

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILLNo. 136 Session of
1985

Report of the Committee of Conference

To the Members of the House of Representatives and Senate:

We, the undersigned, Committee of Conference on the part of the House of Representatives and Senate for the purpose of considering House Bill No. 136, entitled:

"An act amending the act of March 4, 1971 (P.L.6, No.2), entitled 'An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; * * * prescribing crimes, offenses and penalties,' shifting the burden of proof from vendors to the Department of Revenue on questions concerning the utilization of exemption certificates; * * * CHANGING THE TIME PERIOD WITHIN WHICH PETITIONS FOR REFUNDS MAY BE FILED; AND MAKING REPEALS,"

respectfully submit the following bill as our report:

JAMES J. MANDERINO

MAX PIEVSKY

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(Committee on the part of the House of Representatives.)

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AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," shifting the burden of proof from vendors to the Department of Revenue on questions concerning the utilization of exemption certificates; eliminating the split second quarter for filing of sales tax returns; reducing the personal income tax rate; permitting the equitable adjustment of taxes and penalties; revising the provisions relating to net loss carryover; adding a definition of "taxable year"; providing a processing exemption for computer software from the capital stock and franchise tax; providing an investment credit; eliminating tentative payments for corporate net income taxes and requiring the payment of estimated taxes; reducing tentative tax payments for the capital stock and franchise tax; changing the time period within which petitions for refunds may be filed; making repeals; and making an appropriation.

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

Section 1. Section 217 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended July 21, 1983 (P.L.63, No.29), is amended to read:

Section 217. Time for Filing Returns.--(a) [Monthly, Bimonthly and Quarterly Returns] Quarterly and Monthly Returns:

(1) For the year in which this article becomes effective and in each year thereafter a return shall be filed quarterly by every licensee on or before the twentieth day of April, July, October and January for the three months ending the last day of March, June, September and December[, except as hereinafter provided].

(2) For the year in which this article becomes effective, and in each year thereafter, a return shall be filed monthly with respect to each month by every licensee whose total tax

1 reported, or in the event no report is filed, the total tax
2 which should have been reported, for the third calendar quarter
3 of the preceding year equals or exceeds six hundred dollars
4 (\$600). Such returns shall be filed on or before the twentieth
5 day of the next succeeding month with respect to which the
6 return is made.[, except that the return due for the month of
7 April, of each year, shall be filed on or before the twentieth
8 day of May next following and the return due for the month of
9 May of each year shall be filed on or before the twentieth day
10 of June next following.] Any licensee required to file monthly
11 returns hereunder shall be relieved from filing quarterly
12 returns.

13 [(3) For the year in which this article becomes effective,
14 and for each year thereafter, every licensee required to file a
15 quarterly return for the second calendar quarter shall file a
16 single return for the months of April and May on or before the
17 fifteenth day of June next following. The filing of such return
18 shall not relieve the licensee of the duty to file a return on
19 or before the twentieth day of July next following and to remit
20 therewith tax for the month of June.]

21 (b) Annual Returns. For the calendar year 1971, and for each
22 year thereafter, no annual return shall be filed, except as may
23 be required by rules and regulations of the department
24 promulgated and published at least sixty days prior to the end
25 of the year with respect to which the returns are made. Where
26 such annual returns are required licensees shall not be required
27 to file such returns prior to the twentieth day of the year
28 succeeding the year with respect to which the returns are made.

29 (c) Other Returns. Any person, other than a licensee, liable
30 to pay to the department any tax under this article, shall file

1 a return on or before the twentieth day of the month succeeding
2 the month in which such person becomes liable for the tax.

3 (d) Small Taxpayers. The department, by regulation, may
4 waive the requirement for the filing of quarterly return in the
5 case of any licensee whose individual tax collections do not
6 exceed seventy-five dollars (\$75) per calendar quarter and may
7 provide for reporting on a less frequent basis in such cases.

8 Section 2. Section 237(c) of the act, amended March 26, 1976
9 (P.L.60, No.26), is amended to read:

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

11 (c) Exemption Certificates. If the tax does not apply to the
12 sale or lease of tangible personal property or services, the
13 purchaser or lessee shall furnish to the vendor a certificate
14 indicating that the sale is not legally subject to the tax. The
15 certificate shall be in substantially such form as the
16 department may, by regulation, prescribe. Where the tangible
17 personal property or service is of a type which is never subject
18 to the tax imposed or where the sale or lease is in interstate
19 commerce, such certificate need not be furnished. Where a series
20 of transactions are not subject to tax, a purchaser or user may
21 furnish the vendor with a single exemption certificate in
22 substantially such form and valid for such period of time as the
23 department may, by regulation, prescribe. The department shall
24 provide all school districts and intermediate units with a
25 permanent tax exemption number. An exemption certificate, which
26 is complete and regular and on its face discloses a valid basis
27 of exemption if taken in good faith, shall relieve the vendor
28 from the liability imposed by this section. An exemption
29 certificate accepted by a vendor from a natural person domiciled
30 within this Commonwealth or any association, fiduciary,

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

16 * * *

17 Section 3. Section 253(d) of the act is amended to read:

18 Section 253. Refund Petition.--* * *

19 (d) Notwithstanding any other provision of this section
20 where any tax, interest or penalty has been paid under a
21 provision of this article subsequently held by final judgment of
22 a court of competent jurisdiction to be unconstitutional, or
23 under an interpretation of such provision subsequently held by
24 such court to be erroneous, a petition for refund may be filed
25 either before or subsequent to final judgment, but such petition
26 must be filed within [five] three years of the date of the
27 payment of which a refund is requested. The department shall
28 have jurisdiction to hear and determine any such petition filed
29 prior to such final judgment only if, at the time of filing of
30 the petition, proceedings are pending in a court of competent

1 jurisdiction wherein the claim of unconstitutionality or of
2 erroneous interpretation, made in the petition for refund may be
3 established, and in such case, the department shall not take
4 final action upon the petition for refund until the judgment
5 determining the question involved in such petition has become
6 final.

7 Section 4. Section 302 of the act, amended July 21, 1983
8 (P.L.63, No.29), is amended to read:

9 Section 302. Imposition of Tax.--(a) There is hereby
10 imposed a tax to be paid by resident individuals, estates or
11 trusts at the annual rate of two and two-tenths per cent for
12 taxable years up to and including the taxable year commencing on
13 or after January 1, 1982, and at the annual rate of two and
14 forty-five hundredths per cent for the taxable year commencing
15 on or after January 1, 1983, and for the first six months of the
16 taxable year commencing on or after January 1, 1984, and at the
17 annual rate of two and thirty-five hundredths per cent for the
18 second six months of the taxable year commencing on or after
19 January 1, 1984, and for the taxable year commencing on or after
20 January 1, 1985, and at the annual rate of two and two-tenths
21 per cent for the taxable year commencing on or after January 1,
22 1986, and for each taxable year thereafter on the privilege of
23 receiving each of the classes of income hereinafter enumerated
24 in section 303.

25 (b) There is hereby imposed a tax to be paid by nonresident
26 individuals, estates or trusts at the annual rate of two and
27 two-tenths per cent for taxable years up to and including the
28 taxable year commencing on or after January 1, 1982, and at the
29 annual rate of two and forty-five hundredths per cent for the
30 taxable year commencing on or after January 1, 1983, and for the

1 first six months of the taxable year commencing on or after
2 January 1, 1984, and at the annual rate of two and thirty-five
3 hundredths per cent for the second six months of the taxable
4 year commencing on or after January 1, 1984, and for the taxable
5 year commencing on or after January 1, 1985, and at the annual
6 rate of two and two-tenths per cent for the taxable year
7 commencing on or after January 1, 1986, and for each taxable
8 year thereafter on the privilege of receiving each of the
9 classes of income enumerated in section 303 from sources within
10 this Commonwealth.

11 Section 5. Sections 346(a) and 347 of the act, added August
12 31, 1971 (P.L.362, No.93), are amended to read:

13 Section 346. Refund or Credit of Overpayment.--(a) In the
14 case of any [overpayment] payment of tax not due under this
15 article, the department may credit the amount of such
16 overpayment against any liability in respect of the tax imposed
17 by this article on the part of the person who made the
18 overpayment and shall refund any balance to such person.

19 * * *

20 Section 347. Restrictions on Refunds.--No credit or refund
21 shall be made under section 346 without the approval of the
22 Board of Finance and Revenue, except such credits or refunds as
23 arise:

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

26 (2) Upon reassessment or upon the filing of a final return
27 or amended final return showing [less tax due after the
28 application of the allowable credits than the amount of tax
29 withheld from the taxpayer's compensation or the amount of tax
30 paid by him as estimated tax under this act or pursuant to

1 Article III of the act of March 4, 1971 (Act No.2)] any
2 overpayment of tax.

3 Section 6. Section 348 of the act is amended by adding a
4 subsection to read:

5 Section 348. Limitations on Assessment and Collection.--* *
6 *

7 (e) The department may, within three years of the granting
8 of any refund or credit, or within the period in which an
9 assessment or reassessment could have been filed by the
10 department with respect to the taxable period for which the
11 refund was granted, whichever period shall last occur, file an
12 assessment to recover any refund or part thereof or credit or
13 part thereof which was erroneously made or allowed.

14 Section 7. The act is amended by adding a section to read:

15 Section 352.1. Abatement of Additions or Penalties.--Upon
16 the filing of a petition for reassessment or petition for review
17 by a taxpayer (other than an employer) as provided by this
18 article, the department may waive or abate, in whole or in part,
19 additions or penalties of three hundred dollars (\$300) or less
20 imposed upon such taxpayer for a taxable year, where the
21 taxpayer has established that he acted in good faith, with no
22 negligence or intent to defraud.

23 Section 8. Section 401(3)4 of the act, added December 23,
24 1983 (P.L.370, No.90), is amended and the section is amended by
25 adding a clause to read:

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

30 * * *

1 (3) "Taxable income." * * *

2 4. (a) For taxable years beginning in 1982 and thereafter,
3 a net loss deduction shall be allowed from taxable income as
4 arrived at under subclause 1 or, if applicable, subclause 2.

5 (b) A net loss for a taxable year is the negative amount for
6 said taxable year determined under subclause 1 or, if
7 applicable, subclause 2. Negative amounts under subclause 1
8 shall be allocated and apportioned in the same manner as
9 positive amounts.

10 (c) The net loss deduction shall be the lesser of the amount
11 of the net loss or losses which may be carried over to the
12 taxable year or taxable income as determined under subclause 1
13 or, if applicable, subclause 2. A net loss for a taxable year
14 may only be carried over pursuant to the following schedule:

15	Taxable Year	Carryover
16	1981	1 <u>taxable</u> year
17	1982	2 <u>taxable</u> years
18	1983 and thereafter	3 <u>taxable</u> years

19 The earliest net loss shall be carried over to the earliest
20 taxable year to which it may be carried under this schedule.

21 (d) No loss shall be a carryover from a taxable year when
22 the corporation elects to be treated as a Pennsylvania S
23 corporation pursuant to section 307 of Article III of this act
24 to a taxable year when the corporation is subject to the tax
25 imposed under this article.

26 (e) Paragraph (d) shall not prevent a taxable year when a
27 corporation is a Pennsylvania S corporation from being
28 considered a taxable year for determining the number of taxable
29 years to which a net loss may be a carryover.

30 (f) For purposes of the net loss deduction, the short

1 taxable year of a corporation, after the revocation or
2 termination of an election to be treated as a Pennsylvania S
3 corporation pursuant to sections 307.3 and 307.4 of Article III
4 of this act, shall be treated as a taxable year.

5 (g) In the case of a change in ownership by purchase,
6 liquidation, acquisition of stock or reorganization of a
7 corporation in the manner described in section 381 or 382 of the
8 Internal Revenue Code of 1954, as amended, the limitations
9 provided in the Internal Revenue Code with respect to net
10 operating losses shall apply for the purpose of computing the
11 portion of a net loss carryover recognized under paragraph
12 (3)4(c) of this section. When any acquiring corporation or a
13 transferor corporation participated in the filing of
14 consolidated returns to the Federal government, the entitlement
15 of the acquiring corporation to the Pennsylvania net loss
16 carryover of the acquiring corporation or the transferor
17 corporation will be determined as if separate returns to the
18 Federal government had been filed prior to the change in
19 ownership by purchase, liquidation, acquisition of stock or
20 reorganization.

21 * * *

22 (5) "Taxable year." The taxable year which the corporation,
23 or any consolidated group with which the corporation
24 participates in the filing of consolidated returns, actually
25 uses in reporting taxable income to the Federal government. With
26 regard to the tax imposed by Article IV of this act (relating to
27 the Corporate Net Income Tax), the terms "annual year," "fiscal
28 year," "annual or fiscal year," "tax year," and "tax period"
29 shall be the same as the corporation's taxable year, as defined
30 in this paragraph.

1 Section 9. Section 403(b) and (c) of the act, amended
2 September 9, 1971 (P.L.437, No.105), are amended to read:

3 Section 403. Reports and Payment of Tax.--* * *

4 (b) For the purpose of ascertaining the amount of tax
5 payable under this article for the taxable year 1971, and each
6 taxable year thereafter, it shall be the duty of every

7 corporation liable to pay tax under this article, on or before
8 April 30, 1971, and on or before the end of the fourth month
9 after the close of its previous fiscal year for fiscal year

10 taxpayers, and each year thereafter, to transmit in like form
11 and manner an additional tentative report and make payment
12 pursuant to the provisions of the act of March 16, 1970

13 (P.L.180): Provided, That in making such report and payment for
14 the calendar year 1971 and each year thereafter and for fiscal
15 years commencing during the calendar year 1971, and each year
16 thereafter the tax base from the immediate prior year, upon
17 which the tentative tax computation is to be made under said act
18 of March 16, 1970 (P.L.180), shall be computed as if the tax
19 base for such immediate prior year had been determined under the
20 applicable provisions of the act of March 4, 1971 (Act No.2).

21 For taxable years commencing with calendar year 1986 and for
22 each taxable year thereafter, corporations shall not report and
23 pay tentative tax on account of the corporate net income tax,
24 but shall, on or before April 15 for calendar year taxpayers,
25 and on or before the fifteenth day of the fourth month of the
26 fiscal year for fiscal year taxpayers, report and pay estimated
27 corporate net income tax pursuant to section 3003.2 of this act:
28 Provided, however, That tentative tax on account of any other
29 tax which is imposed as the result of the adoption by reference
30 of this part or section shall continue to be imposed.

1 (c) The amount of all taxes, imposed under the provisions of
2 this article, not paid on or before the times as above provided,
3 shall bear interest [at the rate of six per cent per annum] as
4 provided in section 806 of the act of April 9, 1929 (P.L.343,
5 No.176), known as "The Fiscal Code," from the date they are due
6 and payable until paid, except that if the taxable income has
7 been, or is increased by the Commissioner of Internal Revenue,
8 or by any other agency or court of the United States, interest
9 shall be computed on the additional tax due from thirty days
10 after the corporation receives notice of the change of income
11 until paid: Provided, however, That any corporation may pay the
12 full amount of such tax, or any part thereof, together with
13 interest due to the date of payment, without prejudice to its
14 right to present and prosecute a petition for resettlement, a
15 petition for review, or an appeal to court. If it be thereafter
16 determined that such taxes were overpaid, the department shall
17 enter a credit to the account of such corporation, which may be
18 used by it in the manner prescribed by law.

19 * * *

20 Section 10. Section 601(b) of the act, amended December 23,
21 1983 (P.L.360, No.89), is amended and the definition of
22 "processing" in subsection (a) is amended by adding a clause to
23 read:

24 Section 601. Definitions and Reports.--(a) The following
25 words, terms and phrases when used in this Article VI shall have
26 the meaning ascribed to them in this section, except where the
27 context clearly indicates a different meaning:

28 * * *

29 "Processing." The following activities when engaged in as a
30 business enterprise:

1 * * *

2 (15) The development or substantial modification of computer
3 programs or software for sale to unrelated persons for their
4 direct and independent use.

5 * * *

6 (b) It shall be the duty of every domestic and foreign
7 entity to make [annually] for each taxable year, as defined in
8 section 401(5), a written report verified in accordance with the
9 requirements of the department on a form or forms to be
10 prescribed and furnished by it setting forth the information
11 required. The time for filing [annual] reports may be extended;
12 [an entity may be permitted to file its annual and tentative
13 reports on a fiscal year basis;] the procedure in case the
14 department is not satisfied with the reports for the entity, and
15 the penalties for failing to file reports and pay taxes shall be
16 as prescribed by law.

17 Section 11. Sections 602 and 1502 of the act are amended by
18 adding subsections to read:

19 Section 602. Imposition of Tax.--* * *

20 (h) In the event that a domestic or foreign entity is
21 required to file a report pursuant to section 601(b) on other
22 than an annual basis, the tax imposed by this section, including
23 the seventy-five dollars (\$75) minimum tax, shall be prorated to
24 reflect the portion of a taxable year for which the report is
25 filed by multiplying the tax liability by a fraction equal to
26 the number of days in the taxable year divided by three hundred
27 sixty-five days.

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

30 (e.1) In the case of a change in ownership by purchase,

1 liquidation, acquisition of stock or reorganization of a mutual
2 thrift institution in the manner described in sections 381 or
3 382 of the Internal Revenue Code of 1954, as amended, the
4 limitations provided in the Internal Revenue Code with respect
5 to net operating losses shall apply for the purpose of computing
6 the portion of a net loss carryover recognized pursuant to this
7 article. When any acquiring institution or a transferor
8 institution participated in the filing of consolidated returns
9 to the Federal government, the entitlement of the acquiring
10 institution to the Pennsylvania net loss carryover of the
11 acquiring institution or the transferor institution will be
12 determined as if separate returns to the Federal government had
13 been filed prior to the change in ownership by purchase,
14 liquidation, acquisition of stock or reorganization.

15 Section 12. The act is amended by adding an article to read:

16 ARTICLE XVII

17 ECONOMIC REVITALIZATION TAX CREDIT

18 Section 1701. Short Title.--This article shall be known and
19 may be cited as the Pennsylvania Economic Revitalization Tax
20 Credit Law.

21 Section 1702. Legislative Intent.--The General Assembly of
22 the Commonwealth of Pennsylvania hereby finds that:

23 (a) Whereas, in certain regions of this Commonwealth,
24 industries and other businesses important to the economic well-
25 being of this State suffered substantial losses during the
26 recent recession and because of these losses closed plants and
27 other facilities and laid off thousands of Pennsylvania workers;
28 and

29 (b) Whereas, many of these distressed industries have not
30 yet sufficiently returned to profitability to recover their

1 losses and either rehire laid-off workers or expand their
2 employment in Pennsylvania; and

3 (c) Whereas, new capital investments for the economic
4 revitalization of these distressed industries during the current
5 economic expansion are crucial in order to rehire laid-off
6 workers, expand employment, and avoid even more serious economic
7 dislocations within this Commonwealth in any future economic
8 recessions;

9 (d) Therefore, it is in the public interest to provide tax
10 credits to distressed industries and other businesses for new
11 investments above threshold investment levels which will cause
12 the rehiring of laid-off Pennsylvania workers or will result in
13 the retention of existing jobs or the creation of expanded
14 permanent employment opportunities in these distressed
15 industries within Pennsylvania.

16 Section 1703. Tax Credit.--Any taxpayer subject to Article
17 IV of this act (relating to corporate net income tax) for which
18 a net loss for tax years beginning in 1981 or 1982 is not used
19 as a deduction pursuant to section 401(3)4 of this act (relating
20 to definition of taxable income) may apply for a credit pursuant
21 to this article. Upon approval of an application, and submission
22 and approval of a report showing evidence that approved
23 investments have been made pursuant to section 1710(f), the
24 Secretary of Revenue shall award to the taxpayer a credit which
25 may be utilized in the manner provided by section 1708 of this
26 article.

27 Section 1704. Qualified Investment Projects.--(a) A
28 qualified investment project consists of expenditures for the
29 acquisition or construction of new depreciable property with a
30 cost recovery period of five years or more, and of expenditures

1 for the substantial renovation, restoration or reconstruction of
2 existing equipment, buildings or structures with a cost recovery
3 period of five years or more. The investment project of the
4 taxpayer may include expenditures which do not meet the
5 requirements of this section, but only the portion of such
6 expenditures which meet the requirements of this section shall
7 be deemed a qualified investment project.

8 (b) Qualified investment projects shall be limited to
9 expenditures by the taxpayer for property for use by the
10 taxpayer within this Commonwealth directly for manufacturing,
11 processing and research and development activities, as defined
12 in Article VI.

13 (c) Qualified investment projects shall not include
14 investments for vehicles, office furnishings, livestock, public
15 utility property, cable television property, telecommunications
16 property, movie and television films and tapes, vending
17 machines, lodging facilities, restaurants, and commercial retail
18 or wholesale property.

19 (d) Qualified investment projects for which a credit is
20 claimed shall consist of otherwise eligible expenditures for
21 which the taxpayer demonstrates that the investments will result
22 in the permanent rehiring of previously laid-off workers in
23 Pennsylvania, the permanent retention of existing jobs in
24 Pennsylvania or the expansion of permanent employment by the
25 taxpayer within this Commonwealth.

26 (e) Qualified investment projects must be certified by the
27 Board of the Ben Franklin Partnership Fund established in
28 section 448(n) of the act of April 9, 1929 (P.L.177, No.175),
29 known as "The Administrative Code of 1929," as meeting the
30 requirements of this article.

1 (f) Expenditures for qualified investment projects must be
2 made between January 1, 1986, and the last day of any tax year
3 beginning in 1988.

4 Section 1705. Threshold Level.--A taxpayer may apply for
5 credits for qualified investment projects only if the taxpayer
6 certifies that total manufacturing, processing and research and
7 development investments to be made within Pennsylvania by the
8 taxpayer for the taxable year for which a credit is claimed will
9 exceed a threshold level equal to one per cent of the book value
10 of manufacturing, processing and research and development assets
11 in Pennsylvania for the tax year beginning in 1982. The
12 threshold level of manufacturing, processing and research and
13 development assets in place within this Commonwealth during the
14 tax year beginning in 1982 shall be measured by the difference
15 between the numerators of the taxpayer's corporate net income
16 tax and capital stock or franchise tax property apportionment
17 fractions, or such fractions as would have been reported for any
18 taxpayer not reporting any such property apportionment
19 fractions. For the purpose of calculating the threshold level,
20 the taxpayer shall recalculate the appropriate property
21 apportionment fractions to include the assets of any corporation
22 which reported as a separate taxpayer to Pennsylvania during the
23 tax year beginning in 1982, but which is included within a
24 single tax report filed by the taxpayer for all or a portion of
25 the taxable year for which a credit is claimed.

26 Section 1706. Portion of Excess Net Loss Carryover Claimable
27 as Credit.--In the calculation of credits pursuant to this
28 article, a taxpayer may utilize nine and one-half per cent of
29 any net loss for taxable years beginning in 1981 and 1982 not
30 used as a deduction pursuant to section 401(3)4 of this act. A

1 net loss may be utilized in the calculation of credits pursuant
2 to this article only to the extent such carryovers are
3 recognizable as deductions pursuant to section 401(3)4(g) and
4 have not been previously utilized for the award of credits
5 pursuant to this article. For purposes of determining the amount
6 of net loss for which a credit may be claimed, the taxpayer
7 shall reduce the amount of the loss by all depreciation
8 deductions claimed for taxable years beginning in 1981 or 1982
9 with respect to assets for which tax benefits were transferred
10 to the taxpayer under the provisions of section 168(f)(8) of the
11 Internal Revenue Code of 1954, as amended (68A Stat. 3, 26
12 U.S.C. § 168(f)(8)), taking into account the applicable
13 apportionment fraction for the respective tax years.

14 Section 1707. Amount of Credit.--A taxpayer may claim a
15 credit for twenty per cent of expenditures for qualified
16 investment projects, but only to the extent that such
17 expenditures are in excess of the threshold level and do not
18 exceed the portion of the taxpayer's net loss claimable as a
19 credit as determined pursuant to section 1706 of this article.

20 Section 1708. Utilization of Credits.--(a) Credits awarded
21 pursuant to this article may be used to pay any tax or other
22 obligation due and payable as an unrestricted receipt to the
23 General Fund of this Commonwealth, but may not be utilized to
24 pay taxes pursuant to Article III, or to pay any fines or
25 penalties.

26 (b) Credits awarded pursuant to this article may be utilized
27 in the taxable year awarded, and to the extent not utilized,
28 carried over for up to three additional taxable years by the
29 taxpayer and shall thereafter expire. In the event that the
30 credits awarded pursuant to this article exceed the liability of

1 the taxpayer for payments described in subsection (a) of this
2 section, and the taxpayer has no outstanding obligations arising
3 under Article III or outstanding fines or penalties, the
4 taxpayer may petition for a cash refund in the manner provided
5 by law.

6 (c) In the case of a change in ownership by purchase,
7 liquidation, acquisition of stock or reorganization of a
8 corporation in the manner described in section 381 or 382 of the
9 Internal Revenue Code of 1954, as amended, the limitations
10 provided in section 401(3)4(g) of this act with respect to the
11 carryover of net losses shall apply in the same manner with
12 respect to the carryover of any unused credit.

13 Section 1709. Recapture of Credits.--If any property for
14 which a taxpayer is awarded credits pursuant to this article is
15 disposed of prior to the completion of its cost recovery period
16 utilized for the purposes of reporting to the Federal
17 Government, a portion of such credit shall be added to the tax
18 liability of the taxpayer for the taxable year of such
19 disposition equal to the percentage which the number of years
20 remaining in the cost recovery schedule of the property
21 represents to the total years of cost recovery which could have
22 been claimed but for the disposition. For the purposes of
23 calculating the recapture percentage, the year of disposition
24 shall be considered a year of remaining cost recovery. The
25 recapture of tax credits may be waived by the Board of the Ben
26 Franklin Partnership Fund if the disposed property is replaced
27 by the taxpayer by new plant or equipment investments within
28 Pennsylvania which meet the requirements of section 1704(d).

29 Section 1710. Application Procedures.--(a) Applications for
30 credits pursuant to this article shall be filed with the

Secretary of Revenue not later than February 1 or August 1 based upon planned expenditures for qualified investment projects to be made in the current tax year or an upcoming taxable year. In addition to any other information as may be required pursuant to this article, the application shall include:

(1) a five-year history of the applicant's investment and employment activities in this Commonwealth;

(2) a detailed description of the qualified investment projects in excess of the threshold level for which a credit is requested;

(3) an explanation of how the investments for which the credit is claimed will result in the rehiring of laid-off workers, the retention of existing jobs in Pennsylvania or the expansion of employment within this Commonwealth, and a quantitative estimate of the impact of such investment upon employment; and

(4) the identification of other forms of Federal, State and local economic development assistance being utilized by the taxpayer, including, but not limited to, industrial development loans, Pennsylvania Industrial Development Agency loans, job training assistance and other low-interest loans or grants being received by the taxpayer.

(b) The secretary shall review all applications received and shall certify whether or not expenditures for which credits are requested will meet the requirements for qualified investment projects set forth in section 1704(a), (b) and (c), whether or not all or a specified portion of the expenditures will be in excess of the threshold level and shall certify the portion of excess net loss claimable as credit and the amount of credit for which the taxpayer may be eligible pursuant to section 1707. The

1 secretary shall forward all such certifications, together with
2 all such applications submitted by taxpayers, to the Board of
3 the Ben Franklin Partnership Fund. Information forwarded to the
4 Board of the Ben Franklin Partnership Fund by the secretary
5 shall constitute "public records" pursuant to the act of June
6 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know
7 Law.

8 (c) The Board of the Ben Franklin Partnership Fund shall
9 review all applications received from the Secretary of Revenue
10 and approve, in whole or in part, those applications which, in
11 the judgment of the board, will best contribute to the purposes
12 and objectives of this article. The board shall certify to the
13 Secretary of Revenue the amount of credits approved and the
14 secretary shall notify the taxpayer that appropriate credits
15 will be entered upon the accounts of the taxpayer upon the
16 submission of evidence to the secretary that expenditures for
17 which the application was approved have been made by the
18 taxpayer.

19 (d) In the review of applications, the Board of the Ben
20 Franklin Partnership Fund shall make its decisions on the basis
21 of criteria, including, but not limited to:

22 (1) The long-term employment potential resulting from the
23 investment, including projected jobs retained and created over a
24 five-year period;

25 (2) the market demand for products resulting from such
26 investments;

27 (3) the anticipated increase in Pennsylvania's share of
28 domestic and international markets from new markets captured
29 from out-of-state or foreign competitors due to such
30 investments; and

1 (4) the utilization by the taxpayer of new and advanced
2 technologies in such investments which are likely to permanently
3 enhance the taxpayer's competitive position within its industry
4 or business.

5 (e) The Board of the Ben Franklin Partnership Fund shall
6 limit total credits approved for any taxpayer, together with any
7 credit awarded to a subsidiary corporation of the taxpayer, to
8 an amount not in excess of six million two hundred and fifty
9 thousand dollars (\$6,250,000) and shall limit total credits
10 approved pursuant to this article to an amount not in excess of
11 twenty-five million dollars (\$25,000,000). A subsidiary
12 corporation shall be defined in the manner provided by section
13 601.

14 (f) On or before the fifteenth day of the fourth month
15 following the end of any taxable year for which credits are
16 requested, the taxpayer shall file a report with the Secretary
17 of Revenue showing the actual amount of investment made during
18 such period. If expenditures for qualified investments for which
19 credits have been approved plus other expenditures for
20 manufacturing, processing or research and development
21 investments within this Commonwealth exceed the threshold level,
22 the secretary shall enter such credits as the taxpayer may be
23 entitled to pursuant to section 1707 upon the account of the
24 taxpayer. If actual investments made are less than the amount
25 upon which any credits approved were based, the secretary shall
26 reduce the amount of credits awarded to that taxpayer by an
27 appropriate fractional amount of the deficiency of such
28 investment.

29 (g) The Secretary of Revenue and the Board of the Ben
30 Franklin Partnership Fund shall jointly establish procedures for

the application by taxpayers for credits pursuant to this article, the review and approval or disapproval of such applications, and the calculation, award and utilization of such credits. The secretary and the board may jointly promulgate rules and regulations, statements of policy, forms and other rulings and interpretations necessary to implement this article.

Section 1711. Appropriation.--The sum of twenty-five million dollars (\$25,000,000) is hereby appropriated from the General Fund of the Commonwealth to the Department of Revenue for the payment of tax credits pursuant to this article. This appropriation shall continue until June 30, 1988. This appropriation may only be encumbered upon the approval of applications pursuant to section 1710(c), pending the submission of reports by the taxpayer as required by section 1710(f).

Section 1712. Annual Reports.--(a) On or before November 1, 1986, and for each year thereafter, the Board of the Ben Franklin Partnership Fund, in cooperation with the Secretary of Revenue, shall provide the General Assembly with a report showing the following information for the period beginning with the effective date of this article and ending on the last day of September:

(i) The amount of tax credits approved for each taxpayer pursuant to this article.

(ii) the name of each such taxpayer.

(iii) A description of the qualified property, including its location, for which the credit was granted.

(iv) the number of workers to be rehired at each location, the number of jobs to be retained at each location, and the number of new jobs created at each location, as certified by the board.

1 (v) The amount of tax credits utilized by each taxpayer
2 pursuant to this article.

3 (vi) the information contained in the applications, whether
4 approved or rejected, as specified in section 1710.

5 (b) The provisions of section 408(b) of this act relating to
6 confidentiality of information, and any other provisions of law
7 preventing the disclosure of information required pursuant to
8 subsection (a) of this section, shall not apply when the
9 information is divulged for the purposes of subsection (a) of
10 this section.

11 Section 1713. Evaluation of Tax Credit.--Within six months
12 of the exhaustion of credits pursuant to section 1710(e), but
13 not later than November 1, 1988, the Board of the Ben Franklin
14 Partnership Fund, in cooperation with the Secretary of Revenue,
15 shall report to the Governor and to the General Assembly
16 concerning the impact of the credits provided by this article
17 upon investments made by distressed industries. The report shall
18 discuss whether tax credits of the type provided by this article
19 are an efficient and effective method of encouraging new
20 investment by distressed industries and shall recommend whether
21 this article should be reauthorized or extended.

22 Section 1714. Sunset.--No application for credits pursuant
23 to this article shall be approved by the Board of the Ben
24 Franklin Partnership Fund after June 30, 1988.

25 Section 13. Section 3003(b), (c) and (d) of the act, amended
26 December 21, 1981 (P.L.482, No.141) and December 1, 1983
27 (P.L.228, No.66), are amended and the section is amended by
28 adding a subsection to read:

29 Section 3003. Prepayment of Tax.--* * *

30 (b) For the taxable years commencing with calendar year 1979

1 and for each taxable year thereafter, the tentative tax due for
2 the current year shall be computed by applying the current tax
3 rate to ninety per cent of such tax base from the year preceding
4 the immediate prior year as may be applicable with respect to
5 the tax being reported; except that with respect to the
6 aforesaid gross receipts tax on public service companies,
7 transportation by motor vehicles and trackless trolleys, other
8 than motor vehicles for hire, and the aforesaid insurance
9 premiums tax, such amount shall continue to be computed by
10 applying the current tax rate to ninety per cent of the tax base
11 from the immediate prior year as may be applicable with respect
12 to the tax being reported; and except that corporations shall
13 not be required to report or pay tentative tax with respect to
14 the corporate net income tax on account of any taxable year
15 commencing with calendar year 1986 and each taxable year
16 thereafter.

17 The tax imposed on shares of banks and title insurance and
18 trust companies, the tax imposed by Article XVI and the tax
19 imposed on public utility realty shall be paid in the manner and
20 within the time prescribed by Article VII, Article VIII or
21 Article XI-A, as the case may be, but subject to the additions
22 and interest provided in subsection (e) of this section.

23 (b.1) Notwithstanding the provisions of subsections (a) and
24 (b), the tentative tax due with respect to the capital stock and
25 franchise tax for taxable years commencing with calendar year
26 1986 and for each taxable year thereafter shall be computed by
27 applying the current tax rate to eighty-five per cent of such
28 tax base from the year preceding the immediate prior year.

29 (c) Payment of taxes imposed by Articles IV, [V,] IX [and],
30 XI and XV of this act [and by the act of June 22, 1964 (P.L.16,

1 No.2), known as "The Mutual Thrift Institutions Tax Act,"] may
2 at the taxpayer's election be an amount estimated by the
3 taxpayer which estimated amount shall not be less than ninety
4 per cent of the tax as is finally reported in the annual tax
5 report for the current calendar or fiscal year.

6 (d) A corporation with respect to the corporate net income
7 tax imposed by Article IV [and the corporation income tax
8 imposed by Article V] of this act may, at its election, report
9 and pay in installments on account of the tax due for the
10 current taxable year an amount computed either by applying the
11 current tax rate to ninety per cent of the tax base as
12 determined in subsection (a) or (b) of this section, or as
13 computed on the basis estimated by the taxpayer to be due for
14 the current year which estimated amount shall not be less than
15 ninety per cent of the tax as is finally reported in the annual
16 tax report for the current year as provided in subsection (c) of
17 this section. The installments shall be paid in accordance with
18 the following schedules:

19		First	Second	Third	Fourth
20	Year In	Due on the 15th day of the following months			
21	Which Tax	after close of the previous tax year:			
22	Year Begins	4th Month	6th Month	9th Month	12th Month
23	1978	95%	0%	5%	0%
24	1979	95%	0%	5%	0%
25	1980	80%	0%	10%	10%
26	1981	40%	30%	20%	10%
27	1982	30%	30%	25%	15%
28	1983 [and thereafter]				
29	<u>through and including</u>				
30	<u>1985</u>	25%	25%	25%	25%

1 * * *

2 Section 14. The act is amended by adding sections to read:

3 Section 3003.1. Petitions for Refunds.--When any tax or
4 other money has been paid to the Commonwealth, under a provision
5 of this act or any other statute subsequently held by final
6 judgment of a court of competent jurisdiction to be
7 unconstitutional, or under an interpretation of such provision
8 subsequently held by such court to be erroneous, a petition for
9 refund may be filed with the Board of Finance and Revenue either
10 prior or subsequent to such final judgment but must be filed
11 within three years of the payment of which a refund is
12 requested, or within three years of the settlement of such taxes
13 or other moneys due the Commonwealth, whichever period last
14 expires. The board shall have jurisdiction to hear and determine
15 any petition for refund filed prior to such final judgment only
16 if, at the time of the filing thereof, proceedings are pending
17 in a court of competent jurisdiction wherein the claims of
18 unconstitutionality or erroneous interpretation made in the
19 petition for refund may be established, and in such case the
20 board shall not act upon the petition for refund until the final
21 judgment determining the question or questions involved in such
22 petition has been handed down.

23 Section 3003.2. Estimated Corporate Net Income Tax.--(a)
24 Corporations Required to Pay Estimated Tax. Every corporation
25 subject to the corporate net income tax imposed by Article IV of
26 this act, commencing with the calendar year 1986 and fiscal
27 years beginning during the calendar year 1986 and each taxable
28 year thereafter, shall make payments of estimated tax during its
29 taxable year as provided herein.

30 (b) Estimated Tax Defined. For purposes of sections 3003.2

1 through 3003.4 of this article, "estimated tax" means the amount
2 which the corporation estimates as the amount of tax imposed by
3 section 402 of Article IV for the taxable year.

4 (c) Payment in Installments. Payments of estimated tax
5 shall be made in equal installments on or before the fifteenth
6 day of the fourth, sixth, ninth and twelfth months of the
7 taxable year. The remaining portion of the tax due, if any,
8 shall be paid upon the date the corporation's annual report is
9 required to be filed without reference to any extension of time
10 for filing such report.

11 (d) Recomputation of Estimated Tax. If, after paying any
12 installment of estimated tax, the corporation makes a new
13 estimate, the amount of each remaining installment due, if any,
14 shall be such as to bring the total installment payments made on
15 account of the tax due for the current year up to an amount that
16 would have been due had the new estimate been the basis for
17 paying all previous installments.

18 (e) Application to Short Taxable Year. Every corporation
19 with a taxable year of less than twelve months shall pay such
20 installments as become due during the course of its taxable
21 year, and pay the remaining tax due on or before the due date of
22 the annual report (determined without regard to any extension of
23 time for filing).

24 (f) Installments Paid in Advance. At the election of the
25 corporation, any installment of estimated tax may be paid before
26 the date prescribed for its payment.

27 Section 3003.3. Underpayment of Estimated Tax.--(a)
28 Addition to the Tax. In case of any underpayment of an
29 installment of estimated tax by a corporation, there shall be
30 imposed an addition to the tax for the taxable year in an amount

1 determined at the annual rate as provided by law for the payment
2 of interest upon the amount of the underpayment for the period
3 of the underpayment, except that in case of any substantial
4 underpayment of estimated tax by a corporation, such addition to
5 the tax for the taxable year shall be imposed in an amount
6 determined at one hundred twenty per cent of the annual rate as
7 provided by law for the payment of interest upon the entire
8 underpayment for the period of the substantial underpayment. For
9 the purpose of this subsection, a substantial underpayment shall
10 be deemed to exist for any period during which the amount of the
11 underpayment equals or exceeds twenty-five per cent of the
12 cumulative amount of installments of estimated tax which would
13 be required to be paid if the estimated tax were equal to the
14 amount as determined in subsection (b)(1).

15 (b) Amount of Underpayment:

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

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

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

29 (2) If the settled or resettled tax is used in calculating
30 the amount of underpayment, the amount of tax as settled or

1 resettled shall be utilized in determining the amount of
2 underpayment without the necessity of the filing of any petition
3 by the department or by the corporation.

4 (c) Period of Underpayment. The period of the underpayment
5 shall run from the date the installment was required to be paid
6 to whichever of the following dates is the earlier:

7 (1) The fifteenth day of the fourth month following the
8 close of the taxable year.

9 (2) With respect to any portion of the underpayment, the
10 date on which such portion is paid.

11 (d) Exception. Notwithstanding the provisions of the
12 preceding subsections, the addition to the tax with respect to
13 any underpayment of any installment of estimated tax shall not
14 be imposed if the total amount of all payments of estimated tax
15 made on or before the last date prescribed for the payment of
16 such installment equals or exceeds the amount which would have
17 been required to be paid on or before such date if the estimated
18 tax were an amount equal to the tax computed at the rates
19 applicable to the taxable year but otherwise on the basis of the
20 facts shown on the report of the corporation for, and the law
21 applicable to, the second preceding taxable year, if a report
22 showing a liability for tax was filed by the corporation for the
23 second preceding taxable year and such second preceding year was
24 a taxable year of twelve months. Provided, however, that if the
25 settled tax for the second preceding year exceeds the tax shown
26 on such report by ten per cent or more, the settled tax adjusted
27 to reflect the current tax rate shall be used for purposes of
28 this subsection, except that if the settled tax is subsequently
29 resettled, the amount of tax as resettled shall be utilized in
30 the application of this subsection without the necessity of the

1 filing of any petition by the department or by the corporation.
2 In the event that the settled or resettled tax for the second
3 preceding year exceeds the tax shown on the report by ten per
4 cent or more, an addition to the tax resulting from the
5 utilization of such settled or resettled tax in the application
6 of the provisions of this subsection shall not be imposed if,
7 within forty-five days of the mailing date of such settlement or
8 resettlement, payments are made such that the total amount of
9 all payments of estimated tax equals or exceeds the amount which
10 would have been required to be paid on or before such date if
11 the estimated tax were an amount equal to such settled or
12 resettled tax adjusted to reflect the current tax rate. In any
13 case in which the taxable year for which an underpayment of
14 estimated tax may exist is a short taxable year, in determining
15 the tax shown on the report or the settled or resettled tax for
16 the second preceding taxable year, the tax will be reduced by
17 multiplying it by the number of days in the short taxable year
18 and dividing the resulting amount by three hundred sixty-five.

19 Section 3003.4. Interest.--(a) Interest on Underpayments of
20 Estimated Tax. Underpayments of installments of estimated tax
21 shall not bear interest during the period of such underpayment.
22 However, any amount of tax finally determined to be due, which
23 is not paid by the date the annual report is due (determined
24 without regard to any extension of time for filing), shall bear
25 interest from such date until paid.

26 (b) Interest on Additions to the Tax. Additions to the tax
27 shall bear interest from the date the annual report is due until
28 the date paid.

29 Section 15. Section 503(a)(4) of the act of April 9, 1929
30 (P.L.343, No.176), known as The Fiscal Code, and 72 Pa.C.S. §

1 1781(d)(4)(relating to refund of tax) are repealed absolutely
2 with respect to taxes and other moneys due, paid, settled,
3 assessed, determined or appraised on or after January 1, 1985.

4 Section 16. (a) The amendments to section 401(3)4(g) shall
5 apply retroactively to the first day of any taxable year
6 beginning in 1981 and thereafter for the purpose of limiting the
7 portion of excess net loss deductions claimable as a credit
8 under Article XVII.

9 (b) The amendments to section 253 and adding section 3003.1
10 shall apply to taxes and other moneys due, paid, settled,
11 assessed, determined or appraised on or after January 1, 1985.

12 (c) The amendments to sections 217, 403(b) and 3003, and
13 adding sections 3003.2, 3003.3 and 3003.4 shall apply to taxable
14 years beginning on or after January 1, 1986.

15 (d) The amendments to section 601(a), adding a computer
16 software exemption to the definition of processing, shall apply
17 to taxable years beginning on or after January 1, 1985.

18 (e) The amendments to section 237(c) and the addition of
19 Article XVII shall take effect in 60 days.

20 (f) The remainder of this act shall take effect immediately,
21 except that the amendments to sections 401(3)4, 401(3)5, 601(b),
22 602 and 1502 shall be deemed a clarification of preexisting law
23 and shall not be deemed to imply a contrary legislative intent
24 prior to the effective date of such amendments.