

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1038 Session of 2013

INTRODUCED BY ALLOWAY, BRUBAKER, MENSCH, FOLMER, VOGEL,
VULAKOVICH AND WAUGH, JUNE 20, 2013

REFERRED TO FINANCE, JUNE 20, 2013

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," in sales tax, further providing for definitions,
11 for credit against tax and for local receivers of use tax; in
12 personal income tax, further providing for definitions, for
13 classes of income and for taxability of partners; providing
14 for tax treatment determined at partnership level and for tax
15 imposed at partnership level; further providing for income of
16 a Pennsylvania S corporation, for income taxes imposed by
17 other states, for general rule, for return of Pennsylvania S
18 corporation and for requirements concerning returns, notices,
19 records and statements; in corporate net income tax, further
20 providing for definitions, for imposition of tax and for
21 reports and payment of tax; and, in realty transfer tax,
22 further providing for definitions, for imposition and for
23 acquired company; further providing for coal waste removal
24 and ultraclean fuels tax credit; and, in inheritance tax,
25 further providing for exemption for poverty.

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

28 Section 1. Sections 201(ddd) and 206 of the act of March 4,
29 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971,

1 amended or added December 23, 2003 (P.L.250, No.46), are amended
2 to read:

3 Section 201. Definitions.--The following words, terms and
4 phrases when used in this Article II shall have the meaning
5 ascribed to them in this section, except where the context
6 clearly indicates a different meaning:

7 * * *

8 [(ddd) "Call center." The physical location in this
9 Commonwealth:

10 (1) where at least one hundred and fifty employees are
11 employed to initiate or answer telephone calls;

12 (2) where there are at least two hundred telephone lines;
13 and

14 (3) which utilizes an automated call distribution system for
15 customer telephone calls in one or more of the following
16 activities:

17 (A) customer service and support;

18 (B) technical assistance;

19 (C) help desk service;

20 (D) providing information;

21 (E) conducting surveys;

22 (F) revenue collections; or

23 (G) receiving orders or reservations.

24 For purposes of this clause, a physical location may include
25 multiple buildings utilized by a taxpayer located within this
26 Commonwealth.]

27 Section 206. Credit Against Tax.--(a) A credit against the
28 tax imposed by section 202 shall be granted with respect to
29 tangible personal property or services purchased for use outside
30 the Commonwealth equal to the tax paid to another state by

1 reason of the imposition by such other state of a tax similar to
2 the tax imposed by this article: Provided, however, That no such
3 credit shall be granted unless such other state grants
4 substantially similar tax relief by reason of the payment of tax
5 under this article or under the Tax Act of 1963 for Education.

6 [(b) A credit against the tax imposed by section 202 on
7 telecommunications services shall be granted to a call center
8 for gross receipts tax paid by a telephone company on the
9 receipts derived from the sale of incoming and outgoing
10 interstate telecommunications services to the call center under
11 section 1101(a)(2). The following apply:

12 (1) A telephone company, upon request, shall notify a call
13 center of the amount of gross receipts tax paid by the telephone
14 company on the receipts derived from the sale of incoming and
15 outgoing interstate telecommunications services to the call
16 center.

17 (2) A call center that is eligible for the credit in this
18 subsection may apply for a tax credit as set forth in this
19 subsection.

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

24 (4) By April 15 of the calendar year following the close of
25 the calendar year during which the gross receipts tax was
26 incurred, the department shall notify the applicant of the
27 amount of the applicant's tax credit approved by the department.

28 (5) The total amount of tax credits provided for in this
29 subsection and approved by the department shall not exceed
30 thirty million dollars (\$30,000,000) in any fiscal year. If the

total amount of tax credits applied for by all applicants exceeds the amount allocated for those credits, then the credit to be received by each applicant shall be determined as follows:

(i) Divide:

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

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

(ii) Multiply:

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

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

Section 1.1. Section 226 of the act is repealed:

[Section 226. Local Receivers of Use Tax.--Beginning on and after the effective date of this article, in every county, except in counties of the first class, the county treasurer is hereby authorized to receive use tax due and payable under the provisions of this article from any person other than a licensee. The receiving of such taxes shall be pursuant to rules and regulations promulgated by the department and upon forms furnished by the department. Each county treasurer shall remit to the department all use taxes received under the authority of this section minus the costs of administering this provision not to exceed one per cent 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 such tax.]

Section 2. Section 301(t) of the act, added August 31, 1971 (P.L.362, No.93), is amended and the section is amended by adding subsections to read:

Section 301. Definitions.--Any reference in this article to the Internal Revenue Code of 1986 shall mean the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.),

as amended to January 1, 1997, unless the reference contains the phrase "as amended" and refers to no other date, in which case the reference shall be to the Internal Revenue Code of 1986 as it exists as of the time of application of this article. The following words, terms and phrases when used in this article shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning:

* * *

(d.2) "Corporate item" means an item, including income, gain or loss, deduction or credit determined at the Pennsylvania S corporation level, which is required to be taken into account for a Pennsylvania S corporation's taxable year.

* * *

(n.2) "Partnership item" means an item, including income, gain or loss, deduction or credit determined at the partnership level, which is required to be taken into account for a partnership's taxable year.

* * *

(o.4) "Publicly traded partnership" means an entity defined under section 7704 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 7704) with equity securities registered with the Securities and Exchange Commission under section 12 of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a).

* * *

(t) "State" means, except as provided under section 314(a), any state or commonwealth of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States and any foreign country.

* * *

1 Section 2.1. Section 303(a)(2) of the act, added August 31,
2 1971 (P.L.362, No.93), is amended and subsection (a)(3) is
3 amended by adding a subparagraph to read:

4 Section 303. Classes of Income.--(a) The classes of income
5 referred to above are as follows:

6 * * *

7 (2) Net profits. The net income from the operation of a
8 business, profession, or other activity, after provision for all
9 costs and expenses incurred in the conduct thereof, determined
10 either on a cash or accrual basis in accordance with accepted
11 accounting principles and practices but without deduction of
12 taxes based on income. For purposes of calculating net income
13 under this paragraph, to the extent a taxpayer properly deducts
14 an amount under section 195(b)(1)(A) of the Internal Revenue
15 Code of 1986 (26 U.S.C. § 195(b)(1)(A)), as amended, and the
16 regulations promulgated under section 195(b)(1)(A) of the
17 Internal Revenue Code of 1986, the taxpayer shall be permitted a
18 deduction in equal amount in the same taxable year.

19 (3) Net gains or income from disposition of property. Net
20 gains or net income, less net losses, derived from the sale,
21 exchange or other disposition of property, including real
22 property, tangible personal property, intangible personal
23 property or obligations issued on or after the effective date of
24 this amendatory act by the Commonwealth; any public authority,
25 commission, board or other agency created by the Commonwealth;
26 any political subdivision of the Commonwealth or any public
27 authority created by any such political subdivision; or by the
28 Federal Government as determined in accordance with accepted
29 accounting principles and practices. For the purpose of this
30 article:

1 * * *

2 (viii) The term "net gains or net income, less net losses"
3 shall not include gain or loss from the exchange of property
4 which is not recognized for Federal income tax purposes under
5 section 1031 of the Internal Revenue Code of 1986 (26 U.S.C. §
6 1031), as amended, and the regulations promulgated under section
7 1031 of the Internal Revenue Code of 1986. For purposes of
8 determining basis under subparagraph (i), section 1031(d) of the
9 Internal Revenue Code of 1986 (26 U.S.C. § 1031(d)), as amended,
10 and the regulations promulgated under section 1031 of the
11 Internal Revenue Code of 1986 shall apply.

12 * * *

13 Section 3. Section 306 of the act, amended June 22, 2001
14 (P.L.353, No.23), is amended to read:

15 Section 306. Taxability of Partners.--[A] Except as provided
16 under section 306.2, a partnership as an entity shall not be
17 subject to the tax imposed by this article, but the income or
18 gain of a member of a partnership in respect of said partnership
19 shall be subject to the tax and the tax shall be imposed on his
20 share, whether or not distributed, of the income or gain
21 received by the partnership for its taxable year ending within
22 or with the member's taxable year.

23 Section 4. The act is amended by adding sections to read:

24 Section 306.1. Tax Treatment Determined at Partnership
25 Level.--The classification or character of a partnership item
26 shall be determined at the partnership level. This section shall
27 not prohibit the department from adjusting a partner's return.

28 Section 306.2. Tax Imposed at Partnership Level.--(a) A
29 partnership underreporting reportable income by more than one
30 million dollars (\$1,000,000) shall be jointly liable with each

1 partner for any part of a deficiency resulting from the
2 treatment of a partnership item by a partner on that partner's
3 return in a manner that is consistent with the treatment of that
4 partnership item on the partnership return. If the tax is paid
5 by the partner, the department may not collect the tax from the
6 partnership. If the tax is paid by the partnership, the
7 department may not collect the tax from a partner.

8 (b) Subsection (a) shall apply to the following
9 partnerships:

10 (1) A partnership which has eleven or more individual
11 partners.

12 (2) A partnership which has at least one partner which is a
13 corporation, limited liability company, partnership or trust.

14 (3) A partnership which has only individual partners and
15 which elects to be subject to this subsection. The election must
16 be included on the partnership return to be filed with the
17 department.

18 (c) This section shall not apply to a publicly traded
19 partnership.

20 (d) Nothing under this section shall require one partner to
21 be liable for the payment of a tax liability of another partner.

22 (e) Appeals involving a deficiency assessed under this
23 section may only be pursued by the partnership and a
24 reassessment or settlement of tax liability shall be binding on
25 the partners.

26 Section 5. Section 307.8(a) of the act, amended May 7, 1997
27 (P.L.85, No.7), is amended and the section is amended by adding
28 a subsection to read:

29 Section 307.8. Income of a Pennsylvania S Corporation.--(a)
30 A Pennsylvania S corporation shall not be subject to the tax

imposed by this article, except as provided under subsection (f), but the shareholders of the Pennsylvania S corporation shall be subject to the tax imposed under this article as provided in this article.

* * *

(f) (1) A Pennsylvania S corporation underreporting reportable income by more than one million dollars (\$1,000,000) shall be jointly liable with each shareholder for any part of a deficiency resulting from the treatment of a corporate item by any shareholder on the shareholder's return in a manner that is consistent with the treatment of the corporate item on the return of the Pennsylvania S corporation. If the tax is paid by the shareholder, it may not be collected from the corporation.

(2) Paragraph (1) shall apply to the following Pennsylvania S corporations:

(i) A Pennsylvania S corporation which has eleven or more shareholders.

(ii) A Pennsylvania S corporation which elects to be subject to this subsection. The election must be included on the Pennsylvania S corporation return to be filed with the department.

(3) Nothing under this section shall require one shareholder to be liable for the payment of a tax liability of another shareholder.

(4) Appeals involving the deficiency assessed under this section may be filed only by the Pennsylvania S corporation and a reassessment or settlement of tax liability shall be binding on the shareholders.

Section 6. Section 314(a) of the act, amended December 23,

1 1983 (P.L.370, No.90), is amended to read:

2 Section 314. Income Taxes Imposed by Other States.--(a) A
3 resident taxpayer before allowance of any credit under section
4 312 shall be allowed a credit against the tax otherwise due
5 under this article for the amount of any income tax, wage tax or
6 tax on or measured by gross or net earned or unearned income
7 imposed on him or on a Pennsylvania S corporation in which he is
8 a shareholder, to the extent of his pro rata share thereof
9 determined in accordance with section 307.9, by another state
10 with respect to income which is also subject to tax under this
11 article. For purposes of this subsection and notwithstanding
12 section 301(t), the term "state" shall only include a state of
13 the United States, the District of Columbia, the Commonwealth of
14 Puerto Rico and any territory or possession of the United
15 States.

16 * * *

17 Section 7. Section 324 of the act, amended June 22, 2001
18 (P.L.353, No.23), is amended to read:

19 Section 324. General Rule.--(a) When a partnership, estate,
20 trust or Pennsylvania S corporation receives income from sources
21 within this Commonwealth for any taxable year and any portion of
22 the income is allocable to a nonresident partner, beneficiary,
23 member or shareholder thereof, the partnership, estate, trust or
24 Pennsylvania S corporation shall pay a withholding tax under
25 this section at the time and in the manner prescribed by the
26 department; however, notwithstanding any other provision of this
27 article, all such withholding tax shall be paid over on or
28 before the fifteenth day of the fourth month following the end
29 of the taxable year.

30 (b) This section shall not apply to any publicly traded

1 partnership as defined under section 7704 of the Internal
2 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 7704) with
3 equity securities registered with the Securities and Exchange
4 Commission under section 12 of the Securities Exchange Act of
5 1934 (48 Stat. 881, 15 U.S.C. § 78a).

6 Section 8. Section 330.1 of the act, amended or added
7 December 23, 1983 (P.L.370, No.90) and July 13, 1987 (P.L.325,
8 No.59), is amended to read:

9 Section 330.1. Return of Pennsylvania S Corporation.--(a)
10 Every Pennsylvania S corporation shall make a return for each
11 taxable year, stating specifically all items of gross income and
12 deductions, the names and addresses of all persons owning stock
13 in the corporation at any time during the taxable year, the
14 number of shares of stock owned by each shareholder at all times
15 during the taxable year, the amount of money and other property
16 distributed by the corporation during the taxable year to each
17 shareholder, the date of each distribution, each shareholder's
18 pro rata share of each item of the corporation for the taxable
19 year and such other information as the department may require.

20 (b) The return shall be filed on or before thirty days after
21 the date when the corporation's Federal income tax return is
22 due.

23 (c) Every Pennsylvania S corporation shall also submit to
24 the department a true copy of the income tax return filed with
25 the Federal Government at the time the return required under
26 subsection (a) is filed.

27 (d) Each Pennsylvania S corporation required to file a
28 return under subsection (a) for a taxable year shall, on or
29 before the day on which the return for the taxable year was
30 filed, furnish to each person who is a shareholder at any time

during the taxable year a copy of one or both of the following
showing their share of income and any other information as may
be required by the department:

(1) The Resident Schedule of Shareholder/Partner/Beneficiary
Pass Through Income, Loss and Credits (Schedule RK-1) form.

(2) The Nonresident Schedule of
Shareholder/Partner/Beneficiary Pass Through Income, Loss and
Credits (Schedule NRK-1) form.

Section 9. Section 335 of the act, amended or added August
31, 1971 (P.L.362, No.93), December 23, 2003 (P.L.250, No.46)
and July 2, 2012 (P.L.751, No.85), is amended to read:

Section 335. Requirements Concerning Returns, Notices,
Records and Statements.--(a) The department may prescribe by
regulation for the keeping of records, the content and form of
returns, declarations, statements and other documents and the
filing of copies of Federal income tax returns and
determinations. The department may require any person, by
regulation or notice served upon such person, to make such
returns, render such statements, or keep such records, as the
department may deem sufficient to show whether or not such
person is liable for tax under this article.

(b) (1) When required by regulations prescribed by the
department:

(i) Any person required under the authority of this article
to make a return, declaration, statement, or other document
shall include in such return, declaration, statement or other
document such identifying number as may be prescribed for
securing proper identification of such person.

(ii) Any person with respect to whom a return, declaration,
statement, or other document is required under the authority of

1 this article to make a return, declaration, statement, or other
2 document with respect to another person, shall request from such
3 other person, and shall include in any such return, declaration,
4 statement, or other document, such identifying number as may be
5 prescribed for securing proper identification of such other
6 person.

7 (2) For purposes of this section, the department is
8 authorized to require such information as may be necessary to
9 assign an identifying number to any person.

10 (c) (1) Every partnership, estate or trust having a
11 resident partner or a resident beneficiary or every partnership,
12 estate or trust having any income derived from sources within
13 this Commonwealth shall make a return for the taxable year
14 setting forth all items of income, loss and deduction, and such
15 other pertinent information as the department may by regulations
16 prescribe. Such return shall be filed on or before the fifteenth
17 day of the fourth month following the close of each taxable
18 year. For purposes of this subsection, "taxable year" means year
19 or period which would be a taxable year of the partnership if it
20 were subject to tax under this article.

21 (2) Every partnership, estate or trust required to file a
22 return under paragraph (1) shall also file with the department a
23 true copy of the income tax return filed with the Federal
24 Government at the time the return required under paragraph (1)
25 is filed.

26 (3) Every partnership, estate or trust required to file a
27 return under paragraph (1) for any taxable year shall, on or
28 before the day the return is filed, furnish to each partner or
29 nominee for another person or to each beneficiary to whom the
30 income or gains of the estate or trust is taxable, a copy of one

or both of the following showing their share of income and any other information as may be required by the department:

(i) The Resident Schedule of Shareholder/Partner/Beneficiary Pass Through Income, Loss and Credits (Schedule RK-1) form.

(ii) The Nonresident Schedule of Shareholder/Partner/Beneficiary Pass Through Income, Loss and Credits (Schedule NRK-1) form.

(4) Failure to file a timely return as required under paragraph (2) and failure to furnish a copy of the returns required under paragraph (3) shall result in a penalty of fifty dollars (\$50) for each individual return or individual copy required.

(d) The department may prescribe regulations requiring returns of information to be made and filed on or before February 28 of each year as to the payment or crediting in any calendar year of amounts of ten dollars (\$10) or more to any taxpayer. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers and all officers and employees of this Commonwealth, or of any municipal corporation or political subdivision of this Commonwealth having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on compensation required to be furnished by an employer to an employee, shall constitute the return of information required to be made under this section with respect to such compensation.

(e) Any person who is required to make a form W-2G return to

1 the Secretary of the Treasury of the United States in regard to
2 taxable gambling or lottery winnings from sources within this
3 Commonwealth shall file a copy of the form with the department
4 by March 1 of each year or, if filed electronically, by March 31
5 of each year.

6 (f) The following apply:

7 (1) Any person who:

8 (i) makes payments of income from sources within this
9 Commonwealth;

10 (ii) makes payments of nonemployee compensation or payments
11 under an oil and gas lease under subparagraph (i) to a resident
12 or nonresident individual, an entity treated as a partnership
13 for tax purposes or a single member limited liability company;
14 and

15 (iii) is required to make a form 1099-MISC return to the
16 Secretary of the Treasury of the United States with respect to
17 the payments shall file a copy of form 1099-MISC with the
18 department and send a copy of form 1099-MISC to the payee by the
19 Federal filing deadline each year.

20 (2) If the payor is required to perform electronic filing
21 for Pennsylvania employer withholding purposes, the form 1099-
22 MISC shall be filed electronically with the department.

23 (g) (1) Every estate, trust, Pennsylvania S Corporation or
24 partnership, other than a publicly traded partnership, shall
25 maintain at the end of the entity's taxable year an accurate
26 list of partners, members, beneficiaries or shareholders. The
27 list shall include the name, current address and tax
28 identification number of all existing partners, members,
29 beneficiaries or shareholders and of all partners, members,
30 beneficiaries or shareholders, who were admitted or who withdrew

1 during the taxable year, including the date of withdrawal and
2 admittance.

3 (2) If the entity under paragraph (1) does not maintain an
4 accurate list as required, the tax, penalty and interest with
5 respect to the entity shall be considered the tax, penalty and
6 interest of the partnership, estate, trust or Pennsylvania S
7 Corporation and of the general partner, tax matters partner,
8 corporate officer or trustee.

9 Section 10. Section 401(3)1 and 2(a)(17) of the act, amended
10 September 9, 1971 (P.L.437, No.105), are amended, clause (3)1 is
11 amended by adding a phrase, subclause 2(a) is amended by adding
12 a paragraph, paragraphs (3)4(c)(1)(A) and 2(B) are amended by
13 adding subparagraphs and the section is amended by adding
14 clauses to read:

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

19 * * *

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

21 (t) (1) Except as provided in paragraph (2), (3) or (4) for
22 taxable years beginning after December 31, 2014, and in addition
23 to any authority the department has on the effective date of
24 this paragraph to deny a deduction related to a fraudulent or
25 sham transaction, no deduction shall be allowed for an
26 intangible expense or cost, or an interest expense or cost,
27 paid, accrued or incurred directly or indirectly in connection
28 with one or more transactions with an affiliated entity. In
29 calculating taxable income under this paragraph, when the
30 taxpayer is engaged in one or more transactions with an

affiliated entity that was subject to tax in this Commonwealth
or another state or possession of the United States on a tax
base that included the intangible expense or cost, or the
interest expense or cost, paid, accrued or incurred by the
taxpayer, the taxpayer shall receive a credit against tax due in
this Commonwealth in an amount equal to the apportionment factor
of the taxpayer in this Commonwealth multiplied by the greater
of the following:

(A) the tax liability of the affiliated entity with respect
to the portion of its income representing the intangible expense
or cost, or the interest expense or cost, paid, accrued or
incurred by the taxpayer; or

(B) the tax liability that would have been paid by the
affiliated entity under subparagraph (A) if that tax liability
had not been offset by a credit.

The credit issued under this paragraph shall not exceed the
taxpayer's liability in this Commonwealth attributable to the
net income taxed as a result of the adjustment required by this
paragraph.

(2) The adjustment required by paragraph (1) shall not apply
to a transaction that was directly related to a valid business
purpose.

(3) The adjustment required by paragraph (1) shall not apply
to a transaction between a taxpayer and an affiliated entity
domiciled in a foreign nation which has in force a comprehensive
income tax treaty with the United States providing for the
allocation of all categories of income subject to taxation, or
the withholding of tax, on royalties, licenses, fees and
interest for the prevention of double taxation of the respective
nations' residents and the sharing of information.

1 (4) The adjustment required by paragraph (1) shall not apply
2 to a transaction where an affiliated entity directly or
3 indirectly paid, accrued or incurred a payment to a person who
4 is not an affiliated entity, if the payment is paid, accrued or
5 incurred on the intangible expense or cost, or interest expense
6 or cost, and is equal to or less than the taxpayer's
7 proportional share of the transaction. The taxpayer's
8 proportional share shall be based on relative sales, assets,
9 liabilities or another reasonable method.

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

18 (a) Division of Income.

19 * * *

20 (16.1) Sales, other than sales under paragraphs (16) and
21 (17), are in this State as follows:

22 (A) The sale, lease, rental or other use of real property,
23 if the real property is located in this State. If real property
24 is located both in and outside this State, the sale is in this
25 State based upon the percentage of total assessed value of the
26 real property located in this State.

27 (B) (I) The rental, lease or licensing of tangible personal
28 property, if the customer first obtained possession of the
29 tangible personal property in this State.

30 (II) If the tangible personal property is subsequently taken

1 out of this State, the taxpayer may use a reasonably determined
2 estimate of usage in this State to determine the extent of sale
3 in this State.

4 (C) (I) The sale of service, if the service is delivered to
5 a location in this State. If the service is delivered both to a
6 location in and outside this State, the sale is in this State
7 based upon the percentage of total value of the service
8 delivered to a location in this State.

9 (II) If the state or states of assignment under subparagraph
10 (I) cannot be determined for a customer who is an individual
11 that is not a sole proprietor, a service is deemed to be
12 delivered at the customer's billing address.

13 (III) If the state or states of assignment under
14 subparagraph (I) cannot be determined for a customer, except for
15 a customer under subparagraph (II), a service is deemed to be
16 delivered at the location from which the services were ordered
17 in the customer's regular course of operations. If the location
18 from which the services were ordered in the customer's regular
19 course of operations cannot be determined, a service is deemed
20 to be delivered at the customer's billing address.

21 (17) Sales, other than sales [of tangible personal property]
22 under paragraphs (16) and (16.1), are in this State if:

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

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

29 * * *

30 4. * * *

(c) (1) The net loss deduction shall be the lesser of:

(A) * * *

(V) For taxable years beginning after December 31, 2013, the greater of twenty-five per cent of taxable income as determined under subclause 1 or, if applicable, subclause 2 or four million dollars (\$4,000,000);

(VI) For taxable years beginning after December 31, 2014, the greater of thirty per cent of taxable income as determined under subclause 1 or, if applicable, subclause 2 or five million dollars (\$5,000,000); or

* * *

(2) * * *

(B) The earliest net loss shall be carried over to the earliest taxable year to which it may be carried under this schedule. The total net loss deduction allowed in any taxable year shall not exceed:

* * *

(V) The greater of twenty-five per cent of taxable income as determined under subclause 1 or, if applicable, subclause 2 or four million dollars (\$4,000,000) for taxable years beginning after December 31, 2013.

(VI) The greater of thirty per cent of taxable income as determined under subclause 1 or, if applicable, subclause 2 or five million dollars (\$5,000,000) for taxable years beginning after December 31, 2014.

* * *

(8) "Intangible expense or cost." Royalties, licenses or fees paid for the acquisition, use, maintenance, management, ownership, sale, exchange or other disposition of patents, patent applications, trade names, trademarks, service marks,

copyrights, mask works or other similar expenses or costs.

(9) "Interest expense or cost." A deduction allowed under section 163 of the Internal Revenue Code of 1986 (26 U.S.C. § 163) to the extent that such deduction is directly related to an intangible expense or cost.

(10) "Affiliated entity." A person with a relationship to the taxpayer during all or any portion of the taxable year that is any of the following:

(i) a stockholder who is an individual, or a member of the stockholder's family as set forth in section 318 of the Internal Revenue Code of 1986 (26 U.S.C. § 318), if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, more than fifty per cent of the value of the taxpayer's outstanding stock;

(ii) a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, more than fifty per cent of the value of the taxpayer's outstanding stock;

(iii) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code of 1986, if the taxpayer owns, directly, indirectly, beneficially or constructively, more than fifty per cent of the value of the corporation's outstanding stock. The attribution rules of section 318 of the Internal Revenue Code of 1986 shall apply for

purposes of determining whether the ownership requirements of this definition have been met;

(iv) a component member as defined in section 1563(b) of the Internal Revenue Code of 1986 (26 U.S.C. § 1563(b)); or

(v) a person to or from whom there is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue Code of 1986.

(11) "Valid business purpose." A purpose, other than the avoidance or reduction of taxation, which alone or in combination with other purposes constitute the primary motivation for a business activity or transaction. A transaction done at arm's length terms shall be presumed to be directly related to a valid business purpose.

Section 11. Section 402(b) of the act, amended June 29, 2002 (P.L.559, No.89), is amended to read:

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

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

Taxable Year	Tax Rate
January 1, 1995[, and	
each taxable year	
thereafter] <u>to</u>	
<u>December 31, 2014</u>	9.99%
<u>January 1, 2015, to</u>	
<u>December 31, 2015</u>	<u>9.89%</u>
<u>January 1, 2016, to</u>	
<u>December 31, 2016</u>	<u>9.69%</u>
<u>January 1, 2017, to</u>	<u>9.49%</u>

1	<u>December 31, 2017</u>	
2	<u>January 1, 2018, to</u>	
3	<u>December 31, 2018</u>	<u>9.29%</u>
4	<u>January 1, 2019, to</u>	
5	<u>December 31, 2019</u>	<u>8.96%</u>
6	<u>January 1, 2020, to</u>	
7	<u>December 31, 2020</u>	<u>8.63%</u>
8	<u>January 1, 2021, to</u>	
9	<u>December 31, 2021</u>	<u>8.3%</u>
10	<u>January 1, 2022, to</u>	
11	<u>December 31, 2022</u>	<u>7.97%</u>
12	<u>January 1, 2023, to</u>	
13	<u>December 31, 2023</u>	<u>7.64%</u>
14	<u>January 1, 2024, to</u>	
15	<u>December 31, 2024</u>	<u>7.31%</u>
16	<u>January 1, 2025, and</u>	
17	<u>each taxable year</u>	
18	<u>thereafter</u>	<u>6.99%</u>

19 * * *

20 Section 12. Section 403(d) of the act, amended October 18,
 21 2006 (P.L.1149, No.119), is amended to read:

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

23 (d) If the officers of any corporation shall neglect, or
 24 refuse to make any report as herein required, or shall knowingly
 25 make any false report, [the following percentages of the amount
 26 of the tax shall be added by the department to the tax
 27 determined to be due on the first one thousand dollars (\$1,000)
 28 of tax ten per cent, on the next four thousand dollars (\$4,000)
 29 five per cent, and on everything in excess of five thousand
 30 dollars (\$5,000) one per cent, no such] a penalty of five

1 hundred dollars (\$500) plus an additional one per cent for every
2 dollar of tax determined to be due in excess of twenty-five
3 thousand dollars (\$25,000) shall be added to the tax determined
4 to be due. No amounts added to the tax shall bear any interest
5 whatsoever.

6 * * *

7 Section 12.1. The definitions of "document," "real estate"
8 and "real estate company" in section 1101-C of the act, amended
9 July 2, 1986 (P.L.318, No.77), are amended to read:

10 Section 1101-C. Definitions.--The following words when used
11 in this article shall have the meanings ascribed to them in this
12 section:

13 * * *

14 "Document." Any deed, instrument or writing which conveys,
15 transfers, devises, vests, confirms or evidences any transfer or
16 devise of title to real estate in this Commonwealth, but does
17 not include wills, mortgages, deeds of trust or other
18 instruments of like character given as security for a debt and
19 deeds of release thereof to the debtor, land contracts whereby
20 the legal title does not pass to the grantee until the total
21 consideration specified in the contract has been paid or any
22 cancellation thereof unless the consideration is payable over a
23 period of time exceeding thirty years or instruments which
24 solely grant, vest or confirm a public utility easement.

25 "Document" shall also include a declaration of acquisition
26 required to be presented for recording under section 1102-C.5 of
27 this article.

28 * * *

29 "Real estate."

30 (1) Any lands, tenements or hereditaments [within this

Commonwealth], including, without limitation, buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper or lower boundaries, trees and other improvements, immovables or interests which by custom, usage or law pass with a conveyance of land, but excluding permanently attached machinery and equipment in an industrial plant.

(2) A condominium unit.

(3) A tenant-stockholder's interest in a cooperative housing corporation, trust or association under a proprietary lease or occupancy agreement.

"Real estate company." A corporation or association which [is] meets any of the following:

(1) Is primarily engaged in the business of holding, selling or leasing real estate ninety per cent or more of the ownership interest in which is held by thirty-five or fewer persons and which:

[(1)] (i) derives sixty per cent or more of its annual gross receipts from the ownership or disposition of real estate; or

[(2)] (ii) holds real estate, the value of which comprises [ninety] fifty per cent or more of the value of its entire tangible asset holdings exclusive of tangible assets which are freely transferable and actively traded on an established market.

(2) Owns a direct or indirect interest in a real estate company. An indirect ownership interest is an interest in a corporation or association whose purpose is the ownership of a real estate company either by itself or as part of a tiered structure of corporations or associations.

* * *

1 Section 12.2. Section 1102-C of the act, amended July 2,
2 1986 (P.L.318, No.77), is amended to read:

3 Section 1102-C. Imposition of Tax.--Every person who makes,
4 executes, delivers, accepts or presents for recording any
5 document or in whose behalf any document is made, executed,
6 delivered, accepted or presented for recording, shall be subject
7 to pay for and in respect to the transaction or any part
8 thereof, or for or in respect of the vellum parchment or paper
9 upon which such document is written or printed, a State tax at
10 the rate of one per cent of the value of the real estate within
11 this Commonwealth represented by such document, which State tax
12 shall be payable at the earlier of the time the document is
13 presented for recording or within thirty days of acceptance of
14 such document or within thirty days of becoming an acquired
15 company.

16 Section 12.3. Section 1102-C.5(a) of the act, amended July
17 2, 2012 (P.L.751, No.85), is amended to read:

18 Section 1102-C.5. Acquired Company.--(a) A real estate
19 company is an acquired company upon a change in the ownership
20 interest in the company, however effected, if the change:

21 (1) does not affect the continuity of the company; and

22 (2) of itself or together with prior changes has the effect
23 of transferring, directly or indirectly, ninety per cent or more
24 of the total ownership interest in the company within a period
25 of three years.

26 (3) For the purposes of paragraph (2), a transfer occurs
27 within a period of three years of another transfer or transfers
28 if, during the period[:

29 (i) the transferring party provides a legally binding
30 commitment, enforceable at a future date, to execute the

1 transfer;
2 (ii) the terms of the transfer are fixed and not subject to
3 negotiation; and
4 (iii) the transferring party receives full consideration, in
5 any form, in exchange for the transfer.], the transferring party
6 provides the transferee a legally binding commitment or option,
7 enforceable at a future date, to execute the transfer.

8 * * *

9 Section 12.4. Article XVIII-A of the act, added May 12, 1999
10 (P.L.26, No.4), is repealed:

11 [ARTICLE XVIII-A
12 COAL WASTE REMOVAL AND ULTRACLEAN FUELS
13 TAX CREDIT

14 Section 1801-A. Short Title.--This article shall be known
15 and may be cited as the "Coal Waste Removal and Ultraclean Fuels
16 Act."

17 Section 1802-A. Definitions.--The following words, terms and
18 phrases, when used in this article, shall have the meanings
19 ascribed to them in this section, except where the context
20 clearly indicates a different meaning:

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

23 "Developer" means the owner-operator of a facility, as
24 defined in this section, or the operator of the facility that
25 has sold the facility in new condition to a third party from
26 whom that operator has simultaneously leased back the facility
27 for a minimum period of twelve years.

28 "Facility" includes all plant and equipment purchased or
29 constructed by or on behalf of the developer which is used
30 within this Commonwealth by the developer to produce one or more

1 qualified fuels.

2 "Internal Revenue Code" means the Internal Revenue Code of
3 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

4 "Qualified fuels" means those fuels produced from
5 nontraditional coal culm and silt feedstocks as defined in
6 section 29(c) of the Internal Revenue Code of 1986 (Public Law
7 99-514, 26 U.S.C. § 29(c)).

8 "Qualifying property" means tangible personal property and
9 other forms of tangible property which qualify for investment
10 tax credit treatment and which meet all of the following
11 requirements:

12 (1) Be acquired through a purchase, as defined under section
13 179(d)(2) of the Internal Revenue Code (26 U.S.C. § 179(d)(2)),
14 or constructed by the developer for its own use.

15 (2) Be depreciable under section 167 of the Internal Revenue
16 Code (26 U.S.C. § 167).

17 (3) Have a useful life of greater than or equal to four
18 years.

19 (4) Be located within this Commonwealth.

20 (5) Be used by the developer in the production of qualified
21 fuels.

22 (6) Be acquired by purchase or constructed on or after
23 January 1, 2000, and before January 1, 2013.

24 (7) Not be the subject of any tax credit otherwise available
25 to the developer under this act.

26 "Tax credit base" means only the cost or other basis of
27 qualifying property that is properly transferred to the
28 facility's basis for depreciation for Federal income tax
29 purposes between January 1, 2000, and December 31, 2012.

30 Section 1803-A. Investment Tax Credits Program.--(a) A

1 developer of a new facility for the production of one or more
2 qualified fuels shall be allowed an investment tax credit
3 against the taxes imposed under Articles II, IV and VI of this
4 act. The amount of the credit shall be computed as a percentage
5 applied to the cost or other basis for Federal income tax
6 purposes of qualifying property.

7 (b) (1) The investment tax credit shall be computed as
8 fifteen per cent of the tax credit base.

9 (2) The maximum investment tax credit available for
10 application, whether claimed by one or more taxpayers, shall not
11 exceed fifteen per cent of the capital cost of the facility.

12 (3) Any amount of allowable investment tax credit not used
13 in the tax year for which the credit was claimed can be carried
14 forward by the claiming taxpayer to succeeding years until the
15 full amount of allowable credit has been used.

16 (c) (1) The developer, upon notice to the department as
17 specified by the department, may sell or assign, in whole or in
18 part, any investment tax credit afforded under this section to
19 one or more taxpayers if no claim for allowance of such credit
20 has been filed.

21 (2) A taxpayer recipient by purchase or assignment of any
22 portion of the developer's investment tax credit under paragraph
23 (1) shall initially claim such credit, upon notice to the
24 department of the derivative basis of the credit in compliance
25 with procedures specified by the department, for the tax year in
26 which the purchase or assignment is made, but in no event
27 subsequent to the filing of an income tax return for the year
28 2012.

29 (3) Any taxpayer who acquires any portion of the developer's
30 investment tax credit by sale or assignment for value and

1 without notice by the developer of any irregularity or
2 invalidity shall not suffer any disallowance of the credit or
3 the imposition of any adjustment or fraud penalty attributable
4 to conduct by the developer.

5 (d) (1) If prior to the expiration of any qualifying
6 property's useful life, as used to calculate depreciation for
7 Federal income tax purposes, the developer, upon mandatory
8 notice to the department in compliance with procedures specified
9 by the department, disposes of any qualifying property, in a
10 transaction other than a sale-leaseback transaction, upon which
11 the department has previously allowed an investment tax credit
12 claimed by any taxpayer, a portion of all such credit shall be
13 recaptured and added to the developer's tax liability for the
14 tax year in which the qualifying property is disposed.

15 (2) The portion of the investment tax credit previously
16 allowed, which is subject to recapture from the developer, shall
17 be equal to a fraction whose numerator is the number of years
18 remaining to fully depreciate for Federal income tax purposes
19 the qualifying property disposed and whose denominator is the
20 total number of years over which the property otherwise would
21 have been subject to depreciation by the developer.

22 (3) In calculating the recapture percentage, the year of
23 disposition of the qualifying property is considered a year of
24 remaining depreciation.

25 (e) The department shall verify the validity of any claim
26 for allowance of any investment tax credit afforded under this
27 section and, in the case of a fraudulent claim, may assess
28 against the developer a penalty of one hundred and twenty-five
29 per cent of the credit improperly claimed.

30 (f) The tax credits authorized by this section shall not

1 exceed eighteen million dollars (\$18,000,000) in the aggregate
2 during any year.

3 Section 1804-A. Contract Required.--(a) In order for a
4 developer to claim investment tax credits under this article,
5 the developer must enter into a contract with the Commonwealth
6 that provides as follows:

7 (1) The term of the contract shall be twenty-five years,
8 beginning with the first tax year in which the investment tax
9 credits are claimed.

10 (2) The developer shall make periodic payments to the
11 Commonwealth, which payments may not exceed in the aggregate
12 forty-six million eight hundred thousand dollars (\$46,800,000)
13 over the term of the contract.

14 (3) The periodic payments shall occur every five years and
15 each payment shall be nine million three hundred sixty thousand
16 dollars (\$9,360,000), except as provided in paragraphs (4), (5)
17 and (6).

18 (4) For the first five-year period, the amount specified in
19 paragraph (3) shall be reduced by:

20 (i) An amount equal to the business losses of the developer,
21 if any, relating to the facility that are sustained in the first
22 and second years of the contract, provided such amount does not
23 exceed three million seven hundred forty-four thousand dollars
24 (\$3,744,000) for both years.

25 (ii) Allowable offsets identified in subsection (b),
26 provided that such offsets do not exceed nine million three
27 hundred sixty thousand dollars (\$9,360,000).

28 (5) For the remaining five-year periods, the amount
29 specified in paragraph (3) shall be reduced by the amount of
30 allowable offsets identified in subsection (b), provided that

such offsets do not exceed nine million three hundred sixty thousand dollars (\$9,360,000) during any five-year period.

(6) To the extent the amount of allowable offsets during any five-year period exceeds nine million three hundred sixty thousand dollars (\$9,360,000), the excess may be carried over and added to the allowable offsets taken in the following five-year period, provided that the excess is applied first.

(b) For purposes of this section, "allowable offset" includes all of the following:

(1) An amount equal to the corporate net income tax, capital stock and franchise tax and personal income tax related to the construction, ownership and operation of the facility.

(2) An amount equal to all personal income tax withheld from the developer's employees.

(3) An amount equal to all sales and use tax related to the operation and construction of the facility.

(4) The amount paid by the developer of any new tax enacted by the Commonwealth following the effective date of this article.

Section 1805-A. Requirements.--Tax credits authorized by this article shall not be granted unless the developer has obtained an investment tax credit from the Federal Government or an investment by a person other than an agency or instrumentality of the Commonwealth, or any combination thereof, in an amount equal to or greater than the tax credit granted by this article.]

Section 13. Section 2112 of the act, amended or added August 4, 1991 (P.L.97, No.22), June 16, 1994 (P.L.279, No.48) and June 30, 1995 (P.L.139, No.21), is repealed:

[Section 2112. Exemption for Poverty.--(a) The General

1 Assembly, in recognition of the powers contained in section 2(b)
2 (ii) of Article VIII of the Constitution of Pennsylvania which
3 provides therein for the establishing as a class or classes of
4 subjects of taxation the property or privileges of persons who
5 because of poverty are determined to be in need of special tax
6 provisions or tax exemptions, hereby declares as its legislative
7 intent and purpose to implement such powers under such
8 Constitutional provision by establishing a tax exemption as
9 hereinafter provided in this section.

10 (b) The General Assembly, having determined that there are
11 persons within this Commonwealth the value of whose incomes and
12 estates are such that the imposition of an inheritance tax under
13 this article would cause them hardship and economic burden and
14 having further determined that poverty is a relative concept
15 inextricably joined with the ability to maintain assets
16 inherited upon the death of a spouse, deems it to be a matter of
17 public policy to provide an exemption from taxation for
18 transfers of property to or for the use of that class of persons
19 hereinafter designated in order to relieve their hardship and
20 economic burden.

21 (c) Any claim for a tax exemption hereunder shall be
22 determined in accordance with the following:

23 (1) The transferee is the spouse of the decedent at the date
24 of death of the decedent.

25 (2) The value of the estate of the decedent does not exceed
26 two hundred thousand dollars (\$200,000) after reduction for
27 actual liabilities of the decedent as evidenced by a written
28 agreement.

29 (3) The average of the joint exemption income of the
30 decedent and the transferee for the three taxable years, as

1 defined in Article III, immediately preceding the date of death
2 of the decedent does not exceed forty thousand dollars
3 (\$40,000).

4 (d) Notwithstanding any other provision of this article,
5 transfers of property to or for the use of any eligible
6 transferee who meets the standards of eligibility established by
7 this section as the test for poverty shall be deemed a separate
8 class subject to taxation and, as such, shall be entitled to the
9 benefit of the following exemptions from taxation on transfers
10 of property as a credit against the tax imposed by this article:

11 (1) For decedents dying on or after January 1, 1992, and
12 before January 1, 1993, the lesser of:

13 (i) Two per cent of the taxable value of the property of the
14 decedent transferred to or for the use of the transferee.

15 (ii) Two per cent of one hundred thousand dollars (\$100,000)
16 of the taxable value of the property of the decedent transferred
17 to or for the use of the transferee.

18 (2) For decedents dying on or after January 1, 1993, and
19 before January 1, 1994, the lesser of:

20 (i) Four per cent of the taxable value of the property of
21 the decedent transferred to or for the use of the transferee.

22 (ii) Four per cent of one hundred thousand dollars
23 (\$100,000) of the taxable value of the property of the decedent
24 transferred to or for the use of the transferee.

25 (3) For decedents dying on or after January 1, 1994, and
26 before January 1, 1995, the lesser of:

27 (i) Six per cent of the taxable value of the property of the
28 decedent transferred to or for the use of the transferee.

29 (ii) Six per cent of one hundred thousand dollars (\$100,000)
30 of the taxable value of the property of the decedent transferred

1 to or for the use of the transferee.

2 (e) For nonresident decedents, the credit provided in this
3 section shall bear the same ratio as that of the decedent's
4 estate in this Commonwealth bears to the decedent's total estate
5 without regard to situs.

6 (f) The credit provided in this section shall not be greater
7 than the tax imposed.

8 (g) This section shall not apply to the estates of decedents
9 dying on or after January 1, 1995.]

10 Section 14. The following shall apply:

11 (1) A tax credit may not be granted under section 206(b)
12 of the act after June 30, 2013.

13 (2) The amendment or addition of the following
14 provisions of the act shall apply to tax years beginning
15 after December 31, 2013:

16 (i) Section 301(d.2), (n.2), (o.4) and (t).

17 (ii) Section 303(a)(2).

18 (iii) Section 306.

19 (iv) Section 306.1.

20 (v) Section 306.2.

21 (vi) Section 307.8(a) and (f).

22 (vii) Section 314(a).

23 (viii) Section 324.

24 (ix) Section 330.1.

25 (x) Section 335.

26 (xi) Section 401(3)2(a)(16.1) and (17).

27 (xii) Section 403(d).

28 (3) The addition of section 303(a)(3)(viii) shall apply
29 to tax years beginning after December 31, 2015.

30 Section 15. This act shall take effect as follows:

1 (1) The following shall take effect January 1, 2014, or
2 immediately, whichever is later:

3 (i) The amendment of the definitions of "document,"
4 "real estate" and "real estate company" in section 1101-C
5 of the act.

6 (ii) The amendment of sections 1102-C and
7 1102-C.5(a) of the act.

8 (2) The addition of section 401(8), (9), (10) and (11)
9 of the act shall take effect January 1, 2015.

10 (3) The remainder of this act shall take effect
11 immediately.