
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1059 Session of
1991

INTRODUCED BY FISHER, TILGHMAN, GREENLEAF, LOEPER, HART,
SALVATORE, PETERSON, SHUMAKER, CORMAN, BELL, JUBELIRER,
HELFRICK, ARMSTRONG, ROBBINS, LEMMOND, RHOADES, REIBMAN,
LAVALLE, BELAN, STEWART, WENGER, MELLOW, LEWIS, AFFLERBACH,
SCHWARTZ, SCANLON AND STOUT, MAY 13, 1991

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, AUGUST 3, 1991

AN ACT

1 Amending the act of April 9, 1929 (P.L.343, No.176), entitled,
2 as amended, "An act relating to the finances of the State
3 government; providing for the settlement, assessment,
4 collection, and lien of taxes, bonus, and all other accounts
5 due the Commonwealth, the collection and recovery of fees and
6 other money or property due or belonging to the Commonwealth,
7 or any agency thereof, including escheated property and the
8 proceeds of its sale, the custody and disbursement or other
9 disposition of funds and securities belonging to or in the
10 possession of the Commonwealth, and the settlement of claims
11 against the Commonwealth, the resettlement of accounts and
12 appeals to the courts, refunds of moneys erroneously paid to
13 the Commonwealth, auditing the accounts of the Commonwealth
14 and all agencies thereof, of all public officers collecting
15 moneys payable to the Commonwealth, or any agency thereof,
16 and all receipts of appropriations from the Commonwealth,
17 authorizing the Commonwealth to issue tax anticipation notes
18 to defray current expenses, implementing the provisions of
19 section 7(a) of Article VIII of the Constitution of
20 Pennsylvania authorizing and restricting the incurring of
21 certain debt and imposing penalties; affecting every
22 department, board, commission, and officer of the State
23 government, every political subdivision of the State, and
24 certain officers of such subdivisions, every person,
25 association, and corporation required to pay, assess, or
26 collect taxes, or to make returns or reports under the laws
27 imposing taxes for State purposes, or to pay license fees or
28 other moneys to the Commonwealth, or any agency thereof,

every State depository and every debtor or creditor of the Commonwealth," providing an amnesty program for the payment of delinquent taxes; PROVIDING FOR THE EXAMINATION OF BOOKS AND RECORDS BY THE DEPARTMENT OF REVENUE; FURTHER PROVIDING FOR CERTAIN INTEREST PAYMENTS AND THE RATES OF INTEREST, FOR THE SETTLEMENT OF TAXES AND FOR THE FILING OF LIENS AND WRITS OF REVIVAL; PROVIDING CERTAIN SUBPOENA POWERS TO THE DEPARTMENT OF REVENUE; PROVIDING FOR UNFAIR SALES OF CIGARETTES; AND MAKING A REPEAL.

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

Section 1. The act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, is amended by adding ~~an article~~ A SECTION AND ARTICLES to read:

SECTION 212.1. EXAMINATION OF BOOKS AND RECORDS BY THE DEPARTMENT OF REVENUE.--(A) THE DEPARTMENT OF REVENUE OR ANY OF ITS AUTHORIZED AGENTS IS HEREBY AUTHORIZED TO EXAMINE THE BOOKS, PAPERS AND RECORDS OF ANY TAXPAYER OR OTHER PERSONS IN ORDER TO VERIFY THE ACCURACY AND COMPLETENESS OF ANY RETURN OR REPORT MADE, OR IF NO RETURN OR REPORT WAS MADE, TO ASCERTAIN AND ASSESS ANY TAX OR OTHER LIABILITY OWED THE COMMONWEALTH.

(B) THE DEPARTMENT OF REVENUE MAY DETERMINE, BY DESK OR FIELD AUDIT, THE AMOUNT OF TAX OR OTHER LIABILITY REQUIRED TO BE PAID TO THE COMMONWEALTH. THE DETERMINATION MAY BE MADE UPON THE BASIS OF THE FACTS CONTAINED IN THE RETURN OR REPORT BEING AUDITED OR UPON OTHER INFORMATION IN THE DEPARTMENT'S POSSESSION. THE DETERMINATION MAY BE MADE UPON THE BASIS OF A SAMPLE OR TEST AUDIT PERFORMED IN ACCORDANCE WITH THE REGULATIONS OF THE DEPARTMENT, WHETHER OR NOT THE PERSON BEING AUDITED HAS COMPLETE RECORDS OF TRANSACTIONS AND WHETHER OR NOT THE PERSON BEING AUDITED CONSENTS TO SUCH SAMPLE.

ARTICLE II-A

TAX AMNESTY PROGRAM

Section 201-A. Definitions.--The following words, terms and

phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Amnesty period" means January 1, 1992, through 12 midnight March 31, 1992.

"Department" means the Department of Revenue of the Commonwealth.

"Eligible tax" means any tax imposed by ~~this act~~ THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), KNOWN AS THE "TAX REFORM CODE OF 1971," or 72 Pa.C.S. Ch. 17 (relating to inheritance and estate taxes) PRIOR TO JANUARY 1, 1988, FOR WHICH A TAX RETURN WAS FILED OR REQUIRED TO BE FILED PRIOR TO JANUARY 1, 1988.

"Program" means the tax amnesty program as provided for in this article.

"Taxpayer" means any person, association, fiduciary, partnership, corporation or other entity required to pay or collect any of the taxes imposed by this act or 72 Pa.C.S. Ch. 17 (relating to inheritance and estate taxes). The term shall not include a taxpayer who, as of December 31, 1991, has received notice that he is the subject of a criminal investigation for an alleged violation of this act or 72 Pa.C.S. Ch. 17, has been named as a defendant in a criminal complaint alleging a violation of this act or 72 Pa.C.S. Ch. 17 or is a defendant in a pending criminal action for an alleged violation of this act or 72 Pa.C.S. Ch. 17.

Section 202-A. Establishment of Amnesty Program.--(a) There is hereby established a tax amnesty program which shall be administered by the department.

(b) The amnesty program shall apply to a taxpayer who is delinquent on payment of an eligible tax as of December 31,

1991, including tax on returns not filed, tax liabilities according to records of the department as of December 31, 1991, tax liabilities not reported, underreported or not established, but delinquent as of December 31, 1991.

Section 203-A. Required Payment.--(a) All taxpayers who participate in the program shall make payment of all taxes due the Commonwealth as of December 31, 1991, plus fifty per cent of the total amount of interest due within the amnesty period. The department shall not seek to collect the remaining fifty per cent of the total amount of interest due and any penalties owed by the taxpayer.

(b) In addition to filing an amnesty tax return, a taxpayer must file complete tax returns for all years for which the taxpayer previously has not filed a tax return and file complete amended returns for all years for which the taxpayer underreported income.

(c) The department shall not pursue an administrative or judicial proceeding against a taxpayer with respect to any tax that is disclosed on an amnesty tax return.

Section 204-A. Installment Payment Agreement.--The department may enter into an installment payment agreement in the cases of severe financial hardship, as determined by the department, in lieu of complete payment of all taxes due and fifty per cent of the total amount of interest. Failure by the taxpayer to fully comply with the terms of the installment payment agreement shall terminate the taxpayer's participation in the amnesty program and all taxes due the Commonwealth and the total amount of interest and penalties due the Commonwealth shall be considered to be delinquent and shall be immediately due and payable.

1 Section 205-A. Limitation of Deficiency Assessment.--If
2 subsequent to March 31, 1992, the department issues a deficiency
3 assessment upon a return filed pursuant to this article, the
4 department shall have the authority to impose penalties and to
5 pursue a criminal action only with respect to the difference
6 between the amount shown on that return and the current amount
7 of tax.

8 Section 206-A. Overpayment of Tax.--Notwithstanding any
9 other provisions of this or any other act, if an overpayment of
10 tax is refunded or credited within one hundred eighty days after
11 the return is filed under this article, no interest shall be
12 allowed on the overpayment.

13 Section 207-A. Previously Paid Interest and Penalties.--No
14 refund or credit shall be allowed for any interest and penalty
15 paid to the department prior to December 31, 1991.

16 Section 208-A. Proceedings Relating to Amnesty Return
17 Barred.--Participation in the amnesty program is conditioned
18 upon the taxpayer's agreement that the right to protest or
19 pursue an administrative or judicial proceeding with regard to
20 returns filed under the amnesty program or to claim any refund
21 of money paid under the amnesty program is barred.

22 Section 209-A. Undisclosed Liabilities.--Nothing in this
23 article shall be construed to prohibit the department from
24 instituting civil or criminal proceedings against any taxpayer
25 with respect to any amount of tax that is not disclosed on the
26 amnesty return.

27 Section 210-A. Duties of Department.--(a) The department
28 shall develop regulations to implement the provisions of this
29 article. The regulations must be published in the Pennsylvania
30 Bulletin within sixty days of the effective date of this article

1 and shall contain, but not be limited to, the following
2 information:

3 (1) An explanation of the tax amnesty program and the
4 requirements for eligibility for the program.

5 (2) The dates during which a tax amnesty return may be
6 filed.

7 (3) An explanation of the procedure for obtaining an
8 installment payment agreement.

9 (4) A specimen copy of the tax amnesty return.

10 (b) The department shall publicize the tax amnesty program
11 to maximize public awareness of and participation in the
12 program. The department shall coordinate to the highest degree
13 possible its publicity efforts and other actions taken to
14 implement this article.

15 (c) The department shall issue a report to the General
16 Assembly by June 1, 1992, detailing the implementation of the
17 program. The report shall contain, but not be limited to, the
18 following information:

19 (1) A detailed breakdown of the department's administrative
20 costs in implementing the program.

21 (2) The number of tax amnesty returns filed and a breakdown
22 of the number and dollar amount of revenue raised for each tax.

23 (3) The total dollar amount of revenue raised by the
24 program.

25 (4) The number of amnesty returns for which an installment
26 payment agreement was authorized and the guidelines under which
27 the department authorized the installment payment agreements.

28 (d) The department shall notify in writing all taxpayers who
29 owe taxes in excess of four thousand dollars (\$4,000) to the
30 Commonwealth of the amnesty program established under this

1 article. The sole purpose of the letter sent by the department
2 to taxpayers must be notification of the amnesty program.

3 Section 211-A. Method of Payment.--All tax payments under
4 the amnesty program shall be made by certified check or money
5 order.

6 Section 212-A. Feasibility Study.--The department shall
7 study and report to the General Assembly concerning the
8 feasibility of acquiring the services of private collection
9 agencies in a competitive bid process for collecting delinquent
10 tax payments that remain outstanding at the close of the amnesty
11 period. Items to be considered in the study include:

12 (1) Maintenance of taxpayer confidentiality.

13 (2) The effect of private collection process on future
14 criminal and/or judicial proceedings.

15 (3) The savings in personnel and other resources from
16 privatizing the collection process.

17 (4) Identification of delinquent tax accounts that are
18 appropriate for collection by private collection agencies.

19 Section 213-A. Exemption from Review Process.--
20 Notwithstanding any law to the contrary the regulations issued
21 by the department for the amnesty program shall be exempt from
22 the regulatory review process provided in the act of June 25,
23 1982 (P.L.633, No.181), known as the "Regulatory Review Act."

24 ~~Section 214 A. Use of Revenue. All revenue generated by~~ <—
25 ~~this article shall be deposited into the General Fund.~~

26 ~~Section 215 A. Funding. The department shall receive an~~
27 ~~increase in its 1992 1993 fiscal year appropriation equal to the~~
28 ~~cost of administering the provisions of this article.~~

29 ~~Section 2. This act shall take effect immediately.~~

30 SECTION 214-A. USE OF REVENUE.--ALL REVENUE GENERATED BY <—

1 THIS ARTICLE SHALL BE DISTRIBUTED IN THE FOLLOWING ORDER:

2 (1) REPAYMENT OF ANY COST FOR ADMINISTRATION OF THE AMNESTY
3 PROGRAM TO THE DEPARTMENT.

4 (2) AN AMOUNT NOT EXCEEDING FIFTEEN MILLION DOLLARS
5 (\$15,000,000) SHALL BE DEPOSITED INTO THE GENERAL FUND.

6 (3) ANY REVENUE IN EXCESS OF FIFTEEN MILLION DOLLARS
7 (\$15,000,000) SHALL BE DEPOSITED INTO THE RAINY DAY FUND.

8 ARTICLE II-B

9 UNFAIR CIGARETTE SALES

10 SECTION 201-B. DEFINITIONS.--AS USED IN THIS ARTICLE:

11 (A) "PERSON" SHALL MEAN AND INCLUDE ANY INDIVIDUAL, FIRM,
12 ASSOCIATION, COMPANY, PARTNERSHIP, CORPORATION, JOINT STOCK
13 COMPANY, CLUB, AGENCY, SYNDICATE, TRUST, RECEIVER, TRUSTEE,
14 FIDUCIARY AND CONSERVATOR.

15 (B) "CIGARETTES" SHALL MEAN AND INCLUDE ANY ROLL FOR SMOKING
16 MADE WHOLLY OR IN PART OF TOBACCO, IRRESPECTIVE OF SIZE OR
17 SHAPE, AND WHETHER OR NOT SUCH TOBACCO IS FLAVORED, ADULTERATED
18 OR MIXED WITH ANY OTHER INGREDIENT, THE WRAPPER OR COVER OF
19 WHICH IS MADE OF PAPER OR ANY OTHER SUBSTANCE OR MATERIAL,
20 EXCEPTING TOBACCO.

21 (C) "SALE" AND "SELL" SHALL MEAN ANY TRANSFER FOR A
22 CONSIDERATION, EXCHANGE, BARTER, GIFT, OFFER FOR SALE AND
23 DISTRIBUTION, IN ANY MANNER OR BY ANY MEANS WHATSOEVER.

24 (D) "WHOLESALER" SHALL MEAN AND INCLUDE:

25 (1) ANY PERSON, OTHER THAN THE CIGARETTE STAMPING AGENT,
26 WHO, IN THE USUAL COURSE OF BUSINESS, PURCHASES CIGARETTES AND
27 SELLS, WITHIN THIS COMMONWEALTH, AT LEAST SEVENTY-FIVE PER
28 CENTUM OF ALL SUCH CIGARETTES PURCHASED BY HIM TO RETAIL
29 DEALERS, OTHER WHOLESALE DEALERS, OR ANY OTHER PERSONS WHO SHALL
30 BUY SAID CIGARETTES FROM HIM FOR THE PURPOSE OF RESALE TO THE

1 ULTIMATE CONSUMER: PROVIDED, THAT SUCH PERSON MAINTAINS A
2 SEPARATE ESTABLISHED PLACE OF BUSINESS FOR THE RECEIVING,
3 STORAGE AND DISTRIBUTION OF CIGARETTES.

4 (2) ANY PERSON WHO IS ENGAGED IN THE BUSINESS OF
5 DISTRIBUTING CIGARETTES THROUGH VENDING MACHINES TO THE ULTIMATE
6 CONSUMER BY MEANS OF PLACING SAID CIGARETTE VENDING MACHINES,
7 OWNED OR LEASED BY HIM, IN VARIOUS OUTLETS WITHIN THE
8 COMMONWEALTH, AND WHO PAYS TO THE OWNER OR LESSEE OF THE
9 PREMISES A COMMISSION OR RENTAL FOR THE USE OF SAID PREMISES:
10 PROVIDED, THAT SUCH VENDING MACHINE OPERATOR SHALL OPERATE AT
11 LEAST TEN VENDING MACHINES: AND, PROVIDED FURTHER, THAT SAID
12 VENDING MACHINE OPERATOR MEETS ALL THE OTHER REQUIREMENTS FOR
13 LICENSING OF WHOLESALERS UNDER THIS ARTICLE, INCLUDING
14 MAINTAINING A SEPARATE ESTABLISHED PLACE OF BUSINESS FOR THE
15 RECEIVING, STORAGE AND DISTRIBUTION OF CIGARETTES.

16 (3) ANY PERSON WHO IS ENGAGED IN OPERATING A CHAIN STORE.

17 (E) "CHAIN STORE" SHALL MEAN ANY PERSON WHO OWNS AND
18 OPERATES NO LESS THAN FIVE RETAIL OUTLETS IN THIS COMMONWEALTH,
19 HAVING ONE HUNDRED PER CENTUM COMMON OWNERSHIP, WHO PURCHASES
20 CIGARETTES FROM A CIGARETTE STAMPING AGENCY OR ANOTHER
21 WHOLESALE FOR RESALE TO THE ULTIMATE CONSUMER: PROVIDED, THAT
22 SUCH PERSON MAINTAINS COMPLETE AND ACCURATE RECORDS OF ALL
23 PURCHASES AND SALES IN HIS MAIN OFFICE AND ALSO IN THE RETAIL
24 OUTLET. FOR PURPOSES OF THIS ARTICLE, THE TERM "CHAIN STORE"
25 SHALL ALSO INCLUDE FRANCHISEES.

26 (F) "FRANCHISEE" SHALL MEAN ANY PERSON ENGAGED IN THE SALE
27 OF CIGARETTES, WHO IS GRANTED THE RIGHT TO ENGAGE IN THE
28 BUSINESS OF OFFERING, SELLING OR DISTRIBUTING GOODS OR SERVICE
29 UNDER A MARKETING PLAN OR SYSTEM PRESCRIBED IN SUBSTANTIAL PART
30 BY THE GRANTOR OF THAT RIGHT, FOR WHICH A DIRECT OR INDIRECT FEE

1 IS PAID, AND WHOSE FRANCHISOR FRANCHISES FIVE OR MORE RETAIL
2 OUTLETS IN THIS COMMONWEALTH THROUGH WHICH CIGARETTES ARE SOLD.

3 (G) "RETAILER" SHALL MEAN AND INCLUDE ANY PERSON WHO SELLS
4 CIGARETTES AT RETAIL, INCLUDING A WHOLESALER OR A CIGARETTE
5 STAMPING AGENT FOR THE PURPOSES OF ITS SALE TO CONSUMERS,
6 INCLUDING A WHOLESALER OR A CIGARETTE STAMPING AGENT FOR THE
7 PURPOSE OF ITS SALE TO CONSUMERS.

8 (H) "SELL AT RETAIL," "SALE AT RETAIL" AND "RETAIL SALES"
9 SHALL MEAN AND INCLUDE ANY SALE OF CIGARETTES FOR CONSUMPTION OR
10 USE, MADE IN THE ORDINARY COURSE OF TRADE OR USUAL CONDUCT OF
11 THE SELLER'S BUSINESS.

12 (I) "SELL AT WHOLESALE," "SALE AT WHOLESALE" AND "WHOLESALE
13 SALES" SHALL MEAN AND INCLUDE ANY SALE OF CIGARETTES MADE IN THE
14 ORDINARY COURSE OF TRADE OR USUAL CONDUCT OF THE WHOLESALER'S
15 BUSINESS TO THE RETAILER FOR THE PURPOSE OF RESALE.

16 (J) "BASIC COST OF CIGARETTES" SHALL MEAN THE INVOICE COST
17 OF CIGARETTES TO THE RETAILER CIGARETTE STAMPING AGENT OR
18 WHOLESALER, AS THE CASE MAY BE, OR THE REPLACEMENT COST OF
19 CIGARETTES TO THE RETAILER CIGARETTE STAMPING AGENT OR
20 WHOLESALER, AS THE CASE MAY BE, WITHIN THIRTY DAYS PRIOR TO THE
21 DATE OF SALE IN THE QUANTITY LAST PURCHASED, WHICHEVER IS LOWER,
22 BUT NOT LESS ANY DISCOUNTS SUCH AS STAMPING COMMISSION OR
23 DISCOUNT, PROMPT PAYMENT DISCOUNT OR ANTICIPATORY OR PROMOTIONAL
24 DISCOUNT WHICH MAY BE WITHDRAWN AT ANY TIME, TO WHICH SHALL BE
25 ADDED THE FULL FACE VALUE OF ANY TAX WHICH MAY BE REQUIRED BY
26 ANY CIGARETTE TAX ACT OF THIS COMMONWEALTH NOW IN EFFECT OR
27 HEREAFTER ENACTED, IF NOT ALREADY INCLUDED BY THE MANUFACTURER
28 IN HIS LIST PRICE.

29 (K) "COST OF THE WHOLESALER" SHALL MEAN THE "BASIC COST OF
30 CIGARETTES" TO THE WHOLESALER PLUS THE COST OF DOING BUSINESS BY

1 THE WHOLESALER AS EVIDENCED BY THE ACCOUNTING STANDARDS AND
2 METHODS REGULARLY EMPLOYED BY THE WHOLESALER IN HIS
3 DETERMINATION OF COSTS FOR THE PURPOSE OF FEDERAL INCOME TAX
4 REPORTING FOR THE TOTAL OPERATION OF HIS ESTABLISHMENT,
5 INCLUDING DIRECT AND INDIRECT COSTS, EXPRESSED AS A PERCENTAGE
6 AND APPLIED TO THE BASIC COST OF CIGARETTES, WHICH INCLUDES THE
7 COST OF DOING BUSINESS BY THE CIGARETTE STAMPING AGENT WITH
8 RESPECT TO SALES OF CIGARETTES TO WHOLESALERS. THERE SHALL BE
9 DETERMINED A SEPARATE COST OF THE WHOLESALER FOR SALES TO RETAIL
10 DEALERS. IN THE ABSENCE OF FILING SATISFACTORY PROOF OF A LESSER
11 OR HIGHER COST OF DOING BUSINESS BY THE WHOLESALER WITH RESPECT
12 TO SALES TO RETAIL DEALERS THE COST OF DOING BUSINESS SHALL BE
13 PRESUMED TO BE TWO PER CENTUM OF THE BASIC COST OF CIGARETTES.
14 WHEN A WHOLESALER ESTABLISHES A LESSER OR HIGHER COST OF DOING
15 BUSINESS THAN THE PRESUMPTIVE TWO PER CENTUM COST OF DOING
16 BUSINESS, SUCH LESSER OR HIGHER COST OF DOING BUSINESS MAY BE
17 USED TO COMPUTE THE "COST OF THE WHOLESALER" FOR A PERIOD OF
18 TIME NO GREATER THAN SIX MONTHS, AT THE END OF WHICH TIME THE
19 "COST OF THE WHOLESALER" SHALL BE COMPUTED USING THE PRESUMPTIVE
20 TWO PER CENTUM COST OF DOING BUSINESS, UNLESS THE WHOLESALER
21 AGAIN ESTABLISHES A LESSER OR HIGHER COST OF DOING BUSINESS.

22 (L) "COST OF THE RETAILER" SHALL MEAN THE "BASIC COST OF
23 CIGARETTES" TO THE RETAILER PLUS THE COST OF DOING BUSINESS BY
24 THE RETAILER AS EVIDENCED BY THE ACCOUNTING STANDARDS AND
25 METHODS REGULARLY EMPLOYED BY THE RETAILER IN HIS DETERMINATION
26 OF COSTS FOR THE PURPOSE OF FEDERAL INCOME TAX REPORTING FOR THE
27 TOTAL OPERATION OF HIS ESTABLISHMENT, INCLUDING DIRECT AND
28 INDIRECT COSTS EXPRESSED AS A PERCENTAGE AND APPLIED TO THE
29 BASIC COST OF CIGARETTES, WHICH INCLUDES THE COST OF DOING
30 BUSINESS BY THE WHOLESALER WITH RESPECT TO SALES OF CIGARETTES

1 TO RETAILERS. IN THE ABSENCE FILING OF SATISFACTORY OF PROOF OF
2 A LESSER OR HIGHER COST OF DOING BUSINESS BY THE RETAILER MAKING
3 THE SALE, THE COST OF DOING BUSINESS BY THE RETAILER SHALL BE
4 PRESUMED TO BE SIX PER CENTUM OF THE "BASIC COST OF CIGARETTES"
5 TO THE RETAILER. WHEN A RETAILER ESTABLISHES A LESSER OR HIGHER
6 COST OF DOING BUSINESS THAN THE PRESUMPTIVE SIX PER CENTUM COST
7 OF DOING BUSINESS, SUCH LESSER OR HIGHER COST OF DOING BUSINESS
8 MAY BE USED TO COMPUTE THE "COST OF THE RETAILER" FOR A PERIOD
9 OF TIME NO GREATER THAN SIX MONTHS, AT THE END OF WHICH TIME THE
10 "COST TO THE RETAILER" SHALL BE COMPUTED USING THE PRESUMPTIVE
11 SIX PER CENTUM COST OF DOING BUSINESS, UNLESS THE RETAILER AGAIN
12 ESTABLISHES A LESSER OR HIGHER COST OF DOING BUSINESS.

13 IN THE CASE OF ANY PERSON WHO PURCHASES CIGARETTES FOR SALE
14 AT RETAIL FROM ANY MANUFACTURER OF CIGARETTES WITHOUT RESORT TO
15 A WHOLESALER AS SUCH, SUCH PERSON SHALL BE DEEMED, FOR THE
16 PURPOSES OF THIS ACT, TO BE ENGAGED IN THE SALE OF CIGARETTES
17 BOTH AS A WHOLESALER AND RETAILER AND AS SUCH, SHALL BE SUBJECT
18 BOTH TO THE WHOLESALE AND RETAIL MARK-UP PROVISIONS OF THIS
19 ARTICLE, IN THE ORDER NAMED.

20 (M) "COST OF DOING BUSINESS" SHALL MEAN THAT AMOUNT, AS
21 EVIDENCED BY THE STANDARDS AND METHODS OF ACCOUNTING REGULARLY
22 EMPLOYED IN THE DETERMINATION OF COSTS FOR THE PURPOSE OF
23 FEDERAL INCOME TAX REPORTING, FOR THE TOTAL OPERATION OF THE
24 ESTABLISHMENT FOR THE PREVIOUS TWELVE-MONTH PERIOD, AND MUST
25 INCLUDE, BUT SHALL NOT BE LIMITED TO, ALL DIRECT COSTS,
26 INCLUDING, WHERE APPLICABLE, INBOUND FREIGHT CHARGES, LABOR
27 COSTS TO AFFIX TAX INDICIA, COST OF EQUIPMENT TO AFFIX HAND
28 STAMPS, INK, GLUE, RENTAL AND MAINTENANCE EXPENSES FOR THE
29 CIGARETTE TAX MACHINE, STATE AND LOCAL CIGARETTE LICENSES, AND
30 INDIRECT OVERHEAD COSTS AND EXPENSES PAID OR INCURRED SUCH AS,

PREOPENING EXPENSES, MANAGEMENT FEES, LABOR COSTS (INCLUDING SALARIES OF EXECUTIVES AND OFFICERS), RENTS, DEPRECIATION, SELLING COSTS, MAINTENANCE EXPENSES, INTEREST EXPENSES, DELIVERY COSTS, ALL TYPES OF LICENSES, ALL TYPES OF TAXES, INSURANCE, ADVERTISING AND ANY CENTRAL AND REGIONAL ADMINISTRATIVE EXPENSES.

(N) "COST OF THE CIGARETTE STAMPING AGENT" SHALL MEAN THE "BASIC COST OF CIGARETTES" TO THE CIGARETTE STAMPING AGENT PLUS THE COST OF DOING BUSINESS BY THE CIGARETTE STAMPING AGENT AS EVIDENCED BY THE ACCOUNTING STANDARDS AND METHODS REGULARLY EMPLOYED BY SAID AGENT IN HIS DETERMINATION OF COSTS FOR THE PURPOSE OF FEDERAL INCOME TAX REPORTING FOR THE TOTAL OPERATION OF HIS ESTABLISHMENT, AND MUST INCLUDE, WITHOUT LIMITATION, LABOR, (INCLUDING SALARIES OF EXECUTIVES AND OFFICERS), RENT, DEPRECIATION, SELLING COSTS, MAINTENANCE OF EQUIPMENT, DELIVERY COSTS, INTEREST PAYABLE, ALL TYPES OF LICENSES, TAXES, INSURANCE AND ADVERTISING EXPRESSED AS A PERCENTAGE AND APPLIED TO THE BASIC COST OF CIGARETTES. IN THE CASE OF SALES AT RETAIL BY CIGARETTE STAMPING AGENTS, THE "COST OF THE CIGARETTE STAMPING AGENT" SHALL BE THE SAME AS THE "COST OF THE RETAILER." THERE SHALL BE DETERMINED A SEPARATE COST OF THE CIGARETTE STAMPING AGENT FOR SALES TO WHOLESALE DEALERS, AND FOR SALES TO RETAIL DEALERS. IN THE ABSENCE OF FILING OF SATISFACTORY PROOF OF A LESSER OR HIGHER COST OF DOING BUSINESS OF THE CIGARETTE STAMPING AGENT MAKING THE SALE, THE COST OF DOING BUSINESS SHALL BE PRESUMED TO BE TWO PER CENTUM OF THE BASIC COST OF CIGARETTES FOR SALES TO WHOLESALE DEALERS.

WHEN A CIGARETTE STAMPING AGENT ESTABLISHES A LESSER OR HIGHER COST OF DOING BUSINESS THAN THE PRESUMPTIVE COSTS CONTAINED HEREIN, SUCH LESSER OR HIGHER COST OF DOING BUSINESS

1 MAY BE USED TO COMPUTE THE "COST OF THE CIGARETTE STAMPING
2 AGENT" FOR A PERIOD OF TIME NO GREATER THAN SIX MONTHS, AT THE
3 END OF WHICH TIME THE "COST OF THE CIGARETTE STAMPING AGENT"
4 SHALL BE COMPUTED USING THE PRESUMPTIVE COSTS CONTAINED HEREIN,
5 UNLESS THE CIGARETTE STAMPING AGENT AGAIN ESTABLISHES A LESSER
6 OR HIGHER COST OF DOING BUSINESS.

7 (O) "CIGARETTE STAMPING AGENT" SHALL MEAN ANY PERSON WHO IS
8 LICENSED AS SUCH BY THE DEPARTMENT OF REVENUE FOR THE PURPOSE OF
9 AFFIXING CIGARETTE TAX STAMPS TO PACKAGES OF CIGARETTES AND
10 TRANSMITTING THE PROPER TAX TO THE COMMONWEALTH, WHO MAINTAINS
11 SEPARATE WAREHOUSING FACILITIES FOR THE PURPOSE OF RECEIVING AND
12 DISTRIBUTING CIGARETTES AND CONDUCTING HIS BUSINESS, AND WHO HAS
13 RECEIVED COMMITMENTS FROM AT LEAST TWO CIGARETTE MANUFACTURERS
14 WHOSE AGGREGATE MARKET SHARE IS AT LEAST FORTY PER CENTUM OF THE
15 COMMONWEALTH CIGARETTE MARKET AND WHO PURCHASES CIGARETTES
16 DIRECTLY FROM CIGARETTE MANUFACTURERS OR IS A MANUFACTURER OF
17 CIGARETTES.

18 SECTION 202-B. SALES AT LESS THAN COST.--

19 (A) IT SHALL BE UNLAWFUL:

20 (1) FOR ANY CIGARETTE STAMPING AGENT, WHOLESALE DEALER OR
21 RETAIL DEALER, WITH INTENT TO INJURE COMPETITORS OR DESTROY OR
22 SUBSTANTIALLY LESSEN COMPETITION, OR WITH INTENT TO AVOID THE
23 COLLECTION OR PAYING OVER OF SUCH TAXES AS MAY BE REQUIRED BY
24 LAW, TO ADVERTISE, OFFER TO SELL OR SELL CIGARETTES AT LESS THAN
25 COST OF SUCH CIGARETTE STAMPING AGENT, WHOLESALE DEALER OR
26 RETAIL DEALER, AS THE CASE MAY BE.

27 (2) FOR ANY WHOLESALER:

28 (I) TO INDUCE OR ATTEMPT TO INDUCE OR TO PROCURE OR ATTEMPT
29 TO PROCURE THE PURCHASE OF CIGARETTES AT A PRICE LESS THAN THE
30 COST OF THE CIGARETTE STAMPING AGENT WITH RESPECT TO SALES TO

1 WHOLESALE; OR

2 (II) TO INDUCE OR ATTEMPT TO INDUCE OR TO PROCURE OR ATTEMPT
3 TO PROCURE ANY REBATE OR CONCESSION OF ANY KIND OR NATURE
4 WHATSOEVER IN CONNECTION WITH THE PURCHASE OF CIGARETTES.

5 (3) FOR ANY RETAIL DEALER:

6 (I) TO INDUCE OR ATTEMPT TO INDUCE OR TO PROCURE OR ATTEMPT
7 TO PROCURE THE PURCHASE OF CIGARETTES AT A PRICE LESS THAN THE
8 COST TO THE CIGARETTE STAMPING AGENT FOR SALES TO RETAIL
9 DEALERS, IF PURCHASED FROM AN AGENT, OR AT A PRICE LESS THAN THE
10 COST OF THE WHOLESALE; OR

11 (II) TO INDUCE OR ATTEMPT TO INDUCE OR TO PROCURE OR ATTEMPT
12 TO PROCURE ANY REBATE OR CONCESSION OF ANY KIND OR NATURE
13 WHATSOEVER IN CONNECTION WITH THE PURCHASE OF CIGARETTES.

14 (B) EVIDENCE OF ADVERTISEMENT, OFFERING TO SELL OR SALE OF
15 CIGARETTES BY ANY CIGARETTE STAMPING AGENT, WHOLESALE OR RETAIL
16 DEALER AT LESS THAN COST, OR EVIDENCE OF ANY OFFER OF A REBATE
17 IN PRICE, OR GIVING OF A REBATE IN PRICE, OR AN OFFER OF A
18 CONCESSION, OR THE GIVING OF A CONCESSION OF ANY KIND OR NATURE
19 WHATSOEVER IN CONNECTION WITH THE SALE OF CIGARETTES, OR THE
20 INDUCING OR ATTEMPT TO INDUCE OR TO THE PROCURING OR THE ATTEMPT
21 TO PROCURE THE PURCHASE OF CIGARETTES AT A PRICE LESS THAN COST
22 OF THE CIGARETTE STAMPING AGENT, WHOLESALE, OR THE RETAIL
23 DEALER SHALL BE PRIMA FACIE EVIDENCE OF INTENT TO INJURE
24 COMPETITORS AND TO DESTROY OR SUBSTANTIALLY LESSEN COMPETITION
25 OR OF INTENT TO AVOID THE COLLECTION OR PAYING OVER OF SUCH
26 TAXES AS MAY BE REQUIRED BY LAW. EVIDENCE OF A FINAL SELLING
27 COST WHICH IS NOT THE INVOICE COST, OR AN INVOICE WHICH DOES NOT
28 INCLUDE ALLOWABLE DISCOUNTS, REBATES, ALLOWANCES OR FREE OR
29 DISCOUNTED MERCHANDISE RELATING TO THE SALE OF CIGARETTES, WHEN
30 USED BY THE CIGARETTE STAMPING AGENT, WHOLESALE OR RETAILER

1 SHALL BE PRIMA FACIE EVIDENCE OF VIOLATION OF THIS ARTICLE.

2 SECTION 203-B. COMBINATION SALES.--IN ALL ADVERTISEMENTS,
3 OFFERS FOR SALE OR SALES INVOLVING TWO OR MORE ITEMS, AT LEAST
4 ONE OF WHICH ITEMS IS CIGARETTES, AT A COMBINED PRICE, AND IN
5 ALL ADVERTISEMENTS, OFFERS FOR SALE OR SALES INVOLVING THE
6 GIVING OF ANY GIFT OR CONCESSION OF ANY KIND WHATSOEVER (WHETHER
7 IT BE COUPONS OR OTHERWISE), THE PORTION OF THE RETAILER'S OR
8 WHOLESALE'S COMBINED SELLING PRICE RELATING TO CIGARETTES SHALL
9 NOT BE BELOW THE "COST TO THE RETAILER" OR THE "COST TO THE
10 WHOLESALE," AS THE CASE MAY BE, OF SUCH CIGARETTES.

11 SECTION 204-B. SALES BY A WHOLESALE TO A WHOLESALE.--WHEN
12 ONE WHOLESALE SELLS CIGARETTES TO ANY OTHER WHOLESALE, THE
13 FORMER SHALL NOT BE REQUIRED TO INCLUDE IN HIS SELLING PRICE TO
14 THE LATTER "COST TO THE WHOLESALE," AS DEFINED IN THIS ACT, BUT
15 THE LATTER WHOLESALE, UPON THE RESALE OF SUCH CIGARETTES TO A
16 RETAILER, SHALL BE SUBJECT IN ALL RESPECTS TO THE PROVISIONS OF
17 THIS ARTICLE, BUT THE LATTER WHOLESALE UPON RESALE TO A
18 RETAILER, SHALL BE SUBJECT TO THE PROVISIONS OF THE SAID
19 SECTION: PROVIDED HOWEVER, THAT SUCH LATTER WHOLESALE MAY, AT
20 HIS OPTION, USE AS HIS BASIC COST OF THE CIGARETTES SO SOLD, THE
21 BASIC COST OF THE WHOLESALE FROM WHOM HE SHALL HAVE PURCHASED
22 THE SAME.

23 SECTION 205-B. SALES; EXCEPTIONS.--THE PROVISIONS OF THIS
24 ARTICLE SHALL NOT APPLY TO SALES OF CIGARETTES AT RETAIL OR AT
25 WHOLESALE MADE:

26 (1) IN AN ISOLATED TRANSACTION AND NOT IN THE USUAL COURSE OF
27 BUSINESS;

28 (2) WHERE CIGARETTES ARE ADVERTISED, OFFERED FOR SALE OR SOLD
29 IN BONA FIDE CLEARANCE SALES FOR THE PURPOSE OF DISCONTINUING
30 TRADE IN SUCH CIGARETTES AND SUCH ADVERTISING, OFFER TO SELL OR

SALE SHALL STATE THE REASON THEREOF AND THE QUANTITY OF SUCH
CIGARETTES ADVERTISED, OFFERED FOR SALE OR TO BE SOLD;

(3) WHERE CIGARETTES ARE ADVERTISED, OFFERED FOR SALE OR SOLD
AS IMPERFECT OR DAMAGED AND SUCH ADVERTISING, OFFER TO SELL OR
SALE SHALL STATE THE REASON THEREFOR AND THE QUANTITY OF SUCH
CIGARETTES ADVERTISED, OFFERED FOR SALE OR TO BE SOLD;

(4) WHERE CIGARETTES ARE SOLD UPON THE FINAL LIQUIDATION OF A
BUSINESS; OR

(5) WHERE CIGARETTES ARE ADVERTISED, OFFERED FOR SALE OR SOLD
BY ANY FIDUCIARY OR OTHER OFFICER ACTING UNDER THE ORDER OR
DIRECTION OF ANY COURT.

SECTION 206-B. ADVERTISING OF CERTAIN SALES; GOOD FAITH.--

(A) ANY RETAILER MAY ADVERTISE, OFFER TO SELL OR SELL
CIGARETTES AT A PRICE MADE IN GOOD FAITH TO MEET THE PRICE OF A
COMPETITOR WHO IS SELLING THE SAME ARTICLE AT COST TO HIM AS A
RETAILER. ANY WHOLESALE MAY ADVERTISE, OFFER TO SELL OR SELL
CIGARETTES AT A PRICE MADE IN GOOD FAITH TO MEET THE PRICE OF A
COMPETITOR WHO IS RENDERING THE SAME TYPE OF SERVICE AND IS
SELLING THE SAME ARTICLE AT COST TO HIM AS A WHOLESALE. THE
PRICE OF CIGARETTES ADVERTISED, OFFERED FOR SALE OR SOLD UNDER
THE EXCEPTIONS SPECIFIED IN SECTION 205-B SHALL NOT BE
CONSIDERED THE PRICE OF A COMPETITOR AND SHALL NOT BE USED AS A
BASIS FOR ESTABLISHING PRICES BELOW COST, NOR SHALL THE PRICE
ESTABLISHED AT A BANKRUPT SALE BE CONSIDERED THE PRICE OF A
COMPETITOR, WITHIN THE PURVIEW OF THIS SECTION.

(B) IN THE ABSENCE OF PROOF OF THE COST OF A COMPETITOR
UNDER THIS SECTION, THE LOWEST "COST TO THE RETAILER" OR THE
LOWEST "COST TO THE WHOLESALE," AS THE CASE MAY BE, DETERMINED
BY ANY COST SURVEY MADE IN THE SAME TRADING AREA PURSUANT TO
SECTION 210-B OF THIS ARTICLE, MAY BE DEEMED THE COST OF SUCH

1 COMPETITOR, WITHIN THE MEANING OF THIS SECTION.

2 SECTION 207-B. SALES CONTRACTS VOID.--ANY CONTRACT,
3 EXPRESSED OR IMPLIED, MADE BY ANY PERSON IN VIOLATION OF ANY OF
4 THE PROVISIONS OF THIS ARTICLE SHALL BE AN ILLEGAL AND VOID
5 CONTRACT AND NO RECOVERY THEREON SHALL BE HAD.

6 SECTION 208-B. ADMISSIBLE EVIDENCE.--(A) IN DETERMINING
7 "COST TO THE RETAILER" AND "COST TO THE WHOLESALE," THE COURT
8 SHALL RECEIVE AND CONSIDER, AS BEARING ON THE BONA FIDES OF SUCH
9 COST, EVIDENCE TENDING TO SHOW THAT ANY PERSON COMPLAINED
10 AGAINST UNDER ANY OF THE PROVISIONS OF THIS ARTICLE PURCHASED
11 CIGARETTES WITH RESPECT TO THE SALE OF WHICH COMPLAINT IS MADE
12 AT A FICTITIOUS PRICE OR UPON TERMS OR IN SUCH A MANNER OR UNDER
13 SUCH INVOICES AS TO CONCEAL THE TRUE COST, DISCOUNTS, OR TERMS
14 OF PURCHASE, AND SHALL ALSO RECEIVE AND CONSIDER, AS BEARING ON
15 THE BONA FIDES OF SUCH COST, EVIDENCE OF THE NORMAL, CUSTOMARY
16 AND PREVAILING TERMS AND DISCOUNTS IN CONNECTION WITH OTHER
17 SALES OF A SIMILAR NATURE IN THE TRADE AREA OR STATE.

18 (B) MERCHANDISE GIVEN GRATIS, OR PAYMENT MADE TO A RETAILER
19 OR WHOLESALE FOR DISPLAY OR ADVERTISING OR PROMOTION PURPOSES,
20 OR OTHERWISE, SHALL NOT BE CONSIDERED IN DETERMINING THE COST OF
21 CIGARETTES TO THE RETAILER OR WHOLESALE.

22 SECTION 209-B. SALES OUTSIDE ORDINARY CHANNELS OF BUSINESS;
23 EFFECT.--IN ESTABLISHING THE COST OF CIGARETTES TO THE RETAILER
24 OR WHOLESALE, THE INVOICE COST OF SUCH CIGARETTES PURCHASED AT
25 A FORCED BANKRUPT OR CLOSE-OUT SALE OR OTHER SALE OUTSIDE OF THE
26 ORDINARY CHANNELS OF TRADE MAY NOT BE USED AS A BASIS FOR
27 JUSTIFYING A PRICE LOWER THAN ONE BASED UPON THE REPLACEMENT
28 COST OF THE CIGARETTES TO THE RETAILER OR WHOLESALE WITHIN
29 THIRTY DAYS PRIOR TO THE DATE OF SALE IN THE QUANTITY LAST
30 PURCHASED THROUGH THE ORDINARY CHANNELS OF TRADE.

1 SECTION 210-B. COST SURVEY; ADMISSIBILITY.--WHERE A COST
2 SURVEY PURSUANT TO RECOGNIZED STATISTICAL AND COST ACCOUNTING
3 PRACTICES HAS BEEN MADE FOR THE TRADING AREA IN WHICH A
4 VIOLATION OF THIS ARTICLE IS COMMITTED OR CHARGED TO DETERMINE
5 AND ESTABLISH ON THE BASIS OF ACTUAL EXISTING CONDITIONS THE
6 LOWEST COST TO WHOLESALERS OR THE LOWEST COST TO RETAILERS
7 WITHIN THE SAID AREA, SUCH COST SURVEY SHALL BE DEEMED COMPETENT
8 EVIDENCE IN ANY ACTION OR PROCEEDING UNDER THIS ARTICLE AS
9 TENDING TO PROVE ACTUAL COST TO THE WHOLESALER OR ACTUAL COST TO
10 THE RETAILER COMPLAINED AGAINST, BUT ANY PARTY AGAINST WHOM ANY
11 SUCH COST SURVEY MAY BE INTRODUCED IN EVIDENCE SHALL HAVE THE
12 RIGHT TO OFFER EVIDENCE TENDING TO PROVE ANY INACCURACY OF SUCH
13 COST SURVEY OR ANY STATE OF FACTS WHICH WOULD IMPAIR ITS
14 PROBATIVE VALUE.

15 SECTION 211-B. REMEDIES.--(A) THE DEPARTMENT OF REVENUE, IN
16 THE CASE OF ANY VIOLATION OR THREATENED VIOLATION OF THIS ACT,
17 OR ANY PERSON INJURED BY ANY VIOLATION OR WHO SHALL SUFFER
18 INJURY FROM ANY THREATENED VIOLATION OF THIS ACT, MAY MAINTAIN
19 AN ACTION IN ANY COURT OF COMPETENT JURISDICTION TO PREVENT,
20 RESTRAIN OR ENJOIN SUCH VIOLATION OR THREATENED VIOLATION. IF IN
21 SUCH ACTION A VIOLATION OR THREATENED VIOLATION OF THIS ARTICLE
22 SHALL BE ESTABLISHED, THE COURT SHALL ENJOIN AND RESTRAIN OR
23 OTHERWISE PROHIBIT SUCH VIOLATION OR THREATENED VIOLATION AND IN
24 ADDITION THERETO THE COURT SHALL ASSESS IN FAVOR OF THE
25 PLAINTIFF AND AGAINST THE DEFENDANT THE COSTS OF SUIT, INCLUDING
26 REASONABLE ATTORNEY FEES. IN ANY SUCH ACTION IT SHALL NOT BE
27 NECESSARY THAT ACTUAL DAMAGES TO THE PLAINTIFF BE ALLEGED OR
28 PROVED, BUT WHERE ALLEGED AND PROVED BY A PLAINTIFF, OTHER THAN
29 THE DEPARTMENT OF REVENUE, THE PLAINTIFF IN SAID ACTION, IN
30 ADDITION TO SUCH INJUNCTIVE RELIEF AND COSTS OF SUIT, INCLUDING

1 REASONABLE ATTORNEY FEES, SHALL BE ENTITLED TO RECOVER FROM THE
2 DEFENDANT THE ACTUAL DAMAGES SUSTAINED BY HIM.

3 (B) IN THE EVENT THAT NO INJUNCTIVE RELIEF IS SOUGHT OR
4 REQUIRED, ANY PERSON INJURED BY A VIOLATION OF THIS ARTICLE MAY
5 MAINTAIN AN ACTION FOR DAMAGES AND COSTS OF SUIT IN ANY COURT OF
6 COMPETENT JURISDICTION.

7 SECTION 212-B. DEPARTMENT OF REVENUE; POWERS AND DUTIES.--
8 THE ADMINISTRATION OF THIS ARTICLE IS HEREBY VESTED IN THE
9 DEPARTMENT OF REVENUE. SUCH DEPARTMENT SHALL ADOPT RULES AND
10 REGULATIONS FOR THE ENFORCEMENT OF THIS ARTICLE AND SHALL FROM
11 TIME TO TIME MAKE OR CAUSE TO BE MADE ONE OR MORE COST SURVEYS
12 TO ESTABLISH THE LOWEST "COST OF THE CIGARETTE STAMPING AGENT,"
13 THE LOWEST "COST AT THE RETAILER" AND THE LOWEST "COST OF THE
14 WHOLESALE," AS DEFINED IN THIS ARTICLE, FOR THE STATE OR SUCH
15 TRADING AREA OR AREAS THEREIN AS IT SHALL DEFINE. ANY SUCH
16 SURVEY MADE OR CAUSED TO BE MADE BY THE DEPARTMENT MAY BE USED
17 FOR THE PURPOSES SPECIFIED IN SECTION 210-B OF THIS ARTICLE.
18 REGULATIONS SHALL PROVIDE A PROCEDURE FOR LICENSEES TO PROVE A
19 COST DIFFERENT FROM THE STATE PRESUMPTIVE COSTS, INCLUDING PROOF
20 OF LOWER COSTS, FILING OF PETITION, COST ALLOCATION, DATA TO BE
21 SUBMITTED AND GUIDELINES NECESSARY TO IMPLEMENT THIS ARTICLE.
22 AUTHORIZATION TO SELL BELOW THE STATE'S PRESUMPTIVE MINIMUM
23 SHALL BE IN WRITING AND OTHERWISE IN CONFORMANCE WITH THE
24 REQUIREMENTS OF THIS ARTICLE, AND SHALL CONTAIN A STATEMENT THAT
25 THE AUTHORIZATION IS EFFECTIVE FORTY-FIVE DAYS AFTER THE
26 ISSUANCE OF THE WRITING AND IS VALID FOR SIX MONTHS. THE
27 DEPARTMENT OF REVENUE MAY, UPON NOTICE AND AFTER HEARING,
28 SUSPEND OR REVOKE ANY PERMIT ISSUED UNDER THE PROVISIONS OF
29 ARTICLE XII OF THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), KNOWN AS
30 THE "TAX REFORM CODE OF 1971," FOR FAILURE OF THE PERMITTEE TO

1 COMPLY WITH ANY OF THE PROVISIONS OF THIS ARTICLE. ANY PERSON
2 AGGRIEVED BY ANY DECISION OR ORDER OF THE DEPARTMENT SUSPENDING
3 OR REVOKING ANY SUCH PERMIT MAY APPEAL FROM SUCH DECISION OR
4 ORDER. THE DEPARTMENT MAY IMPOSE SUCH FEES AS MAY BE NECESSARY
5 TO COVER THE COSTS INCURRED IN ADMINISTERING THIS ARTICLE.

6 SECTION 213-B. PENALTY.--(A) THE LICENSE OF ANY CIGARETTE
7 STAMPING AGENT OR WHOLESALER OR RETAILER WHO VIOLATES ANY OF THE
8 PROVISIONS OF THIS ARTICLE MAY BE SUSPENDED, AFTER DUE NOTICE
9 AND OPPORTUNITY OF HEARING, FOR A PERIOD OF NOT LESS THAN FIVE
10 DAYS NOR MORE THAN THIRTY DAYS FOR A FIRST OFFENSE, AND SHALL BE
11 REVOKED OR SUSPENDED FOR ANY SUBSEQUENT OFFENSE.

12 (B) IN ADDITION TO THE PENALTY PROVIDED IN SUBSECTION (A) OF
13 THIS SECTION, UPON CONVICTION OF A FIRST OFFENSE, THE CIGARETTE
14 STAMPING AGENT OR WHOLESALER OR RETAILER SHALL BE SENTENCED TO
15 PAY A FINE OF NOT LESS THAN TWO THOUSAND FIVE HUNDRED DOLLARS
16 (\$2,500) NOR MORE THAN FIVE THOUSAND DOLLARS (\$5,000). FOR
17 SUBSEQUENT OFFENSES, THE AGENT, WHOLESALER OR RETAILER SHALL,
18 UPON CONVICTION THEREOF, BE SENTENCED TO PAY A FINE OF NOT LESS
19 THAN FIVE THOUSAND DOLLARS (\$5,000) NOR MORE THAN FIFTEEN
20 THOUSAND DOLLARS (\$15,000).

21 SECTION 214-B. UNFAIR SALES ACT INAPPLICABLE.--THE
22 PROVISIONS OF THE ACT OF AUGUST 11, 1941 (P.L.900, NO.344),
23 KNOWN AS THE "UNFAIR SALES ACT," SHALL NOT APPLY TO SALES OF
24 CIGARETTES COVERED BY THE PROVISIONS OF THIS ARTICLE.

25 SECTION 2. SECTION 806 OF THE ACT, AMENDED DECEMBER 9, 1982
26 (P.L.1057, NO.248), IS AMENDED TO READ:

27 SECTION 806. INTEREST ON TAXES DUE THE COMMONWEALTH.--(A)
28 ALL TAXES DUE THE COMMONWEALTH SHALL BEAR SIMPLE INTEREST FROM
29 THE DATE THEY BECOME DUE AND PAYABLE UNTIL PAID. THE INTEREST
30 RATE PER ANNUM FOR UNDERPAYMENTS OF TAXES DURING EACH CALENDAR

1 YEAR SHALL BE THE INTEREST RATE FOR UNDERPAYMENTS OF TAXES
2 ESTABLISHED BY THE SECRETARY OF THE TREASURY OF THE UNITED
3 STATES UNDER THE PROVISIONS OF THE [INTERNAL REVENUE CODE OF
4 1954] INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26
5 U.S.C. § 1 ET SEQ.), EFFECTIVE JANUARY 1 OF SUCH CALENDAR YEAR
6 WITHOUT REGARD TO ANY CHANGE OR CHANGES IN SAID FEDERAL INTEREST
7 RATE DURING SUCH CALENDAR YEAR. NO PENALTIES SHALL BEAR ANY
8 INTEREST WHATSOEVER. THE PAYMENT OF INTEREST, AS AFORESAID,
9 SHALL NOT RELIEVE ANY PERSON FROM ANY OF THE PENALTIES,
10 COMMISSIONS OR ADDITIONAL TAX PRESCRIBED BY LAW FOR NEGLECT OR
11 REFUSAL TO FURNISH TIMELY RETURNS OR REPORTS TO THE DEPARTMENT
12 OF REVENUE, OR TO PAY ANY CLAIM DUE TO THE COMMONWEALTH FROM
13 SUCH PERSON. THE SECRETARY OF REVENUE SHALL PUBLISH THE RATE OF
14 INTEREST FOR EACH CALENDAR YEAR IN THE PENNSYLVANIA BULLETIN. IN
15 THE CASE OF ANY TENTATIVE TAX, ESTIMATED TAX OR INSTALLMENT
16 PAYMENT, INTEREST SHALL RUN ON ANY UNPAID AMOUNT FROM THE LAST
17 DAY THE PAYMENT IS DUE TO THE DATE PAID. IN THE CASE OF TAX
18 WHICH IS RESETTLED AS A RESULT OF A FINAL CHANGE OR CORRECTION
19 OF TAXABLE INCOME BY THE COMMISSIONER OF INTERNAL REVENUE OR ANY
20 OTHER AGENCY OR COURT OF THE UNITED STATES, INTEREST SHALL BE
21 COMPUTED ON ANY ADDITIONAL TAX DUE FROM THIRTY (30) DAYS AFTER
22 THE CORPORATION RECEIVES NOTICE OF SUCH FINAL CHANGE OR
23 CORRECTION UNTIL PAID.

24 (B) WHENEVER THE TAX LIABILITY OF A PERSON IS SO AFFECTED BY
25 ANY PAYMENT OR CREDIT, SETTLEMENT OR RESETTLEMENT, ASSESSMENT OR
26 REASSESSMENT OR DETERMINATION OR REDETERMINATION AS TO CHANGE
27 THE INTEREST LIABILITY OF SUCH PERSON, SUCH INTEREST LIABILITY
28 SHALL BE RECOMPUTED AND ADJUSTED BY THE DEPARTMENT OF REVENUE
29 AND APPROVED BY THE DEPARTMENT OF THE AUDITOR GENERAL IN CASES
30 IN WHICH SAID LATTER DEPARTMENT IS REQUIRED TO APPROVE

1 SETTLEMENTS AND RESETTLEMENTS, SO AS TO CORRESPOND TO THE TAX
2 LIABILITY AS CHANGED, WITHOUT THE NECESSITY FOR THE FILING OF
3 ANY PETITION OR REQUEST BY SUCH PERSON OR BY SAID DEPARTMENTS.

4 SECTION 3. SECTION 806.1 OF THE ACT, AMENDED DECEMBER 9,
5 1982 (P.L.1057, NO.248) AND JULY 18, 1986 (P.L.1411, NO.127), IS
6 AMENDED TO READ:

7 SECTION 806.1. INTEREST ON OVERPAYMENTS.--(A) "OVERPAYMENT"
8 SHALL MEAN ANY PAYMENT OF TAX WHICH IS DETERMINED IN THE MANNER
9 PROVIDED BY LAW NOT TO BE LEGALLY DUE. SIMPLE INTEREST SHALL BE
10 ALLOWED AND PAID BY THE COMMONWEALTH UPON ANY OVERPAYMENT TO THE
11 COMMONWEALTH OF ANY TAX. THE INTEREST SHALL BE ALLOWED AND PAID
12 FOR THE PERIOD DURING WHICH THE COMMONWEALTH RETAINED THE
13 OVERPAYMENT, BEGINNING WITH THE DATE OF THE OVERPAYMENT, EXCEPT
14 THAT:

15 (1) ANY TAX ACTUALLY DEDUCTED AND WITHHELD AT THE SOURCE
16 SHALL BE DEEMED TO HAVE BEEN OVERPAID ON THE LAST DAY PRESCRIBED
17 FOR FILING THE RETURN OR REPORT FOR THE TAXABLE YEAR (DETERMINED
18 WITHOUT REGARD TO ANY EXTENSION OF TIME FOR FILING).

19 (2) ANY AMOUNT OVERPAID AS ESTIMATED TAX, TENTATIVE TAX OR
20 INSTALLMENT PAYMENT FOR A TAXABLE YEAR SHALL BE DEEMED TO HAVE
21 BEEN OVERPAID ON THE LAST DAY PRESCRIBED FOR FILING THE FINAL
22 RETURN OR REPORT FOR THE TAXABLE YEAR (DETERMINED WITHOUT REGARD
23 TO ANY EXTENSION OF TIME FOR FILING).

24 (3) ANY OVERPAYMENT MADE BEFORE THE LAST DAY PRESCRIBED FOR
25 PAYMENT SHALL BE CONSIDERED MADE ON THE LAST DAY.

26 (4) ANY AMOUNT CLAIMED TO BE OVERPAID WITH RESPECT TO WHICH
27 AN ADMINISTRATIVE REVIEW OR APPELLATE PROCEDURE IS INITIATED IN
28 THE MANNER PROVIDED BY LAW BY THE TAXPAYER SHALL BE DEEMED TO
29 HAVE BEEN OVERPAID SIXTY (60) DAYS FOLLOWING THE DATE OF
30 INITIATION OF SAID REVIEW OR PROCEDURE.

1 (5) IF ANY OVERPAYMENT OF TAX IS REFUNDED OR CREDITED WITHIN
2 SEVENTY-FIVE (75) DAYS AFTER THE LAST DATE PRESCRIBED FOR FILING
3 THE FINAL RETURN OR REPORT OF THE TAX (DETERMINED WITHOUT REGARD
4 TO ANY EXTENSION OF TIME FOR FILING) OR, IN CASE THE FINAL
5 RETURN OR REPORT IS FILED AFTER THE LAST DAY, AND IS REFUNDED OR
6 CREDITED WITHIN SEVENTY-FIVE (75) DAYS AFTER THE DATE THE FINAL
7 RETURN OR REPORT IS FILED, NO INTEREST SHALL BE ALLOWED ON THE
8 OVERPAYMENT. FOR THE PURPOSE OF THIS CLAUSE, A FINAL RETURN OR
9 REPORT SHALL BE DEEMED TO HAVE BEEN FILED ONLY IF, WHEN IT IS
10 RECEIVED BY THE DEPARTMENT OF REVENUE, IT HAS BEEN SUBMITTED ON
11 A PERMITTED FORM CONTAINING (I) THE TAXPAYER'S NAME, ADDRESS AND
12 IDENTIFYING NUMBER AND THE REQUIRED SIGNATURE; AND (II)
13 SUFFICIENT REQUIRED INFORMATION, EITHER ON THE PERMITTED FORM OR
14 ATTACHMENTS THERETO, TO PERMIT THE VERIFICATION OF TAX LIABILITY
15 SHOWN ON THE RETURN.

16 (6) ANY TAX PAID TO AN OFFICER, LICENSEE OR COLLECTOR SHALL
17 BE DEEMED TO HAVE BEEN OVERPAID NO EARLIER THAN THE FIRST DATE
18 THAT THE TAX IS REQUIRED BY LAW TO BE REPORTED AND TRANSMITTED
19 TO THE DEPARTMENT BY THE OFFICER, LICENSEE OR COLLECTOR.

20 (7) NO OVERPAYMENT OF INTEREST OR PENALTY SHALL BEAR ANY
21 INTEREST WHATSOEVER.

22 (B) INTEREST ON OVERPAYMENTS SHALL BE ALLOWED AND PAID AT
23 THE [SAME RATE AS IS PRESCRIBED FOR UNDERPAYMENTS UNDER SECTION
24 806.] FEDERAL SHORT-TERM RATE ESTABLISHED BY THE SECRETARY OF
25 THE TREASURY OF THE UNITED STATES AS THE BASE FOR CALCULATING
26 THE OVERPAYMENT RATE UNDER THE PROVISIONS OF THE [INTERNAL
27 REVENUE CODE OF 1954] INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW
28 99-514, 26 U.S.C. § 1 ET SEQ.), EFFECTIVE JANUARY 1 OF SUCH
29 CALENDAR YEAR WITHOUT REGARD TO ANY CHANGE OR CHANGES IN SAID
30 FEDERAL SHORT-TERM RATE DURING THE CALENDAR YEAR.

(C) INTEREST ON OVERPAYMENTS SHALL BE ALLOWED AND PAID AS
FOLLOWS:

(1) IN THE CASE OF A CASH REFUND, FROM THE DATE OF THE
OVERPAYMENT TO A DATE PRECEDING THE DATE OF THE COMMONWEALTH'S
REFUND CHECK BY NOT MORE THAN THIRTY (30) DAYS.

(2) IN THE CASE OF A CREDIT FOR AN OVERPAYMENT, FROM THE
DATE OF THE OVERPAYMENT TO:

(I) THE DATE OF THE COMMONWEALTH'S NOTICE TO THE TAXPAYER OF
THE FINAL DETERMINATION OF THE CREDIT; OR

(II) THE DATE AS OF WHICH THE CREDIT IS APPLIED, WHICHEVER
FIRST OCCURS: PROVIDED, HOWEVER, THAT IN THE CASE OF A CASH
REFUND OF A PREVIOUSLY DETERMINED CREDIT, INTEREST SHALL BE
ALLOWED AND PAID ON THE AMOUNT OF THE CREDIT FROM A DATE NINETY
(90) DAYS AFTER THE FILING OF A PETITION FOR A CASH REFUND TO A
DATE PRECEDING THE DATE OF THE REFUND CHECK BY NOT MORE THAN
THIRTY (30) DAYS WHETHER OR NOT THE REFUND CHECK IS ACCEPTED BY
THE TAXPAYER AFTER TENDER TO THE TAXPAYER.

(3) THE TAXPAYER'S ACCEPTANCE OF THE COMMONWEALTH'S CHECK
SHALL BE WITHOUT PREJUDICE TO ANY RIGHT OF THE TAXPAYER TO CLAIM
ANY ADDITIONAL OVERPAYMENT AND INTEREST THEREON. TENDER OF A
REFUND CHECK SHALL BE DEEMED ACCEPTANCE THEREOF FOR THE PURPOSES
OF THIS SECTION.

SECTION 4. SECTION 1101 OF THE ACT IS AMENDED BY ADDING A
SUBSECTION TO READ:

SECTION 1101. NOTICE OF SETTLEMENT.--* * *

(D) THE SECRETARY OF REVENUE, AFTER NOTIFICATION TO THE
AUDITOR GENERAL, MAY DEVELOP AND IMPLEMENT PROCEDURES FOR THE
SETTLEMENT OF TAXES EMPLOYING, AMONG OTHER MEANS, AUTOMATIC DATA
PROCESSING, STATISTICAL ANALYSIS, COMPUTER ANALYSIS, MECHANICAL
HANDLING AND ISSUANCE OF SETTLEMENT DOCUMENTS, INCLUDING

1 OMISSION OF ORIGINAL SIGNATURES, SUCH THAT WILL FACILITATE WHAT
2 HE DETERMINES TO BE THE MOST EFFICIENT AND PRODUCTIVE USE OF THE
3 RESOURCES WITHIN HIS CONTROL REQUIRED TO ADEQUATELY AND
4 REASONABLY ENSURE THE PROPER COLLECTION OF TAXES.

5 SECTION 5. SECTION 1404 OF THE ACT, AMENDED AUGUST 7, 1963
6 (P.L.559, NO.296) AND REPEALED IN PART APRIL 28, 1978 (P.L.202,
7 NO.53), IS AMENDED TO READ:

8 SECTION 1404. ENTRY OF TAX LIENS; SCIRE FACIAS.--(A) THE
9 DEPARTMENT OF REVENUE MAY, AT ANY TIME, TRANSMIT TO THE
10 PROTHONOTARIES OF THE RESPECTIVE COUNTIES OF THE COMMONWEALTH,
11 TO BE BY THEM ENTERED OF RECORD, CERTIFIED COPIES OF ALL LIENS
12 FOR STATE TAXES, UNPAID BONUS, INTEREST, AND PENALTIES, WHICH
13 MAY NOW EXIST, OR HEREAFTER ARISE, BY VIRTUE OF ANY LAW OF THIS
14 COMMONWEALTH, UPON WHICH RECORD IT SHALL BE LAWFUL FOR WRITS OF
15 SCIRE FACIAS TO ISSUE AND BE PROSECUTED TO JUDGMENT AND
16 EXECUTION, IN THE SAME MANNER AS SUCH WRITS ARE ORDINARILY
17 EMPLOYED.

18 (B) WHENEVER THE LAW UNDER WHICH THE CLAIM OF THE
19 COMMONWEALTH ARISES PROVIDES A TIME FOR THE EXPIRATION OF SUCH
20 LIEN, THE COMMONWEALTH [MAY] SHALL NOT BE REQUIRED TO REVIVE THE
21 [SAME FOR A PERIOD OF FIVE YEARS, AND THEREAFTER FOR SUCCESSIVE
22 PERIODS OF FIVE YEARS, BY FILING] LIEN, NOR IS THE COMMONWEALTH
23 REQUIRED TO FILE WITH THE PROTHONOTARY A SUGGESTION OF
24 NONPAYMENT AND AN AVERMENT OF DEFAULT [PRIOR TO THE EXPIRATION
25 THEREOF IN FORM SUBSTANTIALLY AS PROVIDED HEREIN, EACH SUCH
26 SUGGESTION AND AVERMENT TO BE EFFECTIVE AS A REVIVAL] OF THE
27 LIEN [FOR A PERIOD OF FIVE YEARS ONLY FROM THE DATE OF THE
28 FILING THEREOF,] AND SUCH LIEN, UNLESS PAID, DISCHARGED OR
29 DIVESTED, SHALL CONTINUE IN FULL FORCE AND EFFECT [UNTIL A
30 PERIOD OF FIVE YEARS HAS ELAPSED WITHOUT THE REVIVAL THEREOF BY

1 THE FILING OF A SUGGESTION AND AVERMENT AS AFORESAID. THE
2 SUGGESTION AND AVERMENT SHALL BE IN SUBSTANTIALLY THE FOLLOWING
3 FORM, UNDER THE CAPTION OF THE CLAIM:

4 AND NOW, 19 , THE COMMONWEALTH OF
5 PENNSYLVANIA, BY THE SECRETARY OF REVENUE, CLAIMANT HEREIN,
6 SUGGESTS OF RECORD, THAT THE ABOVE CLAIM IS STILL DUE AND
7 OWING TO THE CLAIMANT, AND AVERS THAT THE ABOVE NAMED
8 DEFENDANT IS STILL IN DEFAULT FOR NONPAYMENT THEREOF. THE
9 PROTHONOTARY IS DIRECTED TO ENTER THIS SUGGESTION AND
10 AVERMENT ON THE PROPER DOCKET OF SAID CLAIM, AND ALSO TO
11 INDEX IT IN THE JUDGMENT INDEX FOR THE PURPOSE OF CONTINUING
12 THE LIEN OF SAID CLAIM.

13 THE PROTHONOTARY SHALL DOCKET AND INDEX SUCH SUGGESTION AND
14 AVERMENT AS DIRECTED THEREIN. THE FILING AND INDEXING OF SUCH
15 SUGGESTION AND AVERMENT WITHIN THE PRESCRIBED PERIOD SHALL HAVE
16 THE SAME FORCE AND EFFECT FOR THE PURPOSES OF CONTINUING AND
17 PRESERVING THE LIEN OF THE CLAIM AS THOUGH A WRIT OF SCIRE
18 FACIAS HAD BEEN ISSUED OR A JUDGMENT OF REVIVAL HAD BEEN
19 OBTAINED WITHIN SUCH PERIOD.] AND RETAIN ITS PRIORITY FROM THE
20 DATE OF FILING THEREOF. NOTWITHSTANDING THE PROVISIONS OF ANY
21 OTHER LAW, THE COMMONWEALTH SHALL NOT BE REQUIRED TO HAVE THE
22 PROTHONOTARY INDEX A SUGGESTION AND AN AVERMENT WITHIN ANY
23 PRESCRIBED PERIOD TO HAVE THE COMMONWEALTH'S LIEN CONTINUED,
24 PRESERVED OR TO RETAIN ITS PRIORITY.

25 SECTION 6. THE ACT IS AMENDED BY ADDING A SECTION TO READ:
26 SECTION 1603.--POWER TO REQUIRE A PRODUCTION OF BOOKS AND
27 TESTIMONY OF WITNESSES BY SUBPOENA.--THE SECRETARY OF REVENUE
28 MAY REQUIRE, BY SUBPOENA SERVED ON ANY CORPORATION, PERSON,
29 ASSOCIATION, PARTNERSHIP OR PUBLIC UTILITY, IN THE SAME MANNER
30 THAT A SUMMONS OR SUBPOENA IS SERVED IN A CIVIL ACTION IN THE

1 COURTS OF COMMON PLEAS, THE PRODUCTION OF BOOKS AND RECORDS OR
2 THE TESTIMONY OF WITNESSES CONCERNING COMMONWEALTH TAX OR OTHER
3 LIABILITIES AT SUCH TIME AND PLACE AS THE SECRETARY OF REVENUE
4 DESIGNATES.

5 NO CORPORATION, PERSON, ASSOCIATION, PARTNERSHIP OR PUBLIC
6 UTILITY SHALL FAIL TO COMPLY WITH ANY SUCH SUBPOENA; FOR EACH
7 DAY OF FAILURE TO COMPLY, THE PARTY SHALL PAY INTO THE STATE
8 TREASURY A SUM NOT LESS THAN FIFTY DOLLARS (\$50) NOR MORE THAN
9 FIVE HUNDRED DOLLARS (\$500).

10 THE SECRETARY OF REVENUE MAY APPLY TO COMMONWEALTH COURT TO
11 ENFORCE COMPLIANCE WITH HIS SUBPOENA.

12 SECTION 7. NOTHING CONTAINED IN THIS ACT SHALL AFFECT OR
13 IMPAIR LITIGATION PENDING ON THE EFFECTIVE DATE OF THIS ACT.
14 THIS ACT SHALL NOT BE CONSTRUED TO INDICATE THE INTENT OF THE
15 GENERAL ASSEMBLY WITH REGARD TO THE STATUS OF THE LAW OF THE
16 COMMONWEALTH'S PAYMENT OF INTEREST PRIOR TO THE EFFECTIVE DATE
17 OF THIS ACT. THE INTEREST RATE FOR UNDERPAYMENTS AND THE FEDERAL
18 SHORT-TERM RATE UPON THE EFFECTIVE DATE OF THIS ACT SHALL BE
19 THOSE RATES ESTABLISHED BY THE SECRETARY OF THE TREASURY OF THE
20 UNITED STATES AND IN EFFECT FOR THE FIRST CALENDAR QUARTER OF
21 1991. THESE RATES SHALL BE EFFECTIVE UNTIL JANUARY 1, 1992, WHEN
22 NEW RATES WILL BE DETERMINED PURSUANT TO SECTIONS 806 AND 806.1
23 OF THE ACT.

24 SECTION 8. THE ACT OF MAY 20, 1949 (P.L.1584, NO.478), KNOWN
25 AS THE UNFAIR CIGARETTE SALES ACT, IS REPEALED.

26 SECTION 9. THE AMENDMENTS OF SECTIONS 806 AND 806.1 OF THE
27 ACT SHALL NOT APPLY TO ANY UNDERPAYMENTS OR OVERPAYMENTS OF TAX
28 DUE AND PAYABLE PRIOR TO THE EFFECTIVE DATE OF THIS ACT.

29 SECTION 10. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.