

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 676 Session of 2011

INTRODUCED BY WILLIAMS AND SOLOBAY, MARCH 28, 2011

REFERRED TO FINANCE, MARCH 28, 2011

AN ACT

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

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

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

18 Section 413. Expiration.--This article shall expire three
19 years from the effective date of this section.

20 Section 2. The act is amended by adding an article to read:

21 ARTICLE IV-A

22 COMMERCIAL ACTIVITY TAX

23 Section 401-A. 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:

"Agent." A person authorized by another person to act on its behalf to undertake a transaction for the other, including any of the following:

(1) A person receiving a fee to sell financial instruments.

(2) A person retaining only a commission from a transaction with the other proceeds from the transaction being remitted to another person.

(3) A person issuing licenses and permits under 34 Pa.C.S. § 2901 (relating to authority to issue permits).

(4) A lottery sales agent holding a valid license issued under section 305 of the act of August 26, 1971 (P.L.351, No.91), known as the State Lottery Law.

"Bank Holding Company Act." The Bank Holding Company Act of 1956 (70 Stat. 133, 12 U.S.C. § 1841 et seq.).

"Bright-line presence." A condition which a person has in this Commonwealth for a reporting period and for the remaining portion of the calendar year if any of the following applies:

(1) The person owns at any time during the calendar year property in this Commonwealth with an aggregate value of not less than \$50,000. For the purpose of this paragraph, owned property is valued at original cost and rented property is valued at eight times the net annual rental charge.

(2) The person has during the calendar year payroll in this Commonwealth of not less than \$50,000.

(3) The person has during the calendar year taxable gross receipts of not less than \$500,000.

(4) The person has at any time during the calendar year

1 within this Commonwealth not less than 25% of the person's
2 total property, total payroll or total gross receipts.

3 (5) The person is domiciled in this Commonwealth as an
4 individual or for corporate, commercial or other business
5 purposes.

6 "Calendar quarter."

7 (1) Except as provided under paragraph (2), a three-
8 month period ending on the 31st day of March, the 30th day of
9 June, the 30th day of September or the 31st day of December.

10 (2) For fiscal year filers, the last day of the third
11 month of the taxpayer's fiscal year.

12 "Calendar quarter taxpayer." A taxpayer for which the tax
13 period is a calendar quarter.

14 "Calendar year taxpayer." A taxpayer for which the tax
15 period is a calendar year.

16 "Combined company." Any person engaged in the activity of an
17 electric company or rural electric company that is also engaged
18 in the activity of a heating company or a natural gas company,
19 or any combination thereof.

20 "Combined taxpayer." A group of two or more persons treated
21 as a single taxpayer.

22 "Consolidated elected taxpayer." A group of two or more
23 persons treated as a single taxpayer for purposes of this
24 article as the result of an election made under section 401.1-A.

25 "Dealer in intangibles."

26 (1) The term includes every person who keeps an office
27 or other place of business in this Commonwealth and engages
28 at the office or other place in a business whether on the
29 person's own account with a view to profit, or as agent or
30 broker for others, with a view to profit or personal earnings

1 that consists primarily of:

2 (i) Lending money.

3 (ii) Discounting, buying or selling bills of
4 exchange, drafts, acceptances, notes, mortgages or other
5 evidences of indebtedness.

6 (iii) Buying or selling bonds, stocks or other
7 investment securities.

8 (2) The term does not include institutions used
9 exclusively for charitable purposes, insurance companies and
10 financial institutions. The investment of funds as personal
11 accumulations or as business reserves or as working capital
12 does not constitute engaging in a business within the meaning
13 of this paragraph, except that a person who, having engaged
14 in a business that consists primarily of lending money or
15 discounting, buying or selling bills of exchange, drafts,
16 acceptances, notes, mortgages or other evidences of
17 indebtedness on the person's own account, remains in business
18 primarily for the purpose of realizing upon the assets of the
19 business is deemed a dealer in intangibles, though not
20 presently engaged in a business that consists primarily of
21 lending money or discounting or buying the securities.

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

23 "Doing business." Engaging in any activity, whether legal or
24 illegal, that is conducted for or results in gain, profit or
25 income, at any time during the calendar year.

26 "Excluded person." Any of the following:

27 (1) Any person with not more than \$150,000 of taxable
28 gross receipts during the calendar year. The term does not
29 include a person that is a member of a consolidated elected
30 taxpayer.

1 (2) A public utility that paid the excise tax imposed
2 under section 1101 based on one or more measurement periods
3 that include the entire tax period under this article. A
4 public utility that is a combined company is a taxpayer with
5 regard to the following gross receipts:

6 (i) Taxable gross receipts directly attributed to a
7 public utility activity, but not directly attributed to
8 an activity that is subject to the excise tax imposed by
9 section 1101.

10 (ii) Taxable gross receipts that cannot be directly
11 attributed to any activity, multiplied by a fraction
12 whose numerator is the taxable gross receipts described
13 under subparagraph (i) and whose denominator is the total
14 taxable gross receipts that can be directly attributed to
15 any activity.

16 (iii) Except for any differences resulting from the
17 use of an accrual basis method of accounting for purposes
18 of determining gross receipts under this article and the
19 use of the cash basis method of accounting for purposes
20 of determining gross receipts under section 1101, the
21 gross receipts directly attributed to the activity of a
22 natural gas company shall be determined in a manner
23 consistent with section 1101.

24 (iv) As used in paragraph (2), the term "public
25 utility" shall have the same meanings as in section
26 1101-A.

27 (3) A financial institution, as defined in section 2 of
28 the act of December 1, 1959 (P.L.1647, No.606), known as the
29 Business Development Credit Corporation Law, that paid the
30 corporation franchise tax imposed under section 602 based on

1 one or more taxable years that include the entire tax period
2 under this article.

3 (4) A dealer in intangibles based on one or more
4 measurement periods that include the entire tax period under
5 this article.

6 (5) A financial holding company as defined in the Bank
7 Holding Company Act.

8 (6) A bank holding company as defined in the Bank
9 Holding Company Act.

10 (7) A savings and loan holding company as defined in the
11 Home Owners' Loan Act that is engaging only in activities or
12 investments permissible for a financial holding company under
13 section 4 of the Bank Holding Company Act (12 U.S.C. §
14 1843(k)).

15 (8) A person directly or indirectly owned by one or more
16 financial institutions, financial holding companies, bank
17 holding companies or savings and loan holding companies
18 described under paragraph (3), (5), (6) or (7) that is
19 engaged in activities permissible for a financial holding
20 company under section 4(k) of the Bank Holding Company Act
21 (12 U.S.C. § 1843(k)). A person held under merchant banking
22 authority under section 4(k)(4)(H) or (I) of the Bank Holding
23 Company Act (12 U.S.C. § 1843(k)(4)(H) or (I)) is not an
24 excluded person, or a person directly or indirectly owned by
25 one or more insurance companies described under paragraph (9)
26 that is authorized to do the business of insurance in this
27 Commonwealth. For the purposes of this paragraph, a person
28 owns another person under the following circumstances:

29 (i) In the case of corporations issuing capital
30 stock, one corporation owns another corporation if it

owns 50% or more of the other corporation's capital stock with current voting rights.

(ii) In the case of a limited liability company, one person owns the company if that person's membership interest, as defined in 15 Pa.C.S. § 8903 (relating to definitions and index of definitions), is 50% or more of the combined membership interests of all persons owning the interests in the company.

(iii) In the case of a partnership, trust or other unincorporated business organization other than a limited liability company, one person owns the organization if, under the articles of organization or other instrument governing the affairs of the organization, that person has a beneficial interest in the organization's profits, surpluses, losses or distributions of 50% or more of the combined beneficial interests of all persons having that interest in the organization.

(iv) In the case of multiple ownership, the ownership interests of more than one person may be aggregated to meet the 50% ownership tests only when each owner is described under paragraph (3), (5), (6) or (7) and is engaged in activities permissible for a financial holding company under section 4(k) of the Bank Holding Company Act (12 U.S.C. § 1843(k)) or is a person directly or indirectly owned by one or more insurance companies described under paragraph (9) that is authorized to do the business of insurance in this Commonwealth.

(9) A domestic insurance company or foreign insurance company that paid the insurance company premiums tax imposed under section 2 of the act of May 12, 1943 (P.L.259, No.120),

1 referred to as the Foreign Casualty Insurance Premium Tax
2 Allocation Law, based on one or more measurement periods that
3 include the entire tax period under this article.

4 (10) A person that solely facilitates or services one or
5 more securitizations or similar transactions for any person
6 described under paragraph (3), (5), (6), (7), (8) or (9). For
7 purposes of this definition, "securitization" means
8 transferring one or more assets to one or more persons and
9 then issuing securities backed by the right to receive
10 payment from the asset or assets so transferred.

11 (11) (Reserved).

12 (12) Nonprofit organizations or the Commonwealth and its
13 agencies, instrumentalities or political subdivisions.

14 "Gross receipts." Except as provided under this definition,
15 the total amount realized by a person, without deduction for the
16 cost of goods sold or other expenses incurred, that contributes
17 to the production of gross income of the person, including the
18 fair market value of any property and any services received, and
19 any debt transferred or forgiven as consideration.

20 (1) The following are examples of gross receipts:

21 (i) Amounts realized from the sale, exchange or
22 other disposition of the taxpayer's property to or with
23 another person.

24 (ii) Amounts realized from the taxpayer's
25 performance of services for another person.

26 (iii) Amounts realized from another's use or
27 possession of the taxpayer's property or capital.

28 (iv) Any combination of subparagraphs (i), (ii) and
29 (iii).

30 (2) The following amounts are excluded from gross

1 receipts:

2 (i) Interest income except interest on credit sales.

3 (ii) Dividends and distributions from corporations,
4 and distributive or proportionate shares of receipts and
5 income from a pass-through entity as defined under
6 section 1702.

7 (iii) Receipts from the sale, exchange or other
8 disposition of an asset described under section 1221 or
9 1231 of the Internal Revenue Code, without regard to the
10 length of time the person held the asset. Notwithstanding
11 section 1221 of the Internal Revenue Code, receipts from
12 hedging transactions also are excluded to the extent the
13 transactions are entered into primarily to protect a
14 financial position, such as managing the risk of exposure
15 to:

16 (A) foreign currency fluctuations that affect
17 assets, liabilities, profits, losses, equity, or
18 investments in foreign operations;

19 (B) interest rate fluctuations; or

20 (C) commodity price fluctuations.

21 As used in this paragraph, "hedging transaction" has the
22 same meaning as used in section 1221 of the Internal Revenue
23 Code. The actual transfer of title of real or tangible
24 personal property to another entity is not a hedging
25 transaction.

26 (iv) Proceeds received attributable to the
27 repayment, maturity or redemption of the principal of a
28 loan, bond, mutual fund, certificate of deposit or
29 marketable instrument.

30 (v) The principal amount received under a repurchase

1 agreement or on account of any transaction properly
2 characterized as a loan to the person.

3 (vi) Contributions received by a trust, plan or
4 other arrangement, any of which is described in section
5 501(a) of the Internal Revenue Code, or to which Title
6 26, Subtitle A, Chapter 1, Subchapter (D) of the Internal
7 Revenue Code applies.

8 (vii) Compensation, whether current or deferred, and
9 whether in cash or in kind, received or to be received by
10 an employee, a former employee or the employee's legal
11 successor for services rendered to or for an employer,
12 including reimbursements received by or for an individual
13 for medical or education expenses, health insurance
14 premiums or employee expenses or on account of a
15 dependent care spending account, legal services plan, any
16 cafeteria plan described in section 125 of the Internal
17 Revenue Code or any similar employee reimbursement.

18 (viii) Proceeds received from the issuance of the
19 taxpayer's own stock, options, warrants, puts or calls,
20 or from the sale of the taxpayer's treasury stock.

21 (ix) Proceeds received on the account of payments
22 from insurance policies, except those proceeds received
23 for the loss of business revenue.

24 (x) Any of the following:

25 (A) Gifts or charitable contributions received;
26 membership dues received by trade, professional,
27 homeowners' or condominium associations.

28 (B) Payments received for educational courses,
29 meetings, meals or similar payments to a trade,
30 professional or other similar association.

1 (C) Fundraising receipts received by any person
2 when any excess receipts are donated or used
3 exclusively for charitable purposes.

4 (xi) Damages received as the result of litigation in
5 excess of amounts that, if received without litigation,
6 would be gross receipts.

7 (xii) Property, money and other amounts received or
8 acquired by an agent on behalf of another in excess of
9 the agent's commission, fee or other remuneration.

10 (xiii) Tax refunds, other tax benefit recoveries and
11 reimbursements for the tax imposed under this article
12 made by entities that are part of the same combined
13 taxpayer or consolidated elected taxpayer group, and
14 reimbursements made by entities that are not members of a
15 combined taxpayer or consolidated elected taxpayer group
16 that are required to be made for economic parity among
17 multiple owners of an entity whose tax obligation under
18 this article is required to be reported and paid entirely
19 by one owner, pursuant to the requirements of sections
20 401.1-A and 401.2-A.

21 (xiv) Pension reversions.

22 (xv) Contributions to capital.

23 (xvi) Sales or use taxes collected as a vendor or an
24 out-of-State seller on behalf of the taxing jurisdiction
25 from a consumer or other taxes the taxpayer is required
26 by law to collect directly from a purchaser and remit to
27 a Federal, State or local tax authority.

28 (xvii) In the case of receipts from the sale of
29 cigarettes or tobacco products by a wholesale dealer,
30 retail dealer, distributor, manufacturer or seller, as

1 defined in section 202-A of the act of April 9, 1929
2 (P.L.343, No.176), known as The Fiscal Code, an amount
3 equal to the Federal and State excise taxes paid by any
4 person on or for the cigarettes or tobacco products under
5 subtitle E of the Internal Revenue Code.

6 (xviii) In the case of receipts from the sale of
7 motor fuel by a licensed motor fuel dealer, licensed
8 retail dealer or licensed permissive motor fuel dealer,
9 an amount equal to Federal and State excise taxes paid by
10 any person on the motor fuel under section 4081 of the
11 Internal Revenue Code. The terms "licensed motor fuel
12 dealer," "licensed retail dealer" and "licensed
13 permissive motor fuel dealer" shall have the same meaning
14 as the term "dealer" in 75 Pa.C.S. § 9002 (relating to
15 definitions).

16 (xix) In the case of receipts from the sale of beer
17 or intoxicating liquor, as defined in section 102 of the
18 act of April 12, 1951 (P.L.90, No.21), known as the
19 Liquor Code, by a person holding a license issued under
20 the Liquor Code, an amount equal to Federal and State
21 excise taxes paid by any person on or for such beer or
22 intoxicating liquor under subtitle E of the Internal
23 Revenue Code or the Liquor Code. The term "beer" shall
24 have the same meaning as the term "malt or brewed
25 beverage" in section 102 of the Liquor Code. The term
26 "intoxicating liquor" shall have the same meaning as the
27 term "liquor" in section 102 of the Liquor Code.

28 (xx) Receipts realized by a motor vehicle dealer, as
29 defined in 75 Pa.C.S. § 102 (relating to definitions),
30 from the sale or other transfer of a motor vehicle, as

1 defined in 75 Pa.C.S. § 102, to another motor vehicle
2 dealer for the purpose of resale by the transferee motor
3 vehicle dealer, but only if the sale or other transfer
4 was based upon the transferee's need to meet a specific
5 customer's preference for a motor vehicle.

6 (xxi) Receipts from a financial institution for
7 services provided to the financial institution in
8 connection with the issuance, processing, servicing and
9 management of loans or credit accounts, if the financial
10 institution and the recipient of the receipts have at
11 least 50% of their ownership interests owned or
12 controlled, directly or constructively through related
13 interests, by common owners.

14 (xxii) Receipts realized from administering anti-
15 neoplastic drugs and other cancer chemotherapy,
16 biologicals, therapeutic agents and supportive drugs in a
17 physician's office to patients with cancer.

18 (xxiii) Funds received or used by a mortgage broker
19 that is not a dealer in intangibles, other than fees or
20 other consideration, pursuant to a table-funding mortgage
21 loan or warehouse-lending mortgage loan. The terms used
22 in this subparagraph have the same meanings as in section
23 101 of the act of January 30, 1974 (P.L.13, No.6),
24 referred to as the Loan Interest and Protection Law,
25 except "mortgage broker" means a person assisting a buyer
26 in obtaining a mortgage loan for a fee or other
27 consideration paid by the buyer or a lender or a person
28 engaged in table-funding or warehouse-lending mortgage
29 loans that are first lien mortgage loans.

30 (xxiv) Property, money and other amounts received by

1 a professional employer arrangement or employee leasing
2 arrangement as described in section 4 of the act of
3 December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1),
4 known as the Unemployment Compensation Law, from an
5 employer in excess of the administrative fee charged by
6 the professional employer arrangement.

7 (xxv) In the case of amounts retained as commissions
8 under section 222 of the act of December 17, 1981
9 (P.L.435, No.135), known as the Race Horse Industry
10 Reform Act, an amount equal to the amounts specified
11 under section 222 of the Race Horse Industry Reform Act
12 that must be paid to or collected by the department as a
13 tax and the amounts specified under section 222 of the
14 Race Horse Industry Reform Act to be used as purse money.

15 (xxvi) Qualifying distribution center receipts. The
16 following shall apply:

17 (A) For the purposes of this subparagraph:

18 (I) "Qualifying distribution center
19 receipts." The receipts of a supplier from
20 qualified property that is delivered to a
21 qualified distribution center, multiplied by a
22 quantity that equals one minus the Pennsylvania
23 delivery percentage.

24 (II) "Qualified property." The tangible
25 personal property delivered to a qualified
26 distribution center that is shipped to that
27 qualified distribution center solely for further
28 shipping by the qualified distribution center to
29 another location in this Commonwealth or
30 elsewhere. The term "further shipping" includes

1 storing and repackaging the property into smaller
2 or larger bundles, so long as the property is not
3 subject to further manufacturing or processing.

4 (III) "Qualified distribution center." The
5 warehouse or other similar facility in this
6 Commonwealth that, for the qualifying year, is
7 operated by a person that is not part of a
8 combined taxpayer group and that has a qualifying
9 certificate, except that all warehouses or other
10 similar facilities that are operated by persons
11 in the same taxpayer group and that are located
12 within one mile of each other shall be treated as
13 one qualified distribution center.

14 (IV) "Qualifying year." The calendar year
15 to which the qualifying certificate applies.

16 (V) "Qualifying period." The period of the
17 first day of July of the second year preceding
18 the qualifying year through the 30th day of June
19 of the year preceding the qualifying year.

20 (VI) "Qualifying certificate." The
21 certificate issued by the department after the
22 operator of a distribution center files an annual
23 application with the department. The application
24 and annual fee shall be filed and paid for each
25 qualified distribution center on or before the
26 first day of September before the qualifying year
27 or within 45 days after the distribution center
28 opens, whichever is later. The applicant must
29 substantiate to the department's satisfaction
30 that, for the qualifying period, all persons

1 operating the distribution center have more than
2 50% of the cost of the qualified property shipped
3 to a location such that it would be situated
4 outside this Commonwealth under section
5 403.3-A(5). The applicant must also substantiate
6 that the distribution center cumulatively had
7 costs from its suppliers equal to or exceeding
8 \$500,000,000 during the qualifying period. For
9 purposes of this subclause, "supplier" excludes
10 any person that is part of the consolidated
11 elected taxpayer group, if applicable, of the
12 operator of the qualified distribution center.
13 The department may require the applicant to have
14 an independent certified public accountant
15 certify that the calculation of the minimum
16 thresholds required for a qualified distribution
17 center by the operator of a distribution center
18 has been made in accordance with generally
19 accepted accounting principles. The department
20 shall issue or deny the issuance of a certificate
21 within 60 days after the receipt of the
22 application. A denial is subject to appeal under
23 section 2702. If the operator files a timely
24 appeal under section 2702, the operator shall be
25 granted a qualifying certificate, provided that
26 the operator is liable for any tax, interest or
27 penalty upon amounts claimed as qualifying
28 distribution center receipts, other than those
29 receipts exempt under section 401.1-A(c)(1), that
30 would have otherwise not been owed by its

1 suppliers if the qualifying certificate was
2 valid.

3 (VII) "Pennsylvania delivery percentage."

4 The proportion of the total property delivered to
5 a destination inside this Commonwealth from the
6 qualified distribution center during the
7 qualifying period compared with total deliveries
8 from the distribution center everywhere during
9 the qualifying period.

10 (B) If the distribution center is new and was
11 not open for the entire qualifying period, the
12 operator of the distribution center may request that
13 the department grant a qualifying certificate. If the
14 certificate is granted and it is later determined
15 that more than 50% of the qualified property during
16 that year was not shipped to a location such that it
17 would be situated outside of this Commonwealth under
18 section 403.3-A(5) or if it is later determined that
19 the person that operates the distribution center had
20 average monthly costs from its suppliers of less than
21 \$40,000,000 during that year, then the operator of
22 the distribution center shall be liable for any tax,
23 interest or penalty upon amounts claimed as
24 qualifying distribution center receipts, other than
25 those receipts exempt under section 401.1-A(c)(1),
26 that would have not otherwise been owed by its
27 suppliers during the qualifying year if the
28 qualifying certificate was valid. For purposes of
29 this clause, "supplier" excludes any person that is
30 part of the consolidated elected taxpayer group, if

1 applicable, of the operator of the qualified
2 distribution center.

3 (C) The following shall apply:

4 (I) When filing an application for a
5 qualifying certificate under clause (A) (VI), the
6 operator of a qualified distribution center also
7 shall provide documentation, as the department
8 requires, for the department to ascertain the
9 Pennsylvania delivery percentage. The department,
10 upon issuing the qualifying certificate, also
11 shall certify the Pennsylvania delivery
12 percentage. The operator of the qualified
13 distribution center may appeal the department's
14 certification of the Pennsylvania delivery
15 percentage in the same manner as an appeal is
16 taken from the denial of a qualifying certificate
17 under clause (A).

18 (II) Within 30 days after all appeals have
19 been exhausted, the operator of the qualified
20 distribution center shall notify the affected
21 suppliers of qualified property that the
22 suppliers are required to file, within 60 days
23 after receiving notice from the operator of the
24 qualified distribution center, amended reports
25 for the impacted calendar quarter, quarters or
26 year, whichever the case may be. Any additional
27 tax liability or tax overpayment shall be subject
28 to interest but shall not be subject to the
29 imposition of any penalty so long as the amended
30 returns are timely filed. The supplier of

1 tangible personal property delivered to the
2 qualified distribution center shall include in
3 its report of taxable gross receipts the receipts
4 from the total sales of property delivered to the
5 qualified distribution center for the calendar
6 quarter, quarters or year, whichever the case may
7 be, multiplied by the Pennsylvania delivery
8 percentage for the qualifying year. Nothing in
9 this clause shall be construed as imposing
10 liability on the operator of a qualified
11 distribution center for the tax imposed by this
12 article arising from any change to the
13 Pennsylvania delivery percentage.

14 (D) In the case where the distribution center is
15 new and not open for the entire qualifying period,
16 the operator shall make a good faith estimate of a
17 Pennsylvania delivery percentage for use by suppliers
18 in their reports of taxable gross receipts for the
19 remainder of the qualifying period. The operator of
20 the facility shall disclose to the suppliers that the
21 Pennsylvania delivery percentage is an estimate and
22 is subject to recalculation. By the due date of the
23 next application for a qualifying certificate, the
24 operator shall determine the actual Pennsylvania
25 delivery percentage for the estimated qualifying
26 period and proceed as provided under clause (C) with
27 respect to the calculation and recalculation of the
28 Pennsylvania delivery percentage. The supplier is
29 required to file, within 60 days after receiving
30 notice from the operator of the qualified

1 distribution center, amended reports for the impacted
2 calendar quarter, quarters or year, whichever the
3 case may be. Any additional tax liability or tax
4 overpayment shall be subject to interest but shall
5 not be subject to the imposition of any penalty so
6 long as the amended returns are timely filed.

7 (E) Qualifying certificates and Pennsylvania
8 delivery percentages issued by the department shall
9 be open to public inspection and shall be timely
10 published by the department. A supplier relying in
11 good faith on a certificate issued under this
12 subsection shall not be subject to tax on the
13 qualifying distribution center receipts under this
14 subparagraph. A person receiving a qualifying
15 certificate is responsible for paying the tax,
16 interest and penalty upon amounts claimed as
17 qualifying distribution center receipts that would
18 not otherwise have been owed by the supplier if the
19 qualifying certificate were available when it is
20 later determined that the qualifying certificate
21 should not have been issued because the statutory
22 requirements were in fact not met.

23 (F) The annual fee for a qualifying certificate
24 shall be \$100,000 for each qualified distribution
25 center. If a qualifying certificate is not issued,
26 the annual fee is subject to refund after the
27 exhaustion of all appeals provided for under clause
28 (A) (VI). The fee imposed under this clause may be
29 assessed in the same manner as the tax imposed under
30 this article. The first \$100,000 of the annual

1 application fees collected each calendar year shall
2 be credited to the Commercial Activity Tax
3 Administrative Fund.

4 (G) The department may require that adequate
5 security be posted by the operator of the
6 distribution center on appeal when the department
7 disagrees that the applicant has met the minimum
8 thresholds for a qualified distribution center as set
9 forth under clauses (A) and (B).

10 (xxvii) Receipts of an employer from payroll
11 deductions relating to the reimbursement of the employer
12 for advancing money to an unrelated third party on an
13 employee's behalf.

14 (xxviii) Cash discounts allowed and taken.

15 (xxix) Returns and allowances.

16 (xxx) Bad debts from receipts on the basis of which
17 the tax imposed by this article was paid in a prior
18 quarterly tax payment period. For the purpose of this
19 subparagraph, "bad debts" means any debts that have
20 become worthless or uncollectible between the preceding
21 and current quarterly tax payment periods, have been
22 uncollected for at least six months, and that may be
23 claimed as a deduction under section 166 of the Internal
24 Revenue Code and the regulations adopted under that
25 section or that could be claimed as if the taxpayer kept
26 its accounts on the accrual basis. The term "bad debts"
27 does not include repossessed property, uncollectible
28 amounts on property that remains in the possession of the
29 taxpayer until the full purchase price is paid, or
30 expenses in attempting to collect any account receivable

1 or for any portion of the debt recovered.

2 (xxxi) Any amount realized from the sale of an
3 account receivable to the extent the receipts from the
4 underlying transaction giving rise to the account
5 receivable were included in the gross receipts of the
6 taxpayer.

7 (xxxii) Any receipts for which the tax imposed by
8 this article is prohibited by the Constitution of the
9 United States, Federal law or the Constitution of
10 Pennsylvania.

11 (3) In the case of a taxpayer when acting as a real
12 estate broker, the term includes only the portion of any fee
13 for the service of a real estate broker, or service of a real
14 estate salesperson associated with that broker, that is
15 retained by the broker and not paid to an associated real
16 estate salesperson or another real estate broker. For the
17 purposes of this paragraph, the term "real estate broker"
18 shall mean someone licensed under the terms of the
19 Commonwealth to act as a real estate broker.

20 (4) A taxpayer's method of accounting for gross receipts
21 for a tax period shall be the same as the taxpayer's method
22 of accounting for Federal income tax purposes for the
23 taxpayer's Federal taxable year that includes the tax period.
24 If a taxpayer's method of accounting for Federal income tax
25 purposes changes, its method of accounting for gross receipts
26 under this article shall be changed accordingly.

27 "Home Owners' Loan Act." The Home Owners' Loan Act (48 Stat.
28 128, 12 U.S.C. § 1467a).

29 "Internal Revenue Code." The Internal Revenue Code of 1986
30 (100 Stat. 2085, 26 U.S.C. § 1 et seq.), as amended. Any term

1 used in this article that is not otherwise defined has the same
2 meaning as when used in a comparable context in the laws of the
3 United States relating to Federal income taxes unless a
4 different meaning is clearly required. Any reference in this
5 article to the Internal Revenue Code includes other laws of the
6 United States relating to Federal income taxes.

7 "Payroll." Any of the following:

8 (1) Any amount subject to withholding by the person
9 under section 316.

10 (2) Any other amount the person pays as compensation to
11 an individual under the supervision or control of the person
12 for work done in this Commonwealth.

13 (3) Any amount the person pays for services performed in
14 this Commonwealth on its behalf by another.

15 "Person." Individuals, combinations of individuals of any
16 form, receivers, assignees, trustees in bankruptcy, firms,
17 companies, joint-stock companies, business trusts, estates,
18 partnerships, limited liability partnerships, limited liability
19 companies, associations, joint ventures, clubs, societies, for-
20 profit corporations, Pennsylvania S corporations, qualified
21 subchapter S subsidiaries, qualified subchapter S trusts,
22 trusts, entities that are disregarded for Federal income tax
23 purposes and any other entities.

24 "Qualifying controlled group." Two or more corporations in
25 which any taxpayer of one corporation owns or controls either
26 directly or indirectly more than 50% of the capital stock with
27 voting rights of one or more of the other corporations.

28 "Qualifying dealer." A dealer in intangibles that is a
29 qualifying dealer in intangibles or a member of a qualifying
30 controlled group of which an insurance company also is a member

1 on the first day of January of the year in and for which the tax
2 is required to be paid by the dealer.

3 "Qualifying dealer in intangibles." A dealer in intangibles
4 that is a member of a qualifying controlled group of which a
5 financial institution is also a member on the first day of the
6 financial institution's tax year.

7 "Received." The term includes amounts accrued under the
8 accrual method of accounting.

9 "Reporting person." A person in a consolidated elected
10 taxpayer or combined taxpayer group that is designated by that
11 group to legally bind the group for all filings and tax
12 liabilities and to receive all legal notices with respect to
13 matters under this article or, for the purposes of section
14 404-A, a separate taxpayer that is not a member of the group.

15 "Substantial nexus with this Commonwealth." Attributed to a
16 person who:

17 (1) Owns or uses a part or all of its capital in this
18 Commonwealth.

19 (2) Holds a certificate of compliance with the laws of
20 this Commonwealth authorizing the person to do business in
21 this Commonwealth.

22 (3) Has bright-line presence in this Commonwealth.

23 (4) Otherwise has nexus with this Commonwealth to an
24 extent that the person can be required to remit the tax
25 imposed under this article under the Constitution of the
26 United States.

27 "Table-funding mortgage loan." A residential mortgage loan
28 transaction in which the residential mortgage loan is initially
29 payable to the mortgage broker, the mortgage broker does not use
30 the mortgage broker's own funds to fund the transaction and, by

1 the terms of the mortgage or other agreement, the mortgage is
2 simultaneously assigned to another person.

3 "Tangible personal property." The term shall have the same
4 meaning as in section 201(m).

5 "Tax period." The calendar quarter or calendar year on the
6 basis of which a taxpayer is required to pay the tax imposed
7 under this article.

8 "Taxable gross receipts." Gross receipts sitused to this
9 Commonwealth under section 403.3.

10 "Taxpayer." Any person, or any group of persons in the case
11 of a consolidated elected taxpayer or combined taxpayer treated
12 as one taxpayer, required to register or pay tax under this
13 article. The term does not include excluded persons.

14 "Warehouse-mortgage loan." A residential mortgage loan
15 transaction in which the residential mortgage loan is initially
16 payable to the mortgage broker, the mortgage broker uses the
17 mortgage broker's own funds to fund the transaction and the
18 mortgage is sold or assigned before the mortgage broker receives
19 a scheduled payment on the residential mortgage loan.

20 Section 401.1-A. Consolidation of related taxpayers, election
21 and requirements.

22 (a) Election.--A group of two or more persons may elect to
23 be a consolidated elected taxpayer for the purposes of this
24 article if the group satisfies all of the following
25 requirements:

26 (1) The group elects to include all persons, including
27 persons enumerated under paragraphs (2), (3), (4), (5), (6),
28 (7), (8), (9) and (10) of the definition of "excluded
29 person," having at least 80%, or having at least 50%, of the
30 value of their ownership interests owned or controlled,

1 directly or constructively through related interests, by
2 common owners during all or any portion of the tax period,
3 together with the common owners. A group making its initial
4 election on the basis of the 80% ownership test may change
5 its election so that its consolidated elected taxpayer group
6 is formed on the basis of the 50% ownership test if all of
7 the following are satisfied:

8 (i) When the initial election was made, the group
9 did not have any persons satisfying the 50% ownership
10 test.

11 (ii) One or more of the persons in the initial group
12 subsequently acquires ownership interests in a person
13 such that the 50% ownership test is satisfied, the 80%
14 ownership test is not satisfied and the acquired person
15 would be required to be included in a combined taxpayer
16 group under section 401.2-A.

17 (iii) The group requests the change in a written
18 request to the department on or before the due date for
19 filing the first return due under section 405.1-A after
20 the date of the acquisition.

21 (iv) The group has not previously changed its
22 election. At the election of the group, all entities that
23 are not incorporated or formed under Federal or State
24 laws and that meet the consolidated elected ownership
25 test shall either be included in the group or all shall
26 be excluded from the group. If, at the time of
27 registration, the group does not include the entities
28 that meet the consolidated elected ownership test, the
29 group shall elect to either include or exclude the newly
30 acquired entities before the due date of the first return

1 due after the date of the acquisition. Each group shall
2 notify the department of the elections before the due
3 date of the return for the period in which the election
4 becomes binding. If 50% of the value of a person's
5 ownership interests is owned or controlled by each of two
6 consolidated elected taxpayer groups formed under the
7 50% ownership or control test, that person is a member of
8 each group for the purposes, and each group shall include
9 in the group's taxable gross receipts 50% of that
10 person's taxable gross receipts. Otherwise, all of that
11 person's taxable gross receipts shall be included in the
12 taxable gross receipts of the consolidated elected
13 taxpayer group of which the person is a member. In no
14 event shall the ownership or control of 50% of the value
15 of a person's ownership interests by two otherwise
16 unrelated groups form the basis for consolidating the
17 groups into a single consolidated elected taxpayer group
18 or permit any exclusion under subsection (c) of taxable
19 gross receipts between members of the two groups.
20 Paragraph (3) applies with respect to the elections
21 described in this subsection.

22 (2) The group makes the election to be treated as a
23 consolidated elected taxpayer in the manner prescribed under
24 paragraph (1).

25 (3) Subject to review and audit by the department, the
26 group agrees that all of the following apply:

27 (i) The group shall file reports as a single
28 taxpayer for at least the next eight calendar quarters
29 following the election so long as at least two or more of
30 the members of the group meet the requirements of

paragraph (1).

(ii) Before the expiration of the eighth calendar quarter, the group shall notify the department if it elects to cancel its designation as a consolidated elected taxpayer. If the group does not so notify the department, the election remains in effect for another eight calendar quarters.

(iii) If, at any time during any of those eight calendar quarters following the election, a former member of the group no longer meets the requirements under paragraph (1), that member shall report and pay the tax imposed under this article separately, as a member of a combined taxpayer or, if the former member satisfies the requirements with respect to another consolidated elected group, as a member of that consolidated elected group.

(iv) The group agrees to the application of subsection (b).

(b) Report.--A group of persons making the election under this section shall report and pay tax on all of the group's taxable gross receipts even if substantial nexus with this Commonwealth does not exist for one or more persons in the group.

(c) Exclusion.--

(1) (i) Members of a consolidated elected taxpayer group shall exclude gross receipts among persons included in the consolidated elected taxpayer group.

(ii) Subject to paragraph (2), nothing in this section shall have the effect of requiring a consolidated elected taxpayer group to include gross receipts received by a person enumerated under paragraphs (2), (3), (4),

1 (5), (6), (7), (8), (9) and (10) of the definition of
2 "excluded person" if that person is a member of the group
3 pursuant to the elections made by the group under
4 subsection (a)(1).

5 (1.1) In the event of a dealer transfer, a consolidated
6 elected taxpayer group shall not exclude, under this
7 subsection, gross receipts from the transfer. For the
8 purposes of this paragraph, a "dealer transfer" shall mean a
9 transfer of property that satisfies both of the following:

10 (i) The property is directly transferred by any
11 means from one member of the group to another member of
12 the group that is a dealer in intangibles but is not a
13 qualifying dealer.

14 (ii) The property is subsequently delivered by the
15 dealer in intangibles to a person that is not a member of
16 the group.

17 (2) Gross receipts related to the sale or transmission
18 of electricity through the use of an intermediary regional
19 transmission organization approved by the Federal Energy
20 Regulatory Commission shall be excluded from taxable gross
21 receipts under paragraph (1) if all other requirements of
22 paragraph (1) are met, even if the receipts are from and to
23 the same member of the group.

24 (d) Notification.--To make the election to be a consolidated
25 elected taxpayer, a group of persons shall notify the department
26 of the election in the manner prescribed by the department and
27 pay the department a registration fee equal to the lesser of
28 \$200 or \$20 for each person in the group. No additional fee
29 shall be imposed for the addition of new members to the group
30 once the group has remitted a fee in the amount of \$200. The

election shall be made and the fee paid before the beginning of
the first calendar quarter to which the election applies. The
fee shall be collected and used in the same manner as provided
under section 404-A. The election shall be made on a form
prescribed by the department for that purpose and shall be
signed by one or more individuals with authority, separately or
together, to make a binding election on behalf of all persons in
the group. Any person acquired or formed after the filing of the
registration shall be included in the group if the person meets
the requirements of subsection (a)(1). The group shall notify
the department of any additions to the group with the next tax
return it files with the department.

Section 401.2-A. Combined taxpayers, registration fee and
liability.

(a) Members.--All persons, other than persons enumerated
under paragraphs (2), (3), (4), (5), (6), (7), (8), (9) and (10)
of the definition of "excluded person," having more than 50% of
the value of their ownership interest owned or controlled,
directly or constructively through related interests, by common
owners during all or any portion of the tax period, together
with the common owners, shall be members of a combined taxpayer
group if those persons are not members of a consolidated elected
taxpayer pursuant to an election under section 401.1-A.

(b) Register.--A combined taxpayer shall register, file
returns and pay taxes under this article as a single taxpayer.

(c) Exclusion.--A combined taxpayer shall exclude neither
taxable gross receipts between its members nor from others that
are not members.

(d) Payment.--A combined taxpayer shall pay to the
department a registration fee equal to the lesser of \$200 or \$20

1 for each person in the group. No additional fee shall be imposed
2 for the addition of new members to the group once the group has
3 remitted a fee in the amount of \$200. The fee shall be timely
4 paid before the beginning of the first calendar quarter or
5 November 15, 2012, whichever is later. The fee shall be
6 collected and used in the same manner as provided under section
7 404-A. Any person acquired or formed after the filing of the
8 registration shall be included in the group if the person meets
9 the requirements of subsection (a). The group must notify the
10 department of any additions to the group with the next quarterly
11 tax return it files with the department.

12 Section 401.3-A. Taxation of property transferred into
13 Commonwealth.

14 (a) Inclusion.--Except as provided under subsection (b):

15 (1) A person shall include as taxable gross receipts the
16 value of property the person transfers into this Commonwealth
17 for the person's own use within one year after the person
18 receives the property outside this Commonwealth.

19 (2) In the case of a consolidated elected taxpayer group
20 or a combined taxpayer group, the taxpayer shall include as
21 taxable gross receipts the value of property that any of the
22 taxpayer's members transferred into this Commonwealth for the
23 use of any of the taxpayer's members within one year after
24 the taxpayer receives the property outside this Commonwealth.

25 (b) Outside property.--Property brought into this
26 Commonwealth within one year after it is received outside this
27 Commonwealth by a person or group described under subsection (a)
28 (1) or (2) shall not be included as taxable gross receipts as
29 required under subsection (a)(1) or (2) if the department
30 ascertains that the property's receipt outside this Commonwealth

1 by the person or group followed by its transfer into this
2 Commonwealth within one year was not intended in whole or in
3 part to avoid in whole or in part the tax imposed under this
4 article.

5 (c) Regulations.--The department may promulgate regulations
6 necessary to administer this section.

7 Section 401.4-A. Joint and several liability.

8 All members of a consolidated elected taxpayer or combined
9 taxpayer group during the tax period for which additional tax,
10 penalty or interest is owed are jointly and severally liable for
11 the amounts. The reporting person will be assessed for the
12 liability and the amounts due may be pursued against any member
13 of the group.

14 Section 402-A. Commercial activity tax levied on taxable gross
15 receipts.

16 (a) Imposition.--For the purpose of funding the needs of
17 this Commonwealth and its local governments beginning with the
18 tax period that commences July 1, 2012, and continuing for every
19 tax period thereafter, there is levied a commercial activity tax
20 on each person with taxable gross receipts for the privilege of
21 doing business in this Commonwealth. Persons on which the
22 commercial activity tax is levied include, but are not limited
23 to, persons with substantial nexus with this Commonwealth. The
24 tax imposed under this section is not a transactional tax and is
25 not subject to the act of September 14, 1949 (Public Law No.
26 86-272, 73 Stat. 555). The tax imposed under this section is in
27 addition to any other taxes or fees imposed by statute. The tax
28 levied under this section is imposed on the person receiving the
29 gross receipts and is not a tax imposed directly on a purchaser.
30 The tax imposed by this section is an annual privilege tax for

1 the calendar year that, in the case of calendar year taxpayers,
2 is the annual tax period and, in the case of calendar quarter
3 taxpayers, contains all quarterly tax periods in the calendar
4 year. A taxpayer is subject to the annual privilege tax for
5 doing business during any portion of the calendar year.

6 (b) Tax on taxpayer.--The tax imposed by this section is a
7 tax on the taxpayer and shall not be billed or invoiced to
8 another person. If the tax or any portion thereof is billed or
9 invoiced and separately stated, the amounts shall remain part of
10 the price for purposes of the sales and use taxes levied under
11 Article II. Nothing in this subsection shall prohibit:

12 (1) a person from including in the price charged for a
13 good or service an amount sufficient to recover the tax
14 imposed by this section; or

15 (2) a lessor from including an amount sufficient to
16 recover the tax imposed by this section in a lease payment
17 charged or from including the amount on a billing or invoice
18 pursuant to the terms of a written lease agreement providing
19 for the recovery of the lessor's tax costs. The recovery of
20 the costs shall be based on an estimate of the total tax cost
21 of the lessor during the tax period, as the tax liability of
22 the lessor cannot be calculated until the end of that period.

23 Section 403-A. Commercial activity tax rate and computation.

24 (a) Computation.--Except as provided under subsections (b)
25 and (d) and in sections 403.1-A and 403.2-A, the tax levied
26 under this section for each tax period shall be the product of
27 two and six-tenths mills per dollar times the remainder of the
28 taxpayer's taxable gross receipts for the tax period after
29 subtracting the exclusion amount provided for under subsection

30 (c).

1 (b) Amounts.--Notwithstanding subsection (c), the tax on the
2 first \$1,000,000 in taxable gross receipts each calendar year
3 shall be \$150. For calendar year 2013, the tax imposed under
4 this subsection shall be paid not later than May 10, 2013, by
5 both calendar year taxpayers and calendar quarter taxpayers. For
6 calendar years 2014, 2015 and 2016, the tax imposed under this
7 subsection shall be paid with the fourth-quarter tax return or
8 annual tax return for the prior calendar year by both calendar
9 year taxpayers and calendar quarter taxpayers. For calendar
10 years 2017 and thereafter, the tax imposed under this subsection
11 shall be paid not later than the tenth day of May of each year
12 along with the first quarter or annual tax return, as
13 applicable.

14 (c) Exclusion.--

15 (1) Each calendar quarter taxpayer may exclude the first
16 \$250,000 of taxable gross receipts for a calendar quarter and
17 may carry forward and apply any unused exclusion amount to
18 the three subsequent calendar quarters. Each calendar year
19 taxpayer may exclude the first \$1,000,000 of taxable gross
20 receipts for a calendar year.

21 (2) A taxpayer switching from a calendar year tax period
22 to a calendar quarter tax period may, for the first quarter
23 of the change, apply the prior calendar quarter exclusion
24 amounts to the first calendar quarter return the taxpayer
25 files that calendar year. The tax rate shall be based on the
26 rate imposed that calendar quarter when the taxpayer switches
27 from a calendar year to a calendar quarter tax period.

28 (3) A general contractor or a subcontractor shall
29 exclude any income other than income that is actually
30 realized by the general contractor or a subcontractor. For

1 the purposes of this paragraph, the term contractor shall
2 have the meaning given to it in 61 Pa. Code § 31.11 (relating
3 to definitions).

4 (4) A taxpayer that has a small profit margin but
5 conducts a high volume of business shall exclude the cost of
6 labor and goods by itemizing those costs in the manner
7 provided by the department.

8 (d) Credit.--There is allowed a credit against the tax
9 imposed under this article for each of the following calendar
10 years if a transfer was made in the preceding calendar year from
11 the General Fund to the Commercial Activity Tax Refund Fund
12 under section 403.2-A(d): calendar years 2008, 2010 and 2012.
13 The credit is allowed for taxpayers that paid in full the tax
14 imposed under this article for the calendar year in which the
15 transfer was made. The amount of a taxpayer's credit equals the
16 amount computed under section 403.2-A(d).

17 Section 403.1-A. Calculation of tax imposed per calendar
18 quarter.

19 This section applies only to calendar quarter taxpayers. The
20 tax imposed per calendar quarter under section 403-A(a) shall be
21 computed as follows:

22 (1) From January 1, 2012, to March 31, 2012, by
23 multiplying the tax otherwise due under that subsection by
24 23%.

25 (2) From April 1, 2012, to March 31, 2013, by
26 multiplying the tax otherwise due under that subsection by
27 40%.

28 (3) From April 1, 2013, to March 31, 2014, by
29 multiplying the tax otherwise due under that subsection by
30 60%.

1 (4) From April 1, 2014, to March 31, 2015, by
2 multiplying the tax otherwise due under that subsection by
3 80%.

4 (5) After March 31, 2015, 100% of the tax due under that
5 subsection.

6 Section 403.2-A. Periodic review of tax collected, revenue
7 limits and application of excess.

8 (a) Computation.--Not later than the last day of September
9 immediately following the end of each CAT test period, the
10 department shall compute the amount of CAT collected during that
11 test period. If the amount is greater than 110% of the
12 prescribed CAT collections for that period, the department shall
13 proceed as provided under subsections (b) and (c). For the
14 purposes of this subsection, the prescribed CAT collections for
15 the CAT test periods are as follows:

16 (1) For the first CAT test period, \$8,015,000.

17 (2) For the second CAT test period, \$1,190,000,000 less
18 any amount credited to the Commercial Activity Tax Refund
19 Fund with regard to the first CAT test period.

20 (3) For the third CAT test period, \$1,610,000,000 less
21 any amount credited to the commercial activity tax refund
22 fund with regard to the second CAT test period.

23 (b) Collections exceeded.--If the amount of CAT collected
24 during a CAT test period exceeds 110% of the prescribed CAT
25 collections for that test period, the department shall determine
26 a new tax rate equal to the tax rate that would have yielded the
27 prescribed CAT collections during that test period less one-half
28 of the amount of the excess that was certified to the department
29 for the test period under subsection (c).

30 (c) Tax rate.--

1 (1) The tax rate shall be the rate that would have to be
2 imposed under section 403-A(a) before any applicable phase-in
3 percentages under section 403.1-A or otherwise provided by
4 law to yield the prescribed CAT collection after applying any
5 applicable phase-in percentages.

6 (2) A new tax rate computed under subsection (b) shall
7 be expressed as a number of mills per dollar, rounded to the
8 nearest one-hundredth of one mill. The rate shall be rounded
9 upward by one-hundredth of one mill only if the next decimal
10 digit is five or more.

11 (3) Not later than the last day of September following
12 the end of the CAT test period on the basis of which a new
13 tax rate is computed, the department shall certify the new
14 tax rate to the Governor, the President pro tempore of the
15 Senate, the Speaker of the House of Representatives and all
16 other members of the General Assembly. The department shall
17 publish the new tax rate by journal entry and provide notice
18 of the new tax rate to taxpayers. The new tax rate shall be
19 the rate imposed under section 403-A(a) beginning with the
20 ensuing calendar year and is subject to any applicable phase-
21 in percentages provided for under section 403.1-A.

22 (c) Certification.--If the amount of CAT collected during a
23 CAT test period exceeds 110% of the prescribed CAT collections
24 for that test period, the department shall certify the excess
25 amount to the department not later than the last day of
26 September immediately following the end of that test period. The
27 department shall transfer from the General Fund one-half of the
28 amount of the excess so certified to the Commercial Activity Tax
29 Refund Fund, which is created in the State Treasury, and the
30 remaining one-half of the amount of the excess to the budget

stabilization fund. All money credited to the Commercial
Activity Tax Refund Fund shall be applied to reimburse the
General Fund for the diminution in revenue caused by the credit
provided under section 403-A(d). In the calendar year that
begins immediately after the year in which a transfer is made to
the Commercial Activity Tax Refund Fund, the department shall
compute the amount to be credited, under section 403-A(d), to
each taxpayer that paid in full the tax imposed under this
article for the calendar year in which the transfer was made.
The credit allowed to the taxpayer shall equal the amount
transferred to the Commercial Activity Tax Refund Fund
multiplied by a fraction, the numerator of which is the amount
of tax paid by that taxpayer for that calendar year and the
denominator of which is the total of the taxes paid by all the
taxpayers for which the credit is allowed. The credit applies
only to the calendar year that begins immediately after the year
in which a transfer is made to the commercial activity tax
refund fund under this subsection.

(d) Intent.--It is the intent of the General Assembly to
conduct a review of the prescribed CAT collections and rate
adjustments provided for under this section every two years and
to establish lower prescribed CAT collections or reduce the rate
of tax levied under this article on the basis of the following
three factors:

(1) The revenue yield of the tax.

(2) The condition of this Commonwealth's economy.

(3) Savings realized by ongoing reform to Medicaid and
other policy initiatives.

(e) Definitions.--As used in this section, the following
words and phrases shall have the meanings given to them in this

1 subsection unless the context clearly indicates otherwise:

2 "CAT." The commercial activity tax levied under this
3 article.

4 "CAT collected." With regard to a CAT test period, the net
5 amount of CAT, exclusive of registration fees, received in the
6 period after subtracting any CAT refunded in the period.

7 "First CAT test period." The twenty-four month period
8 beginning July 1, 2012, and ending June 30, 2014.

9 "Second CAT test period." The twelve-month period beginning
10 July 1, 2015, and ending June 30, 2016.

11 "Third CAT test period." The twelve-month period beginning
12 July 1, 2016, and ending June 30, 2017.

13 Section 403.3-A. Situsing of gross receipts to this
14 Commonwealth.

15 For the purposes of this article, gross receipts shall be
16 sitused to this Commonwealth as follows:

17 (1) Gross rents and royalties from real property located
18 in this Commonwealth shall be sitused to this Commonwealth.

19 (2) Gross rents and royalties from tangible personal
20 property shall be sitused to this Commonwealth to the extent
21 the tangible personal property is located or used in this
22 Commonwealth.

23 (3) Gross receipts from the sale of electricity and
24 electric transmission and distribution services shall be
25 sitused to this Commonwealth in the manner provided under
26 section 1101.

27 (4) Gross receipts from the sale of real property
28 located in this Commonwealth shall be sitused to this
29 Commonwealth.

30 (5) Gross receipts from the sale of tangible personal

1 property shall be sitused to this Commonwealth if the
2 property is received in this Commonwealth by the purchaser.
3 In the case of delivery of tangible personal property by
4 common carrier or by other means of transportation, the place
5 at which the property is ultimately received after all
6 transportation has been completed shall be considered the
7 place where the purchaser receives the property. For purposes
8 of this paragraph, the phrase "delivery of tangible personal
9 property by common carrier or by other means of
10 transportation" includes the situation in which a purchaser
11 accepts the property in this Commonwealth and then transports
12 the property directly or by other means to a location outside
13 this Commonwealth. Direct delivery in this Commonwealth,
14 other than for purposes of transportation, to a person or
15 firm designated by a purchaser constitutes delivery to the
16 purchaser in this Commonwealth, and direct delivery outside
17 this Commonwealth to a person or firm designated by a
18 purchaser does not constitute delivery to the purchaser in
19 this Commonwealth, regardless of where title passes or other
20 conditions of sale.

21 (6) Gross receipts from the sale, exchange, disposition
22 or other grant of the right to use trademarks, trade names,
23 patents, copyrights and similar intellectual property shall
24 be sitused to this Commonwealth to the extent that the
25 receipts are based on the amount of use of the property in
26 this Commonwealth. If the receipts are not based on the
27 amount of use of the property, but rather on the right to use
28 the property, and the payor has the right to use the property
29 in this Commonwealth, then the receipts from the sale,
30 exchange, disposition or other grant of the right to use the

1 property shall be sitused to this Commonwealth to the extent
2 the receipts are based on the right to use the property in
3 this Commonwealth.

4 (7) Gross receipts from the sale of transportation
5 services by a common or contract carrier shall be sitused to
6 this Commonwealth in proportion to the mileage traveled by
7 the carrier during the tax period on roadways, waterways,
8 airways and railways in this Commonwealth to the mileage
9 traveled by the carrier during the tax period on roadways,
10 waterways, airways and railways everywhere. With prior
11 written approval of the department, a common or contract
12 carrier may use an alternative situsing procedure for
13 transportation services.

14 (8) Gross receipts from dividends, interest and other
15 sources of income from financial instruments described under
16 section 1101 shall be sitused to this Commonwealth. Nothing
17 in this paragraph shall limit or modify the exclusions
18 enumerated under the definition of "excluded person" and
19 paragraph (2) of the definition of "gross receipts." The
20 department may promulgate regulations to further specify the
21 manner in which to situs gross receipts subject to this
22 paragraph.

23 (9) Gross receipts from the sale of all other services,
24 and all other gross receipts not otherwise sitused under this
25 section, shall be sitused to this Commonwealth in the
26 proportion that the purchaser's benefit in this Commonwealth
27 with respect to what was purchased bears to the purchaser's
28 benefit everywhere with respect to what was purchased. The
29 physical location where the purchaser ultimately uses or
30 receives the benefit of what was purchased shall be paramount

1 in determining the proportion of the benefit in this
2 Commonwealth to the benefit everywhere. If a taxpayer's
3 records do not allow the taxpayer to determine that location,
4 the taxpayer may use an alternative method to situs gross
5 receipts under this subsection if the alternative method is
6 reasonable, is consistently and uniformly applied, and is
7 supported by the taxpayer's records as the records exist when
8 the service is provided or within a reasonable period of time
9 thereafter.

10 (10) If the situsing provisions of paragraphs (1), (2),
11 (3), (4), (5), (6), (7) and (8) do not fairly represent the
12 extent of a person's activity in this Commonwealth, the
13 person may request, or the department may require or permit,
14 an alternative method. The request by a person must be made
15 within the applicable statute of limitations set forth in
16 this article.

17 (11) The department may promulgate regulations to
18 provide additional guidance to the application, and provide
19 alternative methods of situsing gross receipts that apply to
20 all persons, or subset of persons, that are engaged in
21 similar business or trade activities.

22 Section 404-A. Registration of taxpayer and fee.

23 (a) Registration required.--Not later than 30 days after a
24 person first has more than \$150,000 in taxable gross receipts in
25 a calendar year, each person subject to this article shall
26 register with the department on the form prescribed by the
27 department. The form shall include the following:

28 (1) The person's name.

29 (2) If applicable, the name of the state or country
30 under the laws of which the person is incorporated.

1 (3) If applicable, the location of a person's principal
2 office and the name and address of the officer or agent of
3 the corporation in charge of the business.

4 (4) If applicable, the names of the person's president,
5 secretary, treasurer and authorized agent designated under
6 section 1101, with the post office address of each.

7 (5) The kind of business in which the person is engaged.

8 (6) If required by the department, the date of the
9 beginning of the person's annual accounting period that
10 includes the first day of January of the taxable calendar
11 year.

12 (7) If the person is not a corporation or a sole
13 proprietor, the names of the person's owners and officers, if
14 required by the department.

15 (8) The person's Federal Employer Identification Number
16 or, if those are not applicable, the person's Social Security
17 number or equivalent.

18 (9) All other information that the department requires
19 to administer and enforce this article.

20 (b) Fee.--Except as otherwise provided in this subsection,
21 each person registering with the department as required by
22 subsection (a) shall pay a registration fee. The fee shall be in
23 the amount of \$15 if a person registers electronically and \$20
24 if a person does not register electronically. The registration
25 fee shall be paid in the manner prescribed by the department at
26 the same time the registration is due if a person is subject to
27 the tax imposed under this article before January 1, 2012. If a
28 person first becomes subject to the tax after that date, the
29 registration fee is payable with the first tax period return the
30 person is required to file as prescribed by section 405.1-A. If

a person does not register within the time prescribed by this section, an additional fee is imposed in the amount of \$100 per month or part thereof that the fee is outstanding, not to exceed \$1,000. The department may abate the additional fee. The fee imposed under this subsection may be assessed in the same manner as the tax imposed under this article. Proceeds from the fee shall be credited to the Commercial Activity Tax Administrative Fund, which is created in the State Treasury for the department to use in implementing and administering the tax imposed under this article. Registration fees paid under this section, excluding any additional fee imposed for a person's failure to timely register, shall be credited against the first payment of tax payable under section 403-A.

(c) Notification.--If a person that has registered under this section is no longer a taxpayer subject to this article, including no longer being a taxpayer because of the application of paragraph (1) of the definition of "excluded person," the person shall notify the department that the person's registration should be canceled.

(d) (Reserved).

(e) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Person." The term includes a reporting person.
Section 405-A. Election as calendar year taxpayer.

(a) Notification.--If a person subject to this article anticipates that the person's taxable gross receipts will be more than \$1,000,000 in a calendar year, the person shall notify the department on the person's initial registration form and file on a quarterly basis as a calendar quarter taxpayer. Any

1 taxpayer with taxable gross receipts of no more than \$1,000,000
2 shall register as a calendar year taxpayer and shall file
3 annually.

4 (b) Calendar quarter taxpayer.--Any person that is a
5 calendar year taxpayer under subsection (a) shall become a
6 calendar quarter taxpayer in the subsequent calendar year if the
7 person's taxable gross receipts for the prior calendar year are
8 more than \$1,000,000 and shall remain a calendar quarter
9 taxpayer until the person notifies the department, and receives
10 approval in writing from the department, to switch back to being
11 a calendar year taxpayer. Nothing in this subsection shall
12 prohibit a person that has elected to be a calendar year
13 taxpayer from notifying the department, using the procedures
14 prescribed by the department, that it is switching back to being
15 a calendar quarter taxpayer.

16 (c) Calendar year taxpayer.--Any taxpayer that is not a
17 calendar quarter taxpayer under this section is a calendar year
18 taxpayer. The department may grant written approval for a
19 calendar quarter taxpayer to use an alternative reporting
20 schedule or estimate the amount of tax due for a calendar
21 quarter if the taxpayer demonstrates to the department the need
22 for the deviation. The department may promulgate a regulation to
23 apply this subsection to a group of taxpayers without the
24 taxpayers having to receive written approval from the
25 department.

26 Section 405.1-A. Filing of tax return required and minimum
27 interim payment.

28 (a) Form.--

29 (1) Not later than the tenth day of the second month
30 after the end of each calendar quarter, every taxpayer other

1 than a calendar year taxpayer shall file with the department
2 a tax return in the form as the department prescribes. The
3 return shall include the amount of the taxpayer's taxable
4 gross receipts for the calendar quarter and shall indicate
5 the amount of tax due under section 403-A for the calendar
6 quarter.

7 (2) (i) Subject to section 405-A(c), a calendar quarter
8 taxpayer shall report the taxable gross receipts for that
9 calendar quarter.

10 (ii) With respect to taxable gross receipts
11 incorrectly reported in a calendar quarter that has a
12 lower tax rate, the tax shall be computed at the tax rate
13 in effect for the quarterly return in which the receipts
14 should have been reported. Nothing in this subparagraph
15 shall prohibit a taxpayer from filing an application for
16 refund under section 408-A with regard to the incorrect
17 reporting of taxable gross receipts discovered after
18 filing the annual return described in paragraph(3). A tax
19 return shall not be deemed to be an incorrect reporting
20 of taxable gross receipts for the purposes of this
21 subparagraph if the return reflects between 95% and 105%
22 of the actual taxable gross receipts for the calendar
23 quarter.

24 (3) For the purposes of paragraph(2)(i), the tax return
25 filed for the fourth calendar quarter of a calendar year is
26 the annual return for the privilege tax imposed by this
27 article. The return shall report any additional taxable gross
28 receipts not previously reported in the calendar year and
29 shall adjust for any over-reported taxable gross receipts in
30 the calendar year. If the taxpayer ceases to be a taxpayer

1 before the end of the calendar year, the last return the
2 taxpayer is required to file shall be the annual return, and
3 the taxpayer shall report any additional taxable gross
4 receipts not previously reported in the calendar year and
5 shall adjust for any over-reported taxable gross receipts in
6 the calendar year.

7 (4) As the tax imposed by this article is a privilege
8 tax, the tax rate with respect to taxable gross receipts for
9 a calendar quarter is not fixed until the end of the
10 measurement period for each calendar quarter. Subject to
11 paragraph (2)(ii), the total amount of taxable gross receipts
12 reported for a given calendar quarter shall be subject to the
13 tax rate in effect in that quarter.

14 (5) Not later than the tenth day of May following the
15 end of each calendar year, every calendar year taxpayer shall
16 file with the department a tax return in the form as the
17 department prescribes. The return shall include the amount of
18 the taxpayer's taxable gross receipts for the calendar year
19 and shall indicate the amount of tax due under section 403-A
20 for the calendar year.

21 (b) Minimum tax.--

22 (1) A person that first becomes subject to the tax
23 imposed under this article shall pay the minimum tax imposed
24 under section 403-A(b) along with the registration fee
25 imposed under section 404-A, if applicable, on or before the
26 day the return is required to be filed for that quarter under
27 subsection (a)(1), regardless of whether the person elects to
28 be a calendar year taxpayer under section 405-A.

29 (2) The amount of the minimum tax for a person subject
30 to paragraph (1) shall be reduced to \$75 if the registration

is timely filed after the first day of May and before the first day of January of the following calendar year.

Section 406-A. Penalty for late filing or delinquent payment.

(a) Imposition.--Any taxpayer that fails to file a return or pay the full amount of the tax due within the period prescribed under this article shall pay a penalty in an amount not exceeding the greater of \$50 or 10% of the tax required to be paid for the tax period.

(b) Additional imposition.--

(1) If any additional tax is found to be due, the department may impose an additional penalty of up to 15% on the additional tax found to be due.

(2) Any delinquent payments of the tax made after a taxpayer is notified of an audit or a tax discrepancy by the department is subject to the penalty imposed under this subsection. If an assessment is issued under section 409-A in connection with the delinquent payments, the payments shall be credited to the assessment.

(c) Failure to switch.--After calendar year 2015, the department may impose an additional penalty against a taxpayer that fails to switch to being a calendar quarter taxpayer at the time it had over \$2,000,000 in taxable gross receipts in the calendar year, as required under section 405-A(b). The penalty may be imposed in an amount not to exceed 10% of the tax due above \$2,000,000 in taxable gross receipts for the calendar year. Any penalty imposed under this subsection shall be in addition to any other penalties imposed under this section.

(d) Failure to register.--If the department notifies a person required to register under section 404-A of that requirement and of the requirement to remit the tax due under

1 this article, and the person fails to register and remit the tax
2 within 60 days after the notice, the department may impose an
3 additional penalty of up to 35% of the tax due. The penalty
4 imposed under this subsection shall be in addition to any other
5 penalties imposed under this section.

6 (e) Collection.--The department may collect any penalty or
7 interest imposed by this section in the same manner as the tax
8 imposed under this article. Penalties and interest collected
9 shall be considered as revenue arising from the tax imposed
10 under this article.

11 (f) Abatement.--The department may abate all or a portion of
12 any penalties imposed under this section and may promulgate
13 regulations governing the abatements.

14 (g) Interest.--If any tax due is not timely paid in
15 accordance with this article, the taxpayer shall pay interest,
16 calculated at the annual rate prescribed under 61 Pa. Code
17 \$ 151.22 (relating to transfer and assessment and refund of
18 credits) or section 2 of the act of April 9, 1867 (P.L.58,
19 No.36), entitled "An act regulating interest on public
20 accounts," from the date the tax payment was due to the date of
21 payment or to the date an assessment was issued, whichever
22 occurs first.

23 (h) Incorrect reporting.--The department may impose a
24 penalty of up to 10% for any additional tax that is due under
25 section 405.1-A(a)(2)(ii) from a taxpayer incorrectly reporting
26 its taxable gross receipts.

27 (i) Incorrect billing.--If the department discovers that a
28 taxpayer has billed or invoiced another person for the tax
29 imposed under this article in violation of 402-A(b), the
30 department shall notify the taxpayer of the violation by

1 certified mail and may impose a penalty of up to \$500. If the
2 taxpayer subsequently bills or invoices a person for the tax
3 imposed under this article, the department shall impose a
4 penalty of \$500.

5 Section 407-A. Quarterly payments, electronic filing of returns
6 and penalty.

7 (a) Electronic filing.--Any person required to file returns
8 for a calendar quarter shall remit each tax payment, and, if
9 required by the department, file the tax return or the annual
10 report, electronically. The department may require taxpayers to
11 use the electronic filing system under section 3003.8 to file
12 returns and remit the tax or may provide another means for
13 taxpayers to file and remit the tax electronically.

14 (b) Excuse from requirement.--A person required by this
15 section to remit taxes or file returns electronically may apply
16 to the department, on the form prescribed by the department, to
17 be excused from that requirement. The department may excuse a
18 person from the requirements of this subsection for good cause.

19 (c) Failure.--

20 (1) If a person required to remit taxes or file a return
21 electronically under this section fails to do so, the
22 department may impose a penalty not to exceed the following:

23 (i) For either of the first two calendar quarters
24 the person so fails, 5% of the amount of the payment that
25 was required to be remitted.

26 (ii) For the third and any subsequent calendar
27 quarters the person so fails, 10% of the amount of the
28 payment that was required to be remitted.

29 (2) The penalty imposed under paragraph (1) shall be in
30 addition to any other penalty imposed under this article and

1 shall be considered as revenue arising from the tax imposed
2 under this article. A penalty may be collected by assessment
3 in the manner prescribed by section 409-A. The department may
4 abate all or a portion of the penalty.

5 Section 408-A. Application for refund to taxpayer.

6 (a) Time.--An application for refund to the taxpayer of the
7 amount of taxes imposed under this article that are overpaid,
8 paid illegally or erroneously, or paid on any illegal or
9 erroneous assessment, shall be filed by the reporting person
10 with the department, on the form prescribed by the department,
11 within four years after the date of the illegal or erroneous
12 payment of the tax, or within any additional period allowed
13 under section 409-A(f). The applicant shall provide the amount
14 of the requested refund along with the claimed reasons for, and
15 documentation to support, the issuance of a refund.

16 (b) Amount.--On the filing of the refund application, the
17 department shall determine the amount of refund to which the
18 applicant is entitled. If the amount is not less than that
19 claimed, the department shall certify the amount to the State
20 Treasurer for payment. If the amount is less than that claimed,
21 the department shall proceed in accordance with 53 Pa.C.S.
22 § 8425 (relating to refunds of overpayments).

23 (c) Interest.--Interest on a refund applied for under this
24 section, computed at the rate provided for under section 1274(d)
25 of the Internal Revenue Code, shall be allowed from the later of
26 the date the tax was paid or when the tax payment was due.

27 (d) Full exclusion.--A calendar quarter taxpayer with more
28 than \$1,000,000 in taxable gross receipts in a calendar year
29 other than calendar year 2012 and that is not able to exclude
30 \$1,000,000 in taxable gross receipts because of the operation of

1 the taxpayer's business in that calendar year may file for a
2 refund under this section to obtain the full exclusion of
3 \$1,000,000 in taxable gross receipts for that calendar year.

4 (e) Credit.--Except as provided under section 408.1-A, the
5 department may, with the consent of the taxpayer, provide for
6 the crediting against tax due for a tax year the amount of any
7 refund due the taxpayer under this article for a preceding tax
8 year.

9 Section 408.1-A. Application of refund to debt to Commonwealth.

10 (a) Satisfaction.--If a taxpayer entitled to a refund under
11 section 408-A owes any debt to the Commonwealth, the amount
12 refundable may be applied in satisfaction of the debt. If the
13 amount refundable is less than the amount of the debt, it may be
14 applied in partial satisfaction of the debt. If the amount
15 refundable is greater than the amount of the debt, the amount
16 remaining after satisfaction of the debt shall be refunded. This
17 section shall apply to debts that have become final. For the
18 purposes of this section, a debt becomes final when, under the
19 applicable law, any time provided for petition for reassessment,
20 request for reconsideration or other appeal of the legality or
21 validity of the amount giving rise to the debt expires without
22 an appeal having been filed in the manner provided by law.

23 (b) Definitions.--As used in this section, the following
24 words and phrases shall have the meanings given to them in this
25 subsection unless the context clearly indicates otherwise:

26 "Debt to the Commonwealth." Any of the following:

27 (1) Unpaid taxes due the Commonwealth.

28 (2) Unpaid workers' compensation premiums due the
29 Commonwealth.

30 (3) Unpaid unemployment compensation contributions due

1 under the Commonwealth.

2 (4) Unpaid unemployment compensation payment in lieu of
3 contribution.

4 (5) Unpaid fees payable to the Commonwealth or to the
5 clerk of courts.

6 (6) Incorrect medical assistance payments.

7 (7) Any unpaid charge, penalty or interest arising from
8 paragraphs (1), (2), (3), (4), (5) and (6).

9 Section 409-A. Assessment against person not filing return or
10 paying tax.

11 (a) Assessment.--The department may make an assessment,
12 based on any information in the department's possession, against
13 any person that fails to file a return or pay any tax as
14 required by this article. The department shall give the person
15 assessed written notice of the assessment as provided under 61
16 Pa. Code § 119.1 (relating to payment on notice and demand).
17 With the notice, the department shall provide instructions on
18 the manner in which to petition for reassessment and request a
19 hearing with respect to the petition. The department shall send
20 any assessments against consolidated elected taxpayer and
21 combined taxpayer groups under section 401.1-A or 401.2-A to the
22 taxpayer's reporting person. The reporting person shall notify
23 all members of the group of the assessment and all outstanding
24 taxes, interest and penalties for which the assessment is
25 issued.

26 (b) Final.--Unless the person assessed, within 60 days after
27 service of the notice of assessment, files with the department,
28 either personally or by certified mail, a written petition
29 signed by the person or the person's authorized agent having
30 knowledge of the facts, the assessment becomes final, and the

1 amount of the assessment is due and payable from the person
2 assessed to the State Treasurer. The petition shall indicate the
3 objections of the person assessed, but additional objections may
4 be raised in writing if received by the department prior to the
5 date shown on the final determination.

6 (c) Filing.--

7 (1) After an assessment becomes final, if any portion of
8 the assessment, including accrued interest, remains unpaid, a
9 certified copy of the department's entry making the
10 assessment final may be filed in the office of the clerk of
11 the court of common pleas in the county in which the person
12 resides or has its principal place of business in this
13 Commonwealth.

14 (2) Immediately upon the filing of the entry, the clerk
15 shall enter judgment for the Commonwealth against the person
16 assessed in the amount shown on the entry. Execution shall
17 issue upon the judgment at the request of the department, and
18 all laws applicable to sales on execution shall apply to
19 sales made under the judgment.

20 (3) The portion of the assessment not paid within 60
21 days after the day the assessment was issued shall bear
22 interest at the annual rate prescribed under section 1274(d)
23 of the Internal Revenue Code from the day the department
24 issues the assessment until it is paid. Interest shall be
25 paid in the same manner as the tax and may be collected by
26 the issuance of an assessment under this section.

27 (d) Jeopardy assessment.--If the department believes that
28 collection of the tax will be jeopardized unless proceedings to
29 collect or secure collection of the tax are instituted without
30 delay, the department may issue a jeopardy assessment against

1 the person liable for the tax. Immediately upon the issuance of
2 the jeopardy assessment, the department shall file an entry with
3 the clerk of the court of common pleas in the manner prescribed
4 under subsection (c). Notice of the jeopardy assessment shall be
5 served on the person assessed or the person's authorized agent
6 in the manner provided under 61 Pa. Code § 119.1 within five
7 days of the filing of the entry with the clerk. The total amount
8 assessed shall be immediately due and payable, unless the person
9 assessed files a petition for reassessment in accordance with
10 subsection (b) and provides security in a form satisfactory to
11 the department and in an amount sufficient to satisfy the unpaid
12 balance of the assessment. Full or partial payment of the
13 assessment shall not prejudice the department's consideration of
14 the petition for reassessment.

15 (e) Forwarding.--The department shall immediately forward to
16 the State Treasurer all amounts the department receives under
17 this section, which shall be considered as revenue arising from
18 the tax imposed under this article.

19 (f) Time for assessment.--Except as provided under this
20 subsection, no assessment shall be made or issued against a
21 taxpayer for the tax imposed under this article more than four
22 years after the due date for the filing of the return for the
23 tax period for which the tax was reported, or more than four
24 years after the return for the tax period was filed, whichever
25 is later. The time limit may be extended if both the taxpayer
26 and the department consent in writing to the extension or enter
27 into an agreement waiving or extending the time limit. Any
28 extension shall extend the four-year time limit under section
29 408-A(b) for the same period of time. Nothing in this subsection
30 shall bar an assessment against a taxpayer that fails to file a

1 return required under this article or that files a fraudulent
2 return.

3 (g) Audit.--If the department possesses information that
4 indicates that the amount of tax a taxpayer is required to pay
5 under this article exceeds the amount the taxpayer paid, the
6 department may audit a sample of the taxpayer's gross receipts
7 over a representative period of time to ascertain the amount of
8 tax due and may issue an assessment based on the audit. The
9 department shall make a good faith effort to reach agreement
10 with the taxpayer in selecting a representative sample. The
11 department may apply a sampling method only if the department
12 has prescribed the method by regulation.

13 (h) Location of person.--If the whereabouts of a person
14 subject to this article is not known to the department, the
15 department shall follow the procedures under 61 Pa. Code
16 § 119.1.

17 Section 410-A. Disposal of business or assets and tax due
18 immediately.

19 If any person liable for the tax imposed under this article
20 sells the trade or business, disposes in any manner other than
21 in the regular course of business at least 75% of assets of the
22 trade or business or quits the trade or business, any tax owed
23 by the person shall become due and payable immediately, and the
24 person shall pay the tax under this section, including any
25 applicable penalties and interest, within 45 days after the date
26 of selling or quitting the trade or business. The person's
27 successor shall withhold a sufficient amount of the purchase
28 money to cover the amount due and unpaid until the former owner
29 produces a receipt from the department showing that the amounts
30 are paid or a certificate indicating that no taxes are due. If a

purchaser fails to withhold purchase money, that person shall be personally liable up to the purchase money amount, for the amounts that are unpaid during the operation of the business by the former owner. The department may promulgate regulations regarding the issuance of certificates under this section, including the waiver of the need for a certificate if certain criteria are met.

Section 411-A. Failure to report or pay and annulment of privilege or franchise.

If any person subject to this article fails to report or pay the tax as required under this article or fails to pay any penalty imposed under this article within 90 days after the time prescribed for payment of the penalty, the Attorney General, on the request of the department, shall commence an action in quo warranto in the court of appeals of the county in which the person has its principal place of business to forfeit and annul its privileges or franchise within this Commonwealth. If the court finds that the person is in default for the amount claimed, it shall render judgment revoking the person's privileges or franchise within this Commonwealth.

Section 412-A. Records, Federal returns and Federal-State reconciliation computations.

The department may prescribe requirements for the keeping of records and other pertinent documents, the filing of copies of Federal income tax returns and determinations and computations reconciling Federal income tax returns with the returns and reports required under section 405-A. The department may require any person, by notice served on that person, to keep those records that the department considers necessary to show whether, and the extent to which, a person is subject to this article.

1 Those records and other documents shall be open during business
2 hours to inspection by the department and shall be preserved for
3 a period of four years unless the department, in writing,
4 consents to their destruction within that period, or by order
5 requires that they be kept longer. If the records are normally
6 kept by the person electronically, the person shall provide the
7 records to the department electronically at the department's
8 request. Any information required by the department under this
9 article is confidential as provided for under section 408,
10 except that the department shall make public an electronic list
11 of all actively registered persons required to remit the tax
12 under this article, including legal names, trade names,
13 addresses and account numbers. The list shall include all
14 persons that canceled their registration at any time during the
15 preceding four calendar years, including the date the
16 registration was canceled.

17 Section 453-A. Credit against tax for amortizable net operating
18 losses.

19 (a) Nonrefundable credit.--For each calendar period
20 beginning prior to January 1, 2037, there is allowed a
21 nonrefundable tax credit against the tax levied each year by
22 this article on each qualifying taxpayer, on each consolidated
23 elected taxpayer having one or more qualifying taxpayers as a
24 member and on each combined taxpayer having one or more
25 qualifying taxpayers as a member. The credit shall be claimed in
26 the order specified in section 498-A and is allowed only to
27 reduce the first one-half of any tax remaining after allowance
28 of the credits that precede it in section 498-A. No credit under
29 subsection (b) shall be allowed against the second one-half of
30 the remaining tax. Except as otherwise limited by subsections

1 (b) and (c), the maximum amount of the nonrefundable credit that
2 may be used against the first one-half of the remaining tax for
3 each calendar year is as follows:

4 (1) For calendar year 2017, 10% of the amortizable
5 amount.

6 (2) For calendar year 2018, 20% of the amortizable
7 amount, less all amounts previously used.

8 (3) For calendar year 2019, 30% of the amortizable
9 amount, less all amounts previously used.

10 (4) For calendar year 2020, 40% of the amortizable
11 amount, less all amounts previously used.

12 (5) For calendar year 2021, 50% of the amortizable
13 amount, less all amounts previously used.

14 (6) For calendar year 2022, 60% of the amortizable
15 amount, less all amounts previously used.

16 (7) For calendar year 2023, 70% of the amortizable
17 amount, less all amounts previously used.

18 (8) For calendar year 2024, 80% of the amortizable
19 amount, less all amounts previously used.

20 (9) For calendar year 2025, 90% of the amortizable
21 amount, less all amounts previously used.

22 (10) For each of calendar years 2026, 2027, 2028, 2029,
23 2030, 2031, 2032, 2033, 2034, 2035 and 2036, 100% of the
24 amortizable amount, less all amounts used in all previous
25 years.

26 In no event shall the cumulative credit used for calendar years
27 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026,
28 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035 and 2036
29 exceed 100% of the amortizable amount.

30 (b) Refundable credit.--

1 (1) Except as set forth under paragraph (2), a
2 refundable credit is allowed in calendar year 2037 for any
3 portion of the qualifying taxpayer's amortizable amount that
4 is not used in accordance with subsection (a) against the tax
5 levied by this article on all taxpayers.

6 (2) Paragraph (1) shall not apply and no refundable
7 credit shall be available to any person if during any portion
8 of the calendar year 2030 the person is not subject to the
9 tax imposed by this article.

10 (c) Filing.--Not later than June 30, 2013, each qualifying
11 taxpayer, consolidated elected taxpayer or combined taxpayer
12 that claims for any year the credit allowed under subsections
13 (a) and (b) shall file with the department a report setting
14 forth the amortizable amount available to the taxpayer and all
15 other related information that the department, by regulation,
16 requires. If the taxpayer does not timely file the report or
17 fails to provide timely all information required by this
18 subsection, the taxpayer is precluded from claiming any credit
19 amounts described under subsections (a) and (b). Unless extended
20 by mutual consent, the department may, until June 30, 2017,
21 audit the accuracy of the amortizable amount available to each
22 taxpayer that will claim the credit, and adjust the amortizable
23 amount or, if appropriate, issue any assessment or final
24 determination, as applicable, necessary to correct any errors
25 found upon audit.

26 (d) Sham transaction.--For the purpose of calculating the
27 amortizable amount, if the department ascertains that any
28 portion of that amount is the result of a sham transaction, the
29 department shall reduce the amortizable amount by two times the
30 adjustment.

1 (e) Transfer.--If one entity transfers all or a portion of
2 its assets and equity to another entity as part of an entity
3 organization or reorganization or subsequent entity organization
4 or reorganization for which no gain or loss is recognized in
5 whole or in part for Federal income tax purposes under the
6 Internal Revenue Code, the credits allowed by this section shall
7 be computed in a manner consistent with that used to compute the
8 portion, if any, of Federal net operating losses allowed to the
9 respective entities under the Internal Revenue Code. The
10 department may prescribe forms or regulations for making the
11 computations required by this subsection.

12 (f) Disposition.--

13 (1) Except as provided under subsection (g), no person
14 shall pledge, collateralize, hypothecate, assign, convey,
15 sell, exchange or otherwise dispose of any or all tax credits
16 or any portion of any or all tax credits allowed under this
17 section.

18 (2) No credit allowed under this section is subject to
19 execution, attachment, lien, levy or other judicial
20 proceeding.

21 (g) Compliance.--

22 (1) (i) Except as set forth under subparagraph (ii) and
23 notwithstanding section 401(3)1, each person timely and
24 fully complying with the reporting requirements set forth
25 under subsection (c) shall not claim, and shall not be
26 entitled to claim, any deduction or adjustment for any
27 Pennsylvania net operating loss carried forward to any
28 one or more franchise tax years after franchise tax year
29 2005.

30 (ii) Subparagraph (i) shall apply only to the

1 portion of the Pennsylvania net operating loss
2 represented by the disallowed Pennsylvania net operating
3 loss carryforward.

4 (2) Notwithstanding section 401(3)1, with respect to all
5 franchise tax years after franchise tax year 2012, each
6 person timely and fully complying with the reporting
7 requirements set forth under subsection (c) shall not claim,
8 and shall not be entitled to claim, any deduction, exclusion
9 or adjustment with respect to deductible temporary
10 differences reflected on the person's books and records on
11 the last day of its taxable year ending in 2010.

12 (3) (i) Except as set forth under subparagraph (ii) and
13 notwithstanding section 401(3)1, with respect to all
14 franchise tax years after franchise tax year 2012, each
15 person timely and fully complying with the reporting
16 requirements set forth under subsection (c) shall exclude
17 from Pennsylvania net income all taxable temporary
18 differences reflected on the person's books and records
19 on the last day of its taxable year ending in 2010.

20 (ii) The exclusion provided under subparagraph (i)
21 for any franchise tax year may not exceed the amount of
22 the taxable temporary differences otherwise included in
23 Pennsylvania net income for that year.

24 (4) Paragraphs (2) and (3) shall apply only to the
25 extent the items were used in the calculations of the credit
26 provided under this section.

27 (h) Definitions.--As used in this section, the following
28 words and phrases shall have the meanings given to them in this
29 subsection unless the context clearly indicates otherwise:

30 "Amortizable amount." The term shall mean:

1 (1) If the qualifying taxpayer's other net deferred tax
2 items apportioned to this Commonwealth is equal to or greater
3 than zero, 8% of the sum of the qualifying taxpayer's
4 disallowed Pennsylvania net operating loss carryforward and
5 the qualifying taxpayer's other net deferred tax items
6 apportioned to this Commonwealth.

7 (2) If the amount of the qualifying taxpayer's other net
8 deferred tax items apportioned to this Commonwealth is less
9 than zero and if the absolute value of the amount of
10 qualifying taxpayer's other net deferred tax items
11 apportioned to this Commonwealth is less than the qualifying
12 taxpayer's disallowed net operating loss, 8% of the
13 difference between the qualifying taxpayer's disallowed net
14 operating loss carryforward and the absolute value of the
15 qualifying taxpayer's other net deferred tax items
16 apportioned to this Commonwealth.

17 (3) If the amount of the qualifying taxpayer's other net
18 deferred tax items apportioned to this Commonwealth is less
19 than zero and if the absolute value of the amount of
20 qualifying taxpayer's other net deferred tax items
21 apportioned to this Commonwealth is equal to or greater than
22 the qualifying taxpayer's disallowed net operating loss,
23 zero.

24 "Amount of other net deferred tax items." The term shall
25 mean:

26 (1) Subject to paragraphs (2), (3) and (4), the
27 difference between the qualifying taxpayer's deductible
28 temporary differences, net of related valuation allowance
29 amounts, shown on the qualifying taxpayer's books and records
30 on the last day of its taxable year ending in 2010, and the

1 qualifying taxpayer's taxable temporary differences as shown
2 on those books and records on that date. The amount of other
3 net deferred tax items may be less than zero.

4 (2) For the purposes of computing the amount of the
5 qualifying taxpayer's other net deferred tax items described
6 under paragraph (1), any credit carryforward shall be
7 excluded from the amount of deductible temporary differences
8 to the extent the credit carryforward amount, net of any
9 related valuation allowance amount, is otherwise included in
10 the qualifying taxpayer's deductible temporary differences,
11 net of related valuation allowance amounts, shown on the
12 qualifying taxpayer's books and records on the last day of
13 the qualifying taxpayer's taxable year ending in 2010.

14 (3) No portion of the disallowed Pennsylvania net
15 operating loss carryforward shall be included in the
16 computation of the amount of the qualifying taxpayer's other
17 net deferred tax items described under paragraph (1).

18 (4) The amount of other net deferred tax items
19 apportioned to this Commonwealth may not exceed 25% of the
20 qualifying Pennsylvania net operating loss carryforward.

21 "Books and records." The qualifying taxpayer's books,
22 records and all other information, all of which the qualifying
23 taxpayer maintains and uses to prepare and issue its financial
24 statements in accordance with generally accepted accounting
25 principles.

26 "Deductible temporary differences" and "taxable temporary
27 differences." The terms shall have the same meanings as those
28 terms have for purposes of paragraph 13 of the Statement of
29 Financial Accounting Standards, number 109.

30 "Disallowed Pennsylvania net operating loss carryforward."

The lesser of the amounts described under paragraph (1) or (2), except that the amounts described under paragraph (1) or (2) shall each be reduced by the qualifying amount.

(1) The qualifying taxpayer's qualifying Pennsylvania net operating loss carryforward.

(2) The Pennsylvania net operating loss carryforward amount that the qualifying taxpayer used to compute the related deferred tax asset reflected on its books and records on the last day of its taxable year ending in 2010, adjusted for return to accrual, but this amount shall be reduced by the qualifying related valuation allowance amount. For the purposes of this paragraph, the "qualifying related valuation allowance amount" is the amount of Pennsylvania net operating loss reflected in the qualifying taxpayer's computation of the valuation allowance account, as shown on its books and records on the last day of its taxable year ending in 2010, with respect to the deferred tax asset relating to its Pennsylvania net operating loss carryforward amount.

"Franchise tax year." The term shall mean the tax year for the qualifying taxpayer.

"Net income." The term shall have the same meaning as the term "net profits" under section 303.

"Other net deferred tax items apportioned to the Commonwealth." The term shall be the product of:

(1) the amount of other net deferred tax items; and

(2) the formula described under 61 Pa. Code § 155.28 (relating to capital stock value methods-fix formula) for the qualifying taxpayer's franchise tax year 2012.

"Qualifying amount." \$50,000,000 per person, except that if for franchise tax year 2012 the person was a member of a

1 combined franchise tax report, as provided under section 403,
2 the "qualifying amount" is, in the aggregate, \$50,000,000 for
3 all members of that combined franchise tax report, and for
4 purposes of paragraphs (1) and (2) of the definition of
5 "disallowed Pennsylvania net operating loss carryforward," those
6 members shall allocate to each member any portion of the
7 \$50,000,000 amount. The total amount allocated to the members
8 who are qualifying taxpayers shall equal \$50,000,000.

9 "Qualifying Pennsylvania net operating loss carryforward." A
10 Pennsylvania net operating loss carryforward that the taxpayer
11 could deduct in whole or in part for franchise tax year 2012,
12 except for the application of subsection (g). A qualifying
13 Pennsylvania net operating loss carryforward shall not exceed
14 the amount of loss carryforward from franchise tax year 2011 as
15 reported by the taxpayer either on a franchise tax report for
16 franchise tax year 2011 or on an amended franchise tax report
17 prepared in good faith for the year and filed before July 1,
18 2012.

19 "Qualifying taxpayer." A taxpayer under this article that
20 has a qualifying Pennsylvania net operating loss carryforward
21 equal to or greater than the qualifying amount.

22 "Sham transaction." A transaction or series of transactions
23 without economic substance because there is no business purpose
24 or expectation of profit other than obtaining tax benefits.

25 "Taxable year." The term shall have the same meaning as
26 under section 301(v).

27 Section 498-A. Order of credits, limitations and excess carried
28 forward.

29 (a) Procedure.--To provide a uniform procedure for
30 calculating the amount of tax due under this article, a taxpayer

1 shall claim any credits to which it is entitled in the following
2 order:

3 (1) The nonrefundable credit for calendar years 2017,
4 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027,
5 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035 and 2036 for
6 unused net operating losses under section 453-A(a).

7 (2) The refundable credit for calendar year 2037 for
8 unused net operating losses under 453-A(b).

9 (b) Limit.--For any credit except the credit enumerated
10 under subsection (a)(1), the amount of the credit for a tax
11 period shall not exceed the tax due after allowing for any other
12 credit that precedes it in the order required under this
13 section. Any excess amount of a particular credit may be carried
14 forward if authorized under the section creating the credit.

15 Section 499-A. Penalties.

16 (a) Fraudulent filing.--Whoever files a fraudulent refund
17 claim under section 408-A shall be fined the greater of not more
18 than \$1,000 or the amount of the fraudulent refund requested or
19 imprisoned not more than 60 days, or both.

20 (b) Violation of article.--Except as provided under this
21 section, whoever violates this article, or any regulation
22 promulgated by the department under this article, shall be fined
23 not more than \$500 or imprisoned not more than 30 days, or both.

24 (c) Cumulative penalties.--The penalties provided under this
25 section shall be in addition to any penalties imposed by the
26 department under section 406-A.

27 Section 3. This act shall take effect January 1, 2012, or
28 immediately, whichever is later.