

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL  
No. 2560 Session of  
2010

INTRODUCED BY PAYTON, GIBBONS, GOODMAN, HORNAMAN, JOSEPHS, MOUL,  
READSHAW, SCAVELLO, SIPTROTH, STURLA AND SWANGER,  
JUNE 8, 2010

REFERRED TO COMMITTEE ON FINANCE, JUNE 8, 2010

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An  
2 act relating to tax reform and State taxation by codifying  
3 and enumerating certain subjects of taxation and imposing  
4 taxes thereon; providing procedures for the payment,  
5 collection, administration and enforcement thereof; providing  
6 for tax credits in certain cases; conferring powers and  
7 imposing duties upon the Department of Revenue, certain  
8 employers, fiduciaries, individuals, persons, corporations  
9 and other entities; prescribing crimes, offenses and  
10 penalties," in corporate net income tax, further providing  
11 for definitions and for imposition of tax; in procedure and  
12 administration, further providing for definitions, for  
13 petition for reassessment and for petition procedure;  
14 repealing provisions relating to review by board and  
15 providing for review by Tax Review Tribunal; and establishing  
16 the Tax Review Tribunal and providing for its powers and  
17 duties.

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

20 Section 1. Section 401(3)2(a) and 4(c) of the act of March  
21 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971,  
22 amended or added December 23, 1983 (P.L.370, No.90), August 4,  
23 1991 (P.L.97, No.22), June 22, 2001 (P.L.353, No.23), June 29,  
24 2002 (P.L.559, No.89), July 12, 2006 (P.L.1137, No.116) and  
25 October 9, 2009 (P.L.451, No.48), are amended, clause (3)2 is

1 amended by adding a phrase and the section is amended by adding  
2 clauses to read:

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

7 \* \* \*

8 (3) "Taxable income." \* \* \*

9 2. In case the entire business of any corporation, other  
10 than a corporation engaged in doing business as a regulated  
11 investment company as defined by the Internal Revenue Code of  
12 1986, is not transacted within this Commonwealth, the tax  
13 imposed by this article shall be based upon such portion of the  
14 taxable income of such corporation for the fiscal or calendar  
15 year, as defined in subclause 1 hereof, and may be determined as  
16 follows:

17 (a) Division of Income.

18 (1) As used in this definition, unless the context otherwise  
19 requires:

20 (A) "Business income" means income arising from transactions  
21 and activity in the regular course of the taxpayer's trade or  
22 business and includes income from tangible and intangible  
23 property if either the acquisition, the management or the  
24 disposition of the property constitutes an integral part of the  
25 taxpayer's regular trade or business operations. The term  
26 includes all income which is apportionable under the  
27 Constitution of the United States.

28 (B) "Commercial domicile" means the principal place from  
29 which the trade or business of the taxpayer is directed or  
30 managed.

1 (C) "Compensation" means wages, salaries, commissions and  
2 any other form of remuneration paid to employees for personal  
3 services.

4 (D) "Nonbusiness income" means all income other than  
5 business income. The term does not include income which is  
6 apportionable under the Constitution of the United States.

7 (E) "Sales" means all gross receipts of the taxpayer not  
8 allocated under this definition other than dividends received,  
9 interest on United States, state or political subdivision  
10 obligations and gross receipts heretofore or hereafter received  
11 from the sale, redemption, maturity or exchange of securities,  
12 except those held by the taxpayer primarily for sale to  
13 customers in the ordinary course of its trade or business.

14 (F) "State" means any state of the United States, the  
15 District of Columbia, the Commonwealth of Puerto Rico, any  
16 territory or possession of the United States, and any foreign  
17 country or political subdivision thereof.

18 (G) "This state" means the Commonwealth of Pennsylvania or,  
19 in the case of application of this definition to the  
20 apportionment and allocation of income for local tax purposes,  
21 the subdivision or local taxing district in which the relevant  
22 tax return is filed.

23 (2) Any taxpayer having income from business activity which  
24 is taxable both within and without this State other than  
25 activity as a corporation whose allocation and apportionment of  
26 income is specifically provided for in section 401(3)2(b)(c) and  
27 (d) shall allocate and apportion taxable income as provided in  
28 this definition.

29 (3) For purposes of allocation and apportionment of income  
30 under this definition, a taxpayer is taxable in another state if

1 in that state the taxpayer is subject to a net income tax, a  
2 franchise tax measured by net income, a franchise tax for the  
3 privilege of doing business, or a corporate stock tax or if that  
4 state has jurisdiction to subject the taxpayer to a net income  
5 tax regardless of whether, in fact, the state does or does not.

6 (4) Rents and royalties from real or tangible personal  
7 property, gains, interest, patent or copyright royalties, to the  
8 extent that they constitute nonbusiness income, shall be  
9 allocated as provided in paragraphs (5) through (8).

10 (5) (A) Net rents and royalties from real property located  
11 in this State are allocable to this State.

12 (B) Net rents and royalties from tangible personal property  
13 are allocable to this State if and to the extent that the  
14 property is utilized in this State, or in their entirety if the  
15 taxpayer's commercial domicile is in this State and the taxpayer  
16 is not organized under the laws of or taxable in the state in  
17 which the property is utilized.

18 (C) The extent of utilization of tangible personal property  
19 in a state is determined by multiplying the rents and royalties  
20 by a fraction, the numerator of which is the number of days of  
21 physical location of the property in the state during the rental  
22 or royalty period in the taxable year and the denominator of  
23 which is the number of days of physical location of the property  
24 everywhere during all rental or royalty periods in the taxable  
25 year. If the physical location of the property during the rental  
26 or royalty period is unknown or unascertainable by the taxpayer,  
27 tangible personal property is utilized in the state in which the  
28 property was located at the time the rental or royalty payer  
29 obtained possession.

30 (6) (A) Gains and losses from sales or other disposition of

1 real property located in this State are allocable to this State.

2 (B) Gains and losses from sales or other disposition of  
3 tangible personal property are allocable to this State if the  
4 property had a situs in this State at the time of the sale, or  
5 the taxpayer's commercial domicile is in this State and the  
6 taxpayer is not taxable in the state in which the property had a  
7 situs.

8 (C) Gains and losses from sales or other disposition of  
9 intangible personal property are allocable to this State if the  
10 taxpayer's commercial domicile is in this State.

11 (7) Interest is allocable to this State if the taxpayer's  
12 commercial domicile is in this State.

13 (8) (A) Patent and copyright royalties are allocable to  
14 this State if and to the extent that the patent or copyright is  
15 utilized by the payer in this State, or if and to the extent  
16 that the patent copyright is utilized by the payer in a state in  
17 which the taxpayer is not taxable and the taxpayer's commercial  
18 domicile is in this State.

19 (B) A patent is utilized in a state to the extent that it is  
20 employed in production, fabrication, manufacturing, or other  
21 processing in the state or to the extent that a patented product  
22 is produced in the state. If the basis of receipts from patent  
23 royalties does not permit allocation to states or if the  
24 accounting procedures do not reflect states of utilization, the  
25 patent is utilized in the state in which the taxpayer's  
26 commercial domicile is located.

27 (C) A copyright is utilized in a state to the extent that  
28 printing or other publication originates in the state. If the  
29 basis of receipts from copyright royalties does not permit  
30 allocation to states or if the accounting procedures do not

reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) (A) Except as provided in subparagraph (B):

(i) For taxable years beginning before January 1, 2007, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus three times the sales factor and the denominator of which is five.

(ii) For taxable years beginning after December 31, 2006, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the sum of fifteen times the property factor, fifteen times the payroll factor and seventy times the sales factor and the denominator of which is one hundred.

(iii) For taxable years beginning after December 31, 2008, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the sum of eight and a half times the property factor, eight and a half times the payroll factor and eighty-three times the sales factor and the denominator of which is one hundred.

(iv) For taxable years beginning after December 31, 2009, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the sum of five times the property factor, five times the payroll factor and ninety times the sales factor and the denominator of which is one hundred.

(v) For taxable years beginning after December 31, 2013, all business income shall be apportioned to this State by multiplying the income by the sales factor.

(B) For purposes of apportionment of the capital stock -

1 franchise tax as provided in section 602 of Article VI of this  
2 act, the apportionment fraction shall be the property factor  
3 plus the payroll factor plus the sales factor as the numerator,  
4 and the denominator shall be three.

5 (10) The property factor is a fraction, the numerator of  
6 which is the average value of the taxpayer's real and tangible  
7 personal property owned or rented and used in this State during  
8 the tax period and the denominator of which is the average value  
9 of all the taxpayer's real and tangible personal property owned  
10 or rented and used during the tax period but shall not include  
11 the security interest of any corporation as seller or lessor in  
12 personal property sold or leased under a conditional sale,  
13 bailment lease, chattel mortgage or other contract providing for  
14 the retention of a lien or title as security for the sales price  
15 of the property.

16 (11) Property owned by the taxpayer is valued at its  
17 original cost. Property rented by the taxpayer is valued at  
18 eight times the net annual rental rate. Net annual rental rate  
19 is the annual rental rate paid by the taxpayer less any annual  
20 rental rate received by the taxpayer from subrentals.

21 (12) The average value of property shall be determined by  
22 averaging the values at the beginning and ending of the tax  
23 period but the tax administrator may require the averaging of  
24 monthly values during the tax period if reasonably required to  
25 reflect properly the average value of the taxpayer's property.

26 (13) The payroll factor is a fraction, the numerator of  
27 which is the total amount paid in this State during the tax  
28 period by the taxpayer for compensation and the denominator of  
29 which is the total compensation paid everywhere during the tax  
30 period.

(14) Compensation is paid in this State if:

(A) The individual's service is performed entirely within the State;

(B) The individual's service is performed both within and without this State, but the service performed without the State is incidental to the individual's service within this State; or

(C) Some of the service is performed in this State and the base of operations or if there is no base of operations, the place from which the service is directed or controlled is in this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(15) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(16) Sales of tangible personal property are in this State if the property is delivered or shipped to a purchaser, within this State regardless of the f.o.b. point or other conditions of the sale.

(17) Sales, other than sales of tangible personal property, are in this State if:

(A) The income-producing activity is performed in this State; or

(B) The income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other state, based on costs of performance.

(18) If the allocation and apportionment provisions of this

1 definition do not fairly represent the extent of the taxpayer's  
2 business activity in this State, the taxpayer may petition the  
3 Secretary of Revenue or the Secretary of Revenue may require, in  
4 respect to all or any part of the taxpayer's business activity:

5 (A) Separate accounting;

6 (B) The exclusion of any one or more of the factors;

7 (C) The inclusion of one or more additional factors which  
8 will fairly represent the taxpayer's business activity in this  
9 State; or

10 (D) The employment of any other method to effectuate an  
11 equitable allocation and apportionment of the taxpayer's income.  
12 In determining the fairness of any allocation or apportionment,  
13 the Secretary of Revenue may give consideration to the  
14 taxpayer's previous reporting and its consistency with the  
15 requested relief.

16 \* \* \*

17 (e) Corporations That are Members of a Unitary Business.

18 (1) Notwithstanding any contrary provisions of this article,  
19 for taxable years that begin on or after January 1, 2010,  
20 business income of a corporation that is a member of a unitary  
21 business that consists of two or more corporations, at least one  
22 of which does not transact its entire business in this State, is  
23 determined by combining the business income of either all  
24 corporations, other than as set forth below, that are water's-  
25 edge basis members or all corporations, other than as set forth  
26 below, that are worldwide members of the unitary business. All  
27 transactions among included corporations of the unitary business  
28 are eliminated in determining the business income of a  
29 corporation that is a member of that unitary business. Business  
30 income of the following corporations is not included in the

determination of combined business income:

(i) any corporation subject to taxation under Article VII,  
VIII, IX or XV;

(ii) any corporation specified in the definition of  
"institution" in section 701.5 that would be subject to taxation  
under Article VII were it located, as defined in section 701.5,  
in this State;

(iii) any corporation commonly known as a title insurance  
company that would be subject to taxation under Article VIII  
were it incorporated in this State;

(iv) any corporation specified as an insurance company,  
association or exchange in Article IX that would be subject to  
taxation under Article IX were its insurance business transacted  
in this State;

(v) any corporation specified in the definition of  
"institution" in section 1501 that would be subject to taxation  
under Article XV were it located, as defined in section 1501, in  
this State;

(vi) any corporation that is a small corporation, as defined  
in section 301(s.2), or a qualified Subchapter S subsidiary, as  
defined in section 301(o.3).

(2) Notwithstanding any contrary provisions of this article,  
all corporations that are required to compute business income  
under paragraph (1) are entitled to apportion such business  
income when one corporation of the same unitary business is  
entitled to apportion such business income. Notwithstanding any  
contrary provisions of this article, for taxable years that  
begin on or after January 1, 2010, the denominator of the  
apportionment fraction of a corporation that is required to  
compute its business income under paragraph (1) shall be

computed on a combined basis for all included corporations of  
the unitary business. All transactions among included  
corporations of the unitary business are eliminated in computing  
the numerator and denominator of the apportionment fraction of a  
corporation that is required to compute its business income  
under paragraph (1). The apportionment fraction of the following  
corporations is not included in the determination of the  
combined apportionment fraction:

(i) any corporation subject to taxation under Article VII,  
VIII, IX or XV;

(ii) any corporation specified in the definition of  
"institution" in section 701.5 that would be subject to taxation  
under Article VII were it located, as defined in section 701.5,  
in this State;

(iii) any corporation commonly known as a title insurance  
company that would be subject to taxation under Article VIII  
were it incorporated in this State;

(iv) any corporation specified as an insurance company,  
association or exchange in Article IX that would be subject to  
taxation under Article IX were its insurance business transacted  
in this State;

(v) any corporation specified in the definition of  
"institution" in section 1501 that would be subject to taxation  
under Article XV were it located, as defined in section 1501, in  
this State;

(vi) any corporation that is a small corporation, as defined  
in section 301(s.2), or a qualified Subchapter S subsidiary, as  
defined in section 301(o.3).

(3) A corporation that is required to compute its business  
income under paragraph (1) shall apportion such combined

business income by multiplying such combined business income by a fraction which is the combined apportionment fraction set forth in paragraph (2).

(4) Nonbusiness income of a corporation that is required to compute business income under paragraph (1) shall be allocated as provided in paragraphs (5) through (8) of phrase (a) of subclause 2 of the definition of "taxable income."

(5) Each corporation that is a member of a unitary business that consists of two or more corporations determines its tax liability based on its apportioned share of the combined business income of the unitary business plus its nonbusiness income or loss allocated to this State, minus its net loss deduction.

(6) If any provision of this phrase operates so that an amount is added to or deducted from taxable income for a taxable year for any corporation of a unitary business that previously had been added to or deducted from taxable income of any corporation of the same unitary business, an appropriate adjustment shall be made for the taxable year in order to prevent double taxation or double deduction. If this adjustment is not made by the appropriate corporation of the unitary business, the Secretary of Revenue is authorized to make this adjustment.

(7) The Secretary of Revenue has the authority and responsibility to make adjustments to ensure that a corporation does not incur an unfair penalty nor realize an unfair benefit because it is required to compute its business income under paragraph (1). Fairness shall be measured by whether the corporation's income allocated and apportioned to this State fairly reflects the corporation's share of the unitary business

1 conducted in this State in the taxable year.

2 \* \* \*

3 4. \* \* \*

4 (c) (1) [The] For taxable years beginning before January 1,  
5 2014, the net loss deduction shall be the lesser of:

6 (A) (I) For taxable years beginning before January 1, 2007,  
7 two million dollars (\$2,000,000);

8 (II) For taxable years beginning after December 31, 2006,  
9 the greater of twelve and one-half per cent of taxable income as  
10 determined under subclause 1 or, if applicable, subclause 2 or  
11 three million dollars (\$3,000,000);

12 (III) For taxable years beginning after December 31, 2008,  
13 the greater of fifteen per cent of taxable income as determined  
14 under subclause 1 or, if applicable, subclause 2 or three  
15 million dollars (\$3,000,000);

16 (IV) For taxable years beginning after December 31, 2009,  
17 the greater of twenty per cent of taxable income as determined  
18 under subclause 1 or, if applicable, subclause 2 or three  
19 million dollars (\$3,000,000); or

20 (B) The amount of the net loss or losses which may be  
21 carried over to the taxable year or taxable income as determined  
22 under subclause 1 or, if applicable, subclause 2.

23 (1.1) In no event shall the net loss deduction include more  
24 than five hundred thousand dollars (\$500,000), in the aggregate,  
25 of net losses from taxable years 1988 through 1994.

26 (1.2) For taxable years beginning after December 31, 2013,  
27 there shall be no maximum on the amount of the net loss  
28 deduction.

29 (2) (A) A net loss for a taxable year may only be carried  
30 over pursuant to the following schedule:

1	Taxable Year	Carryover
2	1981	1 taxable year
3	1982	2 taxable years
4	1983-1987	3 taxable years
5	1988	2 taxable years plus
6		1 taxable year
7		starting with the
8		1995 taxable year
9	1989	1 taxable year plus
10		2 taxable years
11		starting with the
12		1995 taxable year
13	1990-1993	3 taxable years
14		starting with the
15		1995 taxable year
16	1994	1 taxable year
17	1995-1997	10 taxable years
18	1998 and thereafter	20 taxable years

19 (B) The earliest net loss shall be carried over to the  
20 earliest taxable year to which it may be carried under this  
21 schedule. [The] For taxable years beginning before January 1,  
22 2014, the total net loss deduction allowed in any taxable year  
23 shall not exceed:

24 (I) Two million dollars (\$2,000,000) for taxable years  
25 beginning before January 1, 2007.

26 (II) The greater of twelve and one-half per cent of the  
27 taxable income as determined under subclause 1 or, if  
28 applicable, subclause 2 or three million dollars (\$3,000,000)  
29 for taxable years beginning after December 31, 2006.

30 (III) The greater of fifteen per cent of the taxable income

as determined under subclause 1 or, if applicable, subclause 2 or three million dollars (\$3,000,000) for taxable years beginning after December 31, 2008.

(IV) The greater of twenty per cent of the taxable income as determined under subclause 1 or, if applicable, subclause 2 or three million dollars (\$3,000,000) for taxable years beginning after December 31, 2009.

(C) For taxable years beginning after December 31, 2013, there shall be no maximum on the amount of the net loss deduction.

\* \* \*

(8) "Unitary business." A single economic enterprise that is made up of separate parts of a single corporation, of a commonly controlled group of corporations, or both, that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. A unitary business includes only those parts and corporations which may be included as a unitary business under the Constitution of the United States.

(9) "Water's-edge basis." A system of reporting that includes the business income and apportionment factor of certain corporations of a unitary business, described as follows:

1. The business income and apportionment factor of any member incorporated in the United States or formed under the laws of any state of the United States, the District of Columbia, any territory or possession of the United States or the Commonwealth of Puerto Rico.

2. The business income and apportionment factor of any

1 member, regardless of the place incorporated or formed, if the  
2 average of its property, payroll and sales factors within the  
3 United States is twenty per cent or more.

4 3. The business income and apportionment factor of any  
5 member which is a domestic international sales corporation as  
6 described in sections 991, 992, 993 and 994 of the Internal  
7 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 991, 992,  
8 993 and 994); a foreign sales corporation as described in former  
9 sections 921, 922, 923, 924, 925, 926 and 927 of the Internal  
10 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 921, 922,  
11 923, 924, 925, 926 and 927); or any member which is an export  
12 trade corporation, as described in sections 970 and 971 of the  
13 Internal Revenue Code of 1986 (Public Law 99-514 26 U.S.C. §§  
14 970 and 971).

15 4. Any member not described in subclauses 1, 2 and 3 shall  
16 include the portion of its business income derived from or  
17 attributable to sources within the United States, as determined  
18 under the Internal Revenue Code of 1986 without regard to  
19 Federal treaties, and its apportionment factor related thereto.

20 5. Any member that is a "controlled foreign corporation" as  
21 defined in section 957 of the Internal Revenue Code of 1986  
22 (Public Law 99-514, 26 U.S.C. § 957), to the extent the business  
23 income of that member is income defined in section 952 of the  
24 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
25 952), Subpart F income, not excluding lower-tier subsidiaries'  
26 distributions of such income which were previously taxed,  
27 determined without regard to Federal treaties, and the  
28 apportionment factor related to that income; any item of income  
29 received by a controlled foreign corporation and the  
30 apportionment factor related to such income shall be excluded if

1 the corporation establishes to the satisfaction of the Secretary  
2 of Revenue that such income was subject to an effective rate of  
3 income tax imposed by a foreign country greater than ninety per  
4 cent of the maximum rate of tax specified in section 11 of the  
5 Internal Revenue Code of 1986 (Public Law 99-54, 26 U.S.C. §  
6 11). The effective rate of income tax determination shall be  
7 based upon the methodology set forth under 26 CFR 1.954-1  
8 (relating to foreign base company income).

9 6. The business income and apportionment factor of any  
10 member that is not described in subclauses 1, 2, 3, 4 and 5 and  
11 that is doing business in a tax haven. The business income and  
12 apportionment factor of a corporation doing business in a tax  
13 haven shall be excluded if the corporation establishes to the  
14 satisfaction of the Secretary of Revenue that its income was  
15 subject to an effective rate of income tax imposed by a country  
16 greater than ninety per cent of the maximum rate of tax  
17 specified in section 11 of the Internal Revenue Code of 1986  
18 (Public Law 99-514, 26 U.S.C. § 11).

19 Section 2. Section 402(b) of the act, amended June 29, 2002  
20 (P.L.559, No.89), is amended to read:

21 Section 402. Imposition of Tax.--\* \* \*

22 (b) The annual rate of tax on corporate net income imposed  
23 by subsection (a) for taxable years beginning for the calendar  
24 year or fiscal year on or after the dates set forth shall be as  
25 follows:

Taxable Year	Tax Rate
January 1, 1995, [and	
each taxable year	
thereafter]	
<u>through taxable</u>	

years beginning  
after December  
31, 2009 9.99%  
January 1, 2010, and  
each taxable year  
thereafter 7.90%

\* \* \*

Section 3. Sections 2701 and 2702(b) of the act, amended  
October 18, 2006 (P.L.1149, No.119), are amended to read:

Section 2701. Definitions.

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

["Board." The Board of Finance and Revenue.]

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

"Return." The term includes a tax report.

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

Section 2702. Petition for reassessment.

\* \* \*

(b) Special rule for shares taxes.--Notwithstanding any  
provision of law to the contrary, section [1104.1 of the act of  
April 9, 1929 (P.L.343, No.176), known as The Fiscal Code,]  
2703(g) shall constitute the exclusive method by which an appeal  
from the assessment of the tax imposed by Article VII or VIII  
may be made.

\* \* \*

Section 4. Section 2703 of the act is amended by adding a  
subsection to read:

Section 2703. Petition procedure.

\* \* \*

1     (g) Special rule for shares taxes.--Upon sufficient cause  
2     shown by a taxpayer that the payment of tax assessed under  
3     Article VII or VIII would irreparably harm the taxpayer, the  
4     department may take jurisdiction of a petition for refund  
5     challenging the assessed tax without the tax being paid if the  
6     petition is filed within two years after the mailing date of the  
7     assessment.

8     Section 5. Section 2704 of the act, added October 18, 2006  
9     (P.L.1149, No.119), is repealed.

10    [Section 2704. Review by board.

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

16     (b) Petition for review of denial by department's failure to  
17    act.--A petition for review may be filed with the board within  
18    90 days after the mailing date of the department's notice to the  
19    petitioner of its failure to dispose of the petition within the  
20    time periods prescribed by section 2703(d) or (e).

21     (c) Contents of petition.--

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

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

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

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

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

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

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

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

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

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

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

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

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

24           (2) If at the time of the filing of a petition  
25     proceedings are pending in a court of competent jurisdiction  
26     in which any claim made in the petition may be established,  
27     the board, upon the written request of the petitioner, may  
28     defer consideration of the petition until the final judgment  
29     determining the question or questions involved in the  
30     petition has been decided. If consideration of the petition

1 is deferred, the board shall issue a decision and order  
2 disposing of the petition within six months after the final  
3 judgment.

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

9 Section 6. The act is amended by adding a section to read:

10 Section 2704.1. Review by Pennsylvania Tax Review  
11 Tribunal.--(a) Petition for review of a decision and order.--  
12 Within 90 days after the mailing date of the department's notice  
13 of decision and order on a petition filed with it, a taxpayer  
14 may petition the Pennsylvania Tax Review Tribunal to review the  
15 decision and order of the department.

16 (b) Petition for review of denial by department's failure to  
17 act.--A petition for review may be filed with the Pennsylvania  
18 Tax Review Tribunal within 90 days after the mailing date of the  
19 department's notice to the petitioner of its failure to dispose  
20 of the petition within the time periods prescribed by section  
21 2704(d) or (e).

22 Section 7. The act is amended by adding an article to read:

23 ARTICLE XXVIII

24 TAX REVIEW TRIBUNAL

25 Section 2801. Definitions.

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

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

30 "Judge." An administrative law judge appointed to the

1 Pennsylvania Tax Review Tribunal pursuant to section 2802.

2 "Tribunal." The Tax Review Tribunal established in section  
3 2802.

4 Section 2802. Tax Review Tribunal; establishment.

5 (a) Establishment.--The Tax Review Tribunal is hereby  
6 established as an administrative board in the Treasury  
7 Department and independent from the department.

8 (b) Appointment of judges.--The tribunal shall consist of no  
9 less than five qualified and competent administrative law  
10 judges, including a chief administrative law judge. The  
11 administrative law judges shall be appointed by the State  
12 Treasurer, with the approval of the Board of Finance and  
13 Revenue. The State Treasurer, with the approval of the Board of  
14 Finance and Revenue, shall have the power to appoint as many  
15 additional qualified and competent administrative law judges as  
16 may be necessary to fulfill the duties of the tribunal.

17 (c) Temporary appointees.--If the docket of the tribunal is  
18 congested or any judge of the tribunal is absent or unable to  
19 perform the duties of the office, the State Treasurer, with the  
20 approval of the Board of Finance and Revenue, may appoint  
21 qualified and competent persons who meet the minimum standards  
22 established by this article to temporarily serve as  
23 administrative law judges until the docket is no longer  
24 congested or the judge returns to the judge's official duties.

25 (d) Term of office.--Administrative law judges shall be  
26 appointed for terms of five years. The administrative law judges  
27 initially appointed upon the establishment of the tribunal shall  
28 be given terms of varying lengths so that all judges' terms do  
29 not expire in the same year. However, no appointment shall be  
30 for less than three years nor more than five years.

Administrative law judges may be reappointed upon the expiration of their terms.

(e) Chief administrative law judge.--The State Treasurer, with the approval of the Board of Finance and Revenue, shall designate one of the administrative law judges as chief administrative law judge. The chief administrative law judge shall be responsible for assigning a hearing judge to every cause, matter and proceeding coming before the tribunal. The chief administrative law judge shall receive remuneration above that of any other administrative law judge.

(f) Continuation in office.--Once appointed each judge shall continue in office until the judge's term expires and until a successor has been appointed and qualified.

(g) Vacancy.--A vacancy in the tribunal occurring otherwise than by expiration of a term shall be filled for the unexpired term.

(h) Removal.--The State Treasurer, with approval of the Board of Finance and Revenue, may remove an administrative law judge, after notice and an opportunity to be heard, for neglect of duty, inability to perform duties or malfeasance in office.

(i) Location of offices.--The offices of the tribunal shall be located separate and apart from the department.

#### Section 2803. Qualifications of judges and prohibition.

(a) Requirements.--Each judge of the tribunal must meet and maintain the following minimum requirements:

(1) Be a citizen of the United States.

(2) Be a resident of this Commonwealth.

(3) Be an attorney in good standing before the Supreme Court of Pennsylvania.

(4) Have at least five years experience in a position

1 requiring substantial knowledge of Pennsylvania tax law and  
2 the tax appeal process.

3 (b) Oath of office.--Before entering upon the duties of  
4 office, a judge shall take and subscribe to an oath or  
5 affirmation to faithfully discharge the duties of the office.

6 (c) Prohibition.--Each judge shall be devoted full time  
7 during business hours to the duties of the office. No person,  
8 while a judge, shall engage in any other gainful employment or  
9 business nor hold another office or position of profit in a  
10 government of this Commonwealth, any other state or the United  
11 States.

12 Section 2804. Administration.

13 (a) Executive administrator.--The State Treasurer, with  
14 approval of the Board of Finance and Revenue, shall appoint an  
15 executive administrator who shall be responsible for the day-to-  
16 day administration and operation of the tribunal.

17 (b) Chief clerk.--The State Treasurer, with approval of the  
18 Board of Finance and Revenue, shall appoint a chief clerk who  
19 shall be responsible for recording all filings and maintaining a  
20 record of all proceedings before the tribunal. The chief clerk  
21 shall be responsible for certifying the record established at  
22 the tribunal in the event of an appeal to Commonwealth Court.

23 (c) Expenditures.--The chief administrative law judge or his  
24 designee may appoint and fix the compensation of accountants,  
25 attorneys, stenographers and other employees and make other  
26 expenditures, including expenditures for library, publications  
27 and equipment, as necessary to permit the tribunal to  
28 efficiently execute its functions.

29 (d) Limitation.--No employee of the tribunal shall act as  
30 attorney, representative or accountant for others in a matter

1 involving any tax imposed or levied by the Commonwealth.

2 Section 2805. Jurisdiction of tribunal.

3 (a) Exclusive and final authority.--Except as permitted by  
4 section 2817, the tribunal shall be the sole, exclusive and  
5 final authority for the hearing, review and determination of  
6 questions of law and fact arising under a decision and order of  
7 the department pursuant to Article XXVII. Notwithstanding any  
8 other provision of law, the tribunal shall have jurisdiction  
9 over all matters relating to decisions of the department mailed  
10 after December 31, 2009, regarding reassessment,  
11 redetermination, resettlement or refund.

12 (b) Improper commencement.--Except as permitted by section  
13 2817, no person shall contest any matter within the jurisdiction  
14 of the tribunal in any action, suit or proceeding in  
15 Commonwealth Court or any other court of the Commonwealth. If a  
16 person attempts to do so, then the action, suit or proceeding  
17 shall be transferred to the tribunal.

18 (c) Amounts asserted as due.--The taxpayer shall have the  
19 right to have the taxpayer's case heard by the tribunal prior to  
20 the payment of any of the amounts asserted as due by the  
21 department and prior to the posting of any bond except in any  
22 case:

23 (1) Involving the denial of a claim for refund.

24 (2) Where a bond is required by statute.

25 (d) Characterization of certain petitions.--If the taxpayer  
26 pays all or part of the tax or other amount at issue before the  
27 tribunal has rendered a decision, the tribunal shall treat the  
28 taxpayer's petition as a protest of a denial of a claim for  
29 refund of the amount paid without further action on the part of  
30 the taxpayer.

1     (e) Constitutionality issues.--The tribunal shall decide  
2 questions regarding the constitutionality of the application of  
3 statutes to the taxpayer and the constitutionality of  
4 regulations promulgated by the department but shall not have the  
5 power to declare a statute unconstitutional on its face. A  
6 taxpayer desiring to challenge the constitutionality of a  
7 statute on its face may file a petition with the tribunal with  
8 respect to all issues other than the constitutional challenge  
9 and preserving the constitutional challenge until the entire  
10 matter, including the constitutional issue, is presented to the  
11 Commonwealth Court.

12 Section 2806. Filing fees.

13     (a) Fees.--Upon filing a petition pursuant to Article XXVII,  
14 the taxpayer shall pay to the chief clerk a fee in the amount of  
15 \$100, except that, in case of a petition filed in the small  
16 claims division as provided for in section 2816, the fee shall  
17 be \$50. A similar fee shall be paid by other parties making an  
18 appearance in the proceeding, except that no fee shall be  
19 charged to a government body or government official appearing in  
20 a representative capacity.

21     (b) Records related fees.--The tribunal may fix a fee, not  
22 in excess of the fees charged and collected by the clerks of the  
23 Commonwealth Court, for comparing or for preparing and comparing  
24 a transcript of the record, or for copying any record, entry or  
25 other paper and the comparison and certification thereof.

26     (c) Disposition of fees.--All fees and other money received  
27 or collected by the tribunal shall be paid over to the State  
28 Treasurer and shall be held in the General Fund as miscellaneous  
29 receipts.

30 Section 2807. Pleadings.

1     (a) Commencement of proceeding.--A taxpayer may commence a  
2 proceeding in the tribunal by filing a petition for review as  
3 provided in Article XXVII.

4     (b) Taxpayer election.--A taxpayer may elect to proceed in  
5 the small claims division of the tribunal by filing a petition  
6 in the form prescribed by the tribunal for small claims. A  
7 taxpayer may not revoke an election to proceed in the small  
8 claims division and shall not have any further right to appeal  
9 or bring suit.

10    (c) Answer.--The department shall file its answer with the  
11 tribunal no later than 75 days after its receipt of the  
12 tribunal's notification that the taxpayer has filed a petition.  
13 Upon written request, the tribunal may grant up to 15 additional  
14 days to file an answer. If the petitioner files an amended  
15 petition as set forth in the preceding section, the department's  
16 time period for filing its responsive pleading shall run from  
17 the filing date of the amendment. The department shall serve a  
18 copy on the taxpayer's representative or, if the taxpayer is not  
19 represented, on the taxpayer, and shall file proof of service  
20 with the answer. Material facts alleged in the petition, if not  
21 expressly admitted or denied in the answer, shall be deemed  
22 admitted. If the department fails to answer within the  
23 prescribed time, all material facts alleged in the petition  
24 shall be deemed admitted.

25    (d) Reply.--The taxpayer may file a reply in the tribunal  
26 within 30 days after receipt of the answer. The taxpayer shall  
27 serve a copy on the authorized representative of the department  
28 and shall file proof of service with the reply. Material facts  
29 alleged in the answer, if not expressly admitted or denied in  
30 the reply, shall be deemed admitted. If the taxpayer does not

1 file a reply, all material facts alleged in the answer shall be  
2 deemed denied. Upon the filing of a reply or 30 days after the  
3 filing of the answer if no reply is filed, the controversy shall  
4 be deemed at issue and scheduled for hearing.

5 (e) Amendment of pleading.--Either party may amend a  
6 pleading once without leave at any time before the period for  
7 responding to it expires. After expiration of the response  
8 period, a pleading may be amended only with the written consent  
9 of the adverse party or with the permission of the tribunal. The  
10 tribunal shall freely grant consent to amend upon just terms.  
11 Except as otherwise ordered by the tribunal, there shall be an  
12 answer or reply to an amended pleading if an answer or reply is  
13 required to the pleading being amended. Filing of the answer,  
14 or, if the answer has already been filed, the amended answer,  
15 shall be made no later than 75 days after filing of the amended  
16 petition. Filing of the reply or, if the reply has already been  
17 filed, the amended reply, shall be made within 30 days after  
18 filing of the amended answer. The taxpayer may not amend a  
19 petition after expiration of the time for filing a petition, if  
20 the amendment would have the effect of conferring jurisdiction  
21 on the tribunal over a matter which otherwise would not come  
22 within its jurisdiction. An amendment of a pleading shall relate  
23 back to the time of filing of the original pleading unless the  
24 tribunal shall order otherwise either on motion of a party or on  
25 the tribunal's own initiative.

26 Section 2808. Presiding judge.

27 (a) Requirements for presiding judge.--There shall preside  
28 at the taking of evidence and conduct of all hearings one or  
29 more administrative law judges assigned by the chief  
30 administrative law judge as provided in section 2802. The

1 functions of all presiding judges shall be conducted in an  
2 impartial manner. Any judge may at any time withdraw from a  
3 proceeding if the judge deems himself disqualified, and the  
4 chief administrative law judge may require a withdrawal upon the  
5 appeal of any party from a decision of the presiding judge not  
6 to withdraw. Upon disqualification of any judge, the chief  
7 administrative law judge shall assign the matter to another  
8 judge.

9 (b) Authority of presiding judge.--The presiding judge shall  
10 have authority, subject to the provisions of this article and  
11 the published rules of the tribunal, to:

12 (1) Administer oaths and affirmations.

13 (2) Issue subpoenas authorized by law.

14 (3) Rule upon offers of proof and receive relevant  
15 evidence, take or cause depositions to be taken whenever the  
16 ends of justice would be served thereby.

17 (4) Regulate the course of the hearing.

18 (5) Hold conferences for settlement or simplification of  
19 the issues by consent of the parties.

20 (6) Dispose of procedural requests or similar matters.

21 (7) Make decisions or recommend decisions in conformity  
22 within this article.

23 (8) Take any other action authorized by law or the rules  
24 of the tribunal.

25 (c) Presiding judge to decide.--The same presiding judge  
26 shall to the fullest extent possible preside at the reception of  
27 all evidence in a particular case to which the judge has been  
28 assigned. The same presiding judge who presides at the reception  
29 of evidence shall issue the proposed decision and order on the  
30 petition except where the presiding judge becomes unavailable to

1 the tribunal.

2 Section 2809. Procedures in general.

3 (a) Admissibility of evidence.--Any oral or documentary  
4 evidence may be received, but the tribunal shall as a matter of  
5 policy provide for the exclusion of irrelevant, immaterial or  
6 unduly repetitious evidence.

7 (b) Submission of evidence.--A party is entitled to present  
8 the party's case or defense by oral or documentary evidence, to  
9 submit rebuttal evidence and to conduct cross-examination as  
10 required for a full and true disclosure of the facts. The  
11 tribunal may adopt rules for the submission of all or part of  
12 the evidence in written form.

13 (c) Record, briefs and argument.--The transcript of a  
14 hearing, the transcript of testimony and exhibits, together with  
15 all papers and motions filed in the proceeding, constitutes the  
16 exclusive record for decision. Briefing and oral argument shall  
17 be held in accordance with rules established by the tribunal.

18 (d) Official notice of facts.--When the tribunal's decision  
19 rests on official notice of a material fact not appearing in the  
20 evidence in the record, upon notification that facts are about  
21 to be or have been noticed, any party adversely affected shall  
22 have the opportunity upon timely request to show that the facts  
23 are not properly noticed or that alternative facts should be  
24 noticed. The tribunal in its discretion shall determine whether  
25 written presentations suffice or whether oral argument, oral  
26 evidence or cross-examination is appropriate in the  
27 circumstances. Nothing in this subsection shall affect the  
28 application by the tribunal in appropriate circumstances of the  
29 doctrine of judicial notice.

30 (e) Actions of parties and counsel.--A party who fails to be

represented at a scheduled conference or hearing after being notified of the conference or hearing, shall be deemed to have waived the opportunity to participate in the conference or hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished at the conference or hearing, or to recall for further examination of witnesses who were excused, unless the presiding judge shall determine that failure to be represented was unavoidable and that the interests of the other parties would not be prejudiced by permitting the reopening or further examination. If the actions of a party or counsel in a proceeding shall be determined by a panel of administrative law judges assigned by the chief administrative law judge, after due notice and opportunity for hearing, to be obstructive to the orderly conduct of the proceeding and inimical to the public interest, the panel may reject any claim for relief or dismiss any proceeding and, with respect to counsel, may impose sanctions upon counsel or a party as appropriate or bar further participation by that counsel in any proceedings before the tribunal.

(f) Interlocutory appeals.--An interlocutory appeal from a ruling of a presiding judge shall be allowed to a panel of administrative law judges assigned by the chief administrative law judge upon certification by the presiding judge that the ruling involves a material question which should be resolved at that time. Notwithstanding the presiding judge's certification, the panel shall have the authority to dismiss summarily the interlocutory appeal if it should appear that the certification was improvident. An interlocutory appeal shall not result in a stay of the proceedings except upon a finding by the presiding judge or the panel that extraordinary circumstances exist.

1 Section 2810. Prehearing procedures.

2 (a) Conferences.--The presiding judge shall have the  
3 authority to hold one or more prehearing conferences during the  
4 course of the proceeding on the judge's motion or at the request  
5 of a party to the proceeding. The presiding judge may direct the  
6 parties to exchange their evidentiary exhibits and witness lists  
7 at a prehearing conference. Where good cause exists, the parties  
8 may at any time amend, by deletion or supplementation, their  
9 evidentiary exhibits and witness lists.

10 (b) Disclosure of information on witnesses.--At the  
11 prehearing conference or at some other reasonable time prior to  
12 the hearing as determined by rule of the tribunal or order of  
13 the president judge, each party to the proceeding shall make  
14 available to the other parties to the proceeding the names of  
15 the witnesses the party expects to call and the subject matter  
16 of the witnesses' expected testimony. Where good cause exists,  
17 the parties shall have the right at any time to amend, by  
18 deletion or supplementation, the list of names of the witnesses  
19 the parties plan to call and the subject matter of the expected  
20 testimony of those witnesses.

21 (c) Scheduling.--The presiding judge shall have the  
22 authority to impose schedules on the parties to the proceeding  
23 specifying the periods of time during which the parties may  
24 pursue discovery. The schedules and time periods shall be set  
25 with a view to accelerating disposition of the case to the  
26 fullest extent consistent with fairness.

27 Section 2811. Oaths and subpoenas.

28 (a) Oaths.--Any employee of the tribunal designated in  
29 writing for the purpose by the chief administrative law judge  
30 may administer oaths.

1     (b) Subpoenas.--A judge or the chief clerk of the tribunal,  
2 on the request of any party to the proceeding, shall have the  
3 power to issue subpoenas requiring the attendance of witnesses  
4 and giving of testimony and subpoenas duces tecum requiring the  
5 production of any returns, books, papers, documents and  
6 correspondence and other evidence pertaining to the matter under  
7 inquiry in the manner prescribed by the Pennsylvania Rules of  
8 Civil Procedure.

9 Section 2812. Discovery.

10     (a) Informal discovery preferred.--The parties to a  
11 proceeding shall make reasonable effort in good faith to achieve  
12 discovery by informal means before invoking the formal discovery  
13 mechanisms authorized by this article.

14     (b) Depositions.--Any party to the proceeding shall be able  
15 to take depositions of witnesses upon oral examination or  
16 written questions for purposes of discovering relevant,  
17 unprivileged information. To that end, a party may obtain  
18 subpoenas requiring the attendance of witnesses and the  
19 production of returns, books, papers, documents, correspondence  
20 and other evidence pertaining to the matter under inquiry.

21     (c) Interrogatories.--Any party to a proceeding may serve  
22 written interrogatories upon any other party for purposes of  
23 discovering relevant, unprivileged information. A party served  
24 with interrogatories may, before the time prescribed by the  
25 tribunal for answering the interrogatories, apply to the  
26 presiding judge for the holding of a prehearing conference for  
27 the mutual exchange of evidence exhibits and other information.  
28 Each interrogatory which requests information not previously  
29 supplied at a prehearing conference or hearing shall be answered  
30 separately and fully in writing under oath unless it is objected

1 to, in which event the reasons for the objections shall be  
2 stated in lieu of an answer. The party upon whom the  
3 interrogatories have been served shall serve a copy of the  
4 answers and objections within the time prescribed by the  
5 tribunal unless otherwise specified, upon the party submitting  
6 the interrogatories. The party submitting the interrogatories  
7 may petition the presiding officer for an order compelling an  
8 answer to an interrogatory or interrogatories to which there has  
9 been an objection or other failure to answer.

10 (d) Requests for admissions.--A party to a proceeding may  
11 serve upon any other party a written request for the admission  
12 of any relevant, unprivileged, undisputed facts, the genuineness  
13 of any document described in the request, the admissibility of  
14 evidence, the order of proof and other similar matters. The  
15 parties shall stipulate, to the fullest extent to which complete  
16 or qualified agreement can or fairly should be reached, all  
17 matters not privileged which are relevant to the proceeding.

18 (e) Protective orders.--The presiding judge shall have the  
19 authority, upon motion by a party or by the person from whom  
20 discovery is sought, and for good cause shown, to make any order  
21 which justice requires to protect the party or person.

22 (f) Fees and mileage costs.--Any witness subpoenaed or whose  
23 deposition is taken shall receive fees and mileage costs.

24 (g) Other discovery.--The tribunal may provide for other  
25 forms of discovery.

26 (h) Enforcement.--The tribunal may enforce its orders on  
27 discovery and other procedural issues, among other means, by  
28 deciding issues wholly or partly against the offending party.

29 Section 2813. Hearings.

30 (a) Proceedings.--Proceedings before the tribunal shall be

1 tried de novo and, to the extent permissible under the  
2 Constitution of the United States and the Constitution of  
3 Pennsylvania, without a jury.

4 (b) Role of tribunal.--Except as set forth in this article  
5 or otherwise precluded by law, the tribunal shall take evidence,  
6 conduct hearings and issue final and interlocutory decisions.

7 (c) Hearings to be public; exceptions.--

8 (1) Except as set forth in paragraph (2), all hearings  
9 of the tribunal shall be transcribed and open to the public.

10 (2) On motion of either party the tribunal shall issue a  
11 protective order or an order closing part or all of the  
12 hearing from the public when the party opposing disclosure of  
13 certain information shows good cause to protect the  
14 information from being disclosed to the public.

15 (d) Evidence.--The tribunal shall admit relevant evidence if  
16 it is probative of a material fact in controversy. The tribunal  
17 shall exclude irrelevant and unduly repetitious evidence. A rule  
18 of privilege recognized by law applies.

19 (e) Testimony.--Testimony may be given only on oath or  
20 affirmation.

21 (f) Pleadings to conform to proof.--The petition and other  
22 pleadings in the proceeding shall be deemed to conform to the  
23 proof presented at the hearing unless a party satisfies the  
24 tribunal that presentation of the evidence would unfairly  
25 prejudice the party in maintaining its position on the merits or  
26 unless deeming the taxpayer's petition to conform to the proof  
27 would confer jurisdiction on the tribunal over a matter that  
28 would not otherwise come within its jurisdiction.

29 (g) Official reporting.--Proceedings before the tribunal,  
30 except those before the small claims division as provided for in

section 2816 shall be officially reported. The Commonwealth shall pay the expense of reporting from the appropriation for the tribunal.

Section 2814. Decisions.

(a) Decision in writing.--The tribunal shall render its decision in writing, including a concise statement of the facts found and the conclusions of law reached. The tribunal's decision shall, subject to law, grant the relief, invoke the remedies and issue the orders as it deems appropriate to carry out its decision.

(b) Failure to render decision.--If the tribunal fails to render a decision within the prescribed time period, either party may institute an action in mandamus to compel the issuance of a decision.

(c) Precedent.--Except as provided in section 2816(k), the tribunal's interpretation of a taxing statute subject to contest in one case shall be followed by the tribunal in subsequent cases involving the same statute, and its application of a statute to the facts of one case shall be followed by the tribunal in subsequent cases involving the same material facts unless the tribunal's interpretation or application conflicts with that of an appellate court or the tribunal provides satisfactory reasons for reversing prior precedent, provided:

(1) It is necessarily involved and essential to the determination of the case.

(2) There is a full consideration of the question by the tribunal.

(3) The decision is a professed deliberate determination of the question.

Section 2815. Proposed decision; review by panel.

1 (a) Proposed decision and order.--The presiding judge shall  
2 issue a proposed decision and order, including proposed findings  
3 of fact and conclusions of law, within six months after  
4 submission of the last brief filed subsequent to completion of  
5 the hearing or, if briefs are not submitted, then no later than  
6 six months after completion of the hearing.

7 (b) Final order; submission to panel.--The proposed decision  
8 and order shall be subject to review by a panel of  
9 administrative law judges assigned by the chief administrative  
10 law judge upon the filing of exceptions pursuant to subsection  
11 (c). The panel shall include the presiding judge that issued the  
12 proposed decision and order. If no exceptions are filed, the  
13 proposed decision and order shall become final, without further  
14 action.

15 (c) Exceptions procedure.--

16 (1) Within 15 days of the issuance of the proposed  
17 decision and order, a party may file exceptions to the  
18 proposed decision and order including:

19 (i) alternative proposed findings of fact or  
20 conclusions of law, if appropriate; and

21 (ii) the supporting reasons for the exceptions and  
22 any alternative proposed findings of fact or conclusions  
23 of law.

24 (2) Within 30 days of the filing of exceptions to the  
25 proposed decision and order, the panel shall either:

26 (i) issue an order adopting the proposed decision  
27 and order as the final decision and order of the  
28 tribunal; or

29 (ii) issue an alternative decision and order,  
30 including findings of fact and conclusions of law, as the

final decision and order of the tribunal.

(d) Record.--The record shall show the ruling on each finding of fact, conclusion of law or exception presented. All decisions and orders, including proposed decisions and orders, are a part of the record and shall include a statement of:

(1) Findings and conclusions, and the reasons or basis for the findings and conclusions, on all material issues of fact, law or discretion presented on the record.

(2) The appropriate rule, order, relief or denial thereof.

(e) Decision final.--A final decision and order shall finally decide the matters in controversy unless any party to the matter timely appeals the decision as provided for in section 2817.

(f) Effect.--A final decision and order shall have the same effect and shall be enforced in the same manner as a judgment of any court of competent jurisdiction.  
Section 2816. Small claims division.

(a) Establishment.--There is hereby established a small claims division of the tribunal.

(b) Judge to preside.--An administrative law judge assigned by the chief administrative law judge as provided in section 2802 shall preside over proceedings within the jurisdiction of the small claims division.

(c) Amounts in controversy.--If the taxpayer elects in its petition for review filed pursuant to Article XXVII, the small claims division shall have jurisdiction over any proceeding with respect to any calendar year for which the net amount of the tax deficiencies and claimed refunds in controversy does not exceed \$25,000, exclusive of interest and penalties.

1     (d) Jurisdiction.--If the taxpayer elects in its petition  
2 for review filed pursuant to Article XXVII and the department  
3 agrees in its answer to the taxpayer's petition, the small  
4 claims division shall have jurisdiction over any proceeding  
5 regardless of the amount in controversy.

6     (e) Answer.--No later than 30 days after receipt of notice  
7 that the taxpayer has filed a petition in proper form or at  
8 other times as the tribunal may order, the department shall file  
9 with the tribunal an answer similar to that required by section  
10 2807.

11     (f) Withdrawal.--At any time prior to entry of judgment, a  
12 taxpayer may withdraw a proceeding in the small claims division  
13 by notifying the chief clerk of the tribunal in writing. A  
14 withdrawal shall be with prejudice and shall not have the effect  
15 of revoking the election to proceed in the small claims  
16 division.

17     (g) Hearings informal.--Hearings in the small claims  
18 division shall be informal, and the judge may receive evidence  
19 as the judge deems appropriate for determination of the case.  
20 Testimony shall be given under oath or affirmation.

21     (h) Time frame.--The presiding judge shall issue a final  
22 decision and order, including findings of fact and conclusions  
23 of law, within 90 days after the closing of the record.

24     (i) Record.--The record shall show the ruling on each  
25 finding of fact and conclusion of law. All decisions and orders  
26 are a part of the record and shall include a statement of:

27         (1) Findings and conclusions, and the reasons or basis  
28         for the findings and conclusions, on all material issues of  
29         fact, law or discretion presented on the record.

30         (2) The appropriate rule, order, relief or denial

1 thereof.

2 (j) Decision final.--A final decision and order of the small  
3 claims division shall be conclusive upon all parties and may not  
4 be appealed. A decision and order of the small claims division  
5 shall not be considered as precedent in any other case, hearing  
6 or proceeding.

7 (k) Inapplicability.--Sections 2815, 2818, 2819 and this  
8 section shall not apply to proceedings in the small claims  
9 division.

10 Section 2817. Appeals.

11 (a) Individual review.--The taxpayer or the department shall  
12 be entitled to judicial review of a final decision of the  
13 tribunal, except a final decision of the small claims division,  
14 in accordance with Pa.R.A.P. Ch. 15 (relating to judicial review  
15 of governmental determinations).

16 (b) Review of interlocutory decision.--The taxpayer or the  
17 department may obtain judicial review of an interlocutory  
18 decision of the tribunal by filing a petition as provided in  
19 Pa.R.A.P. Ch. 13 (relating to interlocutory appeals by  
20 petition).

21 (c) Record.--The record on judicial review shall include the  
22 decision and order of the tribunal, the stenographic transcript  
23 of the hearing before the tribunal, the pleadings, exhibits,  
24 documents and other items admitted into evidence.

25 Section 2818. Representation.

26 (a) Taxpayer.--Appearances in proceedings conducted by the  
27 tribunal may be by the taxpayer or by an attorney admitted to  
28 practice in this Commonwealth. Parties may also be represented  
29 by an attorney who is a member of or is employed by an  
30 accounting or other professional services firm, by an accountant

1 licensed in this Commonwealth or by an enrolled agent authorized  
2 to practice before the Internal Revenue Service provided the  
3 representation does not constitute the unauthorized practice of  
4 law as determined by the Supreme Court of this Commonwealth.

5 (b) Department.--The department shall be represented by its  
6 authorized representative in all proceedings before the  
7 tribunal.

8 Section 2819. Publication of decisions.

9 Except for decisions issued by the small claims division, the  
10 chief clerk shall cause the final decisions of the tribunal to  
11 be indexed and published in print or electronic format as it  
12 deems best adapted for public convenience. Publications shall be  
13 made permanently available and constitute the official reports  
14 of the tribunal.

15 Section 2820. Service of process.

16 (a) Personal service.--The mailing by first class mail,  
17 postage prepaid, to the address of the taxpayer, as given on the  
18 taxpayer's petition, or to the address of the taxpayer's  
19 representative of record, if any, or to the usual place of  
20 business of the department, or its representative of record,  
21 shall constitute personal service on the other party. The  
22 tribunal may by rule prescribe that notice by other means shall  
23 constitute personal service and may in any individual case order  
24 that notice be given to additional persons or by other means.

25 (b) Date.--Mailing by registered or certified mail and  
26 delivery by a private delivery service approved by the Internal  
27 Revenue Service in accordance with section 7502(f) of the  
28 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
29 7502(f)), of any pleading, decision, order, notice or other  
30 document in respect to proceedings before the tribunal shall be

1 deemed to have occurred on the date of mailing or the date of  
2 submission to the private delivery service.

3 Section 2821. Code of ethics.

4 (a) General rule.--The administrative law judges and the  
5 officers and employees of the tribunal shall conform to the  
6 following code of ethics. An administrative law judge, officer  
7 or employee of the tribunal must:

8 (1) Avoid impropriety and the appearance of impropriety  
9 in all activities.

10 (2) Perform all duties impartially and diligently.

11 (3) Not participate in any ex parte communications  
12 regarding matters before the tribunal.

13 (4) Abstain publicly from expressing, other than in  
14 public session, personal views on the merits of a matter  
15 pending before the tribunal.

16 (5) Observe the standards of fidelity and diligence that  
17 apply to the position of judge, office or employee.

18 (6) Disqualify himself from proceedings in which  
19 impartiality might be reasonably questioned.

20 (7) Regulate extracurricular activities to minimize the  
21 risk of conflict with official duties. An administrative law  
22 judge, officer or employee of the tribunal may speak, write  
23 or lecture, and any reimbursed expenses, honoraria, royalties  
24 or other money received in connection therewith shall be  
25 disclosed annually. Disclosure statements shall be filed with  
26 the executive administrator of the tribunal and shall be open  
27 to public inspection during the normal business hours of the  
28 tribunal during the tenure of the administrative law judge,  
29 officer or employee.

30 (8) Conform to additional rules as the tribunal may

1 prescribe.

2 (b) Ex parte communications.--Ex parte communications  
3 prohibited in this section shall mean any off-the-record  
4 communications to or by any administrative law judge, officer or  
5 employee of the tribunal regarding the merits or any fact in  
6 issue of any matter pending before the tribunal.

7 (c) Removal for violation.--An administrative law judge,  
8 officer or employee of the tribunal who violates the provisions  
9 of subsection (a) shall be subject to removal from office after  
10 notice and an opportunity to be heard.

11 (d) Construction.-- Nothing in this act shall be interpreted  
12 to prohibit the administrative law judges, officers and  
13 employees of the tribunal from serving in the Pennsylvania  
14 National Guard and the reserves of the armed forces of the  
15 United States while appointed to or employed by the tribunal.

16 Section 2822. Rules and forms.

17 The tribunal is authorized to promulgate and adopt all  
18 reasonable regulations and forms as necessary or appropriate to  
19 carry out the intent and purposes of this article.

20 Section 2823. Application of rules of administrative practice  
21 and procedure.

22 Except where inconsistent with this article and the  
23 regulations adopted by the tribunal, all actions and proceedings  
24 before the tribunal are subject to 2 Pa.C.S. Ch. 5 Subch. A  
25 (relating to practice and procedure of Commonwealth agencies)  
26 and Ch. 7 Subch. A (relating to judicial review of Commonwealth  
27 agency action) and 1 Pa. Code Pt. II (relating to general rules  
28 of administrative practice and procedure).

29 Section 8. This act shall take effect immediately.