

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," in corporate net income tax, further providing
11 for definitions, for imposition, for reports and payment and
12 for consolidated reports; providing for a natural gas
13 severance fee; establishing the Safe Roads and Bridges Fund;
14 and, in general provisions, further providing for
15 underpayment of estimated tax.

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

18 Section 1. Section 401(3)1(a) and (b) and 2(a) and (5) of
19 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
20 Code of 1971, amended or added December 23, 1983 (P.L.370,
21 No.90), July 1, 1985 (P.L.78, No.29), August 4, 1991 (P.L.97,
22 No.22), May 12, 1999 (P.L.26, No.4), June 22, 2001 (P.L.353,
23 No.23), June 29, 2002 (P.L.559, No.89), October 9, 2009
24 (P.L.451, No.48) and July 2, 2012 (P.L.751, No.85) are amended,

1 clause (3)2 is amended by adding a phrase and the section is
2 amended by adding clauses to read:

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

7 * * *

8 (3) "Taxable income." 1. (a) In case the entire business
9 of the corporation is transacted within this Commonwealth, for
10 any taxable year which begins on or after January 1, 1971,
11 taxable income for the calendar year or fiscal year as returned
12 to and ascertained by the Federal Government, or in the case of
13 a corporation participating in the filing of consolidated
14 returns to the Federal Government or that is not required to
15 file a return with the Federal Government, the taxable income
16 which would have been returned to and ascertained by the Federal
17 Government if separate returns had been made to the Federal
18 Government for the current and prior taxable years, subject,
19 however, to any correction thereof, for fraud, evasion, or error
20 as finally ascertained by the Federal Government.

21 (b) Additional deductions shall be allowed from taxable
22 income on account of any dividends received from any other
23 corporation but only to the extent that such dividends are
24 included in taxable income as returned to and ascertained by the
25 Federal Government. For tax years beginning on or after January
26 1, 1991, additional deductions shall only be allowed for amounts
27 included, under section 78 of the Internal Revenue Code of 1986
28 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned
29 to and ascertained by the Federal Government and for the amount
30 of any dividends received from a foreign corporation included in

1 taxable income to the extent such dividends would be deductible
2 in arriving at Federal taxable income if received from a
3 domestic corporation. For taxable years beginning on or after
4 January 1, 2014, if not otherwise allowed as a deduction, an
5 additional deduction is allowed for all dividends paid by one to
6 another of the included corporations of a unitary business to
7 the extent those dividends are included in business income of a
8 corporation that is required to determine its business income
9 pursuant to paragraph (1) of phrase (e) of subclause (2).

10 * * *

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

19 (a) Division of Income.

20 (1) As used in this definition, unless the context otherwise
21 requires:

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

30 (B) "Commercial domicile" means the principal place from

1 which the trade or business of the taxpayer is directed or
2 managed.

3 (C) "Compensation" means wages, salaries, commissions and
4 any other form of remuneration paid to employes for personal
5 services.

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

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

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

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

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

1 (3) For purposes of allocation and apportionment of income
2 under this definition, a taxpayer is taxable in another state if
3 in that state the taxpayer is subject to a net income tax, a
4 franchise tax measured by net income, a franchise tax for the
5 privilege of doing business, or a corporate stock tax or if that
6 state has jurisdiction to subject the taxpayer to a net income
7 tax regardless of whether, in fact, the state does or does not.

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

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

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

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

1 obtained possession.

2 (6) (A) Gains and losses from sales or other disposition of
3 real property located in this State are allocable to this State.

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

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

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

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

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

29 (C) A copyright is utilized in a state to the extent that
30 printing or other publication originates in the state. If the

1 basis of receipts from copyright royalties does not permit
2 allocation to states or if the accounting procedures do not
3 reflect states of utilization, the copyright is utilized in the
4 state in which the taxpayer's commercial domicile is located.

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

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

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

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

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

29 (v) For taxable years beginning after December 31, 2012, all
30 business income shall be apportioned to this State by

1 multiplying the income by the sales factor.

2 (B) For purposes of apportionment of the capital stock -
3 franchise tax as provided in section 602 of Article VI of this
4 act, the apportionment fraction shall be the property factor
5 plus the payroll factor plus the sales factor as the numerator,
6 and the denominator shall be three.

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

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

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

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

1 which is the total compensation paid everywhere during the tax
2 period.

3 (14) Compensation is paid in this State if:

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

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

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

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

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

24 (17) Sales, other than sales of tangible personal property
25 and sales set forth under paragraphs (17.1) and (17.2), are in
26 this State if:

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

29 (B) The income-producing activity is performed both in and
30 outside this State and a greater proportion of the income-

1 producing activity is performed in this State than in any other
2 state, based on costs of performance.

3 (17.1) Sales of services are in this State if sales are
4 derived from customers within this State. If part of the sales
5 with respect to a specific contract or other agreement to
6 perform services is derived from customers from within this
7 State, sales are in this State in proportion to the sales
8 derived from customers within this State to total sales with
9 respect to that contract or agreement.

10 (17.2) In order to determine sales in this State of any
11 railroad, truck, bus, airline, pipeline, natural gas or water
12 transportation company that is required to determine its
13 business income under paragraph (1) of phrase (e) of this
14 subclause the company must convert the relevant fraction set
15 forth under phrase (b), (c) or (d) of this subclause to gross
16 receipts. Sales in this State are the result of multiplying
17 total gross receipts from relevant transportation activities by
18 the decimal equivalent of the relevant fraction set forth under
19 phrase (b), (c) or (d) of this subclause.

20 (18) If the allocation and apportionment provisions of this
21 definition do not fairly represent the extent of the taxpayer's
22 business activity in this State, the taxpayer may petition the
23 Secretary of Revenue or the Secretary of Revenue may require, in
24 respect to all or any part of the taxpayer's business activity:

25 (A) Separate accounting;

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

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

30 (D) The employment of any other method to effectuate an

1 equitable allocation and apportionment of the taxpayer's income.
2 In determining the fairness of any allocation or apportionment,
3 the Secretary of Revenue may give consideration to the
4 taxpayer's previous reporting and its consistency with the
5 requested relief.

6 * * *

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

8 (1) Notwithstanding any contrary provisions of this article,
9 for taxable years that begin on or after January 1, 2014,
10 business income of a corporation that is a member of a unitary
11 business that consists of two or more corporations, at least one
12 of which does not transact its entire business in this State, is
13 determined by combining the business income of either all
14 corporations, other than as provided under this paragraph, that
15 are water's-edge basis members or all corporations, other than
16 as provided under this paragraph, that are worldwide members of
17 the unitary business. Business income from an intercompany
18 transaction between included corporations of a unitary business
19 shall be deferred in the manner set forth under 26 CFR 1.1502-13
20 (relating to intercompany transactions) in determining the
21 business income of a corporation that is a member of that
22 unitary business. Business income of the following corporations
23 is not included in the determination of combined business
24 income:

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

27 (ii) any corporation specified in the definition of
28 "institution" in section 701.5 that would be subject to taxation
29 under Article VII if it was located, as defined in section
30 701.5, in this State;

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

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

8 (v) any corporation specified in the definition of
9 "institution" in section 1501 that would be subject to taxation
10 under Article XV if it was located, as defined in section 1501,
11 in this State; or

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

15 (2) Notwithstanding any contrary provisions of this article,
16 all corporations that are required to compute business income
17 under paragraph (1) are entitled to apportion the business
18 income when one corporation of the same unitary business is
19 entitled to apportion the business income. Notwithstanding any
20 contrary provisions of this article, for taxable years that
21 begin on or after January 1, 2014, the denominator of the
22 apportionment fraction of a corporation that is required to
23 compute its business income under paragraph (1) shall be
24 computed on a combined basis for all included corporations of
25 the unitary business. Gross receipts from an intercompany
26 transaction between included corporations of a unitary business
27 shall be eliminated unless the gross receipts are derived from
28 transactions that are deferred in the manner set forth under 26
29 CFR 1.1502-13 in computing the numerator and denominator of the
30 apportionment fraction of a corporation that is required to

1 compute its business income under paragraph (1). Gross receipts
2 from transactions that had been deferred in the manner set forth
3 under 26 CFR 1.1502-13 are included in a corporation's
4 apportionment fraction during the same taxable year that it
5 realizes business income that had been deferred due to the
6 transaction. The apportionment fraction of the following
7 corporations shall not be included in the determination of the
8 combined apportionment fraction:

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

11 (ii) any corporation specified in the definition of
12 "institution" in section 701.5 that would be subject to taxation
13 under Article VII if it was located, as defined in section
14 701.5, in this State;

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

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

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

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

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

1 income by multiplying the combined business income by a fraction
2 which is the combined apportionment fraction set forth under
3 paragraph (2).

4 (4) Nonbusiness income of a corporation that is required to
5 compute business income under paragraph (1) shall be allocated
6 as provided in paragraphs (5), (6), (7) and (8) of phrase (a) of
7 subclause 2 of the definition of "taxable income."

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

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

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

1 conducted in this State in the taxable year.

2 * * *

3 (5) "Taxable year." [The] 1. Except as set forth in
4 subclause 2, the taxable year which the corporation, or any
5 consolidated group with which the corporation participates in
6 the filing of consolidated returns, actually uses in reporting
7 taxable income to the Federal Government[.], or which the
8 corporation would have used in reporting taxable income to the
9 Federal Government had it been required to report its taxable
10 income to the Federal Government. With regard to the tax imposed
11 by Article IV of this act (relating to the Corporate Net Income
12 Tax), the terms "annual year," "fiscal year," "annual or fiscal
13 year," "tax year" and "tax period" shall be the same as the
14 corporation's taxable year, as defined in this [paragraph.]
15 subclause or subclause 2.

16 2. All corporations of a unitary business shall have a
17 common taxable year for purposes of computing tax due under this
18 article. The taxable year for the purposes shall be the common
19 taxable year adopted, in a manner prescribed by the department,
20 by all corporations of a unitary business. The common taxable
21 year must be used by all corporations of that unitary business
22 in the year of adoption and all future years unless otherwise
23 permitted by the department.

24 * * *

25 (8) "Tax haven." A jurisdiction that, during the tax year
26 in question, has no or nominal effective tax on the relevant
27 income and meets any of the following:

28 (i) Has laws or practices that prevent effective exchange of
29 information for tax purposes with other governments on taxpayers
30 benefiting from the tax regime.

1 (ii) Has a tax regime which lacks transparency. A tax regime
2 lacks transparency if the details of legislative, legal or
3 administrative provisions are not open and apparent or are not
4 consistently applied among similarly situated taxpayers, or if
5 the information needed by tax authorities to determine a
6 taxpayer's correct tax liability, such as accounting records and
7 underlying documentation, is not adequately available.

8 (iii) Facilitates the establishment of foreign-owned
9 entities without the need for a local substantive presence or
10 prohibits these entities from having any commercial impact on
11 the local economy.

12 (iv) Explicitly or implicitly excludes the jurisdiction's
13 resident taxpayers from taking advantage of the tax regime's
14 benefits or prohibits enterprises that benefit from the regime
15 operating in the jurisdiction's domestic market.

16 (v) Has created a tax regime which is favorable for tax
17 avoidance, based upon an overall assessment of relevant factors,
18 including whether the jurisdiction has a significant untaxed
19 off-shore financial and other services sector relative to its
20 overall economy.

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

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

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

9 2. The business income and apportionment factor of any
10 member, regardless of the place incorporated or formed, if the
11 average of its property, payroll and sales factors within the
12 United States is twenty per cent or more.

13 3. The business income and apportionment factor of any
14 member which is a domestic international sales corporation as
15 described in sections 991, 992, 993 and 994 of the Internal
16 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 991, 992,
17 993 and 994); a foreign sales corporation as described in former
18 sections 921, 922, 923, 924, 925, 926 and 927 of the Internal
19 Revenue Code of 1986 (formerly 26 U.S.C. §§ 921, 922, 923, 924,
20 925, 926 and 927); or any member which is an export trade
21 corporation, as described in sections 970 and 971 of the
22 Internal Revenue Code of 1986 (26 U.S.C. §§ 970 and 971).

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

28 5. Any member that is a "controlled foreign corporation" as
29 defined in section 957 of the Internal Revenue Code of 1986 (26
30 U.S.C. § 957), to the extent the business income of that member

1 is income defined in section 952 of the Internal Revenue Code of
2 1986 (26 U.S.C. § 952), Subpart F income, not excluding lower-
3 tier subsidiaries' distributions of the income which were
4 previously taxed, determined without regard to Federal treaties,
5 and the apportionment factor related to that income; any item of
6 income received by a controlled foreign corporation and the
7 apportionment factor related to the income shall be excluded if
8 the corporation establishes to the satisfaction of the Secretary
9 of Revenue that the income was subject to an effective rate of
10 income tax imposed by a foreign country greater than ninety per
11 cent of the maximum rate of tax specified in section 11 of the
12 Internal Revenue Code of 1986 (26 U.S.C. § 11). The effective
13 rate of income tax determination shall be based upon the
14 methodology set forth under 26 CFR 1.954-1 (relating to foreign
15 base company income).

16 6. The business income and apportionment factor of any
17 member that is not described in subclause 1, 2, 3, 4 and 5 and
18 that is doing business in a tax haven. The business income and
19 apportionment factor of a corporation doing business in a tax
20 haven shall be excluded if the corporation establishes to the
21 satisfaction of the Secretary of Revenue that its income was
22 subject to an effective rate of income tax imposed by a country
23 greater than ninety per cent of the maximum rate of tax
24 specified in section 11 of the Internal Revenue Code of 1986 (26
25 U.S.C. § 11).

26 (11) "Commonly controlled group." For a corporation, the
27 corporation is a member of a group of two or more corporations
28 and more than fifty per cent of the voting stock of each member
29 of the group is directly or indirectly owned by a common owner
30 or by common owners, either corporate or noncorporate, or by one

1 or more of the member corporations of the group.

2 (12) "Separate company." A corporation that is not a member
3 of a unitary business that consists of two or more corporations.

4 (13) "Tax." Includes interest, penalties and additions to
5 tax unless a more limited meaning is disclosed by the context.

6 Section 2. Section 403 of the act is amended by adding
7 subsections to read:

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

9 (a.1) (1) Each corporation subject to tax under this
10 article shall file an annual report in accordance with this
11 section. Each corporation that is a member of a unitary business
12 that consists of two or more corporations, unless excluded by
13 the provisions of this article, shall file as part of a combined
14 annual report. The corporations of the unitary business shall
15 designate one member that is subject to tax under this article
16 to file the combined annual report and to act as agent on behalf
17 of all other corporations that are members of the unitary
18 business. Each corporation that is a member of a unitary
19 business shall be responsible for its tax liability under this
20 article.

21 (2) The oath or affirmation of the designated member's
22 president, vice president or other principal officer, and of its
23 treasurer or assistant treasurer shall constitute the oath or
24 affirmation of each corporation that is a member of that unitary
25 business.

26 (3) The designated member shall transmit to the department
27 upon a form prescribed by the department, an annual combined
28 report under oath or affirmation of its president, vice
29 president or other principal officer, and of its treasurer or
30 assistant treasurer. The report shall set forth:

1 (i) All corporations included in the unitary business.

2 (ii) All necessary data, both in the aggregate and for each
3 corporation of the unitary business, that sets forth the
4 determination of tax liability for each corporation of the
5 unitary business.

6 (iii) Any other information that the department may require.

7 (a.2) (1) Activities that evidence a significant flow of
8 value among commonly controlled corporations shall include the
9 following:

10 (i) Assisting in the acquisition of equipment.

11 (ii) Assisting with filling personnel needs.

12 (iii) Lending funds or guaranteeing loans.

13 (iv) Interplay in the area of corporate expansion.

14 (v) Providing technical assistance.

15 (vi) Supervising.

16 (vii) Providing general operational guidance.

17 (viii) Providing overall operational strategic advice.

18 (ix) Common use of trade names and patents.

19 (2) Significant flow of value must be more than the flow of
20 funds arising out of passive investment and shall consist of
21 more than periodic financial oversight.

22 (a.3) (1) With respect to a commonly controlled group of
23 corporations, the presence of any of these factors creates a
24 presumption of a unitary business:

25 (i) Corporations engaged in the same type of business.

26 (ii) Corporations engaged in different steps in a vertically
27 structured enterprise.

28 (iii) Strong centralized management of corporations.

29 (2) A corporation newly formed by a corporation that is a
30 member of a unitary business is rebuttably presumed to be a

1 member of the unitary business.

2 (3) A corporation that owns a controlling interest in two or
3 more corporations of a unitary business is rebuttably presumed
4 to be a member of the unitary business.

5 (4) A corporation that permits one or more other
6 corporations of a unitary business to substantially use its
7 patents, trademarks, service marks, logo-types, trade secrets,
8 copyrights or other proprietary assets or that is principally
9 engaged in loaning money to one or more other corporations of a
10 unitary business is rebuttably presumed to be a member of the
11 unitary business. This presumption only applies to a commonly
12 controlled group of corporations.

13 (a.4) As far as applicable to a specific unitary business,
14 unless there is a revision of applicable State law or unless a
15 corporation is not included under the provisions of this
16 article, there is a rebuttable presumption for all tax years
17 that begin in years 2014 and 2015 that a unitary business of two
18 or more corporations includes at least all corporations that are
19 part of a unitary business under the law of any state of the
20 United States in which the corporation files a tax report or tax
21 return of combined net income for the same tax year.

22 (a.5) Unless an election is made to use a worldwide basis of
23 accounting, a corporation that is a member of a unitary business
24 of two or more corporations must determine its business income
25 and apportionment factor upon a water's-edge basis. This basis
26 shall apply to all corporations of the unitary business. If an
27 election is made to use a worldwide basis of accounting, all
28 corporations of the unitary business must make the election,
29 upon a form, prescribed, prepared and furnished by the
30 department. This election shall bind all corporations of the

1 unitary business for the period of time that the election
2 remains in effect. An initial election is binding for a period
3 of seven years. Subsequent elections shall be binding for a
4 period of five years.

5 * * *

6 Section 3. Section 404 of the act is amended to read:

7 Section 404. Consolidated Reports.--The department shall not
8 permit any corporation owning or controlling, directly or
9 indirectly, any of the voting capital stock of another
10 corporation or of other corporations, subject to the provisions
11 of this article, to make a consolidated report[, showing the
12 combined net income].

13 Section 4. The act is amended by adding a section to read:

14 Section 408.2. Transfer.--(a) The department shall annually
15 determine and certify to the State Treasurer the amount of
16 revenue collected by the department attributable to taxes
17 imposed by this article less the base amount. The State
18 Treasurer upon receipt of the certification shall transfer the
19 amount certified to the Safe Roads and Bridges Fund.

20 (b) For purposes of this section, the term "base amount"
21 means the amount of revenue collected by the department
22 attributable to taxes imposed by this article for fiscal year
23 2012-2013.

24 Section 5. The act is amended by adding an article to read:

25 ARTICLE XV-A

26 NATURAL GAS SEVERANCE FEE

27 Section 1501-A. Legislative intent.

28 The General Assembly finds and declares as follows:

29 (1) For decades Commonwealth businesses and residents
30 have been paying the severance taxes assessed and passed on

1 from every other natural gas producing state in the country.

2 (2) It is the intent of the General Assembly to provide
3 the Commonwealth with a means to assess a value on the
4 commodity of natural gas being severed within this
5 Commonwealth.

6 Section 1502-A. Definitions.

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

10 "Accredited laboratory." A facility engaged in the testing
11 and calibration of scientific measurement devices and certified
12 by the Department of Environmental Protection as having met its
13 standards for accreditation.

14 "Association." A partnership, limited partnership or any
15 other form of unincorporated enterprise owned or conducted by
16 two or more persons.

17 "Average annual price of natural gas." The arithmetic mean
18 of the New York Mercantile Exchange (NYMEX) Henry Hub settled
19 price on the last trading day of each month of a calendar year
20 as reported by the Wall Street Journal for the 12-month period
21 ending March 31.

22 "Base fee." The fee under section 1503-A(a).

23 "Coal bed methane." Gas that can be produced from coal beds,
24 coal seams, mined-out areas or gob wells.

25 "Corporation." A corporation, joint stock association,
26 limited liability company, business trust or any other
27 incorporated enterprise organized under the laws of the United
28 States, this Commonwealth or any other state, territory or
29 foreign country or dependency.

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

1 "Fee." The fee imposed under this article.

2 "Fund." The Safe Roads and Bridges Fund established in
3 section 1529-A.

4 "Meter." A device to measure the passage of volumes of gases
5 or liquids past a certain point.

6 "Municipality." A city, borough, incorporated town or
7 township.

8 "Natural gas." A fossil fuel consisting of a mixture of
9 hydrocarbon gases, primarily methane, possibly including ethane,
10 propane, butane, pentane, carbon dioxide, oxygen, nitrogen and
11 hydrogen sulfide and other gas species. The term includes
12 natural gas from oil fields known as associated gas or casing
13 head gas, natural gas fields known as nonassociated gas, coal
14 beds, shale beds and other formations. The term does not include
15 coal bed methane.

16 "Nonproducing site." A point of severance that is not
17 capable of producing natural gas in paying quantities.

18 "Paying quantities." Profit to the producer, however small,
19 over the producer's current operating expenses.

20 "Person." A natural person or a corporation, fiduciary,
21 association or other entity, including the Commonwealth, its
22 political subdivisions, instrumentalities and authorities. When
23 the term is used in a clause prescribing and imposing a penalty
24 or imposing a fine or imprisonment, or both, the term shall
25 include the members, as applied to an association, and the
26 officers, as applied to a corporation.

27 "Producer." A person who engages or continues within this
28 Commonwealth in the business of severing natural gas for sale,
29 profit or commercial use. The term does not include a person who
30 severs natural gas from a storage field.

1 "Producing site." A point of severance capable of producing
2 natural gas in paying quantities.

3 "Reporting period." Every three successive calendar months
4 beginning January 1, 2014.

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

6 "Sever." To extract or otherwise remove natural gas from the
7 soil or water of this Commonwealth.

8 "Severance." The extraction or other removal of the natural
9 gas commodity from the soil or water of this Commonwealth.

10 "Severing." Extracting or otherwise removing the natural gas
11 commodity from the soil or water of this Commonwealth.

12 "Storage field." A natural formation or other site that is
13 used to store natural gas that did not originate from and has
14 been injected into the formation or site.

15 "Stripper well." A producing site or a nonproducing site
16 that is not capable of producing and does not produce more than
17 90,000 cubic feet of natural gas per day.

18 "Taxpayer." A person subject to the fee imposed by this
19 article.

20 "Unit." A thousand cubic feet of natural gas measured at the
21 wellhead at a temperature of 60 degrees Fahrenheit and an
22 absolute pressure of 14.73 pounds per square inch in accordance
23 with American Gas Association Standards and according to Boyle's
24 law for the measurement of gas under varying pressures with
25 deviations as follows:

26 (1) The average absolute atmospheric pressure shall be
27 assumed to be 14.4 pounds to the square inch, regardless of
28 elevation or location of point of delivery above sea level or
29 variations in atmospheric pressure from time to time.

30 (2) The temperature of the gas passing the meters shall

1 be determined by the continuous use of a recording
2 thermometer installed to properly record the temperature of
3 gas flowing through the meters. The arithmetic average of the
4 temperature recorded each 24-hour day shall be used in
5 computing gas volumes. If a recording thermometer is not
6 installed, or is installed and not operating properly, an
7 average flowing temperature of 60 degrees Fahrenheit shall be
8 used in computing gas volume.

9 (3) The specific gravity of the gas shall be determined
10 annually by tests made by the use of an Edwards or Acme
11 gravity balance, or at intervals as found necessary in
12 practice. Specific gravity determinations shall be used in
13 computing gas volumes.

14 (4) The deviation of the natural gas from Boyle's law
15 shall be determined by annual tests or at other shorter
16 intervals as found necessary in practice. The apparatus and
17 method used in making the test shall be in accordance with
18 recommendations of the National Bureau of Standards or Report
19 No. 3 of the Gas Measurement Committee of the American Gas
20 Association, or amendments thereto. The results of the tests
21 shall be used in computing the volume of gas delivered under
22 this article.

23 "Wellhead meter." A meter placed at a producing or
24 nonproducing site to measure the volume of natural gas severed
25 for which a wellhead meter certification has been issued.

26 "Wellhead meter certification." A report issued by an
27 accredited laboratory certifying the accuracy of a wellhead
28 meter.

29 Section 1503-A. Imposition of natural gas severance fee.

30 (a) Establishment.--Beginning January 1, 2014, there shall

1 be levied a natural gas severance fee on every producer. The fee
2 shall not be imposed on units severed from a stripper well
3 unless:

4 (1) The stripper well is one of multiple producing sites
5 or nonproducing sites, the combined volumes of gas produced
6 by all of which sites are measured by a single wellhead meter
7 as provided in section 1507-A.

8 (2) The combined volumes of gas produced by all the
9 producing sites or nonproducing sites described in paragraph
10 (1) is more than 90,000 cubic feet of natural gas per day.

11 (a.1) Exemptions.--The fee shall not be imposed on the
12 following:

13 (1) Units severed by a producer and sold and delivered
14 to a manufacturer of tangible personal property, as defined
15 in section 201(m), for the manufacturer's use within this
16 Commonwealth if the units have been severed from one or more
17 producing sites or nonproducing sites on property owned by
18 the manufacturer.

19 (2) Units provided free of charge to the owner of the
20 surface under which the gas is severed if the surface owner
21 is the end user of the gas.

22 (b) Base fee.--The base fee shall be 5¢ per unit severed at
23 the wellhead.

24 Section 1504-A. Fee adjustment index.

25 (a) Annual adjustment.--The base fee shall be adjusted
26 annually by the amount of the fee adjustment index as calculated
27 under subsection (c), provided that the adjusted fee shall never
28 be less than the base fee. The adjusted fee shall be effective
29 for the next fiscal year.

30 (b) Determination of adjustment.--On or before April 30 of

1 each year following the effective date of this section, the
2 department shall calculate and determine the amount of the fee
3 adjustment index.

4 (c) Calculation of adjustment.--The fee adjustment index
5 shall be determined as follows:

6 (1) If 6% of the average annual price of natural gas is
7 less than the base fee, the fee adjustment index shall be
8 zero and the adjusted fee shall be the base fee.

9 (2) If 6% of the average annual price of natural gas is
10 greater than the base fee, the fee adjustment index shall be
11 50% of the difference between 6% of the average annual price
12 of natural gas and the base fee. The adjusted fee shall be
13 the resulting fee adjustment index plus the base fee rounded
14 to the nearest whole cent.

15 (d) Publication of adjustment.--The department shall forward
16 the amount of the fee adjustment index and the adjusted fee, as
17 determined under subsection (c), to the Legislative Reference
18 Bureau for publication in the Pennsylvania Bulletin by May 1 of
19 each year and shall simultaneously provide the information to
20 producers by written notice. Failure to publish or provide to
21 producers the amount of the fee adjustment index and the
22 adjusted fee shall not affect the applicability of the adjusted
23 fee under subsection (b).

24 (e) Discontinuance of data.--If publication of the NYMEX
25 Henry Hub average monthly natural gas price data is
26 discontinued, the adjusted fee then in effect shall not be
27 adjusted until a comparable method for determining the fee
28 adjustment index is adopted by the General Assembly.

29 (f) Other adjustments.--If the base data of the NYMEX Henry
30 Hub average monthly natural gas price is substantially revised,

1 the department shall, when determining the amount of the fee
2 adjustment index under subsection (c), make appropriate changes
3 to ensure that the fee adjustment index is reasonably consistent
4 with the result that would have been attained had the
5 substantial revision not been made. If the department is unable
6 to make reasonable changes sufficient to ensure a consistent
7 result, the adjusted fee then in effect shall not be adjusted
8 until a comparable method for determining the fee adjustment
9 index is adopted by the General Assembly.

10 (g) Application of fee determinations.--The provisions of
11 this section shall affect only the determination of the fee
12 imposed under section 1503-A. The provisions of this section are
13 not intended nor shall they be construed to affect any other
14 determination, including, but not limited to, the determination
15 of royalty due under mineral leases. Notwithstanding any other
16 provision of law, the fee imposed under section 1503-A shall not
17 reduce any royalty payments due under mineral leases, and the
18 producer shall not recover any portion of the fee paid from the
19 royalty owner through other means of deduction or reallocation,
20 notwithstanding any provision in the lease, contract or
21 agreement.

22 1505-A. Return and payment.

23 (a) Return.--A producer shall submit a return and payment of
24 the fee to the department on a form prescribed by the department
25 for each reporting period. The return shall include the
26 following:

27 (1) The units of production severed by the producer
28 during the reporting period.

29 (2) The number of producing sites of a producer in each
30 county and municipality.

1 (3) The amount due for the reporting period.

2 (b) Filing.--The return required under subsection (a) shall
3 be filed with the department within 25 days following the end of
4 a reporting period.

5 (c) Deadline.--The fee imposed under section 1503-A is due
6 on the day the return is required to be filed and becomes
7 delinquent if not remitted to the department by that date.

8 (d) Deposit.--Except as set forth in section 1530-A, all
9 fees collected under this article shall be deposited into the
10 fund.

11 Section 1506-A. Natural gas severance fee registration.

12 (a) Application.--Before a producer severs natural gas in
13 this Commonwealth, the producer shall apply to the department
14 for a natural gas severance fee registration certificate.

15 (a.1) Application fee.--The department may charge an
16 application fee to cover the administrative costs associated
17 with the application and registration process. If the department
18 charges an application fee, the department shall not issue a
19 registration certificate until the producer has paid the
20 application fee.

21 (a.2) Declaration.--The producer shall include in its
22 application a declaration of all producing sites and
23 nonproducing sites used by the producer for the severance of
24 natural gas. The declaration shall include copies of wellhead
25 meter certifications for each site. The producer shall update
26 the declaration when the producer adds or removes a producing
27 site or nonproducing site in this Commonwealth or when there is
28 a change in the status of a producing site or nonproducing site
29 or when the producer uses a different accredited laboratory to
30 issue a wellhead meter certification. The producer shall update

1 the declaration within 30 days after a calendar month in which a
2 change to the declaration occurs.

3 (b) Issuance.--Except as provided under subsection (c),
4 after the receipt of an application, the department shall issue
5 a registration certificate under subsection (a). The
6 registration certificate shall be nonassignable. All registrants
7 shall be required to renew their registration certificates and
8 wellhead meter certifications on a staggered renewal system
9 established by the department. After the initial staggered
10 renewal period, a registration certificate or a wellhead meter
11 certification issued shall be valid for a period of five years.

12 (c) Refusal, suspension or revocation.--The department may
13 refuse to issue, suspend or revoke a registration certificate if
14 the applicant or registrant has not filed required State tax
15 reports and paid State taxes not subject to a timely perfected
16 administrative or judicial appeal or subject to a duly
17 authorized deferred payment plan. The department shall notify
18 the applicant or registrant of any refusal, suspension or
19 revocation. The notice shall contain a statement that the
20 refusal, suspension or revocation may be made public. The notice
21 shall be made by first class mail. An applicant or registrant
22 aggrieved by the determination of the department may file an
23 appeal under the provisions for administrative appeals in this
24 act. In the case of a suspension or revocation which is
25 appealed, the registration certificate shall remain valid
26 pending a final outcome of the appeals process. Notwithstanding
27 sections 274, 353(f), 408(b), 603, 702, 802, 904 and 1102 or any
28 other provision of law, if no appeal is taken or if an appeal is
29 taken and denied at the conclusion of the appeal process, the
30 department may disclose, by publication or otherwise, the

1 identity of a producer and the fact that the producer's
2 registration certificate has been refused, suspended or revoked
3 under this subsection. Disclosure may include the basis for
4 refusal, suspension or revocation.

5 (d) Violation.--A person severing natural gas in this
6 Commonwealth without holding a valid registration certificate
7 under subsection (b) shall be guilty of a summary offense and
8 shall, upon conviction, be sentenced to pay a fine of not less
9 than \$300 nor more than \$1,500. In the event the person
10 convicted defaults in the payment of the fine, he shall be
11 sentenced to imprisonment for not less than five days nor more
12 than 30 days. The penalties imposed by this subsection shall be
13 in addition to any other penalties imposed by this article. For
14 purposes of this subsection, the severing of natural gas during
15 any calendar day shall constitute a separate violation. The
16 secretary may designate employees of the department to enforce
17 the provisions of this subsection. The employees shall exhibit
18 proof of and be within the scope of the designation when
19 instituting proceedings as provided by the Pennsylvania Rules of
20 Criminal Procedure.

21 (e) Failure to obtain registration certificate.--Failure to
22 obtain or hold a valid registration certificate does not relieve
23 a person from liability for the tax imposed by this article.

24 Section 1507-A. Meters.

25 (a) General rule.--Except as provided in subsection (b), a
26 producer shall provide for and maintain a discrete wellhead
27 meter where natural gas is severed. A producer shall ensure that
28 the meters are maintained according to industry standards. Any
29 wellhead meter installed after the effective date of this
30 section shall be a digital meter.

1 (b) Exception.--If a producer has multiple producing sites
2 or nonproducing sites, the combined volumes of gas produced by
3 all of which sites are measured by a single wellhead meter, the
4 producer shall not be required to provide for a discrete
5 wellhead meter at any of those producing sites or nonproducing
6 sites that is also a stripper well.

7 Section 1508-A. Assessments.

8 (a) Authorization and requirement.--The department is
9 authorized and shall make the inquiries, determinations and
10 assessments of the fee imposed under this article, including
11 interest, additions and penalties imposed under this article.

12 (b) Notice.--The notice of assessment and demand for payment
13 shall be mailed to the taxpayer. The notice shall set forth the
14 basis of the assessment. The department shall send the notice of
15 assessment to the taxpayer at its registered address via
16 certified mail if the assessment increases the taxpayer's tax
17 liability by \$300. Otherwise, the notice of assessment may be
18 sent via regular mail.

19 Section 1509-A. Time for assessment.

20 (a) Requirement.--An assessment as provided under section
21 1508-A shall be made within three years after the date when the
22 return provided for by section 1505-A is filed or the end of the
23 year in which the tax liability arises, whichever shall occur
24 last. For the purposes of this subsection and subsection (b), a
25 return filed before the last day prescribed for the filing
26 period shall be considered as filed on the last day.

27 (b) Exception.--If the taxpayer underpays the correct amount
28 of the fee due by 25% or more, the fee may be assessed within
29 six years after the date the return was filed.

30 (c) Intent to evade.--Where no return is filed or where the

1 taxpayer files a false or fraudulent return with intent to evade
2 the fee imposed by this article, the assessment may be made at
3 any time.

4 (d) Erroneous credit or refund.--Within three years of the
5 granting of a refund or credit or within the period in which an
6 assessment or reassessment may have been issued by the
7 department for the taxable period for which the refund was
8 granted, whichever period shall last occur, the department may
9 issue an assessment to recover a refund or credit made or
10 allowed erroneously.

11 Section 1510-A. Extension of assessment period.

12 Notwithstanding the provisions of this article, the
13 assessment period may be extended in the event a taxpayer has
14 provided written consent before the expiration of the period
15 provided in section 1509-A for a fee assessment. The amount of
16 fee due may be assessed at any time within the extended period.
17 The period may be extended further by subsequent written
18 consents made before the expiration of the extended period.

19 Section 1511-A. Reassessments.

20 A taxpayer against whom an assessment is made may petition
21 the department for a reassessment under Article XXVII.

22 Section 1512-A. Interest.

23 The department shall assess interest on any delinquent fee at
24 the rate prescribed under section 806 of the act of April 9,
25 1929 (P.L.343, No.176), known as The Fiscal Code.

26 Section 1513-A. Penalties.

27 The department shall enforce the following penalties:

28 (1) A penalty against a producer without a natural gas
29 severance fee registration certificate. The penalty shall be
30 \$1 for every unit severed without a valid registration

1 certificate. The department may assess this penalty
2 separately from or in conjunction with any assessment of the
3 natural gas severance fee.

4 (2) A penalty against a producer for failure to timely
5 file a return as required under section 1505-A. The penalty
6 shall be 5% of the fee liability to be reported on the return
7 for each day beyond the due date that the return is not
8 filed.

9 (3) In addition to the penalty under paragraph (2), a
10 penalty against the producer for a willful failure to timely
11 file a return. The penalty shall be 200% of the fee liability
12 required to be reported on the return.

13 (4) A penalty against a producer for failure to pay the
14 fee by the deadline under section 1505-A(c). The penalty
15 shall be 5% of the amount of fee due for each day beyond the
16 payment date that the fee is not paid.

17 Section 1514-A. Criminal acts.

18 (a) Fraudulent return.--Any person with intent to defraud
19 the Commonwealth, who willfully makes or causes to be made a
20 return required by this article which is false, is guilty of a
21 misdemeanor and shall, upon conviction, be sentenced to pay a
22 fine of not more than \$2,000 or to imprisonment for not more
23 than three years, or both.

24 (b) Other crimes.--

25 (1) Except as otherwise provided by subsection (a), a
26 person is guilty of a misdemeanor and shall, upon conviction,
27 be sentenced to pay a fine of not more than \$1,000 and costs
28 of prosecution or to imprisonment for not more than one year,
29 or both, for any of the following:

30 (i) Willfully failing to timely remit the fee to the

1 department.

2 (ii) Willfully failing or neglecting to timely file
3 a return or report required by this article.

4 (iii) Refusing to timely pay a fee, penalty or
5 interest imposed or provided for by this article.

6 (iv) Willfully failing to preserve its books, papers
7 and records as directed by the department.

8 (v) Refusing to permit the department or its
9 authorized agents to examine its books, records or
10 papers.

11 (vi) Knowingly making any incomplete, false or
12 fraudulent return or report.

13 (vii) Preventing or attempting to prevent the full
14 disclosure of the amount of natural gas severance fee
15 due.

16 (viii) Providing any person with a false statement
17 as to the payment of the fee imposed under this article
18 with respect to any pertinent facts.

19 (ix) Making, uttering or issuing a false or
20 fraudulent statement.

21 (2) The penalties imposed by this section shall be in
22 addition to other penalties imposed by this article.

23 Section 1515-A. Abatement of additions or penalties.

24 Upon the filing of a petition for reassessment or a petition
25 for refund by a taxpayer as provided under this article,
26 additions or penalties imposed upon the taxpayer by this article
27 may be waived or abated in whole or in part where the petitioner
28 establishes that he acted in good faith, without negligence and
29 with no intent to defraud.

30 Section 1516-A. Bulk and auction sales.

1 A person that sells or causes to be sold at auction, or that
2 sells or transfers in bulk, 51% or more of a stock of goods,
3 wares or merchandise of any kind, fixtures, machinery,
4 equipment, buildings or real estate involved in a business for
5 which the person holds a registration certificate or is required
6 to obtain a registration certificate under the provisions of
7 this article shall be subject to the provisions of section 1403
8 of the act of April 9, 1929 (P.L.343, No.176), known as The
9 Fiscal Code.

10 Section 1517-A. Collection upon failure to request
11 reassessment, review or appeal.

12 (a) Power of department.--The department may collect the fee
13 imposed under this article:

14 (1) If an assessment of the fee is not paid within 30
15 days after notice to the taxpayer when no petition for
16 reassessment has been filed.

17 (2) Within 60 days of the reassessment, if no petition
18 for review has been filed.

19 (3) If no appeal has been made, within 30 days of:

20 (i) the Board of Finance and Revenue's decision of a
21 petition for review; or

22 (ii) the expiration of the board's time for acting
23 upon the petition.

24 (4) In all cases of judicial sales, receiverships,
25 assignments or bankruptcies.

26 (b) Prohibition.--In a case for the collection of fees under
27 subsection (a), the taxpayer against whom they were assessed
28 shall not be permitted to set up a ground of defense that might
29 have been determined by the department, the Board of Finance and
30 Revenue or the courts, provided that the defense of failure of

1 the department to mail notice of assessment or reassessment to
2 the taxpayer and the defense of payment of assessment or
3 reassessment may be raised in proceedings for collection by a
4 motion to stay the proceedings.

5 Section 1518-A. Tax liens.

6 (a) Lien imposed.--If any taxpayer neglects or refuses to
7 pay the fee imposed under this article for which the taxpayer is
8 liable under this article after demand, the amount, including
9 interest, addition or penalty, together with additional costs
10 that may accrue, shall be a lien in favor of the Commonwealth
11 upon the real and personal property of the taxpayer but only
12 after the same has been entered and docketed of record by the
13 prothonotary of the county where the property is situated. The
14 department may, at any time, transmit to the prothonotaries of
15 the respective counties certified copies of all liens imposed by
16 this section. It shall be the duty of the prothonotary receiving
17 the lien to enter and docket the same of record to the office of
18 the prothonotary. The lien shall be indexed as judgments are now
19 indexed. No prothonotary shall require as a condition precedent
20 to the entry of the lien the payment of costs incidental to its
21 entry.

22 (b) Priority of lien and effect on judicial sale.--Except
23 for the costs of the sale and the writ upon which the sale was
24 made and real estate taxes and municipal claims against the
25 property, a lien imposed under this section shall have priority
26 from the date of its recording and shall be fully paid and
27 satisfied out of the proceeds of any judicial sale of property
28 subject to the lien, before any other obligation, judgment,
29 claim, lien or estate to which the property may subsequently
30 become subject, but shall be subordinate to mortgages and other

1 liens existing and duly recorded or entered of record prior to
2 the recording of the lien.

3 (c) No discharge by sale on junior lien.--In the case of a
4 judicial sale of property subject to a lien imposed under this
5 section, upon a lien or claim over which the lien imposed under
6 this section has priority, the sale shall discharge the lien
7 imposed under this section to the extent only that the proceeds
8 are applied to its payment, and the lien shall continue in full
9 force and effect as to the balance remaining unpaid. There shall
10 be no inquisition or condemnation upon any judicial sale of real
11 estate made by the Commonwealth under the provisions of this
12 article. The lien shall continue as provided in the act of April
13 9, 1929 (P.L.343, No.176), known as The Fiscal Code, and a writ
14 of execution may directly issue upon the lien without the
15 issuance and prosecution to judgment of a writ of scire facias,
16 provided that not less than ten days before issuance of any
17 execution on the lien, notice of the filing and the effect of
18 the lien shall be sent by registered mail to the taxpayer at its
19 last known post office address, provided further that the lien
20 shall have no effect upon any stock of goods, wares or
21 merchandise regularly sold or leased in the ordinary course of
22 business by the taxpayer against whom the lien has been entered,
23 unless and until a writ of execution has been issued and a levy
24 made upon the stock of goods, wares and merchandise.

25 (d) Duty of prothonotary.--Any willful failure of any
26 prothonotary to carry out any duty imposed upon him by this
27 section shall be a misdemeanor. Upon conviction, he shall be
28 sentenced to pay a fine of not more than \$1,000 and costs of
29 prosecution or to imprisonment for not more than one year, or
30 both.

1 (e) Priority.--Except as provided in this article, the
2 distribution, voluntary or compulsory, in receivership,
3 bankruptcy or otherwise of the property or estate of any person,
4 all fees imposed by this article which are due and unpaid and
5 are not collectible under the provisions of section 225 shall be
6 paid from the first money available for distribution in priority
7 to all other claims and liens, except as the laws of the United
8 States may give priority to a claim to the Federal Government. A
9 person charged with the administration or distribution of the
10 property or estate who violates the provisions of this section
11 shall be personally liable for the taxes imposed by this article
12 which are accrued and unpaid and chargeable against the person
13 whose property or estate is being administered or distributed.

14 (f) Other remedies.--Subject to the limitations contained in
15 this article as to the assessment of fees, nothing contained in
16 this section shall be construed to restrict, prohibit or limit
17 the use by the department in collecting fees due and payable of
18 another remedy or procedure available at law or equity for the
19 collection of debts.

20 Section 1519-A. Tax suit reciprocity.

21 The courts of this Commonwealth shall recognize and enforce
22 liabilities for natural gas severance or extraction fees
23 lawfully imposed by any other state, provided that the other
24 state recognizes and enforces the fee imposed under this
25 article.

26 Section 1520-A. Service.

27 A producer is deemed to have appointed the Secretary of the
28 Commonwealth its agent for the acceptance of service of process
29 or notice in a proceeding for the enforcement of the civil
30 provisions of this article and service made upon the Secretary

1 of the Commonwealth as agent shall be of the same legal force
2 and validity as if the service had been personally made upon the
3 producer. Where service cannot be made upon the producer in the
4 manner provided by other laws of this Commonwealth relating to
5 service of process, service may be made upon the Secretary of
6 the Commonwealth. In that case, a copy of the process or notice
7 shall be personally served upon any agent or representative of
8 the producer who may be found within this Commonwealth or, where
9 no agent or representative may be found, a copy of the process
10 or notice shall be sent via registered mail to the producer at
11 the last known address of its principal place of business, home
12 office or residence.

13 Section 1521-A. Refunds.

14 Under Article XXVII the department shall refund all fees,
15 interest and penalties paid to the Commonwealth under the
16 provisions of this article to which the Commonwealth is not
17 rightfully entitled. The refunds shall be made to the person or
18 the person's heirs, successors, assigns or other personal
19 representatives who paid the fee, provided that no refund shall
20 be made under this section regarding a payment made by reason of
21 an assessment where a taxpayer has filed a petition for
22 reassessment under section 2702 to the extent the petition is
23 adverse to the taxpayer by a decision which is no longer subject
24 to further review or appeal. Nothing in this article shall
25 prohibit a taxpayer who has filed a timely petition for
26 reassessment from amending it to a petition for refund where the
27 petitioner paid the fee assessed.

28 Section 1522-A. Refund petition.

29 (a) General rule.--Except as provided for in subsection (b),
30 the refund or credit of tax, interest or penalty provided for by

1 section 1521-A shall be made only where the person who has paid
2 the tax files a petition for refund with the department under
3 Article XXVII within the time limits of section 3003.1.

4 (b) Natural gas severance fee.--A refund or credit of fees,
5 interest or penalty paid as a result of an assessment made by
6 the department under section 1506-A shall be made only where the
7 person who has paid the fee files with the department a petition
8 for a refund with the department under Article XXVII within the
9 time limits of section 3003.1. The filing of a petition for
10 refund, under the provisions of this subsection, shall not
11 affect the abatement of interest, additions or penalties to
12 which the person may be entitled by reason of his payment of the
13 assessment.

14 Section 1523-A. Rules and regulations.

15 The department is charged with the enforcement of the
16 provisions of this article and is authorized and empowered to
17 prescribe, adopt, promulgate and enforce rules and regulations
18 not inconsistent with the provisions of this article relating to
19 any matter or thing pertaining to the administration and
20 enforcement of the provisions of this article and the collection
21 of fees, penalties and interest imposed by this article. The
22 department may prescribe the extent, if any, to which any of the
23 rules and regulations shall be applied without retroactive
24 effect.

25 Section 1524-A. Recordkeeping.

26 (a) General rule.--Every person liable for any fee imposed
27 by this article, or for the collection of the fee, shall keep
28 records, including those enumerated in subsection (b), render
29 statements, make returns and comply with the rules and
30 regulations as the department may prescribe regarding matters

1 pertinent to the person's business. Whenever it is necessary,
2 the department may require a person, by notice served upon the
3 person or by regulations, to make returns, render statements or
4 keep records as the department deems sufficient to show whether
5 or not a person is liable to pay fees under this article.

6 (a.1) Records.--Records to be maintained are:

7 (1) Wellhead meter charts for each reporting period and
8 the meter calibration and maintenance records. If turbine
9 meters are in use, the maintenance records will be made
10 available to the department upon request.

11 (2) Records, statements and other instruments furnished
12 to a producer by a person to whom the producer delivers for
13 sale, transport or delivery of natural gas.

14 (3) Records, statements and other instruments as the
15 department may prescribe by regulation.

16 (b) Records of nonresidents.--A nonresident who does
17 business in this Commonwealth as a producer shall keep adequate
18 records of the business and of the fee due as a result. The
19 records shall be retained within this Commonwealth unless
20 retention outside this Commonwealth is authorized by the
21 department. The department may require a taxpayer who desires to
22 retain records outside this Commonwealth to assume reasonable
23 out-of-State audit expenses.

24 (c) Keeping of separate records.--A producer who is engaged
25 in another business or businesses which do not involve the
26 severing of natural gas under this article shall keep separate
27 books and records of the businesses so as to show the severing
28 of natural gas under this article separately from other business
29 activities not hereunder. If any person fails to keep separate
30 books and records, the person shall be liable for a penalty

1 equaling 100% of fees due under this article for the period
2 where separate records were not maintained.

3 Section 1525-A. Examinations.

4 The department or any of its authorized agents are authorized
5 to examine the books, papers and records of any taxpayer in
6 order to verify the accuracy and completeness of any return made
7 or, if no return was made, to ascertain and assess the fee
8 imposed by this article. The department may require the
9 preservation of all books, papers and records for any period
10 deemed proper by it but not to exceed three years from the end
11 of the calendar year to which the records relate. Every taxpayer
12 is required to give to the department or its agent the means,
13 facilities and opportunity for examinations and investigations
14 under this section. The department is further authorized to
15 examine any person, under oath, concerning the taxable severing
16 of natural gas by any taxpayer or concerning any other matter
17 relating to the enforcement or administration of this article,
18 and to this end may compel the production of books, papers and
19 records and the attendance of all persons whether as parties or
20 witnesses whom it believes to have knowledge of relevant
21 matters. The procedure for the hearings or examinations shall be
22 the same as that provided by the act of April 9, 1929 (P.L.343,
23 No.176), known as The Fiscal Code.

24 Section 1526-A. Unauthorized disclosure.

25 Any information gained by the department as a result of any
26 return, examination, investigation, hearing or verification
27 required or authorized by this article shall be confidential
28 except for official purposes and except in accordance with
29 proper judicial order or as otherwise provided by law, and any
30 person unlawfully divulging the information shall be guilty of a

1 misdemeanor and shall, upon conviction, be sentenced to pay a
2 fine of not more than \$1,000 and costs of prosecution or to
3 imprisonment for not more than one year, or both.

4 Section 1527-A. Cooperation with other governments.

5 Notwithstanding the provisions of section 1519-A, the
6 department may permit the Commissioner of the Internal Revenue
7 Service of the United States, the proper officer of any state or
8 the authorized representative of either of them to inspect the
9 returns of any taxpayer, or may furnish to the commissioner or
10 officer or to either of their authorized representative an
11 abstract of the return of any taxpayer, or supply him with
12 information concerning any item contained in any return or
13 disclosed by the report of any examination or investigation of
14 the return of any taxpayer. This permission shall be granted
15 only if the laws of the United States or another state grant
16 substantially similar privileges to the proper officer of the
17 Commonwealth charged with the administration of this article.

18 Section 1528-A. Bonds.

19 (a) Taxpayer to file bond.--The department may require a
20 nonresident natural person or any foreign corporation,
21 association, fiduciary or other entity, not authorized to do
22 business within this Commonwealth or not having an established
23 place of business in this Commonwealth and subject to the tax
24 imposed under section 1503-A, to file a bond issued by a surety
25 company authorized to do business in this Commonwealth and
26 approved by the Insurance Commissioner as to solvency and
27 responsibility, in amounts as it may fix, to secure the payment
28 of any tax or penalties due or which may become due from a
29 nonresident natural person, corporation, association, fiduciary
30 or other entity whenever it deems it necessary to protect the

1 revenues obtained under this article. The department may also
2 require a bond of a person petitioning the department for
3 reassessment in the case of any assessment over \$500 or where,
4 in its opinion, the ultimate collection is in jeopardy. For a
5 period of three years, the department may require a bond of any
6 person who has, on three or more occasions within a 12-month
7 period, either filed a return or made payment to the department
8 more than 30 days late. In the event the department determines a
9 taxpayer is required to file a bond, it shall give notice to the
10 taxpayer specifying the amount of the bond required. The
11 taxpayer shall file the bond within five days after notice is
12 given by the department unless, within five days, the taxpayer
13 shall request in writing a hearing before the secretary or his
14 representative. At the hearing, the necessity, propriety and
15 amount of the bond shall be determined by the secretary or the
16 secretary's representative. The determination shall be final and
17 the taxpayer shall comply with it within 15 days after notice is
18 mailed to the taxpayer.

19 (b) Securities in lieu of bond.--In lieu of the bond
20 required by this section securities approved by the department
21 or cash in a prescribed amount may be deposited. The securities
22 or cash shall be kept in the custody of the department. The
23 department may apply the securities or cash to the fee imposed
24 by this article and interest or penalties due without notice to
25 the depositor. The securities may be sold by the department to
26 pay the fee or interest or penalties due at public or private
27 sale upon five days' written notice to the depositor.

28 (c) Failure to file bond.--The department may file a lien
29 under section 1518-A against any taxpayer who fails to file a
30 bond when required to do so under this section. All funds

1 received upon execution of the judgment on the lien shall be
2 refunded to the taxpayer with 3% interest, should a final
3 determination be made that it does not owe any payment to the
4 department.

5 Section 1529-A. Safe Roads and Bridges Fund established.

6 (a) Establishment.--The Safe Roads and Bridges Fund is
7 established as a restricted account within the General Fund.

8 (b) Use.--The money in the fund may only be used for
9 construction, reconstruction, maintenance and repair of and
10 safety on public highways and bridges and costs and expenses
11 incident thereto. Expenditures from the fund shall be
12 administered by the Department of Transportation.

13 (c) Nonlapse.--The money in the fund is continuously
14 appropriated into the fund. This appropriation shall not lapse
15 at the end of any fiscal year.

16 Section 1530-A. Appropriation.

17 The amount of the proceeds from the fee imposed by this
18 article as shall be necessary for the payment of refunds,
19 enforcement or administration under this article, is hereby
20 appropriated to the department for those purposes.

21 Section 6. Section 3003.3(d) of the act, amended October 18,
22 2006 (P.L.1149, No.119), is amended and the section is amended
23 by adding subsections to read:

24 Section 3003.3. Underpayment of Estimated Tax.--* * *

25 (d) Notwithstanding the provisions of the preceding
26 subsections, other than as set forth under subsection (d.1),
27 interest with respect to any underpayment of any installment of
28 estimated tax shall not be imposed if the total amount of all
29 payments of estimated tax made on or before the last date
30 prescribed for the payment of such installment equals or exceeds

1 the amount which would have been required to be paid on or
2 before such date if the estimated tax were an amount equal to
3 the tax computed at the rates applicable to the taxable year,
4 including any minimum tax imposed, but otherwise on the basis of
5 the facts shown on the report of the taxpayer for, and the law
6 applicable to, the safe harbor base year, adjusted for any
7 changes to sections 401, 601, 602 and 1101 enacted for the
8 taxable year, if a report showing a liability for tax was filed
9 by the taxpayer for the safe harbor base year. If the total
10 amount of all payments of estimated tax made on or before the
11 last date prescribed for the payment of such installment does
12 not equal or exceed the amount required to be paid per the
13 preceding sentence, but such amount is paid after the date the
14 installment was required to be paid, then the period of
15 underpayment shall run from the date the installment was
16 required to be paid to the date the amount required to be paid
17 per the preceding sentence is paid. Provided, that if the total
18 tax for the safe harbor base year exceeds the tax shown on such
19 report by ten per cent or more, the total tax adjusted to
20 reflect the current tax rate shall be used for purposes of this
21 subsection. In the event that the total tax for the safe harbor
22 base year exceeds the tax shown on the report by ten per cent or
23 more, interest resulting from the utilization of such total tax
24 in the application of the provisions of this subsection shall
25 not be imposed if, within forty-five days of the mailing date of
26 each assessment, payments are made such that the total amount of
27 all payments of estimated tax equals or exceeds the amount which
28 would have been required to be paid on or before such date if
29 the estimated tax were an amount equal to the total tax adjusted
30 to reflect the current tax rate. In any case in which the

1 taxable year for which an underpayment of estimated tax may
2 exist is a short taxable year, in determining the tax shown on
3 the report or the total tax for the safe harbor base year, the
4 tax will be reduced by multiplying it by the ratio of the number
5 of installment payments made in the short taxable year to the
6 number of installment payments required to be made for the full
7 taxable year.

8 (d.1) (1) Notwithstanding subsections (a), (b) and (c),
9 interest with respect to any underpayment of any installment of
10 estimated corporate net income tax for any tax year that begins
11 in year 2014 or 2015 shall not be imposed if the total amount of
12 all payments of estimated corporate net income tax made on or
13 before the last date prescribed for the payment of the
14 installment equals or exceeds the amount which would have been
15 required to be paid on or before that date if the estimated tax
16 were an amount equal to the tax shown on the report of the
17 taxpayer for the safe harbor base year, if a report showing a
18 liability for tax was filed by the taxpayer for the safe harbor
19 base year.

20 (2) If the total amount of all payments of estimated tax
21 made on or before the last date prescribed for the payment of
22 the installment does not equal or exceed the amount required to
23 be paid under paragraph (1), but the amount is paid after the
24 date the installment was required to be paid, the period of
25 underpayment shall run from the date the installment was
26 required to be paid to the date the amount required to be paid
27 under paragraph (1) is paid.

28 (3) If the total tax for the safe harbor base year exceeds
29 the tax shown on the report by ten per cent or more, the total
30 tax shall be used for purposes of this subsection. If the total

1 tax for the safe harbor base year exceeds the tax shown on the
2 report by ten per cent or more, interest resulting from the
3 utilization of the total tax in the application of the
4 provisions of this subsection shall not be imposed if, within
5 forty-five days of the mailing date of a notice from the
6 department increasing the total tax, payments are made such that
7 the total amount of all payments of estimated tax equals or
8 exceeds the amount which would have been required to be paid on
9 or before the date if the estimated tax were an amount equal to
10 the total tax.

11 (4) If the taxable year for which an underpayment of
12 estimated tax may exist is a short taxable year, in determining
13 the tax shown on the report or the total tax for the safe harbor
14 base year, the tax shall be reduced by multiplying it by the
15 ratio of the number of installment payments made in the short
16 taxable year to the number of installment payments required to
17 be made for the full taxable year.

18 (d.2) (1) If there is a substantial underpayment, as
19 defined in subsection (a), of an installment of estimated
20 corporate net income tax or estimated capital stock and
21 franchise tax for a taxable year beginning in 2014 or 2015,
22 there shall be imposed additional interest in an amount
23 determined at one hundred twenty per cent of the annual rate as
24 provided by law upon the entire underpayment for the period of
25 the substantial underpayment.

26 (2) The additional interest imposed under this subsection
27 shall be in addition to any other interest imposed on
28 underpayments under this section.

29 Section 7. The amendment or addition of the following
30 provisions shall apply to taxable years beginning after December

1 31, 2014:

2 (1) Section 401(3)1(a) and (b) and 2(a) and (e), (5),
3 (8), (9), (10), (11), (12) and (13) of the act.

4 (2) Section 403(a.1), (a.2), (a.3), (a.4) and (a.5) of
5 the act.

6 (3) Section 404 of the act.

7 (4) Section 408.2 of the act.

8 (5) The addition of Article XV-A of the act.

9 (6) Section 3003.3(d), (d.1) and (d.2) of the act.

10 Section 8. This act shall take effect immediately.