

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1400 Session of 2012

INTRODUCED BY ARGALL, FOLMER, PICCOLA, ERICKSON, FERLO, SCHWANK, WOZNIAK, WAUGH, ALLOWAY, YUDICHAK, BOSCOLA, MENSCH AND EICHELBERGER, APRIL 20, 2012

REFERRED TO FINANCE, APRIL 20, 2012

AN ACT

1 Providing for tax levies and information related to taxes;
2 authorizing the imposition of a personal income tax or an
3 earned income tax by a school district subject to voter
4 approval; providing for imposition of and exclusions from a
5 sales and use tax for the stabilization of education funding;
6 establishing the Public Transportation Reserve Fund;
7 providing for increase to the personal income tax, for
8 certain licenses, for hotel occupancy tax, for procedure and
9 administration of the tax, for expiration of authority to
10 issue certain debt and for reporting by local government
11 units of debt outstanding; establishing the Education
12 Stabilization Fund; providing for disbursements from this
13 fund and for certain rebates and assistance to senior
14 citizens; and repealing certain provisions of The Local Tax
15 Enabling Act, sales and use tax provisions of the Tax Reform
16 Code of 1971 and provisions relating to senior citizens
17 property tax and rent rebate assistance in the Taxpayer
18 Relief Act.

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26 The General Assembly of the Commonwealth of Pennsylvania

27 hereby enacts as follows:

28 CHAPTER 1

29 PRELIMINARY PROVISIONS

30 Section 101. Short title.

1 This act shall be known and may be cited as the Property Tax
2 Independence Act.

3 Section 102. Definitions.

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

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

8 "Education Stabilization Fund." The Education Stabilization
9 Fund established in section 1302.

10 "Fiscal year." The fiscal year of the Commonwealth beginning
11 on July 1 and ending on June 30 of the immediately following
12 calendar year.

13 "Governing body." The board of school directors of a school
14 district, except that the term shall mean the city council of a
15 city of the first class for purposes of the levy and collection
16 of any tax in a school district of the first class.

17 "Internal Revenue Code of 1986." The Internal Revenue Code
18 of 1986 (Public Law 99-514, 26 U.S.C. § 166).

19 "Local Tax Enabling Act." The act of December 31, 1965
20 (P.L.1257, No.511), known as The Local Tax Enabling Act,

21 "Public School Code of 1949." The act of March 10, 1949
22 (P.L.30, No.14), known as the Public School Code of 1949.

23 "School district." A school district of the first class,
24 first class A, second class, third class or fourth class,
25 including any independent school district. For purposes of the
26 levy, assessment and collection of any tax in a school district
27 of the first class, the term shall include the City Council.

28 "School per capita tax." The tax authorized pursuant to
29 section 679 of the act of March 10, 1949 (P.L.30, No.14), known
30 as the Public School Code of 1949,

1 "Secretary." The Secretary of Revenue of the Commonwealth.
2 "Tax Reform Code of 1971." The act of March 4, 1971 (P.L.6,
3 No.2), known as the Tax Reform Code of 1971.

4 CHAPTER 3

5 PERSONAL INCOME TAX

6 SUBCHAPTER A

7 SCHOOL DISTRICT INCOME TAX

8 Section 301. Scope.

9 This chapter authorizes school districts to levy, assess and
10 collect a personal income tax as a means of abolishing property
11 taxation by the school district.

12 Section 302. Definitions.

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

16 "Association." A partnership, limited partnership or other
17 unincorporated group of two or more persons.

18 "Business." An enterprise, activity, profession or other
19 undertaking of an unincorporated nature conducted for profit or
20 ordinarily conducted for profit whether by a person, association
21 or other entity.

22 "Compensation." The classes of income included within the
23 definition of "compensation" set forth in section 301 of the act
24 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
25 1971, and upon which are imposed a personal income tax by the
26 Commonwealth.

27 "Corporation." A corporation or joint stock association
28 organized under the laws of the United States or the
29 Commonwealth of Pennsylvania or any other state, territory,
30 foreign country or dependency.

1 "Current year." The calendar year or fiscal year for which a
2 tax is levied.

3 "Domicile."

4 (1) The place where a person lives and has the person's
5 permanent home and to which the person has the intention of
6 returning whenever the person is absent. Actual residence is
7 not necessarily domicile because domicile is the fixed place
8 of abode which, in the intention of the taxpayer, is
9 permanent rather than transitory.

10 (2) Domicile is the voluntarily fixed place of
11 habitation of a person, not for a mere special or limited
12 purpose, but with the present intention of making a permanent
13 home, until some event occurs to induce the person to adopt
14 some other permanent home.

15 (3) In the case of a business or association, the
16 domicile is any place where the business or association is
17 conducting or engaging in a business for profit within a
18 school district.

19 "Employer." A person, association, corporation, governmental
20 unit or other entity employing one or more persons, other than
21 domestic servants, for compensation.

22 "Nonresident." A person, association or other entity
23 domiciled outside a school district.

24 "Person" or "individual." A natural person.

25 "Personal income." The classes of income enumerated in
26 section 303 of the act of March 4, 1971 (P.L.6, No.2), known as
27 the Tax Reform Code of 1971, and on which is imposed a personal
28 income tax by the Commonwealth.

29 "Political subdivision." A school district.

30 "Preceding year." The calendar year or fiscal year before a

1 current year.

2 "Resident." A person, association, corporation or other
3 entity:

4 (1) living in or maintaining a permanent or fixed place
5 of abode in a school district; or

6 (2) conducting or engaging in a business for profit
7 within a school district.

8 "Succeeding year." The calendar year or fiscal year
9 following a current year.

10 "Tax officer." The person, public employee or private agency
11 designated by a governing body to collect and administer a tax
12 imposed under this chapter, and the treasurer of a school
13 district of the first class A.

14 "Taxpayer." A person, association or other entity required
15 under this chapter to file a tax return or to pay a tax.

16 Section 303. Preemption.

17 No act of the General Assembly shall vacate or preempt any
18 resolution passed or adopted under the authority of this
19 chapter, or any other act, providing authority for the
20 imposition of a tax by a school district, unless the act of the
21 General Assembly expressly vacates or preempts the authority to
22 pass or adopt the resolutions.

23 Section 304. Personal income tax authorization.

24 (a) School districts.--Except as prohibited under Chapter
25 11, each school district shall have the power and may, by
26 resolution, levy, assess and collect or provide for the levying,
27 assessment and collection of a tax for general revenue purposes
28 at a rate as it shall determine on personal income of the
29 residents of the school district. A school district may only
30 levy or increase the rate of personal income tax when that

1 school district complies with the provisions of subsection (b).

2 (b) Adoption of referendum.--

3 (1) In order to levy a personal income tax under this
4 chapter, a governing body shall use the procedures set forth
5 in paragraphs (2), (3), (4), (5), (6) and (7).

6 (2) (i) Subject to the notice and public hearing
7 requirements of paragraph (7), a governing body may levy
8 the personal income tax under this chapter only by
9 obtaining the approval of the electorate of the affected
10 school district in a public referendum at only the
11 municipal election preceding the fiscal year when the
12 personal income tax will be initially imposed or the rate
13 increased.

14 (ii) The referendum question must state the initial
15 rate of the proposed personal income tax, the reason for
16 the tax and the amount of proposed budgeted revenue
17 growth, if any, in the first fiscal year following
18 adoption of the referendum.

19 (iii) The question shall be in clear language that
20 is readily understandable by a layperson. For the purpose
21 of illustration, a referendum question may be framed as
22 follows:

23 Do you favor the imposition of a personal income tax
24 of X%?

25 (iv) A nonlegal interpretative statement must
26 accompany the question in accordance with section 201.1
27 of the act of June 3, 1937 (P.L.1333, No.320), known as
28 the Pennsylvania Election Code, that includes the
29 following: the initial rate of the personal income tax
30 imposed under this chapter, the estimated revenues to be

1 derived from the initial rate of the personal income tax
2 imposed under this chapter.

3 (3) In the event a school district is located in more
4 than one county, petitions under this section shall be filed
5 with the election officials of the county in which the
6 administrative offices of the school district are located.

7 (4) The election officials who receive a petition shall
8 perform all administrative functions in reviewing and
9 certifying the validity of the petition and conduct all
10 necessary communications with the school district.

11 (5) (i) If the election officials of the county who
12 receive the petition certify that it is sufficient under
13 this section and determine that a question should be
14 placed on the ballot, the decision shall be communicated
15 to election officials in any other county in which the
16 school district is also located.

17 (ii) Election officials in the other county or
18 counties shall cooperate with election officials of the
19 county that receives the petition to ensure that an
20 identical question is placed on the ballot at the same
21 election throughout the entire school district.

22 (6) Election officials from each county involved shall
23 independently certify the results from their county to the
24 governing body.

25 (7) (i) In order to levy the tax under this section,
26 the governing body shall adopt a resolution which shall
27 refer to this chapter prior to placing a question on the
28 ballot.

29 (ii) Prior to adopting a resolution imposing the tax
30 authorized by this section, the governing body shall give

1 public notice of its intent to adopt the resolution in
2 the manner provided by The Local Tax Enabling Act and
3 shall conduct at least two public hearings regarding the
4 proposed adoption of the resolution. One public hearing
5 shall be conducted during normal business hours and one
6 public hearing shall be conducted during evening hours or
7 on a weekend.

8 Section 305. Continuity of tax.

9 Every tax levied under this chapter shall continue in force
10 on a calendar or fiscal year basis, as the case may be, without
11 annual reenactment unless the rate of the tax is subsequently
12 changed.

13 Section 306. Exemption of low-income persons.

14 (a) Low-income exemption.--Each school district shall exempt
15 any person who qualifies under the provisions of section 304 of
16 the Tax Reform Code of 1971 from payment of any or all of the
17 tax imposed under section 304.

18 (b) Procedures.--Each school district shall adopt procedures
19 for the processing of claims for these exemptions.

20 Section 307. Collection of personal income tax.

21 The tax officer shall collect all personal income tax imposed
22 by a school district.

23 Section 308. Limitation on assessment.

24 No assessment may be made of any personal income tax imposed
25 under this chapter more than five years after the date on which
26 the tax should have been paid except where a fraudulent return
27 or no return has been filed.

28 Section 309. Distress and sale of personal property of
29 taxpayer.

30 (a) General rule.--In case of the neglect or refusal of any

1 person, association or corporation to make payment of the amount
2 of any personal income tax due after two months from the date of
3 the tax notice, the tax officer shall levy the amount of the
4 tax, penalty, interest and costs thereon, not exceeding costs
5 and charges allowed constables for similar services by distress
6 and sale of the goods and chattels of the delinquent taxpayer,
7 wherever located, after giving at least ten days' public notice
8 of the sale by one advertisement in a newspaper of general
9 circulation published in the county.

10 (b) Effect on return.--No failure to demand or collect any
11 taxes by distress and sale of goods and chattels shall
12 invalidate any return made, lien filed for nonpayment of taxes
13 or any tax sale for the collection of taxes.

14 Section 310. Collection of delinquent taxes from employers.

15 (a) General rule.--The tax officer shall demand, receive and
16 collect from all employers employing persons owing delinquent
17 personal income taxes or having in possession unpaid
18 compensation belonging to any person or persons owing delinquent
19 personal income taxes on the presentation of a written notice
20 and demand certifying that the information contained in the
21 notice and demand is true and correct and containing the name of
22 the taxpayer and the amount of tax due.

23 (b) Response to notice.--On the presentation of the written
24 notice and demand, the employer shall deduct from the
25 compensation of the employees then owing, or thereafter due, a
26 sum sufficient to pay the amount of the delinquent personal
27 income taxes, interest, penalty and costs shown on the written
28 notice or demand, and shall pay the same to the tax officer by
29 which the delinquent tax was levied within 60 days after the
30 notice was given.

1 (c) Limitation on deduction.--No more than 10% of the
2 compensation of the delinquent taxpayer may be deducted at any
3 one time for delinquent personal income taxes, penalty, interest
4 and costs.

5 (d) Deduction for costs.--The employer shall be entitled to
6 deduct from the moneys collected from each employee the costs
7 incurred from the extra bookkeeping necessary to record the
8 transactions, not exceeding 2% of the amount collected and paid
9 over to the tax officer.

10 (e) Forfeiture.--If the employer fails to deduct the amount
11 of such taxes or to pay the same over to the tax officer, less
12 the amount deducted under subsection (d), within the time
13 required by this section, the employer shall forfeit and pay the
14 amount of the tax for those taxpayers whose taxes are not
15 withheld and paid over, or that are withheld and not paid over
16 together with a penalty of 10%, to be recovered by a civil
17 action to be instituted by the tax officer, as debts of like
18 amount are now by law recoverable, except that the person shall
19 not have the benefit of any exemption law or stay of execution.

20 (f) Collection rights preserved.--Nothing in this section
21 shall be deemed to affect or impair the right of any school
22 district or the tax officer to pursue and collect delinquent
23 taxes validly imposed prior to the effective date of this
24 section.

25 Section 311. Collection of delinquent taxes from Commonwealth.

26 (a) General rule.--On presentation of a written notice and
27 demand under oath to the State Treasurer or any other fiscal
28 officer of the Commonwealth, or its boards, authorities,
29 agencies or commissions, the treasurer or officer shall deduct
30 from the compensation then owing a sum sufficient to pay the

1 amount of the delinquent personal income taxes, interest,
2 penalty and costs shown on the written notice. The same shall be
3 paid to the tax officer within 60 days after the notice is
4 given.

5 (b) Limitation on deduction.--No more than 10% of the
6 compensation of the delinquent taxpayer may be deducted at any
7 one time for delinquent personal income taxes, interest, penalty
8 and costs.

9 (c) Collection rights preserved.--Nothing in this section
10 shall be deemed to affect or impair the right of a school
11 district or the tax officer to pursue and collect delinquent
12 taxes validly imposed prior to the effective date of this
13 section.

14 Section 312. Notice to taxpayer.

15 The department shall, at least 15 days prior to the
16 presentation of a written notice and demand under section 310 or
17 311, notify the taxpayer owing the delinquent tax by registered
18 mail that a written notice and demand shall be presented to the
19 taxpayer's employer unless the tax is paid. The return receipt
20 card for registered mail shall be marked delivered to addressee
21 only, and the cost of notification by registered mail shall be
22 included in the costs for collecting taxes.

23 Section 313. Collection of taxes by suit.

24 (a) Power to collect.--

25 (1) Each school district and the tax officer shall have
26 power to collect unpaid taxes from taxpayers and employers
27 owing such taxes by a civil action or other appropriate
28 remedy.

29 (2) On judgment, execution may be issued without any
30 stay or benefit of any exemption law.

1 (3) The power to collect unpaid taxes under the
2 provisions of this section shall not be affected by the fact
3 that such taxes have been entered as liens in the office of
4 the prothonotary or the fact that the property against which
5 they were levied has been returned to the county
6 commissioners for taxes for prior years.

7 (b) Limitation of actions.--A suit brought to recover the
8 taxes under subsection (a) shall be instituted within three
9 years after the tax is due or within three years after a
10 declaration or return has been filed, whichever date is later,
11 except in the following cases:

12 (1) If no declaration or return was filed by any person
13 although a declaration or return was required to be filed
14 under provisions of the ordinance, there shall be no
15 limitation.

16 (2) If an examination of the declaration or return filed
17 by any person, or of other evidence relating to the
18 declaration or return in the possession of the tax officer,
19 reveals a fraudulent evasion of taxes, there shall be no
20 limitation.

21 (3) If there is a substantial understatement of tax
22 liability of 25% or more and no fraud, suit shall be
23 instituted within six years.

24 (4) If a person has deducted taxes under the provisions
25 of the resolution and has failed to pay the amounts so
26 deducted to the tax officer, or if a person has willfully
27 failed or omitted to make the deductions required by this
28 section, there shall be no limitation.

29 (c) Regulations.--The tax officer, by regulation, shall
30 establish the procedures for collecting the personal income tax

1 and paying the full amount collected over to the school district
2 on a quarterly basis.

3 Section 314. Interest and penalties.

4 (a) General rule.--If for any reason the tax is not paid
5 when due, interest at the annual rate of 6% on the amount of the
6 tax, and an additional penalty of .5% of the amount of the
7 unpaid tax for each month or fraction thereof during which the
8 tax remains unpaid, shall be added and collected. Where suit is
9 brought for the recovery of such tax, the person liable therefor
10 shall, in addition, be liable for the costs of collection and
11 the interest and penalties herein imposed.

12 (b) One-time waiver of interest authorized.--

13 (1) Notwithstanding the provisions of subsection (a),
14 the school district may, by resolution, establish a one-time
15 period during which interest or interest and penalties that
16 would otherwise be imposed for the nonreporting or
17 underreporting of personal income tax liabilities or for the
18 nonpayment of personal income taxes previously imposed and
19 due shall be waived in total or in part if the taxpayer
20 voluntarily files delinquent returns and pays the taxes in
21 full during the period so established.

22 (2) Each school district may adopt regulations to
23 implement the provisions of this subsection.

24 (c) Proceedings.--The provisions of subsection (b) shall not
25 affect or terminate any petitions, investigations, prosecutions
26 or other proceedings pending on the effective date of this
27 section, or prevent the commencement or further prosecution of
28 any proceedings by the proper authorities for violations of this
29 act. No proceedings shall, however, be commenced on the basis of
30 delinquent returns filed pursuant to subsection (b) if the

returns are determined to be substantially true and correct and the taxes are paid in full within the prescribed time.

Section 315. Fines and penalties for violation of resolutions.

(a) Conduct prohibited.--

(1) Any person who fails, neglects or refuses to make any declaration or return required by the resolution, any employer who fails, neglects or refuses to register or to pay the tax deducted from its employees, or fails, neglects or refuses to deduct or withhold the tax from its employees, any person who refuses to permit the officer or any agent designated by that officer to examine the person's books, records and papers, and any person who knowingly makes any incomplete, false or fraudulent return, or attempts to do anything whatsoever to avoid the full disclosure of the amount of the person's personal income in order to avoid the payment of the whole or any part of the tax imposed by the resolution, shall, upon conviction thereof, in any county in which the school district imposing the tax is located, be sentenced to pay a fine of not more than \$500 for each offense and costs and, in default of payment of the fines and costs, to be imprisoned for a period not exceeding 30 days.

(2) Any person who divulges any information which is confidential under the provisions of the resolution shall, upon conviction thereof, be sentenced to pay a fine of not more than \$500 for each offense and costs and, in default of payment of said fines and costs, to be imprisoned for a period not exceeding 30 days.

(b) Cumulative penalties.--The penalties imposed under this section shall be in addition to any other penalty imposed by any other section of the resolution.

1 (c) Defense unavailable.--The failure of any person to
2 receive or procure forms required for making the declaration or
3 returns by the resolution shall not excuse the person from
4 making the declaration or return.

5 Section 316. Collection at source.

6 (a) Duty of employers to register.--Every employer having an
7 office, factory, workshop, branch, warehouse or other place of
8 business within the school district imposing a tax on personal
9 income who employs one or more persons, other than domestic
10 servants, for a salary, wage, commission or other compensation,
11 who has not previously registered shall, within 15 days after
12 becoming an employer, register with the tax officer his name and
13 address and such other information as the tax officer may
14 require.

15 (b) Duty to deduct tax.--

16 (1) Every employer having an office, factory, workshop,
17 branch, warehouse or other place of business within the
18 school district imposing a tax on personal income who employs
19 one or more persons, other than domestic servants, for a
20 salary, wage, commission or other compensation, shall deduct
21 at the time of payment thereof, the tax imposed pursuant to
22 this chapter due to his employee or employees, and shall, on
23 or before April 30 of the current year, July 31 of the
24 current year, October 31 of the current year and January 31
25 of the succeeding year, file a return and pay to the tax
26 officer the amount of taxes deducted during the preceding
27 three-month periods ending March 31 of the current year, June
28 30 of the current year, September 30 of the current year and
29 December 31 of the current year, respectively.

30 (2) Unless otherwise agreed upon between the tax officer

1 and employer, the return shall show the name and Social
2 Security number of each employee, the compensation of the
3 employee during the preceding three-month period, the tax
4 deducted from the compensation, the school district imposing
5 the tax upon the employee, the total compensation of all
6 employees during the preceding three-month period and the
7 total tax deducted from the compensation and paid with the
8 return.

9 (3) Any employer that for two of the preceding four
10 quarterly periods has failed to deduct the proper tax, or any
11 part thereof, or has failed to pay over the proper amount of
12 tax to the school district, may be required by the officer to
13 file the employer's return and pay the tax monthly. In such
14 cases, payments of tax shall be made to the tax officer on or
15 before the last day of the month succeeding the month for
16 which the tax was withheld.

17 (c) Duty to file annual return.--On or before February 28 of
18 the succeeding year, every employer shall file with the tax
19 officer:

20 (1) An annual return showing the total amount of
21 compensation paid, the total amount of tax deducted and the
22 total amount of tax paid to the tax officer for the period
23 beginning January 1 of the current year and ending December
24 31 of the current year.

25 (2) A return withholding statement for each employee
26 employed during all or any part of the period beginning
27 January 1 of the current year and ending December 31 of the
28 current year, setting forth the employee's name, address and
29 Social Security number, the amount of earned income paid to
30 the employee during the period, the amount of tax deducted,

1 the school district imposing the tax upon the employees and
2 the amount of tax paid to the tax officer. Every employer
3 shall furnish two copies of the individual return to the
4 employee for whom it is filed.

5 (d) Discontinued businesses.--Every employer who
6 discontinues business prior to December 31 of the current year
7 shall, within 30 days after the discontinuance of business, file
8 the returns and withholding statements required by this section
9 and pay the tax due.

10 (e) Liability of employers.--Every employer who willfully or
11 negligently fails or omits to make the deductions required by
12 this section shall be liable for payment of the taxes which he
13 was required to withhold to the extent that such taxes have not
14 been recovered from the employee.

15 (f) Liability of employees.--The failure or omission of any
16 employer to make the deductions required by this section shall
17 not relieve any employee from the payment of the tax or from
18 complying with the requirements of the ordinance or resolution
19 relating to the filing of declarations and returns.

20 SUBCHAPTER B

21 EDUCATION TAX

22 Section 321. Education tax.

23 (a) General rule.--In addition to the tax collected under
24 section 302 of the Tax Reform Code of 1971, the Commonwealth
25 shall impose the tax set forth in subsection (c) in the same
26 manner as the tax under the Tax Reform Code of 1971.

27 (b) Imposition of tax.--

28 (1) Every resident individual, estate or trust shall be
29 subject to, and shall pay for the privilege of receiving each
30 of the classes of income enumerated in section 303 of the Tax

1 Reform Code of 1971, a tax upon each dollar of income
2 received by that resident during that resident's taxable year
3 at the rate of .94%.

4 (2) Every nonresident individual, estate or trust shall
5 be subject to, and shall pay for the privilege of receiving
6 each of the classes of income enumerated in section 303 of
7 the Tax Reform Code of 1971 from sources within this
8 Commonwealth, a tax upon each dollar of income received by
9 that nonresident during that nonresident's taxable year at
10 the rate of .94%.

11 (c) Deposit in Education Stabilization Fund.--All moneys
12 collected under this section shall be deposited in the Education
13 Stabilization Fund.

14 (d) Combination of tax forms.--The department shall
15 incorporate the taxpayer reporting requirement for the
16 implementation of this section into the forms utilized by the
17 department under Article III of the Tax Reform Code of 1971.

18 (e) Definitions.--The words and phrases used in this section
19 shall have the same meaning given to them in Article III of the
20 Tax Reform Code of 1971.

21 CHAPTER 5

22 EARNED INCOME TAX

23 Section 501. Scope.

24 This chapter authorizes school districts to levy, assess and
25 collect an earned income tax.

26 Section 502. Definitions.

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

30 "Association." A partnership, limited partnership or other

1 unincorporated group of two or more persons.

2 "Business." An enterprise, activity, profession or other
3 undertaking of an unincorporated nature conducted for profit or
4 ordinarily conducted for profit whether by a person, association
5 or other entity.

6 "Corporation." A corporation or joint stock association
7 organized under the laws of the United States, this Commonwealth
8 or any other state, territory, foreign country or dependency.

9 "Current year." The calendar year or fiscal year for which a
10 tax is levied.

11 "Department." The Department of Community and Economic
12 Development of the Commonwealth.

13 "Domicile."

14 (1) The place where a person lives and has the person's
15 permanent home and to which the person has the intention of
16 returning whenever the person is absent. Actual residence is
17 not necessarily domicile because domicile is the fixed place
18 of abode which, in the intention of the taxpayer, is
19 permanent rather than transitory.

20 (2) Domicile is the voluntarily fixed place of
21 habitation of a person, not for a mere special or limited
22 purpose, but with the present intention of making a permanent
23 home, until some event occurs to induce the person to adopt
24 some other permanent home.

25 (3) In the case of a business or association, the
26 domicile is any place where the business or association is
27 conducting or engaging in a business for profit within a
28 school district.

29 "Earned income."

30 (1) Compensation as determined under section 303 of the

1 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
2 Code of 1971, and regulations in 61 Pa. Code Pt. I Subpt. B
3 Art. V (relating to personal income tax).

4 (2) Employee business expenses are allowable deductions
5 as determined under Article III of the Tax Reform Code of
6 1971.

7 (3) The amount of any housing allowance provided to a
8 member of the clergy shall not be taxable as earned income.

9 "Employer." A person, association, corporation, governmental
10 unit or other entity employing one or more persons, other than
11 domestic servants for compensation.

12 "Nonresident." A person, association or other entity
13 domiciled outside a school district.

14 "Person" or "individual." A natural person.

15 "Political subdivision." A school district.

16 "Preceding year." The calendar year or fiscal year before a
17 current year.

18 "Resident." A person, association, corporation or other
19 entity:

20 (1) living in or maintaining a permanent or fixed place
21 of abode in a school district; or

22 (2) conducting or engaging in a business for profit
23 within a school district.

24 "Succeeding year." The calendar year or fiscal year
25 following a current year.

26 "Tax officer." The person, public employee or private agency
27 designated by a governing body to collect and administer a tax
28 imposed under this chapter, and the treasurer of a school
29 district of the first class A.

30 "Taxpayer." A person, association or other entity required

1 under this chapter to file a tax return or to pay a tax.

2 Section 503. Preemption.

3 No act of the General Assembly shall vacate or preempt any
4 resolution passed or adopted under the authority of this chapter
5 or any other act providing authority for the imposition of a tax
6 by a school district, unless the act of the General Assembly
7 expressly vacates or preempts the authority to pass or adopt
8 such resolutions.

9 Section 504. Earned income tax authorization.

10 (a) School districts.--Except as prohibited under Chapter
11 11, each school district shall have the power and may, by
12 resolution, levy, assess and collect or provide for the levying,
13 assessment and collection of a tax for general revenue purposes
14 at a rate as it shall determine on earned income of the
15 residents of the school district. A school district may only
16 impose and increase the rate of earned income tax when that
17 school district complies with the provisions of subsection (b).

18 (b) Adoption of referendum.--

19 (1) In order to levy an earned income tax under this
20 chapter, a governing body shall use the procedures set forth
21 in paragraphs (2), (3), (4), (5), (6) and (7).

22 (2) (i) Subject to the notice and public hearing
23 requirements of paragraph (7), a governing body may levy
24 the earned income tax under this chapter only by
25 obtaining the approval of the electorate of the affected
26 school district in a public referendum at only the
27 municipal election preceding the fiscal year when the
28 earned income tax will be initially imposed or the rate
29 increased.

30 (ii) The referendum question must state the initial

1 rate of the proposed earned income tax, the reason for
2 the tax and the amount of proposed budgeted revenue
3 growth, if any, in the first fiscal year following
4 adoption of the referendum.

5 (iii) The question shall be in clear language that
6 is readily understandable by a layperson. For the purpose
7 of illustration, a referendum question may be framed as
8 follows:

9 Do you favor the imposition of an earned income and
10 net profits tax of X%?

11 (iv) A nonlegal interpretative statement must
12 accompany the question in accordance with section 201.1
13 of the act of June 3, 1937 (P.L.1333, No.320), known as
14 the Pennsylvania Election Code, that includes the
15 following: the initial rate of the earned income tax
16 imposed under this chapter and the estimated revenues to
17 be derived from the initial rate of the earned income tax
18 imposed under this chapter.

19 (3) In the event a school district is located in more
20 than one county, petitions under this section shall be filed
21 with the election officials of the county in which the
22 administrative offices of the school district are located.

23 (4) The election officials who receive a petition shall
24 perform all administrative functions in reviewing and
25 certifying the validity of the petition and conduct all
26 necessary communications with the school district.

27 (5) (i) If the election officials of the county who
28 receive the petition certify that it is sufficient under
29 this section and determine that a question should be
30 placed on the ballot, the decision shall be communicated

1 to election officials in any other county in which the
2 school district is also located.

3 (ii) Election officials in the other county or
4 counties shall cooperate with election officials of the
5 county receiving the petition to ensure that an identical
6 question is placed on the ballot at the same election
7 throughout the entire school district.

8 (6) Election officials from each county involved shall
9 independently certify the results from their county to the
10 governing body.

11 (7) (i) In order to levy the tax under this section,
12 the governing body shall adopt a resolution which refers
13 to this chapter prior to placing a question on the
14 ballot.

15 (ii) Prior to adopting a resolution imposing the tax
16 authorized by this section, the governing body shall give
17 public notice of its intent to adopt the resolution in
18 the manner provided by The Local Tax Enabling Act and
19 shall conduct at least two public hearings regarding the
20 proposed adoption of the resolution. One public hearing
21 shall be conducted during normal business hours and one
22 public hearing shall be conducted during evening hours or
23 on a weekend.

24 Section 505. Continuity of tax.

25 Every tax levied under this chapter shall continue in force
26 on a calendar or fiscal year basis, as the case may be, without
27 annual reenactment unless the rate of the tax is subsequently
28 changed.

29 Section 506. Exemption of low-income persons.

30 (a) General rule.--Each school district shall exempt any

1 person whose total income from all sources is less than \$10,000
2 per year from the earned income tax, or any portion thereof.

3 (b) Procedures.--Each school district shall adopt procedures
4 for the processing of claims for these exemptions.

5 Section 507. Collection of earned income tax.

6 The tax officer shall collect all earned income tax imposed
7 by a school district.

8 Section 508. Limitation on assessment.

9 No assessment may be made of any earned income tax imposed
10 under this chapter more than five years after the date on which
11 the tax should have been paid except where a fraudulent return
12 or no return has been filed.

13 Section 509. Distress and sale of property of taxpayer.

14 (a) General rule.--In case of the neglect or refusal of any
15 person, association or corporation to make payment of the amount
16 of any earned income tax due after two months from the date of
17 the tax notice, the tax officer shall levy the amount of the
18 tax, penalty, interest and costs thereon, not exceeding costs
19 and charges allowed constables for similar services by distress
20 and sale of the goods and chattels of the delinquent taxpayer,
21 wherever located, after giving at least ten days' public notice
22 of such sale by one advertisement in a newspaper of general
23 circulation published in the county.

24 (b) Effect on return.--No failure to demand or collect any
25 taxes by distress and sale of goods and chattels shall
26 invalidate any return made, lien filed for nonpayment of taxes
27 or any tax sale for the collection of taxes.

28 Section 510. Collection of delinquent taxes from employers.

29 (a) General rule.--The tax officer shall demand, receive and
30 collect from all employers employing persons owing delinquent

1 earned income taxes or having in possession unpaid earned income
2 belonging to any person or persons owing delinquent earned
3 income taxes on the presentation of a written notice and demand
4 certifying that the information contained in the notice and
5 demand is true and correct and containing the name of the
6 taxpayer and the amount of tax due.

7 (b) Response to notice.--On the presentation of the written
8 notice and demand, the employer shall deduct from the earned
9 income of the employees then owing, or thereafter due, a sum
10 sufficient to pay the amount of the delinquent earned income
11 taxes, interest, penalty and costs shown on the written notice
12 or demand, and shall pay the same to the tax officer by which
13 the delinquent tax was levied within 60 days after the notice
14 was given.

15 (c) Limitation on deduction.--No more than 10% of the
16 compensation of the delinquent taxpayer may be deducted at any
17 one time for delinquent earned income taxes, penalty, interest
18 and costs.

19 (d) Deduction for costs.--The employer shall be entitled to
20 deduct from the moneys collected from each employee the costs
21 incurred from the extra bookkeeping necessary to record the
22 transactions, not exceeding 2% of the amount collected and paid
23 over to the tax officer.

24 (e) Forfeiture.--If the employer fails to deduct the amount
25 of such taxes or to pay the same over to the tax officer, less
26 the amount deducted under subsection (d), within the time
27 required by this section, the employer shall forfeit and pay the
28 amount of the tax for those taxpayers whose taxes are not
29 withheld and paid over, or that are withheld and not paid over
30 together with a penalty of 10%, to be recovered by a civil

1 action instituted by the tax officer, as debts of like amount
2 are now by law recoverable, except that the person shall not
3 have the benefit of any exemption law or stay of execution.

4 (f) Collection rights preserved.--Nothing in this section
5 shall be deemed to affect or impair the right of any school
6 district or the tax officer to pursue and collect delinquent
7 taxes validly imposed prior to the effective date of this
8 section.

9 Section 511. Collection of delinquent taxes from Commonwealth.

10 (a) General rule.--On presentation of a written notice and
11 demand under oath to the State Treasurer or any other fiscal
12 officer of the Commonwealth, or its boards, authorities,
13 agencies or commissions, the treasurer or officer shall deduct
14 from the compensation then owing a sum sufficient to pay the
15 amount of the delinquent earned income taxes, interest, penalty
16 and costs shown on the written notice. The same shall be paid to
17 the tax officer within 60 days after the notice is given.

18 (b) Limitation on deduction.--No more than 10% of the
19 compensation of the delinquent taxpayer may be deducted at any
20 one time for delinquent earned income taxes, interest, penalty
21 and costs.

22 (c) Collection rights preserved.--Nothing in this section
23 shall be deemed to affect or impair the right of a school
24 district or the tax officer to pursue and collect delinquent
25 taxes validly imposed prior to the effective date of this
26 section.

27 Section 512. Notice to taxpayer.

28 The tax officer shall, at least 15 days prior to the
29 presentation of a written notice and demand under section 510 or
30 511, notify the taxpayer owing the delinquent tax by registered

1 mail that a written notice and demand shall be presented to the
2 taxpayer's employer unless such tax is paid. The return receipt
3 card for registered mail shall be marked delivered to addressee
4 only, and the cost of notification by registered mail shall be
5 included in the costs for collecting taxes.

6 Section 513. Collection of taxes by suit.

7 (a) Power to collect.--

8 (1) Each school district and the tax officer shall have
9 power to collect unpaid taxes from taxpayers and employers
10 owing such taxes by a civil action or other appropriate
11 remedy.

12 (2) On judgment, execution may be issued without any
13 stay or benefit of any exemption law.

14 (3) The power to collect unpaid taxes under the
15 provisions of this section shall not be affected by the fact
16 that such taxes have been entered as liens in the office of
17 the prothonotary or the fact that the property against which
18 they were levied has been returned to the county
19 commissioners for taxes for prior years.

20 (b) Limitation of actions.--A suit brought to recover the
21 taxes under subsection (a) shall be instituted within three
22 years after the tax is due or within three years after a
23 declaration or return has been filed, whichever date is later,
24 except in the following cases:

25 (1) If no declaration or return was filed by any person,
26 although a declaration or return was required to be filed
27 under provisions of the ordinance, there shall be no
28 limitation.

29 (2) If an examination of the declaration or return filed
30 by any person, or of other evidence relating to the

1 declaration or return in the possession of the tax officer,
2 reveals a fraudulent evasion of taxes, there shall be no
3 limitation.

4 (3) If there is a substantial understatement of tax
5 liability of 25% or more and no fraud, suit shall be
6 instituted within six years.

7 (4) If a person has deducted taxes under the provisions
8 of the resolution and has failed to pay the amounts so
9 deducted to the tax officer, or if any person has willfully
10 failed or omitted to make the deductions required by this
11 section, there shall be no limitation.

12 (c) Procedures.--The tax officer shall establish the
13 procedures for collecting the earned income tax and paying the
14 full amount collected over to the school district on a quarterly
15 basis.

16 Section 514. Interest and penalties.

17 (a) General rule.--If for any reason the tax is not paid
18 when due, interest at the annual rate of 6% on the amount of the
19 tax, and an additional penalty of .5% of the amount of the
20 unpaid tax for each month or fraction thereof during which the
21 tax remains unpaid, shall be added and collected. Where suit is
22 brought for the recovery of such tax, the person liable therefor
23 shall, in addition, be liable for the costs of collection and
24 the interest and penalties herein imposed.

25 (b) One-time waiver of interest authorized.--

26 (1) Notwithstanding the provisions of subsection (a),
27 the school district may, by resolution, establish a one-time
28 period during which interest or interest and penalties that
29 would otherwise be imposed for the nonreporting or
30 underreporting of earned income tax liabilities or for the

1 nonpayment of earned income taxes previously imposed and due
2 shall be waived in total or in part if the taxpayer
3 voluntarily files delinquent returns and pays the taxes in
4 full during the period so established.

5 (2) Each school district may adopt regulations to
6 implement the provisions of this subsection.

7 (c) Proceedings.--The provisions of subsection (b) shall not
8 affect or terminate any petitions, investigations, prosecutions
9 or other proceedings pending on the effective date of this
10 section, or prevent the commencement or further prosecution of
11 any proceedings by the proper authorities for violations of this
12 act. No proceedings shall, however, be commenced on the basis of
13 delinquent returns filed pursuant to subsection (b) if the
14 returns are determined to be substantially true and correct and
15 the taxes are paid in full within the prescribed time.

16 Section 515. Fines and penalties for violation of resolutions.

17 (a) Conduct prohibited.--

18 (1) Any person who fails, neglects or refuses to make
19 any declaration or return required by the resolution, any
20 employer who fails, neglects or refuses to register or to pay
21 the tax deducted from its employees, or fails, neglects or
22 refuses to deduct or withhold the tax from its employees, any
23 person who refuses to permit the officer or any agent
24 designated by that officer to examine the person's books,
25 records and papers, and any person who knowingly makes any
26 incomplete, false or fraudulent return, or attempts to do
27 anything whatsoever to avoid the full disclosure of the
28 amount of the person's earned income in order to avoid the
29 payment of the whole or any part of the tax imposed by the
30 resolution, shall, upon conviction thereof, in any county in

1 which the school district imposing the tax is located be
2 sentenced to pay a fine of not more than \$500 for each
3 offense and costs and, in default of payment of the fines and
4 costs, to be imprisoned for a period not exceeding 30 days.

5 (2) Any person who divulges any information which is
6 confidential under the provisions of the resolution shall,
7 upon conviction thereof, be sentenced to pay a fine of not
8 more than \$500 for each offense and costs and, in default of
9 payment of said fines and costs, to be imprisoned for a
10 period not exceeding 30 days.

11 (b) Cumulative penalties.--The penalties imposed under this
12 section shall be in addition to any other penalty imposed by any
13 other section of the resolution.

14 (c) Defense unavailable.--The failure of any person to
15 receive or procure forms required for making the declaration or
16 returns required by the resolution shall not excuse the person
17 from making the declaration or return.

18 Section 516. Collection at source.

19 (a) Duty of employers to register.--Every employer having an
20 office, factory, workshop, branch, warehouse or other place of
21 business within the school district imposing a tax on earned
22 income within the taxing district who employs one or more
23 persons, other than domestic servants, for a salary, wage,
24 commission or other compensation, who has not previously
25 registered shall, within 15 days after becoming an employer,
26 register with the tax officer his name and address and such
27 other information as the tax officer may require.

28 (b) Duty to deduct tax.--

29 (1) Every employer having an office, factory, workshop,
30 branch, warehouse or other place of business within the

1 school district imposing a tax on earned income who employs
2 one or more persons, other than domestic servants, for a
3 salary, wage, commission or other compensation, shall deduct
4 at the time of payment thereof, the tax imposed pursuant to
5 this chapter on the earned income due to his employee or
6 employees, and shall, on or before April 30 of the current
7 year, July 31 of the current year, October 31 of the current
8 year and January 31 of the succeeding year, file a return and
9 pay to the tax officer the amount of taxes deducted during
10 the preceding three-month periods ending March 31 of the
11 current year, June 30 of the current year, September 30 of
12 the current year and December 31 of the current year,
13 respectively.

14 (2) Unless otherwise agreed upon between the tax officer
15 and employer, the return shall show the name and Social
16 Security number of each employee, the earned income of the
17 employee during the preceding three-month period, the tax
18 deducted from the compensation, the school district imposing
19 the tax upon the employee, the total earned income of all
20 employees during the preceding three-month period and the
21 total tax deducted from the compensation and paid with the
22 return.

23 (3) Any employer that for two of the preceding four
24 quarterly periods has failed to deduct the proper tax, or any
25 part thereof, or has failed to pay over the proper amount of
26 tax to the school district, may be required by the tax
27 officer to file his return and pay the tax monthly. In such
28 cases, payments of tax shall be made to the tax officer on or
29 before the last day of the month succeeding the month for
30 which the tax was withheld.

1 (c) Duty to file annual return.--On or before February 28 of
2 the succeeding year, every employer shall file with the tax
3 officer:

4 (1) An annual return showing the total amount of earned
5 income paid, the total amount of tax deducted and the total
6 amount of tax paid to the tax officer for the period
7 beginning January 1 of the current year and ending December
8 31 of the current year.

9 (2) A return withholding statement for each employee
10 employed during all or any part of the period beginning
11 January 1 of the current year and ending December 31 of the
12 current year, setting forth the employee's name, address and
13 Social Security number, the amount of earned income paid to
14 the employee during the period, the amount of tax deducted,
15 the school district imposing the tax upon the employees and
16 the amount of tax paid to the tax officer. Every employer
17 shall furnish two copies of the individual return to the
18 employee for whom it is filed.

19 (d) Discontinued businesses.--Every employer who
20 discontinues business prior to December 31 of the current year
21 shall, within 30 days after the discontinuance of business, file
22 the returns and withholding statements required by this section
23 and pay the tax due.

24 (e) Liability of employers.--Every employer who willfully or
25 negligently fails or omits to make the deductions required by
26 this section shall be liable for payment of the taxes which he
27 was required to withhold to the extent that such taxes have not
28 been recovered from the employee.

29 (f) Liability of employees.--The failure or omission of any
30 employer to make the deductions required by this section shall

1 not relieve any employee from the payment of the tax or from
2 complying with the requirements of the ordinance or resolution
3 relating to the filing of declarations and returns.

4 CHAPTER 7

5 SALES AND USE TAX FOR THE 6 STABILIZATION OF EDUCATION FUNDING

7 SUBCHAPTER A

8 PRELIMINARY PROVISIONS

9 Section 701. Scope.

10 The tax provided for under this chapter shall be known as the
11 Sales and Use Tax for the Stabilization of Education Funding,
12 which shall be a replacement for the sales and use tax
13 authorized under Article II of the Tax Reform Code of 1971 and
14 that is repealed by this act.

15 Section 701.1. Definitions.

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

19 (a) "Soft drinks."

20 (1) All nonalcoholic beverages, whether carbonated or
21 not, such as soda water, ginger ale, Coca Cola, lime cola,
22 Pepsi Cola, Dr Pepper, fruit juice when plain or carbonated
23 water, flavoring or syrup is added, carbonated water,
24 orangeade, lemonade, root beer or any and all preparations,
25 commonly referred to as soft drinks, of whatsoever kind, and
26 are further described as including any and all beverages,
27 commonly referred to as soft drinks, which are made with or
28 without the use of any syrup.

29 (2) The term does not include natural fruit or vegetable
30 juices or their concentrates, or noncarbonated fruit juice

1 drinks containing not less than 25% by volume of natural
2 fruit juices or of fruit juice which has been reconstituted
3 to its original state, or natural concentrated fruit or
4 vegetable juices reconstituted to their original state,
5 whether any of the natural juices are frozen or unfrozen,
6 sweetened or unsweetened, seasoned with salt or spice or
7 unseasoned. The term also does not include coffee, coffee
8 substitutes, tea, cocoa, natural fluid milk or noncarbonated
9 drinks made from milk derivatives.

10 (b) "Maintaining a place of business in this Commonwealth."

11 (1) Having, maintaining or using within this
12 Commonwealth, either directly or through a subsidiary,
13 representative or an agent, an office, distribution house,
14 sales house, warehouse, service enterprise or other place of
15 business; or any agent of general or restricted authority, or
16 representative, irrespective of whether the place of
17 business, representative or agent is located in this
18 Commonwealth, permanently or temporarily, or whether the
19 person or subsidiary maintaining the place of business,
20 representative or agent is authorized to do business within
21 this Commonwealth.

22 (2) Engaging in any activity as a business within this
23 Commonwealth by any person, either directly or through a
24 subsidiary, representative or an agent, in connection with
25 the lease, sale or delivery of tangible personal property or
26 the performance of services thereon for use, storage or
27 consumption or in connection with the sale or delivery for
28 use of the services described in subclauses (11) through (18)
29 of clause (k) of this section, including, but not limited to,
30 having, maintaining or using any office, distribution house,

1 sales house, warehouse or other place of business, any stock
2 of goods or any solicitor, canvasser, salesman,
3 representative or agent under its authority, at its direction
4 or with its permission, regardless of whether the person or
5 subsidiary is authorized to do business in this Commonwealth.

6 (3) Regularly or substantially soliciting orders within
7 this Commonwealth in connection with the lease, sale or
8 delivery of tangible personal property to or the performance
9 thereon of services or in connection with the sale or
10 delivery of the services described in subclauses (11) through
11 (18) of clause (k) of this section for residents of this
12 Commonwealth by means of catalogs or other advertising,
13 whether the orders are accepted within or without this
14 Commonwealth.

15 (3.1) Entering this Commonwealth by any person to
16 provide assembly, service or repair of tangible personal
17 property, either directly or through a subsidiary,
18 representative or an agent.

19 (3.2) Delivering tangible personal property to locations
20 within this Commonwealth if the delivery includes the
21 unpacking, positioning, placing or assembling of the tangible
22 personal property.

23 (3.3) Having any contact within this Commonwealth which
24 would allow the Commonwealth to require a person to collect
25 and remit tax under the Constitution of the United States.

26 (3.4) Providing a customer's mobile telecommunications
27 service deemed to be provided by the customer's home service
28 provider under the Mobile Telecommunications Sourcing Act (4
29 U.S.C. § 116). For purposes of this clause, words and phrases
30 used in this clause shall have the meanings given to them in

1 the Mobile Telecommunications Sourcing Act.

2 (4) The term does not include:

3 (i) Owning or leasing of tangible or intangible
4 property by a person who has contracted with an
5 unaffiliated commercial printer for printing, provided
6 that:

7 (A) the property is for use by the commercial
8 printer; and

9 (B) the property is located at the Pennsylvania
10 premises of the commercial printer.

11 (ii) Visits by a person's employees or agents to the
12 premises in this Commonwealth of an unaffiliated
13 commercial printer with whom the person has contracted
14 for printing in connection with said contract.

15 (b.1) "Service performed in this Commonwealth."

16 A service performed:

17 (1) completely in this Commonwealth;

18 (2) partially in this Commonwealth and partially outside
19 this Commonwealth, when the recipient or user of the service
20 is located in this Commonwealth; or

21 (3) partially in this Commonwealth and partially outside
22 this Commonwealth, when the recipient or user of the service
23 is not located in this Commonwealth, but only to the extent
24 of those services actually performed in this Commonwealth.

25 The place of performance need not be determined if the recipient
26 or user of the service is located in this Commonwealth.

27 A service performed partially in this Commonwealth and partially
28 outside this Commonwealth shall be presumed to have been
29 performed completely in this Commonwealth unless the taxpayer
30 can show the place of performance by clear and convincing

1 evidence. With respect to interstate telecommunications
2 services, only services for interstate telecommunications which
3 originate or are terminated in this Commonwealth and which are
4 billed and charged to a service address in this Commonwealth
5 shall be presumed to have been performed completely in this
6 Commonwealth and shall be subject to tax.

7 (c) "Manufacture." The performance of manufacturing,
8 fabricating, compounding, processing or other operations,
9 engaged in as a business, which place any tangible personal
10 property in a form, composition or character different from that
11 in which it is acquired whether for sale or use by the
12 manufacturer, and shall include, but not be limited to:

13 (1) Every operation commencing with the first production
14 stage and ending with the completion of tangible personal
15 property having the physical qualities, including packaging,
16 if any, passing to the ultimate consumer, which it has when
17 transferred by the manufacturer to another. For purposes of
18 this definition, "operation" includes clean rooms and their
19 component systems, including: environmental control systems,
20 antistatic vertical walls and manufacturing platforms and
21 floors which are independent of the real estate; process
22 piping systems; specialized lighting systems; deionized water
23 systems; process vacuum and compressed air systems; process
24 and specialty gases; and alarm or warning devices
25 specifically designed to warn of threats to the integrity of
26 the product or people. For purposes of this definition, a
27 "clean room" is a location with a self-contained, sealed
28 environment with a controlled, closed air system independent
29 from the facility's general environmental control system.

30 (2) The publishing of books, newspapers, magazines and

1 other periodicals and printing.

2 (3) Refining, blasting, exploring, mining and quarrying
3 for, or otherwise extracting from the earth or from waste or
4 stock piles or from pits or banks any natural resources,
5 minerals and mineral aggregates including blast furnace slag.

6 (4) Building, rebuilding, repairing and making additions
7 to, or replacements in or upon vessels designed for
8 commercial use of registered tonnage of 50 tons or more when
9 produced on special order of the purchaser, or when rebuilt,
10 repaired or enlarged, or when replacements are made upon
11 order of or for the account of the owner.

12 (5) Research having as its objective the production of a
13 new or an improved:

14 (i) product or utility service; or

15 (ii) method of producing a product or utility
16 service,

17 but in either case not including market research or research
18 having as its objective the improvement of administrative
19 efficiency.

20 (6) Remanufacture for wholesale distribution by a
21 remanufacturer of motor vehicle parts from used parts
22 acquired in bulk by the remanufacturer using an assembly line
23 process which involves the complete disassembly of such parts
24 and integration of the components of such parts with other
25 used or new components of parts, including the salvaging,
26 recycling or reclaiming of used parts by the remanufacturer.

27 (7) Remanufacture or retrofit by a manufacturer or
28 remanufacturer of aircraft, armored vehicles, other defense-
29 related vehicles having a finished value of at least \$50,000.
30 Remanufacture or retrofit involves the disassembly of such

1 aircraft, vehicles, parts or components, including electric
2 or electronic components, the integration of those parts and
3 components with other used or new parts or components,
4 including the salvaging, recycling or reclaiming of the used
5 parts or components and the assembly of the new or used
6 aircraft, vehicles, parts or components. The term does not
7 include constructing, altering, servicing, repairing or
8 improving real estate or repairing, servicing or installing
9 tangible personal property, nor the cooking, freezing or
10 baking of fruits, vegetables, mushrooms, fish, seafood,
11 meats, poultry or bakery products. For purposes of this
12 clause, the following terms or phrases have the following
13 meanings:

14 (i) "aircraft" means fixed-wing aircraft,
15 helicopters, powered aircraft, tilt-rotor or tilt-wing
16 aircraft, unmanned aircraft and gliders;

17 (ii) "armored vehicles" means tanks, armed personnel
18 carriers and all other armed track or semitrack vehicles;
19 and

20 (iii) "other defense-related vehicles" means trucks,
21 truck-tractors, trailers, jeeps and other utility
22 vehicles, including any unmanned vehicles.

23 (c.1) "Blasting." The use of any combustible or explosive
24 composition in the removal of material resources, minerals and
25 mineral aggregates from the earth including the separation of
26 the dirt, waste and refuse in which they are found.

27 (d) "Processing." The performance of the following
28 activities when engaged in as a business enterprise:

29 (1) The filtering or heating of honey, the cooking,
30 baking or freezing of fruits, vegetables, mushrooms, fish,

1 seafood, meats, poultry or bakery products, when the person
2 engaged in the business packages the property in sealed
3 containers for wholesale distribution.

4 (1.1) The processing of fruits or vegetables by
5 cleaning, cutting, coring, peeling or chopping and treating
6 to preserve, sterilize or purify and substantially extend the
7 useful shelf life of the fruits or vegetables, when the
8 person engaged in the activity packages the property in
9 sealed containers for wholesale distribution.

10 (2) The scouring, carbonizing, cording, combing,
11 throwing, twisting or winding of natural or synthetic fibers,
12 or the spinning, bleaching, dyeing, printing or finishing of
13 yarns or fabrics, when the activities are performed prior to
14 sale to the ultimate consumer.

15 (3) The electroplating, galvanizing, enameling,
16 anodizing, coloring, finishing, impregnating or heat treating
17 of metals or plastics for sale or in the process of
18 manufacturing.

19 (3.1) The blanking, shearing, leveling, slitting or
20 burning of metals for sale to or use by a manufacturer or
21 processor.

22 (4) The rolling, drawing or extruding of ferrous and
23 nonferrous metals.

24 (5) The fabrication for sale of ornamental or structural
25 metal or of metal stairs, staircases, gratings, fire escapes
26 or railings, not including fabrication work done at the
27 construction site.

28 (6) The preparation of animal feed or poultry feed for
29 sale.

30 (7) The production, processing and bottling of

1 nonalcoholic beverages for wholesale distribution.

2 (8) The operation of a saw mill or planing mill for the
3 production of lumber or lumber products for sale. The
4 operation of a saw mill or planing mill begins with the
5 unloading by the operator of the saw mill or planing mill of
6 logs, timber, pulpwood or other forms of wood material to be
7 used in the saw mill or planing mill.

8 (9) The milling for sale of flour or meal from grains.

9 (9.1) The aging, stripping, conditioning, crushing and
10 blending of tobacco leaves for use as cigar filler or as
11 components of smokeless tobacco products for sale to
12 manufacturers of tobacco products.

13 (10) The slaughtering and dressing of animals for meat
14 to be sold or to be used in preparing meat products for sale,
15 and the preparation of meat products including lard, tallow,
16 grease, cooking and inedible oils for wholesale distribution.

17 (11) The processing of used lubricating oils.

18 (12) The broadcasting of radio and television programs
19 of licensed commercial or educational stations.

20 (13) The cooking or baking of bread, pastries, cakes,
21 cookies, muffins and donuts when the person engaged in the
22 activity sells the items at retail at locations that do not
23 constitute an establishment from which ready-to-eat food and
24 beverages are sold. For purposes of this clause, a bakery, a
25 pastry shop and a donut shop shall not be considered an
26 establishment from which ready-to-eat food and beverages are
27 sold.

28 (14) The cleaning and roasting and the blending,
29 grinding or packaging for sale of coffee from green coffee
30 beans or the production of coffee extract.

1 (15) The preparation of dry or liquid fertilizer for
2 sale.

3 (16) The production, processing and packaging of ice for
4 wholesale distribution.

5 (17) The producing of mobile telecommunications
6 services.

7 (e) "Person." Any natural person, association, fiduciary,
8 partnership, corporation or other entity, including the
9 Commonwealth of Pennsylvania, its political subdivisions and
10 instrumentalities and public authorities. Whenever used in
11 prescribing and imposing a penalty or imposing a fine or
12 imprisonment, or both, the term as applied to an association,
13 includes the members of the association and, as applied to a
14 corporation, the officers of the corporation.

15 (f) "Purchase at retail."

16 (1) The acquisition for a consideration of the
17 ownership, custody or possession of tangible personal
18 property other than for resale by the person acquiring the
19 same when the acquisition is made for the purpose of
20 consumption or use, whether the acquisition is absolute or
21 conditional, and by any means it is effected.

22 (2) The acquisition of a license to use or consume, and
23 the rental or lease of tangible personal property, other than
24 for resale regardless of the period of time the lessee has
25 possession or custody of the property.

26 (3) The obtaining for a consideration of those services
27 described in subclauses (2), (3) and (4) of clause (k) of
28 this section other than for resale.

29 (4) A retention after March 7, 1956, of possession,
30 custody or a license to use or consume pursuant to a rental

contract or other lease arrangement (other than as security)
other than for resale.

(5) The obtaining for a consideration of those services
described in subclauses (11) through (18) of clause (k) of
this section.

The term, with respect to liquor and malt or brewed beverages,
includes the purchase of liquor from any Pennsylvania Liquor
Store by any person for any purpose, and the purchase of malt or
brewed beverages from a manufacturer of malt or brewed
beverages, distributor or importing distributor by any person
for any purpose, except purchases from a manufacturer of malt or
brewed beverages by a distributor or importing distributor or
purchases from an importing distributor by a distributor within
the meaning of the Liquor Code. The term does not include any
purchase of malt or brewed beverages from a retail dispenser or
any purchase of liquor or malt or brewed beverages from a person
holding a retail liquor license within the meaning of and
pursuant to the provisions of the Liquor Code, but includes any
purchase or acquisition of liquor or malt or brewed beverages
other than pursuant to the provisions of the Liquor Code.

(g) "Purchase price."

(1) The total value of anything paid or delivered, or
promised to be paid or delivered, whether money or otherwise,
in complete performance of a sale at retail or purchase at
retail, without any deduction on account of the cost or value
of the property sold, cost or value of transportation, cost
or value of labor or service, interest or discount paid or
allowed after the sale is consummated, any other taxes
imposed by the Commonwealth or any other expense except that
there shall be excluded any gratuity or separately stated

1 deposit charge for returnable containers.

2 (2) The value of any tangible personal property actually
3 taken in trade or exchange in lieu of the whole or any part
4 of the purchase price shall be deducted from the purchase
5 price. For the purpose of this clause, the amount allowed by
6 reason of tangible personal property actually taken in trade
7 or exchange shall be considered the value of such property.

8 (3) (i) In determining the purchase price on the sale
9 or use of taxable tangible personal property or a service
10 where, because of affiliation of interests between the
11 vendor and purchaser, or irrespective of any such
12 affiliation, if for any other reason the purchase price
13 declared by the vendor or taxpayer on the taxable sale or
14 use of such tangible personal property or service is, in
15 the opinion of the department, not indicative of the true
16 value of the article or service or the fair price
17 thereof, the department shall, pursuant to uniform and
18 equitable rules, determine the amount of constructive
19 purchase price on the basis of which the tax shall be
20 computed and levied. The rules shall provide for a
21 constructive amount of purchase price for each sale or
22 use which would naturally and fairly be charged in an
23 arms-length transaction in which the element of common
24 interest between the vendor or purchaser is absent or, if
25 no common interest exists, any other element causing a
26 distortion of the price or value is likewise absent.

27 (ii) For the purpose of this clause where a taxable
28 sale or purchase at retail transaction occurs between a
29 parent and a subsidiary, affiliate or controlled
30 corporation of such parent corporation, there shall be a

1 rebuttable presumption, that because of the common
2 interest, the transaction was not at arms-length.

3 (4) Where there is a transfer or retention of possession
4 or custody, whether it is termed a rental, lease, service or
5 otherwise, of tangible personal property including, but not
6 limited to, linens, aprons, motor vehicles, trailers, tires,
7 industrial office and construction equipment, and business
8 machines the full consideration paid or delivered to the
9 vendor or lessor shall be considered the purchase price, even
10 though the consideration is separately stated and designated
11 as payment for processing, laundering, service, maintenance,
12 insurance, repairs, depreciation or otherwise. Where the
13 vendor or lessor supplies or provides an employee to operate
14 the tangible personal property, the value of the labor
15 supplied may be excluded and shall not be considered as part
16 of the purchase price if separately stated. There shall also
17 be included as part of the purchase price the value of
18 anything paid or delivered, or promised to be paid or
19 delivered by a lessee, whether money or otherwise, to any
20 person other than the vendor or lessor by reason of the
21 maintenance, insurance or repair of the tangible personal
22 property which a lessee has the possession or custody of
23 under a rental contract or lease arrangement.

24 (5) (i) With respect to the tax imposed by section
25 702(a)(2), on any tangible personal property originally
26 purchased by the user of the property six months or
27 longer prior to the first taxable use of the property
28 within this Commonwealth, the user may elect to pay tax
29 on a substituted base determined by considering the
30 purchase price of the property for tax purposes to be

1 equal to the prevailing market price of similar tangible
2 personal property at the time and place of the first use
3 within this Commonwealth.

4 (ii) The election must be made at the time of filing
5 a tax return with the department and reporting the tax
6 liability and paying the proper tax due plus all accrued
7 penalties and interest, if any, within six months of the
8 due date of such report and payment, as provided for by
9 section 717(a) and (c).

10 (6) The purchase price of employment agency services and
11 help supply services shall be the service fee paid by the
12 purchaser to the vendor or supplying entity. The term
13 "service fee," as used in this subclause, means the total
14 charge or fee of the vendor or supplying entity minus the
15 costs of the supplied employee which costs are wages,
16 salaries, bonuses and commissions, employment benefits,
17 expense reimbursements and payroll and withholding taxes, to
18 the extent that these costs are specifically itemized or that
19 these costs in aggregate are stated in billings from the
20 vendor or supplying entity. To the extent that these costs
21 are not itemized or stated on the billings, then the service
22 fee shall be the total charge or fee of the vendor or
23 supplying entity.

24 (7) Unless the vendor separately states that portion of
25 the billing which applies to premium cable service as defined
26 in clause (11), the total bill for the provision of all cable
27 services shall be the purchase price.

28 (8) The purchase price of prebuilt housing shall be 60%
29 of the manufacturer's selling price, provided that a
30 manufacturer of prebuilt housing who precollects tax from a

1 prebuilt housing builder at the time of the sale to the
2 prebuilt housing builder shall have the option to collect tax
3 on 60% of the selling price or on 100% of the actual cost of
4 the supplies and materials used in the manufacture of the
5 prebuilt housing.

6 (h) "Purchaser." Any person who acquires, for a
7 consideration, the ownership, custody or possession by sale,
8 lease or otherwise of tangible personal property, or who obtains
9 services in exchange for a purchase price but not including an
10 employer who obtains services from his employees in exchange for
11 wages or salaries when such services are rendered in the
12 ordinary scope of their employment.

13 (i) "Resale."

14 (1) Any transfer of ownership, custody or possession of
15 tangible personal property for a consideration, including the
16 grant of a license to use or consume and transactions where
17 the possession of the property is transferred but where the
18 transferor retains title only as security for payment of the
19 selling price whether the transaction is designated as
20 bailment lease, conditional sale or otherwise.

21 (2) The physical incorporation of tangible personal
22 property as an ingredient or constituent into other tangible
23 personal property, which is to be sold in the regular course
24 of business or the performance of those services described in
25 subclauses (2), (3) and (4) of clause (k) upon tangible
26 personal property which is to be sold in the regular course
27 of business or where the person incorporating the property
28 has undertaken at the time of purchase to cause it to be
29 transported in interstate commerce to a destination outside
30 this Commonwealth. The term includes telecommunications

1 services purchased by a cable operator or video programmer
2 that are used to transport or deliver cable or video
3 programming services which are sold in the regular course of
4 business.

5 (3) The term also includes tangible personal property
6 purchased or having a situs within this Commonwealth solely
7 for the purpose of being processed, fabricated or
8 manufactured into, attached to or incorporated into tangible
9 personal property and thereafter transported outside this
10 Commonwealth for use exclusively outside this Commonwealth.

11 (4) The term does not include any sale of malt or brewed
12 beverages by a retail dispenser, or any sale of liquor or
13 malt or brewed beverages by a person holding a retail liquor
14 license within the meaning of the act of April 12, 1951
15 (P.L.90, No.21), known as the Liquor Code.

16 (5) The physical incorporation of tangible personal
17 property as an ingredient or constituent in the construction
18 of foundations for machinery or equipment the sale or use of
19 which is excluded from tax under the provisions of paragraphs
20 (A), (B), (C) and (D) of subclause (8) of clause (k) and
21 subparagraphs (i), (ii), (iii) and (iv) of paragraph (B) of
22 subclause (4) of clause (o), whether the foundations at the
23 time of construction or transfer constitute tangible personal
24 property or real estate.

25 (j) "Resident."

26 (1) Any natural person:

27 (i) who is domiciled in this Commonwealth; or

28 (ii) who maintains a permanent place of abode within
29 this Commonwealth and spends in the aggregate more than
30 60 days of the year within this Commonwealth.

- 1 (2) Any corporation:
- 2 (i) incorporated under the laws of this
- 3 Commonwealth;
- 4 (ii) authorized to do business or doing business
- 5 within this Commonwealth; or
- 6 (iii) maintaining a place of business within this
- 7 Commonwealth.
- 8 (3) Any association, fiduciary, partnership or other
- 9 entity:
- 10 (i) domiciled in this Commonwealth;
- 11 (ii) authorized to do business or doing business
- 12 within this Commonwealth; or
- 13 (iii) maintaining a place of business within this
- 14 Commonwealth.
- 15 (k) "Sale at retail."
- 16 (1) Any transfer, for a consideration, of the ownership,
- 17 custody or possession of tangible personal property,
- 18 including the grant of a license to use or consume whether
- 19 the transfer is absolute or conditional and by any means the
- 20 transfer is effected.
- 21 (2) The rendition of the service of printing or
- 22 imprinting of tangible personal property for a consideration
- 23 for persons who furnish, either directly or indirectly, the
- 24 materials used in the printing or imprinting.
- 25 (3) The rendition for a consideration of the service of:
- 26 (i) washing, cleaning, waxing, polishing or
- 27 lubricating of motor vehicles of another, regardless of
- 28 whether any tangible personal property is transferred in
- 29 conjunction with the activity; and
- 30 (ii) inspecting motor vehicles pursuant to the

1 mandatory requirements of 75 Pa.C.S. (relating to
2 vehicles).

3 (4) The rendition for a consideration of the service of
4 repairing, altering, mending, pressing, fitting, dyeing,
5 laundering, drycleaning or cleaning tangible personal
6 property other than wearing apparel or shoes, or applying or
7 installing tangible personal property as a repair or
8 replacement part of other tangible personal property other
9 than wearing apparel or shoes for a consideration, regardless
10 of whether the services are performed directly or by any
11 means other than by coin-operated self-service laundry
12 equipment for wearing apparel or household goods and whether
13 or not any tangible personal property is transferred in
14 conjunction with the activity, including such services as are
15 rendered in the construction, reconstruction, remodeling,
16 repair or maintenance of real estate.

17 (5) (Reserved).

18 (6) (Reserved).

19 (7) (Reserved).

20 (8) Any retention of possession, custody or a license to
21 use or consume tangible personal property or any further
22 obtaining of services described in subclauses (2), (3) and
23 (4) of this clause pursuant to a rental or service contract
24 or other arrangement (other than as security). The term does
25 not include:

26 (i) any transfer of tangible personal property or
27 rendition of services for the purpose of resale; or

28 (ii) the rendition of services or the transfer of
29 tangible personal property, including, but not limited
30 to, machinery and equipment and their parts and supplies

1 to be used or consumed by the purchaser directly in the
2 operations of:

3 (A) The manufacture of tangible personal
4 property.

5 (B) Farming, dairying, agriculture, horticulture
6 or floriculture when engaged in as a business
7 enterprise. The term "farming" includes the
8 propagation and raising of ranch raised fur-bearing
9 animals and the propagation of game birds for
10 commercial purposes by holders of propagation permits
11 issued under 34 Pa.C.S. (relating to game) and the
12 propagation and raising of horses to be used
13 exclusively for commercial racing activities.

14 (C) The producing, delivering or rendering of a
15 public utility service, or in constructing,
16 reconstructing, remodeling, repairing or maintaining
17 the facilities which are directly used in producing,
18 delivering or rendering the service.

19 (D) Processing as defined in clause (d). The
20 exclusions provided in this paragraph or paragraph
21 (A), (B) or (C) do not apply to any vehicle required
22 registered under 75 Pa.C.S. (relating to vehicles),
23 except those vehicles used directly by a public
24 utility engaged in business as a common carrier; to
25 maintenance facilities; or to materials, supplies or
26 equipment to be used or consumed in the construction,
27 reconstruction, remodeling, repair or maintenance of
28 real estate other than directly used machinery,
29 equipment, parts or foundations that may be affixed
30 to such real estate. The exclusions provided in this

1 paragraph or paragraph (A), (B) or (C) do not apply
2 to tangible personal property or services to be used
3 or consumed in managerial sales or other
4 nonoperational activities, nor to the purchase or use
5 of tangible personal property or services by any
6 person other than the person directly using the same
7 in the operations described in this paragraph or
8 paragraph (A), (B) or (C).

9 The exclusion provided in paragraph (C) does not apply to:

10 (i) construction materials, supplies or equipment
11 used to construct, reconstruct, remodel, repair or
12 maintain facilities not used directly by the purchaser in
13 the production, delivering or rendition of public utility
14 service;

15 (ii) construction materials, supplies or equipment
16 used to construct, reconstruct, remodel, repair or
17 maintain a building, road or similar structure; or

18 (iii) tools and equipment used but not installed in
19 the maintenance of facilities used directly in the
20 production, delivering or rendition of a public utility
21 service. The exclusions provided in paragraphs (A), (B),
22 (C) and (D) do not apply to the services enumerated in
23 clauses (k) (11) through (18) and (w) through (kk), except
24 that the exclusion provided in this subclause for
25 farming, dairying and agriculture shall apply to the
26 service enumerated in clause (z).

27 (9) Where tangible personal property or services are
28 utilized for purposes constituting a sale at retail and for
29 purposes excluded from the definition of "sale at retail," it
30 shall be presumed that the tangible personal property or

1 services are utilized for purposes constituting a sale at
2 retail and subject to tax unless the user proves to the
3 department that the predominant purposes for which such
4 tangible personal property or services are utilized do not
5 constitute a sale at retail.

6 (10) The term, with respect to liquor and malt or brewed
7 beverages, includes the sale of liquor by any Pennsylvania
8 liquor store to any person for any purpose, and the sale of
9 malt or brewed beverages by a manufacturer of malt or brewed
10 beverages, distributor or importing distributor to any person
11 for any purpose, except sales by a manufacturer of malt or
12 brewed beverages to a distributor or importing distributor or
13 sales by an importing distributor to a distributor within the
14 meaning of the act of April 12, 1951 (P.L.90, No.21), known
15 as the Liquor Code. The term does not include any sale of
16 malt or brewed beverages by a retail dispenser or any sale of
17 liquor or malt or brewed beverages by a person holding a
18 retail liquor license within the meaning of and pursuant to
19 the provisions of the Liquor Code, but shall include any sale
20 of liquor or malt or brewed beverages other than pursuant to
21 the provisions of the Liquor Code.

22 (11) The rendition for a consideration of lobbying
23 services.

24 (12) The rendition for a consideration of adjustment
25 services, collection services or credit reporting services.

26 (13) The rendition for a consideration of secretarial or
27 editing services.

28 (14) The rendition for a consideration of disinfecting
29 or pest control services, building maintenance or cleaning
30 services.

1 (15) The rendition for a consideration of employment
2 agency services or help supply services.

3 (16) (Reserved).

4 (17) The rendition for a consideration of lawn care
5 service.

6 (18) The rendition for a consideration of self-storage
7 service.

8 (19) The rendition for a consideration of a mobile
9 telecommunications service.

10 (20) Except as otherwise provided under section 704, the
11 rendition for a consideration of any service when the primary
12 objective of the purchaser is the receipt of any benefit of
13 the service performed, as distinguished from the receipt of
14 property. The following provisions shall apply:

15 (i) In determining what is a service, the intended
16 use or stated objective of the contracting parties shall
17 not necessarily be controlling.

18 (ii) Any service performed in this Commonwealth
19 shall be subject to the tax imposed under this chapter
20 unless specifically exempted in this chapter.

21 (iii) With respect to services performed in this
22 Commonwealth for a recipient or user of the services
23 located in another state in which the services, had they
24 been performed in that state, would not be subject to a
25 sales or use tax under the laws of that state, then no
26 tax may be imposed under this chapter.

27 (iv) The tax on the sale or use of services shall
28 become due at the time payment or other consideration is
29 made for the portion of services actually paid.

30 (1) "Storage." Any keeping or retention of tangible

1 personal property within this Commonwealth for any purpose
2 including the interim keeping, retaining or exercising any right
3 or power over such tangible personal property. This term is in
4 no way limited to the provision of self-storage service.

5 (m) "Tangible personal property." Corporeal personal
6 property including, but not limited to, goods, wares,
7 merchandise, steam and natural and manufactured and bottled gas
8 for non-residential use, electricity for non-residential use,
9 prepaid telecommunications, premium cable or premium video
10 programming service, spirituous or vinous liquor and malt or
11 brewed beverages and soft drinks, interstate telecommunications
12 service originating or terminating in this Commonwealth and
13 charged to a service address in this Commonwealth, intrastate
14 telecommunications service with the exception of:

15 (1) Subscriber line charges and basic local telephone
16 service for residential use.

17 (2) Charges for telephone calls paid for by inserting
18 money into a telephone accepting direct deposits of money to
19 operate, provided further, the service address of any
20 intrastate telecommunications service is deemed to be within
21 this Commonwealth or within a political subdivision,
22 regardless of how or where billed or paid.

23 In the case of any interstate or intrastate telecommunications
24 service, any charge paid through a credit or payment mechanism
25 which does not relate to a service address, such as a bank,
26 travel, credit or debit card, but not including prepaid
27 telecommunications, is deemed attributable to the address of
28 origination of the telecommunications service.

29 (n) "Taxpayer." Any person required to pay or collect the
30 tax imposed by this chapter.

1 (o) "Use."

2 (1) The exercise of any right or power incidental to the
3 ownership, custody or possession of tangible personal
4 property and includes, but is not limited to, transportation,
5 storage or consumption.

6 (2) The obtaining by a purchaser of the service of
7 printing or imprinting of tangible personal property when the
8 purchaser furnishes, either directly or indirectly, the
9 articles used in the printing or imprinting.

10 (3) The obtaining by a purchaser of the services of:

11 (i) washing, cleaning, waxing, polishing or
12 lubricating of motor vehicles regardless of whether any
13 tangible personal property is transferred to the
14 purchaser in conjunction with the services; and

15 (ii) inspecting motor vehicles pursuant to the
16 mandatory requirements of 75 Pa.C.S. (relating to
17 vehicles).

18 (4) The obtaining by a purchaser of the service of
19 repairing, altering, mending, pressing, fitting, dyeing,
20 laundering, drycleaning or cleaning tangible personal
21 property other than wearing apparel or shoes or applying or
22 installing tangible personal property as a repair or
23 replacement part of other tangible personal property,
24 including, but not limited to, wearing apparel or shoes,
25 regardless of whether the services are performed directly or
26 by any means other than by means of coin-operated self-
27 service laundry equipment for wearing apparel or household
28 goods, and regardless of whether any tangible personal
29 property is transferred to the purchaser in conjunction with
30 the activity. The term use does not include:

1 (A) Any tangible personal property acquired and
2 kept, retained or over which power is exercised
3 within this Commonwealth on which the taxing of the
4 storage, use or other consumption thereof is
5 expressly prohibited by the Constitution of the
6 United States or which is excluded from tax under
7 other provisions of this chapter.

8 (B) The use or consumption of tangible personal
9 property, including, but not limited to, machinery
10 and equipment and parts therefor, and supplies or the
11 obtaining of the services described in subclauses
12 (2), (3) and (4) of this clause directly in the
13 operations of:

14 (i) The manufacture of tangible personal property.

15 (ii) Farming, dairying, agriculture, horticulture or
16 floriculture when engaged in as a business enterprise.
17 The term includes the propagation and raising of ranch-
18 raised furbearing animals and the propagation of game
19 birds for commercial purposes by holders of propagation
20 permits issued under 34 Pa.C.S. (relating to game) and
21 the propagation and raising of horses to be used
22 exclusively for commercial racing activities.

23 (iii) The producing, delivering or rendering of a
24 public utility service, or in constructing,
25 reconstructing, remodeling, repairing or maintaining the
26 facilities which are directly used in producing,
27 delivering or rendering such service.

28 (iv) Processing as defined in subclause (d).

29 The exclusions provided in subparagraphs (i), (ii), (iii)
30 and (iv) do not apply to any vehicle required to be

1 registered under 75 Pa.C.S. (relating to vehicles) except
2 those vehicles directly used by a public utility engaged
3 in the business as a common carrier; to maintenance
4 facilities; or to materials, supplies or equipment to be
5 used or consumed in the construction, reconstruction,
6 remodeling, repair or maintenance of real estate other
7 than directly used machinery, equipment, parts or
8 foundations therefor that may be affixed to such real
9 estate. The exclusions provided in subparagraphs (i),
10 (ii), (iii) and this subparagraph do not apply to
11 tangible personal property or services to be used or
12 consumed in managerial sales or other nonoperational
13 activities, nor to the purchase or use of tangible
14 personal property or services by any person other than
15 the person directly using the same in the operations
16 described in subparagraphs (i), (ii), (iii) and this
17 subparagraph. The exclusion provided in subparagraph
18 (iii) does not apply to:

19 (A) construction materials, supplies or
20 equipment used to construct, reconstruct, remodel,
21 repair or maintain facilities not used directly by
22 the purchaser in the production, delivering or
23 rendition of public utility service; or

24 (B) tools and equipment used but not installed
25 in the maintenance of facilities used directly in the
26 production, delivering or rendition of a public
27 utility service.

28 The exclusion provided in subparagraphs (i), (ii), (iii)
29 and this subparagraph does not apply to the services
30 enumerated in clauses (9) through (16) and (w) through

(kk), except that the exclusion provided in subparagraph (ii) for farming, dairying and agriculture shall apply to the service enumerated in clause (z).

(5) Where tangible personal property or services are utilized for purposes constituting a use, and for purposes excluded from the definition of "use," it shall be presumed that the property or services are utilized for purposes constituting a sale at retail and subject to tax unless the user proves to the department that the predominant purposes for which the property or services are utilized do not constitute a sale at retail.

(6) The term, with respect to liquor and malt or brewed beverages, includes the purchase of liquor from any Pennsylvania Liquor Store by any person for any purpose and the purchase of malt or brewed beverages from a manufacturer of malt or brewed beverages, distributor or importing distributor by any person for any purpose, except purchases from a manufacturer of malt or brewed beverages by a distributor or importing distributor, or purchases from an importing distributor by a distributor within the meaning of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code. The term does not include any purchase of malt or brewed beverages from a retail dispenser or any purchase of liquor or malt or brewed beverages from a person holding a retail liquor license within the meaning of and pursuant to the provisions of the Liquor Code, but includes the exercise of any right or power incidental to the ownership, custody or possession of liquor or malt or brewed beverages obtained by the person exercising the right or power in any manner other than pursuant to the provisions of the Liquor Code.

1 (7) The use of tangible personal property purchased at
2 retail on which the services described in subclauses (2), (3)
3 and (4) of this clause have been performed shall be deemed to
4 be a use of said services by the person using the property.

5 (8) (Reserved).

6 (9) The obtaining by the purchaser of lobbying services.

7 (10) The obtaining by the purchaser of adjustment
8 services, collection services or credit reporting services.

9 (11) The obtaining by the purchaser of secretarial or
10 editing services.

11 (12) The obtaining by the purchaser of disinfecting or
12 pest control services, building maintenance or cleaning
13 services.

14 (13) The obtaining by the purchaser of employment agency
15 services or help supply services.

16 (14) (Reserved).

17 (15) The obtaining by the purchaser of lawn care
18 service.

19 (16) The obtaining by the purchaser of self-storage
20 service.

21 (17) The obtaining by a construction contractor of
22 tangible personal property or services provided to tangible
23 personal property which will be used pursuant to a
24 construction contract regardless of whether the tangible
25 personal property or services are transferred.

26 (18) The obtaining of mobile telecommunications service
27 by a customer.

28 (19) Except as otherwise provided under section 704, the
29 obtaining by the purchaser of any service, not otherwise set
30 forth in this definition, when the primary objective of the

1 purchaser is the receipt of any benefit of the service
2 performed, as distinguished from the receipt of property. The
3 following provisions shall apply:

4 (i) In determining what is a service, the intended
5 use or stated objective of the contracting parties shall
6 not necessarily be controlling.

7 (ii) Any service performed in this Commonwealth
8 shall be subject to the tax imposed under this chapter
9 unless specifically exempted in this chapter.

10 (iii) With respect to services performed in this
11 Commonwealth for a recipient or user of the services
12 located in another state in which the services, had they
13 been performed in that state, would not be subject to a
14 sales or use tax under the laws of that state, then no
15 tax may be imposed under this chapter.

16 (iv) The tax on the sale or use of services shall
17 become due at the time payment or other consideration is
18 made for the portion of services actually paid.

19 (p) "Vendor." Any person maintaining a place of business in
20 this Commonwealth, selling or leasing tangible personal
21 property, or rendering services, the sale or use of which is
22 subject to the tax imposed by this chapter but not including any
23 employee who in the ordinary scope of employment renders
24 services to his employer in exchange for wages and salaries.

25 (q) (Reserved).

26 (r) "Gratuity." Any amount paid or remitted for services
27 performed in conjunction with any sale of food or beverages, or
28 hotel or motel accommodations which amount is in excess of the
29 charges and the tax for such food, beverages or accommodations
30 regardless of the method of billing or payment.

1 (s) "Commercial aircraft operator." A person, excluding a
2 scheduled airline who engages in any or all of the following:
3 charter of aircraft, leasing of aircraft, aircraft sales,
4 aircraft rental, flight instruction, air freight or any other
5 flight activities for compensation.

6 (t) "Transient vendor."

7 (1) Any person who:

8 (i) brings into this Commonwealth, by automobile,
9 truck or other means of transportation, or purchases in
10 this Commonwealth tangible personal property the sale or
11 use of which is subject to the tax imposed by this
12 chapter or comes into this Commonwealth to perform
13 services the sale or use of which is subject to the tax
14 imposed by this chapter;

15 (ii) offers or intends to offer the tangible
16 personal property or services for sale at retail within
17 this Commonwealth; and

18 (iii) does not maintain an established office,
19 distribution house, saleshouse, warehouse, service
20 enterprise, residence from which business is conducted or
21 other place of business within this Commonwealth.

22 (2) The term does not include a person who delivers
23 tangible personal property within this Commonwealth pursuant
24 to orders for the property which were solicited or placed by
25 mail or other means.

26 (3) The term does not include a person who handcrafts
27 items for sale at special events, including, but not limited
28 to, fairs, carnivals, art and craft shows and other festivals
29 and celebrations within this Commonwealth.

30 (u) "Promoter." A person who either, directly or

1 indirectly, rents, leases or otherwise operates or grants
2 permission to any person to use space at a show for the display
3 for sale or for the sale of tangible personal property or
4 services subject to tax under section 702.

5 (v) "Show." An event, the primary purpose of which involves
6 the display or exhibition of any tangible personal property or
7 services for sale, including, but not limited to, a flea market,
8 antique show, coin show, stamp show, comic book show, hobby
9 show, automobile show, fair or any similar show, whether held
10 regularly or of a temporary nature, at which more than one
11 vendor displays for sale or sells tangible personal property or
12 services subject to tax under section 702.

13 (w) "Lobbying services." Providing the services of a
14 lobbyist, as defined in the definition of "lobbyist" in 65
15 Pa.C.S. Ch. 13 (relating to lobby regulation and disclosures).

16 (x) "Adjustment services, collection services or credit
17 reporting services." Providing collection or adjustments of
18 accounts receivable or mercantile or consumer credit reporting,
19 including, but not limited to, services of the type provided by
20 adjustment bureaus or collection agencies, consumer or
21 mercantile credit reporting bureaus, credit bureaus or agencies,
22 credit clearinghouses or credit investigation services. The term
23 does not include providing credit card service with collection
24 by a central agency, providing debt counseling or adjustment
25 services to individuals or billing or collection services
26 provided by local exchange telephone companies.

27 (y) "Secretarial or editing services." Providing services
28 which include, but are not limited to, editing, letter writing,
29 proofreading, resume writing, typing or word processing. The
30 term does not include court reporting and stenographic services.

1 (z) "Disinfecting or pest control services." Providing
2 disinfecting, termite control, insect control, rodent control or
3 other pest control services. The term includes, but is not
4 limited to, deodorant servicing of rest rooms, washroom
5 sanitation service, rest room cleaning service, extermination
6 service or fumigating service. As used in this clause, the term
7 "fumigating service" does not include the fumigation of
8 agricultural commodities or containers used for agricultural
9 commodities. As used in this clause, the term "insect control"
10 does not include the gypsy moth control spraying of trees which
11 are harvested for commercial purposes.

12 (aa) "Building maintenance or cleaning services." Providing
13 services which include, but are not limited to, janitorial, maid
14 or housekeeping service, office or interior building cleaning or
15 maintenance service, window cleaning service, floor waxing
16 service, lighting maintenance service such as bulb replacement,
17 cleaning, chimney cleaning service, acoustical tile cleaning
18 service, venetian blind cleaning, cleaning and maintenance of
19 telephone booths or cleaning and degreasing of service stations.
20 The term does not include: repairs on buildings and other
21 structures; the maintenance or repair of boilers, furnaces and
22 residential air conditioning equipment or their parts; the
23 painting, wallpapering or applying other like coverings to
24 interior walls, ceilings or floors; or the exterior painting of
25 buildings.

26 (bb) "Employment agency services." Providing employment
27 services to a prospective employer or employee other than
28 employment services provided by theatrical employment agencies
29 and motion picture casting bureaus. The term includes, but is
30 not limited to, services of the type provided by employment

1 agencies, executive placing services and labor contractor
2 employment agencies other than farm labor.

3 (cc) "Help supply services." Providing temporary or
4 continuing help where the help supplied is on the payroll of the
5 supplying person or entity, but is under the supervision of the
6 individual or business to which help is furnished. The term
7 includes, but is not limited to, service of a type provided by
8 labor and manpower pools, employee leasing services, office help
9 supply services, temporary help services, usher services,
10 modeling services or fashion show model supply services. The
11 term does not include: providing farm labor services or human
12 health-related services, including nursing, home health care and
13 personal care. As used in this clause, "personal care" shall
14 include providing at least one of the following types of
15 assistance to persons with limited ability for self-care:

16 (1) dressing, bathing or feeding;

17 (2) supervising self-administered medication;

18 (3) transferring a person to or from a bed or
19 wheelchair; or

20 (4) routine housekeeping chores when provided in
21 conjunction with and supplied by the same provider of the
22 assistance listed in subclause (1), (2) or (3).

23 (dd) (Reserved).

24 (ee) (Reserved).

25 (ff) (Reserved).

26 (gg) (Reserved).

27 (hh) (Reserved).

28 (ii) (Reserved).

29 (jj) "Lawn care service." Providing services for lawn
30 upkeep, including, but not limited to, fertilizing, lawn mowing,

1 shrubbery trimming or other lawn treatment services.

2 (kk) "Self-storage service." Providing a building, a room
3 in a building or a secured area within a building with separate
4 access provided for each purchaser of self-storage service,
5 primarily for the purpose of storing personal property. The term
6 does not include service involving:

7 (1) safe deposit boxes by financial institutions;

8 (2) storage in refrigerator or freezer units;

9 (3) storage in commercial warehouses;

10 (4) facilities for goods distribution; and

11 (5) lockers in airports, bus stations, museums and other
12 public places.

13 (ll) "Cable or video programming service." Cable television
14 services, video programming services, community antenna
15 television services or any other distribution of television,
16 video, audio or radio services which is transmitted with or
17 without the use of wires to purchasers.

18 If a purchaser receives or agrees to receive cable or video
19 programming service, then the following charges are included in
20 the purchase price: charges for installation or repair of any
21 cable or video programming service, upgrade to include
22 additional premium cable or premium video programming service,
23 downgrade to exclude all or some premium cable or premium video
24 programming service, additional cable outlets in excess of ten
25 or any other charge or fee related to cable or video programming
26 services. The term does not apply to: transmissions by public
27 television, public radio services or official Federal, State or
28 local government cable services; local origination programming
29 which provides a variety of public service programs unique to
30 the community, programming which provides coverage of public

1 affairs issues which are presented without commentary or
2 analysis, including United States Congressional proceedings, or
3 programming which is substantially related to religious
4 subjects; or subscriber charges for access to a video dial tone
5 system or charges by a common carrier to a video programmer for
6 the transport of video programming.

7 (mm) (Reserved).

8 (nn) "Construction contract." A written or oral contract or
9 agreement for the construction, reconstruction, remodeling,
10 renovation or repair of real estate or a real estate structure.
11 The term shall not apply to services which are taxable under
12 clauses (k) (14) and (17) and (o) (12) and (15).

13 (oo) "Construction contractor." A person who performs an
14 activity pursuant to a construction contract, including a
15 subcontractor.

16 (pp) "Building machinery and equipment." Generation
17 equipment, storage equipment, conditioning equipment,
18 distribution equipment and termination equipment, limited to the
19 following:

20 (1) air conditioning limited to heating, cooling,
21 purification, humidification, dehumidification and
22 ventilation;

23 (2) electrical;

24 (3) plumbing;

25 (4) communications limited to voice, video, data, sound,
26 master clock and noise abatement;

27 (5) alarms limited to fire, security and detection;

28 (6) control system limited to energy management, traffic
29 and parking lot and building access;

30 (7) medical system limited to diagnosis and treatment

1 equipment, medical gas, nurse call and doctor paging;

2 (8) laboratory system;

3 (9) cathodic protection system; or

4 (10) furniture, cabinetry and kitchen equipment.

5 The term includes boilers, chillers, air cleaners, humidifiers,
6 fans, switchgear, pumps, telephones, speakers, horns, motion
7 detectors, dampers, actuators, grills, registers, traffic
8 signals, sensors, card access devices, guardrails, medial
9 devices, floor troughs and grates and laundry equipment,
10 together with integral coverings and enclosures, regardless of
11 whether: the item constitutes a fixture or is otherwise affixed
12 to the real estate; damage would be done to the item or its
13 surroundings on removal; or the item is physically located
14 within a real estate structure. The term does not include
15 guardrail posts, pipes, fittings, pipe supports and hangers,
16 valves, underground tanks, wire, conduit, receptacle and
17 junction boxes, insulation, ductwork and coverings.

18 (qq) "Real estate structure." A structure or item purchased
19 by a construction contractor pursuant to a construction contract
20 with:

21 (1) a charitable organization, a volunteer firemen's
22 organization, a nonprofit educational institution or a
23 religious organization for religious purposes and which
24 qualifies as an institution of purely public charity under
25 the act of November 26, 1997 (P.L.508, No.55), known as the
26 Institutions of Purely Public Charity Act;

27 (2) the United States; or

28 (3) the Commonwealth, its instrumentalities or political
29 subdivisions.

30 The term includes building machinery and equipment; developed or

1 undeveloped land; streets; roads; highways; parking lots;
2 stadiums and stadium seating; recreational courts; sidewalks;
3 foundations; structural supports; walls; floors; ceilings;
4 roofs; doors; canopies; millwork; elevators; windows and
5 external window coverings; outdoor advertising boards or signs;
6 airport runways; bridges; dams; dikes; traffic control devices,
7 including traffic signs; satellite dishes; antennas; guardrail
8 posts; pipes; fittings; pipe supports and hangers; valves;
9 underground tanks; wire; conduit; receptacle and junction boxes;
10 insulation; ductwork and coverings; and any structure or item
11 similar to any of the foregoing, regardless of whether the
12 structure or item constitutes a fixture or is affixed to the
13 real estate; or damage would be done to the structure or item or
14 its surroundings on removal.

15 (rr) "Telecommunications service." Any one-way transmission
16 or any two-way, interactive transmission of sounds, signals or
17 other intelligence converted to like form which effects or is
18 intended to effect meaningful communications by electronic or
19 electromagnetic means via wire, cable, satellite, light waves,
20 microwaves, radio waves or other transmission media. The term
21 includes all types of telecommunication transmissions, local,
22 toll, wide-area or any other type of telephone service; private
23 line service; telegraph service; radio repeater service;
24 wireless communication service; personal communications system
25 service; cellular telecommunication service; specialized mobile
26 radio service; stationary two-way radio service; and paging
27 service. The term does not include any of the following:

28 (1) Subscriber charges for access to a video dial tone
29 system.

30 (2) Charges to video programmers for the transport of

1 video programming.

2 (3) Charges for access to the Internet. Access to the
3 Internet does not include any of the following:

4 (i) The transport over the Internet or any
5 proprietary network using the Internet protocol of
6 telephone calls, facsimile transmissions or other
7 telecommunications traffic to or from end users on the
8 public switched telephone network if the signal sent from
9 or received by an end user is not in an Internet
10 protocol.

11 (ii) Telecommunication services purchased by an
12 Internet service provider to deliver access to the
13 Internet to its customers.

14 (4) Mobile telecommunications services.

15 (ss) "Internet." The international nonproprietary computer
16 network of both Federal and non-Federal interoperable packet
17 switched data networks.

18 (tt) "Commercial racing activities." Any of the following:

19 (1) Thoroughbred and harness racing at which pari-mutuel
20 wagering is conducted under the act of December 17, 1981
21 (P.L.435, No.135), known as the Race Horse Industry Reform
22 Act.

23 (2) Fair racing sanctioned by the State Harness Racing
24 Commission.

25 (uu) "Prepaid telecommunications." A tangible item
26 containing a prepaid authorization number that can be used
27 solely to obtain telecommunications service, including any
28 renewal or increases in the prepaid amount.

29 (vv) "Prebuilt housing." Either of the following:

30 (1) Manufactured housing, including mobile homes, which

bears a label as required by and referred to in the act of November 17, 1982 (P.L.676, No.192), known as the Manufactured Housing Construction and Safety Standards Authorization Act.

(2) Industrialized housing as defined in the act of May 11, 1972 (P.L.286, No.70), known as the Industrialized Housing Act.

(ww) "Used prebuilt housing." Prebuilt housing that was previously subject to a sale to a prebuilt housing purchaser.

(xx) "Prebuilt housing builder." A person who makes a prebuilt housing sale to a prebuilt housing purchaser.

(yy) "Prebuilt housing sale." A sale of prebuilt housing to a prebuilt housing purchaser, including a sale to a landlord, without regard to whether the person making the sale is responsible for installing the prebuilt housing or whether the prebuilt housing becomes a real estate structure upon installation. Temporary installation by a prebuilt housing builder for display purposes of a unit held for resale shall not be considered occupancy for residential purposes.

(zz) "Prebuilt housing purchaser." A person who purchases prebuilt housing in a transaction and who intends to occupy the unit for residential purposes in this Commonwealth.

(aaa) "Mobile telecommunications service." Mobile telecommunications service as that term is defined in the Mobile Telecommunications Sourcing Act (Public Law 106-252, 4 U.S.C. § 116 et seq.).

(bbb) "Fiscal Code." The act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

(ccc) "Prepaid mobile telecommunications service." Mobile telecommunications service which is paid for in advance and

1 which enables the origination of calls using an access number,
2 authorization code or both, regardless of whether manually or
3 electronically dialed, if the remaining amount of units of the
4 prepaid mobile telecommunications service is known by the
5 service provider of the prepaid mobile telecommunications
6 service on a continuous basis. The term does not include the
7 advance purchase of mobile telecommunications service if the
8 purchase is pursuant to a service contract between the service
9 provider and customer and if the service contract requires the
10 customer to make periodic payments to maintain the mobile
11 telecommunications service.

12 (ddd) "Call center." The physical location in this
13 Commonwealth:

- 14 (1) where at least 150 employees are employed to
15 initiate or answer telephone calls;
- 16 (2) where there are at least 200 telephone lines; and
- 17 (3) which utilizes an automated call distribution system
18 for customer telephone calls in one or more of the following
19 activities:
 - 20 (i) customer service and support;
 - 21 (ii) technical assistance;
 - 22 (iii) help desk service;
 - 23 (iv) providing information;
 - 24 (v) conducting surveys;
 - 25 (vi) revenue collections; or
 - 26 (vii) receiving orders or reservations.

27 For purposes of this clause, a physical location may include
28 multiple buildings utilized by a taxpayer located within this
29 Commonwealth. Transactions for which purchase agreements are
30 executed after June 30, ????.

1 (eee) "Dental services." The general and usual services
2 rendered and care administered by doctors of dental medicine or
3 doctors of dental surgery, as defined in the act of May 1, 1933
4 (P.L.216, No.76), known as The Dental Law.

5 (fff) "Physician services." The general and usual services
6 rendered and care administered by medical doctors, as defined in
7 the act of December 20, 1985 (P.L.457, No.112), known as the
8 Medical Practice Act of 1985, or doctors of osteopathy, as
9 defined in the act of October 5, 1978 (P.L.1109, No.261), known
10 as the Osteopathic Medical Practice Act.

11 (ggg) "Clothing." All vesture, wearing apparel, raiments,
12 garments, footwear and other articles of clothing, including
13 clothing patterns and items that are to be a component part of
14 clothing, worn or carried on or about the human body including,
15 but not limited to, all accessories, ornamental wear, formal day
16 or evening apparel and articles made of fur on the hide or pelt
17 or any material imitative of fur and articles of which such fur,
18 real, imitation or synthetic, is the component material of chief
19 value and sporting goods and clothing not normally used or worn
20 when not engaged in sports.

21 (hhh) "Food and beverages." All food and beverages for
22 human consumption, including, but not limited to:

23 (1) Soft drinks.

24 (2) Malt and brewed beverages and spiritous and vinous
25 liquors.

26 (3) Food or beverages, whether sold for consumption on
27 or off the premises of on a take-out or to go basis or
28 delivered to the purchaser or consumer, when purchased:

29 (i) from persons engaged in the business of
30 catering; or

(ii) from persons engaged in the business of operating establishments from which ready-to-eat food and beverages are sold, including, but not limited to, restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels, night clubs, fast food operations, pizzerias, fairs, carnivals, lunch carts, ice cream stands, snack bars, cafeterias, employee cafeterias, theaters, stadiums, arenas, amusement parks, carryout shops, coffee shops and other establishments whether mobile or immobile.

For purposes of this clause, a bakery, a pastry shop, a donut shop, a delicatessen, a grocery store, a supermarket, a farmer's market, a convenience store or a vending machine shall not be considered an establishment from which food or beverages ready to eat are sold except for the sale of meals, sandwiches, food from salad bars, hand-dipped or hand-served ice-based products including ice cream and yogurt, hot soup, hot pizza and other hot food items, brewed coffee and hot beverages. For purposes of this subclause, beverages shall not include malt and brewed beverages and spiritous and vinous liquors but shall include soft drinks.

SUBCHAPTER B

SALES AND USE TAX

Section 702. Imposition of tax.

(a) Tax on certain sales at retail and uses of tangible personal property and services.--

(1) There is hereby imposed on each separate sale at retail of tangible personal property or services in this Commonwealth a tax of 7% of the purchase price, which tax shall be collected by the vendor from the purchaser, and

1 shall be paid over to the Commonwealth as provided in this
2 chapter.

3 (2) There is hereby imposed on the use in this
4 Commonwealth of tangible personal property purchased at
5 retail and on those services purchased at retail a tax of 7%
6 of the purchase price, which tax shall be paid to the
7 Commonwealth by the person who makes such use as provided
8 under this chapter, except that the tax shall not be paid to
9 the Commonwealth by the person where the person has paid the
10 tax imposed by paragraph (1) or has paid the tax imposed by
11 this subsection to the vendor with respect to the use.

12 (b) (Reserved).

13 (c) Telecommunications service.--

14 (1) Notwithstanding any other provisions of this
15 chapter, the tax with respect to telecommunications service
16 within the meaning of "tangible personal property" in section
17 701 shall be computed at the rate of 7% on the total amount
18 charged to customers for the services, irrespective of
19 whether such charge is based on a flat rate or on a message
20 unit charge.

21 (2) A telecommunications service provider shall have no
22 responsibility or liability to the Commonwealth for billing,
23 collecting or remitting taxes that apply to services,
24 products or other commerce sold over telecommunications lines
25 by third-party vendors.

26 (3) To prevent actual multistate taxation of interstate
27 telecommunications service, any taxpayer, on proof that the
28 taxpayer has paid a similar tax to another state on the same
29 interstate telecommunications service, shall be allowed a
30 credit against the tax imposed by this section on the same

interstate telecommunications service to the extent of the amount of the tax properly due and paid to the other state.

(d) Coin-operated vending machines.--Notwithstanding any other provisions of this chapter, the sale or use of food and beverages dispensed by means of coin-operated vending machines shall be taxed at the rate of 7% of the receipts collected from any coin-operated vending machine which dispenses food and beverages that were previously taxable.

(e) Prepaid telecommunications.--

(1) Notwithstanding any provisions of this chapter, the sale or use of prepaid telecommunications evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsection (a).

(2) The sale or use of prepaid telecommunications not evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsection (a) and shall be deemed to occur at the purchaser's billing address.

(3) (i) Notwithstanding paragraph (2), the sale or use of prepaid telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of 7% of the receipts collected on each sale if the service provider elects to collect the tax imposed by this chapter on receipts of each sale.

(ii) The service provider shall notify the department of its election and shall collect the tax on receipts of each sale until the service provider notifies the department otherwise.

(e.1) Prepaid mobile telecommunications service.--

(1) Notwithstanding any other provision of this chapter, the sale or use of prepaid mobile telecommunications service

1 evidenced by the transfer of tangible personal property shall
2 be subject to the tax imposed by subsection (a).

3 (2) The sale or use of prepaid mobile telecommunications
4 service not evidenced by the transfer of tangible personal
5 property shall be subject to the tax imposed by subsection
6 (a) and shall be deemed to occur at the purchaser's billing
7 address or the location associated with the mobile telephone
8 number or the point of sale, whichever is applicable.

9 (3) (i) Notwithstanding paragraph (2), the sale or use
10 of prepaid mobile telecommunications service not
11 evidenced by the transfer of tangible personal property
12 shall be taxed at the rate of 7% of the receipts
13 collected on each sale if the service provider elects to
14 collect the tax imposed by this chapter on receipts of
15 each sale.

16 (ii) The service provider shall notify the
17 department of its election and shall collect the tax on
18 receipts of each sale until the service provider notifies
19 the department otherwise.

20 (f) Prebuilt housing.--

21 (1) Notwithstanding any other provision of this chapter,
22 tax with respect to sales of prebuilt housing shall be
23 imposed on the prebuilt housing builder at the time of the
24 prebuilt housing sale within this Commonwealth and shall be
25 paid and reported by the prebuilt housing builder to the
26 department in the time and manner provided in this chapter.

27 (2) A manufacturer of prebuilt housing may, at its
28 option, precollect the tax from the prebuilt housing builder
29 at the time of sale to the prebuilt housing builder.

30 (3) In any case where prebuilt housing is purchased and

1 the tax is not paid by the prebuilt housing builder or
2 precollected by the manufacturer, the prebuilt housing
3 purchaser shall remit tax directly to the department if the
4 prebuilt housing is used in this Commonwealth without regard
5 to whether the prebuilt housing becomes a real estate
6 structure.

7 (g) Home service providers.--

8 (1) Notwithstanding any other provisions of this chapter
9 and in accordance with the Mobile Telecommunications Sourcing
10 Act (Public Law 106-252, 4 U.S.C. § 116 et seq.), the sale or
11 use of mobile telecommunications services which are deemed to
12 be provided to a customer by a home service provider under 4
13 U.S.C. § 117 (relating to sourcing rules) shall be subject to
14 the tax of 7% of the purchase price, which tax shall be
15 collected by the home service provider from the customer, and
16 shall be paid over to the Commonwealth as provided in this
17 chapter if the customer's place of primary use is located
18 within this Commonwealth, regardless of where the mobile
19 telecommunications services originate, terminate or pass
20 through.

21 (2) For purposes of this subsection, words and phrases
22 used in this subsection shall have the same meanings given to
23 them in the Mobile Telecommunications Sourcing Act.

24 Section 703. Computation of tax.

25 (a) Table to be published.--Within 60 days of the effective
26 date of this section, the department shall prepare and publish
27 as a notice in the Pennsylvania Bulletin a table setting forth
28 the amount of tax imposed under section 702 for purchase prices
29 that are less than \$1.

30 (b) Deposit into Education Stabilization Fund.--The tax

collected under section 702 shall be deposited into the
Education Stabilization Fund.

SUBCHAPTER C

EXCLUSIONS FROM SALES AND USE TAX

Section 704. Exclusions from tax.

The tax imposed by section 702 shall not be imposed upon any
of the following:

(1) The sale at retail or use of tangible personal
property (other than motor vehicles, trailers, semi-trailers,
motor boats, aircraft or other similar tangible personal
property required under either Federal law or laws of this
Commonwealth to be registered or licensed) or services sold
by or purchased from a person not a vendor in an isolated
transaction or sold by or purchased from a person who is a
vendor but is not a vendor with respect to the tangible
personal property or services sold or purchased in such
transaction, provided that inventory and stock in trade so
sold or purchased shall not be excluded from the tax by the
provisions of this subsection.

(2) The use of tangible personal property purchased by a
nonresident person outside of, and brought into this
Commonwealth for use therein for a period not to exceed seven
days, or for any period of time when such nonresident is a
tourist or vacationer and, in either case not consumed within
the Commonwealth.

(3) (i) The use of tangible personal property purchased
outside this Commonwealth for use outside this
Commonwealth by a then nonresident natural person or a
business entity not actually doing business within this
Commonwealth, who later brings the tangible personal

1 property into this Commonwealth in connection with the
2 person's or entity's establishment of a permanent
3 business or residence in this Commonwealth, provided that
4 the property was purchased more than six months prior to
5 the date it was first brought into this Commonwealth or
6 prior to the establishment of the business or residence,
7 whichever first occurs.

8 (ii) This paragraph shall not apply to tangible
9 personal property temporarily brought into this
10 Commonwealth for the performance of contracts for the
11 construction, reconstruction, remodeling, repairing and
12 maintenance of real estate.

13 (4) (Reserved).

14 (5) The sale at retail or use of steam, natural and
15 manufactured and bottled gas, fuel oil, electricity or
16 intrastate subscriber line charges, basic local telephone
17 service or telegraph service when purchased directly by the
18 user solely for the user's own residential use and charges
19 for telephone calls paid for by inserting money into a
20 telephone accepting direct deposits of money to operate.

21 (6) (Reserved).

22 (7) (Reserved).

23 (8) (Reserved).

24 (9) (Reserved).

25 (10) (i) The sale at retail to or use by any charitable
26 organization, volunteer firefighters' organization or
27 nonprofit educational institution or a religious
28 organization for religious purposes of tangible personal
29 property or services other than pursuant to a
30 construction contract.

1 (ii) This paragraph shall not apply with respect to
2 any tangible personal property or services used in any
3 unrelated trade or business carried on by the
4 organization or institution or with respect to any
5 materials, supplies and equipment used and transferred to
6 the organization or institution in the construction,
7 reconstruction, remodeling, renovation, repairs and
8 maintenance of any real estate structure, other than
9 building machinery and equipment, except materials and
10 supplies when purchased by the organization or
11 institution for routine maintenance and repairs.

12 (11) The sale at retail, or use of gasoline and other
13 motor fuels, the sales of which are otherwise subject to
14 excise taxes under 75 Pa.C.S. Ch. 90 (relating to liquid
15 fuels and fuels tax).

16 (12) (i) The sale at retail to, or use by the United
17 States, this Commonwealth or its instrumentalities or
18 political subdivisions, nonpublic schools, charter
19 schools, cyber charter schools or vocational schools of
20 tangible personal property or services.

21 (ii) This paragraph includes the sale at retail to a
22 supervisor of a home education program of tangible
23 personal property or services used exclusively for the
24 home education program.

25 (iii) As used in this paragraph, the terms
26 "nonpublic school," "charter school," "cyber charter
27 school," "vocational school," "supervisor" and "home
28 education program" shall have the meanings given to them
29 in the Public School Code of 1949.

30 (13) The sale at retail, or use of wrapping paper,

1 wrapping twine, bags, cartons, tape, rope, labels,
2 nonreturnable containers and all other wrapping supplies,
3 when such use is incidental to the delivery of any personal
4 property, except that any charge for wrapping or packaging
5 shall be subject to tax at the rate imposed by section 702.

6 (14) Sale at retail or use of vessels designed for
7 commercial use of registered tonnage of 50 tons or more when
8 produced by the builders thereof upon special order of the
9 purchaser.

10 (15) Sale at retail of tangible personal property or
11 services used or consumed in building, rebuilding, repairing
12 and making additions to or replacements in and upon vessels
13 designed for commercial use of registered tonnage of 50 tons
14 or more upon special order of the purchaser, or when rebuilt,
15 repaired or enlarged, or when replacements are made upon
16 order of or for the account of the owner.

17 (16) The sale at retail or use of tangible personal
18 property or services to be used or consumed for ship cleaning
19 or maintenance or as fuel, supplies, ships' equipment, ships'
20 stores or sea stores on vessels designed for commercial use
21 of registered tonnage of 50 tons or more to be operated
22 principally outside the limits of this Commonwealth.

23 (17) The sale at retail or use of prescription
24 medicines, drugs or medical supplies, crutches and
25 wheelchairs for the use of persons with disabilities and
26 invalids, artificial limbs, artificial eyes and artificial
27 hearing devices when designed to be worn on the person of the
28 purchaser or user, false teeth and materials used by a
29 dentist in dental treatment, eyeglasses when especially
30 designed or prescribed by an ophthalmologist, oculist or

1 optometrist for the personal use of the owner or purchaser
2 and artificial braces and supports designed solely for the
3 use of persons with disabilities or any other therapeutic,
4 prosthetic or artificial device designed for the use of a
5 particular individual to correct or alleviate a physical
6 incapacity, including, but not limited to, hospital beds,
7 iron lungs and kidney machines.

8 (18) The sale at retail or use of coal.

9 (19) (Reserved).

10 (20) (Reserved).

11 (21) (Reserved).

12 (22) (Reserved).

13 (23) (Reserved).

14 (24) The sale at retail or use of motor vehicles,
15 trailers and semitrailers, or bodies attached to the chassis
16 thereof, sold to a nonresident of this Commonwealth to be
17 used outside this Commonwealth and which are registered in a
18 state other than this Commonwealth within 20 days after
19 delivery to the vendee.

20 (25) The sale at retail or use of water.

21 (26) The sale at retail or use of all vesture, wearing
22 apparel, raiments, garments, footwear and other articles of
23 clothing with a purchase price of less than \$50, including
24 clothing patterns and items that are to be a component part
25 of clothing, worn or carried on or about the human body but
26 all accessories, ornamental wear, formal day or evening
27 apparel and articles made of fur on the hide or pelt or any
28 material imitative of fur and articles of which such fur,
29 real, imitation or synthetic, is the component material of
30 chief value, but only if such value is more than three times

1 the value of the next most valuable component material, and
2 sporting goods and clothing not normally used or worn when
3 not engaged in sports shall not be excluded from the tax.

4 (27) (Reserved).

5 (28) (Reserved).

6 (29) The sale at retail or use of food and beverages
7 that are federally approved items for the Women, Infants and
8 Children Program under section 17 of the Child Nutrition Act
9 of 1966 (Public Law 89-642, 42 U.S.C. § 1786).

10 (30) (i) The sale at retail or use of any printed or
11 other form of advertising materials regardless of where
12 or by whom the advertising material was produced.

13 (ii) This paragraph shall not include the sale at
14 retail or use of mail order catalogs and direct mail
15 advertising literature or materials, including electoral
16 literature or materials, such as envelopes, address
17 labels and a one-time license to use a list of names and
18 mailing addresses for each delivery of direct mail
19 advertising literature or materials, including electoral
20 literature or materials, through the United States Postal
21 Service.

22 (31) (Reserved).

23 (32) (Reserved).

24 (33) (Reserved).

25 (34) (Reserved).

26 (35) (Reserved).

27 (36) The sale at retail or use of rail transportation
28 equipment used in the movement of personalty.

29 (37) (Reserved).

30 (38) (Reserved).

1 (39) The sale at retail or use of fish feed purchased by
2 or on behalf of sportsmen's clubs, fish cooperatives or
3 nurseries approved by the Pennsylvania Fish Commission.

4 (40) The sale at retail of supplies and materials to
5 tourist promotion agencies, which receive grants from the
6 Commonwealth, for distribution to the public as promotional
7 material or the use of such supplies and materials by said
8 agencies for said purposes.

9 (41) (Reserved).

10 (42) The sale or use of brook trout (*salvelinus*
11 *fontinalis*), brown trout (*Salmo trutta*) or rainbow trout
12 (*Salmo gairdneri*).

13 (43) The sale at retail or use of buses to be used
14 exclusively for the transportation of children for school
15 purposes.

16 (44) The sale at retail or use of firewood.

17 (45) (Reserved).

18 (46) The sale at retail or use of tangible personal
19 property purchased in accordance with the Food Stamp Act of
20 1977, as amended (Public Law 95-113, 7 U.S.C. §§ 2011-2029).

21 (47) (Reserved).

22 (48) (Reserved).

23 (49) (i) The sale at retail or use of food and
24 beverages by nonprofit associations which support sports
25 programs.

26 (ii) The following words and phrases when used in
27 this paragraph shall have the meanings given to them in
28 this subparagraph unless the context clearly indicates
29 otherwise:

30 "Nonprofit association." An entity which is

1 organized as a nonprofit corporation or nonprofit
2 unincorporated association under the laws of this
3 Commonwealth or the United States or any entity which is
4 authorized to do business in this Commonwealth as a
5 nonprofit corporation or unincorporated association under
6 the laws of this Commonwealth, including, but not limited
7 to, youth or athletic associations, volunteer fire,
8 ambulance, religious, charitable, fraternal, veterans,
9 civic, or any separately chartered auxiliary of the
10 foregoing, if organized and operated on a nonprofit
11 basis.

12 "Sports program." Baseball, softball, football,
13 basketball, soccer and any other competitive sport
14 formally recognized as a sport by the United States
15 Olympic Committee as specified by and under the
16 jurisdiction of the Amateur Sports Act of 1978 (Public
17 Law 95-606, 36 U.S.C. Ch. 2205), the Amateur Athletic
18 Union or the National Collegiate Athletic Association.
19 The term shall be limited to a program or that portion of
20 a program that is organized for recreational purposes and
21 whose activities are substantially for such purposes and
22 which is primarily for participants who are 18 years of
23 age or younger or whose 19th birthday occurs during the
24 year of participation or the competitive season,
25 whichever is longer. There shall, however, be no age
26 limitation for programs operated for persons with
27 physical handicaps or persons with mental retardation.

28 "Support." The funds raised from sales are used to
29 pay the expenses of a sports program or the nonprofit
30 association sells the food and beverages at a location

1 where a sports program is being conducted under this
2 chapter or the Tax Reform Code of 1971.

3 (50) (Reserved).

4 (51) The sale at retail or use of interior office
5 building cleaning services but only as relates to the costs
6 of the supplied employee, which costs are wages, salaries,
7 bonuses and commissions, employment benefits, expense
8 reimbursements and payroll and withholding taxes, to the
9 extent that these costs are specifically itemized or that
10 these costs in aggregate are stated in billings from the
11 vendor or supplying entity.

12 (52) (Reserved).

13 (53) (Reserved).

14 (54) (Reserved).

15 (55) (Reserved).

16 (56) The sale at retail or use of tangible personal
17 property or services used, transferred or consumed in
18 installing or repairing equipment or devices designed to
19 assist persons in ascending or descending a stairway when:

20 (i) The equipment or devices are used by a person
21 who, by virtue of a physical disability, is unable to
22 ascend or descend stairs without the aid of such
23 equipment or device.

24 (ii) The equipment or device is installed or used in
25 the person's place of residence.

26 (iii) A physician has certified the physical
27 disability of the person in whose residence the equipment
28 or device is installed or used.

29 (57) The sale at retail to or use by a construction
30 contractor of building machinery and equipment and services

1 thereto that are:

2 (i) transferred pursuant to a construction contract
3 for any charitable organization, volunteer firemen's
4 organization, nonprofit educational institution or
5 religious organization for religious purposes, provided
6 that the building machinery and equipment and services
7 thereto are not used in any unrelated trade or business;
8 or

9 (ii) transferred to the United States or the
10 Commonwealth or its instrumentalities or political
11 subdivisions.

12 (58) (Reserved).

13 (59) The sale at retail or use of molds and related mold
14 equipment used directly and predominantly in the manufacture
15 of products, regardless of whether the person that holds
16 title to the equipment manufactures a product.

17 (60) (Reserved).

18 (61) (Reserved).

19 (62) The sale at retail or use of tangible personal
20 property or services which are directly used in farming,
21 dairying or agriculture when engaged in as a business
22 enterprise, regardless of whether the sale is made to the
23 person directly engaged in the business enterprise or to a
24 person contracting with the person directly engaged in the
25 business enterprise for the production of food.

26 (63) (Reserved).

27 (64) The sale at retail to or use by a construction
28 contractor, employed by a public school district pursuant to
29 a construction contract, of any materials and building
30 supplies which, during construction or reconstruction, are

1 made part of any public school building utilized for
2 instructional classroom education within this Commonwealth,
3 if the construction or reconstruction:

4 (i) is necessitated by a disaster emergency, as
5 defined in 35 Pa.C.S. § 7102 (relating to definitions);
6 and

7 (ii) takes place during the period when there is a
8 declaration of disaster emergency under 35 Pa.C.S. §
9 7301(c) (relating to general authority of Governor).

10 (65) (Reserved).

11 (66) The sale at retail or use of copies of an official
12 document sold by a government agency or a court. For the
13 purposes of this paragraph, the following terms or phrases
14 shall have the following meanings:

15 (i) "court" includes:

16 (A) an appellate court as defined in 42 Pa.C.S.
17 § 102 (relating to definitions);

18 (B) A court of common pleas as defined in 42
19 Pa.C.S. § 102; or

20 (C) the minor judiciary as defined in 42 Pa.C.S.
21 § 102;

22 (ii) "government agency" means an agency as defined
23 in section 102 of the act of February 14, 2008 (P.L.6,
24 No.3), known as the Right-to-Know Law; and

25 (iii) "official document" means a record as defined
26 in section 102 of the Right-to-Know Law. The term shall
27 include notes of court testimony, deposition transcripts,
28 driving records, accident reports, birth and death
29 certificates, deeds, divorce decrees and other similar
30 documents.

1 (67) The sale at retail or use of repair or replacement
2 parts, including the installation of those parts, exclusively
3 for use in helicopters and similar rotorcraft or in
4 overhauling or rebuilding of helicopters and similar
5 rotorcraft or helicopters and similar rotorcraft components.

6 (68) The sale at retail or use of helicopters and
7 similar rotorcraft.

8 (69) The sale at retail or use of goods or services that
9 are part of a Medicare Part B transaction.

10 (70) The sale at retail or use of transportation of
11 persons provided or funded by the Federal, State or local
12 government.

13 (71) The sale at retail of insurance premiums.

14 (72) The sale at retail, between an owner of real
15 property and a financial institution, of a mortgage.

16 (73) An investment or gain on an investment, including,
17 but not limited to, bank deposits, stocks and bonds,
18 including any commissions, maintenance costs and other
19 charges, which commissions, maintenance costs and other
20 charges related to the making of such investment or a gain
21 thereon.

22 (74) The rental of real property.

23 (75) The sale at retail of tuition.

24 (76) The sale at retail of any of the following
25 business, professional or technical services performed by a
26 business and rendered to another business:

27 (i) Legal services.

28 (ii) Architectural, engineering and related
29 services.

30 (iii) Accounting, auditing and bookkeeping services.

- (iv) Specialized design services.
- (v) Advertising, public relations and related services.
- (vi) Services to building and dwellings.
- (vii) Scientific, environmental and technical consulting services.
- (viii) Scientific research and development services.
- (ix) Information services.
- (x) Administrative services.
- (xi) Custom programming, design and data processing services.
- (xii) Parking lot and garage services.

(77) The sale at retail of legal services relating to domestic relations matters or criminal matters.

(78) The sale at retail of services rendered as part of a transfer of an interest in real property.

(79) The sale at retail to or use by a person of legal services rendered by an attorney where the payment is made pursuant to a contingency fee based upon a percentage of the amount recovered with respect to a legal claim or dispute.

(80) The sale at retail to or use by a person of the services rendered by or under the supervision of a licensed real estate broker, associate broker or salesperson in connection with any aspect of the sale, lease or acquisition of any interest in real property.

(81) The sale at retail, or the use of motion picture film rented or licensed from a distributor for the purpose of commercial exhibition.

(82) The sale at retail or use of services performed by minors under 18 years of age and not on behalf of another

1 person.

2 (83) The sale at retail or use of services performed by
3 any person to the extent that the recipient or user of such
4 services receives those services free of charge.

5 (84) The sale at retail or use of services provided by
6 employees to their employers in exchange for wages and
7 salaries when such services are rendered in the ordinary
8 course of employment.

9 (85) The sale at retail or use of services performed for
10 resale in the ordinary course of business of the purchaser or
11 user of such services.

12 (86) The sale at retail or use of services that are
13 otherwise taxable that are an integral, inseparable part of
14 the services that are to be sold or used and that are
15 taxable.

16 (87) Telecommunication services performed in this
17 Commonwealth.

18 (88) The sale at retail of medical goods or services by
19 a hospital, as defined in the act of December 20, 1985
20 (P.L.457, No.112), known as the Medical Practice Act of 1985.

21 (89) The sale at retail of medical or dental services,
22 including charges for office visits.

23 Section 705. Alternate imposition of tax.

24 (a) General rule.--If any person actively and principally
25 engaged in the business of selling new or used motor vehicles,
26 trailers or semitrailers, and registered with the department in
27 the "dealer's class," acquires a motor vehicle, trailer or
28 semitrailer for the purpose of resale, and prior to such resale,
29 uses the motor vehicle, trailer or semitrailer for a taxable use
30 under this chapter or the Tax Reform Code of 1971, the person

1 may pay a tax equal to 7% of the fair rental value of the motor
2 vehicle, trailer or semitrailer during use.

3 (b) Aircraft.--A commercial aircraft operator who acquires
4 an aircraft for the purpose of resale, or lease, or is entitled
5 to claim another valid exemption at the time of purchase, and
6 subsequent to the purchase, periodically uses the same aircraft
7 for a taxable use under this chapter or the Tax Reform Code of
8 1971, may elect to pay a tax equal to 7% of the fair rental
9 value of the aircraft during such use.

10 (c) Applicability.--This section shall not apply to the use
11 of a vehicle as a wrecker, parts truck, delivery truck or
12 courtesy car.

13 Section 706. Credit against tax.

14 (a) Tax paid to another state.--

15 (1) A credit against the tax imposed by section 702
16 shall be granted with respect to tangible personal property
17 or services purchased for use outside the Commonwealth equal
18 to the tax paid to another state by reason of the imposition
19 by the other state of a tax similar to the tax imposed by
20 this chapter.

21 (2) No credit under paragraph (1) shall be granted
22 unless the other state grants substantially similar tax
23 relief by reason of the payment of tax under this chapter or
24 under the Tax Reform Code of 1971.

25 (b) Telecommunications services.--A credit against the tax
26 imposed by section 702 on telecommunications services shall be
27 granted to a call center for gross receipts tax paid by a
28 telephone company on the receipts derived from the sale of
29 incoming and outgoing interstate telecommunications services to
30 the call center under section 1101(a)(2) of the Tax Reform Code

1 of 1971. The following apply:

2 (1) A telephone company, on request, shall notify a call
3 center of the amount of gross receipts tax paid by the
4 telephone company on the receipts derived from the sale of
5 incoming and outgoing interstate telecommunications services
6 to the call center.

7 (2) A call center that is eligible for the credit in
8 this subsection may apply for a tax credit as set forth in
9 this subsection.

10 (3) By February 15, a taxpayer must submit an
11 application to the department for gross receipts tax paid on
12 the receipts derived from the sale of incoming and outgoing
13 interstate telecommunications services incurred in the prior
14 calendar year.

15 (4) By April 15 of the calendar year following the close
16 of the calendar year during which the gross receipts tax was
17 incurred, the department shall notify the applicant of the
18 amount of the applicant's tax credit approved by the
19 department.

20 (5) The total amount of tax credits provided for in this
21 subsection and approved by the department shall not exceed
22 \$30,000,000 in any fiscal year. If the total amount of tax
23 credits applied for by all applicants exceeds the amount
24 allocated for those credits, then the credit to be received
25 by each applicant shall be determined as follows:

26 (i) Divide:

27 (A) the tax credit applied for by the applicant;
28 by

29 (B) the total of all tax credits applied for by
30 all applicants.

1 (ii) Multiply:

2 (A) the quotient under subparagraph (i); by

3 (B) the amount allocated for all tax credits.

4 SUBCHAPTER D

5 LICENSES

6 Section 708. Licenses.

7 (a) Duty to obtain license.--Every person maintaining a
8 place of business in this Commonwealth, selling or leasing
9 services or tangible personal property, the sale or use of which
10 is subject to tax and who has not obtained a license from the
11 department, shall, prior to the beginning of business, make
12 application to the department, on a form prescribed by the
13 department, for a license. If such person maintains more than
14 one place of business in this Commonwealth, the license shall be
15 issued for the principal place of business in this Commonwealth.

16 (b) Criteria for issuance of license.--

17 (1) The department shall, after the receipt of an
18 application, issue the license applied for under subsection

19 (a) if the applicant filed all required State tax reports and
20 paid any State taxes not subject to a timely perfected
21 administrative or judicial appeal or subject to a duly
22 authorized deferred payment plan. The license shall be
23 nonassignable.

24 (2) All licenses in effect on the effective date of this
25 section under former Article III of the Tax Reform Code of
26 1971 and all licenses issued or renewed on or after the
27 effective date of this section shall be valid for a period of
28 five years.

29 (b.1) Refusal of license.--

30 (1) If an applicant for a license or any person holding

1 a license has not filed all required State tax reports and
2 paid any State taxes not subject to a timely perfected
3 administrative or judicial appeal or subject to a duly
4 authorized deferred payment plan, the department may refuse
5 to issue, may suspend or may revoke said license.

6 (2) The department shall notify the applicant or
7 licensee of any refusal, suspension or revocation. The notice
8 shall contain a statement that the refusal, suspension or
9 revocation may be made public. The notice shall be made by
10 first class mail.

11 (3) An applicant or licensee aggrieved by the
12 determination of the department may file an appeal pursuant
13 to the provisions for administrative appeals in this chapter.
14 In the case of a suspension or revocation which is appealed,
15 the license shall remain valid pending a final outcome of the
16 appeals process.

17 (4) Notwithstanding section 774 or sections 353(f),
18 408(b), 603, 702, 802, 904 and 1102 of the Tax Reform Code of
19 1971, or any other provision of law to the contrary, if no
20 appeal is taken or if an appeal is taken and denied at the
21 conclusion of the appeal process, the department may
22 disclose, by publication or otherwise, the identity of a
23 person and the fact that the person's license has been
24 refused, suspended or revoked under this subsection.
25 Disclosure may include the basis for refusal, suspension or
26 revocation.

27 (c) Penalties.--

28 (1) A person that maintains a place of business in this
29 Commonwealth for the purpose of selling or leasing services
30 or tangible personal property, the sale or use of which is

1 subject to tax, without having first been licensed by the
2 department shall be guilty of a summary offense and, upon
3 conviction thereof, be sentenced to pay a fine of not less
4 than \$300 nor more than \$1,500 and, in default thereof, a
5 term of imprisonment of not less than five days nor more than
6 30 days.

7 (2) The penalties imposed by this subsection shall be in
8 addition to any other penalties imposed by this chapter.

9 (3) For purposes of this subsection, the offering for
10 sale or lease of any service or tangible personal property,
11 the sale or use of which is subject to tax, during any
12 calendar day shall constitute a separate violation.

13 (4) The secretary may designate employees of the
14 department to enforce the provisions of this subsection. The
15 employees shall exhibit proof of and be within the scope of
16 the designation when instituting proceedings as provided by
17 the Pennsylvania Rules of Criminal Procedure.

18 (d) Effect of failure to obtain license.--Failure of any
19 person to obtain a license shall not relieve that person of
20 liability to pay the tax imposed by this chapter.

21 SUBCHAPTER E

22 HOTEL OCCUPANCY TAX

23 Section 709. Definitions.

24 (a) General rule.--The following words and phrases when used
25 in this subchapter shall have the meanings given to them in this
26 section unless the context clearly indicates otherwise:

27 "Hotel." A building or buildings in which the public may,
28 for a consideration, obtain sleeping accommodations. The term
29 does not include any charitable, educational or religious
30 institution summer camp for children, hospital or nursing home.

1 "Occupancy." The use or possession or the right to the use or
2 possession by any person, other than a permanent resident, of
3 any room or rooms in a hotel for any purpose or the right to the
4 use or possession of the furnishings or to the services and
5 accommodations accompanying the use and possession of the room
6 or rooms.

7 "Occupant." A person, other than a permanent resident, who,
8 for a consideration, uses, possesses or has a right to use or
9 possess any room or rooms in a hotel under any lease,
10 concession, permit, right of access, license or agreement.

11 "Operator." Any person who operates a hotel.

12 "Permanent resident." Any occupant who has occupied or has
13 the right to occupancy of any room or rooms in a hotel for at
14 least 30 consecutive days.

15 "Rent." The consideration received for occupancy valued in
16 money, whether received in money or otherwise, including all
17 receipts, cash, credits and property or services of any kind or
18 nature, and also any amount for which the occupant is liable for
19 the occupancy without any deduction. The term "rent" shall not
20 include a gratuity.

21 (b) Other definitions.--The following words and phrases,
22 when used in Subchapters D and F, shall, in addition to the
23 meaning ascribed to them by section 701, have the meaning
24 ascribed to them in this subsection, except where the context
25 clearly indicates a different meaning:

26 "Maintaining a place of business in this Commonwealth."
27 Being the operator of a hotel in this Commonwealth.

28 "Purchase at retail." Occupancy.

29 "Purchase price." Rent.

30 "Purchaser." Occupant.

1 "Sale at retail." The providing of occupancy to an occupant
2 by an operator.

3 "Services." Occupancy.

4 "Tangible personal property." Occupancy.

5 "Use." Occupancy.

6 "Vendor." Operator.

7 Section 710. Imposition of tax.

8 There is hereby imposed an excise tax of 7% of the rent on
9 every occupancy of a room or rooms in a hotel in this
10 Commonwealth, which tax shall be collected by the operator from
11 the occupant and paid over to the Commonwealth as provided in
12 this chapter and deposited into the Education Stabilization
13 Fund.

14 Section 711. Seasonal tax returns.

15 Notwithstanding any other provisions in this chapter or the
16 Tax Reform Code of 1971, the department may, by regulation,
17 waive the requirement for the filing of quarterly returns in the
18 case of any operator whose hotel is operated only during certain
19 seasons of the year, and may provide for the filing of returns
20 by such persons at times other than those provided by section
21 721.

22 SUBCHAPTER F

23 PROCEDURE AND ADMINISTRATION

24 Section 715. Persons required to make returns.

25 Every person required to pay tax to the department or collect
26 and remit tax to the department shall file returns with respect
27 to the tax.

28 Section 716. Form of returns.

29 The returns required by section 715 shall be on forms
30 prescribed by the department and shall show such information

1 with respect to the taxes imposed by this chapter as the
2 department may reasonably require.

3 Section 717. Time for filing returns.

4 (a) Monthly reporting.--A return shall be filed monthly with
5 respect to each month by every licensee whose total tax reported
6 or, in the event no report is filed, the total tax which should
7 have been reported, for the third calendar quarter of the
8 preceding year equals or exceeds \$600. The returns shall be
9 filed on or before the 20th day of the next succeeding month
10 with respect to which the return is made. Any licensee required
11 to file monthly returns under this chapter shall be relieved
12 from filing quarterly returns.

13 (b) Annual reporting.--No annual return shall be filed,
14 except as may be required by rules and regulations of the
15 department promulgated and published at least 60 days prior to
16 the end of the year with respect to which the returns are made.
17 Where such annual returns are required, licensees shall not be
18 required to file such returns prior to the 20th day of the year
19 succeeding the year with respect to which the returns are made.

20 (c) Persons other than licensees.--Any person, other than a
21 licensee, liable to pay to the department any tax under this
22 chapter, shall file a return on or before the 20th day of the
23 month succeeding the month in which the person becomes liable
24 for the tax.

25 (d) Waivers.--The department, by regulation, may waive the
26 requirement for the filing of quarterly return in the case of
27 any licensee whose individual tax collections do not exceed \$75
28 per calendar quarter and may provide for reporting on a less
29 frequent basis in such cases.

30 Section 718. Extension of time for filing returns.

1 The department may, on written application and for good cause
2 shown, grant a reasonable extension of time for filing any
3 return required under this subchapter. However, the time for
4 making a return shall not be extended for more than three
5 months.

6 Section 719. Place for filing returns.

7 Returns shall be filed with the department at its main office
8 or at any branch office which it may designate for filing
9 returns.

10 Section 720. Timely mailing treated as timely filing and
11 payment.

12 (a) General rule.--Notwithstanding the provisions of any
13 State tax law to the contrary, whenever a report or payment of
14 all or any portion of a State tax is required by law to be
15 received by the department or other agency of the Commonwealth
16 on or before a day certain, the taxpayer shall be deemed to have
17 complied with the law if the letter transmitting the report or
18 payment of the tax which has been received by the department is
19 postmarked by the United States Postal Service on or prior to
20 the final day on which the payment is to be received.

21 (b) Presentation of receipt.--For the purposes of this
22 chapter, presentation of a receipt indicating that the report or
23 payment was mailed by registered or certified mail on or before
24 the due date shall be evidence of timely filing and payment.

25 Section 721. Payment of tax.

26 When a return of tax is required under this subchapter, the
27 person required to make the return shall pay the tax to the
28 department.

29 Section 722. Time of payment.

30 (a) General rule.--The tax imposed by this chapter and

1 incurred or collected by a licensee shall be due and payable by
2 the licensee on the day the return is required to be filed under
3 the provisions of section 717 and the payment must accompany the
4 return for the preceding period.

5 (b) Other payments.--If the amount of tax due for the
6 preceding year as shown by the annual return of a taxpayer is
7 greater than the amount already paid by the taxpayer in
8 connection with the taxpayer's monthly or quarterly returns, the
9 taxpayer shall send with the annual return a remittance for the
10 unpaid amount of tax for the year.

11 (c) Persons other than licensees.--Any person other than a
12 licensee liable to pay any tax under this chapter shall remit
13 the tax at the time of filing the return required by this
14 chapter.

15 Section 723. Other times for payment.

16 In the event that the department authorizes a taxpayer to
17 file a return at other times than those specified in section
18 717, the tax due shall be paid at the time the return is filed.

19 Section 724. Place for payment.

20 The tax imposed by this chapter shall be paid to the
21 department at the place fixed for filing the return.

22 Section 725. Tax held in trust for Commonwealth.

23 (a) General rule.--All taxes collected by any person from
24 purchasers in accordance with this chapter and all taxes
25 collected by any person from purchasers under color of this
26 chapter which have not been properly refunded by the person to
27 the purchaser shall constitute a trust fund for the
28 Commonwealth, and such trust shall be enforceable against such
29 person, the person's representatives and any person, other than
30 a purchaser to whom a refund has been made properly, receiving

any part of the fund without consideration, or knowing that the taxpayer is committing a breach of trust.

(b) Presumption.--Any person receiving payment of a lawful obligation of the taxpayer from the fund identified under subsection (a) shall be presumed to have received the same in good faith and without any knowledge of the breach of trust.

(c) Right to petition and appeal.--Any person, other than a taxpayer, against whom the department makes any claim under this section shall have the same right to petition and appeal as is given taxpayers by any provisions of this subchapter.

Section 726. Local receivers of use tax.

(a) General rule.--In every county, except counties of the first class, the county treasurer shall receive use tax due and payable under this chapter from any person other than a licensee. The receiving of the taxes shall be pursuant to rules and regulations promulgated by the department and on forms furnished by the department.

(b) Deduction for administrative costs.--Each county treasurer shall remit to the department all use taxes received under the authority of this section minus the costs of administering this section not to exceed 1% of the amount of use taxes received, which amount shall be retained in lieu of any commission otherwise allowable by law for the collection of the tax.

Section 727. Discount.

(a) General rule.--Subject to the provisions of subsection (b), if a return is filed by a licensee and the tax shown to be due thereon less any discount is paid all within the time prescribed, the licensee shall be entitled to credit and apply against the tax payable by the licensee a discount of 1% of the

1 amount of the tax collected by the licensee, as compensation for
2 the expense of collecting and remitting the tax due by the
3 licensee and as consideration of the prompt payment.

4 (b) Types of periodic filers.--For returns filed on or after
5 the effective date of this section, the discount under
6 subsection (a) shall be limited to the following:

7 (1) For a monthly filer, \$25 per return.

8 (2) For a quarterly filer, \$75 per return.

9 (3) For a semiannual filer, \$150 per return.

10 Section 728. (Reserved).

11 Section 729. (Reserved).

12 Section 730. Assessment.

13 The department shall make the inquiries, determinations and
14 assessments of the tax, including interest, additions and
15 penalties, imposed by this chapter. A notice of assessment and
16 demand for payment shall be mailed by certified mail to the
17 taxpayer. The notice shall set forth the basis of the
18 assessment.

19 Section 731. Mode and time of assessment.

20 (a) Duty to examine.--

21 (1) Within a reasonable time after any return is filed,
22 the department shall examine it and, if the return shows a
23 greater tax due or collected than the amount of tax remitted
24 with the return, the department shall issue an assessment for
25 the difference, together with an addition of 3% of the
26 difference, which shall be paid to the department within ten
27 days after a notice of the assessment has been mailed to the
28 taxpayer.

29 (2) If such assessment is not paid within ten days,
30 there shall be added and paid to the department an additional

1 3% of the difference for each month during which the
2 assessment remains unpaid. The total of all additions shall
3 not exceed 18% of the difference shown on the assessment.

4 (b) Underestimated tax on returns.--

5 (1) If the department determines that any return or
6 returns of any taxpayer understates the amount of tax due, it
7 shall determine the proper amount and shall ascertain the
8 difference between the amount of tax shown in the return and
9 the amount determined. The difference may be referred to as
10 the deficiency.

11 (2) The department shall send a notice of assessment for
12 the deficiency and the reasons to the taxpayer.

13 (3) The taxpayer shall pay the deficiency to the
14 department within 30 days after a notice of the assessment
15 has been mailed to the taxpayer.

16 (c) Estimated assessments.--

17 (1) In the event that any taxpayer fails to file a
18 return required by this chapter, the department may make an
19 estimated assessment, based on information available, of the
20 proper amount of tax owed by the taxpayer and shall send a
21 notice of assessment in the estimated amount to the taxpayer.

22 (2) The taxpayer shall pay the tax within 30 days after
23 a notice of the estimated assessment has been mailed to the
24 taxpayer.

25 (d) Studies.--

26 (1) The department may conduct the studies necessary to
27 compute effective rates by business classification, based
28 upon the ratio between the tax required to be collected and
29 taxable sales and to use such rates in arriving at the
30 apparent tax liability of a taxpayer.

1 (2) Any assessment based on such rates shall be prima
2 facie correct, except that the rate shall not be considered
3 where a taxpayer establishes the rate is based on a sample
4 inapplicable to the taxpayer.

5 Section 732. Reassessment.

6 Any taxpayer against whom an assessment is made may petition
7 the department for a reassessment under Article XXVII of the Tax
8 Reform Code of 1971.

9 Section 733. (Reserved).

10 Section 734. Review by Board of Finance and Revenue.

11 (a) Procedure.--

12 (1) Within 60 days after the date of mailing of notice
13 by the department of the decision on any petition for
14 reassessment filed with it, the person against whom the
15 assessment was made may, by petition, request the Board of
16 Finance and Revenue to review the decision.

17 (2) The failure of the department to notify the
18 petitioner of a decision within the time provided by section
19 732 shall act as a denial of such petition, and a petition
20 for review may be filed with the Board of Finance and Revenue
21 within 120 days of the date prior to which the department
22 should have mailed to the petitioner its notice of decision.

23 (b) Contents of petition for review.--Each petition for
24 review filed under this section shall state specifically the
25 reasons on which the petitioner relies, or shall incorporate by
26 reference the petition for reassessment in which the reasons are
27 stated. The petition shall be supported by affidavit that it is
28 not made for the purpose of delay and that the facts set forth
29 in the petition are true.

30 (c) Action by board.--

1 (1) The Board of Finance and Revenue shall act finally
2 in disposing of petitions filed with it within six months
3 after they have been received.

4 (2) In the event of the failure of the board to dispose
5 of any petition within six months, the action taken by the
6 department, upon the petition for reassessment, shall be
7 sustained.

8 (3) The Board of Finance and Revenue may sustain the
9 action taken by the department on the petition for
10 reassessment, or it may reassess the tax due on such basis as
11 it deems according to law.

12 (4) The board shall give notice of its action to the
13 department and to the petitioner.

14 Section 735. (Reserved).

15 Section 736. Burden of proof.

16 In all cases of petitions for reassessment, review or appeal,
17 the burden of proof shall be on the petitioner or appellant, as
18 applicable.

19 Section 737. Collection of tax.

20 (a) General rule.--The department shall collect the tax in
21 the manner provided by law for the collection of taxes imposed
22 by the laws of this Commonwealth.

23 (b) Collection by persons maintaining a place of business in
24 the Commonwealth.--

25 (1) Every person maintaining a place of business in this
26 Commonwealth and selling or leasing tangible personal
27 property or services, the sale or use of which is subject to
28 tax shall collect the tax from the purchaser or lessee at the
29 time of making the sale or lease, and shall remit the tax to
30 the department, unless the collection and remittance is

otherwise provided for in this chapter.

(2) (i) Every person not otherwise required to collect tax that delivers tangible personal property to a location within this Commonwealth and that unpacks, positions, places or assembles the tangible personal property shall collect the tax from the purchaser at the time of delivery and shall remit the tax to the department if the person delivering the tangible personal property is responsible for collecting any portion of the purchase price of the tangible personal property delivered and the purchaser has not provided the person with proof that the tax imposed by this chapter has been or will be collected by the seller or that the purchaser provided the seller with a valid exemption certificate.

(ii) Every person required to collect tax under this paragraph shall be deemed to be selling or leasing tangible personal property or services, the sale or use of which is subject to the tax imposed under section 702.

(3) Any person required under this chapter to collect tax from another person, who shall fail to collect the proper amount of the tax, shall be liable for the full amount of the tax which the person should have collected.

(c) Certificate for tax-exempt sales or leases.--

(1) If the tax does not apply to the sale or lease of tangible personal property or services, the purchaser or lessee shall furnish to the vendor a certificate indicating that the sale is not legally subject to the tax. The certificate shall be in substantially such form as the department may, by regulation, prescribe.

(2) Where the tangible personal property or service is

1 of a type which is never subject to the tax imposed or where
2 the sale or lease is in interstate commerce, the certificate
3 need not be furnished.

4 (3) Where a series of transactions are not subject to
5 tax, a purchaser or user may furnish the vendor with a single
6 exemption certificate in substantially such form and valid
7 for such period of time as the department may, by regulation,
8 prescribe.

9 (4) The department shall provide all school districts
10 and intermediate units with a permanent tax exemption number.

11 (5) An exemption certificate, which is complete and
12 regular and on its face discloses a valid basis of exemption
13 if taken in good faith, shall relieve the vendor from the
14 liability imposed by this section.

15 (6) An exemption certificate:

16 (i) accepted by a vendor from a natural person
17 domiciled within this Commonwealth or any association,
18 fiduciary, partnership, corporation or other entity,
19 either authorized to do business within this Commonwealth
20 or having an established place of business within this
21 Commonwealth, in the ordinary course of the vendor's
22 business;

23 (ii) which on its face discloses a valid basis of
24 exemption consistent with the activity of the purchaser
25 and character of the property or service being purchased
26 or which is provided to the vendor by a charitable,
27 religious, educational or volunteer firefighters'
28 organization;

29 (iii) contains the organization's charitable
30 exemption number; and

1 (iv) which, in the case of any purchase costing \$200
2 or more, is accompanied by a sworn declaration on a form
3 to be provided by the department of an intended usage of
4 the property or service which would render it nontaxable,
5 shall be presumed to be taken in good faith and the burden of
6 proving otherwise shall be on the department.

7 (d) Waivers.--

8 (1) The department may authorize a purchaser or lessee
9 who acquires tangible personal property or services under
10 circumstances which make it impossible at the time of
11 acquisition to determine the manner in which the tangible
12 personal property or service will be used, to pay the tax
13 directly to the department, and waive the collection of the
14 tax by the vendor.

15 (2) No such authority shall be granted or exercised,
16 except on application to the department, and the issuance by
17 the department, in its discretion, of a direct payment
18 permit.

19 (3) If a direct payment permit is granted, its use shall
20 be subject to conditions specified by the department, and the
21 payment of tax on all acquisitions pursuant to the permit
22 shall be made directly to the department by the permit
23 holder.

24 Section 738. Collection of tax on motor vehicles, trailers and
25 semitrailers.

26 (a) General rule.--Notwithstanding the provisions of section
27 737(b)(1), tax due on the sale at retail or use of a motor
28 vehicle, trailer or semitrailer, except mobile homes as defined
29 in 75 Pa.C.S (relating to vehicles), required by law to be
30 registered with the department under the provisions of 75

Pa.C.S. shall be paid by the purchaser or user directly to the department on application to the department for an issuance of a certificate of title on the motor vehicle, trailer or semitrailer.

(b) No issuance of certificate of title without payment of tax.--

(1) The department shall not issue a certificate of title until the tax has been paid, or evidence satisfactory to the department has been given to establish that tax is not due.

(2) The department may cancel or suspend any record of certificate of title or registration of a motor vehicle, trailer or semitrailer when the check received in payment of the tax on the vehicle is not paid on demand.

(c) First encumbrance.--The tax shall be considered as a first encumbrance against the vehicle and the vehicle may not be transferred without first payment in full of the tax and any interest additions or penalties which shall accrue in accordance with this chapter.

Section 739. Precollection of tax.

(a) Authorization.--

(1) Except as otherwise provided under paragraph (2), the department may, by regulation, authorize or require particular categories of vendors selling tangible personal property for resale to precollect from the purchaser the tax which the purchaser will collect on making a sale at retail of the tangible personal property.

(2) The department, pursuant to this section, may not require a vendor to precollect tax from a purchaser who purchases for resale more than \$1,000 worth of tangible

1 personal property from the vendor per year.

2 (b) No license required.--In any case in which a vendor has
3 been authorized to prepay the tax to the person from whom the
4 vendor purchased the tangible personal property for resale, the
5 vendor authorized to prepay the tax may, under the regulations
6 of the department, be relieved from the duty to secure a license
7 if the duty arises only by reason of the vendor's sale of the
8 tangible personal property with respect to which the vendor is,
9 under authorization of the department, to prepay the tax.

10 (c) Reimbursement.--

11 (1) The vendor, on making a sale at retail of tangible
12 personal property with respect to which the vendor has
13 prepaid the tax, must separately state at the time of resale
14 the proper amount of tax on the transaction, and reimburse
15 itself on account of the taxes which the vendor has
16 previously prepaid.

17 (2) If the vendor collects a greater amount of tax in
18 any reporting period than the vendor previously prepaid on
19 purchase of the goods with respect to which the vendor
20 prepaid the tax, the vendor must file a return and remit the
21 balance to the Commonwealth at the time at which a return
22 would otherwise be due with respect to the sales.

23 Section 740. Bulk and auction sales.

24 A person who sells or causes to be sold at auction, or who
25 sells or transfers in bulk, 51% or more of any stock, of goods,
26 wares or merchandise of any kind, fixtures, machinery,
27 equipment, buildings or real estate, involved in a business for
28 which the person is licensed or required to be licensed under
29 this chapter, or is liable for filing use tax returns in
30 accordance with this chapter, shall be subject to the provisions

1 of section 1403 of The Fiscal Code.

2 Section 741. Collection on failure to request reassessment,
3 review or appeal.

4 (a) General rule.--The department may collect any tax:

5 (1) If an assessment of tax is not paid within ten days
6 or 30 days, as the case may be, after notice of the
7 assessment to the taxpayer and no petition for reassessment
8 has been filed.

9 (2) Within 60 days from the date of reassessment, if no
10 petition for review has been filed.

11 (3) Within 30 days from the date of the decision of the
12 Board of Finance and Revenue on a petition for review, or of
13 the expiration of the board's time for acting on the
14 petition, if no appeal has been made.

15 (4) In all cases of judicial sales, receiverships,
16 assignments or bankruptcies.

17 (b) Limitation on defenses.--

18 (1) Subject to the provisions of paragraph (2), in any
19 such case in a proceeding for the collection of the taxes,
20 the person against whom the taxes were assessed shall not be
21 permitted to set up any ground of defense that might have
22 been determined by the department, the Board of Finance and
23 Revenue or the courts.

24 (2) The defense of failure of the department to mail
25 notice of assessment or reassessment to the taxpayer and the
26 defense of payment of assessment or reassessment may be
27 raised in proceedings for collection by a motion to stay the
28 proceedings.

29 Section 742. Lien for taxes.

30 (a) Nature and effect of lien.--

1 (1) If any person liable to pay any tax neglects or
2 refuses to pay the same after demand, the amount, including
3 any interest, addition or penalty, together with any costs
4 that may accrue in addition, shall be a lien in favor of the
5 Commonwealth on the property, both real and personal, of the
6 person but only after same has been entered and docketed of
7 record by the prothonotary of the county where the property
8 is situated.

9 (2) The department may, at any time, transmit to the
10 prothonotaries of the respective counties certified copies of
11 all liens for taxes imposed by this chapter or the Tax Reform
12 Code of 1971 and penalties and interest.

13 (3) Each prothonotary receiving the lien shall enter and
14 docket the lien of record in the prothonotary's office, which
15 lien shall be indexed as judgments are now indexed.

16 (4) No prothonotary shall require, as a condition
17 precedent to the entry of the liens, the payment of the costs
18 incident thereto.

19 (b) Priority status.--

20 (1) The lien imposed under this section shall have
21 priority from the date of its recording, and shall be fully
22 paid and satisfied out of the proceeds of any judicial sale
23 of property before any other obligation, judgment, claim,
24 lien or estate to which the property may subsequently become
25 subject, except costs of the sale and of the writ on which
26 the sale was made, and real estate taxes and municipal claims
27 against such property, but shall be subordinate to mortgages
28 and other liens existing and duly recorded or entered of
29 record prior to the recording of the tax lien.

30 (2) In the case of a judicial sale of property, subject

1 to a lien imposed under this section, on a lien or claim over
2 which the lien imposed under this section has priority, the
3 sale shall discharge the lien imposed under this section to
4 the extent only that the proceeds are applied to its payment,
5 and the lien shall continue in full force and effect as to
6 the balance remaining unpaid.

7 (3) There shall be no inquisition or condemnation upon
8 any judicial sale of real estate made by the Commonwealth
9 pursuant to the provisions of this section.

10 (4) (i) The lien of the taxes, interest and penalties,
11 shall continue for five years from the date of entry, and
12 may be revived and continued in the manner now or
13 hereafter provided for renewal of judgments, or as may be
14 provided in The Fiscal Code, and a writ of execution may
15 directly issue upon the lien without the issuance and
16 prosecution to judgment of a writ of scire facias.

17 (ii) Not less than ten days before issuance of any
18 execution on the lien, notice of the filing and the
19 effect of the lien shall be sent by registered mail to
20 the taxpayer at the taxpayer's last known post office
21 address.

22 (iii) The lien shall have no effect on any stock of
23 goods, wares or merchandise regularly sold or leased in
24 the ordinary course of business by the person against
25 whom the lien has been entered, unless and until a writ
26 of execution has been issued and a levy made on the stock
27 of goods, wares and merchandise.

28 (c) Penalty.--Any willful failure of any prothonotary to
29 carry out any duty imposed on the prothonotary under this
30 section shall be a misdemeanor, and, upon conviction, the

1 prothonotary shall be sentenced to pay a fine not more than
2 \$1,000 and costs of prosecution or to a term of imprisonment not
3 exceeding one year, or both.

4 (d) Priority payment from distribution.--

5 (1) Except as otherwise provided under the law, in the
6 distribution, voluntary or compulsory, in receivership,
7 bankruptcy or otherwise, of the property or estate of any
8 person, all taxes imposed by this chapter which are due and
9 unpaid and are not collectible under section 725 shall be
10 paid from the first money available for distribution in
11 priority to all other claims and liens, except insofar as the
12 laws of the United States may give a prior claim to the
13 Federal Government.

14 (2) Any person charged with the administration or
15 distribution of the property or estate, who violates the
16 provisions of this section, shall be personally liable for
17 any taxes imposed by this chapter, which are accrued and
18 unpaid and are chargeable against the person whose property
19 or estate is being administered or distributed.

20 (e) Construction.--Subject to the limitations contained in
21 this chapter as to the assessment of taxes, nothing contained in
22 this section shall be construed to restrict, prohibit or limit
23 the use by the department in collecting taxes finally due and
24 payable of any other remedy or procedure available at law or
25 equity for the collection of debts.

26 Section 743. Suit for taxes.

27 (a) General rule.--At any time within three years after any
28 tax or any amount of tax shall be finally due and payable, the
29 department may commence an action in the courts of this
30 Commonwealth, of any state or of the United States, in the name

1 of the Commonwealth, to collect the amount of tax due together
2 with additions, interest, penalties and costs in the manner
3 provided at law or in equity for the collection of ordinary
4 debts.

5 (b) Prosecution by Attorney General.--The Attorney General
6 shall prosecute the action and, except as provided in this
7 chapter, the provisions of the Rules of Civil Procedure and the
8 provisions of the laws of this Commonwealth relating to civil
9 procedures and remedies shall, to the extent that they are
10 applicable, be available in such proceedings.

11 (c) Construction.--The provisions of this section are in
12 addition to any process, remedy or procedure for the collection
13 of taxes provided by this chapter or by the laws of this
14 Commonwealth, and this section is neither limited by nor
15 intended to limit any such process, remedy or procedure.
16 Section 744. Tax suit comity.

17 The courts of this Commonwealth shall recognize and enforce
18 liabilities for sales and use taxes, lawfully imposed by any
19 other state if the other state extends a like comity to this
20 Commonwealth.

21 Section 745. Service.

22 (a) General rule.--Any person who maintains a place of
23 business in this Commonwealth is deemed to have appointed the
24 Secretary of the Commonwealth as the person's agent for the
25 acceptance of service of process or notice in any proceedings
26 for the enforcement of the civil provisions of this chapter, and
27 any service made upon the Secretary of the Commonwealth as agent
28 shall be of the same legal force and validity as if the service
29 had been personally made on the person.

30 (b) Substitute service.--Where service cannot be made on the

1 person in the manner provided by other laws of this Commonwealth
2 relating to service of process, service may be made on the
3 Secretary of the Commonwealth and, in such case, a copy of the
4 process or notice shall also be personally served on any agent
5 or representative of the person who may be found within this
6 Commonwealth, or where no such agent or representative may be
7 found a copy of the process or notice shall be sent by
8 registered mail to the person at the last known address of the
9 person's principal place of business, home office or residence.

10 Section 746. Collection and payment of tax on credit sales.

11 If any sale subject to tax under this chapter is wholly or
12 partly on credit, the vendor shall require the purchaser to pay
13 in cash at the time the sale is made, or within 30 days
14 thereafter, the total amount of tax due upon the entire purchase
15 price. The vendor shall remit the tax to the department,
16 regardless of whether payment was made by the purchaser to the
17 vendor, with the next return required to be filed under section
18 717.

19 Section 747. Prepayment of tax.

20 (a) General rule.--Whenever a vendor is prohibited by law or
21 governmental regulation to charge and collect the purchase price
22 in advance of or at the time of delivery, the vendor shall
23 prepay the tax as required by section 722, but in that case, if
24 the purchaser fails to pay to the vendor the total amount of the
25 purchase price and the tax and the amount is written off as
26 uncollectible by the vendor, the vendor shall not be liable for
27 the tax and shall be entitled to a credit or refund of the tax
28 paid.

29 (b) Subsequent collection of tax.--If the purchase price is
30 thereafter collected, in whole or in part, the amount collected

1 shall be first applied to the payment of the entire tax portion
2 of the bill, and shall be remitted to the department by the
3 vendor with the first return filed after such collection.

4 (c) Time period for refund.--Tax prepaid shall be subject to
5 refund on petition to the department under the provisions of
6 section 752, filed within 105 days of the close of the fiscal
7 year in which the accounts are written off.

8 Section 747.1. Refund of sales tax attributed to bad debt.

9 (a) General rule.--A vendor may file a petition for refund
10 of sales tax paid to the department that is attributed to a bad
11 debt if all of the following apply:

12 (1) The purchaser fails to pay the vendor the total
13 purchase price.

14 (2) The purchase price is written off, either in whole
15 or in part, as a bad debt on the vendor's books and records.

16 (3) The bad debt has been deducted for Federal income
17 tax purposes under section 166 of the Internal Revenue Code
18 of 1986 (Public Law 99-514, 26 U.S.C. § 166).

19 The petition must be filed with the department under Article
20 XXVII of the Tax Reform Code of 1971 within the time limitations
21 prescribed by section 3003.1 of the Tax Reform Code of 1971.

22 (b) Limitation.--

23 (1) The refund authorized by this section shall be
24 limited to the sales tax paid to the department that is
25 attributed to the bad debt, less any discount under section
26 727.

27 (2) Partial payments by the purchaser to the vendor
28 shall be prorated between the original purchase price and the
29 sales tax due on the sale.

30 (3) Payments made to a vendor on any transaction which

includes both taxable and nontaxable components shall be allocated proportionally between the taxable and nontaxable components.

(c) Assignment.--A vendor may assign its right to petition and receive a refund of sales tax attributed to a bad debt to an affiliated entity. A vendor may not assign its right to petition and receive a refund of sales tax attributed to a bad debt to any other person.

(d) Items not refundable.--No refund shall be granted under this section for interest, finance charges or expenses incurred in attempting to collect any amount receivable.

(e) Contents of petition for refund.--The documentation, procedures and methods for claiming and calculating the refund allowed under this section shall be in such form as the department may prescribe.

(f) Subsequent collection.--If the purchase price that is attributed to a prior bad debt refund is collected in whole or in part, the vendor or affiliated entity shall remit the proportional tax to the department with the first return filed after the collection.

(g) Interest prohibited.--Notwithstanding the provisions of section 806.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, no interest shall be paid by the Commonwealth on refunds of sales tax attributed to bad debt under this section.

(h) Administration.--

(1) No refund or credit of sales tax shall be made for any uncollected purchase price or bad debt except as authorized by this section.

(2) No deduction or credit for bad debt may be taken on

1 any return filed with the department.

2 (3) This section shall provide the exclusive procedure
3 for claiming a refund or credit of sales tax attributed to
4 uncollected purchase price or bad debt.

5 (i) Definition.--For purposes of this section, the term
6 "affiliated entity" means any corporation that is part of the
7 same affiliated group as the vendor as defined by section
8 1504(a)(1) of the Internal Revenue Code of 1986.

9 Section 748. Registration of transient vendors.

10 (a) General rule.--Prior to conducting business or otherwise
11 commencing operations in this Commonwealth, a transient vendor
12 shall register with the department. The application for
13 registration shall be in such form and contain such information
14 as the department, by regulation, shall prescribe and shall set
15 forth truthfully and accurately the information desired by the
16 department. This registration shall be renewed and updated
17 annually.

18 (b) Certificate to be issued.--After registration and the
19 posting of the bond required by section 748.1, the department
20 shall issue to the transient vendor a certificate valid for one
21 year. On renewal of registration, the department shall issue a
22 new certificate valid for one year, if the department is
23 satisfied that the transient vendor has complied with the
24 provisions of this chapter.

25 (c) Possession and exhibition of certificate.--The transient
26 vendor shall possess the certificate at all times when
27 conducting business within this Commonwealth and shall exhibit
28 the certificate upon demand by authorized employees of the
29 department or any law enforcement officer.

30 (d) Contents of certificate.--The certificate issued by the

department shall state that the transient vendor named in the certificate has registered with the department and shall provide notice to the transient vendor that:

(1) The transient vendor must notify the department in writing before it enters this Commonwealth to conduct business, of the location or locations where it intends to conduct business and the date or dates on which it intends to conduct business.

(2) Failure to notify or giving false information to the department may result in suspension or revocation of the transient vendor's certificate.

(3) Conducting business in this Commonwealth after a certificate has been suspended or revoked may result in criminal conviction and the imposition of fines or other penalties.

Section 748.1. Bond.

(a) General rule.--Upon registration with the department, a transient vendor shall also post a bond with the department in the amount of \$500 as surety for compliance with the provisions of this chapter. After a period of demonstrated compliance with these provisions or, if the transient vendor provides the license number of a promoter who has notified the department of a show, in accordance with the provisions of section 748.6(a), the department may reduce the amount of bond required of a transient vendor or may eliminate the bond entirely.

(b) Voluntary suspension of certificate.--A transient vendor may file a request for voluntary suspension of certificate with the department. If the department is satisfied that the provisions of this chapter have been complied with and has possession of the transient vendor's certificate, it shall

1 return the bond posted to the transient vendor.

2 Section 748.2. Notification to department.

3 (a) General rule.--Prior to entering this Commonwealth to
4 conduct business, a transient vendor shall notify the department
5 in writing of the location or locations where it intends to
6 conduct business and the date or dates on which it intends to
7 conduct business.

8 (b) Inspection of records.--While conducting business in
9 this Commonwealth, the transient vendor shall permit authorized
10 employees of the department to inspect its sales records,
11 including, but not limited to, sales receipts and inventory or
12 price lists and to permit inspection of the tangible personal
13 property offered for sale at retail.

14 (c) Conditions for suspension or revocation of
15 certificate.--The department may suspend or revoke a certificate
16 issued to a transient vendor if the transient vendor:

17 (1) fails to notify the department as required by
18 subsection (a);

19 (2) provides the department with false information
20 regarding the conduct of business in this Commonwealth;

21 (3) fails to collect sales tax on all tangible personal
22 property or services sold subject to the sales tax; or

23 (4) fails to file with the department a tax return as
24 required by section 717.

25 (d) Regulations.--The department shall promulgate the rules
26 and regulations necessary to implement this section.

27 Section 748.3. Seizure of property.

28 (a) General rule.--If a transient vendor conducting business
29 in this Commonwealth fails to exhibit a valid certificate on
30 demand by authorized employees of the department, those

1 authorized employees shall seize, without warrant, the tangible
2 personal property and the automobile, truck or other means of
3 transportation used to transport or carry that property. All
4 property seized shall be deemed contraband and shall be subject
5 to immediate forfeiture proceedings instituted by the department
6 pursuant to procedures adopted by regulation, except as
7 otherwise provided by this section.

8 (b) Release of seized property.--Property seized pursuant to
9 subsection (a) shall be released on:

10 (1) presentation of a valid certificate to authorized
11 employees of the department; or

12 (2) registration by the transient vendor with the
13 department and the posting of a bond in the amount of \$500,
14 either immediately or within 15 days after the property is
15 seized.

16 Section 748.4. Fines.

17 Any transient vendor conducting business in this Commonwealth
18 while its certificate is suspended or revoked, as provided by
19 sections 748.1(b) and 748.2(c), commits a misdemeanor of the
20 third degree and, upon conviction, shall be sentenced to pay a
21 fine of not more than \$2,500 for each offense.

22 Section 748.5. Transient vendors subject to chapter.

23 Except as otherwise provided, a transient vendor shall be
24 subject to the provisions of this chapter in the same manner as
25 a vendor who maintains a place of business in this Commonwealth.

26 Section 748.6. Promoters.

27 (a) General rule.--A promoter of a show or shows in this
28 Commonwealth may annually file with the department an
29 application for a promoter's license stating the location and
30 dates of such show or shows. The application shall be filed at

1 least 30 days prior to the opening of the first show and shall
2 be in such form as the department may prescribe.

3 (b) License.--

4 (1) Except as otherwise provided in this chapter, the
5 department shall, within 15 days after receipt of an
6 application for a license, issue to the promoter without
7 charge a license to operate such shows.

8 (2) If application for a license under this section has
9 been timely filed and if the license has not been received by
10 the promoter prior to the opening of the show, the
11 authorization contained in this section with respect to the
12 obtaining of a promoter's license shall be deemed to have
13 been complied with, unless or until the promoter receives
14 notice from the department denying the application for a
15 promoter's license.

16 (c) Compliance.--Any promoter who is a vendor under the
17 provisions of section 701 shall comply with all the provisions
18 of this chapter applicable to vendors and with the provisions of
19 this section applicable to promoters.

20 (d) Prohibited conduct.--No licensed promoter shall permit
21 any person to display for sale or to sell tangible personal
22 property or services subject to tax under section 702 at a show
23 unless the person is licensed under section 708 and provides to
24 the promoter the information required under law.

25 (e) Penalties.--

26 (1) Any licensed promoter who:

27 (i) permits any person to display for sale or to
28 sell tangible personal property or service without first
29 having been licensed under section 708;

30 (ii) fails to maintain records of a show as required

1 by law; or

2 (iii) knowingly maintains false records or fails to
3 comply with any provision contained in this section or
4 any regulation promulgated by the department pertaining
5 to shows,

6 shall be subject to denial of a license or the revocation of
7 any existing license issued pursuant to this section.

8 (2) The department may deny the promoter a license
9 certificate to operate a show for a period of not more than
10 six months from the date of such denial. The penalty shall be
11 in addition to any other penalty imposed by this chapter.

12 (3) Within 20 days of notice of denial or revocation of
13 a license by the department, the promoter may petition the
14 department for a hearing pursuant to 2 Pa.C.S. (relating to
15 administrative law and procedure).

16 Section 749. (Reserved).

17 Section 750. (Reserved).

18 Section 751. (Reserved).

19 Section 752. Refunds.

20 (a) General rule.--Subject to the provisions of subsection
21 (b), the department shall, pursuant to the provisions of Article
22 XXVII of the Tax Reform Code of 1971, refund all taxes, interest
23 and penalties paid to the Commonwealth under the provisions of
24 this chapter and to which the Commonwealth is not rightfully
25 entitled. The refunds shall be made to the person, the person's
26 heirs, successors, assigns or other personal representatives,
27 who actually paid the tax.

28 (b) Exception.--No refund shall be made under this section
29 with respect to any payment made by reason of an assessment with
30 respect to which a taxpayer has filed a petition for

1 reassessment pursuant to section 2702 of the Tax Reform Code of
2 1971 to the extent that the petition has been determined
3 adversely to the taxpayer by a decision which is no longer
4 subject to further review or appeal.

5 (c) Construction.--Nothing contained in this section shall
6 be deemed to prohibit a taxpayer who has filed a timely petition
7 for reassessment from amending it to a petition for refund where
8 the petitioner has paid the tax assessed.

9 Section 753. Refund petition.

10 (a) General rule.--Except as provided for in subsection (b)
11 and section 756, the refund or credit of tax, interest or
12 penalty provided for by section 752 shall be made only where the
13 person who has actually paid the tax files a petition for refund
14 with the department under Article XXVII of the Tax Reform Code
15 of 1971, within the limits of section 3003.1 of the Tax Reform
16 Code of 1971.

17 (b) Assessments.--A refund or credit of tax, interest or
18 penalty paid as a result of an assessment made by the department
19 under section 731 shall be made only where the person who has
20 actually paid the tax files with the department a petition for a
21 refund with the department under Article XXVII of the Tax Reform
22 Code of 1971 within the time limits of section 3003.1 of the Tax
23 Reform Code of 1971. The filing of a petition for refund under
24 the provisions of this subsection shall not affect the abatement
25 of interest, additions or penalties to which the person may be
26 entitled by reason of the person's payment of the assessment.

27 Section 754. (Reserved).

28 Section 755. (Reserved).

29 Section 756. Extended time for filing special petition for
30 refund.

1 (a) General rule.--Any party to a transaction who has paid
2 tax by reason of a transaction with respect to which the
3 department is assessing tax against another person may, within
4 six months after the filing by the department of the assessment
5 against the other person, file a special petition for refund,
6 notwithstanding the person's failure to timely file a petition
7 pursuant to section 3003.1 of the Tax Reform Code of 1971. The
8 provisions of Article XXVII of the Tax Reform Code of 1971 shall
9 be applicable to the special petition for refund, except that
10 the department need not act on the petition until there is a
11 final determination as to the propriety of the assessment filed
12 against the other party to the transaction. Where a petition is
13 filed under this provision in order to take advantage of the
14 extended period of limitations, overpayments by the petitioner
15 shall be refunded but only to the extent of the actual tax,
16 without consideration of interest and penalties, paid by the
17 other party to the transaction.

18 (b) Purpose.--The purpose of this section is to avoid
19 duplicate payment of tax where a determination is made by the
20 department that one party to a transaction is subject to tax,
21 and another party to the transaction has previously paid tax
22 with respect to the transaction and, as such, this section shall
23 be construed as extending right beyond that provided for by
24 section 753, and not to limit the other section.

25 Section 757. (Reserved).

26 Section 758. Limitation on assessment and collection.

27 The amount of the tax imposed by this chapter or the Tax
28 Reform Code of 1971 shall be assessed within three years after
29 the date when the return provided for by section 717(a) or (c)
30 is filed or the end of the year in which the tax liability

1 arises, whichever occurs later. Any assessment may be made at
2 any time during the period notwithstanding that the department
3 may have made one or more previous assessments against the
4 taxpayer for the year in question, or for any part of the year.
5 In any case, no credit shall be given for any penalty previously
6 assessed or paid.

7 Section 759. Failure to file return.

8 Where no return is filed, the amount of the tax due may be
9 assessed and collected at any time as to taxable transactions
10 not reported.

11 Section 760. False or fraudulent return.

12 Where the taxpayer willfully files a false or fraudulent
13 return with intent to evade the tax imposed by this chapter, the
14 amount of tax due may be assessed and collected at any time.

15 Section 761. Extension of limitation period.

16 Notwithstanding any other provisions of this subchapter
17 where, before the expiration of the period prescribed in that
18 other provision for the assessment of a tax, a taxpayer has
19 consented in writing that the period be extended, the amount of
20 tax due may be assessed at any time within the extended period.
21 The period so extended may be extended further by subsequent
22 consents in writing made before the expiration of the extended
23 period.

24 Section 762. (Reserved).

25 Section 763. (Reserved).

26 Section 764. (Reserved).

27 Section 765. Interest.

28 If any amount of tax imposed by this chapter is not paid to
29 the department on or before the last date prescribed for
30 payment, interest on the amount at the rate of .75% per month

1 for each month, or fraction thereof, from the date, shall be
2 paid for the period from the last date to the date paid. The
3 last date prescribed for payment shall be determined under
4 section 722(a) or (c) without regard to any extension of time
5 for payment. In the case of any amount assessed as a deficiency
6 or as an estimated assessment, the date prescribed for payment
7 shall be 30 days after notice of the assessment.

8 Section 766. Additions to tax.

9 (a) Failure to file return.--In the case of failure to file
10 any return required by section 715 on the date prescribed for
11 the return, determined with regard to any extension of time for
12 filing, and, in the case in which a return filed understates the
13 true amount due by more than 50%, there shall be added to the
14 amount of tax actually due 5% of the amount of the tax if the
15 failure to file a proper return is for not more than one month,
16 with an additional 5% for each additional month, or fraction
17 thereof, during which such failure continues, not exceeding 25%
18 in the aggregate. In every case at least \$2 shall be added.

19 (b) Addition for understatement.--There shall be added to
20 every assessment under section 731(b) an addition equal to 5% of
21 the amount of the understatement and no addition to the tax
22 shall be paid under section 731(a).

23 (c) Interest.--If the department assesses a tax according to
24 section 731(a), (b) or (c), there shall be added to the amount
25 of the deficiency interest at the rate of .75% per month for
26 each month, or fraction thereof, from the date prescribed by
27 subsection (a) or section 722(c) for the payment of the tax to
28 the date of notice of the assessment.

29 Section 767. Penalties.

30 (a) General rule.--The penalties, additions, interest and

1 liabilities provided by this chapter shall be paid on notice and
2 demand by the department, and shall be assessed and collected in
3 the same manner as taxes. Except as otherwise provided, any
4 reference in this chapter to tax imposed by this chapter shall
5 be deemed also to refer to the penalties, additions, interest
6 and liabilities provided by this chapter.

7 (b) Monetary penalty.--Any person who willfully attempts, in
8 any manner, to evade or defeat the tax imposed by this chapter,
9 or the payment thereof, or to assist any other person to evade
10 or defeat the tax imposed by this chapter, or the payment
11 thereof, or to receive a refund improperly shall, in addition to
12 other penalties provided by law, be liable for a penalty equal
13 to one-half of the total amount of the tax evaded.

14 (c) Burden of proof.--In any direct proceeding arising out
15 of a petition for reassessment or refund as provided in this
16 chapter, in which an issue of fact is raised with respect to
17 whether a return is fraudulent or with respect to the propriety
18 of the imposition by the department of the penalty prescribed in
19 subsection (b), the burden of proof with respect to the issue
20 shall be on the department.

21 Section 768. Criminal offenses.

22 (a) False returns.--Any person who with intent to defraud
23 the Commonwealth willfully makes, or causes to be made, any
24 return required by this chapter which is false commits a
25 misdemeanor and, upon conviction, shall be sentenced to pay a
26 fine of not more than \$2,000 or to imprisonment not exceeding
27 three years, or both.

28 (b) Other offenses.--Except as otherwise provided by
29 subsection (a) and subject to the provisions of subsection (c),
30 any person who:

1 (1) advertises or holds out or states to the public or
2 to any purchaser or user, directly or indirectly, that the
3 tax or any part imposed by this chapter will be absorbed by
4 the person, or that it will not be added to the purchase
5 price of the tangible personal property or services described
6 in section 701(k)(2), (3), (4) and (11) through (18) sold or,
7 if added, that the tax or any part will be refunded, other
8 than when the person refunds the purchase price because of
9 the property being returned to the vendor;

10 (2) sells or leases tangible personal property or the
11 services, the sale or use of which by the purchaser is
12 subject to tax under this chapter, and willfully fails to
13 collect the tax from the purchaser and timely remit the same
14 to the department;

15 (3) willfully fails or neglects to timely file any
16 return or report required by this chapter or, as a taxpayer,
17 refuses to timely pay any tax, penalty or interest imposed or
18 provided for by this chapter, or willfully fails to preserve
19 the person's books, papers and records as directed by the
20 department;

21 (4) refuses to permit the department or any of its
22 authorized agents to examine the person's books, records or
23 papers, or who knowingly makes any incomplete, false or
24 fraudulent return or report;

25 (5) does or attempts to do anything to prevent the full
26 disclosure of the amount or character of taxable sales
27 purchases or use made by himself or any other person;

28 (6) provides any person with a false statement as to the
29 payment of tax with respect to particular tangible personal
30 property or services; or

1 (7) makes, utters or issues a false or fraudulent
2 exemption certificate;
3 commits a misdemeanor and, upon conviction shall be sentenced to
4 pay a fine of not more than \$1,000 and costs of prosecution or
5 to imprisonment for not more than one year, or both.

6 (c) Exceptions.--

7 (1) Any person who maintains a place of business outside
8 this Commonwealth may absorb the tax with respect to taxable
9 sales made in the normal course of business to customers
10 present at that place of business without being subject to
11 the penalty and fines.

12 (2) Advertising tax-included prices shall be
13 permissible, if the prepaid services are sold by the service
14 provider, for prepaid telecommunications services not
15 evidenced by the transfer of tangible personal property or
16 for prepaid mobile telecommunications services.

17 (d) Penalties are cumulative.--The penalties imposed by this
18 section shall be in addition to any other penalties imposed by
19 any provision of this chapter.

20 Section 769. Abatement of additions or penalties.

21 On the filing of a petition for reassessment or a petition
22 for refund as provided under this chapter by a taxpayer,
23 additions or penalties imposed on the taxpayer by this chapter
24 or the Tax Reform Code of 1971 may be waived or abated, in whole
25 or in part, where the petitioner has established that the
26 petitioner has acted in good faith, without negligence and with
27 no intent to defraud.

28 Section 770. Rules and regulations.

29 (a) General rule.--The department shall enforce the
30 provisions of this chapter and shall prescribe, adopt,

1 promulgate and enforce rules and regulations not inconsistent
2 with the provisions of this chapter, relating to any matter or
3 thing pertaining to the administration and enforcement of the
4 provisions of this chapter, and the collection of taxes,
5 penalties and interest imposed by this chapter. The department
6 may prescribe the extent, if any, to which any of the rules and
7 regulations shall be applied without retroactive effect.

8 (b) Determination of purchase price.--

9 (1) In determining the purchase price of taxable sales
10 where, because of affiliation of interests between the vendor
11 and the purchaser or irrespective of any such affiliation, if
12 for any other reason, the purchase price of the sale is in
13 the opinion of the department not indicative of the true
14 value of the article or the fair price of the article, the
15 department shall, pursuant to uniform and equitable rules,
16 determine the amount of constructive purchase price on the
17 basis of which the tax shall be computed and levied.

18 (2) The rules shall provide for a constructive amount of
19 a purchase price for each sale, which price shall equal a
20 price for the article which would naturally and fairly be
21 charged in an arm's-length transaction in which the element
22 of common interests between vendor and purchaser or, if no
23 common interest exists, any other element causing a
24 distortion of the price or value is absent.

25 (3) For the purpose of this chapter where a taxable sale
26 occurs between a parent corporation and a subsidiary
27 affiliate or controlled corporation of such parent, there
28 shall be a rebuttable presumption that because of such common
29 interest the transaction was not at arm's-length.

30 Section 771. Keeping of records.

1 (a) Persons liable for taxes.--Every person liable for any
2 tax imposed by this chapter, or for the collection of the tax,
3 shall keep the records, render such statements, make the returns
4 and comply with the rules and regulations as the department may,
5 from time to time, prescribe regarding matters pertinent to the
6 person's business. Whenever in the judgment of the department it
7 is necessary, it may require any person, by notice served on the
8 person, or by regulations, to make the returns, render the
9 statements or keep the records as the department deems
10 sufficient to show whether the person is liable to pay or
11 collect tax under this chapter.

12 (b) Persons collecting taxes.--Any person liable to collect
13 tax from another person under the provisions of this chapter
14 shall file reports, keep records, make payments and be subject
15 to interest and penalties as provided for under this chapter, in
16 the same manner as if the person were directly subject to the
17 tax.

18 (c) Nonresidents.--

19 (1) A nonresident who does business in this Commonwealth
20 as a retail dealer shall keep adequate records of the
21 business and of the tax due with respect to the business,
22 which records shall at all times be retained within this
23 Commonwealth unless retention outside this Commonwealth is
24 authorized by the department.

25 (2) No taxes collected from purchasers shall be sent
26 outside this Commonwealth without the written consent of and
27 in accordance with conditions prescribed by the department.

28 (3) The department may require a taxpayer who desires to
29 retain records or tax collections outside this Commonwealth
30 to assume reasonable out-of-State audit expenses.

1 (d) Retail dealers.--

2 (1) Any person doing business as a retail dealer who at
3 the same time is engaged in another business which does not
4 involve the making of sales taxable under this chapter shall
5 keep separate books and records of the person's businesses so
6 as to show the sales taxable under this chapter separately
7 from the sales not taxable under this chapter.

8 (2) If the person fails to keep such separate books and
9 records, the person shall be liable for tax at the rate
10 designated in section 702 on the entire purchase price of
11 sales from both or all of the person's businesses.

12 (e) Segregation of taxes required.--

13 (1) In those instances where a vendor gives no sales
14 memoranda or uses registers showing only total sales, the
15 vendor shall adopt some method of segregating tax from sales
16 receipts and keep records showing the segregation, all in
17 accordance with proper accounting and business practices.

18 (2) A vendor may apply to the department for permission
19 to use a collection and recording procedure which will show
20 the information as the law requires with reasonable accuracy
21 and simplicity. The application must contain a detailed
22 description of the procedure to be adopted.

23 (3) Permission to use the proposed procedure is not to
24 be construed as relieving the vendor from remitting the full
25 amount of tax collected.

26 (4) The department may revoke the permission on 30 days'
27 notice to the vendor.

28 (5) Refusal of the department to grant permission in
29 advance to use the procedure shall not be construed to
30 invalidate a procedure which on examination shows the

1 information as the law requires.

2 Section 771.1. Reports and records of promoters.

3 Every licensed promoter shall keep a record of the date and
4 place of each show and the name, address, sales, use and hotel
5 occupancy license number of every person whom the licensed
6 promoter permits to display for sale or to sell tangible
7 personal property or services subject to tax under section 702
8 at the show. The records shall be open for inspection and
9 examination at any reasonable time by the department or a duly
10 authorized representative, and the records shall, unless the
11 department consents in writing to an earlier destruction, be
12 preserved for three years after the date the report was filed or
13 the date it was due, whichever occurs later, except that the
14 department may by regulation require that they be kept for a
15 longer period of time.

16 Section 772. Examinations.

17 (a) Power of department.--The department or any of its
18 authorized agents may examine the books, papers and records of
19 any taxpayer in order to verify the accuracy and completeness of
20 any return made or if no return was made, to ascertain and
21 assess the tax imposed by this chapter. The department may
22 require the preservation of all such books, papers and records
23 for any period deemed proper by it but not to exceed three years
24 from the end of the calendar year to which the records relate.

25 (b) Duty of taxpayers.--Every taxpayer shall give to the
26 department, or its agent, the means, facilities and opportunity
27 for the examinations and investigation.

28 (c) Other powers of department.--

29 (1) The department is further authorized to examine any
30 person, under oath, concerning taxable sales or use by any

1 taxpayer or concerning any other matter relating to the
2 enforcement or administration of this chapter, and to this
3 end may compel the production of books, papers and records
4 and the attendance of all persons whether as parties or
5 witnesses whom it believes to have knowledge of such matters.

6 (2) The procedure for such hearings or examinations
7 shall be the same as that provided by the act of April 9,
8 1929 (P.L.343, No.176), known as The Fiscal Code, relating to
9 inquisitorial powers of fiscal officers.

10 Section 773. Records and examinations of delivery agents.

11 Every agent for the purpose of delivery of goods shipped into
12 this Commonwealth by a nonresident, including, but not limited
13 to, a common carrier, shall maintain adequate records of such
14 deliveries pursuant to rules and regulations adopted by the
15 department and shall make the records available to the
16 department upon request after due notice.

17 Section 774. Unauthorized disclosure.

18 Any information gained by the department as a result of any
19 return, examination, investigation, hearing or verification
20 required or authorized by this chapter shall be confidential,
21 except for official purposes and except in accordance with
22 proper judicial order or as otherwise provided by law, and any
23 person unlawfully divulging such information commits a
24 misdemeanor and, upon conviction, shall be sentenced to pay a
25 fine of not more than \$1,000 and costs of prosecution or to
26 imprisonment for not more than one year, or both.

27 Section 775. Cooperation with other governments.

28 Notwithstanding the provisions of section 774, the department
29 may permit the Commissioner of Internal Revenue of the United
30 States, or the proper officer of any state, or the authorized

1 representative of either such officer, to inspect the tax
2 returns of any taxpayer, or may furnish to the officer or to the
3 officer's authorized representative an abstract of the return of
4 any taxpayer, or supply the officer or the authorized
5 representative with information concerning any item contained in
6 any return or disclosed by the report of any examination or
7 investigation of the return of any taxpayer. This permission
8 shall be granted only if the statutes of the United States or of
9 such other state, as the case may be, grant substantially
10 similar privileges to the proper officer of the Commonwealth
11 charged with the administration of this chapter.

12 Section 776. Interstate compacts.

13 (a) General rule.--The Governor, or the Governor's
14 authorized representative, may confer with the Governor and the
15 authorized representatives of other states with respect to
16 reciprocal use tax collection between the Commonwealth and such
17 other states.

18 (b) Other powers.--The Governor, or the Governor's
19 authorized representative, may join with the authorities of
20 other states to conduct joint investigations, to exchange
21 information, hold joint hearings and enter into compacts or
22 interstate agreements with such other states to accomplish
23 uniform reciprocal use tax collections between those states who
24 are parties to any compact or interstate agreement and the
25 Commonwealth.

26 Section 777. Bonds.

27 (a) Procedure.--

28 (1) Whenever the department, in its discretion, deems it
29 necessary to protect the revenues to be obtained under the
30 provisions of this chapter, it may require any nonresident

1 natural person or any foreign corporation, association,
2 fiduciary, partnership or other entity, not authorized to do
3 in this Commonwealth or not having an established place of
4 business in this Commonwealth and subject to the tax imposed
5 by section 702, to file a bond issued by a surety company
6 authorized to do business in this Commonwealth and approved
7 by the Insurance Commissioner as to solvency and
8 responsibility, in such amounts as it may fix, to secure the
9 payment of any tax or penalties due, or which may become due,
10 from a natural person or corporation.

11 (2) In order to protect the revenues to be obtained
12 under the provisions of this chapter, the department shall
13 require any nonresident natural person or any foreign
14 corporation, association, fiduciary, partnership or entity,
15 who or which is a building contractor, or who or which is a
16 supplier delivering building materials for work in this
17 Commonwealth and is not authorized to do business in this
18 Commonwealth or does not have an established place of
19 business in this Commonwealth and is subject to the tax
20 imposed by section 702, to file a bond issued by a surety
21 company authorized to do business in this Commonwealth and
22 approved by the Insurance Commissioner as to solvency and
23 responsibility, in the amounts as it may fix, to secure the
24 payments of any tax or penalties due, or which may become
25 due, from a natural person, corporation or other entity.

26 (3) The department may also require a bond of any person
27 petitioning the department for reassessment, in the case of
28 any assessment over \$500 or where it is of the opinion that
29 the ultimate collection is in jeopardy.

30 (4) (i) The department may, for a period of three

1 years, require a bond of any person who has on three or
2 more occasions within a 12-month period either filed a
3 return or made payment to the department more than 30
4 days late.

5 (ii) If the department determines that a taxpayer is
6 to file a bond, the department shall give notice to the
7 taxpayer to that effect, specifying the amount of the
8 bond required.

9 (iii) The taxpayer shall file a bond within five
10 days after the giving of the notice by the department
11 unless, within the five-day period, the taxpayer requests
12 in writing a hearing before the secretary or the
13 secretary's representative at which hearing the
14 necessity, propriety and amount of the bond shall be
15 determined by the secretary or a representative. The
16 determination shall be final and shall be complied within
17 15 days after notice is mailed to the taxpayer.

18 (b) Alternative security.--

19 (1) In lieu of the bond required by this section,
20 securities approved by the department, or cash in the amount
21 as it may prescribe, may be deposited.

22 (2) Such securities or cash shall be kept in the custody
23 of the department, who may, at any time, without notice to
24 the depositor, apply them to any tax and/or interest or
25 penalties due, and for that purpose the securities may be
26 sold by the department, at public or private sale, on five
27 days' written notice to the depositor.

28 (c) Lien may be filed.--

29 (1) The department may file a lien pursuant to section
30 742 against any taxpayer who fails to file a bond when

required to do so under this section.

(2) All funds received on execution of the judgment on the lien shall be refunded to the taxpayer with 3% interest should a final determination be made that the taxpayer does not owe any payment to the department.

SUBCHAPTER G

FUNDING PROVISIONS

Section 780. (Reserved).

Section 781. Appropriation for refunds.

So much of the proceeds of the tax imposed by this chapter as shall be necessary for the payment of refunds, enforcement or administration under this chapter is hereby appropriated for those purposes.

Section 781.1. Construction.

To the extent that the language of this chapter is identical to that of equivalent provisions in the former act of March 6, 1956 (P.L.1228, No.381), known as the Tax Act of 1963 for Education, or Article II of the Tax Reform Code of 1971, that language shall be deemed a reenactment of such identical provisions.

Section 781.2. Transfers to Public Transportation Reserve Fund.

(a) Establishment of fund.--The amount of additional revenues that are generated by taxes received under this chapter that are necessary to replace the revenue earmarked for transportation under 74 Pa.C.S. § 1506 (relating to fund), not to exceed 4.4% of such additional revenues, shall be deposited in the Public Transportation Reserve Fund which is hereby established in the State Treasury and shall be disbursed as provided under an act of the General Assembly enacted after the effective date of this section.

1 (b) Time period for transfers.--Within 30 days of the close
2 of a calendar month, 1.01% of the taxes and other sums specified
3 in subsection (a) received in the prior calendar month shall be
4 transferred to the Public Transportation Reserve Fund.

5 Section 782. Transfers to Education Stabilization Fund.

6 (a) Legislative intent.--It is the intent of the General
7 Assembly to broaden the sales and use tax base in order to
8 provide funds for the operating expenses of school districts and
9 as a means to abolish the school property tax.

10 (b) Source of funding for transfers.--Except as otherwise
11 provided under section 781.2, all revenues received on or after
12 January 1, 2013, from the tax imposed by this chapter shall be
13 transferred to the Education Stabilization Fund.

14 CHAPTER 9

15 SENIOR CITIZENS PROPERTY TAX AND

16 RENT REBATE ASSISTANCE

17 Section 901. Scope of chapter.

18 This chapter provides senior citizens with assistance in the
19 form of property tax and rent rebates.

20 Section 902. (Reserved).

21 Section 903. Definitions.

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

25 "Board." The Board of Finance and Revenue of the
26 Commonwealth.

27 "Claimant." A person who files a claim for property tax
28 rebate or rent rebate in lieu of property taxes and:

29 (1) was at least 65 years of age or whose spouse, if a
30 member of the household, was at least 65 years of age during

1 a calendar year in which real property taxes, rent and
2 inflation costs were due and payable;

3 (2) was a widow or widower and was at least 50 years of
4 age during a calendar year or part thereof in which real
5 property taxes, rent and inflation costs were due and
6 payable; or

7 (3) was a permanently disabled person 18 years of age or
8 older during a calendar year or part thereof in which the
9 real property taxes, rent and inflation costs were due and
10 payable.

11 "Homestead." A dwelling, whether owned or rented, and so
12 much of the land surrounding it, as is reasonably necessary for
13 the use of the dwelling as a home, occupied by a claimant. The
14 term includes, but is not limited to:

15 (1) Premises occupied by reason of ownership or lease in
16 a cooperative housing corporation.

17 (2) A mobile home which is assessed as realty for local
18 property tax purposes and the land, if owned or rented by the
19 claimant, upon which the mobile home is situated, and any
20 other similar living accommodation.

21 (3) A part of a multidwelling or multipurpose building
22 and a part of the land upon which it is built.

23 (4) Premises occupied by reason of the claimant's
24 ownership or rental of a dwelling located on land owned by a
25 nonprofit incorporated association, of which the claimant is
26 a member, if the claimant is required to pay a pro rata share
27 of the property taxes levied against the association's land.

28 (5) Premises occupied by a claimant if the claimant is
29 required by law to pay a property tax by reason of the
30 claimant's ownership or rental, including a possessory

1 interest, in the dwelling, the land or both. An owner
2 includes a person in possession under a contract of sale,
3 deed of trust, life estate, joint tenancy or tenancy in
4 common or by reason of statutes of descent and distribution.

5 "Household income." All income received by a claimant and
6 the claimant's spouse while residing in their homestead during
7 the calendar year for which a rebate is claimed.

8 "Income." All income from whatever source derived,
9 including, but not limited to:

10 (1) Salaries, wages, bonuses, commissions, income from
11 self-employment, alimony, support money, cash public
12 assistance and relief.

13 (2) The gross amount of any pensions or annuities,
14 including railroad retirement benefits for calendar years
15 prior to 1999 and 50% of railroad retirement benefits for
16 calendar years 1999 through 2011.

17 (3) All benefits received under the Social Security Act
18 (49 Stat. 620, 42 U.S.C. § 301 et seq.), except Medicare
19 benefits, for calendar years prior to 1999, and 50% of all
20 benefits received under the Social Security Act, except
21 Medicare benefits, for calendar years 1999 through 2011.

22 (3.1) All retirement benefits received by Federal
23 retirees for calendar years prior to 2012. For calendar years
24 2012 and thereafter, 50% of the retirement benefits received
25 by Federal retirees who, due to the date of their Federal
26 employment are ineligible to receive benefits under the
27 Social Security Act.

28 (4) All benefits received under State unemployment
29 insurance laws.

30 (5) All interest received from the Federal or any state

1 government or any instrumentality or political subdivision
2 thereof.

3 (6) Realized capital gains and rentals.

4 (7) Workers' compensation.

5 (8) The gross amount of loss of time insurance benefits,
6 life insurance benefits and proceeds, except the first \$5,000
7 of the total of death benefit payments.

8 (9) Gifts of cash or property, other than transfers by
9 gift between members of a household, in excess of a total
10 value of \$300.

11 The term does not include surplus food or other relief in kind
12 supplied by a governmental agency, property tax or rent rebate,
13 inflation dividend, unrealized dividend, stock dividend, nor
14 shall the term include any veterans' benefits from whatever
15 source. For calendar years 2012 and thereafter, "income" shall
16 not include 50% of all benefits received under the Social
17 Security Act, except Medicare benefits, and 50% of any Social
18 Security substitute pension.

19 "Permanently disabled person." A person who is unable to
20 engage in any substantial gainful activity by reason of any
21 medically determinable physical or mental impairment which can
22 be expected to continue indefinitely, except as provided in
23 section 904(b) (3) and (c).

24 "Real property taxes." All taxes on a homestead, exclusive
25 of municipal assessments, delinquent charges and interest, due
26 and payable during a calendar year.

27 "Rent rebate in lieu of property taxes." Twenty percent of
28 the gross amount actually paid in cash or its equivalent in any
29 calendar year to a landlord in connection with the occupancy of
30 a homestead by a claimant, irrespective of whether such amount

1 constitutes payment solely for the right of occupancy or
2 otherwise.

3 "Social Security substitute pension." A pension received as
4 a result of a person's employment by a government entity or an
5 instrumentality of a government entity if such pension is, in
6 whole or in part, provided in lieu of old age and survivors
7 benefit payments under the Social Security Act (49 Stat. 620, 42
8 U.S.C. § 301 et seq.). The term includes Tier I railroad
9 retirement benefits. The amount of the pension that qualifies as
10 a "Social Security substitute pension" shall not exceed the
11 maximum Federal old age and survivors benefit payments to which
12 an individual eligible for such payments would be entitled, less
13 any Federal old age and survivors benefit payments received
14 under the Social Security Act for employment covered under such
15 act.

16 "Widow" or "widower." The surviving wife or the surviving
17 husband, as the case may be, of a deceased individual and who
18 has not remarried except as provided in section 904(b)(3) and
19 (c).

20 Section 904. Property tax and rent rebate.

21 (a) Schedule of rebates.--

22 (1) The amount of any claim for property tax rebate or
23 rent rebate in lieu of property taxes for real property taxes
24 or rent due and payable through calendar year 2012 shall be
25 determined in accordance with the following schedule:

Amount of Real Property Taxes	
Household Income	Allowed as Rebate
\$ 0 - \$ 8,000	\$750
8,001 - 15,000	500
15,001 - 18,000	300

1 18,001 - 35,000 250

(2) The amount of any claim for rent rebate in lieu of property taxes for rent due and payable during calendar year 2013 and thereafter shall be determined in accordance with the following schedule:

6 Amount of Rent Rebate in Lieu
7 of Property Taxes Allowed as

8	Household Income	Rebate
9	\$ 0 - \$ 7,500	\$750
10	7,501 - 15,000	500
11	15,001 - 20,000	300
12	20,001 - 25,000	250

13 (b) Limitations on claims.--

(1) No claim shall be allowed if the amount of property tax or rent rebate computed in accordance with this section is less than \$10, and the maximum amount of property tax or rent rebate payable shall not exceed \$500 for claims for calendar years through calendar year 2012. For calendar year 2013 and thereafter the maximum amount of rent rebate payable shall not exceed \$750.

(2) No claim shall be allowed if the claimant is a
tenant of an owner of real property exempt from real property
taxes.

(3) No claimant shall be eligible for a property tax rebate for real property taxes due and payable during calendar year 2013 and thereafter.

27 (c) Apportionment and public assistance.--

28 (1) If any of the following exist relating to a claim:

(i) a homestead is owned or rented and occupied for only a portion of a year or is owned or rented in part by

1 a person who does not meet the qualifications for a
2 claimant, exclusive of any interest owned or leased by a
3 claimant's spouse;

4 (ii) the claimant is a widow or widower who
5 remarries; or

6 (iii) the claimant is a formerly disabled person who
7 is no longer disabled,

8 the department shall apportion the real property taxes or
9 rent in accordance with the period or degree of ownership or
10 leasehold or eligibility of the claimant in determining the
11 amount of rebate for which a claimant is eligible.

12 (2) A claimant who receives public assistance from the
13 Department of Public Welfare shall not be eligible for rent
14 rebate in lieu of property taxes or an inflation dividend
15 during those months within which the claimant receives public
16 assistance.

17 (d) Government subsidies.--Rent shall not include subsidies
18 provided by or through a governmental agency.

19 Section 905. Filing of claim.

20 (a) General rule.--Except as otherwise provided in
21 subsection (b), a claim for property tax or rent rebate shall be
22 filed with the department on or before the 30th day of June of
23 the year next succeeding the end of the calendar year in which
24 real property taxes or rent was due and payable.

25 (b) Exception.--A claim filed after the June 30 deadline
26 until December 31 of such calendar year shall be accepted by the
27 secretary as long as funds are available to pay the benefits to
28 the late filing claimant.

29 (c) Payments from State Lottery Fund.--No reimbursement on a
30 claim shall be made from the State Lottery Fund earlier than the

1 day following the 30th day of June provided in this chapter on
2 which that claim may be filed with the department.

3 (d) Eligibility of claimants.--

4 (1) Only one claimant from a homestead each year shall
5 be entitled to the property tax or rent rebate.

6 (2) If two or more persons are able to meet the
7 qualifications for a claimant, they may determine who the
8 claimant shall be.

9 (3) If they are unable to agree, the department shall
10 determine to whom the rebate is to be paid.

11 (4) In the case where a claimant has died prior to
12 applying for the property tax or rent rebate, the application
13 may be submitted by a family member who satisfies the
14 following requirements:

15 (i) The family member is the surviving spouse,
16 child, mother or father, or sister or brother of the
17 decedent, with preference given in that order.

18 (ii) The family member submits a death certificate
19 of the decedent.

20 (iii) The family member executes a sworn affidavit
21 under the penalties of 18 Pa.C.S. § 4904 (relating to
22 unsworn falsification to authorities) stating the
23 relationship of the family member to the decedent, the
24 existence or nonexistence of a duly appointed personal
25 representative of the decedent and any other persons that
26 may be entitled to make a claim to the property tax or
27 rent rebate that was otherwise due the decedent.

28 (iv) The family member provides such other
29 information determined by the department to be necessary
30 in order to review the application.

1 Section 906. Proof of claim.

2 (a) Contents.--Each claim shall include:

3 (1) Reasonable proof of household income.

4 (2) The size and nature of the property claimed as a
5 homestead.

6 (3) The rent, tax receipt or other proof that the real
7 property taxes on the homestead have been paid or rent in
8 connection with the occupancy of a homestead has been paid.

9 (4) If the claimant is a widow or widower, a declaration
10 of such status in such manner as prescribed by the secretary.

11 (b) Proof of disability.--

12 (1) Proof that a claimant is eligible to receive
13 disability benefits under the Social Security Act (49 Stat.
14 620, 42 U.S.C. § 301 et seq.) shall constitute proof of
15 disability under this chapter.

16 (2) No person who has been found not to be disabled by
17 the Social Security Administration shall be granted a rebate
18 under this chapter.

19 (3) A claimant not covered under the Social Security Act
20 shall be examined by a physician designated by the department
21 and such status determined using the same standards used by
22 the Social Security Administration.

23 (c) Direct payment of taxes or rent not required.--It shall
24 not be necessary that such taxes or rent were paid directly by
25 the claimant if the rent or taxes have been paid when the claim
26 is filed.

27 (d) Proof of age on first claim.--The first claim filed
28 shall include proof that the claimant or the claimant's spouse
29 was at least 65 years of age, or at least 50 years of age in the
30 case of a widow or widower during the calendar year in which

1 real property taxes or rent were due and payable.

2 Section 907. Incorrect claim.

3 Whenever on audit of a claim the department finds the claim
4 to have been incorrectly determined, it shall redetermine the
5 correct amount of the claim and notify the claimant of the
6 reason for the redetermination and the amount of the corrected
7 claim.

8 Section 908. Funds for payment of claims.

9 (a) Payment.--Approved claims shall be paid from the State
10 Lottery Fund established by the act of August 26, 1971 (P.L.351,
11 No.91), known as the State Lottery Law.

12 (b) Minimum funding level.--Not less than the percentage of
13 the State Lottery Fund expended in the fiscal year beginning
14 July 1, 2012, for the provision of property tax relief and rent
15 rebate in lieu of property taxes shall be transferred from the
16 State Lottery Fund each year into a restricted account within
17 the State Lottery Fund, which account is hereby established and
18 shall be known as the Property Tax and Rent Rebate Restricted
19 Account. The moneys of the account shall be expended for the
20 sole purpose of providing property tax relief and rent rebates
21 in lieu of property taxes as provided by law.

22 (c) Restrictions on use of Gaming Fund.--No moneys in the
23 Gaming Fund shall be transferred to the State Lottery Fund or
24 otherwise used for the purposes of this chapter.

25 Section 909. Claim forms and rules and regulations.

26 (a) General rule.--Necessary rules and regulations shall be
27 prescribed by a committee consisting of the Secretary of Aging,
28 the Secretary of Revenue and the Secretary of Community and
29 Economic Development. The Secretary of Aging shall serve as the
30 chairman of the committee. The department shall receive all

1 applications, determine the eligibility of claimants, hear
2 appeals, disburse payments and make available suitable forms for
3 the filing of claims.

4 (b) Report to General Assembly.--In addition to any rules
5 and regulations prescribed under subsection (a), the department
6 shall collect the following information and issue a report
7 including such information to the chairman and minority chairman
8 of the Appropriations Committee of the Senate and the chairman
9 and minority chairman of the Appropriations Committee of the
10 House of Representatives by May 31, 2013, and May 31 of each
11 year thereafter:

12 (1) The total number of claims paid in the fiscal year
13 in which the report is issued with the information provided
14 by school district, by county and for each household income
15 level under section 904(a) (2).

16 (2) The total amount of rebates paid in the fiscal year
17 in which the report is issued with the information provided
18 by school district, by county and for each household income
19 level under subsection 904(a) (2).

20 Section 910. Fraudulent claims and conveyances to obtain
21 benefits.

22 (a) Civil penalty.--In any case in which a claim is
23 excessive and was filed with fraudulent intent, the claim shall
24 be disallowed in full, and a penalty of 25% of the amount
25 claimed shall be imposed. The penalty and the amount of the
26 disallowed claim, if the claim has been paid, shall bear
27 interest at the rate of 1.5% per month from the date of the
28 claim until repaid.

29 (b) Criminal penalty.--The claimant and any person who
30 assisted in the preparation or filing of a fraudulent claim

1 commits a misdemeanor of the third degree and, upon conviction
2 thereof, shall be sentenced to pay a fine not exceeding \$1,000
3 or to imprisonment not exceeding one year, or both.

4 (c) Disallowance for receipt of title.--A claim shall be
5 disallowed if the claimant received title to the homestead
6 primarily for the purpose of receiving property tax rebate.

7 Section 911. Petition for redetermination.

8 (a) Right to file.--A claimant whose claim is either denied,
9 corrected or otherwise adversely affected by the department may
10 file with the department a petition for redetermination on forms
11 supplied by the department within 90 days after the date of
12 mailing of written notice by the department of such action.

13 (b) Contents.--The petition shall set forth the grounds upon
14 which the claimant alleges that such departmental action is
15 erroneous or unlawful, in whole or part, and shall contain an
16 affidavit or affirmation that the facts contained in the
17 petition are true and correct.

18 (c) Extension of time for filing.--

19 (1) An extension of time for filing the petition may be
20 allowed for cause but may not exceed 120 days.

21 (2) The department shall hold such hearings as may be
22 necessary for the purpose of redetermination, and each
23 claimant who has duly filed such petition for redetermination
24 shall be notified by the department of the time when and the
25 place where such hearing in the claimant's case will be held.

26 (d) Time period for decision.--The department shall, within
27 six months after receiving a filed petition for redetermination,
28 dispose of the matters raised by such petition and shall mail
29 notice of the department's decision to the claimant.

30 Section 912. Review by Board of Finance and Revenue.

1 (a) Right to review.--Within 90 days after the date of
2 official receipt by the claimant of notice mailed by the
3 department of its decision on a petition for redetermination
4 filed with it, the claimant who is adversely affected by the
5 decision may by petition request the board to review such
6 action.

7 (b) Effect of no decision from department.--The failure of
8 the department to officially notify the claimant of a decision
9 within the six-month period provided for by section 911 shall
10 act as a denial of the petition, and a petition for review may
11 be filed with the board within 120 days after written notice is
12 officially received by the claimant that the department has
13 failed to dispose of the petition within the six-month period.

14 (c) Contents of petition for redetermination.--A petition
15 for redetermination filed under this section shall state the
16 reasons upon which the claimant relies or shall incorporate by
17 reference the petition for redetermination in which such reasons
18 were stated. The petition shall be supported by affidavit that
19 the facts set forth therein are correct and true.

20 (d) Time period for decision.--The board shall act in
21 disposition of petitions filed with it within six months after
22 they have been received, and, in the event of failure of the
23 board to dispose of any petition within six months, the action
24 taken by the department upon the petition for redetermination
25 shall be deemed sustained.

26 (e) Relief authorized by board.--The board may sustain the
27 action taken by the department on the petition for
28 redetermination or it may take such other action as it shall
29 deem necessary and consistent with provisions of this chapter.

30 (f) Form of notice.--Notice of the action of the board shall

1 be given by mail to the department and to the claimant.

2 Section 913. Appeal.

3 A claimant aggrieved by a decision of the board may appeal
4 from the decision of the board in the manner provided by law for
5 appeals from decisions of the board in tax cases.

6 CHAPTER 11

7 LIMITATIONS ON

8 SCHOOL DISTRICT TAXATION

9 Section 1101. Authority to levy taxes and effect of future
10 Constitutional amendment.

11 (a) Abrogating authority to impose certain taxes.--

12 (1) The authority of any school district to levy, assess
13 and collect any real property tax under the Public School
14 Code of 1949, or any other act shall expire, subject to the
15 provisions of section 1102, at midnight December 31, 2012.

16 (2) The authority of a city of the first class to impose
17 or continue to provide for the imposition or continuation of
18 any tax, including, but not limited to, the real property
19 tax, for the use of a school district of the first class
20 shall expire in accordance with section 1102(b).

21 (b) Collection of certain taxes unaffected.--The provisions
22 of this section or any other provision of this act shall not
23 prevent or interfere with any action of any school district to
24 collect any tax owed by any taxpayer prior to the repeal of any
25 law authorizing such tax after such law is repealed pursuant to
26 this act.

27 (c) Limitations on adoption of personal income taxes
28 authorized under Chapter 3 and earned income taxes authorized
29 under Chapter 5.--A school district that adopts a personal
30 income tax pursuant to Chapter 3 may not adopt an earned income

1 tax under Chapter 5. A school district that adopts an earned
2 income tax under Chapter 5 may not adopt a personal income tax
3 under Chapter 3.

4 Section 1102. Transitional taxes.

5 (a) Transitional taxes for school districts other than
6 school districts of the first class.--Notwithstanding any other
7 provision of the Public School Code of 1949 or any other law to
8 the contrary:

9 (1) Any school district, other than a school district of
10 the first class, may continue to levy, assess and collect a
11 real property tax for fiscal year 2012-2013.

12 (2) For all fiscal years beginning after June 30, 2013,
13 no school district shall have any power or authority to levy,
14 assess and collect any real property tax, except as necessary
15 to reduce the amount of its outstanding debt in existence on
16 December 31, 2011.

17 (b) Transitional taxes for school districts of the first
18 class.--Notwithstanding any other provision of the Public School
19 Code of 1949 or any other law to the contrary:

20 (1) Any school district of the first class and city of
21 the first class may continue to levy, assess and collect a
22 real property tax and all other taxes in existence on July
23 31, 2012, at the rates in effect on that date for the use of
24 a coterminous school district of the first class for fiscal
25 year 2012-2013. The authority to levy, assess and collect
26 such taxes for the use of coterminous school districts shall
27 expire at midnight on December 31, 2012.

28 (2) For all fiscal years beginning after June 30, 2012,
29 no city of the first class shall have any power or authority
30 to levy, assess and collect any of the taxes identified under

paragraph (1) for school purposes, except as necessary to reduce the amount of its outstanding debt in existence on December 31, 2011.

Section 1103. Consideration of State appropriations or reimbursements.

The personal income or earned income tax levied shall not be invalidated by reason of the fact that in determining the amount to be raised by such tax no deduction was made for appropriations or reimbursements paid or payable by the Commonwealth to the school district.

Section 1104. Taxes for cities and school districts of the first class.

Notwithstanding any other provision of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, or any other law to the contrary, nothing in this act shall be construed to limit or impair a city of the first class from levying, assessing or collecting any tax for municipal purposes or from increasing the millage for real estate taxes or revenues if the revenues derived from the real property tax are used solely for municipal purposes.

CHAPTER 12

INDEBTEDNESS

Section 1201. Expiration of authority to issue debt.

Notwithstanding any other provision of 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing) or any other law to the contrary, no school district, including a school district of the first class, shall incur any electoral debt, lease rental debt or nonelectoral debt under 53 Pa.C.S. Pt. VII Subpt. B after the effective date of this section.

Section 1202. Notices and reporting by school districts of debt

1 outstanding.

2 (a) Duties.--

3 (1) Each school district, including a school district of
4 the first class, shall identify the outstanding amount of all
5 electoral debt, lease rental debt or nonelectoral debt
6 incurred as of December 31, 2011.

7 (2) On or before September 30, 2012, each school
8 district, including a school district of the first class,
9 shall certify and report to the Department of Revenue the
10 outstanding amount of all electoral debt, lease rental debt
11 or nonelectoral debt incurred as of December 31, 2011,
12 together with any information requested by the department in
13 order for the Commonwealth to comply with requirements of
14 this section.

15 (b) Audit by Department of Revenue.--

16 (1) The Department of Revenue shall audit each report
17 submitted under subsection (a) and shall certify the amount
18 of each report and the total aggregate amount of all reports
19 to the State Treasurer on or before March 31, 2013.

20 (2) If the Department of Revenue disputes all or any
21 portion of a report submitted under subsection (a), the
22 department shall not include such amount in the certification
23 to the State Treasurer and shall notify the school district
24 in writing of the exclusion from the certification.

25 CHAPTER 13

26 FUNDING PROVISIONS

27 Section 1301. Definitions.

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

1 "Base revenue." The money a school district receives from
2 property tax during fiscal year 2011-2012.

3 "Cost of living factor." The lesser of:

4 (1) the average annual percentage increase in the
5 Consumer Price Index for All Urban Consumers (CPI-U) for the
6 Pennsylvania, New Jersey and Maryland area for the preceding
7 calendar year; or

8 (2) the percentage increase in sales and use tax
9 collected under section 702 from the previous calendar year.

10 "Department." The Department of Education of the
11 Commonwealth.

12 "Fund." The Education Stabilization Fund established in
13 section 1302.

14 Section 1302. Education Stabilization Fund.

15 (a) Establishment.--The Education Stabilization Fund is
16 established as a separate fund in the State Treasury.

17 (b) Sources.--The following are the sources of the fund:

18 (1) Money collected by the department under:

19 (i) section 321; or

20 (ii) Chapter 7.

21 (2) Revenue transferred to the General Fund under:

22 (i) 4 Pa.C.S. § 1402(a)(3), (5) and (7) (relating to
23 gross terminal revenue deductions);

24 (ii) 4 Pa.C.S. § 1406(a)(2)(i) and (2.1)(i)
25 (relating to distributions from Pennsylvania Race Horse
26 Development Fund); or

27 (iii) 4 Pa.C.S. § 1407(d)(2) (relating to
28 Pennsylvania Gaming Economic Development and Tourism
29 Fund).

30 (3) Appropriations.

1 the Tax Reform Code of 1971. The taxes collected after January
2 1, 2013, regardless of the transaction date, shall be deposited
3 into the Education Stabilization Fund.

4 (b) Other taxes.--Notwithstanding the repeal of any
5 provision of the Public School Code of 1949 or of any other law
6 authorizing school districts to impose taxes, a governing body
7 shall have the authority to enforce, after the effective date of
8 the repeal, the collection of taxes levied and assessed under
9 those former provisions prior to the effective date of the
10 repeal under section 1504.

11 Section 1502. Construction.

12 Any and all references in any other act to Article II or any
13 provision in Article II of the Tax Reform Code of 1971 shall be
14 deemed a reference to Chapter 7 of this act or the corresponding
15 provisions in Chapter 7 of this act.

16 Section 1503. Severability.

17 The provisions of this act are severable as follows:

18 (1) If any provision of this act is held invalid, the
19 invalidity shall not affect other provisions or applications
20 of this act which can be given effect without the invalid
21 provision or application.

22 (2) Under no circumstances shall the invalidity of any
23 provision or application of this act affect the validity of
24 any provision in this act that abolishes the power of the
25 governing body and any school district and city of the first
26 class or any other political subdivision to levy, assess or
27 collect a tax on any interest in real property for school
28 purposes.

29 Section 1504. Repeals.

30 (a) Intent.--The General Assembly declares that the repeals

1 under subsection (b) are necessary to effectuate this act.

2 (b) Provisions.--The following acts and parts of acts are
3 repealed:

4 (1) Section 631 of the act of March 10, 1949 (P.L.30,
5 No.14), known as the Public School Code of 1949, is repealed.

6 (2) Any provision of the Public School Code of 1949 and
7 of any other law relating to the authority of any school
8 district to levy, assess and collect any tax on real property
9 and the power of any city of the first class to levy, assess
10 and collect any tax real property for school purposes is
11 repealed upon the expiration of the respective schedule
12 prescribed in sections 1101 and 1102.

13 (3) Any provision of the act of the Public School Code
14 of 1949 and any other law relating to debt is repealed to the
15 extent that it is inconsistent with this act.

16 (4) Any provision of the Public School Code of 1949 and
17 any home rule charter adopted pursuant thereto is repealed
18 insofar as it is inconsistent with this act.

19 (5) Any provision of the act of August 9, 1963 (P.L.643,
20 No.341), known as the First Class City Public Education Home
21 Rule Act, and any home rule school district charter adopted
22 pursuant thereto is repealed insofar as it is inconsistent
23 with this act.

24 (6) Article II of the act of March 4, 1971 (P.L.6,
25 No.2), known as the Tax Reform Code of 1971, is repealed.

26 (7) Any provision of the act of June 27, 2006 (1st
27 Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act,
28 is repealed insofar as it is inconsistent with this act.

29 (8) All acts and parts of acts that are inconsistent
30 with this act are repealed to the extent of such

1 inconsistency.

2 Section 1505. Applicability.

3 This act shall apply as follows:

4 (1) Section 1504(b)(9) shall apply at midnight on
5 December 31, 2012.

6 (2) Chapter 7 shall apply January 1, 2013.

7 Section 1506. Effective date.

8 This act shall take effect as follows:

9 (1) Section 1504(b)(2) and (8) shall take effect at
10 midnight on December 31, 2012.

11 (2) Chapters 3, 4 and 5 shall take effect January 1,
12 2013.

13 (3) The remainder of this act shall take effect
14 immediately.