports designed solely for the use of persons who are walking impaired or any other therapeutic, prosthetic or artificial device designed for the use of a particular individual to correct or alleviate a physical incapacity, including, but not limited to, hospital beds, iron lungs and kidney machines.

(18) The sale at retail or use of coal.

(19) (Reserved).

(20) (Reserved).

(21) (Reserved).

(22) (Reserved).

(23) (Reserved).

(24) The sale at retail or use of motor vehicles, trailers and semi-trailers, or bodies attached to the chassis of motor vehicles, trailers or semi-trailers which are:

(i) sold to a nonresident;

(ii) to be used outside of this Commonwealth;

and

(iii) registered in another state within 20 days after delivery to the vendee.

(25) The sale at retail or use of water.

(26) (i) The sale at retail or use of all vesture, wearing apparel, raiments, garments, footwear and other articles of clothing, including clothing patterns and items that are to be a component part of clothing, worn or carried on or about the human body.

(ii) This paragraph does not include accessories, ornamental wear, formal day or evening apparel, and articles made of fur on the hide or pelt or any material imitative of fur and articles of which such fur, real, imitation or synthetic, is the component material of chief value, but only if such value is more than three times the value of the next most valuable component material, and sporting goods and clothing not normally used or worn when not engaged in sports.

(27) (Reserved).

(28) (Reserved).

(29) (i) The sale at retail or use of food and beverages for human consumption.

(ii) This paragraph shall not apply to any of the following:

(A) Soft drinks.

(B) Malt and brewed beverages and spirituous and vinous liquors.

(iii) Food or beverages, whether sold for consumption on or off the premises or on a "take-out" or "to go" basis or delivered to the purchaser or consumer,

when purchased from persons engaged in the business of catering; or from persons engaged in the business of operating establishments from which ready-to-eat food and beverages are sold.

(iv) (A) For purposes of this paragraph the term "establishments" includes, but is not limited to, restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels, night clubs, fast food operations, pizzerias, fairs, carnivals, lunch carts, ice cream stands, snack bars, cafeterias, employee cafeterias, theaters, stadiums, arenas, amusement parks, carryout shops, coffee shops and other establishments whether mobile or immobile.

(B) The term does not include bakeries, pastry shops, donut shops, delicatessens, grocery stores, supermarkets, farmer's markets, convenience stores or vending machines from which food or beverages ready to eat are sold except for the sale of meals, sandwiches, food from salad bars, hand-dipped or hand-served ice-based products, including ice cream and yogurt, hot soup, hot pizza and other hot food items, brewed coffee and hot beverages.

(C) The term "beverages" does not include malt and brewed beverages and spirituous and vinous liquors, but shall include soft drinks.

(v) This paragraph does not apply to the sale at retail of food and beverages at or from a school or church in the ordinary course of the activities of such organization.

(30) (i) The sale at retail or use of newspapers.

(ii) For purposes of this paragraph, the term "newspaper" shall mean a legal newspaper or publication containing matters of general interest and reports of current events which qualifies as a newspaper of general circulation qualified to carry a legal advertisement as those terms are defined in 45 Pa.C.S. § 101 (relating to definitions), not including magazines.

(iii) This paragraph includes any printed advertising materials circulated with such newspaper regardless of where or by whom the advertising material was produced.

(31) The sale at retail or use of caskets and burial vaults for human remains and markers and tombstones for human graves.

(32) The sale at retail or use of flags of the United States of America and the Commonwealth.

(33) The sale at retail or use of textbooks for use in schools, colleges and universities, either public or private, that are recognized by the Department of Education, when the textbooks are purchased on behalf of or through such schools, colleges or universities.

(34) The sale at retail, or use of motion picture film rented or licensed from a distributor for the purpose of commercial exhibition.

(35) (Reserved).

(36) The sale at retail or use of rail transportation equipment used in the movement of personalty.

(37) (Reserved).

(38) The sale at retail of horses, if at the time of purchase, the seller is directed to ship or deliver the horse to an out-of-State location, whether or not the charges for shipment are paid for by the seller or the purchaser. The seller must obtain a bill of lading, either from the carrier or from the purchaser, who, in turn has obtained the bill of lading from the carrier, reflecting delivery to the out-of-State address to which the horse has been

shipped. The seller must execute a "Certificate of Delivery to Destination Outside of the Commonwealth" for each bill of lading reflecting out-of-State delivery. The seller shall retain the certificate of delivery form to justify the noncollection of sales tax with respect to the transaction to which the form relates. In transactions where a horse is sold by the seller and delivered to a domiciled person, agent or corporation prior to its being delivered to an out-of-State location, the "Certificate of Delivery to Destination Outside of the Commonwealth" form must have attached to it bills of lading both for the transfer to the domiciled person, agent or corporation and from the aforementioned to the out-of-State location.

(39) The sale at retail or use of fish feed purchased by or on behalf of sportsmen's clubs, fish cooperatives or nurseries approved by the Pennsylvania Fish Commission.

(40) (Reserved).

(41) The sale at retail of supplies and materials to tourist promotion agencies which receive grants from the Commonwealth for distribution to the public as promotional material and the use of supplies and materials by the agencies for the purposes set forth in this paragraph.

(42) The sale or use of brook trout (*salvelinus fontinalis*), brown trout (*Salmo trutta*) or rainbow trout (*Salmo gairdneri*).

(43) The sale at retail or use of buses to be used exclusively for the transportation of children for school purposes.

(44) The sale at retail or use of firewood. For the purpose of this paragraph, "firewood" means the product of trees when severed from the land and cut into proper lengths for burning and pellets made from pure wood sawdust if used for fuel for cooking, hot water production or to heat residential dwellings.

(45) The sale at retail or use of materials used in the construction and erection of objects purchased by not-for-profit organizations for purposes of commemoration and memorialization of historical events, provided that the object is erected upon publicly owned property or property to be conveyed to a public entity upon the commemoration or memorialization of the historical event.

(46) The sale at retail or use of tangible personal property purchased in accordance with the Food Stamp Act of 1977 (Public Law 95-113, 7 U.S.C. §§ 2011-2029).

(47) (Reserved).

(48) (Reserved).

(49) The sale at retail or use of food and beverages by nonprofit associations which support sports programs. For purposes of this paragraph, the words and phrases shall have the following meanings:

"Nonprofit association." An entity which is organized as a nonprofit corporation or nonprofit unincorporated association under the laws of this Commonwealth or the United States or any entity which is authorized to do business in this Commonwealth as a nonprofit corporation or unincorporated association under the laws of this Commonwealth, including youth or athletic, volunteer fire, ambulance, religious, charitable, fraternal, veterans or civic, or any separately chartered auxiliary of the association, if organized and operated on a nonprofit basis.

"Sports program." Baseball (including softball), football, basketball, soccer and any other competitive sport formally recognized as a sport by the United States Olympic Committee as specified by and under the jurisdiction of the Amateur Sports Act of 1978 (Public Law 95-606, 36 U.S.C. § 371 et seq.), the Amateur Athletic Union or the National Collegiate Athletic Association. The term shall be limited to a program or that portion of a program that is organized for recreational purposes. The term shall be limited to a program or that portion of a program which is organized for recreational purposes and the activities of which are substantially for such purposes and which

is primarily for participants who are 18 years of age or younger or whose 19th birthdays occur during the year of participation or the competitive season, whichever is longer. There shall, however, be no age limitation for programs operated for persons with physical disabilities or persons with mental retardation.

"Support." The funds raised from sales are used to pay the expenses of a sports program or the nonprofit association sells the food and beverages at a location where a sports program is being conducted under this act.

(50) The sale at retail or use of subscriptions for magazines. The term "magazine" refers to a periodical published at regular intervals not exceeding three months and which are circulated among the general public, containing matters of general interest and reports of current events published for the purpose of disseminating information of a public character or devoted to literature, the sciences, art or some special industry. This paragraph includes any printed advertising material circulated with the periodical or publication, regardless of where or by whom the printed advertising material was produced.

(51) (Reserved).

(52) (Reserved).

(53) (Reserved).

(54) The sale at retail to or use by a producer of commercial motion pictures of any tangible personal property directly used in the production of a feature-length commercial motion picture distributed to a national audience as long as:

(i) the production of any motion picture for which the property will be used does not violate any Federal or State law; and

(ii) the purchaser furnishes to the vendor a certificate substantially in the form as the Department of Community and Economic Development may, by regulation, prescribe, stating that the sale is exempt from tax under this paragraph.

(55) The sale at retail or use of horses to be used exclusively for commercial racing activities and the sale at retail and use of feed, bedding, grooming supplies, riding tack, farrier services, portable stalls and sulkies for horses used exclusively for commercial racing activities.

(56) The sale at retail or use of tangible personal property or services used, transferred or consumed in installing or repairing equipment or devices designed to assist persons in ascending or descending a stairway when:

(i) The equipment or devices are used by a person who, by virtue of a physical disability, is unable to ascend or descend stairs without the aid of such equipment or device.

(ii) The equipment or device is installed or used in the person's place of residence.

(iii) A physician has certified the physical disability of the person in whose residence the equipment or device is installed or used.

(57) The sale at retail to or use by a construction contractor of building machinery and equipment and services thereto that are:

(i) Transferred pursuant to a construction contract for any charitable organization, volunteer firemen's organization, nonprofit educational institution or religious organization for religious purposes, if:

(A) The building machinery and equipment and services thereto are not used in any unrelated trade or business.

(B) Transferred to the United States or the Commonwealth or its instrumentalities or political subdivisions.

(58) (Reserved).

(59) The sale at retail or use of molds and related mold equipment used directly and predominantly in the manufacture of products, regardless of whether the person that holds title to the equipment manufactures a product.

(60) The sale or use of used prebuilt housing.

(61) (Reserved).

(62) The sale at retail or use of tangible personal property or services which are directly used in farming, dairying or agriculture when engaged in as a business enterprise whether or not the sale is made to the person directly engaged in the business enterprise or to a person contracting with the person directly engaged in the business enterprise for the production of food.

(63) The sale at retail or use of separately stated fees paid pursuant to 13 Pa.C.S. § 9525 (relating to fees).

(64) The sale at retail or use by a construction contractor, employed by a public school district pursuant to a construction contract, of any materials and building supplies which, during construction or reconstruction, are made part of any public school building utilized for instructional classroom education within this Commonwealth, if the construction or reconstruction:

(i) Is necessitated by a disaster emergency, as defined in 35 Pa.C.S. § 7102 (relating to definitions); and

(ii) takes place during the period when there is a declaration of disaster emergency under 35 Pa.C.S. § 7301(c) (relating to general authority of Governor).

§ 1205. Alternate imposition of tax.

(a) Dealers of motor vehicles.—A person actively and principally engaged in the business of selling new or used motor vehicles, trailers or semitrailers, and registered with the department in the dealer's class who:

(1) acquires a motor vehicle, trailer or semitrailer for the purpose of resale; and

(2) prior to the resale, uses the motor vehicle, trailer or semitrailer for a taxable use under this chapter

may pay a tax equal to 6% of the fair rental value of the motor vehicle, trailer or semitrailer during that use.

(b) Commercial aircraft operators.—A commercial aircraft operator who:

(1) acquires an aircraft for the purpose of resale, or lease, or is entitled to claim another valid exemption at the time of purchase; and

(2) subsequent to the purchase, periodically uses the same aircraft for a taxable use under this chapter

may elect to pay a tax equal to 6% of the fair rental value of the aircraft during that use.

(c) Nonapplicability.—This section shall not apply to the use of a vehicle as a wrecker, parts truck, delivery truck or courtesy car.

§ 1206. Credit against tax.

(a) Prerequisites.—

(1) Subject to the provisions of paragraph (2), a credit against the tax imposed by section 1202 (relating to imposition of tax) shall be granted with respect to tangible personal property or services purchased for use outside this Commonwealth equal to the tax paid to another state by reason of the imposition by the other state of a tax similar to the tax imposed by this chapter.

(2) No credit shall be granted under this section unless the other state grants substantially similar tax relief by reason of the payment of tax under this chapter.

(b) Call center credit.—A credit against the tax imposed by section 1202 (relating to imposition of tax) on telecommunications services shall be granted to a call center for gross receipts tax paid by a telephone company on the receipts derived from the sale of incoming and outgoing interstate telecommunications services to the call center under section 1101(a)(2) of the Tax Reform Code of 1971. The following apply:

(1) A telephone company, upon request, shall notify a call center of the amount of gross receipts tax paid by the telephone company on the receipts derived from the sale of incoming and outgoing interstate telecommunications services to the call center.

(2) A call center that is eligible for the credit in this subsection may apply for a tax credit as set forth in this subsection.

(3) By February 15, a taxpayer must submit an application to the department for gross receipts tax paid on the receipts derived from the sale of incoming and outgoing interstate telecommunications services incurred in the prior calendar year.

(4) By April 15 of the calendar year following the close of the calendar year during which the gross receipts tax was incurred, the department shall notify the applicant of the amount of the applicant's tax credit approved by the department.

(5) The total amount of tax credits provided for in this subsection and approved by the department shall not exceed \$30,000,000 in any fiscal year. If the total amount of tax credits applied for by all applicants exceeds the amount allocated for those credits, then the credit to be received by each applicant shall be determined as follows:

(i) Divide:

(A) the tax credit applied for by the applicant; by

(B) the total of all tax credits applied for by all applicants.

(ii) Multiply:

(A) the quotient under subparagraph (i); by

(B) the amount allocated for all tax credits.

SUBCHAPTER D LICENSES

Sec.

1208. Licenses.

§ 1208. Licenses.

(a) General rule.—Every person maintaining a place of business in this Commonwealth, selling or leasing services or tangible personal property, the sale or use of which is subject to tax and who has not obtained a license from the department, shall, prior to the beginning of business, make application to the department, on a form prescribed by the department, for a license. If the person maintains more than one place of business in this Commonwealth, the license shall be issued for the principal place of business in this Commonwealth.

(b) Conditions of licensure.—The department shall, after the receipt of an application, issue the license applied for under subsection (a), if the applicant has filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan. The license shall be nonassignable and valid for a period of five years.

(b.1) Grounds for refusal to issue license.—

(1) If an applicant for a license or any person holding a license has not filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan, the department may refuse to issue, may suspend or may revoke said license.

(2) The department shall notify the applicant or licensee of any refusal, suspension or revocation. The notice shall contain a statement that the refusal, suspension or revocation may be made public and shall be sent by first class mail.

(3) An applicant or licensee aggrieved by the determination of the department may file an appeal pursuant to the provisions for administrative appeals in this chapter.

(4) In the case of a suspension or revocation which is appealed, the license shall remain valid pending a final outcome of the appeals process. Notwithstanding sections 274, 353(f), 408(b), 603, 702, 802, 904 and 1102 of the Tax Reform Code or any other provision of law to the contrary, if no appeal is taken or if an appeal is taken and denied at the conclusion of the appeal process, the department may disclose, by publication or otherwise, the identity of a person and the fact that the person's license has been refused, suspended or revoked under this subsection. The department may include the basis for refusal, suspension or revocation in the disclosure.

(c) Penalties.—

(1) A person who maintains a place of business in this Commonwealth for the purpose of selling or leasing services or tangible personal property, the sale or use of which is subject to tax, without having first been licensed by the department shall be guilty of a summary offense and, upon conviction thereof, be sentenced to pay a fine of not less than \$300 nor more than \$1,500 and, in default thereof, to undergo imprisonment of not less than five days nor more than 30 days.

(2) The penalties imposed under this subsection shall be in addition to any other penalties imposed by this chapter.

(3) For purposes of this subsection, the offering for sale or lease of any service or tangible personal property, the sale or use of which is subject to tax, during any calendar day shall constitute a separate violation.

(4) The Secretary of Revenue may designate employees of the department to enforce the provisions of this subsection. Those employees shall exhibit proof of and be within the scope of the designation when instituting proceedings as provided by the Pennsylvania Rules of Criminal Procedure.

(d) Liability to pay tax remains.—The failure of any person to obtain a license shall not relieve that person of liability to pay the tax imposed by this chapter.

SUBCHAPTER E HOTEL OCCUPANCY TAX

Sec.

1209. Definitions.

1210. Imposition of tax.

1211. Seasonal tax returns.

§ 1209. Definitions.

(a) General rule.—For the purposes of this subchapter, the following words, terms and phrases shall have the meaning given to them in this subsection, unless the context clearly indicates otherwise:

“Hotel.” A building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term shall not include any charitable, educational or religious institution summer camp for children, hospital or nursing home.

“Occupancy.” The use or possession or the right to the use or possession by any person of any room or rooms in a hotel for any purpose or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms.

“Occupant.” A person who for a consideration, uses, possesses or has a right to use or possess any room or rooms in a hotel under a lease, concession, permit, right of access, license or agreement.

“Operator.” A person who operates a hotel.

“Rent.” The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever. The term shall not include a gratuity.

(b) Special definitions.—The following words and phrases, when used in Subchapters D (relating to licenses) and F (relating to returns), for the purposes of those subchapters only, shall, in addition to the meaning ascribed to them in section 1201 (relating to definitions), have

the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

“Maintaining a place of business in this Commonwealth.” Being the operator of a hotel in this Commonwealth.

“Purchase at retail.” Occupancy.

“Purchase price.” Rent.

“Purchaser.” An occupant.

“Sale at retail.” The providing of occupancy to an occupant by an operator.

“Services.” Occupancy.

“Tangible personal property.” Occupancy.

“Use.” Occupancy.

“Vendor.” Operator.

§ 1210. Imposition of tax.

There is hereby imposed an excise tax of 6% of the rent upon every occupancy of a room or rooms in a hotel in this Commonwealth, which tax shall be collected by the operator from the occupant and paid to the Commonwealth as provided by this chapter and the Tax Reform Code.

§ 1211. Seasonal tax returns.

Notwithstanding any other provision of this chapter or the Tax Reform Code, the department may, by regulation, waive the requirement for the filing of quarterly returns in the case of an operator whose hotel is operated only during certain seasons of the year, and may provide for the filing of returns by such persons at times other than those provided by section 1221 of the Tax Reform Code.

SUBCHAPTER F RETURNS

Sec.

1215. Persons required to make returns.

1216. Form of returns.

1217. Time for filing returns.

1218. Extension of time for filing returns.

1219. Place for filing returns.

1220. Timely mailing treated as timely filing and payment.

§ 1215. Persons required to make returns.

A person required to pay tax to the department or collect and remit tax to the department shall file returns with respect to such tax.

§ 1216. Form of returns.

The returns required by section 1215 (relating to persons required to make returns) shall be on forms prescribed by the department and shall show such information with respect to the taxes imposed by this chapter as the department may reasonably require.

§ 1217. Time for filing returns.

(a) Quarterly and monthly returns.—

(1) A return shall be filed quarterly by every licensee on or before the 20th day of April, July, October and January for the three months ending the last day of March, June, September and December.

(2) A return shall be filed monthly with respect to each month by every licensee whose total tax reported, or in the event no report is filed, the total tax which should have been reported, for the third calendar quarter of the preceding year equals or exceeds \$600. The returns shall be filed on or before the 20th day of the next succeeding month with respect to which the return is made. Any licensee required to file monthly returns under this section shall be relieved from filing quarterly returns.

(b) Annual returns.—For the calendar year 1971 and for each year thereafter no annual return shall be filed except as may be required by rules and regulations of the department promulgated and published at least 60 days prior to the end of the year with respect to which the returns are made. Where annual returns are required, licensees shall not be required to file the returns prior to the 20th day of the year succeeding the year with respect to which the returns are made.

(c) Other returns.—A person, other than a licensee, who is liable to pay to the department any tax under this chapter, shall file a return on or before the 20th day of the month succeeding the month in which the person becomes liable for the tax.

(d) Small taxpayers.—The department, by regulation, may waive the requirement for the filing of a quarterly return in the case of any licensee whose individual tax collections do not exceed \$75 per calendar quarter and may provide for reporting on a less frequent basis in such cases.

§ 1218. Extension of time for filing returns.

The department may on written application and for good cause shown grant a reasonable extension of time for filing any return required under this chapter. The time for making a return shall not be extended for more than three months.

§ 1219. Place for filing returns.

Returns shall be filed with the department at its main office or at any branch office which it may designate for filing returns.

§ 1220. Timely mailing treated as timely filing and payment.

(a) General rule.—Notwithstanding the provisions of any State tax law to the contrary, when a report or payment of all or any portion of a State tax is required by law to be received by the department or other agency of this Commonwealth on or before a day certain, the taxpayer shall be deemed to have complied with that law if the letter transmitting the report or payment of the tax which has been received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

(b) Presentation of receipt.—For the purposes of this chapter, presentation of a receipt indicating that the report or payment was mailed by registered or certified mail on or before the due date shall be evidence of timely filing and payment.

SUBCHAPTER G PAYMENT

Sec.

1221. Payment.

1222. Time of payment.

1223. Other times for payment.

1224. Place for payment.

1225. Tax held in trust for Commonwealth.

1226. Local receivers of use tax.

1227. Discount.

§ 1221. Payment.

When a return of tax is required under this subchapter, the person required to make the return shall pay the tax to the department.

§ 1222. Time of payment.

(a) Monthly, bimonthly and quarterly payments.—The tax imposed by this chapter and incurred or collected by a licensee shall be due and payable by the licensee on the day the return is required to be filed under the provisions of section 1217 (relating to time for filing returns) and the payment must accompany the return for the preceding period.

(b) Annual payments.—If the amount of tax due for the preceding year as shown by the annual return of any taxpayer is greater than the amount already paid by the taxpayer in connection with the taxpayer's monthly or quarterly returns, the taxpayer shall send with such annual return a remittance for the unpaid amount of tax for the year.

(c) Other payments.—A person other than a licensee liable to pay any tax under this chapter shall remit the tax at the time of filing the return required by this chapter.

§ 1223. Other times for payment.

In the event that the department authorizes a taxpayer to file a return at other times than those specified in section 1217 (relating to time for filing returns), the tax due shall be paid at the time the return is filed.

§ 1224. Place for payment.

The tax imposed by this chapter shall be paid to the department at the place fixed for filing the return.

§ 1225. Tax held in trust for Commonwealth.

(a) General rule.—All taxes collected by any person from purchasers in accordance with this chapter and all taxes collected by any person from purchasers under color of this chapter which have not been properly refunded by the person to the purchaser shall constitute a trust fund for the Commonwealth. The trust shall be enforceable

against that person, his representatives and any person, other than a purchaser to whom a refund has been made properly, receiving any part of the fund without consideration, or knowing that the taxpayer is committing a breach of trust.

(b) Presumption.—A person who receives payment of a lawful obligation of the taxpayer from the fund shall be presumed to have received the same in good faith and without any knowledge of the breach of trust.

(c) Appeal.—A person, other than a taxpayer, against whom the department makes any claim under this section shall have the same right to petition and appeal as is given taxpayers by any provisions of this subchapter.

§ 1226. Local receivers of use tax.

(a) County treasurers.—

(1) A county treasurer may receive use tax due and payable under the provisions of this chapter from any person other than a licensee. The receiving of the taxes shall be pursuant to rules and regulations promulgated by the department and upon forms furnished by the department.

(2) Each county treasurer shall remit to the department all use taxes received under the authority of this section minus the costs of administering this provision not to exceed 1% of the amount of use taxes received, which amount shall be retained in lieu of any commission otherwise allowable by law for the collection of the tax.

(b) Nonapplicability.—This section shall not apply to counties of the first class.

§ 1227. Discount.

If a return is filed by a licensee and the tax shown to be due thereon less any discount is paid all within the time prescribed, the licensee shall be entitled to credit and apply against the tax payable by the licensee a discount of 1% of the amount of the tax collected by the licensee as compensation for the expense of collecting and remitting the same and as a consideration of the prompt payment thereof.

SUBCHAPTER H ASSESSMENT AND REASSESSMENT

Sec.

1230. Assessment.

1231. Mode and time of assessment.

1232. Reassessment.

1233. Assessment to recover erroneous refunds.

1234. Review by Board of Finance and Revenue.

1235. Appeal to Commonwealth Court.

1236. Burden of proof.

§ 1230. Assessment.

The department is authorized and required to make the inquiries, determinations and assessments of the tax, including interest, additions and penalties, imposed by this chapter.

§ 1231. Mode and time of assessment.

(a) Underpayment of tax.—Within a reasonable time after any return is filed, the department shall examine it and, if the return shows a greater tax due or collected than the amount of tax remitted with the return, the department shall issue an assessment for the difference, together with an addition of 3% of such difference, which shall be paid to the department within ten days after a notice of the assessment has been mailed to the taxpayer. If such assessment is not paid within ten days, there shall be added to the assessment and paid to the department an additional 3% of the difference for each month during which the assessment remains unpaid, but the total of all additions shall not exceed 18% of the difference shown on the assessment.

(b) Understatement of tax.—If the department determines that any return or returns of any taxpayer understates the amount of tax due, it shall determine the proper amount and shall ascertain the difference between the amount of tax shown in the return and the amount determined, the difference being hereafter sometimes referred to as the "deficiency." A notice of assessment for the deficiency and the reasons for the deficiency shall then be sent to the taxpayer. The deficiency

shall be paid to the department within 30 days after a notice of the assessment has been mailed to the taxpayer.

(c) Failure to file return.—In the event that any taxpayer fails to file a return required by this chapter, the department may make an estimated assessment, based on information available, of the proper amount of tax owing by the taxpayer. A notice of assessment in the estimated amount shall be sent to the taxpayer. The tax shall be paid within 30 days after a notice of the estimated assessment has been mailed to the taxpayer.

(d) Authority to establish effective rates by business classification.—The department is authorized to make the studies necessary to compute effective rates by business classification, based upon the ratio between the tax required to be collected and taxable sales and to use the rates in arriving at the apparent tax liability of a taxpayer. Any assessment based upon such rates shall be prima facie correct, except that the rate shall not be considered where a taxpayer establishes that the rate is based on a sample inapplicable to the taxpayer.

§ 1232. Reassessment.

(a) Notice of intention to file petition.—Any taxpayer against whom an assessment is made may petition the department for a reassessment. Notice of an intention to file such a petition shall be given to the department within 30 days of the date the notice of assessment was mailed to the taxpayer, except that the department for due cause may accept the notice within 90 days of the date the notice of assessment was mailed. The department by registered mail shall supply the taxpayer with a statement setting forth in reasonable detail the basis of the assessment within 30 days after receipt of the taxpayer's notice of intention to file a petition for reassessment.

(b) Petition for reassessment.—A petition for reassessment shall be filed within 30 days after the basis of assessment has been mailed to the taxpayer. Such petition shall set forth in reasonable detail the grounds upon which the taxpayer claims that the assessment is erroneous or unlawful, in whole or in part, and shall be accompanied by an affidavit or affirmation that the facts contained in the petition are true and correct and that the petition is not interposed for delay. An extension of time for filing the petition may be allowed for cause but in no case shall the extension exceed 120 days.

(c) Hearing.—The department shall hold such hearings as may be necessary for the purpose, at such times and places as it may determine. Each taxpayer who has duly filed a petition for reassessment shall be notified by the department of the time when, and the place where, the hearing in the taxpayer's case will be held.

(d) Decision by department.—It shall be the duty of the department, within six months after receiving a filed petition for reassessment, to dispose of the issue raised by the petition and mail notice of the department's decision to the petitioner. The taxpayer and the department may, however, by stipulation, extend such disposal time by not more than six additional months.

§ 1233. Assessment to recover erroneous refunds.

The department may, within two years of the granting of any refund or credit, or within the period in which an assessment could have been filed by the department with respect to the transaction pertaining to which the refund was granted, whichever period occurs last, file an assessment to recover any refund or part thereof or credit or part thereof which was erroneously made or allowed.

§ 1234. Review by Board of Finance and Revenue.

(a) Time limit.—Within 60 days after the date of mailing of notice by the department of the decision on any petition for reassessment filed with it, the person against whom such assessment was made may, by petition, request the Board of Finance and Revenue to review such decision. The failure of the department to notify the petitioner of a decision within the time provided for by section 1232 (relating to reassessment) shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within 120 days of the date prior to which the department should have mailed to the petitioner its notice of decision.

(b) Petition for review.—Every petition for review filed hereunder shall state specifically the reasons on which the petitioner relies, or shall incorporate by reference the petition for reassessment in which the reasons are stated. The petition shall be supported by affidavit that it is not made for the purpose of delay and that the facts set forth therein are true.

(c) Decision by Board of Finance and Revenue.—The Board of Finance and Revenue shall act finally in disposing of petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department, upon the petition for reassessment, shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on the petition for reassessment, or it may reassess the tax due on such basis as it deems according to law. The board shall give notice of its action to the department and to the petitioner.

§ 1235. Appeal to Commonwealth Court.

Any person aggrieved by the decision of the Board of Finance and Revenue or by the board's failure to act upon a petition for review within six months may appeal in the manner now or hereafter provided by law for appeals in the case of tax settlements.

§ 1236. Burden of proof.

In all cases of petitions for reassessment, review or appeal, the burden of proof shall be upon the petitioner or appellant, as the case may be.

SUBCHAPTER I COLLECTION

Sec.

1237. Collection of tax.

1238. Collection of tax on motor vehicles, trailers and semitrailers.

1239. Precollection of tax.

1240. Bulk and auction sales.

1241. Collection upon failure to request reassessment, review or appeal.

§ 1237. Collection of tax.

(a) Collection by department.—The department shall collect the tax in the manner provided by law for the collection of taxes imposed by the laws of this Commonwealth.

(b) Collection by persons maintaining a place of business in this Commonwealth.—Every person maintaining a place of business in this Commonwealth and selling or leasing tangible personal property or services, the sale or use of which is subject to tax shall collect the tax from the purchaser or lessee at the time of making the sale or lease, and shall remit the tax to the department, unless such collection and remittance is otherwise provided for in this chapter.

(c) Collection by persons delivering property in this Commonwealth.—Every person not otherwise required to collect tax that delivers tangible personal property to a location within this Commonwealth and that unloads, positions, places or assembles the tangible personal property shall collect the tax from the purchaser at the time of delivery and shall remit the tax to the department if the person delivering the tangible personal property is responsible for collecting any portion of the purchase price of the tangible personal property delivered and the purchaser has not provided the person with proof that the tax imposed by this chapter has been or will be collected by the seller or that the purchaser provided the seller with a valid exemption certificate. Every person required to collect tax under this paragraph shall be deemed to be selling or leasing tangible personal property or services, the sale or use of which is subject to the tax imposed under section 1202 (relating to imposition of tax).

(d) Failure to collect tax.—Any person required under this chapter to collect tax from another person, who shall fail to collect the proper amount of such tax, shall be liable for the full amount of the tax which the person should have collected.

(e) Exemption certificates.—If the tax does not apply to the sale or lease of tangible personal property or services, the purchaser or lessee shall furnish to the vendor a certificate indicating that the sale is not legally subject to the tax. The certificate shall be in substantially

the form as the department may, by regulation, prescribe. Where the tangible personal property or service is of a type that is never subject to the tax imposed or where the sale or lease is in interstate commerce, a certificate need not be furnished. Where a series of transactions are not subject to tax, a purchaser or user may furnish the vendor with a single exemption certificate in substantially such form and valid for such period of time as the department may, by regulation, prescribe. The department shall provide all school districts and intermediate units with a permanent tax exemption number.

(f) Good faith reliance on exemption certificate.—An exemption certificate, which is complete and regular and on its face discloses a valid basis of exemption if taken in good faith, shall relieve the vendor from the liability imposed by this section. An exemption certificate accepted by a vendor from a natural person domiciled within this Commonwealth or any association, fiduciary, partnership, corporation or other entity, either authorized to do business within this Commonwealth or having an established place of business within this Commonwealth, in the ordinary course of the vendor's business, which on its face discloses a valid basis of exemption consistent with the activity of the purchaser and character of the property or service being purchased or which is provided to the vendor by a charitable, religious, educational or volunteer firemen's organization and contains the organization's charitable exemption number and which, in the case of any purchase costing \$200 or more, is accompanied by a sworn declaration on a form to be provided by the department of an intended usage of the property or service which would render it nontaxable, shall be presumed to be taken in good faith and the burden of proving otherwise shall be on the department.

(g) Direct payment permits.—The department may authorize a purchaser or lessee who acquires tangible personal property or services under circumstances that make it impossible at the time of acquisition to determine the manner in which the tangible personal property or service will be used, to pay the tax directly to the department, and waive the collection of the tax by the vendor. No such authority shall be granted or exercised, except upon application to the department and the issuance by the department, in its discretion, of a direct payment permit. If a direct payment permit is granted, its use shall be subject to conditions specified by the department, and the payment of tax on all acquisitions pursuant to the permit shall be made directly to the department by the permit holder.

§ 1238. Collection of tax on motor vehicles, trailers and semitrailers.

(a) Direct payment of tax.—Notwithstanding the provisions of section 1237(b)(relating to collection of tax), tax due on the sale at retail or use of a motor vehicle, trailer or semitrailer, except mobile homes as defined in 75 Pa.C.S. § 102 (relating to definitions) required by law to be registered with the department, shall be paid by the purchaser or user directly to the department upon application to the department for an issuance of a certificate of title upon such motor vehicle, trailer or semitrailer. The department shall not issue a certificate of title until the tax has been paid, or evidence satisfactory to the department has been given to establish that tax is not due.

(b) Failure to pay tax.—The department may cancel or suspend any record of certificate of title or registration of a motor vehicle, trailer or semitrailer when the check received in payment of the tax on such vehicle is not paid upon demand. Such tax shall be considered as a first encumbrance against such vehicle and the vehicle may not be transferred without first payment in full of such tax and any interest additions or penalties which shall accrue thereon in accordance with this chapter.

§ 1239. Precollection of tax.

(a) General rule.—The department may, by regulation, authorize or require particular categories of vendors selling tangible personal property for resale to precollect from the purchaser the tax which the purchaser will collect upon making a sale at retail of such tangible personal property. The department, however, may not pursuant to this section require a vendor to precollect tax from a purchaser who purchases for resale more than \$1,000 worth of tangible personal property from such vendor per year.

(b) License exception.—In any case in which a vendor has been authorized to prepay the tax to the person from whom the vendor purchased the tangible personal property for resale, the vendor so authorized to prepay the tax may, under the regulations of the department, be relieved from his duty to secure a license if the duty shall arise only by reason of the vendor's sale of the tangible personal property with respect to which the vendor is, under authorization of the department, to prepay the tax.

(c) Sale at retail.—The vendor, on making a sale at retail of tangible personal property with respect to which the vendor has prepaid the tax, must separately state at the time of resale the proper amount of tax on the transaction, and reimburse himself on account of the taxes which he has previously prepaid. Should such vendor collect a greater amount of tax in any reporting period than the vendor had previously prepaid upon purchase of the goods with respect to which he prepaid the tax, the vendor must file a return and remit the balance to the Commonwealth at the time at which a return would otherwise be due with respect to such sales.

§ 1240. Bulk and auction sales.

A person that sells or causes to be sold at auction, or that sells or transfers in bulk, 51% or more of any stock of goods, wares or merchandise of any kind, fixtures, machinery, equipment, buildings or real estate, involved in a business for which the person is licensed or required to be licensed under the provisions of this chapter, or is liable for filing use tax returns in accordance with the provisions of this chapter, shall be subject to the provisions of section 1403 of the Fiscal Code.

§ 1241. Collection upon failure to request reassessment, review or appeal.

(a) General rule.—The department may collect any tax:

(1) If an assessment of tax is not paid within ten days or 30 days as the case may be after notice thereof to the taxpayer, and no petition for reassessment has been filed.

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

(3) Within 30 days from the date of the decision of the Board of Finance and Revenue upon a petition for review, or of the expiration of the board's time for acting upon such petition, if no appeal has been made.

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

(b) Defenses.—In any such case in a proceeding for the collection of such taxes, the person against whom they were assessed shall not be permitted to set up any ground of defense that might have been determined by the department, the Board of Finance and Revenue or the courts. The defense of failure of the department to mail notice of assessment or reassessment to the taxpayer and the defense of payment of assessment or reassessment, however, may be raised in proceedings for collection by a motion to stay the proceedings.

SUBCHAPTER J NONPAYMENT

Sec.

1242. Lien for taxes.

1243. Suit for taxes.

1244. Tax suit comity.

1245. Service.

§ 1242. Lien for taxes.

(a) Lien imposed.—If any person liable to pay any tax neglects or refuses to pay the tax after demand, the amount, including any interest, addition or penalty, together with any costs that may accrue in addition thereto, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of the person but only after the lien has been entered and docketed of record by the prothonotary of the county where the property is situated. The department may, at any time, transmit, to the prothonotaries of the respective counties, certified copies of all liens for taxes imposed by this chapter and penalties and interest. It shall be the duty of each prothonotary receiving the lien to enter and docket the lien of record in the prothonotary's office, which

lien shall be indexed as judgments are indexed. No prothonotary shall require, as a condition precedent to the entry of the liens, the payment of the costs incident to the liens.

(b) Priority of lien and effect on judicial date; no discharge by sale on junior lien.—The lien imposed under this section shall have priority from the date of its recording under subsection (a), and shall be fully paid and satisfied out of the proceeds of any judicial sale of property subject to the lien before any other obligation, judgment, claim, lien or estate to which the property may subsequently become subject, except costs of the sale and of the writ upon which the sale was made, and real estate taxes and municipal claims against the property, but shall be subordinate to mortgages and other liens existing and duly recorded or entered of record prior to the recording of the tax lien. In the case of a judicial sale of property, subject to a lien imposed under this section, upon a lien or claim over which the lien imposed under this section has priority, the sale shall discharge the lien imposed under this section to the extent only that the proceeds are applied to its payment, and the lien shall continue in full force and effect as to the balance remaining unpaid. There shall be no inquisition or condemnation upon any judicial sale of real estate made by the Commonwealth pursuant to the provisions hereof. The lien of the taxes, interest and penalties shall continue for five years from the date of entry, and may be revived and continued in the manner now or hereafter provided for renewal of judgments, or as may be provided in the Fiscal Code, and a writ of execution may directly issue upon the lien without the issuance and prosecution to judgment of a writ of scire facias. Not less than ten days before issuance of any execution on the lien, however, notice of the filing and the effect of the lien shall be sent by registered mail to the taxpayer at his last known post office address. The lien shall have no effect upon any stock of goods, wares or merchandise regularly sold or leased in the ordinary course of business by the person against whom the lien has been entered, unless a writ of execution has been issued and a levy made upon the stock of goods, wares and merchandise.

(c) Duty of prothonotary.—Any willful failure of any prothonotary to carry out any duty imposed upon the prothonotary by this section shall be a misdemeanor and, upon conviction, the prothonotary shall be sentenced to pay a fine not exceeding \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both.

(d) Priority of tax.—Except as otherwise provided in this section, in the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes imposed by this chapter which are due and unpaid and are not collectible under the provisions of section 1225 (relating to tax held in trust for Commonwealth) shall be paid from the first money available for distribution in priority to all other claims and liens, except insofar as the laws of the United States may give a prior claim to the Federal Government. Any person charged with the administration or distribution of any such property or estate, who shall violate the provisions of this section, shall be personally liable for any taxes imposed by this chapter, which are accrued and unpaid and are chargeable against the person whose property or estate is being administered or distributed.

(e) Other remedies.—Subject to the limitations contained in this chapter as to the assessment of taxes, nothing contained in this section shall be construed to restrict, prohibit or limit the use by the department in collecting taxes finally due and payable of any other remedy or procedure available at law or equity for the collection of debts.

§ 1243. Suit for taxes.

(a) Commencement.—At any time within three years after any tax or any amount of tax shall be finally due and payable, the department may commence an action in the courts of this Commonwealth, of any state or of the United States, in the name of the Commonwealth of Pennsylvania, to collect the amount of tax due together with additions, interest, penalties and costs in the manner provided at law or in equity for the collection of ordinary debts.

(b) Procedure.—The Attorney General shall prosecute the action and, except as provided in this chapter, the provisions of the Rules of Civil Procedure and the provisions of the laws of this Commonwealth relating to civil procedures and remedies shall, to the extent that they are applicable, be available in such proceedings.

(c) Other remedies.—The provisions of this section are in addition to any process, remedy or procedure for the collection of taxes provided by this chapter or by the laws of this Commonwealth, and this section is neither limited by nor intended to limit any such process, remedy or procedure.

§ 1244. Tax suit comity.

The courts of this Commonwealth shall recognize and enforce liabilities for sales and use taxes, lawfully imposed by any other state, provided that the other state extends a like comity to this Commonwealth.

§ 1245. Service.

Any person maintaining a place of business within this Commonwealth is deemed to have appointed the Secretary of the Commonwealth his agent for the acceptance of service of process or notice in any proceedings for the enforcement of the civil provisions of this chapter, and any service made upon the Secretary of the Commonwealth as such agent shall be of the same legal force and validity as if such service had been personally made upon such person. Where service cannot be made upon such person in the manner provided by other laws of this Commonwealth relating to service of process, service may be made upon the Secretary of the Commonwealth and, in such case, a copy of the process or notice shall also be personally served upon any agent or representative of such person who may be found within this Commonwealth, or where no such agent or representative may be found a copy of the process or notice shall be sent by registered mail to such person at the last known address of his principal place of business, home office or residence.

SUBCHAPTER K

MISCELLANEOUS PROVISIONS

Sec.

1246. Collection and payment of tax on credit sales.

1247. Prepayment of tax.

1247.1. Refund of sales tax attributed to bad debt.

1248. Registration of transient vendors.

1248.1. Bond.

1248.2. Notification to department; inspection of records.

1248.3. Seizure of property.

1248.4. Fines.

1248.5. Transient vendors subject to chapter.

1248.6. Promoters.

§ 1246. Collection and payment of tax on credit sales.

If any sale subject to tax under this chapter is wholly or partly on credit, the vendor shall require the purchaser to pay in cash at the time the sale is made, or within 30 days thereafter, the total amount of tax due upon the entire purchase price. The vendor shall remit the tax to the department, regardless of whether payment was made by the purchaser to the vendor, with the next return required to be filed under section 1217 (relating to time for filing returns).

§ 1247. Prepayment of tax.

(a) General rule.—Whenever a vendor is forbidden by law or governmental regulation to charge and collect the purchase price in advance of or at the time of delivery, the vendor shall prepay the tax as required by section 1222 (relating to time of payment), but in such case if the purchaser fails to pay to the vendor the total amount of the purchase price and the tax, and such amount is written off as uncollectible by the vendor, the vendor shall not be liable for the tax and shall be entitled to a credit or refund of the tax paid. If the purchase price is thereafter collected, in whole or in part, the amount collected shall be applied first to the payment of the entire tax portion of the bill, and shall be remitted to the department by the vendor with the first return filed after the collection.

(b) Petition for refund.—Tax prepaid shall be subject to refund upon petition to the department under the provisions of section 1252

(relating to refunds) filed within 105 days of the close of the fiscal year in which the accounts are written off.

§ 1247.1. Refund of sales tax attributed to bad debt.

(a) Petition for refund.—A vendor may file a petition for refund of sales tax paid to the department that is attributed to a bad debt if all of the following apply:

(1) The purchaser fails to pay the vendor the total purchase price.

(2) The purchase price is written off, either in whole or in part, as a bad debt on the vendor's books and records.

(3) The bad debt has been deducted for Federal income tax purposes under section 166 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 166). The petition shall be filed with the department within the time limitations prescribed by section 3003.1 of the Tax Reform Code.

(b) Amount of refund.—The refund authorized by this section shall be limited to the sales tax paid to the department that is attributed to the bad debt, less any discount under section 1227 (relating to discount). Partial payments by the purchaser to the vendor shall be prorated between the original purchase price and the sales tax due on the sale. Payments made to a vendor on any transaction that includes both taxable and nontaxable components shall be allocated proportionally between the taxable and nontaxable components.

(c) Assignment of right to petition.—A vendor may assign its right to petition and receive a refund of sales tax attributed to a bad debt to an affiliated entity. A vendor may not assign its right to petition and receive a refund of sales tax attributed to a bad debt to any other person.

(d) Exclusions.—No refund shall be granted under this section for any of the following:

(1) Interest.

(2) Finance charges.

(3) Expenses incurred in attempting to collect any amount receivable.

(e) Refund procedure.—The documentation, procedures and methods for claiming and calculating the refund allowed under this section shall be in such form as the department may prescribe.

(f) Return of refund.—If the purchase price that is attributed to a prior bad debt refund is thereafter collected, in whole or in part, the vendor or affiliated entity shall remit the proportional tax to the department with the first return filed after the collection.

(g) Interest.—Notwithstanding the provisions of section 806.1 of the Fiscal Code, no interest shall be paid by the Commonwealth on refunds of sales tax attributed to bad debt under this section.

(h) Exclusive remedy.—No refund or credit of sales tax shall be made for any uncollected purchase price or bad debt except as authorized by this section. No deduction or credit for bad debt may be taken on any return filed with the department. This section shall provide the exclusive procedure for claiming a refund or credit of sales tax attributed to uncollected purchase price or bad debt.

(i) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Affiliated entity.” Any corporation that is part of the same affiliated group as the vendor as defined by section 1504(a)(1) of the Internal Revenue Code of 1986.

§ 1248. Registration of transient vendors.

(a) General rule.—Prior to conducting business or otherwise commencing operations within this Commonwealth, a transient vendor shall register with the department. The application for registration shall be in such form and contain such information as the department, by regulation, shall prescribe and shall set forth truthfully and accurately the information desired by the department. This registration shall be renewed and updated annually.

(b) Issuance of certificate.—Upon registration and the posting of the bond required by section 1248.1 (relating to bond), the department shall issue to the transient vendor a certificate, valid for one year. Upon renewal of registration, the department shall issue a new certificate,

valid for one year, providing the department is satisfied that the transient vendor has complied with the provisions of this chapter.

(c) Possession of certificate.—The transient vendor shall possess the certificate at all times when conducting business within this Commonwealth and shall exhibit the certificate upon demand by authorized employees of the department or any law enforcement officer.

(d) Notice on certificate.—The certificate issued by the department shall state that the transient vendor named therein has registered with the department and shall provide notice to the transient vendor that:

(1) The transient vendor must notify the department in writing before it enters this Commonwealth to conduct business, of the location or locations where it intends to conduct business and the date or dates on which it intends to conduct business.

(2) Failure to notify or giving false information to the department may result in suspension or revocation of the transient vendor's certificate.

(3) Conducting business within this Commonwealth after a certificate has been suspended or revoked may result in criminal conviction and the imposition of fines or other penalties.

§ 1248.1. Bond.

(a) Bond required.—Upon registration with the department, a transient vendor shall also post a bond with the department in the amount of \$500 as surety for compliance with the provisions of this chapter. After a period of demonstrated compliance with these provisions, or, if the transient vendor provides the license number of a promoter who has notified the department of a show, in accordance with the provisions of section 1248.6(a) (relating to promoters), the department may reduce the amount of bond required of a transient vendor or may eliminate the bond entirely.

(b) Request for voluntary suspension of certificate.—A transient vendor may file a request for voluntary suspension of certificate with the department. If the department is satisfied that the provisions of this chapter have been complied with and has possession of the transient vendor's certificate, it shall return the bond posted to the transient vendor.

§ 1248.2. Notification to department; inspection of records.

(a) Notification to department.—Prior to entering this Commonwealth to conduct business, a transient vendor shall notify the department in writing of the location or locations where it intends to conduct business and the date or dates on which it intends to conduct business.

(b) Inspection of records.—While conducting business within this Commonwealth, the transient vendor shall permit authorized employees of the department to inspect its sales records, including, but not limited to, sales receipts and inventory or price lists and to permit inspection of the tangible personal property offered for sale at retail.

(c) Suspension or revocation of certificate.—The department may suspend or revoke a certificate issued to a transient vendor if the transient vendor:

(1) fails to notify the department as required by subsection (a);

(2) provides the department with false information regarding the conduct of business within this Commonwealth;

(3) fails to collect sales tax on all tangible personal property or services sold subject to the sales tax; or

(4) fails to file with the department a tax return as required by section 1217 (relating to time for filing returns).

(d) Rules and regulations.—The department shall promulgate the rules and regulations necessary to implement this section.

§ 1248.3. Seizure of property.

(a) General rule.—If a transient vendor conducting business within this Commonwealth fails to exhibit a valid certificate upon demand by authorized employees of the department, those authorized employees shall have the authority to seize, without warrant, the tangible personal property and the automobile, truck or other means of transportation used to transport or carry that property. All property

seized shall be deemed contraband and shall be subject to immediate forfeiture proceedings instituted by the department pursuant to procedures adopted by regulation, except as otherwise provided by this section.

(b) Release of seized property.—Property seized pursuant to subsection (a) shall be released upon:

(1) presentation of a valid certificate to authorized employees of the department; or

(2) registration by the transient vendor with the department and the posting of a bond in the amount of \$500, either immediately or within 15 days after the property is seized.

§ 1248.4. Fines.

Any transient vendor conducting business within this Commonwealth while its certificate is suspended or revoked, as provided by sections 1248.1(b) (relating to bond) and 1248.2(c) (relating to notification to department; inspection of records), commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$2,500 for each offense.

§ 1248.5. Transient vendors subject to chapter.

Except as otherwise provided, a transient vendor shall be subject to the provisions of this chapter in the same manner as a vendor who maintains a place of business within this Commonwealth.

§ 1248.6. Promoters.

(a) License application.—A promoter of a show or shows within this Commonwealth may annually file with the department an application for a promoter's license stating the location and dates of such show or shows. The application shall be filed at least 30 days prior to the opening of the first show and shall be in such form as the department may prescribe.

(b) Issuance of license.—Except as provided in this section, the department shall, within 15 days after receipt of an application for a license, issue to the promoter without charge a license to operate such shows. If application for a license under this section has been timely filed and if the license has not been received by the promoter prior to the opening of the show, the authorization contained in this section with respect to the obtaining of a promoter's license shall be deemed to have been complied with, unless or until the promoter receives notice from the department denying the application for a promoter's license.

(c) Compliance with vendor provisions.—Any promoter who is a vendor under the provisions of section 1201 (relating to definitions) shall comply with all the provisions of this chapter applicable to vendors and with the provisions of this section applicable to promoters.

(d) Duty of promoters at show.—No licensed promoter shall permit any person to display for sale or to sell tangible personal property or services subject to tax under section 1202 (relating to imposition of tax) at a show unless such person is licensed under section 1208 (relating to licenses) and provides to the promoter the information required under section 1271.1 (relating to reports and records of promoters).

(e) Denial or revocation of license.—Any licensed promoter who permits any person to display for sale or to sell tangible personal property or service without first having been licensed under section 1208 fails to maintain records of a show under section 1271.1, knowingly maintains false records or fails to comply with any provision contained in this section or any regulation promulgated by the department pertaining to shows shall be subject to denial of a license or the revocation of any existing license issued pursuant to this section. In addition, the department may deny such promoter a license certificate to operate a show for a period of not more than six months from the date of such denial. Such penalty shall be in addition to any other penalty imposed by this chapter. Within 20 days of notice of denial or revocation of a license by the department, the promoter may petition the department for a hearing, pursuant to 2 Pa.C.S. (relating to administrative law and procedure).

SUBCHAPTER L REFUNDS AND CREDITS

Sec.

1250. Refund or credit for overpayment.

1251. Restriction on refunds.

1252. Refunds.

1253. Refund petition.

1254. Review by Board of Finance and Revenue.

1255. Appeal to Commonwealth Court.

1256. Extended time for filing special petition for refund.

§ 1250. Refund or credit for overpayment.

With respect to all taxes paid to a vendor or to the Commonwealth prior to April 5, 1957, in the case of any overpayment, the department, within the applicable period of limitations, may credit the amount of such overpayment against any liability in respect of the tax imposed by this chapter on the part of the person who made the overpayment, and shall refund any balance to such person.

§ 1251. Restriction on refunds.

No refund shall be made under section 1250 (relating to refund or credit for overpayment) without the approval of the Board of Finance and Revenue.

§ 1252. Refunds.

The department shall, pursuant to the provisions of sections 1253 (relating to refund petition) and 1254 (relating to review by Board of Finance and Revenue), refund all taxes, interest and penalties paid to the Commonwealth under the provisions of this chapter and to which the Commonwealth is not rightfully entitled. Refunds shall be made to the person, his heirs, successors, assigns or other personal representatives, who actually paid the tax. No refund shall be made under this section with respect to any payment made by reason of an assessment with respect to which a taxpayer has filed a petition for reassessment pursuant to section 1232 (relating to reassessment) to the extent that the petition has been determined adversely to the taxpayer by a decision which is no longer subject to further review or appeal. Nothing contained herein shall be deemed to prohibit a taxpayer who has filed a timely petition for reassessment from amending it to a petition for refund where the petitioner has paid the tax assessed.

§ 1253. Refund petition.

(a) Petition requirements and hearing.—Except as provided in section 1256 (relating to extended time for filing special petition for refund) and in subsections (b) and (d), the refund or credit of tax, interest or penalty provided for by section 1252 (relating to refunds) shall be made only where the person who has actually paid the tax files a petition for refund with the department under section 3003.1 of the Tax Reform Code. The petition for refund must set forth in reasonable detail the grounds upon which the taxpayer claims that the Commonwealth is not rightfully entitled to such tax, interest or penalty, in whole or in part, and shall be accompanied by an affidavit affirming that the facts contained in the petition are true and correct. The department may hold hearings as necessary for the purpose at the times and places as it may determine, and each person who has filed a refund petition shall be notified by the department of the time when, and the place where, the hearing will be held.

(b) Refund upon assessment.—A refund or credit of tax, interest or penalty, paid as a result of an assessment made by the department under section 1231 (relating to mode and time of assessment), shall be made only where the person who has actually paid the tax files with the department a petition for a refund with the department under section 3003.1(d) of the Tax Reform Code. The filing of a petition for refund, under the provisions of this subsection, shall not affect the abatement of interest, additions or penalties to which the person may be entitled by reason of his payment of the assessment.

(c) Decision by department.—It shall be the duty of the department, within six months after receiving a petition for refund, to dispose of the issue raised by the petition, and mail notice of the department's decision to the petitioner. The taxpayer and the department may, however, by stipulation, extend such disposal time by not more than six additional months.

(d) Unconstitutional tax provision or erroneous interpretation of provision.—Notwithstanding any other provision of this section, where any tax, interest or penalty has been paid under a provision of this chapter subsequently held by final judgment of a court of competent

jurisdiction to be unconstitutional, or under an interpretation of such provision subsequently held by such court to be erroneous, a petition for refund may be filed either before or subsequent to final judgment, but such petition must be filed under section 3003.1 of the Tax Reform Code. The department shall have jurisdiction to hear and determine any such petition filed prior to such final judgment only if, at the time of filing of the petition, proceedings are pending in a court of competent jurisdiction wherein the claim of unconstitutionality or of erroneous interpretation, made in the petition for refund may be established, and in such case, the department shall not take final action upon the petition for refund until the judgment determining the question involved in such petition has become final.

§ 1254. Review by Board of Finance and Revenue.

Within 90 days after the date of mailing of notice by the department of the decision upon a petition for refund filed with it, pursuant to section 1253 (relating to refund petition), the petitioner may further petition the Board of Finance and Revenue to review the decision of the department. The failure of the department to notify the petitioner of its decision within the time provided for by section 1253 shall act as a denial of the petition, and a petition for review may be filed with the Board of Finance and Revenue within 120 days of the date prior to which the department should have mailed to the petitioner its notice of decision. Every petition for review filed with the Board of Finance and Revenue under the provisions of this section shall incorporate by reference the petition for refund. The petitioner may, in his petition for review, elect to withdraw one or more grounds as set out in the original refund petition. The Board of Finance and Revenue shall act finally in disposing of such petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department upon the petition for refund shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on a petition for refund, or it may redetermine whether a lesser or greater amount of refund is proper. Under no circumstances may the Board of Finance and Revenue authorize a refund greater than that originally applied for by the petitioner. The Board of Finance and Revenue shall give notice of its action to the department and to the petitioner.

§ 1255. Appeal to Commonwealth Court.

Any person aggrieved by the decision of the Board of Finance and Revenue under section 1254 (relating to review by Board of Finance and Revenue) or by the board's failure to act upon a petition for review within six months may appeal in the manner now or hereafter provided for by law for appeals in the case of tax settlements.

§ 1256. Extended time for filing special petition for refund.

Any party to a transaction who has paid tax by reason of a transaction with respect to which the department is assessing tax against another person may, within six months after the filing by the department of the assessment against such other person, file a special petition for refund, notwithstanding his failure to file a regular petition within three years of the payment. The provisions of sections 1253 (relating to refund petition), 1254 (relating to review by Board of Finance and Revenue) and 1255 (relating to appeal to Commonwealth Court) shall be applicable to such special petition for refund, except that the department need not act on such petition until there is a final determination as to the propriety of the assessment filed against the other party to the transaction. Where a petition is filed under this provision in order to take advantage of the extended period of limitations, overpayments by the petitioner shall be refunded but only to the extent of the actual tax, without consideration of interest and penalties, paid by the other party to the transaction. The purpose of this section is to avoid duplicate payment of tax where a determination is made by the department that one party to a transaction is subject to tax, and another party to the transaction has previously paid tax with respect to such transaction; and this section shall be construed as extending right beyond that provided for by section 1253, and not to limit such other section.

SUBCHAPTER M LIMITATIONS

Sec.

1258. Limitation on assessment and collection.

1259. Failure to file return.

1260. False or fraudulent return.

1261. Extension of limitation period.

§ 1258. Limitation on assessment and collection.

The amount of the tax imposed by this chapter shall be assessed within three years after the date when the return provided for by section 1217(a) or (c) (relating to time for filing returns) is filed or the end of the year in which the tax liability arises, whichever occurs last. The assessment may be made at any time during such period notwithstanding that the department may have made one or more previous assessments against the taxpayer for the year in question, or for any part of such year. In any such case, no credit shall be given for any penalty previously assessed or paid.

§ 1259. Failure to file return.

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

§ 1260. False or fraudulent return.

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

§ 1261. Extension of limitation period.

Notwithstanding any of the foregoing provisions of this chapter, where, before the expiration of the period prescribed therein for the assessment of a tax, a taxpayer has consented in writing that the period be extended, the amount of tax due may be assessed at any time within the extended period. The period so extended may be extended further by subsequent consents in writing made before the expiration of the extended period.

SUBCHAPTER N INTEREST, ADDITIONS, PENALTIES AND CRIMES

Sec.

1265. Interest.

1266. Additions to tax.

1267. Penalties.

1268. Crimes.

1269. Abatement of additions or penalties.

§ 1265. Interest.

If any amount of tax imposed by this chapter is not paid to the department on or before the last date prescribed for payment, interest on the amount at the rate of .75% per month for each month, or fraction thereof, from such date, shall be paid for the period from the last date to the date paid. The last date prescribed for payment shall be determined under section 1222(a) or (c) (relating to time of payment) without regard to any extension of time for payment. In the case of any amount assessed as a deficiency or as an estimated assessment, the date prescribed for payment shall be 30 days after notice of the assessment.

§ 1266. Additions to tax.

(a) Failure to file return.—In the case of failure to file any return required by section 1215 (relating to persons required to make returns) on the date prescribed for filing, determined with regard to any extension of time for filing, and in the case in which a return filed understates the true amount due by more than 50%, there shall be added to the amount of tax actually due 5% of the amount of such tax if the failure to file a proper return is for not more than one month, with an additional 5% for each additional month, or fraction thereof, during which the failure continues, not exceeding 25% in the aggregate. In every such case at least \$2 shall be added.

(b) Addition for understatement.—There shall be added to every assessment under section 1231(b) (relating to mode and time of assessment) an addition equal to 5% of the amount of the understatement and no addition to the tax shall be paid under section 1231(a).

(c) Interest.—If the department assesses a tax according to section 1231(a), (b) or (c), there shall be added to the amount of the deficiency interest at the rate of .75% per month for each month, or fraction thereof, from the date prescribed by section 1222(a) or (c) (relating to time of payment) for the payment of the tax to the date of notice of the assessment.

§ 1267. Penalties.

(a) Penalty assessed as tax.—The penalties, additions, interest and liabilities provided by this chapter shall be paid upon notice and demand by the department, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this chapter to “tax” imposed by this chapter shall be deemed also to refer to the penalties, additions, interest and liabilities provided by this chapter.

(b) Attempt to evade or defeat tax.—Any person who willfully attempts, in any manner, to evade or defeat the tax imposed by this chapter, or the payment thereof, or to assist any other person to evade or defeat the tax imposed by this chapter, or the payment thereof, or to receive a refund improperly, shall, in addition to other penalties provided by law, be liable for a penalty equal to one-half of the total amount of the tax evaded.

(c) Burden of proof.—In any direct proceeding arising out of a petition for reassessment or refund as provided in this chapter, in which an issue of fact is raised with respect to whether a return is fraudulent or with respect to the propriety of the imposition by the department of the penalty prescribed in subsection (b), the burden of proof with respect to such issue shall be upon the department.

§ 1268. Crimes.

(a) Fraudulent return.—Any person who with intent to defraud the Commonwealth shall willfully make, or cause to be made, any return required by this chapter, which is false, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding \$2,000 or to imprisonment for not more than three years, or both.

(b) Other crimes.—Except as otherwise provided by subsection (a), the following persons commit a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both:

(1) Any person who advertises or holds out or states to the public or to any purchaser or user, directly or indirectly, that the tax or any part thereof imposed by this chapter will be absorbed by such person, or that it will not be added to the purchase price of the tangible personal property or services described in paragraphs (2), (3), (4) and (11) through (27) under the definition of “sale at retail” in section 1201 (relating to definitions) sold or, if added, that the tax or any part thereof will be refunded, other than when the person refunds the purchase price because of the property being returned to the vendor.

(2) Any person selling or leasing tangible personal property or services the sale or use of which by the purchaser is subject to tax under this chapter, who shall willfully fail to collect the tax from the purchaser and timely remit the same to the department.

(3) Any person who shall willfully fail or neglect to timely file any return or report required by this chapter or any taxpayer who shall refuse to timely pay any tax, penalty or interest imposed or provided for by this chapter, or who shall willfully fail to preserve his books, papers and records as directed by the department.

(4) Any person who shall refuse to permit the department or any of its authorized agents to examine his books, records or papers, or who shall knowingly make any incomplete, false or fraudulent return or report, or who shall do, or attempt to do, anything whatever to prevent the full disclosure of the amount or character of taxable sales purchases or use made by himself or any other person, or shall provide any person with a false statement as to the payment of tax with respect to particular

tangible personal property or services, or shall make, utter or issue a false or fraudulent exemption certificate.

(c) Place of business outside Commonwealth.—Any person maintaining a place of business outside this Commonwealth may absorb the tax with respect to taxable sales made in the normal course of business to customers present at the place of business without being subject to the penalty and fines under subsection (b).

(d) Prepaid mobile telecommunications services.—Advertising tax-included prices shall be permissible, if the prepaid services are sold by the service provider, for prepaid telecommunications services not evidenced by the transfer of tangible personal property or for prepaid mobile telecommunications services.

(e) Other penalties.—The penalties imposed by this section shall be in addition to any other penalties imposed by any provision of this chapter.

§ 1269. Abatement of additions or penalties.

Upon the filing of a petition for reassessment or a petition for refund as provided under this chapter by a taxpayer, additions or penalties imposed upon such taxpayer by this chapter may be waived or abated, in whole or in part, where the petitioner has established that he has acted in good faith, without negligence and with no intent to defraud.

SUBCHAPTER O
ENFORCEMENT AND EXAMINATIONS

Sec.

1270. Rules and regulations.

1271. Keeping of records.

1271.1. Reports and records of promoters.

1272. Examinations.

1273. Records and examinations of delivery agents.

1274. Unauthorized disclosure.

1275. Cooperation with other governments.

1276. Interstate compacts.

1277. Bonds.

§ 1270. Rules and regulations.

(a) General rule.—The department is charged with the enforcement of this chapter, and is authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations not inconsistent with the provisions of this chapter, relating to any matter or thing pertaining to the administration and enforcement of this chapter, and the collection of taxes, penalties and interest imposed by this chapter. The department may prescribe the extent, if any, to which its rules and regulations shall be applied without retroactive effect.

(b) Sales between affiliated interests.—In determining the purchase price of taxable sales where, because of affiliation of interests between the vendor and the purchaser or irrespective of any affiliation, if for any other reason, the purchase price of the sale is in the opinion of the department not indicative of the true value of the article or the fair price thereof, the department shall, pursuant to uniform and equitable rules, determine the amount of constructive purchase price upon the basis of which the tax shall be computed and levied. The rules shall provide for a constructive amount of a purchase price for each sale, which price shall equal a price for the article which would naturally and fairly be charged in an arm’s-length transaction in which the element of common interests between vendor and purchaser, or, if no common interest exists, any other element causing a distortion of the price or value is absent. For the purpose of this chapter where a taxable sale occurs between a parent corporation and a subsidiary affiliate or controlled corporation of the parent, there shall be a rebuttable presumption that because of the common interest the transaction was not at arm’s-length.

§ 1271. Keeping of records.

(a) General rule.—Each person liable for any tax imposed by this chapter, or for the collection of any tax imposed by this chapter, shall keep the records, render the statements, make the returns and comply with the rules and regulations that the department may, from time to time, prescribe regarding matters pertinent to the persons business. Whenever in the judgment of the department it is necessary, it may

require any person, by notice served upon the person, or by regulations, to make returns, render statements or keep records as the department deems sufficient to show whether or not the person is liable to pay or collect tax under this chapter.

(b) Persons collecting tax from others.—Any person liable to collect tax from another person under this chapter shall file reports, keep records, make payments and be subject to interest and penalties as provided for under this chapter, in the same manner as if the person were directly subject to the tax.

(c) Records of nonresidents.—A nonresident who does business in this Commonwealth as a retail dealer shall keep adequate records of the business or businesses and of the tax due with respect to the business or businesses, which records shall at all times be retained within this Commonwealth unless retention outside this Commonwealth is authorized by the department. No taxes collected from purchasers shall be sent outside this Commonwealth without the written consent of and in accordance with conditions prescribed by the department. The department may require a taxpayer who desires to retain records or tax collections outside this Commonwealth to assume reasonable out-of-State audit expenses.

(d) Keeping of separate records.—Any person doing business as a retail dealer who at the same time is engaged in another business or businesses which do not involve the making of sales taxable under this chapter shall keep separate books and records of the person's businesses so as to show the sales taxable under this chapter separately from the person's sales not taxable under this chapter. If the person fails to keep separate books and records, the person shall be liable for tax at the rate designated in section 1202 (relating to imposition of tax) upon the entire purchase price of sales from both or all of the person's businesses.

(e) Other methods.—

(1) In those instances where a vendor gives no sales memoranda or uses registers showing only total sales, the vendor must adopt some method of segregating tax from sales receipts and keep records showing the segregation, all in accordance with proper accounting and business practices.

(2) A vendor may apply to the department for permission to use a collection and recording procedure which will show the information as the law requires with reasonable accuracy and simplicity. A vendor's application must contain a detailed description of the procedure to be adopted. Permission to use the proposed procedure is not to be construed as relieving the vendor from remitting the full amount of tax collected. The department may revoke permission upon 30 days' notice to the vendor. Refusal of the department to grant permission in advance to use the procedure shall not be construed to invalidate a procedure which upon examination shows the information as the law requires.

§ 1271.1. Reports and records of promoters.

Each licensed promoter shall keep a record of the date and place of each show and the name, address, sales, use and hotel occupancy license number of each person whom the licensed promoter permits to display for sale or to sell tangible personal property or services subject to tax under section 1202 (relating to imposition of tax) at the show. The records shall be open for inspection and examination at any reasonable time by the department or its authorized representative, and the records shall, unless the department consents in writing to an earlier destruction, be preserved for three years after the date the report was filed or the date it was due, whichever occurs later, except that the department may by regulation require that they be kept for a longer period of time.

§ 1272. Examinations.

The department or any of its authorized agents are authorized to examine the books, papers and records of any taxpayer in order to verify the accuracy and completeness of any return made or, if no return was made, to ascertain and assess the tax imposed by this chapter. The department may require the preservation of any books, papers and records for any period deemed proper by it but not to

exceed three years from the end of the calendar year to which the records relate. Each taxpayer is required to give to the department, or its agent, the means, facilities and opportunity for examinations and investigation. The department is further authorized to examine any person, under oath, concerning taxable sales or use by any taxpayer or concerning any other matter relating to the enforcement or administration of this chapter, and to this end may compel the production of books, papers and records and the attendance of all persons whether as parties or witnesses whom it believes to have knowledge of such matters. The procedure for hearings or examinations shall be the same as that provided by the Fiscal Code, relating to inquisitorial powers of fiscal officers.

§ 1273. Records and examinations of delivery agents.

Each agent for the purpose of delivery of goods shipped into this Commonwealth by a nonresident including, but not limited to, common carriers, shall maintain adequate records of the deliveries pursuant to rules and regulations adopted by the department and shall make the records available to the department upon request after due notice.

§ 1274. Unauthorized disclosure.

Any information gained by the department as a result of any return, examination, investigation, hearing or verification, required or authorized by this chapter, shall be confidential, except for official purposes and except in accordance with proper judicial order or as otherwise provided by law, and any person unlawfully divulging the information commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both.

§ 1275. Cooperation with other governments.

Notwithstanding the provisions of section 1274 (relating to unauthorized disclosure), the department may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any state, or the authorized representative of either, to inspect the tax returns of any taxpayer, or may furnish to such officer or to an authorized representative an abstract of the return of any taxpayer, or supply the officer with information concerning any item contained in any return or disclosed by the report of any examination or investigation of the return of any taxpayer. This permission shall be granted only if the statutes of the United States or of the other state, as the case may be, grant substantially similar privileges to the proper officer of the Commonwealth charged with the administration of this chapter.

§ 1276. Interstate compacts.

The Governor, or an authorized representative, has the authority to confer with the governors and the authorized representatives of other states with respect to reciprocal use tax collection between Pennsylvania and the other states. The Governor, or a representative, is authorized to join with the authorities of other states to conduct joint investigations, to exchange information, to hold joint hearings and to enter into compacts or interstate agreements with the other states to accomplish uniform reciprocal use tax collections between those states who are parties to any compact or interstate agreement and the Commonwealth of Pennsylvania.

§ 1277. Bonds.

(a) Taxpayer to file bond.—

(1) Whenever the department, in its discretion, deems it necessary to protect the revenues to be obtained under this chapter, it may require any nonresident natural person or any foreign corporation, association, fiduciary, partnership or other entity not authorized to do business within this Commonwealth or not having an established place of business in this Commonwealth and subject to the tax imposed by section 1202 (relating to imposition of tax) to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in an amount as the department may fix, to secure the payment of any tax or penalties due, or which may become due, from the natural person or corporation.

(2) In order to protect the revenues to be obtained under this chapter, the department shall require any nonresident natural person or any foreign corporation, association, fiduciary, partnership or entity, who or which is a building contractor, or who or which is a supplier delivering building materials for work in this Commonwealth and is not authorized to do business within this Commonwealth or does not have an established place of business in this Commonwealth and is subject to the tax imposed by section 1202 to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in an amount as the department may fix, to secure the payments of any tax or penalties due, or which may become due, from the natural person, corporation or other entity.

(3) The department may also require a bond of any person petitioning the department for reassessment, in the case of any assessment over \$500 or where it is of the opinion that the ultimate collection is in jeopardy. The department may, for a period of three years, require a bond of any person who has on three or more occasions within a 12-month period either filed a return or made payment to the department more than 30 days late.

(4) In the event that the department determines that a taxpayer is to file a bond, it shall give notice to the taxpayer to that effect, specifying the amount of the bond required. The taxpayer shall file the bond within five days after the giving of notice by the department unless, within the five days, the taxpayer shall request, in writing, a hearing before the Secretary of Revenue or a representative at which hearing the necessity, propriety and amount of the bond shall be determined by the secretary or representative. The determination shall be final and shall be complied with within 15 days after notice of the determination is mailed to the taxpayer.

(b) Securities in lieu of bond.—In lieu of the bond required by this section, securities approved by the department, or cash in an amount as prescribed by the department, may be deposited. The securities or cash shall be kept in the custody of the department, which may, at any time, without notice to the depositor, apply them to any tax, interest or penalties due, and for that purpose the securities may be sold by the department, at public or private sale, upon five days' written notice to the depositor.

(c) Failure to file bond.—The department may file a lien pursuant to section 1242 (relating to lien for taxes) against any taxpayer who fails to file a bond when required to do so under this section. All funds received upon execution of the judgment on a lien shall be refunded to the taxpayer with 3% interest should a final determination be made that the taxpayer does not owe any payment to the department.

SUBCHAPTER P

APPROPRIATION; EFFECTIVE DATE

Sec.

1281. Appropriation for refunds.

1281.1. Construction of chapter.

1281.2. Transfers to Public Transportation Assistance Fund.

1281.3. Transfer to Property Tax Relief Fund.

§ 1281. Appropriation for refunds.

So much of the proceeds of the tax imposed by this chapter as shall be necessary for the payment of refunds, enforcement or administration under this chapter is hereby appropriated for such purposes.

§ 1281.1. Construction of chapter.

To the extent that the language of this chapter is identical to that of equivalent provisions in the act of March 6, 1956 (P.L.1228, No.381), known as the Tax Act of 1963 for Education, the language shall be deemed a reenactment of the identical provisions.

§ 1281.2. Transfers to Public Transportation Assistance Fund.

(a) Transfer from imposition of tax on periodicals.—All revenues received on or after July 1, 1992, from the imposition of the tax on

periodicals shall be transferred to the Public Transportation Assistance Fund according to the formula set forth in subsection (b).

(b) Transfer to Public Transportation Assistance Fund.—Within 30 days of the close of any calendar month, 0.44% of the taxes received in the previous month under this chapter, less any amounts collected in that previous calendar month under former 74 Pa.C.S. § 1314(d) (relating to Public Transportation Assistance Fund), shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code.

(c) Other transfer.—Within 30 days of the close of any calendar month, 0.09% of the taxes received in the previous month under this chapter shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code.

(d) Transfer after June 30, 2003.—Within 30 days of the close of a calendar month, 0.417% of the taxes received in the previous month under this chapter shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code. This subsection applies to deposits into the Public Transportation Assistance Fund made after June 30, 2003.

§ 1281.3. Transfer to Property Tax Relief Fund.

Within 30 days of the close of any calendar month, 17.5% of the taxes received in the previous month under this chapter shall be transferred to the Property Tax Relief Fund.

CHAPTER 13

SPECIAL SITUS FOR LOCAL SALES TAX

Sec.

1301. Definitions.

1302. Leased or rental vehicles or crafts.

1303. Construction materials.

1304. Mobile telecommunications services.

§ 1301. Definitions.

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

“Lease.” A contract for the use of a motor vehicle or other tangible personal property referred to in section 1302(a) (relating to leased or rental vehicles or crafts) for a period of 30 days or more.

“Rental.” A contract for the use of a motor vehicle or other tangible personal property referred to in section 1302(b) (relating to leased or rental vehicles or crafts) for a period of less than 30 days.

§ 1302. Leased or rental vehicles or crafts.

(a) Lease.—For purposes of this chapter, the lease of a motor vehicle, trailer, semitrailer or mobile home, as defined in 75 Pa.C.S. (relating to vehicles), or of a motorboat, aircraft or other similar tangible personal property required under either Federal or State laws to be registered or licensed shall be deemed to have been completed or used at the address of the lessee. In the case of a lease, the tax shall be paid by the lessee to the lessor.

(b) Rental.—For purposes of this chapter, the rental of a motor vehicle, trailer, semitrailer or mobile home, as defined in 75 Pa.C.S., or of a motorboat, aircraft or other similar tangible personal property required under either Federal or State laws to be registered or licensed shall be deemed to be consummated at the place of business of the retailer. In the case of a rental, the tax due shall be paid by the renter to the retailer.

(c) Applicability.—This chapter shall only apply to any sales tax imposed under Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code, and under the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

§ 1303. Construction materials.

(a) Final destination.—Notwithstanding the provisions of section 504 of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, the sale or use of road construction material, including recycled asphalt, recycled concrete, asphalt, concrete and road aggregates, shall be deemed to have been consummated at the

location of its final destination. Final destination will be determined by reference to delivery or shipping documents relating to such sales.

(b) Applicability.—This section shall apply to taxes levied under Chapter 5 of the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class. This section shall not apply to taxes levied under Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

§ 1304. Mobile telecommunications services.

(a) Primary use.—For purposes of this chapter, the situs of the sales or use of mobile telecommunications services which are deemed to be provided to a customer by a home service provider under section 117(a) and (b) of the Mobile Telecommunications Sourcing Act (4 U.S.C. § 116) shall be the customer's place of primary use regardless of where the mobile telecommunications services originate, terminate or pass through.

(b) Definitions.—For purposes of this section, words and phrases used in this section shall have the meanings given to them in the Mobile Telecommunications Sourcing Act.

CHAPTER 15

PERSONAL INCOME TAX

Subchapter

- A. Preliminary Provisions
- B. Imposition of Tax
- C. Estates and Trusts
- D. Partnerships
- E. Pennsylvania S Corporations
- F. Other Entities
- G. Nonresident Individuals
- H. Credits Against Tax
- I. Contributions of Refunds by Checkoff
- J. Withholding of Tax
- K. Withholding Tax on Shares on Income from Sources within this Commonwealth
- L. Estimated Tax
- M. Returns and Payment of Tax
- N. Procedure and Administration
- O. Miscellaneous Provisions

SUBCHAPTER A

PRELIMINARY PROVISIONS

Sec.

1501. Definitions.

§ 1501. Definitions.

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

“Accepted accounting principles and practices.” Unless otherwise explicitly provided for in this chapter, those accounting principles, systems or practices, including the installment sales method of reporting, which are acceptable by standards of the accounting profession and which are not inconsistent with the regulations of the department setting forth such principles and practices.

“Association.” Any form of unincorporated enterprise which:

(1) is subject to the tax imposed under Article IV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971; or

(2) is required to make a return under section 6042 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 6042).

The term shall not include a partnership or investment company.

“Business.” An enterprise, activity, profession, vocation, trade, joint venture, commerce or any other undertaking of any nature when engaged in as commercial enterprise and conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, Pennsylvania S corporation, association or other unincorporated entity.

“Charitable trust.” A trust operated exclusively for religious, charitable, scientific, literary or educational purposes.

“Claimant.” A person who is subject to the tax imposed under this chapter, is not a dependent of another taxpayer for purposes of section 151 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 151), but is entitled to claim against such tax the poverty tax provisions as provided by the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Compensation.”

(1) The term shall include salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered, whether directly or through an agent, and whether in cash or in property. The term shall also include any part of a distribution under a plan described in section 409A(d)(1) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 409A(d)(1)), as amended, attributable to an elective deferral of income or the income on any elective deferral of income, whether paid or payable during employment or to a retired person upon or after retirement from service.

(2) The term shall not include:

(i) periodic payments for sickness and disability other than regular wages received during a period of sickness or disability;

(ii) disability, retirement or other payments arising under worker's compensation acts, occupational disease acts and similar legislation by any government;

(iii) payments commonly recognized as old age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment;

(iv) payments commonly known as public assistance, or unemployment compensation payments by any governmental agency;

(v) payments to reimburse actual expenses;

(vi) payments made by employers or labor unions, including payments made pursuant to a cafeteria plan qualifying under section 125 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 125), for employee benefit programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits or strike benefits if the program does not discriminate in favor of highly compensated individuals as to eligibility to participate, payments or program benefits;

(vii) any compensation received by United States servicemen serving in a combat zone;

(viii) payments received by a foster parent for in-home care of foster children from an agency of the Commonwealth or a political subdivision thereof or an organization exempt from Federal tax under section 501(c)(3) of the Internal Revenue Code of 1986 which is licensed by the Commonwealth or a political subdivision of the Commonwealth as a placement agency;

(ix) payments made by employers or labor unions for employee benefit programs covering Social Security or retirement; or

(x) personal use of an employer's owned or leased property or of employer-provided services.

“Corporation.” For purposes of applying the provisions of section 1503(a) (relating to classes of income) with respect to a “reorganization” as defined in that section, the term shall include a business trust to which 15 Pa.C.S. Ch. 95 (relating to business trusts) applies, a common law business trust or a limited liability company that for Federal income tax purposes is taxable as a corporation or an investment company.

“Department.” The Department of Revenue of the Commonwealth.

“Dependent.” A child who is the dependent of a claimant for purposes of section 151 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 151).

“Dividends.” Any distribution in cash or property made by a corporation, association, business trust or investment company with respect to its stock out of accumulated earnings and profits or out of earnings and profits of the year in which such dividend is paid. The term shall not include:

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

(2) for taxable years beginning on or after January 1, 1993, a distribution made by an investment company out of earnings and profits derived from interest that is statutorily free from State and local taxation under Article XXIX of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, or the act of August 31, 1971 (P.L.395, No.94), entitled “An act exempting from taxation for State and local purposes within the Commonwealth certain obligations, their transfer and the income therefrom (including any profits made on the sale thereof), issued by the Commonwealth, any public authority, commission, board or other agency created by the Commonwealth, any political subdivision of the Commonwealth or any public authority created by any such political subdivision,” or the laws of the United States.

“Employee.” Any individual from whose wages an employer is required under the Internal Revenue Code of 1986 (P.L.99-514, 26 U.S.C. § 1 et seq.) to withhold Federal income tax.

“Employer.” An individual, partnership, association, corporation, governmental body or unit or agency, or any other entity who or that is required under the Internal Revenue Code of 1986 (P.L.99-514, 26 U.S.C. § 1 et seq.) to withhold Federal income tax from wages paid to an employee.

“Fiduciary.” A guardian, trustee, executor, administrator, receiver, conservator or any person acting in any trust or similar capacity, whether domiciliary or ancillary.

“Income.” For a resident individual, estate or trust the term means the same as compensation, net profits, gains, dividends, interest or income enumerated and classified under section 1503 (relating to classes of income).

“Income from sources within this Commonwealth.”

(1) For a nonresident individual, estate or trust the term means the same as compensation, net profits, gains, dividends, interest or income enumerated and classified under section 1503 (relating to classes of income) to the extent that it is earned, received or acquired from sources within this Commonwealth:

(i) by reason of ownership or disposition of any interest in real or tangible personal property in this Commonwealth;

(ii) in connection with a trade, profession, occupation carried on in this Commonwealth or for the rendition of personal services performed in this Commonwealth;

(iii) as a distributive share of the income of an unincorporated business, Pennsylvania S corporation, profession, enterprise, undertaking or other activity as the result of work done, services rendered or other business activities conducted in this Commonwealth, except as allocated to another state pursuant to regulations promulgated by the Department of Revenue under this chapter; or

(iv) from intangible personal property employed in a trade, profession, occupation or business carried on in this Commonwealth; or

(v) as gambling and lottery winnings by reason of a wager placed in this Commonwealth, the conduct of a game of chance or other gambling activity located in

this Commonwealth or the redemption of a lottery prize from a lottery conducted in this Commonwealth, other than prizes of the Pennsylvania State Lottery.

(2) The term shall not include any items of income enumerated in paragraph (1) received or acquired from an investment company registered with the Federal Securities and Exchange Commission under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.).

“Individual.” A natural person including the members of a partnership or association and the shareholders of a Pennsylvania S corporation.

“Installment sales method of reporting.” The method by which a taxpayer reports the gain upon the sale of tangible personal property or real property when at least one payment is to be received in any taxable year following the taxable year of sale, whether the property is sold or otherwise disposed of in an isolated transaction or from the inventory of a dealer or broker. Taxpayers may elect to allocate the gain upon the transactions in equal proportion to each payment to be received. Taxpayers who do not elect to allocate the gain upon the transactions in equal proportion to each payment received shall report all gains upon the sale in the taxable year in which the transaction occurred. For the purposes of this definition, the gain upon the transaction shall be the difference between the sales price and the seller’s basis in the property, and the sales price shall be the face amount of the evidence of indebtedness given in exchange for the property sold or otherwise disposed of together with the value of any other consideration received by the seller. Where the evidence of indebtedness fails to state a price, the evidence of indebtedness will be valued at the fair market value of the property sold, less the value of other property or cash received in the same transaction. The installment sales method of reporting shall not be used for transactions the object of which is the lending of money or the rendering of services.

“Internal Revenue Code.” The Internal Revenue Code of 1986 (P.L.99-514, 26 U.S.C. § 1 et seq.), as amended to January 1, 1997, unless the reference contains the phrase “as amended” and refers to no other date, in which case the reference shall be to the Internal Revenue Code of 1986 as it exists as of the time of application of this chapter.

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

“Nonresident individual.” Any individual who is not a resident of this Commonwealth.

“Nonresident estate or trust.” Any estate or trust which is not a resident estate or trust. The term shall not include charitable trusts or pension or profit sharing trusts.

“Partnership.” A domestic or foreign general partnership, joint venture, limited partnership, limited liability company, business trust or other unincorporated entity that for Federal income tax purposes is classified as a partnership.

“Pennsylvania S corporation.” Any small corporation as defined in this section which has a valid election under section 1507 (relating to election by small corporation) in effect.

“Person.” Any individual employer, association, fiduciary, partnership, corporation or other entity, estate or trust, resident or nonresident, and the plural as well as the singular number. For the purpose of determining eligibility for special tax provisions, the term means a natural individual.

“Poverty.” An economic condition wherein the total amount of poverty income is insufficient to adequately provide the claimant, his spouse and dependent children with the necessities of life.

“Poverty income.” For the purpose of determining eligibility for special tax provisions all moneys or property, including interest, gains or income derived from obligations which are statutorily free from State or local taxation under any other act of the General Assembly of the Commonwealth of Pennsylvania or under the laws of the United States, received of whatever nature and from whatever source derived, but not including:

(1) periodic payments for sickness and disability other than regular wages received during a period of sickness or disability;

(2) disability, retirement or other payments arising under workers' compensation acts, occupational disease acts and similar legislation by any government;

(3) payments commonly recognized as old age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment;

(4) payments commonly known as public assistance or unemployment compensation payments by any governmental agency;

(5) payments to reimburse actual expenses;

(6) payments made by employers or labor unions for programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, Social Security and retirement; or

(7) any compensation received by United States servicemen serving in a combat zone.

"Qualified Subchapter S subsidiary." A domestic or foreign corporation which for Federal income tax purposes is treated as a qualified Subchapter S subsidiary, as defined in section 1361(b)(3)(B) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1361), as amended to January 1, 1997.

"Resident individual." An individual who is domiciled in this Commonwealth unless he maintains no permanent place of abode in this Commonwealth and does maintain a permanent place of abode elsewhere and spends in the aggregate not more than 30 days of the taxable year in this Commonwealth; or who is not domiciled in this Commonwealth but maintains a permanent place of abode in this Commonwealth and spends in the aggregate more than 183 days of the taxable year in this Commonwealth.

"Received." For the purpose of computation of income subject to tax under this chapter the term means "received, earned or acquired" and the phrase "received, earned or acquired" shall be construed according to the method of accounting required by the Department of Revenue under this article for computing and reporting income subject to the tax.

"Resident estate." The estate of a decedent who at the time of his death was a resident individual.

"Resident trust." The term shall include any of the following:

(1) A trust created by the will of a decedent who at the time of his death was a resident individual.

(2) Any trust created by, or consisting in whole or in part of property transferred to a trust by a person who at the time of such creation or transfer was a resident. The term under this paragraph shall not include charitable trusts or pension or profit-sharing trusts.

"Special tax provisions." A refund or forgiveness of all or part of the claimant's liability under the provisions of this chapter.

"Small corporation." Any corporation which has a valid election in effect under Subchapter S of Chapter 1 of the Internal Revenue Code of 1986 (P.L.99-514, 26 U.S.C. § 1 et seq.), as amended to January 1, 1997.

"State." Any state or commonwealth of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States and any foreign country.

"Tax." The term includes interest, penalties and additions to tax, and the tax required to be withheld by an employer on compensation paid, unless a more limited meaning is disclosed by the context.

"Tax Reform Code." The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

"Taxable year." As follows:

(1) Either the:

(i) taxable period on the basis of which a taxpayer or a claimant is required to file a Federal income tax return pursuant to the Internal Revenue Code of 1986 (P.L.99-514, 26 U.S.C. § 1 et seq.); or

(ii) if a taxpayer or claimant is not required to or does not file a Federal income tax return, the calendar year.

(2) For the initial period during which the tax is imposed, the period beginning June 1, 1971, and ending on:

(i) the last day of the taxable period on the basis of which a taxpayer or claimant is required to file a Federal income tax return pursuant to the Internal Revenue Code of 1986; or

(ii) if a taxpayer or claimant is not required to or does not file a Federal income tax return, December 31, 1971.

"Taxpayer." Any individual, estate or trust subject to the tax imposed by this chapter, any partnership having a partner who is a taxpayer under the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, any Pennsylvania S corporation having a shareholder who is a taxpayer under the Tax Reform Code of 1971 and any employer required to withhold tax on compensation paid.

SUBCHAPTER B IMPOSITION OF TAX

Sec.

1502. Imposition of tax.

1502.1. Rate changes occurring during the taxable year.

1502.2. (Reserved).

1503. Classes of income.

1504. Special tax provisions for poverty.

§ 1502. Imposition of tax.

(a) Resident tax.—Every resident individual, estate or trust shall be subject to, and shall pay for the privilege of receiving each of the classes of income enumerated in section 1503 (relating to classes of income), a tax upon each dollar of income received by that resident during that resident's taxable year at the rate of 3.29%.

(b) Nonresident tax.—Every nonresident individual, estate or trust shall be subject to, and shall pay for the privilege of receiving each of the classes of income enumerated in section 1503 from sources within this Commonwealth, a tax upon each dollar of income received by that nonresident during that nonresident's taxable year at the rate of 3.29%.

§ 1502.1. Rate changes occurring during the taxable year.

Notwithstanding the provisions of section 1502 (relating to imposition of tax), the tax rate to be used for the computation of tax for any taxable year where the rate changes during the taxable year shall be the monthly weighted average of the rates applicable during the taxable year, regardless of when during the taxable year the income is received.

§ 1502.2. (Reserved).

§ 1503. Classes of income.

(a) Classes.—The classes of income referred to in section 1502(b) (relating to imposition of tax) are as follows:

(1) Compensation, which shall include all of the following:

(i) All salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered whether directly or through an agent and whether in cash or in property except income derived from the United States Government for active duty outside this Commonwealth as a member of the armed forces.

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

(A) Amounts lawfully deducted, not deferred, and withheld from the compensation of employees shall be considered to have been

received by the employee as compensation at the time the deduction is made.

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

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

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

(E) Employee contributions to an employees' trust or pooled fund or custodial account or contract or employee annuity shall not be deducted or excluded from compensation.

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

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

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

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

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

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

(2) Net profits, which shall include the net income from the operation of a business, profession, or other activity, after provision for all costs and expenses incurred in the conduct of the operation or activity, determined either on a cash or accrual basis in accordance with accepted accounting principles and practices but without deduction of taxes based on income.

(3) Net gains or income from disposition of property, which shall include net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real property, tangible personal property, intangible personal property or obligations issued on or after February 1, 1994; any public authority, commission, board or other agency created by the Commonwealth; any political subdivision of the Commonwealth or any public authority created by any such political subdivision; or by the Federal Government as determined in accordance with accepted accounting principles and practices. For the purpose of this chapter the following shall apply:

(i) For the determination of the basis of any property, real and personal, if acquired prior to June 1, 1971, the date of acquisition shall be adjusted to June 1, 1971, as if the property had been acquired on that date. If the property was acquired after June 1, 1971, the actual date of acquisition shall be used in determination of the basis.

(ii) (Reserved).

(iii) The term "net gains or income" and "net losses" shall not include gains or income or loss derived from obligations which are statutorily free from State or local taxation under the act of August 31, 1971 (P.L.395, No.94), entitled "An act exempting from taxation for State and local purposes within the Commonwealth certain obligations, their transfer and the income therefrom (including any profits made on the sale thereof), issued by the Commonwealth, any public authority, commission, board or other agency created by the Commonwealth, any political subdivision of the Commonwealth or any public authority created by any such political subdivision," or under the laws of the United States.

(iv) The term "sale, exchange or other disposition" shall not include the exchange of stock or securities in a corporation a party to a reorganization in pursuance of a plan of reorganization, solely for stock or securities in the corporation or in another corporation a party to the reorganization and the transfer of property to a corporation by one or more persons solely in exchange for stock or securities in the corporation if immediately after the exchange the person or persons are in control of the corporation. The following shall apply:

(A) For purposes of this subparagraph, stock or securities issued for services shall not be considered as issued in return for property.

(B) For purposes of this subparagraph, the term "reorganization" shall mean any of the following:

(I) A statutory merger or consolidation.

(II) The acquisition by one corporation, in exchange solely for all or a part of its voting stock, or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation, of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of the other corporation, whether or not the acquiring corporation had control immediately before the acquisition.

(III) The acquisition by one corporation, in exchange solely for all or a part of its voting stock, or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation, of substantially all of the properties of another corporation. In determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded.

(IV) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of

its shareholders, including persons who were shareholders immediately before the transfer, or any combination of transferor or shareholders, is in control of the corporation to which the assets are transferred.

(V) A recapitalization.

(VI) A mere change in identity, form or place of organization however effected.

(C) The acquisition by one corporation, in exchange for the stock of a controlling corporation which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under subclause (B)(I) if the transaction would have qualified under subclause (B)(I) if the merger had been into the controlling corporation and no stock of the acquiring corporation is used in the transaction.

(D) A transaction otherwise qualifying under subclause (B)(I) shall not be disqualified by reason of the fact that the stock of the controlling corporation which before the merger was in control of the merged corporation, is used in the transaction, if:

(I) after the transaction, the corporation surviving the merger holds substantially all of its properties and the properties of the merged corporation, other than stock of the controlling corporation distributed in the transaction; and

(II) in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

(E) For purposes of this subparagraph:

(I) The term “control” means the ownership of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of the corporation.

(II) The term “a party to a reorganization” includes a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization qualifying under clause (B)(I) by reason of clause (C) the term “a party to a reorganization” includes the controlling corporation referred to in clause (C).

(F) Notwithstanding any other provision of this section, upon every exchange or conversion, the taxpayer’s base for the stock or securities received shall be the same as the taxpayer’s actual or attributed base for the stock, securities or property surrendered in exchange.

(v) The term “sale, exchange or other disposition” shall not include a transfer by a common trust fund described in section 584 of the Internal Revenue Code of all or substantially all of its assets to one or more companies described in section 851 of the Internal Revenue Code in exchange for stock or units of beneficial interest in the company or companies to which the assets are transferred and the distribution of the stock or units by the fund to its participants in exchange for their interest in the fund, if no gain or loss is recognized on the transfer or distribution for Federal income tax purposes. Upon every such exchange, the taxpayer’s base for the stock or units or assets received shall be the same as the taxpayer’s actual or attributed base for the assets, stock, units or interest surrendered in exchange.

(vi) The term “sale, exchange or other disposition” shall not include a transfer of an interest in an enterprise treated as a partnership for purposes of this chapter in exchange for an interest in any other enterprise treated as a partnership for purposes of this chapter, a liquidation made in connection therewith or an exchange made pursuant to a statutory merger, consolidation or division of enterprises so treated unless taxable income or gain is recognized for Federal income tax purposes. Upon every such exchange, the taxpayer’s base for the interest received shall be the same as the taxpayer’s actual or attributed base for the interest surrendered in exchange.

(vii) The term “net gains or net income, less net losses,” shall not include any gain or loss from the sale, exchange or other disposition of the taxpayer’s principal residence.

(A) For purposes of this subparagraph, the term “principal residence” shall mean the property that has been owned and used by the taxpayer as the taxpayer’s principal residence for periods aggregating two years or more during the five-year period ending on the date of the sale, exchange or disposition, except that the following shall apply:

(I) In the case of property only a portion of which, during the five-year period ending on the date of the sale, exchange or disposition, has been owned or used by the taxpayer as the taxpayer’s principal residence for periods aggregating two years or more, this subparagraph shall apply with respect to so much of the gain from the sale, exchange or disposition of the property as is determined under regulations prescribed by the department to be attributable to that portion.

(II) In the case of a principal residence only a portion of which has never been subject to the allowance for depreciation, this subparagraph shall apply with respect to so much of the gain from the sale, exchange or disposition of the property as is determined under regulations prescribed by the department to be attributable to that portion.

(B) The provisions of this subparagraph shall not apply to a sale, exchange or disposition if, during the two-year period ending upon the date of the sale, exchange or disposition, there was a prior sale, exchange or disposition by the taxpayer of a principal residence, unless the sale,

exchange or disposition is by reason of a change in employment, health or, to the extent provided in regulations, unforeseen circumstances.

(C) The provisions of this subparagraph shall not apply to any sale, exchange or disposition made prior to January 1, 1998.

(4) Net gains or income derived from or in the form of rents, royalties, patents and copyrights.

(5) Dividends.

(6) Interest derived from obligations which are not statutorily free from State or local taxation under any other act of the General Assembly of the Commonwealth of Pennsylvania or under the laws of the United States and any amount paid under contract of life insurance or endowment or annuity contract, which is includable in gross income for Federal income tax purposes and any amount paid out of the archer medical savings account or health savings account that is includable in the gross income of an account beneficiary for Federal income tax purposes.

(7) Gambling and lottery winnings other than prizes of the Pennsylvania State Lottery.

(8) Net gains or income derived through estates or trusts. To the extent that income or gain is subject to tax under one of the classes of income enumerated in this section the income or gain shall not be subject to tax under another of the enumerated classes.

(a.1) Compensation.—Income shall be computed under the method of accounting on the basis of which the taxpayer regularly computes income in keeping the taxpayer's books. If the department determines that no method has been regularly used or the method used does not clearly reflect income, the computation of income shall be made under a method which, in the opinion of the department, clearly reflects income.

(a.2) Depreciation.—In computing income, a depreciation deduction shall be allowed for the exhaustion, wear and tear and obsolescence of property being employed in the operation of a business or held for the production of income. The deduction must be reasonable and shall be computed in accordance with the property's adjusted basis at the time placed in service, reasonably estimated useful life and net salvage value at the end of its reasonably estimated useful economic life under the straight-line method or other method prescribed by the department, except that a taxpayer may use any depreciation method, recovery method or convention that is also used by the taxpayer in determining Federal net taxable income if, when placed in service, the property has the same adjusted basis for Federal income tax purposes and the method or convention is allowable for Federal income tax purposes at the time the property is placed in service or under the Internal Revenue Code, whichever is earlier. The basis of property shall be reduced, but not below zero, for depreciation by the greater of:

(1) the amount deducted on a return and not disallowed, but only to the extent the deduction results in a reduction of income; and

(2) the amount allowable using the straight-line method of depreciation computed on the basis of the property's adjusted basis at the time placed in service, reasonably estimated useful life and net salvage value at the end of its reasonably estimated useful economic life, regardless of whether the deduction results in a reduction of income.

(a.3) Section 179 Property.—The cost of property commonly referred to as Section 179 Property may be treated as a deductible expense only to the extent allowable under the version of section 179 of the Internal Revenue Code in effect at the time the property is placed in service or under section 179 of the Internal Revenue Code of 1986 (26 U.S.C. § 179), whichever is earlier. The basis of Section 179 Property shall be reduced, but not below zero, for costs treated as a deductible expense. The amount of the reduction shall be the amount deducted on a return and not disallowed, regardless of whether the deduction results in a reduction of income.

(a.4) Federal limitation applicability.—This chapter shall be subject to applicable Federal limitations on state income taxation.

(a.5) Section 1035 applicability.—The requirements of section 1035 of the Internal Revenue Code of 1986 (26 U.S.C. § 1035), as amended, shall be applicable.

(a.6) Applicability.—Except as provided in this chapter and without regard to sections 220(f)(4) and 223(f)(4) of the Internal Revenue Code, the requirements of sections 106(b) and (d), 220 and 223 of the Internal Revenue Code of 1986, as amended to January 1, 2005, shall be applicable.

(b) Intent.—It is hereby declared to be the intent of the General Assembly that if one or more or part of one or more of the classes of income enumerated in subsection (a) are, for any reason, held to be unconstitutional by a final decision of a court of last resort, the unconstitutional class or classes or part of a class or classes of income shall be deemed severable, and the tax imposed by this chapter shall apply with respect to all the remaining classes of income or parts of classes of income enumerated in subsection (a) as if the unconstitutional class or classes of income or part or parts of classes of income had not been included.

§ 1504. Special tax provisions for poverty.

(a) Declaration of intent.—The General Assembly, in recognition of the powers contained in section 2(b)(ii) of Article III of the Constitution of Pennsylvania which provides for the establishing as a class or classes of subjects of taxation the property or privileges of persons who, because of poverty are determined to be in need of special tax provisions declares as its legislative intent and purpose to implement such power under such constitutional provision by establishing special tax provisions as provided in this chapter.

(b) Public policy.—The General Assembly having determined that there are persons within this Commonwealth whose incomes are such that imposition of a tax thereon would deprive them and their dependents of the bare necessities of life and having further determined that poverty is a relative concept inextricably joined with actual income and the number of people dependent upon such income deems it to be a matter of public policy to provide special tax provisions for that class of persons designated in this section to relieve their economic burden.

(c) Standards of eligibility.—For the taxable year 1974 and each year thereafter any claimant who meets the following standards of eligibility established by this chapter as the test for poverty shall be deemed a separate class of subject of taxation, and, as such, shall be entitled to the benefit of the special provisions of this chapter.

(d) Specific standards.—Any claim for special tax provisions under this section shall be determined in accordance with the following:

(1) (i) If the poverty income of the claimant during an entire taxable year is \$6,500 or less, or, in the case of a married claimant, if the joint poverty income of the claimant and the claimant's spouse during an entire taxable year is \$13,000 or less, the claimant shall be entitled to a refund or forgiveness of all moneys which have been paid over to, or would except for the provisions of this chapter be payable to, the Commonwealth under the provisions of this chapter, with an additional income allowance of \$9,500 for each dependent of the claimant.

(ii) For purposes of this subsection, a claimant shall not be considered to be married if:

(A) The claimant and the claimant's spouse file separate returns.

(B) The claimant and the claimant's spouse live apart at all times during the last six months of the taxable year or are separated pursuant to a written separation agreement.

(2) If the poverty income of the claimant during an entire taxable year does not exceed the poverty income limitations prescribed by paragraph (1) by more than the dollar category contained in subparagraphs (i), (ii), (iii), (iv), (v), (vi),

(vii), (viii) or (ix), the claimant shall be entitled to a refund or forgiveness based on the percentage prescribed in those subparagraphs of any moneys which have been paid over to, or would have been except for the provisions in this subsection be payable to, the Commonwealth under this chapter:

- (i) 90% if not in excess of \$250.
- (ii) 80% if not in excess of \$500.
- (iii) 70% if not in excess of \$750.
- (iv) 60% if not in excess of \$1,000.
- (v) 50% if not in excess of \$1,250.
- (vi) 40% if not in excess of \$1,500.
- (vii) 30% if not in excess of \$1,750.
- (viii) 20% if not in excess of \$2,000.
- (ix) 10% if not in excess of \$2,250.

(3) If an individual has a taxable year of less than 12 months, the poverty income thereof shall be annualized in the manner as the department may prescribe.

SUBCHAPTER C ESTATES AND TRUSTS

Sec.

1505. Taxability of estates, trusts and their beneficiaries.

§ 1505. Taxability of estates, trusts and their beneficiaries.

The income of a beneficiary of an estate or trust in respect of the estate or trust shall consist of that part of the income or gains received by the estate or trust for its taxable year ending within or with the beneficiary's taxable year which, under the governing instrument and applicable State law, is required to be distributed currently or is in fact paid or credited to the beneficiary. The income or gains of the estate or trust, if any, taxable to the estate or trust shall consist of the income or gains received by it which has not been distributed or credited to its beneficiaries.

SUBCHAPTER D PARTNERSHIPS

Sec.

1506. Taxability of partners.

§ 1506. Taxability of partners.

A partnership as an entity shall not be subject to the tax imposed by this chapter but the income or gain of a member of a partnership in respect of the partnership shall be subject to the tax and the tax shall be imposed on the member's share, whether or not distributed, of the income or gain received by the partnership for its taxable year ending within or with the member's taxable year.

SUBCHAPTER E PENNSYLVANIA S CORPORATIONS

Sec.

1507. Election by small corporation.

1507.1. Manner of making election.

1507.2. Effective years of election.

1507.3. Revocation of election.

1507.4. Termination by corporation ceasing to be a small corporation.

1507.5. Revocation or termination year.

1507.6. Election after revocation or termination.

1507.7. Taxable year of a Pennsylvania S corporation.

1507.8. Income of a Pennsylvania S corporation.

1507.9. Income of Pennsylvania S corporations taxed to shareholders.

1507.10. Limitation on pass-thru of losses to shareholders.

1507.11. Adjustments to basis of stock of shareholders.

1507.12. Distributions.

§ 1507. Election by small corporation.

Except as provided in section 1507.6 (relating to election after revocation or termination), any small corporation that is subject to the tax imposed under Article IV of the Tax Reform Code or owns a qualified S corporation subsidiary that is subject to the tax imposed under Article IV of the Tax Reform Code may elect to be taxed as a Pennsylvania S corporation. The election shall be valid only if all the shareholders of the corporation on the day on which the election is made consent to the election. A qualified Subchapter S subsidiary owned by a Pennsylvania S corporation shall be treated as a

Pennsylvania S corporation whether or not an election has been made with respect to the subsidiary.

§ 1507.1. Manner of making election.

(a) General rule.—An election made pursuant to section 1507 (relating to election by small corporation) shall be made in the manner prescribed by the department.

(b) Time of making election.—An election under section 1507 may be made for any taxable year at any time during the preceding taxable year or at any time on or before the 15th day of the third month of the current taxable year.

§ 1507.2. Effective years of election.

An election made pursuant to section 1507 (relating to election by small corporation) shall be effective for the taxable year for which the election is made and for each succeeding taxable year unless revoked or terminated.

§ 1507.3. Revocation of election.

(a) General rule.—An election under section 1507 (relating to election by small corporation) may be revoked if shareholders holding more than one-half of the shares of stock of the corporation on the day on which the revocation is made consent to the revocation.

(b) Effective date of revocation.—Except as provided in subsection (c), a revocation under subsection (a) shall be effective:

(1) on the first day of the taxable year, if made on or before the 15th day of the third month of that taxable year; or

(2) if the revocation is made after that date, it shall be effective for the following taxable year.

(c) Special rule.—If the revocation specifies a date for revocation which is on or after the day on which the revocation is made, the revocation shall be effective on and after that date.

§ 1507.4. Termination by corporation ceasing to be a small corporation.

(a) General rule.—If a corporation ceases to be a small corporation, the election under section 1507 (relating to election by small corporation) shall terminate.

(b) Effective date of termination.—A termination under subsection (a) shall be effective on the date on which the corporation ceases to be a small corporation.

§ 1507.5. Revocation or termination year.

(a) General rule.—The portion of the revocation or termination year of a Pennsylvania S corporation ending before the first day for which the revocation or termination is effective shall be treated as a short taxable year for which the corporation is a Pennsylvania S corporation.

(b) Short taxable year.—The portion of the year beginning on the first day for which the revocation or termination is effective shall be treated as a short taxable year for which the corporation is subject to the tax imposed by Article IV of the Tax Reform Code.

(c) Allocation of income and expense items.—The allocation of income and expense items to be taken into consideration in each short year shall be made in accordance with such regulations as may be issued by the department.

§ 1507.6. Election after revocation or termination.

If a corporation has made an election under section 1507 (relating to election by small corporation) and if the election has been revoked pursuant to section 1507.3 (relating to revocation of election) or terminated, the corporation and any successor corporation shall not be eligible to make an election under section 1507 for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such revocation or termination is effective.

§ 1507.7. Taxable year of a Pennsylvania S corporation.

The taxable year of a Pennsylvania S corporation shall be the same taxable year which the corporation uses for Federal income tax purposes.

§ 1507.8. Income of a Pennsylvania S corporation.

(a) General rule.—A Pennsylvania S corporation shall not be subject to the tax imposed by this chapter, but the shareholders of the Pennsylvania S corporation shall be subject to the tax imposed under this chapter as provided in this chapter.

(b) Treatment of losses.—If any tax is imposed on a Pennsylvania S corporation or any qualified subsidiary owned by the Pennsylvania S corporation, pursuant to section 1374 of the Internal Revenue Code, as amended to January 1, 1997, or pursuant to Article IV or Article VI of the Tax Reform Code for any taxable year, then, for purposes of section 1507.9 (relating to income of Pennsylvania S corporations taxed to shareholders), the amount of tax so imposed shall be treated as a loss sustained by the Pennsylvania S corporation during those years. In the case of taxes imposed pursuant to section 1374 of the Internal Revenue Code, as amended to January 1, 1997, or Article IV of the Tax Reform Code, the character of the loss shall be determined by allocating the loss proportionately among the recognized built-in gains giving rise to the tax.

(c) Recognition of gain.—If a Pennsylvania S corporation makes a distribution of property, other than an obligation of the corporation, with respect to its stock and the fair market value of the property exceeds its adjusted basis in the hands of the corporation, then gain shall be recognized on the distribution as if the property had been sold to the distributee at its fair market value.

(d) Election affecting computation.—An election which may affect the computation of items derived from a Pennsylvania S corporation shall be made by the corporation.

(e) Disallowed deductions.—A deduction, except a net loss deduction, which was disallowed when a corporation was subject to the tax imposed under Article IV of the Tax Reform Code shall be allowed in years in which the corporation is a Pennsylvania S corporation to the same extent and in the same manner that the deduction would have been allowed if the corporation had remained subject to the tax imposed under Article IV of the Tax Reform Code.

§ 1507.9. Income of Pennsylvania S corporations taxed to shareholders.

(a) General rule.—Each shareholder of a Pennsylvania S corporation shall take into income the shareholder's pro rata share of the income or loss in each applicable class of income received by the corporation for its taxable year ending within or with the shareholder's taxable year.

(b) Pro rata shares.—Each shareholder's pro rata share of any item for a taxable year shall be the sum of the amounts determined with respect to the shareholder by assigning an equal portion of all items to each day of the taxable year and then by dividing that portion pro rata among the shares outstanding on that day.

(c) Determination of the character of items.—The character of any item included in the shareholder's pro rata share shall be determined as if the item was realized directly by the shareholder from the source from which it was realized by the corporation or incurred in the same manner as incurred by the corporation.

(d) Deduction allowance.—With respect to any deduction allowed pursuant to section 1507.8(e) (relating to income of a Pennsylvania S corporation), any nonresident shareholder shall be allowed the deduction only to the extent that the previously disallowed deduction would have been considered a deduction related to income from sources within this Commonwealth during the taxable year when the deduction was disallowed.

(e) Treatment of subsidiaries.—For all purposes of this chapter, a qualified Subchapter S subsidiary owned by a Pennsylvania S corporation shall not be treated as a separate corporation and all assets, liabilities and items of income, deduction and credit of the qualified Subchapter S subsidiary shall be treated as assets, liabilities and items of income, deduction and credit of the parent Pennsylvania S corporation.

§ 1507.10. Limitation on pass-thru of losses to shareholders.

(a) General rule.—The aggregate amount of losses taken into account by a shareholder of a Pennsylvania S corporation under section 1507.9 (relating to income of Pennsylvania S corporations taxed to shareholders) shall not exceed the sum of the adjusted basis of the shareholder's stock in the Pennsylvania S corporation, determined after applying section 1507.11(a) (relating to adjustments to the basis of the stock of shareholders) for the taxable year and the shareholder's

adjusted basis of any indebtedness of the Pennsylvania S corporation to the shareholder, determined before applying section 1507.11(d) for the taxable year.

(b) Carryover of losses prohibited.—There shall be no carryover of losses by the shareholders of the Pennsylvania S corporation.

§ 1507.11. Adjustments to basis of stock of shareholders.

(a) Increases to basis.—The basis of a shareholder's stock in Pennsylvania S corporation shall be decreased for any period, but not below zero, by any distribution by the corporation to the shareholder which was not included in the income of the shareholder pursuant to section 1507.12 (relating to distributions) and by the shareholder's share of the corporation's losses as determined under section 1507.9 (relating to income of Pennsylvania S corporations taxed to shareholders) the extent that the loss reduced the shareholder's share of the corporation's income, including nontaxable income, as determined under section 1507.9.

(b) Decreases to basis.—The basis of a shareholder's stock in a Pennsylvania S corporation shall be decreased for any period, but not below zero, by any distribution by the corporation to the shareholder which was not included in the income of the shareholder pursuant to section 1507.12 (relating to distributions) and by the shareholder's share of the corporation's losses as determined under section 1507.9 to the extent that the loss reduced the shareholder's income subject to the tax imposed under this chapter or a tax measured by net income, imposed on the shareholder by any other state.

(c) Reduction to zero basis.—If for any taxable year a shareholder's basis in the stock of a Pennsylvania S corporation is reduced to zero, any excess losses shall reduce the shareholder's basis, but not below zero, in any indebtedness of the Pennsylvania S corporation to the shareholder.

(d) Restoration of reduction.—If a shareholder's basis in any indebtedness is reduced under subsection (c), then this reduction shall be restored before the shareholder's basis in the Pennsylvania S corporation's stock is increased.

§ 1507.12. Distributions.

(a) General rule.—A distribution of property by a Pennsylvania S corporation which has no accumulated earnings and profits to a shareholder of the corporation shall not be included in the shareholder's income to the extent that it does not exceed the shareholder's adjusted basis in the stock. Any amount of the distribution in excess of the adjusted basis in the stock shall be treated as a gain from the sale, exchange or other disposition of property.

(b) Distribution with accumulated earnings and profits.—A distribution of property by a Pennsylvania S corporation which has accumulated earnings and profits shall be treated in the same manner as a distribution by a Pennsylvania S corporation without earnings and profits to the extent of the corporation's accumulated adjustment account. That portion of the distribution in excess of the accumulated adjustment account shall be treated as a dividend to the extent of the accumulated earnings and profits of the corporation. Any portion of the distribution in excess of the accumulated earnings and profits of the corporation shall be treated in the same manner as a distribution from a Pennsylvania S corporation without accumulated earnings and profits.

(c) Non-pro-rata distributions.—In the case of a non-pro rata distribution of property, the adjustment shall be limited to an amount which bears the same ratio to the balance in such account as the number of shares sold, exchanged or otherwise disposed of bears to the number of shares in the corporation outstanding immediately before such sale, exchange or disposition.

(d) Definition.—For purposes of this section, "accumulated adjustment account" means the account of a Pennsylvania S corporation which is cumulatively adjusted for the most recent continuous period during which the corporation has been a Pennsylvania S corporation by increasing the account for corporate income and decreasing the account for corporate losses and all distributions of property by the corporation to the shareholders which were not included in the income of the shareholders; provided, that no adjustment shall be made for any income or loss not in any of the

classes of income enumerated in section 1503 (relating to classes of income) or for any nondeductible expense.

SUBCHAPTER F
OTHER ENTITIES

Sec.

1507.21. Treatment of unincorporated entities with single owners.

§ 1507.21. Treatment of unincorporated entities with single owners.

Unless subject to tax under Article IV of the Tax Reform Code, an unincorporated entity that has a single owner shall be disregarded as an entity separate from its owner.

SUBCHAPTER G
NONRESIDENT INDIVIDUALS

Sec.

1508. Nonresident individuals and taxable income.

1509. Husband and wife.

1510. Allocation of income of nonresident.

§ 1508. Nonresident individuals and taxable income.

The income of a nonresident individual shall be that part of the individual's income derived from sources within this Commonwealth.

§ 1509. Husband and wife.

(a) Separate return.—If the income of husband or wife, who are both nonresidents of this Commonwealth and are subject to tax under this chapter, is determined on a separately filed return, their incomes from sources within this Commonwealth shall be separately determined.

(b) One spouse a nonresident.—If either husband or wife is a nonresident and the other is a resident, separate taxes shall be determined on their separate incomes on such forms as the department shall prescribe, unless both spouses elect to determine their joint income as if they were residents, in which event their tax liabilities shall be joint and several.

§ 1510. Allocation of income of nonresident.

Where a nonresident taxpayer:

(1) earns, receives or acquires income from sources partly within and partly without this Commonwealth; or engages in a business, trade, profession or occupation partly within and partly without this Commonwealth; and

(2) as a result thereof or for other reasons that portion of the income derived from or connected with sources within this Commonwealth cannot readily or accurately be ascertained,

the department shall by regulation prescribe uniform rules for apportionment or allocation of so much of the taxpayer's income as fairly and equitably represents income, derived from sources within this Commonwealth and subject to tax under this chapter.

SUBCHAPTER H
CREDITS AGAINST TAX

Sec.

1512. Tax withheld.

1513. Tax paid under former act.

1514. Income taxes imposed by other states.

1515. (Reserved).

§ 1512. Tax withheld.

The amount withheld under section 1516 (relating to requirement of withholding tax) shall be allowed to the recipient of the compensation as a credit against the tax imposed on him by this chapter.

§ 1513. Tax paid under former act.

The amount of tax withheld from an employee and paid over to the Commonwealth or paid over by a taxpayer as an estimated payment pursuant to former Article III of the Tax Reform Code, shall be held as a credit against the tax imposed by this chapter.

§ 1514. Income taxes imposed by other states.

(a) General rule.—A resident taxpayer before allowance of any credit under section 1512 (relating to tax withheld) shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax, wage tax or tax on or measured by gross or net earned or unearned income imposed on the taxpayer or on a Pennsylvania S corporation in which the taxpayer is a shareholder, to

the extent of the taxpayer's pro rata share thereof determined in accordance with section 1507.9 (relating to income of Pennsylvania S corporations taxed to shareholders), by another state with respect to income which is also subject to tax under this chapter.

(b) Limitation.—The credit provided under this section shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the taxpayer's income subject to tax by the other jurisdiction bears to the taxpayer's entire taxable income.

§ 1515. (Reserved).

SUBCHAPTER I
CONTRIBUTIONS OF REFUNDS BY CHECKOFF

Sec.

1515.1. Definitions.

1515.2. Contributions to breast and cervical cancer research.

1515.3. Contributions for wild resource conservation.

1515.4. Contributions for organ and tissue donation awareness.

1515.5. (Reserved).

1515.6. (Reserved).

1515.7. Contributions for juvenile diabetes cure research.

1515.8. Contributions for military family relief assistance.

1515.9. Operational provisions.

§ 1515.1. Definitions.

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

“Individual income tax.” The tax imposed under this chapter.

§ 1515.2. Contributions to breast and cervical cancer research.

(a) General rule.—The department shall provide a space on the Pennsylvania individual income tax return form to allow an individual to voluntarily designate a contribution of any amount desired to be utilized for breast and cervical cancer research in the Department of Health.

(b) Deduction from tax refunds.—The amount so designated on the individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) Transfer of funds.—The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State Treasurer who shall transfer the amount from the General Fund to the Pennsylvania Cancer Control, Prevention and Research Advisory Board within the Department of Health.

(d) Information to be provided.—

(1) The department shall provide adequate information concerning the checkoff for breast and cervical cancer research in its instructions which accompany State income tax return forms. The information concerning the checkoff shall include the listing of an address furnished by the Department of Health to which contributions may be sent by taxpayers wishing to contribute to this effort but who do not receive refunds.

(2) The Department of Health shall conduct a public information campaign on the availability of this opportunity to Pennsylvania taxpayers.

(e) Annual report to General Assembly.—The Department of Health shall report annually to the respective committees of the Senate and the House of Representatives which have jurisdiction over health matters on the amount received via the checkoff plan and how the funds were utilized.

(f) Appropriations.—The General Assembly may, from time to time, appropriate funds for breast and cervical cancer research within the Department of Health.

§ 1515.3. Contributions for wild resource conservation.

(a) General rule.—The department shall provide a space on the Pennsylvania individual income tax return form to allow an individual to voluntarily designate a contribution of any amount desired to the Wild Resource Conservation Fund established under section 5 of the act of June 23, 1982 (P.L.597, No.170), known as the Wild Resource Conservation Act.

(b) Deduction from refund.—The amount so designated by an individual on the income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due the Commonwealth.

(c) Transfer of funds.—The department shall determine annually the total amount designated pursuant to this section and shall report the amount to the State Treasurer who shall transfer the amount from the General Fund to the Wild Resource Conservation Fund for use as provided in the Wild Resource Conservation Act. The department shall be reimbursed from the fund for any administrative costs incurred above and beyond the cost savings it realizes as a result of individual total refund designations.

(d) Information to be provided.—The department shall provide adequate information concerning the Wild Resource Conservation Fund in its instructions which accompany State income tax return forms, which shall include the listing of an address furnished to it by the Wild Resource Conservation Board to which contributions may be sent by those taxpayers wishing to contribute to the fund but who do not receive refunds.

(e) Applicability.—This section shall apply to taxable years beginning on or after January 1, 1997.

§ 1515.4. Contributions for organ and tissue donation awareness.

(a) General rule.—The department shall provide a space on the Pennsylvania individual income tax return form whereby an individual may voluntarily designate a contribution of any amount desired to the Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund established under 20 Pa.C.S. § 8622 (relating to the Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund).

(b) Deduction from refund.—The amount so designated by an individual on the Pennsylvania individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due the Commonwealth.

(c) Transfer of funds.—The department shall annually determine the total amount designated pursuant to this section and shall report that amount to the State Treasurer who shall transfer that amount to the Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund.

(d) Information to be provided.—The department shall, in all taxable years following the effective date of this section, provide on its forms or in its instructions which accompany Pennsylvania individual income tax return forms adequate information concerning the Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund which shall include the listing of an address furnished to it by the Organ Donation Advisory Committee to which contributions may be sent by those taxpayers wishing to contribute to the fund but who do not receive refunds.

(e) Applicability.—This section shall apply to taxable years beginning on or after January 1, 1997.

§ 1515.5. (Reserved).

§ 1515.6. (Reserved).

§ 1515.7. Contributions for juvenile diabetes cure research.

(a) General rule.—The department shall provide a space on the Pennsylvania individual income tax return form to allow an individual to voluntarily designate a contribution of any amount desired to be utilized for juvenile diabetes cure research related to:

- (1) restoring normal blood sugar levels;
- (2) preventing and reversing complications; or
- (3) preventing juvenile diabetes.

(b) Deduction from refund.—The amount so designated on the Pennsylvania individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) Transfer of funds and expenditure.—

- (1) The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State

Treasurer, who shall transfer the amount to a restricted revenue account within the General Fund to be used by the Department of Health for aiding juvenile diabetes cure research.

(2) The Department of Health shall distribute the amounts to institutions of higher education and independent research institutes of this Commonwealth to support projects that have been subject to an established peer and scientific review process identical or similar to the National Institutes of Health review system.

(d) Information to be provided.—The department shall provide adequate information concerning the checkoff for juvenile diabetes cure research in its instructions which accompany the Pennsylvania income tax return forms. The information concerning the checkoff shall include the listing of an address furnished by the Department of Health to which contributions may be sent by taxpayers wishing to contribute to this effort but who do not receive refunds.

(e) Annual report to General Assembly.—The Department of Health shall report annually to the respective committees of the Senate and the House of Representatives which have jurisdiction over health matters on the amount received via the checkoff plan and how the funds were utilized.

(f) Applicability.—This section shall apply to tax years beginning after December 31, 2004.

§ 1515.8. Contributions for military family relief assistance.

(a) General rule.—Beginning with taxable years ending after December 31, 2004, the department shall provide a space on the Pennsylvania individual income tax return form to allow an individual to contribute to a fund for military family relief assistance. Persons may do so by stating the amount of the contribution, not less than \$1, on the return and that the contribution will reduce the taxpayer's refund.

(b) Transfer of funds.—The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State Treasurer who shall transfer the amount to a restricted revenue account within the General Fund to be used by the Department of Military and Veterans Affairs for contributions to military family relief assistance as provided by statute.

(c) Information to be provided.—The department shall provide adequate information concerning the checkoff for military family relief assistance in its instructions which accompany the Pennsylvania income tax return forms. The information concerning the checkoff shall include the listing of an address furnished by the Department of Military and Veterans Affairs to which contributions may be sent by taxpayers wishing to contribute to this effort but who do not receive refunds.

(d) Annual report to General Assembly.—The Department of Military and Veterans Affairs shall report annually to the respective committees of the Senate and the House of Representatives which have jurisdiction over military and veterans affairs on the amount received via the checkoff plan and how the funds were utilized.

(e) Applicability.—This section shall apply to taxable years beginning after December 31, 2004.

§ 1515.9. Operational provisions.

(a) General rule.—Except for the checkoff established under sections 1515.6 (relating to contributions for Korea/Vietnam Memorial National Education Center) and 1515.7 (relating to contributions for juvenile diabetes cure research) and as otherwise provided under subsection (b), the checkoffs established under this subchapter shall apply through taxable years ending December 31, 2007.

(b) Termination of checkoffs.—Any checkoff established under this subchapter and applicable for the first time in a taxable year beginning after December 31, 2003, shall expire four years after the beginning of such first taxable year.

(c) Alternative termination of checkoffs.—Sections 1515.2 (relating to contributions to breast and cervical cancer research), 1515.3 (relating to contributions for wild resources conservation) and

1515.4 (relating to contributions for organ and tissue donation) shall expire January 1, 2008.

SUBCHAPTER J
WITHHOLDING OF TAX

Sec.

1516. Requirement of withholding tax.

1517. Information statement.

1518. Time for filing employer's returns.

1519. Monthly, semi-monthly and quarterly payment of taxes withheld.

1520. Employer's liability for withheld taxes.

1521. Employer's failure to withhold.

1521.1. Bulk and auction sales, transfers and notice.

1522. Designation of third parties to perform acts required of employers.

1523. When withholding not required.

§ 1516. Requirement of withholding tax.

Every employer maintaining an office or transacting business within this Commonwealth and making payment of compensation to:

(1) a resident individual; or

(2) a nonresident individual taxpayer performing services on behalf of such employer within this Commonwealth, shall deduct and withhold from the compensation for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's compensation during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due for such year with respect to the compensation. The method of determining the amount to be withheld shall be prescribed by regulations of the department.

§ 1517. Information statement.

(a) Duty of employers.—Every employer required to deduct and withhold tax under this chapter shall furnish to each employee to whom the employer has paid compensation during the calendar year a written statement in such manner and in such form as may be prescribed by the department showing:

(1) the amount of compensation paid by the employer to the employee;

(2) the amount deducted and withheld as tax, pursuant to this chapter; and

(3) such other information as the department shall prescribe.

(b) Deadline for providing.—

(1) Each statement required by this section for a calendar year shall be furnished to the employee on or before January 31 of the year succeeding the calendar year.

(2) If the employee's employment is terminated before the close of a calendar year, the employer, at its option, shall furnish the statement to the employee at any time after the termination but no later than January 31 of the year succeeding the calendar year.

(3) If an employee whose employment is terminated before the close of a calendar year requests the employer in writing to furnish the employee with the statement at an earlier time, and, if there is no reasonable expectation on the part of both employer and employee of further employment during the calendar year, then the employer shall furnish the statement to the employee on or before the later of the 30th day after the day of the request or the 30th day after the day on which the last payment of wages is made.

§ 1518. Time for filing employers' returns.

Every employer required to deduct and withhold tax under this chapter shall file a quarterly withholding return on or before the last day of April, July, October and January for the three months ending the last day of March, June, September and December. The quarterly returns shall be filed with the department at its main office or at any branch office which it may designate for filing returns.

§ 1519. Monthly, semi-monthly and quarterly payment of taxes withheld.

(a) General rule.—Every employer withholding tax under this chapter shall pay over to the department or to a depository designated by it the tax required to be deducted and withheld under this chapter as follows:

(1) Where the aggregate amount required to be deducted and withheld by any employer for each quarterly period can reasonably be expected to be less than \$300, the employer shall file a return and pay the tax on or before the last day for filing a quarterly return under section 1518 (relating to time for filing employers' returns).

(2) Where the aggregate amount required to be deducted and withheld by any employer for each quarterly period can reasonably be expected to be \$300 or more but less than \$1,000, the employer shall pay the tax monthly, on or before the 15th day of the month succeeding the months of January to November, inclusive, and on or before the last day of January following the month of December.

(3) Where the aggregate amount required to be deducted and withheld by any employer for each quarterly period can reasonably be expected to be \$1,000 or more, the employer shall pay the tax semimonthly, within three banking days after the close of the semimonthly period.

(b) Notice to defaulting employers.—Notwithstanding anything in this section to the contrary, whenever any employer fails to deduct or truthfully account for or pay over the tax withheld or file returns as prescribed by this chapter, the department may serve a notice on such employer requiring the employer to withhold taxes which are required to be deducted under this chapter and deposit such taxes in a bank approved by the department in a separate account in trust for and payable to the department and to keep the amount of the tax in the account until payment over to the department. The notice shall remain in effect until a notice of cancellation is served on the employer by the department.

§ 1520. Employer's liability for withheld taxes.

Every employer required to deduct and withhold tax under this chapter shall be liable for the tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the department and any additions to tax penalties and interest with respect thereto shall be considered the tax of the employer. All taxes deducted and withheld from employees pursuant to this chapter or under color of this chapter shall constitute a trust fund for the Commonwealth and shall be enforceable against the employer, the employer's representative or any other person receiving any part of the fund.

§ 1521. Employer's failure to withhold.

If an employer fails to deduct and withhold tax as prescribed in this act and thereafter the tax against which the tax may be credited is paid, the tax which was required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved of the liability for any penalty, interest or additions to the tax imposed with respect to the failure to deduct and withhold.

§ 1521.1. Bulk and auction sales, transfers and notice.

An employer who is liable for filing returns in accordance with the provisions of this subchapter and either sells or causes to be sold at auction or sells or transfers in bulk 51% or more of any stock of goods, wares or merchandise of any kind, fixtures, machinery, equipment, buildings or real estate held by or on behalf of the employer shall be subject to the provisions of section 1403 of act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

§ 1522. Designation of third parties to perform acts required of employers.

In case a fiduciary, agent or other person has the control, receipt, custody or disposal of, or pays the compensation of an employee or a group of employees, employed by one or more employers, the department may designate the fiduciary, agent, or other person to perform such acts as are required of employers under this chapter as the department may by regulation prescribe. Except as may be otherwise

prescribed by the department, all provisions of this chapter which are applicable to an employer shall be applicable to a fiduciary, agent or other person.

§ 1523. When withholding not required.

Notwithstanding any provision of this part to the contrary, an employer on and after January 1, 1975, shall not be required to withhold any tax upon payment of wages to an employee if such employee can certify that:

- (1) The employee incurred no personal income tax liability for the preceding tax year.
- (2) The employee anticipates no liability for personal income tax for the current taxable year.

SUBCHAPTER K
WITHHOLDING TAX ON SHARES
ON INCOME FROM SOURCES
WITHIN THIS COMMONWEALTH

Sec.

1524. Nonresidents.

1524.1. Amount of withholding tax.

1524.2. Treatment of nonresident partners, members or shareholders.

1524.3. Liability for tax, interest, penalties and additions.

§ 1524. Nonresidents.

(a) General rule.—When a partnership or Pennsylvania S corporation receives income from sources within this Commonwealth for any taxable year and any portion of the income is allocable to a nonresident partner, member or shareholder thereof, the partnership or Pennsylvania S corporation shall pay a withholding tax under this section at the time and in the manner prescribed by the department. Notwithstanding any other provision of this chapter, all such withholding tax shall be paid over on or before the 15th day of the fourth month following the end of the taxable year.

(b) Applicability.—This section shall not apply to any publicly traded partnership as defined under section 7704 of the Internal Revenue Code with equity securities registered with the Securities and Exchange Commission under section 12 of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a).

§ 1524.1. Amount of withholding tax.

(a) General rule.—The amount of tax withheld from nonresidents and the amount of the withholding tax payable under section 1524 (relating to nonresidents) shall be equal to the income from sources within this Commonwealth of the partnership, association or Pennsylvania S corporation which is allocable to nonresident partners, members or shareholders multiplied by the tax rate specified in section 1502(b) (relating to imposition of tax).

(b) Exception.—There shall not be taken into account any item of income, gain, loss or deduction to the extent allocable to any partner, member or shareholder who is not a nonresident.

§ 1524.2. Treatment of nonresident partners, members or shareholders.

Each nonresident partner, member, shareholder or holder of a beneficial interest shall be allowed a credit for the partner's, member's, shareholder's or holder's share of the withholding tax paid by the partnership, association or Pennsylvania S corporation. The credit shall be allowed for the partner's, member's, shareholder's or holder's taxable year in which or with which the partnership, association or Pennsylvania S corporation taxable year, for which the tax was paid, ends.

§ 1524.3. Liability for tax, interest, penalties and additions.

If a partnership, association or Pennsylvania S corporation fails to pay withholding tax as prescribed in this chapter and thereafter the tax is paid, the partnership, association or Pennsylvania S corporation shall not be relieved of the liability for any penalty, interest or addition as a result of failure to properly withhold the tax.

SUBCHAPTER L
ESTIMATED TAX

Sec.

1525. Declarations of estimated tax.

1526. Payments of estimated tax.

§ 1525. Declarations of estimated tax.

(a) General rule.—Every resident and nonresident individual, trust and estate shall at the time prescribed make a declaration of the individual's estimated tax for the taxable year, containing such information as the department may prescribe by regulations, if the individual's income, other than from compensation on which tax is withheld under this chapter, can reasonably be expected to exceed \$8,000.

(b) (Reserved).

(c) Spouses.—A husband and wife may make a joint declaration of estimated tax under this chapter as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. If a joint declaration is made but the spouses elect to determine their taxes separately, the estimated tax for such year may be treated as the estimated tax of either spouse, or may be divided between them, as they may elect.

(d) Filing deadline.—Except as otherwise provided in this chapter, the date for filing a declaration of estimated tax shall depend upon when the resident or nonresident individual, trust or estate determines that the individual's income on which no tax has been withheld under this chapter can reasonably be expected to exceed \$8,000 in the taxable year, as follows:

(1) If the determination is made on or before April 1 of the taxable year, a declaration of estimated tax shall be filed no later than April 15 of the taxable year.

(2) If the determination is made after April 1 but before June 2 of the taxable year, the declaration shall be filed no later than June 15 of the year.

(3) If the determination is made after June 1 but before September 2 of the taxable year, the declaration shall be filed no later than September 15 of the year.

(4) If the determination is made after September 1 of the taxable year, the declaration shall be filed no later than January 15 of the year succeeding the taxable year.

(e) Farming exception.—Notwithstanding the provisions of subsection (d), a declaration of estimated tax of an individual having an estimated gross income from farming for the taxable year which is at least two-thirds of the individual's total estimated gross income for the taxable year may be filed at any time on or before January 15 of the succeeding year, but if the farmer files a final return and pays the entire tax by March 1, the return may be considered as the individual's declaration due on or before January 15.

(f) Estimated tax under \$100.—A declaration of estimated tax of an individual, trust or estate having a total estimated tax for the taxable year of \$100 or less may be filed at any time on or before January 15 of the succeeding year under regulations of the department.

(g) Amendment of declarations.—An individual, trust or estate may amend a declaration under regulations of the department.

(h) Special circumstances.—If on or before January 31 of the year succeeding a taxable year, an individual, trust or estate files the individual's return for the entire taxable year for which a declaration was required to be filed within the time prescribed by subsection (d)(4) and pays with the declaration the full amount of the tax shown to be due on the return:

(1) The return shall be considered as the individual's declaration which was required to be filed no later than January 15.

(2) The return shall be considered as the amendment permitted by subsection (g) to be filed on or before January 15 provided the amount of the tax shown on the return is greater than the amount of the estimated tax shown in a declaration previously made.

(i) Applicability.—This chapter shall apply to:

(1) A taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(2) An individual, trust or estate having a taxable year of less than twelve months in accordance with procedures prescribed in regulations of the department.

(j) (Reserved).

(k) Definition.—For the purposes of this chapter, the term “estimated tax” means the amount which an individual, trust or estate estimates to be the individual’s tax due under this chapter for the taxable year, less the amount which he or it estimates to be the sum of any credits allowable against the tax under this chapter.

§ 1526. Payments of estimated tax.

(a) General rule.—Subject to the provisions of section 1525(i)(2) (relating to declarations of estimated tax), the estimated tax with respect to which a declaration is required shall be paid as follows:

(1) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second, third and fourth installments shall be paid on or before the succeeding June 15, September 15, and January 15, respectively.

(2) If the declaration is not required to be filed on or before April 15 of the taxable year and is filed after April 15, but before June 16 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second and third installments shall be paid on the succeeding September 15 and January 15, respectively.

(3) If the declaration is not required to be filed on or before June 15 of the taxable year and is filed after June 15 but before September 16 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second shall be paid on the succeeding January 15.

(4) If the declaration is not required to be filed on or before September 15 of the taxable year and is filed after September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is not filed within the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs (2), (3) and (4) shall not apply, and there shall be paid at the time of such filing the amount of all installments of estimated tax which were due and payable on or before the date the declaration was filed and the remaining installments shall be paid at such times and in such amounts as they would have been payable if the declaration had been filed when due.

(b) Farmers.—If an individual described in section 1525(e) makes a declaration of estimated tax after September 15 of the taxable year, but before the following March 1, the estimated tax shall be paid in full at the time of the filing of the declaration.

(c) Amended declaration.—

(1) If any amendment of a declaration is filed, the remaining unpaid installments, if any, shall be ratably increased or decreased, as the case may be, to reflect any increase or decrease in the estimated tax by reason of the amendment.

(2) If an amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making the amendment.

SUBCHAPTER M

RETURNS AND PAYMENT OF TAX

Sec.

1530. Returns and liability.

1530.1. Return of Pennsylvania S corporation.

1531. Returns of married individuals, deceased or disabled individuals and fiduciaries.

1532. Time and place for filing returns and paying tax.

1533. Signing of returns and other documents.

1534. Extension of time.

1535. Requirements concerning returns, notices, records and statements.

1536. Timely mailing treated as timely filing and payment.

1536.1. Procedure for claiming special tax provisions.

1536.2. Proof of eligibility.

§ 1530. Returns and liability.

(a) General rule.—On or before the date when a taxpayer’s Federal income tax return is due or would be due if the taxpayer were required to file a Federal income tax return, under the Internal Revenue Code, a tax return under this chapter shall be made and filed by or for every taxpayer having income for the taxable year.

(b) Members of the armed forces.—

(1) In the case of an individual serving in the armed forces of the United States in an area designated by the President of the United States by Executive order as a “combat zone,” as described in section 7508 of the Internal Revenue Code, as amended, at any time during the period designated by the President by Executive order as the period of combatant activities in the combat zone or hospitalized as a result of injury received while serving in the combat zone during such time, or an individual serving in a military capacity as a result of a Federal call-up to active duty or civilian capacity outside the boundary of this Commonwealth in support of the armed forces, the period of service in the area, plus the period of qualified continuous hospitalization attributable to the injury, and the next 180 days thereafter shall be disregarded in determining, under this chapter, in respect of any tax liability, including any interest, penalty, additional amount or addition to the tax of such individual:

(i) Whether any of the following acts were performed within the time prescribed therefor:

(A) Filing any return of income tax, except income tax withheld at source.

(B) Payment of any income tax, except income tax withheld at source or any installment thereof or of any other liability to the Commonwealth in respect thereof.

(C) Filing a petition for redetermination of a deficiency or for review of a decision rendered by the department.

(D) Allowance of a credit or refund of any tax.

(E) Filing a claim for credit or refund of any tax.

(F) Bringing suit upon any such claim for credit.

(G) Assessment of any tax.

(H) Giving or making any notice or demand for the payment of any tax or with respect to any liability to the Commonwealth in respect of any tax.

(I) Collection by the department, by levy or otherwise, of the amount of any liability in respect of any tax.

(J) Bringing suit by the Commonwealth, or any officer on its behalf, in respect of any liability in respect of any tax.

(K) Any other act required or permitted under this chapter specified in regulations prescribed by the department.

(ii) The amount of any credit or refund, including interest.

(2) (i) The provisions of this subsection shall apply to the spouse of an individual entitled to the benefits of paragraph (1).

(ii) This paragraph shall not be construed as applying this subsection to a spouse for any taxable year

beginning more than one year after the date of termination of combatant activities in a combat zone.

(3) The period of service in the area referred to in this subsection shall include the period during which an individual entitled to benefits under this subsection is in a missing status.

(4) In the event that any qualified individual under paragraph (1) is killed while serving in the combat zone, the tax liability of that decedent for both the year of death and the immediate prior year shall be waived by the Commonwealth.

(5) For purposes of paragraph (1), the phrase “period of qualified continuous hospitalization” shall mean:

(i) Any hospitalization outside the United States.

(ii) Any hospitalization inside the United States.

§ 1530.1. Return of Pennsylvania S corporation.

(a) General rule.—Every Pennsylvania S corporation shall make a return for each taxable year, stating specifically:

(1) All items of gross income and deductions.

(2) The names and addresses of all persons owning stock in the corporation at any time during the taxable year.

(3) The number of shares of stock owned by each shareholder at all times during the taxable year.

(4) The amount of money and other property distributed by the corporation during the taxable year to each shareholder.

(5) The date of each distribution.

(6) Each shareholder’s pro rata share of each item of the corporation for the taxable year.

(7) Such other information as the department may require.

(b) Deadline for filing.—The return shall be filed on or before 30 days after the date when the corporation’s Federal income tax return is due.

(c) Copy of Federal return to be included.—Every Pennsylvania S corporation shall also submit to the department a true copy of the income tax return filed with the Federal Government at the time the return required under subsection (a) is filed.

§ 1531. Returns of married individuals, deceased or disabled individuals and fiduciaries.

(a) General rule.—If the income tax liability of husband or wife is determined on a separate return, their income tax liabilities under this chapter shall be separate.

(b) Joint and several tax liability.—If the income tax liabilities of husband and wife are determined on a joint return, their tax liabilities shall be joint and several.

(c) When separate returns to be filed.—If either husband or wife is a resident and the other is a nonresident, they shall file separate tax returns under this chapter on such single or separate forms as may be required by the department, in which event their tax liabilities shall be separate, except as provided in subsection (d), unless both elect to determine their joint taxable income as if both were residents, in which event their tax liabilities shall be joint and several.

(d) When credits permitted.—

(1) Subject to the provisions of paragraph (2), if husband and wife file separate tax returns under this chapter on a single form pursuant to subsection (b) or (c) and:

(i) The sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of the tax for which the spouse is separately liable, then the excess may be applied by the department to the credit of the other spouse if the sum of the payments by the other spouse, including withheld and estimated taxes, is less than the amount of the tax for which the other spouse is separately liable.

(ii) The sum of the payments made by both spouses with respect to the taxes for which they are separately liable, including withheld and estimated taxes, exceeds the total of the taxes due, then a refund of the excess may be made payable to both spouses or, if either is deceased, to the survivor.

(2) The provisions of this subsection shall not apply if the return of either spouse includes a demand that any overpayment made by that spouse shall be applied only on account of that spouse’s separate liability.

(e) Deceased individuals.—The return for any deceased individual shall be made and filed by his executor, administrator or other person charged with the individual’s property.

(f) Minors and individuals with disabilities.—The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by the individual’s guardian, committee, fiduciary or other person charged with the care of the individual’s person or property, or by the individual’s duly authorized agent.

(g) Estates and trusts.—The return for an estate or trust shall be made and filed by the fiduciary. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

§ 1532. Time and place for filing returns and paying tax.

(a) General rule.—A person required to make and file a return under this chapter shall, without assessment, notice or demand, pay any tax due thereon to the department on or before the date fixed for filing such return, determined without regard to any extension of time for filing the return.

(b) Regulations.—The department shall prescribe by regulation the place for filing and return, declaration, statement, or other document required pursuant to this chapter and for payment of any tax.

§ 1533. Signing of returns and other documents.

(a) General rule.—Any return other than an estimated return under section 1525 (relating to declaration of estimated tax), statement or other document required to be made pursuant to this chapter shall be signed in accordance with regulations or instructions prescribed by the department.

(b) Partners to sign documents.—

(1) Any return, statement, or other document required of a partnership shall be signed by one or more partners.

(2) The fact that a partner’s name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Certification of veracity.—The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this chapter shall constitute a certification by the person making or filing the return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

§ 1534. Extension of time.

The department may, upon application, grant a reasonable extension of time for filing a return, declaration, statement or other document required pursuant to this chapter, on such terms and conditions as it may require. Except for a taxpayer who is outside the United States, no such extension for filing a return, declaration, statement or other document, shall exceed six months.

§ 1535. Requirements concerning returns, notices, records and statements.

(a) General rule.—The department may prescribe by regulation for the keeping of records, the content and form of returns, declarations, statements and other documents and the filing of copies of Federal income tax returns and determinations. The department may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the department may deem sufficient to show whether or not the person is liable for tax under this chapter.

(b) Identifying numbers required.—

(1) When required by regulations prescribed by the department:

(i) Any person required under the authority of this chapter to make a return, declaration, statement or other document shall include in such return, declaration, statement or other document such identifying number as

may be prescribed for securing proper identification of such person.

(ii) Any person with respect to whom a return, declaration, statement or other document is required under the authority of this chapter to make a return, declaration, statement or other document with respect to another person, shall request from the other person, and shall include in any a return, declaration, statement or other document, such identifying number as may be prescribed for securing proper identification of the other person.

(2) For purposes of this section, the department is authorized to require such information as may be necessary to assign an identifying number to a person.

(c) Partnership income.—

(1) Every partnership having a resident partner or having any income derived from sources within this Commonwealth shall make a return for the taxable year setting forth all items of income, loss and deduction, and such other pertinent information as the department may by regulations prescribe. The return shall be filed on or before the 15th day of the fourth month following the close of each taxable year.

(2) For purposes of this subsection, “taxable year” means year or period which would be a taxable year of the partnership if it were subject to tax under this chapter.

(d) Regulations.—

(1) The department may prescribe regulations requiring returns of information to be made and filed on or before February 28 of each year as to the payment or crediting in any calendar year of amounts of \$10 or more to any taxpayer.

(2) The returns may be required of a person, including a lessee or mortgagor of real or personal property, fiduciary, employer and any other officer and employee of this Commonwealth or of any municipal corporation or political subdivision of this Commonwealth, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer.

(3) A duplicate of the statement as to tax withheld on compensation required to be furnished by an employer to an employee shall constitute the return of information required to be made under this section with respect to the compensation.

(e) Gambling and lottery winnings.—

(1) Any person who is required to make a form W-2G return to the Secretary of the Treasury of the United States in regard to taxable gambling or lottery winnings from sources within this Commonwealth shall file a copy of the form with the department by March 1 of each year or, if filed electronically, by March 31 of each year.

(2) This subsection shall apply to taxable years beginning after December 31, 2003.

§ 1536. Timely mailing treated as timely filing and payment.

(a) General rule.—Notwithstanding the provisions of any State tax law to the contrary, whenever a report or payment of all or any portion of a State tax is required by law to be received by the department or other agency of the Commonwealth on or before a day certain, the taxpayer shall be deemed to have complied with the law if the letter transmitting the report or payment of such tax which has been received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

(b) Evidence.—For the purposes of this chapter, presentation of a receipt indicating that the report or payment was mailed by registered or certified mail on or before the due date shall be evidence of timely filing and payment.

§ 1536.1. Procedure for claiming special tax provisions.

The following procedures shall be employed for claiming the special tax provisions:

(1) The claimant may claim the special tax provisions upon the expiration of the claimant’s taxable year in connection with the claimant’s filing of an annual return under the provisions of this chapter. Notwithstanding any other provisions of this chapter to the contrary, the department may promulgate such rules or regulations as it may deem necessary to fairly and reasonably implement the provisions of this section.

(2) If a claimant receives income, other than compensation from an employer, the claimant may claim the special tax provisions in connection with the claimant’s filing of estimated tax returns.

§ 1536.2. Proof of eligibility.

The department shall establish such rules, regulations, schedules or other procedures as may be necessary for the submission and establishment of proof of the eligibility of persons for the special tax provisions or other matters relating to the provisions of this chapter. Such procedures may include, but not be limited to, the submission of requisite information and certifications upon forms provided by the department, including such special tax return or report forms as may be necessary.

SUBCHAPTER N PROCEDURE AND ADMINISTRATION

Sec.

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§ 1537. Payment on notice and demand.

Upon receipt of notice and demand from the department, there shall be paid the amount of any tax due under this chapter stated in the notice and demand.

§ 1538. Assessment.

(a) Department authority.—The department is authorized and required to make the inquiries, determinations and assessments of all taxes imposed by this chapter.

(b) Mode or time.—If the mode or time for the assessment of any tax is not otherwise provided for, the department may establish the same by regulations.

(c) Estimated assessment.—In the event that any taxpayer fails to file a return required by this chapter, the department may make an estimated assessment based on information available of the proper amount of tax owing by the taxpayer. A notice of assessment in the estimated amount shall be sent to the taxpayer. The tax shall be paid within 90 days after a notice of the estimated assessment has been mailed to the taxpayer, unless within that period the taxpayer has filed

a petition for reassessment in the manner prescribed by section 1540 (relating to procedure for reassessment).

§ 1539. Jeopardy assessments.

(a) Jeopardy assessments, filing and notice.—If the department believes that the assessment or the collection of a deficiency will be jeopardized in whole or in part by delay, it may mail or issue notice of its finding to the taxpayer, together with a demand for immediate payment of the tax or the deficiency declared to be in jeopardy including interest and penalties and additions thereto, if any.

(b) Closing of taxable year.—If the department believes that a taxpayer designs quickly to depart from this Commonwealth or to remove the taxpayer's property from this Commonwealth or to conceal himself or property, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless the proceedings are brought without delay, the department shall declare the taxable period for the taxpayer immediately terminated and shall cause notice of the finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired, and such taxes shall thereupon become immediately due and payable.

(c) Jeopardy assessments and collection.—A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once. The taxpayer, however, may stay collection and prevent the jeopardy assessment from becoming final by filing, within ten days after the date of the notice of jeopardy assessment, a petition for reassessment, notwithstanding the provisions of section 1540 (relating to procedure for reassessment) to the contrary, accompanied by a bond or other security in such amounts as the department may deem necessary, not exceeding double the amount, including interest and penalties and additions thereto, as to which the stay is desired.

(d) Jeopardy assessment, when final.—If a petition for reassessment, accompanied by bond or other security is not filed within the ten-day period, the assessment becomes final.

(e) Jeopardy assessments and hearing.—If the taxpayer has so requested in the petition of the taxpayer, the department shall grant the taxpayer or the taxpayer's authorized representative an oral hearing.

(f) Jeopardy assessments, action on petition for reassessment.—The department shall consider the petition for reassessment and notify the taxpayer of its decision on the petition. The department's decision as to the validity of the jeopardy assessment shall be final, unless the taxpayer within 90 days after notification of the department's decision files a petition for review authorized under section 1541 (relating to review by Board of Finance and Revenue).

(g) Jeopardy assessments and presumptive evidence of jeopardy.—In any proceeding brought to enforce payment of taxes made due and payable by this section, the belief of the department under subsection (a) whether made after notice to the taxpayer or not, is for all purposes presumptive evidence that the assessment or collection of the tax or the deficiency was in jeopardy. A certificate of the department of the mailing or issuing of the notices specified in this section is presumptive evidence that the notices were mailed or issued.

§ 1540. Procedure for reassessment.

Promptly after the date of an assessment by the department, the department shall send by mail a copy of the assessment to the person against whom it was made. Within 90 days after the date upon which the copy of the assessment was mailed, the person may file with the department a petition for reassessment of the tax. Each petition for reassessment shall state specifically the reasons which the petitioner believes entitled the petitioner to such reassessment, and it shall be supported by affidavit that it is not made for the purpose of delay and that the facts set forth in the petition are true. It shall be the duty of the department, within six months after receiving a petition for reassessment, to dispose of the petition for reassessment. Notice of the action taken upon any petition for reassessment shall be given to the petitioner promptly thereafter.

§ 1541. Review by Board of Finance and Revenue.

Within 90 days after the date of mailing of notice by the department of the action taken on any petition for reassessment filed with it, the person against whom the assessment was made may by petition request the Board of Finance and Revenue to review the action. The failure of the department to notify the petitioner of a decision within the six-month period provided for by section 1540 (relating to procedure for reassessment) shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within 120 days after written notice is mailed to petitioner that the department has failed to dispose of the petition within the six-month period prescribed by section 1540. Each petition for review filed under this section shall state specifically the reasons upon which the petitioner relies, or shall incorporate by reference the petition for reassessment in which the reasons must be stated. The petition shall be supported by affidavit that it is not made for the purpose of delay and that the facts in the petition as set forth are true. The Board of Finance and Revenue shall act in disposition of petitions filed with it within six months after they have been received, and in the event of failure of the board to dispose of any petition within six months, the action taken by the department upon the petition for reassessment shall be deemed sustained. The Board of Finance and Revenue may sustain the action taken on the petition for reassessment, or it may reassess the tax due upon any basis as it shall deem according to law. Notice of the action of the Board of Finance and Revenue shall be given by mail to the department and to the petitioner.

§ 1542. Appeal to Commonwealth Court.

Any person, or the Commonwealth, aggrieved by the decision of the Board of Finance and Revenue may appeal in the manner now or hereafter provided by law for appeals from decisions of the board in tax cases.

§ 1543. Collection of tax.

The department shall collect the taxes imposed by this chapter in the manner provided by law for the collection of taxes imposed by the laws of this Commonwealth.

§ 1544. Collection upon failure to request reassessment, review or appeal.

(a) Collection.—The department may collect any tax:

(1) After 90 days from the date of mailing of a copy of the notice of assessment, if no petition for reassessment has been filed.

(2) After 90 days from the date of mailing of notice of the department's action thereon, if no petition for review has been filed;

(3) Within 30 days from the date of mailing of notice of the decision of the Board of Finance and Revenue upon a petition for review or from the expiration of the board's time for acting upon the petition, if no decision has been made.

(4) Immediately, in all cases of judicial sales, receiverships, assignments or bankruptcies.

(b) Defenses prescribed.—In any proceeding for the collection of the tax imposed by this chapter, the person against whom the assessment was made shall not be permitted to set up any ground of defense that might have been presented to the department, the Board of Finance and Revenue or the Commonwealth Court if the person had properly pursued his administrative remedies under this chapter.

§ 1545. Lien for tax.

(a) Amount and filing.—If any person liable to pay any tax neglects or refuses to pay the same on the date the tax becomes collectible, the amount of the tax, together with any costs that may accrue in addition to the amount of the tax, shall be a lien in favor of the Commonwealth against the real and personal property of the person but only after the lien has been duly entered and docketed of record by the prothonotary of the county where the property is situated. No prothonotary shall require, as a condition precedent to the entry of a lien, the payment of costs incident to the entry of the lien.

(b) Transmittal to prothonotaries.—The department may, at any time, transmit to the prothonotaries of the respective counties certified

copies of all liens for taxes imposed by this chapter. It shall be the duty of each prothonotary receiving a lien to enter and docket the same of record in the office of the prothonotary, which lien shall be indexed as judgments are now indexed. All such liens shall have priority to, and be fully paid before, any other obligation, judgment, claim, lien or estate paid and satisfied out of the judicial sale of the real and personal property with which the property may subsequently become charged, or for which it may subsequently become liable, subject, however, to mortgage or other liens existing and duly recorded at the time the tax lien is recorded, except the cost of sale and of the writ upon which it is made and real estate taxes imposed or assessed upon the property. A writ of execution may directly issue upon such lien; however, not less than ten days before issuance of any execution on the lien, notice of the filing and effect of the lien shall be sent by certified mail to the taxpayer at the taxpayer's last known post office address. The lien shall have no effect upon any stock of goods, ware or merchandise regularly sold or leased in the ordinary course of business by the person against whom the lien had been entered, unless and until a writ of execution has been issued and a levy made upon the stock of goods, wares and merchandise.

(c) Prothonotary.—Any willful failure of any prothonotary to carry out any duty imposed upon the prothonotary by this section shall be a misdemeanor and, upon conviction, the offender shall be sentenced to pay a fine of not more than \$1,000 and cost of prosecution, or to imprisonment for not more than one year, or both.

§ 1546. Refund or credit of overpayment.

(a) Credit and refund.—In the case of any payment of tax not due under this chapter, the department may credit the amount of the overpayment against any liability in respect of the tax imposed by this chapter on the part of the person who made the overpayment and shall refund any balance to the person.

(b) Regulations.—The department is authorized to prescribe regulations providing for the crediting against the estimated tax for any taxable year of the amount determined to be an overpayment of the tax for a preceding taxable year.

(c) Credit against installment.—If the taxpayer has paid as an installment of estimated tax more than the correct amount of the installment, the overpayment shall be credited against the unpaid installments, if any. If the amount paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in subsection (a) or (b).

§ 1547. Restrictions on refunds.

No credit or refund shall be made under section 1546 (relating to refund or credit of overpayment) without the approval of the Board of Finance and Revenue, except credits or refunds as arise:

(1) By reason of the overpayment of an installment of estimated tax.

(2) Upon reassessment or upon the filing of a final return or amended final return showing any overpayment of tax.

§ 1548. Limitations on assessment and collection.

(a) Time.—The amount of any tax imposed by this chapter shall be assessed within three years after the return is filed. For the purposes of this subsection and subsection (b), a return filed before the last day prescribed for the filing thereof, or before the last day of any extension of time for the filing thereof, shall be considered as filed on the last day.

(b) Omission.—If the taxpayer omits from income an amount properly includable in income which is in excess of 25% of the amount of income stated in the return, the tax may be assessed at any time within six years after the return was filed.

(c) Return not filed.—Where no return is filed, or if a taxpayer shall fail, when required, to file an amended return, the amount of the tax due may be assessed at any time.

(d) False or fraudulent return.—Where the taxpayer files a false or fraudulent return with intent to evade the tax imposed by this chapter, the amount of tax due may be assessed at any time.

(e) Assessment.—The department may, within three years of the granting of any refund or credit or within the period in which an assessment or reassessment could have been filed by the department with respect to the taxable period for which the refund was granted, whichever period shall last occur, file an assessment to recover any refund or part thereof or credit or part thereof which was erroneously made or allowed.

§ 1549. Extension of limitation period.

Notwithstanding section 1548 (relating to limitations on assessment and collection), where, before the expiration of the period prescribed in section 1548 a taxpayer has consented in writing that the period be extended, the amount of tax due may be assessed at any time within the extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

§ 1550. Limitations on refund or credit.

Any application for refund must be filed with the department under section 3003.1 of the Tax Reform Code.

§ 1551. Interest.

(a) Interest due.—If any amount of tax imposed by Subchapter B (relating to imposition of tax) is not paid on or before the last date prescribed for payment, interest on the amount at the rate established pursuant to section 806 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, shall be paid for the period from the last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for filing the return. This section shall not apply to any failure to pay estimated tax.

(b) Underpayment.—If any amount of tax required to be withheld by an employer and paid to the department is not paid by the due date prescribed under section 1519 (relating to monthly, semimonthly and quarterly payment of taxes withheld), interest on the amount at the rate established under section 806 of The Fiscal Code shall be paid from that date for the period of underpayment.

§ 1552. Additions, penalties and fees.

(a) Failure to file.—In case of failure to file any return required under this chapter on the date prescribed for filing, determined with regard to any extension of time for filing, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on the return 5% of the amount of the tax if the failure is for not more than one month, with an additional 5% for each additional month or fraction of a month during which the failure continues, not exceeding 5%, in the aggregate, but in no case shall the amount added be less than \$5. The amount of tax required to be shown on the return shall, for purposes of computing the additions for the first month, be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return. The amount of tax required to be shown on the return shall, for purposes of computing the addition for any subsequent month, be reduced by the amount of any part of the tax which is paid by the beginning of the subsequent month and by the amount of any credit against the tax which may be claimed on the return.

(b) Subchapter C taxes.—

(1) If any part of any underpayment of any tax imposed by Subchapter C (relating to estates and trusts) is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to 5% of the underpayment.

(2) If any part of any underpayment of any tax imposed by Subchapter C is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, and the underpayment is from a taxpayer omitting from income an amount properly includable in income which is in excess of 25% of the amount of income stated on the taxpayer's return, there shall be added to the tax an amount equal to 25% of the underpayment.

(c) Fraud.—If any part of any underpayment of tax required under this chapter to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50% of the underpayment. This amount shall be in lieu of any amount determined under subsection (b) or (h).

(d) Underpayment of estimated tax.—

(1) If any taxpayer fails to pay all or any part of an installment of estimated tax, the taxpayer shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the rate established pursuant to section 806 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, upon the amount of the underpayment for the period of the underpayment but not beyond the 15th day of the fourth month following the close of the taxable year. The amount of the underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to 90% of the tax or two-thirds in the case of an individual described in section 1525(e) (relating to declarations of estimated tax), shown on the return for the taxable year or, if no return was filed, of the tax for the year, over the amount, if any, of the installments paid on or before the last day prescribed for payment. No underpayment shall be deemed to exist with respect to an installment otherwise due on or after the taxpayer's death or, in the case of a decedent's estate or a trust created by the decedent to receive the residue of the decedent's estate, for a period of two years after the decedent's death.

(2) No addition to tax shall be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds the lesser of:

(i) the amount which would have been required to be paid on or before the date if the estimated tax were an amount equal to the tax computed, at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the taxpayer's return for, and the law applicable to, the preceding taxable year; or

(ii) an amount equal to 90% of the tax computed, at the rates applicable to the taxable year, on the basis of the actual income for the months in the taxable year ending before the month in which the installment is required to be paid, or, in the case of a trust or estate, an amount equal to 90% of the applicable percentage of the tax for the taxable year as determined pursuant to section 6654(d)(2)(C)(ii) of the Internal Revenue Code, as amended, at rates applicable to the taxable year, computed on an annualized basis in accordance with United States Treasury regulations, based upon the actual income for the months of the taxable year ending with the last day of the second preceding month prior to the month in which the installment is required to be paid.

(e) Failure to collect or account for tax.—Any person required to collect, account for and pay over any tax imposed by this chapter who willfully fails to collect the tax or truthfully account for and pay over the tax, or willfully attempts in any manner to evade or defeat any the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded or not collected or not accounted for and paid over. No penalty shall be imposed under subsection (b), (c) or (h) for any offense to which this subsection is applicable. The term "person" as used in this subsection includes an officer or employee of a corporation, or a member or employe of a partnership, who as such officer, employe or member is under a duty to perform the act in respect of which the violation occurs.

(f) Failure to furnish statement; false or fraudulent statement.—

(1) Any person required under the provisions of section 1517 (relating to information statement) to furnish a statement to an employee who willfully furnishes a false or

fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 1517 and the regulations prescribed under section 1517, shall, for each failure, be subject to a penalty of \$50 for each employee.

(2) Any person required by regulation to furnish an information return who furnishes a false or fraudulent return shall for each failure be subject to a penalty of \$250.

(3) Every Pennsylvania S corporation required to file a return with the department under the provisions of section 1530.1 (relating to return of Pennsylvania S corporation) who furnishes a false or fraudulent return or who fails to file the return in the manner and at the time required under section 1530.1 shall be subject to a penalty of \$250 for each failure.

(h) Underpayment by employer.—If any amount of tax required to be withheld by an employer and paid over to the department under section 1519 (relating to monthly, semimonthly and quarterly payment of taxes withheld) is not paid on or before the due date prescribed for filing the quarterly return under section 1518 (relating to time for filing employers' returns), determined without regard to an extension of time for filing, there shall be added to the tax and paid to the department each month 5% of the underpayment for each month or fraction of the month from the due date, for the period from the due date to the date paid, but the underpayment shall, for purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid by the beginning of that month. The total of the additions shall not exceed 50% of the amount of tax required to be shown on the return reduced by the amount of any part of the tax which is paid by the return due date and by the amount of any credit against the tax which may be claimed on the return.

(i) Incorrect information.—If any individual, estate or trust files what purports to be a return required under section 1530 (relating to returns and liability) but which does not contain information on which the substantial correctness of the self-assessment may be judged, or contains information that on its face indicates that the self-assessment is substantially incorrect and the self-assessment is due to a position which is frivolous or due to a desire, which appears on the purported return, to delay or impede the administration of Pennsylvania income tax laws, then the individual, estate or trust shall pay a penalty of \$500. The penalty imposed by this subsection shall be in addition to any other penalty provided by law.

(j) Underpayment by partnership, association or Pennsylvania S corporation.—If any amount of tax required to be withheld by a partnership, association or Pennsylvania S corporation and paid over to the department under section 1524 (relating to nonresidents) is not paid on or before the date prescribed for payment, there shall be added to the tax and paid to the department each month 5% of the underpayment for each month or fraction of the month from the due date, for the period from the due date to the date paid, but the underpayment shall, for purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid by the beginning of that month. The total of such additions shall not exceed 50% of the amount of the tax.

§ 1552.1. Abatement of additions or penalties.

Upon the filing of a petition for reassessment or petition for review by a taxpayer other than an employer, as provided by this chapter, the department may waive or abate, in whole or in part, additions or penalties of \$300 or less imposed upon the taxpayer for a taxable year, where the taxpayer has established that he acted in good faith with no negligence or intent to defraud.

§ 1553. Crimes.

(a) Tax evasion.—Any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment of the tax shall, in addition to other penalties provided by law, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$25,000, or to imprisonment for not more than two years, or both.

(b) Collections.—Any person required under this chapter to collect, account for and pay over any tax imposed by this chapter who willfully fails to collect or truthfully account for and pay over such tax, shall, in addition to other penalties provided by law, commits a misdemeanor, and shall, upon conviction, be sentenced to pay a fine of not more than \$25,000 or to imprisonment for not more than two years, or both.

(c) Payments, returns, records and information.—Any person required under this chapter to pay any tax or to make a return, keep any records or supply any information, who willfully fails to pay the tax or make the return, keep the records or supply the information at the time or times required by law or regulations, shall, in addition to other penalties provided by law, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$5,000, or to imprisonment for not more than two years, or both.

(d) Fraud.—Any person who willfully makes and subscribes any return, statement or other document which contains or is verified by a written declaration that it is made under the penalties of perjury and which the person does not believe to be true and correct as to every material matter, or willfully aids or assists in, or procures, counsels or advises the preparation or presentation, in connection with any matter arising under this chapter, of a return, affidavit, claim or other document which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim or document, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$5,000 or to imprisonment for not more than two years, or both.

(e) Additional fraud.—Any person who willfully delivers or discloses to the department any list, return, account, statement or other document known by the person to be fraudulent or to be false as to any material matter commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$5,000 or to imprisonment for not more than two years, or both.

(f) Confidential information.—It shall be unlawful for any officer, agent or employee of the Commonwealth to divulge or to make known in any manner whatever, not provided by law, except for official purposes, to any person, the amount or source of income, profits, losses, expenditures or any particular thereof set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof, to be seen or examined by any person except as provided by law, and it shall be unlawful for any person to print or publish in any manner whatsoever not provided by law, any return or any part thereof or source of income, profits, losses or expenditures appearing in any return, and any person committing an offense under this subsection commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000, or to imprisonment for not more than one year, or both, together with the costs of prosecution; and, if the offender be an officer or employee of the Commonwealth, the offender shall be dismissed from office or discharged from employment.

(g) Production of documents.—Notwithstanding subsection (f), it shall be lawful for any officer or employee of the Commonwealth having custody of returns to produce them or evidence of anything contained in them in any action or proceeding in any court on behalf of the department under the provisions of this chapter to which it is a party, or on behalf of any party to any action or proceeding under the provisions of this chapter, when the returns or facts shown thereby are directly involved in the action or proceeding, in either of which events the court may require the production of and may admit in evidence so much of the returns or the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing in this subsection shall be construed to prohibit the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return filed in connection with his tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof or the inspection by the Attorney General or other legal representatives of the Commonwealth of the return of any taxpayer

who shall bring action to review the tax based thereon or against whom an action or proceeding has been instituted for the collection or recovery of the tax imposed by this chapter. Nothing in this chapter shall be construed to prohibit the delivery to the Pennsylvania Higher Education Assistance Agency of a certified copy or extract of any State income tax return requested by the agency for use in determining the eligibility of applicants for State grants, when the executive director of the agency certifies that the agency has in its possession a statement signed by the applicant and the applicant's parent, parents, guardian or guardians, as the case may be, authorizing the agency to obtain a certified copy or extract of any State income tax return from the department.

§ 1554. Rules and regulations.

The department is hereby charged with the enforcement of the provisions of this chapter, and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this chapter and the collection of taxes imposed by this chapter.

§ 1555. Examination.

The department, or any agent authorized in writing by it, is hereby authorized to examine the books, papers and records of any taxpayer or supposed taxpayer, and to require the production of a copy of his return as made to and filed with the Federal Government, if one was so made and filed in order to verify the accuracy of any return made, or if no return was made, to ascertain and assess the tax imposed by this chapter. The taxpayer or supposed taxpayer is hereby directed and required to give to the department or its duly authorized agent the means, facilities and opportunity for the examinations and investigations as are hereby provided and authorized. The department is hereby authorized to examine any person under oath concerning any income which was or should have been returned for taxation, and to this end may compel the production of books, papers and records and the attendance of all persons, whether as parties or witnesses, whom it believes have knowledge of such income. The procedure for such hearing or examination shall be the same as that provided by the act of April 9 1929 (P.L.343, No.176), known as The Fiscal Code, relating to inquisitorial powers of fiscal officers.

§ 1556. Cooperation with other governmental agencies.

(a) Cooperation.—Notwithstanding the provisions of section 1553(f) (relating to crimes), the department may permit the Commissioner of Internal Revenue Service of the United States, or the proper officer of any political subdivision of this Commonwealth or of any other state imposing tax based upon the incomes of individuals, or the authorized representative of the officer, to inspect the tax returns of any taxpayer, or may furnish to the officer or the officer's authorized representative an abstract of the return of income of any taxpayer, or supply the officer with information concerning any item of income contained in any return of any taxpayer. The permission shall be granted or the information furnished to the officer or the officer's representative only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of the Commonwealth charged with the administration of the personal income tax law of this Commonwealth. An officer or authorized agent of any county imposing a personal property tax shall be furnished the following information from the returns upon payment to the department of the cost of collecting and reproducing the requested information:

(1) Name, address and Social Security number of the taxpayer.

(2) If the taxpayer has reported dividends or interest.

(b) Agreement.—The department may enter into an agreement with the taxing authorities of any state which imposes a tax on or measured by income to provide that compensation paid in the state to residents of this Commonwealth shall be exempt from the tax. In that case any compensation paid in this Commonwealth to residents of the other state shall be exempt from Pennsylvania personal income tax. The department, in such agreements, may provide for reciprocal

withholding, employer liability, exchange of information and all other matters relating to cooperation between the states.

§ 1557. Appropriation for refunds.

So much of the proceeds of the tax imposed by this chapter as shall be necessary for the payment of refunds, enforcement or administration under this chapter is hereby appropriated for such purposes.

SUBCHAPTER O MISCELLANEOUS PROVISIONS

Sec.

1558. Constitutional construction.

1559. Saving clause and limitations.

1560. Transfer to Property Tax Relief Fund.

§ 1558. Constitutional construction.

In addition to the provisions relating to legislative intent contained in section 1503(b) (relating to classes of income), if any word, phrase, clause, sentence, sections or provision of this chapter is for any reason held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this chapter. It is hereby declared as the legislative intent that this chapter would have been adopted had the unconstitutional word, phrase, clause, sentence, section or provision thereof not been included.

§ 1559. Saving clause and limitations.

(a) General rule.—Notwithstanding anything contained in any law to the contrary, including but not limited to the provisions of the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act, the validity of any ordinance or part of any ordinance or any resolution or part of any resolution, and any amendments or supplements thereto now or hereafter enacted or adopted by any political subdivision of this Commonwealth for or relating to the imposition, levy or collection of any tax, shall not be affected or impaired by anything contained in this chapter, except as hereinafter provided in subsection (b).

(b) Cities of the first class.—

(1) Notwithstanding the provisions subsection (a) to the contrary, any rate of tax imposed by ordinance of a city of the first class pursuant to the Sterling Act on salaries, wages, commissions, compensation or other income received or to be received for work done or services performed within a city of the first class by persons who are not legal residents of the city, shall not, except as provided, in this section exceed the tax imposition rate of 4.3125% for the tax year 1977 or for any tax year thereafter.

(2) In the event such city by ordinance imposes a tax rate on residents or nonresidents in excess of the tax rate under paragraph (1) on the income categories enumerated in this chapter, the provisions of the ordinance imposing the tax rate increase on income of persons who are legal residents of the city of the first class, shall be deemed valid and legally effective within the meaning and application of subsection (a). However, the provisions of the ordinance imposing a tax rate in excess of 4.3125% with respect to persons who are not legal residents of the city shall be deemed suspended and without any validity to the extent that the tax rate exceeds the tax rate of 4.3125% on income of nonresidents. The excess tax rate provisions shall remain suspended and without any validity until such date as the city of the first class, by ordinance, imposes a rate of tax on income of both legal residents or nonresidents of the city in excess of the tax rate imposition of 5.75% per year. In such case the General Assembly hereby declares such suspension to be removed and the tax rate valid as to nonresidents, provided, however, that such suspension is removed and the rate deemed valid only to the extent the tax rate imposed on income of the nonresidents does not exceed 75% of the tax rate imposed by ordinance per year on the income of legal residents of such city. It is the intention of the General Assembly by this subsection to impose certain terms and conditions with respect to the validity and legal effectiveness of the Sterling Act or of any ordinance of

the city of the first class enacted pursuant thereto which imposes a tax on the income of nonresidents of the city.

(3) Notwithstanding the suspension provisions set forth in this section, each city of the first class which imposes a tax pursuant to the Sterling Act shall, by ordinance direct every employer maintaining an office or transacting business within the city and making payment of compensation to a resident individual or to a nonresident individual taxpayer performing services on behalf of such employer within such city, shall deduct and withhold from such compensation for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's compensation during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due for such year with respect to the compensation. The method of determining the amount to be withheld shall be to withhold the highest amount of tax imposed with provision in the ordinance to provide refunds of the excess tax withheld to qualified nonresident taxpayers within four months of the end of each calendar year.

(4) In the event that all or any part of the provisions of subsection (b) are declared by a court to be unconstitutional, it shall be the duty of the court to construe the remaining provisions of this chapter in accordance with section 1558 (relating to constitutional construction).

(c) Employer duties.—

(1) Every employer having a place of business within this Commonwealth who employs one or more persons who are residents of a city of the first class shall, within 30 days after becoming such an employer, register with the revenue commissioner of a city of the first class the employer's name and address and other information as the revenue commissioner may require.

(2) Every employer having a place of business within this Commonwealth who employs one or more persons who are residents of a city of the first class shall deduct from the salary, wages, commissions or compensation due that person, at the time of payment thereof, the tax imposed by the city of the first class on any salary, wage, commission or other compensation due that employee.

(3) Employers required to withhold taxes under this subsection shall calculate the amount of salary, wages, commissions and compensation of employees as determined under the classes of income set forth in section 1503 (relating to classes of income).

(4) Every employer employing one or more persons who are residents of a city of the first class who pay any tax imposed under this chapter shall file a return and pay to the revenue commissioner the amount of taxes deducted as provided under paragraph (3). The return shall be on a form or forms furnished by the revenue commissioner and shall set forth the names and residences of each employee of that employer during all or any part of the period covered by the return, the amounts of salaries, wages, commissions or other compensation earned during such period by each employee, together with such other information as the revenue commissioner may require.

(5) The employer shall remit the return and the total tax deducted in accordance with time frames established by section 1519 (relating to monthly, semi-monthly and quarterly payment of taxes withheld).

(6) Annually, on or before February 28, every employer who has filed returns of tax withheld and remitted the tax through the year shall be required to file an Employer's Annual Reconciliation of Wage Tax Withheld, along with a copy of Form W-2 of the Internal Revenue Service for each employee, other listings or electronic data processing tapes, setting forth the following information:

- (i) name and address of employer;
- (ii) employer's Federal identification number;

- (iii) full name and residence address of each employee;
- (iv) employee's Social Security number;
- (v) total wages paid during the year before any deductions; and
- (vi) employer's city account number.

(7) Employers or their designated agents required to file with the revenue commissioner under this subsection shall not be required by the revenue commissioner to be bonded. Employer liability for taxes withheld under this subsection shall be the same as provided in sections 1520 (relating to employer's liability for withheld taxes) and 1521 (relating to employer's failure to withhold).

(8) If an employer fails to deduct and withhold tax as prescribed in this subsection, it shall not relieve the employee from payment of such tax where payment cannot, for any reason, be obtained from the employer.

§ 1560. Transfer to Property Tax Relief Fund.

Within 30 days of the close of any calendar month, 6.687% of the taxes received in the previous month under this chapter shall be transferred to the Property Tax Relief Fund.

PART II-A TAX RELIEF

Chapter

21. Homeowner Property Tax Relief

CHAPTER 21

HOMEOWNER PROPERTY TAX RELIEF

Subchapter

- A. General Provisions
- B. Formula
- C. School District Homestead and Farmstead Exclusion
- D. Debt

SUBCHAPTER A GENERAL PROVISIONS

Sec.

2101. Scope.

2102. Definitions.

§ 2101. Scope.

This chapter relates to the allocation of State funds for homestead and farmstead property tax reductions.

§ 2102. Definitions.

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

“Allocation maximum.” The greater of the following:

- (1) A numerical value of 0.50.
- (2) Upon certification by the secretary under section

2111(b) (relating to certification) that the amount to be transferred to the fund under 4 Pa.C.S. § 1408(e) (relating to transfers from State Gaming Fund) is equal to or greater than \$800,000,000, a numerical value of 0.60.

“Allocation minimum.” The greater of the following:

- (1) A numerical value of 0.40.
- (2) Upon certification by the secretary under

section 2111(b) (relating to certification) that the amount to be transferred to the fund under 4 Pa.C.S. § 1408(e) (relating to transfers from State Gaming Fund) is equal to or greater than \$800,000,000, a numerical value of 0.45.

“Assessor.” The chief assessor of a county or the equivalent officer in a home rule county, a city of the third class or a city of the first class, which performs its own assessments of real property.

“Average daily membership.” As used in the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

“Department.” The Department of Education of the Commonwealth.

“Equalized millage.” The term shall have the same usage as defined in section 2501(9.2) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

“Farmstead.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Farmstead property.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Fund.” The Property Tax Relief Fund.

“Homestead.” As defined in 53 Pa.C.S. § 8401 (relating to definitions).

“Homestead property.” As defined in 53 Pa.C.S. § 8401 (relating to definitions).

“Real property tax.” The total dollar value of real property taxes paid by property owners in a school district determined by adding the real property taxes collected by, or on behalf of, the school district plus all State allocations received pursuant to this chapter.

“Real property tax liability.” The assessed value of the real property of the taxpayer multiplied by the millage rate of the school district.

“Residential property tax.” The dollar value of real property taxes paid by residential property owners in a school district, determined by multiplying:

(1) the real property taxes collected by the school district; by

(2) the percentage of the total property value in the school district classified as residential by the State Tax Equalization Board.

“School district.” A school district of the first class, first class A, second class, third class or fourth class.

“School district of the first class.” Includes the governing body of a city of the first class.

“Secretary.” The Secretary of the Budget of the Commonwealth.

“Taxpayer.” A person required to pay a real property tax.

SUBCHAPTER B FORMULA

Sec.

2111. Certification.

2112. Notification.

2113. State allocation.

§ 2111. Certification.

(a) Initial.—By April 15, 2006, the secretary shall certify the total amount of revenue that is reasonably projected to be deposited into the fund for the period through June 30, 2007.

(b) Annual.—Beginning by April 15, 2007, and each April 15 thereafter, the secretary shall certify the total amount of revenue that is reasonably expected to be deposited into the fund during the immediately following fiscal year.

(c) Excess.—If the actual revenue deposited into the fund in any one fiscal year exceeds the amount certified in this section, any revenue in excess of projections shall remain in the fund and shall be included in the certification for the subsequent fiscal year.

(d) Shortage.—If the actual revenue deposited into the fund in any one fiscal year is less than the amount certified in this section, the amount certified for the subsequent fiscal year shall be reduced by the difference between the amount certified and the actual revenue deposited.

§ 2112. Notification.

By April 20, 2006, and each April 20 thereafter, the secretary shall notify the department of the amount certified pursuant to section 2111 (relating to certification) for calculation of the allocation for each school district under section 2113 (relating to State allocation).

§ 2113. State allocation.

(a) Calculation.—The department shall calculate the State allocation for each school district as follows:

(1) For the 2006-2007 fiscal year:

(i) Multiply the school district's 2003-2004 average daily membership by the school district's 2003-2004 equalized millage.

(ii) Multiply the product under subparagraph (i) by the dollar amount necessary to allocate all of the money in the fund as certified under section 2111 (relating to certification).

(iii) If the allocation under this paragraph is less than the product of the residential property taxes collected during the 2003-2004 fiscal year and the allocation minimum for a school district, the school district shall receive an additional amount so that the total allocation under this paragraph is equal to the product of the residential property taxes collected during the 2003-2004 fiscal year and the allocation minimum.

(iv) If the allocation under this paragraph is greater than the product of the residential property taxes collected during the 2003-2004 fiscal year and the allocation maximum for a school district, the school district shall receive a total allocation equal to the product of the residential property taxes collected during the 2003-2004 fiscal year and the allocation maximum.

(2) For subsequent fiscal year:

(i) Multiply the school district's average daily membership for the third fiscal year immediately preceding the fiscal year for which the allocation is being made by the school district's equalized millage for the third fiscal year immediately preceding the fiscal year for which the allocation is being made.

(ii) Multiply the product under subparagraph (i) by the dollar amount necessary to allocate all of the money in the fund as certified under section 2111.

(iii) If the allocation under this paragraph is less than the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation minimum for a school district, the school district shall receive an additional amount so that the total allocation under this paragraph is equal to the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation minimum.

(iv) If the allocation under this paragraph is greater than the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation maximum for a school district, the school district shall receive a total allocation equal to the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation maximum.

(b) Notice.—By May 15, 2006, and each May 15 thereafter, the department shall notify each school district of the amount of the State allocation it is eligible to receive.

(c) Payment.—For each fiscal year commencing after June 30, 2005, the department shall pay from the fund to each school district a State allocation, which shall be divided into two payments. The first payment, which shall be equal to 80% of the district's State allocation, shall be made on the last Thursday of August. The second payment, which shall equal the remainder of the State allocation, shall be made on the last Thursday of October.

(d) Cities of the first class.—In accordance with 53 Pa.C.S. § 8584 (relating to administration and procedure), the State allocation for a school district of the first class shall be paid by the department to a city of the first class for use by the city for homestead and farmstead exclusions.

SUBCHAPTER C
SCHOOL DISTRICT HOMESTEAD
AND FARMSTEAD EXCLUSION

Sec.

2121. Homestead and farmstead applications.

2122. Homestead and farmstead exclusion process.

2123. School district tax notices.

§ 2121. Homestead and farmstead applications.

(a) Initial notification and application.—By October 18, 2004, a board of school directors shall notify by first class mail the owner of each parcel of residential property within the district that the owner must submit a completed application in accordance with 53 Pa.C.S. § 8584(a) (relating to administration and procedure). The board shall provide a second notice by first class mail no later than 60 days prior to the application deadline in subsection (c). Each notice shall include an application to be filed with the assessor of the county where the property is located, instructions for completing the application and the deadline to apply. A school district may limit the second notice to those owners of residential property that have not responded to the initial notification.

(b) Annual notification.—No later than 60 days prior to the application deadline in subsection (c), a board of school directors shall notify by first class mail the owner of each parcel of residential property within the district of the existence of the school district's homestead and farmstead exclusion program, the need to file an application in accordance with 53 Pa.C.S. § 8584(a) in order to qualify for the program and the application deadline. The annual notice shall include all information required under subsection (a). A school district may limit the annual notification to those owners of residential property:

(1) who are not currently approved; or

(2) whose approval is due to expire.

(c) Application deadline.—In accordance with 53 Pa.C.S. § 8584(b), the deadline for filing an application with the assessor shall be March 1.

(d) Action on application.—Real property for which an application has been filed by the application deadline shall be deemed to be a homestead or farmstead property which is eligible for a homestead or farmstead exclusion unless the assessor denies the application. Denials of application by the assessor and the right to appeal that decision shall be in accordance with 53 Pa.C.S. § 8584(d) and (e).

(e) Application review and submission.—Except as set forth in 53 Pa.C.S. § 8584(j), an assessor shall not require the owner of a previously approved property to resubmit an application more than one time every three years.

(f) Applicability.—The provisions of 53 Pa.C.S. § 8584(f), (g), (h) and (j) shall apply to any application filed under this section.

(g) Duties of assessors.—

(1) The assessor shall mail to the owner of property for which an application has been submitted and approved or denied under this section notice of such fact no later than 30 days after receipt of the application.

(2) The assessor shall notify the owner of any homestead or farmstead property designated as such under any other statute of the need, if any, to resubmit an application to maintain the property's eligibility as a homestead or farmstead property. Nothing in this paragraph shall prohibit a county assessor from designating property previously determined to be homestead or farmstead property under any other statute as homestead or farmstead property for purposes of this section.

(3) The assessor shall provide each school district with a certified report, as provided in 53 Pa.C.S. § 8584(i), no later than May 1 of each year.

(h) Uniform application and instructions.—The application to designate property as homestead or farmstead property shall be uniform and shall include instructions for completing the application. The Department of Community and Economic Development shall

develop the uniform application and instructions to be used by county assessors and shall publish the uniform application and instructions by September 20, 2004.

(i) Prohibitions.—A county shall not require an application fee for the filing or review of an application submitted under this section or under 53 Pa.C.S. § 8584(a).

§ 2122. Homestead and farmstead exclusion process.

(a) Calculation.—Each year in which a school district receives a local property tax reduction allocation, the school district shall calculate a homestead and farmstead exclusion which is equal to the lesser of:

(1) the maximum amount of homestead or farmstead exclusion authorized by 53 Pa.C.S. § 8586 (relating to limitations); or

(2) the amount of State allocation the district is eligible to receive.

(b) Resolution.—The school district shall adopt a resolution implementing the homestead and farmstead exclusion calculated under subsection (a). The resolution shall state the maximum amount of homestead or farmstead exclusion an owner of a homestead or farmstead may receive. A resolution may not authorize a homestead or farmstead exclusion which exceeds the amount authorized by 53 Pa.C.S. § 8586.

§ 2123. School district tax notices.

(a) Tax notice.—School districts shall itemize the homestead and farmstead exclusion on tax bills sent to homestead and farmstead owners, indicating the original amount of tax liability, the amount of the exclusion and the net amount of tax due after the exclusion is applied. The tax bill shall be easily understandable and include a notice pursuant to subsection (b).

(b) Notice of property tax relief.—School districts shall include with the homestead or farmstead owner's tax bill a notice that the tax bill includes a homestead or farmstead exclusion. The notice shall at a minimum take the following form:

NOTICE OF PROPERTY TAX RELIEF

Your enclosed tax bill includes a tax reduction for your homestead and/or farmstead property. As an eligible homestead and/or farmstead property owner, you have received tax relief through a homestead and/or farmstead exclusion under a law passed by the Pennsylvania General Assembly designed to reduce your property taxes.

SUBCHAPTER D DEBT

Sec.

2131. Borrowing.

§ 2131. Borrowing.

Tax anticipation notes may be issued under Article XVI-A of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, in anticipation of revenue under Chapter 12 (relating to sales and use tax) which is authorized to be transferred to the fund under section 1281.3 (relating to transfer to Property Tax Relief Fund).

PART III

POLITICAL SUBDIVISION FINANCING

Chapter

31. Public School Financing

CHAPTER 31

PUBLIC SCHOOL FINANCING

Subchapter

- A. Preliminary Provisions
- B. Taxation
- C. Limitations
- D. School District Budgets
- E. Reimbursements

SUBCHAPTER A PRELIMINARY PROVISIONS

Sec.

3101. Scope.

3102. Definitions.

§ 3101. Scope.

This chapter relates to public school financing.

§ 3102. Definitions.

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

“Actual instruction expense.” The term shall have the same usage as in the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

“Average daily membership.” The term shall have the same usage as in the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

“Board of school directors.” A board of school directors of a school district of the first class, first class A, second class, third class or fourth class. The term shall include the city council of a city of the first class for the purpose of the levying and collecting of any tax in a school district of the first class.

“Construction cost average on a square-foot basis.” An amount equal to \$128 per square foot for an elementary school building and \$133 per square foot for a secondary school building, as adjusted annually by the percentage increase in the average of the Statewide average weekly wage and the employment cost index.

“Department.” The Department of Education of the Commonwealth.

“Domicile.” As defined in section 13 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

“Earned income.” As defined in section 13 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

“Election officials.” The board of elections of a county.

“Employer.” As defined in section 301 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Employment Cost Index.” The most recent official figures for the previous 12-month period beginning July 1 and ending June 30 for the Employment Cost Index Series for Elementary and Secondary Schools, reported by the Bureau of Labor Statistics of the Federal Department of Labor.

“Fund.” The Property Tax Relief Fund established in the State Treasury.

“Income tax.” A tax on earned income and net profits or a tax on personal income imposed pursuant to this chapter.

“Index.” As follows:

(1) Except as set forth in paragraph (2), the average of the percentage increase in the Statewide average weekly wage and the Employment Cost Index.

(2) For a school district with a market value/income aid ratio greater than 0.400 for the school year prior to the school year for which the index is calculated, the value under paragraph (1) multiplied by the sum of:

(i) 0.75; and

(ii) the school district's market value/income aid ratio for the school year prior to the school year for which the index is calculated.

“Local Tax Enabling Act.” The act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

“Local tax revenue.” The revenue from taxes actually levied and assessed by a school district, including delinquent taxes. The term does not include interest or dividend earnings, Federal or State grants, contracts or appropriations, income generated from operations or any other source which is not derived from taxes levied and assessed by a school district.

“Market value/income aid ratio.” As defined in section 2501(14.1) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

“Net profits.” As defined in section 13 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

“Personal income.” Income enumerated in section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code

of 1971, as determined by the Department of Revenue, subject to any correction thereof for fraud, evasion or error as finally determined by the Commonwealth.

“Personal income valuation.” As defined in section 2501(9.1) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

“Resident individual.” An individual who is domiciled in a school district.

“School district.” A school district of the first class, first class A, second class, third class or fourth class. The term shall include the city council of a city of the first class for the purpose of the levying and collecting of any tax in a school district of the first class.

“Statewide average weekly wage.” That amount determined by the Department of Labor and Industry in the same manner that it determines the average weekly wage under section 404(e)(2) of the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, except that it shall be calculated for the preceding calendar year.

“Tax Reform Code.” The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Taxpayer.” An individual required under this chapter to pay a tax.

SUBCHAPTER B TAXATION

Sec.

3111. Limitations.

3112. Personal income tax.

3113. Certain rates of taxation limited.

3114. Collections.

§ 3111. Limitations.

This chapter shall not be construed to affect the power of a school district to do any of the following:

(1) To eliminate its occupation tax pursuant to the act of June 22, 2001 (P.L.374, No.24), known as the Optional Occupation Tax Elimination Act.

(2) To levy, assess or collect a tax on earned income and net profits under the Local Tax Enabling Act.

(3) To impose special purpose tax levies approved by the electorate.

§ 3112. Personal income tax.

(a) Imposition.—

(1) A board of school directors may levy, assess and collect a tax on the personal income of resident individuals at a rate determined by the board of school directors.

(2) A school district which seeks to levy the tax authorized under paragraph (1) must comply with section 3121 (relating to public referendum requirements for levying and increasing certain taxes) and the following:

(i) The school district shall convert, in a revenue-neutral manner, any existing earned income and net profits tax rates levied to a personal income tax rate.

(ii) If a school district is not, on the effective date of this subparagraph, levying an earned income and net profits tax, the school district shall levy a personal income tax at a rate which will generate an amount not more than the amount a 1% earned income and net profits tax would have generated if it had been levied.

(iii) (Reserved).

(iv) The board of school directors shall round the rate of the personal income tax levied pursuant to this subparagraph to the nearest 0.1%.

(3) (Reserved).

(4) If a board of school directors seeks to impose a personal income tax under this subsection and the referendum under section 3121 is approved by the electorate, the board of school directors shall have no authority to impose an earned income and net profits tax under any other act.

(5) A personal income tax imposed under the authority of this section shall be levied by the school district on each of the classes of income specified in section 303 of the Tax Reform Code and regulations under that section, the provisions of which are incorporated by reference into this chapter.

(i) Notwithstanding the provisions of section 353(f) of the Tax Reform Code, the Department of Revenue may permit the proper officer or an authorized agent of a school district imposing a personal income tax pursuant to this chapter to inspect the tax returns of any taxpayer of the school district or may furnish to the officer or an authorized agent an abstract of the return of income of any current or former resident of the school district, or supply information concerning any item of income contained in any tax return. The officer or authorized agent of the school district imposing a tax under this chapter shall be furnished the requested information upon payment to the Department of Revenue of the actual cost of providing the requested information.

(ii) (A) Except for official purposes or as provided by law, it shall be unlawful for any officer or authorized agent of a school district to do any of the following:

(I) Disclose to any other individual or entity the amount or source of income, profits, losses, expenditures or any particular information concerning income, profits, losses or expenditures contained in any return.

(II) Permit any other individual or entity to view or examine any return or copy of a return or any book containing any abstract or particulars.

(III) Print, publish or publicize in any manner any return; any particular information contained in or concerning the return; any amount or source of income, profits, losses or expenditures in or concerning the return; or any particular information concerning income, profits, losses or expenditures contained in or relating to any return.

(B) Any officer or authorized agent of a school district that violates clause (A):

(I) May be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(II) May be removed from office or discharged from employment.

(6) (Reserved).

(b) Execution of tax rate.—A tax authorized under section 3121 shall be self-executing and shall be effective beginning on the first day of the fiscal year which begins after the tax is authorized. A tax rate under this subsection shall continue in force on a fiscal year basis without annual reenactment except in a year in which the rate of the tax is changed or the tax is repealed.

§ 3113. Certain rates of taxation limited.

(a) Municipal rates.—If a municipality and school district both impose an earned income and net profits tax on the same individual under the Local Tax Enabling Act and are limited to or have agreed upon a division of the tax rate in accordance with section 8 of the Local Tax Enabling Act, the municipality shall remain subject to that limitation or agreement in the event that the school district opts to impose a personal income tax authorized under section 3112 (relating to personal income tax). Nothing in this chapter shall be construed to authorize a municipality to raise the rate of earned income and net profits tax above the rate it levied under the previously agreed upon

division if a school district imposes a personal income tax under this subchapter.

(b) School districts.—A school district which imposes a tax under this chapter is subject to section 688 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

§ 3114. Collections.

(a) Designation of tax collector.—A board of school directors imposing an income tax under this chapter shall designate a tax officer under section 10 of the Local Tax Enabling Act, or otherwise by law, as the collector of the tax. In the performance of the tax collection duties under this subchapter, the designated tax officer shall have all the same powers, rights, responsibilities and duties for the collection of the taxes which may be imposed under the Local Tax Enabling Act, 53 Pa.C.S. Ch. 84 Subch. C (relating to local taxpayers bill of rights) or as otherwise provided by law.

(b) Conflict.—In any situation where there is a conflict involving the authority conferred on a local tax collector by the provisions of the Local Tax Enabling Act and the Tax Reform Code, the provisions of the Local Tax Enabling Act shall control.

SUBCHAPTER C LIMITATIONS

Sec.

3121. Public referendum requirements for levying and increasing certain taxes.

3122. Property tax limits on reassessment.

§ 3121. Public referendum requirements for levying and increasing certain taxes.

(a) Applicability.—This section shall apply to fiscal years beginning with the 2006-2007 fiscal year.

(b) Prohibitions.—Except as set forth in subsection (f), unless there is compliance with subsection (c), a board of school directors may not do any of the following:

(1) Increase the rate of a tax levied for the support of the public schools by more than the index. For purposes of compliance with this paragraph, a school district which is situated in more than one county and which levies real estate taxes under section 672.1 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, shall apply the index to each separate rate of real estate taxes levied.

(2) Levy a tax which was not levied in a prior fiscal year for the support of the public schools.

(3) Raise the rate of the earned income and net profits tax if already imposed under the authority of the Local Tax Enabling Act.

(4) (Reserved).

(c) Referendum.—

(1) In order to take an action prohibited under subsection (b)(1), at the election immediately preceding the start of the school district fiscal year in which the proposed tax increase would take effect, a referendum stating the specific rate or rates of the tax increase must be submitted to the electors of the school district, and a majority of the electors voting on the question must approve the increase.

(2) In order to take an action under subsection (b)(2), at the election immediately preceding the start of the school district fiscal year in which the proposed tax would take effect, a referendum stating the proposed tax and the rate at which it will be levied must be submitted to the electors of the school district, and a majority of the electors voting on the question must approve the tax.

(3) Except as set forth in subsections (i) and (j), a school district acting pursuant to this subsection shall submit the referendum question required under this section to the election officials of each county in which it is situate no later than 60 days prior to the election immediately preceding the fiscal year in which the tax increase would take effect.

(4) The election officials of each county shall, in consultation with the board of school directors, draft a nonlegal

interpretative statement which shall accompany the referendum question in accordance with section 201.1 of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code. The nonlegal interpretative statement shall include information that references the items of expenditure for which the tax increase is sought and the consequence of the referendum being disapproved by the electorate.

(d) Failure to approve referendum.—

(1) If a referendum question submitted under subsection (c)(1) is not approved, the board of school directors may approve an increase in the tax rate of not more than the index.

(2) If a referendum question submitted under subsection (c)(2) is not approved, the board of school directors may not levy the tax.

(e) Tax rate submissions.—A school district that has adopted a preliminary budget proposal under section 3211 (relating to adoption of preliminary budget proposals) that includes an increase in the rate of any tax levied for the support of public schools shall submit information on the increase to the department on a uniform form prepared by the department. The school district shall submit such information no later than 85 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year. The department shall compare the proposed percentage increase in the rate of any tax with the index. Within ten days of the receipt of the information required under this subsection but no later than 75 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year, the department shall inform the school district whether the proposed tax rate increase is less than or equal to the index. If the department determines that the proposed percentage increase in the rate of the tax exceeds the index, the department shall notify the school district that:

(1) the proposed tax increase must be reduced to an amount less than or equal to the index;

(2) the proposed tax increase must be approved by the electorate under subsection (c)(1); or

(3) an exception must be sought under subsection (f).

(f) Referendum exceptions.—A school district may, without seeking voter approval under subsection (c), increase the rate of a tax levied for the support of the public schools by more than the index if all of the following apply:

(1) The revenue raised by the allowable increase under the index is insufficient to balance the proposed budget due to one or more of the expenditures listed in paragraph (2).

(2) The revenue generated by increasing the rate of a tax by more than the index will be used to pay for any of the following:

(i) Costs incurred in responding to or recovering from an emergency or disaster declared pursuant to 35 Pa.C.S. § 7301 (relating to general authority of Governor) or 75 Pa.C.S. § 6108 (relating to power of Governor during emergency).

(ii) Costs to implement a court order or an administrative order from a Federal or State agency as long as the tax increase is rescinded following fulfillment of the court order or administrative order.

(iii) Costs associated with the following:

(A) To pay interest and principal on any indebtedness incurred under 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing) prior to September 3, 2004. In no case may the school district incur additional debt under this clause except for the refinancing of expenses related to such refinancing and the establishment of funding of appropriate debt service reserves. An increase under this clause shall be rescinded following the final payment of interest and principal.

(B) To pay interest and principal on any electoral debt incurred under 53 Pa.C.S. Pt. VII Subpt. B.

(C) To pay interest and principal on indebtedness for up to 60% of the construction cost average on a square-foot basis if all of the following apply:

(I) The indebtedness is for a school construction project under 22 Pa. Code Ch. 21 (relating to school buildings).

(II) The indebtedness to fund appropriate debt service reserves for the project is incurred after September 3, 2004.

(III) The increase sought under this clause is rescinded following final payment of interest and principal.

(IV) The indebtedness is incurred only after existing fund balances for school construction and any undesignated fund balances have been fully committed to fund the project.

(V) The indebtedness is for an academic elementary or academic secondary school building. For purposes of this subclause, the following shall not be considered to be an academic elementary or academic secondary school building: natatorium, stadium bleachers, athletic field, athletic field lighting equipment and apparatus used to promote and conduct interscholastic athletics.

(VI) The project has been approved by the department under section 731 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

(D) To pay interest and principal on indebtedness for up to \$250,000 of the construction cost of a nonacademic school construction project, as adjusted annually by the percentage increase in the average of the Statewide average weekly wage and the employment cost index.

(iv) Costs to respond to conditions which pose an immediate threat of serious physical harm or injury to the students, staff or residents of the school district, but only until the conditions causing the threat have been fully resolved.

(v) Costs incurred in providing special education programs and services to students with disabilities if the increase in expenditures on special education programs and services was greater than 10%. The dollar amount of this exception shall be equal to the portion of the increase that exceeds 10%.

(vi) Costs which:

(A) were incurred in the implementation of a school improvement plan required under section 1116(b) of the No Child Left Behind Act of 2001 (Public Law 89-10, 20 U.S.C. § 6316(b)); and

(B) were not offset by a State allocation.

(vii) Costs necessary to maintain:

(A) per-student local tax revenue, adjusted by the index, if the percentage growth in

average daily membership between the school year determined under subsection (j)(4) and the third school year preceding the school year determined under subsection (j)(4) exceeds 7.5%; or

(B) actual instruction expense per average daily membership, adjusted by the index, if the increase in actual instruction expense per average daily membership between the school year determined under subsection (j)(4) and the school year preceding the school year determined under subsection (j)(4) is less than the index.

(viii) The maintenance of revenues derived from real property taxes, earned income and net profits taxes, personal income taxes, basic education funding allocations and special education funding allocations, adjusted by the index, for a school district where the percentage increase in revenues derived from real property taxes, earned income and net profits taxes, personal income taxes, basic education funding allocations and special education funding allocations between the school year determined under subsection (j)(4) and the school year preceding the school year determined under subsection (j)(4) is less than the index.

(ix) Costs incurred for providing health care-related benefits which are directly attributable to a collective bargaining agreement in effect on September 3, 2004, between the school district and its employees' organization if the anticipated increase in the cost of health care-related benefits between the current year and the upcoming year is greater than the index. The dollar amount of this exception shall be equal to the portion of the increase which exceeds the index. This subparagraph shall not apply to a collective bargaining agreement renewed, extended or entered into after September 3, 2004.

(g) Revenue derived from increase.—Any revenue derived from an increase in the rate of any tax allowed pursuant to subsection (f)(2)(iii) shall not exceed the anticipated dollar amount of the expenditure.

(h) Limitation on tax rate.—The increase in the rate of any tax allowed pursuant to an exception under subsection (f)(2)(i), (ii), (iv), (v), (vi), (vii), (viii) or (ix) or (n) shall not exceed the rate increase required as determined by a court of common pleas or the department pursuant to subsection (i) or (j).

(i) Court action.—

(1) Prior to the imposition of a tax increase under subsection (f)(2)(i), (ii) and (iv) and no later than 75 days prior to the election immediately preceding the beginning of the school district's fiscal year, approval by the court of common pleas in the judicial district in which the administrative office of the school district is located must be sought. The board of school directors shall publish in a newspaper of general circulation and on the district's publicly accessible Internet website, if one is maintained, notice of its intent to file a petition under this subsection at least one week prior to the filing of the petition. The board of school directors shall also publish in a newspaper of general circulation and on the district's publicly accessible Internet website, if one is maintained, notice, as soon as possible following notification from the court that a hearing has been scheduled, stating the date, time and place of the hearing on the petition. The following shall apply to any proceedings instituted under this subsection:

(i) The school district must prove by clear and convincing evidence that it qualifies for each exception sought.

(ii) The school district must prove by clear and convincing evidence the anticipated dollar amount of the expenditure for each exception sought.

(2) The court shall rule on the school district's petition and inform the school district of its decision no later than 55 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year. If the court approves the petition, the court shall also determine the dollar amount of the expenditure for which an exception is granted, the tax rate increase required to fund the exception and the appropriate duration of the increase. If the court denies the petition, the school district may submit a referendum question under subsection (c)(1). The question must be submitted to the election officials no later than 50 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year.

(j) Department approval.—

(1) A school district that seeks to increase the rate of tax due to an expenditure under subsection (f)(2)(iii), (v), (vi), (vii), (viii) or (ix) or (n) shall obtain the approval of the department before imposing the tax increase. The department shall establish procedures for administering the provisions of this subsection, which may include an administrative hearing on the school district's submission.

(2) A school district proceeding under the provisions of this subsection shall publish in a newspaper of general circulation and on the district's publicly accessible Internet website, if one is maintained, notice of its intent to seek department approval at least one week prior to submitting its request for approval to the department. If the department schedules a hearing on the school district's request, the school district shall publish notice of the hearing in a newspaper of general circulation and on the district's publicly accessible Internet website, if one is maintained, immediately upon receiving the information from the department. The notice shall include the date, time and place of the hearing.

(3) The department shall approve a school district's request under this subsection if a review of the data under paragraph (4) demonstrates that:

(i) the school district qualifies for one or more exceptions under subsection (f)(2)(iii), (v), (vi), (vii), (viii) or (ix) or (n); and

(ii) the sum of the dollar amounts of the exceptions for which the school district qualifies makes the school district eligible under subsection (f)(1).

(4) For the purpose of determining the eligibility of a school district for an exception under subsection (f)(2)(v), (vi), (vii) or (viii), the department shall utilize data from the most recent school years for which annual financial report data required under section 2553 of the Public School Code of 1949 has been received for all school districts. The department shall inform school districts of the school years determined under this subsection no later than 30 days prior to the date on which public inspection of proposed school budgets is required under section 3131(c).

(5) The department shall rule on the school district's request and shall inform the school district of its decision no later than 55 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year. If the department approves the request, the department shall determine the dollar amount of the expenditure for which the exception is sought and the tax rate increase required to fund the exception. If the department denies the request, the school district may submit a referendum question under subsection (c)(1). The question must be submitted to the election officials no later than 50 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year.

(6) Within 30 days of the deadline under paragraph (5), the department shall submit a report to the President pro tempore of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives and the Minority Leader of the House of Representatives enumerating the school districts which sought an exception under this subsection. The department shall also publish the report on its publicly accessible Internet website. The report shall include:

(i) The name of each school district making a request under this subsection.

(ii) The specific exceptions requested by each school district and the dollar amount of the expenditure for each exception.

(iii) The department's ruling on the request for the exception.

(iv) If the exception was approved, the dollar amount of the expenditure for which the exception was sought and the tax rate increase required to fund the exception.

(v) A statistical summary of the information in subparagraphs (ii), (iii) and (iv).

(k) Objections.—Any person that resides within or pays real property taxes to the school district filing a petition under subsection (i) may file with the court written objections to any petition filed under this section.

(l) Index calculation.—No later than August 15, 2005, and each August 15 thereafter, the department shall calculate the index. The department shall publish the index by September 1, 2005, and each September 1 thereafter, in the Pennsylvania Bulletin.

(m) Election interference prohibited.—

(1) No public funds may be used to urge any elector to vote for or against a referendum or be appropriated for political or campaign purposes.

(2) This subsection shall not prohibit the use of public funds for dissemination of factual information relative to a referendum appearing on an election ballot.

(3) As used in this subsection, the term "public funds" means any funds appropriated by the General Assembly or by a political subdivision.

(n) Treatment of certain required payments.—The provisions of subsections (f) and (j) shall apply to a school district's share of payments to the Public School Employees' Retirement System as required under 24 Pa.C.S. § 8327 (relating to payments by employers) if the actual dollar amount of payments between the current year and the upcoming year is greater than 7.5%. The dollar amount to which subsection (f) applies shall equal that portion of the increase which exceeds 7.5% of the actual dollar value of payments between the current year and the upcoming year.

§ 3122. Property tax limits on reassessment.

Notwithstanding any other provision of law, including this subpart, after any county makes a countywide revision of assessment of real property at values based upon an established predetermined ratio as required by law or after any county changes its established predetermined ratio, a board of school directors in a school district located within that county that, after September 3, 2004, for the first time levies its real estate taxes on that revised assessment or valuation shall for the first year reduce its tax rate, if necessary, for the purpose of having the percentage increase in taxes levied for that year against the real properties contained in the duplicate for the preceding year be less than or equal to the index for the preceding year notwithstanding the increased valuations of such properties under the revised assessment. For the purpose of determining the total amount of taxes to be levied for the first year, the amount to be levied on newly constructed buildings or structures or on increased valuations based on new improvements made to existing houses need not be considered. The tax rate shall be fixed for that year at a figure which will accomplish this purpose. The provisions of section 3121 (relating to public referendum requirements for levying and increasing certain

taxes) shall apply to increases in the tax rate above the limits provided in this section.

SUBCHAPTER D
SCHOOL DISTRICT BUDGETS

Sec.

3131. Adoption of preliminary budget proposals.

3132. Adoption of annual budgets.

3133. Information to school districts.

§ 3131. Adoption of preliminary budget proposals.

(a) Adoption.—Beginning January 1, 2006, each board of school directors shall adopt a preliminary budget proposal for the following fiscal year no later than 90 days prior to the date of the election immediately preceding the fiscal year in which the preliminary budget will take effect.

(b) Contents.—The preliminary budget proposal shall include estimated revenues and expenditures and any proposed tax rates and shall be prepared on a uniform form furnished by the department.

(c) Public inspection.—The board of school directors shall print the preliminary budget proposal and make it available for public inspection at least 20 days prior to its adoption. The board of school directors shall give public notice of its intent to adopt the preliminary budget at least ten days prior to adoption and may hold a public hearing prior to its adoption.

§ 3132. Adoption of annual budgets.

(a) Adoption.—Beginning January 1, 2006, each board of school directors shall adopt its annual budget for the following fiscal year no later than the last day of the fiscal year before the fiscal year in which the budget takes effect.

(b) Contents.—The annual budget shall include estimated revenues and expenditures and any proposed tax rates and be prepared on a uniform form furnished by the department.

(c) Public inspection.—The board of school directors shall print the annual budget and make it available for public inspection at least 20 days prior to its adoption. The board of school directors shall give public notice of its intent to adopt the annual budget at least ten days prior to adoption and may hold a public hearing prior to its adoption.

§ 3133. Information to school districts.

No later than September 30 of the year in which a State allocation is made under Chapter 21 (relating to homeowner property tax relief) and September 30 of each year thereafter, the department shall provide each school district with the following information:

(1) The dates by which actions required under this chapter shall take place.

(2) The index for the applicable fiscal year.

SUBCHAPTER E
REIMBURSEMENTS

Sec.

3141. Procedure.

§ 3141. Procedure.

Notwithstanding any other provisions of law to the contrary, the following apply:

(1) This section only applies to a taxpayer who is a resident of this Commonwealth and not a resident of a city of the first class but who is subject to the tax on salaries, wages, commissions or other compensation imposed by a city of the first class under the authority of the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act.

(2) For tax years beginning after the effective date of this section, and each tax year thereafter, payment of a tax on salaries, wages, commissions or other compensation as set forth in paragraph (1) shall be credited to the school district of the taxpayer's residence at an amount no greater than the tax on salaries, wages, commissions or other compensation as set forth in paragraph (1) imposed by the school district in which the taxpayer resides.

(3) An amount equal to the aggregate amount of the tax credited under paragraph (2) shall be paid from the fund to the

school district of residence of each taxpayer under paragraph (1) for the purpose of funding property tax rate reduction. The department shall prescribe procedures to calculate the amount due to each school district qualifying under this paragraph and shall publish the procedures in the Pennsylvania Bulletin.

(4) (Reserved).

PART V
SENIOR CITIZENS

Chapter

51. Senior Citizens Rebate and Assistance

CHAPTER 51

SENIOR CITIZENS REBATE AND ASSISTANCE

Sec.

5101. Scope.

5102. Declaration of policy.

5103. Definitions.

5104. Property tax, rent rebate and inflation cost.

5105. Filing of claim.

5106. Proof of claim.

5107. Incorrect claim.

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5109. Claim forms and rules and regulations.

5110. Fraudulent claim and conveyance to obtain benefits.

5111. Petition for redetermination.

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5113. Appeal.

5114. Grants to area agencies on aging for services to older persons.

5115. Applicability.

§ 5101. Scope.

This chapter relates to senior citizens rebate and assistance.

§ 5102. Declaration of policy.

In recognition of the severe economic plight of certain senior citizens, widows, widowers and permanently disabled persons who are real property owners or renters with fixed and limited incomes who are faced with rising living costs and constantly increasing tax and inflation cost burdens which threaten their homesteads and self-sufficiency, the General Assembly, pursuant to the mandates of the Constitutional Convention of 1968, considers it to be a matter of sound public policy to make special provisions for property tax rebates or rent rebates in lieu of property taxes and inflation dividends to that class of senior citizens, widows, widowers and permanently disabled persons who are real property taxpayers or renters who are without adequate means of support to enable them to remain in peaceable possession of their homes and relieving their economic burden and to provide transportation assistance grants and to provide grants to area agencies on aging for services to older persons.

§ 5103. Definitions.

The following words and phrases, when used in this chapter, shall have the meanings given to them in this section, unless the context clearly indicates otherwise:

“Board.” The Board of Finance and Revenue.

“Claimant.” A person who files a claim for property tax rebate or rent rebate in lieu of property taxes and inflation dividend and was any of the following during all or a part of a calendar year in which real property taxes, rent and inflation costs were due and payable:

(1) A person 65 years of age or older or whose spouse, if a member of the household, was 65 years of age or older.

(2) A widow or widower, 50 years of age or older.

(3) A permanently disabled person 18 years of age or older.

“Department.” The Department of Revenue of the Commonwealth.

“Homestead.” As follows:

(1) The term includes any of the following:

(i) A dwelling, whether owned or rented, and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, occupied by a claimant.

(ii) Premises occupied by reason of ownership or lease in a cooperative housing corporation, mobile homes which are assessed as realty for local property tax purposes and the land, if owned or rented by the claimant, upon which the mobile home is situated, and other similar living accommodations, as well as a part of a multidwelling or multipurpose building and a part of the land upon which it is built.

(iii) Premises occupied by reason of the claimant's ownership or rental of a dwelling located on land owned by a nonprofit incorporated association, of which the claimant is a member, if the claimant is required to pay a pro rata share of the property taxes levied against the association's land.

(iv) Premises occupied by a claimant if the claimant is required by law to pay a property tax by reason of the claimant's ownership or rental, including a possessory interest, in the dwelling, the land or both.

(2) For purposes of this definition, an owner includes a person in possession under a contract of sale, deed of trust, life estate, joint tenancy or tenancy in common or by reason of statutes of descent and distribution.

"Household income." All income received by the claimant and the claimant's spouse while residing in the homestead during the calendar year for which a rebate and dividend are claimed.

"Income." As follows:

(1) Except as provided in paragraph (2), all income from whatever source derived, including the following:

(i) Salaries, wages, bonuses, commissions and income from self-employment.

(ii) Alimony and support money.

(iii) Cash public assistance and relief.

(iv) The gross amount of any pensions or annuities including railroad retirement benefits for calendar years prior to 1999 and 50% of railroad retirement benefits for calendar years 1999 and thereafter.

(v) Except for Medicare benefits, all benefits received under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) for calendar years beginning prior to January 1, 2000, and 50% of all benefits received under the Social Security Act for calendar years beginning after December 31, 1999.

(vi) All benefits received under State unemployment insurance laws and veterans' disability payments.

(vii) All interest received from the Federal or any state government, a Federal or state instrumentality or political subdivision.

(viii) Realized capital gains and rentals.

(ix) Workers' compensation and the gross amount of loss of time insurance benefits.

(x) Life insurance benefits and proceeds, except the first \$5,000 of the total of death benefit payments.

(xi) Gifts of cash or property, other than transfers by gift between members of a household, in excess of a total value of \$300.

(2) The term does not include:

(i) Surplus food or other relief in kind supplied by a governmental agency.

(ii) Property tax or rent rebate or inflation dividend.

"Inflation dividend." An additional amount calculated by the Department of Revenue in accordance with section 5104(b) (relating to property tax, rent rebate and inflation cost).

"Inflation expenses." The additional costs of those essential consumer needs of senior citizens in this Commonwealth. The term

includes the additional cost of medical prescriptions, energy needs, transportation and food and clothing essentials.

"Permanently disabled person." Except as provided in section 5104(e), (f) and (g) (relating to property tax, rent rebate and inflation cost), a person who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to continue indefinitely.

"Real property taxes." Except for municipal assessments, delinquent charges and interest, all taxes on a homestead due and payable during a calendar year.

"Rent rebate in lieu of property taxes." Twenty percent of the gross amount actually paid in cash or its equivalent in any calendar year to a landlord in connection with the occupancy of a homestead by a claimant, regardless of whether the amount constitutes payment solely for the right of occupancy or otherwise.

"Social Security Act." The Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.).

"Widow." The surviving wife of a deceased individual who has not remarried, except as provided in section 5104(e), (f) and (g) (relating to property tax, rent rebate and inflation cost).

"Widower." The surviving husband of a deceased individual who has not remarried, except as provided in section 5104(e), (f) and (g) (relating to property tax, rent rebate and inflation cost).

§ 5104. Property tax, rent rebate and inflation cost.

(a) Amount.—The following shall apply to claim amounts:

(1) The amount of any claim for property tax rebate or rent rebate in lieu of property taxes for real property taxes or rent due and payable during calendar years 1981, 1982, 1983 and 1984 shall be determined in accordance with the following schedule:

(i) If a claimant's household income is \$0 to and including \$4,999, 100% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(ii) If a claimant's household income is \$5,000 to and including \$5,999, 80% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(iii) If a claimant's household income is \$6,000 to and including \$6,999, 60% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(iv) If a claimant's household income is \$7,000 to and including \$7,999, 40% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(v) If a claimant's household income is \$8,000 to and including \$8,999, 20% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(vi) If a claimant's household income is \$9,000 to and including \$11,999, 10% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(2) The amount of any claim for property tax rebate or rent rebate in lieu of property taxes for real property taxes or rent due and payable during calendar year 1985 through calendar year 2006 shall be determined in accordance with the following schedule:

(i) If a claimant's household income is \$0 to and including \$5,499, 100% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(ii) If a claimant's household income is \$5,500 to and including \$5,999, 90% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(iii) If a claimant's household income is \$6,000 to and including \$6,499, 80% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(iv) If a claimant's household income is \$6,500 to and including \$6,999, 70% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(v) If a claimant's household income is \$7,000 to and including \$7,499, 60% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(vi) If a claimant's household income is \$7,500 to and including \$7,999, 50% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(vii) If a claimant's household income is \$8,000 to and including \$8,499, 40% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(viii) If a claimant's household income is \$8,500 to and including \$8,999, 35% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(ix) If a claimant's household income is \$9,000 to and including \$9,999, 25% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(x) If a claimant's household income is \$10,000 to and including \$11,999, 20% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(xi) If a claimant's household income is \$12,000 to and including \$12,999, 15% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(xii) If a claimant's household income is \$13,000 to and including \$15,000, 10% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(3) The amount of any claim for property tax rebate or rent rebate in lieu of property taxes for real property taxes or rent due and payable during calendar year 2007 and thereafter shall be determined in accordance with the following schedule:

(i) If a claimant's household income is \$0 to and including \$7,999, 100% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(ii) If a claimant's household income is \$8,000 to and including \$8,999, 90% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(iii) If a claimant's household income is \$9,000 to and including \$9,999, 80% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(iv) If a claimant's household income is \$10,000 to and including \$10,999, 70% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(v) If a claimant's household income is \$11,000 to and including \$11,999, 60% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(vi) If a claimant's household income is \$12,000 to and including \$12,999, 50% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(vii) If a claimant's household income is \$13,000 to and including \$13,999, 40% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(viii) If a claimant's household income is \$14,000 to and including \$15,999, 35% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(ix) If a claimant's household income is \$16,000 to and including \$17,999, 25% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(x) If a claimant's household income is \$18,000 to and including \$19,999, 20% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(xi) If a claimant's household income is \$20,000 to and including \$21,999, 15% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(xii) If a claimant's household income is \$22,000 to and including \$25,000, 10% of real property taxes or rent rebate in lieu of property taxes shall be allowed as a rebate.

(b) Inflation dividend.—The following shall apply to inflation dividend amounts:

(1) To all claimants eligible for a property tax or rent rebate pursuant to subsection (a)(1) there shall be paid an inflation dividend determined in accordance with the following schedule:

(i) If a claimant's household income is \$0 to and including \$4,999, the dividend shall be \$125.

(ii) If a claimant's household income is \$5,000 to and including \$5,999, the dividend shall be \$100.

(iii) If a claimant's household income is \$6,000 to and including \$6,999, the dividend shall be \$75.

(iv) If a claimant's household income is \$7,000 to and including \$7,999, the dividend shall be \$60.

(v) If a claimant's household income is \$8,000 to and including \$8,999, the dividend shall be \$45.

(vi) If a claimant's household income is \$9,000 to and including \$11,999, the dividend shall be \$30.

(2) To all claimants eligible for a property tax or rent rebate pursuant to subsection (a)(2) there shall be paid an inflation dividend determined in accordance with the following schedule:

(i) If a claimant's household income is \$0 to and including \$4,999, the dividend shall be \$125.

(ii) If a claimant's household income is \$5,000 to and including \$5,999, the dividend shall be \$100.

(iii) If a claimant's household income is \$6,000 to and including \$6,999, the dividend shall be \$75.

(iv) If a claimant's household income is \$7,000 to and including \$7,999, the dividend shall be \$60.

(v) If a claimant's household income is \$8,000 to and including \$8,999, the dividend shall be \$45.

(vi) If a claimant's household income is \$9,000 to and including \$12,999, the dividend shall be \$30.

(vii) If a claimant's household income is \$13,000 to and including \$15,000, the dividend shall be \$20.

(c) Additional inflation dividend for 1980.—To all claimants eligible for a property tax or rent rebate for real property taxes or rent due and payable during calendar year 1980 there shall be paid \$100 as an additional inflation dividend. The additional inflation dividend payment shall be mailed no later than the mailing of the application form for claiming a 1981 property tax or rent rebate.

(d) Limits.—

(1) No claim shall be allowed if the amount of property tax or rent rebate computed in accordance with this section is less than \$10, and the maximum amount of property tax or rent rebate payable shall not exceed \$500 for claims for calendar years up to and including calendar year 2006.

(2) For calendar years 2007 and thereafter the maximum amount of rent rebate payable shall not exceed \$750.

(e) Prohibition.—No claim shall be allowed if the claimant is a tenant of an owner of real property exempt from real property taxes.

(f) Apportionment.—The department shall apportion the real property taxes or rent in accordance with the period or degree of ownership or leasehold or eligibility of the claimant in determining the amount of rebate for which a claimant is eligible if any of the following apply:

(1) A homestead is owned or rented and occupied for only a portion of a year or is owned or rented in part by a person who does not meet the qualifications for a claimant, exclusive of any interest owned or leased by a claimant's spouse.

(2) The claimant is a widow or widower who remarries.

(3) The claimant is a permanently disabled person who is no longer disabled.

(g) Public assistance.—A claimant who receives public assistance from the Department of Public Welfare shall not be eligible for rent rebate in lieu of property taxes or an inflation dividend during those months within which the claimant receives public assistance.

(h) Subsidies.—Rent shall not include subsidies provided by or through a governmental agency.

§ 5105. Filing of claim.

(a) Time.—

(1) Except as set forth in paragraph (2), a claim for property tax or rent rebate and inflation dividend must be filed with the department by June 30 of the year next succeeding the end of the calendar year in which real property taxes or rent were due and payable.

(2) Claims filed after the deadline under paragraph (1) but by December 31 of the year next succeeding the end of the calendar year in which real property taxes or rent were due and payable shall be accepted by the Secretary of Revenue as long as funds are available to pay the benefits to the late-filing claimants.

(b) Reimbursement.—No reimbursement on a claim shall be made from the State Lottery Fund earlier than the day following the June 30 provided in this chapter on which that claim may be filed with the department.

(c) Calendar year 1977.—Rebate claims for taxes or rent paid during calendar year 1977 shall be accepted by the Secretary of Revenue if filed with the department by April 30, 1979.

(d) Entitlement.—Only one claimant from a homestead each year shall be entitled to the property tax or rent rebate and inflation dividend. If two or more persons are able to meet the qualifications for a claimant, they may determine who the claimant shall be. If they are unable to agree, the department shall determine to whom the rebate and dividend is to be paid.

§ 5106. Proof of claim.

(a) Contents.—Each claim shall include reasonable proof of household income, the size and nature of the property claimed as a homestead and the rent or tax receipt or other proof that the real property taxes on the homestead or rent in connection with the occupancy of a homestead has been paid.

(b) Declaration of status.—If the claimant is a widow or widower, a declaration of that status in the manner prescribed by the Secretary of Revenue shall be included.

(c) Eligibility.—Proof that a claimant is eligible to receive disability benefits under the Social Security Act shall constitute proof of disability under this chapter.

(d) Disability.—No person who has been found not to be disabled by the Social Security Administration shall be granted a rebate or dividend under this chapter. A claimant not covered under the

Social Security Act shall be examined by a physician designated by the department and the claimant's status shall be determined using the same standards used by the Social Security Administration.

(e) Payment.—It shall not be necessary that the taxes or rent were paid directly by the claimant if the rent or taxes have been paid when the claim is filed.

(f) Initial claim.—The first claim filed shall include proof that the claimant or the claimant's spouse was age 65 or older or 50 years or older in the case of a widow or widower, during the calendar year in which real property taxes or rent were due and payable.

§ 5107. Incorrect claim.

If, on audit of a claim, the department finds the claim to have been incorrectly determined, it shall redetermine the correct amount of the claim and notify the claimant of the reason of the redetermination and the amount of the corrected claim.

§ 5108. Funds for payment of claims.

(a) Payment.—Approved claims shall be paid from the State Lottery Fund.

(b) Additional funds.—In the event sufficient funds are not available from lottery receipts to meet the expansion of this chapter as provided in section 5104(a)(3) (relating to property tax, rent rebate and inflation cost), additional funds of up to \$150,000,000 to fulfill these obligations shall be transferred from the Property Tax Relief Fund for this purpose.

§ 5109. Claim forms and rules and regulations.

(a) Duties of department.—The department shall receive all applications, determine the eligibility of claimants, hear appeals, disburse payments and make available suitable forms for the filing of claims.

(b) Regulations.—Necessary regulations shall be prescribed by a committee consisting of the Secretary of Aging, the Secretary of Community and Economic Development and the Secretary of Revenue. The Secretary of Aging shall serve as the chairman of the committee.

§ 5110. Fraudulent claim and conveyance to obtain benefits.

(a) Penalty.—In any case in which a claim is excessive and was filed with fraudulent intent, the claim shall be disallowed in full and a penalty of 25% of the amount claimed shall be imposed. The penalty and the amount of the disallowed claim, if the claim has been paid, shall bear interest at the rate of 0.5% per month from the date of the claim until repaid. The claimant and any person who assisted in the preparation or filing of a fraudulent claim commits a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine not exceeding \$1,000 or undergo imprisonment not exceeding one year, or both.

(b) Conveyance.—A claim shall be disallowed if the claimant received title to the homestead primarily for the purpose of receiving a property tax rebate.

§ 5111. Petition for redetermination.

(a) Filing.—Any claimant whose claim is denied, corrected or otherwise adversely affected by the department may file with the department a petition for redetermination on forms supplied by the department within 90 days after the date of mailing of written notice by the department of the action.

(b) Contents.—A petition filed under subsection (a) shall set forth the grounds upon which the claimant alleges that the departmental action is erroneous or unlawful, in whole or part, and shall contain an affidavit or affirmation that the facts contained in the petition are true and correct.

(c) Extension of time.—An extension of time for filing the petition may be allowed for cause but shall not exceed 120 days.

(d) Hearings.—The department shall hold hearings as may be necessary for the purpose of redetermination and each claimant who has duly filed a petition for redetermination shall be notified by the department of the time when, and the place where, the hearing will be held.

(e) Disposition.—It shall be the duty of the department, within six months after receiving a filed petition for redetermination, to dispose of the matters raised by the petition and mail notice of the department's decision to the claimant.

§ 5112. Review by Board of Finance and Revenue.

(a) Review.—Within 90 days after the date of official receipt by the claimant of the notice mailed by the department of its decision on any petition for redetermination filed with it, the claimant who is adversely affected by the decision may by petition request the board to review the action.

(b) Automatic denial.—The failure of the department to officially notify the claimant of a decision within the six-month period provided for by section 5111(e) (relating to petition for redetermination) shall act as a denial of the petition. A petition for review must be filed with the board within 120 days after written notice is officially received by the claimant that the department has failed to dispose of the petition within the six-month period prescribed by section 5111(e).

(c) Contents.—Every petition for redetermination filed under this section must state the reasons upon which the claimant relies or must incorporate by reference the petition for redetermination in which the reasons are stated. The petition must be supported by affidavit that the facts set forth in the petition are correct and true.

(d) Disposition.—The board shall act in disposition of such petitions filed with it within six months after they have been received. If the board fails to dispose of a petition within six months, the action taken by the department upon the petition for redetermination shall be deemed sustained.

(e) Action.—The board may sustain the action taken by the department on the petition for redetermination, or it may take such other action as it deems necessary and consistent with provisions of this chapter.

(f) Notice.—Notice of the action of the board shall be given by mail to the department and to the claimant.

§ 5113. Appeal.

A claimant aggrieved by the decision of the board may appeal from that decision in the manner provided by law for appeals from decisions of the board in tax cases.

§ 5114. Grants to area agencies on aging for services to older persons.

For fiscal year 1981-1982, \$6,200,000 is hereby appropriated from the Lottery Fund to the Department of Aging for service grants to area agencies on aging. The Department of Aging shall allocate these funds to area agencies on aging on the basis of each agency's proportionate share of all Federal and State funds currently available. Such funds shall not be used for costs of administration.

§ 5115. Applicability.

This chapter shall apply to tax years beginning after December 31, 1970.

Section 2. Repeals are as follows:

(1) The General Assembly declares as follows:

(i) The repeal under paragraph (2)(i) is necessary to effectuate the addition of 72 Pa.C.S. Ch. 12.

(ii) The repeal under paragraph (2)(ii) is necessary to effectuate the addition of 72 Pa.C.S. Ch. 13.

(iii) The repeal under paragraph (2)(iii) is necessary to effectuate the addition of 72 Pa.C.S. Ch. 15.

(iv) The repeals under paragraph (2)(v) and (vii) are necessary to effectuate the addition of 72 Pa.C.S. § 1503.

(v) The repeal under paragraph (2)(vi) is necessary to effectuate the addition of 72 Pa.C.S. Ch. 21.

(vi) The repeal under paragraph (2)(iv) is necessary to effectuate the addition of 72 Pa.C.S. Ch. 51.

(2) The following acts and parts of acts are repealed:

(i) Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(ii) Article II-A of the Tax Reform Code of 1971.

(iii) Article III of the Tax Reform Code of 1971.

(iv) The act of March 11, 1971 (P.L.104, No.3), known as the Senior Citizens Rebate and Assistance Act.

(v) Sections 2 and 3 of the act of December 19, 1996 (P.L.1335, No.179), known as the Medical Care Savings Account Act.

(vi) The act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act.

(vii) Section 4 of the act of July 14, 2005 (P.L.278, No.48), known as the Health Savings Account Act.

Section 2.1. A city of the first class shall use 17.5% of the tax authorized and collected pursuant to Chapter 5 of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, for reduction of the tax imposed pursuant to the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act. A city of the first class shall use no more than 50% of this amount to reduce the rate of the tax imposed on residents and no less than 50% of this amount to reduce the rate of the tax imposed on nonresidents.

Section 3. The addition of 72 Pa.C.S. Ch. 12 is a continuation of Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Ch. 12, all activities initiated under Article II of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 12. Orders, regulations, rules and decisions which were made under Article II of the Tax Reform Code of 1971 and which are in effect on the effective date of section 2(1) of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 12.

(2) Except as set forth in paragraph (3), any difference in language between 72 Pa.C.S. Ch. 12 and Article II of the Tax Reform Code of 1971 is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Article II of the Tax Reform Code of 1971.

(3) Paragraph (2) does not apply to the addition of any of the following provisions of Title 72:

(i) The definitions of "advertising services," "computer software," "delivered electronically," "detective services," "lodging service," "management consulting service," "personal service," "prewritten computer software," "purchase at retail," "recreation service," "sale at retail," "self-storage," "tangible personal property" and "use" in section 1201.

(ii) Paragraphs (2) and (3) of the definition of "maintaining a place of business in this Commonwealth" in section 1201.

(iii) Paragraphs (2), (4) and (7) of the definition of "purchase price" in section 1201.

(iv) Paragraphs (4) and (5) of the definition of "resale" in section 1201.

(v) Paragraphs (4), (8)(ii)(C), (iii), (iv), (v) and (vi), (10), (18), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (30) and (31) of the definition of "sale at retail" in section 1201.

(vi) Paragraphs (4)(i) and (ii)(B)(III), (iii), (iv), (v) and (vi), (6), (16), (19), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29) and (30) of the definition of "use" in section 1201.

(vii) Section 1202(b) and (c).

(viii) Section 1204(4), (11), (28), (30), (37), (47), (48), (51), (53), (58) and (61).

(ix) The definitions of "occupancy," "occupant" and "permanent resident" in section 1209.

(x) Section 1268(b)(1).

(xi) Section 1281.2.

(xii) Section 1281.3.

Section 4. The addition of 72 Pa.C.S. Ch. 13 is a continuation of Article II-A of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. Except as otherwise provided in 72 Pa.C.S. Ch. 13, all activities initiated under Article II-A of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 13. Orders, regulations, rules and decisions which were made under Article II-A of the Tax Reform Code of 1971 and which are in effect on the effective date of section 2(2) of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 13.

Section 4.1. The addition of 72 Pa.C.S. Ch. 15 is a continuation of Article III of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Ch. 15, all activities initiated under Article III of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 15. Orders, regulations, rules and decisions which were made under Article III of the Tax Reform Code of 1971 and which are in effect on the effective date of section 2(2)(iii) of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 15.

(2) Except as set forth in paragraph (3), any difference in language between 72 Pa.C.S. Ch. 15 and Article III of the Tax Reform Code of 1971 is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Article III of the Tax Reform Code of 1971.

(3) Paragraph (2) does not apply to the addition of any of the following provisions of Title 72:

- (i) Section 1502.
- (ii) Section 1503(a)(6) and (a.6).

Section 5. The addition of 72 Pa.C.S. § 2121 is a continuation of section 341 of the act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Ch. 21, all activities initiated under section 341 of the Homeowner Tax Relief Act shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 21. Orders, regulations, rules and decisions which were made under section 341 of the Homeowner Tax Relief Act and which are in effect on the effective date of section 2(3) of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 21.

(2) Any difference in language between 72 Pa.C.S. § 2121 and section 341 of the Homeowner Tax Relief Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of the Homeowner Tax Relief Act.

Section 6. The addition of 72 Pa.C.S. Ch. 51 is a continuation of the act of March 11, 1971 (P.L.104, No.3), known as the Senior Citizens Rebate and Assistance Act. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Ch. 51, all activities initiated under the Senior Citizens Rebate and Assistance Act shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 51. Orders, regulations, rules and decisions which were made under the Senior Citizens Rebate and Assistance Act and which are in effect on the effective date of section 2(4) of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 51.

(2) Except as set forth in paragraph (3), any difference in language between 72 Pa.C.S. Ch. 51 and the Senior Citizens Rebate and Assistance Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial

construction or administration and implementation of the Senior Citizens Rebate and Assistance Act.

(3) Paragraph (2) does not apply to the addition of any of the following provisions of Title 72:

- (i) Section 5104(a)(2) and (3) and (d).
- (ii) Section 5108.

Section 6.1. The addition of section 72 Pa.C.S. § 1503(a.6) shall apply to taxable years beginning after December 31, 2005.

Section 7. This act shall take effect as follows:

(1) Except as provided in paragraph (2), the following provisions shall take effect April 1, 2006:

- (i) The addition of 72 Pa.C.S. Ch. 12.
- (ii) The addition of 72 Pa.C.S. Ch. 13.
- (iii) Except for the addition of 72 Pa.C.S. § 1503(a.6), the addition of 72 Pa.C.S. Ch. 15.
- (iv) Section 2(2)(i), (ii) and (iii) of this act.

(2) The addition of 72 Pa.C.S. § 1281.3 and 1560 shall take effect May 1, 2006.

(3) The remainder of this act shall take effect immediately.

On the question recurring,
Will the House agree to the amendment?

POINT OF ORDER

The SPEAKER. On that amendment, does the gentleman, Mr. Vitali, wish to be recognized?

Mr. VITALI. Initially I would like to raise the same point of order I attempted. Does this particular amendment have a fiscal note?

The SPEAKER. The rules were suspended for immediate consideration. Therefore, there is no need for a fiscal note.

PARLIAMENTARY INQUIRY

Mr. VITALI. A parliamentary inquiry, Mr. Speaker.

The SPEAKER. The gentleman will state it.

Mr. VITALI. I am confused, because prior to the vote I asked whether it would be in order to bring up the fiscal-note question and you indicated not prior to the suspension, and now that that suspension is made, I am asking and your position is, well, now it appears to be too late because the motion for suspension was made. I am confused as to when in these circumstances it would be appropriate to raise—

The SPEAKER. The Appropriations chairman is telling me that the fiscal note is out on the system, and we indicated when we took the vote it was on suspension of the rules, and part of the reason for that is the need for the gentleman to dispense with the fiscal note. But the Appropriations chairman, Mr. Feese, tells us that fiscal note is on the system.

Does the gentleman have a further point?

Mr. VITALI. I rise for interrogation, Mr. Speaker.

The SPEAKER. The gentleman is in order. The gentleman, Mr. Scavello, indicates he will stand for interrogation. The gentleman is in order.

Mr. VITALI. Thank you, Mr. Speaker.

Perhaps initially I would ask that the maker of the amendment give a brief explanation of this particular amendment.

Mr. SCAVELLO. I am sorry. Could you repeat the question again, Mr. Speaker?

Mr. VITALI. Could you give the House a brief explanation of this amendment.

Mr. SCAVELLO. What this amendment does, it reduces property taxes, school property taxes, across the State from 40 to 60 percent. It increases the State PIT (personal income tax) .22, from 3.07 to 3.29, and it expands some of the exemptions on the State sales tax but keeps it at 6 percent. Each of the members should have received a distribution sheet for their dollars as well as a statement on what items would be taxed with the new 6 percent.

Excuse me. And as well as expands the rent rebate and property tax program to \$25,000 in income and from \$500 to \$750. And then provides all of the options that Act 72 and HB 1 have as well.

Mr. VITALI. Okay. Could we focus for a minute on the sales tax exemptions? Could you give the most significant changes in the law in that regard – in other words, what will now be taxed under the sales tax – and perhaps list them in the order of the most significant cost savings.

Mr. SCAVELLO. Do you have a printout? I handed the printout to everyone.

Mr. VITALI. No, I do not.

Mr. SCAVELLO. Hold on. I will get one up to you.

Mr. VITALI. No. But I do not want to—

The SPEAKER. Will the gentleman suspend.

There is entirely too much noise on the floor of the House. Would the meetings please break up. The meeting in the back of the hall of the House—

The gentleman is in order.

Mr. VITALI. But could you outline some of the most significant changes, the most significant elimination of exemptions with regard to the sales tax?

Mr. SCAVELLO. They are all listed on that sheet that I have handed out to you, sir. If there is any item in there that you want to question, go right ahead and question it. There is a member that is planning to put an amendment in to pull two of those items out, and he is waiting for the amendment; then I am going to support that when he does get it, and that is the advertising and the management consultant and public relations, and those are the two big ones that I believe that you probably are looking at. Outside of those two, the others are, the numbers are not that great.

Mr. VITALI. What about the sales tax on services: accounting, legal, other—

Mr. SCAVELLO. No, they are not taxed. They are not taxed. If they are not on that paper, they are not taxed. I felt that it is easier to give you that than to give you what was— Mr. Speaker, rather than to give you a statement of what was not taxed, I felt it is easier to just give you what the tax will include.

Mr. VITALI. You understand in the course of debate it is difficult to debate and read at the same time—

Mr. SCAVELLO. No; I understand that—

Mr. VITALI. —and this is a verbal-medium debate, not a written medium.

Mr. SCAVELLO. —and not a problem. But those items that you are referring to are not taxed. Also, the real estate fees are not taxed, stockbroker, broker fees are not taxed, banking fees are not taxed. Those are the items that we have been getting numerous e-mails over in the last couple of weeks.

Mr. VITALI. So the additional sources of revenue under this amendment are an increase in the sales tax – rather, an increase in the exemptions under the sales tax, an increase in the PIT—

Mr. SCAVELLO. Correct.

Mr. VITALI. —gaming revenue?

Mr. SCAVELLO. The gaming revenue when it comes into play in 2007-2008, and on the sheet that I have handed out, I have a conservative figure of \$500 million. If it generates more, then those numbers will be greater to each and every one of the school districts, but I have used \$500 million in gaming revenues in that distribution formula that is on the sheets that you have.

Mr. VITALI. Other than those three sources of revenue, are there any other sources of revenue under your amendment to provide property tax relief or is that substantially it?

Mr. SCAVELLO. Those are the only three.

Mr. VITALI. Okay. Now, can I then shift focus to the distribution formula. What is the formula used to get this amount of money into the hands of property tax payers?

Mr. SCAVELLO. Average daily membership and equalized mills.

Mr. VITALI. Okay. Now, how does that formula differ from the Act 72 formula?

Mr. SCAVELLO. I am not really sure how the Act 72 formula was put together, I will be very honest with you, because in looking at it, you know, every school district, the numbers, you know, you could not really tell from looking at the amounts, and I was not involved in putting it together, so I could not really tell you that. I could just tell you how I came up with my numbers.

Mr. VITALI. Frankly, I have not seen the printouts, and I am trying to get a sense for how the various school districts, particularly mine, do under this formula.

Mr. SCAVELLO. Mr. Speaker, I sent your secretary, I faxed over to her just today a copy of your school districts and what they would receive under this formula, about 10 o'clock this morning.

Mr. VITALI. Could you tell me the range of property tax reduction under this bill?

Mr. SCAVELLO. From 40 to 50 percent in the first year.

Mr. VITALI. So are you suggesting that the lowest, the school district that gets, I am sorry, the taxpayers who get the least relief will be getting 40 percent relief and taxpayers who get the most relief will be getting 50 percent relief?

Mr. SCAVELLO. Correct.

Mr. VITALI. How does the money get from the State to the taxpayer? Is the school district a pass-through? Perhaps you could explain that.

Mr. SCAVELLO. Correct. And it really goes back with the law that is in place, and that is the homestead rebate. You know, it is the median assessment. I did not change the law. You know, it goes back to the school district. If your school district, for example, has \$100 million in residential and farmstead, that is what your total taxes collected are. Under this plan, if you were getting 40 percent back to your school district, you would get \$40 million back to your school district distributed to your taxpayers.

Mr. VITALI. Does each taxpayer in a given school district get an identical amount of property tax reduction, or does it depend on the individual taxpayer situation?

Mr. SCAVELLO. No, Mr. Speaker; it would be on the individual taxpayer situation. It is based off of 50 percent of the median real estate within that school district. What you are looking at is an average number on the sheet.

Mr. VITALI. Okay. I just want to double-check that last question, because a member came up and raised a point of—

Mr. SCAVELLO. I am going to get it clarified right now.

Mr. Speaker, I have been corrected. Everyone gets that same dollar amount.

Mr. VITALI. Okay. If I can just move along to the issue of the— What referendums are involved in this amendment? At what point would the public be required to or what issues would be required to put the referendum, what referendums would be optional? What referendums are encompassed by this amendment?

Mr. SCAVELLO. Mr. Speaker, it is identical to Act 72. I did not change the language, but from my understanding, there is an amendment that is being offered that might change it, and I would be supportive of it. I believe it is Representative Veon's amendment.

Mr. VITALI. In other words, are we talking about a so-called back-end referendum, a referendum for future increases?

Mr. SCAVELLO. Yes; yes.

Mr. VITALI. So the exemptions are identical to what they were in Act 72?

Mr. SCAVELLO. Yes.

Mr. VITALI. Okay.

Mr. SCAVELLO. The difference being, Mr. Speaker, under this proposal every school district would get a significant reduction next year, and then when the gaming revenues come in, it makes it even better.

Mr. VITALI. So in order for the school district to increase school tax above an index amount, they would have to take it to public referendum?

Mr. SCAVELLO. Correct; just like the Governor asked, yes, sir.

Mr. VITALI. And what about opting into this initially? Is there a referendum with regard to opting into this?

Mr. SCAVELLO. There is no opt-in. You have it. We are going to vote to either do it or not. There will be no opt-in to the school district.

Mr. VITALI. Okay. Could you just explain a little more about the property tax rent rebate change, the amount of money which will be diverted to that program, the amount of the rebate, its maximum relief?

Mr. SCAVELLO. It is the first \$150 million. I am assuming there would be \$500 million for property tax, and the first 650, that first 150 would go to the rent rebate program, and it goes to the lottery, and it will expand that program from \$17,000 to \$25,000 and the refund from \$500 to \$750. So the seniors in our Commonwealth that qualify for that program, it is possible that their property taxes can be eliminated with the combination of the items that we are doing here, between the sales tax, the income tax, and the gaming revenue.

Mr. VITALI. Thank you, Mr. Speaker. That concludes my questions.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Lackawanna, Mr. Cawley.

Mr. CAWLEY. Thank you, Mr. Speaker.

Mr. Speaker, I would like to interrogate the maker of the amendment, please.

The SPEAKER. The gentleman indicates he will stand for interrogation. The gentleman is in order.

Mr. CAWLEY. Mr. Speaker, last week we discussed, because of the wage tax issue in the city of Scranton, which is 3.4 percent, that they would be able to, with an amendment to this bill that you had run last week, be able to use a certain percent, exactly what the school board wanted, to lower their property tax and their wage taxes, and do you know if that was requested to be in the bill?

Mr. SCAVELLO. Mr. Speaker, I had requested it, and I am not sure if it is in there or not, but I had requested it, and I would support that wholeheartedly. I think that the school districts should make that decision. I believe Scranton is a special case where they have a very high wage tax, and if they can adjust accordingly, the dollars that are going to Scranton, Scranton should make that decision and not us up here.

Mr. CAWLEY. Thank you.

Mr. SCAVELLO. You are welcome.

Mr. CAWLEY. Thank you, Mr. Speaker.

One other question: A formula down here in Harrisburg was established to determine exactly what percent of the property tax would be lowered. So in our printouts we know that we are not allowed to, by law, lower their property taxes more than 50 percent of the assessed value.

Mr. SCAVELLO. Correct.

Mr. CAWLEY. In many of the districts, that figure is over 50 percent. Now, some people had suggested that that money go back, that if it is over 50 percent, it goes back into a tax reduction fund. That, I think, will be shortchanging those school districts that are going to lose a percentage over 50 percent, which they are supposed to be getting based on a formula. Part of that formula was established based on what taxes those people are paying, and everyone in this State used the exact same formula. I believe that that extra percentage, for instance, if they are listed as getting 60 percent or 55 percent, that extra percentage should stay right in that district and should be used for other expenses. Do you know if that is in the bill?

Mr. SCAVELLO. Mr. Speaker, I am looking at the Scranton School District, and in Scranton that 60 percent, they would be getting \$10,777,289. That is what Scranton is going to get, 50 percent, and that extra 10 will go to the school district and would have to be on all properties. You are getting that number, that \$10,777,289. You are going to get maxed out. Whatever those other dollars are would go to the school district to reduce on all properties.

Mr. CAWLEY. Well, that would be fine, because then again, that is going to be extra money where they can lower the wage tax and use all of the money that is in there presently up to 50 percent to lower the property tax.

Mr. SCAVELLO. And I also would like to point out, Mr. Speaker, that should gaming generate more than \$500 million and, you know, depending on whom you talk to, some say over a billion, that number would be much, much higher. So Scranton can get a significant, significant property tax reduction.

Mr. CAWLEY. Thank you, Mr. Speaker.

And I just would like to mention that there are four other school districts that I have, and several of the, I think three out of the four are presently over 50 percent, but as long as you are saying they are going to get that money that that 55 or 60 percent represents, then that means they are going to keep that extra money and use it for other expenses, correct?

Mr. SCAVELLO. Correct. It would have to be on all properties or wage tax or whatever they choose to do in Scranton.

Mr. CAWLEY. Thank you, Mr. Speaker.

I believe that this is a better proposal than the bill that we are going to be voting on without any amendments. Thanks so much.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Allegheny, Mr. Frankel.

Mr. FRANKEL. Thank you, Mr. Speaker.

I have a number of different issues with this, but I want to dwell on one in particular. You know, when we were debating the city of Pittsburgh's financial situation, we talked about many of the problems that were created by mismanagement over a period of time, and I certainly try to point out many of the consequences of legislation that we had passed here in Harrisburg that resulted in situations that had a negative impact in terms of the city's fiscal situation, and here we are again presented with a similar type, I am sure, of an unintended consequence of this proposal with respect to the way tax relief is distributed.

Because of the formula, which is based on median assessed value, the median assessed value in the city of Pittsburgh is fairly low, which results in a relatively low dollar amount of tax relief; in this situation with all of the gaming revenues matured, about \$660. However, when you take a look at our suburban communities in Allegheny County, we are looking at significantly higher distribution of or, I should say, dollar amount of property tax relief, and while the percentage may be lower, we have to understand it is based on median assessed values which are much, much higher in these suburban areas. So residents of Pittsburgh who may be middle income or upper middle income who are paying very high property taxes, comparable to the more affluent areas of Allegheny County, are getting a significantly lower amount of tax relief. In some cases, if you take a look at Pine-Richland, for instance, Pine-Richland gets almost \$2,100 worth of tax relief compared to \$660 in the city of Pittsburgh.

The problem here is that we are, if we were to pass this legislation, creating another incentive in what has been an unfair comparison on a number of different uncompetitive issues with wage taxes, the property tax to begin with, that will encourage residents of the city of Pittsburgh, the tax base of the city of Pittsburgh, people who own the higher valued homes who have paid the lion's share of property taxes in Pittsburgh, to leave the city of Pittsburgh, and we will see a continuing outflow of the tax base of the city that will create additional problems that, again, historically have been part of the problem with respect to the city's fiscal issues that we are dealing with today.

I cannot support this formula. This formula needs to be able to take into account the differences within a school district, whether it be on millage, on a per-pupil basis, but to do a flat amount per household becomes a real problem with respect to our ability to retain and attract people who pay the taxes in our city. We will have a very difficult time. I know this was not the intent of the maker of this legislation, but it certainly is an unintended consequence with respect to what has happened here. So I am very concerned about that.

I see him. He looks like he wants to respond—

Mr. SCAVELLO. Yes; I would like to respond.

Mr. FRANKEL. —in what was not an interrogation. Mr. Speaker, I would welcome the opportunity to hear a response.

Mr. SCAVELLO. Mr. Speaker, I first would like to point out, the amount of dollars that the city of Pittsburgh will be receiving next year, which is \$40,318,486, their total homestead/farmstead property taxes are \$100 million, and they will be receiving \$40 million and change, as well as if gaming generates \$500 million the year after, they will be receiving another \$10 million; \$50 million.

I do not have a problem accepting an amendment from the Pittsburgh contingency of legislators that want to decide on how the distribution of those dollars would go to Pittsburgh. You know what your numbers are. It is \$40 million and change next year, \$50 million if gaming generates \$500 million, and if it generates \$1 billion, it is \$60 million. I would entertain an amendment however the Pittsburgh delegation would like to see those dollars distributed—

The SPEAKER. Mr. Scavello? Mr. Scavello? Would the gentleman cease.

Mr. SCAVELLO. Yes.

The SPEAKER. Please, you have to answer questions about your amendment, not drafting up new amendments to address whatever problems you perceive in your amendment before the House. Please confine your remarks to your amendment.

Mr. FRANKEL. Well, at this point it is not practical. I mean, we are not the only community. I see the city of Philadelphia has the same issue in front of it, and there may be some other urban areas. You know, I would like to work with you to talk about that. We have discussed it. At this point, under these circumstances, without the ability to craft an amendment this evening, I have to be opposed to this amendment in this bill ultimately based on what I think will be a very destructive measure towards the city of Pittsburgh and I think many other urban communities across the State who may have the same kind of differential that creates an incentive for people to move out of the city.

So I would wish we would have the opportunity to talk about that and maybe craft an amendment. Otherwise, this evening I will be a "no" vote on this, and you know, I wish we were not rushing to a conclusion, but ultimately, as it stands, I need to be in opposition to this for the reasons I have stated.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentledady from Philadelphia, Ms. Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.

I have a few items of interrogation for the maker, if he is willing.

The SPEAKER. The gentledady is in order. The gentleman indicates he will stand for interrogation.

Ms. MANDERINO. Thank you.

Last week or a week and a half ago – I am losing track of time – when the House considered a prior printer's version of your amendment, one of the items onto which the sales tax was broadened I remember was construction or construction-related services, and it sticks out in my mind because it was the biggest revenue raiser. It was \$275 million or something in that ballpark. On the list I have of items that we are expanded to now, that is off the list, so I assume that by narrowing your list of exclusions that you were covering or by narrowing the base, that you are raising less revenue. What I would like to know is

how much less revenue in total and where were the changes in the distribution of the money as a result of that lost revenue?

Mr. SCAVELLO. Mr. Speaker, the evening that we took a vote as a Committee of the Whole on this legislation, I handed out a list of items that would be taxed. One of those items was listed on the paper. At that time there was \$400 million, if you— The rebate was going to be \$2.3 billion back, but the PIT portion was not figured in those numbers. So actually we had approximately \$2.7, \$2.8 billion that evening but we were only distributing \$2.3. I was anticipating some members pulling some items out of that list in the debate, which never happened. The next day I sat down together with the chairmen of the Finance Committee and we tweaked that list. We removed some items and that was one of the items that we removed, and we tweaked the PIT just to come to that number of \$2.3.

Ms. MANDERINO. So the distribution remained the same because the revenue projections were overestimated?

Mr. SCAVELLO. Correct.

Ms. MANDERINO. My second question, and let me pose it in a specific, the city of Philadelphia is now undergoing and I am sure other communities are either now or in the future undergoing reassessments. Our city is looking to move to a full valuation of property, which we do not have right now, but assuming that that stays on course and assuming that the city council and our jurisdiction approves it, it will probably go in effect in 2007.

Now, my concern is this: The redistribution of funds back to the school district in the city of Philadelphia is based on a median assessment that right now is on very undervalued assessments. When our properties are reassessed at full value, which will probably put the median assessed value in many instances at more than double what the assessed value is now, how will that affect the dollar figure that I am looking at on your printout for the School District of Philadelphia, and if it does affect that, where does the money come from in order to— You know, I am looking at it and I am saying – I did not bring my printout to the mike – but I think it was \$409 to the city of Philadelphia. If we were assessed now at what our full value assessment is, just knowing what median values at full assessment would probably be, I am sure that our median that we would be getting back under your formula would be more than double what it is showing on this sheet. But if we were getting back double what you are showing on this sheet, the money has got to come from somewhere else. So I either need to understand that this formula is going to be frozen in assessments at the time we pass this or how every year when different school districts reassess is that going to affect this formula.

Mr. SCAVELLO. This formula, the city of Philadelphia will be receiving 50 percent of your total real estate property taxes for residential properties. That is the number. The distribution formula, you know, it will be based off of— You are getting \$122 million; that is what the city of Philadelphia will receive, and it is based off of distributing that out at 50 percent. Now, if your distribution numbers, if your numbers change in the city of Philadelphia, you are still getting \$122 million. That is not going to change. That number will not change.

Ms. MANDERINO. Okay. So if I am understanding you, what I should be looking at is not necessarily the percentage of property tax reduction but the dollar value—

Mr. SCAVELLO. Yeah.

Ms. MANDERINO. —because right now the dollar value is \$122 million; 50 percent, \$349 – I was looking at the figure that included gambling earlier – \$349.

Mr. SCAVELLO. All right.

Ms. MANDERINO. If we are assessed at— Your formula, you are telling me that if we were assessed at 100 percent full market value, which is what we are moving to, we would still get \$122 million. It might only show that that really means 30 percent property tax reduction in our city—

Mr. SCAVELLO. No.

Ms. MANDERINO. —across the board.

Mr. SCAVELLO. Mr. Speaker, in the city of Philadelphia, your homestead, your homestead property taxes are \$244 million, and what this formula gives you, \$122 million for those homesteads. That is 50 percent of what your— And in a reassessment, you would have to reduce your millage.

Ms. MANDERINO. Okay. Then I misunderstood, and let me just ask so that I am clarifying. The money is driven out not on the assessed value, median assessed value of the property; it is driven out on the total property tax dollars collected by that jurisdiction?

Mr. SCAVELLO. That jurisdiction will be receiving, Mr. Speaker, 50 percent, 50 percent of their total dollars, what they pay into the property taxes today. The distribution, however, is based off of the median assessed value. That is State law. I cannot change that State law.

Ms. MANDERINO. I am sorry. I am not trying to beat a dead horse. I am trying to make sure I understand it. So the formula of driving out money is based on—

Mr. SCAVELLO. Average daily membership plus equalized mills is how we came up with that number, but you are receiving 50 percent of your total property taxes for homesteads in the city of Philadelphia.

Ms. MANDERINO. Our total districtwide revenue collected—

Mr. SCAVELLO. Correct.

Ms. MANDERINO. —regardless of what that means to any individual taxpayer and regardless of how their individual house is assessed?

Mr. SCAVELLO. Correct.

Ms. MANDERINO. Okay. Thank you, Mr. Speaker.

Mr. SCAVELLO. You are welcome.

The SPEAKER. The Chair thanks the gentlelady.

The Chair recognizes the gentleman from Allegheny, Mr. DeLuca.

Mr. DeLUCA. Thank you, Mr. Speaker.

Would the maker of the amendment stand for a brief interrogation?

The SPEAKER. The gentleman, Mr. Scavello, indicates he will stand for interrogation. The gentleman is in order and may proceed.

Mr. DeLUCA. Thank you, Mr. Speaker.

Mr. Speaker, I am listening to the debate here tonight, and as we were in the caucus and as you know last week when we had the committee of the House, we were discussing different plans. I am trying to make a decision on your plan and SB 30 that will be coming up. What difference is your plan compared to SB 30 and what difference will it mean to members of this House as far as the distribution part of this to property tax relief?

Mr. SCAVELLO. Mr. Speaker, the first thing and the most significant piece is that next year school districts across the

Commonwealth will receive 40 percent of their total budget for homestead/farmstead.

Mr. DeLUCA. Mr. Speaker? Mr. Speaker? I think this is important. Could the gentleman have some order so the members could hear what he is saying?

The SPEAKER. The gentleman is correct. The noise levels have gotten too out of control. Would the conferences in the back please break up. To the right and the left of the Speaker, would they also break up, along the wall.

Mr. SCAVELLO. Mr. Speaker, the major difference between SB 30 and this plan, under this plan every school district in the State of Pennsylvania will receive a 40-percent reduction off of their total dollars for homestead/farmstead properties within their district. As far as the gaming piece of it, with the local options, I did not change that. Those local options are still there, and they will arrive in 2007-2008 when the gaming dollars show up. I have also included in this piece of legislation the rebate program, expanding the rent property tax program from \$500 to \$750, to a cap of the income to \$25,000 income.

Mr. DeLUCA. So that is the major differences?

Mr. SCAVELLO. The major differences on the front end, you are going to have a 40- to 50-percent reduction based off of your school district, yes.

Mr. DeLUCA. Let me ask you also, Mr. Speaker, on your amendment, without increasing some of these sales tax exemptions, in doing a little bump in the personal income tax and the sales tax, is it possible to give property relief to the citizens of the Commonwealth of Pennsylvania?

Mr. SCAVELLO. I am sorry, Mr. Speaker. The noise level is so loud that I could not hear the speaker.

The SPEAKER. The gentleman is correct. You all said this was the most important issue for your legislative districts. A little quiet would be nice so we could hear the gentleman and respond to the questions and the questions that are asked.

Mr. DeLUCA. Mr. Speaker, let me restate the question.

Is it possible to give property tax relief to the citizens of the Commonwealth of Pennsylvania without doing a little bump in the PIT and the sales tax and adding some of these exemptions?

Mr. SCAVELLO. Mr. Speaker, without increasing the rate? Are you talking about the exemptions or the rate, sir?

Mr. DeLUCA. Without adding these exemptions and increasing the rate, the little bump in the PIT and the sales tax, do you foresee any other way that the citizens of the Commonwealth would be able to get property tax relief, in your magnitude of 40 to, over 40 percent?

Mr. SCAVELLO. I do not think substantially. You would have to raise the PIT higher. Mr. Speaker, there are three main taxes. It is property, sales, and income. Should we reduce one of those taxes, we will have to find those dollars in one of the other two taxes. The only uncertainty is the gaming revenue, which will show up in the year 2007-2008. All that does, it will sweeten the pot. In order to have a significant reduction next year, you need to have a combination, I believe, of the three.

Mr. DeLUCA. Thank you, Mr. Speaker. Thank you.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Northumberland, Mr. Belfanti.

Mr. BELFANTI. Thank you, Mr. Speaker.

Mr. Speaker, again I commend Representative Scavello for again trying to work out something that is just untenable for many of us in this chamber. Like the gentleman, Mr. Frankel, who lives in an urban area, I live in a very rural area with two

very poor school districts, actually the two poorest school districts in the State, and I know the argument he makes is that, well, they are going to get 50 percent of their money back. But the point is, if Mr. Scavello goes out and buys a \$50,000 Lexus or a constituent in my district goes out and buys a \$50,000 Lexus, that sales tax is the same for that person who is going to receive \$130 as opposed to his constituent who might be receiving \$2,000 because of the mean assessed value in a given school district.

We really need to go back to the drawing board on this whole homestead exemption. It was incorrectly done to begin with. It went over many of our heads unintentionally, because when we heard about a 50-percent reduction here or a 40-percent reduction there, like some of the school districts that opted into Act 50 previously, and under Act 72, in fact, I went home believing that every property owner in my district, whether they lived in that \$100,000 house or that \$10,000 row house, would see that 40 percent or that 50 percent reduction of each and every one of their tax bills, but now they are a finite dollar amount. And according to my Appropriations staff, if you look at these printouts and if your constituents per household are not going to average between \$800 and \$900 in property tax relief under Scavello 13, your homeowners are going to be paying more taxes than they are right now. They are going to pay a half a percent higher sales tax forever; they are going to pay a higher PIT forever, and that \$800 to \$900 is what the average needs to be for your homeowner to break even. We do not care what school districts are getting \$40 million back or 40 percent back or 50 percent back. What counts to most of us is the actual dollar amount that people are going to pay in new sales taxes, in new PITs and will never be able to recoup that money.

In my districts a couple of them, when gaming revenues kick in, guess what they get out of it? Another zero. They get less money. In Hazleton where Representative Eachus, and maybe he will talk about this himself, under Act 50 he is making about \$12 more than he will make under the Scavello plan in each of the residences of the Hazleton School District.

Now, we need to go back to the drawing board. I started to say before when we did homestead exemption, we did it incorrectly. It should have been based upon the actual market value of a residence within a school district. That way that person who is paying \$2,000 a year, if he sees a 40-percent reduction, that dollar amount is going to be 800 bucks, and that property tax payer who has that little row home with the two bedrooms that is paying \$200, if he sees a 40-percent reduction, he is going to see \$80 in relief. It is the people that are living in the developments, it is the people that are living in the \$150,000 and \$200,000 homes who are looking for this relief; it is not the people who are paying \$200 that are looking for relief.

What we are going to do is pass on to them forever, under the Scavello plan, all new taxes that will never go away, and even if you reassess, if your county reassesses down the road from now, you cannot go back to the formula and ask for more money. You are stuck with what is in that printout right now. So those of you who see relief of under \$900 beware because that does not even include a major purchase like that car that somebody likes to buy every 3 or 4 years, because then you are even further back. So be mindful of what you are voting for.

Again, I appreciate the work the gentleman has put in on this. I know his districts make out very well, but once again, your residents, if you are getting that \$300 back or \$280 back or

\$400 back, your residents are still going to pay that extra half a point on that \$40,000 car and that extra third of a point on their income. Regardless of what income tax bracket they are in, they are going to pay that forever.

So I cannot support this Scavello amendment, as I could not support the others, and I hope that this legislature would entertain an amendment at some point during this process to go back to the Constitution and amend the homestead exemption law so that it is not based upon real assessed values but rather on real market value of a property. That way the people that are talking about losing their homes are not going to lose them, and the people that are paying very little in property taxes that are not clamoring for property tax reform are not going to be saddled with all of this additional moneys in new taxes.

Thank you.

The SPEAKER. The Chair thanks the gentleman.

Just for the information of the members, the next six speakers are: Mr. Buxton, Mr. Roberts, Mr. Phillips, Mr. Readshaw, Mr. Cohen, and Mr. Sather.

The Chair recognizes the gentleman from Dauphin, Mr. Buxton.

Mr. BUXTON. Mr. Speaker, I wish to interrogate the maker of the amendment.

The SPEAKER. The gentleman indicates he will stand for interrogation. The gentleman is in order and may proceed.

Mr. BUXTON. Mr. Speaker, do I understand that you mentioned earlier that if your amendment was adopted this evening, that there are succeeding amendments which may eliminate some of the exemptions that you have listed under the sales and use tax, some of which you would support?

Mr. SCAVELLO. Mr. Speaker, it was mentioned to me earlier that some members wanted to offer some amendments. I do not know if they are going to offer them or not, but if they do, I cannot control it. It will be the vote of the members to make that decision.

As far as the total dollars, the reduction numbers should not change. It would have to be revenue-neutral. So whatever they offer, it will be a revenue-neutral amendment, from what I am understanding.

Mr. BUXTON. How would we amend the exemptions under the sales and use tax and make it revenue-neutral?

Mr. SCAVELLO. For example, if they took an item out, exempted an item that was \$300 million, for example, they would have to raise the PIT accordingly to offset it.

Mr. BUXTON. So it is your understanding if we pass your amendment and someone comes along with an amendment to exempt part of your list, that that may translate into an increase in the PIT?

Mr. SCAVELLO. Mr. Speaker, I can only speak from my amendment and what is in front of you. In my amendment I believe Dauphin County does very well. Whatever is presented later on does not necessarily mean that it will be voted. I cannot speak for the will of the House.

Mr. BUXTON. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Fayette, Mr. Roberts.

Mr. ROBERTS. Thank you, Mr. Speaker.

Well, when I originally asked to speak, I meant to interrogate the maker of the amendment, but—

The SPEAKER. The gentleman is in order.

Mr. ROBERTS. —I think my questions have been answered, and I would like to make a comment.

The SPEAKER. The gentleman is in order.

Mr. ROBERTS. Thank you, Mr. Speaker.

I commend Mr. Scavello. I know there has been an awful lot of work that has gone into this amendment, but I am very concerned that tomorrow, if this amendment were to pass, tomorrow we are going to see headlines saying, 50 percent reductions in property tax.

Well, first of all, let me say that I would like to mirror what Representative Belfanti had said, and I am going to have a very difficult time going back to my district and explaining to people that are paying \$2,000 in property tax how 50 percent amounts to \$327. So I am very concerned with the headline tomorrow that says, 50 percent reduction for the people in the Uniontown School District. I am very concerned about that.

This certainly is not the kind of property tax reform that I think that my people have been looking for, and I am going to have to vote “no” on the Scavello amendment. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Northumberland, Mr. Phillips.

Mr. PHILLIPS. Thank you, Mr. Speaker.

I would like to interrogate the maker of the amendment.

The SPEAKER. The gentleman indicates he will stand. The gentleman is in order.

Mr. PHILLIPS. Thank you, Mr. Speaker.

Items being taxed, I have a few questions on items being taxed, and I know this is a great part of the funding of this particular tax reduction.

Airline catering, if I owned a plant that produced meals for airlines and I would ship, say, into New York City to one of the airports and they would go to the different airlines, would that product be taxed?

Mr. SCAVELLO. No, sir.

Mr. PHILLIPS. What is meant by catering?

Mr. SCAVELLO. If you are shipping to New York, there is no tax. You cannot collect a tax. It would have to be within the State.

Mr. PHILLIPS. In other words, a plant that produces—What if they shipped to Philadelphia?

Mr. SCAVELLO. Yes.

Mr. PHILLIPS. So I am a producer, a large producer of meals for airlines and I ship within the State, I pay the tax, the sales tax. You can take a load maybe worth \$80,000 of that product going in; I pay sales tax on that product. I think that would be detrimental to that business. That was the clarity I needed on that, but that would be a burden to a producer.

Mr. SCAVELLO. It also, again, Mr. Speaker, reduces property taxes by a significant amount. You heard two Representatives, Mr. Speaker, a little bit earlier saying 50 percent, like Uniontown and Mount Carmel, that their school districts are not getting a 50-percent reduction. In Uniontown the total school district's property taxes are \$4,644,004. This plan gives the Uniontown School District \$2,322,002. It gives them a 50-percent reduction of their total property taxes. Mount Carmel's property taxes are \$1,166,000. This plan gives Mount Carmel \$583,000—

The SPEAKER. Mr. Scavello?

Mr. SCAVELLO. Yes.

The SPEAKER. The Chair apologizes. I do not remember hearing that question being asked. Of course, it is a possibility that it was asked, but we would like you to answer the questions asked by the gentleman and not—

Mr. SCAVELLO. My apologies, Mr. Speaker.

The SPEAKER. That is fine, Mr. Scavello.

Mr. PHILLIPS. Thank you, Mr. Speaker.

The second one, commercial sports admissions, does that involve just professional sports?

Mr. SCAVELLO. Yes.

Mr. PHILLIPS. What if I had a school that decided to bring in professional wrestling for a fundraiser, would that be included?

Mr. SCAVELLO. They are nonprofits. They are excluded.

Mr. PHILLIPS. All right. Entertainers?

Mr. SCAVELLO. Yes.

Mr. PHILLIPS. What does that include?

Mr. SCAVELLO. An entertainer's fee would be taxed.

Mr. PHILLIPS. You know, entertainers that charge to come into a nonprofit—

Mr. SCAVELLO. A band, a musician.

Mr. PHILLIPS. —that would come in to, say, a school and get paid, they would pay?

Mr. SCAVELLO. Schools are tax-exempt. Nonprofits are tax-exempt.

Mr. PHILLIPS. I know the schools, but the entertainers would pay on what they get, the moneys they get? See, I am trying to get clarity, and I am not trying to be critical of your proposal.

Mr. SCAVELLO. It is on the sale of the ticket, the entertainment ticket.

Mr. PHILLIPS. So the school sells the ticket and they have to put it on there?

Mr. SCAVELLO. If the school is selling the ticket, there is no sales tax. They are exempt.

Mr. PHILLIPS. What about amusement parks?

Mr. SCAVELLO. On the ticket there would be a sales tax.

Mr. PHILLIPS. So a park like, well, we have Knoebels in Representative Belfanti's and my area, they would have to add on, it would add on to the cost of them doing business?

Mr. SCAVELLO. There would be a sales tax.

Mr. PHILLIPS. Memberships, does that include all clubs like VFW (Veterans of Foreign Wars), American Legion, Elks, Moose? What is meant by membership?

Mr. SCAVELLO. The intentions are not the nonprofits, and that—

Mr. PHILLIPS. But is that clarified? I am just trying to get out on record some of the—

Mr. SCAVELLO. All of the nonprofit exemptions are maintained within that category. So let us say, for example, you are a member of a club, a golf club or something; that would be taxed.

Mr. PHILLIPS. What is meant by other admissions?

Mr. SCAVELLO. I believe that is the theaters.

Mr. PHILLIPS. You see, it is like Representative Belfanti said, our tax that we get at our schools is not that great and we are asking our citizens to pay a lot of tax, and I am trying to clarify the taxes that they will have to pay.

Mr. SCAVELLO. It is miniature golf. It is a bowling alley. Those are the other admissions, things like, examples.

Mr. PHILLIPS. So any place you go for entertainment, whether it is sports or regardless of what it is, you will pay a tax? Miniature golf?

Mr. SCAVELLO. Yes, you would.

Mr. PHILLIPS. Golf?

Mr. SCAVELLO. You would be paying a tax.

Mr. PHILLIPS. Explain again the – and I had asked you this earlier in conversation – trade-in value. Explain that to me. Does that mean if I have a car that I am giving \$10,000 for and I buy one for \$20,000, that I pay tax on the \$20,000?

Mr. SCAVELLO. Correct.

Mr. PHILLIPS. That is a big issue.

Thank you much, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Allegheny, Mr. Readshaw. The gentleman waives off.

The Chair recognizes the gentleman from Philadelphia, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, one of the things I talk to my 12-year-old daughter about sometimes is about what kind of television shows she likes and what kind of television shows I liked when I was a boy, and one of the shows that I liked that is not around anymore is Robin Hood. I still remember the lyrics to it, which I will mercifully not recite to you right now. This plan reminds me of Robin Hood except that it is reverse Robin Hood. It is Robin Hood if he robbed from the poor and gave the money to the rich.

You know, I am fortunate that I do not live in Clearfield, in the Harmony Area School District in Clearfield County, because if I lived in the Harmony Area School District of Clearfield County, we get only \$204 back, but you know, I live in Philadelphia, and as a result of that, we are much better than the Harmony Area School District in Clearfield County, much better than the Shamokin Area School District in Northumberland County, which Bob Belfanti represents, which gets only \$128 back, but in Philadelphia I get a big \$349 back. But if I lived in Delaware County, which is the big winner here, if I lived in the Garnet Valley School District in Delaware County, I get \$2,118 back. It is your school. So we got a winner there.

Mr. Speaker, traditionally, we have not had individual benefit programs which depend on where people live. We have had statewide standards. You get the same property tax rebate, the same rent rebate, the same benefits in PACE (Pharmaceutical Assistance Contract for the Elderly) regardless of where you live. This program does something new. It breaks new ground and it breaks it in the wrong direction. We now get money based on the county you live in, and it does not make any sense. If you have a \$300,000 house in Philadelphia, which when you pay property tax is about \$3,000 a year on, you do not get 50 percent of the money back; you get \$349 back.

Dan Frankel pointed out that he has a problem in Pittsburgh and we all have the problem of the pull to the suburbs. Well, if I can lift up my house and transport it a couple miles to Larry Curry's district, you know, the value of it would be, the value of my property tax rebate would go from \$349 to over \$1,600, and that is only a couple miles away.

This plan really hurts low- and moderate-income districts. It turns things on its head. Normally we give more money to low-income people, because they need more money. Here we

are giving more money to higher income people. The whole rationale of redistributing money is to help the poor. Biblical scholars know that there are many references in the Bible to helping poor people. That is one of the legitimate things of government. There is no legitimacy to using government money to take money away from poor people and give it to wealthy people. It is great politics. If I were in Cheltenham, I would have a very hard time voting against this bill. It is great politics to stand for more money for your district, but there is no legitimacy to it. There is no purpose to it other than everybody wants more money and this gives people more money.

The distribution formula here is terrible. It has very little to do with helping the people who need help the most. A fair distribution formula would be giving a certain amount of money to every homeowner. Governor Ridge came up with the new century program, which gave every homeowner \$100. If we come up with more money, we can give people more than \$100; give people \$500, give people \$750, give people \$1,000. That would be fair. This plan really is not fair.

Mr. Speaker, in addition to being fortunate that I do not live in one of the school districts in Bob Belfanti's district or Bud George's district, which gets \$128 or \$200, you know, I am also fortunate that I do not own a car dealership, because this plan really discourages people from buying cars and this plan creates a whole new group of aggrieved businesses. And it is true that right now people who pay property taxes are aggrieved, but people who own car dealerships are going to be very aggrieved if this thing passes, and all the various businesses that this proposal levies taxes on are going to be very aggrieved. And people who find out that, yes, they are getting a property tax cut but somebody a mile or 2 miles away is getting a property tax cut 50 percent, 100 percent, or in my case, 400 or 500 percent higher, they are going to be aggrieved, too, even if they are getting a property tax cut. They are going to be aggrieved that somebody else is getting far more money than they are.

So I really think this is a very, very bad amendment, and I would strongly urge the members of the House to carefully study this printout because this is not free money. We are all going to be paying higher income taxes, and many of us are going to be paying— It does not take a lot of imagination to figure out, Mr. Speaker, that if you pay income taxes and you buy a car once every 4 years and you trade in your old car for the new car, you might well be worse off financially under this proposal.

I would strongly urge a "no" vote.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Huntingdon, Mr. Sather.

Mr. SATHER. Thank you, Mr. Speaker.

I will be very brief because the Representative before me, my good friend, Merle Phillips, asked the questions that I intended to ask regarding membership and a few other classifications of what items would be taxed under the sales tax.

I still have a concern about membership dealing with— I know what was the response and what the intent of the maker of the amendment is and I will go with that, because my concern is our people get life memberships to different organizations – fire companies and different ones – and what I am understanding from the maker of the amendment is that that would not be one of the items that would be taxed. So I am going to leave it at that.

I know from past experience as a former county commissioner, this process of tax relief, tax reform, whatever you want to call it, is not an easy one, and it is easier to say tax reform than it is actually to effect it. So we will see how the rest of the procedure goes forward.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Butler, Mr. Ellis.

Before the gentleman starts, the next six are Bebko-Jones, Eachus, Boyd, Wheatley, Civera, and Maher.

The gentleman is in order.

Mr. ELLIS. Thank you, Mr. Speaker.

Will the gentleman submit to brief interrogation?

The SPEAKER. The gentleman indicates he will stand. The gentleman is in order.

Mr. ELLIS. If I could, Mr. Speaker, I would like to revisit the trade-in-value topic for a second. Just so I understand it correctly, Mr. Speaker, if a person purchases a vehicle for \$40,000 outside of Allegheny County or Philadelphia County, they would pay \$2400, and then 2 years later somebody purchases that vehicle again, would that person at that point be responsible for paying \$1200 tax on that?

Mr. SCAVELLO. Mr. Speaker, could you restate that question?

Mr. ELLIS. During the second purchase of a vehicle to the second owner, is that person also responsible for paying a sales tax?

Mr. SCAVELLO. They always are. That is current law right now.

Mr. ELLIS. I understand that, but we are removing the trade-in value from the initial purchase and we are going to go ahead and continue to tax the second purchase. I was wondering that if we are going to eliminate it from the trade-in value from the initial purchase, were you also going to exempt used cars from the sales tax?

Mr. SCAVELLO. No, Mr. Speaker.

Mr. ELLIS. Okay. So if we follow the same logic, Mr. Speaker, an average car gets sold five times in its lifespan and say the first time it is \$40,000, then \$20,000, then \$10,000, then \$5,000, and finally it is sold for \$2,000. The State would collect \$4,620 tax on that with none of the purchasers trading it in ever receiving any benefit from having already paid that tax. Is that correct?

Mr. SCAVELLO. Yes.

Mr. ELLIS. Okay.

On your spreadsheet, Mr. Speaker, you indicate that there is no value towards this portion. Is that correct?

Mr. SCAVELLO. It was omitted during the Committee of the Whole, Mr. Speaker. That was placed in the list by Representative Levdansky when we sat down and discussed the items. That was not one of my original intentions, but in order to get bipartisan support, I allowed it to come in.

Mr. ELLIS. Okay. So when we are looking at the total fiscal number that you say that this amendment will generate, is that factored into that total?

Mr. SCAVELLO. Yes. It is approximately \$285 million.

Mr. ELLIS. Thank you, Mr. Speaker.

On the amendment?

**THE SPEAKER PRO TEMPORE
(MATTHEW E. BAKER) PRESIDING**

The SPEAKER pro tempore. You may proceed.

Mr. ELLIS. Mr. Speaker, in regards to the plan, I think there is not a person in this chamber who does not believe that Pennsylvanians need and want property tax reform desperately. I certainly am of the opinion that we should do whatever we can, but we have to be very careful. And I think whenever you start to get into double-taxing an item, taxing it every time it is sold with not providing a real break, a trade-in value on a major purchase like an automobile, then I think that we really have to be careful, because this could hurt people. This could really damage a person who thinks that they were sold a bill of goods that produces \$700 on average in Butler County, for instance, and then in 1 year they trade in a vehicle at \$10,000, there is a \$600 savings that they would currently receive that they will not receive if this amendment becomes law, and for that and several other reasons, I would encourage a negative vote on this amendment.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentelady from Erie County, Ms. Bebko-Jones.

Ms. BEBKO-JONES. Thank you, Mr. Speaker.

I would like to interrogate the maker of this amendment.

The SPEAKER pro tempore. The gentleman agrees, and you may proceed.

Ms. BEBKO-JONES. Thank you, Mr. Speaker.

Mr. Speaker, to go back to your items that are being taxed, I know we talked a little bit about entertainers and we seem to talk a lot about the trade-in value, and I only heard members referring to the trade-in value on automobiles. Is that specific in your amendment that it is just automobiles? What about motorcycles? We trade in washers and dryers. You know, here it just says trade-in value. Is that specific and only referring to automobiles?

Mr. SCAVELLO. It is any trade-in.

Ms. BEBKO-JONES. Pardon me?

Mr. SCAVELLO. It is any trade-in.

Ms. BEBKO-JONES. Oh. So everything – a washer, a dryer, a stove, a lawn mower, snowmobile – anything that we trade in is taxable under this amendment?

Mr. SCAVELLO. I have already answered it.

Ms. BEBKO-JONES. Well, I almost was a “yes” vote. I do not know now.

The other – okay? – the other one, if you could expand on, is entertainers. Now, I recognize the fact that if— Mr. Speaker, so if it is everything – Mr. Speaker, can I have your attention? – if it is everything, Mr. Speaker—

The SPEAKER pro tempore. Will the gentelady suspend.

The lady is correct. The gentelady is entitled to be heard. Members, please take your seats. Members, please take your seats and give the gentelady some respect. Thank you.

Ms. BEBKO-JONES. Thank you, Mr. Speaker.

Mr. Speaker, if you are aware of my district, Lake Erie, we have boats galore, ships galore, and a lot of Erie folks, you know, trade in these boats. So then, in other words, all of these boats would be taxable. Is that what you are telling me?

Mr. SCAVELLO. Mr. Speaker, I have already answered that question, and I also, Mr. Speaker, would like to bring out that that item was an item that I did not have originally taxed and that I was asked to put it in there to get bipartisan support. Should someone offer an amendment to pull that item out, I will gladly, gladly, because I am here defending it, but it was not my item that I stuck in there. So if you would like to write that amendment, I will gladly— We can wait and put it in. I just want you to know that I am defending something that was not mine to begin with.

Ms. BEBKO-JONES. Okay. Thank you, Mr. Speaker.

The other item here is entertainers. For example, if Tom Jones comes to Erie and performs at the Warner Theatre or the Civic Center, the tax will be done on the residents that come in to see the show. Is that correct, Mr. Speaker? Mr. Speaker?

Mr. SCAVELLO. I am sorry, Mr. Speaker. Could you ask the question?

Ms. BEBKO-JONES. Okay. If Tom Jones came to Erie to perform at the Warner Theatre, the tax on the—

Mr. SCAVELLO. On the ticket.

Ms. BEBKO-JONES. Right. It is on the ticket.

Mr. SCAVELLO. Correct.

Ms. BEBKO-JONES. All right. Now, in Erie we have many local artists that perform. As a matter of fact, we had the Jr. Philharmonic here last week. So does that extend to our local entertainment, our local playhouses, and all of our skating rinks that the Erie residents would be paying for?

Mr. SCAVELLO. Mr. Speaker, if there is a price of admission, there would be a sales tax on that ticket.

Ms. BEBKO-JONES. Okay.

Mr. SCAVELLO. You know, just remember, Mr. Speaker, that this is revenue-neutral. We are not raising anything to put it in the bank. We are turning it right around and reducing property taxes. In that same school district that you are referring to, you are getting a 50-percent reduction of your total residential property taxes.

Ms. BEBKO-JONES. I understand that, but my concern is, when would my residents see that actual property reduction?

And you know, you referred to the gaming revenue also, and my gut feeling is we are just assuming this money from the gaming, and to me personally, we are looking at maybe 2007-2008.

Mr. SCAVELLO. Correct. The gaming dollars will not show up until 2007-2008. This property tax reduction would be there next year.

Now, just remember also, Mr. Speaker, that by the time the gaming revenues show up, that the property taxes will have increased to whatever those dollars are. We are going to give you something next year – a significant property tax reduction.

Ms. BEBKO-JONES. Thank you, Mr. Speaker.

I do not have any more questions.

The SPEAKER pro tempore. The Chair thanks the gentelady.

The Chair recognizes the gentleman, Mr. Eachus, from Luzerne County. Mr. Eachus.

Mr. EACHUS. Thank you, Mr. Speaker.

Just for a moment I would like to tell you a story about a small district in Hazleton, the Hazleton Area School District. Actually, it is not that small. It is one of the top 25 school districts in the Commonwealth. This is one of those school districts who bought into Act 50. The school district was petitioned by voters. They supported Act 50, and they have

reined in and controlled the cost and growth of this school district while providing currently, since the year 2000, local share property tax relief by levying an earned income tax. Today that school district distributes to those below the median assessed value under the equation under Act 50 an amount of \$225 for those taxpayers.

Fast forward to last year. We passed Act 72, which guarantees a holding fund when we get the gaming money rolling so that additional tax relief will come to school districts. Those who did not take part in Act 50 would get an equal share across districts of whatever came in to the gambling reserve fund, the gaming reserve fund, to be distributed for the school property taxes. If you use Hazleton as the example, today we have \$225 under Act 50, the homestead exemption. At the maximum, at the maximum with Act 72 added to it, we would receive \$490. That is \$490 total when you add Act 50 and Act 72 money together.

Today's proposal, under SB 854, the Scavello amendment, the gentleman from Monroe asks me as a legislator from northeastern Pennsylvania to assess a sales tax on 21 additional categories, raising \$1.8 billion in additional revenue on sales tax that will come into the State coffers. Plus, he asks me to vote for a personal income tax increase of .22 percent. That adds another \$660 million, adding up to over \$2 billion in additional revenue coming in as relief to school districts across the Commonwealth. And my school district, when you add in the sales tax increase, the personal income tax increase, and the gaming revenue, my district receives \$482, which means the gentleman from Northumberland, Mr. Belfanti, is not the big loser. My district gets a minus, minus \$8 in property tax relief, minus \$8 for embarking on an experiment in controlling— My district is responsible for its own growth. It has reined in that growth. We have not had a labor dispute in the Hazleton Area School District since we passed Act 50, and with the passage of Act 72, we garnered additional relief for all taxpayers, not just those under the median value.

What this proposal does in a district like mine where the school board and the taxpayers agreed responsibly to control costs, it gives them a royal – I am not going to add the next word – but it really is no relief, and my district, I think, is emblematic of many small towns across the Commonwealth. Many school districts like the gentleman's in Monroe – actually, Monroe does pretty well – the gentleman from Northumberland, the gentleman from Clearfield, and other counties across the Commonwealth, many of these small struggling towns really do not see the relief, and it really is a regional, a regional ability. It depends on growth, and I just do not think this is fair.

I cannot vote for this scenario with my taxpayers being asked to support a sales tax increase on 21 additional categories and a personal income tax increase of .22 percent. I just cannot do it. I just need the gentleman and the members of this House to know.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Lancaster County, Mr. Boyd.

Mr. BOYD. Thank you, Mr. Speaker.

Would the gentleman stand for brief interrogation?

The SPEAKER pro tempore. The gentleman has agreed, and you may proceed.

Mr. BOYD. Mr. Speaker, one of the items that you mentioned expanding the sales tax to is the word "storage," and

I looked in the definitions of the bill and was not able to come up with a clear, in my mind, definition. Can you elaborate on exactly what "storage" is and what items that are now not taxed would be?

Mr. SCAVELLO. The storage units that you find along the roadway that you rent the room, that storage. You know, the rental sheds that you see in areas within the municipalities, you have these areas and you can rent the room.

Mr. BOYD. Okay. Yes.

Mr. SCAVELLO. It is like \$30, whatever the number is.

Mr. BOYD. Is that the only type of storage?

Mr. SCAVELLO. Yes.

Mr. BOYD. I mean, is that clearly defined in here? In other words, there are moving and storage companies that move furniture, and oftentimes they will put items in storage for a period—

Mr. SCAVELLO. Just storage of property within those units.

Mr. BOYD. Okay.

Also, just in perusing the piece of legislation, trying to look at the fine print, there is mention made of premium cable service. Now, maybe— There is no increase in any cable service?

Mr. SCAVELLO. There is none at all. It is not one of the 21 items mentioned; no.

Mr. BOYD. All right. And another item I noticed in here was prewritten software—

Mr. SCAVELLO. No.

Mr. BOYD. —meaning if a person hires a computer programmer who writes a specific piece of program—

Mr. SCAVELLO. Not taxed.

Mr. BOYD. Okay.

On the membership issue, what effect does this have on sportsmen's associations, gun clubs, memberships into Unified, NRA (National Rifle Association), those various sportsmen's associations, hunting clubs? Pennsylvania has, I believe, the largest number of sportsmen.

Mr. SCAVELLO. If they are nonprofits, there is no sales tax.

Mr. BOYD. They have to be bona fide 501(c)(3)s?

Mr. SCAVELLO. Nonprofits.

Mr. BOYD. The same way with Lion's Clubs, Rotary Clubs—

Mr. SCAVELLO. Correct.

Mr. BOYD. —all of those types of things, service clubs?

Mr. SCAVELLO. Correct.

Mr. BOYD. Okay. I believe that answers all my questions.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Wheatley, from Allegheny County.

Mr. WHEATLEY. Thank you, Mr. Speaker.

Can I interrogate the maker of the amendment?

The SPEAKER pro tempore. The gentleman has agreed, and you may proceed.

Mr. WHEATLEY. Thank you.

I really just have a quick question as it relates to the— Are there any distinctions between nonprofits when they purchase certain items? For example, the personal hygiene product and items, there are many nonprofits who purchase a lot of those items for maybe homeless—

Mr. SCAVELLO. They are tax-exempt, Mr. Speaker.

Mr. WHEATLEY. They are tax—

Mr. SCAVELLO. Yes.

Mr. WHEATLEY. So even though the expansion of the sales tax will be that, they will— Okay.

Mr. SCAVELLO. Correct, Mr. Speaker.

Mr. WHEATLEY. And one last question as it relates to— We have heard this earlier from Mr. Frankel, but I have a question. Before when we passed Act 72, Act 71 and Act 72, I voted to support the expansion of gaming based off the fact that I thought there was going to be a certain level of revenues coming back for property tax relief. Under that proposal, I believe the city of Pittsburgh with the expansion of gaming would have received something like \$330 on average for the properties in Pittsburgh. Under this plan, when the gaming money comes in, it seems that Pittsburgh would only get \$131 from gaming.

Mr. SCAVELLO. Yes. Mr. Speaker, and I believe the gentleman from Luzerne, speaking about the Hazleton School District, made the same comment, just understand, Mr. Speaker, that I am using \$500 million in gaming revenue. I am not using the billion-dollar number that you have seen over the course of time from Act 72. I am using this at \$500 million. So if you would receive \$500 million, that is your number, but if the gaming revenue exceeds \$500 million, then that number would go up. So I am using a conservative number here. I could have just as easily had \$1 billion there, and I think many of the comments that were made from some of the members earlier would not have been made. They are not taking into consideration that I have used a number that is more reasonable.

Mr. WHEATLEY. Thank you.

Mr. Speaker, just a final question. Can you help me understand, as I am looking at Allegheny County and under the column that says, “% of 03-04 Est. Residential Property Taxes,” I see that the city of Pittsburgh is at 48.1 percent.

Mr. SCAVELLO. Correct.

Mr. WHEATLEY. And most of the other communities around Pittsburgh are at either 40 or 50 percent, but yet Pittsburgh as a total dollar figure seems to get significantly less than some of its wealthier communities around it. Could you explain that?

Mr. SCAVELLO. Mr. Speaker, Pittsburgh makes out much better than any of the cities or counties or school districts around there.

Your total property taxes in the city of Pittsburgh, you are getting \$40,318,486. That is a 48.1-percent reduction over what your property taxes for residential are right now. You are significantly higher.

Mr. WHEATLEY. And so the third column then, the amount per residential farm and farmstead unit, that column, it says that, comparatively speaking, Pittsburgh will receive \$532 as it relates to Pine-Richland, which will get \$1,555, as opposed to North Allegheny, which will get \$1,454, as opposed to Mount Lebanon, which would get \$1,302. So that significantly, I am talking about that figure. Can you explain how we get significantly less than some of our more wealthier, affluent neighbors?

Mr. SCAVELLO. In total dollars the city of Pittsburgh is receiving more money than any one of those districts you mentioned. You have got to look at the total dollars that you are receiving – \$40,318,000. When you divide the amount of homesteads into that number, that is what the breakdown is, but

you are getting 48.1 percent back from what the city of Pittsburgh is putting in right now, in total dollars.

Mr. WHEATLEY. Thank you, Mr. Speaker.

Mr. SCAVELLO. You are welcome.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Delaware County, Mr. Civera.

Mr. CIVERA. Thank you, Mr. Speaker.

Mr. Speaker, would the maker of the amendment stand for brief interrogation, please?

The SPEAKER pro tempore. The gentleman has indicated he will, and you may proceed.

Mr. CIVERA. Mr. Speaker, one of the former speakers asked the question or made a statement, and I think you acknowledged it, and I cannot see it in this bill. You are not increasing the sales tax by a half a point?

Mr. SCAVELLO. No, I am not.

Mr. CIVERA. And my direct interpretation is, what you are doing is you are expanding expansion of the sales tax. Am I correct?

Mr. SCAVELLO. Correct; correct, Mr. Speaker.

Mr. CIVERA. Okay.

The next question is, on the distribution that we have, the sheet that we have here tonight, could you explain to me how this formula came up and what formula you used compared to some of the other proposals like SB 1 or in the other bills that were introduced?

Mr. SCAVELLO. Certainly. We used the average daily membership, the population of the school district, and we used the equalized mills, and that is how we came up with those numbers, and what we took into account was the tax burden of the school district.

Mr. CIVERA. Okay. So if I read this correctly and some of the other questions that were asked but I am not sure that they were answered, when you get to the amount per residential/farm homestead, the number that I see, for instance, my school district is Upper Darby, that figure, \$947, we would receive that in 2007?

Mr. SCAVELLO. No. You will receive that next year, in 2006.

Mr. CIVERA. In 2006. And then when you go over to the other column, when you said district, is this figure here, where it says, “District Totals...,” is that when you add the gaming money into that?

Mr. SCAVELLO. Correct. And I am only using \$500 million. Many of the members that were questioning how much they were receiving were, in their minds, they were thinking the billion-dollar number that they were looking at. I am only using \$500 million in my numbers.

Mr. CIVERA. You are only using \$500 million?

Mr. SCAVELLO. Correct.

Mr. CIVERA. Well, what happens if it takes in \$650 million or \$700 million? What happens to the offset of that money?

Mr. SCAVELLO. The numbers, reductions, are greater.

Mr. CIVERA. And it stays with the homestead—

Mr. SCAVELLO. It stays with the school district.

Mr. CIVERA. So with the \$500 million, Upper Darby would receive \$1420—

Mr. SCAVELLO. Correct.

Mr. CIVERA. —in the year what, '08-'09?

Mr. SCAVELLO. With the gaming dollars, in '07-'08—

Mr. CIVERA. Okay.

Mr. SCAVELLO. —assuming that the gaming dollars will generate \$500 million in '07-'08—

Mr. CIVERA. Okay.

Mr. SCAVELLO. —but from the sales tax piece, that front number will be here next year.

Mr. CIVERA. Okay. You had indicated that you increased the property rebate, property rebate and rent rebate. Where do you get that money?

Mr. SCAVELLO. It is the first \$150 million from the gaming dollars. So for example, if gaming generates \$650 million, that first \$150 million would go to expand the rent rebate, property tax rebate program. Our goal here is to help the seniors out there that need it the most. It is very possible that— You know, there were a couple of comments made earlier, Mr. Speaker, from some Representatives saying that we were taking care of the rich. That is so far from the truth. What we are going to be doing is taking care of the seniors that need it the most. Right now, Mr. Speaker, they are making those decisions between buying food and medicine or paying their taxes, and the seniors out there, the first thing they do is pay their taxes. If they qualify for the exemption, for that \$25,000, it is very possible that those seniors will not have property taxes under this plan.

Mr. CIVERA. Mr. Speaker, if I can make a couple comments on the amendment.

The SPEAKER pro tempore. The gentleman is in order and may proceed.

Mr. CIVERA. Thank you, Mr. Speaker.

Mr. Speaker, we have dealt with this issue for some time, for many, many years, talking about property tax reform. Republicans have had different ideas; Democrats have had different ideas. Committees have been set up over the years in a bipartisan way, and when the committees would come out with a different statement in how to approach that we should deal with the property tax formula and how is the money going to be driven into the individual districts, whether it was the idea of raising the PIT or whether it was the idea of raising sales tax or expansion of sales tax or whether it was the idea of just using the gaming money, there has always been a debate. And what I hear tonight is that the formula is not adequate. Well, when you look at the formula overall with the school subsidy, is that adequate? What we have in Pennsylvania and the way the money is driven back into the local school districts, it is not a proper formula, yet this legislature for some reason, some political reasons, is not bold enough to deal with that issue individually. When we dealt with the select committee, we addressed that because of the complexity of it, because of what it entails.

What this gentleman does here tonight is a bold step. Whether you like it or whether you do not like it, it is a step in the right direction. Is it the ultimate answer? No, it is not the ultimate answer. But what the answer is, that the people of Pennsylvania have waited long enough, have waited long enough to get to this point, and year after year after year we go home; we make speeches. We tell the seniors that we are going to do this, that we are in favor of property taxes, and it does not happen; it does not happen, because when you look at these spreadsheets and you look on an individual basis, if it does not pertain to the district, if it does not drive the money back into those districts that either have a high tax rate or a low tax rate, it is not good enough, and what happens is, we delay the process from happening. It does not mean that these members here

tonight want to support a tax increase. It does not mean that these members tonight want to support an expansion in the sales tax. What it means is that they cannot deal with going back to those districts and looking at those people straight in the face and saying, another session has gone by and we have not been able to deliver something.

Now, we all agree here tonight, some formula has got to work. The Governor is on board. He wants to do something; he wants to do something. The General Assembly, the House of Representatives, they want to do something. Well, this starts it, to get a 35- or 40-percent reduction in your real estate taxes, whether your real estate tax is low or whether your real estate tax is high. In the southeast we happen to pay a good dollar. In the southeast, Mr. Speaker, what we pay in PIT and the way it is driven up in Harrisburg and the way it is distributed back to those individual districts, some of those districts do not pay that amount of money.

Now, you have got to look at the reality of this. The time is here. We are here during Christmas week. We could be home with our families. We are here doing the people's business. This is the people's business. I support this plan.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Allegheny County, Mr. Maher.

Mr. MAHER. Thank you, Mr. Speaker.

Before I was elected to this body, a constitutional amendment was proposed to provide the opportunity for homestead exemptions. Pennsylvanians embraced that amendment. We authored legislation to coincide with the constitutional provisions. Short of elimination of the property tax, which last week's Committee of the Whole would suggest lacks a majority of support in this body, the most that we can do is to provide a full homestead exemption. This plan, although not the approach that I had encouraged originally, does that.

Let us consider those who are on the other side of the aisle and have been lamenting about this school district or that school district, that it is too little. Other than the couple of Act 50 communities in this State, let us be candid. How much property tax relief will be in your school district this year under Act 72? Zero, zero. How much property tax relief will be in your school district next year under existing law? Zero. Yet this somehow, which will take it to 40 and 50 percent of the maximum allowed under the Constitution, is insufficient? The folks who are standing up and lamenting the insufficiency to their school districts should beware and compare this proposal to Act 72 that most of you voted for. This is considerably more money into your school districts than the legislation which you embraced and rallied behind just a year or so ago.

Now, that went down to a thundering heap. Our constituents recognized it as being insufficient. So to hear this evening from school districts that will get twice as much, three times as much, four times as much per home of tax relief, that that amount, many times more than was sufficient in your eyes before, is somehow now insufficient is an odd bit of math.

It strikes me that we have some fundamental forks in the road and we need to make some compromises. My support of this amendment is itself a compromise because this amendment meets a number of standards. Number one, it provides the full amount of property tax relief permitted under the homestead provisions of the Constitution; number two, the relief is now. It is not some vague promise about 2 years, 3 years, 4 years from

now. It is now. It is this year ahead. Number three, it is fair and understandable. Folks have been saying this is unfair. What could be fairer than funding following students?

On a commonsense level, does it not make sense to you that the cost to operate schools should be a function of the number of students in the schools? Should not funding— The cost of the school relates to the number of students. Should not the support that comes from the State to help have something to do with the number of students? It is very simple to explain. I challenge you, though, to try to explain the Act 72 formula to anyone, anyone.

Mr. Speaker, may I ask for a moment of order? Thank you.

The SPEAKER pro tempore. The gentleman is correct.

Ladies and gentlemen, please clear the aisles. Members, please be seated.

Mr. MAHER. Thank you, Mr. Speaker.

The relief in this proposal mirrors the burden borne in your school districts. There are districts which currently receive less than \$2 a day in basic education support each year from the State per student. There are other districts that are nearly \$40 per day. I do not remember speeches about inequity coming from the other side of the aisle when that funding stream was approved. Does it not make sense that the tax burden is felt heaviest on the shoulders of those who are retired in communities that receive the least support from the State? Should they not enjoy relief because your school district in suburban Pittsburgh has homeowners who are retired beyond their working years and are paying, paying far more in property taxes, not because their schools spend more, but because of a funding formula which favors other school districts?

The relief here mirrors the burden. Nothing could be simpler. Relief here is driven out by the number of students in a school district. Nothing could be simpler.

Those who are concerned about the burden of the income tax falling onto the poorest Pennsylvanians, I should remind you, the poorest Pennsylvanians pay no income tax. A family of four in Pennsylvania earning up to \$32,000 a year pays no income tax. The Department of Revenue's Web site will tell you one in four families in Pennsylvania qualifies for that exemption to pay no income tax. So what this shift is, it is not a shift from wealthy community to poor community or poor community to wealthy community. This shift is very simple. It is a shift from those who are beyond their earning years to those who are in their earning years, which itself is something you need to weigh. But if you believe as I do that no one should be taxed out of their homes and if you believe as I do that we ought to be pursuing the greatest possible relief for homeowners permitted under the Constitution while still preserving local control of schools, then I would urge you to embrace the compromise here, recognize that the benefits to your school districts under this amendment are many, many times greater than any other, any other proposal that has been brought to a vote in this House at this stage.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Luzerne County, Mr. Hasay.

Mr. HASAY. Thank you, Mr. Speaker.

Mr. Speaker, first of all, I commend the gentleman from Monroe, Mr. Scavello, on trying to do something about school property taxes. It is a major issue, but the trade-in value part, which would pertain to a car or a pickup or a washer or dryer or

a boat or whatever, if a husband and wife, one buys a car and the other one, the husband, buys a truck, with the trade-in value out, which was eliminated, they will have to pay the full price on the car or the truck, which is going to wipe out whatever benefit they had on their school taxes.

So I would support the amendment without the trade-in value, and I want to bring that to Mr. Scavello's attention. So really, the trade-in value really penalizes a lot of our constituents.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. Does the gentleman seek interrogation?

Mr. HASAY. I said I would be brief. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The gentleman, Mr. Fairchild, is recognized.

Mr. FAIRCHILD. Thank you, Mr. Speaker.

I also rise to commend the gentleman from Monroe. I think he worked on this for a number of years, and you deserve an awful lot of credit.

I do have, however, brief interrogation, if he will stand for interrogation.

The SPEAKER pro tempore. The gentleman has agreed, and you may proceed.

Mr. SCAVELLO. Certainly, Mr. Speaker.

I am having an amendment drafted to pull the trade-in value out.

Mr. FAIRCHILD. My question is on the trade-in value, so I am still going to ask it just in case that amendment does not fly or whatever.

Under the present bill, I know the manufacturing community is exempt. However, if a manufacturer would, let us say, they have a \$1 million piece of equipment and they trade it in for a newer piece of equipment, would they be liable for the trade-in value?

Mr. SCAVELLO. Excuse me, Mr. Speaker. Could you repeat the question?

Mr. FAIRCHILD. Sure.

If a manufacturer – and a lot of times they have very expensive, sophisticated technical equipment – if they had a piece of equipment that they were purchasing for \$1 million and they had a trade-in value for the old equipment that they were replacing, would that be subject to the trade-in value?

Mr. SCAVELLO. That would be exempted.

Mr. FAIRCHILD. Why would it be exempt?

Mr. SCAVELLO. Because all manufacturing is exempted.

Mr. FAIRCHILD. So everything with manufacturing is exempt.

Mr. SCAVELLO. Correct.

Mr. FAIRCHILD. A distribution center – and we have quite a few of these in Pennsylvania – they are very truck-related, mainly because of the wonderful interstate system we have, and a lot of times they upgrade their fleets by 20, 30, 40, 50 trucks at a time. Would they be exempt, or would they be subject to the trade-in value?

Mr. SCAVELLO. Trucking is exempt as well. There is a list of exemptions, and that is one of the exemptions.

Mr. FAIRCHILD. Okay. So how about construction equipment, same thing where people trade in these very expensive pieces of equipment or upgrade?

Mr. SCAVELLO. Are you talking—

Mr. FAIRCHILD. Let us say a hydraulic backhoe that costs a half a million dollars and they trade it in for one, and they get \$150,000 or \$200,000?

Mr. SCAVELLO. Exempted; exempted.

Mr. FAIRCHILD. Thank you, Mr. Speaker.

**THE SPEAKER (JOHN M. PERZEL)
PRESIDING**

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Delaware, Mr. Killion.

Mr. KILLION. Thank you, Mr. Speaker.

I, too, would also like to commend Representative Scavello. I know how hard he has worked on this bill, and I would ask the Speaker if the maker of the amendment would stand for brief interrogation?

The SPEAKER. The gentleman indicates he will stand. The gentleman is in order.

Mr. KILLION. Thank you, Mr. Speaker.

Just a couple quick questions. I heard you were talking about sports admissions. What about college sports admissions?

Mr. SCAVELLO. Nonprofit.

Mr. KILLION. Thank you. Very helpful.

And I did hear professional services are out.

Mr. SCAVELLO. Yes.

Mr. KILLION. What about banking services?

Mr. SCAVELLO. They are out.

Mr. KILLION. Thank you.

And personal hygiene products. Could you give me some examples of what that includes?

Mr. SCAVELLO. Antiperspirant—

Mr. KILLION. Okay. How about toothpaste?

Mr. SCAVELLO. Antiperspirant—

Mr. KILLION. Toothpaste. Thank you.

And then the last question, management consulting, and let me just give an example. A stockbroker—

Mr. SCAVELLO. A stockbroker is out.

Mr. KILLION. But if you manage and consult on pension plans on a fee basis as opposed to a commission basis?

Mr. SCAVELLO. It is managing and operating advice, marketing research, developing and conducting public relations plans, human resources and executive search consulting, scientific and technical advice and assistance. That is the definition of the management consulting services.

Mr. KILLION. So more and more in the financial industry it is being done not on commission but on a fee basis – assets under management, so many basis points, a fee for managing a pension plan and providing advice on that pension plan or 401(k). Would that fit that definition?

Mr. SCAVELLO. No.

Mr. KILLION. Thank you, Mr. Speaker.

No further questions.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Lycoming, Mr. Cappelli.

Mr. CAPPELLI. Thank you, Mr. Speaker.

Would the gentleman from Monroe stand for brief interrogation?

The SPEAKER. The gentleman indicates he will stand. The gentleman is in order.

Mr. CAPPELLI. Thank you.

Mr. Speaker, I, too, first of all, would like to commend you for your work on this, and I know it has been a moving target. There have been a lot of constituencies out there who want their cake and eat it, too, and you have done a yeoman's job in trying to appease them.

With respect to that, this trade-in-value issue on big-ticket items consternates me as well, and you have indicated in prior questioning that you are preparing an amendment to remove that. With that in mind, do you have an estimate or an idea of what will be required relative to the State personal income tax and adjustment thereto to make up for that lost revenue?

Mr. SCAVELLO. If we remove it, I would not raise the income tax offset. We are talking about maybe 2 percentage points on the – between 1 and 2 percentage points on the distribution formula. So instead of 40, it would probably be between 38 and 39. We will reduce that number. I am not going to go and try to increase the PIT to offset it.

Mr. CAPPELLI. So, Mr. Speaker, your projected or stated increase in the State personal income tax would not be affected—

Mr. SCAVELLO. Not by removing that item.

Mr. CAPPELLI. —by this subsequent amendment.

Mr. SCAVELLO. Not by removing the item.

Mr. CAPPELLI. Okay. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Samuelson.

Mr. SAMUELSON. I just had a question for the gentleman from Monroe.

The SPEAKER. The gentleman consents. The gentleman is in order.

Mr. SAMUELSON. Earlier this evening the gentleman said that the chart that was distributed tonight is based on \$500 million of gambling revenue.

Mr. SCAVELLO. Correct.

Mr. SAMUELSON. I am looking in the bill, and I see a section of the bill that refers to \$800 million of gambling revenue, a trigger on pages 112 and 113. Is that different from the chart that I am looking at, or how does that—

Mr. SCAVELLO. The moneys on the chart, on the distribution piece, are \$500 million. The numbers will not kick in until you have \$300 million. It is \$800 million total. So it is just like Act 72 has, I believe, \$500 million before we can distribute any moneys. Well, this will distribute the money sooner. So as soon as you get \$800 million, \$500 million can go to this. I am reducing the number that you need to hold.

Mr. SAMUELSON. All right.

And just to restate the previous dialogue with the gentleman from Williamsport, were you speaking of removing the trade-in-value exception?

Mr. SCAVELLO. Yes.

Mr. SAMUELSON. And what cost was that? About—

Mr. SCAVELLO. Approximately \$275 million.

Mr. SAMUELSON. \$275 million, which would appear to be about 10 percent of the revenues you are using for property tax reduction. You are saying that would not significantly change the chart that we are looking at?

Mr. SCAVELLO. It is approximately about 2 percent across the board on every school district when you total it up total, in total; excuse me.

Mr. SAMUELSON. Taking \$275 million out of \$2.3 billion appears to be about 12 percent. How would that only affect the school district—

Mr. SCAVELLO. Because every school district, you look at your total dollars. Some it might be a little bit more; some will be a lot less. It is based off the total dollars. So yes, over the total it is 12 percent, but when you divvy it, when you break it out according to school district, your percentages are going to be between approximately 2 to 3 percent. In total, it will be 12 percent.

Mr. SAMUELSON. Well, how does that add up? If statewide your chart is going to be reduced by 12 percent but each school district only is going to lose 2 percent?

Mr. SCAVELLO. For example, if you have Pittsburgh and Philadelphia, that number is much higher than it would be if you were in the Fairfield area, the percentage, you know, in dollar figure.

Mr. SAMUELSON. Okay.

And finally, just a question, this amendment is to a bill relating to health savings accounts, tax exemption for health savings accounts, and the amendment is on property tax reform. How would you answer if somebody in the future would raise that question about the constitutional provision that requires a bill to be about one subject and here we have, rather than a standalone bill or rather than an amendment to a tax reform bill, you have an amendment to a health savings account bill?

Mr. SCAVELLO. The language in SB 854 is included in the amendment.

Mr. SAMUELSON. The language in—

Mr. SCAVELLO. In SB 854 is included in the amendment.

Mr. SAMUELSON. Okay. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Allegheny, Mr. Levdansky.

Mr. LEVDANSKY. Thank you, Mr. Speaker.

Mr. Speaker, it does not take any degree of difficulty to pick a part of this amendment that you do not like and thereby politically justify voting against it. That is the easiest thing in the world to do.

I want to be clear. This is not my amendment. This list of items to which sales taxes would be applied, both goods and services, is not a list that I would draw up if I were offering this amendment, nor is the distribution formula for the funding something that I advocate, and those are essentially the concerns that I have heard from a majority of the people speaking tonight against it. So on that basis, I could say that I am going to vote “no,” too, and that would be politically, probably, the easiest thing to do.

But I am reminded tonight of a statement from a 9-year-old immigrant from Italy who came to this country and was the closest thing I had to a grandfather growing up. Pappy Merolli told me this: “Davis” – in his broken English – “Davis, you no get something for nothing in this life. Only question is, who pays and who gets?” That simple statement from that poorly educated Italian immigrant rings true in my life often but none more true than tonight.

It is easy to say there is a piece of this amendment that I do not like, and there is a lot of this amendment that I do not like, but what is the goal here? The goal is to pass something in this chamber and send it to the other chamber and to force them to deal with the issue of property tax relief in a meaningful way.

And in my judgment, a meaningful way is not just to fix Act 72, which we need to do, and let us be honest about it, politically speaking, that is the easy money, but you know, people are going to have to lose, they are going to have to gamble and lose in order to provide money under Act 72. So there is no gain without some pain there either.

We need clearly to fix Act 72, but I have always said that not only do I want to fix Act 72 but I am interested and willing in going further to engender more property tax cuts. And I do not agree with everything on this list, and I sure do not agree with the distribution formula, but I want to do something. I do not just want to pass SB 30 later on, because I think that is an abdication of responsibility in telling the locals, you have got to raise a wage tax in order to cause property tax relief to happen. That is not my idea of leadership on this matter, Mr. Speaker.

I think I am willing to support this, I know that I am willing to support this, because I want to provide substantial and meaningful property tax relief, and I want to engage the Senate and the people of Pennsylvania in a real debate about how we do that. Now, last week I offered an amendment, not an amendment but I offered a proposal to raise the sales tax rate a little bit and raise the personal income tax rate a little bit and engender meaningful property tax relief from that, and that got not 102 but it got some substantial votes. But there is no free lunch here. If you do not like this amendment, if you do not want to close sales tax exemptions, then what do you want to do? Do you want to raise the personal income tax? Do you want to raise the sales tax? Those are essentially the three choices that we have got to decide. Do you want to raise the sales tax rate, the personal income tax rate, or close some loopholes? I frankly think that in the end it may require a combination of those three ingredients, and we can negotiate on the relative amounts of those three ingredients, but I believe that this ingredient of closing some sales tax exemptions needs to be part of the mix, even if I disagree with the contents of this amendment.

So in the interest of furthering the discussions on property tax relief with the administration, with the Senate, I am going to vote for this, because I think this will help further the discussion. This will put closing some sales tax exemptions on the table for discussion with the Senate, and for that reason I am going to vote for the Scavello amendment.

Thank you.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Chester, Mr. Flick. The gentleman waives off.

The gentleman from Centre, Mr. Benninghoff.

Mr. BENNINGHOFF. Thank you, Mr. Speaker, and I will keep my comments short. I realize people are here late. Thank you. That is probably the best applause I will get.

I would like to talk about a little bit more global support. Obviously, I am supportive of Mario Scavello; I think he has done a yeoman’s job with this issue, but I think we need to think about what happens if we do not pass something along these lines. Now, the reality, especially for those of you that are not here and those who might be viewing, is we only have several options. Most people in this chamber say they do not want to raise corporate net income tax or capital stock and franchise tax. Everybody hates the property tax. You know, what are our options? The reality, and I believe our voters are smart enough to realize that if we want to have any severe and significant property tax reduction, that there is going to be a little bit of

pain, and I believe that we were elected to come down here and make some painful decisions and make some decisions but based on the fact that we believe that they are right. They are not perfect. If you came down here to do everything that was perfect, you have been sold a bill of goods. It is not that simple. It is not a perfect process. The bottom line is, sales tax was originally designed as an education tax, and it is a good option in a community that is going more to a service-based society rather than just consumption.

I support this bill and this concept for one significant reason, that it is the one bill that I believe can provide significant property tax in the citizens' pockets next year, and I think that is what our constituents want. Yes, in a perfect world they would love to eliminate property taxes, and I suspect if Mario could do that, he would wave his magic wand and do it tomorrow. It is a matter of whom do we get to want to give and take. Many of you have got the same phone calls I got bashing you, telling you that you are going to do this terrible vote. I have got to believe in my heart that the voters back home and the constituents can see through that, that it is nothing but a bunch of political trickery and dirty politics. We got tough decisions to make.

There are going to be some other issues come down the pike very soon that you are going to be asked to raise taxes on as well, so we have got to decide as a community and as a Commonwealth what services do you want to provide for our people and what are you willing to pay for them. The schools are handcuffed by Federal mandates, some State mandates. They need to raise revenue, and it would be easy to say, let us just raise it all back home. Well, many of your same constituents who are concerned about property taxes have very little to no income base, so tell me, what local tax do you want to raise? And I can find some special interest group every corner I turn that wants you to exempt them, and that is what has happened. Slowly we have cut the pie, slice by slice, trimmed it down to the point where you have very little money to work with to provide very little relief, and that is why, voters back home, you had no property tax relief of any significance for 30 years, and I suspect we will have none for another 30 years.

I would love to believe, even though I did not vote for gaming, that it would just dump buckets of money on us, but we do not know that. In the interim, we need some type of relief for our taxpayers. This, I believe, gives them some choices, and again, it is not perfect, but it is a consumption tax. I would ask you to take a few moments before you cast your vote, do not be expecting to vote for the perfect pill that is going to fix everything. This is a step in the process. It puts us at a table. I do believe there is a consensus, a majority of you do not support SB 30 and the mandating of Act 72 on people, so what are your other options? Let this at least be a part of the menu.

Thank you, Mr. Speaker. Mario, thank you for your hard work.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Westmoreland, Mr. Stairs.

Mr. STAIRS. Thank you, Mr. Speaker.

As we wind down the discussion on this very important amendment, I personally would like to see us eliminate the property taxes, but from seeing what has been happening the last couple of weeks, I know that is not going to be on the agenda and that is not going to happen. It is something we can work towards.

But I am going to support the amendment tonight, and there are a couple of problems with it that I think the sponsor is going to try to address and that we can do that later tonight. But I think the big issue is, we have to get something back to the Senate. I am not infatuated with the Senate's proposal. I think it is lacking and we can do better. So I think that we have to continue the process, put this back to the Senate, let them nonconcur if that is their desire, and then we can go with the conference. But we have to present to the people of our districts a sign that we are seriously going to do something about property tax, and I think this is the best sign we have, and with a little bit of extra homework on it, we can do an excellent job on this. I hope we can support this amendment and keep moving on.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Philadelphia, Mr. Cohen, for the second time.

Mr. COHEN. Mr. Speaker, according to the summary, at the end of the printout Mr. Scavello handed out, on the very last page, the average person in Pennsylvania gets \$692 in tax relief – \$692 – but if you look at the money in your district, how much the average gets, in the vast majority of districts the average person gets less than \$692. The fact is that this formula is skewed so that the more affluent districts get a completely disproportionate share of the total amount of money. This is great if you represent one of the more affluent districts. This is not particularly good public policy, and it is not in the interests of the overwhelming majority of school districts and it is not in the interests of the overwhelming majority of legislative districts.

I would urge a “no” vote on the Scavello amendment.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Scavello, for the second time.

Mr. SCAVELLO. Thank you, Mr. Speaker.

I have heard here this evening comments on why their school district is not receiving more dollars, and I keep going back to the fact that they are getting 40 to 50 percent reduction of the total property taxes within their school district. From what I am understanding here, some members want more. Some members want more than what they are paying in. When you look at the overall average of \$692, if your school districts, if you are paying \$500 in school district taxes, how can you expect more than the \$500?

What we are here doing is we are trying to make it fair to every school district within the State of Pennsylvania. We finally have an opportunity, a bill in front of you that will be able to reduce the total property taxes for the residential and homestead properties within every school district by at least 40 percent, and I repeat, 40 percent next year – not 2 years from now, next year. Of course, there are other comments about the gaming revenue and that I am not getting as much as I was getting under Act 72. You are not comparing apples to apples. I am using \$500 million. I am not using the \$1 billion that you are used to seeing. Should you get the \$1 billion in revenue, you can add that to that number and you will see a significantly higher figure for your school districts.

One thing that we do with this piece of legislation, we finally, finally get what we needed from the beginning, and that is funding public education to 50 percent at the State level. Then some of the other ideas and some of the other plans that some of

the members have about local options can kick in. How can you go to a school district that is being funded at 76 and 77 percent locally from property taxes and say, hey, we are going to give you some local options. You first have to take care of equity, and that is what this piece of legislation does; it takes care of equity.

I am hearing comments that I am not worried about the poor. That is so far from the truth. As a matter of fact, if you are a senior citizen out there and you can qualify for that \$25,000 income, you can have your property taxes totally eliminated. Just think about that. The seniors out there in your districts that right now are hurting and making those decisions between food, prescription drugs, and property taxes, do you know what the senior out there is doing first? They are paying their property taxes and cutting out some of the medicine and cutting out the other items.

Many speakers are critical of this amendment, but I challenge them to deliver, deliver something substantial. If you look at the bill, if you put a bill in and you put a bill in of any type of property taxes, you have got my name on that bill cosponsoring your legislation, because I truly believe we are in a situation that we need to address property taxes in this Commonwealth. I probably am on more pieces of your legislation with property taxes than anyone else in this room, in this large room. I am asking you, if you like what we are trying to accomplish, there are a few amendments that are going to follow that will correct some of those problems that you brought to the floor.

I am told to tell you all to vote “yes” and sit down.

I just want you all to know that I put something together and we kept changing it and changing it because I am listening to what people are saying, trying to put something together that is going to work for everyone. So I am asking you to vote “yes” on this amendment. And just remember, should we not do this, you will have a better plan that you can follow up with. The Senate bill, the Senate bill is going to be coming next. So if you think— Just get to the Senate bill later. Okay. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—105

Allen	Ellis	Kauffman	Readshaw
Argall	Evans, J.	Keller, M.	Reichley
Armstrong	Fabrizio	Levdansky	Rooney
Baker	Fairchild	Mackereth	Ross
Baldwin	Feese	Maher	Santoni
Barrar	Fichter	Maitland	Sather
Bastian	Fleagle	Major	Saylor
Bebko-Jones	Freeman	Marsico	Scavello
Benninghoff	Gabig	McGill	Schroder
Beyer	Geist	McIlhattan	Semmel
Birmelin	Gillespie	McIlhinney	Siptroth
Boyd	Gingrich	McNaughton	Smith, S. H.
Bunt	Godshall	Miller, R.	Solobay
Buxton	Good	Nailor	Sonney
Caltagirone	Grell	Nickol	Stairs
Cappelli	Grucela	O’Neill	Steil
Causar	Gruitza	Payne	Taylor, E. Z.
Cawley	Habay	Petri	Taylor, J.
Civera	Hanna	Petrone	Tigue

Cornell	Harhart	Phillips	True
Crahalla	Harris	Pickett	Walko
Creighton	Hennessey	Pistella	Watson
Curry	Herman	Pyle	Wilt
Dally	Hershey	Quigley	Wright
DeLuca	Hess	Rapp	Yewwic
Denlinger	Hickernell	Raymond	Yudichak
Diven			

NAYS—90

Adolph	Frankel	Markosek	Samuelson
Belardi	Gannon	McCall	Shapiro
Belfanti	George	McGeehan	Staback
Biancucci	Gerber	Melio	Stern
Bishop	Gergely	Metcalf	Stetler
Blackwell	Goodman	Micozzie	Stevenson, R.
Blaum	Harhai	Millard	Stevenson, T.
Butkovitz	Harper	Miller, S.	Sturla
Casorio	Hasay	Mustio	Surra
Clymer	Hutchinson	Myers	Tangretti
Cohen	James	O’Brien	Thomas
Corrigan	Josephs	Oliver	Turzai
Costa	Keller, W.	Parker	Veon
Cruz	Kenney	Petrarca	Vitali
Daley	Killion	Preston	Wansacz
Dermody	Kirkland	Ramaley	Waters
DeWeese	LaGrotta	Reed	Wheatley
DiGirolamo	Leach	Roberts	Williams
Donatucci	Lederer	Roebuck	Youngblood
Eachus	Leh	Rohrer	Zug
Evans, D.	Lescovitz	Rubley	
Flick	Manderino	Ruffing	Perzel,
Forcier	Mann	Sainato	Speaker

NOT VOTING—0

EXCUSED—8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

The SPEAKER. For what purpose does the gentleman, Mr. Scavello, rise?

Mr. SCAVELLO. Just to thank the members for their affirmative vote.

On the question,
Will the House agree to the bill on third consideration as amended?

RULES SUSPENDED

The SPEAKER. The Chair recognizes the gentleman, Mr. Maher.

Mr. MAHER. Mr. Speaker, I move that the rules of the House be immediately suspended for amendment A5498.

On the question,
Will the House agree to the motion?

The SPEAKER. On that question, those in favor of the suspension will vote— The Chair recognizes the gentleman, Mr. DeWeese.

Mr. DeWEESE. Mr. Speaker, could we please get a brief explanation of the amendment before—

The SPEAKER. The Chair recognizes the gentleman, Mr. Maher—

Mr. DeWEESE. Thank you very kindly.

The SPEAKER. —for the purpose of an explanation of the amendment.

Mr. MAHER. Thank you, Mr. Speaker.

In the conversation on the prior amendment, there was some concern about the language dealing with the trade-in of vehicles and other things. This amendment recognizes that that provision, in the mathematics that were considered within our caucus and I believe across the aisle, was identified as not contributing toward the funds that will be distributed. So this amendment strips out the trade-in provision and maintains that exemption.

The SPEAKER. The Chair recognizes the gentleman, Mr. DeWeese.

Mr. DeWEESE. Could I have a sidebar with the maker of the motion, please, Mr. Speaker?

The SPEAKER. The House will be at ease.

(Conference held.)

Mr. DeWEESE. Thank you, Mr. Speaker.

The SPEAKER. On the suspension, Mr. DeWeese, was the sidebar—

On the suspension, the majority leader, the gentleman, Mr. Smith.

Mr. S. SMITH. Mr. Speaker, I would urge the members to support the suspension of the rules, primarily because in the course of the debate on the previous amendment, I believe there was an implied support to amend the amendment, and this is the only practical procedure with which we can do that. So I would ask the members to suspend the rules more to uphold the spirit of the previous debate and what the prime sponsor presented over the last hour and a half or 2 hours.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the suspension, the gentleman, Mr. Maher.

Mr. MAHER. Thank you, Mr. Speaker.

The SPEAKER. On suspension – I apologize – only the majority and minority leaders can be recognized.

Mr. MAHER. That was my understanding. Thank you.

The SPEAKER. The Chair apologizes.

On the question recurring,

Will the House agree to the motion?

The following roll call was recorded:

YEAS—195

Adolph	Fabrizio	Levdansky	Ross
Allen	Fairchild	Mackereth	Rubley
Argall	Feese	Maher	Ruffing
Armstrong	Fichter	Maitland	Sainato
Baker	Fleagle	Major	Samuelson
Baldwin	Flick	Manderino	Santoni
Barrar	Forcier	Mann	Sather

Bastian	Frankel	Markosek	Saylor
Bebko-Jones	Freeman	Marsico	Scavello
Belardi	Gabig	McCall	Schroder
Belfanti	Gannon	McGeehan	Semmel
Benninghoff	Geist	McGill	Shapiro
Beyer	George	McLhattan	Siptroth
Biancucci	Gerber	McLhinney	Smith, S. H.
Birmelin	Gergely	McNaughton	Solobay
Bishop	Gillespie	Melio	Sonney
Blackwell	Gingrich	Metcalfe	Staback
Blaum	Godshall	Micozzie	Stairs
Boyd	Good	Millard	Steil
Bunt	Goodman	Miller, R.	Stern
Butkovitz	Grell	Miller, S.	Stetler
Buxton	Grucela	Mustio	Stevenson, R.
Caltagirone	Gruitza	Myers	Stevenson, T.
Cappelli	Habay	Nailor	Sturla
Casorio	Hanna	Nickol	Surra
Causer	Harhai	O'Brien	Tangretti
Cawley	Harhart	Oliver	Taylor, E. Z.
Civera	Harper	O'Neill	Taylor, J.
Clymer	Harris	Parker	Thomas
Cohen	Hasay	Payne	Tigue
Cornell	Hennessey	Petrarca	True
Corrigan	Herman	Petri	Turzai
Costa	Hershey	Petrone	Veon
Crahalla	Hess	Phillips	Vitali
Creighton	Hickernell	Pickett	Walko
Cruz	Hutchinson	Pistella	Wansacz
Curry	James	Preston	Waters
Daley	Josephs	Pyle	Watson
Dally	Kauffman	Quigley	Wheatley
DeLuca	Keller, M.	Ramaley	Williams
Denlinger	Keller, W.	Rapp	Wilt
Dermody	Kenney	Raymond	Wright
DeWeese	Killion	Readshaw	Yewcic
DiGirolamo	Kirkland	Reed	Youngblood
Diven	LaGrotta	Reichley	Yudchak
Donatucci	Leach	Roberts	Zug
Eachus	Lederer	Roebuck	
Ellis	Leh	Rohrer	Perzel,
Evans, D.	Lescovitz	Rooney	Speaker
Evans, J.			

NAYS—0

NOT VOTING—0

EXCUSED—8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. MAHER offered the following amendment No. A05498:

Amend Sec. 1.3 (Sec. 1204), page 27, lines 52 through 56 (A05363), by striking out "This paragraph does not" in line 52, all of lines 53 through 56 and "be registered or licensed." in line 56

Amend Sec. 3, page 140, line 20 (A05363), by striking out "1204(4)" and inserting

1204(1), (4)

On the question,
Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Maher.

Mr. MAHER. Thank you, Mr. Speaker.

Just very briefly, I think the majority leader summed it up very well. This was contemplated in the last discussion, and I do wish to salute the drafting attorney up in LRB (Legislative Reference Bureau) for acting with all possible alacrity to make this moment possible.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Northampton, Mr. Samuelson.

Mr. SAMUELSON. Thank you, Mr. Speaker.

I appreciate the gentleman's explanation.

This amendment is not in print on the computer screens. Does the gentleman have a copy that he could read into the record or— It sounds like a very concise amendment, but we do not have a copy in front of us as we are being asked to vote. Could the gentleman read the amendment into the record?

The SPEAKER. The Chair recognizes the gentleman, Mr. Maher.

Mr. MAHER. The gentleman is correct. It is a very brief amendment, and I believe you are being provided a copy. Unfortunately, I turned all of my copies in to the amendment clerks. But if you are looking, what it is basically doing is taking the front end of a sentence, the back end of the sentence, and saying everything in between is deleted, and it is a single sentence in the legislation.

Mr. S. SMITH. Mr. Speaker?

The SPEAKER. The Chair recognizes the majority leader.

Mr. S. SMITH. Could we just, just because of a little bit of the confusion with the amendment, could we just suspend for a second or two here until we make sure that the amendment is what the members were expecting it would be, just so we are clear.

Thank you, Mr. Speaker.

The SPEAKER. The House will be at ease.

VOTE CORRECTION

The SPEAKER. For what purpose does the gentleman, Mr. Kirkland, rise?

Mr. KIRKLAND. Thank you, Mr. Speaker.

Could I take this time to correct the record?

The SPEAKER. The gentleman is in order.

Mr. KIRKLAND. Thank you, Mr. Speaker.

On SB 854, amendment 5363, my switch malfunctioned. I would like to be recorded in the affirmative.

The SPEAKER. The Chair thanks the gentleman. The gentleman's remarks will be spread across the record.

CONSIDERATION OF SB 854 CONTINUED

The SPEAKER. For what purpose does the gentleman, Mr. Melio, rise?

Mr. MELIO. Thank you, Mr. Speaker.

A question on the Maher amendment. Is that possible to do now?

The SPEAKER. The House is at ease for a few moments while the leader is discussing the Maher amendment. You will be recognized when the time comes.

On the Maher amendment, the Chair recognizes the gentleman from Allegheny, Mr. Maher.

Mr. MAHER. Thank you, Mr. Speaker.

A couple members have encouraged me to offer just a bit of clarification, which is, Mr. Scavello's efforts have been a progression of analyses, and the analysis provided in our caucus today, for better or for worse, while it listed the caption of trade-ins, it was not assuming any revenue from trade-ins on this particular schedule. The concern that was raised on the floor, therefore, about this range of trade-ins, including snowmobiles or whatever else, can be resolved without changing the math on the schedules that we have been considering today simply by eliminating the provision on trade-ins and not otherwise providing another revenue source.

Now, I recognize that there are a variety of schedules that we have all seen, but this amendment was drafted in contemplation of the information that was most recently at my fingertips at the time the conversation happened. But this is to eliminate trade-ins and does not otherwise increase any tax.

Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman from Bucks, Mr. Melio.

Mr. MELIO. Thank you, Mr. Speaker.

That was my question. Earlier it was stated that if you eliminate one of the tax items, you were going to have to replace it with another. So you either do or you do not. I just wanted to know how he can say that they were going to eliminate that tax and not replace it with something else.

The SPEAKER. Mr. Maher.

Mr. MAHER. Mr. Speaker, I am really unable to answer who drafted which schedule at what point in time, but I can tell you just in good faith that based upon this schedule, which may look familiar, if you can have long-range vision, that the expectation was zero that fed into the funds to be collected on this list of 21 items. It was zero associated with trade-in, and the amount available then that was provided to the school districts carried over. So are you looking at the same schedule over there? I do not know, but all I can do is express that, so— And it is also understandable that given, Mr. Scavello indicated his openness to consider the points of view raised by so many of us. So this has been an evolving proposal and I certainly recognize will continue to evolve after this evening, and my intent here was to embrace what seemed to be the sense of the House that there is a desire to get passed a sales tax associated with trade-in value on movable equipment.

The SPEAKER. The Chair recognizes the gentleman, Mr. Melio.

Mr. MELIO. Mr. Speaker, I just want to, it is my understanding, based on the testimony from the lady from Erie, with all the heavy boats and the big equipment that they have, that that would be a considerable amount of money lost to the Commonwealth if they take that tax out, and there has to be some kind of way to make up for that kind of loss.

The SPEAKER. The Chair recognizes the gentleman, Mr. Vitali.

Mr. VITALI. Thank you, Mr. Speaker.

Will the maker of the amendment stand for brief interrogation?

The SPEAKER. The gentleman indicates he will stand for interrogation. The gentleman is in order.

Mr. VITALI. Could you tell us the fiscal impact of this amendment?

Mr. MAHER. Mr. Speaker, the fiscal impact of the amendment based upon the suppositions in place when we considered the prior amendment is, considering the schedule circulated for our discussion in caucus, zero, and a fiscal note was not required, Mr. Vitali, because we suspended the rules to consider the amendment immediately, if that was what was on your mind.

Mr. VITALI. No, I was not going to make a fiscal-note challenge, and I am not making reference to the fact that this was not considered on the original schedule. What I am trying to find out is in real-dollar terms, in real dollars to the State of Pennsylvania, with this amendment in versus with this amendment out, what will be the impact upon revenues?

Mr. MAHER. I am unable to provide you that information. I simply do not have that information because the schedule that I was working with is as I have described several times, Mr. Speaker.

Mr. VITALI. Do you have any sense of in thousands or tens of thousands or hundreds of thousands of dollars we will lose in revenues if this is passed?

The SPEAKER. The—

Mr. MAHER. Mr. Speaker, may I take one last—

The SPEAKER. Mr. Maher? Mr. Maher?

Mr. MAHER. Yes, sir?

The SPEAKER. The gentleman, Mr. Feese, has indicated that he will be glad to answer the question as to the dollar figures that your amendment will actually cost.

Mr. Feese is recognized.

Mr. FEESE. Thank you, Mr. Speaker.

Mr. Speaker, in response to the gentleman, Mr. Vitali's question, if this amendment is passed, the amount of money available for property tax relief will be reduced by approximately \$290 million. The chart that the gentleman from Allegheny County is referring to is an earlier chart. Mr. Scavello's plan has been an evolving plan and changes frequently and rapidly, and the amount of tax relief that the gentleman, Mr. Scavello's plan had proffered was based on about \$2.3 billion without gaming. Included in that \$2.3 billion was \$290 million for the trade-in issue, which is before the House now.

Thank you, Mr. Speaker.

Mr. VITALI. Thank you. Let me follow that up, because I just want to make sure I heard that right. In other words, if we pass the Maher amendment, we will have \$290 million less for property tax relief? Is that what you are saying?

Mr. FEESE. Mr. Speaker, in regard to the gentleman's question, that is what I am saying, \$290 million less.

Mr. VITALI. Thank you, Mr. Speaker.

Let me, just maybe further interrogation to the gentleman, Mr. Maher. I am trying to thresh out the policy reasons for this exemption.

The SPEAKER. Would the gentleman suspend.

The gentleman, Mr. Maher, indicates he will stand for interrogation.

Mr. VITALI. Did you hear that question, Mr. Speaker?

Mr. MAHER. I certainly heard the question, and I would express very simply that the purpose of this amendment is to embrace what I perceived as the sense of this chamber during

the discussion of the last amendment. If you are unhappy with the amendment, certainly vote "no." And I would also add that thank goodness Mr. Scavello's math was so modest in its expectation of what is ultimately to come from Act 71, because depending if you believe your Governor, Mr. Scavello has not provided for \$500 million additional that should be pushed out.

So as to the variety of schedules, I have a schedule that adds up to \$2.3 billion; it shows zero for this. I certainly respect and appreciate the education afforded by our Appropriations chairman, but it is a very simple thing. Do you want to tax trade-ins or not, and I do not want to. I do not think anybody else here does. That is the policy reason for the amendment. If you want to tax them, vote "no."

Thank you, Mr. Speaker.

Mr. VITALI. Okay. But surely the policy reason in justifying \$290 million has to be more than "because I want to." I mean—

The SPEAKER. Mr. Vitali, Mr. Vitali, that was a statement. Does the gentleman have any further questions?

Mr. VITALI. No; no. I would like to speak on this amendment.

The SPEAKER. The gentleman is in order and may proceed.

Mr. VITALI. And again, I frankly did not have really a preconceived notion on this amendment one way or the other when I got to the podium here, but I think we have learned at least two important things. One, this is a big hit. I mean, this is a big hit. Two hundred ninety million dollars, if you believe in tax relief, is a big hit. And second, and I do not claim to be an expert on this issue, but I do not really think strong policy reasons for exempting this were really articulated. I mean, this is the type situation where the pain has to be spread around a lot, and unless you have a good reason to sort of exempt certain people, you know, perhaps they should not be exempted. So before we, you know, bleed out \$290 million, I would really think strong and hard about this.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Feese. The gentleman waives off.

The gentleman, Mr. Adolph.

Mr. ADOLPH. Thank you, Mr. Speaker.

Mr. Speaker, I rise really to try to explain the Maher amendment the way I see it. The way I see the Maher amendment is that we will reduce the revenue collected by Pennsylvania residents when we trade in our automobiles, our tractors, our trailers, and whatever, which has to reduce the amount of the property tax reduction that we saw on the Scavello amendment.

Now, all during that debate I heard Representative Scavello say that he was willing to take this out, but I think we have to remember that if you are willing to take this out, that amount that you saw your school districts receive as a reduction will be lowered about 10 percent. So those school districts that received about 40 percent tax reduction will see about 30 percent if the Maher amendment passes.

I voted against the Scavello amendment, because in my opinion, these amendments are being run backwards, okay? We need to run these amendments for the net result, okay? So if you voted for the Scavello amendment thinking you were going to get a 40-percent tax reduction and now all of a sudden we are voting these other amendments that will reduce the reductions, why did we run the Scavello amendment first?

So I am not telling you how to vote on the Maher amendment; I am just telling you how it affects the Scavello amendment. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Vitali, for the second time.

Mr. VITALI. Just one additional point I should have mentioned the first time up, and again, I do not have an overabundance of experience in buying cars and trade-ins, but one thing I do know, just sort of being around the periphery, is, the way a dealer values a trade-in, there is a lot of play in that figure, and I think that play perhaps can be used to further erode what the Commonwealth gets. My fear is that if you pass this amendment and exempt the trade-in value, if I am understanding this correctly, there can be cause for abuse and evasion of sales tax because there just is a lot of play in valuing that trade-in, and I think those who have gone through this process of buying a car and putting a dollar number on the trade-in know that. So that just gives me one more cause for concern with regard to this Maher amendment.

And quite frankly, if this means that my school district, instead of getting a 40-percent reduction in taxes it goes to a 30-percent reduction in taxes, I say, the heck with this amendment; tax it fully. You know, it is just not worth it. My district values, I know as I walk the streets of my district and I listen to people tell me about property tax reductions, they want those taxes reduced. They are not telling me about trade-in values; they are telling me about property tax reductions, and if this in fact is going to be 10 percent one way or the other because of Maher, I know I am not supporting it.

Thank you.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Cappelli. The gentleman waives off.

The gentleman, Mr. McNaughton.

Mr. McNAUGHTON. Thank you, Mr. Speaker.

Mr. Speaker, the gentleman from Delaware County is a little disingenuous. He did not even vote for the original tax reform proposal by Scavello. Obviously he would vote "no" for this one. I suggest that each member make their own decision, not base their decision on Representative Vitali.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

Those in favor of the Maher— Mr. Maher, for the second time.

Mr. MAHER. Thank you, Mr. Speaker.

Very quickly, I just want to assess, as I understand it, Mr. Vitali's argument. He does not like the status quo because people might cheat, he voted against imposing a sales tax on this with his prior vote, and now he is against removing that sales tax. Apparently, there is no state of affairs of all the possible options which appeals to him.

I suggest we go with the amendment and move on. Thank you.

PARLIAMENTARY INQUIRY

The SPEAKER. Mr. Stetler.

Mr. STETLER. Thank you, Mr. Speaker.

A parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. STETLER. Mr. Speaker, as an owner of a car dealership, do I have a conflict of interest in voting on this legislation?

The SPEAKER. No; you are a member of a class.

Mr. STETLER. Thank you, Mr. Speaker.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS—170

Adolph	Eachus	Lederer	Ruffing
Allen	Ellis	Lescovitz	Sainato
Argall	Evans, D.	Levdansky	Samuelson
Armstrong	Evans, J.	Maher	Santoni
Baker	Fabrizio	Major	Sather
Baldwin	Fairchild	Manderino	Scavello
Barrar	Fichter	Mann	Schroder
Bastian	Flick	Markosek	Semmel
Bebko-Jones	Forcier	Marsico	Shapiro
Belardi	Frankel	McCall	Siproth
Belfanti	Freeman	McGeehan	Smith, S. H.
Benninghoff	Gannon	McGill	Solobay
Biancucci	Geist	McNaughton	Sonney
Birmelin	George	Melio	Staback
Bishop	Gerber	Metcalfe	Stairs
Blackwell	Gergely	Micozzie	Stern
Blaum	Gingrich	Millard	Stetler
Boyd	Godshall	Miller, S.	Stevenson, R.
Bunt	Good	Mustio	Stevenson, T.
Butkovitz	Goodman	Myers	Sturla
Buxton	Grell	Nailor	Surra
Caltagirone	Grucela	O'Brien	Tangretti
Cappelli	Gruitza	Oliver	Taylor, E. Z.
Casorio	Habay	Parker	Taylor, J.
Causler	Hanna	Payne	Thomas
Cawley	Harhai	Petrarca	Tigue
Civera	Harhart	Petrone	True
Clymer	Harper	Phillips	Turzai
Cornell	Harris	Pickett	Veon
Corrigan	Hasay	Pistella	Walko
Costa	Hennessey	Preston	Wansacz
Crahalla	Herman	Quigley	Waters
Creighton	Hershey	Ramaley	Wheatley
Cruz	Hess	Raymond	Williams
Daley	Hickernell	Readshaw	Wilt
Dally	Hutchinson	Reed	Wright
DeLuca	James	Reichley	Yewcic
Denlinger	Keller, W.	Roberts	Youngblood
Dermody	Kenney	Roebuck	Yudichak
DeWeese	Killion	Rohrer	Zug
DiGirolo	Kirkland	Rooney	
Diven	LaGrotta	Ross	Perzel,
Donatucci	Leach	Rubley	Speaker

NAYS—25

Beyer	Josephs	McIlhattan	Pyle
Cohen	Kauffman	McIlhinney	Rapp
Curry	Keller, M.	Miller, R.	Saylor
Feese	Leh	Nickol	Steil
Fleagle	Mackereth	O'Neill	Vitali
Gabig	Maitland	Petri	Watson
Gillespie			

NOT VOTING—0

EXCUSED—8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,
Will the House agree to the bill on third consideration as amended?

RULES SUSPENDED

The SPEAKER. The Chair recognizes the gentleman, Mr. Maher.

Mr. MAHER. Mr. Speaker, I move for an immediate suspension of the rules for amendment A5499.

On the question,
Will the House agree to the motion?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. DeWeese.

PARLIAMENTARY INQUIRY

The SPEAKER. For what purpose does the gentleman, Mr. Roebuck, rise?

Mr. ROEBUCK. Thank you, Mr. Speaker. For a point of clarification, if I might.

The SPEAKER. What would the gentleman's point be?
Mr. ROEBUCK. Mr. Speaker, during the debate on the last amendment, on several occasions during that debate individual member's names were used in the debate. It was my understanding that that is against House rules, and in fact, individual House members have been reprimanded for doing that. That was not done. I would like to know whether or not that is in fact still the rule of the House.

The SPEAKER. The gentleman is correct. The members should not use members of the House in their debate. They can use their legislative district numbers but not their names.

Mr. ROEBUCK. Thank you, Mr. Speaker.

The SPEAKER. On the Maher amendment, the suspension of the rules for the Maher amendment, does the gentleman, Mr. DeWeese, wish—

On the question recurring,
Will the House agree to the motion?

The following roll call was recorded:

YEAS—189

Adolph	Fairchild	Mackereth	Rubley
Allen	Feese	Maher	Ruffing
Argall	Fichter	Maitland	Sainato
Armstrong	Fleagle	Major	Samuelson
Baker	Flick	Manderino	Santoni
Baldwin	Forcier	Mann	Sather
Barrar	Frankel	Markosek	Saylor
Bastian	Freeman	Marsico	Scavello
Bebko-Jones	Gabig	McCall	Schroder
Belardi	Gannon	McGeehan	Semmel
Belfanti	Geist	McGill	Shapiro
Beyer	George	McIlhattan	Siptroth

Bianucci	Gerber	McIlhinney	Smith, S. H.
Birmelin	Gergely	McNaughton	Solobay
Bishop	Gillespie	Metcalfe	Sonney
Blackwell	Gingrich	Micozzie	Staback
Blaum	Godshall	Millard	Stairs
Boyd	Good	Miller, R.	Steil
Bunt	Goodman	Miller, S.	Stern
Butkovitz	Grell	Mustio	Stetler
Buxton	Grucela	Myers	Stevenson, R.
Caltagirone	Gruitza	Nailor	Stevenson, T.
Cappelli	Habay	Nickol	Sturla
Casorio	Hanna	O'Brien	Surra
Causer	Harhai	Oliver	Tangretti
Cawley	Harhart	O'Neill	Taylor, E. Z.
Civera	Harper	Parker	Taylor, J.
Clymer	Harris	Payne	Thomas
Cornell	Hasay	Petrarca	Tigue
Corrigan	Hennessey	Petri	True
Costa	Herman	Petrone	Turzai
Crahalla	Hershey	Phillips	Veon
Creighton	Hess	Pickett	Walko
Cruz	Hickernell	Pistella	Wansacz
Daley	Hutchinson	Preston	Waters
Dally	James	Pyle	Watson
DeLuca	Josephs	Quigley	Wheatley
Denlinger	Kauffman	Ramaley	Williams
Dermody	Keller, M.	Rapp	Wilt
DeWeese	Keller, W.	Raymond	Wright
DiGirolamo	Kenney	Readshaw	Yewcic
Diven	Killion	Reed	Youngblood
Donatucci	Kirkland	Reichley	Yudichak
Eachus	LaGrotta	Roberts	Zug
Ellis	Leach	Roebuck	
Evans, D.	Lederer	Rohrer	
Evans, J.	Leh	Rooney	Perzel,
Fabrizio	Lescovitz	Ross	Speaker

NAYS—6

Benninghoff	Curry	Melio	Vitali
Cohen	Levdansky		

NOT VOTING—0

EXCUSED—8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,
Will the House agree to the bill on third consideration as amended?

Mr. MAHER offered the following amendment No. **A05499:**

Amend Sec. 1.3 (Sec. 1201), page 7, lines 16 through 39 (A05363), by striking out all of said lines

Amend Sec. 1.3 (Sec. 1201), page 19, lines 51 and 52 (A05363), by striking out all of said lines

Amend Sec. 1.3 (Sec. 1201), page 25, lines 6 and 7 (A05363), by striking out all of said lines

Amend Sec. 3, page 139, lines 58 and 59 (A05363), by striking out "management consulting service,"

On the question,
Will the House agree to the amendment?

The SPEAKER. On that question, those in favor of the amendment— The gentleman, Mr. Samuelson.

Mr. SAMUELSON. Thank you, Mr. Speaker.

A question for the gentleman, Mr. Maher.

The SPEAKER. The gentleman, Mr. Maher, indicates he will stand for interrogation. The gentleman is in order and may proceed.

Mr. SAMUELSON. I just wanted to ask the gentleman, describe the effect of this impact, what services is he entailing here, and also, what is the fiscal impact of this proposal? How would it change the bill as amended?

Mr. MAHER. Thank you, Mr. Speaker.

Based upon the schedules we have been looking at, it is in the range of 535 to 680. I would hesitate, though, that that is an extrapolation based upon the status quo, and those that recall the early eighties and the computer services tax understand that sales tax and these sorts of services which are portable across State lines lead to an exodus. So I believe that number assumes a status quo that would not exist.

Mr. SAMUELSON. 535 to 680 what? You said 535 to 680.

Mr. MAHER. That is correct.

Mr. SAMUELSON. Million?

Mr. MAHER. That is correct.

Mr. SAMUELSON. If you were to take \$680 million out of the \$2.1 billion that remains in this proposal, that sounds like about 30 percent. Do you have a revised chart of how that would affect every school district under this proposal if 30 percent of the revenues were removed?

Mr. MAHER. I do not.

Mr. SAMUELSON. Would it be better to hold over your amendment until a time when such information could be provided so each of us could see the impact on each school district?

Mr. MAHER. That might well be desirable. I would add, though, that, again, if you really believe that the gaming moneys will be there to the extent that has been forecast on your side, that this is not a bump in the road to the extent that our math assumed a lower number. But, Mr. Speaker, I ask that we might be at ease for just a moment to confer.

AMENDMENT PASSED OVER TEMPORARILY

The SPEAKER. We will go over the amendment temporarily. We just received a reconsideration motion on the Scavello amendment.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

MOTION TO RECONSIDER AMENDMENT A05363

The SPEAKER. The Chair has before it a reconsideration of the vote: I move that the vote by which amendment 5363 was passed to SB 854, PN 1231, on the 20th day of December be reconsidered.

On the question,
Will the House agree to the motion?

POINT OF ORDER

The SPEAKER. For what purpose does the gentleman, Mr. Maher, rise?

Mr. MAHER. A point of order, Mr. Speaker.

The SPEAKER. The gentleman will state his point.

Mr. MAHER. The amendment just embraced by this House amended what had been subject to this reconsideration, and it would strike me that since that language has already been changed, that the moment for reconsideration has passed.

The SPEAKER. If we reconsider the amendment, the Scavello amendment 5363, and the Scavello amendment were defeated, it would be necessary then to take your amendment out by reconsideration.

Mr. MAHER. Just to make sure I am understanding, Mr. Speaker. An amendment which amends language which is already amended into a bill, the fact that this House has acted to amend that does not preclude, the intervening business which changed the body, it does not preclude the reconsideration motion as if no amendment had happened in the meantime?

The SPEAKER. The answer is no.

Mr. MAHER. So essentially, just for a point of understanding for the future, it effectively is a tool for rolling back printer's numbers and that sort of thing, only with respect to amendments, so not an actual reprinting. But we can disengage a whole series of amendments just by going back and reconsidering the first in a series? Is that correct?

The SPEAKER. The answer is, it is possible.

Mr. MAHER. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the reconsideration motion, the Chair recognizes the gentleman, Mr. Scavello.

Mr. SCAVELLO. Mr. Speaker, would I be out of order to ask who filed for the reconsideration?

The SPEAKER. The gentlemen, Mr. Yewcic and Mr. DeLuca.

Mr. SCAVELLO. Could I interrogate Mr. DeLuca?

The SPEAKER. I hope they are not off your Christmas list, Mr. Scavello.

Mr. SCAVELLO. Could I interrogate Mr. DeLuca?

The SPEAKER. Whoa. Mr. Scavello?

Mr. SCAVELLO. Yes.

The SPEAKER. Mr. Scavello, we are on reconsideration.

Mr. SCAVELLO. Yes.

The SPEAKER. Does the gentleman wish to make a statement on reconsideration?

Mr. SCAVELLO. I would like the members to kindly vote not to reconsider.

The SPEAKER. The Chair thanks the gentleman.

Does the gentleman, Mr. DeWeese, wish to be recognized?

Mr. DeWEESE. Will Mr. Scavello submit to interrogation?

The SPEAKER. We are on reconsideration. If the gentleman, Mr. Scavello, wishes to be interrogated, the gentleman can stand. If the gentleman wishes not to—

For what purpose does the gentleman, Mr. Benninghoff, rise?

Mr. BENNINGHOFF. Thank you, Mr. Speaker.

I rise to appeal the ruling of the Chair on that last ruling, please – respectfully.

The SPEAKER. Would the gentleman please come to the rostrum.

(Conference held at Speaker’s podium.)

MOTION WITHDRAWN

The SPEAKER. The reconsideration motion has been withdrawn.

The Chair recognizes the gentleman, Mr. Benninghoff.

Mr. BENNINGHOFF. Not being the tallest member in the chamber, I respectfully repeal my request to repeal the Speaker’s decision. Thank you very much, and thank you for your time.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

AMENDMENT A05499 WITHDRAWN

The SPEAKER. The Chair recognizes the gentleman, Mr. Maher, who withdraws amendment A5499. Is that correct, Mr. Maher? The gentleman indicates that is correct.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

RULES SUSPENDED

The SPEAKER. The Chair recognizes the gentleman, Mr. Payne.

Mr. PAYNE. Mr. Speaker, I move to suspend the rules for amendment A5500.

On the question,

Will the House agree to the motion?

The following roll call was recorded:

YEAS—169

Adolph	Ellis	Lederer	Ruble
Allen	Evans, D.	Lescovitz	Ruffing
Argall	Fabrizio	Maher	Sainato
Armstrong	Fairchild	Maitland	Samuelson
Baker	Feese	Major	Santoni
Baldwin	Fichter	Manderino	Saylor
Barrar	Fleagle	Mann	Scavello
Bastian	Flick	Markosek	Semmel
Bebko-Jones	Frankel	Marsico	Siptroth
Belardi	Freeman	McCall	Smith, S. H.
Belfanti	Gabig	McGeehan	Solobay
Benninghoff	Gannon	McGill	Staback
Beyer	Geist	McIlhattan	Stairs
Bianucci	George	McIlhinney	Steil
Birmelin	Gerber	McNaughton	Stetler
Bishop	Gergely	Metcalfe	Stevenson, R.

Blackwell	Gillespie	Micozzie	Stevenson, T.
Blaum	Gingrich	Millard	Sturla
Boyd	Godshall	Miller, R.	Surra
Bunt	Good	Miller, S.	Taylor, E. Z.
Butkovitz	Goodman	Mustio	Taylor, J.
Buxton	Grell	Myers	Thomas
Caltagirone	Grucela	Nailor	Tigue
Cappelli	Gruitza	Nickol	True
Causer	Habay	O’Brien	Turzai
Cawley	Hanna	Oliver	Veon
Clymer	Harhai	O’Neill	Vitali
Cohen	Harper	Parker	Walko
Cornell	Hasay	Payne	Wansacz
Corrigan	Hennessey	Petrarca	Waters
Costa	Herman	Petri	Watson
Cruz	Hershey	Petrone	Wheatley
Curry	Hess	Phillips	Williams
Daley	Hickernell	Pickett	Wilt
Dally	Hutchinson	Pistella	Wright
DeLuca	James	Preston	Yewcic
Denlinger	Josephs	Ramaley	Youngblood
Dermody	Keller, W.	Raymond	Yudichak
DeWeese	Kenney	Reed	Zug
DiGirolamo	Killion	Roberts	
Diven	Kirkland	Roebuck	
Donatucci	LaGrotta	Rooney	Perzel,
Eachus	Leach	Ross	Speaker

NAYS—26

Casorio	Harris	Pyle	Sather
Civera	Kauffman	Quigley	Schroder
Crahalla	Keller, M.	Rapp	Shapiro
Creighton	Leh	Readshaw	Sonney
Evans, J.	Levdansky	Reichley	Stern
Forcier	Mackereth	Rohrer	Tangretti
Harhart	Melio		

NOT VOTING—0

EXCUSED—8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. PAYNE offered the following amendment No. **A05500**:

Amend Sec. 1.3 (Sec. 1204), page 33, line 18 (A05363), by striking out all of said line and inserting

(53) The sale at retail or use of candy or gum regardless of the location from which the candy or gum is sold.

On the question,

Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Samuelson.

Mr. SAMUELSON. Thank you, Mr. Speaker.

Once again, I would like the maker of the amendment to explain the impact of this amendment and also what the fiscal impact would be.

The SPEAKER. The Chair recognizes the gentleman, Mr. Payne.

Mr. PAYNE. Thank you, Mr. Speaker.

This amendment is an amendment to remove the tax in the Scavello amendment on candy and gum. Now, the first thing I should tell you is that Pennsylvania, our Commonwealth, is the largest producer of candy in the United States, and we do not just have one company; we have Costas, M&M's, Hershey, Asher's, Kraft, Blommer's, Palmer, Luden's, Wilbur's, Just Born, Nestle's – over 100 mom-and-pop candy companies. Now, the question is, Mr. Speaker, do chocolate-covered pretzels fall into that? Does a Nature bar that has chocolate on it fall into that? The actual tax revenue is less than 1 percent, less than 1 percent to the school districts. Approximately \$40 million is what we are talking about.

The SPEAKER. The Chair recognizes the gentleman, Mr. Scavello.

Mr. SCAVELLO. Mr. Speaker, this amendment, first, taxing candy in the State of Pennsylvania has nothing to do with the manufacturers in our Commonwealth; it has to do with the sale of candy in our Commonwealth. And the biggest issue when we talk about manufacturers, it is the single sales factor, which we have worked on. I implore the members not to vote on any other amendments, because if we do vote other amendments in, we are going to just reduce the amount of dollars that is going to go back for property taxes.

So I am asking for a “no” vote on any other amendments that should come up.

The SPEAKER. The Chair thanks the gentleman.

Mr. Payne. Does the gentleman wish to be recognized for the second time?

The Chair recognizes the gentleman, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, we have raised the taxes on cigarettes repeatedly, and we have done so because we want to discourage people from smoking. It occurs to me that obesity is a major problem in this Commonwealth and across the country, and if raising taxes on smoking discourages people from smoking, raising taxes on candy ought to discourage people from eating candy.

I would think, Mr. Speaker, that the cost of this is minimal to whatever degree people pay attention to the price of candy when they buy it. If discouraging people occasionally from buying candy works, then Pennsylvanians will be marginally healthier.

I see no reason why we cannot increase taxes on candy. I would urge a “no” vote on the Payne amendment.

The SPEAKER. The gentleman, Mr. Benninghoff. The gentleman waives off.

The gentleman, Mr. Gannon.

Mr. GANNON. Thank you, Mr. Speaker.

Now, Mr. Speaker, what am I supposed to do when I take my granddaughter to the mall and she says, you know, grandpa, will you buy me some candy over there? Am I going to say, no, sweetheart, there is a sales tax on it now; I cannot do it? I mean, that is an absurd argument, that because there is a sales tax, that has got something to do with obesity or not.

The SPEAKER. Mr. Scavello.

Mr. SCAVELLO. Mr. Speaker, I just would like to point out, the surrounding States tax candy, tax gum; New York, as much as up to 8 3/4 percent depending on where you purchase it. New Jersey taxes at 6 percent; Ohio, at 10 percent. Maryland

taxes it at 5 percent. All the surrounding States tax candy and gum. We are not doing anything different.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Cappelli.

Mr. CAPPELLI. Thank you, Mr. Speaker.

Mr. Speaker, I really hate to stand in opposition to my good friend from Dauphin County, but quite frankly, this is a prime example of why we cannot address property tax reform. If every single individual constituency out there across this State, whether it is accountants, attorneys, or in this case, candy manufacturers, is going to be asking for an exemption, to not have the sales tax applied to them, we end up at the end of the day exactly where we are right now, with nothing.

Candy is not a necessity. It is not fresh food, it is not fresh vegetables, it is not clothing; it is candy, and I would suggest that we can make a legitimate argument in support of property tax reform to apply the sales and use tax to it, and I urge opposition to the Payne amendment.

Thank you.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS—63

Baldwin	Goodman	McNaughton	Smith, S. H.
Belfanti	Habay	Melio	Solobay
Biancucci	Harper	Metcalfe	Staback
Caltagirone	Herman	Micozzie	Stern
Casorio	Hickernell	Miller, S.	Stevenson, R.
Clymer	Hutchinson	Mustio	Stevenson, T.
Cruz	Killion	Oliver	Thomas
Daley	LaGrotta	Payne	Turzai
DeWeese	Lescovitz	Petrarca	Veon
DiGirolamo	Maher	Pistella	Wilt
Donatucci	Manderino	Ramaley	Yewwic
Eachus	Mann	Raymond	Youngblood
Evans, D.	Marsico	Roberts	Zug
Forcier	McCall	Rooney	
Gannon	McGeehan	Ruffing	Perzel,
George	McIlhinney	Samuelson	Speaker
Gergely			

NAYS—132

Adolph	Dermody	Keller, M.	Roebuck
Allen	Diven	Keller, W.	Rohrer
Argall	Ellis	Kenney	Ross
Armstrong	Evans, J.	Kirkland	Rubley
Baker	Fabrizio	Leach	Sainato
Barrar	Fairchild	Lederer	Santoni
Bastian	Feese	Leh	Sather
Bebko-Jones	Fichter	Levdansky	Saylor
Belardi	Fleagle	Mackereth	Scavello
Benninghoff	Flick	Maitland	Schroder
Beyer	Frankel	Major	Semmel
Birmelin	Freeman	Markosek	Shapiro
Bishop	Gabig	McGill	Siproth
Blackwell	Geist	McIlhattan	Sonney
Blaum	Gerber	Millard	Stairs
Boyd	Gillespie	Miller, R.	Steil
Bunt	Gingrich	Myers	Stetler
Butkovitz	Godshall	Nailor	Sturla
Buxton	Good	Nickol	Surra
Cappelli	Grell	O'Brien	Tangretti

Causer	Grucela	O'Neill	Taylor, E. Z.
Cawley	Gruitza	Parker	Taylor, J.
Civera	Hanna	Petri	True
Cohen	Harhai	Petrone	True
Cornell	Harhart	Phillips	Vitali
Corrigan	Harris	Pickett	Walko
Costa	Hasay	Preston	Wansacz
Crahalla	Hennessey	Pyle	Waters
Creighton	Hershey	Quigley	Watson
Curry	Hess	Rapp	Wheatley
Dally	James	Readshaw	Williams
DeLuca	Josephs	Reed	Wright
Denlinger	Kauffman	Reichley	Yudichak

NOT VOTING-0

EXCUSED-8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,
Will the House agree to the bill on third consideration as amended?

The SPEAKER. There are a number of other amendments that are in order, but for the information of the membership, they would remove the Scavello amendment from the bill. Does anyone wish to offer those? The Chair sees no one.

Mr. Saylor.
Mr. SAYLOR. Mr. Speaker, I have an amendment to this bill, a back-end referendum amendment that does not remove the Scavello amendment. It is an amendment to the Scavello bill as it was amended with the Scavello amendment, yes. For the Parliamentarian, Clancy, it is amendment A05415.

The SPEAKER. Would the gentleman please bring a copy of that amendment to the desk.

The Chair apologizes. We do not have a copy, although it was filed timely and on the computer, we do not have a copy here of it, of the Saylor amendment A5415.

On the question recurring,
Will the House agree to the bill on third consideration as amended?

RULES SUSPENDED

The SPEAKER. The Chair recognizes the gentleman, Mr. Saylor.

Mr. SAYLOR. Mr. Speaker, I move for an immediate suspension of the rules for amendment A5415.

On the question,
Will the House agree to the motion?

The following roll call was recorded:

YEAS-193

Adolph	Fabrizio	Levdansky	Ross
Allen	Fairchild	Mackereth	Rubley
Argall	Feese	Maher	Ruffing
Armstrong	Fichter	Maitland	Sainato
Baker	Fleagle	Major	Samuelson
Baldwin	Flick	Manderino	Santoni
Barrar	Forcier	Mann	Sather
Bastian	Frankel	Markosek	Saylor
Bebko-Jones	Freeman	Marsico	Scavello
Belardi	Gabig	McCall	Semmel
Belfanti	Gannon	McGeehan	Shapiro
Benninghoff	Geist	McGill	Siproth
Biancucci	George	McIlhattan	Smith, S. H.
Birmelin	Gerber	McIlhinney	Solobay
Bishop	Gergely	McNaughton	Sonney
Blackwell	Gillespie	Melio	Staback
Blaum	Gingrich	Metcalfe	Stairs
Boyd	Godshall	Micozzie	Steil
Bunt	Good	Millard	Stern
Butkovitz	Goodman	Miller, R.	Stetler
Buxton	Grell	Miller, S.	Stevenson, R.
Caltagirone	Grucela	Mustio	Stevenson, T.
Cappelli	Gruitza	Myers	Sturla
Casorio	Habay	Nailor	Surra
Causer	Hanna	Nickol	Tangretti
Cawley	Harhai	O'Brien	Taylor, E. Z.
Civera	Harhart	Oliver	Taylor, J.
Clymer	Harper	O'Neill	Thomas
Cohen	Harris	Parker	Tigue
Cornell	Hasay	Payne	True
Corrigan	Hennessey	Petrarca	Turzai
Costa	Herman	Petri	Veon
Crahalla	Hershey	Petrone	Vitali
Creighton	Hess	Phillips	Walko
Cruz	Hickernell	Pickett	Wansacz
Curry	Hutchinson	Pistella	Waters
Daley	James	Preston	Watson
Dally	Josephs	Pyle	Wheatley
DeLuca	Kauffman	Quigley	Williams
Denlinger	Keller, M.	Ramaley	Wilt
Dermody	Keller, W.	Rapp	Wright
DeWeese	Kenney	Raymond	Yewcic
DiGirolo	Killion	Readshaw	Youngblood
Diven	Kirkland	Reed	Yudichak
Donatucci	LaGrotta	Reichley	Zug
Eachus	Leach	Roberts	
Ellis	Lederer	Roebuck	
Evans, D.	Leh	Rohrer	Perzel,
Evans, J.	Lescovitz	Rooney	Speaker

NAYS-2

Beyer	Schroder
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NOT VOTING-0

EXCUSED-8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,
Will the House agree to the bill on third consideration as amended?

Mr. SAYLOR offered the following amendment No. A05415:

Amend Sec. 1.3 (Sec. 3121), page 123, lines 38 through 59; page 124, lines 1 through 59; page 125, lines 1 through 34 (A05363), by striking out all of said lines on said pages and inserting

(i) Costs incurred in responding to or recovering from an emergency or disaster declared pursuant to 35 Pa.C.S. § 7301 (relating to general authority of Governor) or 75 Pa.C.S. § 6108 (relating to power of Governor during emergency).

(ii) Costs to implement a court order or an administrative order from a Federal or State agency as long as the tax increase is rescinded following fulfillment of the court order or administrative order.

(iii) Costs associated with the following:

(A) To pay interest and principal on any indebtedness incurred under 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing) prior to the effective date of this section. In no case may the school district incur additional debt under this clause except for the refinancing of expenses related to such refinancing and the establishment of funding of appropriate debt services reserves. An increase under this clause shall be rescinded following the final payment of interest and principal.

(B) To pay interest and principal on any electoral debt incurred under 53 Pa.C.S. Pt. VII Subpt. B.

(iv) Costs incurred in providing special education programs and services to students with disabilities if the increase in expenditures on special education programs and services was greater than the index. The dollar amount of this exception shall be equal to the portion of the increase that exceeds the index. Eligible costs for special education programs and services include, but are not limited to, transportation, psychological testing, legal services, early intervention programs and any related services required by an individualized education plan.

(v) Costs which:

(A) Were incurred in the implementation of a school improvement plan required under section 1116(b) of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 20 U.S.C. § 6316(b)).

(B) Were not offset by a specific State allocation.

(vi) Costs necessary to maintain the total actual instructional expense. The dollar amount of this exception shall be equal to the portion of the increase in the total actual instructional expense that exceeds the index. The total actual instructional expense is calculated as follows:

(A) Divide the existing average daily membership into the total school district actual instructional expense for the current school year to determine the existing actual instructional expense per student.

(B) Multiply the existing actual instructional expense per student by the index to determine the adjusted instructional expense per student.

(C) Multiply the adjusted instructional expense per student by the projected enrollment for the immediately succeeding fiscal year to determine the total actual instructional expense.

(vii) Costs necessary to maintain actual instructional expense per average daily membership, adjusted by the index, if the increase in actual instructional expense per average daily membership between the school year determined under subsection (j)(4) and the school year preceding the school year determined under subsection (j)(4) is less than the index.

(viii) Maintenance of revenues derived from real property taxes, earned income and net profits taxes, personal income taxes, basic education funding allocations and special education funding allocations, adjusted by the index, for a school district where the percentage increase in revenues derived from real property taxes, earned income and net profits taxes, personal income taxes, basic education funding allocations and special education funding allocations between the school year determined under subsection (j)(4) and the school year preceding the school year determined under subsection (j)(4) is less than the index.

(ix) Costs incurred for providing health care-related benefits if the anticipated increase in the cost of health care-related benefits between the current year and the upcoming year is greater than the index. The dollar amount of this exception shall be equal to the portion of the increase which exceeds the index.

(x) Building costs associated with the following:

(A) Costs associated with school construction projects up to the cost of building, repairing or renovating an academic area up to the Statewide academic square feet per student average. Such costs shall be determined on a construction cost average on a square foot basis. Prior to September 30 of each fiscal year, the department shall calculate the Statewide academic square feet per student average as follows:

(I) The department shall calculate the Statewide total number of students as determined by the average daily membership as the term is used and applied in this act.

(II) The department shall calculate the Statewide academic area of all public schools.

(III) The sum of subclause (I) shall be divided into subclause (II) to determine the Statewide academic square foot per student average of that school year.

(B) For purposes of this subsection, the term "academic area" shall not include natatorium, stadium bleachers, team locker room, athletic field, fitness center, gymnasium not otherwise used for academic purposes, field house, indoor track, artificial turf or other areas used to conduct interscholastic athletics.

(C) Costs related to this subsection shall be subject to the provisions of 22 Pa. Code Ch. 21 (relating to school buildings) and section 731.

(xi) Costs incurred for providing a school district's share of payments to the Public School Employees' Retirement System as required under 24 Pa.C.S. § 8327 (relating to payments by employers) if the actual dollar amount between the current year and the upcoming year is greater than the index. The dollar amount to which this subsection applies shall equal that portion of the increase which exceeds the index of the

actual dollar value of payment between the current year and the upcoming year.

Amend Sec. 1.3 (Sec. 3121), page 128, by inserting between lines 9 and 10 (A05363)

(o) Expiration.—The provisions of this section shall expire September 1, 2011, unless otherwise extended by an act of the General Assembly.

On the question,
Will the House agree to the amendment?

The SPEAKER. On that question, the gentleman, Mr. Saylor. Mr. SAYLOR. Mr. Speaker, I rise to present the Saylor-Veon amendment, which is a consolidation of amendments that have been offered over the last number of tax plans by people like Representative Jerry Nailor, Representative Nickol, and others here in the House, a consolidation, and it is a back-end referendum that is to be added that came out of the Finance Committee’s special session committee, and I ask for consideration of the amendment as presented.

The SPEAKER. The gentleman, Mr. Scavello. Does Mr. Scavello seek recognition? The gentleman waives off. The gentleman, Mr. Veon.

Mr. VEON. Thank you, Mr. Speaker.

Mr. Speaker, I join with the gentleman and thank him for his help on putting these amendments together. These are virtually— This language is the same as the amendments I offered. I appreciate the gentleman offering them together and would ask for an affirmative vote.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—183

Adolph	Fabrizio	Mackereth	Rubley
Allen	Fairchild	Maher	Ruffing
Argall	Fichter	Maitland	Sainato
Armstrong	Fleagle	Major	Samuelson
Baker	Flick	Manderino	Santoni
Baldwin	Frankel	Mann	Sather
Barrar	Freeman	Markosek	Saylor
Bastian	Gabig	Marsico	Scavello
Bebko-Jones	Gannon	McCall	Semmel
Belardi	Geist	McGeehan	Shapiro
Belfanti	George	McGill	Siptroth
Benninghoff	Gerber	McIlhattan	Solobay
Biancucci	Gergely	McIlhinney	Sonney
Birmelin	Gillespie	McNaughton	Staback
Bishop	Gingrich	Melio	Stairs
Blackwell	Godshall	Micozzie	Steil
Blaum	Good	Millard	Stern
Boyd	Goodman	Miller, R.	Stetler
Bunt	Grell	Miller, S.	Stevenson, R.
Butkovitz	Grucela	Mustio	Stevenson, T.
Buxton	Gruitza	Myers	Sturla
Caltagirone	Habay	Nailor	Surra
Cappelli	Hanna	Nickol	Tangretti
Casorio	Harhai	O’Brien	Taylor, E. Z.
Cawley	Harhart	Oliver	Taylor, J.
Civera	Harper	O’Neill	Thomas
Clymer	Harris	Parker	Tigue
Cohen	Hasay	Payne	True
Cornell	Hennessey	Petrarca	Turzai
Corrigan	Herman	Petri	Veon
Costa	Hess	Petrone	Vitali

Crahalla	Hickernell	Phillips	Walko
Creighton	James	Pickett	Wansacz
Cruz	Josephs	Pistella	Waters
Curry	Kauffman	Preston	Watson
Daley	Keller, M.	Pyle	Wheatley
Dally	Keller, W.	Quigley	Williams
DeLuca	Kenney	Ramaley	Wilt
Denlinger	Killion	Raymond	Wright
Dermody	Kirkland	Readshaw	Yewcic
DeWeese	LaGrotta	Reed	Youngblood
DiGirolamo	Leach	Reichley	Yudichak
Diven	Lederer	Roberts	Zug
Donatucci	Leh	Roebuck	
Eachus	Lescovitz	Rooney	Perzel,
Evans, D.	Levdansky	Ross	Speaker
Evans, J.			

NAYS—12

Beyer	Feese	Hutchinson	Rohrer
Causar	Forcier	Metcalfe	Schroder
Ellis	Hershey	Rapp	Smith, S. H.

NOT VOTING—0

EXCUSED—8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,
Will the House agree to the bill on third consideration as amended?

The SPEAKER. The gentleman, Mr. Veon, has amendment 5423. The gentleman has to suspend the rules in order to run the amendment.

Mr. VEON. I am going to withdraw that amendment, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,
Will the House agree to the bill on third consideration as amended?

RULES SUSPENDED

The SPEAKER. The gentleman, Mr. Herman. Mr. HERMAN. Mr. Speaker, I move that the rules of the House be immediately suspended for amendment A5433.

On the question,
Will the House agree to the motion?

The following roll call was recorded:

YEAS—191

Adolph	Fairchild	Mackereth	Ross
Allen	Feese	Maher	Rubley
Argall	Fichter	Maitland	Ruffing
Armstrong	Fleagle	Major	Sainato

Baker	Flick	Manderino	Samuelson
Baldwin	Forcier	Mann	Santoni
Barrar	Frankel	Markosek	Sather
Bastian	Freeman	Marsico	Saylor
Bebko-Jones	Gabig	McCall	Scavello
Belardi	Gannon	McGeehan	Semmel
Belfanti	Geist	McGill	Shapiro
Benninghoff	George	McIlhattan	Siptroth
Biancucci	Gerber	McIlhinney	Smith, S. H.
Birmelin	Gergely	McNaughton	Solobay
Bishop	Gillespie	Melio	Sonney
Blackwell	Gingrich	Metcalfe	Staback
Blaum	Godshall	Micozzie	Stairs
Boyd	Good	Millard	Steil
Bunt	Goodman	Miller, R.	Stern
Butkovitz	Grell	Miller, S.	Stetler
Buxton	Grucela	Mustio	Stevenson, R.
Caltagirone	Gruitza	Myers	Stevenson, T.
Cappelli	Habay	Nailor	Sturla
Causer	Hanna	Nickol	Surra
Cawley	Harhai	O'Brien	Tangretti
Civera	Harhart	Oliver	Taylor, E. Z.
Clymer	Harper	O'Neill	Taylor, J.
Cohen	Harris	Parker	Thomas
Cornell	Hasay	Payne	Tigue
Corrigan	Hennessey	Petrarca	True
Costa	Herman	Petri	Turzai
Crahalla	Hershey	Petrone	Veon
Creighton	Hess	Phillips	Vitali
Cruz	Hickernell	Pickett	Walko
Curry	Hutchinson	Pistella	Wansacz
Daley	James	Preston	Waters
Dally	Josephs	Pyle	Watson
DeLuca	Keller, M.	Quigley	Wheatley
Denlinger	Keller, W.	Ramaley	Williams
Dermody	Kenney	Rapp	Wilt
DeWeese	Killion	Raymond	Wright
DiGirolamo	Kirkland	Readshaw	Yewcic
Diven	LaGrotta	Reed	Youngblood
Donatucci	Leach	Reichley	Yudichak
Eachus	Lederer	Roberts	Zug
Ellis	Leh	Roebuck	
Evans, D.	Lescovitz	Rohrer	Perzel,
Evans, J.	Levdansky	Rooney	Speaker
Fabrizio			

NAYS-4

Beyer	Casorio	Kauffman	Schroder
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NOT VOTING-0

EXCUSED-8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. HERMAN offered the following amendment No. **A05433**:

Amend Sec. 1.3 (Sec. 1204), page 34, by inserting between lines 32 and 33 (A05363)
(65) The sale at retail of college tuition.

Amend Sec. 3, page 140, line 21 (A05363), by striking out "and (61)" and inserting
, (61) and (65)

On the question,

Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Herman.

Mr. HERMAN. Thank you very much, Mr. Speaker.

Mr. Speaker, this amendment would make it absolutely sure in statute that college tuition will not be subject to the sales tax under the Scavello amendment.

I appreciate an affirmative vote. Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Scavello.

Mr. SCAVELLO. Mr. Speaker, college tuition is not taxed under my amendment. I do not see a reason to even have this amendment here, but if we have to vote on it, I— You know, it is not one of the items that we are taxing.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS-195

Adolph	Fabrizio	Levdansky	Ross
Allen	Fairchild	Mackereth	Rubley
Argall	Feese	Maher	Ruffing
Armstrong	Fichter	Maitland	Sainato
Baker	Feagle	Major	Samuelson
Baldwin	Flick	Manderino	Santoni
Barrar	Forcier	Mann	Sather
Bastian	Frankel	Markosek	Saylor
Bebko-Jones	Freeman	Marsico	Scavello
Belardi	Gabig	McCall	Schroder
Belfanti	Gannon	McGeehan	Semmel
Benninghoff	Geist	McGill	Shapiro
Beyer	George	McIlhattan	Siptroth
Biancucci	Gerber	McIlhinney	Smith, S. H.
Birmelin	Gergely	McNaughton	Solobay
Bishop	Gillespie	Melio	Sonney
Blackwell	Gingrich	Metcalfe	Staback
Blaum	Godshall	Micozzie	Stairs
Boyd	Good	Millard	Steil
Bunt	Goodman	Miller, R.	Stern
Butkovitz	Grell	Miller, S.	Stetler
Buxton	Grucela	Mustio	Stevenson, R.
Caltagirone	Gruitza	Myers	Stevenson, T.
Cappelli	Habay	Nailor	Sturla
Casorio	Hanna	Nickol	Surra
Causer	Harhai	O'Brien	Tangretti
Cawley	Harhart	Oliver	Taylor, E. Z.
Civera	Harper	O'Neill	Taylor, J.
Clymer	Harris	Parker	Thomas
Cohen	Hasay	Payne	Tigue
Cornell	Hennessey	Petrarca	True
Corrigan	Herman	Petri	Turzai
Costa	Hershey	Petrone	Veon
Crahalla	Hess	Phillips	Vitali
Creighton	Hickernell	Pickett	Walko
Cruz	Hutchinson	Pistella	Wansacz
Curry	James	Preston	Waters
Daley	Josephs	Pyle	Watson
Dally	Kauffman	Quigley	Wheatley
DeLuca	Keller, M.	Ramaley	Williams
Denlinger	Keller, W.	Rapp	Wilt
Dermody	Kenney	Raymond	Wright
DeWeese	Killion	Readshaw	Yewcic
DiGirolamo	Kirkland	Reed	Youngblood

Diven	LaGrotta	Reichley	Yudichak
Donatucci	Leach	Roberts	Zug
Eachus	Lederer	Roebuck	
Ellis	Leh	Rohrer	Perzel,
Evans, D.	Lescovitz	Rooney	Speaker
Evans, J.			

NAYS—0

NOT VOTING—0

EXCUSED—8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

MOTION TO SUSPEND RULES

The SPEAKER. The Chair recognizes the gentleman, Mr. Scavello.

Mr. SCAVELLO. Mr. Speaker, I move for an immediate suspension of the rules for amendment A5443.

On the question,

Will the House agree to the motion?

MOTION WITHDRAWN

The SPEAKER. On that question— The gentleman withdraws the amendment.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

RULES SUSPENDED

The SPEAKER. The Chair recognizes the gentleman, Mr. Saylor.

Mr. SAYLOR. Mr. Speaker, I move that the rules of the House be immediately suspended for amendment A5494.

On the question,

Will the House agree to the motion?

The SPEAKER. On that question, Mr. Saylor.

Mr. SAYLOR. Mr. Speaker, this is simply an amendment to correct a double reference in the bill to pensions exemptions. It now just takes one of them out and makes a technical correction.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,

Will the House agree to the motion?

The following roll call was recorded:

YEAS—195

Adolph	Fabrizio	Levdansky	Ross
Allen	Fairchild	Mackereth	Rubley
Argall	Feese	Maher	Ruffing
Armstrong	Fichter	Maitland	Sainato
Baker	Fleagle	Major	Samuelson
Baldwin	Flick	Manderino	Santoni
Barrar	Forcier	Mann	Sather
Bastian	Frankel	Markosek	Saylor
Bebko-Jones	Freeman	Marsico	Scavello
Belardi	Gabig	McCall	Schroder
Belfanti	Gannon	McGeehan	Semmel
Benninghoff	Geist	McGill	Shapiro
Beyer	George	McIlhattan	Siptroth
Biancucci	Gerber	McIlhinney	Smith, S. H.
Birmelin	Gergely	McNaughton	Solobay
Bishop	Gillespie	Melio	Sonney
Blackwell	Gingrich	Metcalfe	Staback
Blaum	Godshall	Micozzie	Stairs
Boyd	Good	Millard	Steil
Bunt	Goodman	Miller, R.	Stern
Butkovitz	Grell	Miller, S.	Stetler
Buxton	Grucela	Mustio	Stevenson, R.
Caltagirone	Gruitza	Myers	Stevenson, T.
Cappelli	Habay	Nailor	Sturla
Casorio	Hanna	Nickol	Surra
Causer	Harhai	O'Brien	Tangretti
Cawley	Harhart	Oliver	Taylor, E. Z.
Civera	Harper	O'Neill	Taylor, J.
Clymer	Harris	Parker	Thomas
Cohen	Hasay	Payne	Tigue
Cornell	Hennessey	Petrarca	True
Corrigan	Herman	Petri	Turzai
Costa	Hershey	Petrone	Veon
Crahalla	Hess	Phillips	Vitali
Creighton	Hickernell	Pickett	Walko
Cruz	Hutchinson	Pistella	Wansacz
Curry	James	Preston	Waters
Daley	Josephs	Pyle	Watson
Dally	Kauffman	Quigley	Wheatley
DeLuca	Keller, M.	Ramaley	Williams
Denlinger	Keller, W.	Rapp	Wilt
Dermody	Kenney	Raymond	Wright
DeWeese	Killion	Readshaw	Yewcic
DiGirolamo	Kirkland	Reed	Youngblood
Diven	LaGrotta	Reichley	Yudichak
Donatucci	Leach	Roberts	Zug
Eachus	Lederer	Roebuck	
Ellis	Leh	Rohrer	Perzel,
Evans, D.	Lescovitz	Rooney	Speaker
Evans, J.			

NAYS—0

NOT VOTING—0

EXCUSED—8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. **SAYLOR** offered the following amendment No. **A05494**:

Amend Sec. 1.3 (Sec. 3121), page 127, line 59; page 128, lines 1 through 9 (A05363), by striking out all of said lines on said pages and inserting

(n) (Reserved).

On the question,
Will the House agree to the amendment?

AMENDMENT PASSED OVER TEMPORARILY

The **SPEAKER**. On that question— The Chair is temporarily over this amendment; temporarily over that amendment.

On the question recurring,
Will the House agree to the bill on third consideration as amended?

RULES SUSPENDED

The **SPEAKER**. The Chair recognizes the gentleman, Mr. Cohen.

Mr. **COHEN**. Mr. Speaker, I move that the rules of the House be immediately suspended for amendment A5503.

On the question,
Will the House agree to the motion?

The following roll call was recorded:

YEAS—166

Adolph	Evans, J.	Maher	Samuelson
Allen	Fabrizio	Manderino	Santoni
Argall	Fairchild	Mann	Sather
Baker	Feese	Markosek	Scavello
Barrar	Fichter	Marsico	Semmel
Bastian	Flick	McCall	Shapiro
Bebko-Jones	Frankel	McGeehan	Siptroth
Belardi	Freeman	McGill	Smith, S. H.
Belfanti	Gannon	McIlhattan	Solobay
Beyer	Geist	McIlhinney	Sonney
Biancucci	George	Melio	Staback
Birmelin	Gerber	Micozzie	Stairs
Bishop	Gergely	Millard	Steil
Blackwell	Gingrich	Miller, R.	Stern
Blaum	Godshall	Miller, S.	Stetler
Bunt	Good	Mustio	Stevenson, R.
Butkovitz	Goodman	Myers	Stevenson, T.
Buxton	Grell	Nickol	Sturla
Caltagirone	Grucela	O'Brien	Surra
Cappelli	Gruitza	Oliver	Tangretti
Casorio	Habay	O'Neill	Taylor, E. Z.
Cawley	Hanna	Parker	Taylor, J.
Civera	Harhai	Payne	Thomas
Clymer	Harhart	Petrarca	Tigue
Cohen	Harper	Petri	Turzai
Cornell	Hasay	Petrone	Veon
Corrigan	Hennessey	Phillips	Vitali
Costa	Herman	Pickett	Walko
Crahalla	Hershey	Pistella	Wansacz
Creighton	Hess	Preston	Waters
Cruz	Hutchinson	Quigley	Watson
Curry	James	Ramaley	Wheatley
Daley	Josephs	Raymond	Williams

Dally	Keller, W.	Readshaw	Wilt
DeLuca	Kenney	Reed	Wright
Dermody	Killion	Roberts	Yewcic
DeWeese	Kirkland	Roebuck	Youngblood
DiGirolamo	LaGrotta	Rooney	Yudichak
Diven	Leach	Ross	Zug
Donatucci	Lederer	Rubley	
Eachus	Lescovitz	Ruffing	Perzel,
Evans, D.	Levdansky	Sainato	Speaker

NAYS—29

Armstrong	Forcier	Leh	Pyle
Baldwin	Gabig	Mackereth	Rapp
Benninghoff	Gillespie	Maitland	Reichley
Boyd	Harris	Major	Rohrer
Causar	Hickernell	McNaughton	Saylor
Denlinger	Kauffman	Metcalfe	Schroder
Ellis	Keller, M.	Nailor	True
Fleagle			

NOT VOTING—0

EXCUSED—8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,
Will the House agree to the bill on third consideration as amended?

Mr. **COHEN** offered the following amendment No. **A05503**:

Amend Sec. 1.3 (Chapter Analysis), page 112, line 38 (A05363), by striking out “Exclusion” and inserting

Payment

Amend Sec. 1.3 (Sec. 2113), page 115, line 36 (A05363), by striking out “exclusions” and inserting

payments

Amend Sec. 1.3 (Subchapter Heading), page 115, line 38 (A05363), by striking out “EXCLUSION” and inserting

PAYMENT

Amend Sec. 1.3 (Subchapter Analysis), page 115, line 41 (A05363), by striking out “exclusion” and inserting

payment

Amend Sec. 1.3 (Subchapter Analysis), page 115, line 42 (A05363), by striking out all of said line

Amend Sec. 1.3 (Sec. 2121), page 116, line 3 (A05363), by striking out “exclusion” and inserting

payment

Amend Sec. 1.3 (Sec. 2121), page 116, line 17 (A05363), by striking out “exclusion” and inserting

payment

Amend Sec. 1.3 (Sec. 2122), page 116, line 55 (A05363), by striking out “exclusion” and inserting

payment

Amend Sec. 1.3 (Sec. 2122), page 116, line 58 (A05363), by striking out “exclusion” and inserting

payment

Amend Sec. 1.3 (Sec. 2122), page 116, line 59 (A05363), by striking out “the lesser of:” and inserting

\$692.

Amend Sec. 1.3 (Sec. 2122), page 117, lines 1 through 5 (A05363), by striking out all of said lines

Amend Sec. 1.3 (Sec. 2122), page 117, line 7 (A05363), by striking out “exclusion” and inserting
payment

Amend Sec. 1.3 (Sec. 2122), page 117, line 9 (A05363), by striking out “maximum”

Amend Sec. 1.3 (Sec. 2122), page 117, line 9 (A05363), by striking out “exclusion” and inserting
payment

Amend Sec. 1.3 (Sec. 2122), page 117, lines 10 through 31 (A05363), by striking out “A resolution may not” in line 10 and all of lines 11 through 31

On the question,
Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, this is a Tom Ridge memorial amendment. You will recall that when Tom Ridge was Governor of Pennsylvania, he pushed through, you know, he paid attention to what we demanded, but then he came up with his own proposal, which we all adopted, saying that everybody all across the State should get a \$100 tax dividend. His proposal, it passed the House virtually unanimously; it passed the Senate virtually unanimously. We are now dealing with a lot more money than \$100. This proposal takes the average figure per household in the Scavello amendment, \$692, and says that everybody shall get a \$692 tax reduction.

Now, the vast majority of school districts in the Commonwealth of Pennsylvania, according to the material Mr. Scavello handed out, will benefit from this amendment. Every school district will benefit because this is obviously a very fair proposal that has a possibility of lasting over time. I really doubt, Mr. Speaker, that a proposal in which one district in Mr. Belfanti’s district gets \$128 a person if they are a homeowner and another district in Delaware County gets \$2,100 is very likely to either be ultimately enacted into law, or if it is enacted into law, I really doubt it is very likely to sustain a court challenge or to sustain a legislative challenge. It is going to be a program of inherent controversy as long as it lasts. But taking all the money and treating everybody the same, as Governor Ridge did, is something that will last with time. You know, 5 years, 10 years, 20 years from now this proposal will be in effect. So I strongly— So if you really want tax reform that is going to last, this is the way to do it. In addition, the vast majority of school districts in Pennsylvania will benefit from this program.

The SPEAKER. The gentleman, Mr. Buxton.

Mr. BUXTON. Mr. Speaker, I wish to interrogate the maker of the amendment.

The SPEAKER. The gentleman indicates he will stand for interrogation. The gentleman is in order.

Mr. BUXTON. How would you drive out this 690-some dollars? Would this be a rebate—

Mr. COHEN. Yes.

Mr. BUXTON. —to each citizen in Pennsylvania?

Mr. COHEN. It would be exactly the same way as Mr. Scavello did it. We just changed the language. Mr. Scavello has a much more complicated system, but basically the essence is the same so that in Harrisburg, in Dauphin County, whereas

under the Scavello amendment every residential farm and farmstead unit got \$596, now everyone will get \$692.

Mr. BUXTON. But they would receive that in the form of a rebate; it would not go through the school district?

Mr. COHEN. The precise way that Mr. Scavello used will be used here.

Mr. BUXTON. So it would not be a rebate similar to the Tom Ridge—

Mr. COHEN. No.

Mr. BUXTON. —\$100 that you referred to?

Mr. COHEN. It will be a credit.

Mr. BUXTON. But my concern is, if it is driven out as a rebate, it becomes taxed under the Federal government and that way that would diminish the actual rebate that a citizen receives.

Mr. COHEN. I used the Tom Ridge analogy because everybody got \$100 under the Ridge proposal. Here everybody gets \$692, which is the statewide average.

Mr. BUXTON. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Scavello.

Mr. SCAVELLO. Mr. Speaker, would the maker of the amendment stand for interrogation?

Mr. COHEN. Yes, Mr. Speaker, I will.

Mr. SCAVELLO. Mr. Speaker, is it your intention to give property tax refunds over the amount that the property owner is paying now; for example, if that refund is higher than their actual cost in their school district?

Mr. COHEN. I think that would very rarely occur, Mr. Speaker, but if it did occur, it does occur. If in the process of going through the legislative process you wish to change that and ban it from happening, that would be okay with me.

Mr. SCAVELLO. In many cases, Mr. Speaker, the rebate amount that the gentleman from Philadelphia is including would be greater than the homestead exemption for those particular school districts. We have the fairest proposal in front of us that we voted on earlier. It is a 40-percent reduction in property taxes to every school district in the State. Every school district will receive between 40 – and excuse me; some will get even a little bit more – between 40 and 50 of their total property taxes that they are paying in that school district. It is the fairest possible proposal, and I urge the members for a “no” vote on this amendment.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Cohen.

Mr. COHEN. Mr. Speaker, sometimes fairness is in the eye of the beholder. I think we have two dueling conceptions of fairness here. This amendment is fair because everybody gets the same amount of money from this amendment. The strength of this amendment is that this can last over a long period of time. Mr. Scavello’s amendment is fair only in the sense that there is an average figure calculated per school district and then everybody in the school district gets the same amount of money regardless of how much property they own. So in Philadelphia somebody who owns a house valued at \$500,000 in Babette Josephs’ district gets \$349 and somebody in Jewell Williams’ district who owns a house valued at \$15,000 gets \$349. So everybody is getting the same amount of money in every school district, but you know, the amount of money that is given has no relation to the value of the properties, and it depends in which school district you live in and how much you own. I mean, there are people, Mr. Speaker, under your amendment,

there are people in Philadelphia who pay less than \$349 in property taxes because they have properties that are worth very little money.

There is no perfect system here, but it seems to me, Mr. Speaker, we are handing out State money. We are handing out State money here, and we have a system where the amount of State money we hand out ranges from \$128 to over \$2100, and it depends not on the value of the property you own; it depends not on the amount of property tax you pay; it depends not on the amount of income you have. It is just a very, very odd formula. Different people in the same circumstance are being treated differently. You know, a \$300,000 house in Philadelphia is going to get a heck of a lot smaller rebate than a \$300,000 house in Mr. Scavello's district or many other districts around the State. We are handing out State money here, Mr. Speaker, and the way we do it is subject to court challenge; it is subject to political challenges.

You know, I really do not think, Mr. Speaker, people who get a tiny fraction of their real estate back are going to be very happy with this proposal. And if we think the pay raise revolt was significant, you know, just wait until people start figuring out that they are only getting a tiny percentage of their income tax back because they live in a certain school district.

The SPEAKER. Will the gentleman suspend.

For what purpose does the gentleman, Mr. Flick, rise?

Mr. FLICK. Thank you, Mr. Speaker.

Mr. Speaker, a point of parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. FLICK. I do not believe that this amendment is in any way constitutional based on the homestead exemption which we have already passed and which is part of law. We could not do what the gentleman wishes to do based on the Constitution, the amendment that was done several years ago, and I would rule that it is not constitutional. Well, I do not rule; I would suggest it is not constitutional and make that motion.

The SPEAKER. The gentleman would have to wait until the gentleman, Mr. Cohen, has completed his remarks.

The gentleman, Mr. Cohen.

Mr. FLICK. Thank you.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, it is Mr. Flick's duty to come up with a particular section and a particular sentence or paragraph of the Constitution that he thinks this violates.

I believe that this treats all homeowners equally. Under the Federal Constitution, we are supposed to—

The SPEAKER. Will the gentleman suspend. We are not on constitutionality.

Mr. COHEN. Okay. Thank you, Mr. Speaker.

Mr. Speaker, I believe this is an inherently fair proposal. It treats everybody equally. Every county is treated equally; every homeowner is treated equally. Yes, Mr. Speaker, people who own less expensive houses are going to get a higher percentage of their property tax off. They need the money more, Mr. Speaker. The people who benefit most, most need the money. The people who benefit most are the people most likely to file for bankruptcy. The people who are going to get a higher percentage of their property taxes off with the same dollar amount are the people who are most likely not to pay their utility bills. They are the most likely to be unemployed.

Everybody here is treated equally. I believe that it is highly desirable as a matter of public policy, and I strongly urge your

support of this amendment. This is an amendment that guarantees that what we do tonight will actually stand the test of time. It will actually be upheld as sound public policy in Pennsylvania.

I urge your support.

The SPEAKER. The Chair thanks the gentleman.

CONSTITUTIONAL POINT OF ORDER

The SPEAKER. The Chair recognizes the gentleman, Mr. Flick.

Mr. FLICK. Thank you, Mr. Speaker.

I have located the section of the Constitution. It is Article VIII, the uniformity clause of taxation, and on that basis, I move that this amendment is unconstitutional.

The SPEAKER. The gentleman, Mr. Flick, raises the point of order that amendment No. A5503 is unconstitutional.

The Speaker, under rule 4, is required to submit questions affecting the constitutionality of an amendment to the House for decision, which the Chair now does.

On the question,

Will the House sustain the constitutionality of the amendment?

The SPEAKER. Does the gentleman, Mr. Cohen, wish to be recognized? Mr. Cohen.

Mr. COHEN. Yes, Mr. Speaker.

Mr. Speaker, it is up to each local taxing authority to determine what its taxes are. We do not determine the tax rate. All we are doing is determining a tax credit. There is nothing in the Constitution that says all tax credits have to be uniform; there is nothing in the Constitution that says all tax credits have to be uniform.

We pass enterprise zones. We give businesses tax reductions in specific circumstances. We do a lot of things that have the result of reducing people's taxes in different ways so that everybody does not wind up with the same tax load. That is constitutional. If you assume this is unconstitutional, then that means we cannot give tax abatements to other businesses by that same legal theory. This is constitutional. This treats every person equally. This is an awful lot more constitutional than the Scavello amendment, which treats people wildly differently and treats those people worst who have the least amount of income.

I have absolutely no doubt that any court, either in Pennsylvania or the Federal government, would uphold the constitutionality of this amendment. It deals with a tax credit. It does not deal with a tax rate.

The SPEAKER. Does the gentleman, Mr. Scavello, seek recognition? The gentleman waives off.

Those voting "aye" will vote to declare the amendment to be constitutional; those voting "no" will vote to declare the amendment to be unconstitutional.

On the question recurring,

Will the House sustain the constitutionality of the amendment?

The following roll call was recorded:

YEAS—92

Bebko-Jones	Fabrizio	Markosek	Siptroth
Belardi	Fairchild	McCall	Solobay
Belfanti	Frankel	McGeehan	Staback
Biancucci	Freeman	Melio	Stetler
Bishop	George	Myers	Sturla
Blackwell	Gerber	O'Brien	Surra
Blaum	Gergely	Oliver	Tangretti
Butkovitz	Goodman	Parker	Taylor, J.
Buxton	Grucela	Petrarca	Thomas
Caltagirone	Gruitza	Petrone	Tigue
Casorio	Hanna	Phillips	Veon
Cawley	Harhai	Pistella	Vitali
Cohen	James	Preston	Walko
Corrigan	Josephs	Ramaley	Wansacz
Costa	Keller, W.	Readshaw	Waters
Cruz	Kenney	Roberts	Wheatley
Curry	Kirkland	Roebuck	Williams
Daley	LaGrotta	Rooney	Yewcic
DeLuca	Leach	Ruffing	Youngblood
Dermody	Lederer	Sainato	Yudichak
DeWeese	Lescovitz	Samuelson	
Donatucci	Levdansky	Santoni	
Eachus	Manderino	Shapiro	Perzel,
Evans, D.	Mann		Speaker

NAYS—103

Adolph	Feese	Killion	Raymond
Allen	Fichter	Leh	Reed
Argall	Fleagle	Mackereth	Reichley
Armstrong	Flick	Maher	Rohrer
Baker	Forcier	Maitland	Ross
Baldwin	Gabig	Major	Rubley
Barrar	Gannon	Marsico	Sather
Bastian	Geist	McGill	Saylor
Benninghoff	Gillespie	McIlhattan	Scavello
Beyer	Gingrich	McIlhinney	Schroder
Birmelin	Godshall	McNaughton	Semmel
Boyd	Good	Metcalfe	Smith, S. H.
Bunt	Grell	Micozzie	Sonney
Cappelli	Habay	Millard	Stairs
Causer	Harhart	Miller, R.	Steil
Civera	Harper	Miller, S.	Stern
Clymer	Harris	Mustio	Stevenson, R.
Cornell	Hasay	Nailor	Stevenson, T.
Crahalla	Hennessey	Nickol	Taylor, E. Z.
Creighton	Herman	O'Neill	True
Dally	Hershey	Payne	Turzai
Denlinger	Hess	Petri	Watson
DiGirolamo	Hickernell	Pickett	Wilt
Diven	Hutchinson	Pyle	Wright
Ellis	Kauffman	Quigley	Zug
Evans, J.	Keller, M.	Rapp	

NOT VOTING—0

EXCUSED—8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

Less than the majority having voted in the affirmative, the question was determined in the negative and the constitutionality of the amendment was not sustained.

On the question recurring,
Will the House agree to the bill on third consideration as amended?

RULES SUSPENDED

The SPEAKER. The Chair recognizes the gentleman, Mr. Scavello.

Mr. SCAVELLO. Mr. Speaker, I move that the rules of the House be suspended for amendment A5443.

On the question,
Will the House agree to the motion?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Scavello.

Mr. SCAVELLO. Mr. Speaker, I am just inserting the word "property tax." It is just to clarify an amendment. It is a minimal item.

On the question recurring,
Will the House agree to the motion?

The following roll call was recorded:

YEAS—195

Adolph	Fabrizio	Levdansky	Ross
Allen	Fairchild	Mackereth	Rubley
Argall	Feese	Maher	Ruffing
Armstrong	Fichter	Maitland	Sainato
Baker	Fleagle	Major	Samuelson
Baldwin	Flick	Manderino	Santoni
Barrar	Forcier	Mann	Sather
Bastian	Frankel	Markosek	Saylor
Bebko-Jones	Freeman	Marsico	Scavello
Belardi	Gabig	McCall	Schroder
Belfanti	Gannon	McGeehan	Semmel
Benninghoff	Geist	McGill	Shapiro
Beyer	George	McIlhattan	Siptroth
Biancucci	Gerber	McIlhinney	Smith, S. H.
Birmelin	Gergely	McNaughton	Solobay
Bishop	Gillespie	Melio	Sonney
Blackwell	Gingrich	Metcalfe	Staback
Blaum	Godshall	Micozzie	Stairs
Boyd	Good	Millard	Steil
Bunt	Goodman	Miller, R.	Stern
Butkovitz	Grell	Miller, S.	Stetler
Buxton	Grucela	Mustio	Stevenson, R.
Caltagirone	Gruitza	Myers	Stevenson, T.
Cappelli	Habay	Nailor	Sturla
Casorio	Hanna	Nickol	Surra
Causer	Harhai	O'Brien	Tangretti
Cawley	Harhart	Oliver	Taylor, E. Z.
Civera	Harper	O'Neill	Taylor, J.
Clymer	Harris	Parker	Thomas
Cohen	Hasay	Payne	Tigue
Cornell	Hennessey	Petrarca	True
Corrigan	Herman	Petri	Turzai
Costa	Hershey	Petrone	Veon
Crahalla	Hess	Phillips	Vitali
Creighton	Hickernell	Pickett	Walko
Cruz	Hutchinson	Pistella	Wansacz
Curry	James	Preston	Waters
Daley	Josephs	Pyle	Watson
Dally	Kauffman	Quigley	Wheatley
DeLuca	Keller, M.	Ramaley	Williams
Denlinger	Keller, W.	Rapp	Wilt
Dermody	Kenney	Raymond	Wright
DeWeese	Killion	Readshaw	Yewcic
DiGirolamo	Kirkland	Reed	Youngblood
Diven	LaGrotta	Reichley	Yudichak
Donatucci	Leach	Roberts	Zug
Eachus	Lederer	Roebuck	

Ellis	Leh	Rohrer	Perzel,
Evans, D.	Lescovitz	Rooney	Speaker
Evans, J.			

NAYS—0

NOT VOTING—0

EXCUSED—8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnarowski

A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. **SCAVELLO** offered the following amendment No. **A05443**:

Amend Sec. 1.3 (Sec. 5104), page 135, line 41 (A05363), by inserting after “of”

property tax or

On the question,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS—195

Adolph	Fabrizio	Levdansky	Ross
Allen	Fairchild	Mackereth	Rubley
Argall	Feese	Maher	Ruffing
Armstrong	Fichter	Maitland	Sainato
Baker	Fleagle	Major	Samuelson
Baldwin	Flick	Manderino	Santoni
Barrar	Forcier	Mann	Sather
Bastian	Frankel	Markosek	Saylor
Bebko-Jones	Freeman	Marsico	Scavello
Belardi	Gabig	McCall	Schroder
Belfanti	Gannon	McGeehan	Semmel
Benninghoff	Geist	McGill	Shapiro
Beyer	George	McIlhattan	Siptroth
Bianucci	Gerber	McIlhinney	Smith, S. H.
Birmelin	Gergely	McNaughton	Solobay
Bishop	Gillespie	Melio	Sonney
Blackwell	Gingrich	Metcalfe	Staback
Blaum	Godshall	Micozzie	Stairs
Boyd	Good	Millard	Steil
Bunt	Goodman	Miller, R.	Stern
Butkovitz	Grell	Miller, S.	Stetler
Buxton	Grucela	Mustio	Stevenson, R.
Caltagirone	Gruitza	Myers	Stevenson, T.
Cappelli	Habay	Nailor	Sturla
Casorio	Hanna	Nickol	Surra
Causar	Harhai	O'Brien	Tangretti
Cawley	Harhart	Oliver	Taylor, E. Z.
Civera	Harper	O'Neill	Taylor, J.
Clymer	Harris	Parker	Thomas
Cohen	Hasay	Payne	Tigue
Cornell	Hennessey	Petrarca	True
Corrigan	Herman	Petri	Turzai
Costa	Hershey	Petrone	Veon
Crahalla	Hess	Phillips	Vitali

Creighton	Hickernell	Pickett	Walko
Cruz	Hutchinson	Pistella	Wansacz
Curry	James	Preston	Waters
Daley	Josephs	Pyle	Watson
Dally	Kauffman	Quigley	Wheatley
DeLuca	Keller, M.	Ramaley	Williams
Denlinger	Keller, W.	Rapp	Wilt
Dermody	Kenney	Raymond	Wright
DeWeese	Killion	Readshaw	Yewcic
DiGirolamo	Kirkland	Reed	Youngblood
Diven	LaGrotta	Reichley	Yudichak
Donatucci	Leach	Roberts	Zug
Eachus	Lederer	Roebuck	
Ellis	Leh	Rohrer	Perzel,
Evans, D.	Lescovitz	Rooney	Speaker
Evans, J.			

NAYS—0

NOT VOTING—0

EXCUSED—8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnarowski

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

The **SPEAKER**. The Chair recognizes the gentleman, Mr. Saylor, who moves to suspend the rules for immediate consideration of A5494.

The Chair rescinds. We have already suspended the rules on that amendment. We passed over that amendment.

CONSIDERATION OF AMENDMENT A05494 CONTINUED

The **SPEAKER**. The House has immediately before it A5494.

On the question recurring,

Will the House agree to the amendment?

The **SPEAKER**. Does the gentleman, Mr. Vitali, wish to be recognized?

Mr. **VITALI**. Yes, Mr. Speaker.

Just looking for a brief explanation of this.

The **SPEAKER**. The gentleman, Mr. Saylor, indicates he will give a brief explanation.

Mr. **SAYLOR**. Mr. Speaker, this is a correction to a drafting error. There are currently, as the bill is, two different sections that refer to the pension exception. This takes one of those out and makes it a cleaner bill.

Thank you.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS—195

Adolph	Fabrizio	Levdansky	Ross
Allen	Fairchild	Mackereth	Rubley
Argall	Feese	Maher	Ruffing
Armstrong	Fichter	Maitland	Sainato
Baker	Fleagle	Major	Samuelson
Baldwin	Flick	Manderino	Santoni
Barrar	Forcier	Mann	Sather
Bastian	Frankel	Markosek	Saylor
Bebko-Jones	Freeman	Marsico	Scavello
Belardi	Gabig	McCall	Schroder
Belfanti	Gannon	McGeehan	Semmel
Benninghoff	Geist	McGill	Shapiro
Beyer	George	McIlhattan	Siptroth
Biancucci	Gerber	McIlhinney	Smith, S. H.
Birmelin	Gergely	McNaughton	Solobay
Bishop	Gillespie	Melio	Sonney
Blackwell	Gingrich	Metcalfe	Staback
Blaum	Godshall	Micozzie	Stairs
Boyd	Good	Millard	Steil
Bunt	Goodman	Miller, R.	Stern
Butkovitz	Grell	Miller, S.	Stetler
Buxton	Grucela	Mustio	Stevenson, R.
Caltagirone	Gruitza	Myers	Stevenson, T.
Cappelli	Habay	Nailor	Sturla
Casorio	Hanna	Nickol	Surra
Causar	Harhai	O'Brien	Tangretti
Cawley	Harhart	Oliver	Taylor, E. Z.
Civera	Harper	O'Neill	Taylor, J.
Clymer	Harris	Parker	Thomas
Cohen	Hasay	Payne	Tigue
Cornell	Hennessey	Petrarca	True
Corrigan	Herman	Petri	Turzai
Costa	Hershey	Petrone	Veon
Crahalla	Hess	Phillips	Vitali
Creighton	Hickernell	Pickett	Walko
Cruz	Hutchinson	Pistella	Wansacz
Curry	James	Preston	Waters
Daley	Josephs	Pyle	Watson
Dally	Kauffman	Quigley	Wheatley
DeLuca	Keller, M.	Ramaley	Williams
Denlinger	Keller, W.	Rapp	Wilt
Dermody	Kenney	Raymond	Wright
DeWeese	Killion	Readshaw	Yewcic
DiGiroloamo	Kirkland	Reed	Youngblood
Diven	LaGrotta	Reichley	Yudichak
Donatucci	Leach	Roberts	Zug
Eachus	Lederer	Roebuck	
Ellis	Leh	Rohrer	Perzel,
Evans, D.	Lescovitz	Rooney	Speaker
Evans, J.			

NAYS—0

NOT VOTING—0

EXCUSED—8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question recurring,
Will the House agree to the bill on third consideration as amended?

The SPEAKER. Now the Chair is down to the amendments that would knock out the Scavello amendment: George, Scavello, Saylor, Veon, Curry, Yudichak, and Levdansky. Are any of those members still intending to offer those amendments? If you would, please just rise. The Chair sees no one up.

On the question recurring,
Will the House agree to the bill on third consideration as amended?
Bill as amended was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.
The question is, shall the bill pass finally?

On that question, the Chair recognizes the gentleman, Mr. McCall.

Mr. McCALL. Thank you, Mr. Speaker.

Mr. Speaker, I sat and listened to the debate most of the evening, and I have heard on a number of occasions that our property taxes, with the Scavello amendment included in this legislation, are going to reduce our property taxes by anywhere from 40 to 60 percent, and I am here to tell you that that is just completely not accurate.

The way we passed the constitutional amendment that provides for tax relief under the homestead exclusion allows us to reduce property taxes by 50 percent against the median assessed value of our properties. Now, I am going to give you an example in my home school district, which is Panther Valley School District, and a lot of you know Jim Thorpe School District, because I know you ski up in that area, and I am going to give you the two scenarios on how it works, and it is nowhere near 40 or 60 percent. So when you go back to your districts, you make sure you understand how it all works because you are not going to be giving your citizens 40 or 60 percent tax reductions.

Panther Valley School District, the median assessed value in my home school district is \$19,000. I live in the coal regions. Those homes are basically old A-frame coal company houses. The median assessed value, and the way you figure that, you take the number at the very top and you take the number at the very bottom and you do the calculation until you get to a median assessed value. Panther Valley School District – now, my house is assessed at a much higher value, and I will get into that number, too, and then you have people that have them at much lower values – Panther Valley's median assessed value is \$19,000. Under the law we passed, the constitutional amendment that we passed, 50 percent of that is what is excluded for taxation, which is \$9,500. So if you want a 100-percent reduction in your property taxes under this language, if your house was assessed at \$9,500, you are going to get 100 percent tax relief under the Scavello language. If your house is assessed at \$19,000, guess what? You are going to get a true 50-percent tax reduction under the Scavello language, because you are going to take the 50 percent of the median value, Panther Valley School District, the median assessed value is \$19,000, 50 percent of which is what is exempt for the homestead exclusion. That is what goes against your property tax bill. My house is assessed at \$190,000, I guess, because we pay 50 percent of the assessed value. I get, out of that \$90,000

assessed value of my house, I get \$9,500 taken off of my tax bill. It is a 1-percent tax reduction for me, 1 percent.

Now, in Panther Valley School District, if your home is assessed again at \$19,000, you are going to truly get a 50-percent tax reduction, and that is not going to be for many of the people in my district, in Panther Valley School District. So 1 percent for me, based on his numbers, just based on his numbers alone. The total budget in Panther Valley School District is \$17 million, \$13 million of which is what the locals pay. We get \$4 million from the State. Thirteen million dollars is what is raised with local taxation.

Under his language where he is saying that we are going to get a full 42.3-percent property tax reduction, we are actually going to get 12 percent, if you based it on, at that whole number, based on \$1,667,000 being driven into my school district. If I get the full \$3 billion or the \$2.3 million, it will be, for the whole entire school district, an 18-percent reduction, not a 60-percent reduction.

Now, let us go to Jim Thorpe School District. Jim Thorpe School District, a lot of people who live up on the mountain, Penn Forest Township, where the ski areas are, there are a lot of new homes up there. The median assessed value in that school district is \$44,000, which means by the law we passed and that our constituents voted on for the constitutional change, means that of that \$44,000 of the median assessed value in Jim Thorpe School District, \$22,000 is what is the 50-percent exclusion under the property tax exclusion. It means if you have a house for \$100,000, that is assessed at \$100,000, you are going to get \$100,000 minus \$22,000. It is going to be based on \$78,000, is what your house is going to be taxed on. That is not a 50- or a 60-percent tax reduction.

Now, I will give you this: I will say that I think this is a tremendous start. All of us want to reduce property taxes. As a matter of fact, if I had my druthers and if I could get all the heads together, I would have them reduced almost 100 percent. But the reality is that if you are going to go back, and I hope the members on my side of the aisle at least listen to me, do not go back into your school districts and say you are going to be giving them 50 and 60 percent property tax reductions because it is not true. And the people that we are going to go back and sell it to, you better be very candid with them because they are going to come back to you and say, where is the 60-percent property tax reduction when, in fact, it is going to be much, much less than that.

So I am not voting for this because I just think with the amount of reductions and with the increase in the sales tax and the personal income tax, my people are probably going to end up paying more money. As much as I want to see tax reform happen, I do not think that this is the proper answer, and I am hoping that we get something that comes out of a conference committee that will truly, truly reduce property taxes in this Commonwealth.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Scavello.

Mr. SCAVELLO. Mr. Speaker, am I on final passage? If I am, I would like to be the last speaker, if possible.

The SPEAKER. The Chair sees the gentleman, Mr. Belfanti.

Mr. BELFANTI. Thank you, Mr. Speaker.

I guess you are betting that I am going to stand to rise in favor of this bill on final passage, but I am going to surprise

everyone and ask for a “no” vote. I wish people would reconsider what they did earlier with that very close vote.

This bill is wrong-headed. The moneys, we keep hearing, are going back to the school districts in 40 and 50 percent piles. School districts are innate objects. We are hearing from our taxpayers that they want tax relief, and it is just not fair that residents of districts like mine and residents of districts up in the Poconos are going to be paying dollar for dollar the same rate in new taxes on these new items at 6 percent and the same increase in whatever PIT or EIT (earned income tax) or whatever else is in this legislation. It is just not fair. It is just not right.

I think Mr. McCall talked about coal mining towns originally built by the mining companies. They are row homes; they are old, but people take a lot of pride in them. But there are people in districts like mine and Keith’s that do live in a development that are paying \$4,000 a year or \$5,000 a year, and when they see \$216 as a maximum they can get just because of the school district they live in, not because of the house they live in, not because of what they spend in their buying power in the store, and not depending upon how much sales tax they are paying at the equivalent rate of every other member’s constituent in this room, there has to be a fairer and more equitable formula.

I was not real happy with what I read about the Senate plan, but at least in the Senate plan, if the taxes are raised locally, they stay in the local district. They are dispensed locally and the rate can be set by the constituents through their elected school district representatives. So I am asking that – and I do not believe this bill is going to see the light of day on the Senate floor; I do not know what reason we spent the past 6 or 7 or 8 hours debating it, what the rationale was on that – but I am asking people, look at that chart seriously and if your average is not \$900 in that middle column before gaming revenues kick in, if your average is not \$900, your constituents are going to be paying more in overall taxes than they are paying now, notwithstanding any major purchase, so any year they decide to buy that car, they are going to lose even more money.

Please reconsider your earlier vote and vote “no” on final passage at this time.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, for many Pennsylvanians this bill is one of the greatest tax increases in the history of this Commonwealth. For a few fortunate Pennsylvanians, this is a tax cut, but for me personally, for large numbers of my constituents, for large numbers of your constituents, this bill represents a tax increase. They are going to be paying more in taxes than they are going to save in property taxes.

Now, there is a lot of anger about property taxes out there. People want us to do something. They do not say, do anything. I have never heard anybody say, anything you do on property taxes is fine with me.

A former member of the House used to say that people say we have important problems and we have to do something about them, and this bill is something, we have to do something, and therefore we have to do this. This is not a good bill for many millions of Pennsylvanians. Many millions of Pennsylvanians are going to wind up paying higher taxes as a result of this piece of legislation.

For many people, Mr. Speaker, voting for this bill will be something they will hear about. They are not just going to hear

about it from happy constituents. They are going to hear about it night and day from unhappy constituents. They are going to read about it in their opponents' campaign brochures. They are going to hear it on the radio in their opponents' television commercials.

Passing this bill may well be the biggest political mistake people have ever made in this House of Representatives. This bill says that if you are among a very small group of lucky people who own a nice house in an affluent district, you will get a net tax reduction. If you own a nice house in a district that is not affluent, you do not get much of a tax reduction. If you do not own a nice house in a nonaffluent district, you do not get much of a tax reduction.

This is the most whimsical, most arbitrary system of tax reduction ever proposed in the history of Pennsylvania. This bill is a scandal. It is an embarrassment. Mr. Scavello may win reelection after passing this bill, but not everybody in the House will.

I strongly urge this bill be defeated.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Scavello.

Mr. SCAVELLO. Mr. Speaker, first of all, this bill has nothing to do with reelection. This bill has to do with addressing an issue that our school property taxes in this State need to be adjusted. Our property owners need to be helped.

If you look at the sheets, the printouts that were given out, every school district is treated the same. How can we give you a property tax reduction of more than what you are putting into the pie? The last three speakers keep talking about what they are getting. It is what they are paying that they need to be looking at. How can you compare yourselves to another school district? And if you look at these charts, every school district in the State is going to get at least, at least 40 percent more than what they have gotten in the past to fund public education. How much more can we ask for?

I ask the members for an affirmative vote. Thank you.

On the question recurring,

Shall the bill pass finally?

The SPEAKER. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS—103

Allen	Evans, J.	Levdansky	Reichley
Argall	Feese	Mackereth	Rooney
Armstrong	Fichter	Maher	Ross
Baker	Fleagle	Maitland	Santoni
Baldwin	Flick	Major	Sather
Barrar	Freeman	Marsico	Saylor
Bastian	Gabig	McGill	Scavello
Benninghoff	Geist	McIlhattan	Schroder
Beyer	Gillespie	McIlhinney	Semmel
Birmelin	Gingrich	McNaughton	Siptroth
Boyd	Godshall	Micozzie	Smith, S. H.
Bunt	Good	Millard	Solobay
Buxton	Grell	Miller, R.	Sonney
Caltagirone	Grucela	Miller, S.	Stairs
Cappelli	Gruitza	Nailor	Stevenson, T.
Causar	Habay	Nickol	Taylor, E. Z.
Civera	Hanna	Payne	Taylor, J.
Cornell	Harhart	Petrone	Tigue
Crahalla	Harris	Pickett	True
Creighton	Hasay	Pistella	Turzai

Curry	Hennessey	Pyle	Walko
Dally	Herman	Quigley	Watson
DeLuca	Hershey	Rapp	Wilt
Denlinger	Hickernell	Raymond	Wright
Diven	Kauffman	Readshaw	Yudichak
Ellis	Keller, M.	Reed	

NAYS—92

Adolph	Fairchild	Mann	Samuelson
Bebko-Jones	Forcier	Markosek	Shapiro
Belardi	Frankel	McCall	Staback
Belfanti	Gannon	McGeehan	Steil
Biancucci	George	Melio	Stern
Bishop	Gerber	Metcalfe	Stetler
Blackwell	Gergely	Mustio	Stevenson, R.
Blaum	Goodman	Myers	Sturla
Butkovitz	Harhai	O'Brien	Surra
Casorio	Harper	Oliver	Tangretti
Cawley	Hess	O'Neill	Thomas
Clymer	Hutchinson	Parker	Veon
Cohen	James	Petrarca	Vitali
Corrigan	Josephs	Petri	Wansacz
Costa	Keller, W.	Phillips	Waters
Cruz	Kenney	Preston	Wheatley
Daley	Killion	Ramaley	Williams
Dermody	Kirkland	Roberts	Yewcic
DeWeese	LaGrotta	Roebuck	Youngblood
DiGirolamo	Leach	Rohrer	Zug
Donatucci	Lederer	Rubley	
Eachus	Leh	Ruffing	
Evans, D.	Lescovitz	Sainato	Perzel, Speaker
Fabrizio	Manderino		

NOT VOTING—0

EXCUSED—8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk return the same to the Senate with the information that the House has passed the same with amendment in which the concurrence of the Senate is requested.

RULES SUSPENDED

The SPEAKER. The Chair recognizes the gentleman, Mr. Fairchild.

Mr. FAIRCHILD. Mr. Speaker, I move that the rules of the House be immediately suspended for HB 1068.

On the question,

Will the House agree to the motion?

The following roll call was recorded:

YEAS—194

Adolph	Fabrizio	Levdansky	Ross
Allen	Fairchild	Mackereth	Rubley
Argall	Feese	Maher	Ruffing
Armstrong	Fichter	Maitland	Sainato
Baker	Fleagle	Major	Samuelson
Baldwin	Flick	Manderino	Santoni
Barrar	Forcier	Mann	Sather

Bastian	Frankel	Markosek	Saylor
Bebko-Jones	Freeman	Marsico	Scavello
Belardi	Gabig	McCall	Schroder
Belfanti	Gannon	McGeehan	Semmel
Benninghoff	Geist	McGill	Shapiro
Beyer	George	McIlhattan	Siptroth
Biancucci	Gerber	McIlhinney	Smith, S. H.
Birmelin	Gergely	McNaughton	Solobay
Bishop	Gillespie	Melio	Sonney
Blackwell	Gingrich	Metcalfe	Staback
Blaum	Godshall	Micozzie	Stairs
Boyd	Good	Millard	Steil
Bunt	Goodman	Miller, R.	Stern
Butkovitz	Grell	Miller, S.	Stetler
Buxton	Grucela	Mustio	Stevenson, R.
Caltagirone	Gruitza	Myers	Stevenson, T.
Cappelli	Habay	Nailor	Sturla
Casorio	Hanna	Nickol	Surra
Causer	Harhai	O'Brien	Tangretti
Cawley	Harhart	Oliver	Taylor, E. Z.
Civera	Harper	O'Neill	Taylor, J.
Clymer	Harris	Parker	Thomas
Cohen	Hasay	Payne	Tigue
Cornell	Hennessey	Petrarca	True
Corrigan	Herman	Petri	Turzai
Costa	Hershey	Petrone	Veon
Crahalla	Hess	Phillips	Vitali
Creighton	Hickernell	Pickett	Walko
Cruz	Hutchinson	Pistella	Wansacz
Curry	James	Preston	Waters
Daley	Josephs	Pyle	Watson
Dally	Kauffman	Quigley	Wheatley
DeLuca	Keller, M.	Ramaley	Williams
Denlinger	Keller, W.	Rapp	Wilt
Dermody	Kenney	Raymond	Wright
DeWeese	Killion	Readshaw	Yewcic
DiGiroloamo	Kirkland	Reed	Youngblood
Diven	LaGrotta	Reichley	Yudichak
Donatucci	Leach	Roberts	Zug
Ellis	Lederer	Roebuck	
Evans, D.	Leh	Rohrer	Perzel,
Evans, J.	Lescovitz	Rooney	Speaker

NAYS-1

Eachus

NOT VOTING-0

EXCUSED-8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

BILL ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 1068, PN 2955**, entitled:

An Act amending Title 51 (Military Affairs) of the Pennsylvania Consolidated Statutes, further providing for association group life insurance for Pennsylvania National Guard.

On the question,
Will the House agree to the bill on third consideration?

Mr. FAIRCHILD offered the following amendment No. **A05178**:

Amend Title, page 1, line 3, by striking out "Pennsylvania National Guard." and inserting

eligible members of the armed forces of the United States or its reserve component.

Amend Sec. 1 (Sec. 3105), page 3, lines 16 and 17, by striking out "RESERVE COMPONENT OF THE UNITED STATES ARMED FORCES" and inserting

armed forces of the United States or its reserve component

Amend Sec. 1 (Sec. 3105), page 3, line 28, by striking out "RESERVE COMPONENT OF THE UNITED STATES ARMED FORCES" and inserting

armed forces of the United States or its reserve component

Amend Sec. 1 (Sec. 3105), page 4, lines 22 and 23, by striking out "RESERVE COMPONENT OF THE UNITED STATES ARMED FORCES" and inserting

armed forces of the United States or its reserve component

Amend Sec. 1 (Sec. 3105), page 4, lines 24 and 25, by striking out "RESERVE COMPONENT OF THE UNITED STATES ARMED FORCES" and inserting

armed forces of the United States or its reserve component

On the question,
Will the House agree to the amendment?

The following roll call was recorded:
YEAS-195

Adolph	Fabrizio	Levdansky	Ross
Allen	Fairchild	Mackereth	Rubley
Argall	Feeze	Maher	Ruffing
Armstrong	Fichter	Maitland	Sainato
Baker	Fleagle	Major	Samuelson
Baldwin	Flick	Manderino	Santoni
Barrar	Forcier	Mann	Sather
Bastian	Frankel	Markosek	Saylor
Bebko-Jones	Freeman	Marsico	Scavello
Belardi	Gabig	McCall	Schroder
Belfanti	Gannon	McGeehan	Semmel
Benninghoff	Geist	McGill	Shapiro
Beyer	George	McIlhattan	Siptroth
Biancucci	Gerber	McIlhinney	Smith, S. H.
Birmelin	Gergely	McNaughton	Solobay
Bishop	Gillespie	Melio	Sonney
Blackwell	Gingrich	Metcalfe	Staback
Blaum	Godshall	Micozzie	Stairs
Boyd	Good	Millard	Steil
Bunt	Goodman	Miller, R.	Stern
Butkovitz	Grell	Miller, S.	Stetler
Buxton	Grucela	Mustio	Stevenson, R.
Caltagirone	Gruitza	Myers	Stevenson, T.
Cappelli	Habay	Nailor	Sturla
Casorio	Hanna	Nickol	Surra
Causer	Harhai	O'Brien	Tangretti
Cawley	Harhart	Oliver	Taylor, E. Z.
Civera	Harper	O'Neill	Taylor, J.
Clymer	Harris	Parker	Thomas
Cohen	Hasay	Payne	Tigue
Cornell	Hennessey	Petrarca	True
Corrigan	Herman	Petri	Turzai
Costa	Hershey	Petrone	Veon
Crahalla	Hess	Phillips	Vitali
Creighton	Hickernell	Pickett	Walko
Cruz	Hutchinson	Pistella	Wansacz
Curry	James	Preston	Waters
Daley	Josephs	Pyle	Watson

Dally	Kauffman	Quigley	Wheatley
DeLuca	Keller, M.	Ramaley	Williams
Denlinger	Keller, W.	Rapp	Wilt
Dermody	Kenney	Raymond	Wright
DeWeese	Killion	Readshaw	Yewcic
DiGirolamo	Kirkland	Reed	Youngblood
Diven	LaGrotta	Reichley	Yudichak
Donatucci	Leach	Roberts	Zug
Eachus	Lederer	Roebuck	
Ellis	Leh	Rohrer	Perzel,
Evans, D.	Lescovitz	Rooney	Speaker
Evans, J.			

NAYS-0

NOT VOTING-0

EXCUSED-8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,
Will the House agree to the bill on third consideration as amended?
Bill as amended was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.
The question is, shall the bill pass finally?
Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS-195

Adolph	Fabrizio	Levdansky	Ross
Allen	Fairchild	Mackereth	Rubley
Argall	Feese	Maher	Ruffing
Armstrong	Fichter	Maitland	Sainato
Baker	Fleagle	Major	Samuelson
Baldwin	Flick	Manderino	Santoni
Barrar	Forcier	Mann	Sather
Bastian	Frankel	Markosek	Saylor
Bebko-Jones	Freeman	Marsico	Scavello
Belardi	Gabig	McCall	Schroder
Belfanti	Gannon	McGeehan	Semmel
Benninghoff	Geist	McGill	Shapiro
Beyer	George	McIlhattan	Siptroth
Bianucci	Gerber	McIlhinney	Smith, S. H.
Birmelin	Gergely	McNaughton	Solobay
Bishop	Gillespie	Melio	Sonney
Blackwell	Gingrich	Metcalfe	Staback
Blaum	Godshall	Micozzie	Stairs
Boyd	Good	Millard	Steil
Bunt	Goodman	Miller, R.	Stern
Butkovitz	Grell	Miller, S.	Stetler
Buxton	Grucela	Mustio	Stevenson, R.
Caltagirone	Gruitza	Myers	Stevenson, T.
Cappelli	Habay	Nailor	Sturla
Casorio	Hanna	Nickol	Surra
Causar	Harhai	O'Brien	Tangretti
Cawley	Harhart	Oliver	Taylor, E. Z.
Civera	Harper	O'Neill	Taylor, J.
Clymer	Harris	Parker	Thomas

Cohen	Hasay	Payne	Tigue
Cornell	Hennessey	Petrarca	True
Corrigan	Herman	Petri	Turzai
Costa	Hershey	Petrone	Veon
Crahalla	Hess	Phillips	Vitali
Creighton	Hickernell	Pickett	Walko
Cruz	Hutchinson	Pistella	Wansacz
Curry	James	Preston	Waters
Daley	Josephs	Pyle	Watson
Dally	Kauffman	Quigley	Wheatley
DeLuca	Keller, M.	Ramaley	Williams
Denlinger	Keller, W.	Rapp	Wilt
Dermody	Kenney	Raymond	Wright
DeWeese	Killion	Readshaw	Yewcic
DiGirolamo	Kirkland	Reed	Youngblood
Diven	LaGrotta	Reichley	Yudichak
Donatucci	Leach	Roberts	Zug
Eachus	Lederer	Roebuck	
Ellis	Leh	Rohrer	Perzel,
Evans, D.	Lescovitz	Rooney	Speaker
Evans, J.			

NAYS-0

NOT VOTING-0

EXCUSED-8

Haluska	Mundy	Rieger	Smith, B.
Kotik	Pallone	Shaner	Wojnaroski

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.
Ordered, That the clerk present the same to the Senate for concurrence.

VOTE CORRECTIONS

The SPEAKER. Mr. Petri, for what purpose—
Mr. PETRI. Thank you, Mr. Speaker.
On amendment A5350 to SB 854, I would like to be recorded in the negative, and on final passage of SB 854, I would like to be recorded in the affirmative. Thank you.
The SPEAKER. The Chair thanks the gentleman. The gentleman's remarks will be spread across the record.
The gentleman, Mr. Boyd.
Mr. BOYD. Thank you, Mr. Speaker.
On amendment A5415 I was recorded in the affirmative. I would like to be recorded in the negative. Thank you, Mr. Speaker.
The SPEAKER. The Chair thanks the gentleman.
The Chair recognizes the gentleman, Mr. Micozzie.
Mr. MICOZZIE. Mr. Speaker, on final passage of SB 854, I would like to be recorded as a "no" vote. Thank you.
The SPEAKER. The gentleman's remarks will be spread across the record.

RECESS

The SPEAKER. This House stands in recess to the call of the Chair.

AFTER RECESS

The time of recess having expired, the House was called to order.

BILLS AND RESOLUTIONS PASSED OVER

The SPEAKER. Without objection, any remaining bills and resolutions on today's calendar will be passed over. The Chair hears no objection.

RECESS

The SPEAKER. The Chair recognizes the gentleman from Washington, Mr. Daley.

Mr. DALEY. Mr. Speaker, I move that this House do now recess until Tuesday, January 3, 2006, at 12 m., e.s.t., unless sooner recalled by the Speaker.

On the question,

Will the House agree to the motion?

Motion was agreed to, and at 11:59 a.m., e.s.t., Tuesday, January 3, 2006, the House recessed.