

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," adding an exclusion from sales and use tax; further providing for special provisions for poverty; further providing for capitol stock franchise tax; creating a Hazardous Sites Cleanup Fund; reducing the utilities gross receipts tax; and further providing for prepayment of capital stock tax.

The General Assembly of the Commonwealth of Pennsylvania

hereby enacts as follows:

Section 1. Section 204 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended by adding a clause to read:

Section 204. Exclusions from Tax.--The tax imposed by section 202 shall not be imposed upon

* * *

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

Section 2. Section 304(d)(1) of the act, added March 13, 1974 (P.L.179, No.32), is amended to read:

Section 304. Special Tax Provisions for Poverty.--* * *

(d) Any claim for special tax provisions hereunder shall be determined in accordance with the following:

(1) If the poverty income of the claimant during an entire taxable year is [three thousand dollars (\$3,000)] four thousand five hundred dollars (\$4,500) or less, the claimant shall be

1 entitled to a refund or forgiveness of any moneys which have
2 been paid over to (or would except for the provisions of this
3 act be payable to) the Commonwealth under the provisions of this
4 article, with an additional income allowance of [twelve hundred
5 dollars (\$1200)] one thousand five hundred dollars (\$1,500) for
6 the first additional dependent and an additional income
7 allowance of [seven hundred fifty dollars (\$750)] one thousand
8 dollars (\$1,000) for each additional dependent of the claimant.

9 * * *

10 Section 3. The definition of "capital stock value" in
11 section 601(a) of the act, amended July 2, 1986 (P.L.318,
12 No.77), is amended to read:

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

17 * * *

18 "Capital stock value." The amount computed pursuant to the
19 following formula: the product of one-half times the sum of the
20 average net income capitalized at the rate of nine and one-half
21 per cent plus seventy-five per cent of net worth, from which
22 product shall be subtracted [fifty thousand dollars (\$50,000)]
23 one hundred thousand dollars (\$100,000), the algebraic
24 equivalent of which is

25
$$(.5 \times (\text{average net income} / .095 + (.75)$$

26
$$(\text{net worth}))) - [\$50,000] \text{ } \underline{\$100,000}$$

27 * * *

28 Section 4. Section 602(a), (b) and (e) of the act, amended
29 December 23, 1983 (P.L.360, No.89) and December 23, 1983
30 (P.L.370, No.90), are amended to read:

1 Section 602. Imposition of Tax.--(a) That every domestic
2 entity from which a report is required under section 601 hereof,
3 shall be subject to, and pay to the department annually, a tax
4 which is the greater of (i) seventy-five dollars (\$75) or (ii)
5 the amount computed at the rate of ten mills, upon each dollar
6 of the capital stock value as defined in section 601(a) for the
7 calendar year 1971 and the fiscal year beginning in 1971 through
8 calendar year 1986 and fiscal years beginning in 1986, at the
9 rate of nine mills, upon each dollar of the capital stock value
10 as defined in section 601(a) for the calendar year 1987 and
11 fiscal years beginning in 1987 and at the rate of nine and one-
12 half mills upon each dollar of the capital stock value as
13 defined in section 601(a) for the calendar year 1988 and fiscal
14 years beginning in 1988 through calendar year 1991 and fiscal
15 years beginning in 1991, and at the rate of nine mills upon each
16 dollar of the capital stock value as defined in section 601(a)
17 for the calendar year 1992 and fiscal years beginning in 1992
18 and each year thereafter, except that any domestic entity or
19 company subject to the tax prescribed herein may elect to
20 compute and pay its tax under and in accordance with the
21 provisions of subsection (b) of this section 602: Provided,
22 That, except for the imposition of the seventy-five dollar (\$75)
23 minimum tax, the provisions of this section shall not apply to
24 the taxation of the capital stock of entities organized for
25 manufacturing, processing, research or development purposes,
26 which is invested in and actually and exclusively employed in
27 carrying on manufacturing, processing, research or development
28 within the State, except such entities as enjoy and exercise the
29 right of eminent domain, but every entity organized for the
30 purpose of manufacturing, processing, research or development

1 except such entities as enjoy and exercise the right of eminent
2 domain shall pay the State tax of the greater of (i) seventy-
3 five dollars (\$75) or (ii) the amount computed at the rate of
4 ten mills, upon each dollar of the capital stock value as
5 defined in section 601(a) for the calendar year 1971 and the
6 fiscal year beginning in 1971 through calendar year 1986 and
7 fiscal years beginning in 1986, at the rate of nine mills, upon
8 each dollar of the capital stock value as defined in section
9 601(a) for the calendar year 1987 and fiscal years beginning in
10 1987 and at the rate of nine and one-half mills upon each dollar
11 of the capital stock value as defined in section 601(a) for the
12 calendar year 1988 and fiscal years beginning in 1988 through
13 calendar year 1991 and fiscal years beginning in 1991, and at
14 the rate of nine mills upon each dollar of the capital stock
15 value as defined in section 601(a) for the calendar year 1992
16 and fiscal years beginning in 1992 and each year thereafter,
17 upon such proportion of its capital stock, if any, as may be
18 invested in any property or business not strictly incident or
19 appurtenant to the manufacturing, processing, research or
20 development business, in addition to the local taxes assessed
21 upon its property in the district where located, it being the
22 object of this provision to relieve from State taxation, except
23 for imposition of the seventy-five dollar (\$75) minimum tax
24 under this section, only so much of the capital stock as is
25 invested purely in the manufacturing, processing, research or
26 development plant and business.

27 (b) (1) Every foreign entity from which a report is
28 required under section 601 hereof, shall be subject to and pay
29 to the department annually, a franchise tax which is the greater
30 of (i) seventy-five dollars (\$75) or (ii) the amount computed at

1 the rate of ten mills for the calendar year 1971 and the fiscal
2 [year] years beginning in 1971 through calendar year 1986 and
3 fiscal years beginning in 1986, at the rate of nine mills for
4 the calendar year 1987 and for fiscal years beginning in 1987
5 and at the rate of nine and one-half mills for calendar year
6 1988 and fiscal years beginning in 1988 through calendar year
7 1991 and fiscal years beginning in 1991, and at the rate of nine
8 mills for calendar year 1992 and fiscal years beginning in 1992
9 and each year thereafter, upon a taxable value to be determined
10 in the following manner. The capital stock value shall be
11 ascertained in the manner prescribed in section 601(a) of this
12 article. The taxable value shall then be determined by employing
13 the relevant apportionment factors set forth in Article IV:
14 Provided, That the manufacturing, processing, research and
15 development exemptions contained under section 602(a) shall also
16 apply to foreign corporations and in determining the relevant
17 apportionment factors the numerator of the property, payroll, or
18 sales factors shall not include any property, payroll or sales
19 attributable to manufacturing, processing, research or
20 development activities in the Commonwealth. Any foreign
21 corporation, joint-stock association, limited partnership or
22 company subject to the tax prescribed herein may elect to
23 compute and pay its tax under section 602(a): Provided, That any
24 foreign corporation, joint-stock association, limited
25 partnership or company electing to compute and pay its tax under
26 section 602(a) shall be treated as if it were a domestic
27 corporation for the purpose of determining which of its assets
28 are exempt from taxation and for the purpose of determining the
29 proportion of the value of its capital stock which is subject to
30 taxation.

1 (2) The provisions of this article shall apply to the
2 taxation of entities organized for manufacturing, processing,
3 research or development purposes, but shall not apply to such
4 entities as enjoy and exercise the right of eminent domain.

5 * * *

6 (e) Any holding company subject to the capital stock tax or
7 the franchise tax imposed by this section may elect to compute
8 the capital stock or franchise tax by applying the rate of tax
9 of ten mills for the calendar year 1971 and the fiscal year
10 beginning in 1971 through the calendar year 1986 and fiscal
11 years beginning in 1986, at the rate of nine mills for the
12 calendar year 1987 and fiscal years beginning in 1987; at the
13 rate of nine and one-half mills for calendar year 1988 and
14 fiscal years beginning in 1988 through calendar year 1991 and
15 fiscal years beginning in 1991, and at the rate of nine mills
16 for the calendar year 1992 and fiscal years beginning in 1992
17 and each year thereafter, upon each dollar to ten per cent of
18 the capital stock value, but in no case shall the tax so
19 computed be less than seventy-five dollars (\$75). If exercised,
20 this election shall be in lieu of any other apportionment or
21 allocation to which such company would otherwise be entitled.

22 * * *

23 Section 5. The act is amended by adding a section to read:

24 Section 602.3. Deposit of Proceeds; Appropriation.--(a) The
25 proceeds resulting from the increase in the tax rate from nine
26 mills to nine and one-half mills, effective for calendar year
27 1988 and fiscal years beginning in 1988 through calendar year
28 1991 and fiscal years beginning in 1991, shall be transferred to
29 the Hazardous Sites Cleanup Fund which is hereby created.

30 (b) The funds deposited in the Hazardous Sites Cleanup Fund

1 are hereby appropriated out of this account upon authorization
2 by the Governor.

3 Section 6. Section 1101(a) and (b) of the act, amended
4 December 11, 1979 (P.L.499, No.107), are amended and the section
5 is amended by adding a subsection to read:

6 Section 1101. Imposition of Tax.--(a) General Rule.--Every
7 railroad company, pipeline company, conduit company, steamboat
8 company, canal company, slack water navigation company,
9 transportation company, and every other company, association,
10 joint-stock association, or limited partnership, now or
11 hereafter incorporated or organized by or under any law of this
12 Commonwealth, or now or hereafter organized or incorporated by
13 any other state or by the United States or any foreign
14 government, and doing business in this Commonwealth, and every
15 copartnership, person or persons owning, operating or leasing to
16 or from another corporation, company, association, joint-stock
17 association, limited partnership, copartnership, person or
18 persons, any railroad, pipeline, conduit, steamboat, canal,
19 slack water navigation, or other device for the transportation
20 of freight, passengers, baggage, or oil, except taxicabs, motor
21 buses and motor omnibuses, and every limited partnership,
22 association, joint-stock association, corporation or company
23 engaged in, or hereafter engaged in, the transportation of
24 freight or oil within this State, and every telephone company,
25 telegraph company, express company, gas company, palace car
26 company and sleeping car company, now or hereafter incorporated
27 or organized by or under any law of this Commonwealth, or now or
28 hereafter organized or incorporated by any other state or by the
29 United States or any foreign government and doing business in
30 this Commonwealth, and every limited partnership, association,

1 joint-stock association, copartnership, person or persons,
2 engaged in telephone, telegraph, express, gas, palace car or
3 sleeping car business in this Commonwealth, shall pay to the
4 State Treasurer, through the Department of Revenue, a tax of
5 [forty-five] forty-four mills upon each dollar of the gross
6 receipts of the corporation, company or association, limited
7 partnership, joint-stock association, copartnership, person or
8 persons, received from passengers, baggage, and freight
9 transported wholly within this State, from telegraph or
10 telephone messages transmitted wholly within this State, from
11 express, palace car or sleeping car business done wholly within
12 this State, or from the sales of gas, except gross receipts
13 derived from sales to any municipality owned or operated public
14 utility and except gross receipts derived from the sales for
15 resale, to persons, partnerships, associations, corporations or
16 political subdivisions subject to the tax imposed by this act
17 upon gross receipts derived from such resale and from the
18 transportation of oil done wholly within this State. The gross
19 receipts of gas companies shall include the gross receipts from
20 the sale of artificial and natural gas, but shall not include
21 gross receipts from the sale of liquefied petroleum gas.

22 (b) Electric Light, Waterpower and Hydro-electric
23 Utilities.--Every electric light company, waterpower company and
24 hydro-electric company now or hereafter incorporated or
25 organized by or under any law of this Commonwealth, or now or
26 hereafter organized or incorporated by any other state or by the
27 United States or any foreign government and doing business in
28 this Commonwealth, and every limited partnership, association,
29 joint-stock association, copartnership, person or persons,
30 engaged in electric light and power business, waterpower

1 business and hydro-electric business in this Commonwealth, shall
2 pay to the State Treasurer, through the Department of Revenue, a
3 tax of [forty-five] forty-four mills upon each dollar of the
4 gross receipts of the corporation, company or association,
5 limited partnership, joint-stock association, copartnership,
6 person or persons, received from:

7 (1) the sales of electric energy within this State, except
8 gross receipts derived from the sales for resale of electric
9 energy to persons, partnerships, associations, corporations or
10 political subdivisions subject to the tax imposed by this
11 subsection upon gross receipts derived from such resale; and

12 (2) the sales of electric energy produced in Pennsylvania
13 and made outside of Pennsylvania in a state that has taken
14 action since December 21, 1977 which results in higher costs for
15 electric energy produced in that state and sold in Pennsylvania
16 unless the action that was taken after December 21, 1977 is
17 rescinded according to the following apportionment formula:
18 except for gross receipts derived from sales under clause (1),
19 the gross receipts from all sales of electricity of the producer
20 shall be apportioned to the Commonwealth of Pennsylvania by the
21 ratio of the producer's operating and maintenance expenses in
22 Pennsylvania and depreciation attributable to property in
23 Pennsylvania to the producer's total operating and maintenance
24 expenses and depreciation.

25 * * *

26 (h) Benefits to Consumer.--For purposes of this article, the
27 reduction in the taxes imposed under subsections (a) and (b)
28 shall derive to the benefit of the consumer purchasing services
29 from said utilities. Said benefit shall be provided in the form
30 of a reduction in the State tax surcharge. Failure to pass

1 through the reduction to the consumer shall subject the public
2 utility to a civil penalty of at least one thousand dollars
3 (\$1,000), but not more than five thousand dollars (\$5,000), and
4 such additional relief as the court may deem appropriate.

5 Section 7. Section 3003(b.2) and (c) of the act, renumbered
6 or added December 21, 1981 (P.L.482, No.141) and July 2, 1986
7 (P.L.318, No.77), are amended and the section is amended by
8 adding subsections to read:

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

10 (b.2) Notwithstanding the provisions of subsections (a), (b)
11 and (b.1), the tentative tax due, with respect to the capital
12 stock and franchise tax for taxable years commencing during
13 calendar year 1987 [and for each taxable year thereafter,] shall
14 be computed by applying the [current tax rate] following tax
15 rates to eighty per cent of such tax base from the year
16 preceding the immediate prior year:

17 (1) Any payment of tentative tax due prior to the effective
18 date of this paragraph shall be payable at the tax rate
19 applicable to calendar year 1986.

20 (2) Any payment of tentative tax due subsequent to the
21 effective date of this paragraph shall be payable at the tax
22 rate applicable to calendar year 1987.

23 (b.3) Notwithstanding the provisions of subsections (a),
24 (b), (b.1) and (b.2), the tentative tax due with respect to the
25 capital stock and franchise tax for taxable years commencing
26 during calendar year 1988, and for each taxable year thereafter,
27 shall be computed by applying the current tax rate to ninety per
28 cent of such tax base from the year preceding the immediate
29 prior year.

30 (c) Payment of taxes imposed by Articles IV, VI, IX, XI and

XV of this act may at the taxpayer's election be an amount estimated by the taxpayer which estimated amount shall not be less than ninety per cent of the tax as is finally reported in the annual tax report for the current calendar or fiscal year.

* * *

(d.1) A corporation with respect to the capital stock franchise tax imposed by Article VI of this act may, at its election, report and pay in installments on account of the tax due for the current taxable year an amount computed either by applying the current tax rate to ninety per cent of the tax base as determined in subsection (b.3) of this section or as computed on the basis estimated by the taxpayer to be due for the current year which estimated amount shall not be less than ninety per cent of the tax as is finally reported in the annual tax report for the current year as provided in subsection (c) of this section. The installments shall be paid in accordance with the following schedules:

	<u>First</u>	<u>Second</u>	<u>Third</u>	<u>Fourth</u>
<u>Year In</u>	<u>Due on the 15th day of the following months</u>			
<u>Which Tax</u>	<u>after close of the previous tax year:</u>			
<u>Year Begins</u>	<u>4th Month</u>	<u>6th Month</u>	<u>9th Month</u>	<u>12th Month</u>
<u>1988</u>	<u>44%</u>	<u>44%</u>	<u>6%</u>	<u>6%</u>
<u>1989</u>	<u>34%</u>	<u>34%</u>	<u>16%</u>	<u>16%</u>
<u>1990</u>	<u>29%</u>	<u>29%</u>	<u>21%</u>	<u>21%</u>
<u>1991 and</u>				
<u>thereafter</u>	<u>25%</u>	<u>25%</u>	<u>25%</u>	<u>25%</u>

Any taxpayer which has elected to compute its tentative tax liability on the aforesaid estimated basis and which has elected to report and pay the estimated tax in installments may, when reporting and paying its third or fourth installment, base the

1 installment on an amended tentative tax report reflecting the
2 taxpayer's new estimate of its tax liability for the tax year:
3 Provided, That the new estimate reflects a lower tax liability
4 than was previously reported in its original or, if applicable,
5 amended tentative tax report. If an amended tentative tax report
6 is filed, each remaining installment payment due, if any, shall
7 be such as to bring the total installment payments made on
8 account of the tax due for the current taxable year up to an
9 amount determined by multiplying the tentative tax due for the
10 year as reported in the amended report by the sum of the
11 percentages set forth in the above schedule for the applicable
12 elapsed installments.

13 The remaining portion of the tax due, if any, shall be paid
14 upon the date the taxpayer's annual report is required to be
15 filed under the applicable tax statute, determined without
16 reference to any extension of time for filing such report.

17 * * *

18 Section 8. Funds deposited in the Hazardous Sites Cleanup
19 Fund established in section 5 (section 602.3) shall not be
20 expended until enabling legislation is adopted by the General
21 Assembly regarding the requirements for the use of the funds in
22 the cleanup of hazardous waste sites.

23 Section 9. This act shall apply as follows:

24 (1) Sections 1 (section 204(46)) and 8 shall apply from
25 the time they take effect.

26 (2) Section 2 (section 304(d)(1)) shall apply
27 retroactively to the tax year commencing January 1, 1987, and
28 each tax year thereafter.

29 (3) Section 4 (section 602(a), (b) and (e)) shall apply
30 retroactively to the tax year commencing January 1, 1987, and

1 each tax year thereafter or to the fiscal year commencing on
2 or after January 1, 1987, and each fiscal year thereafter.

3 (4) The remainder of this act shall apply to the tax
4 year commencing January 1, 1988, and each tax year
5 thereafter.

6 Section 10. This act shall take effect as follows:

7 (1) Section 1 (section 204(46)) shall take effect
8 September 30, 1987, or immediately, whichever is later.

9 (2) The remainder of this act shall take effect
10 immediately.