

TAX REFORM CODE OF 1971 - OMNIBUS AMENDMENTS

Act of Oct. 18, 2006, P.L. 1149, No. 119

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Session of 2006

No. 2006-119

SB 993

AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," further providing, in sales and use tax, for assessment, for reassessment, for review by Board of Finance and Revenue, for appeal to Commonwealth Court, for refund of sales tax attributed to bad debt, for refund or credit for overpayment, for restriction on refunds, for refunds, for refund petition, for review by Board of Finance and Review, for appeal to Commonwealth Court and for extended time for filing special petition for refund; further providing, in personal income tax, for assessment, for jeopardy assessments, for procedure for reassessment, for review by Board of Finance and Revenue, for appeal to Commonwealth Court, for restrictions on refunds and for limitations on refund or credit; further providing, in corporate net income tax, for definitions and for reports and payment of tax; for changes made by Federal Government, for settlement and resettlement and for enforcement relating to corporate net income tax; providing, in corporate net income tax, for assessments, for jeopardy assessments, for limitations on assessments, for extension of limitation period, for audit by Auditor General and for collection; further providing, in gross receipts tax, for imposition; further providing, in realty transfer tax, for determination and notice, for lien and for refunds; further providing, in mutual thrift institutions tax, for imposition and report; providing, in malt beverage tax, for assessment by department; providing for procedure and administration; further providing, in general provisions, for estimated tax, for underpayment, for refund petitions and for timely filing; and providing, in general provisions, for assessments to be made by department.

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

Section 1. Sections 230, 232 and 234 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, are amended to read:

Section 230. 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 article. **A notice of assessment and demand for payment shall be mailed by certified mail to the taxpayer. The notice shall set forth the basis of the assessment.**

Section 232. Reassessment.--Any taxpayer against whom an assessment is made may petition the department for a reassessment pursuant to Article XXVII. [Notice of an intention to file such a

petition shall be given to the department within thirty days of the date the notice of assessment was mailed to the taxpayer, except that the department for due cause may accept such notice within ninety 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 thirty days after receipt of the taxpayer's notice of intention to file a petition for reassessment. A petition for reassessment shall thereafter be filed within thirty days after such 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 therein 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 such extension exceed one hundred twenty days. The department shall hold such hearings as may be necessary for the purpose, at such times and places as it may determine, and each taxpayer who has duly filed such petition for reassessment shall be notified by the department of the time when, and the place where, such hearing in his case will be held.

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 such petition and mail notice of the department's decision to the petitioner: Provided, however, That the taxpayer and the department may, by stipulation, extend such disposal time by not more than six additional months.

Section 234. Review by Board of Finance and Revenue.--Within sixty 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 232 shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within one hundred twenty days of the date prior to which the department should have mailed to the petitioner its notice of decision. 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. 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.]

Section 2. Section 235 of the act, amended December 3, 1975 (P.L.476, No.140) and repealed in part April 28, 1978 (P.L.202, No.53), is amended to read:

[Section 235. 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.]

Section 3. Section 247.1(a) of the act, amended June 22, 2001 (P.L.353, No.23), is amended to read:

Section 247.1. Refund of Sales Tax Attributed to Bad Debt.--(a)
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 **under Article XXVII** within the time limitations prescribed by section 3003.1 of this act.

* * *

Section 4. Sections 250 and 251 of the act are amended to read:

[Section 250. 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 act on the part of the person who made the overpayment, and shall refund any balance to such person.

Section 251. Restriction on Refunds.--No refund shall be made under section 250 without the approval of the Board of Finance and Revenue.]

Section 5. Section 252 of the act, amended April 23, 1998 (P.L.239, No.45), is amended to read:

Section 252. Refunds.--The department shall, pursuant to the provisions of [sections 253 and 254] **Article XXVII**, refund all taxes, interest and penalties paid to the Commonwealth under the provisions of this article and to which the Commonwealth is not rightfully entitled. Such refunds shall be made to the person, his heirs, successors, assigns or other personal representatives, who actually paid the tax: Provided, That 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 [232 of this article] **2702 of Article XXVII** to the extent that said petition has been determined adversely to the taxpayer by a decision which is no longer subject to further review or appeal: Provided further, That 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.

Section 6. Section 253 of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

Section 253. Refund Petition.--(a) Except as provided for in section 256 and in subsection (b) [and (d)] of this section, the refund or credit of tax, interest or penalty provided for by section 252 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. Such 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 therein are true and correct. The department may hold such hearings as may be necessary for the purpose at such times and places as it may determine, and each person who has duly filed a refund petition shall be notified by the department of the time when, and the place where, such hearing in his case will be held.] **Article XXVII within the time limits of section 3003.1.**

(b) A refund or credit of tax, interest or penalty, paid as a result of an assessment made by the department under section 231, 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)] **Article XXVII within the time limits of section 3003.1.** 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) It shall be the duty of the department, within six months after receiving a petition for refund, to dispose of the issue raised by such petition, and mail notice of the department's decision to the petitioner: Provided, however, That the taxpayer and the department may, by stipulation, extend such disposal time by not more than six additional months.]

(d) Notwithstanding any other provision of this section where any tax, interest or penalty has been paid under a provision of this article 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. 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.]

Section 7. Section 254 of the act, amended June 30, 1995 (P.L.139, No.21), is amended to read:

[Section 254. Review by Board of Finance and Revenue.--Within ninety 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 253, 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 253 shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within one hundred twenty 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 shall give notice of its action to the department and to the petitioner.]

Section 8. Section 255 of the act, amended December 3, 1975 (P.L.476, No.140) and repealed in part April 28, 1978 (P.L.202, No.53), is amended to read:

[Section 255. Appeal to the Commonwealth Court.--Any person aggrieved by the decision of the Board of Finance and Revenue under section 254, 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.]

Section 9. Section 256 of the act is amended to read:

Section 256. 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.] **timely file a petition pursuant to section 3003.1 of Article XXX.** The provisions of [sections 253, 254 and 255] **Article XXVII** 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, as such, this section shall be construed as extending right beyond that provided for by section 253, and not to limit such other section.

Section 10. Sections 338, 339, 340 and 341 of the act, added August 31, 1971 (P.L.362, No.93), are amended to read:

Section 338. Assessment.--(a) The department is authorized and required to make the inquiries, determinations and assessments of all taxes imposed by this article.

(b) 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) In the event that any taxpayer fails to file a return required by this article, 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 ninety days after a notice of such estimated assessment has been mailed to the taxpayer, unless within such period the taxpayer has filed a petition for reassessment in the manner prescribed by [section 340 of this article.] **Article XXVII.**

(d) A notice of assessment issued by the department pursuant to this article shall be mailed by certified mail to the taxpayer. The notice shall set forth the basis of the assessment.

Section 339. 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 the State or to remove his property therefrom or to conceal himself or his property therein, 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 such proceedings be brought without delay, the department shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such 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, 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 [340] **2702** 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, Hearing. If the taxpayer has so requested in his petition, the department shall grant him or his 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 thereon. Its decision as to the validity of the jeopardy assessment shall be final, unless the taxpayer within ninety days after notification of the department's decision files a petition for review authorized under section [341] **2704**.

(g) Jeopardy Assessments, 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.

Section 340. Procedure for Reassessment.--[Promptly after the date of an assessment by the department, the department shall send by mail a copy thereof to the person against whom it was made. Within ninety days after the date upon which the copy of any such assessment was mailed, such person may file with the department a petition for reassessment of such tax. Every petition for reassessment shall state specifically the reasons which the petitioner believes entitled him 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 therein are true. It shall be the duty of the department, within six months after receiving a petition for reassessment, to dispose of such petition for reassessment. Notice of the action taken upon any petition for reassessment shall be given to the petitioner promptly thereafter.]
Any taxpayer against whom an assessment is made may petition the department for a reassessment pursuant to Article XXVII.

[Section 341. Review by Board of Finance and Revenue.--Within ninety 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 such action. The failure of the department to notify the petitioner of a decision

within the six-months period provided for by section 340 shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within one hundred twenty days after written notice is mailed to petitioner that the department has failed to dispose of the petition within the six-months period prescribed by section 340. Every petition for review filed hereunder shall state specifically the reasons upon which the petitioner relies, or shall incorporate by reference the petition for reassessment in which such reasons shall have been stated. The petition shall be supported by affidavit that it is not made for the purpose of delay and that the facts therein set forth are true. The Board of Finance and Revenue shall act in disposition of such petitions filed with it within six months after they have been received, and in the event of failure of said board to dispose of any such 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 such 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.]

Section 11. Section 342 of the act, amended December 3, 1975 (P.L.476, No.140) and repealed in part April 28, 1978 (P.L.202, No.53), is amended to read:

[Section 342. Appeal to the 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 said board in tax cases.]

Section 12. Section 347 of the act, amended July 1, 1985 (P.L.78, No.29), is amended to read:

Section 347. Restrictions on Refunds.--[No] **A** credit or refund [shall] **may** be made under section 346 [without the approval of the Board of Finance and Revenue, except such credits or refunds as arise]:

(1) By reason of the overpayment of an installment of estimated tax;

(2) Upon reassessment [or upon];

(3) **Upon** the filing of a final return or amended final return showing any overpayment of tax.

Section 13. Section 350 of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

Section 350. Limitations on Refund or Credit.--Any application for refund must be filed with the department under **Article XXVII within the time limits of** section 3003.1.

Section 14. Section 401 of the act is amended by adding a clause to read:

Section 401. Definitions.--The following words, terms, and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

(7) **"Determination." The ascertainment of tax liability. The term includes a redetermination.**

Section 15. Section 403 of the act, amended September 9, 1971 (P.L.437, No.105), June 23, 1982 (P.L.610, No.172), July 1, 1985 (P.L.78, No.29) and August 4, 1991 (P.L.97, No.22), is amended to read:

Section 403. Reports and Payment of Tax.--(a) [For the purpose of ascertaining the amount of tax payable under this article, it] **It** shall be the duty of every corporation, liable to pay tax under this article, on or before April 15, 1972, and each year thereafter, to transmit to the department, upon a form prescribed[, prepared

and furnished] by the department, an annual report under oath or affirmation of its president, vice-president [or other principal officer, and of its], treasurer [or], assistant treasurer **or other authorized officers** of net income taxable under the provisions of this article. Such report shall set forth:

(1) A true copy of its return to the Federal Government of the annual taxable income arising or accruing in the calendar or fiscal year next preceding, or such part or portions of said return, as the department may designate;

(2) If no return was filed with the Federal Government the report made to the department shall show such information as would have been contained in a return to the Federal Government had one been made; and

(3) Such other information as the department may require. Upon receipt of the report, the department shall promptly forward to the Department of State, the names of the president, vice-president, secretary and treasurer of the corporation and the complete street address of the principal office of the corporation for inclusion in the records of the Department of State relating to corporation.

(b) [For the purpose of ascertaining the amount of tax payable under this article for the taxable year 1971, and each taxable year thereafter, it shall be the duty of every corporation liable to pay tax under this article, on or before April 30, 1971, and on or before the end of the fourth month after the close of its previous fiscal year for fiscal year taxpayers, and each year thereafter, to transmit in like form and manner an additional tentative report and make payment pursuant to the provisions of section 3003:

Provided, That in making such report and payment for the calendar year 1971 and each year thereafter and for fiscal years commencing during the calendar year 1971, and each year thereafter the tax base from the immediate prior year, upon which the tentative tax computation is to be made under said section 3003, shall be computed as if the tax base for such immediate prior year had been determined under the applicable provisions of the act of March 4, 1971 (Act No.2). For taxable years commencing with calendar year 1986 and for each taxable year through taxable year 1991, corporations shall not report and pay tentative tax on account of the corporate net income tax, but shall, on or before April 15 for calendar year taxpayers and on or before the fifteenth day of the fourth month of the fiscal year for fiscal year taxpayers, report and pay estimated corporate net income tax pursuant to section 3003.2 of this act: Provided, however, That tentative tax on account of any other tax which is imposed as the result of the adoption by reference of this part or section shall continue to be imposed.

For taxable years commencing on or after January 1, 1992, corporations shall report and pay estimated tax pursuant to section 3003.2 on or before March 15 for calendar year taxpayers and on or before the fifteenth day of the third month for fiscal year taxpayers.] **It shall be the duty of each corporation liable to pay tax under this article to pay estimated tax under section 3003.2 and to make final payment of tax due for the taxable year with the annual report required by this section.**

(c) The amount of all taxes, imposed under the provisions of this article, not paid on or before the times as above provided, shall bear interest as provided in section 806 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," from the date they are due and payable until paid, except that if the taxable income has been, or is increased by the Commissioner of Internal Revenue, or by any other agency or court of the United States, interest shall be computed on the additional tax due from thirty days after the corporation receives notice of the change of income until paid: Provided, however, That any corporation may pay the full amount of such tax, or any part thereof, together with interest

due to the date of payment, without prejudice to its right to present and prosecute [a petition for resettlement, a petition for review], **an administrative petition** or an appeal to court. If it be thereafter determined that such taxes were overpaid, the department shall enter a credit to the account of such corporation, which may be used by it in the manner prescribed by law.

(d) If the officers of any corporation shall neglect, or refuse to make any report as herein required, or shall knowingly make any false report, the following percentages of the amount of the tax shall be added by the department to the tax determined to be due on the first one thousand dollars (\$1,000) of tax ten per cent, on the next four thousand dollars (\$4,000) five per cent, and on everything in excess of five thousand dollars (\$5,000) one per cent, no such amounts added to the tax shall bear any interest whatsoever.

(e) If any corporation closes its fiscal year not upon December 31, but upon some other date, and reports to the Federal Government as of such other date, or would so report were it to make a return to the Federal Government, such corporation shall certify such fact to the department, and shall make the annual report, herein required, within thirty days after the return to the Federal Government is due, or would be due were it to be required of such corporation, subject in all other respects to the provisions of this article. [The tentative report required of such corporation shall be due not later than four months after the end of the next preceding fiscal year.]

(f) If the corporation shall claim in its report that the return made to the Federal Government was inaccurate, the amount claimed by it to be the taxable income, taxable under this article, and the basis of such claim of inaccuracy, shall be fully specified.

Section 16. Section 406 of the act, amended September 9, 1971 (P.L.437, No.105), is amended to read:

Section 406. Changes Made by Federal Government.--(a) If the amount of the taxable income, as returned by any corporation to the Federal Government, is finally changed or corrected by the Commission of Internal Revenue or by any other agency or court of the United States, such corporation, within thirty days after the receipt of such final change or correction, shall make a [corrected] report **of change**, under oath or affirmation, to the department showing such finally changed or corrected taxable income, upon which the tax is required to be paid to the United States. In case a corporation fails to file a report of [such correction] **change**, which results in an increase in taxable income within the time prescribed, there shall be added to the tax, a penalty of five dollars (\$5) for every day during which such corporation is in default, but the department may abate any such penalty in whole or in part.

(b) If, as a result of such final change or correction, [there should be] **a corporation should report** any change [made] in the amount of the taxable income of any corporation upon which tax is imposed by this article, the department shall **adjust the corporation's tax on the department's records to conform to the revised tax as reported and shall credit the taxpayer's account to the extent of any overpayment resulting from the adjustment. The department shall then** have the power, and its duty shall be, to [resettle such taxes. Whenever a resettlement shall have been made hereunder, the department shall resettle the account according to law, and shall credit or charge, as the case may be, the amount resulting from such resettlement upon the current accounts of the corporation with which it is made. The resettlement shall be subject to audit and approval by the Department of the Auditor General, as in the case of original settlements, and in case of the failure of the two departments to agree, the resettlement shall be submitted

to the Board of Finance and Revenue, as in the case of original settlements.] **determine and assess the taxpayer's unpaid and unreported liability for tax, interest or penalty due the Commonwealth, or to credit the taxpayer's account.**

(c) Where a report of change, [correction, or redetermination] of Federal income, or Federal tax, has been filed after [a petition for review, or] an **administrative or judicial** appeal has been taken, [such] **the** report shall be deemed a part of the original annual report upon petition of the taxpayer at any subsequent proceeding as though it had been filed with [such] **the** original report, and no separate [petition for review or] appeal from [the resettlement] **an assessment** resulting from [such] **the** report of change, correction, or redetermination shall be necessary **to the extent the identical issues for the taxable year have been raised in the appeal.**

(d) The provisions of this section shall not be construed so as to permit [a resettlement] **an assessment** based upon the allowance of any deduction on account of net operating losses, sustained in other fiscal or calendar years, that are not allowed as deductions under the definition of "taxable income" as contained in this article.

(e) The provisions of this section shall apply to every corporation which was doing business in Pennsylvania in the year for which the Federal income has been changed, irrespective of whether or not such corporation has thereafter merged, consolidated, withdrawn or dissolved. Any clearance certificate issued by the department shall be conditioned upon the requirement that in the event of a change in Federal income for any year for which taxes have been paid to the Commonwealth, the corporation or its successor or its officers or its directors shall file with the department a report of change and pay any additional State tax resulting therefrom.

Section 17. The heading of Part IV of Article IV of the act is amended to read:

PART IV
[SETTLEMENT AND RESETTLEMENT]
ASSESSMENT AND COLLECTION OF TAX

Section 18. Section 407 of the act is amended by adding a subsection to read:

Section 407. Settlement and Resettlement.--* * *

(e.1) This section applies to settlements mailed by the department prior to January 1, 2008.

Section 19. The act is amended by adding sections to read:

Section 407.1. Assessments.--(a) If the department determines that unpaid or unreported tax is due the Commonwealth, the department shall issue an assessment under this section and sections 407.2, 407.3, 407.4 and 407.5. Such an assessment is not subject to the settlement procedure in the act of April 9, 1929 (P.L.343, No.176) , known as The Fiscal Code.

(b) A notice of assessment and demand for payment shall be mailed by certified mail to the taxpayer. The notice shall set forth the basis of the assessment. The assessment shall be paid to the department upon receipt of the notice of assessment. Payment of the assessment shall be without prejudice to the right of the taxpayer to file a petition for reassessment in the manner prescribed by Article XXVII.

(c) In the event that a taxpayer fails to file a report for a tax governed by this article, the department may issue an estimated assessment based upon the records and information available or that may come into the department's possession. If prior to the filing of a report the department estimates that additional unpaid or

unreported tax is due the Commonwealth, the department may issue additional estimated assessments.

(d) A notice of estimated assessment and demand for payment shall be mailed by certified mail to the taxpayer. The assessment shall be paid to the department upon receipt of the notice of assessment. Payment of the estimated assessment does not eliminate the taxpayer's obligation to file a report.

(e) A taxpayer shall have no right to petition for reassessment, petition for refund or otherwise appeal a notice of estimated assessment except as provided in subsection (f).

(f) The department shall remove an estimated assessment within ninety days of the filing of a report and other information required to determine the tax due the Commonwealth, whereupon the department may issue an assessment as provided in subsection (a). Any tax due the Commonwealth that is included in an estimated assessment shall retain its lien priority as of the date of the estimated assessment to the extent such amount is included with an assessment issued upon the review of the filed report.

Section 407.2. Jeopardy Assessments.--(a) If the department believes that the assessment or the collection of unpaid or unreported tax will be jeopardized in whole or in part by delay, it shall issue a jeopardy assessment.

(b) If the department believes that a taxpayer intends to depart from the Commonwealth, remove the taxpayer's property from the Commonwealth, conceal himself or property of the taxpayer from the Commonwealth, or to do any other act that may prejudice or render wholly or partly ineffectual any action to collect any tax for the prior or current tax periods unless the action is brought without delay, the department shall declare the current tax period of the taxpayer immediately terminated. In this case, the department shall issue a jeopardy assessment for the tax period declared terminated and for all prior tax periods, whether or not the time otherwise allowed by law for filing a report or paying the tax has expired.

(c) A notice of jeopardy assessment and demand for payment shall be mailed by certified mail to the taxpayer. The notice of jeopardy assessment shall include the amount of the bond or other security required to stay collection of the assessment.

(d) The jeopardy assessment shall be paid to the department upon receipt of the notice of jeopardy assessment. Payment of the jeopardy assessment does not eliminate the taxpayer's obligation to file a report. If prior to the filing of a report the department estimates that additional unpaid tax is due the Commonwealth, the department may issue additional jeopardy assessments or estimated assessments pursuant to section 407.1.

(e) A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once. The following apply:

(1) The collection of the whole or any amount of a jeopardy assessment may be stayed, at any time before the assessment becomes final, by filing with the department a bond or other security in such amounts as the department may deem necessary, not exceeding one hundred twenty per cent of the tax for which the stay is desired.

(2) Upon the filing of the bond or other security, the collection of the amount assessed that is covered by the bond or other security shall be stayed. The taxpayer shall have the right to waive the stay at any time in respect to the whole or any part of the amount covered by the bond or other security. If the taxpayer waives any part of the amount covered by the bond or other security, then the bond or other security shall be proportionately reduced upon payment of the amount waived. If any portion of the jeopardy assessment is abated, the bond or other security shall be proportionately reduced at the request of the taxpayer.

(f) (1) A taxpayer may prevent a jeopardy assessment from becoming final by filing a petition for reassessment with the department within thirty days after the mailing date of the notice of jeopardy assessment. The issues to be addressed in the review of the petition shall include:

(i) Whether the making of the jeopardy assessment is reasonable under the circumstances.

(ii) Whether the amount assessed as a result of the jeopardy assessment is appropriate under the circumstances.

(2) The department shall issue a decision and order disposing of a petition filed under paragraph (1) within sixty days after receipt of the petition. Notice of the department's decision and order disposing of the petition shall be mailed to the petitioner.

(3) A taxpayer may file a petition for review of the department's decision and order under paragraph (2) in Commonwealth Court within 30 days after the following:

(i) The mailing date of the department's notice of decision and order on a petition for reassessment of a jeopardy assessment.

(ii) If the petition is not disposed of by the department within sixty days after receipt, the sixtieth day following the date the petition was received by the department.

(4) If it is determined that the making of the jeopardy assessment is unreasonable or that the amount assessed is inappropriate, the assessment may be abated, the assessment may be redetermined in whole or in part, or the department or the taxpayer may be directed to take such other actions as may be appropriate.

(g) Any determination made pursuant to a petition for reassessment under this section shall be final and conclusive upon exhaustion of the appeal rights provided in this section and shall not be reviewed in any other proceeding.

(h) (1) In an action under this section involving the issue of whether the making of a jeopardy assessment is reasonable under the circumstances, the burden of proof in respect to such issue shall be upon the department.

(2) In an action under this section involving the issue of whether an amount assessed as a result of jeopardy assessment is appropriate under the circumstances, the burden of proof in respect to such issue shall be upon the taxpayer.

Section 407.3. Limitations on Assessments.--(a) Tax may be assessed within three years after the date the report is filed.

(b) Tax may be assessed at any time if a taxpayer fails to file a report required by law.

(c) Tax may be assessed at any time if the taxpayer files a false or fraudulent report with intent to evade tax imposed by the tax laws of this Commonwealth.

(d) If at any time within the time limitations specified in this section the department is not satisfied with its determination of the taxpayer's liability, the department may strike all, or any part of, a previously issued assessment or may issue additional assessments of tax.

(e) The department may, within three 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 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.

(f) For purposes of this section, a report filed before the last day prescribed for filing shall be deemed to have been filed on the last day.

Section 407.4. Extension of Limitation Period.--Notwithstanding section 407.3, where, before the expiration of the period prescribed in section 407.3, a taxpayer has consented in writing that such 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.

Section 407.5. Audit by Auditor General; Determination of Tax.--(a) The Department of the Auditor General shall have the power to do all of the following:

(1) Audit and approve all determinations by the department of tax liability as reported by the taxpayer, including determinations resulting from a field audit, prior to the department's issuance of a determination of the taxpayer's account.

(2) Review any tax report filed with the department, determine the amount of tax liability for the tax period covered by the report and issue to the department for concurrence a determination of tax liability for the tax period.

(3) Audit the procedures implemented by the department under this part for the determination of tax liability or the issuance of an assessment, refund or credit or other action taken by the department with regard to tax liability under this part.

(b) Upon the concurrence of the department and the Auditor General on the determination of tax liability under subsection (a)(1) or (2), the department shall issue an assessment under this article, a refund or a credit, under section 1108 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," or take other appropriate action.

(c) In case of the failure of the department and the Department of the Auditor General to agree on a determination of tax liability under subsection (a)(1) or (2) within four months, the matter shall be submitted to the Board of Finance and Revenue for decision. If the board fails to reach a decision within three months, the determination of the Department of Revenue shall automatically become valid. The decision of the Board of Finance and Revenue shall be implemented by the issuance of an assessment under this article, a refund or a credit, under section 1108 of "The Fiscal Code," or other appropriate action.

(d) The Secretary of Revenue and the Auditor General shall agree on the development and implementation of procedures for the automated determination of taxes that will facilitate the most efficient and productive use of the resources of their respective agencies required to adequately and reasonably ensure the proper collection of taxes.

(e) Nothing in this part shall limit any powers and duties conferred upon the Department of the Auditor General by statute, including the Constitution of Pennsylvania and Article IV of "The Fiscal Code."

Section 20. Section 408(b) of the act, amended June 23, 1982 (P.L.610, No.172), is amended to read:

Section 408. Enforcement; Rules and Regulations; Inquisitorial Powers of the Department.--* * *

(b) The department, or any agent authorized in writing by it, is hereby authorized to examine the books, papers, and records, and to investigate the character of the business of any corporation in order to verify the accuracy of any report made, or if no report was made by such corporation, to ascertain and [settle] **assess** the tax imposed by this article. Every such corporation is hereby directed and required to give to the department, or its duly authorized agent, the means, facilities, and opportunity for such examinations and investigations, as are hereby provided and authorized. Any information gained by the department, as a result of any returns, investigations, or verifications required to be made by this article, shall be confidential, except for official purposes, and any person divulging such information shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100) or more

than one thousand dollars (\$1,000) and costs of prosecution, or to undergo imprisonment for not more than six months, or both. Nothing in this section shall preclude the department from providing public information, as defined in section 403(a)(3), to other government units. Any identification number provided by the department to another governmental unit for governmental purposes shall continue to be confidential information.

* * *

Section 21. The act is amended by adding a section to read:

Section 408.1. Collection of Tax.--(a) The department shall collect the taxes imposed by this article in the manner provided by law for the collection of taxes imposed by the laws of this Commonwealth.

(b) The department may collect any tax:

(1) Immediately, in the case of any amount related to tax reported as due the Commonwealth by the taxpayer that is not paid by the due date for payment of the tax.

(2) After ninety days from the mailing date of a notice of assessment, if no petition for reassessment has been filed.

(3) After ninety days from the mailing date of the department's decision and order disposing of a petition for reassessment, if no petition for review has been filed.

(4) After thirty days from the mailing date of the decision and order of the Board of Finance and Revenue upon a petition for review or from the expiration of the board's time for acting upon such petition, if no decision has been made.

(5) Immediately, in all cases of judicial sales, receiverships, assignments or bankruptcies.

(6) Immediately, in the case of jeopardy assessments as provided by section 407.2.

(c) A taxpayer shall not be permitted to raise any defense to the department's collection of tax that might have been determined by the department, the Board of Finance and Revenue or the courts if the taxpayer had properly pursued its administrative remedies under this article.

Section 22. Section 1101(e) of the act, amended December 11, 1979 (P.L.499, No.107), is amended to read:

Section 1101. Imposition of Tax.--* * *

(e) Time to File Reports.--The time for filing annual reports may be extended, estimated [settlements] **assessments** may be made by the Department of Revenue if reports are not filed, and the penalties for failing to file reports and pay the taxes imposed under subsections (a) and (b) shall be as prescribed by the laws defining the powers and duties of the Department of Revenue. In any case where the works of any corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons are operated by another corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons, the taxes imposed under subsections (a) and (b) shall be apportioned between the corporations, companies, copartnerships, associations, joint-stock associations, limited partnerships, person or persons in accordance with the terms of their respective leases or agreements, but for the payment of the said taxes the Commonwealth shall first look to the corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons operating the works, and upon payment by the said company, corporation, copartnership, association, joint-stock association, limited partnership, person or persons of a tax upon the receipts, as herein provided, derived from the operation thereof, no other corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons shall be held liable for any tax imposed under subsections (a) and (b) upon the proportion

of said receipts received by said corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons for the use of said works.

* * *

Section 23. Section 1111-C of the act, amended July 2, 1986 (P.L.318, No.77) and July 7, 2005 (P.L.149, No.40), is amended to read:

Section 1111-C. [Determination] **Assessment** and Notice of Tax; Review.--(a) If any person shall fail to pay any tax imposed by this article for which he is liable, the department is hereby authorized and empowered to make [a determination] **an assessment** of additional tax and interest due by such person based upon any information within its possession or that shall come into its possession. All of such [determinations] **assessments** shall be made within three years after the date of the recording of the document, subject to the following:

(1) If the taxpayer underpays the correct amount of the tax by twenty-five per cent or more, the tax may be assessed at any time within six years after the date of the recording of the document.

(2) If any part of an underpayment of tax is due to fraud or an undisclosed, intentional disregard of rules and regulations, the full amount of the tax may be assessed at any time.

(b) Promptly after the date of such [determination] **assessment**, the department shall send by **certified** mail a copy thereof, **including the basis of the assessment**, to the person against whom it was made. [Within ninety days after the date upon which the copy of any such determination was mailed, such person may file with the department a petition for redetermination of such taxes. Every petition for redetermination shall state specifically the reasons which the petitioner believes entitle him to such redetermination, and it shall be supported by affirmation that it is not made for the purpose of delay and that the facts set forth therein are true. It shall be the duty of the department within six months after the date of filing of any petition for redetermination to dispose of the petition. Notice of the action taken upon any petition for redetermination shall be given to the petitioner promptly after the date of redetermination by the department.]

(c) Any person shall have the right to review by the Board of Finance and Revenue and appeal in the same manner and within the same time as provided by law in the case of capital stock and franchise taxes imposed upon corporations.] **Any taxpayer against whom an assessment is made may petition the department for a reassessment pursuant to Article XXVII.**

Section 24. Section 1112-C of the act, amended July 2, 1986 (P.L.318, No.77), is amended to read:

Section 1112-C. Lien.--(a) Any tax determined to be due by the department and remaining unpaid after demand for the same, and all penalties and interest thereon, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of such person but only after said lien has been entered and docketed of record by the prothonotary of the county where such property is situated.

(a.1) At any time after it makes [a determination] **an assessment** of additional tax, penalty or interest, the department may transmit to the prothonotaries of the respective counties certified copies of all liens for such taxes, penalties and interest, and it shall be the duty of each prothonotary receiving the lien to enter and docket the same of record in his office, which lien shall be indexed as judgments are now indexed. After the department's [determination] **assessment** becomes final, a writ of execution may directly issue upon such lien without the issuance and prosecution to judgment of a writ of scire facias: Provided, That not less than ten days before

issuance of any execution on the lien, notice shall be sent by certified mail to the taxpayer at his last known post office address. No prothonotary shall require as a condition precedent to the entry of such liens, the payment of any costs incident thereto.

(b) The lien imposed hereunder shall have priority from the date of its recording as aforesaid, and shall be fully paid and satisfied out of the proceeds of any judicial sale of property subject thereto before any other obligation, judgment, claim, lien or estate to which said 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 such 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 hereunder upon a lien or claim over which the lien imposed hereunder has priority, as aforesaid, such sale shall discharge the lien imposed hereunder to the extent only that the proceeds are applied to its payment, and such lien shall continue in full force and effect as to the balance remaining unpaid.

(c) The lien imposed hereunder shall continue for five years from the date of its entry of record, and may be renewed and continued in the manner now or hereafter provided for the renewal of judgments, or as may be provided in the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

Section 25. Section 1113-C of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

Section 1113-C. Refunds.--(a) Whenever the amount due upon [determination, redetermination] **assessment** or review is less than the amount paid to the department on account thereof, the department shall enter a credit in the amount of such difference to the account of the person who paid the tax.

(b) Where there has been no [determination] **assessment** of unpaid tax, the department shall have the power, and its duty shall be, to hear and decide any application for refund and, upon the allowance of such application, to enter a credit in the amount of the overpayment to the account of the person who paid the tax. Such application must be filed under [section 3003.1] **Article XXVII**.

Section 26. Section 1502(f) of the act, amended October 14, 1988 (P.L.737, No.106), is amended to read:

Section 1502. Imposition; Report and Payment of Tax; Exemptions.--* * *

(f) If any institution shall neglect or refuse to make any report required by this article, such institution shall be liable to a penalty of five thousand dollars (\$5,000), which shall be [settled] **assessed** in the same manner as the tax imposed by this article is [settled] **assessed**.

Section 27. Section 2005 of the act, added December 22, 1989 (P.L.775, No.110), is amended to read:

Section 2005. Assessment by Department.--(a) If any person shall fail to pay any tax imposed by this article for which he is liable, the department is hereby authorized and empowered to make an assessment of additional tax due by such person, based upon any information within its possession, or that shall come into its possession.

(b) Promptly after the date of such assessment, the department shall send by [registered] **certified** mail a copy of the assessment, **including the basis of the assessment**, to the person against whom it was made. Within ninety days after the date upon which the copy of any such assessment was mailed, such person may file with the department a petition for reassessment of such taxes. Every petition for reassessment shall state specifically the reasons which the petitioner believes entitle him 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 therein are true. It shall be the duty of the department, within six months after the date of any assessment, to dispose of any petition for reassessment. Notice of the action taken upon any petition for reassessment shall be given to the petitioner promptly after the date of reassessment by the department.

(c) Within [sixty] **ninety** 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 such assessment was made, may, by petition, request the Board of Finance and Revenue to review such action. Every petition for review filed hereunder shall state specifically the reason upon which the petitioner relies, or shall incorporate by reference the petition for reassessment in which such reasons shall have been stated. The petition shall be supported by affidavit that it is not made for the purpose of delay, and that the facts therein set forth are true. If the petitioner be a corporation, joint-stock association or limited partnership, the affidavit must be made by one of the principal officers thereof. A petition for review may be amended by the petitioner at any time prior to the hearing, as hereinafter provided. The Board of Finance and Revenue shall act finally in disposition of such petitions filed with it within six months after they have been received, and, in the event of the failure of said board to dispose of any such 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 such basis as it shall deem according to law and equity. Notice of the action of the Board of Finance and Revenue shall be given by mail, or otherwise, to the department and to the petitioner.

(d) 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.

(e) Whenever any assessment of additional tax is not paid within ninety days after the date of the assessment, if no petition for reassessment has been filed, or within [sixty] **ninety** days from the date of reassessment, if no petition for review has been filed, or within [sixty] **thirty** days from the date of the decision of the Board of Finance and Revenue upon a petition for review, or the expiration of the board's time for acting upon such petition, if no appeal has been made, and in all cases of judicial sales, receiverships, assignments or bankruptcies, the department may call upon the Office of Attorney General to collect such assessment. In such event, 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 department may also certify to the Liquor Control Board, for such action as the board may deem proper, the fact that any person has failed to pay or duly appeal from such assessment of additional tax. The department may also provide, adopt, promulgate and enforce such rules and regulations, as may be appropriate, to prevent further shipment or transportation of malt or brewed beverages into this Commonwealth by any person against whom such unpaid assessment shall have been made.

Section 28. The act is amended by adding an article to read:

ARTICLE XXVII

PROCEDURE AND ADMINISTRATION

Section 2701. Definitions.

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

"Board." The Board of Finance and Revenue.

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

"Return." The term includes a tax report.

"Secretary." The Secretary of Revenue of the Commonwealth.

Section 2702. Petition for reassessment.

(a) General rule.--A taxpayer may file a petition for reassessment with the department within 90 days after the mailing date of the notice of assessment.

(b) Special rule for shares taxes.--Notwithstanding any provision of law to the contrary, section 1104.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, shall constitute the exclusive method by which an appeal from the assessment of the tax imposed by Article VII or VIII may be made.

(c) Application to inheritance and estate taxes.--This section shall not apply to the taxes imposed by Article XXI. Part XI of Article XXI shall provide the exclusive procedure for protesting the appraisal and assessment of taxes imposed by Article XXI. Section 2703. Petition procedure.

(a) Content of petition.--

(1) A petition for reassessment shall state:

(i) The tax type and tax periods included within the petition.

(ii) The amount of the tax that the taxpayer claims to have been erroneously assessed.

(iii) The basis upon which the taxpayer claims that the assessment is erroneous.

(2) A petition for refund shall state:

(i) The tax type and tax periods included within the petition.

(ii) The amount of the tax that the taxpayer claims to have been overpaid.

(iii) The basis of the taxpayer's claim for refund.

(3) The petition shall be supported by an affidavit by the petitioner or the petitioner's authorized representative that the petition is not made for the purpose of delay and that the facts set forth in the petition are true.

(b) Request for hearing.--Upon written request of the petitioner or when deemed necessary by the department, the department shall schedule a hearing to review a petition. The petitioner shall be notified by the department of the date, time and place where the hearing will be held.

(c) Decision and order.--The department shall issue a decision and order disposing of a petition on such basis as it deems to be in accordance with law. The department shall provide a written explanation of the basis for any denial of relief.

(d) Time limit for decision and order.--The department shall issue a decision and order disposing of a petition within six months after receipt of the petition. The petitioner and the department may agree to extend the time period for the department to dispose of the petition for one additional six-month period. Notice of the department's decision and order disposing of the petition shall be issued to the petitioner.

(e) Exception to time limit for decision and order.--If at the time of the filing of a petition proceedings are pending in a court of competent jurisdiction wherein any claim made in the petition may be established, the department, upon the written request of the petitioner, may defer consideration of the petition until the

final judgment determining the question or questions involved in the petition has been decided. If consideration of the petition is deferred, the department shall issue a decision and order disposing of the petition within six months after the final judgment.

(f) Failure of department to take action.--The failure of the department to dispose of the petition within the time period provided for by subsection (d) or (e) shall act as a denial of the petition. Notice of the department's failure to take action and the denial of the petition shall be mailed to the petitioner. Section 2704. Review by board.

(a) Petition for review of a decision and order.--Within 90 days after the mailing date of the department's notice of decision and order on a petition filed with it, a taxpayer may petition the board to review the decision and order of the department.

(b) Petition for review of denial by department's failure to act.--A petition for review may be filed with the board within 90 days after the mailing date of the department's notice to the petitioner of its failure to dispose of the petition within the time periods prescribed by section 2703(d) or (e).

(c) Contents of petition.--

(1) A petition for review of the department's decision and order on a petition for reassessment shall state all of the following:

(i) The tax type and tax periods included within the petition.

(ii) The amount of the tax that the taxpayer claims to have been erroneously assessed.

(iii) The basis upon which the taxpayer claims that the assessment is erroneous.

(2) A petition for review of the department's decision and order on a petition for refund shall state all of the following:

(i) The tax type and tax periods included within the petition.

(ii) The amount of the tax that the taxpayer claims to have been overpaid.

(iii) The basis of the taxpayer's claims for refund.

(3) A petition may satisfy the requirements of paragraphs (1)(iii) or (2)(iii) by incorporating by reference the petition filed with the department in which the basis of the taxpayer's claim is specifically stated.

(d) Affidavit.--A petition shall be supported by an affidavit by the petitioner or the petitioner's authorized representative that the petition is not made for the purpose of delay and that the facts set forth in the petition are true.

(e) Decision and order.--The board shall issue a decision and order disposing of a petition on any basis as it deems to be in accordance with law and equity.

(f) Time limit for decision and order.--

(1) Except as provided in paragraph (2), the board shall issue a decision and order disposing of a petition within six months after receipt of the petition.

(2) If at the time of the filing of a petition proceedings are pending in a court of competent jurisdiction in which any claim made in the petition may be established, the board, upon the written request of the petitioner, may defer consideration of the petition until the final judgment determining the question or questions involved in the petition has been decided. If consideration of the petition is deferred, the board shall issue a decision and order disposing of the petition within six months after the final judgment.

(g) Failure of board to take action.--The failure of the board to dispose of the petition within the time period provided for by subsection (f) shall act as a denial of the petition. Notice of the board's failure to take action and the denial of the petition shall be issued to the petitioner.

Section 2705. Burden of proof.

Except as otherwise provided by this act, in all cases of petitions filed pursuant to this article, the burden of proof shall be upon the petitioner or appellant, as the case may be.

Section 2706. Abatement of additions or penalties.

Upon the filing of a petition for reassessment or a petition for refund as provided under this act by a taxpayer, additions or penalties imposed upon the taxpayer by the laws of this Commonwealth 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.

Section 29. Sections 3003.2(i) of the act, amended June 29, 2002 (P.L.559, No.89), is amended and subsection (b) is amended by adding a paragraph to read:

Section 3003.2. Estimated Tax.--* * *

(b) The following words, terms and phrases when used in this section and section 3003.3 shall have the following meanings ascribed to them:

* * *

(6) "Total tax." The total tax liability of the taxpayer for the tax period including the tax reported by the taxpayer and settled, resettled or assessed by the department.

* * *

(i) Whenever the amount shown as due on the annual report, including any [settlement of the annual report] **assessment of the tax period**, is less than the amount paid to the department on account of that amount under this article, the department shall enter a credit in the amount of the difference to the account of the taxpayer, which credit shall be immediately subject to application, assignment or refund, at the request of the taxpayer under section 1108 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," or at the initiative of the department. If the application, assignment or refund of credit under this subsection results in an underpayment of the tax due upon [settlement or resettlement] **assessment**, interest shall be calculated on the amount of the underpayment from the date credit was applied, assigned or refunded.

Section 30. Section 3003.3(b) and (d) of the act, amended May 7, 1997 (P.L.85, No.7) and December 23, 2003 (P.L.250, No.46), are amended to read:

Section 3003.3. Underpayment of Estimated Tax.--* * *

(b) (1) For purposes of this section, the amount of the underpayment, if any, shall be the excess of:

(i) the cumulative amount of installments which would be required to be paid as of each installment date as defined in section 3003.2(c) if the estimated tax were equal to ninety per cent of the tax shown on the report for the taxable year, except that, if the [settled tax or, if the tax is resettled, the resettled] **total** tax exceeds the tax shown on the report by ten per cent or more, the amount of the underpayment shall be based on ninety per cent of the amount of [such settled or resettled] **the total** tax; over

(ii) the cumulative amount of installments paid on or before the last date prescribed for payment.

(2) If the [settled or resettled tax is used in calculating the amount of underpayment, the amount of tax as settled or resettled shall be utilized in determining] **total tax is revised**,

the amount of underpayment **shall be calculated** without the necessity of the filing of any petition by the department or by the taxpayer.

* * *

(d) Notwithstanding the provisions of the preceding subsections, interest with respect to any underpayment of any installment of estimated tax shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to the tax computed at the rates applicable to the taxable year, including any minimum tax imposed, but otherwise on the basis of the facts shown on the report of the taxpayer for, and the law applicable to, the safe harbor base year, adjusted for any changes to sections 401, 601, 602 and 1101 enacted for the taxable year, if a report showing a liability for tax was filed by the taxpayer for the safe harbor base year. If the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment does not equal or exceed the amount required to be paid per the preceding sentence, but such amount is paid after the date the installment was required to be paid, then the period of underpayment shall run from the date the installment was required to be paid to the date the amount required to be paid per the preceding sentence is paid. Provided, that if the [settled] **total** tax for the safe harbor base year exceeds the tax shown on such report by ten per cent or more, the [settled] **total** tax adjusted to reflect the current tax rate shall be used for purposes of this subsection.[, except that, if the settled tax is subsequently resettled, the amount of tax as resettled shall be utilized in the application of this subsection without the necessity of the filing of any petition by the department or by the taxpayer.] In the event that the [settled or resettled] **total** tax for the safe harbor base year exceeds the tax shown on the report by ten per cent or more, interest resulting from the utilization of such [settled or resettled] **total** tax in the application of the provisions of this subsection shall not be imposed if, within forty-five days of the mailing date of [such settlement or resettlement] **each assessment**, payments are made such that the total amount of all payments of estimated tax equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to [such settled or resettled] **the total** tax adjusted to reflect the current tax rate. In any case in which the taxable year for which an underpayment of estimated tax may exist is a short taxable year, in determining the tax shown on the report or the [settled or resettled] **total** tax for the safe harbor base year, the tax will be reduced by multiplying it by the ratio of the number of installment payments made in the short taxable year to the number of installment payments required to be made for the full taxable year.

Section 31. Sections 3003.5 and 3003.6 of the act, added June 16, 1994 (P.L.279, No.48), are amended to read:

Section 3003.5. Refund Petitions.--(a) Effective January 1, 1995, petitions for refund of taxes, penalties, fines, additions and other moneys collected by the Department of Revenue except those claims for refunds of liquid fuels taxes paid by political subdivisions, farmers, nonpublic schools not operated for profit, volunteer fire companies, volunteer rescue squads, volunteer ambulance services, users of liquid fuel in propeller-driven aircraft or engines and agencies of the Federal Government and of the Commonwealth and the Boat Fund of the Pennsylvania Fish and Boat Commission shall be heard and determined by the Department of Revenue as provided in the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," and the Department of Revenue shall

thereafter have, **except as set forth in Article XXVII**, the powers and duties formerly granted to the Board of Finance and Revenue with respect to such refunds. Also effective January 1, 1995, the Board of Finance and Revenue shall no longer have the power and duty to hear and determine any petition for refund of taxes, penalties, fines, additions or other moneys collected by the Department of Revenue, except that thereafter the board may either hear and determine any such petitions filed with it prior to January 1, 1995, or it may transfer such petitions to the Department of Revenue.

(b) Appeals.--The decision of the Department of Revenue on a petition for refund under this section may, in the first instance, be appealed to the Board of Finance and Revenue in the manner provided by section 1103 of "The Fiscal Code" except that the Board of Finance and Revenue shall act finally in disposition of such petitions within twelve months after they have been received.

Section 3003.6. Timely Filing.--A taxpayer shall be deemed to have timely filed [a petition for resettlement,] a petition for reassessment[, a petition for redetermination] or any other protest relating to the assessment of tax or any other matter relating to any tax imposed by this act if the letter transmitting the petition is received by the Department of Revenue or is postmarked by the United States Postal Service on or prior to the final day on which the petition is required to be filed.

Section 32. The act is amended by adding a section to read:

Section 3003.18. Assessments to be Made by Department.--(a) Parts IV, V, VI and VII of Article IV shall apply to all of the following:

(1) The tax imposed by section 17 of the act of June 22, 1935 (P.L.414, No.182), known as the "State Personal Property Tax Act."

(2) The tax imposed by the act of May 23, 1945 (P.L.893, No.360), known as the "Co-operative Agricultural Association Corporate Net Income Tax Act." The reference to petition for resettlement in section 4 of the "Co-operative Agricultural Association Corporate Net Income Tax Act" shall be interpreted as a petition for reassessment.

(3) The State admissions tax and the pari-mutuel wagering tax imposed by sections 208 and 222 of the act of December 17, 1981 (P.L.435, No.135), known as the "Race Horse Industry Reform Act."

(4) All taxes, fees, additions, bonuses, costs, penalties or charges collected by the department either:

(i) subject to settlement or determination by the department prior to the effective date of this section; or

(ii) for which no other method for the establishment of the unpaid or unreported liability to be collected by the department is provided by law.

(b) The powers conferred upon the department by this section shall be in addition to, but not exclusive of, any powers conferred upon the department by law before or after the effective date of this section.

(c) This section shall not apply to any of the following:

(1) The procedure for collection of moneys due the Commonwealth by county or city officers as provided by Article IX of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

(2) The taxes imposed by 75 Pa.C.S. Chs. 90 (relating to liquid fuels and fuels tax), 95 (relating to taxes for highway maintenance and construction) and 96 (relating to motor carriers road tax).

Section 33. This act shall apply as follows:

(1) The provisions of this act shall apply to all determinations and assessments of tax liability by the Department of Revenue after December 31, 2007.

(2) The provisions of this act shall not apply to or effect any proceeding, prosecution, action, suit or appeal involving

assessments, determinations or settlements of tax liability by the Department of Revenue prior to January 1, 2008, and any reassessment, redetermination or resettlement resulting from such proceeding, prosecution, suit or appeal. For all proceedings, prosecutions, actions, suits or appeals involving assessments, determinations or settlements of tax liability by the Department of Revenue prior to January 1, 2008, the procedures in place prior to the effective date of this section shall apply until final resolution by withdrawal, reassessment, redetermination or resettlement by the Department of Revenue or an administrative board or a decision by a court of competent jurisdiction.

Section 34. This act shall take effect immediately.

APPROVED--The 18th day of October, A. D. 2006.

EDWARD G. RENDELL