

# COMMONWEALTH OF PENNSYLVANIA

## LEGISLATIVE JOURNAL

WEDNESDAY, JUNE 14, 2006

SESSION OF 2006

190TH OF THE GENERAL ASSEMBLY

No. 37

### HOUSE OF REPRESENTATIVES

The House convened at 11 a.m., e.d.t.

#### THE SPEAKER (JOHN M. PERZEL) PRESIDING

#### PRAYER

REV. JULIANN V. WHIPPLE, Chaplain of the House of Representatives, offered the following prayer:

Let us pray:

God of all liberty and true freedom, today we honor the flag of our nation and what it stands for – all men are created equal, liberty and justice for all – but do we truly believe those words in our heart? We ask You to blow apart our notions of justice, liberty, and equality, tearing down our refusal to understand that none of us has truly earned those things but we have been blessed by You to be in a place that subscribes to what it means to be under Your laws, under God. May we remember that being under God is challenging and causes us to live in a way that sees all mankind as Your children and forces us to stretch our horizons, to be better people. Lengthen our sight and enlarge our sympathies that we find no person so annoying or child so insignificant that we close the door against need or shut our eyes upon hope.

As we pledge to the flag, open our ears and our hearts to the words we speak casually from childhood memory. Reignite in us a love for unity and justice that gives feet to the pledge. Let us never forget our Star-Spangled Banner waves over a free nation because of the incredible sacrifices made by its sons and daughters. We do not pray that other nations love us but that they may know for that which we stand – one nation under God, indivisible, with liberty and justice for all.

To Thine be the power and the glory forever. Amen.

#### PLEDGE OF ALLEGIANCE

(The Pledge of Allegiance was recited by members and visitors.)

#### JOURNAL APPROVAL POSTPONED

The SPEAKER. Without objection, the approval of the Journal of Tuesday, June 13, 2006, will be postponed until printed.

### BILLS REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the majority leader. Mr. S. SMITH. Mr. Speaker, I move the following bills be taken from the table:

HB 2590;  
SB 811;  
HB 256;  
HB 259;  
HB 446;  
HB 2253;  
SB 148;  
SB 151;  
SB 410;  
SB 651; and  
SB 709.

On the question,  
Will the House agree to the motion?  
Motion was agreed to.

### BILLS ON SECOND CONSIDERATION

The following bills, having been called up, were considered for the second time and agreed to, and ordered transcribed for third consideration:

**HB 2590, PN 3908; SB 811, PN 1814; HB 256, PN 2210; HB 259, PN 2105; HB 446, PN 485; HB 2253, PN 3141; SB 148, PN 1061; SB 151, PN 137; SB 410, PN 933; SB 651, PN 748; and SB 709, PN 1039.**

### BILLS RECOMMITTED

The SPEAKER. The Chair recognizes the majority leader. Mr. S. SMITH. Mr. Speaker, I move that the following bills be recommitted to the Committee on Appropriations:

HB 2590;  
SB 811;  
HB 256;  
HB 259;  
HB 446;  
HB 2253;  
SB 148;  
SB 151;  
SB 410;

SB 651; and  
SB 709.

On the question,  
Will the House agree to the motion?  
Motion was agreed to.

### HOUSE BILLS INTRODUCED AND REFERRED

**No. 2758** By Representatives PYLE, BEYER, BUNT, CALTAGIRONE, CAPPELLI, CORNELL, DALLY, FABRIZIO, GERGELY, GRUCELA, MANN, PETRARCA, QUIGLEY, RAYMOND, REED, REICHLEY, RUBLEY, SAYLOR, SEMMEL, SIPTROTH, SOLOBAY, SONNEY, R. STEVENSON, THOMAS, TURZAI and YOUNGBLOOD

An Act amending the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, further providing for special occasion permits.

Referred to Committee on LIQUOR CONTROL, June 14, 2006.

**No. 2759** By Representatives CASORIO, BLAUM, COHEN, PALLONE, BELFANTI, CALTAGIRONE, CRAHALLA, FLAHERTY, GEIST, GEORGE, GOODMAN, GRUCELA, JOSEPHS, KOTIK, MANN, McILHATTAN, PETRARCA, PYLE, THOMAS, TIGUE, WOJNAROSKI, YOUNGBLOOD, YUDICHAK, BEYER, PISTELLA and JAMES

An Act amending the act of November 22, 1978 (P.L.1166, No.274), referred to as the Pennsylvania Commission on Crime and Delinquency Law, providing for a task force on drug-endangered children.

Referred to Committee on JUDICIARY, June 14, 2006.

**No. 2760** By Representatives METCALFE, CREIGHTON, BALDWIN, BARRAR, BASTIAN, BELFANTI, BENNINGHOFF, BIRMELIN, BOYD, CALTAGIRONE, CAUSER, CLYMER, CRAHALLA, DeLUCA, DENLINGER, DIVEN, FLAHERTY, FORCIER, GABIG, GEIST, GOOD, GRELL, GRUCELA, HARRIS, HICKERNELL, HUTCHINSON, M. KELLER, KENNEY, MAHER, MILLARD, MUSTIO, NAILOR, PYLE, QUIGLEY, RAPP, REED, REICHLEY, ROHRER, SATHER, SCHRODER, SOLOBAY, SONNEY, R. STEVENSON, SURRA, TRUE, TURZAI, WOJNAROSKI, WRIGHT, YEWIC and JAMES

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing for employing illegal aliens.

Referred to Committee on JUDICIARY, June 14, 2006.

**No. 2761** By Representatives METCALFE, CREIGHTON, ALLEN, BALDWIN, BARRAR, BASTIAN, BELFANTI, BENNINGHOFF, BIRMELIN, BOYD, CALTAGIRONE, CAUSER, CLYMER, CRAHALLA, DENLINGER, ELLIS, FLAHERTY, FLICK, FORCIER, GABIG, GOOD, GOODMAN, GRELL, GRUCELA, HARRIS, HICKERNELL, HUTCHINSON, KAUFFMAN, M. KELLER, KENNEY,

MAHER, MAITLAND, MILLARD, R. MILLER, MUSTIO, NAILOR, PYLE, QUIGLEY, RAPP, REED, REICHLEY, ROHRER, SATHER, SCHRODER, SOLOBAY, SONNEY, R. STEVENSON, TRUE, TURZAI, WOJNAROSKI, WRIGHT and YEWIC

An Act limiting expenditure of public moneys on illegal aliens; and providing for requests for reimbursement of public moneys expended on illegal aliens.

Referred to Committee on HEALTH AND HUMAN SERVICES, June 14, 2006.

**No. 2762** By Representatives ROHRER, BALDWIN, BASTIAN, BIRMELIN, BOYD, CALTAGIRONE, CLYMER, CRAHALLA, CREIGHTON, FORCIER, GABIG, GEIST, GOODMAN, GRELL, GRUCELA, HENNESSEY, HERSHEY, HESS, HUTCHINSON, LEH, McILHATTAN, METCALFE, R. MILLER, S. MILLER, MUSTIO, PHILLIPS, READSHAW, REICHLEY, SAYLOR, SCAVELLO, SIPTROTH, STEIL, STERN, R. STEVENSON, E. Z. TAYLOR, THOMAS, WANSACZ, WILT and YEWIC

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, establishing special tax provisions for certain employees paid the minimum wage.

Referred to Committee on FINANCE, June 14, 2006.

**No. 2763** By Representatives O'BRIEN, BAKER, BUNT, CRAHALLA, CREIGHTON, GEIST, GODSHALL, HASAY, W. KELLER, KOTIK, SAYLOR, STERN, E. Z. TAYLOR and J. TAYLOR

An Act proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for security from searches and seizures.

Referred to Committee on JUDICIARY, June 14, 2006.

**No. 2764** By Representatives O'BRIEN, BUNT, CALTAGIRONE, CRAHALLA, CREIGHTON, GEIST, HICKERNELL, W. KELLER, KOTIK, MACKERETH, PYLE, SAYLOR, SONNEY, STABACK, E. Z. TAYLOR and J. TAYLOR

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for sentencing procedure for murder of the first degree.

Referred to Committee on JUDICIARY, June 14, 2006.

**No. 2765** By Representatives O'BRIEN, BAKER, BELFANTI, BLAUM, BOYD, BUNT, CALTAGIRONE, CAPPELLI, CRAHALLA, CREIGHTON, J. EVANS, GEIST, GILLESPIE, HENNESSEY, W. KELLER, KOTIK, LEDERER, LEH, MACKERETH, MAITLAND, MARSICO, MILLARD, PICKETT, PYLE, SHAPIRO, SONNEY, STABACK, E. Z. TAYLOR, J. TAYLOR, THOMAS and TIGUE

An Act amending Title 44 (Law and Justice) of the Pennsylvania Consolidated Statutes, further providing for policy and for DNA sample required; providing for collection from persons accepted from

other jurisdictions; and further providing for procedures for withdrawal, collection and transmission of DNA samples and for expungement.

Referred to Committee on JUDICIARY, June 14, 2006.

**No. 2766** By Representatives BLACKWELL, CRAHALLA, COHEN, FREEMAN, CALTAGIRONE, PISTELLA, HERSHEY, ROEBUCK, TANGRETTI, SCHRODER, LEACH, BELFANTI, GOOD, GERBER, SIPTROTH, FABRIZIO, HENNESSEY, J. TAYLOR, JOSEPHS, MYERS, BISHOP, WILLIAMS and THOMAS

An Act amending the act of February 17, 1906 (P.L.45, No.11), entitled "An act to regulate the deposits of State funds, to prescribe the method of selecting State depositories, to limit the amount of State deposits, to provide for the security of such deposits, to fix the rate of interest thereon, to provide for the publication of monthly statements of moneys in the general and sinking funds, to declare it a misdemeanor to give or take anything of value for obtaining the same, and prescribing penalties for violations of this act," prohibiting State depositories from maintaining financial transactions with The Republic of The Sudan, a communist block country or any country governed by a military dictatorship which supports or condones policies which result in human rights violations.

Referred to Committee on STATE GOVERNMENT, June 14, 2006.

**LEAVES OF ABSENCE**

The SPEAKER. The Chair turns to leaves of absence. The Chair recognizes the minority whip, who moves for a leave of absence for the day for the gentleman from Philadelphia, Mr. RIEGER. Without objection, that leave will be granted.

The Republican whip requests no leaves of absence.

**MASTER ROLL CALL**

The SPEAKER. The Chair is about to take the master roll, and the members will proceed to vote.

The following roll call was recorded:

**PRESENT—202**

Adolph	Feese	Maher	Ruffing
Allen	Fichter	Maitland	Sabatina
Argall	Flaherty	Major	Sainato
Armstrong	Fleagle	Manderino	Samuelson
Baker	Flick	Mann	Santoni
Baldwin	Forcier	Markosek	Sather
Barrar	Frankel	Marsico	Saylor
Bastian	Freeman	McCall	Scavello
Bebko-Jones	Gabig	McGeehan	Schroder
Belardi	Gannon	McGill	Semmel
Belfanti	Geist	McIlhattan	Shaner
Benninghoff	George	McIlhinney	Shapiro
Beyer	Gerber	McNaughton	Siptroth
Biancucci	Gergely	Melio	Smith, B.
Birmelin	Gillespie	Metcalfe	Smith, S. H.
Bishop	Gingrich	Micozzie	Solobay
Blackwell	Godshall	Millard	Sonney
Blaum	Good	Miller, R.	Staback
Boyd	Goodman	Miller, S.	Stairs
Bunt	Grell	Mundy	Steil
Buxton	Grucela	Mustio	Stern

Caltagirone	Gruitza	Myers	Stetler
Cappelli	Haluska	Nailor	Stevenson, R.
Casorio	Hanna	Nickol	Stevenson, T.
Causar	Harhai	O'Brien	Sturla
Cawley	Harhart	Oliver	Surra
Civera	Harper	O'Neill	Tangretti
Clymer	Harris	Pallone	Taylor, E. Z.
Cohen	Hasay	Parker	Taylor, J.
Cornell	Hennessey	Payne	Thomas
Corrigan	Herman	Petrarca	Tigue
Costa	Hershey	Petri	True
Crahalla	Hess	Petrone	Turzai
Creighton	Hickernell	Phillips	Veon
Cruz	Hutchinson	Pickett	Vitali
Curry	James	Pistella	Walko
Daley	Josephs	Preston	Wansacz
Dally	Kauffman	Pyle	Waters
DeLuca	Keller, M.	Quigley	Watson
Denlinger	Keller, W.	Ramaley	Wheatley
Dermody	Kenney	Rapp	Williams
DeWeese	Killion	Raymond	Wilt
DiGirolamo	Kirkland	Readshaw	Wojnaroski
Diven	Kotik	Reed	Wright
Donatucci	LaGrotta	Reichley	Yewcic
Eachus	Leach	Roberts	Youngblood
Ellis	Lederer	Roebuck	Yudichak
Evans, D.	Leh	Rohrer	Zug
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth	Rubley	Speaker

ADDITIONS—0

NOT VOTING—0

EXCUSED—1

Rieger

LEAVES ADDED—6

Armstrong	Cornell	Taylor, E. Z.	Wilt
Birmelin	Leh		

LEAVES CANCELED—2

Armstrong	Taylor, E.Z.
-----------	--------------

**RULES COMMITTEE MEETING**

The SPEAKER. The Chair recognizes the majority leader, who calls for an immediate meeting of the Rules Committee.

**BILLS REREPORTED FROM COMMITTEE**

**HB 2545, PN 3751** By Rep. S. SMITH

An Act amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, further providing, in parking authorities, for purposes and powers and for competition in award of contracts.

**RULES.**

**HB 2699, PN 4132** By Rep. S. SMITH

An Act authorizing and directing the Department of Public Welfare to establish and maintain a managed health care program for medical assistance recipients; requiring actuarially sound rates for

certain managed care organizations; providing for the right of appeal and approval by the General Assembly of changes to the Commonwealth medical assistance plan and associated waivers; and repealing inconsistent portions of other acts.

RULES.

### BILLS ON SECOND CONSIDERATION

The following bills, having been called up, were considered for the second time and agreed to, and ordered transcribed for third consideration:

**HB 2545, PN 3751; and HB 2699, PN 4132.**

### HARRISBURG LEGISLATIVE LEAVE

The SPEAKER. The Chair recognizes the gentleman, Mr. Grucela.

Mr. GRUCELA. Thank you, Mr. Speaker.

Mr. Speaker, request Capitol leave for the gentleman from Allegheny County, Mr. KOTIK.

The SPEAKER. Without objection, that leave will be granted.

Mr. GRUCELA. Thank you, Mr. Speaker.

### FILMING PERMISSION

The SPEAKER. The Chair wants to advise the members that it has given permission to Ed Hille of the Philadelphia Inquirer for 10 minutes to take still photographs of the House of Representatives, for the information of the members.

### BILLS RECOMMITTED

The SPEAKER. The Chair recognizes the majority leader.

Mr. S. SMITH. Mr. Speaker, I move that HB 2545 and HB 2699 be recommitted to the Committee on Appropriations.

On the question,

Will the House agree to the motion?

Motion was agreed to.

### GUESTS INTRODUCED

The SPEAKER. The Chair would like to welcome to the hall of the House Todd Chamberlain, assistant Scout Master for Troop 32 from Mont Alto, PA. Jared Chamberlain and William Slemmer, both second-class Boy Scouts, are currently working on their Citizenship of Community and Citizenship of Nation. They are the guests today of Representative Pat Fleagle and are seated to the left of the Speaker. Would they please rise and be recognized.

The Chair would like to welcome to the hall of the House Mary Pritchard, who is the guest today of Representative Craig Dally. She is seated to the left of the Speaker. Would she please rise and be recognized.

The Chair would like to welcome Matthew Graeff, who was the 2006 "There Ought To Be a Law" winner in Representative Semmel's district. Matthew's law is regarding saving animals when disasters approach. He attends Kutztown Elementary

School and is accompanied by his parents, John and Rebecca Graeff, and his grandparents, Susan and Clifford Schlenker. They are seated to the left of the Speaker. Would they please rise and be recognized.

We have two guests today of Representative Siptroth. They are in the House gallery. They are Rich Geller, a constituent, and Stephen Washington, chief of staff in Representative Siptroth's home district office. Would they please rise and be recognized.

The Chair would like to welcome Justin and Jason Lombardozzi. They are serving as guest pages today of Representative Rob Kauffman. Justin is a ninth grader from Faust Junior High, and Jason is a seventh grader at Chambersburg Area Middle School. They are seated in the front of the Speaker, in the well of the hall of the House. Would they please rise and be recognized.

### CALENDAR

#### BILL ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 1215, PN 3322**, entitled:

An Act amending the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, defining "independent contractor"; further providing for liability to independent contractors, for subcontracting with independent contractors and for proof of insurance; providing for registration of independent contractors and for presumptions relating to independent contractors; imposing duties upon the Department of Labor and Industry; and further providing for offenses.

On the question,

Will the House agree to the bill on third consideration?

#### BILL RECOMMITTED

The SPEAKER. The Chair recognizes the majority leader.

Mr. S. SMITH. Mr. Speaker, I move that HB 1215 be recommitted to the Committee on Appropriations.

On the question,

Will the House agree to the motion?

Motion was agreed to.

#### RESOLUTION

The House proceeded to consideration of concurrent resolution **SR 308, PN 1806**, entitled:

A Concurrent Resolution proclaiming May 22, 2006, as "Pennsylvania Ports Day" in Pennsylvania.

On the question,

Will the House concur in the resolution of the Senate?

The following roll call was recorded:

YEAS—202

Adolph  
Allen

Feese  
Fichter

Maher  
Maitland

Ruffing  
Sabatina

Argall	Flaherty	Major	Sainato
Armstrong	Fleagle	Manderino	Samuelson
Baker	Flick	Mann	Santoni
Baldwin	Forcier	Markosek	Sather
Barrar	Frankel	Marsico	Saylor
Bastian	Freeman	McCall	Scavello
Bebko-Jones	Gabig	McGeehan	Schroder
Belardi	Gannon	McGill	Sammel
Belfanti	Geist	McIlhatten	Shaner
Benninghoff	George	McIlhinney	Shapiro
Beyer	Gerber	McNaughton	Siptroth
Biancucci	Gergely	Melio	Smith, B.
Birmelin	Gillespie	Metcalf	Smith, S. H.
Bishop	Gingrich	Micozzie	Solobay
Blackwell	Godshall	Millard	Sonney
Blaum	Good	Miller, R.	Staback
Boyd	Goodman	Miller, S.	Stairs
Bunt	Grell	Mundy	Steil
Buxton	Grucela	Mustio	Stern
Caltagirone	Gruitza	Myers	Stetler
Cappelli	Haluska	Nailor	Stevenson, R.
Casorio	Hanna	Nickol	Stevenson, T.
Causer	Harhai	O'Brien	Sturla
Cawley	Harhart	Oliver	Surra
Civera	Harper	O'Neill	Tangretti
Clymer	Harris	Pallone	Taylor, E. Z.
Cohen	Hasay	Parker	Taylor, J.
Cornell	Hennessey	Payne	Thomas
Corrigan	Herman	Petrarca	Tigue
Costa	Hershey	Petri	True
Crahalla	Hess	Petrone	Turzai
Creighton	Hickernell	Phillips	Veon
Cruz	Hutchinson	Pickett	Vitali
Curry	James	Pistella	Walko
Daley	Josephs	Preston	Wansacz
Dally	Kauffman	Pyle	Waters
DeLuca	Keller, M.	Quigley	Watson
Denlinger	Keller, W.	Ramaley	Wheatley
Dermody	Kenney	Rapp	Williams
DeWeese	Killion	Raymond	Wilt
DiGirolo	Kirkland	Readshaw	Wojnaroski
Diven	Kotik	Reed	Wright
Donatucci	LaGrotta	Reichley	Yewcic
Eachus	Leach	Roberts	Youngblood
Ellis	Lederer	Roebuck	Yudichak
Evans, D.	Leh	Rohrer	Zug
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth	Rubley	Speaker

NAYS-0

NOT VOTING-0

EXCUSED-1

Rieger

The majority of the members elected to the House having voted in the affirmative, the question was determined in the affirmative and the resolution was concurred in.

Ordered, That the clerk inform the Senate accordingly.

### STATEMENT BY MR. BELFANTI

The SPEAKER. For what purpose does the gentleman, Mr. Belfanti, rise?

Mr. BELFANTI. Mr. Speaker, a point of personal privilege.

The SPEAKER. The gentleman will state it.

Mr. BELFANTI. Thank you, Mr. Speaker.

Mr. Speaker, as I speak, there is a raid occurring in my legislative district on a construction site where dozens of illegal aliens were surrounded by the Pennsylvania State Police, township police, the county sheriff, the district attorney, and officials from the Department of Labor and Industry.

For about a week we have been trying to get the INS (Immigration and Naturalization Service) to come in and investigate the situation because we were aware that there were children working on this construction site laying brick and doing electrical pipe work. Three of those who were arrested or detained, I should say, not arrested, because the INS is not there, are under 17. They are in violation of the Child Labor Law. There are no wage-an-hour statements on the site. The Department of Labor and Industry has determined that they have not been paying workers' compensation or unemployment compensation. The district attorney through his interviews has determined these people have been working 7 12-hour days at straight time and would not disclose what straight time they were being paid. Is it even \$5.15 an hour? At this point we do not know.

Mr. Speaker, Representative Allen and I had passed here in the House and the Senate and signed into law by the Governor legislation that any project where there is a single dollar of State moneys involved, that any contractor found in violation of the illegal alien act or any of the State unemployment or workers' compensation or underage worker violations would have to repay all of their State loans, State grants with interest and would be prohibited from performing construction in this Commonwealth for a period of at least 3 years. But, Mr. Speaker, that only applies to jobs that are being funded in some part by State dollars. This is a private job. It is a shopping center being erected. There are no State dollars.

I found myself in the precarious position of 2 weeks ago, even before this project started, cosponsoring legislation that my good friend, Representative Daryl Metcalfe, introduced that would address this situation where there are not State dollars used and would impose certain civil and criminal penalties against contractors who knowingly and willfully employ illegal aliens.

A few weeks ago or a few months ago the same situation occurred at Slippery Rock University, a State-related university; a month or so before that a Wal-Mart distribution center. Hundreds of illegal aliens were rounded up and many got away, and in today's raid they believe they captured about two-thirds of the work force.

I would like to thank Secretary Steve Schmerin, because when it came to our knowledge that this job, this building, would be completed before the INS, who tells us they have two agents for the eastern half of the State, based out of Philadelphia, who needed about 2 weeks' notice and some proof that there were illegal aliens or underage aliens working on the job, the project would have been completed. So I asked the Secretary, based upon the knowledge we had, if he would send in enforcement agents from Labor and Industry with the assistance of local law enforcement and determine whether or not this project was a legal project being performed by legal aliens, documented aliens, who were paying workers' compensation and unemployment compensation, and who were utilizing workers who were not under our Child Labor Law years. I do not know what child labor law is in Mexico. It could

be 15; it could be 12, but if they are working here, they need to be 18 if they are working on heavy construction.

So, Mr. Speaker, I am asking that whatever committees the Metcalfe bills are assigned to, that those committees conduct hearings at the earliest part of this summer so that by the very latest they are in position to run when we come back after the budget break. If I felt we had time to do something before then, I would be asking that because this is becoming pervasive.

The reason there are only two INS officers, field agents, out of Philadelphia is because this was not a problem 5 years ago, but it is a major problem now. They were utilizing this type of labor in the South and the Southwest and the Southeast, but now they are here in Pennsylvania. They are taking jobs away from Pennsylvania workers who want to work, they are taking jobs away from American workers who want to work, and they are even taking jobs away from legal aliens who are here legitimately who have a right to work because they have gone through the work permit and visa process.

Mr. Speaker, I think today was a good day in Northumberland County, a good day for the State of Pennsylvania, and I would hope that Labor and Industry and the administration would be more proactive since we cannot get the necessary assistance from the INS. We need to have more State assistance so that we can shut these projects down and allow an opportunity for legal workers to be working here in Pennsylvania.

Thank you for your accommodation in allowing me to speak.  
The SPEAKER. The Chair thanks the gentleman.

**HARRISBURG LEGISLATIVE LEAVE**

The SPEAKER. The Chair recognizes the gentleman, Mr. Grucela.

Mr. GRUCELA. Thank you, Mr. Speaker.

Mr. Speaker, request Capitol leave for the gentleman from Philadelphia, Mr. DONATUCCI.

The SPEAKER. Without objection, that leave will be granted.

Mr. GRUCELA. Thank you, Mr. Speaker.

**RESOLUTIONS PURSUANT TO RULE 35**

Mr. SEMMEL called up **HR 789, PN 4198**, entitled:

A Resolution designating the week of June 17 through 23, 2006, as "Civil Air Patrol Cadet Week" in Pennsylvania.

On the question,  
Will the House adopt the resolution?

The following roll call was recorded:

YEAS—202

Adolph	Feese	Maher	Ruffing
Allen	Fichter	Maitland	Sabatina
Argall	Flaherty	Major	Sainato
Armstrong	Fleagle	Manderino	Samuelson
Baker	Flick	Mann	Santoni
Baldwin	Forcier	Markosek	Sather
Barrar	Frankel	Marsico	Saylor
Bastian	Freeman	McCall	Scavello
Bebko-Jones	Gabig	McGeehan	Schroder
Belardi	Gannon	McGill	Semmel

Belfanti	Geist	McIlhattan	Shaner
Benninghoff	George	McIlhinney	Shapiro
Beyer	Gerber	McNaughton	Siptroth
Biancucci	Gergely	Melio	Smith, B.
Birmelin	Gillespie	Metcalfe	Smith, S. H.
Bishop	Gingrich	Micozzie	Solobay
Blackwell	Godshall	Millard	Sonney
Blaum	Good	Miller, R.	Staback
Boyd	Goodman	Miller, S.	Stairs
Bunt	Grell	Mundy	Steil
Buxton	Grucela	Mustio	Stern
Caltagirone	Gruitza	Myers	Stetler
Cappelli	Haluska	Nailor	Stevenson, R.
Casorio	Hanna	Nickol	Stevenson, T.
Causer	Harhai	O'Brien	Sturla
Cawley	Harhart	Oliver	Surra
Civera	Harper	O'Neill	Tangretti
Clymer	Harris	Pallone	Taylor, E. Z.
Cohen	Hasay	Parker	Taylor, J.
Cornell	Hennessey	Payne	Thomas
Corrigan	Herman	Petrarca	Tigue
Costa	Hershey	Petri	True
Crahalla	Hess	Petrone	Turzai
Creighton	Hickernell	Phillips	Veon
Cruz	Hutchinson	Pickett	Vitali
Curry	James	Pistella	Walko
Daley	Josephs	Preston	Wansacz
Dally	Kauffman	Pyle	Waters
DeLuca	Keller, M.	Quigley	Watson
Denlinger	Keller, W.	Ramaley	Wheatley
Dermody	Kenney	Rapp	Williams
DeWeese	Killion	Raymond	Wilt
DiGirolo	Kirkland	Readshaw	Wojnarowski
Diven	Kotik	Reed	Wright
Donatucci	LaGrotta	Reichley	Yewcic
Eachus	Leach	Roberts	Youngblood
Ellis	Lederer	Roebuck	Yudichak
Evans, D.	Leh	Rohrer	Zug
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth	Rubley	Speaker

NAYS—0

NOT VOTING—0

EXCUSED—1

Rieger

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

\* \* \*

Mr. MUSTIO called up **HR 790, PN 4199**, entitled:

A Resolution recognizing the anniversary of the observance of Flag Day as a national holiday and honoring Collier Township, Allegheny County, for its role in the history of Flag Day.

On the question,  
Will the House adopt the resolution?

The SPEAKER. The gentleman, Mr. Siptroth.  
Mr. SIPTROTH. Thank you, Mr. Speaker.

On the resolution.

The SPEAKER. The gentleman is in order.

Mr. SIPTROTH. Thank you, Mr. Speaker.  
I would like to thank the kind gentleman from Allegheny for yielding his time regarding this particular issue.

I know often the significance of Flag Day is overlooked since it falls between Memorial Day and Independence Day. However, with the state of our nation today, I think Flag Day requires even more recognition than perhaps in other years. As intense debates ensue in Washington and across the country regarding immigration reform, the war in Iraq and the war on terror, our flag has come to have heightened meaning. It represents us as a people, our history and our ideals, even when our ideals are in question or in transition.

Regardless of our individual feelings on the divisive issues our great nation faces today, I was moved by reading a quote on the cover of the American Legion magazine by President Woodrow Wilson about the flag: "This flag, which we honor and under which we serve, is the emblem of unity, our power, our thought and purpose as a nation. It has no other character than that which we give it from generation to generation."

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,  
Will the House adopt the resolution?

The following roll call was recorded:

YEAS—201

Adolph	Feese	Maher	Sabatina
Allen	Fichter	Maitland	Sainato
Argall	Flaherty	Major	Samuelson
Armstrong	Fleagle	Manderino	Santoni
Baker	Flick	Mann	Sather
Baldwin	Forcier	Markosek	Saylor
Barrar	Frankel	Marsico	Scavello
Bastian	Freeman	McCall	Schroder
Bebko-Jones	Gabig	McGeehan	Semmel
Belardi	Gannon	McGill	Shaner
Belfanti	Geist	McIlhattan	Shapiro
Benninghoff	George	McIlhinney	Siptroth
Beyer	Gerber	McNaughton	Smith, B.
Biancucci	Gergely	Melio	Smith, S. H.
Birmelin	Gillespie	Metcalfe	Solobay
Bishop	Gingrich	Micozzie	Sonney
Blackwell	Godshall	Millard	Staback
Blaum	Good	Miller, R.	Stairs
Boyd	Goodman	Miller, S.	Steil
Bunt	Grell	Mundy	Stern
Buxton	Grucela	Mustio	Stetler
Caltagirone	Gruitza	Myers	Stevenson, R.
Cappelli	Haluska	Nailor	Stevenson, T.
Casorio	Hanna	Nickol	Sturla
Causar	Harhai	O'Brien	Surra
Cawley	Harhart	Oliver	Tangretti
Civera	Harper	O'Neill	Taylor, E. Z.
Clymer	Harris	Pallone	Taylor, J.
Cohen	Hasay	Parker	Thomas
Cornell	Hennessey	Payne	Tigue
Corrigan	Herman	Petrarca	True
Costa	Hershey	Petri	Turzai
Crahalla	Hess	Petrone	Veon
Creighton	Hickernell	Phillips	Vitali
Cruz	Hutchinson	Pickett	Walko
Curry	James	Pistella	Wansacz
Daley	Josephs	Preston	Waters
Dally	Kauffman	Pyle	Watson
DeLuca	Keller, M.	Quigley	Wheatley
Denlinger	Keller, W.	Ramaley	Williams
Dermody	Kenney	Rapp	Wilt

DeWeese	Killion	Raymond	Wojnaroski
DiGirolamo	Kirkland	Readshaw	Wright
Diven	Kotik	Reed	Yewcic
Donatucci	LaGrotta	Reichley	Youngblood
Eachus	Leach	Roberts	Yudichak
Ellis	Lederer	Roebuck	Zug
Evans, D.	Leh	Rohrer	
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth	Rubley	Speaker

NAYS—0

NOT VOTING—1

Ruffing

EXCUSED—1

Rieger

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

**BILLS ON THIRD CONSIDERATION**

The House proceeded to third consideration of **HB 1746, PN 4036**, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for establishment of fees and charges; eliminating the expiration of provisions on access to justice; and making a related repeal.

On the question,  
Will the House agree to the bill on third consideration?

Mr. O'BRIEN offered the following amendment No. **A07666**:

Amend Sec. 1 (Sec. 1725), page 15, line 5, by inserting after "THE"

First Judicial District to fund the lease.

On the question,  
Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. O'Brien.

Mr. O'BRIEN. Thank you, Mr. Speaker.

This is merely a technical amendment. It inadvertently omitted the Philadelphia courts to use certain funds to lease. It adds the word "lease" to the bill that was inadvertently left out.

Thank you.

On the question recurring,  
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—201

Adolph	Feese	Maher	Sabatina
Allen	Fichter	Maitland	Sainato

Argall	Flaherty	Major	Samuelson
Armstrong	Fleagle	Manderino	Santoni
Baker	Flick	Mann	Sather
Baldwin	Forcier	Markosek	Saylor
Barrar	Frankel	Marsico	Scavello
Bastian	Freeman	McCall	Schroder
Bebko-Jones	Gabig	McGeehan	Semmel
Belardi	Gannon	McGill	Shaner
Belfanti	Geist	McIlhattan	Shapiro
Benninghoff	George	McIlhinney	Siptroth
Beyer	Gerber	McNaughton	Smith, B.
Biancucci	Gergely	Melio	Smith, S. H.
Birmelin	Gillespie	Metcalfe	Solobay
Bishop	Gingrich	Micozzie	Sonney
Blackwell	Godshall	Millard	Staback
Blaum	Good	Miller, R.	Stairs
Boyd	Goodman	Miller, S.	Steil
Bunt	Grell	Mundy	Stern
Buxton	Grucela	Mustio	Stetler
Caltagirone	Gruitza	Myers	Stevenson, R.
Cappelli	Haluska	Nailor	Stevenson, T.
Casorio	Hanna	Nickol	Sturla
Causar	Harhai	O'Brien	Surra
Cawley	Harhart	Oliver	Tangretti
Civera	Harper	O'Neill	Taylor, E. Z.
Clymer	Harris	Pallone	Taylor, J.
Cohen	Hasay	Parker	Thomas
Cornell	Hennessey	Payne	Tigue
Corrigan	Herman	Petrarca	True
Costa	Hershey	Petri	Turzai
Crahalla	Hess	Petrone	Veon
Creighton	Hickernell	Phillips	Vitali
Cruz	Hutchinson	Pickett	Walko
Curry	James	Pistella	Wansacz
Daley	Josephs	Preston	Waters
Dally	Kauffman	Pyle	Watson
DeLuca	Keller, M.	Quigley	Wheatley
Denlinger	Keller, W.	Ramaley	Williams
Dermody	Kenney	Rapp	Wilt
DeWeese	Killion	Raymond	Wojnaroski
DiGiroloamo	Kirkland	Readshaw	Wright
Diven	Kotik	Reed	Yewcic
Donatucci	LaGrotta	Reichley	Youngblood
Eachus	Leach	Roberts	Yudichak
Ellis	Lederer	Roebuck	Zug
Evans, D.	Leh	Rohrer	
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth	Rubley	Speaker

NAYS-0

NOT VOTING-1

Ruffing

EXCUSED-1

Rieger

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,  
Will the House agree to the bill on third consideration as amended?  
Bill as amended was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?  
Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS-196

Adolph	Feese	Maher	Sainato
Allen	Fichter	Maitland	Samuelson
Argall	Flaherty	Major	Santoni
Armstrong	Fleagle	Manderino	Sather
Baker	Flick	Mann	Saylor
Baldwin	Frankel	Markosek	Scavello
Barrar	Freeman	Marsico	Schroder
Bastian	Gabig	McCall	Semmel
Bebko-Jones	Gannon	McGeehan	Shaner
Belardi	Geist	McGill	Shapiro
Belfanti	George	McIlhattan	Siptroth
Benninghoff	Gerber	McIlhinney	Smith, B.
Beyer	Gergely	McNaughton	Smith, S. H.
Biancucci	Gillespie	Melio	Solobay
Birmelin	Gingrich	Micozzie	Sonney
Bishop	Godshall	Millard	Staback
Blackwell	Good	Miller, R.	Stairs
Blaum	Goodman	Miller, S.	Steil
Boyd	Grell	Mundy	Stern
Bunt	Grucela	Mustio	Stetler
Buxton	Gruitza	Myers	Stevenson, R.
Caltagirone	Haluska	Nailor	Stevenson, T.
Cappelli	Hanna	Nickol	Sturla
Casario	Harhai	O'Brien	Surra
Causar	Harhart	Oliver	Tangretti
Cawley	Harper	O'Neill	Taylor, E. Z.
Civera	Harris	Pallone	Taylor, J.
Clymer	Hasay	Parker	Thomas
Cohen	Hennessey	Payne	Tigue
Cornell	Herman	Petri	True
Corrigan	Hershey	Petrone	Turzai
Costa	Hess	Phillips	Veon
Crahalla	Hickernell	Pickett	Vitali
Creighton	Hutchinson	Pistella	Walko
Cruz	James	Preston	Wansacz
Curry	Josephs	Pyle	Waters
Daley	Kauffman	Quigley	Watson
Dally	Keller, M.	Ramaley	Wheatley
DeLuca	Keller, W.	Rapp	Williams
Denlinger	Kenney	Raymond	Wilt
Dermody	Killion	Reed	Wojnaroski
DeWeese	Kirkland	Reichley	Wright
DiGiroloamo	Kotik	Roberts	Yewcic
Diven	LaGrotta	Roebuck	Youngblood
Donatucci	Leach	Rohrer	Yudichak
Eachus	Lederer	Rooney	Zug
Ellis	Leh	Ross	
Evans, D.	Lescovitz	Rubley	
Evans, J.	Levdansky	Sabatina	Perzel,
Fabrizio	Mackereth		Speaker
Fairchild			

NAYS-5

Casorio	Metcalfe	Petrarca	Readshaw
Forcier			

NOT VOTING-1

Ruffing

EXCUSED-1

Rieger



The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

\* \* \*

The House proceeded to third consideration of **SB 1150, PN 1679**, entitled:

An Act amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for offense of protesting at a commemorative service and for commemorative service protest action.

On the question,  
Will the House agree to the bill on third consideration?

Mr. **LEACH** offered the following amendment No. **A07704**:

Amend Title, page 1, line 6, by striking out “PROTESTING AT A”

Amend Title, page 1, line 7, by inserting after “SERVICE” where it appears the first time

protest activities

Amend Sec. 1 (Sec. 7517), page 2, line 11, by striking out “protest activities” and inserting

a protest activity

Amend Sec. 1 (Sec. 7517), page 3, lines 8 through 16, by striking out all of said lines and inserting

“Protest activity.” A congregation, picket, patrol or demonstration that is not part of a commemorative service.

On the question,  
Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Leach.

Mr. LEACH. Mr. Speaker?

The SPEAKER. Mr. Leach.

Mr. LEACH. Thank you.

Mr. Speaker, this amendment, the way the bill is drafted, the way the original bill is drafted, it prohibits— This is a time, place, and manner restriction, Mr. Speaker, meaning that under the First Amendment, this has to be neutral, this has to be neutral as to content. This bill, the way it is drafted, it is not neutral as to content. What it does is it prohibits demonstrations that are likely to upset a family member or upset or cause distress, and what that does, as we found out in the Judiciary Committee hearing, is it says that certain types of protests would be illegal and certain types of demonstrations would be legal. For example, I said as a hypothetical, if someone were holding up a sign at a funeral saying, you know, get out of Iraq, that could be something that would be illegal, where if someone were holding up a sign that said stay in Iraq, that would not be, or God bless the troops or whatever.

Mr. Speaker, I support the purpose of this bill. What I am trying to do is make sure it is a constitutional bill. What my amendment is designed to do is to prevent any effort to have the government get involved in what is a good protest and what is not a good protest. So, Mr. Speaker, all my amendment does is make this content-neutral so that the courts do not have to get

involved in whether or not it is constitutional because it picks and chooses among messages that the government approves of.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Pyle.

Mr. PYLE. Thank you, Mr. Speaker.

I would ask the members to please oppose this amendment.

Right after the disposition of the Representative from Montgomery County’s amendment, I plan to offer one that I think brings it greater into line with the recently passed Federal Respect For America’s Fallen Heroes Act and will stand constitutional muster with greater strength.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

### PARLIAMENTARY INQUIRY

The SPEAKER. The Chair recognizes the gentleman, Mr. Bunt.

Mr. BUNT. Thank you, Mr. Speaker.

Mr. Speaker, the gentleman from Montgomery explained his position on existing language, and I do not know whether I should direct this to the Parliamentarian as to the construction of the existing language, whether it meets the criteria of statutory construction, or does it appear, as Mr. Leach indicates, that it needs revision?

The SPEAKER. The gentleman may not agree with the content, but it is constructed and drafted properly.

### HARRISBURG LEGISLATIVE LEAVE

The SPEAKER. The Chair recognizes the gentleman, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, I request Capitol leave for the gentleman from Philadelphia, Mr. ROEBUCK.

The SPEAKER. Without objection, that leave will be granted.

### CONSIDERATION OF SB 1150 CONTINUED

The SPEAKER. The Chair recognizes the gentlelady, Miss Mann.

Miss MANN. Thank you, Mr. Speaker.

Unfortunately, I have to rise and oppose the amendment introduced by my good friend and colleague, the Representative from Montgomery County.

I think that this legislation is critical to what we are trying to do – protect the families of those who have lost a loved one in the course of serving our country – and some of the concerns that he has expressed and is trying to resolve in this amendment are also concerns of ours. We have another amendment that Representative Pyle is about to introduce very shortly that I think addresses these concerns and protects the intent of the legislation, and I ask for the members to oppose this amendment.

Thank you.

The SPEAKER. The Chair thanks the gentlelady.

Is there anyone else before I get to Mr. Leach, who would like to be the last one to speak?

The Chair recognizes the gentleman from Montgomery, Mr. Leach.

Mr. LEACH. Mr. Speaker, let me just respond to the author of the bill, the gentelady from Lehigh County, whom I respect greatly, and I have read— I know there is an amendment coming up by Representative Pyle, which I believe is a good amendment. I would support that amendment. I think it still does not go far enough in one respect, Mr. Speaker, and I know this is sort of arcane, technical constitutional stuff, but I think it is important.

As I understand Mr. Pyle's amendment – and I have a copy of it – he does change the language defining from a protest to a demonstration, which is much more neutral than the original language of protest. However, he still leaves in the language that in order for a demonstration now to be illegal, it would still have to upset the family. Now, let me just first say, Mr. Speaker, that no one is more offended by the protests that engender this legislation than I am. Everyone in this chamber knows my position on equal rights and civil rights for gay Pennsylvanians, and the type of demonstrations that we have seen at this funeral by Reverend Phelps is the type of demonstrations that I find most abhorrent. I want to stop this from occurring at funerals. The only thing I want to do is make this effective to withstand constitutional scrutiny, and the difference is a time, place, and manner restriction, which this is.

A time, place, and manner restriction says you can protest, you can demonstrate; you just cannot do it here and now in this manner, in this way, and in order for those to be constitutional, they have to be strictly content-neutral. Let me give you an example. You can say you are for or against a free trade agreement, but you cannot say it while standing on the turnpike blocking traffic, Mr. Speaker, and that is a legitimate restriction under the First Amendment, but what that says is, you cannot say either you are for or against something while standing on the turnpike. A law that says you can say you are for something, you just cannot say you are against it, that would be unconstitutional. It has to be strictly content-neutral, and even with Mr. Pyle's amendment, I still do not think it is strictly content-neutral, because he says that in order for a demonstration to be illegal, it would have to upset or distress the family that was having the funeral, which means that if a family approved of a message, the State could not restrict it, which, again, is not a constitutional distinction, and all I want to do is prevent a judge from striking this down.

We do not gain anything by having the family distress requirement, because if you banned all demonstrations, any demonstration that the family did not like would be banned, anything that the Reverend Phelps was trying to do or any other group like that would be banned. We would accomplish what the Representative from Lehigh County is trying to do, but I just think – and I will support the bill, and I will support Representative Pyle's amendment if mine is defeated – but I just think it is a matter of constitutional law. We are playing with fire when we get the government into the business of deciding some demonstrations are good and some demonstrations are bad, and we are also playing with fire when we get into a situation where we are saying a family has to be distressed, because what percentage of the family? Let us say the family is divided on the war and Mom is distressed and Dad is not about an antiwar message or a prowar message. The court is going to have to get into deciding whether this meets the statutory

definition of whether the family was distressed, and I just think that is a mistake and it is an unnecessary mistake, Mr. Speaker.

I think that if we ban all demonstrations at funerals within these parameters, we craft a much more constitutionally solid bill that is much more likely to survive.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the majority leader, the gentleman, Mr. Smith.

Mr. S. SMITH. Thank you, Mr. Speaker.

I would, without elaborating on some of the specifics of this debate over this amendment, I would simply say that clearly the intentions of the House, the intentions of the sponsor of the bill, the intentions of these individual members who have amendments to it are all clearly in the direction, in the same direction and for a good purpose. I believe in looking at the amendment before us as well as the subsequent amendment to be proposed by the gentleman from Armstrong County, the subsequent amendment clearly addresses these concerns.

I would urge the members to vote against amendment 7704 so that we can then consider 7909.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,  
Will the House agree to the amendment?

The following roll call was recorded:

#### YEAS—24

Bebko-Jones	Freeman	Manderino	Rooney
Bishop	Gerber	Melio	Stetler
Cohen	Josephs	Mundy	Sturla
Curry	Kirkland	Oliver	Thomas
Evans, D.	Leach	Roberts	Vitali
Flaherty	Levdansky	Roebuck	Wheatley

#### NAYS—178

Adolph	Fairchild	Maher	Sabatina
Allen	Feese	Maitland	Sainato
Argall	Fichter	Major	Samuelson
Armstrong	Fleagle	Mann	Santoni
Baker	Flick	Markosek	Sather
Baldwin	Forcier	Marsico	Saylor
Barrar	Frankel	McCall	Scavello
Bastian	Gabig	McGeehan	Schroder
Belardi	Gannon	McGill	Semmel
Belfanti	Geist	McIlhattan	Shaner
Benninghoff	George	McIlhinney	Shapiro
Beyer	Gergely	McNaughton	Siptroth
Bianucci	Gillespie	Metcalfe	Smith, B.
Birmelin	Gingrich	Micozzie	Smith, S. H.
Blackwell	Godshall	Millard	Solobay
Blaum	Good	Miller, R.	Sonney
Boyd	Goodman	Miller, S.	Staback
Bunt	Grell	Mustio	Stairs
Buxton	Grucela	Myers	Steil
Caltagirone	Gruitza	Nailor	Stern
Cappelli	Haluska	Nickol	Stevenson, R.
Casorio	Hanna	O'Brien	Stevenson, T.
Causer	Harhai	O'Neill	Surra
Cawley	Harhart	Pallone	Tangretti
Civera	Harper	Parker	Taylor, E. Z.
Clymer	Harris	Payne	Taylor, J.
Cornell	Hasay	Petrarca	Tigue
Corrigan	Hennessey	Petri	True
Costa	Herman	Petrone	Turzai

Crahalla	Hershey	Phillips	Veon
Creighton	Hess	Pickett	Walko
Cruz	Hickernell	Pistella	Wansacz
Daley	Hutchinson	Preston	Waters
Dally	James	Pyle	Watson
DeLuca	Kauffman	Quigley	Williams
Denlinger	Keller, M.	Ramaley	Wilt
Dermody	Keller, W.	Rapp	Wojnaroski
DeWeese	Kenney	Raymond	Wright
DiGirolo	Killion	Readshaw	Yewcic
Diven	Kotik	Reed	Youngblood
Donatucci	LaGrotta	Reichley	Yudichak
Eachus	Lederer	Rohrer	Zug
Ellis	Leh	Ross	
Evans, J.	Lescovitz	Rubley	Perzel,
Fabrizio	Mackereth	Ruffing	Speaker

NOT VOTING—0

EXCUSED—1

Rieger

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,  
Will the House agree to the bill on third consideration?

Mr. **PYLE** offered the following amendment No. **A07909**:

Amend Title, page 1, line 6, by striking out “PROTESTING” and inserting

demonstrating

Amend Title, page 1, line 7, by striking out “PROTEST” and inserting

demonstration

Amend Sec. 1 (Sec. 7517), page 1, line 13, by striking out “protest” and inserting

demonstration

Amend Sec. 1 (Sec. 7517), page 2, line 11, by striking out “protest” and inserting

demonstration

Amend Sec. 1 (Sec. 7517), page 2, line 25, by striking out “a burial” and inserting

the burial, funeral, ceremony

Amend Sec. 1 (Sec. 7517), page 2, line 26, by striking out “for” and inserting

of

Amend Sec. 1 (Sec. 7517), page 2, line 29, by inserting after “viewing”

, visitation, burial, funeral, ceremony

Amend Sec. 1 (Sec. 7517), page 3, line 4, by striking out “burial” and inserting

visitation, burial, funeral, ceremony

Amend Sec. 1 (Sec. 7517), page 3, lines 8 through 16, by striking out all of said lines and inserting

“Demonstration activities.” Any of the following:

(1) Any picketing or similar conduct.

(2) Any oration, speech or use of sound amplification equipment or device or similar conduct that is not part of a commemorative service.

(3) The display of any placard, sign, banner, flag or similar device, unless such display is part of a commemorative service.

(4) The distribution of any handbill, pamphlet, leaflet or other written or printed matter, other than a program distributed as part of a commemorative service.

Amend Sec. 2 (Sec. 8319), page 3, line 18, by striking out “8319” and inserting

8320

Amend Sec. 2 (Sec. 8319), page 3, line 18, by striking out “PROTEST” and inserting

demonstration

Amend Sec. 2 (Sec. 8319), page 3, line 22, by striking out “PROTEST” and inserting

demonstration

On the question,  
Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Pyle.

Mr. PYLE. Thank you, Mr. Speaker.

Mr. Speaker, a few weeks ago I had to stand before this hallowed chamber and deliver a condolence resolution for a gentleman from Marion Center, Indiana County, who lost his life serving in Iraq, and at the instant of his interment, a group from Kansas showed up holding signs above their head that can be called nothing less than venomous and hateful.

In our effort to protect the families of those fallen heroes that now have to deal with those unfortunate consequences, I offer this amendment. I would like to point out 7909, sir, is made with the cooperation of the prime sponsor of the bill, Senator Pippy, who also served in Iraq. The difference in the language between our amendment and the previous amendment from the gentleman from Montgomery County is our act brings it closer into compliance with the recently passed Federal Respect For America’s Fallen Heroes Act and in fact, we feel, will stand constitutional muster much better.

I would urge a positive vote. Thank you.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,  
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—202

Adolph	Feese	Maher	Ruffing
Allen	Fichter	Maitland	Sabatina
Argall	Flaherty	Major	Sainato
Armstrong	Fleagle	Manderino	Samuelson
Baker	Flick	Mann	Santoni
Baldwin	Forcier	Markosek	Sather
Barrar	Frankel	Marsico	Saylor
Bastian	Freeman	McCall	Scavello
Bebko-Jones	Gabig	McGeehan	Schroder
Belardi	Gannon	McGill	Semmel
Belfanti	Geist	McIlhattan	Shaner
Benninghoff	George	McIlhinney	Shapiro
Beyer	Gerber	McNaughton	Siptroth
Biancucci	Gergely	Melio	Smith, B.
Birmelin	Gillespie	Metcalfe	Smith, S. H.
Bishop	Gingrich	Micozzie	Solobay
Blackwell	Godshall	Millard	Sonney
Blaum	Good	Miller, R.	Staback
Boyd	Goodman	Miller, S.	Stairs
Bunt	Grell	Mundy	Steil
Buxton	Grucela	Mustio	Stern
Caltagirone	Gruitza	Myers	Stetler
Cappelli	Haluska	Nailor	Stevenson, R.

Casorio	Hanna	Nickol	Stevenson, T.
Causar	Harhai	O'Brien	Sturla
Cawley	Harhart	Oliver	Surra
Civera	Harper	O'Neill	Tangretti
Clymer	Harris	Pallone	Taylor, E. Z.
Cohen	Hasay	Parker	Taylor, J.
Cornell	Hennessey	Payne	Thomas
Corrigan	Herman	Petrarca	Tigue
Costa	Hershey	Petri	True
Crahalla	Hess	Petrone	Turzai
Creighton	Hickernell	Phillips	Veon
Cruz	Hutchinson	Pickett	Vitali
Curry	James	Pistella	Walko
Daley	Josephs	Preston	Wansacz
Dally	Kauffman	Pyle	Waters
DeLuca	Keller, M.	Quigley	Watson
Denlinger	Keller, W.	Ramaley	Wheatley
Dermody	Kenney	Rapp	Williams
DeWeese	Killion	Raymond	Wilt
DiGiroloamo	Kirkland	Readshaw	Wojnaroski
Diven	Kotik	Reed	Wright
Donatucci	LaGrotta	Reichley	Yewcic
Eachus	Leach	Roberts	Youngblood
Ellis	Lederer	Roebuck	Yudichak
Evans, D.	Leh	Rohrer	Zug
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth	Rubley	Speaker

NAYS—0

NOT VOTING—0

EXCUSED—1

Rieger

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,

Will the House agree to the bill on third consideration as amended?

Bill as amended was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

On that question, the Chair recognizes the gentlelady, Miss Mann.

Miss MANN. Thank you, Mr. Speaker.

I stand here before you today to ask my colleagues to overwhelmingly support SB 1150.

This bill, introduced by Senator John Pippy, is nearly identical to companion legislation I introduced here in the House, HB 2496, and as my colleague and assistant on this bill, Representative Pyle, mentioned, this bill is the result of activity that is beyond our imaginations. Families who have lost loved ones serving their country in the war in Iraq and Afghanistan are coming home, and at a time when they are suffering a great loss and deserve to be able to mourn the loss of that loved one in solitude and with dignity, they are being deprived of that by a bunch of jerks, if I can, who call themselves Christians and say, they call themselves Christians and claim to be members of a church, and I think nothing could be further from the truth.

These families deserve our respect. These men and women fighting for our country deserve our respect, and they deserve to be laid to rest with dignity, and their families deserve to have that time for themselves, and these folks want to use this opportunity as a time to promote their own obscure and absurd political agenda, and that has to stop in these United States, and it is going to stop here in Pennsylvania.

And I have to tell you, these same protesters, these very same protesters, are making issue, making issue when the very men and women being laid to rest are out there fighting for everything our country stands for, including that First Amendment right to free speech; a bit of irony there.

Here today, as it is Flag Day and we honor our nation's flag and we honor our nation, let us also honor those who have died in the cause of war in defending this country by supporting SB 1150. I ask for your support. Thank you.

The SPEAKER. The Chair thanks the gentlelady.

The Chair recognizes the gentleman from Armstrong, Mr. Pyle.

Mr. PYLE. Thank you, Mr. Speaker.

I proudly stand with the lady from Allentown and reiterate most of what she says.

Mr. Speaker, there are times and places for everything, and when a family has to deal with interring their loved ones, no one should have to deal with grandstanding and putting forth the beliefs that may run counter to what a lot of us think.

I think the Representative from Allentown said it best, and it is probably better if I just urge my colleagues to stand with her and support Senator Pippy's bill unanimously.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Metcalfe.

Mr. METCALFE. Thank you, Mr. Speaker.

Mr. Speaker, not to prolong the debate, but I would like to commend Senator Pippy and those who have worked to advance this legislation – Senator Pippy, of course, serving in Iraq himself; my being a veteran and many of my colleagues here that are veterans, many of us that are not that have family members and good friends that have served on foreign soil to protect our freedom – and it is a disgrace that people would try and use those freedoms that are being protected as an excuse for their horrible, horrific behavior as they have protested at the funerals when family members are trying to mourn for the loss of their loved ones who have sacrificed the ultimate sacrifice for their nation.

It is an awful situation that has come about with these protesters. You are not allowed to holler fire in the middle of a full theater because of freedom of speech, and you should not be allowed to display this horrific behavior at the funeral proceedings of one of our nation's heroes.

So I fully support this bill and again commend Senator Pippy and everyone who has been involved in moving this forward.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,

Shall the bill pass finally?

The SPEAKER. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS-202

Adolph	Feese	Maher	Ruffing
Allen	Fichter	Maitland	Sabatina
Argall	Flaherty	Major	Sainato
Armstrong	Fleagle	Manderino	Samuelson
Baker	Flick	Mann	Santoni
Baldwin	Forcier	Markosek	Sather
Barrar	Frankel	Marsico	Saylor
Bastian	Freeman	McCall	Scavello
Bebko-Jones	Gabig	McGeehan	Schroder
Belardi	Gannon	McGill	Semmel
Belfanti	Geist	McIlhattan	Shaner
Benninghoff	George	McIlhinney	Shapiro
Beyer	Gerber	McNaughton	Siptroth
Biancucci	Gergely	Melio	Smith, B.
Birmelin	Gillespie	Metcalfe	Smith, S. H.
Bishop	Gingrich	Micozzie	Solobay
Blackwell	Godshall	Millard	Sonney
Blaum	Good	Miller, R.	Staback
Boyd	Goodman	Miller, S.	Stairs
Bunt	Grell	Mundy	Steil
Buxton	Grucela	Mustio	Stern
Caltagirone	Gruitza	Myers	Stetler
Cappelli	Haluska	Nailor	Stevenson, R.
Casorio	Hanna	Nickol	Stevenson, T.
Causar	Harhai	O'Brien	Sturla
Cawley	Harhart	Oliver	Surra
Civera	Harper	O'Neill	Tangretti
Clymer	Harris	Pallone	Taylor, E. Z.
Cohen	Hasay	Parker	Taylor, J.
Cornell	Hennessey	Payne	Thomas
Corrigan	Herman	Petrarca	Tigue
Costa	Hershey	Petri	True
Crahalla	Hess	Petrone	Turzai
Creighton	Hickernell	Phillips	Veon
Cruz	Hutchinson	Pickett	Vitali
Curry	James	Pistella	Walko
Daley	Josephs	Preston	Wansacz
Dally	Kauffman	Pyle	Waters
DeLuca	Keller, M.	Quigley	Watson
Denlinger	Keller, W.	Ramaley	Wheatley
Dermody	Kenney	Rapp	Williams
DeWeese	Killion	Raymond	Wilt
DiGirolamo	Kirkland	Readshaw	Wojnaroski
Diven	Kotik	Reed	Wright
Donatucci	LaGrotta	Reichley	Yewcic
Eachus	Leach	Roberts	Youngblood
Ellis	Lederer	Roebuck	Yudichak
Evans, D.	Leh	Rohrer	Zug
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth	Rubley	Speaker

NAYS-0

NOT VOTING-0

EXCUSED-1

Rieger

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk return the same to the Senate with the information that the House has passed the same with amendment in which the concurrence of the Senate is requested.

\* \* \*

The House proceeded to third consideration of **HB 2285, PN 3197**, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing for the illegal dumping of methamphetamine waste.

On the question,  
Will the House agree to the bill on third consideration?  
Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.  
The question is, shall the bill pass finally?

The Chair recognizes the gentleman, Mr. Vitali. The gentleman waives off.

The gentleman, Mr. Petrarca.  
Mr. PETRARCA. Thank you, Mr. Speaker.

We all know in this Commonwealth what a problem methamphetamine is; the sale, use, and production of methamphetamine. What this piece of legislation does, it makes it a felony of the third degree to illegally dump these substances. Unfortunately, in this Commonwealth we are finding these substances being put down drains, finding them in ditches, finding them in fields. There have been volunteers, there have been children damaged, burned, from opening containers, opening packages that contain the substances used to create methamphetamine. In fact, 2 to 3 ounces of methamphetamine produces approximately 6 pounds of toxic waste.

This waste, again, is highly toxic, and Pennsylvania needs to create this for law enforcement to be able to have another tool to fight methamphetamine in this Commonwealth. A number of States have done this, and I ask you for your support.  
Thank you.

The SPEAKER. The Chair thanks the gentleman.

**HARRISBURG LEGISLATIVE LEAVE**

Mr. S. SMITH. Mr. Speaker?

The SPEAKER. The Chair recognizes the majority leader, the gentleman, Mr. Smith.

Mr. S. SMITH. Just on leaves of absence. I would like to request the gentleman, Mr. STAIRS, be on Capitol leave.

The SPEAKER. Without objection, that leave will be granted.

**CONSIDERATION OF HB 2285 CONTINUED**

On the question recurring,  
Shall the bill pass finally?

The SPEAKER. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS-202

Adolph	Feese	Maher	Ruffing
Allen	Fichter	Maitland	Sabatina

Argall	Flaherty	Major	Sainato
Armstrong	Fleagle	Manderino	Samuelson
Baker	Flick	Mann	Santoni
Baldwin	Forcier	Markosek	Sather
Barrar	Frankel	Marsico	Saylor
Bastian	Freeman	McCall	Scavello
Bebko-Jones	Gabig	McGeehan	Schroder
Belardi	Gannon	McGill	Semmel
Belfanti	Geist	McIlhattan	Shaner
Benninghoff	George	McIlhinney	Shapiro
Beyer	Gerber	McNaughton	Siptroth
Biancucci	Gergely	Melio	Smith, B.
Birmelin	Gillespie	Metcalfe	Smith, S. H.
Bishop	Gingrich	Micozzie	Solobay
Blackwell	Godshall	Millard	Sonney
Blaum	Good	Miller, R.	Staback
Boyd	Goodman	Miller, S.	Stairs
Bunt	Grell	Mundy	Steil
Buxton	Grucela	Mustio	Stern
Caltagirone	Gruitza	Myers	Stetler
Cappelli	Haluska	Nailor	Stevenson, R.
Casorio	Hanna	Nickol	Stevenson, T.
Causer	Harhai	O'Brien	Sturla
Cawley	Harhart	Oliver	Surra
Civera	Harper	O'Neill	Tangretti
Clymer	Harris	Pallone	Taylor, E. Z.
Cohen	Hasay	Parker	Taylor, J.
Cornell	Hennessey	Payne	Thomas
Corrigan	Herman	Petrarca	Tigue
Costa	Hershey	Petri	True
Crahalla	Hess	Petrone	Turzai
Creighton	Hickernell	Phillips	Veon
Cruz	Hutchinson	Pickett	Vitali
Curry	James	Pistella	Walko
Daley	Josephs	Preston	Wansacz
Dally	Kauffman	Pyle	Waters
DeLuca	Keller, M.	Quigley	Watson
Denlinger	Keller, W.	Ramaley	Wheatley
Dermody	Kenney	Rapp	Williams
DeWeese	Killion	Raymond	Wilt
DiGiroloamo	Kirkland	Readshaw	Wojnaroski
Diven	Kotik	Reed	Wright
Donatucci	LaGrotta	Reichley	Yewcic
Eachus	Leach	Roberts	Youngblood
Ellis	Lederer	Roebuck	Yudichak
Evans, D.	Leh	Rohrer	Zug
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth	Rubley	Speaker

NAYS-0

NOT VOTING-0

EXCUSED-1

Rieger

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

\* \* \*

The House proceeded to third consideration of **HB 2330, PN 3318**, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, prohibiting the purchase, sale and use of alcohol vaporizing devices; and imposing a penalty.

On the question,

Will the House agree to the bill on third consideration?

Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS-202

Adolph	Feese	Maher	Ruffing
Allen	Fichter	Maitland	Sabatina
Argall	Flaherty	Major	Sainato
Armstrong	Fleagle	Manderino	Samuelson
Baker	Flick	Mann	Santoni
Baldwin	Forcier	Markosek	Sather
Barrar	Frankel	Marsico	Saylor
Bastian	Freeman	McCall	Scavello
Bebko-Jones	Gabig	McGeehan	Schroder
Belardi	Gannon	McGill	Semmel
Belfanti	Geist	McIlhattan	Shaner
Benninghoff	George	McIlhinney	Shapiro
Beyer	Gerber	McNaughton	Siptroth
Biancucci	Gergely	Melio	Smith, B.
Birmelin	Gillespie	Metcalfe	Smith, S. H.
Bishop	Gingrich	Micozzie	Solobay
Blackwell	Godshall	Millard	Sonney
Blaum	Good	Miller, R.	Staback
Boyd	Goodman	Miller, S.	Stairs
Bunt	Grell	Mundy	Steil
Buxton	Grucela	Mustio	Stern
Caltagirone	Gruitza	Myers	Stetler
Cappelli	Haluska	Nailor	Stevenson, R.
Casorio	Hanna	Nickol	Stevenson, T.
Causer	Harhai	O'Brien	Sturla
Cawley	Harhart	Oliver	Surra
Civera	Harper	O'Neill	Tangretti
Clymer	Harris	Pallone	Taylor, E. Z.
Cohen	Hasay	Parker	Taylor, J.
Cornell	Hennessey	Payne	Thomas
Corrigan	Herman	Petrarca	Tigue
Costa	Hershey	Petri	True
Crahalla	Hess	Petrone	Turzai
Creighton	Hickernell	Phillips	Veon
Cruz	Hutchinson	Pickett	Vitali
Curry	James	Pistella	Walko
Daley	Josephs	Preston	Wansacz
Dally	Kauffman	Pyle	Waters
DeLuca	Keller, M.	Quigley	Watson
Denlinger	Keller, W.	Ramaley	Wheatley
Dermody	Kenney	Rapp	Williams
DeWeese	Killion	Raymond	Wilt
DiGiroloamo	Kirkland	Readshaw	Wojnaroski
Diven	Kotik	Reed	Wright
Donatucci	LaGrotta	Reichley	Yewcic
Eachus	Leach	Roberts	Youngblood
Ellis	Lederer	Roebuck	Yudichak
Evans, D.	Leh	Rohrer	Zug
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth	Rubley	Speaker

NAYS-0

NOT VOTING—0

EXCUSED—1

Rieger

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

\* \* \*

The House proceeded to third consideration of **HB 1880, PN 3846**, entitled:

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing, in research and development tax credit, for the definition of “small business,” for credit for research and development expenses, for the limitations, for limitation on credits and for termination.

On the question,  
Will the House agree to the bill on third consideration?

Mr. **T. STEVENSON** offered the following amendment No. **A07797**:

Amend Bill, page 4, by inserting between lines 8 and 9 Section 6. The amendment of the definition of “small business” in section 1702-B and of sections 1703-B, 1709-B(a) and 1712-B of the act shall apply to all credits awarded after June 30, 2006.

Amend Sec. 6, page 4, line 9, by striking out “6” and inserting  
7

On the question,  
Will the House agree to the amendment?

The **SPEAKER**. On that question, the Chair recognizes the gentleman, Mr. Stevenson.

The gentleman, Mr. Vitali, is recognized.

Mr. **VITALI**. Thank you, Mr. Speaker.

Could we have a brief explanation of this amendment?

The **SPEAKER**. The Chair recognizes the gentleman, Mr. Stevenson.

Mr. **T. STEVENSON**. Thank you, Mr. Speaker.

This amendment basically is technical in nature and provides that the provisions of the bill shall only apply to credits awarded after June 30, 2006.

Thank you, Mr. Speaker.

The **SPEAKER**. The Chair thanks the gentleman.

**HARRISBURG LEGISLATIVE LEAVE**

The **SPEAKER**. The Chair recognizes the gentleman, Mr. Casorio.

Mr. **CASORIO**. Thank you, Mr. Speaker. For the purpose of Capitol leave.

The **SPEAKER**. The gentleman is in order.

Mr. **CASORIO**. Thank you, sir.

The gentleman from Westmoreland, Mr. **PALLONE**, I would like to place him on Capitol leave.

The **SPEAKER**. Without objection, the leave will be granted.

Mr. **CASORIO**. Thank you.

**CONSIDERATION OF HB 1880 CONTINUED**

On the question recurring,  
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—202

Adolph	Feese	Maher	Ruffing
Allen	Fichter	Maitland	Sabatina
Argall	Flaherty	Major	Sainato
Armstrong	Fleagle	Manderino	Samuelson
Baker	Flick	Mann	Santoni
Baldwin	Forcier	Markosek	Sather
Barrar	Frankel	Marsico	Saylor
Bastian	Freeman	McCall	Scavello
Bebko-Jones	Gabig	McGeehan	Schroder
Belardi	Gannon	McGill	Semmel
Belfanti	Geist	McIlhattan	Shaner
Benninghoff	George	McIlhinney	Shapiro
Beyer	Gerber	McNaughton	Siptroth
Biancucci	Gergely	Melio	Smith, B.
Birmelin	Gillespie	Metcalfe	Smith, S. H.
Bishop	Gingrich	Micozzie	Solobay
Blackwell	Godshall	Millard	Sonney
Blaum	Good	Miller, R.	Staback
Boyd	Goodman	Miller, S.	Stairs
Bunt	Grell	Mundy	Steil
Buxton	Grucela	Mustio	Stern
Caltagirone	Gruitza	Myers	Stevenson, R.
Cappelli	Haluska	Nailor	Stevenson, T.
Casorio	Hanna	Nickol	Sturla
Causer	Harhai	O'Brien	Surra
Cawley	Harhart	Oliver	Tangretti
Civera	Harper	O'Neill	Taylor, E. Z.
Clymer	Harris	Pallone	Taylor, J.
Cohen	Hasay	Parker	Thomas
Cornell	Hennessey	Payne	Tigue
Corrigan	Herman	Petrarca	True
Costa	Hershey	Petri	Turzai
Crahalla	Hess	Petrone	Veon
Creighton	Hickernell	Phillips	Vitali
Cruz	Hutchinson	Pickett	Walko
Curry	James	Pistella	Wansacz
Daley	Josephs	Preston	Waters
Dally	Kauffman	Pyle	Watson
DeLuca	Keller, M.	Quigley	Wheatley
Denlinger	Keller, W.	Ramaley	Williams
Dermody	Kenney	Rapp	Wilt
DeWeese	Killion	Raymond	Wojnarowski
DiGirolamo	Kirkland	Readshaw	Wright
Diven	Kotik	Reed	Yewcic
Donatucci	LaGrotta	Reichley	Youngblood
Eachus	Leach	Roberts	Yudichak
Ellis	Lederer	Roebuck	Zug
Evans, D.	Leh	Rohrer	
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth	Rubley	Speaker

NAYS—0

NOT VOTING—0

## EXCUSED—1

Rieger

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,  
Will the House agree to the bill on third consideration as amended?

The SPEAKER. Is the gentleman, Mr. Surra, still offering his amendment? The gentleman indicates he is withdrawing.

On the question recurring,  
Will the House agree to the bill on third consideration as amended?

Bill as amended was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

On that question, the Chair recognizes the gentleman, Mr. Vitali.

Mr. VITALI. Thank you, Mr. Speaker.

Will the maker of the bill stand for brief interrogation?

The SPEAKER. The gentleman indicates he will stand for interrogation.

Mr. VITALI. Thank you, Mr. Speaker.

Could you give a brief explanation of this bill? I have read it very quickly, and I am just trying to get at exactly what it does and what policies we are trying to achieve by it.

Mr. T. STEVENSON. Yes. Mr. Speaker, the bill expands the credit from 10 to 20 percent to equal what the Federal R&D tax credit (research and development tax credit) is. It increases the cap from \$30 to \$40 million—

Mr. VITALI. So this would be a credit for whom? For doing what?

Mr. T. STEVENSON. For research and development activities that a business might do where it obviously employs more people to do them.

Mr. VITALI. Okay. So this would just be generic research and development, not in a specific field. This would be—

Mr. T. STEVENSON. Correct.

Mr. VITALI. So this would expand the credit they could get for that.

Mr. T. STEVENSON. Yes.

Mr. VITALI. What would be the cost of this?

Mr. T. STEVENSON. The cost for this bill is \$10 million for the next fiscal year.

Mr. VITALI. Okay. Has the administration taken a position on this bill?

Mr. T. STEVENSON. Yes. The administration supports this bill.

Mr. VITALI. Okay. Thank you.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,  
Shall the bill pass finally?

The SPEAKER. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

## YEAS—202

Adolph	Feese	Maher	Ruffing
Allen	Fichter	Maitland	Sabatina
Argall	Flaherty	Major	Sainato
Armstrong	Fleagle	Manderino	Samuelson
Baker	Flick	Mann	Santoni
Baldwin	Forcier	Markosek	Sather
Barrar	Frankel	Marsico	Saylor
Bastian	Freeman	McCall	Scavello
Bebko-Jones	Gabig	McGeehan	Schroder
Belardi	Gannon	McGill	Semmel
Belfanti	Geist	McIlhattan	Shaner
Benninghoff	George	McIlhinney	Shapiro
Beyer	Gerber	McNaughton	Siptroth
Biancucci	Gergely	Melio	Smith, B.
Birmelin	Gillespie	Metcalfe	Smith, S. H.
Bishop	Gingrich	Micozzie	Solobay
Blackwell	Godshall	Millard	Sonney
Blaum	Good	Miller, R.	Staback
Boyd	Goodman	Miller, S.	Stairs
Bunt	Grell	Mundy	Steil
Buxton	Grucela	Mustio	Stern
Caltagirone	Gruitza	Myers	Stetler
Cappelli	Haluska	Nailor	Stevenson, R.
Casorio	Hanna	Nickol	Stevenson, T.
Causar	Harhai	O'Brien	Sturla
Cawley	Harhart	Oliver	Surra
Civera	Harper	O'Neill	Tangretti
Clymer	Harris	Pallone	Taylor, E. Z.
Cohen	Hasay	Parker	Taylor, J.
Cornell	Hennessey	Payne	Thomas
Corrigan	Herman	Petrarca	Tigue
Costa	Hershey	Petri	True
Crahalla	Hess	Petrone	Turzai
Creighton	Hickernell	Phillips	Veon
Cruz	Hutchinson	Pickett	Vitali
Curry	James	Pistella	Walko
Daley	Josephs	Preston	Wansacz
Dally	Kauffman	Pyle	Waters
DeLuca	Keller, M.	Quigley	Watson
Derlinger	Keller, W.	Ramaley	Wheatley
Dermody	Kenney	Rapp	Williams
DeWeese	Killion	Raymond	Wilt
DiGirolamo	Kirkland	Readshaw	Wojnaroski
Diven	Kotik	Reed	Wright
Donatucci	LaGrotta	Reichley	Yewcic
Eachus	Leach	Roberts	Youngblood
Ellis	Lederer	Roebuck	Yudichak
Evans, D.	Leh	Rohrer	Zug
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth	Rublely	Speaker

## NAYS—0

## NOT VOTING—0

## EXCUSED—1

Rieger

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.



Ordered, That the clerk present the same to the Senate for concurrence.

\* \* \*

The House proceeded to third consideration of **HB 529, PN 4033**, entitled:

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing for classes of income.

On the question,  
Will the House agree to the bill on third consideration?  
Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS—202

Adolph	Feese	Maher	Ruffing
Allen	Fichter	Maitland	Sabatina
Argall	Flaherty	Major	Sainato
Armstrong	Fleagle	Manderino	Samuelson
Baker	Flick	Mann	Santoni
Baldwin	Forcier	Markosek	Sather
Barrar	Frankel	Marsico	Saylor
Bastian	Freeman	McCall	Scavello
Bebko-Jones	Gabig	McGeehan	Schroder
Belardi	Gannon	McGill	Semmel
Belfanti	Geist	McIlhattan	Shaner
Benninghoff	George	McIlhinney	Shapiro
Beyer	Gerber	McNaughton	Siptroth
Bianucci	Gergely	Melio	Smith, B.
Birmelin	Gillespie	Metcalfe	Smith, S. H.
Bishop	Gingrich	Micozzie	Solobay
Blackwell	Godshall	Millard	Sonney
Blaum	Good	Miller, R.	Staback
Boyd	Goodman	Miller, S.	Stairs
Bunt	Grell	Mundy	Steil
Buxton	Grucela	Mustio	Stern
Caltagirone	Gruitza	Myers	Stetler
Cappelli	Haluska	Nailor	Stevenson, R.
Casorio	Hanna	Nickol	Stevenson, T.
Causar	Harhai	O'Brien	Sturla
Cawley	Harhart	Oliver	Surra
Civera	Harper	O'Neill	Tangretti
Clymer	Harris	Pallone	Taylor, E. Z.
Cohen	Hasay	Parker	Taylor, J.
Cornell	Hennessey	Payne	Thomas
Corrigan	Herman	Petrarca	Tigue
Costa	Hershey	Petri	True
Crahalla	Hess	Petrone	Turzai
Creighton	Hickernell	Phillips	Veon
Cruz	Hutchinson	Pickett	Vitali
Curry	James	Pistella	Walko
Daley	Josephs	Preston	Wansacz
Dally	Kauffman	Pyle	Waters
DeLuca	Keller, M.	Quigley	Watson
Denlinger	Keller, W.	Ramaley	Wheatley
Dermody	Kenny	Rapp	Williams
DeWeese	Killion	Raymond	Wilt
DiGirolamo	Kirkland	Readshaw	Wojnaroski
Diven	Kotik	Reed	Wright
Donatucci	LaGrotta	Reichley	Yewcic
Eachus	Leach	Roberts	Youngblood

Ellis	Lederer	Roebuck	Yudichak
Evans, D.	Leh	Rohrer	Zug
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth	Rubley	Speaker

NAYS—0

NOT VOTING—0

EXCUSED—1

Rieger

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

\* \* \*

The House proceeded to third consideration of **SB 332, PN 1777**, entitled:

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for foreign decree of adoption.

On the question,  
Will the House agree to the bill on third consideration?  
Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

On that question, the Chair recognizes the gentleman, Mr. Vitali. The Chair rescinds.

The gentleman, Mr. Birmelin.

Mr. BIRMELIN. I hope the Speaker did not mistake me for Mr. Vitali.

The SPEAKER. No, I did not make that mistake.

Mr. BIRMELIN. I thank the Speaker.

Very briefly, this Senate bill is one that I have been working with Senator Vance on well over 3 years now. It deals with the issue of foreign adoptions. It is a bill that clarifies a situation that the clerks of orphans' courts in Pennsylvania need to have clarified, I think, because there is some disagreement among them as to whether or not people who adopt a baby from another country have to readopt when they come to the United States.

This legislation makes it crystal clear that if you make a foreign adoption that is finalized in that country where you receive the child, you do not need to readopt in Pennsylvania and that you should be allowed to register the child in the court of the county in which you live. It is good legislation that we worked on for a long time. We would hope that we would have your support. You voted for my version of this a few months ago unanimously, and I am sure that you are still supportive of that, and I appreciate your help.

Thank you.

On the question recurring,  
Shall the bill pass finally?

The SPEAKER. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS—202

Adolph	Feese	Maher	Ruffing
Allen	Fichter	Maitland	Sabatina
Argall	Flaherty	Major	Sainato
Armstrong	Fleagle	Manderino	Samuelson
Baker	Flick	Mann	Santoni
Baldwin	Forcier	Markosek	Sather
Barrar	Frankel	Marsico	Saylor
Bastian	Freeman	McCall	Scavello
Bebko-Jones	Gabig	McGeehan	Schroder
Belardi	Gannon	McGill	Semmel
Belfanti	Geist	McIlhattan	Shaner
Benninghoff	George	McIlhinney	Shapiro
Beyer	Gerber	McNaughton	Siptroth
Biancucci	Gergely	Melio	Smith, B.
Birmelin	Gillespie	Metcalfe	Smith, S. H.
Bishop	Gingrich	Micozzie	Solobay
Blackwell	Godshall	Millard	Sonney
Blaum	Good	Miller, R.	Staback
Boyd	Goodman	Miller, S.	Stairs
Bunt	Grell	Mundy	Steil
Buxton	Grucela	Mustio	Stern
Caltagirone	Gruitza	Myers	Stetler
Cappelli	Haluska	Nailor	Stevenson, R.
Casorio	Hanna	Nickol	Stevenson, T.
Causar	Harhai	O'Brien	Sturla
Cawley	Harhart	Oliver	Surra
Civera	Harper	O'Neill	Tangretti
Clymer	Harris	Pallone	Taylor, E. Z.
Cohen	Hasay	Parker	Taylor, J.
Cornell	Hennessey	Payne	Thomas
Corrigan	Herman	Petrarca	Tigue
Costa	Hershey	Petri	True
Crahalla	Hess	Petrone	Turzai
Creighton	Hickernell	Phillips	Veon
Cruz	Hutchinson	Pickett	Vitali
Curry	James	Pistella	Walko
Daley	Josephs	Preston	Wansacz
Dally	Kauffman	Pyle	Waters
DeLuca	Keller, M.	Quigley	Watson
Denlinger	Keller, W.	Ramaley	Wheatley
Dermody	Kenney	Rapp	Williams
DeWeese	Killion	Raymond	Wilt
DiGirolamo	Kirkland	Readshaw	Wojnaroski
Diven	Kotik	Reed	Wright
Donatucci	LaGrotta	Reichley	Yewcic
Eachus	Leach	Roberts	Youngblood
Ellis	Lederer	Roebuck	Yudichak
Evans, D.	Leh	Rohrer	Zug
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth	Rubley	Speaker

NAYS—0

NOT VOTING—0

EXCUSED—1

Rieger

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk return the same to the Senate with the information that the House has passed the same with amendment in which the concurrence of the Senate is requested.

\* \* \*

The House proceeded to third consideration of **SB 243, PN 244**, entitled:

An Act amending the act of June 28, 1935 (P.L.477, No.193), referred to as the Enforcement Officer Disability Benefits Law, extending the payment of the salary, medical and hospital expenses to sheriffs and deputy sheriffs under certain circumstances.

On the question,  
Will the House agree to the bill on third consideration?

Mr. M. KELLER offered the following amendment No. **A08049**:

Amend Sec. 3, page 7, line 16, by striking out "in 60 days" and inserting

January 1, 2007

On the question,  
Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Keller.

Mr. M. KELLER. Thank you, Mr. Speaker.

This amendment changes the date to the 1st of the year. To the best of my knowledge, it has been agreed to by the Sheriffs' Association, the County Commissioners Association, and the maker of the bill.

Thank you.  
The SPEAKER. The Chair thanks the gentleman.

On the question recurring,  
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—202

Adolph	Feese	Maher	Ruffing
Allen	Fichter	Maitland	Sabatina
Argall	Flaherty	Major	Sainato
Armstrong	Fleagle	Manderino	Samuelson
Baker	Flick	Mann	Santoni
Baldwin	Forcier	Markosek	Sather
Barrar	Frankel	Marsico	Saylor
Bastian	Freeman	McCall	Scavello
Bebko-Jones	Gabig	McGeehan	Schroder
Belardi	Gannon	McGill	Semmel
Belfanti	Geist	McIlhattan	Shaner
Benninghoff	George	McIlhinney	Shapiro
Beyer	Gerber	McNaughton	Siptroth
Biancucci	Gergely	Melio	Smith, B.
Birmelin	Gillespie	Metcalfe	Smith, S. H.
Bishop	Gingrich	Micozzie	Solobay
Blackwell	Godshall	Millard	Sonney
Blaum	Good	Miller, R.	Staback
Boyd	Goodman	Miller, S.	Stairs
Bunt	Grell	Mundy	Steil

Buxton	Grucela	Mustio	Stern
Caltagirone	Gruitza	Myers	Stetler
Cappelli	Haluska	Nailor	Stevenson, R.
Casorio	Hanna	Nickol	Stevenson, T.
Causer	Harhai	O'Brien	Sturla
Cawley	Harhart	Oliver	Surra
Civera	Harper	O'Neill	Tangretti
Clymer	Harris	Pallone	Taylor, E. Z.
Cohen	Hasay	Parker	Taylor, J.
Cornell	Hennessey	Payne	Thomas
Corrigan	Herman	Petrarca	Tigue
Costa	Hershey	Petri	True
Crahalla	Hess	Petrone	Turzai
Creighton	Hickernell	Phillips	Veon
Cruz	Hutchinson	Pickett	Vitali
Curry	James	Pistella	Walko
Daley	Josephs	Preston	Wansacz
Dally	Kauffman	Pyle	Waters
DeLuca	Keller, M.	Quigley	Watson
Denlinger	Keller, W.	Ramaley	Wheatley
Dermody	Kenney	Rapp	Williams
DeWeese	Killion	Raymond	Wilt
DiGirolamo	Kirkland	Readshaw	Wojnaroski
Diven	Kotik	Reed	Wright
Donatucci	LaGrotta	Reichley	Yewcic
Eachus	Leach	Roberts	Youngblood
Ellis	Lederer	Roebuck	Yudichak
Evans, D.	Leh	Rohrer	Zug
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth	Rubley	Speaker

## NAYS-0

## NOT VOTING-0

## EXCUSED-1

Rieger

The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,

Will the House agree to the bill on third consideration as amended?

Bill as amended was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

## YEAS-202

Adolph	Feese	Maher	Ruffing
Allen	Fichter	Maitland	Sabatina
Argall	Flaherty	Major	Sainato
Armstrong	Fleagle	Manderino	Samuelson
Baker	Flick	Mann	Santoni
Baldwin	Forcier	Markosek	Sather
Barrar	Frankel	Marsico	Saylor
Bastian	Freeman	McCall	Scavello
Bebko-Jones	Gabig	McGeehan	Schroder
Belardi	Gannon	McGill	Semmel
Belfanti	Geist	McIlhattan	Shaner

Benninghoff	George	McIlhinney	Shapiro
Beyer	Gerber	McNaughton	Siptroth
Biancucci	Gergely	Melio	Smith, B.
Birmelin	Gillespie	Metcalfe	Smith, S. H.
Bishop	Gingrich	Micozzie	Solobay
Blackwell	Godshall	Millard	Sonney
Blaum	Good	Miller, R.	Staback
Boyd	Goodman	Miller, S.	Stairs
Bunt	Grell	Mundy	Steil
Buxton	Grucela	Mustio	Stern
Caltagirone	Gruitza	Myers	Stetler
Cappelli	Haluska	Nailor	Stevenson, R.
Casorio	Hanna	Nickol	Stevenson, T.
Causer	Harhai	O'Brien	Sturla
Cawley	Harhart	Oliver	Surra
Civera	Harper	O'Neill	Tangretti
Clymer	Harris	Pallone	Taylor, E. Z.
Cohen	Hasay	Parker	Taylor, J.
Cornell	Hennessey	Payne	Thomas
Corrigan	Herman	Petrarca	Tigue
Costa	Hershey	Petri	True
Crahalla	Hess	Petrone	Turzai
Creighton	Hickernell	Phillips	Veon
Cruz	Hutchinson	Pickett	Vitali
Curry	James	Pistella	Walko
Daley	Josephs	Preston	Wansacz
Dally	Kauffman	Pyle	Waters
DeLuca	Keller, M.	Quigley	Watson
Denlinger	Keller, W.	Ramaley	Wheatley
Dermody	Kenney	Rapp	Williams
DeWeese	Killion	Raymond	Wilt
DiGirolamo	Kirkland	Readshaw	Wojnaroski
Diven	Kotik	Reed	Wright
Donatucci	LaGrotta	Reichley	Yewcic
Eachus	Leach	Roberts	Youngblood
Ellis	Lederer	Roebuck	Yudichak
Evans, D.	Leh	Rohrer	Zug
Evans, J.	Lescovitz	Rooney	
Fabrizio	Levdansky	Ross	Perzel,
Fairchild	Mackereth	Rubley	Speaker

## NAYS-0

## NOT VOTING-0

## EXCUSED-1

Rieger

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk return the same to the Senate with the information that the House has passed the same with amendment in which the concurrence of the Senate is requested.

**ANNOUNCEMENT BY MAJORITY LEADER**

The SPEAKER. The Chair recognizes the majority leader, the gentleman, Mr. Smith.

Mr. S. SMITH. Thank you, Mr. Speaker.

Just one reminder and one announcement as far as the rest of the day goes.

A reminder to the members of the House Republican Caucus that we have an off-campus meeting that will be starting immediately when we break here at 12:30, and I encourage everyone to attend that caucus meeting.

Secondly, in terms of the day's proceedings, we anticipate to be back here at approximately 3 o'clock, at which time we will

pick up the order of business that we were dealing with last night on the tax reform issue, and I intend to pretty much pick it up, or the hope is, the plan is, to pick it up exactly where we left off last evening at around 10:30, quarter to 11.

So the House Republicans off-campus meeting immediately at 12:30 downtown, and to the House as a whole, back here at 3 o'clock to pick up the tax reform issue.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

### DEMOCRATIC CAUCUS

The SPEAKER. The Chair recognizes the gentleman, Mr. Cohen.

Mr. COHEN. Mr. Speaker, I would like to announce an immediate meeting of the Democratic Caucus upon the call of the recess.

The SPEAKER. The Chair thanks the gentleman.

### BILLS REPORTED FROM COMMITTEES, CONSIDERED FIRST TIME, AND RECOMMITTED TO COMMITTEE ON RULES

**HB 1252, PN 4215** (Amended) By Rep. STAIRS

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, further providing for notice publication by recognizing the Internet and for emergency certification to overcome teacher shortages.

EDUCATION.

**HB 2544, PN 3750** By Rep. CLYMER

An Act amending the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code, further providing for county employee retirement allowances.

STATE GOVERNMENT.

**HB 2608, PN 3923** By Rep. STAIRS

An Act establishing the School-Based Mentoring Grant Program; imposing additional powers and duties on the Department of Education and making an appropriation.

EDUCATION.

**HB 2629, PN 3960** By Rep. STAIRS

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, further providing for reports to Department of Education and for financial reports.

EDUCATION.

**HB 2634, PN 4227** (Amended) By Rep. CLYMER

An Act amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, providing for procedure for conveyance of established projects.

STATE GOVERNMENT.

**HB 2729, PN 4151**

By Rep. CLYMER

An Act authorizing and directing the Department of General Services, with the approval of the Governor and the Department of Military and Veterans Affairs, to grant and convey to the Borough of Mansfield certain lands situate in the Borough of Mansfield, Tioga County.

STATE GOVERNMENT.

### BILL REPORTED FROM COMMITTEE, CONSIDERED FIRST TIME, AND Tabled

**SB 810, PN 1021**

By Rep. CLYMER

An Act amending the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, further regulating duties of Department of Community and Economic Development.

STATE GOVERNMENT.

The SPEAKER. Any further announcements?

### RECESS

The SPEAKER. This House is in recess until 3 p.m.

### AFTER RECESS

The time of recess having expired, the House was called to order.

### SENATE MESSAGE

AMENDED HOUSE BILL RETURNED  
FOR CONCURRENCE AND  
REFERRED TO COMMITTEE ON RULES

The clerk of the Senate, being introduced, returned **HB 153, PN 4212**, with information that the Senate has passed the same with amendment in which the concurrence of the House of Representatives is requested.

### SENATE MESSAGE

HOUSE BILL  
CONCURRED IN BY SENATE

The clerk of the Senate, being introduced, returned **HB 2315, PN 3276**, with information that the Senate has passed the same without amendment.

### BILL SIGNED BY SPEAKER

Bill numbered and entitled as follows having been prepared for presentation to the Governor, and the same being correct, the title was publicly read as follows:

**HB 2315, PN 3276**

An Act amending Title 74 (Transportation) of the Pennsylvania Consolidated Statutes, further providing for the Aviation Advisory Committee.

Whereupon, the Speaker, in the presence of the House, signed the same.

**LEAVES OF ABSENCE**

The SPEAKER. The Chair recognizes the majority whip, who moves for a leave of absence for the remainder of the day for the gentelady from Chester, Mrs. TAYLOR; the gentleman from Lancaster, Mr. ARMSTRONG; and the gentleman from Wayne, Mr. BIRMELIN. Without objection, those leaves will be granted.

**HARRISBURG LEGISLATIVE LEAVE**

The SPEAKER. The Chair recognizes the gentleman, Mr. Grucela.

Mr. GRUCELA. Thank you, Mr. Speaker.

Request Capitol leave for the gentleman from Lawrence County, Mr. LaGROTTA.

The SPEAKER. Without objection, that leave will be granted.

Mr. GRUCELA. Thank you.

**SUPPLEMENTAL CALENDAR A****RESOLUTION PURSUANT TO RULE 35**

Mr. ADOLPH called up **HR 792, PN 4216**, entitled:

A Resolution acknowledging the efforts of Philadelphia 2016 and the cooperation of the Philadelphia region and the Commonwealth of Pennsylvania to secure Philadelphia's designation as the United States candidate city for the 2016 Olympic and Paralympic Games and affirming the General Assembly's support of these efforts; and encouraging the United States Olympic Committee to favorably consider Philadelphia as the United States candidate city.

On the question,

Will the House adopt the resolution?

**HARRISBURG LEGISLATIVE LEAVE**

The SPEAKER. For what purpose does the gentleman, Mr. Grucela, rise?

Mr. GRUCELA. Thank you, Mr. Speaker.

Request Capitol leave for the gentleman from Westmoreland County, Mr. TANGRETTI.

The SPEAKER. The Chair thanks the gentleman.

Mr. GRUCELA. Thank you, Mr. Speaker.

The SPEAKER. Is there anybody left?

Mr. GRUCELA. I do not know, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

**CONSIDERATION OF HR 792 CONTINUED**

On the question recurring,  
Will the House adopt the resolution?

The following roll call was recorded:

**YEAS—199**

Adolph	Flaherty	Maitland	Ruffing
Allen	Fleagle	Major	Sabatina
Argall	Flick	Manderino	Sainato
Baker	Forcier	Mann	Samuelson
Baldwin	Frankel	Markosek	Santoni
Barrar	Freeman	Marsico	Sather
Bastian	Gabig	McCall	Saylor
Bebko-Jones	Gannon	McGeehan	Scavello
Belardi	Geist	McGill	Schroder
Belfanti	George	McLhattan	Semmel
Benninghoff	Gerber	McIlhinney	Shaner
Beyer	Gergely	McNaughton	Shapiro
Biancucci	Gillespie	Melio	Siptroth
Bishop	Gingrich	Metcalfe	Smith, B.
Blackwell	Godshall	Micozzie	Smith, S. H.
Blaum	Good	Millard	Solobay
Boyd	Goodman	Miller, R.	Sonney
Bunt	Grell	Miller, S.	Staback
Buxton	Grucela	Mundy	Stairs
Caltagirone	Gruitza	Mustio	Steil
Cappelli	Haluska	Myers	Stern
Casorio	Hanna	Nailor	Stetler
Causar	Harhai	Nickol	Stevenson, R.
Cawley	Harhart	O'Brien	Stevenson, T.
Civera	Harper	Oliver	Sturla
Clymer	Harris	O'Neill	Surra
Cohen	Hasay	Pallone	Tangretti
Cornell	Hennessey	Parker	Taylor, J.
Corrigan	Herman	Payne	Thomas
Costa	Hershey	Petrarca	Tigue
Crahalla	Hess	Petri	True
Creighton	Hickernell	Petrone	Turzai
Cruz	Hutchinson	Phillips	Veon
Curry	James	Pickett	Vitali
Daley	Josephs	Pistella	Walko
Dally	Kauffman	Preston	Wansacz
DeLuca	Keller, M.	Pyle	Waters
Denlinger	Keller, W.	Quigley	Watson
Dermody	Kenney	Ramaley	Wheatley
DeWeese	Killion	Rapp	Williams
DiGirolamo	Kirkland	Raymond	Wilt
Diven	Kotik	Readshaw	Wojnaroski
Donatucci	LaGrotta	Reed	Wright
Eachus	Leach	Reichley	Yewcic
Ellis	Lederer	Roberts	Youngblood
Evans, D.	Leh	Roebuck	Yudichak
Evans, J.	Lescovitz	Rohrer	Zug
Fabrizio	Levdansky	Rooney	
Fairchild	Mackereth	Ross	Perzel,
Feese	Maher	Rubley	Speaker
Fichter			

**NAYS—0****NOT VOTING—0****EXCUSED—4**

Armstrong	Birmelin	Rieger	Taylor, E. Z.
-----------	----------	--------	---------------

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

### HARRISBURG LEGISLATIVE LEAVES CANCELED

The SPEAKER. The Chair returns to leaves of absence and notes the presence on the floor of the House of the gentleman, Mr. Donatucci, and the gentleman, Mr. Stairs. Their names will be canceled from the legislative leave list.

### LEAVE OF ABSENCE

The SPEAKER. And the Chair at this time would ask for a leave for the gentleman, Mr. WILT, for the remainder of the day. Without objection, that leave will be granted.

### BILLS REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the majority leader.  
Mr. S. SMITH. Mr. Speaker, I move that SB 235 be taken off the table, along with SB 707, off the table.

On the question,  
Will the House agree to the motion?  
Motion was agreed to.

### BILLS ON SECOND CONSIDERATION

The following bills, having been called up, were considered for the second time and agreed to, and ordered transcribed for third consideration:

**SB 235, PN 1261; and SB 707, PN 1821.**

### BILLS RECOMMITTED

The SPEAKER. The Chair recognizes the majority leader.  
Mr. S. SMITH. Mr. Speaker, I move that SB 235 and SB 707 be recommitted to the Committee on Appropriations.

On the question,  
Will the House agree to the motion?  
Motion was agreed to.

### HARRISBURG LEGISLATIVE LEAVE CANCELED

The SPEAKER. The Chair notes the presence on the floor of the hall of the House of the gentleman, Mr. Tangretti. His name will be canceled from legislative leave.

### CALENDAR CONTINUED

### BILL ON CONCURRENCE IN SENATE AMENDMENTS

The House proceeded to consideration of concurrence in Senate amendments to **HB 859, PN 2853**, entitled:

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, clarifying provisions relating to imposition of certain realty transfer taxes.

On the question,  
Will the House concur in Senate amendments?

The SPEAKER. It is moved by the gentleman, Mr. DeWeese, that the House do concur in the amendments inserted by the Senate.

### RULES SUSPENDED

The SPEAKER. The Chair at this time recognizes the gentleman, Mr. Pyle.

Mr. PYLE. Mr. Speaker, I move for an immediate suspension of the rules for amendment No. A8073.

On the question,  
Will the House agree to the motion?

The SPEAKER. The gentleman, Mr. Pyle.  
Mr. PYLE. Thank you, Mr. Speaker.

I have been told for 30 years the great white whale of this chamber has been property tax, something substantial we can deliver to our people that we feel good about that allows them to save considerably.

What my amendment does, Mr. Speaker, is it adds 1 percent as a sales and use tax on— Sales and use tax. Thank you.

The SPEAKER. A brief explanation, Mr. Pyle.  
Mr. PYLE. Mr. Speaker, thank you.

I would like to point out a few things about this amendment.

One of the members' great reservations with increasing the sales and use tax is imposition upon the poor for the basic necessities – food and clothing. I would like to point out that A8073 does not attach to that but instead just adds 1 percent to currently taxed items for the purpose of returning back this money in school property tax savings by individual districts.

If the members have not yet received it, there is a table floating around here. I would encourage you to look it over, and I stand ready for questions, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

For what purpose does the gentleman, Mr. Vitali, rise?

Mr. VITALI. Mr. Speaker, to make a motion.

The SPEAKER. We have a motion on the floor, Mr. Vitali.

Mr. VITALI. Mr. Speaker, this is a 63-page amendment which we have not caucused on, and the language was unavailable to us up until moments ago. We still do not have a hard copy. I understand it is the tradition and custom of this chamber to caucus on amendments. This is a major, major piece of legislation, 63 pages, a 30-year project, and we are doing it without even a caucus, Mr. Speaker.

The SPEAKER. The motion for the suspension of the rules is only debatable by the caucus leaders.

Mr. DeWeese.

### LEAVE OF ABSENCE

The SPEAKER. The Chair returns to leaves of absence and places the gentleman, Mr. LEH, on leave of absence for the remainder of the day, without objection.

### CONSIDERATION OF HB 859 CONTINUED

#### PARLIAMENTARY INQUIRY

The SPEAKER. For what purpose does the gentleman, Mr. Samuelson, rise?

Mr. SAMUELSON. A parliamentary inquiry.

The SPEAKER. The gentleman will state.

Mr. SAMUELSON. Why is a suspension of the rules necessary? In short, which rule is Representative Pyle asking us to suspend? Is it the rule where we are supposed to get 24 hours to look at amendments?

The SPEAKER. No.

Mr. SAMUELSON. Which rule is it?

The SPEAKER. We are assuming that it is rule 30, bills amended by the Senate, and rule 19(a), fiscal note requirements.

Mr. SAMUELSON. Rule 30?

The SPEAKER. And 19(a).

Mr. SAMUELSON. And 19(a). Is that regarding the timing of how long the legislature is supposed to have to review amendments?

The SPEAKER. No; no. There is no timing for amendments on concurrence.

### HARRISBURG LEGISLATIVE LEAVE

#### LEAVE OF ABSENCE

The SPEAKER. The Chair recognizes the gentleman, Mr. Argall.

Mr. ARGALL. Thank you, Mr. Speaker.

Mr. Speaker, we would like to add the woman, Mrs. TRUE, Representative TRUE, from Lancaster County to Capitol leave, and the woman from Montgomery County, Representative CORNELL, for a regular leave.

The SPEAKER. Without objection, those leaves will be granted.

### CONSIDERATION OF HB 859 CONTINUED

The SPEAKER. The Chair recognizes the majority leader at this time, on suspension of the rules.

Mr. S. SMITH. Mr. Speaker, is there a question for me, Mr. Speaker?

The SPEAKER. Suspension of the rules to consider amendment A8073.

Mr. S. SMITH. Mr. Speaker, I would urge the members to support the suspension of the rules to allow for amendment A08073 to be considered. It is an amendment which incorporates sales tax into the components and the general

package of property tax reform, and I would ask the members to support this suspension. Since this bill is on concurrence, it requires a suspension of the rules.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. DeWeese.

Mr. VITALI. Mr. Speaker, I move that this House do adjourn until 5 o'clock this evening.

The SPEAKER. The gentleman was not recognized. The gentleman, Mr. DeWeese, was recognized.

The gentleman, Mr. DeWeese.

Mr. VITALI. A parliamentary inquiry.

Mr. Speaker, with regard to a motion to adjourn, you do not need to wait to be rec—

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. DeWeese.

Mr. DeWEESE. Thank you very much, Mr. Speaker.

On the motion to suspend, I would concur with the gentleman from Jefferson County, the majority leader. Last night's sidebar discussion was frank and cordial, and the handshake indicated that we would vote 39 today after we had voted these other measures considering a one-half-percent increase in the sales tax to offset massive property taxes and a second effort that would potentially take a 1-percent increase in the sales to offset even more substantial property taxes.

So in that regard, I would ask for a suspension of the rules in order that we move forward with what I believe can be a historic and strong initial step in reducing property taxes in the Commonwealth. So I would ask for an affirmative vote on suspension of the rules.

The SPEAKER. Please keep the noise levels down. The conferences in the aisles will please break up.

### MOTION TO RECESS

The SPEAKER. For what purpose does the gentleman, Mr. Vitali, rise?

Mr. VITALI. For the purpose of making a motion.

The SPEAKER. The gentleman is in order.

Mr. VITALI. Thank you, Mr. Speaker.

Because we have not had time to caucus on this major piece of legislation, because we have not seen it in writing, because we have not had time to analyze the printouts, I would move that this House do adjourn for a period of 1 hour so that we may have a chance to read the amendment and try to understand its contents.

### HARRISBURG LEGISLATIVE LEAVE CANCELED

The SPEAKER. The Chair notes the presence on the floor of the House of the gentleman, Mr. Pallone. His name will be canceled from legislative leave.

### CONSIDERATION OF HB 859 CONTINUED

The SPEAKER. That motion is debatable only by the floor leaders.

On the question,

Will the House agree to the motion?

The SPEAKER. The Chair recognizes the majority leader, the gentleman, Mr. Smith.

Mr. S. SMITH. Mr. Speaker, I would oppose the motion to adjourn. Properly, I suspect, it is a motion to recess for 1 hour. However, I would oppose the motion to recess or adjourn for 1 hour.

Quite frankly, Mr. Speaker, we have had extensive caucus discussions over the last year. I know that the House Democrats have had exceedingly long conversations on these issues. Quite frankly, Mr. Speaker, in my opinion, there frankly are not a lot of new ideas in many respects. There are components of ideas that fit together to make up a property tax plan. There are distribution plans. We have seen all of these at various points, we have discussed all of them at various points, and I believe, Mr. Speaker, that while we have not perhaps caucused on the specific numbered amendment, the fact is, we have had major caucus discussions and review of all of the ideas embodied here, and I am confident, Mr. Speaker, that in the course of debating the amendment and going over it on the floor, that all of the pieces that are embodied in this amendment that would provide substantial property tax relief in Pennsylvania are well understood by the members.

In the sense of trying to move forward, of trying to adopt the business that the people of Pennsylvania say we need to adopt, I would ask the members to oppose this motion to adjourn.

Thank you, Mr. Speaker.

The SPEAKER. Mr. DeWeese.

Mr. DeWEESE. I fundamentally agree with my colleague, the majority leader, but I am going to accede to my own Democratic colleague from Delaware County to argue his meritorious case.

The SPEAKER. As unusual as it is, we will entertain Mr. Vitali's comments. Mr. Vitali.

Mr. VITALI. Thank you, Mr. Speaker.

I am making this motion to adjourn for some very basic reasons. The first, and the reasons, frankly, that almost should not have to be made in this chamber, and in my mind, it is a real shame they have to be made, I struggled to get this 63-page amendment for the past hour or two, and it was not even available up until moments before it came on the screen. The Republicans very well may have had a chance to look at this amendment, but the Democrats have not.

Mr. Speaker, this is a 63-page amendment. This is perhaps the most important issue that this chamber has faced. This is an amendment that deeply affects all of our districts. It contains controversial items like the distribution of a billion-plus dollars into our districts for property tax relief, things like the back-end referendum, things like property tax and rent rebate, and we are not even, our 90-some House members, even given the opportunity to read this. This is totally and patently absurd, and frankly, if this motion passes, it is a disgrace.

There is absolutely no reason Democratic members ought to be put in the position to not be able to read and understand the most important issue facing them this session, and for some of them, you know, the larger part of their careers. A 1-hour adjournment – and frankly, not even that is sufficient – a 1-hour adjournment is going to prejudice this issue not at all.

Mr. Speaker, the public is sick and tired of the legislature, and rightfully so. The process by which we pass important bills is a disgrace, and they told us so when 17 of our number were defeated out of office in May and more will—

The SPEAKER. The gentleman does not have the same latitude as a leader, and the motion is a motion to recess, which is not debatable. It is not subject to subsidiary motions, except to amend and may be amended only as to the length of the recess. So this motion is not debatable.

If the gentleman would like to confine his remarks to the motion, we will turn the microphone back on. If the gentleman finds that he cannot, we will leave the microphone off.

### PARLIAMENTARY INQUIRY

Mr. VITALI. A parliamentary inquiry.

This is a motion to adjourn. That is my understanding.

The SPEAKER. No, you cannot make a motion to adjourn. A motion to adjourn means we are leaving. This is a motion to recess, is what you have to do. I just said that. The Chair thanks the gentleman.

Mr. VITALI. Mr. Speaker, this is just basic common sense. This motion should not even have to be made. I am sorry it has to be made, and there is really no point in talking further. The arguments for this are just so self-evident.

Thank you.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,  
Will the House agree to the motion?

The following roll call was recorded:

#### YEAS-96

Bebko-Jones	George	Marsico	Sabatina
Belardi	Gergely	McCall	Sainato
Biancucci	Goodman	McGeehan	Samuelson
Bishop	Gruitza	Melio	Schroder
Blackwell	Haluska	Metcalfe	Semmel
Buxton	Hanna	Miller, S.	Shaner
Caltagirone	Harhai	Mundy	Shapiro
Casorio	Harhart	Mustio	Solobay
Cawley	Hutchinson	Myers	Staback
Corrigan	James	Oliver	Stairs
Costa	Josephs	Pallone	Stern
Crahalla	Kauffman	Parker	Stevenson, R.
Creighton	Keller, M.	Petrarca	Surra
Cruz	Keller, W.	Petrone	Tangretti
Curry	Kirkland	Pistella	Thomas
Daley	Kotik	Preston	Tigue
DeLuca	LaGrotta	Ramaley	Vitali
Donatucci	Leach	Rapp	Walko
Ellis	Lederer	Readshaw	Waters
Fabrizio	Lescovitz	Reichley	Wheatley
Flaherty	Levdansky	Roberts	Wojnaroski
Forcier	Manderino	Roebuck	Yewcic
Frankel	Mann	Rohrer	Youngblood
Freeman	Markosek	Ruffing	Yudichak

#### NAYS-99

Adolph	Evans, J.	Mackereth	Rublely
Allen	Fairchild	Maher	Santoni
Argall	Feese	Maitland	Sather
Baker	Fichter	Major	Saylor
Baldwin	Fleagle	McGill	Scavell
Barrar	Flick	McIlhattan	Siptroth
Bastian	Gabig	McIlhinney	Smith, B.
Belfanti	Gannon	McNaughton	Smith, S. H.
Benninghoff	Geist	Micozzie	Sonney



Beyer	Gerber	Millard	Steil
Blaum	Gillespie	Miller, R.	Stetler
Boyd	Gingrich	Nailor	Stevenson, T.
Bunt	Godshall	Nickol	Sturla
Cappelli	Good	O'Brien	Taylor, J.
Causar	Grell	O'Neill	True
Civera	Grucela	Payne	Turzai
Clymer	Harris	Petri	Veon
Cohen	Hasay	Phillips	Wansacz
Dally	Hennessey	Pickett	Watson
Denlinger	Herman	Pyle	Williams
Dermody	Hershey	Quigley	Wright
DeWeese	Hess	Raymond	Zug
DiGirolamo	Hickernell	Reed	
Diven	Kennedy	Rooney	Perzel,
Eachus	Killion	Ross	Speaker
Evans, D.			

NOT VOTING—1

Harper

EXCUSED—7

Armstrong	Cornell	Rieger	Wilt
Birmelin	Leh	Taylor, E. Z.	

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

On the question recurring,  
Will the House agree to the motion?

The SPEAKER. The Chair has immediately before it the suspension of the rules for amendment 8073, the Pyle amendment.

On the question recurring,  
Will the House agree to the motion?

The following roll call was recorded:

YEAS—178

Adolph	Feese	Mackereth	Sabatina
Allen	Fichter	Maitland	Sainato
Argall	Flaherty	Major	Santoni
Baker	Fleagle	Manderino	Sather
Baldwin	Flick	Mann	Saylor
Barrar	Forcier	Markosek	Scavello
Bastian	Frankel	Marsico	Schroder
Bebko-Jones	Gabig	McCall	Semmel
Belardi	Gannon	McGeehan	Shaner
Belfanti	Geist	McGill	Siptroth
Benninghoff	George	McIlhattan	Smith, B.
Beyer	Gerber	McIlhinney	Smith, S. H.
Biancucci	Gergely	McNaughton	Solobay
Bishop	Gillespie	Melio	Sonney
Blackwell	Gingrich	Micozzie	Staback
Blaum	Godshall	Millard	Stairs
Boyd	Good	Miller, R.	Steil
Bunt	Goodman	Myers	Stern
Buxton	Grell	Nailor	Stetler
Caltagirone	Grucela	Nickol	Stevenson, R.
Cappelli	Gruitza	O'Brien	Stevenson, T.
Causar	Haluska	Oliver	Sturla
Cawley	Hanna	O'Neill	Surra
Civera	Harhai	Parker	Tangretti
Clymer	Harhart	Payne	Taylor, J.

Cohen	Harper	Petrarca	Thomas
Corrigan	Harris	Petri	Tigue
Costa	Hasay	Petrone	True
Crahalla	Hennessey	Phillips	Turzai
Creighton	Herman	Pickett	Veon
Cruz	Hershey	Pistella	Walko
Daley	Hess	Preston	Wansacz
Dally	Hickernell	Pyle	Waters
DeLuca	James	Quigley	Watson
Denlinger	Keller, M.	Ramaley	Wheatley
Dermody	Keller, W.	Raymond	Williams
DeWeese	Kenney	Readshaw	Wojnaroski
DiGirolamo	Killion	Reed	Wright
Diven	Kirkland	Reichley	Yewcic
Donatucci	Kotik	Roberts	Youngblood
Eachus	LaGrotta	Rohrer	Yudichak
Evans, D.	Leach	Rooney	Zug
Evans, J.	Lederer	Ross	
Fabrizio	Lescovitz	Rublely	Perzel,
Fairchild	Levdansky	Ruffing	Speaker

NAYS—18

Casorio	Josephs	Mundy	Roebuck
Curry	Kauffman	Mustio	Samuelson
Ellis	Maher	Pallone	Shapiro
Freeman	Metcalf	Rapp	Vitali
Hutchinson	Miller, S.		

NOT VOTING—0

EXCUSED—7

Armstrong	Cornell	Rieger	Wilt
Birmelin	Leh	Taylor, E. Z.	

A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,  
Will the House concur in Senate amendments?

Mr. PYLE offered the following amendment No. A08073:

Amend Title, page 1, lines 1 through 12, by striking out all of said lines and inserting  
Amending Titles 53 (Municipalities Generally) and 72 (Taxation and Fiscal Affairs) of the Pennsylvania Consolidated Statutes, further providing, in municipal taxation, for applicability and for definitions; consolidating the sales and use tax provisions of the Tax Reform Code of 1971; further providing for imposition, for computation, for exclusions, for alternate imposition, for filing times and for transfers to the Property Tax Relief Fund; consolidating the special situs for local sales tax provisions of the Tax Reform Code of 1971; providing for State allocations; and making related repeals.

Amend Bill, page 2, lines 25 through 30; pages 3 and 4, lines 1 through 30; page 5, lines 1 through 16, by striking out all of said lines on said pages and inserting

Section 1. Section 8405 of Title 53 is amended to read:  
§ 8405. Applicability.

[It] Except as provided in Ch. 85 Subch. F (relating to homestead property exclusion), it is the intent of the General Assembly that no provision of this subpart shall apply to any city of the first class, a county of the first class coterminous with a city of the first class and any school district of the first class located within a city of the first class.

Section 1.1. The definitions of “assessor” and “board” in section 8582 of Title 53 are amended and the section is amended by adding definitions to read:

§ 8582. Definitions.

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

“Assessor.” The chief assessor of the county, the equivalent position in a home rule county or the equivalent position in a city of the first or third class that performs its own assessments of real property.

“Board.” Any of the following:

(1) “Board.” As defined in the act of June 26, 1931, (P.L.1379, No.348), referred to as the Third Class County Assessment Board Law.

(2) “Board.” As defined in the act of May 21, 1943 (P.L.571, No.254), known as The Fourth to Eighth Class County Assessment Law.

(3) “Board of Property Assessment, Appeals and Review.” The Board of Property Assessment, Appeals and Review in a county of the second class under the act of June 21, 1939 (P.L.626, No.294), referred to as the Second Class County Assessment Law.

(4) “Board of Revision of Tax and Appeals.” The board of revision of taxes and appeals in cities of the third class.

(5) “Board of Revision of Taxes.” The board of revision of taxes in cities of the first class.

\* \* \*

“Homestead.” A dwelling, including the parcel of land on which the dwelling is located and the other improvements located on the parcel for which any of the following apply:

(1) The dwelling is primarily used as the domicile of an owner who is a natural person. The homestead for real property qualifying under this paragraph shall not include the land on which the dwelling is located if the land is not owned by a person who owns the dwelling.

(2) The dwelling is a unit in a condominium as the term is defined in 68 Pa.C.S. § 3103 (relating to definitions) and the unit is primarily used as the domicile of a natural person who is an owner of the unit; or the dwelling is a unit in a cooperative as the term is defined in 68 Pa.C.S. § 4103 (relating to definitions) and the unit is primarily used as the domicile of a natural person who is an owner of the unit. The homestead for a unit in a condominium or a cooperative shall be limited to the assessed value of the unit, which shall be determined in a manner consistent with the assessment of real property taxes on those units under 68 Pa.C.S. (relating to real and personal property) or as otherwise provided law. If the unit is not separately assessed for real property taxes, the homestead shall be a pro rata share of the real property.

(3) The dwelling does not qualify under paragraphs (1) and (2) and a portion of the dwelling is used as the domicile of an owner who is a natural person. The homestead for real property qualifying under this paragraph shall be the portion of the real property that is equal to the portion of the dwelling that is used as the domicile of an owner.

“Homestead property.” A homestead for which an application has been submitted and approved under section 8584 (relating to administration and procedure).

\* \* \*

“School district.” A school district of the first class, first class A, second class, third class or fourth class, including any independent school district.

Section 2. Title 72 is amended by adding parts to read:

PART I  
PRELIMINARY PROVISIONS  
(RESERVED)  
PART II  
TAXES

Chapter

12. Sales and Use Tax.

13. Special Situs for Local Sales Tax.

CHAPTER 12  
SALES AND USE TAX

Subchapter

A. General Provisions

B. Imposition of Tax

C. Exclusions from Tax

D. Licenses

E. Hotel Occupancy Tax

F. Returns

G. Payment

H. Assessment and Reassessment

I. Collection

J. Nonpayment

K. Miscellaneous Provisions

L. Refunds and Credits

M. Limitations

N. Interest, Additions, Penalties and Crimes

O. Enforcement and Examinations

P. Appropriation; Effective Date

SUBCHAPTER A  
GENERAL PROVISIONS

Sec.

1201. Definitions.

§ 1201. Definitions.

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

“Adjustment services, collection services or credit reporting services.” Providing collection or adjustments of accounts receivable or mercantile or consumer credit reporting, including, but not limited to, services of the type provided by adjustment bureaus or collection agencies, consumer or mercantile credit reporting bureaus, credit bureaus or agencies, credit clearinghouses or credit investigation services. Such services do not include providing credit card service with collection by a central agency, providing debt counseling or adjustment services to individuals or billing or collection services provided by local exchange telephone companies.

“Blasting.” The use of any combustible or explosive composition in the removal of material resources, minerals and mineral aggregates from the earth and the separation of the dirt, waste and refuse in which the resources, minerals and mineral aggregates are found.

“Building machinery and equipment.” Includes, without limitation, boilers, chillers, air cleaners, humidifiers, fans, switchgear, pumps, telephones, speakers, horns, motion detectors, dampers, actuators, grills, registers, traffic signals, sensors, card access devices, guardrails, medial devices, floor troughs and grates and laundry equipment, together with integral coverings and enclosures, whether or not the item constitutes a fixture or is otherwise affixed to the real estate, whether or not damage would be done to the item or its surroundings upon removal or whether or not the item is physically located within a real estate structure. The term also includes generation equipment, storage equipment, conditioning equipment, distribution equipment and termination equipment, which shall be limited to the following:

- (1) air conditioning, limited to heating, cooling, purification, humidification, dehumidification and ventilation;
- (2) electrical;
- (3) plumbing;
- (4) communications limited to voice, video, data, sound, master clock and noise abatement;
- (5) alarms limited to fire, security and detection;
- (6) control system limited to energy management, traffic and parking lot and building access;

- (7) medical system limited to diagnosis and treatment equipment, medical gas, nurse call and doctor paging;
- (8) laboratory system;
- (9) cathodic protection system; or
- (10) furniture, cabinetry and kitchen equipment.

The term shall not include guardrail posts, pipes, fittings, pipe supports and hangers, valves, underground tanks, wire, conduit, receptacle and junction boxes, insulation, ductwork and coverings thereof.

“Building maintenance or cleaning services.” Providing services which include, but are not limited to, janitorial, maid or housekeeping service, office or interior building cleaning or maintenance service, window cleaning service, floor waxing service, lighting maintenance service such as bulb replacement, cleaning, chimney cleaning service, acoustical tile cleaning service, venetian blind cleaning, cleaning and maintenance of telephone booths or cleaning and degreasing of service stations. The term shall not include repairs on buildings and other structures; nor shall this term include the maintenance or repair of boilers, furnaces and residential air conditioning equipment or parts thereof; the painting, wallpapering or applying other like coverings to interior walls, ceilings or floors; or the exterior painting of buildings.

“Call center.” The physical location in this Commonwealth:

- (1) where at least 150 employees are employed to initiate or answer telephone calls;
- (2) where there are at least two hundred telephone lines; and
- (3) which utilizes an automated call distribution system for customer telephone calls in one or more of the following activities:

- (i) customer service and support;
- (ii) technical assistance;
- (iii) help desk service;
- (iv) providing information;
- (v) conducting surveys;
- (vi) revenue collections; or
- (vii) receiving orders or reservations.

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

“Commercial aircraft operator.” A person, excluding scheduled airlines, that engages in any or all of the following: charter of aircraft, leasing of aircraft, aircraft sales, aircraft rental, flight instruction, air freight or any other flight activities for compensation.

“Commercial racing activities.” Any of the following:

- (1) Thoroughbred and harness racing at which pari-mutuel wagering is conducted under the act of December 17, 1981 (P.L.435, No.135), known as the Race Horse Industry Reform Act.
- (2) Fair racing sanctioned by the State Harness Racing Commission.

“Construction contract.” A written or oral contract or agreement for the construction, reconstruction, remodeling, renovation or repair of real estate or a real estate structure. The term shall not apply to services which are taxable under paragraphs (14) and (17) of the definition of “sale at retail” and paragraphs (12) and (15) of the definition of “use.”

“Construction contractor.” A person who performs an activity pursuant to a construction contract, including a subcontractor.

“Department.” The Department of Revenue of the Commonwealth.

“Disinfecting or pest control services.” Providing disinfecting, termite control, insect control, rodent control or other pest control services, including, but not limited to, deodorant servicing of restrooms, washroom sanitation service, restroom cleaning service, extermination service or fumigating service. The term “fumigating service” shall not include the fumigation of agricultural commodities or containers used for agricultural commodities, and the term “insect control” shall not include the spraying of trees which are harvested for commercial purposes for gypsy moth control.

“Employment agency services.” Providing employment services to a prospective employer or employee other than employment services

provided by theatrical employment agencies and motion picture casting bureaus. These services shall include, but not be limited to, services of the type provided by employment agencies, executive placing services and labor contractor employment agencies other than farm labor.

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

“Gratuity.” Any amount paid or remitted for services performed in conjunction with any sale of food or beverages, or hotel or motel accommodations which amount is in excess of the charges and the tax thereon for such food, beverages or accommodations regardless of the method of billing or payment.

“Help supply services.” Providing temporary or continuing help where the help supplied is on the payroll of the supplying person or entity, but is under the supervision of the individual or business to which help is furnished. These services shall include, but not be limited to, service of a type provided by labor and manpower pools, employee leasing services, office help supply services, temporary help services, usher services, modeling services or fashion show model supply services. Such services shall not include providing farm labor services. The term shall not include nursing, home health care and personal care services and other human health-related services. As used in this definition, “personal care” shall include providing at least one of the following types of assistance to persons with limited ability for self-care:

- (1) dressing, bathing or feeding;
- (2) supervising self-administered medication;
- (3) transferring a person to or from a bed or wheelchair;

or

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

“Internet.” The international nonproprietary computer network of both Federal and non-Federal interoperable packet switched data networks.

“Lawn care service.” Providing services for lawn upkeep, including, but not limited to, fertilizing, lawn mowing, shrubbery trimming or other lawn treatment services.

“Lobbying services.” Providing the services of a lobbyist, as defined in the definition of “lobbyist” in 65 Pa.C.S. § 1303 (relating to definitions).

“Maintaining a place of business in this Commonwealth.” As follows:

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

(2) Engagement in any activity as a business within this Commonwealth by any person, either directly or through a subsidiary, representative or an agent, in connection with the lease, sale or delivery of tangible personal property or the performance of services thereon for use, storage or consumption or in connection with the sale or delivery for use of the services described in paragraphs (11) through (18) of the definition of “sale at retail,” including, but not limited to, having, maintaining or using any office, distribution house, sales house, warehouse or other place of business, any stock of goods or any solicitor, canvasser, salesman, representative or agent under its authority, at its direction or with its permission, regardless of whether the person or subsidiary is authorized to do business in this Commonwealth.

(3) Regularly or substantially soliciting orders within this Commonwealth in connection with the lease, sale or delivery

of tangible personal property to or the performance thereon of services or in connection with the sale or delivery of the services described in paragraphs (11) through (18) of the definition of "sale at retail" for residents of this Commonwealth by means of catalogs or other advertising, whether the orders are accepted within or without this Commonwealth.

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

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

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

(3.4) Providing a customer's mobile telecommunications service deemed to be provided by the customer's home service provider under the Mobile Telecommunications Sourcing Act (Public Law 106-252, 114 Stat. 626). For purposes of this paragraph, words and phrases used in this paragraph shall have the meanings given to them in the Mobile Telecommunications Sourcing Act.

(4) The term shall not include:

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

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

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

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

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

(1) Every operation commencing with the first production stage and ending with the completion of tangible personal property having the physical qualities, including packaging, if any, passing to the ultimate consumer, which it has when transferred by the manufacturer to another.

(2) The publishing of books, newspapers, magazines and other periodicals and printing.

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

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

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

(i) product or utility service; or

(ii) method of producing a product or utility service.

The term does not include market research or research having as its objective the improvement of administrative efficiency.

(6) Remanufacture for wholesale distribution by a remanufacturer of motor vehicle parts from used parts acquired

in bulk by the remanufacturer using an assembly line process which involves the complete disassembly of such parts and integration of the components of such parts with other used or new components of parts, including the salvaging, recycling or reclaiming of used parts by the remanufacturer.

(7) Remanufacture or retrofit by a manufacturer or remanufacturer of aircraft, armored vehicles, other defense-related vehicles having a finished value of at least \$50,000. Remanufacture or retrofit involves the disassembly of such aircraft, vehicles, parts or components, including electric or electronic components, the integration of those parts and components with other used or new parts or components, including the salvaging, recycling or reclaiming of the used parts or components and the assembly of the new or used aircraft, vehicles, parts or components. For purposes of this definition, the following terms or phrases have the following meanings:

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

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

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

(8) The term does not include constructing, altering, servicing, repairing or improving real estate or repairing, servicing or installing tangible personal property, nor the cooking, freezing or baking of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products.

"Mobile telecommunications service." Mobile telecommunications service as that term is defined in the Mobile Telecommunications Sourcing Act (Public Law 106-252, 114 Stat. 626).

"Person." A natural person, association, fiduciary, partnership, corporation or other entity, including the Commonwealth of Pennsylvania, its political subdivisions and instrumentalities and public authorities. Whenever used in any provision prescribing and imposing a penalty or imposing a fine or imprisonment, or both, the term, as applied to an association, shall include the members of these listed classes and, as applied to a corporation, the officers of the corporation.

"Prebuilt housing." Either of the following:

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

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

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

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

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

"Premium cable or premium video programming service."

(1) That portion of cable television services, video programming services, community antenna television services or any other distribution of television, video, audio or radio services which meets all of the following criteria:

(i) Is transmitted with or without the use of wires to purchasers.

(ii) Consists substantially of programming uninterrupted by paid commercial advertising which includes programming primarily composed of uninterrupted full-length motion pictures or sporting events, pay-per-view, paid programming or like audio or radio broadcasting.

(iii) Does not constitute a component of a basic service tier provided by a cable television system or a cable programming service tier provided by a cable television system.

(A) A basic service tier shall include:

(I) all signals of domestic television broadcast stations;

(II) any public, educational, governmental or religious programming; and

(III) any additional video programming signals or service added to the basic service tier by the cable operator.

(B) The basic service tier shall include a single additional lower-priced package of broadcast channels and access information channels which is a subset of the basic service tier as set forth in this paragraph.

(C) A cable programming service tier includes any video programming other than:

(I) the basic service tier;

(II) video programming offered on a pay-per-channel or pay-per-view basis; or

(III) a combination of multiple channels of pay-per-channel or pay-per-view programming offered as a package.

(2) If a purchaser receives or agrees to receive premium cable or premium video programming service, then the following charges are included in the purchase price:

(i) Charges for installation or repair of any premium cable or premium video programming service.

(ii) Upgrade to include additional premium cable or premium video programming service.

(iii) Downgrade to exclude all or some premium cable or premium video programming service.

(iv) Additional premium cable outlets in excess of ten.

(v) Any other charge or fee related to premium cable or premium video programming services.

(3) The term shall not apply to any of the following:

(i) Transmissions by public television.

(ii) Public radio services.

(iii) Official Federal, State or local government cable services.

(iv) Local origination programming which provides a variety of public service programs unique to the community.

(v) Programming which provides coverage of public affairs issues which are presented without commentary or analysis. This subparagraph includes United States Congressional proceedings.

(vi) Programming which is substantially related to religious subjects.

(vii) Subscriber charges for access to a video dial tone system or charges by a common carrier to a video programmer for the transport of video programming.

“Prepaid mobile telecommunications service.” Mobile telecommunications service which is paid for in advance and which enables the origination of calls using an access number, authorization code or both, whether manually or electronically dialed, if the remaining amount of units of the prepaid mobile telecommunications service is known by the service provider of the prepaid mobile telecommunications service on a continuous basis. The term does not include the advance purchase of mobile telecommunications service if the purchase is pursuant to a service contract between the service provider and customer and if the service contract requires the customer to make periodic payments to maintain the mobile telecommunications service.

“Prepaid telecommunications.” A tangible item containing a prepaid authorization number that can be used solely to obtain telecommunications service, including any renewal or increases in the prepaid amount.

“Processing.” The performance of the following activities when engaged in as a business enterprise:

(1) The filtering or heating of honey, the cooking, baking or freezing of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products, when the person engaged in such business packages such property in sealed containers for wholesale distribution.

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

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

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

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

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

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

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

(7) The production, processing and bottling of nonalcoholic beverages for wholesale distribution.

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

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

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

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

(11) The processing of used lubricating oils.

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

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

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

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

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

(17) The producing of mobile telecommunications services.

“Promoter.” A person who either, directly or indirectly, rents, leases or otherwise operates or grants permission to any person to use space at a show for the display for sale or for the sale of tangible personal property or services subject to tax under section 1202 (relating to imposition of tax).

“Purchase at retail.” Any of the following:

(1) The acquisition for a consideration of the ownership, custody or possession of tangible personal property other than for resale by the person acquiring the same when such acquisition is made for the purpose of consumption or use, whether such acquisition shall be absolute or conditional, and by whatsoever means the same shall have been effected.

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

(3) The obtaining for a consideration any of those services set forth under paragraphs (2), (3) and (4) of the definition of sale at retail other than for resale.

(4) A retention after March 7, 1956, of possession, custody or a license to use or consume pursuant to a rental contract or other lease arrangement, other than as security, other than for resale.

(5) The obtaining for a consideration any of those services set forth under paragraphs (11) through (18) of the definition of “sale at retail.”

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

“Purchase price.” As follows:

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

(2) There shall be deducted from the purchase price the value of any tangible personal property actually taken in trade or exchange in lieu of the whole or any part of the purchase price. For the purpose of this paragraph, the amount allowed by reason of tangible personal property actually taken in trade or exchange shall be considered the value of the property.

(3) In determining the purchase price on the sale or use of taxable tangible personal property or a service where, because of affiliation of interests between the vendor and purchaser, or irrespective of any such affiliation, if for any other reason the purchase price declared by the vendor or taxpayer on the taxable sale or use of such tangible personal property or service is, in the opinion of the Department of Revenue, not indicative of the true value of the article or service or the fair price thereof, the department shall, pursuant to uniform and equitable rules, determine the amount of constructive purchase price upon the basis of which the tax shall be computed and levied. Such rules shall provide for a constructive amount of purchase price for each sale or use which would naturally and fairly be charged in an arms-length transaction in which the element of common interest between the vendor or purchaser is absent or if no common interest exists, any other element causing a distortion of the price or value is likewise absent. For the purpose of this paragraph where a taxable sale or purchase at retail transaction occurs between a parent and a subsidiary, affiliate or controlled corporation of such parent corporation, there shall be a rebuttable presumption, that because of such common interest such transaction was not at arm's-length.

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

(5) With respect to the tax imposed by section 1202(b) (relating to imposition of tax) upon any tangible personal property originally purchased by the user of the property six months or longer prior to the first taxable use of the property within this Commonwealth. The user may elect to pay tax on a substituted base determined by considering the purchase price of the property for tax purposes to be equal to the prevailing market price of similar tangible personal property at the time and place of the first use within this Commonwealth. The election must be made at the time of filing a tax return with the department and reporting the tax liability and paying the tax due plus accrued penalties and interest within six months of the due date of the report and payment under section 1217(a) and (c) (relating to time for filing returns).

(6) The purchase price of employment agency services and help supply services shall be the service fee paid by the purchaser to the vendor or supplying entity. The term “service fee,” as used in this paragraph, shall be the total charge or fee of the vendor or supplying entity minus the costs of the supplied employee which costs are wages, salaries, bonuses and

commissions, employment benefits, expense reimbursements and payroll and withholding taxes, to the extent that these costs are specifically itemized or that these costs in aggregate are stated in billings from the vendor or supplying entity. To the extent that these costs are not itemized or stated on the billings, then the service fee shall be the total charge or fee of the vendor or supplying entity.

(7) Unless the vendor separately states which portion of the billing applies to premium cable services, the total bill for the provision of all cable services shall be the purchase price.

(8) The purchase price of prebuilt housing shall be 60% of the manufacturer's selling price, but a manufacturer of prebuilt housing who precollects tax from a prebuilt housing builder at the time of the sale to the prebuilt housing builder shall have the option to collect tax on 60% of the selling price or on 100% of the actual cost of the supplies and materials used in the manufacture of the prebuilt housing.

"Purchaser." A person who acquires, for a consideration, the ownership, custody or possession by sale, lease or otherwise, of tangible personal property, or who obtains services in exchange for a purchase price, but not including an employer who obtains services from employees of the employer in exchange for wages or salaries when the services are rendered in the ordinary scope of their employment.

"Real estate structure." A structure or item purchased by a construction contractor pursuant to a construction contract with:

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

(2) the United States; or

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

The term includes building machinery and equipment; developed or undeveloped land; streets; roads; highways; parking lots; stadiums and stadium seating; recreational courts; sidewalks; foundations; structural supports; walls; floors; ceilings; roofs; doors; canopies; millwork; elevators; windows and external window coverings; outdoor advertising boards or signs; airport runways; bridges; dams; dikes; traffic control devices, including traffic signs; satellite dishes; antennas; guardrail posts; pipes; fittings; pipe supports and hangers; valves; underground tanks; wire; conduit; receptacle and junction boxes; insulation; ductwork and coverings thereof; and any structure or item similar to any of the foregoing, whether or not the structure or item constitutes a fixture or is affixed to the real estate, or whether or not damage would be done to the structure or item or its surroundings upon removal.

"Resale." As follows:

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

(2) The physical incorporation of tangible personal property as an ingredient or constituent into other tangible personal property, which is to be sold in the regular course of business or the performance of those services described in paragraphs (2), (3) and (4) of the definition of "sale at retail" upon tangible personal property which is to be sold in the regular course of business or where the person incorporating such property has undertaken at the time of purchase to cause it to be transported in interstate commerce to a destination outside this Commonwealth. The term shall include telecommunications services purchased by a cable operator or video programmer that

are used to transport or deliver cable or video programming services which are sold in the regular course of business.

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

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

(5) The physical incorporation of tangible personal property as an ingredient or constituent in the construction of foundations for machinery or equipment the sale or use of which is excluded from tax under the provisions of paragraph (8)(ii)(A), (B), (C) and (D) of the definition of "sale at retail" and paragraph (4)(ii)(B)(I), (II), (III) and (IV) of the definition of "use," whether the foundations at the time of construction or transfer constitute tangible personal property or real estate.

"Resident." As follows:

(1) Any natural person:

(i) who is domiciled in this Commonwealth; or

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

(2) Any corporation:

(i) incorporated under the laws of this Commonwealth;

(ii) authorized to do business or doing business within this Commonwealth; or

(iii) maintaining a place of business within this Commonwealth.

(3) Any association, fiduciary, partnership or other entity:

(i) domiciled in this Commonwealth;

(ii) authorized to do business or doing business within this Commonwealth; or

(iii) maintaining a place of business within this Commonwealth.

"Sale at retail." As follows:

(1) Any transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the grant of a license to use or consume whether the transfer be absolute or conditional and by whatsoever means the same shall have been effected.

(2) The rendition of the service of printing or imprinting of tangible personal property for a consideration for persons who furnish, either directly or indirectly, the materials used in the printing or imprinting.

(3) The rendition for a consideration of the service of:

(i) Washing, cleaning, waxing, polishing or lubricating of motor vehicles of another, whether or not any tangible personal property is transferred in conjunction therewith.

(ii) Inspecting motor vehicles pursuant to the mandatory requirements of 75 Pa.C.S. (relating to vehicles).

(4) The rendition for a consideration of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property except wearing apparel or shoes, or applying or installing tangible personal property as a repair or replacement part of other tangible personal property except wearing apparel or shoes for a consideration, whether or not the services are performed directly or by any means except by coin-operated self-service laundry

equipment for wearing apparel or household goods and whether or not any tangible personal property is transferred in conjunction therewith, except such services as are rendered in the construction, reconstruction, remodeling, repair or maintenance of real estate, except that this paragraph shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under section 1204(26) (relating to exclusions from tax) or on diaper service.

(5) (Reserved).

(6) (Reserved).

(7) (Reserved).

(8) (i) Any retention of possession, custody or a license to use or consume tangible personal property or any further obtaining of services described in paragraphs (2), (3) and (4) pursuant to a rental or service contract or other arrangement, other than as security.

(ii) The term does not include any such transfer of tangible personal property or rendition of services for the purpose of resale or such rendition of services or the transfer of tangible personal property, including, but not limited to, machinery and equipment and parts therefor and supplies to be used or consumed by the purchaser directly in the operations of:

(A) The manufacture of tangible personal property.

(B) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term "farming" shall include the propagation and raising of ranch raised furbearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. (relating to game) and the propagation and raising of horses to be used exclusively for commercial racing activities.

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

(D) Processing as defined in this section.

(iii) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to any vehicle required to be registered under 75 Pa.C.S., except those vehicles used directly by a public utility engaged in business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used machinery, equipment, parts or foundations therefor that may be fixed to the real estate.

(iv) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or services by any person other than the person directly using the same in the operations described in subparagraph (ii)(A), (B), (C) and (D).

(v) The exclusion provided in subparagraph (ii)(C) shall not apply to:

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

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

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

(vi) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to the services enumerated in paragraphs (11) through (18) nor to lobbying services, adjustment services, collection services or credit reporting services, secretarial or editing services, disinfecting or pest control services, building maintenance or cleaning services, employment agency services, help supply services, lawn care service or self-storage service, except that the exclusion provided in subparagraph (ii)(B) for farming, dairying and agriculture shall apply to the service enumerated in the definition of disinfecting or pest control services.

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

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

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

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

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

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

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

(16) (Reserved).

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

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

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

"Secretarial or editing services." Providing services which include, but are not limited to, editing, letter writing, proofreading, resume writing, typing or word processing. Such services shall not include court reporting and stenographic services.

"Self-storage service." Providing a building, a room in a building or a secured area within a building with separate access provided for each purchaser of self-storage service, primarily for the



purpose of storing personal property. The term excludes providing any of the following:

- (1) Safe deposit boxes by financial institutions.
- (2) Storage in refrigerator or freezer units.
- (3) Storage in commercial warehouses.
- (4) Facilities for goods distribution.
- (5) Lockers in airports, bus stations, museums and other public places.

“Show.” An event, the primary purpose of which involves the display or exhibition of any tangible personal property or services for sale, including, but not limited to, a flea market, antique show, coin show, stamp show, comic book show, hobby show, automobile show, fair or any similar show, whether held regularly or of a temporary nature, at which more than one vendor displays for sale or sells tangible personal property or services subject to tax under section 1202 (relating to imposition of tax).

“Soft drinks.” All nonalcoholic beverages, whether carbonated or not, such as soda water, ginger ale, Coca Cola, lime cola, Pepsi Cola, Dr Pepper, fruit juice when plain or carbonated water, flavoring or syrup is added, carbonated water, orangeade, lemonade, root beer or any and all preparations, commonly referred to as soft drinks, of whatsoever kind, and are further described as including any and all beverages, commonly referred to as soft drinks, which are made with or without the use of any syrup. The term shall not include natural fruit or vegetable juices or their concentrates, or noncarbonated fruit juice drinks containing not less than 25% by volume of natural fruit juices or of fruit juice which has been reconstituted to its original state, or natural concentrated fruit or vegetable juices reconstituted to their original state, whether any of the foregoing natural juices are frozen or unfrozen, sweetened or unsweetened, seasoned with salt or spice or unseasoned, nor shall the term include coffee, coffee substitutes, tea, cocoa, natural fluid milk or noncarbonated drinks made from milk derivatives.

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

“Tangible personal property.” Corporeal personal property including, but not limited to, goods, wares, merchandise, steam and natural and manufactured and bottled gas for nonresidential use, electricity for nonresidential use, prepaid telecommunications, premium cable or premium video programming service, spirituous or vinous liquor and malt or brewed beverages and soft drinks, interstate telecommunications service originating or terminating in this Commonwealth and charged to a service address in this Commonwealth, intrastate telecommunications service, except for subscriber line charges and basic local telephone service for residential use and charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate. The service address of any intrastate telecommunications service is deemed to be within this Commonwealth or within a political subdivision, regardless of how or where billed or paid. In the case of any such interstate or intrastate telecommunications service, any charge paid through a credit or payment mechanism which does not relate to a service address, such as a bank, travel, credit or debit card, but not including prepaid telecommunications, is deemed attributable to the address of origination of the telecommunications service.

“Tax Reform Code.” The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Taxpayer.” Any person required to pay or collect the tax imposed by this chapter.

“Telecommunications service.” Any one-way transmission or any two-way, interactive transmission of sounds, signals or other intelligence converted to like form which effects or is intended to effect meaningful communications by electronic or electromagnetic means via wire, cable, satellite, light waves, microwaves, radio waves or other transmission media. The term includes all types of telecommunication

transmissions, such as local, toll, wide-area or any other type of telephone service; private line service; telegraph service; radio repeater service; wireless communication service; personal communications system service; cellular telecommunication service; specialized mobile radio service; stationary two-way radio service; and paging service. The term does not include any of the following:

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

(2) Charges to video programmers for the transport of video programming.

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

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

(ii) Telecommunications services purchased by an Internet service provider to deliver access to the Internet to its customers.

(4) Mobile telecommunications services.

“Transient vendor.” As follows:

(1) Any person who:

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

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

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

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

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

“Use.” As follows:

(1) The exercise of any right or power incidental to the ownership, custody or possession of tangible personal property and shall include, but not be limited to, transportation, storage or consumption.

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

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

(i) Washing, cleaning, waxing, polishing or lubricating of motor vehicles whether or not any tangible personal property is transferred to the purchaser in conjunction with such services.

(ii) Inspecting motor vehicles pursuant to the mandatory requirements of 75 Pa.C.S. (relating to vehicles).

(4) (i) The obtaining by a purchaser of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property except wearing apparel or shoes or applying or installing tangible personal property as a repair or

replacement part of other tangible personal property except wearing apparel or shoes, whether or not the services are performed directly or by any means except by coin-operated self-service laundry equipment for wearing apparel or household goods, and whether or not any tangible personal property is transferred to the purchaser in conjunction therewith, except such services as are obtained in the construction, reconstruction, remodeling, repair or maintenance of real estate, except that this paragraph shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under section 1204(26) (relating to exclusions from tax) or on diaper service.

(ii) The term shall not include:

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

(B) The use or consumption of tangible personal property, including, but not limited to, machinery and equipment and parts therefor, and supplies or the obtaining of the services described in this paragraph and paragraphs (2) and (3) directly in the operations of:

(I) The manufacture of tangible personal property.

(II) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term "farming" shall include the propagation and raising of ranch-raised furbearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. (relating to game) and the propagation and raising of horses to be used exclusively for commercial racing activities.

(III) The producing, delivering or rendering of a public utility service, or the constructing, reconstructing, remodeling, repairing or maintaining the facilities which are directly used in producing, delivering or rendering a public utility service.

(IV) Processing as defined in this section.

(iii) The exclusions provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to any vehicle required to be registered under 75 Pa.C.S. except those vehicles directly used by a public utility engaged in the business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used machinery, equipment, parts or foundations therefor that may be affixed to such real estate.

(iv) The exclusions provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or

services by any person other than the person directly using the same in the operations described in subparagraph (ii)(B)(I), (II), (III) and (IV).

(v) The exclusion provided in subparagraph (iii) shall not apply to:

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

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

(vi) The exclusion provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to the services enumerated in paragraphs (9) through (16) nor to lobbying services, adjustment services, collection services or credit reporting services, secretarial or editing services, disinfecting or pest control services, building maintenance or cleaning services, employment agency services, help supply services, lawn care service or self-storage service, except that the exclusion provided in subparagraph (ii)(B)(II) for farming, dairying and agriculture shall apply to the service enumerated in the definition of "disinfecting or pest control services."

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

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

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

(8) The term shall not include the providing of a motor vehicle to a nonprofit private or public school to be used by the school for the sole purpose of driver education.

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

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

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

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

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

(14) (Reserved).

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

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

(17) The obtaining by a construction contractor of tangible personal property or services provided to tangible personal property which will be used pursuant to a construction contract whether or not the tangible personal property or services are transferred.

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

“Used prebuilt housing.” Prebuilt housing that was previously subject to a sale to a prebuilt housing purchaser.

“Vendor.” Any person maintaining a place of business in this Commonwealth, selling or leasing tangible personal property, or rendering services, the sale or use of which is subject to the tax imposed by this chapter, but not including any employee who in the ordinary scope of employment renders services to the employer of the employee in exchange for wages and salaries.

#### SUBCHAPTER B IMPOSITION OF TAX

Sec.

1202. Imposition of tax.

1203. Computation of tax.

§ 1202. Imposition of tax.

(a) Sales tax.—There is hereby imposed upon each separate sale at retail of tangible personal property or services within this Commonwealth a tax of 7.0% of the purchase price. The tax shall be collected by the vendor from the purchaser and shall be paid over to this Commonwealth as provided in this chapter.

(b) Use tax.—There is hereby imposed upon the use within this Commonwealth of tangible personal property purchased at retail and on those services purchased at retail a tax of 7.0% of the purchase price. The tax shall be paid to the Commonwealth by the person who makes such use, except that such tax shall not be paid to the Commonwealth by that person where that person has paid the tax imposed by subsection (a) or has paid the tax imposed by this subsection to the vendor with respect to such use.

(c) Telecommunications services.—

(1) Notwithstanding any other provision of this chapter, the tax with respect to telecommunications service shall be computed at the rate of 7.0% upon the total amount charged to customers for such services, irrespective of whether that charge is based upon a flat rate or upon a message unit charge. Charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate shall not be subject to this tax.

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

(3) To prevent actual multistate taxation of interstate telecommunications service, a taxpayer, upon proof that the taxpayer has paid a similar tax to another state on the same interstate telecommunications service, shall be allowed a credit against the tax imposed by this section on the same interstate telecommunications service to the extent of the amount of the tax properly due and paid to the other state.

(d) Vending machine sales of food and beverages.—Notwithstanding any other provisions of this chapter, the sale or use of food and beverages dispensed by means of coin operated vending machines shall be taxed at the rate of 7.0% of the receipts collected from the machine which dispenses food and beverages heretofore taxable.

(e) Prepaid telecommunications.—

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

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

(3) (i) Notwithstanding paragraph (2), the sale or use of prepaid telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of 7.0% of the receipts collected on each sale if the service provider elects to collect the tax imposed by this chapter on receipts of each sale.

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

(e.1) Prepaid mobile telecommunications services.—

(1) Notwithstanding any other provision of this chapter, the sale or use of prepaid mobile telecommunications service evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b).

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

(3) (i) Notwithstanding paragraph (2), the sale or use of prepaid mobile telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of 7.0% of the receipts collected on each sale if the service provider elects to collect the tax imposed by this chapter on receipts of each sale.

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

(f) Prebuilt housing.—

(1) Notwithstanding any other provision of this chapter, tax with respect to sales of prebuilt housing shall be imposed, subject to the provisions of paragraph (2), on the prebuilt housing builder at the time of the prebuilt housing sale within this Commonwealth and shall be paid and reported by the prebuilt housing builder to the department in the time and manner provided in this chapter.

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

(3) In any case where prebuilt housing is purchased and the tax is not paid by the prebuilt housing builder or precollected by the manufacturer, the prebuilt housing purchaser shall remit tax directly to the department if the prebuilt housing is used in this Commonwealth without regard to whether the prebuilt housing becomes a real estate structure.

(g) Mobile telecommunications services provided by home service provider.—Notwithstanding any other provisions of this chapter and in accordance with the Mobile Telecommunications Sourcing Act (Public Law 106-252, 4 U.S.C. § 116), the sale or use of mobile telecommunications services which are deemed to be provided to a customer by a home service provider under section 4 U.S.C. § 117(a) and (b) shall be subject to the tax of 7.0% of the purchase price. The tax shall be collected by the home service provider from the customer and shall be paid over to the Commonwealth as provided in this chapter if the customer’s place of primary use is located within this

Commonwealth, regardless of where the mobile telecommunications services originate, terminate or pass through. The words and phrases used in this subsection shall have the same meanings given to them in the Mobile Telecommunications Sourcing Act.

§ 1203. Computation of tax.

The department shall promulgate regulations to assist in computing the amount of tax imposed by section 1202 (relating to imposition of tax) if the purchase price is less than or equal to a dollar. If the purchase price is more than \$1.00, 7.0% of each dollar of purchase price plus the charges set forth in this section upon any fractional part of a dollar in excess of even dollars shall be collected.

SUBCHAPTER C  
EXCLUSIONS FROM TAX

Sec.

1204. Exclusions from tax.

1205. Alternate imposition of tax.

1206. Credit against tax.

§ 1204. Exclusions from tax.

The tax imposed by section 1202 (relating to imposition of tax) shall not be imposed upon any of the following:

(1) The sale at retail or use of tangible personal property, other than motor vehicles, trailers, semitrailers, motorboats, aircraft or other similar tangible personal property required under either Federal law or laws of this Commonwealth to be registered or licensed, or services sold by or purchased from a person that is not a vendor in an isolated transaction or sold by or purchased from a person that is a vendor but is not a vendor with respect to the tangible personal property or services sold or purchased in the transaction. Inventory and stock in trade sold at retail or used shall not be excluded from the tax by this paragraph.

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

(3) The use of tangible personal property in accordance with the following:

(i) The property is purchased outside this Commonwealth for use outside this Commonwealth by an individual or business entity that, at the time of purchase, is not:

(A) a resident of this Commonwealth;  
nor

(B) actually doing business within this Commonwealth.

(ii) The purchaser later brings the tangible personal property into this Commonwealth in connection with the establishment of a permanent business or residence in this Commonwealth.

(iii) The property has been purchased more than six months prior to the earlier of:

(A) the date it was first brought into this Commonwealth; or

(B) the establishment of a business or residence under subparagraph (ii).

(iv) This paragraph does not apply to tangible personal property temporarily brought into this Commonwealth for the performance of contracts for the construction, reconstruction, remodeling, repairing and maintenance of real estate.

(4) The sale at retail or use of disposable diapers, premoistened wipes, incontinence products, colostomy deodorants, toilet paper, sanitary napkins, tampons or similar items used for feminine hygiene or toothpaste, toothbrushes or dental floss.

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

(6) (Reserved).

(7) (Reserved).

(8) (Reserved).

(9) (Reserved).

(10) (i) The sale at retail to or use by:

(A) any charitable organization, volunteer firemen's organization or nonprofit educational institution; or

(B) a religious organization for religious purposes of tangible personal property or services other than pursuant to a construction contract.

(ii) The exclusion under this paragraph shall not apply with respect to any tangible personal property or services used in any unrelated trade or business carried on by such organization or institution or with respect to any materials, supplies and equipment used and transferred to the organization or institution in the construction, reconstruction, remodeling, renovation, repairs and maintenance of any real estate structure, other than building machinery and equipment, except materials and supplies when purchased by such organizations or institutions for routine maintenance and repairs.

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

(12) The sale at retail to, or use by the United States, this Commonwealth or its instrumentalities or political subdivisions of tangible personal property or services.

(13) The sale at retail or use of wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, nonreturnable containers and all other wrapping supplies, if the use is incidental to the delivery of personal property. This paragraph does not apply to a charge for wrapping or packaging.

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

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

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

(17) The sale at retail or use of any of the following:

(i) Prescription or nonprescription medicines, drugs or medical supplies.

(ii) Crutches and wheelchairs for the use of persons who are walking impaired.

(iii) Artificial limbs, artificial eyes and artificial hearing devices when designed to be worn on the person of the purchaser or user.

(iv) False teeth and materials used by a dentist in dental treatment.

(v) Eyeglasses when especially designed or prescribed by an ophthalmologist, oculist or optometrist for the personal use of the owner or purchaser.

(vi) Artificial braces and supports designed solely for the use of persons who are walking impaired or any other therapeutic, prosthetic or artificial device designed for the use of a particular individual to correct or alleviate a physical incapacity, including, but not limited to, hospital beds, iron lungs and kidney machines.

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

(19) (Reserved).

(20) (Reserved).

(21) (Reserved).

(22) (Reserved).

(23) (Reserved).

(24) The sale at retail or use of motor vehicles, trailers and semi-trailers, or bodies attached to the chassis of motor vehicles, trailers or semi-trailers which are:

(i) sold to a nonresident;

(ii) to be used outside of this Commonwealth; and

(iii) registered in another state within 20 days after delivery to the vendee.

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

(26) (i) The sale at retail or use of all vesture, wearing apparel, raiments, garments, footwear and other articles of clothing, including clothing patterns and items that are to be a component part of clothing, worn or carried on or about the human body.

(ii) This paragraph does not include accessories, ornamental wear, formal day or evening apparel, and articles made of fur on the hide or pelt or any material imitative of fur and articles of which such fur, real, imitation or synthetic, is the component material of chief value, but only if such value is more than three times the value of the next most valuable component material, and sporting goods and clothing not normally used or worn when not engaged in sports.

(27) (Reserved).

(28) (Reserved).

(29) (i) The sale at retail or use of food and beverages for human consumption.

(ii) This paragraph shall not apply to any of the following:

(A) Soft drinks.

(B) Malt and brewed beverages and spirituous and vinous liquors.

(iii) Food or beverages, whether sold for consumption on or off the premises or on a "take-out" or "to go" basis or delivered to the purchaser or consumer, when purchased from persons engaged in the business of catering; or from persons engaged in the business of operating establishments from which ready-to-eat food and beverages are sold.

(iv) (A) For purposes of this paragraph the term "establishments" includes, but is not limited to, restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels, night clubs, fast food operations, pizzerias, fairs, carnivals, lunch carts, ice cream stands, snack bars, cafeterias, employee cafeterias, theaters, stadiums, arenas, amusement parks, carryout shops, coffee shops and other establishments whether mobile or immobile.

(B) The term does not include bakeries, pastry shops, donut shops, delicatessens, grocery stores, supermarkets, farmer's markets, convenience stores or vending machines from

which food or beverages ready to eat are sold except for the sale of meals, sandwiches, food from salad bars, hand-dipped or hand-served ice-based products, including ice cream and yogurt, hot soup, hot pizza and other hot food items, brewed coffee and hot beverages.

(C) The term "beverages" does not include malt and brewed beverages and spirituous and vinous liquors, but shall include soft drinks.

(v) This paragraph does not apply to the sale at retail of food and beverages at or from a school or church in the ordinary course of the activities of such organization.

(30) (i) The sale at retail or use of newspapers.

(ii) For purposes of this paragraph, the term "newspaper" shall mean a legal newspaper or publication containing matters of general interest and reports of current events which qualifies as a newspaper of general circulation qualified to carry a legal advertisement as those terms are defined in 45 Pa.C.S. § 101 (relating to definitions), not including magazines.

(iii) This paragraph includes any printed advertising materials circulated with such newspaper regardless of where or by whom the advertising material was produced.

(31) The sale at retail or use of caskets and burial vaults for human remains and markers and tombstones for human graves.

(32) The sale at retail or use of flags of the United States of America and the Commonwealth.

(33) The sale at retail or use of textbooks for use in schools, colleges and universities, either public or private, that are recognized by the Department of Education, when the textbooks are purchased on behalf of or through such schools, colleges or universities.

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

(35) The sale at retail or use of mail order catalogs and direct mail advertising literature or materials, including electoral literature or materials, such as envelopes, address labels and a one-time license to use a list of names and mailing addresses for each delivery of direct mail advertising literature or materials, including electoral literature or materials, through the United States Postal Service.

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

(37) (Reserved).

(38) The sale at retail of horses, if at the time of purchase, the seller is directed to ship or deliver the horse to an out-of-State location, whether or not the charges for shipment are paid for by the seller or the purchaser. The seller must obtain a bill of lading, either from the carrier or from the purchaser, who, in turn has obtained the bill of lading from the carrier, reflecting delivery to the out-of-State address to which the horse has been shipped. The seller must execute a "Certificate of Delivery to Destination Outside of the Commonwealth" for each bill of lading reflecting out-of-State delivery. The seller shall retain the certificate of delivery form to justify the noncollection of sales tax with respect to the transaction to which the form relates. In transactions where a horse is sold by the seller and delivered to a domiciled person, agent or corporation prior to its being delivered to an out-of-State location, the "Certificate of Delivery to Destination Outside of the Commonwealth" form must have attached to it bills of lading both for the transfer to the domiciled person, agent or corporation and from the aforementioned to the out-of-State location.

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

(40) (Reserved).

(41) The sale at retail of supplies and materials to tourist promotion agencies which receive grants from the Commonwealth for distribution to the public as promotional material and the use of supplies and materials by the agencies for the purposes set forth in this paragraph.

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

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

(44) The sale at retail or use of firewood. For the purpose of this paragraph, "firewood" means the product of trees when severed from the land and cut into proper lengths for burning and pellets made from pure wood sawdust if used for fuel for cooking, hot water production or to heat residential dwellings.

(45) The sale at retail or use of materials used in the construction and erection of objects purchased by not-for-profit organizations for purposes of commemoration and memorialization of historical events, provided that the object is erected upon publicly owned property or property to be conveyed to a public entity upon the commemoration or memorialization of the historical event.

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

(47) (Reserved).

(48) (Reserved).

(49) The sale at retail or use of food and beverages by nonprofit associations which support sports programs. For purposes of this paragraph, the words and phrases shall have the following meanings:

"Nonprofit association." An entity which is organized as a nonprofit corporation or nonprofit unincorporated association under the laws of this Commonwealth or the United States or any entity which is authorized to do business in this Commonwealth as a nonprofit corporation or unincorporated association under the laws of this Commonwealth, including youth or athletic, volunteer fire, ambulance, religious, charitable, fraternal, veterans or civic, or any separately chartered auxiliary of the association, if organized and operated on a nonprofit basis.

"Sports program." Baseball (including softball), football, basketball, soccer and any other competitive sport formally recognized as a sport by the United States Olympic Committee as specified by and under the jurisdiction of the Amateur Sports Act of 1978 (Public Law 95-606, 36 U.S.C. § 371 et seq.), the Amateur Athletic Union or the National Collegiate Athletic Association. The term shall be limited to a program or that portion of a program which is organized for recreational purposes and the activities of which are substantially for such purposes and which is primarily for participants who are 18 years of age or younger or whose 19th birthdays occur during the year of participation or the competitive season, whichever is longer. There shall, however, be no age limitation for programs operated for persons with physical disabilities or persons with mental retardation.

"Support." The funds raised from sales are used to pay the expenses of a sports program or the nonprofit association sells the food and beverages at a location where a sports program is being conducted under this act.

(50) The sale at retail or use of subscriptions for magazines. The term "magazine" refers to a periodical published at regular intervals not exceeding three months and which are circulated among the general public, containing matters of

general interest and reports of current events published for the purpose of disseminating information of a public character or devoted to literature, the sciences, art or some special industry. This paragraph includes any printed advertising material circulated with the periodical or publication, regardless of where or by whom the printed advertising material was produced.

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

(52) (Reserved).

(53) The sale at retail or use of candy or gum regardless of the location from which the candy or gum is sold.

(54) The sale at retail to or use by a producer of commercial motion pictures of any tangible personal property directly used in the production of a feature-length commercial motion picture distributed to a national audience as long as:

(i) the production of any motion picture for which the property will be used does not violate any Federal or State law; and

(ii) the purchaser furnishes to the vendor a certificate substantially in the form as the Department of Community and Economic Development may, by regulation, prescribe, stating that the sale is exempt from tax under this paragraph.

(55) The sale at retail or use of horses to be used exclusively for commercial racing activities and the sale at retail and use of feed, bedding, grooming supplies, riding tack, farrier services, portable stalls and sulkies for horses used exclusively for commercial racing activities.

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

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

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

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

(57) The sale at retail to or use by a construction contractor of building machinery and equipment and services thereto that are:

(i) Transferred pursuant to a construction contract for any charitable organization, volunteer firemen's organization, nonprofit educational institution or religious organization for religious purposes, if:

(A) The building machinery and equipment and services thereto are not used in any unrelated trade or business.

(B) Transferred to the United States or the Commonwealth or its instrumentalities or political subdivisions.

(58) (Reserved).

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

(60) The sale or use of used prebuilt housing.

(61) The sale at retail to or use of food and nonalcoholic beverages by an airline which will transfer the food or

nonalcoholic beverages to passengers in connection with the rendering of the airline service.

(62) The sale at retail or use of tangible personal property or services which are directly used in farming, dairying or agriculture when engaged in as a business enterprise whether or not the sale is made to the person directly engaged in the business enterprise or to a person contracting with the person directly engaged in the business enterprise for the production of food.

(63) The sale at retail or use of separately stated fees paid pursuant to 13 Pa.C.S. § 9525 (relating to fees).

(64) The sale at retail to or use by a construction contractor, employed by a public school district pursuant to a construction contract, of any materials and building supplies which, during construction or reconstruction, are made part of any public school building utilized for instructional classroom education within this Commonwealth, if the construction or reconstruction:

- (i) is necessitated by a disaster emergency, as defined in 35 Pa.C.S. § 7102 (relating to definitions); and
- (ii) takes place during the period when there is a declaration of disaster emergency under 35 Pa.C.S. § 7301(c) (relating to general authority of Governor).

#### § 1205. Alternate imposition of tax.

(a) Dealers of motor vehicles.—A person actively and principally engaged in the business of selling new or used motor vehicles, trailers or semitrailers, and registered with the department in the dealer's class who:

(1) acquires a motor vehicle, trailer or semitrailer for the purpose of resale; and

(2) prior to the resale, uses the motor vehicle, trailer or semitrailer for a taxable use under this chapter

may pay a tax equal to 7.0% of the fair rental value of the motor vehicle, trailer or semitrailer during that use.

(b) Commercial aircraft operators.—A commercial aircraft operator who:

(1) acquires an aircraft for the purpose of resale, or lease, or is entitled to claim another valid exemption at the time of purchase; and

(2) subsequent to the purchase, periodically uses the same aircraft for a taxable use under this chapter

may elect to pay a tax equal to 7.0% of the fair rental value of the aircraft during that use.

(c) Nonapplicability.—This section shall not apply to the use of a vehicle as a wrecker, parts truck, delivery truck or courtesy car.

#### § 1206. Credit against tax.

(a) Prerequisites.—

(1) Subject to the provisions of paragraph (2), a credit against the tax imposed by section 1202 (relating to imposition of tax) shall be granted with respect to tangible personal property or services purchased for use outside this Commonwealth equal to the tax paid to another state by reason of the imposition by the other state of a tax similar to the tax imposed by this chapter.

(2) No credit shall be granted under this section unless the other state grants substantially similar tax relief by reason of the payment of tax under this chapter.

(b) Call center credit.—A credit against the tax imposed by section 1202 (relating to imposition of tax) on telecommunications services shall be granted to a call center for gross receipts tax paid by a telephone company on the receipts derived from the sale of incoming and outgoing interstate telecommunications services to the call center under section 1101(a)(2) of the Tax Reform Code. The following apply:

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

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

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

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

(5) The total amount of tax credits provided for in this subsection and approved by the department shall not exceed \$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.

#### SUBCHAPTER D LICENSES

Sec.

1208. Licenses.

§ 1208. Licenses.

(a) General rule.—Every person maintaining a place of business in this Commonwealth, selling or leasing services or tangible personal property, the sale or use of which is subject to tax and who has not obtained a license from the department, shall, prior to the beginning of business, make application to the department, on a form prescribed by the department, for a license. If the person maintains more than one place of business in this Commonwealth, the license shall be issued for the principal place of business in this Commonwealth.

(b) Conditions of licensure.—The department shall, after the receipt of an application, issue the license applied for under subsection (a), if the applicant has filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan. The license shall be nonassignable and valid for a period of five years.

(b.1) Grounds for refusal to issue license.—

(1) If an applicant for a license or any person holding a license has not filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan, the department may refuse to issue, may suspend or may revoke said license.

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

(3) An applicant or licensee aggrieved by the determination of the department may file an appeal pursuant to the provisions for administrative appeals in this chapter.

(4) In the case of a suspension or revocation which is appealed, the license shall remain valid pending a final outcome of the appeals process. Notwithstanding section 1274, and sections, 353(f), 408(b), 603, 702, 802, 904 and 1102 of the Tax Reform Code or any other provision of law to the contrary, if no appeal is taken or if an appeal is taken and denied at the conclusion of the appeal process, the department may disclose,

by publication or otherwise, the identity of a person and the fact that the person's license has been refused, suspended or revoked under this subsection. The department may include the basis for refusal, suspension or revocation in the disclosure.

(c) Penalties.—

(1) A person who maintains a place of business in this Commonwealth for the purpose of selling or leasing services or tangible personal property, the sale or use of which is subject to tax, without having first been licensed by the department shall be guilty of a summary offense and, upon conviction thereof, be sentenced to pay a fine of not less than \$300 nor more than \$1,500 and, in default thereof, to undergo imprisonment of not less than five days nor more than 30 days.

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

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

(4) The Secretary of Revenue may designate employees of the department to enforce the provisions of this subsection. Those employees shall exhibit proof of and be within the scope of the designation when instituting proceedings as provided by the Pennsylvania Rules of Criminal Procedure.

(d) Liability to pay tax remains.—The failure of any person to obtain a license shall not relieve that person of liability to pay the tax imposed by this chapter.

#### SUBCHAPTER E HOTEL OCCUPANCY TAX

Sec.

1209. Definitions.

1210. Imposition of tax.

1211. Seasonal tax returns.

§ 1209. Definitions.

(a) General rule.—For the purposes of this subchapter, the following words, terms and phrases shall have the meaning given to them in this subsection, unless the context clearly indicates otherwise:

“Hotel.” A building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term shall not include any charitable, educational or religious institution summer camp for children, hospital or nursing home.

“Occupancy.” The use or possession or the right to the use or possession by any person except a permanent resident of any room or rooms in a hotel for any purpose or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms.

“Occupant.” A person except a permanent resident who for a consideration, uses, possesses or has a right to use or possess any room or rooms in a hotel under a lease, concession, permit, right of access, license or agreement.

“Operator.” A person who operates a hotel.

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

“Rent.” The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever. The term shall not include a gratuity.

(b) Special definitions.—The following words and phrases, when used in Subchapters D (relating to licenses) and F (relating to returns), for the purposes of those subchapters only, shall, in addition to the meaning ascribed to them in section 1201 (relating to definitions), have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

“Maintaining a place of business in this Commonwealth.” Being the operator of a hotel in this Commonwealth.

“Purchase at retail.” Occupancy.

“Purchase price.” Rent.

“Purchaser.” An occupant.

“Sale at retail.” The providing of occupancy to an occupant by an operator.

“Services.” Occupancy.

“Tangible personal property.” Occupancy.

“Use.” Occupancy.

“Vendor.” Operator.

§ 1210. Imposition of tax.

There is hereby imposed an excise tax of 7.0% of the rent upon every occupancy of a room or rooms in a hotel in this Commonwealth, which tax shall be collected by the operator from the occupant and paid to the Commonwealth as provided by this chapter and the Tax Reform Code.

§ 1211. Seasonal tax returns.

Notwithstanding any other provision of this chapter or the Tax Reform Code, the department may, by regulation, waive the requirement for the filing of quarterly returns in the case of an operator whose hotel is operated only during certain seasons of the year, and may provide for the filing of returns by such persons at times other than those provided by section 1221 (relating to payment).

#### SUBCHAPTER F RETURNS

Sec.

1215. Persons required to make returns.

1216. Form of returns.

1217. Time for filing returns.

1218. Extension of time for filing returns.

1219. Place for filing returns.

1220. Timely mailing treated as timely filing and payment.

§ 1215. Persons required to make returns.

A person required to pay tax to the department or collect and remit tax to the department shall file returns with respect to such tax.

§ 1216. Form of returns.

The returns required by section 1215 (relating to persons required to make returns) shall be on forms prescribed by the department and shall show such information with respect to the taxes imposed by this chapter as the department may reasonably require.

§ 1217. Time for filing returns.

(a) Quarterly and monthly returns.—

(1) A return shall be filed quarterly by every licensee on or before the 20th day of April, July, October and January for the three months ending the last day of March, June, September and December.

(2) A return shall be filed monthly with respect to each month by every licensee whose total tax reported, or in the event no report is filed, the total tax which should have been reported, for the third calendar quarter of the preceding year equals or exceeds \$700. The returns shall be filed on or before the 20th day of the next succeeding month with respect to which the return is made. Any licensee required to file monthly returns under this section shall be relieved from filing quarterly returns.

(b) Annual returns.—For the calendar year 1971 and for each year thereafter no annual return shall be filed except as may be required by rules and regulations of the department promulgated and published at least 60 days prior to the end of the year with respect to which the returns are made. Where annual returns are required, licensees shall not be required to file the returns prior to the 20th day of the year succeeding the year with respect to which the returns are made.

(c) Other returns.—A person, other than a licensee, who is liable to pay to the department any tax under this chapter, shall file a return on or before the 20th day of the month succeeding the month in which the person becomes liable for the tax.

(d) Small taxpayers.—The department, by regulation, may waive the requirement for the filing of a quarterly return in the case of any licensee whose individual tax collections do not exceed \$85 per



calendar quarter and may provide for reporting on a less frequent basis in such cases.

§ 1218. Extension of time for filing returns.

The department may on written application and for good cause shown grant a reasonable extension of time for filing any return required under this chapter. The time for making a return shall not be extended for more than three months.

§ 1219. Place for filing returns.

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

§ 1220. Timely mailing treated as timely filing and payment.

(a) General rule.—Notwithstanding the provisions of any State tax law to the contrary, when a report or payment of all or any portion of a State tax is required by law to be received by the department or other agency of this Commonwealth on or before a day certain, the taxpayer shall be deemed to have complied with that law if the letter transmitting the report or payment of the tax which has been received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

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

#### SUBCHAPTER G PAYMENT

Sec.

1221. Payment.

1222. Time of payment.

1223. Other times for payment.

1224. Place for payment.

1225. Tax held in trust for Commonwealth.

1226. Local receivers of use tax.

1227. Discount.

§ 1221. Payment.

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

§ 1222. Time of payment.

(a) Monthly, bimonthly and quarterly payments.—The tax imposed by this chapter and incurred or collected by a licensee shall be due and payable by the licensee on the day the return is required to be filed under the provisions of section 1217 (relating to time for filing returns) and the payment must accompany the return for the preceding period.

(b) Annual payments.—If the amount of tax due for the preceding year as shown by the annual return of any taxpayer is greater than the amount already paid by the taxpayer in connection with the taxpayer's monthly or quarterly returns, the taxpayer shall send with such annual return a remittance for the unpaid amount of tax for the year.

(c) Other payments.—A person other than a licensee liable to pay any tax under this chapter shall remit the tax at the time of filing the return required by this chapter.

§ 1223. Other times for payment.

In the event that the department authorizes a taxpayer to file a return at other times than those specified in section 1217 (relating to time for filing returns), the tax due shall be paid at the time the return is filed.

§ 1224. Place for payment.

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

§ 1225. Tax held in trust for Commonwealth.

(a) General rule.—All taxes collected by any person from purchasers in accordance with this chapter and all taxes collected by any person from purchasers under color of this chapter which have not been properly refunded by the person to the purchaser shall constitute a trust fund for the Commonwealth. The trust shall be enforceable against that person, his representatives and any person, other than a purchaser to whom a refund has been made properly, receiving any part

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

(b) Presumption.—A person who receives payment of a lawful obligation of the taxpayer from the fund shall be presumed to have received the same in good faith and without any knowledge of the breach of trust.

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

§ 1226. Local receivers of use tax.

(a) County treasurers.—

(1) A county treasurer may receive use tax due and payable under the provisions of this chapter from any person other than a licensee. The receiving of the taxes shall be pursuant to rules and regulations promulgated by the department and upon forms furnished by the department.

(2) 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 1% of the amount of use taxes received, which amount shall be retained in lieu of any commission otherwise allowable by law for the collection of the tax.

(b) Nonapplicability.—This section shall not apply to counties of the first class.

§ 1227. Discount.

If a return is filed by a licensee and the tax shown to be due thereon less any discount is paid all within the time prescribed, the licensee shall be entitled to credit and apply against the tax payable by the licensee a discount of 1% of the amount of the tax collected by the licensee as compensation for the expense of collecting and remitting the same and as a consideration of the prompt payment thereof.

#### SUBCHAPTER H ASSESSMENT AND REASSESSMENT

Sec.

1230. Assessment.

1231. Mode and time of assessment.

1232. Reassessment.

1233. Assessment to recover erroneous refunds.

1234. Review by Board of Finance and Revenue.

1235. Appeal to Commonwealth Court.

1236. Burden of proof.

§ 1230. Assessment.

The department is authorized and required to make the inquiries, determinations and assessments of the tax, including interest, additions and penalties, imposed by this chapter.

§ 1231. Mode and time of assessment.

(a) Underpayment of tax.—Within a reasonable time after any return is filed, the department shall examine it and, if the return shows a greater tax due or collected than the amount of tax remitted with the return, the department shall issue an assessment for the difference, together with an addition of 3% of such difference, which shall be paid to the department within ten days after a notice of the assessment has been mailed to the taxpayer. If such assessment is not paid within ten days, there shall be added to the assessment and paid to the department an additional 3% of the difference for each month during which the assessment remains unpaid, but the total of all additions shall not exceed 18% of the difference shown on the assessment.

(b) Understatement of tax.—If the department determines that any return or returns of any taxpayer understates the amount of tax due, it shall determine the proper amount and shall ascertain the difference between the amount of tax shown in the return and the amount determined, the difference being hereafter sometimes referred to as the "deficiency." A notice of assessment for the deficiency and the reasons for the deficiency shall then be sent to the taxpayer. The deficiency shall be paid to the department within 30 days after a notice of the assessment has been mailed to the taxpayer.

(c) Failure to file return.—In the event that any taxpayer fails to file a return required by this chapter, the department may make an estimated assessment, based on information available, of the proper amount of tax owing by the taxpayer. A notice of assessment in the estimated amount shall be sent to the taxpayer. The tax shall be paid within 30 days after a notice of the estimated assessment has been mailed to the taxpayer.

(d) Authority to establish effective rates by business classification.—The department is authorized to make the studies necessary to compute effective rates by business classification, based upon the ratio between the tax required to be collected and taxable sales and to use the rates in arriving at the apparent tax liability of a taxpayer. Any assessment based upon such rates shall be prima facie correct, except that the rate shall not be considered where a taxpayer establishes that the rate is based on a sample inapplicable to the taxpayer.

#### § 1232. Reassessment.

(a) Notice of intention to file petition.—Any taxpayer against whom an assessment is made may petition the department for a reassessment. Notice of an intention to file such a petition shall be given to the department within 30 days of the date the notice of assessment was mailed to the taxpayer, except that the department for due cause may accept the notice within 90 days of the date the notice of assessment was mailed. The department by registered mail shall supply the taxpayer with a statement setting forth in reasonable detail the basis of the assessment within 30 days after receipt of the taxpayer's notice of intention to file a petition for reassessment.

(b) Petition for reassessment.—A petition for reassessment shall be filed within 30 days after the basis of assessment has been mailed to the taxpayer. Such petition shall set forth in reasonable detail the grounds upon which the taxpayer claims that the assessment is erroneous or unlawful, in whole or in part, and shall be accompanied by an affidavit or affirmation that the facts contained in the petition are true and correct and that the petition is not interposed for delay. An extension of time for filing the petition may be allowed for cause but in no case shall the extension exceed 120 days.

(c) Hearing.—The department shall hold such hearings as may be necessary for the purpose, at such times and places as it may determine. Each taxpayer who has duly filed a petition for reassessment shall be notified by the department of the time when, and the place where, the hearing in the taxpayer's case will be held.

(d) Decision by department.—It shall be the duty of the department, within six months after receiving a filed petition for reassessment, to dispose of the issue raised by the petition and mail notice of the department's decision to the petitioner. The taxpayer and the department may, however, by stipulation, extend such disposal time by not more than six additional months.

#### § 1233. Assessment to recover erroneous refunds.

The department may, within two years of the granting of any refund or credit, or within the period in which an assessment could have been filed by the department with respect to the transaction pertaining to which the refund was granted, whichever period occurs last, file an assessment to recover any refund or part thereof or credit or part thereof which was erroneously made or allowed.

#### § 1234. Review by Board of Finance and Revenue.

(a) Time limit.—Within 60 days after the date of mailing of notice by the department of the decision on any petition for reassessment filed with it, the person against whom such assessment was made may, by petition, request the Board of Finance and Revenue to review such decision. The failure of the department to notify the petitioner of a decision within the time provided for by section 1232 (relating to reassessment) shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within 120 days of the date prior to which the department should have mailed to the petitioner its notice of decision.

(b) Petition for review.—Every petition for review filed hereunder shall state specifically the reasons on which the petitioner relies, or shall incorporate by reference the petition for reassessment in

which the reasons are stated. The petition shall be supported by affidavit that it is not made for the purpose of delay and that the facts set forth therein are true.

(c) Decision by Board of Finance and Revenue.—The Board of Finance and Revenue shall act finally in disposing of petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department, upon the petition for reassessment, shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on the petition for reassessment, or it may reassess the tax due on such basis as it deems according to law. The board shall give notice of its action to the department and to the petitioner.

#### § 1235. Appeal to Commonwealth Court.

Any person aggrieved by the decision of the Board of Finance and Revenue or by the board's failure to act upon a petition for review within six months may appeal in the manner now or hereafter provided by law for appeals in the case of tax settlements.

#### § 1236. Burden of proof.

In all cases of petitions for reassessment, review or appeal, the burden of proof shall be upon the petitioner or appellant, as the case may be.

### SUBCHAPTER I COLLECTION

#### Sec.

1237. Collection of tax.

1238. Collection of tax on motor vehicles, trailers and semitrailers.

1239. Precollection of tax.

1240. Bulk and auction sales.

1241. Collection upon failure to request reassessment, review or appeal.

#### § 1237. Collection of tax.

(a) Collection by department.—The department shall collect the tax in the manner provided by law for the collection of taxes imposed by the laws of this Commonwealth.

(b) Collection by persons maintaining a place of business in this Commonwealth.—Every person maintaining a place of business in this Commonwealth and selling or leasing tangible personal property or services, the sale or use of which is subject to tax shall collect the tax from the purchaser or lessee at the time of making the sale or lease, and shall remit the tax to the department, unless such collection and remittance is otherwise provided for in this chapter.

(c) Collection by persons delivering property in this Commonwealth.—Every person not otherwise required to collect tax that delivers tangible personal property to a location within this Commonwealth and that unpacks, positions, places or assembles the tangible personal property shall collect the tax from the purchaser at the time of delivery and shall remit the tax to the department if the person delivering the tangible personal property is responsible for collecting any portion of the purchase price of the tangible personal property delivered and the purchaser has not provided the person with proof that the tax imposed by this chapter has been or will be collected by the seller or that the purchaser provided the seller with a valid exemption certificate. Every person required to collect tax under this paragraph shall be deemed to be selling or leasing tangible personal property or services, the sale or use of which is subject to the tax imposed under section 1202 (relating to imposition of tax).

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

(e) Exemption certificates.—If the tax does not apply to the sale or lease of tangible personal property or services, the purchaser or lessee shall furnish to the vendor a certificate indicating that the sale is not legally subject to the tax. The certificate shall be in substantially the form as the department may, by regulation, prescribe. Where the tangible personal property or service is of a type that is never subject to the tax imposed or where the sale or lease is in interstate commerce,

a certificate need not be furnished. Where a series of transactions are not subject to tax, a purchaser or user may furnish the vendor with a single exemption certificate in substantially such form and valid for such period of time as the department may, by regulation, prescribe. The department shall provide all school districts and intermediate units with a permanent tax exemption number.

(f) Good faith reliance on exemption certificate.—An exemption certificate, which is complete and regular and on its face discloses a valid basis of exemption if taken in good faith, shall relieve the vendor from the liability imposed by this section. An exemption certificate accepted by a vendor from a natural person domiciled within this Commonwealth or any association, fiduciary, partnership, corporation or other entity, either authorized to do business within this Commonwealth or having an established place of business within this Commonwealth, in the ordinary course of the vendor's business, which on its face discloses a valid basis of exemption consistent with the activity of the purchaser and character of the property or service being purchased or which is provided to the vendor by a charitable, religious, educational or volunteer firemen's organization and contains the organization's charitable exemption number and which, in the case of any purchase costing \$200 or more, is accompanied by a sworn declaration on a form to be provided by the department of an intended usage of the property or service which would render it nontaxable, shall be presumed to be taken in good faith and the burden of proving otherwise shall be on the department.

(g) Direct payment permits.—The department may authorize a purchaser or lessee who acquires tangible personal property or services under circumstances that make it impossible at the time of acquisition to determine the manner in which the tangible personal property or service will be used, to pay the tax directly to the department, and waive the collection of the tax by the vendor. No such authority shall be granted or exercised, except upon application to the department and the issuance by the department, in its discretion, of a direct payment permit. If a direct payment permit is granted, its use shall be subject to conditions specified by the department, and the payment of tax on all acquisitions pursuant to the permit shall be made directly to the department by the permit holder.

§ 1238. Collection of tax on motor vehicles, trailers and semitrailers.

(a) Direct payment of tax.—Notwithstanding the provisions of section 1237(b) (relating to collection of tax), tax due on the sale at retail or use of a motor vehicle, trailer or semitrailer, except mobile homes as defined in 75 Pa.C.S. § 102 (relating to definitions) required by law to be registered with the department, shall be paid by the purchaser or user directly to the department upon application to the department for an issuance of a certificate of title upon such motor vehicle, trailer or semitrailer. The department shall not issue a certificate of title until the tax has been paid, or evidence satisfactory to the department has been given to establish that tax is not due.

(b) Failure to pay tax.—The department may cancel or suspend any record of certificate of title or registration of a motor vehicle, trailer or semitrailer when the check received in payment of the tax on such vehicle is not paid upon demand. Such tax shall be considered as a first encumbrance against such vehicle and the vehicle may not be transferred without first payment in full of such tax and any interest additions or penalties which shall accrue thereon in accordance with this chapter.

§ 1239. Pre-collection of tax.

(a) General rule.—The department may, by regulation, authorize or require particular categories of vendors selling tangible personal property for resale to precollect from the purchaser the tax which the purchaser will collect upon making a sale at retail of such tangible personal property. The department, however, may not pursuant to this section require a vendor to precollect tax from a purchaser who purchases for resale more than \$1,000 worth of tangible personal property from such vendor per year.

(b) License exception.—In any case in which a vendor has been authorized to prepay the tax to the person from whom the vendor purchased the tangible personal property for resale, the vendor so

authorized to prepay the tax may, under the regulations of the department, be relieved from his duty to secure a license if the duty shall arise only by reason of the vendor's sale of the tangible personal property with respect to which the vendor is, under authorization of the department, to prepay the tax.

(c) Sale at retail.—The vendor, on making a sale at retail of tangible personal property with respect to which the vendor has prepaid the tax, must separately state at the time of resale the proper amount of tax on the transaction, and reimburse himself on account of the taxes which he has previously prepaid. Should such vendor collect a greater amount of tax in any reporting period than the vendor had previously prepaid upon purchase of the goods with respect to which he prepaid the tax, the vendor must file a return and remit the balance to the Commonwealth at the time at which a return would otherwise be due with respect to such sales.

§ 1240. Bulk and auction sales.

A person that sells or causes to be sold at auction, or that sells or transfers in bulk, 51% or more of any stock of goods, wares or merchandise of any kind, fixtures, machinery, equipment, buildings or real estate, involved in a business for which the person is licensed or required to be licensed under the provisions of this chapter, or is liable for filing use tax returns in accordance with the provisions of this chapter, shall be subject to the provisions of section 1403 of the Fiscal Code.

§ 1241. Collection upon failure to request reassessment, review or appeal.

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

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

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

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

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

(b) Defenses.—In any such case in a proceeding for the collection of such taxes, the person against whom they were assessed shall not be permitted to set up any ground of defense that might have been determined by the department, the Board of Finance and Revenue or the courts. The defense of failure of the department to mail notice of assessment or reassessment to the taxpayer and the defense of payment of assessment or reassessment, however, may be raised in proceedings for collection by a motion to stay the proceedings.

#### SUBCHAPTER J NONPAYMENT

Sec.

1242. Lien for taxes.

1243. Suit for taxes.

1244. Tax suit comity.

1245. Service.

§ 1242. Lien for taxes.

(a) Lien imposed.—If any person liable to pay any tax neglects or refuses to pay the tax after demand, the amount, including any interest, addition or penalty, together with any costs that may accrue in addition thereto, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of the person but only after the lien has been entered and docketed of record by the prothonotary of the county where the property is situated. The department may, at any time, transmit, to the prothonotaries of the respective counties, certified copies of all liens for taxes imposed by this chapter and penalties and interest. It shall be the duty of each prothonotary receiving the lien to enter and docket the lien of record in the prothonotary's office, which lien shall be indexed as judgments are indexed. No prothonotary shall require, as a condition precedent to the entry of the liens, the payment of the costs incident to the liens.

(b) Priority of lien and effect on judicial date; no discharge by sale on junior lien.—The lien imposed under this section shall have priority from the date of its recording under subsection (a), and shall be fully paid and satisfied out of the proceeds of any judicial sale of property subject to the lien before any other obligation, judgment, claim, lien or estate to which the property may subsequently become subject, except costs of the sale and of the writ upon which the sale was made, and real estate taxes and municipal claims against the property, but shall be subordinate to mortgages and other liens existing and duly recorded or entered of record prior to the recording of the tax lien. In the case of a judicial sale of property, subject to a lien imposed under this section, upon a lien or claim over which the lien imposed under this section has priority, the sale shall discharge the lien imposed under this section to the extent only that the proceeds are applied to its payment, and the lien shall continue in full force and effect as to the balance remaining unpaid. There shall be no inquisition or condemnation upon any judicial sale of real estate made by the Commonwealth pursuant to the provisions hereof. The lien of the taxes, interest and penalties shall continue for five years from the date of entry, and may be revived and continued in the manner now or hereafter provided for renewal of judgments, or as may be provided in the Fiscal Code, and a writ of execution may directly issue upon the lien without the issuance and prosecution to judgment of a writ of scire facias. Not less than ten days before issuance of any execution on the lien, however, notice of the filing and the effect of the lien shall be sent by registered mail to the taxpayer at his last known post office address. The lien shall have no effect upon any stock of goods, wares or merchandise regularly sold or leased in the ordinary course of business by the person against whom the lien has been entered, unless a writ of execution has been issued and a levy made upon the stock of goods, wares and merchandise.

(c) Duty of prothonotary.—Any willful failure of any prothonotary to carry out any duty imposed upon the prothonotary by this section shall be a misdemeanor and, upon conviction, the prothonotary shall be sentenced to pay a fine not exceeding \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both.

(d) Priority of tax.—Except as otherwise provided in this section, in the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes imposed by this chapter which are due and unpaid and are not collectible under the provisions of section 1225 (relating to tax held in trust for Commonwealth) shall be paid from the first money available for distribution in priority to all other claims and liens, except insofar as the laws of the United States may give a prior claim to the Federal Government. Any person charged with the administration or distribution of any such property or estate, who shall violate the provisions of this section, shall be personally liable for any taxes imposed by this chapter, which are accrued and unpaid and are chargeable against the person whose property or estate is being administered or distributed.

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

#### § 1243. Suit for taxes.

(a) Commencement.—At any time within three years after any tax or any amount of tax shall be finally due and payable, the department may commence an action in the courts of this Commonwealth, of any state or of the United States, in the name of the Commonwealth of Pennsylvania, to collect the amount of tax due together with additions, interest, penalties and costs in the manner provided at law or in equity for the collection of ordinary debts.

(b) Procedure.—The Attorney General shall prosecute the action and, except as provided in this chapter, the provisions of the Rules of Civil Procedure and the provisions of the laws of this Commonwealth

relating to civil procedures and remedies shall, to the extent that they are applicable, be available in such proceedings.

(c) Other remedies.—The provisions of this section are in addition to any process, remedy or procedure for the collection of taxes provided by this chapter or by the laws of this Commonwealth, and this section is neither limited by nor intended to limit any such process, remedy or procedure.

#### § 1244. Tax suit comity.

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

#### § 1245. Service.

Any person maintaining a place of business within this Commonwealth is deemed to have appointed the Secretary of the Commonwealth his agent for the acceptance of service of process or notice in any proceedings for the enforcement of the civil provisions of this chapter, and any service made upon the Secretary of the Commonwealth as such agent shall be of the same legal force and validity as if such service had been personally made upon such person. Where service cannot be made upon such person in the manner provided by other laws of this Commonwealth relating to service of process, service may be made upon the Secretary of the Commonwealth and, in such case, a copy of the process or notice shall also be personally served upon any agent or representative of such person who may be found within this Commonwealth, or where no such agent or representative may be found a copy of the process or notice shall be sent by registered mail to such person at the last known address of his principal place of business, home office or residence.

### SUBCHAPTER K

#### MISCELLANEOUS PROVISIONS

Sec.

1246. Collection and payment of tax on credit sales.

1247. Prepayment of tax.

1247.1. Refund of sales tax attributed to bad debt.

1248. Registration of transient vendors.

1248.1. Bond.

1248.2. Notification to department; inspection of records.

1248.3. Seizure of property.

1248.4. Fines.

1248.5. Transient vendors subject to chapter.

1248.6. Promoters.

§ 1246. Collection and payment of tax on credit sales.

If any sale subject to tax under this chapter is wholly or partly on credit, the vendor shall require the purchaser to pay in cash at the time the sale is made, or within 30 days thereafter, the total amount of tax due upon the entire purchase price. The vendor shall remit the tax to the department, regardless of whether payment was made by the purchaser to the vendor, with the next return required to be filed under section 1217 (relating to time for filing returns).

§ 1247. Prepayment of tax.

(a) General rule.—Whenever a vendor is forbidden by law or governmental regulation to charge and collect the purchase price in advance of or at the time of delivery, the vendor shall prepay the tax as required by section 1222 (relating to time of payment), but in such case if the purchaser fails to pay to the vendor the total amount of the purchase price and the tax, and such amount is written off as uncollectible by the vendor, the vendor shall not be liable for the tax and shall be entitled to a credit or refund of the tax paid. If the purchase price is thereafter collected, in whole or in part, the amount collected shall be applied first to the payment of the entire tax portion of the bill, and shall be remitted to the department by the vendor with the first return filed after the collection.

(b) Petition for refund.—Tax prepaid shall be subject to refund upon petition to the department under the provisions of section 1252 (relating to refunds) filed within 105 days of the close of the fiscal year in which the accounts are written off.

§ 1247.1. Refund of sales tax attributed to bad debt.

(a) Petition for refund.—A vendor may file a petition for refund of sales tax paid to the department that is attributed to a bad debt if all of the following apply:

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

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

(3) The bad debt has been deducted for Federal income tax purposes under section 166 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 166). The petition shall be filed with the department within the time limitations prescribed by section 3003.1 of the Tax Reform Code.

(b) Amount of refund.—The refund authorized by this section shall be limited to the sales tax paid to the department that is attributed to the bad debt, less any discount under section 1227 (relating to discount). Partial payments by the purchaser to the vendor shall be prorated between the original purchase price and the sales tax due on the sale. Payments made to a vendor on any transaction that includes both taxable and nontaxable components shall be allocated proportionally between the taxable and nontaxable components.

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

(d) Exclusions.—No refund shall be granted under this section for any of the following:

(1) Interest.

(2) Finance charges.

(3) Expenses incurred in attempting to collect any amount receivable.

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

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

(g) Interest.—Notwithstanding the provisions of section 806.1 of the Fiscal Code, no interest shall be paid by the Commonwealth on refunds of sales tax attributed to bad debt under this section.

(h) Exclusive remedy.—No refund or credit of sales tax shall be made for any uncollected purchase price or bad debt except as authorized by this section. No deduction or credit for bad debt may be taken on any return filed with the department. This section shall provide the exclusive procedure for claiming a refund or credit of sales tax attributed to uncollected purchase price or bad debt.

(i) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Affiliated entity.” Any corporation that is part of the same affiliated group as the vendor as defined by section 1504(a)(1) of the Internal Revenue Code of 1986.

§ 1248. Registration of transient vendors.

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

(b) Issuance of certificate.—Upon registration and the posting of the bond required by section 1248.1 (relating to bond), the department shall issue to the transient vendor a certificate, valid for one year. Upon renewal of registration, the department shall issue a new certificate, valid for one year, providing the department is satisfied that the transient vendor has complied with the provisions of this chapter.

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

(d) Notice on certificate.—The certificate issued by the department shall state that the transient vendor named therein has registered with the department and shall provide notice to the transient vendor that:

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

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

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

§ 1248.1. Bond.

(a) Bond required.—Upon registration with the department, a transient vendor shall also post a bond with the department in the amount of \$500 as surety for compliance with the provisions of this chapter. After a period of demonstrated compliance with these provisions, or, if the transient vendor provides the license number of a promoter who has notified the department of a show, in accordance with the provisions of section 1248.6(a) (relating to promoters), the department may reduce the amount of bond required of a transient vendor or may eliminate the bond entirely.

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

§ 1248.2. Notification to department; inspection of records.

(a) Notification to department.—Prior to entering this Commonwealth to conduct business, a transient vendor shall notify the department in writing of the location or locations where it intends to conduct business and the date or dates on which it intends to conduct business.

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

(c) Suspension or revocation of certificate.—The department may suspend or revoke a certificate issued to a transient vendor if the transient vendor:

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

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

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

(4) fails to file with the department a tax return as required by section 1217 (relating to time for filing returns).

(d) Rules and regulations.—The department shall promulgate the rules and regulations necessary to implement this section.

§ 1248.3. Seizure of property.

(a) General rule.—If a transient vendor conducting business within this Commonwealth fails to exhibit a valid certificate upon demand by authorized employees of the department, those authorized employees shall have the authority to seize, without warrant, the tangible personal property and the automobile, truck or other means of transportation used to transport or carry that property. All property seized shall be deemed contraband and shall be subject to immediate forfeiture proceedings instituted by the department pursuant to

procedures adopted by regulation, except as otherwise provided by this section.

(b) Release of seized property.—Property seized pursuant to subsection (a) shall be released upon:

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

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

§ 1248.4. Fines.

Any transient vendor conducting business within this Commonwealth while its certificate is suspended or revoked, as provided by sections 1248.1(b) (relating to bond) and 1248.2(c) (relating to notification to department; inspection of records), commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$2,500 for each offense.

§ 1248.5. Transient vendors subject to chapter.

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

§ 1248.6. Promoters.

(a) License application.—A promoter of a show or shows within this Commonwealth may annually file with the department an application for a promoter's license stating the location and dates of such show or shows. The application shall be filed at least 30 days prior to the opening of the first show and shall be in such form as the department may prescribe.

(b) Issuance of license.—Except as provided in this section, the department shall, within 15 days after receipt of an application for a license, issue to the promoter without charge a license to operate such shows. If application for a license under this section has been timely filed and if the license has not been received by the promoter prior to the opening of the show, the authorization contained in this section with respect to the obtaining of a promoter's license shall be deemed to have been complied with, unless or until the promoter receives notice from the department denying the application for a promoter's license.

(c) Compliance with vendor provisions.—Any promoter who is a vendor under the provisions of section 1201 (relating to definitions) shall comply with all the provisions of this chapter applicable to vendors and with the provisions of this section applicable to promoters.

(d) Duty of promoters at show.—No licensed promoter shall permit any person to display for sale or to sell tangible personal property or services subject to tax under section 1202 (relating to imposition of tax) at a show unless such person is licensed under section 1208 (relating to licenses) and provides to the promoter the information required under section 1271.1 (relating to reports and records of promoters).

(e) Denial or revocation of license.—Any licensed promoter who permits any person to display for sale or to sell tangible personal property or service without first having been licensed under section 1208 fails to maintain records of a show under section 1271.1, knowingly maintains false records or fails to comply with any provision contained in this section or any regulation promulgated by the department pertaining to shows shall be subject to denial of a license or the revocation of any existing license issued pursuant to this section. In addition, the department may deny such promoter a license certificate to operate a show for a period of not more than six months from the date of such denial. Such penalty shall be in addition to any other penalty imposed by this chapter. Within 20 days of notice of denial or revocation of a license by the department, the promoter may petition the department for a hearing, pursuant to 2 Pa.C.S. (relating to administrative law and procedure).

#### SUBCHAPTER L REFUNDS AND CREDITS

Sec.

1250. Refund or credit for overpayment.

1251. Restriction on refunds.

1252. Refunds.

1253. Refund petition.

1254. Review by Board of Finance and Revenue.

1255. Appeal to Commonwealth Court.

1256. Extended time for filing special petition for refund.

§ 1250. Refund or credit for overpayment.

With respect to all taxes paid to a vendor or to the Commonwealth prior to April 5, 1957, in the case of any overpayment, the department, within the applicable period of limitations, may credit the amount of such overpayment against any liability in respect of the tax imposed by this chapter on the part of the person who made the overpayment, and shall refund any balance to such person.

§ 1251. Restriction on refunds.

No refund shall be made under section 1250 (relating to refund or credit for overpayment) without the approval of the Board of Finance and Revenue.

§ 1252. Refunds.

The department shall, pursuant to the provisions of sections 1253 (relating to refund petition) and 1254 (relating to review by Board of Finance and Revenue), refund all taxes, interest and penalties paid to the Commonwealth under the provisions of this chapter and to which the Commonwealth is not rightfully entitled. Refunds shall be made to the person, his heirs, successors, assigns or other personal representatives, who actually paid the tax. No refund shall be made under this section with respect to any payment made by reason of an assessment with respect to which a taxpayer has filed a petition for reassessment pursuant to section 1232 (relating to reassessment) to the extent that the petition has been determined adversely to the taxpayer by a decision which is no longer subject to further review or appeal. Nothing contained herein shall be deemed to prohibit a taxpayer who has filed a timely petition for reassessment from amending it to a petition for refund where the petitioner has paid the tax assessed.

§ 1253. Refund petition.

(a) Petition requirements and hearing.—Except as provided for in section 1256 (relating to extended time for filing special petition for refund) and in subsections (b) and (d), the refund or credit of tax, interest or penalty provided for by section 1252 (relating to refunds) shall be made only where the person who has actually paid the tax files a petition for refund with the department under section 3003.1 of the Tax Reform Code. The petition for refund must set forth in reasonable detail the grounds upon which the taxpayer claims that the Commonwealth is not rightfully entitled to such tax, interest or penalty, in whole or in part, and shall be accompanied by an affidavit affirming that the facts contained in the petition are true and correct. The department may hold hearings as necessary for the purpose at the times and places as it may determine, and each person who has filed a refund petition shall be notified by the department of the time when, and the place where, the hearing will be held.

(b) Refund upon assessment.—A refund or credit of tax, interest or penalty, paid as a result of an assessment made by the department under section 1231 (relating to mode and time of assessment), shall be made only where the person who has actually paid the tax files with the department a petition for a refund with the department under section 3003.1(d) of the Tax Reform Code. The filing of a petition for refund, under the provisions of this subsection, shall not affect the abatement of interest, additions or penalties to which the person may be entitled by reason of his payment of the assessment.

(c) Decision by department.—It shall be the duty of the department, within six months after receiving a petition for refund, to dispose of the issue raised by the petition, and mail notice of the department's decision to the petitioner. The taxpayer and the department may, however, by stipulation, extend such disposal time by not more than six additional months.

(d) Unconstitutional tax provision or erroneous interpretation of provision.—Notwithstanding any other provision of this section, where any tax, interest or penalty has been paid under a provision of this chapter subsequently held by final judgment of a court of competent jurisdiction to be unconstitutional, or under an interpretation of such provision subsequently held by such court to be erroneous, a petition

for refund may be filed either before or subsequent to final judgment, but such petition must be filed under section 3003.1 of the Tax Reform Code. The department shall have jurisdiction to hear and determine any such petition filed prior to such final judgment only if, at the time of filing of the petition, proceedings are pending in a court of competent jurisdiction wherein the claim of unconstitutionality or of erroneous interpretation, made in the petition for refund may be established, and in such case, the department shall not take final action upon the petition for refund until the judgment determining the question involved in such petition has become final.

§ 1254. Review by Board of Finance and Revenue.

Within 90 days after the date of mailing of notice by the department of the decision upon a petition for refund filed with it, pursuant to section 1253 (relating to refund petition), the petitioner may further petition the Board of Finance and Revenue to review the decision of the department. The failure of the department to notify the petitioner of its decision within the time provided for by section 1253 shall act as a denial of the petition, and a petition for review may be filed with the Board of Finance and Revenue within 120 days of the date prior to which the department should have mailed to the petitioner its notice of decision. Every petition for review filed with the Board of Finance and Revenue under the provisions of this section shall incorporate by reference the petition for refund. The petitioner may, in his petition for review, elect to withdraw one or more grounds as set out in the original refund petition. The Board of Finance and Revenue shall act finally in disposing of such petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department upon the petition for refund shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on a petition for refund, or it may redetermine whether a lesser or greater amount of refund is proper. Under no circumstances may the Board of Finance and Revenue authorize a refund greater than that originally applied for by the petitioner. The Board of Finance and Revenue shall give notice of its action to the department and to the petitioner.

§ 1255. Appeal to Commonwealth Court.

Any person aggrieved by the decision of the Board of Finance and Revenue under section 1254 (relating to review by Board of Finance and Revenue) or by the board's failure to act upon a petition for review within six months may appeal in the manner now or hereafter provided for by law for appeals in the case of tax settlements.

§ 1256. Extended time for filing special petition for refund.

Any party to a transaction who has paid tax by reason of a transaction with respect to which the department is assessing tax against another person may, within six months after the filing by the department of the assessment against such other person, file a special petition for refund, notwithstanding his failure to file a regular petition within three years of the payment. The provisions of sections 1253 (relating to refund petition), 1254 (relating to review by Board of Finance and Revenue) and 1255 (relating to appeal to Commonwealth Court) shall be applicable to such special petition for refund, except that the department need not act on such petition until there is a final determination as to the propriety of the assessment filed against the other party to the transaction. Where a petition is filed under this provision in order to take advantage of the extended period of limitations, overpayments by the petitioner shall be refunded but only to the extent of the actual tax, without consideration of interest and penalties, paid by the other party to the transaction. The purpose of this section is to avoid duplicate payment of tax where a determination is made by the department that one party to a transaction is subject to tax, and another party to the transaction has previously paid tax with respect to such transaction; and this section shall be construed as extending right beyond that provided for by section 1253, and not to limit such other section.

## SUBCHAPTER M LIMITATIONS

Sec.

1258. Limitation on assessment and collection.

1259. Failure to file return.

1260. False or fraudulent return.

1261. Extension of limitation period.

§ 1258. Limitation on assessment and collection.

The amount of the tax imposed by this chapter shall be assessed within three years after the date when the return provided for by section 1217(a) or (c) (relating to time for filing returns) is filed or the end of the year in which the tax liability arises, whichever occurs last. The assessment may be made at any time during such period notwithstanding that the department may have made one or more previous assessments against the taxpayer for the year in question, or for any part of such year. In any such case, no credit shall be given for any penalty previously assessed or paid.

§ 1259. Failure to file return.

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

§ 1260. False or fraudulent return.

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

§ 1261. Extension of limitation period.

Notwithstanding any of the foregoing provisions of this chapter, where, before the expiration of the period prescribed therein for the assessment of a tax, a taxpayer has consented in writing that the period be extended, the amount of tax due may be assessed at any time within the extended period. The period so extended may be extended further by subsequent consents in writing made before the expiration of the extended period.

## SUBCHAPTER N INTEREST, ADDITIONS, PENALTIES AND CRIMES

Sec.

1265. Interest.

1266. Additions to tax.

1267. Penalties.

1268. Crimes.

1269. Abatement of additions or penalties.

§ 1265. Interest.

If any amount of tax imposed by this chapter is not paid to the department on or before the last date prescribed for payment, interest on the amount at the rate of .75% per month for each month, or fraction thereof, from such date, shall be paid for the period from the last date to the date paid. The last date prescribed for payment shall be determined under section 1222(a) or (c) (relating to time of payment) without regard to any extension of time for payment. In the case of any amount assessed as a deficiency or as an estimated assessment, the date prescribed for payment shall be 30 days after notice of the assessment.

§ 1266. Additions to tax.

(a) Failure to file return.—In the case of failure to file any return required by section 1215 (relating to persons required to make returns) on the date prescribed for filing, determined with regard to any extension of time for filing, and in the case in which a return filed understates the true amount due by more than 50%, there shall be added to the amount of tax actually due 5% of the amount of such tax if the failure to file a proper return is for not more than one month, with an additional 5% for each additional month, or fraction thereof, during which the failure continues, not exceeding 25% in the aggregate. In every such case at least \$2 shall be added.

(b) Addition for understatement.—There shall be added to every assessment under section 1231(b) (relating to mode and time of assessment) an addition equal to 5% of the amount of the understatement and no addition to the tax shall be paid under section 1231(a).

(c) Interest.—If the department assesses a tax according to section 1231(a), (b) or (c), there shall be added to the amount of the deficiency interest at the rate of .75% per month for each month, or fraction thereof, from the date prescribed by section 1222(a) or (c) (relating to time of payment) for the payment of the tax to the date of notice of the assessment.

§ 1267. Penalties.

(a) Penalty assessed as tax.—The penalties, additions, interest and liabilities provided by this chapter shall be paid upon notice and demand by the department, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this chapter to “tax” imposed by this chapter shall be deemed also to refer to the penalties, additions, interest and liabilities provided by this chapter.

(b) Attempt to evade or defeat tax.—Any person who willfully attempts, in any manner, to evade or defeat the tax imposed by this chapter, or the payment thereof, or to assist any other person to evade or defeat the tax imposed by this chapter, or the payment thereof, or to receive a refund improperly, shall, in addition to other penalties provided by law, be liable for a penalty equal to one-half of the total amount of the tax evaded.

(c) Burden of proof.—In any direct proceeding arising out of a petition for reassessment or refund as provided in this chapter, in which an issue of fact is raised with respect to whether a return is fraudulent or with respect to the propriety of the imposition by the department of the penalty prescribed in subsection (b), the burden of proof with respect to such issue shall be upon the department.

§ 1268. Crimes.

(a) Fraudulent return.—Any person who with intent to defraud the Commonwealth shall willfully make, or cause to be made, any return required by this chapter, which is false, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding \$2,000 or to imprisonment for not more than three years, or both.

(b) Other crimes.—Except as otherwise provided by subsection (a), the following persons commit a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both:

(1) Any person who advertises or holds out or states to the public or to any purchaser or user, directly or indirectly, that the tax or any part thereof imposed by this chapter will be absorbed by such person, or that it will not be added to the purchase price of the tangible personal property or services described in paragraphs (2), (3), (4) and (11) through (18) under the definition of “sale at retail” in section 1201 (relating to definitions) sold or, if added, that the tax or any part thereof will be refunded, other than when the person refunds the purchase price because of the property being returned to the vendor.

(2) Any person selling or leasing tangible personal property or services the sale or use of which by the purchaser is subject to tax under this chapter, who shall willfully fail to collect the tax from the purchaser and timely remit the same to the department.

(3) Any person who shall willfully fail or neglect to timely file any return or report required by this chapter or any taxpayer who shall refuse to timely pay any tax, penalty or interest imposed or provided for by this chapter, or who shall willfully fail to preserve his books, papers and records as directed by the department.

(4) Any person who shall refuse to permit the department or any of its authorized agents to examine his books, records or papers, or who shall knowingly make any incomplete, false or fraudulent return or report, or who shall do, or attempt to do, anything whatever to prevent the full disclosure of the amount or character of taxable sales purchases or use made by himself or any other person, or shall provide any person with a false statement as to the payment of tax with respect to particular

tangible personal property or services, or shall make, utter or issue a false or fraudulent exemption certificate.

(c) Place of business outside Commonwealth.—Any person maintaining a place of business outside this Commonwealth may absorb the tax with respect to taxable sales made in the normal course of business to customers present at the place of business without being subject to the penalty and fines under subsection (b).

(d) Prepaid mobile telecommunications services.—Advertising tax-included prices shall be permissible, if the prepaid services are sold by the service provider, for prepaid telecommunications services not evidenced by the transfer of tangible personal property or for prepaid mobile telecommunications services.

(e) Other penalties.—The penalties imposed by this section shall be in addition to any other penalties imposed by any provision of this chapter.

§ 1269. Abatement of additions or penalties.

Upon the filing of a petition for reassessment or a petition for refund as provided under this chapter by a taxpayer, additions or penalties imposed upon such taxpayer by this chapter may be waived or abated, in whole or in part, where the petitioner has established that he has acted in good faith, without negligence and with no intent to defraud.

SUBCHAPTER O  
ENFORCEMENT AND EXAMINATIONS

Sec.

1270. Rules and regulations.

1271. Keeping of records.

1271.1. Reports and records of promoters.

1272. Examinations.

1273. Records and examinations of delivery agents.

1274. Unauthorized disclosure.

1275. Cooperation with other governments.

1276. Interstate compacts.

1277. Bonds.

§ 1270. Rules and regulations.

(a) General rule.—The department is charged with the enforcement of this chapter, and is authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations not inconsistent with the provisions of this chapter, relating to any matter or thing pertaining to the administration and enforcement of this chapter, and the collection of taxes, penalties and interest imposed by this chapter. The department may prescribe the extent, if any, to which its rules and regulations shall be applied without retroactive effect.

(b) Sales between affiliated interests.—In determining the purchase price of taxable sales where, because of affiliation of interests between the vendor and the purchaser or irrespective of any affiliation, if for any other reason, the purchase price of the sale is in the opinion of the department not indicative of the true value of the article or the fair price thereof, the department shall, pursuant to uniform and equitable rules, determine the amount of constructive purchase price upon the basis of which the tax shall be computed and levied. The rules shall provide for a constructive amount of a purchase price for each sale, which price shall equal a price for the article which would naturally and fairly be charged in an arm’s-length transaction in which the element of common interests between vendor and purchaser, or, if no common interest exists, any other element causing a distortion of the price or value is absent. For the purpose of this chapter where a taxable sale occurs between a parent corporation and a subsidiary affiliate or controlled corporation of the parent, there shall be a rebuttable presumption that because of the common interest the transaction was not at arm’s-length.

§ 1271. Keeping of records.

(a) General rule.—Each person liable for any tax imposed by this chapter, or for the collection of any tax imposed by this chapter, shall keep the records, render the statements, make the returns and comply with the rules and regulations that the department may, from time to time, prescribe regarding matters pertinent to the persons business. Whenever in the judgment of the department it is necessary, it may



require any person, by notice served upon the person, or by regulations, to make returns, render statements or keep records as the department deems sufficient to show whether or not the person is liable to pay or collect tax under this chapter.

(b) Persons collecting tax from others.—Any person liable to collect tax from another person under this chapter shall file reports, keep records, make payments and be subject to interest and penalties as provided for under this chapter, in the same manner as if the person were directly subject to the tax.

(c) Records of nonresidents.—A nonresident who does business in this Commonwealth as a retail dealer shall keep adequate records of the business or businesses and of the tax due with respect to the business or businesses, which records shall at all times be retained within this Commonwealth unless retention outside this Commonwealth is authorized by the department. No taxes collected from purchasers shall be sent outside this Commonwealth without the written consent of and in accordance with conditions prescribed by the department. The department may require a taxpayer who desires to retain records or tax collections outside this Commonwealth to assume reasonable out-of-State audit expenses.

(d) Keeping of separate records.—Any person doing business as a retail dealer who at the same time is engaged in another business or businesses which do not involve the making of sales taxable under this chapter shall keep separate books and records of the person's businesses so as to show the sales taxable under this chapter separately from the person's sales not taxable under this chapter. If the person fails to keep separate books and records, the person shall be liable for tax at the rate designated in section 1202 (relating to imposition of tax) upon the entire purchase price of sales from both or all of the person's businesses.

(e) Other methods.—

(1) In those instances where a vendor gives no sales memoranda or uses registers showing only total sales, the vendor must adopt some method of segregating tax from sales receipts and keep records showing the segregation, all in accordance with proper accounting and business practices.

(2) A vendor may apply to the department for permission to use a collection and recording procedure which will show the information as the law requires with reasonable accuracy and simplicity. A vendor's application must contain a detailed description of the procedure to be adopted. Permission to use the proposed procedure is not to be construed as relieving the vendor from remitting the full amount of tax collected. The department may revoke permission upon 30 days' notice to the vendor. Refusal of the department to grant permission in advance to use the procedure shall not be construed to invalidate a procedure which upon examination shows the information as the law requires.

#### § 1271.1. Reports and records of promoters.

Each licensed promoter shall keep a record of the date and place of each show and the name, address, sales, use and hotel occupancy license number of each person whom the licensed promoter permits to display for sale or to sell tangible personal property or services subject to tax under section 1202 (relating to imposition of tax) at the show. The records shall be open for inspection and examination at any reasonable time by the department or its authorized representative, and the records shall, unless the department consents in writing to an earlier destruction, be preserved for three years after the date the report was filed or the date it was due, whichever occurs later, except that the department may by regulation require that they be kept for a longer period of time.

#### § 1272. Examinations.

The department or any of its authorized agents are authorized to examine the books, papers and records of any taxpayer in order to verify the accuracy and completeness of any return made or, if no return was made, to ascertain and assess the tax imposed by this chapter. The department may require the preservation of any books, papers and records for any period deemed proper by it but not to

exceed three years from the end of the calendar year to which the records relate. Each taxpayer is required to give to the department, or its agent, the means, facilities and opportunity for examinations and investigation. The department is further authorized to examine any person, under oath, concerning taxable sales or use by any taxpayer or concerning any other matter relating to the enforcement or administration of this chapter, and to this end may compel the production of books, papers and records and the attendance of all persons whether as parties or witnesses whom it believes to have knowledge of such matters. The procedure for hearings or examinations shall be the same as that provided by the Fiscal Code, relating to inquisitorial powers of fiscal officers.

#### § 1273. Records and examinations of delivery agents.

Each agent for the purpose of delivery of goods shipped into this Commonwealth by a nonresident including, but not limited to, common carriers, shall maintain adequate records of the deliveries pursuant to rules and regulations adopted by the department and shall make the records available to the department upon request after due notice.

#### § 1274. Unauthorized disclosure.

Any information gained by the department as a result of any return, examination, investigation, hearing or verification, required or authorized by this chapter, shall be confidential, except for official purposes and except in accordance with proper judicial order or as otherwise provided by law, and any person unlawfully divulging the information commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both.

#### § 1275. Cooperation with other governments.

Notwithstanding the provisions of section 1274 (relating to unauthorized disclosure), the department may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any state, or the authorized representative of either, to inspect the tax returns of any taxpayer, or may furnish to such officer or to an authorized representative an abstract of the return of any taxpayer, or supply the officer with information concerning any item contained in any return or disclosed by the report of any examination or investigation of the return of any taxpayer. This permission shall be granted only if the statutes of the United States or of the other state, as the case may be, grant substantially similar privileges to the proper officer of the Commonwealth charged with the administration of this chapter.

#### § 1276. Interstate compacts.

The Governor, or an authorized representative, has the authority to confer with the governors and the authorized representatives of other states with respect to reciprocal use tax collection between Pennsylvania and the other states. The Governor, or a representative, is authorized to join with the authorities of other states to conduct joint investigations, to exchange information, to hold joint hearings and to enter into compacts or interstate agreements with the other states to accomplish uniform reciprocal use tax collections between those states who are parties to any compact or interstate agreement and the Commonwealth of Pennsylvania.

#### § 1277. Bonds.

(a) Taxpayer to file bond.—

(1) Whenever the department, in its discretion, deems it necessary to protect the revenues to be obtained under this chapter, it may require any nonresident natural person or any foreign corporation, association, fiduciary, partnership or other entity not authorized to do business within this Commonwealth or not having an established place of business in this Commonwealth and subject to the tax imposed by section 1202 (relating to imposition of tax) to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in an amount as the department may fix, to secure the payment of any tax or penalties due, or which may become due, from the natural person or corporation.

(2) In order to protect the revenues to be obtained under this chapter, the department shall require any nonresident natural person or any foreign corporation, association, fiduciary, partnership or entity, who or which is a building contractor, or who or which is a supplier delivering building materials for work in this Commonwealth and is not authorized to do business within this Commonwealth or does not have an established place of business in this Commonwealth and is subject to the tax imposed by section 1202 to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in an amount as the department may fix, to secure the payments of any tax or penalties due, or which may become due, from the natural person, corporation or other entity.

(3) The department may also require a bond of any person petitioning the department for reassessment, in the case of any assessment over \$500 or where it is of the opinion that the ultimate collection is in jeopardy. The department may, for a period of three years, require a bond of any person who has on three or more occasions within a 12-month period either filed a return or made payment to the department more than 30 days late.

(4) In the event that the department determines that a taxpayer is to file a bond, it shall give notice to the taxpayer to that effect, specifying the amount of the bond required. The taxpayer shall file the bond within five days after the giving of notice by the department unless, within the five days, the taxpayer shall request, in writing, a hearing before the Secretary of Revenue or a representative at which hearing the necessity, propriety and amount of the bond shall be determined by the secretary or representative. The determination shall be final and shall be complied with within 15 days after notice of the determination is mailed to the taxpayer.

(b) Securities in lieu of bond.—In lieu of the bond required by this section, securities approved by the department, or cash in an amount as prescribed by the department, may be deposited. The securities or cash shall be kept in the custody of the department, which may, at any time, without notice to the depositor, apply them to any tax, interest or penalties due, and for that purpose the securities may be sold by the department, at public or private sale, upon five days' written notice to the depositor.

(c) Failure to file bond.—The department may file a lien pursuant to section 1242 (relating to lien for taxes) against any taxpayer who fails to file a bond when required to do so under this section. All funds received upon execution of the judgment on a lien shall be refunded to the taxpayer with 3% interest should a final determination be made that the taxpayer does not owe any payment to the department.

#### SUBCHAPTER P

#### APPROPRIATION; EFFECTIVE DATE

Sec.

1281. Appropriation for refunds.

1281.1. Construction of chapter.

1281.2. Transfers to Public Transportation Assistance Fund.

1281.3. Transfer to Property Tax Stabilization Fund.

§ 1281. Appropriation for refunds.

So much of the proceeds of the tax imposed by this chapter as shall be necessary for the payment of refunds, enforcement or administration under this chapter is hereby appropriated for such purposes.

§ 1281.1. Construction of chapter.

To the extent that the language of this chapter is identical to that of equivalent provisions in the former act of March 6, 1956 (1955 P.L.1228, No.381), known as the Tax Act of 1963 for Education, the language shall be deemed a reenactment of the identical provisions.

§ 1281.2. Transfers to Public Transportation Assistance Fund.

(a) Transfer from imposition of tax on periodicals.—All revenues received on or after July 1, 1992, from the imposition of the tax on

periodicals shall be transferred to the Public Transportation Assistance Fund according to the formula set forth in subsection (b).

(b) Transfer to Public Transportation Assistance Fund.—Within 30 days of the close of any calendar month, 0.44% of the taxes received in the previous month under this chapter, less any amounts collected in that previous calendar month under former 74 Pa.C.S. § 1314(d) (relating to Public Transportation Assistance Fund), shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code.

(c) Other transfer.—Within 30 days of the close of any calendar month, 0.09% of the taxes received in the previous month under this chapter shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code.

(d) Transfer after June 30, 2003.—Within 30 days of the close of a calendar month, 0.417% of the taxes received in the previous month under this chapter shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code. This subsection applies to deposits into the Public Transportation Assistance Fund made after June 30, 2003.

§ 1281.3. Transfer to Property Tax Stabilization Fund.

Within 30 days of the close of any calendar month, 14.285% of the taxes received in the previous month under this chapter shall be transferred to the Property Tax Stabilization Fund.

#### CHAPTER 13

#### SPECIAL SITUS FOR LOCAL SALES TAX

Sec.

1301. Definitions.

1302. Leased or rental vehicles or crafts.

1303. Construction materials.

1304. Mobile telecommunications services.

§ 1301. Definitions.

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

“Lease.” A contract for the use of a motor vehicle or other tangible personal property referred to in section 1302(a) (relating to leased or rental vehicles or crafts) for a period of 30 days or more.

“Rental.” A contract for the use of a motor vehicle or other tangible personal property referred to in section 1302(b) (relating to leased or rental vehicles or crafts) for a period of less than 30 days.

§ 1302. Leased or rental vehicles or crafts.

(a) Lease.—For purposes of this chapter, the lease of a motor vehicle, trailer, semitrailer or mobile home, as defined in 75 Pa.C.S. (relating to vehicles), or of a motorboat, aircraft or other similar tangible personal property required under either Federal or State laws to be registered or licensed shall be deemed to have been completed or used at the address of the lessee. In the case of a lease, the tax shall be paid by the lessee to the lessor.

(b) Rental.—For purposes of this chapter, the rental of a motor vehicle, trailer, semitrailer or mobile home, as defined in 75 Pa.C.S., or of a motorboat, aircraft or other similar tangible personal property required under either Federal or State laws to be registered or licensed shall be deemed to be consummated at the place of business of the retailer. In the case of a rental, the tax due shall be paid by the renter to the retailer.

(c) Applicability.—This chapter shall only apply to any sales tax imposed under Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code, and under the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

§ 1303. Construction materials.

(a) Final destination.—Notwithstanding the provisions of section 504 of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, the sale or use of road construction material, including recycled asphalt, recycled concrete, asphalt, concrete and road aggregates, shall be deemed to have been consummated at the

location of its final destination. Final destination will be determined by reference to delivery or shipping documents relating to such sales.

(b) Applicability.—This section shall apply to taxes levied under Chapter 5 of the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class. This section shall not apply to taxes levied under Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

§ 1304. Mobile telecommunications services.

(a) Primary use.—For purposes of this chapter, the situs of the sales or use of mobile telecommunications services which are deemed to be provided to a customer by a home service provider under section 117 of the Mobile Telecommunications Sourcing Act (4 U.S.C. § 117(a) and (b)) shall be the customer's place of primary use regardless of where the mobile telecommunications services originate, terminate or pass through.

(b) Definitions.—For purposes of this section, words and phrases used in this section shall have the meanings given to them in the Mobile Telecommunications Sourcing Act.

PART III  
TAX RELIEF

Chapter

21. Homeowner Property Tax Relief

CHAPTER 21

HOMEOWNER PROPERTY TAX RELIEF

Subchapter

- A. General Provisions
- B. Formula
- C. Tax Relief in Cities of the First Class
- D. Funds

SUBCHAPTER A  
GENERAL PROVISIONS

Sec.

2101. Scope.

2102. Definitions.

§ 2101. Scope.

This chapter relates to the allocation of State funds for homestead and farmstead property tax reductions.

§ 2102. Definitions.

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

“Allocation maximum.” The Statewide average reduction plus a numerical value of 0.10. The allocation maximum shall not be greater than a numerical value of 0.50.

“Allocation minimum.” The Statewide average reduction minus a numerical value of 0.10. The allocation minimum shall not be less than a numerical value of 0.05.

“Assessor.” The term as it is defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Average daily membership.” All resident pupils of the school district for whom the school district is financially responsible. It shall be calculated by dividing the aggregate days membership for all children on active rolls by the number of days the school is in session.

“Department.” The Department of Education of the Commonwealth.

“Equalized millage.” The term shall have the same usage as defined in section 2501(9.2) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

“Farmstead.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Farmstead property.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Fund.” The Property Tax Stabilization Fund.

“Homestead.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Homestead property.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Real property tax.” The total dollar value of real property taxes paid by property owners in a school district determined by adding the real property taxes collected by, or on behalf of, the school district plus all State allocations received pursuant to this chapter.

“Real property tax liability.” The assessed value of the real property of the taxpayer multiplied by the millage rate of the school district.

“Residential property tax.” The dollar value of real property taxes paid by residential property owners in a school district, determined by multiplying:

(1) the real property taxes collected by the school district; by

(2) the percentage of the total property value in the school district classified as residential by the State Tax Equalization Board.

“School district.” A school district of the first class, first class A, second class, third class or fourth class.

“School district of the first class.” Includes the governing body of a city of the first class.

“Secretary.” The Secretary of the Budget of the Commonwealth.

“Statewide Average Reduction.” The amount certified under section 2111 divided by the sum of all residential property taxes for all school districts collected during the third year immediately preceding the fiscal year for which the certification is being made, rounded to the nearest one-tenth of one percent.

“Taxpayer.” A person required to pay a real property tax.

SUBCHAPTER B  
FORMULA

Sec.

2111. Certification.

2112. Notification.

2113. State allocation.

§ 2111. Certification.

(a) Initial.—By April 15, 2007, the secretary shall certify the greater of the following:

(1) The total amount of revenue that is reasonably projected to be deposited into the fund for the period through June 30, 2007.

(2) \$300,000,000.

(b) Annual.—Beginning April 15, 2008, and each April 15 thereafter, the secretary shall certify the greater of the following:

(1) The total amount of revenue that is reasonably expected to be deposited into the fund for the current fiscal year.

(2) The amount certified by the secretary under this section for the prior fiscal year.

(c) Excess.—If the actual revenue deposited into the fund in any one fiscal year exceeds the amount certified in this section, any revenue in excess of projections shall remain in the fund and shall be included in the certification for the subsequent fiscal year.

(d) Shortage.—If the actual revenue deposited into the fund in any one fiscal year is less than the amount certified in this section, the secretary shall transfer from the Property Tax Stabilization Reserve Fund to the fund either of the following:

(1) For calendar year 2007, the amount equal to the difference between the amount certified under subsection (a) and \$300,000,000.

(2) For calendar year 2008 and each calendar year thereafter, the amount equal to the difference between the amount certified under subsection (b) and the amount certified under this section for the prior year.

§ 2112. Notification.

By April 20, 2007, and each April 20 thereafter, the secretary shall notify the department of the amount certified pursuant to section 2111 (relating to certification) for calculation of the allocation for each school district under section 2113 (relating to State allocation).

§ 2113. State allocation.

(a) Calculation.—The department shall calculate the State allocation for each school district as follows:

(1) For the 2007-2008 fiscal year:

(i) Multiply the school district's 2004-2005 average daily membership by the school district's 2004-2005 equalized millage.

(ii) Multiply the product under subparagraph (i) by the dollar amount necessary to allocate all of the money in the fund as certified under section 2111 (relating to certification).

(iii) If the allocation under this paragraph is less than the product of the residential property taxes collected during the 2004-2005 fiscal year and the allocation minimum for a school district, the school district shall receive an additional amount so that the total allocation under this paragraph is equal to the product of the residential property taxes collected during the 2004-2005 fiscal year and the allocation minimum.

(iv) If the allocation under this paragraph is greater than the product of the residential property taxes collected during the 2004-2005 fiscal year and the allocation maximum for a school district, the school district shall receive a total allocation equal to the product of the residential property taxes collected during the 2004-2005 fiscal year and the allocation maximum.

(2) For subsequent fiscal years:

(i) Multiply the school district's average daily membership for the third fiscal year immediately preceding the fiscal year for which the allocation is being made by the school district's equalized millage for the third fiscal year immediately preceding the fiscal year for which the allocation is being made.

(ii) Multiply the product under subparagraph (i) by the dollar amount necessary to allocate all of the money in the fund as certified under section 2111.

(iii) If the allocation under this paragraph is less than the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation minimum for a school district, the school district shall receive an additional amount so that the total allocation under this paragraph is equal to the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation minimum.

(iv) If the allocation under this paragraph is greater than the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation maximum for a school district, the school district shall receive a total allocation equal to the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation maximum.

(b) Notice.—By May 15, 2007, and each May 15 thereafter, the department shall notify each school district of the amount of the State allocation it is eligible to receive.

(c) Payment.—Beginning 2007 and each year thereafter, the department shall pay from the fund to each school district a State allocation which shall be made concurrently with the first payment under section 2517 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

(d) Use of payments.—Except as provided in Subchapter C, the State allocation for a school district shall be used for homestead and farmstead exclusions in accordance with law.

## SUBCHAPTER C

### TAX RELIEF IN CITIES OF THE FIRST CLASS

Sec.

2131. Tax relief in cities of the first class.

§ 2131. Tax relief in cities of the first class.

(a) Tax rate reduction.—A city of the first class shall reduce the rate of wage and net profits tax on residents and nonresidents levied under the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act, in order to be eligible to receive a State allocation under this chapter. If the city elects to reduce taxes pursuant to this section, all money received from the fund under section 2113 (relating to State allocation) shall be used to offset a reduction by the city in the fiscal year in which a payment under section 2113 is received and each fiscal year thereafter in the rate of tax on wages and net profits for both residents and nonresidents as provided for in subsection (b). The reductions shall remain in effect for so long as a State allocation under section 2113 is paid to the city in an amount equal to the cost of such reductions.

(b) Calculation of reduction.—

(1) The city shall calculate the amount of the tax rate reductions so that they equal, based on estimates certified by the city's director of finance and approved by the Pennsylvania Intergovernmental Cooperation Authority prior to the implementation of the reductions, in combination with any reduction in the rate of unearned income tax imposed by a school district in the city of the first class required by the act of August 9, 1963 (P.L.640, No.338), entitled "An act empowering cities of the first class, coterminous with school districts of the first class, to authorize the boards of public education of such school districts to impose certain additional taxes for school district purposes, and providing for the levy, assessment and collection of such taxes," as a result of the reduction in the rate of wage and net profits tax, the amount paid to the city from the fund for tax reductions. The city shall each year transfer to the school district an amount equal to the cost of any reduction in the rate of unearned income tax, and the transfer shall not be subject to the provisions of section 696(h) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

(2) The tax rate reductions implemented by a city of the first class pursuant to this section shall be in addition to the following schedule of percentages of wage and net profits tax rate reductions:

(i) On January 1, 2007, 0.9533% for residents and 0.4216% for nonresidents.

(ii) On January 1, 2008, 0.9624% for residents and 0.8387% for nonresidents.

(iii) On January 1, 2009, 1.1851% for residents and 1.0526% for nonresidents.

(c) Exceptions.—The wage and net profits tax rates may only be raised above the rates specified in subsection (b)(2) if all of the following apply:

(1) The increase is approved by an affirmative vote of at least ten members of a city council of a city of the first class.

(2) The Pennsylvania Intergovernmental Cooperation Authority certifies that a condition under paragraph (3) exists.

(3) The increase is necessary to respond to any of the following:

(i) A fiscal threat or condition, as certified by the city's director of finance, that occurs to the city as set forth in the applicable statutory provision relating to public referendum requirements for increasing certain taxes or an equivalent fiscal threat that affects the citizens of the city. It shall be the responsibility of the city's director of finance with the approval of the Pennsylvania Intergovernmental Cooperation Authority to ensure that any additional tax revenue raised is equal to the amount expended to respond to the fiscal threat or condition. If the amount of revenue raised through rate

adjustment exceeds the amount necessary to respond, over the course of the city's approved financial plan, to the fiscal threat, the excess amount shall be used for wage tax and net profits tax reduction in the immediately succeeding approved financial plan, but only if the tax rate reduction, expressed as the difference between the two tax rates, would exceed .0002.

(ii) A decrease of more than 2% in the amount of total tax collections plus any funds provided under this chapter from the preceding year's collections. Such a determination of a decrease must be attested to by the city's director of finance.

(iii) A declaration by the Pennsylvania Intergovernmental Cooperation Authority that the city's five-year plan is disapproved pursuant to section 209 of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

(iv) Federal or State law imposes a new unfunded mandate on the city that costs the city more than 1.5% of the city's total general fund expenditures in any fiscal year.

(v) The cost to the city of an existing mandate imposed by Federal or State law increases by more than 1.5% of the city's total general fund expenditures in any fiscal year and funds to pay for the increase are not appropriated to the city by the Federal or State government.

(vi) Existing Federal or State funding is decreased by 1.5% of the city's total general fund expenditures in any fiscal year.

(d) Excess funds.—If in any fiscal year the sums received by a city of the first class from the fund are in excess of the value of the tax rate reductions actually made by the city and the school district of the first class pursuant to subsection (a), the city shall, within 60 days following the certification by the director of finance, in consultation with the Secretary of the Budget and with the approval of the Pennsylvania Intergovernmental Cooperation Authority of the amount of the excess, do either of the following:

(1) repay to the fund the excess sums; or

(2) further reduce wage and net profits tax rates and unearned income tax rates, if required, in the fiscal year next following the determination of the excess, by an amount that will result in total tax rate reductions required for the amount received from the fund. To the extent the tax rate reduction provided for in this paragraph, expressed as the difference between the two tax rates, would not exceed .0002, this subsection shall not apply.

(e) Insufficient funds.—If in any fiscal year the director of finance certifies, in consultation with the Secretary of the Budget and with the approval of the Pennsylvania Intergovernmental Cooperation Authority, that the amount of sums received by the city from the fund are less than the value of the tax rate reductions actually made by the city and school district of the first class pursuant to subsection (a), the city may, in the fiscal year next following the determination of the amount, increase the city's wage and net profits tax rate above the rates specified in subsection (b)(2) by an amount that will result in an overall tax rate reduction equal to that required for the amount received by the city from the fund. To the extent the tax rate increase provided for in this subsection, expressed as the difference between the two tax rates, would not exceed .0002, this subsection shall not apply.

#### SUBCHAPTER D

#### FUNDS

Sec.

2141. Property Tax Stabilization Reserve Fund.

2142. Property Tax Stabilization Fund.

§ 2141. Property Tax Stabilization Reserve Fund.

(a) Fund established.—There is established within the fund a restricted receipts account to be known as the Property Tax

Stabilization Reserve Fund. Interest which accrues on the Property Tax Stabilization Reserve Fund shall be credited to the fund.

(b) Receipts.—The secretary is authorized to transfer funds from the fund into the Property Tax Stabilization Reserve Fund necessary to comply with the requirements of subsection (c).

(c) Balance.—

(1) The secretary shall ensure that \$200,000,000 exists in the Property Tax Stabilization Reserve Fund prior to making a certification under section 2111 (relating to certification).

(2) If a transfer was made under section 2111(d), the secretary shall deposit funds necessary to ensure that \$200,000,000, is available in the Property Tax Stabilization Reserve Fund prior to making a certification under section 2111.

(d) Nonlapse.—The money in the Property Tax Stabilization Reserve Fund is continuously appropriated to the Property Tax Stabilization Fund and shall not lapse at the end of any fiscal year.

§ 2142. Property Tax Stabilization Fund.

There is established a special fund to be known as the Property Tax Stabilization Fund. Interest which accrues on money in the fund shall be credited to the fund.

Section 3. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate this act.

(2) Articles II and II-A of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

Section 4. The addition of 72 Pa.C.S. Ch. 12 is a continuation of Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Ch. 12, all activities initiated under Article II of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 12. Orders, regulations, rules and decisions which were made under Article II of the Tax Reform Code of 1971 and which are in effect on the effective date of section 3 of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 12.

(2) Except as set forth in paragraph (3), any difference in language between 72 Pa.C.S. Ch. 12 and Article II of the Tax Reform Code of 1971 is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Article II of the Tax Reform Code of 1971.

(3) Paragraph (2) does not apply to the addition of any of the following provisions of Title 72:

(i) Section 1202(a), (b), (c)(1), (d), (e)(3)(i), (e.1)(3)(i) and (g).

(ii) Section 1203.

(iii) Section 1204(28), (37), (47), (48) and (58).

(iv) Section 1205(a)(2) and (b)(2).

(v) Section 1210.

(vi) Section 1217(a)(2) and (d).

(vii) Section 1281.3.

Section 5. The addition of 72 Pa.C.S. Ch. 13 is a continuation of Article II-A of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. Except as otherwise provided in 72 Pa.C.S. Ch. 13, all activities initiated under Article II-A of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 13. Orders, regulations, rules and decisions which were made under Article II-A of the Tax Reform Code of 1971 and which are in effect on the effective date of section 3 of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 13.

Section 6. This act shall take effect as follows:

(1) Except as provided in paragraph (2), the following provisions shall take effect January 1, 2007:

- (i) The addition of 72 Pa.C.S. Ch. 12.
- (ii) The addition of 72 Pa.C.S. Ch. 13.
- (iii) Section 3 of this act.

(2) The addition of 72 Pa.C.S. § 1281.3 shall take effect February 1, 2007.

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

On the question,  
Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Pyle.

### THE SPEAKER PRO TEMPORE (MATTHEW E. BAKER) PRESIDING

The SPEAKER pro tempore. The gentleman, Mr. Pyle, is recognized.

Mr. PYLE. Thank you, Mr. Speaker.

As I stated, Mr. Speaker, we have before us a chance here to enact substantial and real property tax savings for the residents of this Commonwealth. If I may please reference the chart you have just been given so I can explain how these numbers are generated.

In the first column, what you see is the amount this 1-percent sales tax increase on currently taxed items will generate in the first year. The second column is what HB 39, which this is a companion to, will generate. The third column incorporates an EIT (earned income tax) switch put to the local school districts that enables them to fund at least 50 percent of every homestead. The last column is the total savings year by year.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman, Mr. Cappelli, from Lycoming County.

Mr. CAPPELLI. Thank you, Mr. Speaker.

Mr. Speaker, would the gentleman from Armstrong stand for brief interrogation?

The SPEAKER pro tempore. The gentleman has agreed, and you may proceed.

Mr. CAPPELLI. Thank you, Mr. Speaker.

Mr. Speaker, looking at your spreadsheet, it indicates that by fiscal year 2010-2011, the 1-percent increase or the 1-percent in the sales and use tax will generate just under \$1.6 billion. Is that correct?

Mr. PYLE. That is correct, sir.

Mr. CAPPELLI. Mr. Speaker, do you know or do you have an idea of how much new revenue would be generated by a prior piece of legislation passed in this House and sent to the Senate, the Scavello-Benninghoff plan, that simply broadened the base of the sales and use tax but left the rate at 6 percent?

Mr. PYLE. I am unaware of that number, sir.

Mr. CAPPELLI. Mr. Speaker, that figure was \$2 billion, and I guess my question, Mr. Speaker, is, should we be looking to increase our sales and use tax by any percent when we can generate a like or larger amount of revenue by prudently broadening the base and leaving the rate as it is now at 6 percent?

Mr. PYLE. Mr. Speaker, that is an excellent question. However, where this varies from the legislation the gentleman from Lycoming has mentioned is that this does not broaden the

base. It does not attach to professional services. It does not attach to food. It does not attach to clothing. It addresses only currently taxed items. That is the main difference between the aforementioned legislation and this bill.

Mr. CAPPELLI. Thank you, Mr. Speaker.

Mr. Speaker, has the Pennsylvania automotive dealers' association taken a position on this bill?

Mr. PYLE. No, they have not, sir.

Mr. CAPPELLI. Okay. Thank you, Mr. Speaker. That ends my interrogation.

The SPEAKER pro tempore. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Lancaster County, Mr. Denlinger.

Members, please extend the courtesy to the gentleman, Mr. Denlinger. You will have your opportunity, too, and I am sure you would want the same courtesy extended to you.

Mr. Denlinger.

Mr. DENLINGER. Thank you, Mr. Speaker.

Would the gentleman from Armstrong submit to brief interrogation?

The SPEAKER pro tempore. The gentleman has agreed, and you may proceed.

Mr. DENLINGER. Thank you, Mr. Speaker.

Mr. Speaker, I am wondering if this bill contains an earned income tax component, and in fact would the residents of a given area have to in a public referendum approve an earned income tax, EIT switch of property taxes to earned income taxes?

Mr. PYLE. Per se, sir, no. This amendment does not contain any EIT language as such, but the companion bill that this attaches to does.

Mr. DENLINGER. In what time frame would the local school district have to vote and approve that earned income tax component?

Mr. PYLE. The first time local school districts would have to approach this, sir, or address it would be the primary of 2007.

Mr. DENLINGER. And at what rate would that be put in place?

Mr. PYLE. Necessary to generate the amounts on the sheet shown, Mr. Speaker, it cannot exceed 1 percent.

Mr. DENLINGER. Okay. Very good.

And then second, sort of a follow-up to the gentleman from Lycoming's question, I am wondering, have we done any economic analysis on the impact to, say, the auto industry within our State, if we tax all new vehicle sales at an additional 1 percent, and the economic impact on large-ticket purchases, say of appliances and other major items? Have we done some analysis on that?

Mr. PYLE. Mr. Speaker, no, we have not.

Mr. DENLINGER. Mr. Speaker, if I can make a comment then on the—

The SPEAKER pro tempore. The gentleman is in order and may proceed.

Mr. DENLINGER. Thank you.

The proposal before us certainly has some good numbers, some intriguing numbers, and I think it is worthy of a look. However, it does concern me that we have not really done our homework as far as the impact on this State, some of our key businesses. Our auto dealers across the State come to mind certainly and some other key businesses that I think could be impacted in a significantly negative fashion. For that reason

I do believe that this proposal needs additional study, and I would encourage the members to consider that and to vote “no” accordingly on the Pyle amendment.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman, Mr. Scavello, from Monroe County.

Mr. SCAVELLO. Thank you, Mr. Speaker.

Will the maker of the amendment please answer a couple of questions for me?

The SPEAKER pro tempore. The gentleman has agreed, and you may proceed.

Mr. SCAVELLO. Does this piece of legislation include HB 39’s total verbiage as far as all the rebates and everything of 39, the whole text of that piece of legislation?

Mr. PYLE. No, it does not, Mr. Speaker, but I would like to point out that in addition to the numbers presented before you, this does not include the existing property tax and rent rebate for senior citizens. Those numbers would be in addition to the numbers presented.

Mr. SCAVELLO. Because I am reading here, it says, “This analysis does not include the expansion of the Property/Tax Rent Rebate Program...,” and in parentheses it has the HB 39, “which provides additional relief for Seniors.” So I am assuming that that is not included in these numbers but yet it is in this bill. So the seniors get all of the benefits from HB 39 as well when we vote for this piece of legislation. Am I correct?

Mr. PYLE. Your assumption is correct, Mr. Speaker, if the companion to this HB 39 is indeed passed.

Mr. SCAVELLO. Very good. Oh; it would have to be passed separately. It is not part of the same piece of legislation.

Mr. PYLE. That is correct, sir.

Mr. SCAVELLO. Okay. The only other question that I have, in the first year you are showing \$518 million. Why are we showing 518 instead of 1.4? I think that the savings could be much greater in that first year.

Mr. PYLE. Mr. Speaker, the earliest we could put this into effect would be half a year. That is why those numbers are significantly less than the other.

Mr. SCAVELLO. And are we saying January 1 of next year?

Mr. PYLE. It would have to go to referendum in spring 2007 and be in effect for January 1.

Mr. SCAVELLO. So if we go January 1 of next year, we are talking about property taxes from 2007-2008, which would start on July 1 of 2007 and end June 30 of the following year. We are still going to be collecting taxes within that year. It is possible that we can make this rebate even greater to the taxpayers of our area in 2007-2008 should we choose to.

Mr. PYLE. Mr. Speaker, that potential does exist, yes.

Mr. SCAVELLO. Very good. Thank you.

Mr. Speaker, I would like to make a comment on the bill.

The SPEAKER pro tempore. The gentleman is in order and may proceed.

Mr. SCAVELLO. I have always said all along that we need to do more than just HB 39. We need to give the citizens of Pennsylvania something substantial, and whatever it is, it is going to be a switch. You are just not going to have new money fall from the sky. HB 39, although we can say to the citizens of Pennsylvania that we are going to give you a huge reduction in property taxes, \$1 billion, there is no person here that will give me a written guarantee that we are going to have a billion dollars in property tax reduction. But with something like this,

at least you know that you can bank on those dollars, and those dollars will be reduced to property owners in this Commonwealth.

I would support this legislation and urge the members as well to support the legislation.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Berks County, Mr. Rohrer.

Mr. ROHRER. Thank you, Mr. Speaker.

A couple of questions, if I could interrogate the maker of the amendment.

The SPEAKER pro tempore. The gentleman has agreed, and you may proceed.

Mr. ROHRER. I need to have a clarification, because we have not had this amendment to look at either. So I do not have the benefit of really knowing what is in this. A general question: Does this amendment along with the bill, does it or can it stand separately from HB 39?

Mr. PYLE. Yes, it can.

Mr. ROHRER. The money that is collected under this bill, where does it go?

Mr. PYLE. It would go to the Property Tax Stabilization Fund created by this amendment, sir.

Mr. ROHRER. Where in the bill are— Let us put it this way. If it can stand alone, then we have to look to the next question of, what is there relative to spending controls? What is in the bill and/or this amendment, anything in this amendment that deals with spending controls?

Mr. PYLE. Mr. Speaker, in this amendment there are no spending controls. Those are contained within the companion bill.

Mr. ROHRER. Okay. My question then is, if you look at the bill, where does it talk about referendum? I was not able to find anything other than what was there relative to the city of the first class.

Mr. PYLE. Within this amendment, sir, there are no referendums.

Mr. ROHRER. Okay, that is fine, but then if this is going to be attached to the bill, where in the bill that this is associated with does it refer to referendum?

Mr. PYLE. Mr. Speaker, this legislation has no referendum built into it. What it does is it generates revenue to pump through HB 39 to drive— No; excuse me. It distributes the money on its own. I misspoke. My apologies, sir.

Mr. ROHRER. Okay. But that is back to my question. Then basically what you are saying is that there is no spending control in this amendment and/or the accompanying bill, HB 859, to which it would be attached.

Mr. PYLE. Mr. Speaker, the assumption is that this attaches to HB 859, and it does not.

Mr. ROHRER. Okay. That is my question. That is important to understand. So therefore, if anyone wants any remote sense of spending control, be it good or bad, it would have to be accompanied by what is in HB 39.

Mr. PYLE. The gentleman’s statement is correct, Mr. Speaker.

Mr. ROHRER. Okay. I think that is important to understand. So therefore, it is not really true to say that this is independent of HB 39 if you want any type of spending control at all. So that being— Okay. A second question.

Mr. PYLE. Mr. Speaker? Mr. Speaker, I am having trouble hearing the questions.

Mr. ROHRER. Maybe, Mr. Speaker, we could request a little bit less noise in the hall?

The SPEAKER pro tempore. The gentleman is entirely correct. He cannot hear the questions. Members, please be seated. Members, kindly be seated.

Mr. PYLE. Mr. Speaker, if I could request the interrogator to please ask the question again so I can hear it.

Mr. ROHRER. Okay. I think— I forget where I was. I think the last question, I think the last question was, then in real life, this amendment and the bill to which it is attached, because it has no referendum a part of it but relies on the referendum that is in HB 39, that in essence the two, if you want any type of spending control, it does accompany and has to go along with HB 39?

Mr. PYLE. No, sir. That is not entirely correct, Mr. Speaker. This amendment before you now, A8073, dedicates all funding driven directly to homestead and farmstead property tax reduction. There is no other use for this money.

Mr. ROHRER. Okay. I understand, but I am saying there is no spending control from the standpoint of the school district. This just provides money. There is nothing about this that provides any kind of spending control. At least I think that is what you are saying.

Mr. PYLE. You are correct, Mr. Speaker.

Mr. ROHRER. Okay. Secondly, looking at the distribution, the numbers as driven out under the plan are different than what is driven out under HB 39. This is under a different methodology.

Mr. PYLE. Correct, sir.

Mr. ROHRER. In my counties, and as I look across the distribution chart, it appears to me that there is a greater amount of money that is returned per household in wealthy districts than there is per household in poor districts. Is that correct?

Mr. PYLE. Mr. Speaker, part of what you query is correct. What this does is it uses an equalized millage in an ADM (average daily membership) formula, whereas districts that pay more property tax will receive more in return when the EIT in their local districts is adjusted.

Mr. ROHRER. Okay. However, however, basically you are answering yes, more under the sales tax collected under this plan would go back to districts that would be considered wealthy than those that have less wealth. That is the very nature of the distribution.

Mr. PYLE. I would offer, Mr. Speaker, this is not a school subsidy bill; this is a property tax reduction bill.

Mr. ROHRER. I understand. Okay.

All right. I would like to have a comment or two then.

The SPEAKER pro tempore. The gentleman is in order and may proceed.

Mr. ROHRER. Thank you.

Mr. Speaker, clearly the issue of what we are trying to tackle here in the property tax reform effort is, one, that we all have to deal with what is substantive, because that is what the voters want. Now, if this House cannot bring themselves to eliminate, then everything else we are looking at is less, and that goes without saying, but the question is whether or not that is enough.

The raising of the sales tax by 1 percent becomes more than just philosophical. You either broaden the base or you raise the rate. The raising of the rate is, in fact, more regressive than the

broadening of the base. If I look at the distribution even in my district, the average household would pay under the 1 percent, and that is not even buying a new car or furniture or a large purchase, would get, in the first year it would only be 20-some dollars. They would pay \$120 under the expanded base. That is not substantive, I do not believe.

Secondly, part of what is required in reform is that we do something to keep a lid on the spending. Again, there is nothing in here regarding spending control, and that is really where we get into trouble. If I look at my chart here, the amount of money that again will be gotten back if the full 1 percent is distributed is less than what our property taxes are going up every year at 3 and 4 percent. So again, not keeping a lid on the spending really just puts more money into the pot without getting hold of the problem.

And the third thing I mention, which is a concern, and again, we have not really discussed this sufficiently, even within our own caucus, is that whereas the distribution method employed here does drive back more money generally to districts that pay higher taxes, that is not necessarily true, and my concern here, Mr. Speaker, is that what we have is an institutionalized expansion of our inequity problem, and that is a very, very big concern of mine, Mr. Speaker.

As we do know, the issue of equity is a legal problem. It is a problem that we faced that we have very narrowly averted in the State. Taking State money and driving it back in essence furthers that, I believe, and I am very concerned about that aspect, and to that extent, Mr. Speaker, I am not able to support the amendment because of those reasons. I believe that if there would be further discussions, some of these things could be handled and worked out, but it is too quick to be able to deal with.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentelady, Mrs. Rubley, from Chester County. She waives off.

The gentleman, Mr. Nickol, from York County is recognized.

Mr. NICKOL. Thank you, Mr. Speaker.

I understand the conference committee report on HB 39 is the base for this amendment, and the amendment builds on that base and is complimentary to HB 39. It offers an even higher level of property tax cuts.

HB 39 has been criticized by many as not substantial enough in terms of tax relief, including by myself. The Governor and many members of the House and the State Senate have essentially agreed, saying that HB 39 is only a first step. In other words, trust us to come back tomorrow and do more. Actually, I do not feel we have much reserve for trust with the voters on the issue of local tax reform. I do not even trust us. Anyone who thinks HB 39 will be the base for us to come back tomorrow and build on it surely has not sat through the divisive caucuses, long hours of session, and attended the heated local meetings with senior citizens, school boards, taxpayer groups, teachers, and other constituency.

We should be honest with the public and ourselves. HB 39 may be a start, but this amendment represents the last hope for more substantive—

The SPEAKER pro tempore. Will the gentleman yield. The Chair has been advised to remind the gentleman we are on the amendment, not HB 39. The gentleman may proceed.



Mr. NICKOL. We should be honest with the public and ourselves. HB 39 may be a start, but this amendment represents the last hope for more substantive property tax relief probably for many years.

Are we serious about higher levels of school property tax reduction? With HB 39, homeowners will still have to wait 3 years until fiscal '09-'10 for \$685.5 million in tax relief from the slots. This amendment will jump-start property tax relief in fiscal year 2007-2008 with \$518.4 million, increased in fiscal year 2008-2009 to \$1.479 billion, and then add in the \$685.5 million from HB 39 on top of this.

As you can see, not only is the tax relief under this more immediate, it is also more substantial. I know one school district of my own, as an example, Southwestern School District in York County, HB 39 alone would generate \$174 in tax relief other than through local referendum. This amendment would generate \$712 in local tax relief other than through local referendum. Let us pass the amendment and see if the State Senate and the Governor can agree with us on a higher level of tax relief.

I support the amendment offered by the gentleman from Armstrong County. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman.

Are there any other members seeking recognition? The gentleman from Franklin County, Mr. Kauffman, is recognized.

Mr. KAUFFMAN. Will the gentleman rise for brief interrogation, the maker of the amendment?

The SPEAKER pro tempore. The gentleman has agreed, and you may proceed.

Mr. KAUFFMAN. We are hearing a lot about the companion pieces – HB 859, HB 39 – and my question is, if HB 859 passes and HB 39 passes, is there anything that would prevent the Governor from signing HB 39 and HB 859 never being acted on; thus, we get the result that we would have had approximately 1 month ago in just HB 39?

Mr. PYLE. I do not think that can be answered.

Mr. KAUFFMAN. Well, is there anything that links these two together?

Mr. PYLE. No, there is not, Mr. Speaker.

Mr. KAUFFMAN. Mr. Speaker, on the amendment.

The SPEAKER pro tempore. The gentleman is recognized.

Mr. KAUFFMAN. Therein lies my concern, Mr. Speaker. The answer to that question is very uncertain, and with this Governor, I do not hold anything as something that we can count on, and I surely do not believe that we can count on HB 859 and HB 39 going together to the Governor. In the end we may just get HB 39. Thus, I would oppose this amendment.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

### PARLIAMENTARY INQUIRY

The SPEAKER pro tempore. Mr. Vitali, are you seeking recognition? The gentleman, Mr. Vitali, from Delaware County.

Mr. VITALI. Thank you, Mr. Speaker.

Initially I just wanted to make a parliamentary inquiry. Do we have a fiscal note here?

The SPEAKER pro tempore. Mr. Vitali, we suspended the rules that required a fiscal note.

Mr. VITALI. Mr. Speaker, I am not sure that we did that. We may have to check the record. As I was listening to the debate, and in fact, I did not hear anything mentioned of suspending rules with regard to the fiscal note. Is it possible that we can check the record to see if in fact we did, because I do not think we did.

The SPEAKER pro tempore. Will the gentleman yield, please.

The gentleman, Mr. Samuelson, raised the issue of parliamentary inquiry, which involved the rules being suspended under rule 19(a) and under rule 30.

Mr. VITALI. It is my understanding that we were suspending under rule 30, which did not involve fiscal notes. I do not have the rules in front of me, but are you suggesting 19(a) involves the fiscal note requirement and what—

The SPEAKER pro tempore. Mr. Vitali, both rules were clearly stated.

Mr. VITALI. Thank you, Mr. Speaker.

The SPEAKER pro tempore. You are welcome.

Mr. VITALI. If I can just then interrogate the maker of the bill – the maker of the amendment, rather?

The SPEAKER pro tempore. The gentleman has agreed, and you may proceed.

Mr. VITALI. If perhaps the maker of the amendment could explain to me where in the bill itself is the language which generates the spreadsheets on our desks.

Mr. PYLE. Mr. Speaker, they are contained within chapter 21 of the document; page 62 to be exact, Mr. Speaker.

Mr. VITALI. And could you tell me the general policy or strategy which generated these figures? In other words, what calculations or factors went into generating these figures?

Mr. PYLE. Mr. Speaker, that would be ADM plus equalized mills.

Mr. VITALI. And maybe dumb that down for my benefit a bit.

Mr. PYLE. That would be difficult, Mr. Speaker.

Mr. VITALI. I think you are up to the challenge, though.

Mr. PYLE. Your question, Mr. Speaker? Is the interrogator asking me to explain ADM and equalized millage, Mr. Speaker?

Mr. VITALI. Explain the formula in terms more understandable by a layman.

The SPEAKER pro tempore. Mr. Vitali, would you rephrase your question to make it a bit clearer.

Mr. VITALI. Thank you, Mr. Speaker.

Could you explain the formula, how it was calculated, how it was constructed, in such a way that a layman would be more easily able to understand it?

Mr. PYLE. It takes the tax effort of the school, factors in average daily membership, which is the number of students attending any given school district. That is how it generates these factors.

Mr. VITALI. Okay. Is this the same type ESBE (equalized subsidy for basic education) formula that was the initial basis for generating the basic ed moneys our school district generates, because that does also use the tax effort calculations?

Mr. PYLE. Yes, it is the same calculation, Mr. Speaker.

Mr. VITALI. I am confused now, because I am looking at these figures and the ESBE figures, and in the amount my school district gets with regard to others, they do not seem proportionate. Something does not quite seem right intuitively.

Mr. PYLE. Mr. Speaker, I would answer, what we are trying to do here is to reduce school property taxes, not fund education.

Mr. VITALI. I certainly understand that, but that really was not my question. I was just trying to get at the formula by which you are reducing property taxes, but you seem to be doing that in a way based on average daily membership, which is the number of kids going to schools.

Mr. PYLE. Mr. Speaker, I would answer, we are not using the ESBE formula. That is used to determine school subsidies. This is aimed solely at property tax reduction.

Mr. VITALI. So you are backing off from your previous statement that this is similar to the ESBE formula?

Mr. PYLE. That was not stated that it was similar to the ESBE formula.

Mr. VITALI. Okay.

Mr. PYLE. It uses components of it but not in its entirety.

Mr. VITALI. I understand.

What is the total amount of revenue generated by your amendment for property tax reduction?

Mr. PYLE. It states that by year at the top of the sheet, if you would like to follow those. The first year is a half figure due to only a half year's sales tax and usage being collected. Truer numbers are represented in the second, third, and fourth columns, fiscal years '08 through '11.

Mr. VITALI. So roughly, once this gets into full swing, about \$1 1/2 billion a year is what your amendment generates in terms of revenues for property tax reduction?

Mr. PYLE. Approximately, yes, Mr. Speaker.

Mr. VITALI. Now, could you break that down in terms of the various sources? It is my understanding there is a sales tax component here. Is there a gambling component? What are the components of that money?

Mr. PYLE. Mr. Speaker, this is solely sales tax. This contains no gambling components.

Mr. VITALI. The sales tax is increased to 7 percent. Is that it?

Mr. PYLE. Correct, Mr. Speaker.

Mr. VITALI. How do the exemptions of goods and services subject to sales tax differ under this amendment than under current law?

Mr. PYLE. There is no difference, Mr. Speaker.

Mr. VITALI. Right.

Mr. PYLE. The same exemptions that currently exist would continue to exist.

Mr. VITALI. Okay. And so this amendment contains the sales tax component and the distribution component but does not contain the other components of what people commonly think of by property tax reform, such as things like the back-end referendum, the gambling money, the PIT (personal income tax) increase, and so forth? This is just the sales tax imposition and a distribution scheme. Is that correct?

Mr. PYLE. Correct.

Mr. VITALI. Okay. Thank you. That concludes my interrogation.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman, Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Speaker.

Will the maker of the amendment stand for a brief interrogation?

The SPEAKER pro tempore. The gentleman agrees, and you may proceed.

Mr. PALLONE. Thank you, Mr. Speaker.

I am kind of a good old boy of my own. I come from a small town, and while I am formally educated, both college and law school, I am not always that swift when it comes to figures. So I am trying to take a look here at these numbers, and I heard a number of speakers talk tonight already, this afternoon, and just so I am clear in my mind, is there any increase at all to the earned income tax or the personal income tax for the individuals of Pennsylvania under your amendment?

Mr. PYLE. No, there is not. Thank you.

Mr. PALLONE. Good; I am glad to hear that.

Is there any increase in expansion – I am sorry – in the base of the sales tax?

Mr. PYLE. No, there is not.

Mr. PALLONE. And we are increasing the sales tax up to 7 percent, or are we increasing it by 7 percent?

Mr. PYLE. We are increasing it 1 percent to a total of 7 percent.

Mr. PALLONE. And the counties that have an additional percent, or whatever, will be at 8 percent?

Mr. PYLE. Correct.

Mr. PALLONE. Thank you.

Also, Mr. Speaker, do you know currently how much the 6-percent sales tax base generates in revenue in the Commonwealth of Pennsylvania?

Mr. PYLE. Approximately \$8 billion, Mr. Speaker.

Mr. PALLONE. Okay. Now, in doing the math, if 6 percent raises \$8 billion, can you explain to me how 1 additional percent is going to raise \$1.5 billion? And if you do the math— Like I say, I am not an accountant anymore.

Mr. PYLE. We are calculating this right now, Mr. Speaker.

A 6-percent sales tax, Mr. Speaker, generates approximately \$8.6 billion; the sales tax at current level, 6 percent. At 7 it will increase that roughly \$1.5 billion, all of which is dedicated to homestead and farmstead exemption.

Mr. PALLONE. All right. But if you do the math and divide 6 into \$8.4 or \$8.6 billion, as you said, if you do the math, it does not— How are you going to expand the sales tax revenue, is what I am asking you?

Mr. PYLE. Sure.

Mr. PALLONE. A percent obviously generates a fixed amount.

Mr. PYLE. Correct. Mr. Speaker, if you are basing your numbers off what is provided on this sheet, those big totals in the first columns up there incorporate EITs after the first year.

Mr. PALLONE. Oh, so then you misspoke before? It does include an EIT?

Mr. PYLE. I just misspoke.

Mr. Speaker, those numbers increase because the amount of sales increase every year.

Mr. PALLONE. So are you basing the expectation on increased sales and a hopeful increase in revenue generated?

Mr. PYLE. Yes.

Mr. PALLONE. These are not based on prior numbers or history or experience?

Mr. PYLE. No. Our numbers increase \$100,000 over current figures due to inflation, from \$1.4 to \$1.5.

Mr. PALLONE. My next question would be, and I am looking at each of the blocks here, because this review here is I think 13 pages long, and I am just trying to focus on, quite selfishly, the 7 districts that I represent. In the very first column in each of those blocks for the fiscal years, is that what is

generated in property tax savings, correct, referring to your document?

Mr. PYLE. Correct, Mr. Speaker.

Mr. PALLONE. And then what would be the fourth column in each block, which is a substantially larger number than the first column, where is that number coming from?

Mr. PYLE. That number would come from a totaling of the first column, what is generated by the sales tax, and also anticipated incomes from HB 39.

Mr. PALLONE. Which has not passed yet?

Mr. PYLE. Correct.

Mr. PALLONE. And so I am clear in my mind that— So we need to focus, for the purposes of your amendment, on column one?

Mr. PYLE. The first column is solely generated by the increased 1 percent sales and use tax.

Mr. PALLONE. All right. Thank you, Mr. Speaker.

On the amendment.

The SPEAKER pro tempore. The gentleman may proceed.

Mr. PALLONE. Thank you, Mr. Speaker.

While I am certain that all of Pennsylvania is concerned about property tax relief and reductions and ultimate elimination, there is no guarantee in amendment 8073 that in fact the revenues will be generated sufficient to accomplish the goals that we want to. It is based on another piece of legislation that has not passed yet, it has not been implemented yet, and when you look at the numbers, quite frankly, there is a concern that most of the school districts in my legislative district are going to enjoy a savings of about \$115 per household, which is not a significant savings at all.

You know, we have had considerable debate about this on the floor. We have had considerable debate since I began my tenure in the House, and we continually said that significant savings is important. I clearly do not understand how today, when we are offered a 63-page amendment that we have not had an opportunity to read or review or caucus on, that is offered to a piece of legislation that was introduced last March of 2005, passed the House in May of 2005, went over to the Senate, came back to the House in October of 2005 – so it has been around for better than a year – all of a sudden today, in the eleventh hour, which the general public has continually been critical of the legislature of taking eleventh-hour decisions and making them in haste, we are making another eleventh-hour decision without having the ability or the time to do our due diligence and determine the value of this particular offer to attempt to reduce property taxes.

Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Northampton County, Mr. Samuelson.

Mr. SAMUELSON. Thank you, Mr. Speaker.

I rise to interrogate the maker of the amendment.

The SPEAKER pro tempore. The gentleman has agreed, and you may proceed.

Mr. SAMUELSON. I, too, am trying to make a connection here between the amendment, the 69-page amendment, and the printout of every school district in Pennsylvania and trying to determine exactly how the tax relief district by district is calculated, and I have noticed some anomalies here in the printout, districts that have lower tax relief in year one, then have higher tax relief in year two, and I understood the gentleman's earlier answer that it is based on average daily

membership, but if I look around the State, it does not seem to be related to the number of students in a district or the population of a district. How is the tax relief number derived?

Mr. PYLE. Mr. Speaker, these numbers are generated, Mr. Speaker, by the average daily membership times the tax effort of the local district. That EIT component that is incorporated within another bill, I understand we will be voting on later—

Mr. SAMUELSON. Okay.

Mr. PYLE. —allows local school districts to determine an EIT up to a set level. The higher they raise the EIT, the greater the contribution of the district and the higher the savings.

Mr. SAMUELSON. Can you explain the fluctuation, how a district that gets less tax relief in year one gets more? An example would be from your home area, Armstrong County. I am comparing the Armstrong School District with the Freeport Area School District. In the first year, Armstrong, which is a larger district populationwise, gets more tax relief, but in the second year, Freeport Area, a smaller district, gets more tax relief. So what is the difference between year one and year two that would cause those fluctuations district to district?

Mr. PYLE. Mr. Speaker, if you read the columns, Mr. Speaker, in vertical fashion, up and down, you will see the first column is based on 5 months' collection of sales and use tax, whereas the second column is based on 12 months of sales and use tax. That is why there are corresponding increases.

Mr. SAMUELSON. But if in the first year, based on 5 months, a taxpayer in Armstrong School District qualifies for more tax relief than a taxpayer in Freeport Area, why in year two, if you just extrapolated out to 12 months, why in year two does the taxpayer in Armstrong School District qualify for less tax relief than Freeport? What is the difference between year one and year two other than the magnitude? I understand we are going from 5 months to 12 months. Why the fluctuation? And that is not just unique to Armstrong County. I have noticed that other parts of the State, a district that gets less tax relief in year one gets more in year two, and conversely, there are others that lose out in year two. What section of the bill should we be looking at to understand this formula?

Mr. PYLE. Mr. Speaker, these numbers fluctuate due to ADMs. All schools go through bubbles of population in students. Based on current student populations in my home district of Armstrong and one of the school districts within my legislative district, Freeport, we have extrapolated population figures for average daily membership of students. That is why those numbers fluctuate.

Mr. SAMUELSON. So if the average daily membership goes up, the tax relief goes up?

Mr. PYLE. Exactly.

Mr. SAMUELSON. And if a district is four times as large, it is based on a per capita basis; they are not going to get four times the tax relief, you are saying?

Mr. PYLE. Mr. Speaker, it is per capita times the local tax effort in the EIT portion.

Mr. SAMUELSON. Okay. The final question: Which section of the amendment should we be looking at to understand the basis for this formula?

Mr. PYLE. That would be in chapter 21, Mr. Speaker.

Mr. SAMUELSON. Chapter 21 of the School Code or of the amendment?

Mr. PYLE. Of the amendment, Mr. Speaker. It begins on page 62.

Mr. SAMUELSON. And the formula itself— On 62 and 63 I am getting a lot of definitions. The formula itself that you are using is where?

Mr. PYLE. It would be section 2112, Mr. Speaker.

Mr. SAMUELSON. Section 2112; it is one word long. There it is, “Notification”; “notification.” And this is the formula that the Department of Education would notify—

Mr. PYLE. Mr. Speaker, I have misspoken. It is section 2113, not 2112.

Mr. SAMUELSON. Okay. And this calculation would be made once a year by whom, by the Department of Education?

Mr. PYLE. The staff of the House Appropriations Committee.

Mr. SAMUELSON. The staff of the House Appropriations Committee?

Mr. PYLE. Correct.

Mr. SAMUELSON. In a bipartisan manner or just the majority staff would be making this determination?

Mr. PYLE. Mr. Speaker? Hold, Mr. Speaker. Could you please restate your question.

Mr. SAMUELSON. Who would make the annual calculation of how much tax relief would be given to each school district around the State?

Mr. PYLE. That would be the Department of Education and the Budget Secretary, Mr. Speaker.

Mr. SAMUELSON. Okay. Thank you, Mr. Speaker.

Mr. PYLE. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman.

### LEAVE OF ABSENCE CANCELED

The SPEAKER pro tempore. The Chair recognizes the presence in the hall of the House of the gentleman, Mr. Armstrong, and he will be added to the master roll.

### CONSIDERATION OF HB 859 CONTINUED

The SPEAKER pro tempore. The gentleman at this time is recognized, the gentleman, Mr. Yudichak, from Luzerne County.

Mr. YUDICHAK. Thank you, Mr. Speaker.

Mr. Speaker, may I interrogate the maker of the amendment?

The SPEAKER pro tempore. The gentleman has agreed, and you may proceed.

Mr. YUDICHAK. Thank you, Mr. Speaker.

It never ceases to amaze me. We have a great propensity to complicate matters here in this great chamber, and you have done a great job tonight at being succinct in your answers and direct and clear in your explanation.

For clarification, for further clarification, I want to get to the bottom line of your amendment: \$1.5 billion generated for property tax relief in Pennsylvania, added to \$1 billion in projected gaming revenues, and with HB 39 a projection of another \$250 million, for a total of \$2.75 billion in property tax relief?

Mr. PYLE. If the amendment runs concurrent with HB 39, yes, you are correct.

Mr. YUDICHAK. So the bottom line is \$2.75 billion?

Mr. PYLE. Yes.

Mr. YUDICHAK. Thank you, Mr. Speaker.

On the amendment.

The SPEAKER pro tempore. On the amendment, you may proceed.

Mr. YUDICHAK. Thank you, Mr. Speaker.

It has not been an easy road on the property tax debate here in Pennsylvania, but we have made great progress, and I want to commend the House, both Democrats and Republicans who have driven this issue certainly more than anyone else in the Commonwealth of Pennsylvania.

A few years ago property tax relief was \$300 million in the form of a \$100 rebate. We are doing much better today: \$1 billion in relief from gaming, \$1 1/2 billion from the sales tax, and \$250 million in HB 39 that will expand the property tax and rent rebate for seniors. That is substantial property tax relief. That is what this House has fought for.

I encourage an affirmative vote on the Pyle amendment. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman, Mr. Levdansky.

Mr. LEVDANSKY. Thank you, Mr. Speaker.

Mr. Speaker, a lot of members have labored for many, many years and even decades to provide a solution to the issue of property tax reform, and some people think that property tax reform means that we reduce or eliminate property taxes, but the reality for those of us in this chamber that have labored to try to address this issue for many, many years is, we clearly understand that it is about shifting tax burden off of local property and onto something else.

Now, there has always been a consensus that we want to lower school property taxes, but we have never really had a consensus as to what other taxes we raise in order to effectuate lower school property taxes. Now, the easy piece of the puzzle to solve is the gaming revenue, and later on we will have a vote on HB 39 to allocate those gaming revenues. That is the easy piece. But voters that I have talked to in my district and across the Commonwealth are not just happy, in my judgment, with just that level of property tax relief. The message I have got from my district is, they want to go further. They want more significant property tax reductions than that which will be engendered by the revenue from gaming, which brings us to where we are today.

This amendment would raise the sales and use tax 1 percent and use an average daily membership times an equalized millage to drive that money out to our school districts, yielding the amount of property tax reductions that you see in the printout. Now, one could complain that, you know, well, you know, I would rather not have the sales and use tax. Frankly, I would rather see a— Personally, I would like to see a combination perhaps of an increase in the sales and use tax and the personal income tax, but we cannot have it all our own way.

This is a compromise version, which it has taken us a long time to get here. To come up with a 1 percent, under this amendment, we allocate, raise the sales tax 1 percent, which raises approximately \$1.4 billion when added to, when added to the gaming revenue allocated under HB 39 and a small contribution from the lottery surplus, gets us approximately a \$2.6 to \$2.7 billion reduction in school property taxes for homeowners in the Commonwealth. That is the maximum amount that we could deliver under the State Constitution. Under the existing constitutional requirement, this is the

maximum, this combined with HB 39, combined with revenue from the lottery, yields the maximum allowable cut in school district property taxes for homeowners. In the end, given all the circumstances, it really does not get any better than this.

Tax reform really is about shifting the burden of paying for public education. I think, I think that given all the circumstances and where we are and where we have been, that this is a good, fair compromise that delivers substantial and meaningful property tax cuts to our homeowners, and again, we could all nit-pick and look at the details and complain, but this is a consensus-driven process.

In my judgment, in a bipartisan fashion, I believe this is a fair and balanced approach that is fair to homeowners, fair to State taxpayers, and on balance, I think it is clearly, clearly the maximum that we can do, given our State Constitution, and I would urge an affirmative vote on the amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Clearfield County, Mr. George.

Mr. GEORGE. Thank you, Mr. Speaker.

If I can first apologize in that I am not as learned as many of you here, especially in the fundamentals of economics, but God has been very good to me in that I have been around a long time, and you know, there is an old saying, it says, if you do not know anything about history, it is doomed to repeat itself.

So I remember in 1954 when my dad came down as a Democrat committeeman and they nominated George Leader to be the Governor of Pennsylvania, and they nominated a man who was not even a Democrat, I do not believe, but he was bright and he was shrewd and he was a dedicated man, and he needed to get money for the State but he did not want a sales tax, and for 16 months he fought that legislature and they finally beat him and that was at 1 percent.

Now, I hear people talking about what this does. I do not know. All I do know is there are computers, there are catalogs, there are Internets, and we are spending millions of dollars out of State simply because it is cheaper to do business out of State and have it delivered to your home without even leaving your home.

Now, I came here in 1974. I know how tough it is to vote for a tax. Governor Shapp tried with 118 Democrats and we took an extra 4 months. I have worked under five Governors. I worked under Bob Casey, and we had a tax, that each one of those individuals left money for the next chief executive, left money.

Now, my problem is, under Bob Casey we were getting nearly 50 percent of a subsidy for these schools, rich, poor, or indifferent, and now under Ridge, who is running around this State of Pennsylvania saying about how wrong everything is, he does not admit that the money they spent has put the situation before us, and he does not admit that he dropped the school subsidy to 36, 37, and 38 percent.

Now, we have a Governor over here that for some reason you do not like the car he drives – I do not either; it is not a Ford – but nevertheless, the man has proposed time and time again, as somebody just said, we are closer, we are closer because of this Governor, Ed Rendell, that seems to open his mind every once in a while and the papers close in on him, but the truth of the matter is, he has brought that subsidy up considerably.

So if you want to do this, you feel free to do it. I am only saying to you, it is going to come back to haunt you. The Senate is not going to pass this bill. They are saying if there is an

\$870 million surplus, we are not passing that bill. So let us keep on working until we get the right idea. Unfortunately, the prime sponsor, the gentleman, I like him dearly, but the truth of the matter is, it just is not right, and if it is not right, do not do it.

Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman, Mr. Reichley.

Mr. REICHLLEY. Thank you, Mr. Speaker.

Would the maker of the amendment please stand for brief interrogation?

The SPEAKER pro tempore. The gentleman has agreed, and you may proceed.

Mr. REICHLLEY. Thank you, Mr. Speaker.

Mr. Speaker, in all the din and clamor of the afternoon, I apologize, but I need some clarification. Under this amendment, 8073, would you please be able to explain just how much money would be raised from this increase of the sales tax?

Mr. PYLE. Mr. Speaker, I would answer, in the first year, \$518.4 million; second year, \$1.479 billion; third year, \$1.531 billion; fourth year, \$1.587 billion, Mr. Speaker.

Mr. REICHLLEY. Are you able to explain what the reason is for the different amounts over the 4-year time period?

Mr. PYLE. Mr. Speaker, I would answer that normal inflation, as prices increase and spending increases, those amounts will correspondingly increase by the year.

Mr. REICHLLEY. And with the amount of revenue that is raised, I remember the gentleman from Northampton and, I believe, the gentleman from Delaware were asking you, trying to get a more specific detail in the formula by which the money is distributed back to the districts. We have heard terms such as “average daily membership” and “equalized millage,” “minimum, maximum amounts.” Are you able to explain, I think I heard the gentleman from Delaware mention in layman’s terms, but as basically as possible?

Mr. PYLE. Mr. Speaker, I would answer, it is the size of the school district, the ADM, the average daily membership, times the local tax effort, and increasing the EIT. That is how we generate this formula.

Mr. REICHLLEY. And I apologize, Mr. Speaker, if you have already answered this question, but when you say tax effort, are you able to define that for the general public who is listening or watching?

Mr. PYLE. All local school districts, to qualify in this, are required to institute a local earned income tax on wage earners. They have within their option the ability to raise it up to a total of 1 percent. However, they can choose to do that incrementally and phase it in, not to exceed 1 percent.

Mr. REICHLLEY. Now, if one was not to use average daily membership times equalized millage as the distribution formula, if you were just to use average daily membership, would that skew or affect how the money is distributed to the various districts throughout Pennsylvania?

Mr. PYLE. Yes, it would, Mr. Speaker. That would most adversely affect the smaller school districts.

Mr. REICHLLEY. By using average daily membership times equalized millage, are you able to sort of broaden the impact of tax relief rather than it just being farmed directly to those districts that might proportionately have a larger student body?

Mr. PYLE. That is correct, Mr. Speaker.

Mr. REICHLLEY. Such as the Philadelphia School District?

Mr. PYLE. Correct, Mr. Speaker.

Mr. REICHLEY. Now, in Lehigh County we have the Allentown School District, the third largest school district in Pennsylvania. Are you familiar with how the Allentown School District is affected by using average daily membership times equalized millage?

Mr. PYLE. Allentown, with its great size in student population, would actually have more money driven to it, having the higher ADM, or average daily membership, just as Philadelphia District would in your previous question.

Mr. REICHLEY. And there are a number of other districts, such as the suburban district that I live in, the East Penn School District, also in Lehigh County, that has sustained a huge increase in student population in the past year. How would what are described as growing school districts be affected by this distribution formula?

Mr. PYLE. This amendment very favorably treats growing school districts, because this is based largely upon the ADM, and as more students enter the school system, the ADM increases, as does the amount of rebate returned to the homeowners.

Mr. REICHLEY. I think I recall, Mr. Speaker, that a growing school district is defined based upon the past 3 years' enrollment levels or there is a look back at 3 years' previous enrollment levels.

Mr. PYLE. In other legislation, Mr. Speaker, that is correct. It is the average of the previous 3 years.

Mr. REICHLEY. So if the East Penn School District had a large student increase this past year, this year, and the following year, they really would not see the total benefits of this formula until 3 years down the road from now?

Mr. PYLE. I would think in the third year is when they would realize the enhanced benefits, Mr. Speaker.

Mr. REICHLEY. Now, are you able to compare what would be available to districts like Allentown, East Penn, whatever district you might choose, the amount of relief available under your amendment as compared to what might be available under HB 39 as it currently stands, the conference committee report?

Mr. PYLE. Mr. Speaker, could you please restate.

Mr. REICHLEY. Sure. Sorry, Mr. Speaker.

Are you able to explain how the amount of money received by a district such as Allentown and in East Penn, two districts in Lehigh County that I either live in or abut, how they are impacted by the funding formula in your amendment as opposed to under HB 39?

Mr. PYLE. Mr. Speaker, in this amendment we consider only the increase in sales and use tax of 1 percent and the local tax effort, the EITs, as have been discussed, which differ from 39. I hope that has answered your question.

Mr. REICHLEY. Yes. And I will try to conclude the questioning, Mr. Speaker.

There have been some questions posed to the gentleman from Armstrong, Mr. Speaker, about the absence of back-end referendum provisions within this amendment. Would the maker of the amendment be open to the addition of an amendment to include a back-end referendum within this legislation as amended?

Mr. PYLE. Mr. Speaker, I would, Mr. Speaker.

Mr. REICHLEY. Do you have any idea how the addition of back-end referendum to this legislation would compare to any back-end referendum currently in HB 39?

Mr. PYLE. Mr. Speaker, depending on the form of the back-end referendum as proposed, they would be very close to the same, is my understanding.

Mr. REICHLEY. So conceivably, one could vote for HB 859 as amended by your amendment, with an additional provision for a back-end referendum, and not have to address HB 39 to achieve property tax relief?

Mr. PYLE. That would be correct, Mr. Speaker.

Mr. REICHLEY. But obviously, the amount of money that might potentially be available for homeowners and low-income seniors would not be as great. Your amendment, as it is, does not have any provision for property tax or rent rebate relief. Is that correct?

Mr. PYLE. Within this amendment there are no provisions for property tax/rent rebate. However, should the program continue as in prior years, it would be in addition to the numbers presented on this spreadsheet.

Mr. REICHLEY. Okay. Thank you, Mr. Speaker.

On the amendment, Mr. Speaker?

The SPEAKER pro tempore. On the amendment, Mr. Reichley.

Mr. REICHLEY. Thank you, Mr. Speaker.

I apologize to the members for asking so many detailed and perhaps overly prosaic questions to the maker of the amendment. This is a situation which is of inordinate importance to every homeowner and renter in Pennsylvania, and when one compares the amount of tax relief that was available under HB 39 as it was presented to the House a month ago, I have been handed the printout that shows that, for instance, in the East Penn School District, where I live, the amount for homestead available from slot gaming, with a conservative estimate of \$400 million in revenue to the State, would only provide \$90, 9-0, in property tax relief to the homeowners in my school district; for the Parkland School District, \$79; for the Salisbury School District, \$74; and it goes on and on in that similar fashion. This frankly, Mr. Speaker, is not what my constituents think of as property tax relief.

Now, looking at the spreadsheet that the maker of the amendment provided, I note that in those three same school districts, in the first year based solely upon property tax relief, homeowners in the East Penn School District would receive \$160, and Parkland, \$152, and in Salisbury, \$129. So right from the very beginning, we are almost doubling the amount that is available to the homeowners in those three districts.

In addition, under this amendment, it is possible that the homestead referendum from HB 39 would offer substantially hundreds of dollars more, and that with the property tax and rent rebate, the constituents in the East Penn, Parkland, and Salisbury School Districts are on order to receive as much, for instance in the East Penn School District, as much as \$1,255 in the fiscal year 2008-2009, up to \$1,435 in 2009-2010, and \$1,465, that is just in the East Penn School District alone, without the inclusion of the maximized amount of property tax and rent rebate.

The Parkland School District has similar kinds of figures of property tax relief, and I would challenge those members on both sides of the aisle who think that the kind of relief offered from HB 39's conference committee report is sufficient to look carefully at these spreadsheets. We are not doing our constituents any favors. HB 39 is much like cheap alcohol.

It tastes bad; it smells bad; it is cheap, and it is going to give us a heck of a headache the next morning if we pass just that alone.

So we need to move on HB 859 with the Pyle amendment, and I would urge our members to seriously consider this. It is a good step forward for all homeowners throughout Pennsylvania.

Thank you, Mr. Speaker.

**THE SPEAKER (JOHN M. PERZEL)  
PRESIDING**

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Dally. The Chair apologizes.

The Chair recognizes the gentleman from Northampton, Mr. Dally.

Mr. DALLY. Thank you for your indulgence, Mr. Speaker.

I would like to interrogate the maker of the amendment, please.

The SPEAKER. The gentleman is in order and may proceed.

Mr. DALLY. Thank you, Mr. Speaker.

Mr. Speaker, and perhaps this question may have been asked and answered already, but in regard to fiscal year 2007-2008 on the spreadsheet, is there a reason why there is not a full year recognized as far as the sales tax revenue that could be generated?

Mr. PYLE. There is, Mr. Speaker, and that reason is that we could not begin collecting the sales tax until 5 months into the year. Plus, you are going to see that number coming in a lot lower than the following years once it is already instituted and operational.

Mr. DALLY. Mr. Speaker, your calculation in terms of property tax reduction that is available pursuant to HB 39, what are your assumptions that you are making in terms of the gaming revenue that will be available for property tax reduction?

Mr. PYLE. Mr. Speaker, I would answer, it is never safe to assume anything.

Mr. DALLY. Well, I know in previous printouts that we have had on HB 39, there are various assumptions in terms of \$400 million, \$750 million, \$1 billion in gaming revenue.

Mr. PYLE. Mr. Speaker, the numbers we are using are numbers projected by Governor Rendell.

Mr. DALLY. Okay. Well, I notice in fiscal year 2009-2010, the gaming money kicks in from HB 39, and you are making an estimate of \$688.5 million in revenue. Is that correct?

Mr. PYLE. That would be correct.

Mr. DALLY. Okay. So that means the gamblers in Pennsylvania will have to lose about \$1.9 billion to generate that kind of income?

Mr. PYLE. Again, that would be correct.

Mr. DALLY. Okay. I think the previous speaker inquired about the back-end referendum. Now, we all know that HB 39 has a back-end referendum, and there was some concern expressed this evening by House members in terms of this bill not having taxpayer protections like a back-end referendum like HB 39. Do you believe that it would be advantageous to have a back-end referendum similar or exactly like HB 39 in this bill?

Mr. PYLE. Mr. Speaker, I would answer that at any time the protection of the taxpayers is paramount in the minds of this legislature, and as such, if language were drafted to my

amendment that would enable the quote, unquote, "back-end referendum," I would not oppose it and in fact would support it.

Mr. DALLY. Okay. Mr. Speaker, could the House be at ease for one second, please?

The SPEAKER. The House will be at ease.

Mr. DALLY. Thank you.

The SPEAKER. The Chair recognizes the gentleman, Mr. Dally.

Mr. DALLY. Thank you, Mr. Speaker.

I am presently waiting for some additional information from the Legislative Reference Bureau, and I would like to defer to the next speaker, if that is okay with you.

The SPEAKER. The Chair skips over the gentleman.

The Chair recognizes the gentleman from Allegheny, Mr. Turzai. The gentleman waives off.

The next on the list is the gentleman from Allegheny, Mr. DeLuca; then the gentleman, Mr. Flaherty.

Mr. DeLUCA. Thank you, Mr. Speaker.

Would the maker of the amendment stand for a brief interrogation?

Mr. Speaker, as I look over the figures here, certainly I looked at some of my district, would I be right in assuming with HB 39 that we will vote next, is it conceivable that some senior citizens will not pay any property tax combined with the two?

Mr. PYLE. Mr. Speaker, it is conceivable.

Mr. DeLUCA. Thank you.

Mr. Speaker, I would like to make a statement.

The SPEAKER. The gentleman is in order and may proceed.

Mr. DeLUCA. Thank you.

Mr. Speaker, we have been hearing about how our seniors are suffering from property tax; their houses are being sold, sheriff's sale, and we also have been hearing about giving every individual out there, the middle class, a property tax reduction. The Pyle amendment does that.

Now, we have to bite the bullet here up in Harrisburg or we are never going to see property tax in our lifetime. I have been up here 24 years, previous to that other members have been up here trying to get some meaningful property tax, not only for seniors but for the average person out there.

What this amendment does, it gives everybody some property tax, and combined with HB 39, we are doing a benefit to our senior citizens who can least afford their property tax, who want to stay in their home and keep their independence. They possibly could be paying no property tax. And is that not what we all were sent up here to do, to represent the people back in our districts?

I want to commend Representative Pyle for bringing this amendment up. I think it is a good amendment, and we should vote for it.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Allegheny, Mr. Flaherty.

Mr. FLAHERTY. Thank you, Mr. Speaker.

May I ask Mr. Pyle a few questions, Mr. Speaker?

The SPEAKER. The gentleman is in order.

Mr. FLAHERTY. First I just want to thank Mr. Pyle for the kindness he showed me on my first day in my first committee meeting when he showed me where to sit, and I will never forget that. Thank you.

Mr. PYLE. My pleasure, Mr. Speaker.

Mr. FLAHERTY. And I am looking over the spreadsheet which you sent to me, and if I could, just so I can have an understanding of exactly what my numbers are looking.

Mr. PYLE. Sure.

Mr. FLAHERTY. In fiscal year 2008-2009, that is the first full year that this will take effect. Is that correct?

Mr. PYLE. That is the first year that all benefits will be realized; yes.

Mr. FLAHERTY. For a full year?

Mr. PYLE. Correct; correct.

Mr. FLAHERTY. And the amount that we anticipate coming in, 1 percent of the sales revenue is \$1.479 billion?

Mr. PYLE. That is correct, sir.

Mr. FLAHERTY. And if I could, I am just looking at one of the school districts in my area, Hampton School District. The average, the average of each household in Hampton would be \$659. Is that correct, Mr. Speaker?

Mr. PYLE. In the second year that is correct for all the good Hampton Talbots.

Mr. FLAHERTY. And if they went ahead on the May 7 referendum, approved the additional tax, the savings would be as much as \$1,493. Is that correct?

Mr. PYLE. You are reading that correctly, sir.

Mr. FLAHERTY. And we also might have the opportunity to vote on HB 39 tonight. Is that correct?

Mr. PYLE. I would be unaware as to the disposition of any other bills, sir.

Mr. FLAHERTY. I apologize. Let me rephrase that, if I might. There is nothing in this amendment that we are voting on, this amendment presently before us, that would restrict in any way our ability to vote on HB 39. Is that correct?

Mr. PYLE. You are correct.

Mr. FLAHERTY. May I comment briefly, Mr. Speaker?

The SPEAKER. The gentleman is in order and may proceed.

Mr. FLAHERTY. I also wish to compliment you, Mr. Speaker.

Mr. PYLE. Thank you, sir.

Mr. FLAHERTY. Earlier Mr. Reichley asked us to step across party lines and join you in signing on to this amendment, and in there he indicated that HB 39 would not be enough, and I concur – HB 39 is not enough – but I will say that with the addition of this amendment, it certainly goes a long way towards providing real property tax relief that we need. It may not be the best, but there are 203 people in this room, and I am all sure that we can have 203 ideas. This is what 203 people could vote on to bring about one relief for everybody. This bill touches everybody. There is nobody that is left behind, and I would ask everybody to unanimously support this.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Allegheny, Mr. Maher.

Mr. MAHER. Thank you, Mr. Speaker.

I applaud the intent and tenacity of the gentleman offering this amendment, and as I listened to the debate, it has become increasingly clear to me that as members are weighing whether to augment what is now HB 39, which this proposal hinges on a great part as to whether or not this package is actually a package, and as we are aware and Mr. Kauffman clarified for us, if we were to act on this amendment and this bill and should it receive the embrace of this chamber, it would then arrive in

the Senate, perhaps to meet a dusty end when this session expires in November. If we were then to pass HB 39, its next destination would be the Governor's desk. So the package is very much at the moment like two rail cars that could be coupled but are uncoupled, and when the train leaves the station, if that train is the HB 39 framework as a starting point, my concern is that train will leave the station without the benefit of the subject matter before us.

And I know there are members here who would support this amendment if they believed it was in fact part of a package with HB 39 and not an orphan. So as to allow members to vote on this amendment as a genuine package and not a separate car of the train to be left on the siding, Mr. Speaker, I, in a moment, will be making a motion to temporarily table this amendment only so long as it takes us to act on amendment 8001. Amendment 8001 takes the language in HB 39, modified, as I am told, only to adjust for the calendar weeks that have intervened since that conference report was christened, will take that language and insert it into this bill. Then members would have great clarity that this amendment that is before us at the moment is in fact augmenting HB 39 and not simply something that is going to vaporize as soon as it leaves this chamber.

So with that thought process and to allow our members to be rid of the dilemma of whether or not this aspect or that aspect of HB 39 that individuals have found attractive will in fact be coupled with this, Mr. Speaker, I am making a motion that we are temporarily over amendment 8073, and I do not know if I can make a compound motion to move that we would be temporarily over amendment 8073 to allow for the immediate consideration of amendment 8001.

The SPEAKER. The gentleman can make a motion to postpone the amendment, but the gentleman cannot make a second motion at the same time.

Mr. MAHER. Thank you, Mr. Speaker.

Then I will make the simple motion, which I will couple if we succeed with a second motion, that motion would be to table amendment 8073 temporarily.

### PARLIAMENTARY INQUIRY

The SPEAKER. On that motion, the gentleman is making a motion to postpone temporarily. Is that correct?

Mr. MAHER. No.

I believe as a parliamentary inquiry, I am not clear on the difference between the postponement and tabling. I know we have been tabling amendments. If the Chair is advising me that to accomplish my expressed intent would be a postponement of consideration of this amendment, then I certainly welcome that education and would modify my motion accordingly.

The SPEAKER. Postpone temporarily would be the correct motion. I could read the—

Mr. MAHER. Thank you, Mr. Speaker.

### MOTION TO POSTPONE

Mr. MAHER. My motion would be to postpone consideration of amendment 8073, which I understand will only be debatable, I think— I am not sure. Is that debatable by everybody, or is that debatable by the leaders?

The SPEAKER. Only by the floor leaders.



Mr. MAHER. Only by the floor leaders.

So as I enter that motion, I would simply reiterate that the object of my motion is to allow consideration of the amendment which is before us genuinely coupled to the language that we have been referring to as HB 39, and with that in mind, Mr. Speaker, I do make the motion to postpone consideration of amendment 8073 temporarily.

On the question,  
Will the House agree to the motion?

The SPEAKER. On that motion, for what purpose does the gentleman, Mr. Geist, rise?

Mr. GEIST. Thank you, Mr. Speaker.

I was going to ask if I could briefly interrogate the maker of the motion. Is that in order? I do not know whether it is in order or not.

The SPEAKER. That is not in order. You gave it a try.

The Chair recognizes the majority leader, the gentleman, Mr. Smith.

Mr. S. SMITH. Mr. Speaker, I, like the previous speaker, I am not exactly sure that I am clear other than that the maker of this motion wants to postpone temporarily consideration of amendment 8073.

### PARLIAMENTARY INQUIRY

Mr. S. SMITH. A parliamentary inquiry, Mr. Speaker.

If this motion were to pass and this amendment were to be tabled, what would be in order next?

The SPEAKER. We would wait for the determination of the majority leader.

Mr. S. SMITH. Dinner?

The SPEAKER. Unless a motion was made, but we would defer to you first.

Mr. S. SMITH. We would be getting very close that dinner would be in order almost.

Mr. Speaker, I hate to do this, but I have got to oppose the motion to postpone this. I mean, we have just spent quite a bit of time debating this amendment. I think members understand the amendment. You know, I think it is clearly before the House. While there may be some people that are not sure if they want to vote for it or against it, I do not quite understand the purpose of postponement and would ask the members to allow us to proceed to a vote, a final vote on the amendment, given the time we have put into it.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the Democrat leader, the gentleman, Mr. DeWeese.

Mr. DeWEESE. I commend the majority leader for hanging tough. I think this train has been derailed way too many times. I would vigorously oppose my honorable colleague, Mr. Maher, and his motion to postpone; vigorously oppose Mr. Maher on this motion.

Thank you.

The SPEAKER. The Chair thanks the gentleman.

The motion is debatable by the leaders.

### PARLIAMENTARY INQUIRY

The SPEAKER. For what purpose does the gentleman, Mr. Pallone, rise?

Mr. PALLONE. Parliamentary inquiry, Mr. Speaker.

The SPEAKER. The gentleman will state it.

Mr. PALLONE. Mr. Speaker, a parliamentary inquiry. I think it is a parliamentary inquiry.

What exactly is being, because there was postpone and merge used in the same sentence, what exactly are we voting on? What is before the House?

The SPEAKER. Simply the postponement of amendment A8073 to some other time later this evening.

Mr. PALLONE. That does not include the merger of any other amendments or other bills or anything else?

The SPEAKER. No, it does not.

Mr. PALLONE. I thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

### PARLIAMENTARY INQUIRY

The SPEAKER. For what purpose does the gentleman, Mr. Geist, rise?

Mr. GEIST. Thank you, Mr. Speaker.

Before when I asked and I could not interrogate on the motion, may I ask a question of the Chair then about amending an amendment that has not been voted on?

The SPEAKER. We are right now on the motion to postpone.

Mr. GEIST. That is correct, Mr. Speaker. That is what the question would be.

The SPEAKER. Would the gentleman state the question.

Mr. GEIST. Would it be possible then to amend the motion to really suspend the rules to amend the amendment that is up now rather than postpone?

The SPEAKER. That would not be appropriate at this time.

Mr. GEIST. Okay. Would it not be more efficient for the operation of the House then to suspend the rules to amend an amendment rather than postpone?

The SPEAKER. It may be, it may or may not be, but the motion on the floor is to postpone amendment A8073 at this time. That is the motion on the floor.

Mr. GEIST. Thank you, Mr. Speaker.

The SPEAKER. On the motion to postpone, those in favor of the postponement will vote "aye"; those opposed, "no."

On the question recurring,  
Will the House agree to the motion?

The following roll call was recorded:

### YEAS—42

Armstrong	Gabig	Metcalfe	Rohrer
Baker	Gillespie	Miller, R.	Samuelson
Benninghoff	Gingrich	Miller, S.	Saylor
Beyer	Godshall	Mustio	Scavello
Causer	Hutchinson	Nailor	Schroder
Cawley	Kauffman	Nickol	Semmel
Clymer	Mackereth	Pickett	Solobay
Denlinger	Maher	Rapp	Tigue
Ellis	Major	Reichley	Turzai
Forcier	Marsico	Roberts	Yewcic
Freeman	McNaughton		

## NAYS—154

Adolph	Fairchild	Lescovitz	Sabatina
Allen	Feese	Levdansky	Sainato
Argall	Fichter	Maitland	Santoni
Baldwin	Flaherty	Manderino	Sather
Barrar	Fleagle	Mann	Shaner
Bastian	Flick	Markosek	Shapiro
Bebko-Jones	Frankel	McCall	Siptroth
Belardi	Gannon	McGeehan	Smith, B.
Belfanti	Geist	McGill	Smith, S. H.
Biancucci	George	McIlhattan	Sonney
Bishop	Gerber	McIlhinney	Staback
Blackwell	Gergely	Melio	Stairs
Blaum	Good	Micozzie	Steil
Boyd	Goodman	Millard	Stern
Bunt	Grell	Mundy	Stetler
Buxton	Grucela	Myers	Stevenson, R.
Caltagirone	Gruitza	O'Brien	Stevenson, T.
Cappelli	Haluska	Oliver	Sturla
Casorio	Hanna	O'Neill	Surra
Civera	Harhai	Pallone	Tangretti
Cohen	Harper	Parker	Taylor, J.
Corrigan	Harris	Payne	Thomas
Costa	Hasay	Petrarca	True
Crahalla	Hennessey	Petri	Veon
Creighton	Herman	Petrone	Vitali
Cruz	Hershey	Phillips	Walko
Curry	Hess	Pistella	Wansacz
Daley	Hickernell	Preston	Waters
Dally	James	Pyle	Watson
DeLuca	Josephs	Quigley	Wheatley
Dermody	Keller, M.	Ramaley	Williams
DeWeese	Keller, W.	Raymond	Wojnaroski
DiGirolamo	Kenny	Readshaw	Wright
Diven	Killion	Reed	Youngblood
Donatucci	Kirkland	Roebuck	Yudichak
Eachus	Kotik	Rooney	Zug
Evans, D.	LaGrotta	Ross	
Evans, J.	Leach	Rubley	Perzel,
Fabrizio	Lederer	Ruffing	Speaker

## NOT VOTING—1

Harhart

## EXCUSED—6

Birmelin	Leh	Taylor, E. Z.	Wilt
Cornell	Rieger		

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

On the question recurring,  
Will the House agree to the amendment?

**PARLIAMENTARY INQUIRY**

The SPEAKER. The Chair recognizes the gentleman, Mr. Bunt, from Montgomery.

Mr. BUNT. Thank you, Mr. Speaker.

Mr. Speaker, for a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. BUNT. Mr. Speaker, would this amendment be amendable, and what is the process for— Can this amendment be held in abeyance, or is it amendable?

The SPEAKER. We cannot hold the amendment in abeyance. The motion to do that was just defeated.

Mr. BUNT. Okay.

The SPEAKER. If this amendment is adopted, the gentleman could offer an amendment to amend the bill and the amendment.

Mr. BUNT. So we would have to have two separate votes?

The SPEAKER. The gentleman would have to suspend the rules to offer the amendment, yes; the same as Mr. Pyle moved to suspend the rules in order to be able to bring the amendment up.

Mr. BUNT. Okay. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair sees no one else standing.

The gentleman, Mr. DeWeese, asked to be the last Democrat to speak.

The Chair rescinds. The gentleman from Cumberland, Mr. Gabig.

Mr. GABIG. Thank you, Mr. Speaker.

As I understand where we are in terms of the parliamentary status of this debate, if this amendment would pass and the bill would pass, it would go to the Senate, and I am not going to ask parliamentary inquiries. I am not positive about that, but I am enough sure about it that I am not going to waste time asking people questions.

We have another bill that has been referred to – I know we are not debating it – but I think it is called HB 39, the conference committee report, that is coming up later on the agenda; that if we vote it out, it goes to the Governor's Office. I think Representative Kauffman from Franklin County made that clear during his interrogation, and I think we just had a discussion about that.

So it seems to me, and maybe I am wrong, that even if this passes, it is the old favorite song that I have heard from the other side, it is dead on arrival, d-e-a-d, dead on arrival over in the Senate. Right?

I want to applaud the gentleman from Armstrong County for this. I voted for the elimination plan in the Committee of the Whole, and I voted for I think the STOP (Stop Taxing Our Properties) plan, and I voted for the Scavello-Benninghoff plan. I voted for the Metcalfe plan. I voted for many plans that do not quite do what I want to do, and I would vote for this. It does not do exactly— I do not like the idea of raising the rate. I like the idea of broadening; I like the idea, but, you know, you have to compromise here.

I think the gentleman from Allegheny County whose father was the commissioner there and the mayor of Pittsburgh, Mr. Flaherty, said we have to compromise. He has only been up here a short time, and he already understands that, but he has done a great job fitting in. I do not know if we were classmates at Duquesne Law School. We were close, I remember, at the time. He has weathered the storm a lot better than I have over the years, but— That is my problem. That is why I did not understand what was wrong with what the other gentleman from Allegheny County, Mr. Maher, was doing to try to couple these things.

So I guess I would get to the point. I like substantively what the gentleman is doing, but it just seems like we are wasting our time to put up this vote, on the amendment, so I guess I would

ask the gentleman if I could interrogate the maker of the amendment or ask the Speaker if I could interrogate?

The SPEAKER. The gentleman indicates he will stand for interrogation. The gentleman is in order and may proceed.

Mr. GABIG. Thank you, Mr. Speaker.

So with those sort of introductory remarks—

Mr. PYLE. Sorry, sir. You would have to repeat most of those.

Mr. GABIG. Okay.

My point is, it seems like if we vote for your amendment and HB 39 passes, the bill as amended will be dead on arrival in the Senate and we are wasting our time here. This is not a real exercise in creating legislation.

Mr. PYLE. Is that a question, sir?

Mr. GABIG. Do you agree with that or disagree with that?

Mr. PYLE. No, I do not. I see no way possible to foretell the future.

Mr. GABIG. All right.

Would the gentleman agree, Mr. Speaker, that—

The SPEAKER. The gentleman can ask any question he would like about the amendment. About the future of any amendment, that is not an appropriate subject for this debate. The gentleman can ask any question he would like about amendment 8073.

Mr. GABIG. All right.

Amendment 8073, the amendment, and I guess I would ask for guidance. I think I understand and I will limit my remarks as soon as I get the answer from the Speaker on this, about the caution he just gave me.

My concern is how it fits in with the parliamentary procedure with where we are here today. Are those appropriate questions?

The SPEAKER. Sure.

Mr. GABIG. Okay. All right.

So again, Mr. Speaker, referring to the maker of the amendment, does the gentleman agree with me that if HB 39 passes, that this proposal to do the 1-percent sales tax increase is not going to the Governor's desk and HB 39 is?

The SPEAKER. Mr. Gabig, 8073. Any question you would like to ask about anything in 8073, the gentleman is more than welcome to ask. You cannot ask questions about what the Governor may or may not do or what the Senate may or may not do. That is not a subject before this House; 8073.

Mr. GABIG. All right. Let me ask it this way then, just to get to the sort of gist of it, to the maker of the bill, Mr. Speaker. Would you like to see your amendment, your proposal, for the 1-percent sales tax increase to be added to HB 39? Would you like to see that coupled with HB 39 before HB 39 went to the Governor's desk?

Mr. PYLE. Thank you, Mr. Speaker.

I really have not made that my concern. My concern here is to generate as much revenue turned back to the homeowners and farmowners of this State. I feel the 1-percent sales and use tax added in with the local option to adjust EIT is an integral part of any debate or argument that ensues. As for the fate of HB 39, I can say not, sir. I do not know. I cannot see ahead.

Mr. GABIG. Okay. Would you support then, I guess is the— What?

Mr. Speaker, I was distracted by the gentleman from Scranton; I am sorry.

Mr. Speaker, would you support, if we pass this, if I vote for your amendment and it passes—

The SPEAKER. That is not a proper question, Mr. Gabig. Mr. Gabig, we are on 8073. The gentleman is more than willing to answer any question about that.

Mr. GABIG. Okay. All right.

Mr. Speaker, I understand the concern of the Chair, and I appreciate the indulgence of the Chair and of the maker of the bill.

Thank you very much.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Tigie.

Mr. TIGUE. Thank you, Mr. Speaker.

Mr. Speaker, I stand, first of all, to support the gentleman's amendment.

We had a vote a few months ago on the sales tax, which I offered along with the Democratic leader, actually, who was a sponsor, and we know, those of us who are really interested in getting something done know that this is one of the ways to do it.

Last evening I heard the majority leader stand on the floor and say he was upset at some of the comments made by individuals who were saying this is a tax increase, and I really liked when he said that. I appreciated his remarks, and I agree wholeheartedly with them.

There are only three piles of money – property tax, sales tax, and income tax. If you are going to lower one pile, you have to get the money from one of those two other piles or from a new source such as slots.

The reason why I support the sales tax is, the sales tax, in addition to the slots, is the only tax that we will bring in from people who come into Pennsylvania, so it is a new source of revenue in some instances. The other reason I support it is because I believe also that special session HB 39 does not go far enough. Unfortunately, I think that there was a major mistake in not running an amendment last evening or, as Representative Maher mentioned, not running amendment 8001 today. Because we have split it, those of us who are really serious have lost the chance to do significantly more than slots. The questions about what is going to happen to HB 859, they may be out of order, but they are appropriate from the sense that we all know what is going to happen if we vote this not as part of HB 39. HB 39 is going to go to the Governor; this is going to go to the Senate. They do not have to do it. It was bad strategy.

I was very disappointed in the motion, the defeat of the motion to suspend or to go over to do this. Once again, once again we are missing an opportunity. We are missing an opportunity because I do not know if this is going to pass now because people think that it is just an exercise in futility. But I do think it is important that those of us who are interested in getting property tax more than what HB 39 does vote for this amendment to show people that we are willing, those of us who are willing to vote for this are willing to go beyond what slots may bring in a couple of years.

The two best things about this amendment are, one, it starts immediately, much sooner, obviously, than the slots, and secondly, it brings in money from a new source, and as I said, that is the people who come in here.

I would ask everybody to support this. I know everyone is not going to support it, and I am very disappointed in the leadership in the House on both sides for doing this the way it is done, because we could have had a better bill sent back to the Senate and had them vote and show us whether or not they were willing to agree with us and then we could talk about HB 39.

Thank you, Mr. Speaker, and thank you for your time.  
The SPEAKER. The Chair thanks the gentleman.

#### AMENDMENT WITHDRAWN TEMPORARILY

The SPEAKER. The Chair recognizes the gentleman, Mr. Pyle.

Mr. PYLE. Mr. Speaker, there is perhaps no topic more significant to my home people of Armstrong and Indiana Counties than significant property tax relief, yet over the last few joyous moments, there have been considerable concerns raised about HB 39, and in light of that, Mr. Speaker, I would like to ask the disposition of this amendment be temporarily suspended so that we may immediately consider a suspension of the rules for amendments 8001 and 8002.

The SPEAKER. The gentleman can immediately temporarily withdraw 8073. That is the only motion at this time the gentleman can make.

Mr. PYLE. Thank you, Mr. Speaker.  
That is exactly what I would like to do.

On the question recurring,  
Will the House concur in Senate amendments?

The SPEAKER. Amendment 8001 is an amendment submitted by the gentleman, Mr. Smith. The gentleman would have to ask Mr. Smith to run that amendment immediately, get his acquiescence to run that amendment immediately.

Mr. PYLE. I would ask for that acquiescence, Mr. Speaker.

The SPEAKER. Let us hear what the majority leader has to say, Mr. Pyle.

The Chair recognizes the gentleman, Mr. Smith.

#### VOTE CORRECTION

The SPEAKER. For what purpose does the gentledady, Mrs. Harhart, rise?

Mrs. HARHART. Thank you, Mr. Speaker.

Because my button malfunctioned, I would like to be voted "yes" in the not-to-postpone bill that we did.

The SPEAKER. The Chair thanks the gentledady. The gentledady's remarks will be spread across the record.

Mrs. HARHART. Thank you.

#### LEAVE OF ABSENCE CANCELED

The SPEAKER. The lady from Chester County, Mrs. Taylor, will be removed from leaves of absence.

#### CONSIDERATION OF HB 859 CONTINUED

The SPEAKER. Does the gentleman, Mr. Smith, wish to authorize the gentleman, Mr. Pyle, to offer amendment 8001?

Mr. S. SMITH. Mr. Speaker, I believe, after a little bit of discussion here, that the gentleman, Mr. Pyle, would probably like to proceed with this amendment that has been before us and I think that we have been debating for the last several hours, and I would simply ask the members if we can bring this amendment to a vote in short order. So for the time being, Mr. Speaker, I would prefer that they stay with 8073.

Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Pyle, temporarily withdrew amendment A8073. It is the opinion of the Chair the gentleman wishes to bring it back immediately before the floor of the House. Is that correct, Mr. Pyle?

Mr. PYLE. That is correct, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,  
Will the House concur in Senate amendments?

Mr. PYLE reoffered the following amendment No. **A08073**:

Amend Title, page 1, lines 1 through 12, by striking out all of said lines and inserting

Amending Titles 53 (Municipalities Generally) and 72 (Taxation and Fiscal Affairs) of the Pennsylvania Consolidated Statutes, further providing, in municipal taxation, for applicability and for definitions; consolidating the sales and use tax provisions of the Tax Reform Code of 1971; further providing for imposition, for computation, for exclusions, for alternate imposition, for filing times and for transfers to the Property Tax Relief Fund; consolidating the special situs for local sales tax provisions of the Tax Reform Code of 1971; providing for State allocations; and making related repeals.

Amend Bill, page 2, lines 25 through 30; pages 3 and 4, lines 1 through 30; page 5, lines 1 through 16, by striking out all of said lines on said pages and inserting

Section 1. Section 8405 of Title 53 is amended to read:  
§ 8405. Applicability.

[It] Except as provided in Ch. 85 Subch. F (relating to homestead property exclusion), it is the intent of the General Assembly that no provision of this subpart shall apply to any city of the first class, a county of the first class coterminous with a city of the first class and any school district of the first class located within a city of the first class.

Section 1.1. The definitions of "assessor" and "board" in section 8582 of Title 53 are amended and the section is amended by adding definitions to read:

§ 8582. Definitions.

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

"Assessor." The chief assessor of the county, the equivalent position in a home rule county or the equivalent position in a city of the first or third class that performs its own assessments of real property.

"Board." Any of the following:

(1) "Board." As defined in the act of June 26, 1931, (P.L.1379, No.348), referred to as the Third Class County Assessment Board Law.

(2) "Board." As defined in the act of May 21, 1943 (P.L.571, No.254), known as The Fourth to Eighth Class County Assessment Law.

(3) "Board of Property Assessment, Appeals and Review." The Board of Property Assessment, Appeals and Review in a county of the second class under the act of June 21, 1939 (P.L.626, No.294), referred to as the Second Class County Assessment Law.

(4) "Board of Revision of Tax and Appeals." The board of revision of taxes and appeals in cities of the third class.

(5) "Board of Revision of Taxes." The board of revision of taxes in cities of the first class.

\*\*\*

"Homestead." A dwelling, including the parcel of land on which the dwelling is located and the other improvements located on the parcel for which any of the following apply:

(1) The dwelling is primarily used as the domicile of an owner who is a natural person. The homestead for real property

qualifying under this paragraph shall not include the land on which the dwelling is located if the land is not owned by a person who owns the dwelling.

(2) The dwelling is a unit in a condominium as the term is defined in 68 Pa.C.S. § 3103 (relating to definitions) and the unit is primarily used as the domicile of a natural person who is an owner of the unit; or the dwelling is a unit in a cooperative as the term is defined in 68 Pa.C.S. § 4103 (relating to definitions) and the unit is primarily used as the domicile of a natural person who is an owner of the unit. The homestead for a unit in a condominium or a cooperative shall be limited to the assessed value of the unit, which shall be determined in a manner consistent with the assessment of real property taxes on those units under 68 Pa.C.S. (relating to real and personal property) or as otherwise provided law. If the unit is not separately assessed for real property taxes, the homestead shall be a pro rata share of the real property.

(3) The dwelling does not qualify under paragraphs (1) and (2) and a portion of the dwelling is used as the domicile of an owner who is a natural person. The homestead for real property qualifying under this paragraph shall be the portion of the real property that is equal to the portion of the dwelling that is used as the domicile of an owner.

“Homestead property.” A homestead for which an application has been submitted and approved under section 8584 (relating to administration and procedure).

\* \* \*

“School district.” A school district of the first class, first class A, second class, third class or fourth class, including any independent school district.

Section 2. Title 72 is amended by adding parts to read:

PART I

PRELIMINARY PROVISIONS  
(RESERVED)

PART II

TAXES

Chapter

12. Sales and Use Tax.

13. Special Situs for Local Sales Tax.

CHAPTER 12

SALES AND USE TAX

Subchapter

A. General Provisions

B. Imposition of Tax

C. Exclusions from Tax

D. Licenses

E. Hotel Occupancy Tax

F. Returns

G. Payment

H. Assessment and Reassessment

I. Collection

J. Nonpayment

K. Miscellaneous Provisions

L. Refunds and Credits

M. Limitations

N. Interest, Additions, Penalties and Crimes

O. Enforcement and Examinations

P. Appropriation; Effective Date

SUBCHAPTER A

GENERAL PROVISIONS

Sec.

1201. Definitions.

§ 1201. Definitions.

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

“Adjustment services, collection services or credit reporting services.” Providing collection or adjustments of accounts receivable

or mercantile or consumer credit reporting, including, but not limited to, services of the type provided by adjustment bureaus or collection agencies, consumer or mercantile credit reporting bureaus, credit bureaus or agencies, credit clearinghouses or credit investigation services. Such services do not include providing credit card service with collection by a central agency, providing debt counseling or adjustment services to individuals or billing or collection services provided by local exchange telephone companies.

“Blasting.” The use of any combustible or explosive composition in the removal of material resources, minerals and mineral aggregates from the earth and the separation of the dirt, waste and refuse in which the resources, minerals and mineral aggregates are found.

“Building machinery and equipment.” Includes, without limitation, boilers, chillers, air cleaners, humidifiers, fans, switchgear, pumps, telephones, speakers, horns, motion detectors, dampers, actuators, grills, registers, traffic signals, sensors, card access devices, guardrails, medial devices, floor troughs and grates and laundry equipment, together with integral coverings and enclosures, whether or not the item constitutes a fixture or is otherwise affixed to the real estate, whether or not damage would be done to the item or its surroundings upon removal or whether or not the item is physically located within a real estate structure. The term also includes generation equipment, storage equipment, conditioning equipment, distribution equipment and termination equipment, which shall be limited to the following:

- (1) air conditioning, limited to heating, cooling, purification, humidification, dehumidification and ventilation;
- (2) electrical;
- (3) plumbing;
- (4) communications limited to voice, video, data, sound, master clock and noise abatement;
- (5) alarms limited to fire, security and detection;
- (6) control system limited to energy management, traffic and parking lot and building access;
- (7) medical system limited to diagnosis and treatment equipment, medical gas, nurse call and doctor paging;
- (8) laboratory system;
- (9) cathodic protection system; or
- (10) furniture, cabinetry and kitchen equipment.

The term shall not include guardrail posts, pipes, fittings, pipe supports and hangers, valves, underground tanks, wire, conduit, receptacle and junction boxes, insulation, ductwork and coverings thereof.

“Building maintenance or cleaning services.” Providing services which include, but are not limited to, janitorial, maid or housekeeping service, office or interior building cleaning or maintenance service, window cleaning service, floor waxing service, lighting maintenance service such as bulb replacement, cleaning, chimney cleaning service, acoustical tile cleaning service, venetian blind cleaning, cleaning and maintenance of telephone booths or cleaning and degreasing of service stations. The term shall not include repairs on buildings and other structures; nor shall this term include the maintenance or repair of boilers, furnaces and residential air conditioning equipment or parts thereof; the painting, wallpapering or applying other like coverings to interior walls, ceilings or floors; or the exterior painting of buildings.

“Call center.” The physical location in this Commonwealth:

- (1) where at least 150 employees are employed to initiate or answer telephone calls;
- (2) where there are at least two hundred telephone lines; and
- (3) which utilizes an automated call distribution system for customer telephone calls in one or more of the following activities:

- (i) customer service and support;
- (ii) technical assistance;
- (iii) help desk service;
- (iv) providing information;
- (v) conducting surveys;

- (vi) revenue collections; or
- (vii) receiving orders or reservations.

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

“Commercial aircraft operator.” A person, excluding scheduled airlines, that engages in any or all of the following: charter of aircraft, leasing of aircraft, aircraft sales, aircraft rental, flight instruction, air freight or any other flight activities for compensation.

“Commercial racing activities.” Any of the following:

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

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

“Construction contract.” A written or oral contract or agreement for the construction, reconstruction, remodeling, renovation or repair of real estate or a real estate structure. The term shall not apply to services which are taxable under paragraphs (14) and (17) of the definition of “sale at retail” and paragraphs (12) and (15) of the definition of “use.”

“Construction contractor.” A person who performs an activity pursuant to a construction contract, including a subcontractor.

“Department.” The Department of Revenue of the Commonwealth.

“Disinfecting or pest control services.” Providing disinfecting, termite control, insect control, rodent control or other pest control services, including, but not limited to, deodorant servicing of restrooms, washroom sanitation service, restroom cleaning service, extermination service or fumigating service. The term “fumigating service” shall not include the fumigation of agricultural commodities or containers used for agricultural commodities, and the term “insect control” shall not include the spraying of trees which are harvested for commercial purposes for gypsy moth control.

“Employment agency services.” Providing employment services to a prospective employer or employee other than employment services provided by theatrical employment agencies and motion picture casting bureaus. These services shall include, but not be limited to, services of the type provided by employment agencies, executive placing services and labor contractor employment agencies other than farm labor.

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

“Gratuity.” Any amount paid or remitted for services performed in conjunction with any sale of food or beverages, or hotel or motel accommodations which amount is in excess of the charges and the tax thereon for such food, beverages or accommodations regardless of the method of billing or payment.

“Help supply services.” Providing temporary or continuing help where the help supplied is on the payroll of the supplying person or entity, but is under the supervision of the individual or business to which help is furnished. These services shall include, but not be limited to, service of a type provided by labor and manpower pools, employee leasing services, office help supply services, temporary help services, usher services, modeling services or fashion show model supply services. Such services shall not include providing farm labor services. The term shall not include nursing, home health care and personal care services and other human health-related services. As used in this definition, “personal care” shall include providing at least one of the following types of assistance to persons with limited ability for self-care:

- (1) dressing, bathing or feeding;
- (2) supervising self-administered medication;
- (3) transferring a person to or from a bed or wheelchair;

or

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

“Internet.” The international nonproprietary computer network of both Federal and non-Federal interoperable packet switched data networks.

“Lawn care service.” Providing services for lawn upkeep, including, but not limited to, fertilizing, lawn mowing, shrubbery trimming or other lawn treatment services.

“Lobbying services.” Providing the services of a lobbyist, as defined in the definition of “lobbyist” in 65 Pa.C.S. § 1303 (relating to definitions).

“Maintaining a place of business in this Commonwealth.” As follows:

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

(2) Engagement in any activity as a business within this Commonwealth by any person, either directly or through a subsidiary, representative or an agent, in connection with the lease, sale or delivery of tangible personal property or the performance of services thereon for use, storage or consumption or in connection with the sale or delivery for use of the services described in paragraphs (11) through (18) of the definition of “sale at retail,” including, but not limited to, having, maintaining or using any office, distribution house, sales house, warehouse or other place of business, any stock of goods or any solicitor, canvasser, salesman, representative or agent under its authority, at its direction or with its permission, regardless of whether the person or subsidiary is authorized to do business in this Commonwealth.

(3) Regularly or substantially soliciting orders within this Commonwealth in connection with the lease, sale or delivery of tangible personal property to or the performance thereon of services or in connection with the sale or delivery of the services described in paragraphs (11) through (18) of the definition of “sale at retail” for residents of this Commonwealth by means of catalogs or other advertising, whether the orders are accepted within or without this Commonwealth.

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

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

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

(3.4) Providing a customer’s mobile telecommunications service deemed to be provided by the customer’s home service provider under the Mobile Telecommunications Sourcing Act (Public Law 106-252, 114 Stat. 626). For purposes of this paragraph, words and phrases used in this paragraph shall have the meanings given to them in the Mobile Telecommunications Sourcing Act.

(4) The term shall not include:

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

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

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

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

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

(1) Every operation commencing with the first production stage and ending with the completion of tangible personal property having the physical qualities, including packaging, if any, passing to the ultimate consumer, which it has when transferred by the manufacturer to another.

(2) The publishing of books, newspapers, magazines and other periodicals and printing.

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

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

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

(i) product or utility service; or

(ii) method of producing a product or utility service.

The term does not include market research or research having as its objective the improvement of administrative efficiency.

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

(7) Remanufacture or retrofit by a manufacturer or remanufacturer of aircraft, armored vehicles, other defense-related vehicles having a finished value of at least \$50,000. Remanufacture or retrofit involves the disassembly of such aircraft, vehicles, parts or components, including electric or electronic components, the integration of those parts and components with other used or new parts or components, including the salvaging, recycling or reclaiming of the used parts or components and the assembly of the new or used aircraft, vehicles, parts or components. For purposes of this definition, the following terms or phrases have the following meanings:

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

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

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

(8) The term does not include constructing, altering, servicing, repairing or improving real estate or repairing, servicing or installing tangible personal property, nor the cooking, freezing or baking of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products.

"Mobile telecommunications service." Mobile telecommunications service as that term is defined in the Mobile Telecommunications Sourcing Act (Public Law 106-252, 114 Stat. 626).

"Person." A natural person, association, fiduciary, partnership, corporation or other entity, including the Commonwealth of Pennsylvania, its political subdivisions and instrumentalities and public authorities. Whenever used in any provision prescribing and imposing a penalty or imposing a fine or imprisonment, or both, the term, as applied to an association, shall include the members of these listed classes and, as applied to a corporation, the officers of the corporation.

"Prebuilt housing." Either of the following:

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

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

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

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

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

"Premium cable or premium video programming service."

(1) That portion of cable television services, video programming services, community antenna television services or any other distribution of television, video, audio or radio services which meets all of the following criteria:

(i) Is transmitted with or without the use of wires to purchasers.

(ii) Consists substantially of programming uninterrupted by paid commercial advertising which includes programming primarily composed of uninterrupted full-length motion pictures or sporting events, pay-per-view, paid programming or like audio or radio broadcasting.

(iii) Does not constitute a component of a basic service tier provided by a cable television system or a cable programming service tier provided by a cable television system.

(A) A basic service tier shall include:

(I) all signals of domestic television broadcast stations;

(II) any public, educational, governmental or religious programming; and

(III) any additional video programming signals or service added to the basic service tier by the cable operator.

(B) The basic service tier shall include a single additional lower-priced package of broadcast channels and access information channels which is a subset of the basic service tier as set forth in this paragraph.

(C) A cable programming service tier includes any video programming other than:

(I) the basic service tier;

(II) video programming offered on a pay-per-channel or pay-per-view basis; or

(III) a combination of multiple channels of pay-per-channel or pay-per-view programming offered as a package.

(2) If a purchaser receives or agrees to receive premium cable or premium video programming service, then the following charges are included in the purchase price:

(i) Charges for installation or repair of any premium cable or premium video programming service.

(ii) Upgrade to include additional premium cable or premium video programming service.

(iii) Downgrade to exclude all or some premium cable or premium video programming service.

(iv) Additional premium cable outlets in excess of ten.

(v) Any other charge or fee related to premium cable or premium video programming services.

(3) The term shall not apply to any of the following:

(i) Transmissions by public television.

(ii) Public radio services.

(iii) Official Federal, State or local government cable services.

(iv) Local origination programming which provides a variety of public service programs unique to the community.

(v) Programming which provides coverage of public affairs issues which are presented without commentary or analysis. This subparagraph includes United States Congressional proceedings.

(vi) Programming which is substantially related to religious subjects.

(vii) Subscriber charges for access to a video dial tone system or charges by a common carrier to a video programmer for the transport of video programming.

“Prepaid mobile telecommunications service.” Mobile telecommunications service which is paid for in advance and which enables the origination of calls using an access number, authorization code or both, whether manually or electronically dialed, if the remaining amount of units of the prepaid mobile telecommunications service is known by the service provider of the prepaid mobile telecommunications service on a continuous basis. The term does not include the advance purchase of mobile telecommunications service if the purchase is pursuant to a service contract between the service provider and customer and if the service contract requires the customer to make periodic payments to maintain the mobile telecommunications service.

“Prepaid telecommunications.” A tangible item containing a prepaid authorization number that can be used solely to obtain telecommunications service, including any renewal or increases in the prepaid amount.

“Processing.” The performance of the following activities when engaged in as a business enterprise:

(1) The filtering or heating of honey, the cooking, baking or freezing of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products, when the person engaged in such business packages such property in sealed containers for wholesale distribution.

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

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

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

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

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

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

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

(7) The production, processing and bottling of nonalcoholic beverages for wholesale distribution.

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

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

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

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

(11) The processing of used lubricating oils.

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

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

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

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

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

(17) The producing of mobile telecommunications services.

“Promoter.” A person who either, directly or indirectly, rents, leases or otherwise operates or grants permission to any person to use space at a show for the display for sale or for the sale of tangible personal property or services subject to tax under section 1202 (relating to imposition of tax).

“Purchase at retail.” Any of the following:

(1) The acquisition for a consideration of the ownership, custody or possession of tangible personal property other than for resale by the person acquiring the same when such acquisition is made for the purpose of consumption or use, whether such acquisition shall be absolute or conditional, and by whatsoever means the same shall have been effected.

(2) The acquisition of a license to use or consume, and the rental or lease of tangible personal property, other than for



resale regardless of the period of time the lessee has possession or custody of the property.

(3) The obtaining for a consideration any of those services set forth under paragraphs (2), (3) and (4) of the definition of sale at retail other than for resale.

(4) A retention after March 7, 1956, of possession, custody or a license to use or consume pursuant to a rental contract or other lease arrangement, other than as security, other than for resale.

(5) The obtaining for a consideration any of those services set forth under paragraphs (11) through (18) of the definition of "sale at retail."

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

"Purchase price." As follows:

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

(2) There shall be deducted from the purchase price the value of any tangible personal property actually taken in trade or exchange in lieu of the whole or any part of the purchase price. For the purpose of this paragraph, the amount allowed by reason of tangible personal property actually taken in trade or exchange shall be considered the value of the property.

(3) In determining the purchase price on the sale or use of taxable tangible personal property or a service where, because of affiliation of interests between the vendor and purchaser, or irrespective of any such affiliation, if for any other reason the purchase price declared by the vendor or taxpayer on the taxable sale or use of such tangible personal property or service is, in the opinion of the Department of Revenue, not indicative of the true value of the article or service or the fair price thereof, the department shall, pursuant to uniform and equitable rules, determine the amount of constructive purchase price upon the basis of which the tax shall be computed and levied. Such rules shall provide for a constructive amount of purchase price for each sale or use which would naturally and fairly be charged in an arms-length transaction in which the element of common interest between the vendor or purchaser is absent or if no common interest exists, any other element causing a distortion of the price or value is likewise absent. For the purpose of this paragraph where a taxable sale or purchase at retail transaction occurs between a parent and a subsidiary, affiliate or controlled corporation of such parent corporation, there shall be a rebuttable presumption, that because of such common interest such transaction was not at arm's-length.

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

(5) With respect to the tax imposed by section 1202(b) (relating to imposition of tax) upon any tangible personal property originally purchased by the user of the property six months or longer prior to the first taxable use of the property within this Commonwealth. The user may elect to pay tax on a substituted base determined by considering the purchase price of the property for tax purposes to be equal to the prevailing market price of similar tangible personal property at the time and place of the first use within this Commonwealth. The election must be made at the time of filing a tax return with the department and reporting the tax liability and paying the tax due plus accrued penalties and interest within six months of the due date of the report and payment under section 1217(a) and (c) (relating to time for filing returns).

(6) The purchase price of employment agency services and help supply services shall be the service fee paid by the purchaser to the vendor or supplying entity. The term "service fee," as used in this paragraph, shall be the total charge or fee of the vendor or supplying entity minus the costs of the supplied employee which costs are wages, salaries, bonuses and commissions, employment benefits, expense reimbursements and payroll and withholding taxes, to the extent that these costs are specifically itemized or that these costs in aggregate are stated in billings from the vendor or supplying entity. To the extent that these costs are not itemized or stated on the billings, then the service fee shall be the total charge or fee of the vendor or supplying entity.

(7) Unless the vendor separately states which portion of the billing applies to premium cable services, the total bill for the provision of all cable services shall be the purchase price.

(8) The purchase price of prebuilt housing shall be 60% of the manufacturer's selling price, but a manufacturer of prebuilt housing who precollects tax from a prebuilt housing builder at the time of the sale to the prebuilt housing builder shall have the option to collect tax on 60% of the selling price or on 100% of the actual cost of the supplies and materials used in the manufacture of the prebuilt housing.

"Purchaser." A person who acquires, for a consideration, the ownership, custody or possession by sale, lease or otherwise, of tangible personal property, or who obtains services in exchange for a purchase price, but not including an employer who obtains services from employees of the employer in exchange for wages or salaries when the services are rendered in the ordinary scope of their employment.

"Real estate structure." A structure or item purchased by a construction contractor pursuant to a construction contract with:

(1) a charitable organization, a volunteer firemen's organization, a nonprofit educational institution or a religious

organization for religious purposes and which qualifies as an institution of purely public charity under the act of November 26, 1997 (P.L.508, No.55), known as the Institutions of Purely Public Charity Act;

(2) the United States; or

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

The term includes building machinery and equipment; developed or undeveloped land; streets; roads; highways; parking lots; stadiums and stadium seating; recreational courts; sidewalks; foundations; structural supports; walls; floors; ceilings; roofs; doors; canopies; millwork; elevators; windows and external window coverings; outdoor advertising boards or signs; airport runways; bridges; dams; dikes; traffic control devices, including traffic signs; satellite dishes; antennas; guardrail posts; pipes; fittings; pipe supports and hangers; valves; underground tanks; wire; conduit; receptacle and junction boxes; insulation; ductwork and coverings thereof; and any structure or item similar to any of the foregoing, whether or not the structure or item constitutes a fixture or is affixed to the real estate, or whether or not damage would be done to the structure or item or its surroundings upon removal.

“Resale.” As follows:

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

(2) The physical incorporation of tangible personal property as an ingredient or constituent into other tangible personal property, which is to be sold in the regular course of business or the performance of those services described in paragraphs (2), (3) and (4) of the definition of “sale at retail” upon tangible personal property which is to be sold in the regular course of business or where the person incorporating such property has undertaken at the time of purchase to cause it to be transported in interstate commerce to a destination outside this Commonwealth. The term shall include telecommunications services purchased by a cable operator or video programmer that are used to transport or deliver cable or video programming services which are sold in the regular course of business.

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

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

(5) The physical incorporation of tangible personal property as an ingredient or constituent in the construction of foundations for machinery or equipment the sale or use of which is excluded from tax under the provisions of paragraph (8)(ii)(A), (B), (C) and (D) of the definition of “sale at retail” and paragraph (4)(ii)(B)(I), (II), (III) and (IV) of the definition of “use,” whether the foundations at the time of construction or transfer constitute tangible personal property or real estate.

“Resident.” As follows:

(1) Any natural person:

(i) who is domiciled in this Commonwealth; or

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

(2) Any corporation:

(i) incorporated under the laws of this Commonwealth;

(ii) authorized to do business or doing business within this Commonwealth; or

(iii) maintaining a place of business within this Commonwealth.

(3) Any association, fiduciary, partnership or other entity:

(i) domiciled in this Commonwealth;

(ii) authorized to do business or doing business within this Commonwealth; or

(iii) maintaining a place of business within this Commonwealth.

“Sale at retail.” As follows:

(1) Any transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the grant of a license to use or consume whether the transfer be absolute or conditional and by whatsoever means the same shall have been effected.

(2) The rendition of the service of printing or imprinting of tangible personal property for a consideration for persons who furnish, either directly or indirectly, the materials used in the printing or imprinting.

(3) The rendition for a consideration of the service of:

(i) Washing, cleaning, waxing, polishing or lubricating of motor vehicles of another, whether or not any tangible personal property is transferred in conjunction therewith.

(ii) Inspecting motor vehicles pursuant to the mandatory requirements of 75 Pa.C.S. (relating to vehicles).

(4) The rendition for a consideration of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property except wearing apparel or shoes, or applying or installing tangible personal property as a repair or replacement part of other tangible personal property except wearing apparel or shoes for a consideration, whether or not the services are performed directly or by any means except by coin-operated self-service laundry equipment for wearing apparel or household goods and whether or not any tangible personal property is transferred in conjunction therewith, except such services as are rendered in the construction, reconstruction, remodeling, repair or maintenance of real estate, except that this paragraph shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under section 1204(26) (relating to exclusions from tax) or on diaper service.

(5) (Reserved).

(6) (Reserved).

(7) (Reserved).

(8) (i) Any retention of possession, custody or a license to use or consume tangible personal property or any further obtaining of services described in paragraphs (2), (3) and (4) pursuant to a rental or service contract or other arrangement, other than as security.

(ii) The term does not include any such transfer of tangible personal property or rendition of services for the purpose of resale or such rendition of services or the transfer of tangible personal property, including, but not limited to, machinery and equipment and parts therefor and supplies to be used or consumed by the purchaser directly in the operations of:

(A) The manufacture of tangible personal property.

(B) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term “farming” shall

include the propagation and raising of ranch raised furbearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. (relating to game) and the propagation and raising of horses to be used exclusively for commercial racing activities.

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

(D) Processing as defined in this section.

(iii) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to any vehicle required to be registered under 75 Pa.C.S., except those vehicles used directly by a public utility engaged in business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used machinery, equipment, parts or foundations therefor that may be fixed to the real estate.

(iv) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or services by any person other than the person directly using the same in the operations described in subparagraph (ii)(A), (B), (C) and (D).

(v) The exclusion provided in subparagraph (ii)(C) shall not apply to:

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

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

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

(vi) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to the services enumerated in paragraphs (11) through (18) nor to lobbying services, adjustment services, collection services or credit reporting services, secretarial or editing services, disinfecting or pest control services, building maintenance or cleaning services, employment agency services, help supply services, lawn care service or self-storage service, except that the exclusion provided in subparagraph (ii)(B) for farming, dairying and agriculture shall apply to the service enumerated in the definition of disinfecting or pest control services.

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

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

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

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

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

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

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

(16) (Reserved).

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

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

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

“Secretarial or editing services.” Providing services which include, but are not limited to, editing, letter writing, proofreading, resume writing, typing or word processing. Such services shall not include court reporting and stenographic services.

“Self-storage service.” Providing a building, a room in a building or a secured area within a building with separate access provided for each purchaser of self-storage service, primarily for the purpose of storing personal property. The term excludes providing any of the following:

(1) Safe deposit boxes by financial institutions.

(2) Storage in refrigerator or freezer units.

(3) Storage in commercial warehouses.

(4) Facilities for goods distribution.

(5) Lockers in airports, bus stations, museums and other public places.

“Show.” An event, the primary purpose of which involves the display or exhibition of any tangible personal property or services for sale, including, but not limited to, a flea market, antique show, coin show, stamp show, comic book show, hobby show, automobile show, fair or any similar show, whether held regularly or of a temporary nature, at which more than one vendor displays for sale or sells tangible personal property or services subject to tax under section 1202 (relating to imposition of tax).

“Soft drinks.” All nonalcoholic beverages, whether carbonated or not, such as soda water, ginger ale, Coca Cola, lime cola, Pepsi Cola, Dr Pepper, fruit juice when plain or carbonated water, flavoring or syrup is added, carbonated water, orangeade, lemonade, root beer or any and all preparations, commonly referred to as soft drinks, of whatsoever kind, and are further described as including any and all beverages, commonly referred to as soft drinks, which are made with or without the use of any syrup. The term shall not include natural fruit or vegetable juices or their concentrates, or noncarbonated fruit juice drinks containing not less than 25% by volume of natural fruit juices or of fruit juice which has been reconstituted to its original state, or natural concentrated fruit or vegetable juices reconstituted to their original state, whether any of the foregoing natural juices are

frozen or unfrozen, sweetened or unsweetened, seasoned with salt or spice or unseasoned, nor shall the term include coffee, coffee substitutes, tea, cocoa, natural fluid milk or noncarbonated drinks made from milk derivatives.

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

“Tangible personal property.” Corporeal personal property including, but not limited to, goods, wares, merchandise, steam and natural and manufactured and bottled gas for nonresidential use, electricity for nonresidential use, prepaid telecommunications, premium cable or premium video programming service, spirituous or vinous liquor and malt or brewed beverages and soft drinks, interstate telecommunications service originating or terminating in this Commonwealth and charged to a service address in this Commonwealth, intrastate telecommunications service, except for subscriber line charges and basic local telephone service for residential use and charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate. The service address of any intrastate telecommunications service is deemed to be within this Commonwealth or within a political subdivision, regardless of how or where billed or paid. In the case of any such interstate or intrastate telecommunications service, any charge paid through a credit or payment mechanism which does not relate to a service address, such as a bank, travel, credit or debit card, but not including prepaid telecommunications, is deemed attributable to the address of origination of the telecommunications service.

“Tax Reform Code.” The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Taxpayer.” Any person required to pay or collect the tax imposed by this chapter.

“Telecommunications service.” Any one-way transmission or any two-way, interactive transmission of sounds, signals or other intelligence converted to like form which effects or is intended to effect meaningful communications by electronic or electromagnetic means via wire, cable, satellite, light waves, microwaves, radio waves or other transmission media. The term includes all types of telecommunication transmissions, such as local, toll, wide-area or any other type of telephone service; private line service; telegraph service; radio repeater service; wireless communication service; personal communications system service; cellular telecommunication service; specialized mobile radio service; stationary two-way radio service; and paging service. The term does not include any of the following:

- (1) Subscriber charges for access to a video dial tone system.
- (2) Charges to video programmers for the transport of video programming.
- (3) Charges for access to the Internet. Access to the Internet does not include any of the following:
  - (i) The transport over the Internet or any proprietary network using the Internet protocol of telephone calls, facsimile transmissions or other telecommunications traffic to or from end users on the public switched telephone network if the signal sent from or received by an end user is not in an Internet protocol.
  - (ii) Telecommunications services purchased by an Internet service provider to deliver access to the Internet to its customers.
- (4) Mobile telecommunications services.

“Transient vendor.” As follows:

- (1) Any person who:
  - (i) brings into this Commonwealth, by automobile, truck or other means of transportation, or purchases in this Commonwealth tangible personal property the sale or use of which is subject to the tax imposed by this chapter or comes into this

Commonwealth to perform services the sale or use of which is subject to the tax imposed by this chapter;

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

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

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

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

“Use.” As follows:

(1) The exercise of any right or power incidental to the ownership, custody or possession of tangible personal property and shall include, but not be limited to, transportation, storage or consumption.

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

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

(i) Washing, cleaning, waxing, polishing or lubricating of motor vehicles whether or not any tangible personal property is transferred to the purchaser in conjunction with such services.

(ii) Inspecting motor vehicles pursuant to the mandatory requirements of 75 Pa.C.S. (relating to vehicles).

(4) (i) The obtaining by a purchaser of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property except wearing apparel or shoes or applying or installing tangible personal property as a repair or replacement part of other tangible personal property except wearing apparel or shoes, whether or not the services are performed directly or by any means except by coin-operated self-service laundry equipment for wearing apparel or household goods, and whether or not any tangible personal property is transferred to the purchaser in conjunction therewith, except such services as are obtained in the construction, reconstruction, remodeling, repair or maintenance of real estate, except that this paragraph shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under section 1204(26) (relating to exclusions from tax) or on diaper service.

(ii) The term shall not include:

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

(B) The use or consumption of tangible personal property, including, but not limited to, machinery and equipment and parts therefor, and supplies or the obtaining of the services described in this paragraph and paragraphs (2) and (3) directly in the operations of:

(I) The manufacture of tangible personal property.

(II) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term “farming” shall include the propagation and raising of ranch-raised furbearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. (relating to game) and the propagation and raising of horses to be used exclusively for commercial racing activities.

(III) The producing, delivering or rendering of a public utility service, or the constructing, reconstructing, remodeling, repairing or maintaining the facilities which are directly used in producing, delivering or rendering a public utility service.

(IV) Processing as defined in this section.

(iii) The exclusions provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to any vehicle required to be registered under 75 Pa.C.S. except those vehicles directly used by a public utility engaged in the business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used machinery, equipment, parts or foundations therefor that may be affixed to such real estate.

(iv) The exclusions provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or services by any person other than the person directly using the same in the operations described in subparagraph (ii)(B)(I), (II), (III) and (IV).

(v) The exclusion provided in subparagraph (iii) shall not apply to:

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

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

(vi) The exclusion provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to the services enumerated in paragraphs (9) through (16) nor to lobbying services, adjustment services, collection services or credit reporting services, secretarial or editing services, disinfecting or pest control services, building maintenance or cleaning services, employment agency services, help supply services, lawn care service or self-storage service, except that the exclusion provided in subparagraph (ii)(B)(II) for farming, dairying and agriculture shall apply to the service enumerated in the definition of “disinfecting or pest control services.”

(5) Where tangible personal property or services are utilized for purposes constituting a use, and for purposes excluded from this definition, it shall be presumed that the

property or services are utilized for purposes constituting a sale at retail and subject to tax unless the user thereof proves to the Department of Revenue that the predominant purposes for which the property or services are utilized do not constitute a sale at retail.

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

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

(8) The term shall not include the providing of a motor vehicle to a nonprofit private or public school to be used by the school for the sole purpose of driver education.

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

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

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

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

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

(14) (Reserved).

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

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

(17) The obtaining by a construction contractor of tangible personal property or services provided to tangible personal property which will be used pursuant to a construction contract whether or not the tangible personal property or services are transferred.

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

“Used prebuilt housing.” Prebuilt housing that was previously subject to a sale to a prebuilt housing purchaser.

“Vendor.” Any person maintaining a place of business in this Commonwealth, selling or leasing tangible personal property, or rendering services, the sale or use of which is subject to the tax imposed by this chapter, but not including any employee who in the ordinary scope of employment renders services to the employer of the employee in exchange for wages and salaries.

#### SUBCHAPTER B IMPOSITION OF TAX

Sec.

1202. Imposition of tax.

1203. Computation of tax.

§ 1202. Imposition of tax.

(a) Sales tax.—There is hereby imposed upon each separate sale at retail of tangible personal property or services within this

Commonwealth a tax of 7.0% of the purchase price. The tax shall be collected by the vendor from the purchaser and shall be paid over to this Commonwealth as provided in this chapter.

(b) Use tax.—There is hereby imposed upon the use within this Commonwealth of tangible personal property purchased at retail and on those services purchased at retail a tax of 7.0% of the purchase price. The tax shall be paid to the Commonwealth by the person who makes such use, except that such tax shall not be paid to the Commonwealth by that person where that person has paid the tax imposed by subsection (a) or has paid the tax imposed by this subsection to the vendor with respect to such use.

(c) Telecommunications services.—

(1) Notwithstanding any other provision of this chapter, the tax with respect to telecommunications service shall be computed at the rate of 7.0% upon the total amount charged to customers for such services, irrespective of whether that charge is based upon a flat rate or upon a message unit charge. Charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate shall not be subject to this tax.

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

(3) To prevent actual multistate taxation of interstate telecommunications service, a taxpayer, upon proof that the taxpayer has paid a similar tax to another state on the same interstate telecommunications service, shall be allowed a credit against the tax imposed by this section on the same interstate telecommunications service to the extent of the amount of the tax properly due and paid to the other state.

(d) Vending machine sales of food and beverages.—Notwithstanding any other provisions of this chapter, the sale or use of food and beverages dispensed by means of coin operated vending machines shall be taxed at the rate of 7.0% of the receipts collected from the machine which dispenses food and beverages heretofore taxable.

(e) Prepaid telecommunications.—

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

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

(3) (i) Notwithstanding paragraph (2), the sale or use of prepaid telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of 7.0% of the receipts collected on each sale if the service provider elects to collect the tax imposed by this chapter on receipts of each sale.

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

(e.1) Prepaid mobile telecommunications services.—

(1) Notwithstanding any other provision of this chapter, the sale or use of prepaid mobile telecommunications service evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b).

(2) The sale or use of prepaid mobile telecommunications service not evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b) and shall be deemed to occur at the purchaser's billing address or the location associated with the

mobile telephone number or the point of sale, whichever is applicable.

(3) (i) Notwithstanding paragraph (2), the sale or use of prepaid mobile telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of 7.0% of the receipts collected on each sale if the service provider elects to collect the tax imposed by this chapter on receipts of each sale.

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

(f) Prebuilt housing.—

(1) Notwithstanding any other provision of this chapter, tax with respect to sales of prebuilt housing shall be imposed, subject to the provisions of paragraph (2), on the prebuilt housing builder at the time of the prebuilt housing sale within this Commonwealth and shall be paid and reported by the prebuilt housing builder to the department in the time and manner provided in this chapter.

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

(3) In any case where prebuilt housing is purchased and the tax is not paid by the prebuilt housing builder or precollected by the manufacturer, the prebuilt housing purchaser shall remit tax directly to the department if the prebuilt housing is used in this Commonwealth without regard to whether the prebuilt housing becomes a real estate structure.

(g) Mobile telecommunications services provided by home service provider.—Notwithstanding any other provisions of this chapter and in accordance with the Mobile Telecommunications Sourcing Act (Public Law 106-252, 4 U.S.C. § 116), the sale or use of mobile telecommunications services which are deemed to be provided to a customer by a home service provider under section 4 U.S.C. § 117(a) and (b) shall be subject to the tax of 7.0% of the purchase price. The tax shall be collected by the home service provider from the customer and shall be paid over to the Commonwealth as provided in this chapter if the customer's place of primary use is located within this Commonwealth, regardless of where the mobile telecommunications services originate, terminate or pass through. The words and phrases used in this subsection shall have the same meanings given to them in the Mobile Telecommunications Sourcing Act.

§ 1203. Computation of tax.

The department shall promulgate regulations to assist in computing the amount of tax imposed by section 1202 (relating to imposition of tax) if the purchase price is less than or equal to a dollar. If the purchase price is more than \$1.00, 7.0% of each dollar of purchase price plus the charges set forth in this section upon any fractional part of a dollar in excess of even dollars shall be collected.

#### SUBCHAPTER C

#### EXCLUSIONS FROM TAX

Sec.

1204. Exclusions from tax.

1205. Alternate imposition of tax.

1206. Credit against tax.

§ 1204. Exclusions from tax.

The tax imposed by section 1202 (relating to imposition of tax) shall not be imposed upon any of the following:

(1) The sale at retail or use of tangible personal property, other than motor vehicles, trailers, semitrailers, motorboats, aircraft or other similar tangible personal property required under either Federal law or laws of this Commonwealth to be registered or licensed, or services sold by or purchased from a person that is not a vendor in an isolated transaction or sold by or purchased from a person that is a vendor but is not a vendor with respect to the tangible personal property or services sold or purchased in

the transaction. Inventory and stock in trade sold at retail or used shall not be excluded from the tax by this paragraph.

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

(3) The use of tangible personal property in accordance with the following:

(i) The property is purchased outside this Commonwealth for use outside this Commonwealth by an individual or business entity that, at the time of purchase, is not:

- (A) a resident of this Commonwealth;
- nor
- (B) actually doing business within this Commonwealth.

(ii) The purchaser later brings the tangible personal property into this Commonwealth in connection with the establishment of a permanent business or residence in this Commonwealth.

(iii) The property has been purchased more than six months prior to the earlier of:

- (A) the date it was first brought into this Commonwealth; or
- (B) the establishment of a business or residence under subparagraph (ii).

(iv) This paragraph does not apply to tangible personal property temporarily brought into this Commonwealth for the performance of contracts for the construction, reconstruction, remodeling, repairing and maintenance of real estate.

(4) The sale at retail or use of disposable diapers, premoistened wipes, incontinence products, colostomy deodorants, toilet paper, sanitary napkins, tampons or similar items used for feminine hygiene or toothpaste, toothbrushes or dental floss.

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

(6) (Reserved).

(7) (Reserved).

(8) (Reserved).

(9) (Reserved).

(10) (i) The sale at retail to or use by:

(A) any charitable organization, volunteer firemen's organization or nonprofit educational institution; or

(B) a religious organization for religious purposes of tangible personal property or services other than pursuant to a construction contract.

(ii) The exclusion under this paragraph shall not apply with respect to any tangible personal property or services used in any unrelated trade or business carried on by such organization or institution or with respect to any materials, supplies and equipment used and transferred to the organization or institution in the construction, reconstruction, remodeling, renovation, repairs and maintenance of any real estate structure, other than building machinery and equipment, except materials and supplies when purchased by such organizations or institutions for routine maintenance and repairs.

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

(12) The sale at retail to, or use by the United States, this Commonwealth or its instrumentalities or political subdivisions of tangible personal property or services.

(13) The sale at retail or use of wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, nonreturnable containers and all other wrapping supplies, if the use is incidental to the delivery of personal property. This paragraph does not apply to a charge for wrapping or packaging.

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

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

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

(17) The sale at retail or use of any of the following:

(i) Prescription or nonprescription medicines, drugs or medical supplies.

(ii) Crutches and wheelchairs for the use of persons who are walking impaired.

(iii) Artificial limbs, artificial eyes and artificial hearing devices when designed to be worn on the person of the purchaser or user.

(iv) False teeth and materials used by a dentist in dental treatment.

(v) Eyeglasses when especially designed or prescribed by an ophthalmologist, oculist or optometrist for the personal use of the owner or purchaser.

(vi) Artificial braces and supports designed solely for the use of persons who are walking impaired or any other therapeutic, prosthetic or artificial device designed for the use of a particular individual to correct or alleviate a physical incapacity, including, but not limited to, hospital beds, iron lungs and kidney machines.

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

(19) (Reserved).

(20) (Reserved).

(21) (Reserved).

(22) (Reserved).

(23) (Reserved).

(24) The sale at retail or use of motor vehicles, trailers and semi-trailers, or bodies attached to the chassis of motor vehicles, trailers or semi-trailers which are:

(i) sold to a nonresident;

(ii) to be used outside of this Commonwealth;

and

(iii) registered in another state within 20 days after delivery to the vendee.

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

(26) (i) The sale at retail or use of all vesture, wearing apparel, raiments, garments, footwear and other articles of clothing, including clothing patterns and items that are to be a component part of clothing, worn or carried on or about the human body.

(ii) This paragraph does not include accessories, ornamental wear, formal day or evening apparel, and articles made of fur on the hide or pelt or any material imitative of fur and articles of which such fur, real, imitation or synthetic, is the component material of chief value, but only if such value is more than three times the value of the next most valuable component material, and sporting goods and clothing not normally used or worn when not engaged in sports.

(27) (Reserved).

(28) (Reserved).

(29) (i) The sale at retail or use of food and beverages for human consumption.

(ii) This paragraph shall not apply to any of the following:

(A) Soft drinks.

(B) Malt and brewed beverages and spirituous and vinous liquors.

(iii) Food or beverages, whether sold for consumption on or off the premises or on a "take-out" or "to go" basis or delivered to the purchaser or consumer, when purchased from persons engaged in the business of catering; or from persons engaged in the business of operating establishments from which ready-to-eat food and beverages are sold.

(iv) (A) For purposes of this paragraph the term "establishments" includes, but is not limited to, restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels, night clubs, fast food operations, pizzerias, fairs, carnivals, lunch carts, ice cream stands, snack bars, cafeterias, employee cafeterias, theaters, stadiums, arenas, amusement parks, carryout shops, coffee shops and other establishments whether mobile or immobile.

(B) The term does not include bakeries, pastry shops, donut shops, delicatessens, grocery stores, supermarkets, farmer's markets, convenience stores or vending machines from which food or beverages ready to eat are sold except for the sale of meals, sandwiches, food from salad bars, hand-dipped or hand-served ice-based products, including ice cream and yogurt, hot soup, hot pizza and other hot food items, brewed coffee and hot beverages.

(C) The term "beverages" does not include malt and brewed beverages and spirituous and vinous liquors, but shall include soft drinks.

(v) This paragraph does not apply to the sale at retail of food and beverages at or from a school or church in the ordinary course of the activities of such organization.

(30) (i) The sale at retail or use of newspapers.

(ii) For purposes of this paragraph, the term "newspaper" shall mean a legal newspaper or publication containing matters of general interest and reports of current events which qualifies as a newspaper of general circulation qualified to carry a legal advertisement as those terms are defined in 45 Pa.C.S. § 101 (relating to definitions), not including magazines.

(iii) This paragraph includes any printed advertising materials circulated with such newspaper regardless of where or by whom the advertising material was produced.

(31) The sale at retail or use of caskets and burial vaults for human remains and markers and tombstones for human graves.

(32) The sale at retail or use of flags of the United States of America and the Commonwealth.

(33) The sale at retail or use of textbooks for use in schools, colleges and universities, either public or private, that are recognized by the Department of Education, when the textbooks are purchased on behalf of or through such schools, colleges or universities.

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

(35) The sale at retail or use of mail order catalogs and direct mail advertising literature or materials, including electoral literature or materials, such as envelopes, address labels and a one-time license to use a list of names and mailing addresses for each delivery of direct mail advertising literature or materials, including electoral literature or materials, through the United States Postal Service.

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

(37) (Reserved).

(38) The sale at retail of horses, if at the time of purchase, the seller is directed to ship or deliver the horse to an out-of-State location, whether or not the charges for shipment are paid for by the seller or the purchaser. The seller must obtain a bill of lading, either from the carrier or from the purchaser, who, in turn has obtained the bill of lading from the carrier, reflecting delivery to the out-of-State address to which the horse has been shipped. The seller must execute a "Certificate of Delivery to Destination Outside of the Commonwealth" for each bill of lading reflecting out-of-State delivery. The seller shall retain the certificate of delivery form to justify the noncollection of sales tax with respect to the transaction to which the form relates. In transactions where a horse is sold by the seller and delivered to a domiciled person, agent or corporation prior to its being delivered to an out-of-State location, the "Certificate of Delivery to Destination Outside of the Commonwealth" form must have attached to it bills of lading both for the transfer to the domiciled person, agent or corporation and from the aforementioned to the out-of-State location.

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

(40) (Reserved).

(41) The sale at retail of supplies and materials to tourist promotion agencies which receive grants from the Commonwealth for distribution to the public as promotional material and the use of supplies and materials by the agencies for the purposes set forth in this paragraph.

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

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

(44) The sale at retail or use of firewood. For the purpose of this paragraph, "firewood" means the product of trees when severed from the land and cut into proper lengths for burning and pellets made from pure wood sawdust if used for fuel for cooking, hot water production or to heat residential dwellings.

(45) The sale at retail or use of materials used in the construction and erection of objects purchased by not-for-profit organizations for purposes of commemoration and memorialization of historical events, provided that the object is erected upon publicly owned property or property to be conveyed to a public entity upon the commemoration or memorialization of the historical event.



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

(47) (Reserved).

(48) (Reserved).

(49) The sale at retail or use of food and beverages by nonprofit associations which support sports programs. For purposes of this paragraph, the words and phrases shall have the following meanings:

“Nonprofit association.” An entity which is organized as a nonprofit corporation or nonprofit unincorporated association under the laws of this Commonwealth or the United States or any entity which is authorized to do business in this Commonwealth as a nonprofit corporation or unincorporated association under the laws of this Commonwealth, including youth or athletic, volunteer fire, ambulance, religious, charitable, fraternal, veterans or civic, or any separately chartered auxiliary of the association, if organized and operated on a nonprofit basis.

“Sports program.” Baseball (including softball), football, basketball, soccer and any other competitive sport formally recognized as a sport by the United States Olympic Committee as specified by and under the jurisdiction of the Amateur Sports Act of 1978 (Public Law 95-606, 36 U.S.C. § 371 et seq.), the Amateur Athletic Union or the National Collegiate Athletic Association. The term shall be limited to a program or that portion of a program which is organized for recreational purposes and the activities of which are substantially for such purposes and which is primarily for participants who are 18 years of age or younger or whose 19th birthdays occur during the year of participation or the competitive season, whichever is longer. There shall, however, be no age limitation for programs operated for persons with physical disabilities or persons with mental retardation.

“Support.” The funds raised from sales are used to pay the expenses of a sports program or the nonprofit association sells the food and beverages at a location where a sports program is being conducted under this act.

(50) The sale at retail or use of subscriptions for magazines. The term “magazine” refers to a periodical published at regular intervals not exceeding three months and which are circulated among the general public, containing matters of general interest and reports of current events published for the purpose of disseminating information of a public character or devoted to literature, the sciences, art or some special industry. This paragraph includes any printed advertising material circulated with the periodical or publication, regardless of where or by whom the printed advertising material was produced.

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

(52) (Reserved).

(53) The sale at retail or use of candy or gum regardless of the location from which the candy or gum is sold.

(54) The sale at retail to or use by a producer of commercial motion pictures of any tangible personal property directly used in the production of a feature-length commercial motion picture distributed to a national audience as long as:

(i) the production of any motion picture for which the property will be used does not violate any Federal or State law; and

(ii) the purchaser furnishes to the vendor a certificate substantially in the form as the Department of Community and Economic Development may, by

regulation, prescribe, stating that the sale is exempt from tax under this paragraph.

(55) The sale at retail or use of horses to be used exclusively for commercial racing activities and the sale at retail and use of feed, bedding, grooming supplies, riding tack, farrier services, portable stalls and sulkies for horses used exclusively for commercial racing activities.

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

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

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

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

(57) The sale at retail to or use by a construction contractor of building machinery and equipment and services thereto that are:

(i) Transferred pursuant to a construction contract for any charitable organization, volunteer firemen’s organization, nonprofit educational institution or religious organization for religious purposes, if:

(A) The building machinery and equipment and services thereto are not used in any unrelated trade or business.

(B) Transferred to the United States or the Commonwealth or its instrumentalities or political subdivisions.

(58) (Reserved).

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

(60) The sale or use of used prebuilt housing.

(61) The sale at retail to or use of food and nonalcoholic beverages by an airline which will transfer the food or nonalcoholic beverages to passengers in connection with the rendering of the airline service.

(62) The sale at retail or use of tangible personal property or services which are directly used in farming, dairying or agriculture when engaged in as a business enterprise whether or not the sale is made to the person directly engaged in the business enterprise or to a person contracting with the person directly engaged in the business enterprise for the production of food.

(63) The sale at retail or use of separately stated fees paid pursuant to 13 Pa.C.S. § 9525 (relating to fees).

(64) The sale at retail to or use by a construction contractor, employed by a public school district pursuant to a construction contract, of any materials and building supplies which, during construction or reconstruction, are made part of any public school building utilized for instructional classroom education within this Commonwealth, if the construction or reconstruction:

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

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

§ 1205. Alternate imposition of tax.

(a) Dealers of motor vehicles.—A person actively and principally engaged in the business of selling new or used motor vehicles, trailers

or semitrailers, and registered with the department in the dealer's class who:

(1) acquires a motor vehicle, trailer or semitrailer for the purpose of resale; and

(2) prior to the resale, uses the motor vehicle, trailer or semitrailer for a taxable use under this chapter

may pay a tax equal to 7.0% of the fair rental value of the motor vehicle, trailer or semitrailer during that use.

(b) Commercial aircraft operators.—A commercial aircraft operator who:

(1) acquires an aircraft for the purpose of resale, or lease, or is entitled to claim another valid exemption at the time of purchase; and

(2) subsequent to the purchase, periodically uses the same aircraft for a taxable use under this chapter

may elect to pay a tax equal to 7.0% of the fair rental value of the aircraft during that use.

(c) Nonapplicability.—This section shall not apply to the use of a vehicle as a wrecker, parts truck, delivery truck or courtesy car.

§ 1206. Credit against tax.

(a) Prerequisites.—

(1) Subject to the provisions of paragraph (2), a credit against the tax imposed by section 1202 (relating to imposition of tax) shall be granted with respect to tangible personal property or services purchased for use outside this Commonwealth equal to the tax paid to another state by reason of the imposition by the other state of a tax similar to the tax imposed by this chapter.

(2) No credit shall be granted under this section unless the other state grants substantially similar tax relief by reason of the payment of tax under this chapter.

(b) Call center credit.—A credit against the tax imposed by section 1202 (relating to imposition of tax) on telecommunications services shall be granted to a call center for gross receipts tax paid by a telephone company on the receipts derived from the sale of incoming and outgoing interstate telecommunications services to the call center under section 1101(a)(2) of the Tax Reform Code. The following apply:

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

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

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

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

(5) The total amount of tax credits provided for in this subsection and approved by the department shall not exceed \$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.

## SUBCHAPTER D

### LICENSES

Sec.

1208. Licenses.

§ 1208. Licenses.

(a) General rule.—Every person maintaining a place of business in this Commonwealth, selling or leasing services or tangible personal property, the sale or use of which is subject to tax and who has not obtained a license from the department, shall, prior to the beginning of business, make application to the department, on a form prescribed by the department, for a license. If the person maintains more than one place of business in this Commonwealth, the license shall be issued for the principal place of business in this Commonwealth.

(b) Conditions of licensure.—The department shall, after the receipt of an application, issue the license applied for under subsection (a), if the applicant has filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan. The license shall be nonassignable and valid for a period of five years.

(b.1) Grounds for refusal to issue license.—

(1) If an applicant for a license or any person holding a license has not filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan, the department may refuse to issue, may suspend or may revoke said license.

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

(3) An applicant or licensee aggrieved by the determination of the department may file an appeal pursuant to the provisions for administrative appeals in this chapter.

(4) In the case of a suspension or revocation which is appealed, the license shall remain valid pending a final outcome of the appeals process. Notwithstanding section 1274, and sections, 353(f), 408(b), 603, 702, 802, 904 and 1102 of the Tax Reform Code or any other provision of law to the contrary, if no appeal is taken or if an appeal is taken and denied at the conclusion of the appeal process, the department may disclose, by publication or otherwise, the identity of a person and the fact that the person's license has been refused, suspended or revoked under this subsection. The department may include the basis for refusal, suspension or revocation in the disclosure.

(c) Penalties.—

(1) A person who maintains a place of business in this Commonwealth for the purpose of selling or leasing services or tangible personal property, the sale or use of which is subject to tax, without having first been licensed by the department shall be guilty of a summary offense and, upon conviction thereof, be sentenced to pay a fine of not less than \$300 nor more than \$1,500 and, in default thereof, to undergo imprisonment of not less than five days nor more than 30 days.

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

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

(4) The Secretary of Revenue may designate employees of the department to enforce the provisions of this subsection. Those employees shall exhibit proof of and be within the scope of the designation when instituting proceedings as provided by the Pennsylvania Rules of Criminal Procedure.

(d) Liability to pay tax remains.—The failure of any person to obtain a license shall not relieve that person of liability to pay the tax imposed by this chapter.

#### SUBCHAPTER E HOTEL OCCUPANCY TAX

Sec.

1209. Definitions.

1210. Imposition of tax.

1211. Seasonal tax returns.

§ 1209. Definitions.

(a) General rule.—For the purposes of this subchapter, the following words, terms and phrases shall have the meaning given to them in this subsection, unless the context clearly indicates otherwise:

“Hotel.” A building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term shall not include any charitable, educational or religious institution summer camp for children, hospital or nursing home.

“Occupancy.” The use or possession or the right to the use or possession by any person except a permanent resident of any room or rooms in a hotel for any purpose or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms.

“Occupant.” A person except a permanent resident who for a consideration, uses, possesses or has a right to use or possess any room or rooms in a hotel under a lease, concession, permit, right of access, license or agreement.

“Operator.” A person who operates a hotel.

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

“Rent.” The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever. The term shall not include a gratuity.

(b) Special definitions.—The following words and phrases, when used in Subchapters D (relating to licenses) and F (relating to returns), for the purposes of those subchapters only, shall, in addition to the meaning ascribed to them in section 1201 (relating to definitions), have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

“Maintaining a place of business in this Commonwealth.” Being the operator of a hotel in this Commonwealth.

“Purchase at retail.” Occupancy.

“Purchase price.” Rent.

“Purchaser.” An occupant.

“Sale at retail.” The providing of occupancy to an occupant by an operator.

“Services.” Occupancy.

“Tangible personal property.” Occupancy.

“Use.” Occupancy.

“Vendor.” Operator.

§ 1210. Imposition of tax.

There is hereby imposed an excise tax of 7.0% of the rent upon every occupancy of a room or rooms in a hotel in this Commonwealth, which tax shall be collected by the operator from the occupant and paid to the Commonwealth as provided by this chapter and the Tax Reform Code.

§ 1211. Seasonal tax returns.

Notwithstanding any other provision of this chapter or the Tax Reform Code, the department may, by regulation, waive the requirement for the filing of quarterly returns in the case of an operator whose hotel is operated only during certain seasons of the year, and may provide for the filing of returns by such persons at times other than those provided by section 1221 (relating to payment).

#### SUBCHAPTER F RETURNS

Sec.

1215. Persons required to make returns.

1216. Form of returns.

1217. Time for filing returns.

1218. Extension of time for filing returns.

1219. Place for filing returns.

1220. Timely mailing treated as timely filing and payment.

§ 1215. Persons required to make returns.

A person required to pay tax to the department or collect and remit tax to the department shall file returns with respect to such tax.

§ 1216. Form of returns.

The returns required by section 1215 (relating to persons required to make returns) shall be on forms prescribed by the department and shall show such information with respect to the taxes imposed by this chapter as the department may reasonably require.

§ 1217. Time for filing returns.

(a) Quarterly and monthly returns.—

(1) A return shall be filed quarterly by every licensee on or before the 20th day of April, July, October and January for the three months ending the last day of March, June, September and December.

(2) A return shall be filed monthly with respect to each month by every licensee whose total tax reported, or in the event no report is filed, the total tax which should have been reported, for the third calendar quarter of the preceding year equals or exceeds \$700. The returns shall be filed on or before the 20th day of the next succeeding month with respect to which the return is made. Any licensee required to file monthly returns under this section shall be relieved from filing quarterly returns.

(b) Annual returns.—For the calendar year 1971 and for each year thereafter no annual return shall be filed except as may be required by rules and regulations of the department promulgated and published at least 60 days prior to the end of the year with respect to which the returns are made. Where annual returns are required, licensees shall not be required to file the returns prior to the 20th day of the year succeeding the year with respect to which the returns are made.

(c) Other returns.—A person, other than a licensee, who is liable to pay to the department any tax under this chapter, shall file a return on or before the 20th day of the month succeeding the month in which the person becomes liable for the tax.

(d) Small taxpayers.—The department, by regulation, may waive the requirement for the filing of a quarterly return in the case of any licensee whose individual tax collections do not exceed \$85 per calendar quarter and may provide for reporting on a less frequent basis in such cases.

§ 1218. Extension of time for filing returns.

The department may on written application and for good cause shown grant a reasonable extension of time for filing any return required under this chapter. The time for making a return shall not be extended for more than three months.

§ 1219. Place for filing returns.

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

§ 1220. Timely mailing treated as timely filing and payment.

(a) General rule.—Notwithstanding the provisions of any State tax law to the contrary, when a report or payment of all or any portion of a State tax is required by law to be received by the department or other agency of this Commonwealth on or before a day certain, the taxpayer shall be deemed to have complied with that law if the letter transmitting the report or payment of the tax which has been received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

(b) Presentation of receipt.—For the purposes of this chapter, presentation of a receipt indicating that the report or payment was mailed by registered or certified mail on or before the due date shall be

evidence of timely filing and payment.

SUBCHAPTER G  
PAYMENT

Sec.

1221. Payment.

1222. Time of payment.

1223. Other times for payment.

1224. Place for payment.

1225. Tax held in trust for Commonwealth.

1226. Local receivers of use tax.

1227. Discount.

§ 1221. Payment.

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

§ 1222. Time of payment.

(a) Monthly, bimonthly and quarterly payments.—The tax imposed by this chapter and incurred or collected by a licensee shall be due and payable by the licensee on the day the return is required to be filed under the provisions of section 1217 (relating to time for filing returns) and the payment must accompany the return for the preceding period.

(b) Annual payments.—If the amount of tax due for the preceding year as shown by the annual return of any taxpayer is greater than the amount already paid by the taxpayer in connection with the taxpayer's monthly or quarterly returns, the taxpayer shall send with such annual return a remittance for the unpaid amount of tax for the year.

(c) Other payments.—A person other than a licensee liable to pay any tax under this chapter shall remit the tax at the time of filing the return required by this chapter.

§ 1223. Other times for payment.

In the event that the department authorizes a taxpayer to file a return at other times than those specified in section 1217 (relating to time for filing returns), the tax due shall be paid at the time the return is filed.

§ 1224. Place for payment.

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

§ 1225. Tax held in trust for Commonwealth.

(a) General rule.—All taxes collected by any person from purchasers in accordance with this chapter and all taxes collected by any person from purchasers under color of this chapter which have not been properly refunded by the person to the purchaser shall constitute a trust fund for the Commonwealth. The trust shall be enforceable against that person, his representatives and any person, other than a purchaser to whom a refund has been made properly, receiving any part of the fund without consideration, or knowing that the taxpayer is committing a breach of trust.

(b) Presumption.—A person who receives payment of a lawful obligation of the taxpayer from the fund shall be presumed to have received the same in good faith and without any knowledge of the breach of trust.

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

§ 1226. Local receivers of use tax.

(a) County treasurers.—

(1) A county treasurer may receive use tax due and payable under the provisions of this chapter from any person other than a licensee. The receiving of the taxes shall be pursuant to rules and regulations promulgated by the department and upon forms furnished by the department.

(2) 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 1% of the amount of use taxes received, which amount shall be retained in lieu of any commission otherwise allowable by law for the collection of the tax.

(b) Nonapplicability.—This section shall not apply to counties of the first class.

§ 1227. Discount.

If a return is filed by a licensee and the tax shown to be due thereon less any discount is paid all within the time prescribed, the licensee shall be entitled to credit and apply against the tax payable by the licensee a discount of 1% of the amount of the tax collected by the licensee as compensation for the expense of collecting and remitting the same and as a consideration of the prompt payment thereof.

SUBCHAPTER H  
ASSESSMENT AND REASSESSMENT

Sec.

1230. Assessment.

1231. Mode and time of assessment.

1232. Reassessment.

1233. Assessment to recover erroneous refunds.

1234. Review by Board of Finance and Revenue.

1235. Appeal to Commonwealth Court.

1236. Burden of proof.

§ 1230. Assessment.

The department is authorized and required to make the inquiries, determinations and assessments of the tax, including interest, additions and penalties, imposed by this chapter.

§ 1231. Mode and time of assessment.

(a) Underpayment of tax.—Within a reasonable time after any return is filed, the department shall examine it and, if the return shows a greater tax due or collected than the amount of tax remitted with the return, the department shall issue an assessment for the difference, together with an addition of 3% of such difference, which shall be paid to the department within ten days after a notice of the assessment has been mailed to the taxpayer. If such assessment is not paid within ten days, there shall be added to the assessment and paid to the department an additional 3% of the difference for each month during which the assessment remains unpaid, but the total of all additions shall not exceed 18% of the difference shown on the assessment.

(b) Understatement of tax.—If the department determines that any return or returns of any taxpayer understates the amount of tax due, it shall determine the proper amount and shall ascertain the difference between the amount of tax shown in the return and the amount determined, the difference being hereafter sometimes referred to as the "deficiency." A notice of assessment for the deficiency and the reasons for the deficiency shall then be sent to the taxpayer. The deficiency shall be paid to the department within 30 days after a notice of the assessment has been mailed to the taxpayer.

(c) Failure to file return.—In the event that any taxpayer fails to file a return required by this chapter, the department may make an estimated assessment, based on information available, of the proper amount of tax owing by the taxpayer. A notice of assessment in the estimated amount shall be sent to the taxpayer. The tax shall be paid within 30 days after a notice of the estimated assessment has been mailed to the taxpayer.

(d) Authority to establish effective rates by business classification.—The department is authorized to make the studies necessary to compute effective rates by business classification, based upon the ratio between the tax required to be collected and taxable sales and to use the rates in arriving at the apparent tax liability of a taxpayer. Any assessment based upon such rates shall be prima facie correct, except that the rate shall not be considered where a taxpayer establishes that the rate is based on a sample inapplicable to the taxpayer.

§ 1232. Reassessment.

(a) Notice of intention to file petition.—Any taxpayer against whom an assessment is made may petition the department for a reassessment. Notice of an intention to file such a petition shall be given to the department within 30 days of the date the notice of assessment was mailed to the taxpayer, except that the department for due cause may accept the notice within 90 days of the date the notice of

assessment was mailed. The department by registered mail shall supply the taxpayer with a statement setting forth in reasonable detail the basis of the assessment within 30 days after receipt of the taxpayer's notice of intention to file a petition for reassessment.

(b) Petition for reassessment.—A petition for reassessment shall be filed within 30 days after the basis of assessment has been mailed to the taxpayer. Such petition shall set forth in reasonable detail the grounds upon which the taxpayer claims that the assessment is erroneous or unlawful, in whole or in part, and shall be accompanied by an affidavit or affirmation that the facts contained in the petition are true and correct and that the petition is not interposed for delay. An extension of time for filing the petition may be allowed for cause but in no case shall the extension exceed 120 days.

(c) Hearing.—The department shall hold such hearings as may be necessary for the purpose, at such times and places as it may determine. Each taxpayer who has duly filed a petition for reassessment shall be notified by the department of the time when, and the place where, the hearing in the taxpayer's case will be held.

(d) Decision by department.—It shall be the duty of the department, within six months after receiving a filed petition for reassessment, to dispose of the issue raised by the petition and mail notice of the department's decision to the petitioner. The taxpayer and the department may, however, by stipulation, extend such disposal time by not more than six additional months.

#### § 1233. Assessment to recover erroneous refunds.

The department may, within two years of the granting of any refund or credit, or within the period in which an assessment could have been filed by the department with respect to the transaction pertaining to which the refund was granted, whichever period occurs last, file an assessment to recover any refund or part thereof or credit or part thereof which was erroneously made or allowed.

#### § 1234. Review by Board of Finance and Revenue.

(a) Time limit.—Within 60 days after the date of mailing of notice by the department of the decision on any petition for reassessment filed with it, the person against whom such assessment was made may, by petition, request the Board of Finance and Revenue to review such decision. The failure of the department to notify the petitioner of a decision within the time provided for by section 1232 (relating to reassessment) shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within 120 days of the date prior to which the department should have mailed to the petitioner its notice of decision.

(b) Petition for review.—Every petition for review filed hereunder shall state specifically the reasons on which the petitioner relies, or shall incorporate by reference the petition for reassessment in which the reasons are stated. The petition shall be supported by affidavit that it is not made for the purpose of delay and that the facts set forth therein are true.

(c) Decision by Board of Finance and Revenue.—The Board of Finance and Revenue shall act finally in disposing of petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department, upon the petition for reassessment, shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on the petition for reassessment, or it may reassess the tax due on such basis as it deems according to law. The board shall give notice of its action to the department and to the petitioner.

#### § 1235. Appeal to Commonwealth Court.

Any person aggrieved by the decision of the Board of Finance and Revenue or by the board's failure to act upon a petition for review within six months may appeal in the manner now or hereafter provided by law for appeals in the case of tax settlements.

#### § 1236. Burden of proof.

In all cases of petitions for reassessment, review or appeal, the burden of proof shall be upon the petitioner or appellant, as the case may be.

## SUBCHAPTER I COLLECTION

Sec.

1237. Collection of tax.

1238. Collection of tax on motor vehicles, trailers and semitrailers.

1239. Precollection of tax.

1240. Bulk and auction sales.

1241. Collection upon failure to request reassessment, review or appeal.

§ 1237. Collection of tax.

(a) Collection by department.—The department shall collect the tax in the manner provided by law for the collection of taxes imposed by the laws of this Commonwealth.

(b) Collection by persons maintaining a place of business in this Commonwealth.—Every person maintaining a place of business in this Commonwealth and selling or leasing tangible personal property or services, the sale or use of which is subject to tax shall collect the tax from the purchaser or lessee at the time of making the sale or lease, and shall remit the tax to the department, unless such collection and remittance is otherwise provided for in this chapter.

(c) Collection by persons delivering property in this Commonwealth.—Every person not otherwise required to collect tax that delivers tangible personal property to a location within this Commonwealth and that unpacks, positions, places or assembles the tangible personal property shall collect the tax from the purchaser at the time of delivery and shall remit the tax to the department if the person delivering the tangible personal property is responsible for collecting any portion of the purchase price of the tangible personal property delivered and the purchaser has not provided the person with proof that the tax imposed by this chapter has been or will be collected by the seller or that the purchaser provided the seller with a valid exemption certificate. Every person required to collect tax under this paragraph shall be deemed to be selling or leasing tangible personal property or services, the sale or use of which is subject to the tax imposed under section 1202 (relating to imposition of tax).

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

(e) Exemption certificates.—If the tax does not apply to the sale or lease of tangible personal property or services, the purchaser or lessee shall furnish to the vendor a certificate indicating that the sale is not legally subject to the tax. The certificate shall be in substantially the form as the department may, by regulation, prescribe. Where the tangible personal property or service is of a type that is never subject to the tax imposed or where the sale or lease is in interstate commerce, a certificate need not be furnished. Where a series of transactions are not subject to tax, a purchaser or user may furnish the vendor with a single exemption certificate in substantially such form and valid for such period of time as the department may, by regulation, prescribe. The department shall provide all school districts and intermediate units with a permanent tax exemption number.

(f) Good faith reliance on exemption certificate.—An exemption certificate, which is complete and regular and on its face discloses a valid basis of exemption if taken in good faith, shall relieve the vendor from the liability imposed by this section. An exemption certificate accepted by a vendor from a natural person domiciled within this Commonwealth or any association, fiduciary, partnership, corporation or other entity, either authorized to do business within this Commonwealth or having an established place of business within this Commonwealth, in the ordinary course of the vendor's business, which on its face discloses a valid basis of exemption consistent with the activity of the purchaser and character of the property or service being purchased or which is provided to the vendor by a charitable, religious, educational or volunteer firemen's organization and contains the organization's charitable exemption number and which, in the case of any purchase costing \$200 or more, is accompanied by a sworn

declaration on a form to be provided by the department of an intended usage of the property or service which would render it nontaxable, shall be presumed to be taken in good faith and the burden of proving otherwise shall be on the department.

(g) Direct payment permits.—The department may authorize a purchaser or lessee who acquires tangible personal property or services under circumstances that make it impossible at the time of acquisition to determine the manner in which the tangible personal property or service will be used, to pay the tax directly to the department, and waive the collection of the tax by the vendor. No such authority shall be granted or exercised, except upon application to the department and the issuance by the department, in its discretion, of a direct payment permit. If a direct payment permit is granted, its use shall be subject to conditions specified by the department, and the payment of tax on all acquisitions pursuant to the permit shall be made directly to the department by the permit holder.

§ 1238. Collection of tax on motor vehicles, trailers and semitrailers.

(a) Direct payment of tax.—Notwithstanding the provisions of section 1237(b) (relating to collection of tax), tax due on the sale at retail or use of a motor vehicle, trailer or semitrailer, except mobile homes as defined in 75 Pa.C.S. § 102 (relating to definitions) required by law to be registered with the department, shall be paid by the purchaser or user directly to the department upon application to the department for an issuance of a certificate of title upon such motor vehicle, trailer or semitrailer. The department shall not issue a certificate of title until the tax has been paid, or evidence satisfactory to the department has been given to establish that tax is not due.

(b) Failure to pay tax.—The department may cancel or suspend any record of certificate of title or registration of a motor vehicle, trailer or semitrailer when the check received in payment of the tax on such vehicle is not paid upon demand. Such tax shall be considered as a first encumbrance against such vehicle and the vehicle may not be transferred without first payment in full of such tax and any interest additions or penalties which shall accrue thereon in accordance with this chapter.

§ 1239. Precollection of tax.

(a) General rule.—The department may, by regulation, authorize or require particular categories of vendors selling tangible personal property for resale to precollect from the purchaser the tax which the purchaser will collect upon making a sale at retail of such tangible personal property. The department, however, may not pursuant to this section require a vendor to precollect tax from a purchaser who purchases for resale more than \$1,000 worth of tangible personal property from such vendor per year.

(b) License exception.—In any case in which a vendor has been authorized to prepay the tax to the person from whom the vendor purchased the tangible personal property for resale, the vendor so authorized to prepay the tax may, under the regulations of the department, be relieved from his duty to secure a license if the duty shall arise only by reason of the vendor's sale of the tangible personal property with respect to which the vendor is, under authorization of the department, to prepay the tax.

(c) Sale at retail.—The vendor, on making a sale at retail of tangible personal property with respect to which the vendor has prepaid the tax, must separately state at the time of resale the proper amount of tax on the transaction, and reimburse himself on account of the taxes which he has previously prepaid. Should such vendor collect a greater amount of tax in any reporting period than the vendor had previously prepaid upon purchase of the goods with respect to which he prepaid the tax, the vendor must file a return and remit the balance to the Commonwealth at the time at which a return would otherwise be due with respect to such sales.

§ 1240. Bulk and auction sales.

A person that sells or causes to be sold at auction, or that sells or transfers in bulk, 51% or more of any stock of goods, wares or merchandise of any kind, fixtures, machinery, equipment, buildings or real estate, involved in a business for which the person is licensed or required to be licensed under the provisions of this chapter, or is liable

for filing use tax returns in accordance with the provisions of this chapter, shall be subject to the provisions of section 1403 of the Fiscal Code.

§ 1241. Collection upon failure to request reassessment, review or appeal.

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

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

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

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

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

(b) Defenses.—In any such case in a proceeding for the collection of such taxes, the person against whom they were assessed shall not be permitted to set up any ground of defense that might have been determined by the department, the Board of Finance and Revenue or the courts. The defense of failure of the department to mail notice of assessment or reassessment to the taxpayer and the defense of payment of assessment or reassessment, however, may be raised in proceedings for collection by a motion to stay the proceedings.

#### SUBCHAPTER J NONPAYMENT

Sec.

1242. Lien for taxes.

1243. Suit for taxes.

1244. Tax suit comity.

1245. Service.

§ 1242. Lien for taxes.

(a) Lien imposed.—If any person liable to pay any tax neglects or refuses to pay the tax after demand, the amount, including any interest, addition or penalty, together with any costs that may accrue in addition thereto, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of the person but only after the lien has been entered and docketed of record by the prothonotary of the county where the property is situated. The department may, at any time, transmit, to the prothonotaries of the respective counties, certified copies of all liens for taxes imposed by this chapter and penalties and interest. It shall be the duty of each prothonotary receiving the lien to enter and docket the lien of record in the prothonotary's office, which lien shall be indexed as judgments are indexed. No prothonotary shall require, as a condition precedent to the entry of the liens, the payment of the costs incident to the liens.

(b) Priority of lien and effect on judicial date; no discharge by sale on junior lien.—The lien imposed under this section shall have priority from the date of its recording under subsection (a), and shall be fully paid and satisfied out of the proceeds of any judicial sale of property subject to the lien before any other obligation, judgment, claim, lien or estate to which the property may subsequently become subject, except costs of the sale and of the writ upon which the sale was made, and real estate taxes and municipal claims against the property, but shall be subordinate to mortgages and other liens existing and duly recorded or entered of record prior to the recording of the tax lien. In the case of a judicial sale of property, subject to a lien imposed under this section, upon a lien or claim over which the lien imposed under this section has priority, the sale shall discharge the lien imposed under this section to the extent only that the proceeds are applied to its payment, and the lien shall continue in full force and effect as to the balance remaining unpaid. There shall be no inquisition or condemnation upon any judicial sale of real estate made by the Commonwealth pursuant to the provisions hereof. The lien of the taxes, interest and penalties shall continue for five years from the date of entry, and may be revived and continued in the manner now or hereafter provided for renewal of judgments, or as may be provided in

the Fiscal Code, and a writ of execution may directly issue upon the lien without the issuance and prosecution to judgment of a writ of scire facias. Not less than ten days before issuance of any execution on the lien, however, notice of the filing and the effect of the lien shall be sent by registered mail to the taxpayer at his last known post office address. The lien shall have no effect upon any stock of goods, wares or merchandise regularly sold or leased in the ordinary course of business by the person against whom the lien has been entered, unless a writ of execution has been issued and a levy made upon the stock of goods, wares and merchandise.

(c) Duty of prothonotary.—Any willful failure of any prothonotary to carry out any duty imposed upon the prothonotary by this section shall be a misdemeanor and, upon conviction, the prothonotary shall be sentenced to pay a fine not exceeding \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both.

(d) Priority of tax.—Except as otherwise provided in this section, in the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes imposed by this chapter which are due and unpaid and are not collectible under the provisions of section 1225 (relating to tax held in trust for Commonwealth) shall be paid from the first money available for distribution in priority to all other claims and liens, except insofar as the laws of the United States may give a prior claim to the Federal Government. Any person charged with the administration or distribution of any such property or estate, who shall violate the provisions of this section, shall be personally liable for any taxes imposed by this chapter, which are accrued and unpaid and are chargeable against the person whose property or estate is being administered or distributed.

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

#### § 1243. Suit for taxes.

(a) Commencement.—At any time within three years after any tax or any amount of tax shall be finally due and payable, the department may commence an action in the courts of this Commonwealth, of any state or of the United States, in the name of the Commonwealth of Pennsylvania, to collect the amount of tax due together with additions, interest, penalties and costs in the manner provided at law or in equity for the collection of ordinary debts.

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

(c) Other remedies.—The provisions of this section are in addition to any process, remedy or procedure for the collection of taxes provided by this chapter or by the laws of this Commonwealth, and this section is neither limited by nor intended to limit any such process, remedy or procedure.

#### § 1244. Tax suit comity.

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

#### § 1245. Service.

Any person maintaining a place of business within this Commonwealth is deemed to have appointed the Secretary of the Commonwealth his agent for the acceptance of service of process or notice in any proceedings for the enforcement of the civil provisions of this chapter, and any service made upon the Secretary of the Commonwealth as such agent shall be of the same legal force and validity as if such service had been personally made upon such person. Where service cannot be made upon such person in the manner

provided by other laws of this Commonwealth relating to service of process, service may be made upon the Secretary of the Commonwealth and, in such case, a copy of the process or notice shall also be personally served upon any agent or representative of such person who may be found within this Commonwealth, or where no such agent or representative may be found a copy of the process or notice shall be sent by registered mail to such person at the last known address of his principal place of business, home office or residence.

### SUBCHAPTER K

#### MISCELLANEOUS PROVISIONS

Sec.

1246. Collection and payment of tax on credit sales.

1247. Prepayment of tax.

1247.1. Refund of sales tax attributed to bad debt.

1248. Registration of transient vendors.

1248.1. Bond.

1248.2. Notification to department; inspection of records.

1248.3. Seizure of property.

1248.4. Fines.

1248.5. Transient vendors subject to chapter.

1248.6. Promoters.

§ 1246. Collection and payment of tax on credit sales.

If any sale subject to tax under this chapter is wholly or partly on credit, the vendor shall require the purchaser to pay in cash at the time the sale is made, or within 30 days thereafter, the total amount of tax due upon the entire purchase price. The vendor shall remit the tax to the department, regardless of whether payment was made by the purchaser to the vendor, with the next return required to be filed under section 1217 (relating to time for filing returns).

§ 1247. Prepayment of tax.

(a) General rule.—Whenever a vendor is forbidden by law or governmental regulation to charge and collect the purchase price in advance of or at the time of delivery, the vendor shall prepay the tax as required by section 1222 (relating to time of payment), but in such case if the purchaser fails to pay to the vendor the total amount of the purchase price and the tax, and such amount is written off as uncollectible by the vendor, the vendor shall not be liable for the tax and shall be entitled to a credit or refund of the tax paid. If the purchase price is thereafter collected, in whole or in part, the amount collected shall be applied first to the payment of the entire tax portion of the bill, and shall be remitted to the department by the vendor with the first return filed after the collection.

(b) Petition for refund.—Tax prepaid shall be subject to refund upon petition to the department under the provisions of section 1252 (relating to refunds) filed within 105 days of the close of the fiscal year in which the accounts are written off.

§ 1247.1. Refund of sales tax attributed to bad debt.

(a) Petition for refund.—A vendor may file a petition for refund of sales tax paid to the department that is attributed to a bad debt if all of the following apply:

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

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

(3) The bad debt has been deducted for Federal income tax purposes under section 166 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 166). The petition shall be filed with the department within the time limitations prescribed by section 3003.1 of the Tax Reform Code.

(b) Amount of refund.—The refund authorized by this section shall be limited to the sales tax paid to the department that is attributed to the bad debt, less any discount under section 1227 (relating to discount). Partial payments by the purchaser to the vendor shall be prorated between the original purchase price and the sales tax due on the sale. Payments made to a vendor on any transaction that includes both taxable and nontaxable components shall be allocated proportionally between the taxable and nontaxable components.

(c) Assignment of right to petition.—A vendor may assign its

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

(d) Exclusions.—No refund shall be granted under this section for any of the following:

- (1) Interest.
- (2) Finance charges.
- (3) Expenses incurred in attempting to collect any amount receivable.

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

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

(g) Interest.—Notwithstanding the provisions of section 806.1 of the Fiscal Code, no interest shall be paid by the Commonwealth on refunds of sales tax attributed to bad debt under this section.

(h) Exclusive remedy.—No refund or credit of sales tax shall be made for any uncollected purchase price or bad debt except as authorized by this section. No deduction or credit for bad debt may be taken on any return filed with the department. This section shall provide the exclusive procedure for claiming a refund or credit of sales tax attributed to uncollected purchase price or bad debt.

(i) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Affiliated entity.” Any corporation that is part of the same affiliated group as the vendor as defined by section 1504(a)(1) of the Internal Revenue Code of 1986.

§ 1248. Registration of transient vendors.

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

(b) Issuance of certificate.—Upon registration and the posting of the bond required by section 1248.1 (relating to bond), the department shall issue to the transient vendor a certificate, valid for one year. Upon renewal of registration, the department shall issue a new certificate, valid for one year, providing the department is satisfied that the transient vendor has complied with the provisions of this chapter.

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

(d) Notice on certificate.—The certificate issued by the department shall state that the transient vendor named therein has registered with the department and shall provide notice to the transient vendor that:

- (1) The transient vendor must notify the department in writing before it enters this Commonwealth to conduct business, of the location or locations where it intends to conduct business and the date or dates on which it intends to conduct business.
- (2) Failure to notify or giving false information to the department may result in suspension or revocation of the transient vendor’s certificate.
- (3) Conducting business within this Commonwealth after a certificate has been suspended or revoked may result in criminal conviction and the imposition of fines or other penalties.

§ 1248.1. Bond.

(a) Bond required.—Upon registration with the department, a transient vendor shall also post a bond with the department in the amount of \$500 as surety for compliance with the provisions of this

chapter. After a period of demonstrated compliance with these provisions, or, if the transient vendor provides the license number of a promoter who has notified the department of a show, in accordance with the provisions of section 1248.6(a) (relating to promoters), the department may reduce the amount of bond required of a transient vendor or may eliminate the bond entirely.

(b) Request for voluntary suspension of certificate.—A transient vendor may file a request for voluntary suspension of certificate with the department. If the department is satisfied that the provisions of this chapter have been complied with and has possession of the transient vendor’s certificate, it shall return the bond posted to the transient vendor.

§ 1248.2. Notification to department; inspection of records.

(a) Notification to department.—Prior to entering this Commonwealth to conduct business, a transient vendor shall notify the department in writing of the location or locations where it intends to conduct business and the date or dates on which it intends to conduct business.

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

(c) Suspension or revocation of certificate.—The department may suspend or revoke a certificate issued to a transient vendor if the transient vendor:

- (1) fails to notify the department as required by subsection (a);
- (2) provides the department with false information regarding the conduct of business within this Commonwealth;
- (3) fails to collect sales tax on all tangible personal property or services sold subject to the sales tax; or
- (4) fails to file with the department a tax return as required by section 1217 (relating to time for filing returns).

(d) Rules and regulations.—The department shall promulgate the rules and regulations necessary to implement this section.

§ 1248.3. Seizure of property.

(a) General rule.—If a transient vendor conducting business within this Commonwealth fails to exhibit a valid certificate upon demand by authorized employees of the department, those authorized employees shall have the authority to seize, without warrant, the tangible personal property and the automobile, truck or other means of transportation used to transport or carry that property. All property seized shall be deemed contraband and shall be subject to immediate forfeiture proceedings instituted by the department pursuant to procedures adopted by regulation, except as otherwise provided by this section.

(b) Release of seized property.—Property seized pursuant to subsection (a) shall be released upon:

- (1) presentation of a valid certificate to authorized employees of the department; or
- (2) registration by the transient vendor with the department and the posting of a bond in the amount of \$500, either immediately or within 15 days after the property is seized.

§ 1248.4. Fines.

Any transient vendor conducting business within this Commonwealth while its certificate is suspended or revoked, as provided by sections 1248.1(b) (relating to bond) and 1248.2(c) (relating to notification to department; inspection of records), commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$2,500 for each offense.

§ 1248.5. Transient vendors subject to chapter.

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

§ 1248.6. Promoters.

(a) License application.—A promoter of a show or shows within this Commonwealth may annually file with the department an



application for a promoter's license stating the location and dates of such show or shows. The application shall be filed at least 30 days prior to the opening of the first show and shall be in such form as the department may prescribe.

(b) Issuance of license.—Except as provided in this section, the department shall, within 15 days after receipt of an application for a license, issue to the promoter without charge a license to operate such shows. If application for a license under this section has been timely filed and if the license has not been received by the promoter prior to the opening of the show, the authorization contained in this section with respect to the obtaining of a promoter's license shall be deemed to have been complied with, unless or until the promoter receives notice from the department denying the application for a promoter's license.

(c) Compliance with vendor provisions.—Any promoter who is a vendor under the provisions of section 1201 (relating to definitions) shall comply with all the provisions of this chapter applicable to vendors and with the provisions of this section applicable to promoters.

(d) Duty of promoters at show.—No licensed promoter shall permit any person to display for sale or to sell tangible personal property or services subject to tax under section 1202 (relating to imposition of tax) at a show unless such person is licensed under section 1208 (relating to licenses) and provides to the promoter the information required under section 1271.1 (relating to reports and records of promoters).

(e) Denial or revocation of license.—Any licensed promoter who permits any person to display for sale or to sell tangible personal property or service without first having been licensed under section 1208 fails to maintain records of a show under section 1271.1, knowingly maintains false records or fails to comply with any provision contained in this section or any regulation promulgated by the department pertaining to shows shall be subject to denial of a license or the revocation of any existing license issued pursuant to this section. In addition, the department may deny such promoter a license certificate to operate a show for a period of not more than six months from the date of such denial. Such penalty shall be in addition to any other penalty imposed by this chapter. Within 20 days of notice of denial or revocation of a license by the department, the promoter may petition the department for a hearing, pursuant to 2 Pa.C.S. (relating to administrative law and procedure).

#### SUBCHAPTER L REFUNDS AND CREDITS

Sec.

1250. Refund or credit for overpayment.

1251. Restriction on refunds.

1252. Refunds.

1253. Refund petition.

1254. Review by Board of Finance and Revenue.

1255. Appeal to Commonwealth Court.

1256. Extended time for filing special petition for refund.

§ 1250. Refund or credit for overpayment.

With respect to all taxes paid to a vendor or to the Commonwealth prior to April 5, 1957, in the case of any overpayment, the department, within the applicable period of limitations, may credit the amount of such overpayment against any liability in respect of the tax imposed by this chapter on the part of the person who made the overpayment, and shall refund any balance to such person.

§ 1251. Restriction on refunds.

No refund shall be made under section 1250 (relating to refund or credit for overpayment) without the approval of the Board of Finance and Revenue.

§ 1252. Refunds.

The department shall, pursuant to the provisions of sections 1253 (relating to refund petition) and 1254 (relating to review by Board of Finance and Revenue), refund all taxes, interest and penalties paid to the Commonwealth under the provisions of this chapter and to which the Commonwealth is not rightfully entitled. Refunds shall be made to the person, his heirs, successors, assigns or other personal representatives, who actually paid the tax. No refund shall be made

under this section with respect to any payment made by reason of an assessment with respect to which a taxpayer has filed a petition for reassessment pursuant to section 1232 (relating to reassessment) to the extent that the petition has been determined adversely to the taxpayer by a decision which is no longer subject to further review or appeal. Nothing contained herein shall be deemed to prohibit a taxpayer who has filed a timely petition for reassessment from amending it to a petition for refund where the petitioner has paid the tax assessed.

§ 1253. Refund petition.

(a) Petition requirements and hearing.—Except as provided for in section 1256 (relating to extended time for filing special petition for refund) and in subsections (b) and (d), the refund or credit of tax, interest or penalty provided for by section 1252 (relating to refunds) shall be made only where the person who has actually paid the tax files a petition for refund with the department under section 3003.1 of the Tax Reform Code. The petition for refund must set forth in reasonable detail the grounds upon which the taxpayer claims that the Commonwealth is not rightfully entitled to such tax, interest or penalty, in whole or in part, and shall be accompanied by an affidavit affirming that the facts contained in the petition are true and correct. The department may hold hearings as necessary for the purpose at the times and places as it may determine, and each person who has filed a refund petition shall be notified by the department of the time when, and the place where, the hearing will be held.

(b) Refund upon assessment.—A refund or credit of tax, interest or penalty, paid as a result of an assessment made by the department under section 1231 (relating to mode and time of assessment), shall be made only where the person who has actually paid the tax files with the department a petition for a refund with the department under section 3003.1(d) of the Tax Reform Code. The filing of a petition for refund, under the provisions of this subsection, shall not affect the abatement of interest, additions or penalties to which the person may be entitled by reason of his payment of the assessment.

(c) Decision by department.—It shall be the duty of the department, within six months after receiving a petition for refund, to dispose of the issue raised by the petition, and mail notice of the department's decision to the petitioner. The taxpayer and the department may, however, by stipulation, extend such disposal time by not more than six additional months.

(d) Unconstitutional tax provision or erroneous interpretation of provision.—Notwithstanding any other provision of this section, where any tax, interest or penalty has been paid under a provision of this chapter subsequently held by final judgment of a court of competent jurisdiction to be unconstitutional, or under an interpretation of such provision subsequently held by such court to be erroneous, a petition for refund may be filed either before or subsequent to final judgment, but such petition must be filed under section 3003.1 of the Tax Reform Code. The department shall have jurisdiction to hear and determine any such petition filed prior to such final judgment only if, at the time of filing of the petition, proceedings are pending in a court of competent jurisdiction wherein the claim of unconstitutionality or of erroneous interpretation, made in the petition for refund may be established, and in such case, the department shall not take final action upon the petition for refund until the judgment determining the question involved in such petition has become final.

§ 1254. Review by Board of Finance and Revenue.

Within 90 days after the date of mailing of notice by the department of the decision upon a petition for refund filed with it, pursuant to section 1253 (relating to refund petition), the petitioner may further petition the Board of Finance and Revenue to review the decision of the department. The failure of the department to notify the petitioner of its decision within the time provided for by section 1253 shall act as a denial of the petition, and a petition for review may be filed with the Board of Finance and Revenue within 120 days of the date prior to which the department should have mailed to the petitioner its notice of decision. Every petition for review filed with the Board of Finance and Revenue under the provisions of this section shall incorporate by reference the petition for refund. The petitioner may, in

his petition for review, elect to withdraw one or more grounds as set out in the original refund petition. The Board of Finance and Revenue shall act finally in disposing of such petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department upon the petition for refund shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on a petition for refund, or it may redetermine whether a lesser or greater amount of refund is proper. Under no circumstances may the Board of Finance and Revenue authorize a refund greater than that originally applied for by the petitioner. The Board of Finance and Revenue shall give notice of its action to the department and to the petitioner.

§ 1255. Appeal to Commonwealth Court.

Any person aggrieved by the decision of the Board of Finance and Revenue under section 1254 (relating to review by Board of Finance and Revenue) or by the board's failure to act upon a petition for review within six months may appeal in the manner now or hereafter provided for by law for appeals in the case of tax settlements.

§ 1256. Extended time for filing special petition for refund.

Any party to a transaction who has paid tax by reason of a transaction with respect to which the department is assessing tax against another person may, within six months after the filing by the department of the assessment against such other person, file a special petition for refund, notwithstanding his failure to file a regular petition within three years of the payment. The provisions of sections 1253 (relating to refund petition), 1254 (relating to review by Board of Finance and Revenue) and 1255 (relating to appeal to Commonwealth Court) shall be applicable to such special petition for refund, except that the department need not act on such petition until there is a final determination as to the propriety of the assessment filed against the other party to the transaction. Where a petition is filed under this provision in order to take advantage of the extended period of limitations, overpayments by the petitioner shall be refunded but only to the extent of the actual tax, without consideration of interest and penalties, paid by the other party to the transaction. The purpose of this section is to avoid duplicate payment of tax where a determination is made by the department that one party to a transaction is subject to tax, and another party to the transaction has previously paid tax with respect to such transaction; and this section shall be construed as extending right beyond that provided for by section 1253, and not to limit such other section.

#### SUBCHAPTER M LIMITATIONS

Sec.

1258. Limitation on assessment and collection.

1259. Failure to file return.

1260. False or fraudulent return.

1261. Extension of limitation period.

§ 1258. Limitation on assessment and collection.

The amount of the tax imposed by this chapter shall be assessed within three years after the date when the return provided for by section 1217(a) or (c) (relating to time for filing returns) is filed or the end of the year in which the tax liability arises, whichever occurs last. The assessment may be made at any time during such period notwithstanding that the department may have made one or more previous assessments against the taxpayer for the year in question, or for any part of such year. In any such case, no credit shall be given for any penalty previously assessed or paid.

§ 1259. Failure to file return.

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

§ 1260. False or fraudulent return.

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

§ 1261. Extension of limitation period.

Notwithstanding any of the foregoing provisions of this chapter, where, before the expiration of the period prescribed therein for the assessment of a tax, a taxpayer has consented in writing that the period be extended, the amount of tax due may be assessed at any time within the extended period. The period so extended may be extended further by subsequent consents in writing made before the expiration of the extended period.

#### SUBCHAPTER N INTEREST, ADDITIONS, PENALTIES AND CRIMES

Sec.

1265. Interest.

1266. Additions to tax.

1267. Penalties.

1268. Crimes.

1269. Abatement of additions or penalties.

§ 1265. Interest.

If any amount of tax imposed by this chapter is not paid to the department on or before the last date prescribed for payment, interest on the amount at the rate of .75% per month for each month, or fraction thereof, from such date, shall be paid for the period from the last date to the date paid. The last date prescribed for payment shall be determined under section 1222(a) or (c) (relating to time of payment) without regard to any extension of time for payment. In the case of any amount assessed as a deficiency or as an estimated assessment, the date prescribed for payment shall be 30 days after notice of the assessment.

§ 1266. Additions to tax.

(a) Failure to file return.—In the case of failure to file any return required by section 1215 (relating to persons required to make returns) on the date prescribed for filing, determined with regard to any extension of time for filing, and in the case in which a return filed understates the true amount due by more than 50%, there shall be added to the amount of tax actually due 5% of the amount of such tax if the failure to file a proper return is for not more than one month, with an additional 5% for each additional month, or fraction thereof, during which the failure continues, not exceeding 25% in the aggregate. In every such case at least \$2 shall be added.

(b) Addition for understatement.—There shall be added to every assessment under section 1231(b) (relating to mode and time of assessment) an addition equal to 5% of the amount of the understatement and no addition to the tax shall be paid under section 1231(a).

(c) Interest.—If the department assesses a tax according to section 1231(a), (b) or (c), there shall be added to the amount of the deficiency interest at the rate of .75% per month for each month, or fraction thereof, from the date prescribed by section 1222(a) or (c) (relating to time of payment) for the payment of the tax to the date of notice of the assessment.

§ 1267. Penalties.

(a) Penalty assessed as tax.—The penalties, additions, interest and liabilities provided by this chapter shall be paid upon notice and demand by the department, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this chapter to "tax" imposed by this chapter shall be deemed also to refer to the penalties, additions, interest and liabilities provided by this chapter.

(b) Attempt to evade or defeat tax.—Any person who willfully attempts, in any manner, to evade or defeat the tax imposed by this chapter, or the payment thereof, or to assist any other person to evade or defeat the tax imposed by this chapter, or the payment thereof, or to receive a refund improperly, shall, in addition to other penalties provided by law, be liable for a penalty equal to one-half of the total amount of the tax evaded.

(c) Burden of proof.—In any direct proceeding arising out of a petition for reassessment or refund as provided in this chapter, in which an issue of fact is raised with respect to whether a return is fraudulent

or with respect to the propriety of the imposition by the department of the penalty prescribed in subsection (b), the burden of proof with respect to such issue shall be upon the department.

§ 1268. Crimes.

(a) Fraudulent return.—Any person who with intent to defraud the Commonwealth shall willfully make, or cause to be made, any return required by this chapter, which is false, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding \$2,000 or to imprisonment for not more than three years, or both.

(b) Other crimes.—Except as otherwise provided by subsection (a), the following persons commit a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both:

(1) Any person who advertises or holds out or states to the public or to any purchaser or user, directly or indirectly, that the tax or any part thereof imposed by this chapter will be absorbed by such person, or that it will not be added to the purchase price of the tangible personal property or services described in paragraphs (2), (3), (4) and (11) through (18) under the definition of “sale at retail” in section 1201 (relating to definitions) sold or, if added, that the tax or any part thereof will be refunded, other than when the person refunds the purchase price because of the property being returned to the vendor.

(2) Any person selling or leasing tangible personal property or services the sale or use of which by the purchaser is subject to tax under this chapter, who shall willfully fail to collect the tax from the purchaser and timely remit the same to the department.

(3) Any person who shall willfully fail or neglect to timely file any return or report required by this chapter or any taxpayer who shall refuse to timely pay any tax, penalty or interest imposed or provided for by this chapter, or who shall willfully fail to preserve his books, papers and records as directed by the department.

(4) Any person who shall refuse to permit the department or any of its authorized agents to examine his books, records or papers, or who shall knowingly make any incomplete, false or fraudulent return or report, or who shall do, or attempt to do, anything whatever to prevent the full disclosure of the amount or character of taxable sales purchases or use made by himself or any other person, or shall provide any person with a false statement as to the payment of tax with respect to particular tangible personal property or services, or shall make, utter or issue a false or fraudulent exemption certificate.

(c) Place of business outside Commonwealth.—Any person maintaining a place of business outside this Commonwealth may absorb the tax with respect to taxable sales made in the normal course of business to customers present at the place of business without being subject to the penalty and fines under subsection (b).

(d) Prepaid mobile telecommunications services.—Advertising tax-included prices shall be permissible, if the prepaid services are sold by the service provider, for prepaid telecommunications services not evidenced by the transfer of tangible personal property or for prepaid mobile telecommunications services.

(e) Other penalties.—The penalties imposed by this section shall be in addition to any other penalties imposed by any provision of this chapter.

§ 1269. Abatement of additions or penalties.

Upon the filing of a petition for reassessment or a petition for refund as provided under this chapter by a taxpayer, additions or penalties imposed upon such taxpayer by this chapter may be waived or abated, in whole or in part, where the petitioner has established that he has acted in good faith, without negligence and with no intent to defraud.

#### SUBCHAPTER O ENFORCEMENT AND EXAMINATIONS

Sec.

1270. Rules and regulations.

1271. Keeping of records.

1271.1. Reports and records of promoters.

1272. Examinations.

1273. Records and examinations of delivery agents.

1274. Unauthorized disclosure.

1275. Cooperation with other governments.

1276. Interstate compacts.

1277. Bonds.

§ 1270. Rules and regulations.

(a) General rule.—The department is charged with the enforcement of this chapter, and is authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations not inconsistent with the provisions of this chapter, relating to any matter or thing pertaining to the administration and enforcement of this chapter, and the collection of taxes, penalties and interest imposed by this chapter. The department may prescribe the extent, if any, to which its rules and regulations shall be applied without retroactive effect.

(b) Sales between affiliated interests.—In determining the purchase price of taxable sales where, because of affiliation of interests between the vendor and the purchaser or irrespective of any affiliation, if for any other reason, the purchase price of the sale is in the opinion of the department not indicative of the true value of the article or the fair price thereof, the department shall, pursuant to uniform and equitable rules, determine the amount of constructive purchase price upon the basis of which the tax shall be computed and levied. The rules shall provide for a constructive amount of a purchase price for each sale, which price shall equal a price for the article which would naturally and fairly be charged in an arm’s-length transaction in which the element of common interests between vendor and purchaser, or, if no common interest exists, any other element causing a distortion of the price or value is absent. For the purpose of this chapter where a taxable sale occurs between a parent corporation and a subsidiary affiliate or controlled corporation of the parent, there shall be a rebuttable presumption that because of the common interest the transaction was not at arm’s-length.

§ 1271. Keeping of records.

(a) General rule.—Each person liable for any tax imposed by this chapter, or for the collection of any tax imposed by this chapter, shall keep the records, render the statements, make the returns and comply with the rules and regulations that the department may, from time to time, prescribe regarding matters pertinent to the persons business. Whenever in the judgment of the department it is necessary, it may require any person, by notice served upon the person, or by regulations, to make returns, render statements or keep records as the department deems sufficient to show whether or not the person is liable to pay or collect tax under this chapter.

(b) Persons collecting tax from others.—Any person liable to collect tax from another person under this chapter shall file reports, keep records, make payments and be subject to interest and penalties as provided for under this chapter, in the same manner as if the person were directly subject to the tax.

(c) Records of nonresidents.—A nonresident who does business in this Commonwealth as a retail dealer shall keep adequate records of the business or businesses and of the tax due with respect to the business or businesses, which records shall at all times be retained within this Commonwealth unless retention outside this Commonwealth is authorized by the department. No taxes collected from purchasers shall be sent outside this Commonwealth without the written consent of and in accordance with conditions prescribed by the department. The department may require a taxpayer who desires to retain records or tax collections outside this Commonwealth to assume reasonable out-of-State audit expenses.

(d) Keeping of separate records.—Any person doing business as a retail dealer who at the same time is engaged in another business or businesses which do not involve the making of sales taxable under this chapter shall keep separate books and records of the person’s businesses so as to show the sales taxable under this chapter separately

from the person's sales not taxable under this chapter. If the person fails to keep separate books and records, the person shall be liable for tax at the rate designated in section 1202 (relating to imposition of tax) upon the entire purchase price of sales from both or all of the person's businesses.

(e) Other methods.—

(1) In those instances where a vendor gives no sales memoranda or uses registers showing only total sales, the vendor must adopt some method of segregating tax from sales receipts and keep records showing the segregation, all in accordance with proper accounting and business practices.

(2) A vendor may apply to the department for permission to use a collection and recording procedure which will show the information as the law requires with reasonable accuracy and simplicity. A vendor's application must contain a detailed description of the procedure to be adopted. Permission to use the proposed procedure is not to be construed as relieving the vendor from remitting the full amount of tax collected. The department may revoke permission upon 30 days' notice to the vendor. Refusal of the department to grant permission in advance to use the procedure shall not be construed to invalidate a procedure which upon examination shows the information as the law requires.

#### § 1271.1. Reports and records of promoters.

Each licensed promoter shall keep a record of the date and place of each show and the name, address, sales, use and hotel occupancy license number of each person whom the licensed promoter permits to display for sale or to sell tangible personal property or services subject to tax under section 1202 (relating to imposition of tax) at the show. The records shall be open for inspection and examination at any reasonable time by the department or its authorized representative, and the records shall, unless the department consents in writing to an earlier destruction, be preserved for three years after the date the report was filed or the date it was due, whichever occurs later, except that the department may by regulation require that they be kept for a longer period of time.

#### § 1272. Examinations.

The department or any of its authorized agents are authorized to examine the books, papers and records of any taxpayer in order to verify the accuracy and completeness of any return made or, if no return was made, to ascertain and assess the tax imposed by this chapter. The department may require the preservation of any books, papers and records for any period deemed proper by it but not to exceed three years from the end of the calendar year to which the records relate. Each taxpayer is required to give to the department, or its agent, the means, facilities and opportunity for examinations and investigation. The department is further authorized to examine any person, under oath, concerning taxable sales or use by any taxpayer or concerning any other matter relating to the enforcement or administration of this chapter, and to this end may compel the production of books, papers and records and the attendance of all persons whether as parties or witnesses whom it believes to have knowledge of such matters. The procedure for hearings or examinations shall be the same as that provided by the Fiscal Code, relating to inquisitorial powers of fiscal officers.

#### § 1273. Records and examinations of delivery agents.

Each agent for the purpose of delivery of goods shipped into this Commonwealth by a nonresident including, but not limited to, common carriers, shall maintain adequate records of the deliveries pursuant to rules and regulations adopted by the department and shall make the records available to the department upon request after due notice.

#### § 1274. Unauthorized disclosure.

Any information gained by the department as a result of any return, examination, investigation, hearing or verification, required or authorized by this chapter, shall be confidential, except for official purposes and except in accordance with proper judicial order or as otherwise provided by law, and any person unlawfully divulging the information commits a misdemeanor and shall, upon conviction, be

sentenced to pay a fine of not more than \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both.

#### § 1275. Cooperation with other governments.

Notwithstanding the provisions of section 1274 (relating to unauthorized disclosure), the department may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any state, or the authorized representative of either, to inspect the tax returns of any taxpayer, or may furnish to such officer or to an authorized representative an abstract of the return of any taxpayer, or supply the officer with information concerning any item contained in any return or disclosed by the report of any examination or investigation of the return of any taxpayer. This permission shall be granted only if the statutes of the United States or of the other state, as the case may be, grant substantially similar privileges to the proper officer of the Commonwealth charged with the administration of this chapter.

#### § 1276. Interstate compacts.

The Governor, or an authorized representative, has the authority to confer with the governors and the authorized representatives of other states with respect to reciprocal use tax collection between Pennsylvania and the other states. The Governor, or a representative, is authorized to join with the authorities of other states to conduct joint investigations, to exchange information, to hold joint hearings and to enter into compacts or interstate agreements with the other states to accomplish uniform reciprocal use tax collections between those states who are parties to any compact or interstate agreement and the Commonwealth of Pennsylvania.

#### § 1277. Bonds.

(a) Taxpayer to file bond.—

(1) Whenever the department, in its discretion, deems it necessary to protect the revenues to be obtained under this chapter, it may require any nonresident natural person or any foreign corporation, association, fiduciary, partnership or other entity not authorized to do business within this Commonwealth or not having an established place of business in this Commonwealth and subject to the tax imposed by section 1202 (relating to imposition of tax) to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in an amount as the department may fix, to secure the payment of any tax or penalties due, or which may become due, from the natural person or corporation.

(2) In order to protect the revenues to be obtained under this chapter, the department shall require any nonresident natural person or any foreign corporation, association, fiduciary, partnership or entity, who or which is a building contractor, or who or which is a supplier delivering building materials for work in this Commonwealth and is not authorized to do business within this Commonwealth or does not have an established place of business in this Commonwealth and is subject to the tax imposed by section 1202 to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in an amount as the department may fix, to secure the payments of any tax or penalties due, or which may become due, from the natural person, corporation or other entity.

(3) The department may also require a bond of any person petitioning the department for reassessment, in the case of any assessment over \$500 or where it is of the opinion that the ultimate collection is in jeopardy. The department may, for a period of three years, require a bond of any person who has on three or more occasions within a 12-month period either filed a return or made payment to the department more than 30 days late.

(4) In the event that the department determines that a taxpayer is to file a bond, it shall give notice to the taxpayer to that effect, specifying the amount of the bond required. The taxpayer shall file the bond within five days after the giving of

notice by the department unless, within the five days, the taxpayer shall request, in writing, a hearing before the Secretary of Revenue or a representative at which hearing the necessity, propriety and amount of the bond shall be determined by the secretary or representative. The determination shall be final and shall be complied with within 15 days after notice of the determination is mailed to the taxpayer.

(b) Securities in lieu of bond.—In lieu of the bond required by this section, securities approved by the department, or cash in an amount as prescribed by the department, may be deposited. The securities or cash shall be kept in the custody of the department, which may, at any time, without notice to the depositor, apply them to any tax, interest or penalties due, and for that purpose the securities may be sold by the department, at public or private sale, upon five days' written notice to the depositor.

(c) Failure to file bond.—The department may file a lien pursuant to section 1242 (relating to lien for taxes) against any taxpayer who fails to file a bond when required to do so under this section. All funds received upon execution of the judgment on a lien shall be refunded to the taxpayer with 3% interest should a final determination be made that the taxpayer does not owe any payment to the department.

#### SUBCHAPTER P APPROPRIATION; EFFECTIVE DATE

Sec.

1281. Appropriation for refunds.

1281.1. Construction of chapter.

1281.2. Transfers to Public Transportation Assistance Fund.

1281.3. Transfer to Property Tax Stabilization Fund.

§ 1281. Appropriation for refunds.

So much of the proceeds of the tax imposed by this chapter as shall be necessary for the payment of refunds, enforcement or administration under this chapter is hereby appropriated for such purposes.

§ 1281.1. Construction of chapter.

To the extent that the language of this chapter is identical to that of equivalent provisions in the former act of March 6, 1956 (1955 P.L.1228, No.381), known as the Tax Act of 1963 for Education, the language shall be deemed a reenactment of the identical provisions.

§ 1281.2. Transfers to Public Transportation Assistance Fund.

(a) Transfer from imposition of tax on periodicals.—All revenues received on or after July 1, 1992, from the imposition of the tax on periodicals shall be transferred to the Public Transportation Assistance Fund according to the formula set forth in subsection (b).

(b) Transfer to Public Transportation Assistance Fund.—Within 30 days of the close of any calendar month, 0.44% of the taxes received in the previous month under this chapter, less any amounts collected in that previous calendar month under former 74 Pa.C.S. § 1314(d) (relating to Public Transportation Assistance Fund), shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code.

(c) Other transfer.—Within 30 days of the close of any calendar month, 0.09% of the taxes received in the previous month under this chapter shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code.

(d) Transfer after June 30, 2003.—Within 30 days of the close of a calendar month, 0.417% of the taxes received in the previous month under this chapter shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code. This subsection applies to deposits into the Public Transportation Assistance Fund made after June 30, 2003.

§ 1281.3. Transfer to Property Tax Stabilization Fund.

Within 30 days of the close of any calendar month, 14.285% of the taxes received in the previous month under this chapter shall be transferred to the Property Tax Stabilization Fund.

#### CHAPTER 13 SPECIAL SITUS FOR LOCAL SALES TAX

Sec.

1301. Definitions.

1302. Leased or rental vehicles or crafts.

1303. Construction materials.

1304. Mobile telecommunications services.

§ 1301. Definitions.

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

“Lease.” A contract for the use of a motor vehicle or other tangible personal property referred to in section 1302(a) (relating to leased or rental vehicles or crafts) for a period of 30 days or more.

“Rental.” A contract for the use of a motor vehicle or other tangible personal property referred to in section 1302(b) (relating to leased or rental vehicles or crafts) for a period of less than 30 days.

§ 1302. Leased or rental vehicles or crafts.

(a) Lease.—For purposes of this chapter, the lease of a motor vehicle, trailer, semitrailer or mobile home, as defined in 75 Pa.C.S. (relating to vehicles), or of a motorboat, aircraft or other similar tangible personal property required under either Federal or State laws to be registered or licensed shall be deemed to have been completed or used at the address of the lessee. In the case of a lease, the tax shall be paid by the lessee to the lessor.

(b) Rental.—For purposes of this chapter, the rental of a motor vehicle, trailer, semitrailer or mobile home, as defined in 75 Pa.C.S., or of a motorboat, aircraft or other similar tangible personal property required under either Federal or State laws to be registered or licensed shall be deemed to be consummated at the place of business of the retailer. In the case of a rental, the tax due shall be paid by the renter to the retailer.

(c) Applicability.—This chapter shall only apply to any sales tax imposed under Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code, and under the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

§ 1303. Construction materials.

(a) Final destination.—Notwithstanding the provisions of section 504 of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, the sale or use of road construction material, including recycled asphalt, recycled concrete, asphalt, concrete and road aggregates, shall be deemed to have been consummated at the location of its final destination. Final destination will be determined by reference to delivery or shipping documents relating to such sales.

(b) Applicability.—This section shall apply to taxes levied under Chapter 5 of the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class. This section shall not apply to taxes levied under Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

§ 1304. Mobile telecommunications services.

(a) Primary use.—For purposes of this chapter, the situs of the sales or use of mobile telecommunications services which are deemed to be provided to a customer by a home service provider under section 117 of the Mobile Telecommunications Sourcing Act (4 U.S.C. § 117(a) and (b)) shall be the customer's place of primary use regardless of where the mobile telecommunications services originate, terminate or pass through.

(b) Definitions.—For purposes of this section, words and phrases used in this section shall have the meanings given to them in the Mobile Telecommunications Sourcing Act.

#### PART III TAX RELIEF

Chapter

21. Homeowner Property Tax Relief

#### CHAPTER 21

#### HOMEOWNER PROPERTY TAX RELIEF

Subchapter

A. General Provisions

B. Formula

C. Tax Relief in Cities of the First Class  
D. Funds

SUBCHAPTER A  
GENERAL PROVISIONS

Sec.

2101. Scope.

2102. Definitions.

§ 2101. Scope.

This chapter relates to the allocation of State funds for homestead and farmstead property tax reductions.

§ 2102. Definitions.

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

“Allocation maximum.” The Statewide average reduction plus a numerical value of 0.10. The allocation maximum shall not be greater than a numerical value of 0.50.

“Allocation minimum.” The Statewide average reduction minus a numerical value of 0.10. The allocation minimum shall not be less than a numerical value of 0.05.

“Assessor.” The term as it is defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Average daily membership.” All resident pupils of the school district for whom the school district is financially responsible. It shall be calculated by dividing the aggregate days membership for all children on active rolls by the number of days the school is in session.

“Department.” The Department of Education of the Commonwealth.

“Equalized millage.” The term shall have the same usage as defined in section 2501(9.2) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

“Farmstead.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Farmstead property.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Fund.” The Property Tax Stabilization Fund.

“Homestead.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Homestead property.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Real property tax.” The total dollar value of real property taxes paid by property owners in a school district determined by adding the real property taxes collected by, or on behalf of, the school district plus all State allocations received pursuant to this chapter.

“Real property tax liability.” The assessed value of the real property of the taxpayer multiplied by the millage rate of the school district.

“Residential property tax.” The dollar value of real property taxes paid by residential property owners in a school district, determined by multiplying:

(1) the real property taxes collected by the school district; by

(2) the percentage of the total property value in the school district classified as residential by the State Tax Equalization Board.

“School district.” A school district of the first class, first class A, second class, third class or fourth class.

“School district of the first class.” Includes the governing body of a city of the first class.

“Secretary.” The Secretary of the Budget of the Commonwealth.

“Statewide Average Reduction.” The amount certified under section 2111 divided by the sum of all residential property taxes for all school districts collected during the third year immediately preceding the fiscal year for which the certification is being made, rounded to the nearest one-tenth of one percent.

“Taxpayer.” A person required to pay a real property tax.

SUBCHAPTER B  
FORMULA

Sec.

2111. Certification.

2112. Notification.

2113. State allocation.

§ 2111. Certification.

(a) Initial.—By April 15, 2007, the secretary shall certify the greater of the following:

(1) The total amount of revenue that is reasonably projected to be deposited into the fund for the period through June 30, 2007.

(2) \$300,000,000.

(b) Annual.—Beginning April 15, 2008, and each April 15 thereafter, the secretary shall certify the greater of the following:

(1) The total amount of revenue that is reasonably expected to be deposited into the fund for the current fiscal year.

(2) The amount certified by the secretary under this section for the prior fiscal year.

(c) Excess.—If the actual revenue deposited into the fund in any one fiscal year exceeds the amount certified in this section, any revenue in excess of projections shall remain in the fund and shall be included in the certification for the subsequent fiscal year.

(d) Shortage.—If the actual revenue deposited into the fund in any one fiscal year is less than the amount certified in this section, the secretary shall transfer from the Property Tax Stabilization Reserve Fund to the fund either of the following:

(1) For calendar year 2007, the amount equal to the difference between the amount certified under subsection (a) and \$300,000,000.

(2) For calendar year 2008 and each calendar year thereafter, the amount equal to the difference between the amount certified under subsection (b) and the amount certified under this section for the prior year.

§ 2112. Notification.

By April 20, 2007, and each April 20 thereafter, the secretary shall notify the department of the amount certified pursuant to section 2111 (relating to certification) for calculation of the allocation for each school district under section 2113 (relating to State allocation).

§ 2113. State allocation.

(a) Calculation.—The department shall calculate the State allocation for each school district as follows:

(1) For the 2007-2008 fiscal year:

(i) Multiply the school district’s 2004-2005 average daily membership by the school district’s 2004-2005 equalized millage.

(ii) Multiply the product under subparagraph (i) by the dollar amount necessary to allocate all of the money in the fund as certified under section 2111 (relating to certification).

(iii) If the allocation under this paragraph is less than the product of the residential property taxes collected during the 2004-2005 fiscal year and the allocation minimum for a school district, the school district shall receive an additional amount so that the total allocation under this paragraph is equal to the product of the residential property taxes collected during the 2004-2005 fiscal year and the allocation minimum.

(iv) If the allocation under this paragraph is greater than the product of the residential property taxes collected during the 2004-2005 fiscal year and the allocation maximum for a school district, the school district shall receive a total allocation equal to the product of the residential property taxes collected during the 2004-2005 fiscal year and the allocation maximum.

(2) For subsequent fiscal years:

(i) Multiply the school district’s average daily membership for the third fiscal year immediately

preceding the fiscal year for which the allocation is being made by the school district's equalized millage for the third fiscal year immediately preceding the fiscal year for which the allocation is being made.

(ii) Multiply the product under subparagraph (i) by the dollar amount necessary to allocate all of the money in the fund as certified under section 2111.

(iii) If the allocation under this paragraph is less than the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation minimum for a school district, the school district shall receive an additional amount so that the total allocation under this paragraph is equal to the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation minimum.

(iv) If the allocation under this paragraph is greater than the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation maximum for a school district, the school district shall receive a total allocation equal to the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation maximum.

(b) Notice.—By May 15, 2007, and each May 15 thereafter, the department shall notify each school district of the amount of the State allocation it is eligible to receive.

(c) Payment.—Beginning 2007 and each year thereafter, the department shall pay from the fund to each school district a State allocation which shall be made concurrently with the first payment under section 2517 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

(d) Use of payments.—Except as provided in Subchapter C, the State allocation for a school district shall be used for homestead and farmstead exclusions in accordance with law.

#### SUBCHAPTER C

#### TAX RELIEF IN CITIES OF THE FIRST CLASS

Sec.

2131. Tax relief in cities of the first class.

§ 2131. Tax relief in cities of the first class.

(a) Tax rate reduction.—A city of the first class shall reduce the rate of wage and net profits tax on residents and nonresidents levied under the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act, in order to be eligible to receive a State allocation under this chapter. If the city elects to reduce taxes pursuant to this section, all money received from the fund under section 2113 (relating to State allocation) shall be used to offset a reduction by the city in the fiscal year in which a payment under section 2113 is received and each fiscal year thereafter in the rate of tax on wages and net profits for both residents and nonresidents as provided for in subsection (b). The reductions shall remain in effect for so long as a State allocation under section 2113 is paid to the city in an amount equal to the cost of such reductions.

(b) Calculation of reduction.—

(1) The city shall calculate the amount of the tax rate reductions so that they equal, based on estimates certified by the city's director of finance and approved by the Pennsylvania Intergovernmental Cooperation Authority prior to the implementation of the reductions, in combination with any reduction in the rate of unearned income tax imposed by a school district in the city of the first class required by the act of August 9, 1963 (P.L.640, No.338), entitled "An act empowering cities of the first class, coterminous with school districts of the first class, to authorize the boards of public education of

such school districts to impose certain additional taxes for school district purposes, and providing for the levy, assessment and collection of such taxes," as a result of the reduction in the rate of wage and net profits tax, the amount paid to the city from the fund for tax reductions. The city shall each year transfer to the school district an amount equal to the cost of any reduction in the rate of unearned income tax, and the transfer shall not be subject to the provisions of section 696(h) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

(2) The tax rate reductions implemented by a city of the first class pursuant to this section shall be in addition to the following schedule of percentages of wage and net profits tax rate reductions:

(i) On January 1, 2007, 0.9533% for residents and 0.4216% for nonresidents.

(ii) On January 1, 2008, 0.9624% for residents and 0.8387% for nonresidents.

(iii) On January 1, 2009, 1.1851% for residents and 1.0526% for nonresidents.

(c) Exceptions.—The wage and net profits tax rates may only be raised above the rates specified in subsection (b)(2) if all of the following apply:

(1) The increase is approved by an affirmative vote of at least ten members of a city council of a city of the first class.

(2) The Pennsylvania Intergovernmental Cooperation Authority certifies that a condition under paragraph (3) exists.

(3) The increase is necessary to respond to any of the following:

(i) A fiscal threat or condition, as certified by the city's director of finance, that occurs to the city as set forth in the applicable statutory provision relating to public referendum requirements for increasing certain taxes or an equivalent fiscal threat that affects the citizens of the city. It shall be the responsibility of the city's director of finance with the approval of the Pennsylvania Intergovernmental Cooperation Authority to ensure that any additional tax revenue raised is equal to the amount expended to respond to the fiscal threat or condition. If the amount of revenue raised through rate adjustment exceeds the amount necessary to respond, over the course of the city's approved financial plan, to the fiscal threat, the excess amount shall be used for wage tax and net profits tax reduction in the immediately succeeding approved financial plan, but only if the tax rate reduction, expressed as the difference between the two tax rates, would exceed .0002.

(ii) A decrease of more than 2% in the amount of total tax collections plus any funds provided under this chapter from the preceding year's collections. Such a determination of a decrease must be attested to by the city's director of finance.

(iii) A declaration by the Pennsylvania Intergovernmental Cooperation Authority that the city's five-year plan is disapproved pursuant to section 209 of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

(iv) Federal or State law imposes a new unfunded mandate on the city that costs the city more than 1.5% of the city's total general fund expenditures in any fiscal year.

(v) The cost to the city of an existing mandate imposed by Federal or State law increases by more than 1.5% of the city's total general fund expenditures in any fiscal year and funds to pay for the increase are not appropriated to the city by the Federal or State government.

(vi) Existing Federal or State funding is decreased by 1.5% of the city's total general fund expenditures in any fiscal year.

(d) Excess funds.—If in any fiscal year the sums received by a city of the first class from the fund are in excess of the value of the tax rate reductions actually made by the city and the school district of the first class pursuant to subsection (a), the city shall, within 60 days following the certification by the director of finance, in consultation with the Secretary of the Budget and with the approval of the Pennsylvania Intergovernmental Cooperation Authority of the amount of the excess, do either of the following:

(1) repay to the fund the excess sums; or

(2) further reduce wage and net profits tax rates and unearned income tax rates, if required, in the fiscal year next following the determination of the excess, by an amount that will result in total tax rate reductions required for the amount received from the fund. To the extent the tax rate reduction provided for in this paragraph, expressed as the difference between the two tax rates, would not exceed .0002, this subsection shall not apply.

(e) Insufficient funds.—If in any fiscal year the director of finance certifies, in consultation with the Secretary of the Budget and with the approval of the Pennsylvania Intergovernmental Cooperation Authority, that the amount of sums received by the city from the fund are less than the value of the tax rate reductions actually made by the city and school district of the first class pursuant to subsection (a), the city may, in the fiscal year next following the determination of the amount, increase the city's wage and net profits tax rate above the rates specified in subsection (b)(2) by an amount that will result in an overall tax rate reduction equal to that required for the amount received by the city from the fund. To the extent the tax rate increase provided for in this subsection, expressed as the difference between the two tax rates, would not exceed .0002, this subsection shall not apply.

#### SUBCHAPTER D FUNDS

Sec.

2141. Property Tax Stabilization Reserve Fund.

2142. Property Tax Stabilization Fund.

§ 2141. Property Tax Stabilization Reserve Fund.

(a) Fund established.—There is established within the fund a restricted receipts account to be known as the Property Tax Stabilization Reserve Fund. Interest which accrues on the Property Tax Stabilization Reserve Fund shall be credited to the fund.

(b) Receipts.—The secretary is authorized to transfer funds from the fund into the Property Tax Stabilization Reserve Fund necessary to comply with the requirements of subsection (c).

(c) Balance.—

(1) The secretary shall ensure that \$200,000,000 exists in the Property Tax Stabilization Reserve Fund prior to making a certification under section 2111 (relating to certification).

(2) If a transfer was made under section 2111(d), the secretary shall deposit funds necessary to ensure that \$200,000,000, is available in the Property Tax Stabilization Reserve Fund prior to making a certification under section 2111.

(d) Nonlapse.—The money in the Property Tax Stabilization Reserve Fund is continuously appropriated to the Property Tax Stabilization Fund and shall not lapse at the end of any fiscal year.

§ 2142. Property Tax Stabilization Fund.

There is established a special fund to be known as the Property Tax Stabilization Fund. Interest which accrues on money in the fund shall be credited to the fund.

Section 3. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate this act.

(2) Articles II and II-A of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

Section 4. The addition of 72 Pa.C.S. Ch. 12 is a continuation of Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Ch. 12, all activities initiated under Article II of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 12. Orders, regulations, rules and decisions which were made under Article II of the Tax Reform Code of 1971 and which are in effect on the effective date of section 3 of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 12.

(2) Except as set forth in paragraph (3), any difference in language between 72 Pa.C.S. Ch. 12 and Article II of the Tax Reform Code of 1971 is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Article II of the Tax Reform Code of 1971.

(3) Paragraph (2) does not apply to the addition of any of the following provisions of Title 72:

(i) Section 1202(a), (b), (c)(1), (d), (e)(3)(i), (e.1)(3)(i) and (g).

(ii) Section 1203.

(iii) Section 1204(28), (37), (47), (48) and (58).

(iv) Section 1205(a)(2) and (b)(2).

(v) Section 1210.

(vi) Section 1217(a)(2) and (d).

(vii) Section 1281.3.

Section 5. The addition of 72 Pa.C.S. Ch. 13 is a continuation of Article II-A of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. Except as otherwise provided in 72 Pa.C.S. Ch. 13, all activities initiated under Article II-A of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 13. Orders, regulations, rules and decisions which were made under Article II-A of the Tax Reform Code of 1971 and which are in effect on the effective date of section 3 of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 13.

Section 6. This act shall take effect as follows:

(1) Except as provided in paragraph (2), the following provisions shall take effect January 1, 2007:

(i) The addition of 72 Pa.C.S. Ch. 12.

(ii) The addition of 72 Pa.C.S. Ch. 13.

(iii) Section 3 of this act.

(2) The addition of 72 Pa.C.S. § 1281.3 shall take effect February 1, 2007.

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

On the question recurring,  
Will the House agree to the amendment?

The SPEAKER. The Chair recognizes the gentleman from Allegheny, Mr. Turzai.

Mr. TURZAI. Thank you very much, Mr. Speaker.

I rise in support of Representative Pyle's amendment and would like to make a point for everybody to be in favor of this amendment whether or not you are for HB 39. I know that many folks who are in favor of HB 39 are willing to support this amendment. Others who are not in favor of HB 39, like myself, are also in favor of this amendment.

Now, my colleague, Representative Dally, will shortly be offering an amendment to this amendment to bring in a back-end referendum identical to HB 39, and whether or not you are for HB 39 is irrelevant to whether or not you want this type of tax relief, property tax relief that Representative Pyle is putting forth for all of us to vote on today.



The fact of the matter is, Representative Pyle is doing a shift that will allow \$1.4 billion to be placed in a property tax reduction school funding account to be used exclusively for property tax reduction, dollar for dollar. No matter where you stand on any other components, that is a laudable goal and it will be a significant achievement, and if we are serious, if we are serious about making the tough decisions to reduce property taxes and, in addition, to provide for more equitable funding in the State of Pennsylvania, then I would say that it is incumbent upon all of us to be in favor of Representative Pyle's amendment.

I do, however, note that I think it would be helpful to have an identical back-end referendum to HB 39 placed in this amendment, which will ultimately be in HB 859; it would be identical so that everybody here can be on record for this significant, this significant amendment that is designed to take a step forward, a real step forward to property tax relief.

I want to concur also with Representative Tighe. Look, we can talk and talk all we want about how are we going to reduce property taxes. The one way we have to be able to do it is to reduce costs. That is certainly one of the ways, but reducing costs in and of itself will not relieve the full burden of the property tax. There has to be a second component, and that is a shift, and the sales tax, which is paid considerably by people outside of this State, is by far the best place to shift. It is not in and of itself a tax increase. This is truly a tax shift, because what Representative Pyle does is he takes every dollar earned from the sales tax, puts it into a segregated account, and uses it exclusively, dollar for dollar, for property tax relief. That is huge and it is novel.

What he has done, what Representative Pyle has done has taken a locked-box approach. There is no way that anybody gets to play gimmicks with the money that he is securing from the sales tax; no way. What he is saying is, folks, citizens of Pennsylvania, we know you have some distrust of the legislature right now, but the fact of the matter is, the way he has drafted the bill, you can be assured that this money cannot be used for other programs, this money cannot be used to give out grants all across the State, this money is not being borrowed; we are not doing some borrowing gimmick. He is making the tough decision to do a shift, put the money in a secure account, and it gets to be used for one thing and one thing only as long as it is in existence, dollar-for-dollar property tax reduction.

We need to add a back-end referendum component to it just identical to HB 39, and that way everybody can vote independently on HB 39, up or down, but this bill, this amendment, has to be a part of it, no matter where you are, if you are serious about property tax relief.

We applaud Representative Pyle for his hard work, his excellent job on the floor tonight, and I would ask everybody to support Representative Dally when he asks for a motion to suspend on a back-end referendum and to support Representative Pyle on this novel, simplistic, clear, clean approach to reducing property taxes.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Allegheny, Mr. Markosek.

Mr. MARKOSEK. Thank you very much, Mr. Speaker.

Mr. Speaker, I rise in favor of the Pyle amendment.

Property tax or the property tax problem has been around this Commonwealth long before any of us in this chamber here tonight entered this chamber to start our careers as legislators, and probably this issue has been around long before even any of the staff has been here. And the reason why it has been such an intractable problem to solve is because everybody wants property taxes reduced. We have heard all the arguments about how terrible they are and how they affect the wrong people and how regressive they are and they affect senior citizens and they cause people to lose their homes in sheriff's sales and the whole ramifications of it, but when we ask people back home, what would you like us to shift to, they do not even think that we should shift to anything. They just think we should somehow remove property taxes and provide relief for free, find it, you know, growing on trees, or be magicians and somehow create a situation whereby we can find money to replace the money from the property tax to fund our schools and our education system.

I think what we see here tonight is finally, after 50, 40, 50 years, certainly the culmination of a point in the history of this body where we have members here prepared to vote on some shift of the tax that is significant, that probably does not go all the way, is certainly not going to make everybody happy, but nevertheless is an effort to solve an intractable problem that has been with us for generation after generation.

The sales tax increase in this particular bill is not something that my constituents are going to like for the most part. We already have a little slightly higher sales tax in Allegheny County than we have in most of the counties, but nevertheless, nevertheless, people have said, we want property tax reform, we want property tax reduction; the school districts are raising taxes, we are losing our homes, and do whatever you have to do; that is why we send you down there; that is why we pay you your salary, to get the property tax issue resolved. Tonight we are going to at least do that in part. We are going to at least do that in part.

I would caution my constituents and the constituents throughout the Commonwealth who are watching and listening tonight that this will not solve property taxes, the property tax problem in its entirety, but it is a huge and significant movement forward in solving that problem. It will be significant. It will help a lot of people; most of whom it will help are those who are the most needy for this kind of property tax relief.

So I am happy tonight to stand to support the Pyle amendment, to support property tax reform, to go home and say at least we have shown some leadership here in Harrisburg; we have led. The leaders here have brought us to this point where we can go home and truthfully say that we have provided significant, if not total, significant property tax reduction tonight.

I urge a "yes" vote on the Pyle amendment.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Allegheny, Mr. Maher, for the second time. The gentleman waives off.

### PARLIAMENTARY INQUIRY

The SPEAKER. The gentlelady from Berks, Mrs. Miller.

Mrs. MILLER. Thank you, Mr. Speaker.

May I please make a parliamentary inquiry?

The SPEAKER. The gentelady will state it.

Mrs. MILLER. Thank you, Mr. Speaker.

Mr. Speaker, if the House adopts amendment 8073 to HB 859, will the other amendments that have been filed to HB 859 continue to be in order for consideration, specifically amendment 8001?

The SPEAKER. Let us just double-check that. Give us a moment.

It would be in order, but it would wipe out the Pyle amendment.

Mrs. MILLER. And the case with amendment 8002 also?

The SPEAKER. Yes. Amendment 8002 amends 8001. That would still be okay. If 8001 went in, then it would be in order.

Mrs. MILLER. So if you could, Mr. Speaker, please reiterate the effect of the adoption of this amendment to 8001.

The SPEAKER. If this amendment goes in, 8073, and afterward 8001 were adopted, that would basically wipe out 8073. Then 8002, if 8001 went in, would then be in order and would be okay to go into the bill.

Mrs. MILLER. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentelady.

### PARLIAMENTARY INQUIRY

The SPEAKER. The gentleman, Mr. Dally, for the second time.

Mr. DALLY. A parliamentary inquiry, Mr. Speaker.

The SPEAKER. The gentleman will state it.

Mr. DALLY. Along the same lines.

Upon the conclusion of the vote on 8073, I intend to offer or at least request the suspension of the rules to offer amendment 8099, which I understand will amend the bill after it is amended by 8073 and thus will be in order.

The SPEAKER. That is correct. You would have to suspend the rules, but you are right; you are correct.

Mr. DALLY. Okay. Because what my amendment would do is put a back-end referendum into this bill after it is amended by 8073.

Okay. Thank you.

The SPEAKER. The Chair thanks the gentleman.

### PARLIAMENTARY INQUIRY

The SPEAKER. The gentleman, Mr. Maher.

Mr. MAHER. Thank you, Mr. Speaker.

With the Chair's indulgence, continuation of these parliamentary inquiries for clarity on what happens next.

In the event 8073 were to be adopted and then there was the immediate consideration of 8001, which I believe includes a back-end referendum, would the prior gentleman's amendment still be in order or would it be duplicative of the ground covered in 8001?

The SPEAKER. If 8001 were to go in the bill, then the Dally amendment 8099 would not be proper to go into the bill.

Mr. MAHER. I am sorry, Mr. Speaker. I was distracted during your response. Could you repeat it for me.

The SPEAKER. If 8001 goes in, then 8099 would be out of order.

Mr. MAHER. And would it be the case that if 8099 goes in, 8001 would be out of order?

The SPEAKER. That is not true, according to the Parliamentarian.

Mr. MAHER. So if the order of progress were to be this amendment followed by 8099, followed by 8001, followed by 8002, all those amendments would be in order insofar as they are not disqualifying one another in the sequence. Is that my understanding of that?

The SPEAKER. They would be in order, but 8073 and 8099 would be wiped out.

Mr. MAHER. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair sees no other members standing.

The gentleman, Mr. DeWeese, had wished to be the last Democrat to be able to speak.

At this time the Chair recognizes the Democrat leader, the gentleman, Mr. DeWeese.

Mr. DeWEESE. Thank you very much, Mr. Speaker.

I will make this exceptionally brief. Two quick points.

The bipartisan effort that is being realized this afternoon is worthy of laudation. I am very happy that we are working collectively, collaboratively, continually to try to bring down property taxes. I think that the HB 39 effort amalgamated with a modest sales tax increase will allow for very, very substantial property tax decreases in Greene and Fayette and Washington Counties.

And my final observation would be, again, I have spent a lot of time since Halloween knocking on doors and a lot of time in Point Marion and in Mount Morris, and these two areas are right up against the West Virginia border, and I have hundreds and hundreds and hundreds of my constituents going into West Virginia and paying sales taxes on a variety of things. My whole view has evolved and modified on sales taxes, but I think the most fundamental thought process that should percolate through our brains as we make this vote tonight here in Harrisburg is that property taxes can, with the gaming money and with sales, across-the-board sales tax, modest sales tax increases, allow for very, very substantial plummeting of property taxes in Pennsylvania during the next few years.

So with that in mind, I will ask for an affirmative vote on the Pyle amendment, and I look forward to going forward and even reducing property taxes more.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Pyle.

Mr. PYLE. Thank you, Mr. Speaker.

Mr. Speaker, tonight we have a chance to return back to our neighborhoods and our communities substantial property tax reduction. Now, they say the art of being a statesman is not being absolute in your beliefs but rather being able to listen to everyone else's ideas and incorporate them into your own.

I will be honest with you, Mr. Speaker, I am not a big fan of gaming, but I know if we are going to make this move, it is going to take compromise as I have always thought, a hybrid. With adding this 1-percent sales and use tax to anticipated gaming revenues, in addition to a local EIT option, I think we have combined all the sources of revenue we can find. As evidenced by those sheets in front of you, that is something we can be happy to take home to our people. This substance, this has substantial impact, Mr. Speaker.

Mr. Speaker, I would ask that the members considering this vote tonight think not of what perfect plan exists out there.

I think we have proven through the Committee of the Whole, through caucuses, through debates that there is no perfect, one-size-fits-all plan, but also in that same thought, Mr. Speaker, I would urge these members to please keep in mind that although this may be very attractive, this is a step in process; it is not a final product, and while I have said in caucus many times I do favor elimination, I do not think it is going to happen right now, but sometimes, Mr. Speaker, you have got to take what is there. This is it. The 1-percent sales and use tax allows us to take additional funding from those other aforementioned revenue sources and go back to those old ladies and the retired couples.

As the minority leader said – hey, I like old people – Mr. Speaker, I have been to Point Marion many times and seen the Cheat River as it flows and been to the stables, and I feel their pain as well as you do, and in Ford City where our retirees struggle to deal with either feeding themselves, heating their houses, or paying their school property taxes, we have an opportunity to grant them some kind of substantial relief.

More importantly, this bill extends to all homeowners, not just single segments of the population. I would ask that all members vote affirmatively on this bill and rise up and be statesmen of this Commonwealth.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

Does the gentleman wish to be recognized?

Mr. GANNON. Mr. Speaker, was Representative Pyle recognized on his last remarks?

The SPEAKER. Yes, he was.

Mr. GANNON. Then I will waive off.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS-92

Allen	Flaherty	Maher	Ruffing
Argall	Fleagle	Maitland	Samuelson
Bebko-Jones	Freeman	Mann	Santoni
Belardi	Gabig	Markosek	Saylor
Benninghoff	Geist	McCall	Scavello
Beyer	Gillespie	McIlhattan	Schroder
Biancucci	Gingrich	McNaughton	Siptroth
Boyd	Godshall	Millard	Smith, B.
Buxton	Goodman	Miller, R.	Smith, S. H.
Caltagirone	Grell	Mundy	Solobay
Causser	Grucela	Nailor	Sonney
Cawley	Gruitza	Nickol	Staback
Corrigan	Haluska	Payne	Stairs
Curry	Hanna	Petrarca	Stetler
Daley	Harhai	Phillips	Stevenson, T.
Dally	Harhart	Pyle	Surra
DeLuca	Harris	Ramaley	Tangretti
DeWeese	Hennessey	Readshaw	Tigue
Diven	Hershey	Reed	True
Eachus	Hickernell	Reichley	Turzai
Evans, D.	Kotik	Roberts	Walko
Fabrizio	Levdansky	Rooney	Wansacz
Fairchild	Mackereth	Ross	Yudichak

NAYS-106

Adolph	Fichter	Manderino	Sabatina
Armstrong	Flick	Marsico	Sainato
Baker	Forcier	McGeehan	Sather
Baldwin	Frankel	McGill	Semmel
Barrar	Gannon	McIlhinney	Shaner
Bastian	George	Melio	Shapiro
Belfanti	Gerber	Metcalfe	Steil
Bishop	Gergely	Micozzie	Stern
Blackwell	Good	Miller, S.	Stevenson, R.
Blaum	Harper	Mustio	Sturla
Bunt	Hasay	Myers	Taylor, E. Z.
Cappelli	Herman	O'Brien	Taylor, J.
Casorio	Hess	Oliver	Thomas
Civera	Hutchinson	O'Neill	Veon
Clymer	James	Pallone	Vitali
Cohen	Josephs	Parker	Waters
Costa	Kauffman	Petri	Watson
Crahalla	Keller, M.	Petrone	Wheatley
Crighton	Keller, W.	Pickett	Williams
Cruz	Kenney	Pistella	Wojnaroski
Denlinger	Killion	Preston	Wright
Dermody	Kirkland	Quigley	Yewcic
DiGirolamo	LaGrotta	Rapp	Youngblood
Donatucci	Leach	Raymond	Zug
Ellis	Lederer	Roebuck	
Evans, J.	Lescovitz	Rohrer	Perzel,
Feese	Major	Rubley	Speaker

NOT VOTING-0

EXCUSED-5

Birmelin	Leh	Rieger	Wilt
Cornell			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,

Will the House concur in Senate amendments?

RULES SUSPENDED

The SPEAKER. For what purpose does the gentleman, Mr. Maher, rise?

Mr. MAHER. Thank you, Mr. Speaker.

I move that we suspend the rules for the immediate consideration of amendment 8001.

The SPEAKER. The gentleman cannot do that because the amendment is offered by the gentleman, Mr. Smith, and unless Mr. Smith yields to the gentleman, Mr. Maher—

The gentleman, Mr. Smith, yields to the gentleman, Mr. Maher.

The gentleman, Mr. Maher, moves for an immediate suspension of the rules for amendment 8001.

On the question,

Will the House agree to the motion?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Vitali. For what purpose does the gentleman rise? This is not a debatable motion.

Mr. VITALI. I understand, Mr. Speaker.

Could we get an explanation of the amendment before we vote on the suspension?

The SPEAKER. Would the gentleman, Mr. Maher, give a brief explanation of the gentleman, Mr. Smith's amendment?

Mr. MAHER. I would be delighted to, Mr. Speaker.

I have heard a lot of enthusiasm from my colleagues across the aisle for the HB 39 sort of thing, but I think there are also a number of my colleagues on this side and the other side of the aisle that believe that is not enough; we can do more, we can do better.

This amendment, 8001, which again I give great credit to our leader for crafting and allowing me to introduce, would combine HB 39's language, updated to recognize that the clock has ticked since the conference report was drafted, and to provide a half-percent change in the sales tax à la the notion endorsed repeatedly by the minority leader. That is the extent of it.

The SPEAKER. The Chair recognizes the Democrat leader, the gentleman, Mr. DeWeese.

Mr. DeWEESE. To use the honorable gentleman from Upper St. Clair's specific word "duplicative," which is a fancy way to say duplicate, God bless America, I think if we go along with my honorable friend's effort, we are just going to have the same substantive debate all over again. I would ask for a negative vote on suspension of the rules. Let us keep this process going. Let us at least try to salvage a favorable vote on 39.

So I would ask, again notwithstanding the depth and vitality and perdurability of the friendship I have with the gentleman from Upper St. Clair, I do not want him to succeed this time. I vote "no" on suspension of the rules.

The SPEAKER. Does the majority leader acquiesce to the gentleman, Mr. Maher, in order to defend the majority leader's amendment again?

Mr. S. SMITH. Mr. Speaker, I will take it.

The SPEAKER. The Chair recognizes the majority leader, the gentleman, Mr. Smith.

Mr. S. SMITH. On the suspension of the rules, Mr. Speaker.

I kind of disagree with what the minority leader just said. Clearly there is a lot of duplication between some of these amendments, but to suggest that it is doing the same thing over is not quite accurate. I think that we should consider the suspension of the rules, and quite frankly, I was under the impression that we would have cooperation with the minority party to consider some of these amendments today in conjunction with this bill, and I would hope that they would rethink that position.

There are differences in these. As I said at the very beginning of the debate today, there are a whole series of concepts that make up part of these tax reform packages. It is a matter of piecing them together, seeking to find that common ground where a simple majority of this body can support it. The subtle differences between the amendment we just debated for the last several hours and this amendment that would be before us if we were to suspend the rules are significant in their own right, and I think that it would be worthy to have the debate to consider amendment 8001 in order that we can best determine the direction, the future direction, and just how far, just how far this legislature is willing to go in regard to property tax reform.

This amendment is in fact different, with a lot of similarities, granted, but different than the amendment we just considered.

It is consistent with what many of us have said, that we postpone the vote on HB 39 in order to do more, because I thought we could do more and I thought we could do better. Clearly, if we do not pass one of these amendments, we will not be achieving that, and I think standing in the way of that, a suspension of the rules is pretty much going to deprive us of a real opportunity to do that.

The last amendment, we did have a chance, but it failed by a few votes. This amendment has some differences, and I think it would have an opportunity to pass. So, Mr. Speaker, I would ask the members to suspend the rules to allow for the consideration of A8001.

### PARLIAMENTARY INQUIRY

Mr. DeWEESE. Mr. Speaker?

The SPEAKER. The Chair recognizes the Democrat leader, Mr. DeWeese.

Mr. DeWEESE. A point of parliamentary inquiry, Mr. Speaker.

Since this was filed yesterday, do we have to suspend the rules?

The SPEAKER. We are on concurrence.

Mr. DeWEESE. May I speak to the issue at hand, please?

The SPEAKER. The gentleman is in order.

Mr. DeWEESE. I do not think that the Democrats are against a suspension of the rules on a variety of different measures. I do not know that the honorable majority leader in our sidebar conversation last night elicited specific promises from the whip or myself as to what specific amendments we would want to embrace. This is one that we are not that inclined to be helpful on. I think others during the rest of the process, the rest of the evening, might be. There was never any handshake, there was never any quid pro quo as to, we will help you on this if you will help us on that. We just made up our mind last night, and I think the record would reflect, even at the microphone before we adjourned for the evening, that we wanted a clear vote on 39 and we would be helpful on a variety of efforts, and I think the evidence is manifest. We just helped Mr. Pyle to the best of our ability, and we will probably be available to help on some other ones. This one is just one that we were not inclined to move forward with. Mr. Veon and I discussed it with staff and other members, and this was just something we thought we could forgo and go to some other very good efforts that the majority leader and his team are getting ready to evince.

### PARLIAMENTARY INQUIRY

The SPEAKER. Mr. Levdansky, this is on suspension of the rules, only arguable by the leaders, but for what purpose does the gentleman rise?

Mr. LEVDANSKY. Mr. Speaker, I have a point of parliamentary inquiry.

The SPEAKER. The gentleman will state.

Mr. LEVDANSKY. I have a problem with how this amendment would drive out both the sales tax revenue and the gaming revenue. However, were this amendment to be considered at the same time or if this amendment were to be considered and would be automatically amendment A7696—

Mr. S. SMITH. Mr. Speaker? Mr. Speaker, if the gentleman wants to debate the amendment, then vote for the suspension of the rules. He is starting to talk about the amendment.

The SPEAKER. The gentleman, Mr. Smith, is correct.

Mr. LEVDANSKY. Okay.

The SPEAKER. If the gentleman has a point, please get to the point.

Mr. LEVDANSKY. Is there a way to require amendment A7696 to be considered following this amendment?

The SPEAKER. No.

Mr. LEVDANSKY. Okay. Thank you.

### PARLIAMENTARY INQUIRY

The SPEAKER. For what purpose does the gentleman, Mr. Markosek, rise?

Mr. MARKOSEK. A parliamentary inquiry, Mr. Speaker.

The SPEAKER. The gentleman will state.

Mr. MARKOSEK. Mr. Speaker, would it be within the rules for me to ask a question of the maker of the motion?

The SPEAKER. No.

Mr. MARKOSEK. Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Smith.

Mr. S. SMITH. Thank you, Mr. Speaker.

Mr. Speaker, when we agreed yesterday to consider HB 859, a bill that was on concurrence, which means in order for us to even consider amendments to the bill we needed to suspend the rules, there were a series of amendments, some of which may have been considered or not – I was not sure as of yesterday. I dispute the notion that there was an agreement to only consider one amendment to HB 859.

I truly believe, Mr. Speaker, that it is in the best interests of the House and the best interests of the people of Pennsylvania if we were to consider this amendment. If in fact the members of this body want a real chance at doing something more and better in the way of property taxes over and above what is embodied in the conference report of HB 39, you need to vote to suspend the rules and at least allow for the opportunity for that to happen. Once the amendment is on the floor, then, you know, people can vote the way they want to vote obviously. But I think if you really want to see something more and better happen in the way of property tax reform, a motion to suspend the rules to allow for the consideration of this amendment is the proper vote.

Thank you, Mr. Speaker.

The SPEAKER. The House will be temporarily at ease.

The Chair recognizes the Democrat leader, the gentleman, Mr. DeWeese, on the suspension.

Mr. DeWEESE. Thank you very much, Mr. Speaker.

After discussions with the majority leader and staff, we have acquiesced to a vote on one-half a percent and on 1 percent. This will be included in the amendment, and I would join the majority leader respectfully and ask for a suspension of the rules.

Thank you.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,

Will the House agree to the motion?

The following roll call was recorded:

### YEAS—185

Adolph	Flaherty	Maher	Sabatina
Allen	Fleagle	Maitland	Sainato
Argall	Flick	Major	Santoni
Armstrong	Forcier	Mann	Sather
Baker	Freeman	Markosek	Saylor
Baldwin	Gabig	Marsico	Scavello
Barrar	Gannon	McCall	Schroder
Bastian	Geist	McGeehan	Semmel
Bebko-Jones	George	McGill	Shaner
Belardi	Gerber	McIlhattan	Shapiro
Benninghoff	Gergely	McIlhinney	Sipthoth
Beyer	Gillespie	McNaughton	Smith, B.
Biancucci	Gingrich	Micozzie	Smith, S. H.
Bishop	Godshall	Millard	Solobay
Blackwell	Good	Miller, R.	Sonney
Blaum	Goodman	Miller, S.	Staback
Boyd	Grell	Mundy	Stairs
Bunt	Grucela	Mustio	Steil
Buxton	Gruitza	Myers	Stern
Caltagirone	Haluska	Nailor	Stetler
Cappelli	Hanna	Nickol	Stevenson, R.
Causar	Harhai	O'Brien	Stevenson, T.
Cawley	Harhart	Oliver	Sturla
Civera	Harper	O'Neill	Surra
Clymer	Harris	Parker	Taylor, E. Z.
Cohen	Hasay	Payne	Taylor, J.
Corrigan	Hennessey	Petrarca	Tigue
Costa	Herman	Petri	True
Crahalla	Hershey	Petrone	Turzai
Cruz	Hess	Phillips	Veon
Curry	Hickernell	Pickett	Vitali
Daley	Hutchinson	Pistella	Walko
Dally	James	Preston	Wansacz
DeLuca	Josephs	Pyle	Waters
Denlinger	Kauffman	Quigley	Watson
DeWeese	Keller, M.	Ramaley	Wheatley
DiGirolamo	Keller, W.	Rapp	Williams
Diven	Kenney	Raymond	Wojnaroski
Donatucci	Killion	Readshaw	Wright
Eachus	Kirkland	Reed	Yewcic
Ellis	Kotik	Reichley	Youngblood
Evans, D.	LaGrotta	Roberts	Yudichak
Evans, J.	Leach	Roebuck	Zug
Fabrizio	Lederer	Rohrer	
Fairchild	Lescovitz	Ross	Perzel,
Feese	Levdansky	Rubley	Speaker
Fichter	Mackereth	Ruffing	

### NAYS—13

Belfanti	Frankel	Metcalf	Samuelson
Casorio	Manderino	Pallone	Tangretti
Creighton	Melio	Rooney	Thomas
Dermody			

### NOT VOTING—0

### EXCUSED—5

Birmelin	Leh	Rieger	Wilt
Cornell			

A majority of the members required by the rules having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,

Will the House concur in Senate amendments?

Mr. S. SMITH offered the following amendment No. A08001:

Amend Title, page 1, lines 1 through 12, by striking out all of said lines and inserting

Amending Titles 24 (Education), 53 (Municipalities Generally) and 72 (Taxation and Fiscal Affairs) of the Pennsylvania Consolidated Statutes, providing for installment payment of school taxes and for public school financing; further providing, in municipal taxation, for applicability and for definitions; consolidating the sales and use tax provisions of the Tax Reform Code of 1971; further providing for definitions, for imposition, for computation, for exclusions, for alternate imposition, for filing times and for transfers to the Property Tax Relief Fund; consolidating the special situs for local sales tax provisions of the Tax Reform Code of 1971; consolidating and extensively revising the Homeowner Tax Relief Act; providing for senior citizen property tax and rent rebate assistance; imposing restrictions on school districts; imposing powers and duties on the Department of Revenue; and making related repeals.

Amend Bill, page 2, lines 25 through 30; pages 3 and 4, lines 1 through 30; page 5, lines 1 through 16, by striking out all of said lines on said pages and inserting

Section 1. Title 24 of the Pennsylvania Consolidated Statutes is amended by adding a part to read:

PART II  
FINANCING

Chapter

23. Installment Payment of Taxes

31. Public School Financing

CHAPTER 23

INSTALLMENT PAYMENT OF TAXES

Sec.

2301. Applicability.

2302. Installment payment of school real property taxes.

2303. Collection of installment payments of school real property taxes.

2304. Assignment of installment claims.

2305. Considering increase in compensation of tax collector.

§ 2301. Applicability.

Notwithstanding the act of May 25, 1945 (P.L.1050, No.394), known as the Local Tax Collection Law, this chapter shall authorize school districts of the second, third and fourth class to provide for the collection of school real property taxes in installments for certain eligible taxpayers, to assign installment claims and to increase the compensation of tax collectors.

§ 2302. Installment payment of school real property taxes.

(a) General rule.—A board of school directors of a school district of the second, third or fourth class may adopt a resolution authorizing the collection and payment of school real property taxes in installments.

(b) Adoption of resolution.—No later than June 30, 2007, a board of school directors of a school district of the second, third or fourth class shall adopt a resolution which, for taxes levied in calendar year 2007 and each year thereafter, authorizes the collection and payment of school real property taxes, excluding any interim or delinquent school property taxes, in installments.

(c) Contents of resolution.—The resolution adopted pursuant to subsection (b) shall set forth all of the following:

(1) Permit taxpayers with homestead or farmstead property approved pursuant to Chapter 21 to be eligible to pay school real property taxes in installments.

(2) The process through which an eligible taxpayer may choose to pay school real property taxes in installments. The process shall indicate that:

(i) The payment of the first installment by a taxpayer before it becomes delinquent shall conclusively evidence an intention to pay school real property taxes in installments.

(ii) Where a taxpayer fails to evidence an intention to pay school real property taxes in installments, the school real property taxes shall become due and payable and be collected as provided in the act of May 25, 1945 (P.L.1050, No.394), known as the Local Tax Collection Law, subject to the discounts and penalties provided by that act.

(3) The number of installments that an eligible taxpayer shall be required to pay of school real property taxes, which shall be no more than monthly and no less than three times during the months prior to the date established by the county in which the school district is located for the turnover of delinquent taxes pursuant to the act of July 7, 1947 (P.L.1368, No.542), known as the Real Estate Tax Sale Law.

(4) The dates on which installment payments of school real property taxes are due or delinquent. Notwithstanding the complete and final settlement made in accordance with section 26 of the Local Tax Collection Law, a board of school directors may set installment payment dates subsequent to December 31 and prior to the date established by the county in which the school district is located for the turnover of delinquent taxes pursuant to the Real Estate Tax Sale Law. The unpaid installments shall not be considered delinquent if paid on or before the respective installment dates. To each installment on the date when it becomes delinquent, a penalty of up to 10% shall be added, which shall be collected by the tax collector. No further penalties, except as provided in this chapter, shall be added to any installment of taxes, unless one or more installments remain unpaid, and the lands upon which such installments are due are returned under the existing laws to the county commissioners for nonpayment of taxes, or in case a lien for such unpaid installment or installments is filed under existing laws in the office of the prothonotary, in which case, the additional penalty or interest provided for by the existing return and lien laws shall apply. A taxpayer who is delinquent by more than ten days on more than two installment payments shall be ineligible for the installment payment option in the following school fiscal year.

(d) Notice.—A board of school directors of a school district to which this section applies shall annually set forth information regarding the payment of school real property taxes in installments and the dates on which such payments are due or delinquent on the tax notice sent to a homestead or farmstead property owner.

§ 2303. Collection of installment payments of school real property taxes.

(a) Contract.—

(1) A school district may contract with a tax bureau independent of the school district for collection of installments under this section. A tax bureau may contract with more than one tax collector. The tax collector shall be paid such commissions or compensation at the same rate on installment payments as is paid for the collection of taxes generally. Such commissions or compensation shall be paid by proper orders drawn on the school district. Every tax collector shall be responsible and accountable to the school district for all such taxes collected by the tax collector, and the final accounts and records, returns and payments and duplicates shall be audited annually in the year in which the installments are collected in like manner and in accordance with the laws pertaining to tax collections.

(2) (i) By January 15, the tax collector shall make a final and complete settlement of all taxes for the prior calendar year with the proper authority of the taxing district. In the settlement of such taxes, the tax collector shall be allowed a credit for all of the following:

(A) for all taxes collected and paid over;

(B) for all uncollected, nonlienable installments carried forward and certified for

collection by the elected tax collector in accordance with this chapter;

(C) for all unpaid taxes certified by the tax collector to the taxing district for collection as delinquent taxes as authorized by law;

(D) for unpaid taxes resulting from an interim assessment where, as of December 31, taxes remain unpaid and less than four months have elapsed since the date of the tax notice;

(E) for all unpaid taxes upon real property, which real property shall have been returned to the county commissioners as provided by law or shall have been certified to the taxing district or its solicitor, for the entry of liens in the office of the prothonotary;

(F) in the case of occupation, poll and per capita taxes, for taxes accounted for by exonerations, which shall be granted by the taxing district upon oath or affirmation that he has complied with section 20 of the Local Tax Collection Law; and

(G) for taxes paid in accordance with subsection (b).

(ii) In all taxing districts which have authorized installment payments to be made after December 31 of the year in which taxes are levied, all unpaid installments of taxes upon real property shall be certified by the elected tax collector to the taxing district, together with a proper description of the property upon which the same is levied, at the time of complete and final settlement. All unpaid installments so certified to the taxing district shall be collected by the elected tax collector in accordance with this chapter.

(iii) Upon final and complete settlement of a tax duplicate, a tax collector shall take an oath or affirmation in writing and subscribed by the tax collector, that he has made a true and just return of all taxes collected by him. The oath or affirmation shall be administered by the officer of the taxing district empowered to make settlement, who shall have power to administer the same, and shall be filed with the officer.

(3) Nothing in this act should be construed to alter any existing tax collection arrangement unless deemed appropriate by the school district or as otherwise provided for under this section.

(b) Authorization.—A board of school directors may authorize the collection of payments:

(1) Through electronic fund transfers through the Federal Reserve Bank's Automated Clearing House. Electronic fund transfers shall be a debit to the taxpayer's account to the school district's depository bank account at the option of the taxpayer.

(2) By a credit card payment which shall be made through the school district's depository bank or another bank designated by the board of school directors. The board of school directors shall also designate the credit card type that may be utilized for installment payment collection.

§ 2304. Assignment of installment claims.

(a) Initial assignment.—A taxing district may assign some or all of its installment claims, either absolutely or as collateral security, for an amount to be determined by the taxing district and under such terms and conditions upon which the taxing district and the assignee shall agree in writing and shall be approved by resolution of the taxing district. An installment claim may be assigned whether or not any installment thereunder has become delinquent. Upon such an assignment, the following shall apply:

(1) Assignment shall not be deemed a discharge or satisfaction of the installment claim or the taxes giving rise to the installment claim and any lien of the assigned installment claim

and taxes giving rise to the installment claim shall continue in favor of the assignee.

(2) The assignee shall have and enjoy the same rights, privileges and remedies as were held by the taxing district with respect to the assigned installment claim and the tax giving rise to the claim under the provisions of the act of May 25, 1945 (P.L.1050, No.394), known as the Local Tax Collection Law, or any other laws applicable to the collection and enforcement of tax claims.

(3) An assignment of an installment claim under this section shall be deemed, unless otherwise provided in writing, an assignment of applicable claims and liens arising with respect to such installment claim under section 33 of the act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law, and section 316 of the act of July 7, 1947 (P.L.1368, No.542), known as the Real Estate Tax Sale Law.

(4) If the instrument of assignment so provides and contains or provides for the delivery of an extract from the duplicate of the information pertaining to the assigned installment claims, the assignee exclusively shall have the rights and duties of the tax collector under the Local Tax Collection Law with respect to the assigned installment claims and shall be deemed to be acting pursuant to the warrant provided in section 5 of the Local Tax Collection Law; provided, that the assignee shall not be entitled to any commission or salary in such capacity and shall not be subject to sections 4 and 16 of the Local Tax Collection Law.

(5) An owner of property shall have the same rights and defenses under this act and any other law applicable to the collection and enforcement of tax claims that the owner held against the assignor.

(6) References in the Local Tax Collection Law to a taxing district with respect to an installment claim shall be deemed to be references to the assignee of the taxing district with respect to assigned installment claims except for references to any actions taken by the taxing district before the assignment.

(b) Further assignment.—An installment claim assigned pursuant to this section may be further assigned, with the subsequent assignee having and enjoying the same rights, privileges and remedies as its assignor.

§ 2305. Considering increase in compensation of tax collector.

(a) Request.—Within 15 days of a board of school directors' adoption of a resolution under section 2302, the tax collector in the school district may, by sending a certified letter, request that the school district consider increasing the compensation of the tax collector to account for any increased administrative costs incurred by the tax collector. Within 45 days of receiving such letter, the school district shall consider the request.

(b) Permission.—Within 15 days of a board of school directors' adoption of a resolution under section 2302, the school district may, by sending a certified letter, inform the tax collector that tax collector compensation may be adjusted for installments until January 31, 2009. Within 45 days of sending the letter, the school district shall consider any adjustment.

## CHAPTER 31 PUBLIC SCHOOL FINANCING

### Subchapter

- A. Preliminary Provisions
- B. Taxation
- C. Limitations
- D. School District Budgets
- E. Reimbursements
- F. Tax Study Commission
- G. Register

### SUBCHAPTER A PRELIMINARY PROVISIONS

#### Sec.

3101. Scope.

3102. Definitions.

§ 3101. Scope.

This chapter relates to public school financing.

§ 3102. Definitions.

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

“Actual instruction expense.” The term shall have the same usage as in the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

“Average daily membership.” All resident pupils of the school district for whom the school district is financially responsible. It shall be calculated by dividing the aggregate days membership for all children on active rolls by the number of days the school is in session.

“Board of school directors.” A board of school directors of a school district of the first class, first class A, second class, third class or fourth class. The term shall include the city council of a city of the first class for the purpose of the levying and collecting of any tax in a school district of the first class.

“Construction cost average on a square-foot basis.” An amount equal to \$137 per square foot for an elementary school building and \$142 per square foot for a secondary school building, as adjusted annually by the percentage increase in the average of the Statewide average weekly wage and the employment cost index.

“Department.” The Department of Education of the Commonwealth.

“Domicile.” As defined in section 13 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

“Earned income.” As defined in section 13 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

“Election officials.” The board of elections of a county.

“Employer.” As defined in section 301 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Employment Cost Index.” The most recent official figures for the previous 12-month period beginning July 1 and ending June 30 for the Employment Cost Index Series for Elementary and Secondary Schools, reported by the Bureau of Labor Statistics of the Federal Department of Labor.

“Fund.” The Property Tax Relief Fund.

“Income tax.” A tax earned income and net profits or a tax on personal income imposed pursuant to this chapter.

“Index.” The average of the percentage increase in the Statewide average weekly wage and the Employment Cost Index.

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

“Local tax revenue.” The revenue from taxes actually levied and assessed by a school district, including delinquent taxes. The term does not include interest or dividend earnings, Federal or State grants, contracts or appropriations, income generated from operations or any other source which is not derived from taxes levied and assessed by a school district.

“Net profits.” As defined in section 13 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

“Personal income.” Income enumerated in section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, as determined by the Department of Revenue, subject to any correction thereof for fraud, evasion or error as finally determined by the Commonwealth.

“Resident individual.” An individual who is domiciled in a school district.

“School district.” A school district of the first class, first class A, second class, third class or fourth class. The term shall include the city council of a city of the first class for the purpose of the levying and collecting of any tax in a school district of the first class.

“Statewide average weekly wage.” That amount determined by the Department of Labor and Industry in the same manner that it

determines the average weekly wage under section 404(e)(2) of the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, except that it shall be calculated for the preceding calendar year.

“Tax Reform Code.” The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Taxpayer.” An individual required under this chapter to pay a tax.

## SUBCHAPTER B TAXATION

Sec.

3111. Limitations.

3112. Personal income tax.

3113. Homestead and farmstead tax authorization.

3114. Certain rates of taxation limited.

3115. Collections.

3116. Credits.

3117. Regulations.

§ 3111. Limitations.

This chapter shall not be construed to affect the power of a school district to do any of the following:

(1) To eliminate its occupation tax pursuant to the act of June 22, 2001 (P.L.374, No.24), known as the Optional Occupation Tax Elimination Act.

(2) To levy, assess or collect a tax on earned income and net profits under the Local Tax Enabling Act.

(3) To impose special purpose tax levies approved by the electorate.

§ 3112. Personal income tax.

(a) Imposition.—

(1) A board of school directors may levy, assess and collect a tax on the personal income of resident individuals at a rate determined by the board of school directors.

(2) A school district which seeks to levy the tax authorized under paragraph (1) must comply with section 3121 (relating to referendum) and the following:

(i) The school district shall convert, in a revenue-neutral manner, any existing earned income and net profits tax rates levied to a personal income tax rate.

(ii) If a school district is not, on the effective date of this subparagraph, levying an earned income and net profits tax, the school district shall levy a personal income tax at a rate which will generate an amount not more than the amount a 1% earned income and net profits tax would have generated if it had been levied.

(iii) The board of school directors shall round the rate of the personal income tax levied pursuant to this subparagraph to the nearest 0.1%.

(3) If a board of school directors seeks to impose a personal income tax under this subsection and the referendum under section 3121 is approved by the electorate, the board of school directors shall have no authority to impose an earned income and net profits tax under any other act.

(4) A personal income tax imposed under the authority of this section shall be levied by the school district on each of the classes of income specified in section 303 of the Tax Reform Code and regulations under that section, the provisions of which are incorporated by reference into this chapter.

(i) Notwithstanding the provisions of section 353(f) of the Tax Reform Code, the Department of Revenue may permit the proper officer or an authorized agent of a school district imposing a personal income tax pursuant to this chapter to inspect the tax returns of any taxpayer of the school district or may furnish to the officer or an authorized agent an abstract of the return of income of any current or former resident of the school district, or supply information concerning any item of income contained in any tax return. The officer or



authorized agent of the school district imposing a tax under this chapter shall be furnished the requested information upon payment to the Department of Revenue of the actual cost of providing the requested information.

(ii) (A) Except for official purposes or as provided by law, it shall be unlawful for any officer or authorized agent of a school district to do any of the following:

(I) Disclose to any other individual or entity the amount or source of income, profits, losses, expenditures or any particular information concerning income, profits, losses or expenditures contained in any return.

(II) Permit any other individual or entity to view or examine any return or copy of a return or any book containing any abstract or particulars.

(III) Print, publish or publicize in any manner any return; any particular information contained in or concerning the return; any amount or source of income, profits, losses or expenditures in or concerning the return; or any particular information concerning income, profits, losses or expenditures contained in or relating to any return.

(B) Any officer or authorized agent of a school district that violates clause (A):

(I) May be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(II) May be removed from office or discharged from employment.

(b) Execution of tax rate.—A tax authorized under section 3121 shall be self-executing and shall be effective beginning on the first day of the fiscal year which begins after the tax is authorized. A tax rate under this subsection shall continue in force on a fiscal year basis without annual reenactment except in a year in which the rate of the tax is changed or the tax is repealed.

§ 3113. Homestead and farmstead tax authorization.

(a) General rule.—A board of school directors may levy, assess and collect a tax on earned income and net profits or a tax on personal income as provided in this section for the purpose of funding homestead and farmstead exclusions to reduce school district property taxes.

(b) Rate.—

(1) A school district may, in accordance with section 3121 (relating to referendum), levy or increase a tax on earned income and net profits or personal income tax of resident individuals for the purpose of funding homestead and farmstead exclusions. The board of school directors shall round the rate of the earned income and net profits tax or personal income tax levied pursuant to this section to the nearest 0.1%. For purposes of calculating the tax rate authorized under this paragraph, the portion of tax dedicated to the increase in revenue permitted under paragraph (2), if any, shall be excluded.

(2) Notwithstanding section 3124 (relating to disposition of income tax revenue and State allocations), the rate of the earned income and net profits tax or personal income tax proposed to be levied and assessed for the fiscal year immediately following the year in which the tax is authorized may provide for an increase in revenue of not more than 2% of the estimated revenue from the earned income and net profits tax or personal income tax authorized under paragraph (1), which may be used for the operations of the school district.

(3) If a school district levies an earned income and net profits tax and seeks to fund homestead and farmstead exclusions with a personal income tax, the school district shall convert the earned income and net profits tax to a personal income tax in accordance with section 3112 (relating to personal income tax) prior to levying a personal income tax under this section.

(c) Execution of tax rate.—A tax authorized under section 3121 shall be self-executing and shall be effective beginning on the first day of the fiscal year which begins after the tax is authorized. A tax rate under this subsection shall continue in force on a fiscal year basis without annual reenactment except in a year in which the rate of the tax is changed or the tax is repealed.

§ 3114. Certain rates of taxation limited.

(a) Municipal rates.—If a municipality and school district both impose an earned income and net profits tax on the same individual under the Local Tax Enabling Act and are limited to or have agreed upon a division of the tax rate in accordance with section 8 of the Local Tax Enabling Act, the municipality shall remain subject to that limitation or agreement in the event that the school district opts to impose a personal income tax authorized under section 3112 (relating to personal income tax). Nothing in this chapter shall be construed to authorize a municipality to raise the rate of earned income and net profits tax above the rate it levied under the previously agreed upon division if a school district imposes a personal income tax under this subchapter.

(b) School districts.—A school district which imposes a tax under this chapter is subject to section 688 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

§ 3115. Collections.

(a) Designation of tax collector.—A board of school directors imposing an income tax under this chapter shall designate a tax officer under section 10 of the Local Tax Enabling Act, or otherwise by law, as the collector of the tax. In the performance of the tax collection duties under this subchapter, the designated tax officer shall have all the same powers, rights, responsibilities and duties for the collection of the taxes which may be imposed under the Local Tax Enabling Act, 53 Pa.C.S. Ch. 84 Subch. C (relating to local taxpayers bill of rights) or as otherwise provided by law.

(b) Conflict.—In any situation where there is a conflict involving the authority conferred on a local tax collector by the provisions of the Local Tax Enabling Act and the Tax Reform Code, the provisions of the Local Tax Enabling Act shall control.

§ 3116. Credits.

(a) Credit.—Except as set forth in subsection (b), the provisions of section 14 of the Local Tax Enabling Act shall be applied by a board of school directors to determine any credits applicable to a tax imposed under section 3112 (relating to personal income tax) or 3113 (relating to homestead and farmstead tax authorization).

(b) Limitation.—Payment of any tax on income to any state other than Pennsylvania or to any political subdivision located outside the boundaries of this Commonwealth by a resident of a school district located in this Commonwealth shall not be credited to and allowed as a deduction from the liability of such person for any income tax imposed by the school district of residence pursuant to this chapter.

§ 3117. Regulations.

A school district that imposes:

(1) an earned income and net profits tax authorized under section 3113 (relating to homestead and farmstead tax authorization) shall be subject to section 13 of the Local Tax Enabling Act and may adopt procedures for the processing of claims for credits or exemptions under sections 3116 (relating to credits), 3123 (relating to special provisions for poverty) and 3141 (relating to procedure); or

(2) a personal income tax authorized under section 3112 (relating to personal income tax) shall be subject to all regulations adopted by the Department of Revenue in administering the tax due to the Commonwealth under Article III of the Tax Reform Code.

SUBCHAPTER C  
LIMITATIONS

Sec.

3121. Referendum.

3122. Public referendum requirements for levying and increasing certain taxes.

3123. Special provisions for poverty.

3124. Disposition of income tax revenue and State allocations.

3125. School district tax options.

3126. Property tax limits on reassessment.

§ 3121. Referendum.

(a) General rule.—A board of school directors may do either of the following:

(1) Levy, assess and collect an earned income and net profits tax authorized under section 3113 (relating to homestead and farmstead tax authorization) only after obtaining the approval of the electorate of the school district in a public referendum at a municipal election.

(2) Levy, assess and collect a personal income tax authorized under section 3112 (relating to personal income tax) or 3113 only after obtaining the approval of the electorate of the school district in a public referendum at a municipal election. No such public referendum may be conducted until the Department of Revenue receives final approval of regulations governing the collection of a personal income tax.

(b) Submittal of referendum.—

(1) A board of school directors may submit, at a municipal election, a referendum question to the electors of the school district seeking voter approval allowing the school district to levy, assess and collect an earned income and net profits tax or a personal income tax for the purpose of annually funding homestead and farmstead exclusions or millage reductions in certain circumstances or levy, assess and collect a personal income tax for the purpose of converting the school district's earned income and net profits tax to a personal income tax. Prior to placing a referendum question on the ballot, the board of school directors must adopt a resolution pursuant to this section. The board of school directors must give public notice of its intent to adopt the resolution in the manner provided by section 4 of the Local Tax Enabling Act and must conduct at least one public hearing on the resolution.

(2) The board of school directors shall submit the referendum question required under this section to the election officials of each county in which the school district is situated no later than 60 days prior to a municipal election. The election officials shall cause the referendum question to be submitted to the electors of the school district.

(3) The referendum question shall state the rate of the proposed earned income and net profits tax or personal income tax to be levied, the reason for the tax, the estimated per homestead tax reduction and the current rate of earned income and net profits or personal income tax levied by the school district. The question shall be clear and in language that is readily understandable by a layperson and shall be framed in one of the following forms with the school district resolution enumerating the variable amounts represented by the terms X, Y and Z:

(i) Do you favor imposing an additional X% (insert name of tax)? The revenue generated from the increased tax rate will be used to reduce taxes on qualified residential property by an estimated amount of \$Y. The current (insert name of tax) rate for the school district is Z%.

(ii) Do you favor imposing a personal income tax at X%? The revenue generated from the tax will be used to reduce taxes on qualified residential properties by (insert amount of reduction).

(iii) Do you favor converting the school district's current earned income and net profits tax into a

personal income tax at X%? The revenue generated from the personal income tax will be used to replace the revenue from the current school district's earned income and net profits tax. The current earned income and net profits tax rate is Z%.

(iv) Do you favor converting the school district's current earned income and net profits tax into a personal income tax at X%? The revenue generated from the personal income tax will be used to reduce taxes on qualified residential property by an estimated amount of (insert amount of reduction) and to replace the revenue from the current school district's earned income and net profits tax. The current earned income and net profits tax rate is Z%.

(4) The election officials of each county shall, in consultation with the board of school directors, draft a nonlegal interpretative statement which shall accompany the referendum question in accordance with section 201.1 of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code. The nonlegal interpretative statement shall inform the voters of:

(i) the reason for the tax;

(ii) the estimated increase in revenue which the board of school directors has included in the proposed tax rate as authorized under section 3113(b)(2);

(iii) the estimated per homestead tax reduction;

and  
(iv) the current rate of earned income and net profits tax or, if applicable, personal income tax levied by the school district.

(c) Proposed tax rate.—The proposed rate of the earned income and net profits tax or personal income tax shall be established by the board of school directors of the school district and shall not exceed the rate required to provide an exclusion for homestead property and farmstead property equal to the maximum exclusion under 53 Pa.C.S. § 8586 (relating to limitations) or the rate required to convert the tax in a revenue neutral manner.

(d) Effective date.—If the referendum question under this section is approved, the new rate of the earned income and net profits tax or personal income tax shall take effect pursuant to sections 3112(b) and 3113(c).

(e) Majority approval.—Approval of the referendum required under this subsection shall be by a majority of the electors voting on the question in the school district.

(f) Effect on certain school districts.—This section shall not apply to a school district of the first class.

(g) School districts operating under 53 Pa.C.S. Ch. 87.—

(1) This subsection shall apply to a school district which is subject to 53 Pa.C.S. Ch. 87 (relating to other subjects of taxation).

(2) A school district under this subsection shall convert its earned income and net profits tax authorized under 53 Pa.C.S. § 8703 (relating to adoption of referendum) to an earned income and net profits tax authorized under this subsection at the same rate as the tax was levied under 53 Pa.C.S. § 8703 on the date of conversion. The tax authorized under this subsection shall be subject to the provisions of sections 3116 (relating to credits), 3117 (relating to regulations), 3123 (relating to special provisions for poverty) and 3141 (relating to procedure).

(3) A school district under this subsection shall combine all revenue generated for funding homestead and farmstead exclusions under 53 Pa.C.S. § 8703 with any revenue collected for the purposes of funding homestead and farmstead exclusions under this chapter.

(h) Pennsylvania Election Code provisions.—Proceedings under this section shall be in accordance with the provisions of the Pennsylvania Election Code.

(i) 2007 referendum.—Unless a school district is providing the maximum homestead and farmstead exclusion allowed under 53 Pa.C.S. § 8586 (relating to limitations), a board of school directors shall submit at the primary election of 2007 a referendum question to the electors of the school district seeking voter approval allowing the school district to levy, assess and collect an earned income and net profits tax authorized under section 3113 or a personal income tax authorized under section 3113 for the purpose of annually funding homestead and farmstead exclusions.

§ 3122. Public referendum requirements for levying and increasing certain taxes.

(a) Applicability.—This section shall apply to fiscal years beginning with the 2007-2008 fiscal year.

(b) Prohibitions.—Except as set forth in subsection (f), unless there is compliance with subsection (c), a board of school directors may not do any of the following:

(1) Increase the rate of a tax levied for the support of the public schools by more than the index. For purposes of compliance with this paragraph, a school district which is situated in more than one county and which levies real estate taxes under section 672.1 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, shall apply the index to each separate rate of real estate taxes levied.

(2) Levy a tax which was not levied in a prior fiscal year for the support of the public schools.

(3) Raise the rate of the earned income and net profits tax if already imposed under the authority of the Local Tax Enabling Act.

(c) Referendum.—

(1) In order to take an action prohibited under subsection (b)(1), at the election immediately preceding the start of the school district fiscal year in which the proposed tax increase would take effect, a referendum stating the specific rate or rates of the tax increase must be submitted to the electors of the school district, and a majority of the electors voting on the question must approve the increase.

(2) In order to take an action under subsection (b)(2), at the election immediately preceding the start of the school district fiscal year in which the proposed tax would take effect, a referendum stating the proposed tax and the rate at which it will be levied must be submitted to the electors of the school district, and a majority of the electors voting on the question must approve the tax.

(3) Except as set forth in subsections (i) and (j), a school district acting pursuant to this subsection shall submit the referendum question required under this section to the election officials of each county in which it is situate no later than 60 days prior to the election immediately preceding the fiscal year in which the tax increase would take effect.

(4) The election officials of each county shall, in consultation with the board of school directors, draft a nonlegal interpretative statement which shall accompany the referendum question in accordance with section 201.1 of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code. The nonlegal interpretative statement shall include information that references the items of expenditure for which the tax increase is sought and the consequence of the referendum being disapproved by the electorate.

(d) Failure to approve referendum.—

(1) If a referendum question submitted under subsection (c)(1) is not approved, the board of school directors may approve an increase in the tax rate of not more than the index.

(2) If a referendum question submitted under subsection (c)(2) is not approved, the board of school directors may not levy the tax.

(e) Tax rate submissions.—A school district that has adopted a preliminary budget proposal under section 3131 (relating to adoption of

preliminary budget proposals) that includes an increase in the rate of any tax levied for the support of public schools shall submit information on the increase to the department on a uniform form prepared by the department. The school district shall submit such information no later than 85 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year. The department shall compare the proposed percentage increase in the rate of any tax with the index. Within ten days of the receipt of the information required under this subsection but no later than 75 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year, the department shall inform the school district whether the proposed tax rate increase is less than or equal to the index. If the department determines that the proposed percentage increase in the rate of the tax exceeds the index, the department shall notify the school district that:

(1) the proposed tax increase must be reduced to an amount less than or equal to the index;

(2) the proposed tax increase must be approved by the electorate under subsection (c)(1); or

(3) an exception must be sought under subsection (f).

(f) Referendum exceptions.—A school district may, without seeking voter approval under subsection (c), increase the rate of a tax levied for the support of the public schools by more than the index if all of the following apply:

(1) The revenue raised by the allowable increase under the index is insufficient to balance the proposed budget due to one or more of the expenditures listed in paragraph (2).

(2) The revenue generated by increasing the rate of a tax by more than the index will be used to pay for any of the following:

(i) Costs incurred in responding to or recovering from an emergency or disaster declared pursuant to 35 Pa.C.S. § 7301 (relating to general authority of Governor) or 75 Pa.C.S. § 6108 (relating to power of Governor during emergency).

(ii) Costs to implement a court order or an administrative order from a Federal or State agency as long as the tax increase is rescinded following fulfillment of the court order or administrative order.

(iii) Costs associated with the following:

(A) For a board of school directors that elected to participate in the former act of act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act, to pay interest and principal on any indebtedness incurred under 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing) prior to September 4, 2004. In no case may the school district incur additional debt under this clause except for the refinancing of existing debt, including the payment of costs and expenses related to such refinancing and the establishment of funding of appropriate debt service reserves. An increase under this clause shall be rescinded following the final payment of interest and principal.

(B) For a board of school directors that did not elect to participate in the former act of act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act, to pay interest and principal on any indebtedness authorized under 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing) prior to July 1, 2006. In no case may the school district incur additional debt under this clause except for the refinancing of existing debt, including the payment of costs and expenses related to such refinancing and the establishment of funding of

appropriate debt service reserves. An increase under this clause shall be rescinded following the final payment of interest and principal.

(C) To pay interest and principal on any electoral debt incurred under 53 Pa.C.S. Pt. VII Subpt. B.

(D) To pay interest and principal on indebtedness for up to 60% of the construction cost average on a square-foot basis if all of the following apply:

(I) The indebtedness is for a school construction project under 22 Pa. Code Ch. 21 (relating to school buildings).

(II) For a board of school directors that elected to participate in the former Homeowner Tax Relief Act, the indebtedness to fund appropriate debt service reserves for the project is incurred after September 3, 2004.

(II.1) For a board of school directors that did not elect to participate in the former Homeowner Tax Relief Act, the indebtedness to fund appropriate debt service reserves for the project is incurred on or after the effective date of this act.

(III) The increase sought under this clause is rescinded following final payment of interest and principal.

(IV) The indebtedness is incurred only after existing fund balances for school construction and at least 50% of any undesignated fund balances have been fully committed to fund the project.

(V) The indebtedness is for an academic elementary or academic secondary school building. For purposes of this subclause, the following shall not be considered to be an academic elementary or academic secondary school building: natatorium, stadium bleachers, athletic field, athletic field lighting equipment and apparatus used to promote and conduct interscholastic athletics.

(VI) For school districts of the second, third and fourth class, the project has been approved by the department under section 731 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949. For nonreimbursable projects in school districts of the first class A, the plans and specifications have been approved by the board of school directors. For reimbursable projects in school districts of the first class A, the plans and specifications have been approved by the department pursuant to 22 Pa. Code Ch. 21.

(E) To pay interest and principal on indebtedness for up to \$250,000 of the construction cost of a nonacademic school construction project, as adjusted annually by the percentage increase in the average of the Statewide average weekly wage and the employment cost index. An increase under this

clause shall be rescinded following the final payment of interest and principal.

(F) For purposes of this subparagraph, electoral debt includes the refunding or refinancing of electoral debt for which an exception is permitted under clause (B) as long as the refunding or refinancing incurs no additional debt other than for:

(I) costs and expenses related to the refunding or refinancing; and

(II) funding of appropriate debt service reserves.

(G) For purposes of this subparagraph, indebtedness includes the refunding or refinancing of indebtedness for which an exception is permitted under clauses (A), (B), (D) and (E) as long as the refunding or refinancing incurs no additional debt other than for:

(I) costs and expenses related to the refunding or refinancing; and

(II) funding of appropriate debt service reserves.

(iv) Costs incurred in providing special education programs and services to students with disabilities if the increase in expenditures on special education programs and services was greater than the index. The dollar amount of this exception shall be equal to the portion of the increase that exceeds the index. Eligible costs for special education programs and services include, but are not limited to, transportation, psychological testing, legal services, early intervention programs and any related services required by an individualized education plan.

(v) Costs which:

(A) Were incurred in the implementation of a school improvement plan required under section 1116(b) of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 20 U.S.C. § 6316(b)).

(B) Were not offset by a specific State allocation.

(vi) Costs necessary to maintain the total actual instructional expense. The dollar amount of this exception shall be equal to the portion of the increase in the total actual instructional expense that exceeds the index. The total actual instructional expense is calculated as follows:

(A) Divide the existing average daily membership into the total school district actual instructional expense for the current school year to determine the existing actual instructional expense per student.

(B) Multiply the existing actual instructional expense per student by the index to determine the adjusted instructional expense per student.

(C) Multiply the adjusted instructional expense per student by the projected enrollment for the immediately succeeding fiscal year to determine the total actual instructional expense.

(vii) Costs necessary to maintain actual instructional expense per average daily membership, adjusted by the index, if the increase in actual instructional expense per average daily membership between the school year determined under subsection (j)(4) and the school year preceding the school year determined under subsection (j)(4) is less than the index.

(viii) Maintenance of revenues derived from real property taxes, earned income and net profits taxes, personal income taxes, basic education funding allocations and special education funding allocations, adjusted by the index, for a school district where the percentage increase in revenues derived from real property taxes, earned income and net profits taxes, personal income taxes, basic education funding allocations and special education funding allocations between the school year determined under subsection (j)(4) and the school year preceding the school year determined under subsection (j)(4) is less than the index.

(ix) Costs incurred for providing health care-related benefits which are directly attributable to a collective bargaining agreement in effect on January 1, 2006, between the school district and its employees' organization if the anticipated increase in the cost of health care-related benefits between the current year and the upcoming year is greater than the index. The dollar amount of this exception shall be equal to the portion of the increase which exceeds the index. This subparagraph shall not apply to a collective bargaining agreement renewed, extended or entered into after January 1, 2006.

(x) Costs incurred for providing a school district's share of payments to the Public School Employees' Retirement System as required under 24 Pa.C.S. § 8327 (relating to payments by employers) if the actual dollar amount between the current year and the upcoming year is greater than the index. The dollar amount to which this subsection applies shall equal that portion of the increase which exceeds the index of the actual dollar value of payment between the current year and the upcoming year.

(g) Revenue derived from increase.—Any revenue derived from an increase in the rate of any tax allowed pursuant to subsection (f)(2)(iii) shall not exceed the anticipated dollar amount of the expenditure.

(h) Limitation on tax rate.—The increase in the rate of any tax allowed pursuant to an exception under subsection (f)(2)(i), (ii), (iv), (v), (vi), (vii), (viii), (ix) or (x) shall not exceed the rate increase required as determined by a court of common pleas or the department pursuant to subsection (i) or (j).

(i) Court action.—

(1) Prior to the imposition of a tax increase under subsection (f)(2)(i), (ii) and (iv) and no later than 75 days prior to the election immediately preceding the beginning of the school district's fiscal year, approval by the court of common pleas in the judicial district in which the administrative office of the school district is located must be sought. The board of school directors shall publish in a newspaper of general circulation and on the district's publicly accessible Internet website, if one is maintained, notice of its intent to file a petition under this subsection at least one week prior to the filing of the petition. The board of school directors shall also publish in a newspaper of general circulation and on the district's publicly accessible Internet website, if one is maintained, notice, as soon as possible following notification from the court that a hearing has been scheduled, stating the date, time and place of the hearing on the petition. The following shall apply to any proceedings instituted under this subsection:

(i) The school district must prove by clear and convincing evidence that it qualifies for each exception sought.

(ii) The school district must prove by clear and convincing evidence the anticipated dollar amount of the expenditure for each exception sought.

(2) The court shall rule on the school district's petition and inform the school district of its decision no later than 55 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year. If the court approves the petition, the court shall also determine the dollar amount of the expenditure for which an exception is granted, the tax rate increase required to fund the exception and the appropriate duration of the increase. If the court denies the petition, the school district may submit a referendum question under subsection (c)(1). The question must be submitted to the election officials no later than 50 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year.

(j) Department approval.—

(1) A school district that seeks to increase the rate of tax due to an expenditure under subsection (f)(2)(iii), (v), (vi), (vii), (viii), (ix) or (x) shall obtain the approval of the department before imposing the tax increase. The department shall establish procedures for administering the provisions of this subsection, which may include an administrative hearing on the school district's submission.

(2) A school district proceeding under the provisions of this subsection shall publish in a newspaper of general circulation and on the district's publicly accessible Internet website, if one is maintained, notice of its intent to seek department approval at least one week prior to submitting its request for approval to the department. If the department schedules a hearing on the school district's request, the school district shall publish notice of the hearing in a newspaper of general circulation and on the district's publicly accessible Internet website, if one is maintained, immediately upon receiving the information from the department. The notice shall include the date, time and place of the hearing.

(3) The department shall approve a school district's request under this subsection if a review of the data under paragraph (4) demonstrates that:

(i) the school district qualifies for one or more exceptions under subsection (f)(2)(iii), (v), (vi), (vii), (viii), (ix) or (x); and

(ii) the sum of the dollar amounts of the exceptions for which the school district qualifies makes the school district eligible under subsection (f)(1).

(4) For the purpose of determining the eligibility of a school district for an exception under subsection (f)(2)(v), (vi), (vii) or (viii), the department shall utilize data from the most recent school years for which annual financial report data required under section 2553 of the Public School Code of 1949 has been received for all school districts. The department shall inform school districts of the school years determined under this subsection no later than 30 days prior to the date on which public inspection of proposed school budgets is required under section 3131(c).

(5) The department shall rule on the school district's request and shall inform the school district of its decision no later than 55 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year. If the department approves the request, the department shall determine the dollar amount of the expenditure for which the exception is sought and the tax rate increase required to fund the exception. If the department denies the request, the school district may submit a referendum question under subsection (c)(1). The question must be submitted to the election officials no later than 50 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year.

(6) Within 30 days of the deadline under paragraph (5), the department shall submit a report to the President pro tempore of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives and the Minority Leader of the

House of Representatives enumerating the school districts which sought an exception under this subsection. The department shall also publish the report on its publicly accessible Internet website. The report shall include:

- (i) The name of each school district making a request under this subsection.
- (ii) The specific exceptions requested by each school district and the dollar amount of the expenditure for each exception.
- (iii) The department's ruling on the request for the exception.
- (iv) If the exception was approved, the dollar amount of the expenditure for which the exception was sought and the tax rate increase required to fund the exception.
- (v) A statistical summary of the information in subparagraphs (ii), (iii) and (iv).

(k) Objections.—Any person that resides within or pays real property taxes to the school district filing a petition under subsection (i) may file with the court written objections to any petition filed under this section.

(l) Index calculation.—No later than August 15, 2005, and each August 15 thereafter, the department shall calculate the index. The department shall publish the index by September 1, 2005, and each September 1 thereafter, in the Pennsylvania Bulletin.

(m) Election interference prohibited.—

(1) No public funds may be used to urge any elector to vote for or against a referendum or be appropriated for political or campaign purposes.

(2) This subsection shall not prohibit the use of public funds for dissemination of factual information relative to a referendum appearing on an election ballot.

(3) As used in this subsection, the term "public funds" means any funds appropriated by the General Assembly or by a political subdivision.

§ 3123. Special provisions for poverty.

(a) Earned income and net profits tax.—A school district that imposes an earned income and net profits tax authorized under section 3113 (relating to homestead and farmstead tax authorization) may exempt from the payment of that tax any person whose total income from all sources is less than \$12,000.

(b) Applicability to personal income tax.—Section 304 of the Tax Reform Code shall apply to any personal income tax levied by a school district under section 3112 (relating to personal income tax).

§ 3124. Disposition of income tax revenue and State allocations.

(a) Earned income and net profits tax revenue.—All earned income and net profits tax revenue received by the school district pursuant to this chapter shall be used as follows:

(1) Except as set forth in section 3113(b)(2) (relating to homestead and farmstead tax authorization) or 3125(a) (relating to school district tax options) or in the fiscal year that a tax under section 3113(a) is implemented or increased, all revenue received by a school district that is directly attributable to that tax shall be used to fund exclusions for homestead and farmstead property.

(2) Except as set forth in section 3125(a), in the second fiscal year and each fiscal year thereafter, an amount equivalent to the revenue directly attributable to the imposition of the tax in the first full fiscal year in which the tax is levied and collected shall be used to fund exclusions for homestead and farmstead property. All remaining revenue may be used for the operations of the school district.

(b) Personal income tax revenue.—All personal income tax revenue received by the school district pursuant to this chapter shall be used as follows:

(1) Except as set forth in section 3113(b)(2) or 3125(a), in the fiscal year that the tax under section 3113(a) is implemented or increased, all revenue received by the

school district that is directly attributable to that tax shall be used to fund exclusions for homestead and farmstead property.

(2) Except as set forth in section 3125(a), in the second fiscal year and each fiscal year thereafter, an amount equivalent to the revenue directly attributable to the imposition of the tax in the first full fiscal year in which the tax is levied and collected shall be used to fund exclusions for homestead and farmstead property. All remaining revenue may be used for the operations of the school district.

(c) State allocations.—

(1) A school district that receives a State allocation under 72 Pa.C.S. Ch. 21 (relating to homeowner property tax relief) shall use the State allocation to fund exclusions for homestead and farmstead property or as provided under 72 Pa.C.S. Ch. 21 Subch. D or, where section 3125(a)(2) applies, to reduce the property tax rate on all properties subject to the property tax in the school district.

(2) Notwithstanding the provisions of paragraph (1), a school district coterminous with a city of the second class A may use up to 50% of the State allocation received under 72 Pa.C.S. Ch. 21 to reduce the rate of the earned income and net profits tax levied by the school district pursuant to any other act. If a board of school directors elects to reduce the rate of earned income and net profits tax pursuant to this paragraph, it shall adopt a resolution reducing the rate of earned income and net profits tax no later than the last day of the fiscal year immediately preceding the fiscal year in which the new earned income and net profits tax rate shall take effect. The board shall give public notice of its intent to adopt the resolution in the manner provided by section 4 of the Local Tax Enabling Act and shall conduct at least one public hearing on the resolution. Any portion of the property tax reduction allocation not used to reduce the rate of the earned income and net profits tax shall be used as prescribed in paragraph (1).

§ 3125. School district tax options.

(a) Receipt of State allocation.—In any fiscal year in which a school district receives a State allocation under 72 Pa.C.S. Ch. 21 (relating to homeowner property tax relief) and the sum of the State allocation and revenue from the earned income and net profits tax or personal income tax received by the school district under this chapter exceeds the amount required to fund the maximum homestead and farmstead exclusions authorized under 53 Pa.C.S. § 8586 (relating to limitations), the school district shall:

(1) reduce the rate of the earned income and net profits tax or personal income tax such that the sum of the State allocation and the earned income and net profits tax or personal income tax revenue is equal to the amount required to fund the maximum homestead and farmstead exclusions authorized under 53 Pa.C.S. § 8586; or

(2) maintain the rate of the earned income and net profits tax or personal income tax and utilize any revenue in excess of the revenue required to fund the maximum homestead and farmstead exclusions authorized under 53 Pa.C.S. § 8586 to reduce the property tax rate on all properties subject to the property tax in the school district.

(b) Reduction of earned income and net profits tax.—In any year subsequent to a year in which the rate of the earned income and net profits tax or personal income tax was reduced pursuant to subsection (a)(1) and the sum of the State allocation under 72 Pa.C.S. Ch. 21 and revenue from the earned income and net profits tax or personal income tax received by the school district under this chapter is less than the amount necessary to maintain the maximum homestead and farmstead exclusions authorized under 53 Pa.C.S. § 8586, the school district may raise the rate of the earned income and net profits tax or personal income tax up to the amount previously reduced under subsection (a)(1), without complying with the referendum provisions of section 3121 (relating to referendum).

§ 3126. Property tax limits on reassessment.

Notwithstanding any other provision of law, including this subpart, after any county makes a countywide revision of assessment of real property at values based upon an established predetermined ratio as required by law or after any county changes its established predetermined ratio, a board of school directors in a school district located within that county that, after September 3, 2004, for the first time levies its real estate taxes on that revised assessment or valuation shall for the first year reduce its tax rate, if necessary, for the purpose of having the percentage increase in taxes levied for that year against the real properties contained in the duplicate for the preceding year be less than or equal to the index for the preceding year notwithstanding the increased valuations of such properties under the revised assessment. For the purpose of determining the total amount of taxes to be levied for the first year, the amount to be levied on newly constructed buildings or structures or on increased valuations based on new improvements made to existing houses need not be considered. The tax rate shall be fixed for that year at a figure which will accomplish this purpose. The provisions of section 3121 (relating to referendum) shall apply to increases in the tax rate above the limits provided in this section.

SUBCHAPTER D  
SCHOOL DISTRICT BUDGETS

Sec.

3131. Adoption of preliminary budget proposals.

3132. Adoption of annual budgets.

3133. Information to school districts.

§ 3131. Adoption of preliminary budget proposals.

(a) Adoption.—Beginning January 1, 2007, each board of school directors shall adopt a preliminary budget proposal for the following fiscal year no later than 90 days prior to the date of the election immediately preceding the fiscal year in which the preliminary budget will take effect.

(b) Contents.—The preliminary budget proposal shall include estimated revenues and expenditures and any proposed tax rates and shall be prepared on a uniform form furnished by the department.

(c) Public inspection.—The board of school directors shall print the preliminary budget proposal and make it available for public inspection at least 20 days prior to its adoption. The board of school directors shall give public notice of its intent to adopt the preliminary budget at least ten days prior to adoption and may hold a public hearing prior to its adoption.

(d) Resolution.—

(1) A board of school directors may elect to adopt a resolution indicating that it will not raise the rate of any tax for the support of the public schools for the following fiscal year by more than the index. The resolution must be adopted no later than 110 days prior to the date of the election immediately preceding the upcoming fiscal year. The resolution must make the following unconditional certifications:

(i) That the board of school directors will not increase any tax at a rate that exceeds the index as calculated by the department.

(ii) That the board of school directors will comply with the procedures set forth in section 687 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, for the adoption of its proposed and final budgets.

(iii) That the board of school directors certifies that increasing any tax at a rate less than or equal to the index will be sufficient to balance its final budget.

(2) A board of school directors that adopts a resolution under this section shall do all of the following:

(i) Comply with the procedures in section 687 of the Public School Code of 1949 for the adoption of its proposed and final budgets and shall not be subject to subsections (a) and (c).

(ii) Submit information on a proposed increase in the rate of a tax levied for the support of the public schools to the department on a uniform form prepared by the department no later than five days after the adoption of the resolution.

(iii) Send a copy of the resolution adopted pursuant to this section to the department no later than five days after the adoption of the resolution.

(3) A board of school directors that adopts a resolution under this section shall not be eligible to seek referendum exceptions under section 3122(e) and (f) (relating to public referendum for levying and increasing certain taxes).

(4) Upon receipt of the information required under paragraph (2)(ii), the department shall compare the proposed percentage increase in the rate of the tax with the index. Within ten days of the receipt of the information required under this subsection, the department shall inform the school district whether the proposed tax rate increase is less than or equal to the index. If the department determines that the proposed percentage increase in the rate of the tax exceeds the index, the school district shall be subject to subsections (a) and (c); and paragraphs (2)(i) and (3) shall not apply. The department's determination under this paragraph shall not constitute an adjudication.

§ 3132. Adoption of annual budgets.

(a) Adoption.—Beginning January 1, 2007, each board of school directors shall adopt its annual budget for the following fiscal year no later than the last day of the fiscal year before the fiscal year in which the budget takes effect.

(b) Contents.—The annual budget shall include estimated revenues and expenditures and any proposed tax rates and be prepared on a uniform form furnished by the department.

(c) Public inspection.—The board of school directors shall print the annual budget and make it available for public inspection at least 20 days prior to its adoption. The board of school directors shall give public notice of its intent to adopt the annual budget at least ten days prior to adoption and may hold a public hearing prior to its adoption.

§ 3133. Information to school districts.

No later than September 30 of the year in which a State allocation is made under Chapter 21 (relating to homeowner property tax relief) and September 30 of each year thereafter, the department shall provide each school district with the following information:

(1) The dates by which actions required under this chapter shall take place.

(2) The index for the applicable fiscal year.

SUBCHAPTER E  
REIMBURSEMENTS

Sec.

3141. Procedure.

§ 3141. Procedure.

Notwithstanding any other provisions of law to the contrary, the following apply:

(1) This section only applies to a taxpayer who is a resident of this Commonwealth and not a resident of a city of the first class but who is subject to the tax on salaries, wages, commissions or other compensation imposed by a city of the first class under the authority of the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act.

(2) For tax years beginning after the effective date of this section, and each tax year thereafter, payment of a tax on salaries, wages, commissions or other compensation as set forth in paragraph (1) shall be credited to the school district of the taxpayer's residence at an amount no greater than the tax on salaries, wages, commissions or other compensation as set forth in paragraph (1) imposed by the school district in which the taxpayer resides.

(3) An amount equal to the aggregate amount of the tax credited under paragraph (2) shall be paid from the fund to the

school district of residence of each taxpayer under paragraph (1) for the purpose of funding property tax rate reduction. The department shall prescribe procedures to calculate the amount due to each school district qualifying under this paragraph and shall publish the procedures in the Pennsylvania Bulletin.

SUBCHAPTER F  
TAX STUDY COMMISSION

Sec.

3151. Tax study commission.

§ 3151. Tax study commission.

(a) Appointment.—A board of school directors shall appoint a local tax study commission prior to adopting a resolution under section 3121 (relating to referendum). The local tax study commission shall be appointed no later than 180 days prior to the date on which the board of school directors is required to adopt a resolution under section 3121.

(b) Membership.—The local tax study commission shall consist of five, seven or nine members who are resident individuals or taxpayers of the school district and shall reflect the socioeconomic, age and occupational diversity of the school district to the extent possible. Except that one member of the local tax study commission may be a member of the board of school directors, no member shall be an official or employee or a relative thereof, of the school district.

(c) Staff and expenses.—The school district shall provide necessary and reasonable support staff and shall reimburse the members of the local tax study commission for necessary and reasonable expenses in the discharge of their duties. Receipts shall be required for all reimbursable expenses under this subsection.

(d) Contents of study.—The local tax study commission shall study the existing taxes levied, assessed and collected by the school district and the effect of any county or municipal taxes imposed concurrently with the school district. The local tax study commission shall determine how the tax policies of the school district could be improved by the levy, assessment and collection of the taxes authorized under sections 3112 (relating to personal income tax) and 3113 (relating to homestead and farmstead tax authorization). The study shall include consideration of all of the following:

- (1) Historic and present rates of and revenue from taxes currently levied, assessed and collected.
- (2) The percentage of total revenues provided by taxes currently levied, assessed and collected.
- (3) The age, income, employment and property use characteristics of the existing tax base.
- (4) Projected revenues of taxes currently levied, assessed and collected, including taxes authorized and taxes not levied under this chapter.

(e) Recommendation.—Within 90 days of its appointment, the local tax study commission shall make a nonbinding recommendation to the board of school directors regarding the imposition of the taxes authorized under sections 3112 and 3113, commencing in the subsequent fiscal year. Prior to making its recommendation, the local tax study commission shall hold at least one public hearing. The recommendation of the local tax study commission shall be presented at a public meeting of the board of school directors. The board of school directors shall make such recommendation available to interested persons upon request.

(f) Failure to issue a recommendation.—If the local tax study commission fails to make a recommendation under subsection (e), the board of school directors shall discharge the local tax study commission.

(g) Adoption of recommendation.—The board of school directors shall accept or reject the recommendation of the local tax study commission prior to adopting a resolution under section 3121.

(h) Materials.—All records of the local tax study commission, including receipts, tapes, minutes of meetings and written communications shall be turned over to the board of school directors and made available for public inspection during the regular business hours of the school district.

SUBCHAPTER G  
REGISTER

Sec.

3161. Tax Register and Local Tax Withholding Register.

§ 3161. Tax Register and Local Tax Withholding Register.

(a) General rule.—The Department of Community and Economic Development shall maintain a Tax Register and Local Withholding Tax Register.

(b) Tax Register.—The Department of Community and Economic Development shall maintain a Tax Register, an official continuing register of all county, municipal and school tax rates within this Commonwealth on its publicly accessible Internet website. Information for the Tax Register shall be furnished by each county, municipality and school district to the department as prescribed by the Department of Community and Economic Development. The Department of Community and Economic Development shall continuously update the Tax Register as new and updated information is provided.

(c) Local Withholding Tax Register.—As part of the Tax Register, the Department of Community and Economic Development shall maintain a Local Withholding Tax Register, an official continuing register of all withholding taxes.

(d) Contents of Local Withholding Tax Register.—The Local Withholding Tax Register shall be organized by municipality and shall list all of the following:

- (1) Each municipality and coterminous school district.
- (2) The effective municipal income tax rate on resident taxpayers.
- (3) The effective school district income tax rate on resident taxpayers.
- (4) The combined municipal and school district income tax rate on taxpayers residing in each municipality.
- (5) The effective income tax rate on resident and nonresident taxpayers working within a municipality.
- (6) Whether an income tax is a personal income tax levied under this chapter.
- (7) The effective emergency and municipal services tax rate.
- (8) The effective school district emergency and municipal services tax rate.
- (9) The combined municipal and school district emergency and municipal services tax rate.
- (10) The amount of any other withholding tax.
- (11) The name, telephone number, address, e-mail address, where available, and Internet website, where available, of the tax officer responsible for administering the collection of the tax and from whom information, forms and copies of regulations are available.
- (12) Any other information deemed to be necessary by the Department of Community and Economic Development.

(e) Official release and effective period of tax rates on Local Withholding Tax Register.—On June 15 and December 15 of each year, the Department of Community and Economic Development shall update and officially release withholding tax rates on the Local Tax Withholding Register. Withholding for tax rates released on June 15 shall become effective on July 1. Withholding for tax rates released on December 15 shall become effective on January 1 of the following year. The Department of Community and Economic Development may revise the notification, official release and effective dates of the Local Withholding Tax Register for good cause and with adequate notice.

(f) Information for the Local Withholding Tax Register.—Information for the Local Withholding Tax Register shall be furnished by each municipality and school district to the Department of Community and Economic Development as prescribed by the department. The information shall include a copy of the ordinance or resolution enacting, repealing or changing the tax. The Department of Community and Economic Development shall be notified and receive



information regarding changes to the Local Withholding Tax Register as follows:

(1) New tax enactments, repeals and changes shall be received by the Department of Community and Economic Development no later than June 1 to require withholding of a new tax, withholding at a new rate, or to suspend withholding of such tax effective July 1 of that year. All new tax enactments, repeals and changes received by the Department of Community and Economic Development by June 1 shall be officially released on June 15 and become effective on July 1. Failure of the Department of Community and Economic Development to receive information by June 1 from municipalities and school districts regarding current tax rates, new tax enactments, repeals and changes shall be construed to mean that the information contained in the previous release of the Local Tax Withholding Register is still in force. Information received by the Department of Community and Economic Development after June 1, but before December 1, shall be officially released on December 15.

(2) New tax enactments, repeals and changes shall be received by the Department of Community and Economic Development no later than December 1 to require withholding of a new tax, withholding at a new rate, or to suspend withholding of such tax effective January 1 of the following year. All new tax enactments, repeals and changes received by the Department of Community and Economic Development by December 1 shall be officially released on December 15 and become effective on January 1 of the following year. Failure of the Department of Community and Economic Development to receive information by December 1 from municipalities and school districts regarding current tax rates, new tax enactments, repeals and changes shall be construed to mean that the information contained in the previous release of the Local Tax Withholding Register is still in force. Information received by the Department of Community and Economic Development after December 1, but before June 1, shall be officially released on June 15.

(g) Withholding and effect of Local Withholding Tax Register.—Employers shall not be required to withhold from the compensation of their employees or make reports of compensation in connection with any withholding tax that is not officially released on the Local Withholding Tax Register as of June 15 and December 15 of each year or as of August 15, 2006, as provided in subsections (e) and (f). Notwithstanding any law to the contrary, no school district, municipality or tax officer may require any employer to withhold a withholding tax at a rate or amount which is not officially released on the Local Withholding Tax Register. The provisions of this section shall not affect the liability of any taxpayer for taxes lawfully imposed under this act.

(h) Withholding and effect to Tax Register.—An employer may withhold at the most recently available rate on the Tax Register even if the rate is different than the tax rate officially released on the Local Withholding Tax Register as provided in subsections (d) and (e). An employer shall not be required to withhold a tax rate that is not officially released on the Local Withholding Tax Register.

Section 1.1. Section 8405 of Title 53 is amended to read: § 8405. Applicability.

[It] Except as provided in Ch. 85 Subch. F (relating to homestead property exclusion), it is the intent of the General Assembly that no provision of this subpart shall apply to any city of the first class, a county of the first class coterminous with a city of the first class and any school district of the first class located within a city of the first class.

Section 1.2. The definitions of “assessor” and “board” in section 8582 of Title 53 are amended and the section is amended by adding definitions to read:

§ 8582. Definitions.

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

“Assessor.” The chief assessor of the county, the equivalent position in a home rule county or the equivalent position in a city of the first or third class that performs its own assessments of real property.

“Board.” Any of the following:

(1) “Board.” As defined in the act of June 26, 1931, (P.L.1379, No.348), referred to as the Third Class County Assessment Board Law.

(2) “Board.” As defined in the act of May 21, 1943 (P.L.571, No.254), known as The Fourth to Eighth Class County Assessment Law.

(3) “Board of Property Assessment, Appeals and Review.” The Board of Property Assessment, Appeals and Review in a county of the second class under the act of June 21, 1939 (P.L.626, No.294), referred to as the Second Class County Assessment Law.

(4) “Board of Revision of Tax and Appeals.” The board of revision of taxes and appeals in cities of the third class.

(5) “Board of Revision of Taxes.” The board of revision of taxes in cities of the first class.

\* \* \*

“Homestead.” A dwelling, including the parcel of land on which the dwelling is located and the other improvements located on the parcel for which any of the following apply:

(1) The dwelling is primarily used as the domicile of an owner who is a natural person. The homestead for real property qualifying under this paragraph shall not include the land on which the dwelling is located if the land is not owned by a person who owns the dwelling.

(2) The dwelling is a unit in a condominium as the term is defined in 68 Pa.C.S. § 3103 (relating to definitions) and the unit is primarily used as the domicile of a natural person who is an owner of the unit; or the dwelling is a unit in a cooperative as the term is defined in 68 Pa.C.S. § 4103 (relating to definitions) and the unit is primarily used as the domicile of a natural person who is an owner of the unit. The homestead for a unit in a condominium or a cooperative shall be limited to the assessed value of the unit, which shall be determined in a manner consistent with the assessment of real property taxes on those units under 68 Pa.C.S. (relating to real and personal property) or as otherwise provided law. If the unit is not separately assessed for real property taxes, the homestead shall be a pro rata share of the real property.

(3) The dwelling does not qualify under paragraphs (1) and (2) and a portion of the dwelling is used as the domicile of an owner who is a natural person. The homestead for real property qualifying under this paragraph shall be the portion of the real property that is equal to the portion of the dwelling that is used as the domicile of an owner.

“Homestead property.” A homestead for which an application has been submitted and approved under section 8584 (relating to administration and procedure).

\* \* \*

“School district.” A school district of the first class, first class A, second class, third class or fourth class, including any independent school district.

Section 2. Title 72 is amended by adding parts to read:

PART I  
PRELIMINARY PROVISIONS  
(RESERVED)  
PART II  
TAXES

Chapter

12. Sales and Use Tax.

13. Special Situs for Local Sales Tax.

CHAPTER 12  
SALES AND USE TAX

Subchapter

A. General Provisions

- B. Imposition of Tax
- C. Exclusions from Tax
- D. Licenses
- E. Hotel Occupancy Tax
- F. Returns
- G. Payment
- H. Assessment and Reassessment
- I. Collection
- J. Nonpayment
- K. Miscellaneous Provisions
- L. Refunds and Credits
- M. Limitations
- N. Interest, Additions, Penalties and Crimes
- O. Enforcement and Examinations
- P. Appropriation; Effective Date

SUBCHAPTER A  
GENERAL PROVISIONS

Sec.

1201. Definitions.

§ 1201. Definitions.

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

“Adjustment services, collection services or credit reporting services.” Providing collection or adjustments of accounts receivable or mercantile or consumer credit reporting, including, but not limited to, services of the type provided by adjustment bureaus or collection agencies, consumer or mercantile credit reporting bureaus, credit bureaus or agencies, credit clearinghouses or credit investigation services. Such services do not include providing credit card service with collection by a central agency, providing debt counseling or adjustment services to individuals or billing or collection services provided by local exchange telephone companies.

“Blasting.” The use of any combustible or explosive composition in the removal of material resources, minerals and mineral aggregates from the earth and the separation of the dirt, waste and refuse in which the resources, minerals and mineral aggregates are found.

“Building machinery and equipment.” Includes, without limitation, boilers, chillers, air cleaners, humidifiers, fans, switchgear, pumps, telephones, speakers, horns, motion detectors, dampers, actuators, grills, registers, traffic signals, sensors, card access devices, guardrails, medial devices, floor troughs and grates and laundry equipment, together with integral coverings and enclosures, whether or not the item constitutes a fixture or is otherwise affixed to the real estate, whether or not damage would be done to the item or its surroundings upon removal or whether or not the item is physically located within a real estate structure. The term also includes generation equipment, storage equipment, conditioning equipment, distribution equipment and termination equipment, which shall be limited to the following:

- (1) air conditioning, limited to heating, cooling, purification, humidification, dehumidification and ventilation;
- (2) electrical;
- (3) plumbing;
- (4) communications limited to voice, video, data, sound, master clock and noise abatement;
- (5) alarms limited to fire, security and detection;
- (6) control system limited to energy management, traffic and parking lot and building access;
- (7) medical system limited to diagnosis and treatment equipment, medical gas, nurse call and doctor paging;
- (8) laboratory system;
- (9) cathodic protection system; or
- (10) furniture, cabinetry and kitchen equipment.

The term shall not include guardrail posts, pipes, fittings, pipe supports and hangers, valves, underground tanks, wire, conduit, receptacle and junction boxes, insulation, ductwork and coverings thereof.

“Building maintenance or cleaning services.” Providing services which include, but are not limited to, janitorial, maid or housekeeping service, office or interior building cleaning or maintenance service, window cleaning service, floor waxing service, lighting maintenance service such as bulb replacement, cleaning, chimney cleaning service, acoustical tile cleaning service, venetian blind cleaning, cleaning and maintenance of telephone booths or cleaning and degreasing of service stations. The term shall not include repairs on buildings and other structures; nor shall this term include the maintenance or repair of boilers, furnaces and residential air conditioning equipment or parts thereof; the painting, wallpapering or applying other like coverings to interior walls, ceilings or floors; or the exterior painting of buildings.

“Call center.” The physical location in this Commonwealth:

(1) where at least 150 employees are employed to initiate or answer telephone calls;

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

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

- (i) customer service and support;
- (ii) technical assistance;
- (iii) help desk service;
- (iv) providing information;
- (v) conducting surveys;
- (vi) revenue collections; or
- (vii) receiving orders or reservations.

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

“Commercial aircraft operator.” A person, excluding scheduled airlines, that engages in any or all of the following: charter of aircraft, leasing of aircraft, aircraft sales, aircraft rental, flight instruction, air freight or any other flight activities for compensation.

“Commercial racing activities.” Any of the following:

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

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

“Computer software.” A set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

“Construction contract.” A written or oral contract or agreement for the construction, reconstruction, remodeling, renovation or repair of real estate or a real estate structure. The term shall not apply to services which are taxable under paragraphs (14) and (17) of the definition of “sale at retail” and paragraphs (12) and (15) of the definition of “use.”

“Construction contractor.” A person who performs an activity pursuant to a construction contract, including a subcontractor.

“Delivered electronically.” Delivered to the purchaser by means other than tangible storage media.

“Department.” The Department of Revenue of the Commonwealth.

“Disinfecting or pest control services.” Providing disinfecting, termite control, insect control, rodent control or other pest control services, including, but not limited to, deodorant servicing of restrooms, washroom sanitation service, restroom cleaning service, extermination service or fumigating service. The term “fumigating service” shall not include the fumigation of agricultural commodities or containers used for agricultural commodities, and the term “insect control” shall not include the spraying of trees which are harvested for commercial purposes for gypsy moth control.

“Employment agency services.” Providing employment services to a prospective employer or employee other than employment services provided by theatrical employment agencies and motion picture casting bureaus. These services shall include, but not be limited to, services of

the type provided by employment agencies, executive placing services and labor contractor employment agencies other than farm labor.

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

“Gratuity.” Any amount paid or remitted for services performed in conjunction with any sale of food or beverages, or hotel or motel accommodations which amount is in excess of the charges and the tax thereon for such food, beverages or accommodations regardless of the method of billing or payment.

“Help supply services.” Providing temporary or continuing help where the help supplied is on the payroll of the supplying person or entity, but is under the supervision of the individual or business to which help is furnished. These services shall include, but not be limited to, service of a type provided by labor and manpower pools, employee leasing services, office help supply services, temporary help services, usher services, modeling services or fashion show model supply services. Such services shall not include providing farm labor services. The term shall not include nursing, home health care and personal care services and other human health-related services. As used in this definition, “personal care” shall include providing at least one of the following types of assistance to persons with limited ability for self-care:

- (1) dressing, bathing or feeding;
- (2) supervising self-administered medication;
- (3) transferring a person to or from a bed or wheelchair;

or

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

“Internet.” The international nonproprietary computer network of both Federal and non-Federal interoperable packet switched data networks.

“Lawn care service.” Providing services for lawn upkeep, including, but not limited to, fertilizing, lawn mowing, shrubbery trimming or other lawn treatment services.

“Lobbying services.” Providing the services of a lobbyist, as defined in the definition of “lobbyist” in 65 Pa.C.S. § 1303 (relating to definitions).

“Maintaining a place of business in this Commonwealth.” As follows:

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

- (2) Engagement in any activity as a business within this Commonwealth by any person, either directly or through a subsidiary, representative or an agent, in connection with the lease, sale or delivery of tangible personal property or the performance of services thereon for use, storage or consumption or in connection with the sale or delivery for use of the services described in paragraphs (11) through (18) of the definition of “sale at retail,” including, but not limited to, having, maintaining or using any office, distribution house, sales house, warehouse or other place of business, any stock of goods or any solicitor, canvasser, salesman, representative or agent under its authority, at its direction or with its permission, regardless of whether the person or subsidiary is authorized to do business in this Commonwealth.

- (3) Regularly or substantially soliciting orders within this Commonwealth in connection with the lease, sale or delivery of tangible personal property to or the performance thereon of services or in connection with the sale or delivery of the services

described in paragraphs (11) through (18) of the definition of “sale at retail” for residents of this Commonwealth by means of catalogs or other advertising, whether the orders are accepted within or without this Commonwealth.

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

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

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

(3.4) Providing a customer’s mobile telecommunications service deemed to be provided by the customer’s home service provider under the Mobile Telecommunications Sourcing Act (Public Law 106-252, 114 Stat. 626). For purposes of this paragraph, words and phrases used in this paragraph shall have the meanings given to them in the Mobile Telecommunications Sourcing Act.

(4) The term shall not include:

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

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

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

- (ii) Visits by a person’s employees or agents to the premises in this Commonwealth of an unaffiliated commercial printer with whom the person has contracted for printing in connection with the contract.

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

- (1) Every operation commencing with the first production stage and ending with the completion of tangible personal property having the physical qualities, including packaging, if any, passing to the ultimate consumer, which it has when transferred by the manufacturer to another.

(2) The publishing of books, newspapers, magazines and other periodicals and printing.

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

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

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

- (i) product or utility service; or

- (ii) method of producing a product or utility service.

The term does not include market research or research having as its objective the improvement of administrative efficiency.

(6) Remanufacture for wholesale distribution by a remanufacturer of motor vehicle parts from used parts acquired in bulk by the remanufacturer using an assembly line process which involves the complete disassembly of such parts and

integration of the components of such parts with other used or new components of parts, including the salvaging, recycling or reclaiming of used parts by the remanufacturer.

(7) Remanufacture or retrofit by a manufacturer or remanufacturer of aircraft, armored vehicles, other defense-related vehicles having a finished value of at least \$50,000. Remanufacture or retrofit involves the disassembly of such aircraft, vehicles, parts or components, including electric or electronic components, the integration of those parts and components with other used or new parts or components, including the salvaging, recycling or reclaiming of the used parts or components and the assembly of the new or used aircraft, vehicles, parts or components. For purposes of this definition, the following terms or phrases have the following meanings:

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

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

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

(8) The term does not include constructing, altering, servicing, repairing or improving real estate or repairing, servicing or installing tangible personal property, nor the cooking, freezing or baking of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products.

"Mobile telecommunications service." Mobile telecommunications service as that term is defined in the Mobile Telecommunications Sourcing Act (Public Law 106-252, 114 Stat. 626).

"Person." A natural person, association, fiduciary, partnership, corporation or other entity, including the Commonwealth of Pennsylvania, its political subdivisions and instrumentalities and public authorities. Whenever used in any provision prescribing and imposing a penalty or imposing a fine or imprisonment, or both, the term, as applied to an association, shall include the members of these listed classes and, as applied to a corporation, the officers of the corporation.

"Prebuilt housing." Either of the following:

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

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

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

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

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

"Premium cable or premium video programming service."

(1) That portion of cable television services, video programming services, community antenna television services or any other distribution of television, video, audio or radio services which meets all of the following criteria:

(i) Is transmitted with or without the use of wires to purchasers.

(ii) Consists substantially of programming uninterrupted by paid commercial advertising which includes programming primarily composed of uninterrupted full-length motion pictures or sporting events, pay-per-view, paid programming or like audio or radio broadcasting.

(iii) Does not constitute a component of a basic service tier provided by a cable television system or a cable programming service tier provided by a cable television system.

(A) A basic service tier shall include:

(I) all signals of domestic television broadcast stations;

(II) any public, educational, governmental or religious programming; and

(III) any additional video programming signals or service added to the basic service tier by the cable operator.

(B) The basic service tier shall include a single additional lower-priced package of broadcast channels and access information channels which is a subset of the basic service tier as set forth in this paragraph.

(C) A cable programming service tier includes any video programming other than:

(I) the basic service tier;

(II) video programming offered on a pay-per-channel or pay-per-view basis; or

(III) a combination of multiple channels of pay-per-channel or pay-per-view programming offered as a package.

(2) If a purchaser receives or agrees to receive premium cable or premium video programming service, then the following charges are included in the purchase price:

(i) Charges for installation or repair of any premium cable or premium video programming service.

(ii) Upgrade to include additional premium cable or premium video programming service.

(iii) Downgrade to exclude all or some premium cable or premium video programming service.

(iv) Additional premium cable outlets in excess of ten.

(v) Any other charge or fee related to premium cable or premium video programming services.

(3) The term shall not apply to any of the following:

(i) Transmissions by public television.

(ii) Public radio services.

(iii) Official Federal, State or local government cable services.

(iv) Local origination programming which provides a variety of public service programs unique to the community.

(v) Programming which provides coverage of public affairs issues which are presented without commentary or analysis. This subparagraph includes United States Congressional proceedings.

(vi) Programming which is substantially related to religious subjects.

(vii) Subscriber charges for access to a video dial tone system or charges by a common carrier to a video programmer for the transport of video programming.

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

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

“Prepaid telecommunications.” A tangible item containing a prepaid authorization number that can be used solely to obtain telecommunications service, including any renewal or increases in the prepaid amount.

“Prewritten computer software.” The term shall have the same meaning as the term “computer software,” including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions of those programs shall not cause the combination to be considered to be other than prewritten computer software. The term includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of the person’s modifications or enhancements. Prewritten computer software or a prewritten portion of the software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, shall be considered to be prewritten computer software except that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.

“Processing.” The performance of the following activities when engaged in as a business enterprise:

(1) The filtering or heating of honey, the cooking, baking or freezing of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products, when the person engaged in such business packages such property in sealed containers for wholesale distribution.

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

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

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

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

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

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

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

(7) The production, processing and bottling of nonalcoholic beverages for wholesale distribution.

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

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

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

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

(11) The processing of used lubricating oils.

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

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

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

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

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

(17) The producing of mobile telecommunications services.

“Promoter.” A person who either, directly or indirectly, rents, leases or otherwise operates or grants permission to any person to use space at a show for the display for sale or for the sale of tangible personal property or services subject to tax under section 1202 (relating to imposition of tax).

“Purchase at retail.” Any of the following:

(1) The acquisition for a consideration of the ownership, custody or possession of tangible personal property other than for resale by the person acquiring the same when such acquisition is made for the purpose of consumption or use, whether such acquisition shall be absolute or conditional, and by whatsoever means the same shall have been effected.

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

(3) The obtaining for a consideration any of those services set forth under paragraphs (2), (3) and (4) of the definition of sale at retail other than for resale.

(4) A retention after March 7, 1956, of possession, custody or a license to use or consume pursuant to a rental contract or other lease arrangement, other than as security, other than for resale.

(5) The obtaining for a consideration any of those services set forth under paragraphs (11) through (18) of the definition of “sale at retail.”

(6) With respect to liquor and malt or brewed beverages, the term includes purchase of liquor from a Pennsylvania Liquor Store by a person for any purpose, and purchase of malt or brewed beverages from a manufacturer of malt or brewed beverages, distributor or importing distributor by a person for any purpose, except purchases from a manufacturer of malt or brewed beverages by a distributor or importing distributor or purchases from an importing distributor by a distributor within the meaning of the act of April 12, 1951 (P.L.90, No.21), known

as the Liquor Code. The term does not include purchase of malt or brewed beverages from a retail dispenser or purchase of liquor or malt or brewed beverages from a person holding a retail liquor license within the meaning of and pursuant to the provisions of the Liquor Code, but shall include purchase or acquisition of liquor or malt or brewed beverages other than pursuant to the provisions of the Liquor Code.

“Purchase price.” As follows:

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

(2) There shall be deducted from the purchase price the value of any tangible personal property actually taken in trade or exchange in lieu of the whole or any part of the purchase price. For the purpose of this paragraph, the amount allowed by reason of tangible personal property actually taken in trade or exchange shall be considered the value of the property.

(3) In determining the purchase price on the sale or use of taxable tangible personal property or a service where, because of affiliation of interests between the vendor and purchaser, or irrespective of any such affiliation, if for any other reason the purchase price declared by the vendor or taxpayer on the taxable sale or use of such tangible personal property or service is, in the opinion of the Department of Revenue, not indicative of the true value of the article or service or the fair price thereof, the department shall, pursuant to uniform and equitable rules, determine the amount of constructive purchase price upon the basis of which the tax shall be computed and levied. Such rules shall provide for a constructive amount of purchase price for each sale or use which would naturally and fairly be charged in an arms-length transaction in which the element of common interest between the vendor or purchaser is absent or if no common interest exists, any other element causing a distortion of the price or value is likewise absent. For the purpose of this paragraph where a taxable sale or purchase at retail transaction occurs between a parent and a subsidiary, affiliate or controlled corporation of such parent corporation, there shall be a rebuttable presumption, that because of such common interest such transaction was not at arm's-length.

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

(5) With respect to the tax imposed by section 1202(b) (relating to imposition of tax) upon any tangible personal

property originally purchased by the user of the property six months or longer prior to the first taxable use of the property within this Commonwealth. The user may elect to pay tax on a substituted base determined by considering the purchase price of the property for tax purposes to be equal to the prevailing market price of similar tangible personal property at the time and place of the first use within this Commonwealth. The election must be made at the time of filing a tax return with the department and reporting the tax liability and paying the tax due plus accrued penalties and interest within six months of the due date of the report and payment under section 1217(a) and (c) (relating to time for filing returns).

(6) The purchase price of employment agency services and help supply services shall be the service fee paid by the purchaser to the vendor or supplying entity. The term “service fee,” as used in this paragraph, shall be the total charge or fee of the vendor or supplying entity minus the costs of the supplied employee which costs are wages, salaries, bonuses and commissions, employment benefits, expense reimbursements and payroll and withholding taxes, to the extent that these costs are specifically itemized or that these costs in aggregate are stated in billings from the vendor or supplying entity. To the extent that these costs are not itemized or stated on the billings, then the service fee shall be the total charge or fee of the vendor or supplying entity.

(7) Unless the vendor separately states which portion of the billing applies to premium cable services, the total bill for the provision of all cable services shall be the purchase price.

(8) The purchase price of prebuilt housing shall be 60% of the manufacturer's selling price, but a manufacturer of prebuilt housing who precollects tax from a prebuilt housing builder at the time of the sale to the prebuilt housing builder shall have the option to collect tax on 60% of the selling price or on 100% of the actual cost of the supplies and materials used in the manufacture of the prebuilt housing.

“Purchaser.” A person who acquires, for a consideration, the ownership, custody or possession by sale, lease or otherwise, of tangible personal property, or who obtains services in exchange for a purchase price, but not including an employer who obtains services from employees of the employer in exchange for wages or salaries when the services are rendered in the ordinary scope of their employment.

“Real estate structure.” A structure or item purchased by a construction contractor pursuant to a construction contract with:

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

(2) the United States; or

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

The term includes building machinery and equipment; developed or undeveloped land; streets; roads; highways; parking lots; stadiums and stadium seating; recreational courts; sidewalks; foundations; structural supports; walls; floors; ceilings; roofs; doors; canopies; millwork; elevators; windows and external window coverings; outdoor advertising boards or signs; airport runways; bridges; dams; dikes; traffic control devices, including traffic signs; satellite dishes; antennas; guardrail posts; pipes; fittings; pipe supports and hangers; valves; underground tanks; wire; conduit; receptacle and junction boxes; insulation; ductwork and coverings thereof; and any structure or item similar to any of the foregoing, whether or not the structure or item constitutes a fixture or is affixed to the real estate, or whether or not damage would be done to the structure or item or its surroundings upon removal.

“Resale.” As follows:

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

(2) The physical incorporation of tangible personal property as an ingredient or constituent into other tangible personal property, which is to be sold in the regular course of business or the performance of those services described in paragraphs (2), (3) and (4) of the definition of “sale at retail” upon tangible personal property which is to be sold in the regular course of business or where the person incorporating such property has undertaken at the time of purchase to cause it to be transported in interstate commerce to a destination outside this Commonwealth. The term shall include telecommunications services purchased by a cable operator or video programmer that are used to transport or deliver cable or video programming services which are sold in the regular course of business.

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

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

(5) The physical incorporation of tangible personal property as an ingredient or constituent in the construction of foundations for machinery or equipment the sale or use of which is excluded from tax under the provisions of paragraph (8)(ii)(A), (B), (C) and (D) of the definition of “sale at retail” and paragraph (4)(ii)(B)(I), (II), (III) and (IV) of the definition of “use,” whether the foundations at the time of construction or transfer constitute tangible personal property or real estate.

“Resident.” As follows:

(1) Any natural person:

- (i) who is domiciled in this Commonwealth; or
- (ii) who maintains a permanent place of abode within this Commonwealth and spends in the aggregate more than 60 days of the year within this Commonwealth.

(2) Any corporation:

- (i) incorporated under the laws of this Commonwealth;
- (ii) authorized to do business or doing business within this Commonwealth; or
- (iii) maintaining a place of business within this Commonwealth.

(3) Any association, fiduciary, partnership or other entity:

- (i) domiciled in this Commonwealth;
- (ii) authorized to do business or doing business within this Commonwealth; or
- (iii) maintaining a place of business within this Commonwealth.

“Sale at retail.” As follows:

(1) Any transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the grant of a license to use or consume whether the transfer be absolute or conditional and by whatsoever means the same shall have been effected.

(2) The rendition of the service of printing or imprinting of tangible personal property for a consideration for persons who furnish, either directly or indirectly, the materials used in the printing or imprinting.

(3) The rendition for a consideration of the service of:

(i) Washing, cleaning, waxing, polishing or lubricating of motor vehicles of another, whether or not any tangible personal property is transferred in conjunction therewith.

(ii) Inspecting motor vehicles pursuant to the mandatory requirements of 75 Pa.C.S. (relating to vehicles).

(4) The rendition for a consideration of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property except wearing apparel or shoes, or applying or installing tangible personal property as a repair or replacement part of other tangible personal property except wearing apparel or shoes for a consideration, whether or not the services are performed directly or by any means except by coin-operated self-service laundry equipment for wearing apparel or household goods and whether or not any tangible personal property is transferred in conjunction therewith, except such services as are rendered in the construction, reconstruction, remodeling, repair or maintenance of real estate, except that this paragraph shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under section 1204(26) (relating to exclusions from tax) or on diaper service.

(5) (Reserved).

(6) (Reserved).

(7) (Reserved).

(8) (i) Any retention of possession, custody or a license to use or consume tangible personal property or any further obtaining of services described in paragraphs (2), (3) and (4) pursuant to a rental or service contract or other arrangement, other than as security.

(ii) The term does not include any such transfer of tangible personal property or rendition of services for the purpose of resale or such rendition of services or the transfer of tangible personal property, including, but not limited to, machinery and equipment and parts therefor and supplies to be used or consumed by the purchaser directly in the operations of:

(A) The manufacture of tangible personal property.

(B) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term “farming” shall include the propagation and raising of ranch raised furbearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. (relating to game) and the propagation and raising of horses to be used exclusively for commercial racing activities.

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

(D) Processing as defined in this section.

(iii) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to any vehicle required to be registered under 75 Pa.C.S., except those vehicles used directly by a public utility engaged in business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or

consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used machinery, equipment, parts or foundations therefor that may be fixed to the real estate.

(iv) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or services by any person other than the person directly using the same in the operations described in subparagraph (ii)(A), (B), (C) and (D).

(v) The exclusion provided in subparagraph (ii)(C) shall not apply to:

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

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

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

(vi) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to the services enumerated in paragraphs (11) through (18) nor to lobbying services, adjustment services, collection services or credit reporting services, secretarial or editing services, disinfecting or pest control services, building maintenance or cleaning services, employment agency services, help supply services, lawn care service or self-storage service, except that the exclusion provided in subparagraph (ii)(B) for farming, dairying and agriculture shall apply to the service enumerated in the definition of disinfecting or pest control services.

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

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

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

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

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

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

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

(16) (Reserved).

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

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

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

“Secretarial or editing services.” Providing services which include, but are not limited to, editing, letter writing, proofreading, resume writing, typing or word processing. Such services shall not include court reporting and stenographic services.

“Self-storage service.” Providing a building, a room in a building or a secured area within a building with separate access provided for each purchaser of self-storage service, primarily for the purpose of storing personal property. The term excludes providing any of the following:

(1) Safe deposit boxes by financial institutions.

(2) Storage in refrigerator or freezer units.

(3) Storage in commercial warehouses.

(4) Facilities for goods distribution.

(5) Lockers in airports, bus stations, museums and other public places.

“Show.” An event, the primary purpose of which involves the display or exhibition of any tangible personal property or services for sale, including, but not limited to, a flea market, antique show, coin show, stamp show, comic book show, hobby show, automobile show, fair or any similar show, whether held regularly or of a temporary nature, at which more than one vendor displays for sale or sells tangible personal property or services subject to tax under section 1202 (relating to imposition of tax).

“Soft drinks.” All nonalcoholic beverages, whether carbonated or not, such as soda water, ginger ale, Coca Cola, lime cola, Pepsi Cola, Dr Pepper, fruit juice when plain or carbonated water, flavoring or syrup is added, carbonated water, orangeade, lemonade, root beer or any and all preparations, commonly referred to as soft drinks, of whatsoever kind, and are further described as including any and all beverages, commonly referred to as soft drinks, which are made with or without the use of any syrup. The term shall not include natural fruit or vegetable juices or their concentrates, or noncarbonated fruit juice drinks containing not less than 25% by volume of natural fruit juices or of fruit juice which has been reconstituted to its original state, or natural concentrated fruit or vegetable juices reconstituted to their original state, whether any of the foregoing natural juices are frozen or unfrozen, sweetened or unsweetened, seasoned with salt or spice or unseasoned, nor shall the term include coffee, coffee substitutes, tea, cocoa, natural fluid milk or noncarbonated drinks made from milk derivatives.

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

“Tangible personal property.” Corporeal personal property including, but not limited to, goods, wares, merchandise, steam and natural and manufactured and bottled gas for nonresidential use, electricity for nonresidential use, prepaid telecommunications, premium cable or premium video programming service, spirituous or vinous liquor and malt or brewed beverages and soft drinks, interstate telecommunications service originating or terminating in this Commonwealth and charged to a service address in this Commonwealth, intrastate telecommunications service, except for subscriber line charges and basic local telephone service for residential use and charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate. The service



address of any intrastate telecommunications service is deemed to be within this Commonwealth or within a political subdivision, regardless of how or where billed or paid. In the case of any such interstate or intrastate telecommunications service, any charge paid through a credit or payment mechanism which does not relate to a service address, such as a bank, travel, credit or debit card, but not including prepaid telecommunications, is deemed attributable to the address of origination of the telecommunications service. The term shall not include:

(1) Computer software, other than prewritten computer software, delivered to the purchaser by tangible storage media.

(2) Digital products delivered electronically, including computer software, music, video, reading materials or ring tones.

“Tax Reform Code.” The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Taxpayer.” Any person required to pay or collect the tax imposed by this chapter.

“Telecommunications service.” Any one-way transmission or any two-way, interactive transmission of sounds, signals or other intelligence converted to like form which effects or is intended to effect meaningful communications by electronic or electromagnetic means via wire, cable, satellite, light waves, microwaves, radio waves or other transmission media. The term includes all types of telecommunication transmissions, such as local, toll, wide-area or any other type of telephone service; private line service; telegraph service; radio repeater service; wireless communication service; personal communications system service; cellular telecommunication service; specialized mobile radio service; stationary two-way radio service; and paging service. The term does not include any of the following:

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

(2) Charges to video programmers for the transport of video programming.

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

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

(ii) Telecommunications services purchased by an Internet service provider to deliver access to the Internet to its customers.

(4) Mobile telecommunications services.

“Transient vendor.” As follows:

(1) Any person who:

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

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

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

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

(3) The term shall not include a person who handcrafts items for sale at special events, including, but not limited to,

fairs, carnivals, art and craft shows and other festivals and celebrations within this Commonwealth.

“Use.” As follows:

(1) The exercise of any right or power incidental to the ownership, custody or possession of tangible personal property and shall include, but not be limited to, transportation, storage or consumption.

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

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

(i) Washing, cleaning, waxing, polishing or lubricating of motor vehicles whether or not any tangible personal property is transferred to the purchaser in conjunction with such services.

(ii) Inspecting motor vehicles pursuant to the mandatory requirements of 75 Pa.C.S. (relating to vehicles).

(4) (i) The obtaining by a purchaser of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property except wearing apparel or shoes or applying or installing tangible personal property as a repair or replacement part of other tangible personal property except wearing apparel or shoes, whether or not the services are performed directly or by any means except by coin-operated self-service laundry equipment for wearing apparel or household goods, and whether or not any tangible personal property is transferred to the purchaser in conjunction therewith, except such services as are obtained in the construction, reconstruction, remodeling, repair or maintenance of real estate, except that this paragraph shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under section 1204(26) (relating to exclusions from tax) or on diaper service.

(ii) The term shall not include:

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

(B) The use or consumption of tangible personal property, including, but not limited to, machinery and equipment and parts therefor, and supplies or the obtaining of the services described in this paragraph and paragraphs (2) and (3) directly in the operations of:

(I) The manufacture of tangible personal property.

(II) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term “farming” shall include the propagation and raising of ranch-raised furbearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. (relating to game) and the propagation and raising of horses to be used exclusively for commercial racing activities.

(III) The producing, delivering or rendering of a public utility service, or the constructing, reconstructing, remodeling, repairing or maintaining the facilities which are directly used in producing, delivering or rendering a public utility service.

(IV) Processing as defined in this section.

(iii) The exclusions provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to any vehicle required to be registered under 75 Pa.C.S. except those vehicles directly used by a public utility engaged in the business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used machinery, equipment, parts or foundations therefor that may be affixed to such real estate.

(iv) The exclusions provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or services by any person other than the person directly using the same in the operations described in subparagraph (ii)(B)(I), (II), (III) and (IV).

(v) The exclusion provided in subparagraph (iii) shall not apply to:

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

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

(vi) The exclusion provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to the services enumerated in paragraphs (9) through (16) nor to lobbying services, adjustment services, collection services or credit reporting services, secretarial or editing services, disinfecting or pest control services, building maintenance or cleaning services, employment agency services, help supply services, lawn care service or self-storage service, except that the exclusion provided in subparagraph (ii)(B)(II) for farming, dairying and agriculture shall apply to the service enumerated in the definition of "disinfecting or pest control services."

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

(6) The term "use" with respect to "liquor" and "malt or brewed beverages" shall include the purchase of "liquor" from any "Pennsylvania liquor store" by any person for any purpose and the purchase of "malt or brewed beverages" from a "manufacturer of malt or brewed beverages," "distributor" or "importing distributor" by any person for any purpose, except purchases from a "manufacturer of malt or brewed beverages" by a "distributor" or "importing distributor," or purchases from an "importing distributor" by a "distributor" within the meaning of

the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code. The term "use" shall not include any purchase of "malt or brewed beverages" from a "retail dispenser" or any purchase of "liquor" or "malt or brewed beverages" from a person holding a "retail liquor license" within the meaning of and pursuant to the provisions of the Liquor Code, but shall include the exercise of any right or power incidental to the ownership, custody or possession of "liquor" or "malt or brewed beverages" obtained by the person exercising such right or power in any manner other than pursuant to the provisions of the Liquor Code.

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

(8) The term shall not include the providing of a motor vehicle to a nonprofit private or public school to be used by the school for the sole purpose of driver education.

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

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

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

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

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

(14) (Reserved).

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

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

(17) The obtaining by a construction contractor of tangible personal property or services provided to tangible personal property which will be used pursuant to a construction contract whether or not the tangible personal property or services are transferred.

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

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

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

#### SUBCHAPTER B IMPOSITION OF TAX

Sec.

1202. Imposition of tax.

1203. Computation of tax.

§ 1202. Imposition of tax.

(a) Sales tax.—There is hereby imposed upon each separate sale at retail of tangible personal property or services within this Commonwealth a tax of 6.5% of the purchase price. The tax shall be collected by the vendor from the purchaser and shall be paid over to this Commonwealth as provided in this chapter.

(b) Use tax.—There is hereby imposed upon the use within this Commonwealth of tangible personal property purchased at retail and on those services purchased at retail a tax of 6.5% of the purchase price. The tax shall be paid to the Commonwealth by the person who makes such use, except that such tax shall not be paid to the Commonwealth by that person where that person has paid the tax imposed by subsection (a) or has paid the tax imposed by this subsection to the vendor with respect to such use.

(c) Telecommunications services.—

(1) Notwithstanding any other provision of this chapter, the tax with respect to telecommunications service shall be

computed at the rate of 6.5% upon the total amount charged to customers for such services, irrespective of whether that charge is based upon a flat rate or upon a message unit charge. Charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate shall not be subject to this tax.

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

(3) To prevent actual multistate taxation of interstate telecommunications service, a taxpayer, upon proof that the taxpayer has paid a similar tax to another state on the same interstate telecommunications service, shall be allowed a credit against the tax imposed by this section on the same interstate telecommunications service to the extent of the amount of the tax properly due and paid to the other state.

(d) Vending machine sales of food and beverages.—Notwithstanding any other provisions of this chapter, the sale or use of food and beverages dispensed by means of coin operated vending machines shall be taxed at the rate of 6.5% of the receipts collected from the machine which dispenses food and beverages heretofore taxable.

(e) Prepaid telecommunications.—

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

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

(3) (i) Notwithstanding paragraph (2), the sale or use of prepaid telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of 6.5% of the receipts collected on each sale if the service provider elects to collect the tax imposed by this chapter on receipts of each sale.

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

(e.1) Prepaid mobile telecommunications services.—

(1) Notwithstanding any other provision of this chapter, the sale or use of prepaid mobile telecommunications service evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b).

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

(3) (i) Notwithstanding paragraph (2), the sale or use of prepaid mobile telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of 6.5% of the receipts collected on each sale if the service provider elects to collect the tax imposed by this chapter on receipts of each sale.

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

(f) Prebuilt housing.—

(1) Notwithstanding any other provision of this chapter, tax with respect to sales of prebuilt housing shall be imposed,

subject to the provisions of paragraph (2), on the prebuilt housing builder at the time of the prebuilt housing sale within this Commonwealth and shall be paid and reported by the prebuilt housing builder to the department in the time and manner provided in this chapter.

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

(3) In any case where prebuilt housing is purchased and the tax is not paid by the prebuilt housing builder or precollected by the manufacturer, the prebuilt housing purchaser shall remit tax directly to the department if the prebuilt housing is used in this Commonwealth without regard to whether the prebuilt housing becomes a real estate structure.

(g) Mobile telecommunications services provided by home service provider.—Notwithstanding any other provisions of this chapter and in accordance with the Mobile Telecommunications Sourcing Act (Public Law 106-252, 4 U.S.C. § 116), the sale or use of mobile telecommunications services which are deemed to be provided to a customer by a home service provider under section 4 U.S.C. § 117(a) and (b) shall be subject to the tax of 6.5% of the purchase price. The tax shall be collected by the home service provider from the customer and shall be paid over to the Commonwealth as provided in this chapter if the customer's place of primary use is located within this Commonwealth, regardless of where the mobile telecommunications services originate, terminate or pass through. The words and phrases used in this subsection shall have the same meanings given to them in the Mobile Telecommunications Sourcing Act.

§ 1203. Computation of tax.

The department shall promulgate regulations to assist in computing the amount of tax imposed by section 1202 (relating to imposition of tax) if the purchase price is less than or equal to a dollar. If the purchase price is more than \$1.00, 6.5% of each dollar of purchase price plus the charges set forth in this section upon any fractional part of a dollar in excess of even dollars shall be collected.

#### SUBCHAPTER C EXCLUSIONS FROM TAX

Sec.

1204. Exclusions from tax.

1205. Alternate imposition of tax.

1206. Credit against tax.

§ 1204. Exclusions from tax.

The tax imposed by section 1202 (relating to imposition of tax) shall not be imposed upon any of the following:

(1) The sale at retail or use of tangible personal property, other than motor vehicles, trailers, semitrailers, motorboats, aircraft or other similar tangible personal property required under either Federal law or laws of this Commonwealth to be registered or licensed, or services sold by or purchased from a person that is not a vendor in an isolated transaction or sold by or purchased from a person that is a vendor but is not a vendor with respect to the tangible personal property or services sold or purchased in the transaction. Inventory and stock in trade sold at retail or used shall not be excluded from the tax by this paragraph.

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

(3) The use of tangible personal property in accordance with the following:

(i) The property is purchased outside this Commonwealth for use outside this Commonwealth by an individual or business entity that, at the time of purchase, is not:

(A) a resident of this Commonwealth;

nor

(B) actually doing business within this Commonwealth.

(ii) The purchaser later brings the tangible personal property into this Commonwealth in connection with the establishment of a permanent business or residence in this Commonwealth.

(iii) The property has been purchased more than six months prior to the earlier of:

(A) the date it was first brought into this Commonwealth; or

(B) the establishment of a business or residence under subparagraph (ii).

(iv) This paragraph does not apply to tangible personal property temporarily brought into this Commonwealth for the performance of contracts for the construction, reconstruction, remodeling, repairing and maintenance of real estate.

(4) The sale at retail or use of disposable diapers, premoistened wipes, incontinence products, colostomy deodorants, toilet paper, sanitary napkins, tampons or similar items used for feminine hygiene or toothpaste, toothbrushes or dental floss.

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

(6) (Reserved).

(7) (Reserved).

(8) (Reserved).

(9) (Reserved).

(10) (i) The sale at retail to or use by:

(A) any charitable organization, volunteer firemen's organization or nonprofit educational institution; or

(B) a religious organization for religious purposes of tangible personal property or services other than pursuant to a construction contract.

(ii) The exclusion under this paragraph shall not apply with respect to any tangible personal property or services used in any unrelated trade or business carried on by such organization or institution or with respect to any materials, supplies and equipment used and transferred to the organization or institution in the construction, reconstruction, remodeling, renovation, repairs and maintenance of any real estate structure, other than building machinery and equipment, except materials and supplies when purchased by such organizations or institutions for routine maintenance and repairs.

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

(12) The sale at retail to, or use by the United States, this Commonwealth or its instrumentalities or political subdivisions of tangible personal property or services.

(13) The sale at retail or use of wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, nonreturnable containers and all other wrapping supplies, if the use is incidental to the delivery of personal property. This paragraph does not apply to a charge for wrapping or packaging.

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

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

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

(17) The sale at retail or use of any of the following:

(i) Prescription or nonprescription medicines, drugs or medical supplies.

(ii) Crutches and wheelchairs for the use of persons who are walking impaired.

(iii) Artificial limbs, artificial eyes and artificial hearing devices when designed to be worn on the person of the purchaser or user.

(iv) False teeth and materials used by a dentist in dental treatment.

(v) Eyeglasses when especially designed or prescribed by an ophthalmologist, oculist or optometrist for the personal use of the owner or purchaser.

(vi) Artificial braces and supports designed solely for the use of persons who are walking impaired or any other therapeutic, prosthetic or artificial device designed for the use of a particular individual to correct or alleviate a physical incapacity, including, but not limited to, hospital beds, iron lungs and kidney machines.

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

(19) (Reserved).

(20) (Reserved).

(21) (Reserved).

(22) (Reserved).

(23) (Reserved).

(24) The sale at retail or use of motor vehicles, trailers and semi-trailers, or bodies attached to the chassis of motor vehicles, trailers or semi-trailers which are:

(i) sold to a nonresident;

(ii) to be used outside of this Commonwealth;

and

(iii) registered in another state within 20 days after delivery to the vendee.

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

(26) (i) The sale at retail or use of all vesture, wearing apparel, raiments, garments, footwear and other articles of clothing, including clothing patterns and items that are to be a component part of clothing, worn or carried on or about the human body.

(ii) This paragraph does not include accessories, ornamental wear, formal day or evening apparel, and articles made of fur on the hide or pelt or any material imitative of fur and articles of which such fur, real, imitation or synthetic, is the component material of chief value, but only if such value is more than three times the value of the next most valuable component material, and sporting goods and clothing not normally used or worn when not engaged in sports.

(27) (Reserved).

(28) (Reserved).

(29) (i) The sale at retail or use of food and beverages for human consumption.

(ii) This paragraph shall not apply to any of the following:

(A) Soft drinks.

(B) Malt and brewed beverages and spirituous and vinous liquors.

(iii) Food or beverages, whether sold for consumption on or off the premises or on a “take-out” or “to go” basis or delivered to the purchaser or consumer, when purchased from persons engaged in the business of catering; or from persons engaged in the business of operating establishments from which ready-to-eat food and beverages are sold.

(iv) (A) For purposes of this paragraph the term “establishments” includes, but is not limited to, restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels, night clubs, fast food operations, pizzerias, fairs, carnivals, lunch carts, ice cream stands, snack bars, cafeterias, employee cafeterias, theaters, stadiums, arenas, amusement parks, carryout shops, coffee shops and other establishments whether mobile or immobile.

(B) The term does not include bakeries, pastry shops, donut shops, delicatessens, grocery stores, supermarkets, farmer’s markets, convenience stores or vending machines from which food or beverages ready to eat are sold except for the sale of meals, sandwiches, food from salad bars, hand-dipped or hand-served ice-based products, including ice cream and yogurt, hot soup, hot pizza and other hot food items, brewed coffee and hot beverages.

(C) The term “beverages” does not include malt and brewed beverages and spirituous and vinous liquors, but shall include soft drinks.

(v) This paragraph does not apply to the sale at retail of food and beverages at or from a school or church in the ordinary course of the activities of such organization.

(30) (i) The sale at retail or use of newspapers.

(ii) For purposes of this paragraph, the term “newspaper” shall mean a legal newspaper or publication containing matters of general interest and reports of current events which qualifies as a newspaper of general circulation qualified to carry a legal advertisement as those terms are defined in 45 Pa.C.S. § 101 (relating to definitions), not including magazines.

(iii) This paragraph includes any printed advertising materials circulated with such newspaper regardless of where or by whom the advertising material was produced.

(31) The sale at retail or use of caskets and burial vaults for human remains and markers and tombstones for human graves.

(32) The sale at retail or use of flags of the United States of America and the Commonwealth.

(33) The sale at retail or use of textbooks for use in schools, colleges and universities, either public or private, that are recognized by the Department of Education, when the textbooks are purchased on behalf of or through such schools, colleges or universities.

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

(35) The sale at retail or use of mail order catalogs and direct mail advertising literature or materials, including electoral literature or materials, such as envelopes, address labels and a one-time license to use a list of names and mailing addresses for each delivery of direct mail advertising literature or materials,

including electoral literature or materials, through the United States Postal Service.

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

(37) (Reserved).

(38) The sale at retail of horses, if at the time of purchase, the seller is directed to ship or deliver the horse to an out-of-State location, whether or not the charges for shipment are paid for by the seller or the purchaser. The seller must obtain a bill of lading, either from the carrier or from the purchaser, who, in turn has obtained the bill of lading from the carrier, reflecting delivery to the out-of-State address to which the horse has been shipped. The seller must execute a “Certificate of Delivery to Destination Outside of the Commonwealth” for each bill of lading reflecting out-of-State delivery. The seller shall retain the certificate of delivery form to justify the noncollection of sales tax with respect to the transaction to which the form relates. In transactions where a horse is sold by the seller and delivered to a domiciled person, agent or corporation prior to its being delivered to an out-of-State location, the “Certificate of Delivery to Destination Outside of the Commonwealth” form must have attached to it bills of lading both for the transfer to the domiciled person, agent or corporation and from the aforementioned to the out-of-State location.

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

(40) (Reserved).

(41) The sale at retail of supplies and materials to tourist promotion agencies which receive grants from the Commonwealth for distribution to the public as promotional material and the use of supplies and materials by the agencies for the purposes set forth in this paragraph.

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

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

(44) The sale at retail or use of firewood. For the purpose of this paragraph, “firewood” means the product of trees when severed from the land and cut into proper lengths for burning and pellets made from pure wood sawdust if used for fuel for cooking, hot water production or to heat residential dwellings.

(45) The sale at retail or use of materials used in the construction and erection of objects purchased by not-for-profit organizations for purposes of commemoration and memorialization of historical events, provided that the object is erected upon publicly owned property or property to be conveyed to a public entity upon the commemoration or memorialization of the historical event.

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

(47) (Reserved).

(48) (Reserved).

(49) The sale at retail or use of food and beverages by nonprofit associations which support sports programs. For purposes of this paragraph, the words and phrases shall have the following meanings:

“Nonprofit association.” An entity which is organized as a nonprofit corporation or nonprofit unincorporated association under the laws of this Commonwealth or the United States or any entity which is authorized to do business in this Commonwealth as a nonprofit corporation or unincorporated association under the laws of this Commonwealth, including youth or athletic, volunteer fire, ambulance, religious, charitable, fraternal,

veterans or civic, or any separately chartered auxiliary of the association, if organized and operated on a nonprofit basis.

“Sports program.” Baseball (including softball), football, basketball, soccer and any other competitive sport formally recognized as a sport by the United States Olympic Committee as specified by and under the jurisdiction of the Amateur Sports Act of 1978 (Public Law 95-606, 36 U.S.C. § 371 et seq.), the Amateur Athletic Union or the National Collegiate Athletic Association. The term shall be limited to a program or that portion of a program which is organized for recreational purposes and the activities of which are substantially for such purposes and which is primarily for participants who are 18 years of age or younger or whose 19th birthdays occur during the year of participation or the competitive season, whichever is longer. There shall, however, be no age limitation for programs operated for persons with physical disabilities or persons with mental retardation.

“Support.” The funds raised from sales are used to pay the expenses of a sports program or the nonprofit association sells the food and beverages at a location where a sports program is being conducted under this act.

(50) The sale at retail or use of subscriptions for magazines. The term “magazine” refers to a periodical published at regular intervals not exceeding three months and which are circulated among the general public, containing matters of general interest and reports of current events published for the purpose of disseminating information of a public character or devoted to literature, the sciences, art or some special industry. This paragraph includes any printed advertising material circulated with the periodical or publication, regardless of where or by whom the printed advertising material was produced.

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

(52) (Reserved).

(53) The sale at retail or use of candy or gum regardless of the location from which the candy or gum is sold.

(54) The sale at retail to or use by a producer of commercial motion pictures of any tangible personal property directly used in the production of a feature-length commercial motion picture distributed to a national audience as long as:

(i) the production of any motion picture for which the property will be used does not violate any Federal or State law; and

(ii) the purchaser furnishes to the vendor a certificate substantially in the form as the Department of Community and Economic Development may, by regulation, prescribe, stating that the sale is exempt from tax under this paragraph.

(55) The sale at retail or use of horses to be used exclusively for commercial racing activities and the sale at retail and use of feed, bedding, grooming supplies, riding tack, farrier services, portable stalls and sulkies for horses used exclusively for commercial racing activities.

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

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

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

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

(57) The sale at retail to or use by a construction contractor of building machinery and equipment and services thereto that are:

(i) Transferred pursuant to a construction contract for any charitable organization, volunteer firemen’s organization, nonprofit educational institution or religious organization for religious purposes, if:

(A) The building machinery and equipment and services thereto are not used in any unrelated trade or business.

(B) Transferred to the United States or the Commonwealth or its instrumentalities or political subdivisions.

(58) (Reserved).

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

(60) The sale or use of used prebuilt housing.

(61) The sale at retail to or use of food and nonalcoholic beverages by an airline which will transfer the food or nonalcoholic beverages to passengers in connection with the rendering of the airline service.

(62) The sale at retail or use of tangible personal property or services which are directly used in farming, dairying or agriculture when engaged in as a business enterprise whether or not the sale is made to the person directly engaged in the business enterprise or to a person contracting with the person directly engaged in the business enterprise for the production of food.

(63) The sale at retail or use of separately stated fees paid pursuant to 13 Pa.C.S. § 9525 (relating to fees).

(64) The sale at retail to or use by a construction contractor, employed by a public school district pursuant to a construction contract, of any materials and building supplies which, during construction or reconstruction, are made part of any public school building utilized for instructional classroom education within this Commonwealth, if the construction or reconstruction:

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

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

§ 1205. Alternate imposition of tax.

(a) Dealers of motor vehicles.—A person actively and principally engaged in the business of selling new or used motor vehicles, trailers or semitrailers, and registered with the department in the dealer’s class who:

(1) acquires a motor vehicle, trailer or semitrailer for the purpose of resale; and

(2) prior to the resale, uses the motor vehicle, trailer or semitrailer for a taxable use under this chapter

may pay a tax equal to 6.5% of the fair rental value of the motor vehicle, trailer or semitrailer during that use.

(b) Commercial aircraft operators.—A commercial aircraft operator who:

(1) acquires an aircraft for the purpose of resale, or lease, or is entitled to claim another valid exemption at the time of purchase; and

(2) subsequent to the purchase, periodically uses the same aircraft for a taxable use under this chapter

may elect to pay a tax equal to 6.5% of the fair rental value of the aircraft during that use.

(c) Nonapplicability.—This section shall not apply to the use of a vehicle as a wrecker, parts truck, delivery truck or courtesy car.

§ 1206. Credit against tax.

(a) Prerequisites.—

(1) Subject to the provisions of paragraph (2), a credit against the tax imposed by section 1202 (relating to imposition of tax) shall be granted with respect to tangible personal property or services purchased for use outside this Commonwealth equal to the tax paid to another state by reason of the imposition by the other state of a tax similar to the tax imposed by this chapter.

(2) No credit shall be granted under this section unless the other state grants substantially similar tax relief by reason of the payment of tax under this chapter.

(b) Call center credit.—A credit against the tax imposed by section 1202 (relating to imposition of tax) on telecommunications services shall be granted to a call center for gross receipts tax paid by a telephone company on the receipts derived from the sale of incoming and outgoing interstate telecommunications services to the call center under section 1101(a)(2) of the Tax Reform Code. The following apply:

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

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

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

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

(5) The total amount of tax credits provided for in this subsection and approved by the department shall not exceed \$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.

#### SUBCHAPTER D LICENSES

Sec.

1208. Licenses.

§ 1208. Licenses.

(a) General rule.—Every person maintaining a place of business in this Commonwealth, selling or leasing services or tangible personal property, the sale or use of which is subject to tax and who has not obtained a license from the department, shall, prior to the beginning of business, make application to the department, on a form prescribed by the department, for a license. If the person maintains more than one place of business in this Commonwealth, the license shall be issued for the principal place of business in this Commonwealth.

(b) Conditions of licensure.—The department shall, after the receipt of an application, issue the license applied for under

subsection (a), if the applicant has filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan. The license shall be nonassignable and valid for a period of five years.

(b.1) Grounds for refusal to issue license.—

(1) If an applicant for a license or any person holding a license has not filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan, the department may refuse to issue, may suspend or may revoke said license.

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

(3) An applicant or licensee aggrieved by the determination of the department may file an appeal pursuant to the provisions for administrative appeals in this chapter.

(4) In the case of a suspension or revocation which is appealed, the license shall remain valid pending a final outcome of the appeals process. Notwithstanding section 1274, and sections, 353(f), 408(b), 603, 702, 802, 904 and 1102 of the Tax Reform Code or any other provision of law to the contrary, if no appeal is taken or if an appeal is taken and denied at the conclusion of the appeal process, the department may disclose, by publication or otherwise, the identity of a person and the fact that the person's license has been refused, suspended or revoked under this subsection. The department may include the basis for refusal, suspension or revocation in the disclosure.

(c) Penalties.—

(1) A person who maintains a place of business in this Commonwealth for the purpose of selling or leasing services or tangible personal property, the sale or use of which is subject to tax, without having first been licensed by the department shall be guilty of a summary offense and, upon conviction thereof, be sentenced to pay a fine of not less than \$300 nor more than \$1,500 and, in default thereof, to undergo imprisonment of not less than five days nor more than 30 days.

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

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

(4) The Secretary of Revenue may designate employees of the department to enforce the provisions of this subsection. Those employees shall exhibit proof of and be within the scope of the designation when instituting proceedings as provided by the Pennsylvania Rules of Criminal Procedure.

(d) Liability to pay tax remains.—The failure of any person to obtain a license shall not relieve that person of liability to pay the tax imposed by this chapter.

#### SUBCHAPTER E HOTEL OCCUPANCY TAX

Sec.

1209. Definitions.

1210. Imposition of tax.

1211. Seasonal tax returns.

§ 1209. Definitions.

(a) General rule.—For the purposes of this subchapter, the following words, terms and phrases shall have the meaning given to them in this subsection, unless the context clearly indicates otherwise:

“Hotel.” A building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term shall not include any charitable, educational or religious institution summer camp for children, hospital or nursing home.

“Occupancy.” The use or possession or the right to the use or possession by any person except a permanent resident of any room or rooms in a hotel for any purpose or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms.

“Occupant.” A person except a permanent resident who for a consideration, uses, possesses or has a right to use or possess any room or rooms in a hotel under a lease, concession, permit, right of access, license or agreement.

“Operator.” A person who operates a hotel.

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

“Rent.” The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever. The term shall not include a gratuity.

(b) Special definitions.—The following words and phrases, when used in Subchapters D (relating to licenses) and F (relating to returns), for the purposes of those subchapters only, shall, in addition to the meaning ascribed to them in section 1201 (relating to definitions), have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

“Maintaining a place of business in this Commonwealth.” Being the operator of a hotel in this Commonwealth.

“Purchase at retail.” Occupancy.

“Purchase price.” Rent.

“Purchaser.” An occupant.

“Sale at retail.” The providing of occupancy to an occupant by an operator.

“Services.” Occupancy.

“Tangible personal property.” Occupancy.

“Use.” Occupancy.

“Vendor.” Operator.

#### § 1210. Imposition of tax.

There is hereby imposed an excise tax of 6.5% of the rent upon every occupancy of a room or rooms in a hotel in this Commonwealth, which tax shall be collected by the operator from the occupant and paid to the Commonwealth as provided by this chapter and the Tax Reform Code.

#### § 1211. Seasonal tax returns.

Notwithstanding any other provision of this chapter or the Tax Reform Code, the department may, by regulation, waive the requirement for the filing of quarterly returns in the case of an operator whose hotel is operated only during certain seasons of the year, and may provide for the filing of returns by such persons at times other than those provided by section 1221 (relating to payment).

### SUBCHAPTER F RETURNS

Sec.

1215. Persons required to make returns.

1216. Form of returns.

1217. Time for filing returns.

1218. Extension of time for filing returns.

1219. Place for filing returns.

1220. Timely mailing treated as timely filing and payment.

#### § 1215. Persons required to make returns.

A person required to pay tax to the department or collect and remit tax to the department shall file returns with respect to such tax.

#### § 1216. Form of returns.

The returns required by section 1215 (relating to persons required to make returns) shall be on forms prescribed by the department and shall show such information with respect to the taxes imposed by this chapter as the department may reasonably require.

#### § 1217. Time for filing returns.

(a) Quarterly and monthly returns.—

(1) A return shall be filed quarterly by every licensee on or before the 20th day of April, July, October and January for the three months ending the last day of March, June, September and December.

(2) A return shall be filed monthly with respect to each month by every licensee whose total tax reported, or in the event no report is filed, the total tax which should have been reported, for the third calendar quarter of the preceding year equals or exceeds \$650. The returns shall be filed on or before the 20th day of the next succeeding month with respect to which the return is made. Any licensee required to file monthly returns under this section shall be relieved from filing quarterly returns.

(b) Annual returns.—For the calendar year 1971 and for each year thereafter no annual return shall be filed except as may be required by rules and regulations of the department promulgated and published at least 60 days prior to the end of the year with respect to which the returns are made. Where annual returns are required, licensees shall not be required to file the returns prior to the 20th day of the year succeeding the year with respect to which the returns are made.

(c) Other returns.—A person, other than a licensee, who is liable to pay to the department any tax under this chapter, shall file a return on or before the 20th day of the month succeeding the month in which the person becomes liable for the tax.

(d) Small taxpayers.—The department, by regulation, may waive the requirement for the filing of a quarterly return in the case of any licensee whose individual tax collections do not exceed \$80 per calendar quarter and may provide for reporting on a less frequent basis in such cases.

#### § 1218. Extension of time for filing returns.

The department may on written application and for good cause shown grant a reasonable extension of time for filing any return required under this chapter. The time for making a return shall not be extended for more than three months.

#### § 1219. Place for filing returns.

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

#### § 1220. Timely mailing treated as timely filing and payment.

(a) General rule.—Notwithstanding the provisions of any State tax law to the contrary, when a report or payment of all or any portion of a State tax is required by law to be received by the department or other agency of this Commonwealth on or before a day certain, the taxpayer shall be deemed to have complied with that law if the letter transmitting the report or payment of the tax which has been received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

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

### SUBCHAPTER G PAYMENT

Sec.

1221. Payment.

1222. Time of payment.

1223. Other times for payment.

1224. Place for payment.

1225. Tax held in trust for Commonwealth.

1226. Local receivers of use tax.

1227. Discount.

#### § 1221. Payment.

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

#### § 1222. Time of payment.

(a) Monthly, bimonthly and quarterly payments.—The tax imposed by this chapter and incurred or collected by a licensee shall be due and payable by the licensee on the day the return is required to be filed under the provisions of section 1217 (relating to time for filing



returns) and the payment must accompany the return for the preceding period.

(b) Annual payments.—If the amount of tax due for the preceding year as shown by the annual return of any taxpayer is greater than the amount already paid by the taxpayer in connection with the taxpayer's monthly or quarterly returns, the taxpayer shall send with such annual return a remittance for the unpaid amount of tax for the year.

(c) Other payments.—A person other than a licensee liable to pay any tax under this chapter shall remit the tax at the time of filing the return required by this chapter.

§ 1223. Other times for payment.

In the event that the department authorizes a taxpayer to file a return at other times than those specified in section 1217 (relating to time for filing returns), the tax due shall be paid at the time the return is filed.

§ 1224. Place for payment.

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

§ 1225. Tax held in trust for Commonwealth.

(a) General rule.—All taxes collected by any person from purchasers in accordance with this chapter and all taxes collected by any person from purchasers under color of this chapter which have not been properly refunded by the person to the purchaser shall constitute a trust fund for the Commonwealth. The trust shall be enforceable against that person, his representatives and any person, other than a purchaser to whom a refund has been made properly, receiving any part of the fund without consideration, or knowing that the taxpayer is committing a breach of trust.

(b) Presumption.—A person who receives payment of a lawful obligation of the taxpayer from the fund shall be presumed to have received the same in good faith and without any knowledge of the breach of trust.

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

§ 1226. Local receivers of use tax.

(a) County treasurers.—

(1) A county treasurer may receive use tax due and payable under the provisions of this chapter from any person other than a licensee. The receiving of the taxes shall be pursuant to rules and regulations promulgated by the department and upon forms furnished by the department.

(2) 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 1% of the amount of use taxes received, which amount shall be retained in lieu of any commission otherwise allowable by law for the collection of the tax.

(b) Nonapplicability.—This section shall not apply to counties of the first class.

§ 1227. Discount.

If a return is filed by a licensee and the tax shown to be due thereon less any discount is paid all within the time prescribed, the licensee shall be entitled to credit and apply against the tax payable by the licensee a discount of 1% of the amount of the tax collected by the licensee as compensation for the expense of collecting and remitting the same and as a consideration of the prompt payment thereof.

#### SUBCHAPTER H ASSESSMENT AND REASSESSMENT

Sec.

1230. Assessment.

1231. Mode and time of assessment.

1232. Reassessment.

1233. Assessment to recover erroneous refunds.

1234. Review by Board of Finance and Revenue.

1235. Appeal to Commonwealth Court.

1236. Burden of proof.

§ 1230. Assessment.

The department is authorized and required to make the inquiries, determinations and assessments of the tax, including interest, additions and penalties, imposed by this chapter.

§ 1231. Mode and time of assessment.

(a) Underpayment of tax.—Within a reasonable time after any return is filed, the department shall examine it and, if the return shows a greater tax due or collected than the amount of tax remitted with the return, the department shall issue an assessment for the difference, together with an addition of 3% of such difference, which shall be paid to the department within ten days after a notice of the assessment has been mailed to the taxpayer. If such assessment is not paid within ten days, there shall be added to the assessment and paid to the department an additional 3% of the difference for each month during which the assessment remains unpaid, but the total of all additions shall not exceed 18% of the difference shown on the assessment.

(b) Understatement of tax.—If the department determines that any return or returns of any taxpayer understates the amount of tax due, it shall determine the proper amount and shall ascertain the difference between the amount of tax shown in the return and the amount determined, the difference being hereafter sometimes referred to as the "deficiency." A notice of assessment for the deficiency and the reasons for the deficiency shall then be sent to the taxpayer. The deficiency shall be paid to the department within 30 days after a notice of the assessment has been mailed to the taxpayer.

(c) Failure to file return.—In the event that any taxpayer fails to file a return required by this chapter, the department may make an estimated assessment, based on information available, of the proper amount of tax owing by the taxpayer. A notice of assessment in the estimated amount shall be sent to the taxpayer. The tax shall be paid within 30 days after a notice of the estimated assessment has been mailed to the taxpayer.

(d) Authority to establish effective rates by business classification.—The department is authorized to make the studies necessary to compute effective rates by business classification, based upon the ratio between the tax required to be collected and taxable sales and to use the rates in arriving at the apparent tax liability of a taxpayer. Any assessment based upon such rates shall be prima facie correct, except that the rate shall not be considered where a taxpayer establishes that the rate is based on a sample inapplicable to the taxpayer.

§ 1232. Reassessment.

(a) Notice of intention to file petition.—Any taxpayer against whom an assessment is made may petition the department for a reassessment. Notice of an intention to file such a petition shall be given to the department within 30 days of the date the notice of assessment was mailed to the taxpayer, except that the department for due cause may accept the notice within 90 days of the date the notice of assessment was mailed. The department by registered mail shall supply the taxpayer with a statement setting forth in reasonable detail the basis of the assessment within 30 days after receipt of the taxpayer's notice of intention to file a petition for reassessment.

(b) Petition for reassessment.—A petition for reassessment shall be filed within 30 days after the basis of assessment has been mailed to the taxpayer. Such petition shall set forth in reasonable detail the grounds upon which the taxpayer claims that the assessment is erroneous or unlawful, in whole or in part, and shall be accompanied by an affidavit or affirmation that the facts contained in the petition are true and correct and that the petition is not interposed for delay. An extension of time for filing the petition may be allowed for cause but in no case shall the extension exceed 120 days.

(c) Hearing.—The department shall hold such hearings as may be necessary for the purpose, at such times and places as it may determine. Each taxpayer who has duly filed a petition for reassessment shall be notified by the department of the time when, and the place where, the hearing in the taxpayer's case will be held.

(d) Decision by department.—It shall be the duty of the department, within six months after receiving a filed petition for

reassessment, to dispose of the issue raised by the petition and mail notice of the department's decision to the petitioner. The taxpayer and the department may, however, by stipulation, extend such disposal time by not more than six additional months.

§ 1233. Assessment to recover erroneous refunds.

The department may, within two years of the granting of any refund or credit, or within the period in which an assessment could have been filed by the department with respect to the transaction pertaining to which the refund was granted, whichever period occurs last, file an assessment to recover any refund or part thereof or credit or part thereof which was erroneously made or allowed.

§ 1234. Review by Board of Finance and Revenue.

(a) Time limit.—Within 60 days after the date of mailing of notice by the department of the decision on any petition for reassessment filed with it, the person against whom such assessment was made may, by petition, request the Board of Finance and Revenue to review such decision. The failure of the department to notify the petitioner of a decision within the time provided for by section 1232 (relating to reassessment) shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within 120 days of the date prior to which the department should have mailed to the petitioner its notice of decision.

(b) Petition for review.—Every petition for review filed hereunder shall state specifically the reasons on which the petitioner relies, or shall incorporate by reference the petition for reassessment in which the reasons are stated. The petition shall be supported by affidavit that it is not made for the purpose of delay and that the facts set forth therein are true.

(c) Decision by Board of Finance and Revenue.—The Board of Finance and Revenue shall act finally in disposing of petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department, upon the petition for reassessment, shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on the petition for reassessment, or it may reassess the tax due on such basis as it deems according to law. The board shall give notice of its action to the department and to the petitioner.

§ 1235. Appeal to Commonwealth Court.

Any person aggrieved by the decision of the Board of Finance and Revenue or by the board's failure to act upon a petition for review within six months may appeal in the manner now or hereafter provided by law for appeals in the case of tax settlements.

§ 1236. Burden of proof.

In all cases of petitions for reassessment, review or appeal, the burden of proof shall be upon the petitioner or appellant, as the case may be.

#### SUBCHAPTER I COLLECTION

Sec.

1237. Collection of tax.

1238. Collection of tax on motor vehicles, trailers and semitrailers.

1239. Pre-collection of tax.

1240. Bulk and auction sales.

1241. Collection upon failure to request reassessment, review or appeal.

§ 1237. Collection of tax.

(a) Collection by department.—The department shall collect the tax in the manner provided by law for the collection of taxes imposed by the laws of this Commonwealth.

(b) Collection by persons maintaining a place of business in this Commonwealth.—Every person maintaining a place of business in this Commonwealth and selling or leasing tangible personal property or services, the sale or use of which is subject to tax shall collect the tax from the purchaser or lessee at the time of making the sale or lease, and shall remit the tax to the department, unless such collection and remittance is otherwise provided for in this chapter.

(c) Collection by persons delivering property in this Commonwealth.—Every person not otherwise required to collect tax that delivers tangible personal property to a location within this Commonwealth and that unpacks, positions, places or assembles the tangible personal property shall collect the tax from the purchaser at the time of delivery and shall remit the tax to the department if the person delivering the tangible personal property is responsible for collecting any portion of the purchase price of the tangible personal property delivered and the purchaser has not provided the person with proof that the tax imposed by this chapter has been or will be collected by the seller or that the purchaser provided the seller with a valid exemption certificate. Every person required to collect tax under this paragraph shall be deemed to be selling or leasing tangible personal property or services, the sale or use of which is subject to the tax imposed under section 1202 (relating to imposition of tax).

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

(e) Exemption certificates.—If the tax does not apply to the sale or lease of tangible personal property or services, the purchaser or lessee shall furnish to the vendor a certificate indicating that the sale is not legally subject to the tax. The certificate shall be in substantially the form as the department may, by regulation, prescribe. Where the tangible personal property or service is of a type that is never subject to the tax imposed or where the sale or lease is in interstate commerce, a certificate need not be furnished. Where a series of transactions are not subject to tax, a purchaser or user may furnish the vendor with a single exemption certificate in substantially such form and valid for such period of time as the department may, by regulation, prescribe. The department shall provide all school districts and intermediate units with a permanent tax exemption number.

(f) Good faith reliance on exemption certificate.—An exemption certificate, which is complete and regular and on its face discloses a valid basis of exemption if taken in good faith, shall relieve the vendor from the liability imposed by this section. An exemption certificate accepted by a vendor from a natural person domiciled within this Commonwealth or any association, fiduciary, partnership, corporation or other entity, either authorized to do business within this Commonwealth or having an established place of business within this Commonwealth, in the ordinary course of the vendor's business, which on its face discloses a valid basis of exemption consistent with the activity of the purchaser and character of the property or service being purchased or which is provided to the vendor by a charitable, religious, educational or volunteer firemen's organization and contains the organization's charitable exemption number and which, in the case of any purchase costing \$200 or more, is accompanied by a sworn declaration on a form to be provided by the department of an intended usage of the property or service which would render it nontaxable, shall be presumed to be taken in good faith and the burden of proving otherwise shall be on the department.

(g) Direct payment permits.—The department may authorize a purchaser or lessee who acquires tangible personal property or services under circumstances that make it impossible at the time of acquisition to determine the manner in which the tangible personal property or service will be used, to pay the tax directly to the department, and waive the collection of the tax by the vendor. No such authority shall be granted or exercised, except upon application to the department and the issuance by the department, in its discretion, of a direct payment permit. If a direct payment permit is granted, its use shall be subject to conditions specified by the department, and the payment of tax on all acquisitions pursuant to the permit shall be made directly to the department by the permit holder.

§ 1238. Collection of tax on motor vehicles, trailers and semitrailers.

(a) Direct payment of tax.—Notwithstanding the provisions of section 1237(b) (relating to collection of tax), tax due on the sale at retail or use of a motor vehicle, trailer or semitrailer, except mobile homes as defined in 75 Pa.C.S. § 102 (relating to definitions) required

by law to be registered with the department, shall be paid by the purchaser or user directly to the department upon application to the department for an issuance of a certificate of title upon such motor vehicle, trailer or semitrailer. The department shall not issue a certificate of title until the tax has been paid, or evidence satisfactory to the department has been given to establish that tax is not due.

(b) Failure to pay tax.—The department may cancel or suspend any record of certificate of title or registration of a motor vehicle, trailer or semitrailer when the check received in payment of the tax on such vehicle is not paid upon demand. Such tax shall be considered as a first encumbrance against such vehicle and the vehicle may not be transferred without first payment in full of such tax and any interest additions or penalties which shall accrue thereon in accordance with this chapter.

§ 1239. Precollection of tax.

(a) General rule.—The department may, by regulation, authorize or require particular categories of vendors selling tangible personal property for resale to precollect from the purchaser the tax which the purchaser will collect upon making a sale at retail of such tangible personal property. The department, however, may not pursuant to this section require a vendor to precollect tax from a purchaser who purchases for resale more than \$1,000 worth of tangible personal property from such vendor per year.

(b) License exception.—In any case in which a vendor has been authorized to prepay the tax to the person from whom the vendor purchased the tangible personal property for resale, the vendor so authorized to prepay the tax may, under the regulations of the department, be relieved from his duty to secure a license if the duty shall arise only by reason of the vendor's sale of the tangible personal property with respect to which the vendor is, under authorization of the department, to prepay the tax.

(c) Sale at retail.—The vendor, on making a sale at retail of tangible personal property with respect to which the vendor has prepaid the tax, must separately state at the time of resale the proper amount of tax on the transaction, and reimburse himself on account of the taxes which he has previously prepaid. Should such vendor collect a greater amount of tax in any reporting period than the vendor had previously prepaid upon purchase of the goods with respect to which he prepaid the tax, the vendor must file a return and remit the balance to the Commonwealth at the time at which a return would otherwise be due with respect to such sales.

§ 1240. Bulk and auction sales.

A person that sells or causes to be sold at auction, or that sells or transfers in bulk, 51% or more of any stock of goods, wares or merchandise of any kind, fixtures, machinery, equipment, buildings or real estate, involved in a business for which the person is licensed or required to be licensed under the provisions of this chapter, or is liable for filing use tax returns in accordance with the provisions of this chapter, shall be subject to the provisions of section 1403 of the Fiscal Code.

§ 1241. Collection upon failure to request reassessment, review or appeal.

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

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

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

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

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

(b) Defenses.—In any such case in a proceeding for the collection of such taxes, the person against whom they were assessed shall not be permitted to set up any ground of defense that might have been determined by the department, the Board of Finance and Revenue or

the courts. The defense of failure of the department to mail notice of assessment or reassessment to the taxpayer and the defense of payment of assessment or reassessment, however, may be raised in proceedings for collection by a motion to stay the proceedings.

SUBCHAPTER J

NONPAYMENT

Sec.

1242. Lien for taxes.

1243. Suit for taxes.

1244. Tax suit comity.

1245. Service.

§ 1242. Lien for taxes.

(a) Lien imposed.—If any person liable to pay any tax neglects or refuses to pay the tax after demand, the amount, including any interest, addition or penalty, together with any costs that may accrue in addition thereto, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of the person but only after the lien has been entered and docketed of record by the prothonotary of the county where the property is situated. The department may, at any time, transmit, to the prothonotaries of the respective counties, certified copies of all liens for taxes imposed by this chapter and penalties and interest. It shall be the duty of each prothonotary receiving the lien to enter and docket the lien of record in the prothonotary's office, which lien shall be indexed as judgments are indexed. No prothonotary shall require, as a condition precedent to the entry of the liens, the payment of the costs incident to the liens.

(b) Priority of lien and effect on judicial date; no discharge by sale on junior lien.—The lien imposed under this section shall have priority from the date of its recording under subsection (a), and shall be fully paid and satisfied out of the proceeds of any judicial sale of property subject to the lien before any other obligation, judgment, claim, lien or estate to which the property may subsequently become subject, except costs of the sale and of the writ upon which the sale was made, and real estate taxes and municipal claims against the property, but shall be subordinate to mortgages and other liens existing and duly recorded or entered of record prior to the recording of the tax lien. In the case of a judicial sale of property, subject to a lien imposed under this section, upon a lien or claim over which the lien imposed under this section has priority, the sale shall discharge the lien imposed under this section to the extent only that the proceeds are applied to its payment, and the lien shall continue in full force and effect as to the balance remaining unpaid. There shall be no inquisition or condemnation upon any judicial sale of real estate made by the Commonwealth pursuant to the provisions hereof. The lien of the taxes, interest and penalties shall continue for five years from the date of entry, and may be revived and continued in the manner now or hereafter provided for renewal of judgments, or as may be provided in the Fiscal Code, and a writ of execution may directly issue upon the lien without the issuance and prosecution to judgment of a writ of scire facias. Not less than ten days before issuance of any execution on the lien, however, notice of the filing and the effect of the lien shall be sent by registered mail to the taxpayer at his last known post office address. The lien shall have no effect upon any stock of goods, wares or merchandise regularly sold or leased in the ordinary course of business by the person against whom the lien has been entered, unless a writ of execution has been issued and a levy made upon the stock of goods, wares and merchandise.

(c) Duty of prothonotary.—Any willful failure of any prothonotary to carry out any duty imposed upon the prothonotary by this section shall be a misdemeanor and, upon conviction, the prothonotary shall be sentenced to pay a fine not exceeding \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both.

(d) Priority of tax.—Except as otherwise provided in this section, in the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes imposed by this chapter which are due and unpaid and are not collectible under the provisions of section 1225 (relating to tax held in

trust for Commonwealth) shall be paid from the first money available for distribution in priority to all other claims and liens, except insofar as the laws of the United States may give a prior claim to the Federal Government. Any person charged with the administration or distribution of any such property or estate, who shall violate the provisions of this section, shall be personally liable for any taxes imposed by this chapter, which are accrued and unpaid and are chargeable against the person whose property or estate is being administered or distributed.

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

#### § 1243. Suit for taxes.

(a) Commencement.—At any time within three years after any tax or any amount of tax shall be finally due and payable, the department may commence an action in the courts of this Commonwealth, of any state or of the United States, in the name of the Commonwealth of Pennsylvania, to collect the amount of tax due together with additions, interest, penalties and costs in the manner provided at law or in equity for the collection of ordinary debts.

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

(c) Other remedies.—The provisions of this section are in addition to any process, remedy or procedure for the collection of taxes provided by this chapter or by the laws of this Commonwealth, and this section is neither limited by nor intended to limit any such process, remedy or procedure.

#### § 1244. Tax suit comity.

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

#### § 1245. Service.

Any person maintaining a place of business within this Commonwealth is deemed to have appointed the Secretary of the Commonwealth his agent for the acceptance of service of process or notice in any proceedings for the enforcement of the civil provisions of this chapter, and any service made upon the Secretary of the Commonwealth as such agent shall be of the same legal force and validity as if such service had been personally made upon such person. Where service cannot be made upon such person in the manner provided by other laws of this Commonwealth relating to service of process, service may be made upon the Secretary of the Commonwealth and, in such case, a copy of the process or notice shall also be personally served upon any agent or representative of such person who may be found within this Commonwealth, or where no such agent or representative may be found a copy of the process or notice shall be sent by registered mail to such person at the last known address of his principal place of business, home office or residence.

### SUBCHAPTER K

### MISCELLANEOUS PROVISIONS

#### Sec.

1246. Collection and payment of tax on credit sales.

1247. Prepayment of tax.

1247.1. Refund of sales tax attributed to bad debt.

1248. Registration of transient vendors.

1248.1. Bond.

1248.2. Notification to department; inspection of records.

1248.3. Seizure of property.

1248.4. Fines.

1248.5. Transient vendors subject to chapter.

1248.6. Promoters.

#### § 1246. Collection and payment of tax on credit sales.

If any sale subject to tax under this chapter is wholly or partly on credit, the vendor shall require the purchaser to pay in cash at the time the sale is made, or within 30 days thereafter, the total amount of tax due upon the entire purchase price. The vendor shall remit the tax to the department, regardless of whether payment was made by the purchaser to the vendor, with the next return required to be filed under section 1217 (relating to time for filing returns).

#### § 1247. Prepayment of tax.

(a) General rule.—Whenever a vendor is forbidden by law or governmental regulation to charge and collect the purchase price in advance of or at the time of delivery, the vendor shall prepay the tax as required by section 1222 (relating to time of payment), but in such case if the purchaser fails to pay to the vendor the total amount of the purchase price and the tax, and such amount is written off as uncollectible by the vendor, the vendor shall not be liable for the tax and shall be entitled to a credit or refund of the tax paid. If the purchase price is thereafter collected, in whole or in part, the amount collected shall be applied first to the payment of the entire tax portion of the bill, and shall be remitted to the department by the vendor with the first return filed after the collection.

(b) Petition for refund.—Tax prepaid shall be subject to refund upon petition to the department under the provisions of section 1252 (relating to refunds) filed within 105 days of the close of the fiscal year in which the accounts are written off.

#### § 1247.1. Refund of sales tax attributed to bad debt.

(a) Petition for refund.—A vendor may file a petition for refund of sales tax paid to the department that is attributed to a bad debt if all of the following apply:

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

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

(3) The bad debt has been deducted for Federal income tax purposes under section 166 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 166). The petition shall be filed with the department within the time limitations prescribed by section 3003.1 of the Tax Reform Code.

(b) Amount of refund.—The refund authorized by this section shall be limited to the sales tax paid to the department that is attributed to the bad debt, less any discount under section 1227 (relating to discount). Partial payments by the purchaser to the vendor shall be prorated between the original purchase price and the sales tax due on the sale. Payments made to a vendor on any transaction that includes both taxable and nontaxable components shall be allocated proportionally between the taxable and nontaxable components.

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

(d) Exclusions.—No refund shall be granted under this section for any of the following:

(1) Interest.

(2) Finance charges.

(3) Expenses incurred in attempting to collect any amount receivable.

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

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

(g) Interest.—Notwithstanding the provisions of section 806.1 of the Fiscal Code, no interest shall be paid by the Commonwealth on refunds of sales tax attributed to bad debt under this section.

(h) Exclusive remedy.—No refund or credit of sales tax shall be made for any uncollected purchase price or bad debt except as authorized by this section. No deduction or credit for bad debt may be taken on any return filed with the department. This section shall provide the exclusive procedure for claiming a refund or credit of sales tax attributed to uncollected purchase price or bad debt.

(i) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Affiliated entity.” Any corporation that is part of the same affiliated group as the vendor as defined by section 1504(a)(1) of the Internal Revenue Code of 1986.

§ 1248. Registration of transient vendors.

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

(b) Issuance of certificate.—Upon registration and the posting of the bond required by section 1248.1 (relating to bond), the department shall issue to the transient vendor a certificate, valid for one year. Upon renewal of registration, the department shall issue a new certificate, valid for one year, providing the department is satisfied that the transient vendor has complied with the provisions of this chapter.

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

(d) Notice on certificate.—The certificate issued by the department shall state that the transient vendor named therein has registered with the department and shall provide notice to the transient vendor that:

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

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

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

§ 1248.1. Bond.

(a) Bond required.—Upon registration with the department, a transient vendor shall also post a bond with the department in the amount of \$500 as surety for compliance with the provisions of this chapter. After a period of demonstrated compliance with these provisions, or, if the transient vendor provides the license number of a promoter who has notified the department of a show, in accordance with the provisions of section 1248.6(a) (relating to promoters), the department may reduce the amount of bond required of a transient vendor or may eliminate the bond entirely.

(b) Request for voluntary suspension of certificate.—A transient vendor may file a request for voluntary suspension of certificate with the department. If the department is satisfied that the provisions of this chapter have been complied with and has possession of the transient vendor’s certificate, it shall return the bond posted to the transient vendor.

§ 1248.2. Notification to department; inspection of records.

(a) Notification to department.—Prior to entering this Commonwealth to conduct business, a transient vendor shall notify the department in writing of the location or locations where it intends to conduct business and the date or dates on which it intends to conduct business.

(b) Inspection of records.—While conducting business within this Commonwealth, the transient vendor shall permit authorized

employees of the department to inspect its sales records, including, but not limited to, sales receipts and inventory or price lists and to permit inspection of the tangible personal property offered for sale at retail.

(c) Suspension or revocation of certificate.—The department may suspend or revoke a certificate issued to a transient vendor if the transient vendor:

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

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

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

(4) fails to file with the department a tax return as required by section 1217 (relating to time for filing returns).

(d) Rules and regulations.—The department shall promulgate the rules and regulations necessary to implement this section.

§ 1248.3. Seizure of property.

(a) General rule.—If a transient vendor conducting business within this Commonwealth fails to exhibit a valid certificate upon demand by authorized employees of the department, those authorized employees shall have the authority to seize, without warrant, the tangible personal property and the automobile, truck or other means of transportation used to transport or carry that property. All property seized shall be deemed contraband and shall be subject to immediate forfeiture proceedings instituted by the department pursuant to procedures adopted by regulation, except as otherwise provided by this section.

(b) Release of seized property.—Property seized pursuant to subsection (a) shall be released upon:

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

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

§ 1248.4. Fines.

Any transient vendor conducting business within this Commonwealth while its certificate is suspended or revoked, as provided by sections 1248.1(b) (relating to bond) and 1248.2(c) (relating to notification to department; inspection of records), commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$2,500 for each offense.

§ 1248.5. Transient vendors subject to chapter.

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

§ 1248.6. Promoters.

(a) License application.—A promoter of a show or shows within this Commonwealth may annually file with the department an application for a promoter’s license stating the location and dates of such show or shows. The application shall be filed at least 30 days prior to the opening of the first show and shall be in such form as the department may prescribe.

(b) Issuance of license.—Except as provided in this section, the department shall, within 15 days after receipt of an application for a license, issue to the promoter without charge a license to operate such shows. If application for a license under this section has been timely filed and if the license has not been received by the promoter prior to the opening of the show, the authorization contained in this section with respect to the obtaining of a promoter’s license shall be deemed to have been complied with, unless or until the promoter receives notice from the department denying the application for a promoter’s license.

(c) Compliance with vendor provisions.—Any promoter who is a vendor under the provisions of section 1201 (relating to definitions) shall comply with all the provisions of this chapter applicable to vendors and with the provisions of this section applicable to promoters.

(d) Duty of promoters at show.—No licensed promoter shall permit any person to display for sale or to sell tangible personal property or services subject to tax under section 1202 (relating to

imposition of tax) at a show unless such person is licensed under section 1208 (relating to licenses) and provides to the promoter the information required under section 1271.1 (relating to reports and records of promoters).

(e) Denial or revocation of license.—Any licensed promoter who permits any person to display for sale or to sell tangible personal property or service without first having been licensed under section 1208 fails to maintain records of a show under section 1271.1, knowingly maintains false records or fails to comply with any provision contained in this section or any regulation promulgated by the department pertaining to shows shall be subject to denial of a license or the revocation of any existing license issued pursuant to this section. In addition, the department may deny such promoter a license certificate to operate a show for a period of not more than six months from the date of such denial. Such penalty shall be in addition to any other penalty imposed by this chapter. Within 20 days of notice of denial or revocation of a license by the department, the promoter may petition the department for a hearing, pursuant to 2 Pa.C.S. (relating to administrative law and procedure).

#### SUBCHAPTER L REFUNDS AND CREDITS

Sec.

1250. Refund or credit for overpayment.

1251. Restriction on refunds.

1252. Refunds.

1253. Refund petition.

1254. Review by Board of Finance and Revenue.

1255. Appeal to Commonwealth Court.

1256. Extended time for filing special petition for refund.

§ 1250. Refund or credit for overpayment.

With respect to all taxes paid to a vendor or to the Commonwealth prior to April 5, 1957, in the case of any overpayment, the department, within the applicable period of limitations, may credit the amount of such overpayment against any liability in respect of the tax imposed by this chapter on the part of the person who made the overpayment, and shall refund any balance to such person.

§ 1251. Restriction on refunds.

No refund shall be made under section 1250 (relating to refund or credit for overpayment) without the approval of the Board of Finance and Revenue.

§ 1252. Refunds.

The department shall, pursuant to the provisions of sections 1253 (relating to refund petition) and 1254 (relating to review by Board of Finance and Revenue), refund all taxes, interest and penalties paid to the Commonwealth under the provisions of this chapter and to which the Commonwealth is not rightfully entitled. Refunds shall be made to the person, his heirs, successors, assigns or other personal representatives, who actually paid the tax. No refund shall be made under this section with respect to any payment made by reason of an assessment with respect to which a taxpayer has filed a petition for reassessment pursuant to section 1232 (relating to reassessment) to the extent that the petition has been determined adversely to the taxpayer by a decision which is no longer subject to further review or appeal. Nothing contained herein shall be deemed to prohibit a taxpayer who has filed a timely petition for reassessment from amending it to a petition for refund where the petitioner has paid the tax assessed.

§ 1253. Refund petition.

(a) Petition requirements and hearing.—Except as provided for in section 1256 (relating to extended time for filing special petition for refund) and in subsections (b) and (d), the refund or credit of tax, interest or penalty provided for by section 1252 (relating to refunds) shall be made only where the person who has actually paid the tax files a petition for refund with the department under section 3003.1 of the Tax Reform Code. The petition for refund must set forth in reasonable detail the grounds upon which the taxpayer claims that the Commonwealth is not rightfully entitled to such tax, interest or penalty, in whole or in part, and shall be accompanied by an affidavit affirming that the facts contained in the petition are true and correct.

The department may hold hearings as necessary for the purpose at the times and places as it may determine, and each person who has filed a refund petition shall be notified by the department of the time when, and the place where, the hearing will be held.

(b) Refund upon assessment.—A refund or credit of tax, interest or penalty, paid as a result of an assessment made by the department under section 1231 (relating to mode and time of assessment), shall be made only where the person who has actually paid the tax files with the department a petition for a refund with the department under section 3003.1(d) of the Tax Reform Code. The filing of a petition for refund, under the provisions of this subsection, shall not affect the abatement of interest, additions or penalties to which the person may be entitled by reason of his payment of the assessment.

(c) Decision by department.—It shall be the duty of the department, within six months after receiving a petition for refund, to dispose of the issue raised by the petition, and mail notice of the department's decision to the petitioner. The taxpayer and the department may, however, by stipulation, extend such disposal time by not more than six additional months.

(d) Unconstitutional tax provision or erroneous interpretation of provision.—Notwithstanding any other provision of this section, where any tax, interest or penalty has been paid under a provision of this chapter subsequently held by final judgment of a court of competent jurisdiction to be unconstitutional, or under an interpretation of such provision subsequently held by such court to be erroneous, a petition for refund may be filed either before or subsequent to final judgment, but such petition must be filed under section 3003.1 of the Tax Reform Code. The department shall have jurisdiction to hear and determine any such petition filed prior to such final judgment only if, at the time of filing of the petition, proceedings are pending in a court of competent jurisdiction wherein the claim of unconstitutionality or of erroneous interpretation, made in the petition for refund may be established, and in such case, the department shall not take final action upon the petition for refund until the judgment determining the question involved in such petition has become final.

§ 1254. Review by Board of Finance and Revenue.

Within 90 days after the date of mailing of notice by the department of the decision upon a petition for refund filed with it, pursuant to section 1253 (relating to refund petition), the petitioner may further petition the Board of Finance and Revenue to review the decision of the department. The failure of the department to notify the petitioner of its decision within the time provided for by section 1253 shall act as a denial of the petition, and a petition for review may be filed with the Board of Finance and Revenue within 120 days of the date prior to which the department should have mailed to the petitioner its notice of decision. Every petition for review filed with the Board of Finance and Revenue under the provisions of this section shall incorporate by reference the petition for refund. The petitioner may, in his petition for review, elect to withdraw one or more grounds as set out in the original refund petition. The Board of Finance and Revenue shall act finally in disposing of such petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department upon the petition for refund shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on a petition for refund, or it may redetermine whether a lesser or greater amount of refund is proper. Under no circumstances may the Board of Finance and Revenue authorize a refund greater than that originally applied for by the petitioner. The Board of Finance and Revenue shall give notice of its action to the department and to the petitioner.

§ 1255. Appeal to Commonwealth Court.

Any person aggrieved by the decision of the Board of Finance and Revenue under section 1254 (relating to review by Board of Finance and Revenue) or by the board's failure to act upon a petition for review within six months may appeal in the manner now or hereafter provided for by law for appeals in the case of tax settlements.

§ 1256. Extended time for filing special petition for refund.

Any party to a transaction who has paid tax by reason of a transaction with respect to which the department is assessing tax against another person may, within six months after the filing by the department of the assessment against such other person, file a special petition for refund, notwithstanding his failure to file a regular petition within three years of the payment. The provisions of sections 1253 (relating to refund petition), 1254 (relating to review by Board of Finance and Revenue) and 1255 (relating to appeal to Commonwealth Court) shall be applicable to such special petition for refund, except that the department need not act on such petition until there is a final determination as to the propriety of the assessment filed against the other party to the transaction. Where a petition is filed under this provision in order to take advantage of the extended period of limitations, overpayments by the petitioner shall be refunded but only to the extent of the actual tax, without consideration of interest and penalties, paid by the other party to the transaction. The purpose of this section is to avoid duplicate payment of tax where a determination is made by the department that one party to a transaction is subject to tax, and another party to the transaction has previously paid tax with respect to such transaction; and this section shall be construed as extending right beyond that provided for by section 1253, and not to limit such other section.

#### SUBCHAPTER M LIMITATIONS

Sec.

1258. Limitation on assessment and collection.

1259. Failure to file return.

1260. False or fraudulent return.

1261. Extension of limitation period.

§ 1258. Limitation on assessment and collection.

The amount of the tax imposed by this chapter shall be assessed within three years after the date when the return provided for by section 1217(a) or (c) (relating to time for filing returns) is filed or the end of the year in which the tax liability arises, whichever occurs last. The assessment may be made at any time during such period notwithstanding that the department may have made one or more previous assessments against the taxpayer for the year in question, or for any part of such year. In any such case, no credit shall be given for any penalty previously assessed or paid.

§ 1259. Failure to file return.

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

§ 1260. False or fraudulent return.

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

§ 1261. Extension of limitation period.

Notwithstanding any of the foregoing provisions of this chapter, where, before the expiration of the period prescribed therein for the assessment of a tax, a taxpayer has consented in writing that the period be extended, the amount of tax due may be assessed at any time within the extended period. The period so extended may be extended further by subsequent consents in writing made before the expiration of the extended period.

#### SUBCHAPTER N INTEREST, ADDITIONS, PENALTIES AND CRIMES

Sec.

1265. Interest.

1266. Additions to tax.

1267. Penalties.

1268. Crimes.

1269. Abatement of additions or penalties.

§ 1265. Interest.

If any amount of tax imposed by this chapter is not paid to the department on or before the last date prescribed for payment, interest

on the amount at the rate of .75% per month for each month, or fraction thereof, from such date, shall be paid for the period from the last date to the date paid. The last date prescribed for payment shall be determined under section 1222(a) or (c) (relating to time of payment) without regard to any extension of time for payment. In the case of any amount assessed as a deficiency or as an estimated assessment, the date prescribed for payment shall be 30 days after notice of the assessment.

§ 1266. Additions to tax.

(a) Failure to file return.—In the case of failure to file any return required by section 1215 (relating to persons required to make returns) on the date prescribed for filing, determined with regard to any extension of time for filing, and in the case in which a return filed understates the true amount due by more than 50%, there shall be added to the amount of tax actually due 5% of the amount of such tax if the failure to file a proper return is for not more than one month, with an additional 5% for each additional month, or fraction thereof, during which the failure continues, not exceeding 25% in the aggregate. In every such case at least \$2 shall be added.

(b) Addition for understatement.—There shall be added to every assessment under section 1231(b) (relating to mode and time of assessment) an addition equal to 5% of the amount of the understatement and no addition to the tax shall be paid under section 1231(a).

(c) Interest.—If the department assesses a tax according to section 1231(a), (b) or (c), there shall be added to the amount of the deficiency interest at the rate of .75% per month for each month, or fraction thereof, from the date prescribed by section 1222(a) or (c) (relating to time of payment) for the payment of the tax to the date of notice of the assessment.

§ 1267. Penalties.

(a) Penalty assessed as tax.—The penalties, additions, interest and liabilities provided by this chapter shall be paid upon notice and demand by the department, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this chapter to “tax” imposed by this chapter shall be deemed also to refer to the penalties, additions, interest and liabilities provided by this chapter.

(b) Attempt to evade or defeat tax.—Any person who willfully attempts, in any manner, to evade or defeat the tax imposed by this chapter, or the payment thereof, or to assist any other person to evade or defeat the tax imposed by this chapter, or the payment thereof, or to receive a refund improperly, shall, in addition to other penalties provided by law, be liable for a penalty equal to one-half of the total amount of the tax evaded.

(c) Burden of proof.—In any direct proceeding arising out of a petition for reassessment or refund as provided in this chapter, in which an issue of fact is raised with respect to whether a return is fraudulent or with respect to the propriety of the imposition by the department of the penalty prescribed in subsection (b), the burden of proof with respect to such issue shall be upon the department.

§ 1268. Crimes.

(a) Fraudulent return.—Any person who with intent to defraud the Commonwealth shall willfully make, or cause to be made, any return required by this chapter, which is false, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding \$2,000 or to imprisonment for not more than three years, or both.

(b) Other crimes.—Except as otherwise provided by subsection (a), the following persons commit a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both:

(1) Any person who advertises or holds out or states to the public or to any purchaser or user, directly or indirectly, that the tax or any part thereof imposed by this chapter will be absorbed by such person, or that it will not be added to the purchase price of the tangible personal property or services described in paragraphs (2), (3), (4) and (11) through (18) under the definition of “sale at retail” in section 1201 (relating to

definitions) sold or, if added, that the tax or any part thereof will be refunded, other than when the person refunds the purchase price because of the property being returned to the vendor.

(2) Any person selling or leasing tangible personal property or services the sale or use of which by the purchaser is subject to tax under this chapter, who shall willfully fail to collect the tax from the purchaser and timely remit the same to the department.

(3) Any person who shall willfully fail or neglect to timely file any return or report required by this chapter or any taxpayer who shall refuse to timely pay any tax, penalty or interest imposed or provided for by this chapter, or who shall willfully fail to preserve his books, papers and records as directed by the department.

(4) Any person who shall refuse to permit the department or any of its authorized agents to examine his books, records or papers, or who shall knowingly make any incomplete, false or fraudulent return or report, or who shall do, or attempt to do, anything whatever to prevent the full disclosure of the amount or character of taxable sales purchases or use made by himself or any other person, or shall provide any person with a false statement as to the payment of tax with respect to particular tangible personal property or services, or shall make, utter or issue a false or fraudulent exemption certificate.

(c) Place of business outside Commonwealth.—Any person maintaining a place of business outside this Commonwealth may absorb the tax with respect to taxable sales made in the normal course of business to customers present at the place of business without being subject to the penalty and fines under subsection (b).

(d) Prepaid mobile telecommunications services.—Advertising tax-included prices shall be permissible, if the prepaid services are sold by the service provider, for prepaid telecommunications services not evidenced by the transfer of tangible personal property or for prepaid mobile telecommunications services.

(e) Other penalties.—The penalties imposed by this section shall be in addition to any other penalties imposed by any provision of this chapter.

#### § 1269. Abatement of additions or penalties.

Upon the filing of a petition for reassessment or a petition for refund as provided under this chapter by a taxpayer, additions or penalties imposed upon such taxpayer by this chapter may be waived or abated, in whole or in part, where the petitioner has established that he has acted in good faith, without negligence and with no intent to defraud.

### SUBCHAPTER O ENFORCEMENT AND EXAMINATIONS

Sec.

1270. Rules and regulations.

1271. Keeping of records.

1271.1. Reports and records of promoters.

1272. Examinations.

1273. Records and examinations of delivery agents.

1274. Unauthorized disclosure.

1275. Cooperation with other governments.

1276. Interstate compacts.

1277. Bonds.

§ 1270. Rules and regulations.

(a) General rule.—The department is charged with the enforcement of this chapter, and is authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations not inconsistent with the provisions of this chapter, relating to any matter or thing pertaining to the administration and enforcement of this chapter, and the collection of taxes, penalties and interest imposed by this chapter. The department may prescribe the extent, if any, to which its rules and regulations shall be applied without retroactive effect.

(b) Sales between affiliated interests.—In determining the purchase price of taxable sales where, because of affiliation of interests between the vendor and the purchaser or irrespective of any affiliation,

if for any other reason, the purchase price of the sale is in the opinion of the department not indicative of the true value of the article or the fair price thereof, the department shall, pursuant to uniform and equitable rules, determine the amount of constructive purchase price upon the basis of which the tax shall be computed and levied. The rules shall provide for a constructive amount of a purchase price for each sale, which price shall equal a price for the article which would naturally and fairly be charged in an arm's-length transaction in which the element of common interests between vendor and purchaser, or, if no common interest exists, any other element causing a distortion of the price or value is absent. For the purpose of this chapter where a taxable sale occurs between a parent corporation and a subsidiary affiliate or controlled corporation of the parent, there shall be a rebuttable presumption that because of the common interest the transaction was not at arm's-length.

§ 1271. Keeping of records.

(a) General rule.—Each person liable for any tax imposed by this chapter, or for the collection of any tax imposed by this chapter, shall keep the records, render the statements, make the returns and comply with the rules and regulations that the department may, from time to time, prescribe regarding matters pertinent to the persons business. Whenever in the judgment of the department it is necessary, it may require any person, by notice served upon the person, or by regulations, to make returns, render statements or keep records as the department deems sufficient to show whether or not the person is liable to pay or collect tax under this chapter.

(b) Persons collecting tax from others.—Any person liable to collect tax from another person under this chapter shall file reports, keep records, make payments and be subject to interest and penalties as provided for under this chapter, in the same manner as if the person were directly subject to the tax.

(c) Records of nonresidents.—A nonresident who does business in this Commonwealth as a retail dealer shall keep adequate records of the business or businesses and of the tax due with respect to the business or businesses, which records shall at all times be retained within this Commonwealth unless retention outside this Commonwealth is authorized by the department. No taxes collected from purchasers shall be sent outside this Commonwealth without the written consent of and in accordance with conditions prescribed by the department. The department may require a taxpayer who desires to retain records or tax collections outside this Commonwealth to assume reasonable out-of-State audit expenses.

(d) Keeping of separate records.—Any person doing business as a retail dealer who at the same time is engaged in another business or businesses which do not involve the making of sales taxable under this chapter shall keep separate books and records of the person's businesses so as to show the sales taxable under this chapter separately from the person's sales not taxable under this chapter. If the person fails to keep separate books and records, the person shall be liable for tax at the rate designated in section 1202 (relating to imposition of tax) upon the entire purchase price of sales from both or all of the person's businesses.

(e) Other methods.—

(1) In those instances where a vendor gives no sales memoranda or uses registers showing only total sales, the vendor must adopt some method of segregating tax from sales receipts and keep records showing the segregation, all in accordance with proper accounting and business practices.

(2) A vendor may apply to the department for permission to use a collection and recording procedure which will show the information as the law requires with reasonable accuracy and simplicity. A vendor's application must contain a detailed description of the procedure to be adopted. Permission to use the proposed procedure is not to be construed as relieving the vendor from remitting the full amount of tax collected. The department may revoke permission upon 30 days' notice to the vendor. Refusal of the department to grant permission in advance to use the procedure shall not be construed to invalidate a



procedure which upon examination shows the information as the law requires.

§ 1271.1. Reports and records of promoters.

Each licensed promoter shall keep a record of the date and place of each show and the name, address, sales, use and hotel occupancy license number of each person whom the licensed promoter permits to display for sale or to sell tangible personal property or services subject to tax under section 1202 (relating to imposition of tax) at the show. The records shall be open for inspection and examination at any reasonable time by the department or its authorized representative, and the records shall, unless the department consents in writing to an earlier destruction, be preserved for three years after the date the report was filed or the date it was due, whichever occurs later, except that the department may by regulation require that they be kept for a longer period of time.

§ 1272. Examinations.

The department or any of its authorized agents are authorized to examine the books, papers and records of any taxpayer in order to verify the accuracy and completeness of any return made or, if no return was made, to ascertain and assess the tax imposed by this chapter. The department may require the preservation of any books, papers and records for any period deemed proper by it but not to exceed three years from the end of the calendar year to which the records relate. Each taxpayer is required to give to the department, or its agent, the means, facilities and opportunity for examinations and investigation. The department is further authorized to examine any person, under oath, concerning taxable sales or use by any taxpayer or concerning any other matter relating to the enforcement or administration of this chapter, and to this end may compel the production of books, papers and records and the attendance of all persons whether as parties or witnesses whom it believes to have knowledge of such matters. The procedure for hearings or examinations shall be the same as that provided by the Fiscal Code, relating to inquisitorial powers of fiscal officers.

§ 1273. Records and examinations of delivery agents.

Each agent for the purpose of delivery of goods shipped into this Commonwealth by a nonresident including, but not limited to, common carriers, shall maintain adequate records of the deliveries pursuant to rules and regulations adopted by the department and shall make the records available to the department upon request after due notice.

§ 1274. Unauthorized disclosure.

Any information gained by the department as a result of any return, examination, investigation, hearing or verification, required or authorized by this chapter, shall be confidential, except for official purposes and except in accordance with proper judicial order or as otherwise provided by law, and any person unlawfully divulging the information commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both.

§ 1275. Cooperation with other governments.

Notwithstanding the provisions of section 1274 (relating to unauthorized disclosure), the department may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any state, or the authorized representative of either, to inspect the tax returns of any taxpayer, or may furnish to such officer or to an authorized representative an abstract of the return of any taxpayer, or supply the officer with information concerning any item contained in any return or disclosed by the report of any examination or investigation of the return of any taxpayer. This permission shall be granted only if the statutes of the United States or of the other state, as the case may be, grant substantially similar privileges to the proper officer of the Commonwealth charged with the administration of this chapter.

§ 1276. Interstate compacts.

The Governor, or an authorized representative, has the authority to confer with the governors and the authorized representatives of other states with respect to reciprocal use tax collection between Pennsylvania and the other states. The Governor, or a representative,

is authorized to join with the authorities of other states to conduct joint investigations, to exchange information, to hold joint hearings and to enter into compacts or interstate agreements with the other states to accomplish uniform reciprocal use tax collections between those states who are parties to any compact or interstate agreement and the Commonwealth of Pennsylvania.

§ 1277. Bonds.

(a) Taxpayer to file bond.—

(1) Whenever the department, in its discretion, deems it necessary to protect the revenues to be obtained under this chapter, it may require any nonresident natural person or any foreign corporation, association, fiduciary, partnership or other entity not authorized to do business within this Commonwealth or not having an established place of business in this Commonwealth and subject to the tax imposed by section 1202 (relating to imposition of tax) to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in an amount as the department may fix, to secure the payment of any tax or penalties due, or which may become due, from the natural person or corporation.

(2) In order to protect the revenues to be obtained under this chapter, the department shall require any nonresident natural person or any foreign corporation, association, fiduciary, partnership or entity, who or which is a building contractor, or who or which is a supplier delivering building materials for work in this Commonwealth and is not authorized to do business within this Commonwealth or does not have an established place of business in this Commonwealth and is subject to the tax imposed by section 1202 to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in an amount as the department may fix, to secure the payments of any tax or penalties due, or which may become due, from the natural person, corporation or other entity.

(3) The department may also require a bond of any person petitioning the department for reassessment, in the case of any assessment over \$500 or where it is of the opinion that the ultimate collection is in jeopardy. The department may, for a period of three years, require a bond of any person who has on three or more occasions within a 12-month period either filed a return or made payment to the department more than 30 days late.

(4) In the event that the department determines that a taxpayer is to file a bond, it shall give notice to the taxpayer to that effect, specifying the amount of the bond required. The taxpayer shall file the bond within five days after the giving of notice by the department unless, within the five days, the taxpayer shall request, in writing, a hearing before the Secretary of Revenue or a representative at which hearing the necessity, propriety and amount of the bond shall be determined by the secretary or representative. The determination shall be final and shall be complied with within 15 days after notice of the determination is mailed to the taxpayer.

(b) Securities in lieu of bond.—In lieu of the bond required by this section, securities approved by the department, or cash in an amount as prescribed by the department, may be deposited. The securities or cash shall be kept in the custody of the department, which may, at any time, without notice to the depositor, apply them to any tax, interest or penalties due, and for that purpose the securities may be sold by the department, at public or private sale, upon five days' written notice to the depositor.

(c) Failure to file bond.—The department may file a lien pursuant to section 1242 (relating to lien for taxes) against any taxpayer who fails to file a bond when required to do so under this section. All funds received upon execution of the judgment on a lien shall be refunded to the taxpayer with 3% interest should a final determination be made that the taxpayer does not owe any payment to the department.

SUBCHAPTER P  
APPROPRIATION; EFFECTIVE DATE

Sec.

1281. Appropriation for refunds.

1281.1. Construction of chapter.

1281.2. Transfers to Public Transportation Assistance Fund.

1281.3. Transfer to Property Tax Relief Fund.

§ 1281. Appropriation for refunds.

So much of the proceeds of the tax imposed by this chapter as shall be necessary for the payment of refunds, enforcement or administration under this chapter is hereby appropriated for such purposes.

§ 1281.1. Construction of chapter.

To the extent that the language of this chapter is identical to that of equivalent provisions in the former act of March 6, 1956 (1955 P.L.1228, No.381), known as the Tax Act of 1963 for Education, the language shall be deemed a reenactment of the identical provisions.

§ 1281.2. Transfers to Public Transportation Assistance Fund.

(a) Transfer from imposition of tax on periodicals.—All revenues received on or after July 1, 1992, from the imposition of the tax on periodicals shall be transferred to the Public Transportation Assistance Fund according to the formula set forth in subsection (b).

(b) Transfer to Public Transportation Assistance Fund.—Within 30 days of the close of any calendar month, 0.44% of the taxes received in the previous month under this chapter, less any amounts collected in that previous calendar month under former 74 Pa.C.S. § 1314(d) (relating to Public Transportation Assistance Fund), shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code.

(c) Other transfer.—Within 30 days of the close of any calendar month, 0.09% of the taxes received in the previous month under this chapter shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code.

(d) Transfer after June 30, 2003.—Within 30 days of the close of a calendar month, 0.417% of the taxes received in the previous month under this chapter shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code. This subsection applies to deposits into the Public Transportation Assistance Fund made after June 30, 2003.

§ 1281.3. Transfer to Property Tax Relief Fund.

Within 30 days of the close of any calendar month, 7.692% of the taxes received in the previous month under this chapter shall be transferred to the Property Tax Relief Fund.

CHAPTER 13

SPECIAL SITUS FOR LOCAL SALES TAX

Sec.

1301. Definitions.

1302. Leased or rental vehicles or crafts.

1303. Construction materials.

1304. Mobile telecommunications services.

§ 1301. Definitions.

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

“Lease.” A contract for the use of a motor vehicle or other tangible personal property referred to in section 1302(a) (relating to leased or rental vehicles or crafts) for a period of 30 days or more.

“Rental.” A contract for the use of a motor vehicle or other tangible personal property referred to in section 1302(b) (relating to leased or rental vehicles or crafts) for a period of less than 30 days.

§ 1302. Leased or rental vehicles or crafts.

(a) Lease.—For purposes of this chapter, the lease of a motor vehicle, trailer, semitrailer or mobile home, as defined in 75 Pa.C.S. (relating to vehicles), or of a motorboat, aircraft or other similar tangible personal property required under either Federal or State laws to be registered or licensed shall be deemed to have been completed or used at the address of the lessee. In the case of a lease, the tax shall be paid by the lessee to the lessor.

(b) Rental.—For purposes of this chapter, the rental of a motor vehicle, trailer, semitrailer or mobile home, as defined in 75 Pa.C.S., or of a motorboat, aircraft or other similar tangible personal property required under either Federal or State laws to be registered or licensed shall be deemed to be consummated at the place of business of the retailer. In the case of a rental, the tax due shall be paid by the renter to the retailer.

(c) Applicability.—This chapter shall only apply to any sales tax imposed under Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code, and under the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

§ 1303. Construction materials.

(a) Final destination.—Notwithstanding the provisions of section 504 of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, the sale or use of road construction material, including recycled asphalt, recycled concrete, asphalt, concrete and road aggregates, shall be deemed to have been consummated at the location of its final destination. Final destination will be determined by reference to delivery or shipping documents relating to such sales.

(b) Applicability.—This section shall apply to taxes levied under Chapter 5 of the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class. This section shall not apply to taxes levied under Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

§ 1304. Mobile telecommunications services.

(a) Primary use.—For purposes of this chapter, the situs of the sales or use of mobile telecommunications services which are deemed to be provided to a customer by a home service provider under section 117 of the Mobile Telecommunications Sourcing Act (4 U.S.C. § 117(a) and (b)) shall be the customer’s place of primary use regardless of where the mobile telecommunications services originate, terminate or pass through.

(b) Definitions.—For purposes of this section, words and phrases used in this section shall have the meanings given to them in the Mobile Telecommunications Sourcing Act.

PART III  
TAX RELIEF

Chapter

21. Homeowner Property Tax Relief

CHAPTER 21

HOMEOWNER PROPERTY TAX RELIEF

Subchapter

A. General Provisions

B. Formula

C. School District Homestead and Farmstead Exclusion

D. Tax Relief in Cities of the First Class

E. Reserve Fund

SUBCHAPTER A  
GENERAL PROVISIONS

Sec.

2101. Scope.

2102. Definitions.

§ 2101. Scope.

This chapter relates to the allocation of State funds for homestead and farmstead property tax reductions.

§ 2102. Definitions.

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

“Allocation maximum.” The Statewide average reduction plus a numerical value of 0.05. The allocation maximum shall not be greater than a numerical value of 0.65.

“Allocation minimum.” The Statewide average reduction minus a numerical value of 0.05. The allocation minimum shall not be less than a numerical value of 0.05.

“Assessor.” The term as it is defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Average daily membership.” All resident pupils of the school district for whom the school district is financially responsible. It shall be calculated by dividing the aggregate days membership for all children on active rolls by the number of days the school is in session.

“Department.” The Department of Education of the Commonwealth.

“Equalized millage.” The term shall have the same usage as defined in section 2501(9.2) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

“Farmstead.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Farmstead property.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Fund.” The Property Tax Relief Fund.

“Homestead.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Homestead property.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Real property tax.” The total dollar value of real property taxes paid by property owners in a school district determined by adding the real property taxes collected by, or on behalf of, the school district plus all State allocations received pursuant to this chapter.

“Real property tax liability.” The assessed value of the real property of the taxpayer multiplied by the millage rate of the school district.

“Residential property tax.” The dollar value of real property taxes paid by residential property owners in a school district, determined by multiplying:

(1) the real property taxes collected by the school district; by

(2) the percentage of the total property value in the school district classified as residential by the State Tax Equalization Board.

“School district.” A school district of the first class, first class A, second class, third class or fourth class.

“School district of the first class.” Includes the governing body of a city of the first class.

“Secretary.” The Secretary of the Budget of the Commonwealth.

“Statewide Average Reduction.” The amount certified under section 2111 divided by the sum of all residential property taxes for all school districts collected during the third year immediately preceding the fiscal year for which the certification is being made, rounded to the nearest one-tenth of one percent.

“Taxpayer.” A person required to pay a real property tax.

#### SUBCHAPTER B FORMULA

Sec.

2111. Certification.

2112. Notification.

2113. State allocation.

§ 2111. Certification.

(a) Initial.—By April 15, 2007, the secretary shall certify the greater of the following:

(1) The total amount of revenue that is reasonably projected to be deposited into the fund for the period through June 30, 2007.

(2) \$400,000,000.

(b) Annual.—Beginning April 15, 2008, and each April 15 thereafter, the secretary shall certify the greater of the following:

(1) The total amount of revenue that is reasonably expected to be deposited into the fund for the current fiscal year.

(2) The amount certified by the secretary under this section for the prior fiscal year.

(c) Excess.—If the actual revenue deposited into the fund in any one fiscal year exceeds the amount certified in this section, any revenue

in excess of projections shall remain in the fund and shall be included in the certification for the subsequent fiscal year.

(d) Shortage.—If the actual revenue deposited into the fund in any one fiscal year is less than the amount certified in this section, the secretary shall transfer from the Property Tax Relief Reserve Fund to the fund either of the following:

(1) For calendar year 2007, the amount equal to the difference between the amount certified under subsection (a) and \$400,000,000.

(2) For calendar year 2008 and each calendar year thereafter, the amount equal to the difference between the amount certified under subsection (b) and the amount certified under this section for the prior year.

§ 2112. Notification.

By April 20, 2007, and each April 20 thereafter, the secretary shall notify the department of the amount certified pursuant to section 2111 (relating to certification) for calculation of the allocation for each school district under section 2113 (relating to State allocation).

§ 2113. State allocation.

(a) Calculation.—The department shall calculate the State allocation for each school district as follows:

(1) For the 2007-2008 fiscal year:

(i) Multiply the school district’s 2004-2005 average daily membership by the school district’s 2004-2005 equalized millage.

(ii) Multiply the product under subparagraph (i) by the dollar amount necessary to allocate all of the money in the fund as certified under section 2111 (relating to certification).

(iii) If the allocation under this paragraph is less than the product of the residential property taxes collected during the 2004-2005 fiscal year and the allocation minimum for a school district, the school district shall receive an additional amount so that the total allocation under this paragraph is equal to the product of the residential property taxes collected during the 2004-2005 fiscal year and the allocation minimum.

(iv) If the allocation under this paragraph is greater than the product of the residential property taxes collected during the 2004-2005 fiscal year and the allocation maximum for a school district, the school district shall receive a total allocation equal to the product of the residential property taxes collected during the 2004-2005 fiscal year and the allocation maximum.

(2) For subsequent fiscal years:

(i) Multiply the school district’s average daily membership for the third fiscal year immediately preceding the fiscal year for which the allocation is being made by the school district’s equalized millage for the third fiscal year immediately preceding the fiscal year for which the allocation is being made.

(ii) Multiply the product under subparagraph (i) by the dollar amount necessary to allocate all of the money in the fund as certified under section 2111.

(iii) If the allocation under this paragraph is less than the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation minimum for a school district, the school district shall receive an additional amount so that the total allocation under this paragraph is equal to the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation minimum.

(iv) If the allocation under this paragraph is greater than the product of the residential property taxes collected during the third fiscal year immediately

preceding the fiscal year for which the allocation is being made and the allocation maximum for a school district, the school district shall receive a total allocation equal to the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation maximum.

(b) Notice.—By May 15, 2007, and each May 15 thereafter, the department shall notify each school district of the amount of the State allocation it is eligible to receive.

(c) Payment.—Beginning 2007 and each year thereafter, the department shall pay from the fund to each school district a State allocation which shall be made concurrently with the first payment under section 2517 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

(d) Use of payments.—Except as provided in Subchapter D, the State allocation for a school district shall be used for homestead and farmstead exclusions under Subchapter C.

SUBCHAPTER C  
SCHOOL DISTRICT HOMESTEAD  
AND FARMSTEAD EXCLUSION

Sec.

2121. Homestead and farmstead applications.

2122. Homestead and farmstead exclusion process.

2123. School district tax notices.

§ 2121. Homestead and farmstead applications.

(a) Initial notification and application.—By October 18, 2004, a board of school directors shall notify by first class mail the owner of each parcel of residential property within the district that the owner must submit a completed application in accordance with 53 Pa.C.S. § 8584(a) (relating to administration and procedure). The board shall provide a second notice by first class mail no later than 60 days prior to the application deadline in subsection (c). Each notice shall include an application to be filed with the assessor of the county where the property is located, instructions for completing the application and the deadline to apply. A school district may limit the second notice to those owners of residential property that have not responded to the initial notification.

(b) Annual notification.—No later than 60 days prior to the application deadline in subsection (c), a board of school directors shall notify by first class mail the owner of each parcel of residential property within the district of the existence of the school district's homestead and farmstead exclusion program, the need to file an application in accordance with 53 Pa.C.S. § 8584(a) in order to qualify for the program and the application deadline. The annual notice shall include all information required under subsection (a). A school district may limit the annual notification to those owners of residential property:

- (1) who are not currently approved; or
- (2) whose approval is due to expire.

(c) Application deadline.—In accordance with 53 Pa.C.S. § 8584(b), the deadline for filing an application with the assessor shall be March 1.

(d) Action on application.—Real property for which an application has been filed by the application deadline shall be deemed to be a homestead or farmstead property which is eligible for a homestead or farmstead exclusion unless the assessor denies the application. Denials of application by the assessor and the right to appeal that decision shall be in accordance with 53 Pa.C.S. § 8584(d) and (e).

(e) Application review and submission.—Except as set forth in 53 Pa.C.S. § 8584(j), an assessor shall not require the owner of a previously approved property to resubmit an application more than one time every three years.

(f) Applicability.—The provisions of 53 Pa.C.S. § 8584(f), (g), (h) and (j) shall apply to any application filed under this section.

(g) Duties of assessors.—

(1) The assessor shall mail to the owner of property for which an application has been submitted and approved or denied under this section notice of such fact no later than 30 days after receipt of the application.

(2) The assessor shall notify the owner of any homestead or farmstead property designated as such under any other statute of the need, if any, to resubmit an application to maintain the property's eligibility as a homestead or farmstead property. Nothing in this paragraph shall prohibit a county assessor from designating property previously determined to be homestead or farmstead property under any other statute as homestead or farmstead property for purposes of this section.

(3) The assessor shall provide each school district with a certified report, as provided in 53 Pa.C.S. § 8584(i), no later than May 1 of each year.

(h) Uniform application and instructions.—The application to designate property as homestead or farmstead property shall be uniform and shall include instructions for completing the application. The Department of Community and Economic Development shall develop the uniform application and instructions to be used by county assessors and shall publish the uniform application and instructions by September 20, 2004.

(i) Prohibitions.—A county shall not require an application fee for the filing or review of an application submitted under this section or under 53 Pa.C.S. § 8584(a).

§ 2122. Homestead and farmstead exclusion process.

(a) Calculation.—Each year in which a school district receives a State allocation under this chapter, the school district shall calculate a homestead and farmstead exclusion which is equal to the lesser of:

- (1) the maximum amount of homestead and farmstead exclusion authorized by 53 Pa.C.S. § 8586 (relating to limitations); or
- (2) the sum of:
  - (i) the amount of State allocation the district is eligible to receive.
  - (ii) any amount available to fund homestead and farmstead exclusions. This subparagraph shall include amounts available to fund homestead and farmstead exclusions under 24 Pa.C.S. Ch. 31 (relating to financing).

(b) Resolution.—The school district shall adopt a resolution implementing the homestead and farmstead exclusion calculated under subsection (a) no later than the last day of the fiscal year immediately preceding the fiscal year in which the homestead and farmstead exclusions shall take effect. The resolution shall state the maximum amount of homestead or farmstead exclusion an owner of a homestead or farmstead may receive. A resolution may not authorize a homestead or farmstead exclusion which exceeds the amount authorized by 53 Pa.C.S. § 8586.

§ 2123. School district tax notices.

(a) Tax notice.—School districts shall itemize the homestead and farmstead exclusion on tax bills sent to homestead and farmstead owners, indicating the original amount of tax liability, the amount of the exclusion and the net amount of tax due after the exclusion is applied. The tax bill shall be easily understandable and include a notice pursuant to subsection (b).

(b) Notice of property tax relief.—School districts shall include with the homestead or farmstead owner's tax bill a notice that the tax bill includes a homestead or farmstead exclusion. The notice shall at a minimum take the following form:

NOTICE OF PROPERTY TAX RELIEF

Your enclosed tax bill includes a tax reduction for your homestead and/or farmstead property. As an eligible homestead and/or farmstead property owner, you have received tax relief through a homestead and/or farmstead exclusion under a law passed by the Pennsylvania General Assembly designed to reduce your property taxes.

SUBCHAPTER D  
TAX RELIEF IN CITIES OF THE FIRST CLASS

Sec.

2131. Tax relief in cities of the first class.

§ 2131. Tax relief in cities of the first class.

(a) Tax rate reduction.—A city of the first class shall reduce the rate of wage and net profits tax on residents and nonresidents levied under the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act, in order to be eligible to receive a State allocation under this chapter. If the city elects to reduce taxes pursuant to this section, all money received from the fund under section 2113 (relating to State allocation) shall be used to offset a reduction by the city in the fiscal year in which a payment under section 2113 is received and each fiscal year thereafter in the rate of tax on wages and net profits for both residents and nonresidents as provided for in subsection (b). The reductions shall remain in effect for so long as a State allocation under section 2113 is paid to the city in an amount equal to the cost of such reductions.

(b) Calculation of reduction.—

(1) The city shall calculate the amount of the tax rate reductions so that they equal, based on estimates certified by the city's director of finance and approved by the Pennsylvania Intergovernmental Cooperation Authority prior to the implementation of the reductions, in combination with any reduction in the rate of unearned income tax imposed by a school district in the city of the first class required by the act of August 9, 1963 (P.L.640, No.338), entitled "An act empowering cities of the first class, coterminous with school districts of the first class, to authorize the boards of public education of such school districts to impose certain additional taxes for school district purposes, and providing for the levy, assessment and collection of such taxes," as a result of the reduction in the rate of wage and net profits tax, the amount paid to the city from the fund for tax reductions. The city shall each year transfer to the school district an amount equal to the cost of any reduction in the rate of unearned income tax, and the transfer shall not be subject to the provisions of section 696(h) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

(2) The tax rate reductions implemented by a city of the first class pursuant to this section shall be in addition to the following schedule of percentages of wage and net profits tax rate reductions:

(i) On January 1, 2007, 0.9533% for residents and 0.4216% for nonresidents.

(ii) On January 1, 2008, 0.9624% for residents and 0.8387% for nonresidents.

(iii) On January 1, 2009, 1.1851% for residents and 1.0526% for nonresidents.

(c) Exceptions.—The wage and net profits tax rates may only be raised above the rates specified in subsection (b)(2) if all of the following apply:

(1) The increase is approved by an affirmative vote of at least ten members of a city council of a city of the first class.

(2) The Pennsylvania Intergovernmental Cooperation Authority certifies that a condition under paragraph (3) exists.

(3) The increase is necessary to respond to any of the following:

(i) A fiscal threat or condition, as certified by the city's director of finance, that occurs to the city as set forth in 24 Pa.C.S. § 3122(f) (relating to public referendum requirements for levying and increasing certain taxes) or an equivalent fiscal threat that affects the citizens of the city. It shall be the responsibility of the city's director of finance with the approval of the Pennsylvania Intergovernmental Cooperation Authority to ensure that any additional tax revenue raised is equal to the amount expended to respond to the fiscal threat or condition. If the amount of revenue raised through rate

adjustment exceeds the amount necessary to respond, over the course of the city's approved financial plan, to the fiscal threat, the excess amount shall be used for wage tax and net profits tax reduction in the immediately succeeding approved financial plan, but only if the tax rate reduction, expressed as the difference between the two tax rates, would exceed .0002.

(ii) A decrease of more than 2% in the amount of total tax collections plus any funds provided under this chapter from the preceding year's collections. Such a determination of a decrease must be attested to by the city's director of finance.

(iii) A declaration by the Pennsylvania Intergovernmental Cooperation Authority that the city's five-year plan is disapproved pursuant to section 209 of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

(iv) Federal or State law imposes a new unfunded mandate on the city that costs the city more than 1.5% of the city's total general fund expenditures in any fiscal year.

(v) The cost to the city of an existing mandate imposed by Federal or State law increases by more than 1.5% of the city's total general fund expenditures in any fiscal year and funds to pay for the increase are not appropriated to the city by the Federal or State government.

(vi) Existing Federal or State funding is decreased by 1.5% of the city's total general fund expenditures in any fiscal year.

(d) Excess funds.—If in any fiscal year the sums received by a city of the first class from the fund are in excess of the value of the tax rate reductions actually made by the city and the school district of the first class pursuant to subsection (a), the city shall, within 60 days following the certification by the director of finance, in consultation with the Secretary of the Budget and with the approval of the Pennsylvania Intergovernmental Cooperation Authority of the amount of the excess, do either of the following:

(1) repay to the fund the excess sums; or

(2) further reduce wage and net profits tax rates and unearned income tax rates, if required, in the fiscal year next following the determination of the excess, by an amount that will result in total tax rate reductions required for the amount received from the fund. To the extent the tax rate reduction provided for in this paragraph, expressed as the difference between the two tax rates, would not exceed .0002, this subsection shall not apply.

(e) Insufficient funds.—If in any fiscal year the director of finance certifies, in consultation with the Secretary of the Budget and with the approval of the Pennsylvania Intergovernmental Cooperation Authority, that the amount of sums received by the city from the fund are less than the value of the tax rate reductions actually made by the city and school district of the first class pursuant to subsection (a), the city may, in the fiscal year next following the determination of the amount, increase the city's wage and net profits tax rate above the rates specified in subsection (b)(2) by an amount that will result in an overall tax rate reduction equal to that required for the amount received by the city from the fund. To the extent the tax rate increase provided for in this subsection, expressed as the difference between the two tax rates, would not exceed .0002, this subsection shall not apply.

SUBCHAPTER E  
RESERVE FUND

Sec.

2141. Property Tax Relief Reserve Fund.

§ 2141. Property Tax Relief Reserve Fund.

(a) Fund established.—There is established within the fund a restricted receipts account to be known as the Property Tax Relief

Reserve Fund. Interest which accrues on the Property Tax Relief Reserve Fund shall be credited to the fund.

(b) Receipts.—The secretary is authorized to transfer funds from the fund into the Property Tax Relief Reserve Fund necessary to comply with the requirements of subsection (c).

(c) Balance.—

(1) The secretary shall ensure that \$400,000,000 exists in the Property Tax Relief Reserve Fund prior to making a certification under section 2111 (relating to certification).

(2) If a transfer was made under section 2111(d), the secretary shall deposit funds necessary to ensure that \$400,000,000, is available in the Property Tax Relief Reserve Fund prior to making a certification under section 2111.

(d) Nonlapse.—The money in the Property Tax Relief Reserve Fund is continuously appropriated to the Property Tax Relief Reserve Fund and shall not lapse at the end of any fiscal year.

#### PART IV SENIOR CITIZENS

##### Chapter

#### 41. Senior Citizens Property Tax and Rent Rebate Assistance

##### CHAPTER 41

#### SENIOR CITIZENS PROPERTY TAX AND RENT REBATE ASSISTANCE

##### Sec.

4101. Scope.

4102. (Reserved).

4103. Definitions.

4104. Property tax and rent rebate.

4105. Filing of claim.

4106. Proof of claim.

4107. Incorrect claim.

4108. Funds for payment of claims.

4109. Claim forms and rules and regulations.

4110. Fraudulent claims and conveyances to obtain benefits.

4111. Petition for redetermination.

4112. Review by Board of Finance and Revenue.

4113. Appeal.

§ 4101. Scope.

This chapter provides senior citizens with assistance in the form of property tax and rent rebates.

§ 4102. (Reserved).

§ 4103. Definitions.

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

“Board.” The Board of Finance and Revenue of the Commonwealth.

“Claimant.” A person who files a claim for property tax rebate or rent rebate in lieu of property taxes and:

(1) was at least 65 years of age, or whose spouse, if a member of the household, was at least 65 years of age during a calendar year in which real property taxes or rent were due and payable;

(2) was a widow or widower and was at least 50 years of age during a calendar year or part thereof in which real property taxes or rent were due and payable; or

(3) was a permanently disabled person 18 years of age or older during a calendar year or part thereof in which the real property taxes or rent were due and payable.

“Department.” The Department of Revenue of the Commonwealth.

“Homestead.” A dwelling, whether owned or rented, and so much of the land surrounding it, as is reasonably necessary for the use of the dwelling as a home, occupied by a claimant. The term includes, but is not limited to:

(1) Premises occupied by reason of ownership or lease in a cooperative housing corporation.

(2) Mobile homes which are assessed as realty for local property tax purposes and the land, if owned or rented by the claimant, upon which the mobile home is situated, and other similar living accommodations.

(3) A part of a multidwelling or multipurpose building and a part of the land upon which it is built.

(4) Premises occupied by reason of the claimant’s ownership or rental of a dwelling located on land owned by a nonprofit incorporated association, of which the claimant is a member, if the claimant is required to pay a pro rata share of the property taxes levied against the association’s land.

(5) Premises occupied by a claimant if the claimant is required by law to pay a property tax by reason of the claimant’s ownership or rental, including a possessory interest, in the dwelling, the land, or both. An owner includes a person in possession under a contract of sale, deed of trust, life estate, joint tenancy or tenancy in common or by reason of statutes of descent and distribution.

“Household income.” All income received by a claimant and the claimant’s spouse while residing in the homestead during the calendar year for which a rebate is claimed.

“Income.” All income from whatever source derived, including, but not limited to:

(1) Salaries, wages, bonuses, commissions, income from self-employment, alimony, support money, cash public assistance and relief.

(2) The gross amount of any pensions or annuities including railroad retirement benefits for calendar years prior to 1999, and 50% of railroad retirement benefits for calendar years 1999 and thereafter.

(3) All benefits received under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.), except Medicare benefits, for calendar years prior to 1999, and 50% of all benefits received under the Social Security Act, except Medicare benefits, for calendar years 1999 and thereafter.

(4) All benefits received under State unemployment insurance laws and veterans’ disability payments.

(5) All interest received from the Federal or any state government, or any instrumentality or political subdivision thereof.

(6) Realized capital gains and rentals.

(7) Workers’ compensation.

(8) The gross amount of loss of time insurance benefits, life insurance benefits and proceeds, except the first \$5,000 of the total of death benefit payments.

(9) Gifts of cash or property, other than transfers by gift between members of a household, in excess of a total value of \$300.

The term does not include surplus food or other relief in kind supplied by a governmental agency, property tax or rent rebate or inflation dividend.

“Permanently disabled person.” A person who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to continue indefinitely, except as provided in section 4104(b)(3) and (c) (relating to property tax and rent rebate).

“Real property taxes.” All taxes on a homestead, exclusive of municipal assessments, delinquent charges and interest, due and payable during a calendar year.

“Rent rebate in lieu of property taxes.” Twenty percent of the gross amount actually paid in cash or its equivalent in any calendar year to a landlord in connection with the occupancy of a homestead by a claimant, irrespective of whether such amount constitutes payment solely for the right of occupancy or otherwise.

“Secretary.” The Secretary of Revenue of the Commonwealth.

“Widow” or “widower.” The surviving wife or the surviving husband, as the case may be, of a deceased individual and who has not

remarried except as provided in section 4104(b)(3) and (c) (relating to property tax and rent rebate).

§ 4104. Property tax and rent rebate.

(a) Schedule of rebates.—

(1) The amount of any claim for property tax rebate or rent rebate in lieu of property taxes for real property taxes or rent due and payable during calendar years 1985 through 2005 shall be determined in accordance with the following schedule:

Household Income	Percentage of Real Property Taxes or Rent Rebate in Lieu of Property Taxes Allowed as Rebate
\$ 0 - \$4,999	100%
5,000 - 5,499	100
5,500 - 5,999	90
6,000 - 6,499	80
6,500 - 6,999	70
7,000 - 7,499	60
7,500 - 7,999	50
8,000 - 8,499	40
8,500 - 8,999	35
9,000 - 9,999	25
10,000 - 11,999	20
12,000 - 12,999	15
13,000 - 15,000	10

(2) The amount of any claim for property tax rebate for real property taxes due and payable during calendar year 2006 and thereafter shall be determined in accordance with the following schedule:

Household Income	Amount of Real Property Taxes Allowed as Rebate
\$ 0 - \$ 8,000	\$650
8,001 - 15,000	500
15,001 - 18,000	300
18,001 - 35,000	250

(3) The amount of any claim for rent rebate in lieu of property taxes for rent due and payable during calendar year 2006 and thereafter shall be determined in accordance with the following:

Household Income	Amount of Rent Rebate in Lieu of Property Taxes Allowed as Rebate
\$ 0 - \$ 8,000	\$650
8,001 - 15,000	500

(b) Limitations on claims.—

(1) No claim through calendar year 2005 shall be allowed if the amount of property tax or rent rebate computed in accordance with this section is less than \$10, and the maximum amount of property tax or rent rebate payable shall not exceed \$500.

(2) For calendar year 2006 and thereafter, the maximum amount of property tax or rent rebate in lieu of property taxes payable shall not exceed the lesser of:

- (i) the amount of a claim under subsection (a)(2) or (3);
- (ii) the amount of real property taxes actually paid; or
- (iii) 20% of gross rent actually paid.

(3) No claim shall be allowed if the claimant is a tenant of an owner of real property exempt from real property taxes.

(c) Apportionment and public assistance.—

(1) If any of the following exist relating to a claim:

(i) a homestead is owned or rented and occupied for only a portion of a year or is owned or rented in part by a person who does not meet the qualifications for a claimant, exclusive of any interest owned or leased by a claimant's spouse;

(ii) the claimant is a widow or widower who remarries; or

(iii) the claimant is a formerly disabled person who is no longer disabled,

the department shall apportion the real property taxes or rent in accordance with the period or degree of ownership or leasehold or eligibility of the claimant in determining the amount of rebate for which a claimant is eligible.

(2) A claimant who receives public assistance from the Department of Public Welfare shall not be eligible for rent rebate in lieu of property taxes during those months within which the claimant receives public assistance.

(d) Government subsidies.—Rent shall not include subsidies provided by or through a governmental agency.

§ 4105. Filing of claim.

(a) General rule.—Except as otherwise provided in subsection (b), a claim for property tax or rent rebate shall be filed with the department on or before the 30th day of June of the year next succeeding the end of the calendar year in which real property taxes or rent was due and payable.

(b) Exception.—A claim filed after the June 30 deadline until December 31 of such calendar year shall be accepted by the secretary as long as funds are available to pay the benefits to the late filing claimant.

(c) Payments.—No reimbursement on a claim shall be made earlier than the day following the 30th day of June provided in this chapter on which that claim may be filed with the department.

(d) Eligibility of claimants.—

(1) Only one claimant from a homestead each year shall be entitled to the property tax or rent rebate.

(2) If two or more persons are able to meet the qualifications for a claimant, they may determine who the claimant shall be.

(3) If they are unable to agree, the department shall determine to whom the rebate is to be paid.

§ 4106. Proof of claim.

(a) Contents.—Each claim shall include:

(1) Reasonable proof of household income.

(2) The size and nature of the property claimed as a homestead.

(3) The rent, tax receipt or other proof that the real property taxes on the homestead have been paid or rent in connection with the occupancy of a homestead has been paid.

(4) If the claimant is a widow or widower, a declaration of such status in such manner as prescribed by the secretary.

(b) Proof of disability.—

(1) Proof that a claimant is eligible to receive disability benefits under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) shall constitute proof of disability under this chapter.

(2) No person who has been found not to be disabled by the Social Security Administration shall be granted a rebate under this chapter.

(3) A claimant not covered under the Social Security Act shall be examined by a physician designated by the department and such status determined using the same standards used by the Social Security Administration.

(c) Direct payment of taxes or rent not required.—It shall not be necessary that such taxes or rent were paid directly by the claimant if the rent or taxes have been paid when the claim is filed.

(d) Proof of age on first claim.—The first claim filed shall include proof that the claimant or the claimant's spouse was at least 65 years of age, or at least 50 years of age in the case of a widow or widower during the calendar year in which real property taxes or rent were due and payable.

§ 4107. Incorrect claim.

Whenever on audit of a claim, the department finds the claim to have been incorrectly determined, it shall redetermine the correct amount of the claim and notify the claimant of the reason for the redetermination and the amount of the corrected claim.

§ 4108. Funds for payment of claims.

(a) Payment.—

(1) Except as provided in paragraph (2), approved claims shall be paid from the State Lottery Fund established by the act of August 26, 1971 (P.L.351, No.91), known as the State Lottery Law.

(2) Approved claims for calendar years 2006 and thereafter shall be paid from the Property Tax Relief Fund.

(b) Transfers.—Beginning July 1, 2007, the Secretary of the Budget shall annually transfer an amount equal to the amount of approved claims paid for calendar year 2005 from the State Lottery Fund to the Property Tax Relief Fund.

§ 4109. Claim forms and rules and regulations.

(a) General rule.—Necessary rules and regulations shall be prescribed by a committee consisting of the Secretary of Aging, the Secretary of Revenue and the Secretary of Community and Economic Development. The Secretary of Aging shall serve as the chairman of the committee. The department shall receive all applications, determine the eligibility of claimants, hear appeals, disburse payments and make available suitable forms for the filing of claims.

(b) Report to General Assembly.—In addition to any rules and regulations prescribed under subsection (a), the department shall collect the following information and issue a report including such information to the chairman and minority chairman of the Appropriations Committee of the Senate and the chairman and minority chairman of the Appropriations Committee of the House of Representatives by September 30, 2006, and September 30 of each year thereafter.

(1) The total number of claims which will be paid in the fiscal year in which the report is issued with the information provided by school district, by county and for each household income level under section 4104(a)(2) (relating to property tax and rent rebate).

(2) The total amount of rebates paid in the fiscal year in which the report is issued with the information provided by school district, by county and for each household income level under section 4104(a)(2).

§ 4110. Fraudulent claims and conveyances to obtain benefits.

(a) Civil penalty.—In any case in which a claim is excessive and was filed with fraudulent intent, the claim shall be disallowed in full and a penalty of 25% of the amount claimed shall be imposed. The penalty and the amount of the disallowed claim, if the claim has been paid, shall bear interest at the rate of 1.5% per month from the date of the claim until repaid.

(b) Criminal penalty.—The claimant and any person who assisted in the preparation or filing of a fraudulent claim commits a misdemeanor of the third degree and, upon conviction thereof, shall be sentenced to pay a fine not exceeding \$1,000, or to imprisonment not exceeding one year, or both.

(c) Disallowance for receipt of title.—A claim shall be disallowed if the claimant received title to the homestead primarily for the purpose of receiving property tax rebate.

§ 4111. Petition for redetermination.

(a) Right to file.—A claimant whose claim is either denied, corrected or otherwise adversely affected by the department may file with the department a petition for redetermination on forms supplied by the department within 90 days after the date of mailing of written notice by the department of such action.

(b) Contents.—The petition shall set forth the grounds upon which the claimant alleges that such departmental action is erroneous or unlawful, in whole or part, and shall contain an affidavit or affirmation that the facts contained in the petition are true and correct.

(c) Extension of time for filing.—

(1) An extension of time for filing the petition may be allowed for cause, but may not exceed 120 days.

(2) The department shall hold such hearings as may be necessary for the purpose of redetermination, and each claimant who has duly filed such petition for redetermination shall be

notified by the department of the time when, and the place where, such hearing in the claimant's case will be held.

(d) Time period for decision.—The department shall, within six months after receiving a filed petition for redetermination, dispose of the matters raised by such petition and shall mail notice of the department's decision to the claimant.

§ 4112. Review by Board of Finance and Revenue.

(a) Right to review.—Within 90 days after the date of official receipt by the claimant of notice mailed by the department of its decision on a petition for redetermination filed with it, the claimant who is adversely affected by the decision may by petition request the board to review such action.

(b) Effect of no decision from department.—The failure of the department to officially notify the claimant of a decision within the six-month period provided for by section 1411 (relating to petition for redetermination) shall act as a denial of the petition, and a petition for review may be filed with the board within 120 days after written notice is officially received by the claimant that the department has failed to dispose of the petition within the six-month period.

(c) Contents of petition for redetermination.—A petition for redetermination filed shall state the reasons upon which the claimant relies or shall incorporate by reference the petition for redetermination in which such reasons were stated. The petition shall be supported by affidavit that the facts set forth therein are correct and true.

(d) Time period for decision.—The board shall act in disposition of petitions filed with it within six months after they have been received, and in the event of failure of the board to dispose of any petition within six months, the action taken by the department upon the petition for redetermination shall be deemed sustained.

(e) Relief authorized by board.—The board may sustain the action taken by the department on the petition for redetermination or it may take such other action as it shall deem necessary and consistent with provisions of this chapter.

(f) Form of notice.—Notice of the action of the board shall be given by mail to the department and to the claimant.

§ 4113. Appeal.

A claimant aggrieved by a decision of the board may appeal from the decision of the board in the manner provided by law for appeals from decisions of the board in tax cases.

Section 3. No school district which has not already made an election to adopt the provisions of 53 Pa.C.S. Ch. 87 may make an election to do so after the effective date of this section.

Section 4. The sum of \$3,000,000, or as much thereof as may be necessary, is hereby appropriated from the Property Tax Relief Reserve Fund to the Department of Community and Economic Development for the purpose of making one-time transition grants to counties, other than counties of the first class, for costs associated with implementing the Taxpayer Relief Act. Grants shall be made pursuant to guidelines adopted by the department and shall be limited to funds appropriated for this purpose. The Department of Community and Economic Development shall not draw a warrant upon the State Treasurer for a disbursement from this appropriation until the State Treasurer certifies that the Property Tax Relief Reserve Fund has at least a \$3,000,000 balance.

Section 5. A school district that has authorized the levy of a 0.1% earned income and net profits tax, by resolution or referendum, under the former act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act, is prohibited from levying, assessing or collecting the tax.

Section 6. The following shall apply:

(1) Except as provided in paragraph (2), the authority of any independent school district to levy, assess and collect any tax under the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, shall expire at midnight on December 31, 2011.

(2) The provisions of paragraph (1) shall not prevent or interfere with any action of any independent school district to



collect any tax imposed under the authority of The Local Tax Enabling Act that is levied and assessed prior to January 1, 2012.

Section 7. The Department of Revenue shall promulgate regulations which are necessary for implementation of a local personal income tax. Proposed rulemaking shall be omitted under section 204 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law. The regulations shall be consistent with the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and shall be submitted as final-omit regulations under section 5(a) of the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 8. Repeals are as follows:

(1) The General Assembly declares that the repeals under paragraphs (2), (3), (4), (5), (6) and (7) are necessary to effectuate this act.

(2) Section 9 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, is repealed insofar as it is inconsistent with the provisions of section Pa.C.S. § 3161.

(3) Articles II and II-A of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(4) The act of March 11, 1971 (P.L.104, No.3), known as the Senior Citizens Rebate and Assistance Act, is repealed.

(5) The act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act, is repealed.

(6) 53 Pa.C.S. Ch. 89 Subch. B is repealed.

(7) Any act that provides for a register of municipal and school district withholding taxes is repealed insofar as it is inconsistent with the provisions of section 24 Pa.C.S. § 3161.

Section 9. Except as otherwise provided, actions, orders, regulations, rules, designations and decisions which were made by the Department of Education or by a school district under the former act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act, and which have been completed or are in effect on the effective date of section 8(5) shall continue and remain in full force and effect to the extent that such actions, orders, regulations, rules, designations and decisions apply to the 2006-2007 fiscal year unless revoked, vacated or modified by this act, the Department of Education or the school district.

Section 10. The addition of 72 Pa.C.S. Ch. 12 is a continuation of Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Ch. 12, all activities initiated under Article II of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 12. Orders, regulations, rules and decisions which were made under Article II of the Tax Reform Code of 1971 and which are in effect on the effective date of section 8 of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 12.

(2) Except as set forth in paragraph (3), any difference in language between 72 Pa.C.S. Ch. 12 and Article II of the Tax Reform Code of 1971 is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Article II of the Tax Reform Code of 1971.

(3) Paragraph (2) does not apply to the addition of any of the following provisions of Title 72:

(i) The definitions of “computer software,” “delivered electronically,” “prewritten computer software” and “tangible personal property” in section 1201.

(ii) Section 1202(a), (b), (c)(1), (d), (e)(3)(i), (e.1)(3)(i) and (g).

(iii) Section 1203.

(iv) Section 1204(28), (37), (47), (48) and (58).

(v) Section 1205(a)(2) and (b)(2).

(vi) Section 1210.

(vii) Section 1217(a)(2) and (d).

(viii) Section 1281.3.

Section 11. The addition of 72 Pa.C.S. Ch. 13 is a continuation of Article II-A of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. Except as otherwise provided in 72 Pa.C.S. Ch. 13, all activities initiated under Article II-A of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 13. Orders, regulations, rules and decisions which were made under Article II-A of the Tax Reform Code of 1971 and which are in effect on the effective date of section 8 of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 13.

Section 12. The addition of 72 Pa.C.S. § 2121 is a continuation of section 341 of the former act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Ch. 21, all activities initiated under section 341 of the Homeowner Tax Relief Act shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 21. Orders, regulations, rules and decisions which were made under section 341 of the Homeowner Tax Relief Act and which are in effect on the effective date of section 8 of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 21.

(2) Any difference in language between 72 Pa.C.S. § 2121 and section 341 of the Homeowner Tax Relief Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of the Homeowner Tax Relief Act.

Section 13. The addition of 72 Pa.C.S. Ch. 41 is a continuation of the act of March 11, 1971 (P.L.104, No.3), known as the Senior Citizens Rebate and Assistance Act. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Ch. 41, all activities initiated under the Senior Citizens Rebate and Assistance Act shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 41. Orders, regulations, rules and decisions which were made under the Senior Citizens Rebate and Assistance Act and which are in effect on the effective date of section 8 of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 41.

(2) Except as set forth in paragraph (3), any difference in language between 72 Pa.C.S. Ch. 41 and the Senior Citizens Rebate and Assistance Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of the Senior Citizens Rebate and Assistance Act.

(3) Paragraph (2) does not apply to the addition of any of the following provisions of Title 72:

(i) Section 4104(a)(2) and (3), (b) and (d).

(ii) Section 4105(c).

(iii) Section 4108.

(iv) Section 4109(b).

Section 14. The Secretary of Revenue shall transmit notice to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin that revenue from gaming has exceeded \$100,000,000.

Section 15. This act shall take effect as follows:

(1) The addition of 24 Pa.C.S. § 3141 shall take effect upon publication of the notice in the Pennsylvania Bulletin required under section 14 of this act.

(2) Except as provided in paragraphs (1) and (3), the following provisions shall take effect January 1, 2007:

- (i) The addition of 72 Pa.C.S. Ch. 12.  
(ii) The addition of 72 Pa.C.S. Ch. 13.  
(iii) Section 8(3) of this act.

(3) The addition of 72 Pa.C.S. § 1281.3 shall take effect February 1, 2007.

(4) The remainder of this act shall take effect immediately.

On the question,  
Will the House agree to the amendment?

The following roll call was recorded:

#### YEAS—96

Allen	Geist	Mann	Sather
Argall	Gillespie	Markosek	Saylor
Baker	Gingrich	McIlhattan	Scavello
Bebko-Jones	Godshall	McNaughton	Schroder
Belardi	Good	Millard	Semmel
Benninghoff	Goodman	Miller, R.	Shapiro
Beyer	Grell	Miller, S.	Siptroth
Bianucci	Grucela	Nailor	Smith, S. H.
Boyd	Gruitza	O'Brien	Solobay
Buxton	Haluska	Payne	Sonney
Caltagirone	Harhai	Petrarca	Staback
Cawley	Harhart	Petri	Stairs
Corrigan	Harris	Phillips	Stetler
Costa	Hasay	Pickett	Stevenson, T.
Dally	Hennessey	Pyle	Taylor, E. Z.
DeLuca	Herman	Readshaw	Taylor, J.
Diven	Hershey	Reed	Tigue
Eachus	Hess	Reichley	True
Ellis	Hickermell	Roberts	Turzai
Fabrizio	Kenney	Ross	Walko
Fairchild	Mackereth	Rubley	Watson
Flaherty	Maher	Ruffing	Wojnarowski
Fleagle	Maitland	Samuelson	Yewcic
Freeman	Major	Santoni	Yudichak

#### NAYS—102

Adolph	Evans, D.	Lescovitz	Roebuck
Armstrong	Evans, J.	Levdansky	Rohrer
Baldwin	Feese	Manderino	Rooney
Barrar	Fichter	Marsico	Sabatina
Bastian	Flick	McCall	Sainato
Belfanti	Forcier	McGeehan	Shaner
Bishop	Frankel	McGill	Smith, B.
Blackwell	Gabig	McIlhinney	Steil
Blaum	Gannon	Melio	Stern
Bunt	George	Metcalfe	Stevenson, R.
Cappelli	Gerber	Micozzie	Sturla
Casorio	Gergely	Mundy	Surra
Causar	Hanna	Mustio	Tangretti
Civera	Harper	Myers	Thomas
Clymer	Hutchinson	Nickol	Veon
Cohen	James	Oliver	Vitali
Crahalla	Josephs	O'Neill	Wansacz
Creighton	Kauffman	Pallone	Waters
Cruz	Keller, M.	Parker	Wheatley
Curry	Keller, W.	Petrone	Williams
Daley	Killion	Pistella	Wright
Denlinger	Kirkland	Preston	Youngblood
Dermody	Kotik	Quigley	Zug
DeWeese	LaGrotta	Ramaley	
DiGirolamo	Leach	Rapp	Perzel,
Donatucci	Lederer	Raymond	Speaker

NOT VOTING—0

#### EXCUSED—5

Birmelin                      Leh                      Rieger                      Wilt  
Cornell

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,  
Will the House concur in Senate amendments?

#### VOTE CORRECTION

The SPEAKER. For what purpose does the gentleman, Mr. Ellis, rise?

Mr. ELLIS. Thank you, Mr. Speaker. I would like to correct the vote.

My button malfunctioned. I was recorded in the affirmative on amendment 8001. I would like to be recorded in the negative.

The SPEAKER. The gentleman's remarks will be spread across the record.

#### CONSIDERATION OF HB 859 CONTINUED

##### BILL PASSED OVER TEMPORARILY

The SPEAKER. The House will temporarily go over HB 859.

#### RECESS

The SPEAKER. This House stands in recess until the call of the Chair.

#### AFTER RECESS

The time of recess having expired, the House was called to order.

#### CALENDAR CONTINUED

#### CONSIDERATION OF HB 859 CONTINUED

#### AMENDMENT A08001 RECONSIDERED

The SPEAKER. The Chair has immediately before it a reconsideration vote for an amendment.

It is moved that the vote by which amendment No. 8001 was defeated to HB 859 on the 14th day of June be reconsidered, signed by two members of the General Assembly.

On the question,  
Will the House agree to the motion?

**VOTE CORRECTIONS**

The SPEAKER. Before we go to that vote for reconsideration, the gentleman, Mr. Shapiro. For what purpose does the gentleman rise?

Mr. SHAPIRO. Mr. Speaker, I simply rise to correct the record.

The SPEAKER. The gentleman is in order.

Mr. SHAPIRO. On amendment A8001, HB 859, my switch malfunctioned. I meant to be recorded in the negative.

The SPEAKER. The Chair thanks the gentleman.

The gentleman's remarks will be spread across the record.

For what purpose does the gentleman, Mr. Gabig, rise?

Mr. GABIG. Mr. Speaker, I want to do the exact opposite of what my good friend from Montgomery did.

On the same amendment, 8001 of HB 859, I was recorded in the negative, and if the record could reflect it, I want to be recorded in the positive.

The SPEAKER. We are about to reconsider that amendment.

The gentleman's remarks will be spread across the record.

**CONSIDERATION OF HB 859 CONTINUED**

On the question recurring,  
Will the House agree to the motion?

The following roll call was recorded:

**YEAS—185**

Adolph	Fichter	Maher	Ruffing
Allen	Flaherty	Maitland	Sabatina
Argall	Fleagle	Major	Sainato
Armstrong	Flick	Mann	Samuelson
Baker	Forcier	Markosek	Santoni
Baldwin	Frankel	Marsico	Sather
Barrar	Freeman	McCall	Saylor
Bastian	Gabig	McGeehan	Scavello
Bebko-Jones	Gannon	McGill	Schroder
Belardi	Geist	McIlhattan	Semmel
Benninghoff	George	McIlhinney	Shaner
Beyer	Gerber	McNaughton	Shapiro
Biancucci	Gergely	Micozzie	Siptroth
Bishop	Gillespie	Millard	Smith, B.
Blackwell	Gingrich	Miller, R.	Smith, S. H.
Blaum	Godshall	Miller, S.	Solobay
Boyd	Good	Mundy	Sonney
Bunt	Goodman	Myers	Staback
Buxton	Grucela	Nailor	Stairs
Caltagirone	Gruitza	Nickol	Stern
Cappelli	Haluska	O'Brien	Stevenson, R.
Causar	Hanna	Oliver	Stevenson, T.
Cawley	Harhai	O'Neill	Sturla
Civera	Harhart	Pallone	Surra
Clymer	Harper	Parker	Tangretti
Cohen	Harris	Payne	Taylor, E. Z.
Corrigan	Hasay	Petrarca	Taylor, J.
Costa	Hennessey	Petri	Tigue
Crahalla	Herman	Petrone	True
Cruz	Hershey	Phillips	Turzai
Curry	Hess	Pickett	Veon
Daley	Hickernell	Pistella	Vitali
Dally	Hutchinson	Preston	Walko
DeLuca	James	Pyle	Wansacz
Denlinger	Josephs	Quigley	Waters

Dermody	Kauffman	Ramaley	Watson
DeWeese	Keller, W.	Rapp	Williams
DiGirolamo	Kenney	Raymond	Wojnaroski
Diven	Killion	Readshaw	Wright
Donatucci	Kirkland	Reed	Yewcic
Eachus	Kotik	Reichley	Youngblood
Ellis	LaGrotta	Roberts	Yudichak
Evans, D.	Leach	Roebuck	Zug
Evans, J.	Lederer	Rohrer	
Fabrizio	Lescovitz	Rooney	
Fairchild	Levdansky	Ross	Perzel,
Feese	Mackereth	Rubley	Speaker

**NAYS—13**

Belfanti	Keller, M.	Metcalfe	Stetler
Casorio	Manderino	Mustio	Thomas
Creighton	Melio	Steil	Wheatley
Grell			

**NOT VOTING—0**

**EXCUSED—5**

Birmelin	Leh	Rieger	Wilt
Cornell			

The majority having voted in the affirmative, the question was determined in the affirmative and the motion was agreed to.

On the question recurring,  
Will the House agree to the amendment?

The clerk read the following amendment No. **A08001**:

Amend Title, page 1, lines 1 through 12, by striking out all of said lines and inserting  
Amending Titles 24 (Education), 53 (Municipalities Generally) and 72 (Taxation and Fiscal Affairs) of the Pennsylvania Consolidated Statutes, providing for installment payment of school taxes and for public school financing; further providing, in municipal taxation, for applicability and for definitions; consolidating the sales and use tax provisions of the Tax Reform Code of 1971; further providing for definitions, for imposition, for computation, for exclusions, for alternate imposition, for filing times and for transfers to the Property Tax Relief Fund; consolidating the special situs for local sales tax provisions of the Tax Reform Code of 1971; consolidating and extensively revising the Homeowner Tax Relief Act; providing for senior citizen property tax and rent rebate assistance; imposing restrictions on school districts; imposing powers and duties on the Department of Revenue; and making related repeals.

Amend Bill, page 2, lines 25 through 30; pages 3 and 4, lines 1 through 30; page 5, lines 1 through 16, by striking out all of said lines on said pages and inserting

Section 1. Title 24 of the Pennsylvania Consolidated Statutes is amended by adding a part to read:

**PART II  
FINANCING**

- Chapter
- 23. Installment Payment of Taxes
- 31. Public School Financing

**CHAPTER 23  
INSTALLMENT PAYMENT OF TAXES**

- Sec.
- 2301. Applicability.
- 2302. Installment payment of school real property taxes.
- 2303. Collection of installment payments of school real property taxes.

2304. Assignment of installment claims.

2305. Considering increase in compensation of tax collector.

§ 2301. Applicability.

Notwithstanding the act of May 25, 1945 (P.L.1050, No.394), known as the Local Tax Collection Law, this chapter shall authorize school districts of the second, third and fourth class to provide for the collection of school real property taxes in installments for certain eligible taxpayers, to assign installment claims and to increase the compensation of tax collectors.

§ 2302. Installment payment of school real property taxes.

(a) General rule.—A board of school directors of a school district of the second, third or fourth class may adopt a resolution authorizing the collection and payment of school real property taxes in installments.

(b) Adoption of resolution.—No later than June 30, 2007, a board of school directors of a school district of the second, third or fourth class shall adopt a resolution which, for taxes levied in calendar year 2007 and each year thereafter, authorizes the collection and payment of school real property taxes, excluding any interim or delinquent school property taxes, in installments.

(c) Contents of resolution.—The resolution adopted pursuant to subsection (b) shall set forth all of the following:

(1) Permit taxpayers with homestead or farmstead property approved pursuant to Chapter 21 to be eligible to pay school real property taxes in installments.

(2) The process through which an eligible taxpayer may choose to pay school real property taxes in installments. The process shall indicate that:

(i) The payment of the first installment by a taxpayer before it becomes delinquent shall conclusively evidence an intention to pay school real property taxes in installments.

(ii) Where a taxpayer fails to evidence an intention to pay school real property taxes in installments, the school real property taxes shall become due and payable and be collected as provided in the act of May 25, 1945 (P.L.1050, No.394), known as the Local Tax Collection Law, subject to the discounts and penalties provided by that act.

(3) The number of installments that an eligible taxpayer shall be required to pay of school real property taxes, which shall be no more than monthly and no less than three times during the months prior to the date established by the county in which the school district is located for the turnover of delinquent taxes pursuant to the act of July 7, 1947 (P.L.1368, No.542), known as the Real Estate Tax Sale Law.

(4) The dates on which installment payments of school real property taxes are due or delinquent. Notwithstanding the complete and final settlement made in accordance with section 26 of the Local Tax Collection Law, a board of school directors may set installment payment dates subsequent to December 31 and prior to the date established by the county in which the school district is located for the turnover of delinquent taxes pursuant to the Real Estate Tax Sale Law. The unpaid installments shall not be considered delinquent if paid on or before the respective installment dates. To each installment on the date when it becomes delinquent, a penalty of up to 10% shall be added, which shall be collected by the tax collector. No further penalties, except as provided in this chapter, shall be added to any installment of taxes, unless one or more installments remain unpaid, and the lands upon which such installments are due are returned under the existing laws to the county commissioners for nonpayment of taxes, or in case a lien for such unpaid installment or installments is filed under existing laws in the office of the prothonotary, in which case, the additional penalty or interest provided for by the existing return and lien laws shall apply. A taxpayer who is delinquent by more than ten days on more than two installment payments shall be

ineligible for the installment payment option in the following school fiscal year.

(d) Notice.—A board of school directors of a school district to which this section applies shall annually set forth information regarding the payment of school real property taxes in installments and the dates on which such payments are due or delinquent on the tax notice sent to a homestead or farmstead property owner.

§ 2303. Collection of installment payments of school real property taxes.

(a) Contract.—

(1) A school district may contract with a tax bureau independent of the school district for collection of installments under this section. A tax bureau may contract with more than one tax collector. The tax collector shall be paid such commissions or compensation at the same rate on installment payments as is paid for the collection of taxes generally. Such commissions or compensation shall be paid by proper orders drawn on the school district. Every tax collector shall be responsible and accountable to the school district for all such taxes collected by the tax collector, and the final accounts and records, returns and payments and duplicates shall be audited annually in the year in which the installments are collected in like manner and in accordance with the laws pertaining to tax collections.

(2) (i) By January 15, the tax collector shall make a final and complete settlement of all taxes for the prior calendar year with the proper authority of the taxing district. In the settlement of such taxes, the tax collector shall be allowed a credit for all of the following:

(A) for all taxes collected and paid over;

(B) for all uncollected, nonlienable installments carried forward and certified for collection by the elected tax collector in accordance with this chapter;

(C) for all unpaid taxes certified by the tax collector to the taxing district for collection as delinquent taxes as authorized by law;

(D) for unpaid taxes resulting from an interim assessment where, as of December 31, taxes remain unpaid and less than four months have elapsed since the date of the tax notice;

(E) for all unpaid taxes upon real property, which real property shall have been returned to the county commissioners as provided by law or shall have been certified to the taxing district or its solicitor, for the entry of liens in the office of the prothonotary;

(F) in the case of occupation, poll and per capita taxes, for taxes accounted for by exonerations, which shall be granted by the taxing district upon oath or affirmation that he has complied with section 20 of the Local Tax Collection Law; and

(G) for taxes paid in accordance with subsection (b).

(ii) In all taxing districts which have authorized installment payments to be made after December 31 of the year in which taxes are levied, all unpaid installments of taxes upon real property shall be certified by the elected tax collector to the taxing district, together with a proper description of the property upon which the same is levied, at the time of complete and final settlement. All unpaid installments so certified to the taxing district shall be collected by the elected tax collector in accordance with this chapter.

(iii) Upon final and complete settlement of a tax duplicate, a tax collector shall take an oath or affirmation in writing and subscribed by the tax collector, that he has made a true and just return of all taxes collected by him.

The oath or affirmation shall be administered by the officer of the taxing district empowered to make settlement, who shall have power to administer the same, and shall be filed with the officer.

(3) Nothing in this act should be construed to alter any existing tax collection arrangement unless deemed appropriate by the school district or as otherwise provided for under this section.

(b) Authorization.—A board of school directors may authorize the collection of payments:

(1) Through electronic fund transfers through the Federal Reserve Bank's Automated Clearing House. Electronic fund transfers shall be a debit to the taxpayer's account to the school district's depository bank account at the option of the taxpayer.

(2) By a credit card payment which shall be made through the school district's depository bank or another bank designated by the board of school directors. The board of school directors shall also designate the credit card type that may be utilized for installment payment collection.

§ 2304. Assignment of installment claims.

(a) Initial assignment.—A taxing district may assign some or all of its installment claims, either absolutely or as collateral security, for an amount to be determined by the taxing district and under such terms and conditions upon which the taxing district and the assignee shall agree in writing and shall be approved by resolution of the taxing district. An installment claim may be assigned whether or not any installment thereunder has become delinquent. Upon such an assignment, the following shall apply:

(1) Assignment shall not be deemed a discharge or satisfaction of the installment claim or the taxes giving rise to the installment claim and any lien of the assigned installment claim and taxes giving rise to the installment claim shall continue in favor of the assignee.

(2) The assignee shall have and enjoy the same rights, privileges and remedies as were held by the taxing district with respect to the assigned installment claim and the tax giving rise to the claim under the provisions of the act of May 25, 1945 (P.L.1050, No.394), known as the Local Tax Collection Law, or any other laws applicable to the collection and enforcement of tax claims.

(3) An assignment of an installment claim under this section shall be deemed, unless otherwise provided in writing, an assignment of applicable claims and liens arising with respect to such installment claim under section 33 of the act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law, and section 316 of the act of July 7, 1947 (P.L.1368, No.542), known as the Real Estate Tax Sale Law.

(4) If the instrument of assignment so provides and contains or provides for the delivery of an extract from the duplicate of the information pertaining to the assigned installment claims, the assignee exclusively shall have the rights and duties of the tax collector under the Local Tax Collection Law with respect to the assigned installment claims and shall be deemed to be acting pursuant to the warrant provided in section 5 of the Local Tax Collection Law; provided, that the assignee shall not be entitled to any commission or salary in such capacity and shall not be subject to sections 4 and 16 of the Local Tax Collection Law.

(5) An owner of property shall have the same rights and defenses under this act and any other law applicable to the collection and enforcement of tax claims that the owner held against the assignor.

(6) References in the Local Tax Collection Law to a taxing district with respect to an installment claim shall be deemed to be references to the assignee of the taxing district with respect to assigned installment claims except for references to any actions taken by the taxing district before the assignment.

(b) Further assignment.—An installment claim assigned pursuant to this section may be further assigned, with the subsequent assignee having and enjoying the same rights, privileges and remedies as its assignor.

§ 2305. Considering increase in compensation of tax collector.

(a) Request.—Within 15 days of a board of school directors' adoption of a resolution under section 2302, the tax collector in the school district may, by sending a certified letter, request that the school district consider increasing the compensation of the tax collector to account for any increased administrative costs incurred by the tax collector. Within 45 days of receiving such letter, the school district shall consider the request.

(b) Permission.—Within 15 days of a board of school directors' adoption of a resolution under section 2302, the school district may, by sending a certified letter, inform the tax collector that tax collector compensation may be adjusted for installments until January 31, 2009. Within 45 days of sending the letter, the school district shall consider any adjustment.

## CHAPTER 31

### PUBLIC SCHOOL FINANCING

#### Subchapter

- A. Preliminary Provisions
- B. Taxation
- C. Limitations
- D. School District Budgets
- E. Reimbursements
- F. Tax Study Commission
- G. Register

#### SUBCHAPTER A PRELIMINARY PROVISIONS

#### Sec.

3101. Scope.

3102. Definitions.

§ 3101. Scope.

This chapter relates to public school financing.

§ 3102. Definitions.

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

"Actual instruction expense." The term shall have the same usage as in the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

"Average daily membership." All resident pupils of the school district for whom the school district is financially responsible. It shall be calculated by dividing the aggregate days membership for all children on active rolls by the number of days the school is in session.

"Board of school directors." A board of school directors of a school district of the first class, first class A, second class, third class or fourth class. The term shall include the city council of a city of the first class for the purpose of the levying and collecting of any tax in a school district of the first class.

"Construction cost average on a square-foot basis." An amount equal to \$137 per square foot for an elementary school building and \$142 per square foot for a secondary school building, as adjusted annually by the percentage increase in the average of the Statewide average weekly wage and the employment cost index.

"Department." The Department of Education of the Commonwealth.

"Domicile." As defined in section 13 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

"Earned income." As defined in section 13 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

"Election officials." The board of elections of a county.

"Employer." As defined in section 301 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

"Employment Cost Index." The most recent official figures for the previous 12-month period beginning July 1 and ending June 30 for

the Employment Cost Index Series for Elementary and Secondary Schools, reported by the Bureau of Labor Statistics of the Federal Department of Labor.

“Fund.” The Property Tax Relief Fund.

“Income tax.” A tax earned income and net profits or a tax on personal income imposed pursuant to this chapter.

“Index.” The average of the percentage increase in the Statewide average weekly wage and the Employment Cost Index.

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

“Local tax revenue.” The revenue from taxes actually levied and assessed by a school district, including delinquent taxes. The term does not include interest or dividend earnings, Federal or State grants, contracts or appropriations, income generated from operations or any other source which is not derived from taxes levied and assessed by a school district.

“Net profits.” As defined in section 13 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

“Personal income.” Income enumerated in section 303 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, as determined by the Department of Revenue, subject to any correction thereof for fraud, evasion or error as finally determined by the Commonwealth.

“Resident individual.” An individual who is domiciled in a school district.

“School district.” A school district of the first class, first class A, second class, third class or fourth class. The term shall include the city council of a city of the first class for the purpose of the levying and collecting of any tax in a school district of the first class.

“Statewide average weekly wage.” That amount determined by the Department of Labor and Industry in the same manner that it determines the average weekly wage under section 404(e)(2) of the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, except that it shall be calculated for the preceding calendar year.

“Tax Reform Code.” The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Taxpayer.” An individual required under this chapter to pay a tax.

#### SUBCHAPTER B TAXATION

Sec.

3111. Limitations.

3112. Personal income tax.

3113. Homestead and farmstead tax authorization.

3114. Certain rates of taxation limited.

3115. Collections.

3116. Credits.

3117. Regulations.

§ 3111. Limitations.

This chapter shall not be construed to affect the power of a school district to do any of the following:

(1) To eliminate its occupation tax pursuant to the act of June 22, 2001 (P.L.374, No.24), known as the Optional Occupation Tax Elimination Act.

(2) To levy, assess or collect a tax on earned income and net profits under the Local Tax Enabling Act.

(3) To impose special purpose tax levies approved by the electorate.

§ 3112. Personal income tax.

(a) Imposition.—

(1) A board of school directors may levy, assess and collect a tax on the personal income of resident individuals at a rate determined by the board of school directors.

(2) A school district which seeks to levy the tax authorized under paragraph (1) must comply with section 3121 (relating to referendum) and the following:

(i) The school district shall convert, in a revenue-neutral manner, any existing earned income and net profits tax rates levied to a personal income tax rate.

(ii) If a school district is not, on the effective date of this subparagraph, levying an earned income and net profits tax, the school district shall levy a personal income tax at a rate which will generate an amount not more than the amount a 1% earned income and net profits tax would have generated if it had been levied.

(iii) The board of school directors shall round the rate of the personal income tax levied pursuant to this subparagraph to the nearest 0.1%.

(3) If a board of school directors seeks to impose a personal income tax under this subsection and the referendum under section 3121 is approved by the electorate, the board of school directors shall have no authority to impose an earned income and net profits tax under any other act.

(4) A personal income tax imposed under the authority of this section shall be levied by the school district on each of the classes of income specified in section 303 of the Tax Reform Code and regulations under that section, the provisions of which are incorporated by reference into this chapter.

(i) Notwithstanding the provisions of section 353(f) of the Tax Reform Code, the Department of Revenue may permit the proper officer or an authorized agent of a school district imposing a personal income tax pursuant to this chapter to inspect the tax returns of any taxpayer of the school district or may furnish to the officer or an authorized agent an abstract of the return of income of any current or former resident of the school district, or supply information concerning any item of income contained in any tax return. The officer or authorized agent of the school district imposing a tax under this chapter shall be furnished the requested information upon payment to the Department of Revenue of the actual cost of providing the requested information.

(ii) (A) Except for official purposes or as provided by law, it shall be unlawful for any officer or authorized agent of a school district to do any of the following:

(I) Disclose to any other individual or entity the amount or source of income, profits, losses, expenditures or any particular information concerning income, profits, losses or expenditures contained in any return.

(II) Permit any other individual or entity to view or examine any return or copy of a return or any book containing any abstract or particulars.

(III) Print, publish or publicize in any manner any return; any particular information contained in or concerning the return; any amount or source of income, profits, losses or expenditures in or concerning the return; or any particular information concerning income, profits, losses or expenditures contained in or relating to any return.

(B) Any officer or authorized agent of a school district that violates clause (A):

(I) May be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(II) May be removed from office or discharged from employment.

(b) Execution of tax rate.—A tax authorized under section 3121 shall be self-executing and shall be effective beginning on the first day

of the fiscal year which begins after the tax is authorized. A tax rate under this subsection shall continue in force on a fiscal year basis without annual reenactment except in a year in which the rate of the tax is changed or the tax is repealed.

§ 3113. Homestead and farmstead tax authorization.

(a) General rule.—A board of school directors may levy, assess and collect a tax on earned income and net profits or a tax on personal income as provided in this section for the purpose of funding homestead and farmstead exclusions to reduce school district property taxes.

(b) Rate.—

(1) A school district may, in accordance with section 3121 (relating to referendum), levy or increase a tax on earned income and net profits or personal income tax of resident individuals for the purpose of funding homestead and farmstead exclusions. The board of school directors shall round the rate of the earned income and net profits tax or personal income tax levied pursuant to this section to the nearest 0.1%. For purposes of calculating the tax rate authorized under this paragraph, the portion of tax dedicated to the increase in revenue permitted under paragraph (2), if any, shall be excluded.

(2) Notwithstanding section 3124 (relating to disposition of income tax revenue and State allocations), the rate of the earned income and net profits tax or personal income tax proposed to be levied and assessed for the fiscal year immediately following the year in which the tax is authorized may provide for an increase in revenue of not more than 2% of the estimated revenue from the earned income and net profits tax or personal income tax authorized under paragraph (1), which may be used for the operations of the school district.

(3) If a school district levies an earned income and net profits tax and seeks to fund homestead and farmstead exclusions with a personal income tax, the school district shall convert the earned income and net profits tax to a personal income tax in accordance with section 3112 (relating to personal income tax) prior to levying a personal income tax under this section.

(c) Execution of tax rate.—A tax authorized under section 3121 shall be self-executing and shall be effective beginning on the first day of the fiscal year which begins after the tax is authorized. A tax rate under this subsection shall continue in force on a fiscal year basis without annual reenactment except in a year in which the rate of the tax is changed or the tax is repealed.

§ 3114. Certain rates of taxation limited.

(a) Municipal rates.—If a municipality and school district both impose an earned income and net profits tax on the same individual under the Local Tax Enabling Act and are limited to or have agreed upon a division of the tax rate in accordance with section 8 of the Local Tax Enabling Act, the municipality shall remain subject to that limitation or agreement in the event that the school district opts to impose a personal income tax authorized under section 3112 (relating to personal income tax). Nothing in this chapter shall be construed to authorize a municipality to raise the rate of earned income and net profits tax above the rate it levied under the previously agreed upon division if a school district imposes a personal income tax under this subchapter.

(b) School districts.—A school district which imposes a tax under this chapter is subject to section 688 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

§ 3115. Collections.

(a) Designation of tax collector.—A board of school directors imposing an income tax under this chapter shall designate a tax officer under section 10 of the Local Tax Enabling Act, or otherwise by law, as the collector of the tax. In the performance of the tax collection duties under this subchapter, the designated tax officer shall have all the same powers, rights, responsibilities and duties for the collection of the taxes which may be imposed under the Local Tax Enabling Act, 53 Pa.C.S. Ch. 84 Subch. C (relating to local taxpayers bill of rights) or as otherwise provided by law.

(b) Conflict.—In any situation where there is a conflict involving the authority conferred on a local tax collector by the provisions of the Local Tax Enabling Act and the Tax Reform Code, the provisions of the Local Tax Enabling Act shall control.

§ 3116. Credits.

(a) Credit.—Except as set forth in subsection (b), the provisions of section 14 of the Local Tax Enabling Act shall be applied by a board of school directors to determine any credits applicable to a tax imposed under section 3112 (relating to personal income tax) or 3113 (relating to homestead and farmstead tax authorization).

(b) Limitation.—Payment of any tax on income to any state other than Pennsylvania or to any political subdivision located outside the boundaries of this Commonwealth by a resident of a school district located in this Commonwealth shall not be credited to and allowed as a deduction from the liability of such person for any income tax imposed by the school district of residence pursuant to this chapter.

§ 3117. Regulations.

A school district that imposes:

(1) an earned income and net profits tax authorized under section 3113 (relating to homestead and farmstead tax authorization) shall be subject to section 13 of the Local Tax Enabling Act and may adopt procedures for the processing of claims for credits or exemptions under sections 3116 (relating to credits), 3123 (relating to special provisions for poverty) and 3141 (relating to procedure); or

(2) a personal income tax authorized under section 3112 (relating to personal income tax) shall be subject to all regulations adopted by the Department of Revenue in administering the tax due to the Commonwealth under Article III of the Tax Reform Code.

#### SUBCHAPTER C

#### LIMITATIONS

Sec.

3121. Referendum.

3122. Public referendum requirements for levying and increasing certain taxes.

3123. Special provisions for poverty.

3124. Disposition of income tax revenue and State allocations.

3125. School district tax options.

3126. Property tax limits on reassessment.

§ 3121. Referendum.

(a) General rule.—A board of school directors may do either of the following:

(1) Levy, assess and collect an earned income and net profits tax authorized under section 3113 (relating to homestead and farmstead tax authorization) only after obtaining the approval of the electorate of the school district in a public referendum at a municipal election.

(2) Levy, assess and collect a personal income tax authorized under section 3112 (relating to personal income tax) or 3113 only after obtaining the approval of the electorate of the school district in a public referendum at a municipal election. No such public referendum may be conducted until the Department of Revenue receives final approval of regulations governing the collection of a personal income tax.

(b) Submittal of referendum.—

(1) A board of school directors may submit, at a municipal election, a referendum question to the electors of the school district seeking voter approval allowing the school district to levy, assess and collect an earned income and net profits tax or a personal income tax for the purpose of annually funding homestead and farmstead exclusions or millage reductions in certain circumstances or levy, assess and collect a personal income tax for the purpose of converting the school district's earned income and net profits tax to a personal income tax. Prior to placing a referendum question on the ballot, the board of school directors must adopt a resolution pursuant to this section. The board of school directors must give public notice of its intent

to adopt the resolution in the manner provided by section 4 of the Local Tax Enabling Act and must conduct at least one public hearing on the resolution.

(2) The board of school directors shall submit the referendum question required under this section to the election officials of each county in which the school district is situated no later than 60 days prior to a municipal election. The election officials shall cause the referendum question to be submitted to the electors of the school district.

(3) The referendum question shall state the rate of the proposed earned income and net profits tax or personal income tax to be levied, the reason for the tax, the estimated per homestead tax reduction and the current rate of earned income and net profits or personal income tax levied by the school district. The question shall be clear and in language that is readily understandable by a layperson and shall be framed in one of the following forms with the school district resolution enumerating the variable amounts represented by the terms X, Y and Z:

(i) Do you favor imposing an additional X% (insert name of tax)? The revenue generated from the increased tax rate will be used to reduce taxes on qualified residential property by an estimated amount of \$Y. The current (insert name of tax) rate for the school district is Z%.

(ii) Do you favor imposing a personal income tax at X%? The revenue generated from the tax will be used to reduce taxes on qualified residential properties by (insert amount of reduction).

(iii) Do you favor converting the school district's current earned income and net profits tax into a personal income tax at X%? The revenue generated from the personal income tax will be used to replace the revenue from the current school district's earned income and net profits tax. The current earned income and net profits tax rate is Z%.

(iv) Do you favor converting the school district's current earned income and net profits tax into a personal income tax at X%? The revenue generated from the personal income tax will be used to reduce taxes on qualified residential property by an estimated amount of (insert amount of reduction) and to replace the revenue from the current school district's earned income and net profits tax. The current earned income and net profits tax rate is Z%.

(4) The election officials of each county shall, in consultation with the board of school directors, draft a nonlegal interpretative statement which shall accompany the referendum question in accordance with section 201.1 of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code. The nonlegal interpretative statement shall inform the voters of:

- (i) the reason for the tax;
- (ii) the estimated increase in revenue which the board of school directors has included in the proposed tax rate as authorized under section 3113(b)(2);
- (iii) the estimated per homestead tax reduction; and
- (iv) the current rate of earned income and net profits tax or, if applicable, personal income tax levied by the school district.

(c) Proposed tax rate.—The proposed rate of the earned income and net profits tax or personal income tax shall be established by the board of school directors of the school district and shall not exceed the rate required to provide an exclusion for homestead property and farmstead property equal to the maximum exclusion under 53 Pa.C.S. § 8586 (relating to limitations) or the rate required to convert the tax in a revenue neutral manner.

(d) Effective date.—If the referendum question under this section is approved, the new rate of the earned income and net profits tax or personal income tax shall take effect pursuant to sections 3112(b) and 3113(c).

(e) Majority approval.—Approval of the referendum required under this subsection shall be by a majority of the electors voting on the question in the school district.

(f) Effect on certain school districts.—This section shall not apply to a school district of the first class.

(g) School districts operating under 53 Pa.C.S. Ch. 87.—

(1) This subsection shall apply to a school district which is subject to 53 Pa.C.S. Ch. 87 (relating to other subjects of taxation).

(2) A school district under this subsection shall convert its earned income and net profits tax authorized under 53 Pa.C.S. § 8703 (relating to adoption of referendum) to an earned income and net profits tax authorized under this subsection at the same rate as the tax was levied under 53 Pa.C.S. § 8703 on the date of conversion. The tax authorized under this subsection shall be subject to the provisions of sections 3116 (relating to credits), 3117 (relating to regulations), 3123 (relating to special provisions for poverty) and 3141 (relating to procedure).

(3) A school district under this subsection shall combine all revenue generated for funding homestead and farmstead exclusions under 53 Pa.C.S. § 8703 with any revenue collected for the purposes of funding homestead and farmstead exclusions under this chapter.

(h) Pennsylvania Election Code provisions.—Proceedings under this section shall be in accordance with the provisions of the Pennsylvania Election Code.

(i) 2007 referendum.—Unless a school district is providing the maximum homestead and farmstead exclusion allowed under 53 Pa.C.S. § 8586 (relating to limitations), a board of school directors shall submit at the primary election of 2007 a referendum question to the electors of the school district seeking voter approval allowing the school district to levy, assess and collect an earned income and net profits tax authorized under section 3113 or a personal income tax authorized under section 3113 for the purpose of annually funding homestead and farmstead exclusions.

§ 3122. Public referendum requirements for levying and increasing certain taxes.

(a) Applicability.—This section shall apply to fiscal years beginning with the 2007-2008 fiscal year.

(b) Prohibitions.—Except as set forth in subsection (f), unless there is compliance with subsection (c), a board of school directors may not do any of the following:

(1) Increase the rate of a tax levied for the support of the public schools by more than the index. For purposes of compliance with this paragraph, a school district which is situated in more than one county and which levies real estate taxes under section 672.1 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, shall apply the index to each separate rate of real estate taxes levied.

(2) Levy a tax which was not levied in a prior fiscal year for the support of the public schools.

(3) Raise the rate of the earned income and net profits tax if already imposed under the authority of the Local Tax Enabling Act.

(c) Referendum.—

(1) In order to take an action prohibited under subsection (b)(1), at the election immediately preceding the start of the school district fiscal year in which the proposed tax increase would take effect, a referendum stating the specific rate or rates of the tax increase must be submitted to the electors of the school district, and a majority of the electors voting on the question must approve the increase.

(2) In order to take an action under subsection (b)(2), at the election immediately preceding the start of the school district



fiscal year in which the proposed tax would take effect, a referendum stating the proposed tax and the rate at which it will be levied must be submitted to the electors of the school district, and a majority of the electors voting on the question must approve the tax.

(3) Except as set forth in subsections (i) and (j), a school district acting pursuant to this subsection shall submit the referendum question required under this section to the election officials of each county in which it is situated no later than 60 days prior to the election immediately preceding the fiscal year in which the tax increase would take effect.

(4) The election officials of each county shall, in consultation with the board of school directors, draft a nonlegal interpretative statement which shall accompany the referendum question in accordance with section 201.1 of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code. The nonlegal interpretative statement shall include information that references the items of expenditure for which the tax increase is sought and the consequence of the referendum being disapproved by the electorate.

(d) Failure to approve referendum.—

(1) If a referendum question submitted under subsection (c)(1) is not approved, the board of school directors may approve an increase in the tax rate of not more than the index.

(2) If a referendum question submitted under subsection (c)(2) is not approved, the board of school directors may not levy the tax.

(e) Tax rate submissions.—A school district that has adopted a preliminary budget proposal under section 3131 (relating to adoption of preliminary budget proposals) that includes an increase in the rate of any tax levied for the support of public schools shall submit information on the increase to the department on a uniform form prepared by the department. The school district shall submit such information no later than 85 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year. The department shall compare the proposed percentage increase in the rate of any tax with the index. Within ten days of the receipt of the information required under this subsection but no later than 75 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year, the department shall inform the school district whether the proposed tax rate increase is less than or equal to the index. If the department determines that the proposed percentage increase in the rate of the tax exceeds the index, the department shall notify the school district that:

(1) the proposed tax increase must be reduced to an amount less than or equal to the index;

(2) the proposed tax increase must be approved by the electorate under subsection (c)(1); or

(3) an exception must be sought under subsection (f).

(f) Referendum exceptions.—A school district may, without seeking voter approval under subsection (c), increase the rate of a tax levied for the support of the public schools by more than the index if all of the following apply:

(1) The revenue raised by the allowable increase under the index is insufficient to balance the proposed budget due to one or more of the expenditures listed in paragraph (2).

(2) The revenue generated by increasing the rate of a tax by more than the index will be used to pay for any of the following:

(i) Costs incurred in responding to or recovering from an emergency or disaster declared pursuant to 35 Pa.C.S. § 7301 (relating to general authority of Governor) or 75 Pa.C.S. § 6108 (relating to power of Governor during emergency).

(ii) Costs to implement a court order or an administrative order from a Federal or State agency as

long as the tax increase is rescinded following fulfillment of the court order or administrative order.

(iii) Costs associated with the following:

(A) For a board of school directors that elected to participate in the former act of act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act, to pay interest and principal on any indebtedness incurred under 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing) prior to September 4, 2004. In no case may the school district incur additional debt under this clause except for the refinancing of existing debt, including the payment of costs and expenses related to such refinancing and the establishment of funding of appropriate debt service reserves. An increase under this clause shall be rescinded following the final payment of interest and principal.

(B) For a board of school directors that did not elect to participate in the former act of act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act, to pay interest and principal on any indebtedness authorized under 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing) prior to July 1, 2006. In no case may the school district incur additional debt under this clause except for the refinancing of existing debt, including the payment of costs and expenses related to such refinancing and the establishment of funding of appropriate debt service reserves. An increase under this clause shall be rescinded following the final payment of interest and principal.

(C) To pay interest and principal on any electoral debt incurred under 53 Pa.C.S. Pt. VII Subpt. B.

(D) To pay interest and principal on indebtedness for up to 60% of the construction cost average on a square-foot basis if all of the following apply:

(I) The indebtedness is for a school construction project under 22 Pa. Code Ch. 21 (relating to school buildings).

(II) For a board of school directors that elected to participate in the former Homeowner Tax Relief Act, the indebtedness to fund appropriate debt service reserves for the project is incurred after September 3, 2004.

(II.1) For a board of school directors that did not elect to participate in the former Homeowner Tax Relief Act, the indebtedness to fund appropriate debt service reserves for the project is incurred on or after the effective date of this act.

(III) The increase sought under this clause is rescinded following final payment of interest and principal.

(IV) The indebtedness is incurred only after existing fund balances for school construction and at least 50% of any undesignated fund balances have been fully committed to fund the project.

(V) The indebtedness is for an academic elementary or academic secondary school building. For purposes of this subclause, the following shall not be considered to be an academic elementary or academic secondary school building: natatorium, stadium bleachers, athletic field, athletic field lighting equipment and apparatus used to promote and conduct interscholastic athletics.

(VI) For school districts of the second, third and fourth class, the project has been approved by the department under section 731 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949. For nonreimbursable projects in school districts of the first class A, the plans and specifications have been approved by the board of school directors. For reimbursable projects in school districts of the first class A, the plans and specifications have been approved by the department pursuant to 22 Pa. Code Ch. 21.

(E) To pay interest and principal on indebtedness for up to \$250,000 of the construction cost of a nonacademic school construction project, as adjusted annually by the percentage increase in the average of the Statewide average weekly wage and the employment cost index. An increase under this clause shall be rescinded following the final payment of interest and principal.

(F) For purposes of this subparagraph, electoral debt includes the refunding or refinancing of electoral debt for which an exception is permitted under clause (B) as long as the refunding or refinancing incurs no additional debt other than for:

(I) costs and expenses related to the refunding or refinancing; and

(II) funding of appropriate debt service reserves.

(G) For purposes of this subparagraph, indebtedness includes the refunding or refinancing of indebtedness for which an exception is permitted under clauses (A), (B), (D) and (E) as long as the refunding or refinancing incurs no additional debt other than for:

(I) costs and expenses related to the refunding or refinancing; and

(II) funding of appropriate debt service reserves.

(iv) Costs incurred in providing special education programs and services to students with disabilities if the increase in expenditures on special education programs and services was greater than the index. The dollar amount of this exception shall be equal to the portion of the increase that exceeds the index. Eligible costs for special education programs and services include, but are not limited to, transportation, psychological testing, legal services, early intervention programs and any related services required by an individualized education plan.

(v) Costs which:

(A) Were incurred in the implementation of a school improvement plan required under

section 1116(b) of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 20 U.S.C. § 6316(b)).

(B) Were not offset by a specific State allocation.

(vi) Costs necessary to maintain the total actual instructional expense. The dollar amount of this exception shall be equal to the portion of the increase in the total actual instructional expense that exceeds the index. The total actual instructional expense is calculated as follows:

(A) Divide the existing average daily membership into the total school district actual instructional expense for the current school year to determine the existing actual instructional expense per student.

(B) Multiply the existing actual instructional expense per student by the index to determine the adjusted instructional expense per student.

(C) Multiply the adjusted instructional expense per student by the projected enrollment for the immediately succeeding fiscal year to determine the total actual instructional expense.

(vii) Costs necessary to maintain actual instructional expense per average daily membership, adjusted by the index, if the increase in actual instructional expense per average daily membership between the school year determined under subsection (j)(4) and the school year preceding the school year determined under subsection (j)(4) is less than the index.

(viii) Maintenance of revenues derived from real property taxes, earned income and net profits taxes, personal income taxes, basic education funding allocations and special education funding allocations, adjusted by the index, for a school district where the percentage increase in revenues derived from real property taxes, earned income and net profits taxes, personal income taxes, basic education funding allocations and special education funding allocations between the school year determined under subsection (j)(4) and the school year preceding the school year determined under subsection (j)(4) is less than the index.

(ix) Costs incurred for providing health care-related benefits which are directly attributable to a collective bargaining agreement in effect on January 1, 2006, between the school district and its employees' organization if the anticipated increase in the cost of health care-related benefits between the current year and the upcoming year is greater than the index. The dollar amount of this exception shall be equal to the portion of the increase which exceeds the index. This subparagraph shall not apply to a collective bargaining agreement renewed, extended or entered into after January 1, 2006.

(x) Costs incurred for providing a school district's share of payments to the Public School Employees' Retirement System as required under 24 Pa.C.S. § 8327 (relating to payments by employers) if the actual dollar amount between the current year and the upcoming year is greater than the index. The dollar amount to which this subsection applies shall equal that portion of the increase which exceeds the index of the actual dollar value of payment between the current year and the upcoming year.

(g) Revenue derived from increase.—Any revenue derived from an increase in the rate of any tax allowed pursuant to

subsection (f)(2)(iii) shall not exceed the anticipated dollar amount of the expenditure.

(h) Limitation on tax rate.—The increase in the rate of any tax allowed pursuant to an exception under subsection (f)(2)(i), (ii), (iv), (v), (vi), (vii), (viii), (ix) or (x) shall not exceed the rate increase required as determined by a court of common pleas or the department pursuant to subsection (i) or (j).

(i) Court action.—

(1) Prior to the imposition of a tax increase under subsection (f)(2)(i), (ii) and (iv) and no later than 75 days prior to the election immediately preceding the beginning of the school district's fiscal year, approval by the court of common pleas in the judicial district in which the administrative office of the school district is located must be sought. The board of school directors shall publish in a newspaper of general circulation and on the district's publicly accessible Internet website, if one is maintained, notice of its intent to file a petition under this subsection at least one week prior to the filing of the petition. The board of school directors shall also publish in a newspaper of general circulation and on the district's publicly accessible Internet website, if one is maintained, notice, as soon as possible following notification from the court that a hearing has been scheduled, stating the date, time and place of the hearing on the petition. The following shall apply to any proceedings instituted under this subsection:

(i) The school district must prove by clear and convincing evidence that it qualifies for each exception sought.

(ii) The school district must prove by clear and convincing evidence the anticipated dollar amount of the expenditure for each exception sought.

(2) The court shall rule on the school district's petition and inform the school district of its decision no later than 55 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year. If the court approves the petition, the court shall also determine the dollar amount of the expenditure for which an exception is granted, the tax rate increase required to fund the exception and the appropriate duration of the increase. If the court denies the petition, the school district may submit a referendum question under subsection (c)(1). The question must be submitted to the election officials no later than 50 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year.

(j) Department approval.—

(1) A school district that seeks to increase the rate of tax due to an expenditure under subsection (f)(2)(iii), (v), (vi), (vii), (viii), (ix) or (x) shall obtain the approval of the department before imposing the tax increase. The department shall establish procedures for administering the provisions of this subsection, which may include an administrative hearing on the school district's submission.

(2) A school district proceeding under the provisions of this subsection shall publish in a newspaper of general circulation and on the district's publicly accessible Internet website, if one is maintained, notice of its intent to seek department approval at least one week prior to submitting its request for approval to the department. If the department schedules a hearing on the school district's request, the school district shall publish notice of the hearing in a newspaper of general circulation and on the district's publicly accessible Internet website, if one is maintained, immediately upon receiving the information from the department. The notice shall include the date, time and place of the hearing.

(3) The department shall approve a school district's request under this subsection if a review of the data under paragraph (4) demonstrates that:

(i) the school district qualifies for one or more exceptions under subsection (f)(2)(iii), (v), (vi), (vii), (viii), (ix) or (x); and

(ii) the sum of the dollar amounts of the exceptions for which the school district qualifies makes the school district eligible under subsection (f)(1).

(4) For the purpose of determining the eligibility of a school district for an exception under subsection (f)(2)(v), (vi), (vii) or (viii), the department shall utilize data from the most recent school years for which annual financial report data required under section 2553 of the Public School Code of 1949 has been received for all school districts. The department shall inform school districts of the school years determined under this subsection no later than 30 days prior to the date on which public inspection of proposed school budgets is required under section 3131(c).

(5) The department shall rule on the school district's request and shall inform the school district of its decision no later than 55 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year. If the department approves the request, the department shall determine the dollar amount of the expenditure for which the exception is sought and the tax rate increase required to fund the exception. If the department denies the request, the school district may submit a referendum question under subsection (c)(1). The question must be submitted to the election officials no later than 50 days prior to the date of the election immediately preceding the beginning of the school district's fiscal year.

(6) Within 30 days of the deadline under paragraph (5), the department shall submit a report to the President pro tempore of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives and the Minority Leader of the House of Representatives enumerating the school districts which sought an exception under this subsection. The department shall also publish the report on its publicly accessible Internet website. The report shall include:

(i) The name of each school district making a request under this subsection.

(ii) The specific exceptions requested by each school district and the dollar amount of the expenditure for each exception.

(iii) The department's ruling on the request for the exception.

(iv) If the exception was approved, the dollar amount of the expenditure for which the exception was sought and the tax rate increase required to fund the exception.

(v) A statistical summary of the information in subparagraphs (ii), (iii) and (iv).

(k) Objections.—Any person that resides within or pays real property taxes to the school district filing a petition under subsection (i) may file with the court written objections to any petition filed under this section.

(l) Index calculation.—No later than August 15, 2005, and each August 15 thereafter, the department shall calculate the index. The department shall publish the index by September 1, 2005, and each September 1 thereafter, in the Pennsylvania Bulletin.

(m) Election interference prohibited.—

(1) No public funds may be used to urge any elector to vote for or against a referendum or be appropriated for political or campaign purposes.

(2) This subsection shall not prohibit the use of public funds for dissemination of factual information relative to a referendum appearing on an election ballot.

(3) As used in this subsection, the term "public funds" means any funds appropriated by the General Assembly or by a political subdivision.

§ 3123. Special provisions for poverty.

(a) Earned income and net profits tax.—A school district that imposes an earned income and net profits tax authorized under section 3113 (relating to homestead and farmstead tax authorization) may exempt from the payment of that tax any person whose total income from all sources is less than \$12,000.

(b) Applicability to personal income tax.—Section 304 of the Tax Reform Code shall apply to any personal income tax levied by a school district under section 3112 (relating to personal income tax).

§ 3124. Disposition of income tax revenue and State allocations.

(a) Earned income and net profits tax revenue.—All earned income and net profits tax revenue received by the school district pursuant to this chapter shall be used as follows:

(1) Except as set forth in section 3113(b)(2) (relating to homestead and farmstead tax authorization) or 3125(a) (relating to school district tax options) or in the fiscal year that a tax under section 3113(a) is implemented or increased, all revenue received by a school district that is directly attributable to that tax shall be used to fund exclusions for homestead and farmstead property.

(2) Except as set forth in section 3125(a), in the second fiscal year and each fiscal year thereafter, an amount equivalent to the revenue directly attributable to the imposition of the tax in the first full fiscal year in which the tax is levied and collected shall be used to fund exclusions for homestead and farmstead property. All remaining revenue may be used for the operations of the school district.

(b) Personal income tax revenue.—All personal income tax revenue received by the school district pursuant to this chapter shall be used as follows:

(1) Except as set forth in section 3113(b)(2) or 3125(a), in the fiscal year that the tax under section 3113(a) is implemented or increased, all revenue received by the school district that is directly attributable to that tax shall be used to fund exclusions for homestead and farmstead property.

(2) Except as set forth in section 3125(a), in the second fiscal year and each fiscal year thereafter, an amount equivalent to the revenue directly attributable to the imposition of the tax in the first full fiscal year in which the tax is levied and collected shall be used to fund exclusions for homestead and farmstead property. All remaining revenue may be used for the operations of the school district.

(c) State allocations.—

(1) A school district that receives a State allocation under 72 Pa.C.S. Ch. 21 (relating to homeowner property tax relief) shall use the State allocation to fund exclusions for homestead and farmstead property or as provided under 72 Pa.C.S. Ch. 21 Subch. D or, where section 3125(a)(2) applies, to reduce the property tax rate on all properties subject to the property tax in the school district.

(2) Notwithstanding the provisions of paragraph (1), a school district coterminous with a city of the second class A may use up to 50% of the State allocation received under 72 Pa.C.S. Ch. 21 to reduce the rate of the earned income and net profits tax levied by the school district pursuant to any other act. If a board of school directors elects to reduce the rate of earned income and net profits tax pursuant to this paragraph, it shall adopt a resolution reducing the rate of earned income and net profits tax no later than the last day of the fiscal year immediately preceding the fiscal year in which the new earned income and net profits tax rate shall take effect. The board shall give public notice of its intent to adopt the resolution in the manner provided by section 4 of the Local Tax Enabling Act and shall conduct at least one public hearing on the resolution. Any portion of the property tax reduction allocation not used to reduce the rate of the earned income and net profits tax shall be used as prescribed in paragraph (1).

§ 3125. School district tax options.

(a) Receipt of State allocation.—In any fiscal year in which a school district receives a State allocation under 72 Pa.C.S. Ch. 21 (relating to homeowner property tax relief) and the sum of the State allocation and revenue from the earned income and net profits tax or personal income tax received by the school district under this chapter exceeds the amount required to fund the maximum homestead and farmstead exclusions authorized under 53 Pa.C.S. § 8586 (relating to limitations), the school district shall:

(1) reduce the rate of the earned income and net profits tax or personal income tax such that the sum of the State allocation and the earned income and net profits tax or personal income tax revenue is equal to the amount required to fund the maximum homestead and farmstead exclusions authorized under 53 Pa.C.S. § 8586; or

(2) maintain the rate of the earned income and net profits tax or personal income tax and utilize any revenue in excess of the revenue required to fund the maximum homestead and farmstead exclusions authorized under 53 Pa.C.S. § 8586 to reduce the property tax rate on all properties subject to the property tax in the school district.

(b) Reduction of earned income and net profits tax.—In any year subsequent to a year in which the rate of the earned income and net profits tax or personal income tax was reduced pursuant to subsection (a)(1) and the sum of the State allocation under 72 Pa.C.S. Ch. 21 and revenue from the earned income and net profits tax or personal income tax received by the school district under this chapter is less than the amount necessary to maintain the maximum homestead and farmstead exclusions authorized under 53 Pa.C.S. § 8586, the school district may raise the rate of the earned income and net profits tax or personal income tax up to the amount previously reduced under subsection (a)(1), without complying with the referendum provisions of section 3121 (relating to referendum).

§ 3126. Property tax limits on reassessment.

Notwithstanding any other provision of law, including this subpart, after any county makes a countywide revision of assessment of real property at values based upon an established predetermined ratio as required by law or after any county changes its established predetermined ratio, a board of school directors in a school district located within that county that, after September 3, 2004, for the first time levies its real estate taxes on that revised assessment or valuation shall for the first year reduce its tax rate, if necessary, for the purpose of having the percentage increase in taxes levied for that year against the real properties contained in the duplicate for the preceding year be less than or equal to the index for the preceding year notwithstanding the increased valuations of such properties under the revised assessment. For the purpose of determining the total amount of taxes to be levied for the first year, the amount to be levied on newly constructed buildings or structures or on increased valuations based on new improvements made to existing houses need not be considered. The tax rate shall be fixed for that year at a figure which will accomplish this purpose. The provisions of section 3121 (relating to referendum) shall apply to increases in the tax rate above the limits provided in this section.

#### SUBCHAPTER D SCHOOL DISTRICT BUDGETS

Sec.

3131. Adoption of preliminary budget proposals.

3132. Adoption of annual budgets.

3133. Information to school districts.

§ 3131. Adoption of preliminary budget proposals.

(a) Adoption.—Beginning January 1, 2007, each board of school directors shall adopt a preliminary budget proposal for the following fiscal year no later than 90 days prior to the date of the election immediately preceding the fiscal year in which the preliminary budget will take effect.

(b) Contents.—The preliminary budget proposal shall include estimated revenues and expenditures and any proposed tax rates and shall be prepared on a uniform form furnished by the department.

(c) Public inspection.—The board of school directors shall print the preliminary budget proposal and make it available for public inspection at least 20 days prior to its adoption. The board of school directors shall give public notice of its intent to adopt the preliminary budget at least ten days prior to adoption and may hold a public hearing prior to its adoption.

(d) Resolution.—

(1) A board of school directors may elect to adopt a resolution indicating that it will not raise the rate of any tax for the support of the public schools for the following fiscal year by more than the index. The resolution must be adopted no later than 110 days prior to the date of the election immediately preceding the upcoming fiscal year. The resolution must make the following unconditional certifications:

(i) That the board of school directors will not increase any tax at a rate that exceeds the index as calculated by the department.

(ii) That the board of school directors will comply with the procedures set forth in section 687 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, for the adoption of its proposed and final budgets.

(iii) That the board of school directors certifies that increasing any tax at a rate less than or equal to the index will be sufficient to balance its final budget.

(2) A board of school directors that adopts a resolution under this section shall do all of the following:

(i) Comply with the procedures in section 687 of the Public School Code of 1949 for the adoption of its proposed and final budgets and shall not be subject to subsections (a) and (c).

(ii) Submit information on a proposed increase in the rate of a tax levied for the support of the public schools to the department on a uniform form prepared by the department no later than five days after the adoption of the resolution.

(iii) Send a copy of the resolution adopted pursuant to this section to the department no later than five days after the adoption of the resolution.

(3) A board of school directors that adopts a resolution under this section shall not be eligible to seek referendum exceptions under section 3122(e) and (f) (relating to public referendum for levying and increasing certain taxes).

(4) Upon receipt of the information required under paragraph (2)(ii), the department shall compare the proposed percentage increase in the rate of the tax with the index. Within ten days of the receipt of the information required under this subsection, the department shall inform the school district whether the proposed tax rate increase is less than or equal to the index. If the department determines that the proposed percentage increase in the rate of the tax exceeds the index, the school district shall be subject to subsections (a) and (c); and paragraphs (2)(i) and (3) shall not apply. The department's determination under this paragraph shall not constitute an adjudication.

§ 3132. Adoption of annual budgets.

(a) Adoption.—Beginning January 1, 2007, each board of school directors shall adopt its annual budget for the following fiscal year no later than the last day of the fiscal year before the fiscal year in which the budget takes effect.

(b) Contents.—The annual budget shall include estimated revenues and expenditures and any proposed tax rates and be prepared on a uniform form furnished by the department.

(c) Public inspection.—The board of school directors shall print the annual budget and make it available for public inspection at least

20 days prior to its adoption. The board of school directors shall give public notice of its intent to adopt the annual budget at least ten days prior to adoption and may hold a public hearing prior to its adoption.

§ 3133. Information to school districts.

No later than September 30 of the year in which a State allocation is made under Chapter 21 (relating to homeowner property tax relief) and September 30 of each year thereafter, the department shall provide each school district with the following information:

(1) The dates by which actions required under this chapter shall take place.

(2) The index for the applicable fiscal year.

#### SUBCHAPTER E REIMBURSEMENTS

Sec.

3141. Procedure.

§ 3141. Procedure.

Notwithstanding any other provisions of law to the contrary, the following apply:

(1) This section only applies to a taxpayer who is a resident of this Commonwealth and not a resident of a city of the first class but who is subject to the tax on salaries, wages, commissions or other compensation imposed by a city of the first class under the authority of the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act.

(2) For tax years beginning after the effective date of this section, and each tax year thereafter, payment of a tax on salaries, wages, commissions or other compensation as set forth in paragraph (1) shall be credited to the school district of the taxpayer's residence at an amount no greater than the tax on salaries, wages, commissions or other compensation as set forth in paragraph (1) imposed by the school district in which the taxpayer resides.

(3) An amount equal to the aggregate amount of the tax credited under paragraph (2) shall be paid from the fund to the school district of residence of each taxpayer under paragraph (1) for the purpose of funding property tax rate reduction. The department shall prescribe procedures to calculate the amount due to each school district qualifying under this paragraph and shall publish the procedures in the Pennsylvania Bulletin.

#### SUBCHAPTER F TAX STUDY COMMISSION

Sec.

3151. Tax study commission.

§ 3151. Tax study commission.

(a) Appointment.—A board of school directors shall appoint a local tax study commission prior to adopting a resolution under section 3121 (relating to referendum). The local tax study commission shall be appointed no later than 180 days prior to the date on which the board of school directors is required to adopt a resolution under section 3121.

(b) Membership.—The local tax study commission shall consist of five, seven or nine members who are resident individuals or taxpayers of the school district and shall reflect the socioeconomic, age and occupational diversity of the school district to the extent possible. Except that one member of the local tax study commission may be a member of the board of school directors, no member shall be an official or employee or a relative thereof, of the school district.

(c) Staff and expenses.—The school district shall provide necessary and reasonable support staff and shall reimburse the members of the local tax study commission for necessary and reasonable expenses in the discharge of their duties. Receipts shall be required for all reimbursable expenses under this subsection.

(d) Contents of study.—The local tax study commission shall study the existing taxes levied, assessed and collected by the school district and the effect of any county or municipal taxes imposed concurrently with the school district. The local tax study commission shall determine how the tax policies of the school district could be improved by the levy, assessment and collection of the taxes authorized

under sections 3112 (relating to personal income tax) and 3113 (relating to homestead and farmstead tax authorization). The study shall include consideration of all of the following:

(1) Historic and present rates of and revenue from taxes currently levied, assessed and collected.

(2) The percentage of total revenues provided by taxes currently levied, assessed and collected.

(3) The age, income, employment and property use characteristics of the existing tax base.

(4) Projected revenues of taxes currently levied, assessed and collected, including taxes authorized and taxes not levied under this chapter.

(e) Recommendation.—Within 90 days of its appointment, the local tax study commission shall make a nonbinding recommendation to the board of school directors regarding the imposition of the taxes authorized under sections 3112 and 3113, commencing in the subsequent fiscal year. Prior to making its recommendation, the local tax study commission shall hold at least one public hearing. The recommendation of the local tax study commission shall be presented at a public meeting of the board of school directors. The board of school directors shall make such recommendation available to interested persons upon request.

(f) Failure to issue a recommendation.—If the local tax study commission fails to make a recommendation under subsection (e), the board of school directors shall discharge the local tax study commission.

(g) Adoption of recommendation.—The board of school directors shall accept or reject the recommendation of the local tax study commission prior to adopting a resolution under section 3121.

(h) Materials.—All records of the local tax study commission, including receipts, tapes, minutes of meetings and written communications shall be turned over to the board of school directors and made available for public inspection during the regular business hours of the school district.

#### SUBCHAPTER G REGISTER

Sec.

3161. Tax Register and Local Tax Withholding Register.

§ 3161. Tax Register and Local Tax Withholding Register.

(a) General rule.—The Department of Community and Economic Development shall maintain a Tax Register and Local Withholding Tax Register.

(b) Tax Register.—The Department of Community and Economic Development shall maintain a Tax Register, an official continuing register of all county, municipal and school tax rates within this Commonwealth on its publicly accessible Internet website. Information for the Tax Register shall be furnished by each county, municipality and school district to the department as prescribed by the Department of Community and Economic Development. The Department of Community and Economic Development shall continuously update the Tax Register as new and updated information is provided.

(c) Local Withholding Tax Register.—As part of the Tax Register, the Department of Community and Economic Development shall maintain a Local Withholding Tax Register, an official continuing register of all withholding taxes.

(d) Contents of Local Withholding Tax Register.—The Local Withholding Tax Register shall be organized by municipality and shall list all of the following:

(1) Each municipality and coterminous school district.

(2) The effective municipal income tax rate on resident taxpayers.

(3) The effective school district income tax rate on resident taxpayers.

(4) The combined municipal and school district income tax rate on taxpayers residing in each municipality.

(5) The effective income tax rate on resident and nonresident taxpayers working within a municipality.

(6) Whether an income tax is a personal income tax levied under this chapter.

(7) The effective emergency and municipal services tax rate.

(8) The effective school district emergency and municipal services tax rate.

(9) The combined municipal and school district emergency and municipal services tax rate.

(10) The amount of any other withholding tax.

(11) The name, telephone number, address, e-mail address, where available, and Internet website, where available, of the tax officer responsible for administering the collection of the tax and from whom information, forms and copies of regulations are available.

(12) Any other information deemed to be necessary by the Department of Community and Economic Development.

(e) Official release and effective period of tax rates on Local Withholding Tax Register.—On June 15 and December 15 of each year, the Department of Community and Economic Development shall update and officially release withholding tax rates on the Local Tax Withholding Register. Withholding for tax rates released on June 15 shall become effective on July 1. Withholding for tax rates released on December 15 shall become effective on January 1 of the following year. The Department of Community and Economic Development may revise the notification, official release and effective dates of the Local Withholding Tax Register for good cause and with adequate notice.

(f) Information for the Local Withholding Tax Register.—Information for the Local Withholding Tax Register shall be furnished by each municipality and school district to the Department of Community and Economic Development as prescribed by the department. The information shall include a copy of the ordinance or resolution enacting, repealing or changing the tax. The Department of Community and Economic Development shall be notified and receive information regarding changes to the Local Withholding Tax Register as follows:

(1) New tax enactments, repeals and changes shall be received by the Department of Community and Economic Development no later than June 1 to require withholding of a new tax, withholding at a new rate, or to suspend withholding of such tax effective July 1 of that year. All new tax enactments, repeals and changes received by the Department of Community and Economic Development by June 1 shall be officially released on June 15 and become effective on July 1. Failure of the Department of Community and Economic Development to receive information by June 1 from municipalities and school districts regarding current tax rates, new tax enactments, repeals and changes shall be construed to mean that the information contained in the previous release of the Local Tax Withholding Register is still in force. Information received by the Department of Community and Economic Development after June 1, but before December 1, shall be officially released on December 15.

(2) New tax enactments, repeals and changes shall be received by the Department of Community and Economic Development no later than December 1 to require withholding of a new tax, withholding at a new rate, or to suspend withholding of such tax effective January 1 of the following year. All new tax enactments, repeals and changes received by the Department of Community and Economic Development by December 1 shall be officially released on December 15 and become effective on January 1 of the following year. Failure of the Department of Community and Economic Development to receive information by December 1 from municipalities and school districts regarding current tax rates, new tax enactments, repeals and changes shall be construed to mean that the information contained in the previous release of the Local Tax Withholding Register is still in force. Information received by the Department of Community

and Economic Development after December 1, but before June 1, shall be officially released on June 15.

(g) Withholding and effect of Local Withholding Tax Register.—Employers shall not be required to withhold from the compensation of their employees or make reports of compensation in connection with any withholding tax that is not officially released on the Local Withholding Tax Register as of June 15 and December 15 of each year or as of August 15, 2006, as provided in subsections (e) and (f). Notwithstanding any law to the contrary, no school district, municipality or tax officer may require any employer to withhold a withholding tax at a rate or amount which is not officially released on the Local Withholding Tax Register. The provisions of this section shall not affect the liability of any taxpayer for taxes lawfully imposed under this act.

(h) Withholding and effect to Tax Register.—An employer may withhold at the most recently available rate on the Tax Register even if the rate is different than the tax rate officially released on the Local Withholding Tax Register as provided in subsections (d) and (e). An employer shall not be required to withhold a tax rate that is not officially released on the Local Withholding Tax Register.

Section 1.1. Section 8405 of Title 53 is amended to read: § 8405. Applicability.

[It] Except as provided in Ch. 85 Subch. F (relating to homestead property exclusion), it is the intent of the General Assembly that no provision of this subpart shall apply to any city of the first class, a county of the first class coterminous with a city of the first class and any school district of the first class located within a city of the first class.

Section 1.2. The definitions of “assessor” and “board” in section 8582 of Title 53 are amended and the section is amended by adding definitions to read:

§ 8582. Definitions.

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

“Assessor.” The chief assessor of the county, the equivalent position in a home rule county or the equivalent position in a city of the first or third class that performs its own assessments of real property.

“Board.” Any of the following:

(1) “Board.” As defined in the act of June 26, 1931, (P.L.1379, No.348), referred to as the Third Class County Assessment Board Law.

(2) “Board.” As defined in the act of May 21, 1943 (P.L.571, No.254), known as The Fourth to Eighth Class County Assessment Law.

(3) “Board of Property Assessment, Appeals and Review.” The Board of Property Assessment, Appeals and Review in a county of the second class under the act of June 21, 1939 (P.L.626, No.294), referred to as the Second Class County Assessment Law.

(4) “Board of Revision of Tax and Appeals.” The board of revision of taxes and appeals in cities of the third class.

(5) “Board of Revision of Taxes.” The board of revision of taxes in cities of the first class.

\* \* \*

“Homestead.” A dwelling, including the parcel of land on which the dwelling is located and the other improvements located on the parcel for which any of the following apply:

(1) The dwelling is primarily used as the domicile of an owner who is a natural person. The homestead for real property qualifying under this paragraph shall not include the land on which the dwelling is located if the land is not owned by a person who owns the dwelling.

(2) The dwelling is a unit in a condominium as the term is defined in 68 Pa.C.S. § 3103 (relating to definitions) and the unit is primarily used as the domicile of a natural person who is an owner of the unit; or the dwelling is a unit in a cooperative as the term is defined in 68 Pa.C.S. § 4103 (relating to definitions)

and the unit is primarily used as the domicile of a natural person who is an owner of the unit. The homestead for a unit in a condominium or a cooperative shall be limited to the assessed value of the unit, which shall be determined in a manner consistent with the assessment of real property taxes on those units under 68 Pa.C.S. (relating to real and personal property) or as otherwise provided law. If the unit is not separately assessed for real property taxes, the homestead shall be a pro rata share of the real property.

(3) The dwelling does not qualify under paragraphs (1) and (2) and a portion of the dwelling is used as the domicile of an owner who is a natural person. The homestead for real property qualifying under this paragraph shall be the portion of the real property that is equal to the portion of the dwelling that is used as the domicile of an owner.

“Homestead property.” A homestead for which an application has been submitted and approved under section 8584 (relating to administration and procedure).

\* \* \*

“School district.” A school district of the first class, first class A, second class, third class or fourth class, including any independent school district.

Section 2. Title 72 is amended by adding parts to read:

PART I  
PRELIMINARY PROVISIONS  
(RESERVED)  
PART II  
TAXES

Chapter

12. Sales and Use Tax.

13. Special Situs for Local Sales Tax.

CHAPTER 12  
SALES AND USE TAX

Subchapter

A. General Provisions

B. Imposition of Tax

C. Exclusions from Tax

D. Licenses

E. Hotel Occupancy Tax

F. Returns

G. Payment

H. Assessment and Reassessment

I. Collection

J. Nonpayment

K. Miscellaneous Provisions

L. Refunds and Credits

M. Limitations

N. Interest, Additions, Penalties and Crimes

O. Enforcement and Examinations

P. Appropriation; Effective Date

SUBCHAPTER A  
GENERAL PROVISIONS

Sec.

1201. Definitions.

§ 1201. Definitions.

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

“Adjustment services, collection services or credit reporting services.” Providing collection or adjustments of accounts receivable or mercantile or consumer credit reporting, including, but not limited to, services of the type provided by adjustment bureaus or collection agencies, consumer or mercantile credit reporting bureaus, credit bureaus or agencies, credit clearinghouses or credit investigation services. Such services do not include providing credit card service with collection by a central agency, providing debt counseling or adjustment services to individuals or billing or collection services provided by local exchange telephone companies.

“Blasting.” The use of any combustible or explosive composition in the removal of material resources, minerals and mineral aggregates from the earth and the separation of the dirt, waste and refuse in which the resources, minerals and mineral aggregates are found.

“Building machinery and equipment.” Includes, without limitation, boilers, chillers, air cleaners, humidifiers, fans, switchgear, pumps, telephones, speakers, horns, motion detectors, dampers, actuators, grills, registers, traffic signals, sensors, card access devices, guardrails, medial devices, floor troughs and grates and laundry equipment, together with integral coverings and enclosures, whether or not the item constitutes a fixture or is otherwise affixed to the real estate, whether or not damage would be done to the item or its surroundings upon removal or whether or not the item is physically located within a real estate structure. The term also includes generation equipment, storage equipment, conditioning equipment, distribution equipment and termination equipment, which shall be limited to the following:

- (1) air conditioning, limited to heating, cooling, purification, humidification, dehumidification and ventilation;
- (2) electrical;
- (3) plumbing;
- (4) communications limited to voice, video, data, sound, master clock and noise abatement;
- (5) alarms limited to fire, security and detection;
- (6) control system limited to energy management, traffic and parking lot and building access;
- (7) medical system limited to diagnosis and treatment equipment, medical gas, nurse call and doctor paging;
- (8) laboratory system;
- (9) cathodic protection system; or
- (10) furniture, cabinetry and kitchen equipment.

The term shall not include guardrail posts, pipes, fittings, pipe supports and hangers, valves, underground tanks, wire, conduit, receptacle and junction boxes, insulation, ductwork and coverings thereof.

“Building maintenance or cleaning services.” Providing services which include, but are not limited to, janitorial, maid or housekeeping service, office or interior building cleaning or maintenance service, window cleaning service, floor waxing service, lighting maintenance service such as bulb replacement, cleaning, chimney cleaning service, acoustical tile cleaning service, venetian blind cleaning, cleaning and maintenance of telephone booths or cleaning and degreasing of service stations. The term shall not include repairs on buildings and other structures; nor shall this term include the maintenance or repair of boilers, furnaces and residential air conditioning equipment or parts thereof; the painting, wallpapering or applying other like coverings to interior walls, ceilings or floors; or the exterior painting of buildings.

“Call center.” The physical location in this Commonwealth:

- (1) where at least 150 employees are employed to initiate or answer telephone calls;
- (2) where there are at least two hundred telephone lines; and
- (3) which utilizes an automated call distribution system for customer telephone calls in one or more of the following activities:
  - (i) customer service and support;
  - (ii) technical assistance;
  - (iii) help desk service;
  - (iv) providing information;
  - (v) conducting surveys;
  - (vi) revenue collections; or
  - (vii) receiving orders or reservations.

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

“Commercial aircraft operator.” A person, excluding scheduled airlines, that engages in any or all of the following: charter of aircraft, leasing of aircraft, aircraft sales, aircraft rental, flight instruction, air freight or any other flight activities for compensation.

“Commercial racing activities.” Any of the following:

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

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

“Computer software.” A set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

“Construction contract.” A written or oral contract or agreement for the construction, reconstruction, remodeling, renovation or repair of real estate or a real estate structure. The term shall not apply to services which are taxable under paragraphs (14) and (17) of the definition of “sale at retail” and paragraphs (12) and (15) of the definition of “use.”

“Construction contractor.” A person who performs an activity pursuant to a construction contract, including a subcontractor.

“Delivered electronically.” Delivered to the purchaser by means other than tangible storage media.

“Department.” The Department of Revenue of the Commonwealth.

“Disinfecting or pest control services.” Providing disinfecting, termite control, insect control, rodent control or other pest control services, including, but not limited to, deodorant servicing of restrooms, washroom sanitation service, restroom cleaning service, extermination service or fumigating service. The term “fumigating service” shall not include the fumigation of agricultural commodities or containers used for agricultural commodities, and the term “insect control” shall not include the spraying of trees which are harvested for commercial purposes for gypsy moth control.

“Employment agency services.” Providing employment services to a prospective employer or employee other than employment services provided by theatrical employment agencies and motion picture casting bureaus. These services shall include, but not be limited to, services of the type provided by employment agencies, executive placing services and labor contractor employment agencies other than farm labor.

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

“Gratuity.” Any amount paid or remitted for services performed in conjunction with any sale of food or beverages, or hotel or motel accommodations which amount is in excess of the charges and the tax thereon for such food, beverages or accommodations regardless of the method of billing or payment.

“Help supply services.” Providing temporary or continuing help where the help supplied is on the payroll of the supplying person or entity, but is under the supervision of the individual or business to which help is furnished. These services shall include, but not be limited to, service of a type provided by labor and manpower pools, employee leasing services, office help supply services, temporary help services, usher services, modeling services or fashion show model supply services. Such services shall not include providing farm labor services. The term shall not include nursing, home health care and personal care services and other human health-related services. As used in this definition, “personal care” shall include providing at least one of the following types of assistance to persons with limited ability for self-care:

- (1) dressing, bathing or feeding;
- (2) supervising self-administered medication;
- (3) transferring a person to or from a bed or wheelchair;

or

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

“Internet.” The international nonproprietary computer network of both Federal and non-Federal interoperable packet switched data networks.



“Lawn care service.” Providing services for lawn upkeep, including, but not limited to, fertilizing, lawn mowing, shrubbery trimming or other lawn treatment services.

“Lobbying services.” Providing the services of a lobbyist, as defined in the definition of “lobbyist” in 65 Pa.C.S. § 1303 (relating to definitions).

“Maintaining a place of business in this Commonwealth.” As follows:

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

(2) Engagement in any activity as a business within this Commonwealth by any person, either directly or through a subsidiary, representative or an agent, in connection with the lease, sale or delivery of tangible personal property or the performance of services thereon for use, storage or consumption or in connection with the sale or delivery for use of the services described in paragraphs (11) through (18) of the definition of “sale at retail,” including, but not limited to, having, maintaining or using any office, distribution house, sales house, warehouse or other place of business, any stock of goods or any solicitor, canvasser, salesman, representative or agent under its authority, at its direction or with its permission, regardless of whether the person or subsidiary is authorized to do business in this Commonwealth.

(3) Regularly or substantially soliciting orders within this Commonwealth in connection with the lease, sale or delivery of tangible personal property to or the performance thereon of services or in connection with the sale or delivery of the services described in paragraphs (11) through (18) of the definition of “sale at retail” for residents of this Commonwealth by means of catalogs or other advertising, whether the orders are accepted within or without this Commonwealth.

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

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

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

(3.4) Providing a customer’s mobile telecommunications service deemed to be provided by the customer’s home service provider under the Mobile Telecommunications Sourcing Act (Public Law 106-252, 114 Stat. 626). For purposes of this paragraph, words and phrases used in this paragraph shall have the meanings given to them in the Mobile Telecommunications Sourcing Act.

(4) The term shall not include:

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

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

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

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

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

(1) Every operation commencing with the first production stage and ending with the completion of tangible personal property having the physical qualities, including packaging, if any, passing to the ultimate consumer, which it has when transferred by the manufacturer to another.

(2) The publishing of books, newspapers, magazines and other periodicals and printing.

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

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

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

(i) product or utility service; or

(ii) method of producing a product or utility service.

The term does not include market research or research having as its objective the improvement of administrative efficiency.

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

(7) Remanufacture or retrofit by a manufacturer or remanufacturer of aircraft, armored vehicles, other defense-related vehicles having a finished value of at least \$50,000. Remanufacture or retrofit involves the disassembly of such aircraft, vehicles, parts or components, including electric or electronic components, the integration of those parts and components with other used or new parts or components, including the salvaging, recycling or reclaiming of the used parts or components and the assembly of the new or used aircraft, vehicles, parts or components. For purposes of this definition, the following terms or phrases have the following meanings:

(i) “aircraft” means fixed-wing aircraft, helicopters, powered aircraft, tilt-rotor or tilt-wing aircraft, unmanned aircraft and gliders;

(ii) “armored vehicles” means tanks, armed personnel carriers and all other armed track or semitrack vehicles; or

(iii) “other defense-related vehicles” means trucks, truck-tractors, trailers, jeeps and other utility vehicles, including any unmanned vehicles.

(8) The term does not include constructing, altering, servicing, repairing or improving real estate or repairing, servicing or installing tangible personal property, nor the cooking, freezing or baking of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products.

“Mobile telecommunications service.” Mobile telecommunications service as that term is defined in the

Mobile Telecommunications Sourcing Act (Public Law 106-252, 114 Stat. 626).

“Person.” A natural person, association, fiduciary, partnership, corporation or other entity, including the Commonwealth of Pennsylvania, its political subdivisions and instrumentalities and public authorities. Whenever used in any provision prescribing and imposing a penalty or imposing a fine or imprisonment, or both, the term, as applied to an association, shall include the members of these listed classes and, as applied to a corporation, the officers of the corporation.

“Prebuilt housing.” Either of the following:

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

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

“Prebuilt housing builder.” A person who makes a prebuilt housing sale to a prebuilt housing purchaser.

“Prebuilt housing purchaser.” A person who purchases prebuilt housing in a transaction and who intends to occupy the unit for residential purposes in this Commonwealth.

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

“Premium cable or premium video programming service.”

(1) That portion of cable television services, video programming services, community antenna television services or any other distribution of television, video, audio or radio services which meets all of the following criteria:

(i) Is transmitted with or without the use of wires to purchasers.

(ii) Consists substantially of programming uninterrupted by paid commercial advertising which includes programming primarily composed of uninterrupted full-length motion pictures or sporting events, pay-per-view, paid programming or like audio or radio broadcasting.

(iii) Does not constitute a component of a basic service tier provided by a cable television system or a cable programming service tier provided by a cable television system.

(A) A basic service tier shall include:

(I) all signals of domestic television broadcast stations;

(II) any public, educational, governmental or religious programming; and

(III) any additional video programming signals or service added to the basic service tier by the cable operator.

(B) The basic service tier shall include a single additional lower-priced package of broadcast channels and access information channels which is a subset of the basic service tier as set forth in this paragraph.

(C) A cable programming service tier includes any video programming other than:

(I) the basic service tier;

(II) video programming offered on a pay-per-channel or pay-per-view basis; or

(III) a combination of multiple channels of pay-per-channel or pay-per-view programming offered as a package.

(2) If a purchaser receives or agrees to receive premium cable or premium video programming service, then the following charges are included in the purchase price:

(i) Charges for installation or repair of any premium cable or premium video programming service.

(ii) Upgrade to include additional premium cable or premium video programming service.

(iii) Downgrade to exclude all or some premium cable or premium video programming service.

(iv) Additional premium cable outlets in excess of ten.

(v) Any other charge or fee related to premium cable or premium video programming services.

(3) The term shall not apply to any of the following:

(i) Transmissions by public television.

(ii) Public radio services.

(iii) Official Federal, State or local government cable services.

(iv) Local origination programming which provides a variety of public service programs unique to the community.

(v) Programming which provides coverage of public affairs issues which are presented without commentary or analysis. This subparagraph includes United States Congressional proceedings.

(vi) Programming which is substantially related to religious subjects.

(vii) Subscriber charges for access to a video dial tone system or charges by a common carrier to a video programmer for the transport of video programming.

“Prepaid mobile telecommunications service.” Mobile telecommunications service which is paid for in advance and which enables the origination of calls using an access number, authorization code or both, whether manually or electronically dialed, if the remaining amount of units of the prepaid mobile telecommunications service is known by the service provider of the prepaid mobile telecommunications service on a continuous basis. The term does not include the advance purchase of mobile telecommunications service if the purchase is pursuant to a service contract between the service provider and customer and if the service contract requires the customer to make periodic payments to maintain the mobile telecommunications service.

“Prepaid telecommunications.” A tangible item containing a prepaid authorization number that can be used solely to obtain telecommunications service, including any renewal or increases in the prepaid amount.

“Prewritten computer software.” The term shall have the same meaning as the term “computer software,” including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions of those programs shall not cause the combination to be considered to be other than prewritten computer software. The term includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of the person’s modifications or enhancements. Prewritten computer software or a prewritten portion of the software that is modified or enhanced to any degree, where the modification or enhancement is

designed and developed to the specifications of a specific purchaser, shall be considered to be prewritten computer software except that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.

“Processing.” The performance of the following activities when engaged in as a business enterprise:

(1) The filtering or heating of honey, the cooking, baking or freezing of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products, when the person engaged in such business packages such property in sealed containers for wholesale distribution.

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

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

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

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

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

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

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

(7) The production, processing and bottling of nonalcoholic beverages for wholesale distribution.

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

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

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

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

(11) The processing of used lubricating oils.

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

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

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

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

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

(17) The producing of mobile telecommunications services.

“Promoter.” A person who either, directly or indirectly, rents, leases or otherwise operates or grants permission to any person to use space at a show for the display for sale or for the sale of tangible personal property or services subject to tax under section 1202 (relating to imposition of tax).

“Purchase at retail.” Any of the following:

(1) The acquisition for a consideration of the ownership, custody or possession of tangible personal property other than for resale by the person acquiring the same when such acquisition is made for the purpose of consumption or use, whether such acquisition shall be absolute or conditional, and by whatsoever means the same shall have been effected.

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

(3) The obtaining for a consideration any of those services set forth under paragraphs (2), (3) and (4) of the definition of sale at retail other than for resale.

(4) A retention after March 7, 1956, of possession, custody or a license to use or consume pursuant to a rental contract or other lease arrangement, other than as security, other than for resale.

(5) The obtaining for a consideration any of those services set forth under paragraphs (11) through (18) of the definition of “sale at retail.”

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

“Purchase price.” As follows:

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

(2) There shall be deducted from the purchase price the value of any tangible personal property actually taken in trade or exchange in lieu of the whole or any part of the purchase price. For the purpose of this paragraph, the amount allowed by reason of tangible personal property actually taken in trade or exchange shall be considered the value of the property.

(3) In determining the purchase price on the sale or use of taxable tangible personal property or a service where, because

of affiliation of interests between the vendor and purchaser, or irrespective of any such affiliation, if for any other reason the purchase price declared by the vendor or taxpayer on the taxable sale or use of such tangible personal property or service is, in the opinion of the Department of Revenue, not indicative of the true value of the article or service or the fair price thereof, the department shall, pursuant to uniform and equitable rules, determine the amount of constructive purchase price upon the basis of which the tax shall be computed and levied. Such rules shall provide for a constructive amount of purchase price for each sale or use which would naturally and fairly be charged in an arms-length transaction in which the element of common interest between the vendor or purchaser is absent or if no common interest exists, any other element causing a distortion of the price or value is likewise absent. For the purpose of this paragraph where a taxable sale or purchase at retail transaction occurs between a parent and a subsidiary, affiliate or controlled corporation of such parent corporation, there shall be a rebuttable presumption, that because of such common interest such transaction was not at arm's-length.

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

(5) With respect to the tax imposed by section 1202(b) (relating to imposition of tax) upon any tangible personal property originally purchased by the user of the property six months or longer prior to the first taxable use of the property within this Commonwealth. The user may elect to pay tax on a substituted base determined by considering the purchase price of the property for tax purposes to be equal to the prevailing market price of similar tangible personal property at the time and place of the first use within this Commonwealth. The election must be made at the time of filing a tax return with the department and reporting the tax liability and paying the tax due plus accrued penalties and interest within six months of the due date of the report and payment under section 1217(a) and (c) (relating to time for filing returns).

(6) The purchase price of employment agency services and help supply services shall be the service fee paid by the purchaser to the vendor or supplying entity. The term "service fee," as used in this paragraph, shall be the total charge or fee of the vendor or supplying entity minus the costs of the supplied employee which costs are wages, salaries, bonuses and commissions, employment benefits, expense reimbursements and payroll and withholding taxes, to the extent that these costs are specifically itemized or that these costs in aggregate are stated in billings from the vendor or supplying entity. To the extent that these costs are not itemized or stated on the billings, then the service fee shall be the total charge or fee of the vendor or supplying entity.

(7) Unless the vendor separately states which portion of the billing applies to premium cable services, the total bill for the provision of all cable services shall be the purchase price.

(8) The purchase price of prebuilt housing shall be 60% of the manufacturer's selling price, but a manufacturer of prebuilt housing who precollects tax from a prebuilt housing builder at the time of the sale to the prebuilt housing builder shall have the option to collect tax on 60% of the selling price or on 100% of the actual cost of the supplies and materials used in the manufacture of the prebuilt housing.

"Purchaser." A person who acquires, for a consideration, the ownership, custody or possession by sale, lease or otherwise, of tangible personal property, or who obtains services in exchange for a purchase price, but not including an employer who obtains services from employees of the employer in exchange for wages or salaries when the services are rendered in the ordinary scope of their employment.

"Real estate structure." A structure or item purchased by a construction contractor pursuant to a construction contract with:

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

(2) the United States; or

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

The term includes building machinery and equipment; developed or undeveloped land; streets; roads; highways; parking lots; stadiums and stadium seating; recreational courts; sidewalks; foundations; structural supports; walls; floors; ceilings; roofs; doors; canopies; millwork; elevators; windows and external window coverings; outdoor advertising boards or signs; airport runways; bridges; dams; dikes; traffic control devices, including traffic signs; satellite dishes; antennas; guardrail posts; pipes; fittings; pipe supports and hangers; valves; underground tanks; wire; conduit; receptacle and junction boxes; insulation; ductwork and coverings thereof; and any structure or item similar to any of the foregoing, whether or not the structure or item constitutes a fixture or is affixed to the real estate, or whether or not damage would be done to the structure or item or its surroundings upon removal.

"Resale." As follows:

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

(2) The physical incorporation of tangible personal property as an ingredient or constituent into other tangible personal property, which is to be sold in the regular course of business or the performance of those services described in paragraphs (2), (3) and (4) of the definition of "sale at retail" upon tangible personal property which is to be sold in the regular course of business or where the person incorporating such property has undertaken at the time of purchase to cause it to be transported in interstate commerce to a destination outside this Commonwealth. The term shall include telecommunications services purchased by a cable operator or video programmer that are used to transport or deliver cable or video programming services which are sold in the regular course of business.

(3) The term shall also include tangible personal property purchased or having a situs within this Commonwealth solely for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into tangible

personal property and thereafter transported outside this Commonwealth for use exclusively outside this Commonwealth.

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

(5) The physical incorporation of tangible personal property as an ingredient or constituent in the construction of foundations for machinery or equipment the sale or use of which is excluded from tax under the provisions of paragraph (8)(ii)(A), (B), (C) and (D) of the definition of "sale at retail" and paragraph (4)(ii)(B)(I), (II), (III) and (IV) of the definition of "use," whether the foundations at the time of construction or transfer constitute tangible personal property or real estate.

"Resident." As follows:

(1) Any natural person:

(i) who is domiciled in this Commonwealth; or  
(ii) who maintains a permanent place of abode within this Commonwealth and spends in the aggregate more than 60 days of the year within this Commonwealth.

(2) Any corporation:

(i) incorporated under the laws of this Commonwealth;  
(ii) authorized to do business or doing business within this Commonwealth; or  
(iii) maintaining a place of business within this Commonwealth.

(3) Any association, fiduciary, partnership or other entity:

(i) domiciled in this Commonwealth;  
(ii) authorized to do business or doing business within this Commonwealth; or  
(iii) maintaining a place of business within this Commonwealth.

"Sale at retail." As follows:

(1) Any transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the grant of a license to use or consume whether the transfer be absolute or conditional and by whatsoever means the same shall have been effected.

(2) The rendition of the service of printing or imprinting of tangible personal property for a consideration for persons who furnish, either directly or indirectly, the materials used in the printing or imprinting.

(3) The rendition for a consideration of the service of:

(i) Washing, cleaning, waxing, polishing or lubricating of motor vehicles of another, whether or not any tangible personal property is transferred in conjunction therewith.

(ii) Inspecting motor vehicles pursuant to the mandatory requirements of 75 Pa.C.S. (relating to vehicles).

(4) The rendition for a consideration of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property except wearing apparel or shoes, or applying or installing tangible personal property as a repair or replacement part of other tangible personal property except wearing apparel or shoes for a consideration, whether or not the services are performed directly or by any means except by coin-operated self-service laundry equipment for wearing apparel or household goods and whether or not any tangible personal property is transferred in conjunction therewith, except such services as are rendered in the construction, reconstruction, remodeling, repair or maintenance of real estate, except that this paragraph shall not be deemed to impose tax upon such services in the preparation for sale of new

items which are excluded from the tax under section 1204(26) (relating to exclusions from tax) or on diaper service.

(5) (Reserved).

(6) (Reserved).

(7) (Reserved).

(8) (i) Any retention of possession, custody or a license to use or consume tangible personal property or any further obtaining of services described in paragraphs (2), (3) and (4) pursuant to a rental or service contract or other arrangement, other than as security.

(ii) The term does not include any such transfer of tangible personal property or rendition of services for the purpose of resale or such rendition of services or the transfer of tangible personal property, including, but not limited to, machinery and equipment and parts therefor and supplies to be used or consumed by the purchaser directly in the operations of:

(A) The manufacture of tangible personal property.

(B) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term "farming" shall include the propagation and raising of ranch raised furbearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. (relating to game) and the propagation and raising of horses to be used exclusively for commercial racing activities.

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

(D) Processing as defined in this section.

(iii) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to any vehicle required to be registered under 75 Pa.C.S., except those vehicles used directly by a public utility engaged in business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used machinery, equipment, parts or foundations therefor that may be fixed to the real estate.

(iv) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or services by any person other than the person directly using the same in the operations described in subparagraph (ii)(A), (B), (C) and (D).

(v) The exclusion provided in subparagraph (ii)(C) shall not apply to:

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

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

(C) tools and equipment used but not installed in the maintenance of facilities used

directly in the production, delivering or rendition of a public utility service.

(vi) The exclusions provided in subparagraph (ii)(A), (B), (C) and (D) shall not apply to the services enumerated in paragraphs (11) through (18) nor to lobbying services, adjustment services, collection services or credit reporting services, secretarial or editing services, disinfecting or pest control services, building maintenance or cleaning services, employment agency services, help supply services, lawn care service or self-storage service, except that the exclusion provided in subparagraph (ii)(B) for farming, dairying and agriculture shall apply to the service enumerated in the definition of disinfecting or pest control services.

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

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

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

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

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

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

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

(16) (Reserved).

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

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

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

“Secretarial or editing services.” Providing services which include, but are not limited to, editing, letter writing, proofreading, resume writing, typing or word processing. Such services shall not include court reporting and stenographic services.

“Self-storage service.” Providing a building, a room in a building or a secured area within a building with separate access provided for each purchaser of self-storage service, primarily for the purpose of storing personal property. The term excludes providing any of the following:

- (1) Safe deposit boxes by financial institutions.
- (2) Storage in refrigerator or freezer units.
- (3) Storage in commercial warehouses.
- (4) Facilities for goods distribution.

(5) Lockers in airports, bus stations, museums and other public places.

“Show.” An event, the primary purpose of which involves the display or exhibition of any tangible personal property or services for sale, including, but not limited to, a flea market, antique show, coin show, stamp show, comic book show, hobby show, automobile show, fair or any similar show, whether held regularly or of a temporary nature, at which more than one vendor displays for sale or sells tangible personal property or services subject to tax under section 1202 (relating to imposition of tax).

“Soft drinks.” All nonalcoholic beverages, whether carbonated or not, such as soda water, ginger ale, Coca Cola, lime cola, Pepsi Cola, Dr Pepper, fruit juice when plain or carbonated water, flavoring or syrup is added, carbonated water, orangeade, lemonade, root beer or any and all preparations, commonly referred to as soft drinks, of whatsoever kind, and are further described as including any and all beverages, commonly referred to as soft drinks, which are made with or without the use of any syrup. The term shall not include natural fruit or vegetable juices or their concentrates, or noncarbonated fruit juice drinks containing not less than 25% by volume of natural fruit juices or of fruit juice which has been reconstituted to its original state, or natural concentrated fruit or vegetable juices reconstituted to their original state, whether any of the foregoing natural juices are frozen or unfrozen, sweetened or unsweetened, seasoned with salt or spice or unseasoned, nor shall the term include coffee, coffee substitutes, tea, cocoa, natural fluid milk or noncarbonated drinks made from milk derivatives.

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

“Tangible personal property.” Corporeal personal property including, but not limited to, goods, wares, merchandise, steam and natural and manufactured and bottled gas for nonresidential use, electricity for nonresidential use, prepaid telecommunications, premium cable or premium video programming service, spirituous or vinous liquor and malt or brewed beverages and soft drinks, interstate telecommunications service originating or terminating in this Commonwealth and charged to a service address in this Commonwealth, intrastate telecommunications service, except for subscriber line charges and basic local telephone service for residential use and charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate. The service address of any intrastate telecommunications service is deemed to be within this Commonwealth or within a political subdivision, regardless of how or where billed or paid. In the case of any such interstate or intrastate telecommunications service, any charge paid through a credit or payment mechanism which does not relate to a service address, such as a bank, travel, credit or debit card, but not including prepaid telecommunications, is deemed attributable to the address of origination of the telecommunications service. The term shall not include:

(1) Computer software, other than prewritten computer software, delivered to the purchaser by tangible storage media.

(2) Digital products delivered electronically, including computer software, music, video, reading materials or ring tones.

“Tax Reform Code.” The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

“Taxpayer.” Any person required to pay or collect the tax imposed by this chapter.

“Telecommunications service.” Any one-way transmission or any two-way, interactive transmission of sounds, signals or other intelligence converted to like form which effects or is intended to effect meaningful communications by electronic or electromagnetic means via wire, cable, satellite, light waves, microwaves, radio waves or other transmission media. The term includes all types of telecommunication transmissions, such as local, toll, wide-area or any other type of

telephone service; private line service; telegraph service; radio repeater service; wireless communication service; personal communications system service; cellular telecommunication service; specialized mobile radio service; stationary two-way radio service; and paging service. The term does not include any of the following:

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

(2) Charges to video programmers for the transport of video programming.

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

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

(ii) Telecommunications services purchased by an Internet service provider to deliver access to the Internet to its customers.

(4) Mobile telecommunications services.

“Transient vendor.” As follows:

(1) Any person who:

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

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

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

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

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

“Use.” As follows:

(1) The exercise of any right or power incidental to the ownership, custody or possession of tangible personal property and shall include, but not be limited to, transportation, storage or consumption.

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

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

(i) Washing, cleaning, waxing, polishing or lubricating of motor vehicles whether or not any tangible personal property is transferred to the purchaser in conjunction with such services.

(ii) Inspecting motor vehicles pursuant to the mandatory requirements of 75 Pa.C.S. (relating to vehicles).

(4) (i) The obtaining by a purchaser of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property except wearing apparel or shoes or applying or installing tangible personal property as a repair or replacement part of other tangible personal property

except wearing apparel or shoes, whether or not the services are performed directly or by any means except by coin-operated self-service laundry equipment for wearing apparel or household goods, and whether or not any tangible personal property is transferred to the purchaser in conjunction therewith, except such services as are obtained in the construction, reconstruction, remodeling, repair or maintenance of real estate, except that this paragraph shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under section 1204(26) (relating to exclusions from tax) or on diaper service.

(ii) The term shall not include:

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

(B) The use or consumption of tangible personal property, including, but not limited to, machinery and equipment and parts therefor, and supplies or the obtaining of the services described in this paragraph and paragraphs (2) and (3) directly in the operations of:

(I) The manufacture of tangible personal property.

(II) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term “farming” shall include the propagation and raising of ranch-raised furbearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. (relating to game) and the propagation and raising of horses to be used exclusively for commercial racing activities.

(III) The producing, delivering or rendering of a public utility service, or the constructing, reconstructing, remodeling, repairing or maintaining the facilities which are directly used in producing, delivering or rendering a public utility service.

(IV) Processing as defined in this section.

(iii) The exclusions provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to any vehicle required to be registered under 75 Pa.C.S. except those vehicles directly used by a public utility engaged in the business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used machinery, equipment, parts or foundations therefor that may be affixed to such real estate.

(iv) The exclusions provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or services by any person other than the person directly

using the same in the operations described in subparagraph (ii)(B)(I), (II), (III) and (IV).

(v) The exclusion provided in subparagraph (iii) shall not apply to:

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

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

(vi) The exclusion provided in subparagraph (ii)(B)(I), (II), (III) and (IV) shall not apply to the services enumerated in paragraphs (9) through (16) nor to lobbying services, adjustment services, collection services or credit reporting services, secretarial or editing services, disinfecting or pest control services, building maintenance or cleaning services, employment agency services, help supply services, lawn care service or self-storage service, except that the exclusion provided in subparagraph (ii)(B)(II) for farming, dairying and agriculture shall apply to the service enumerated in the definition of “disinfecting or pest control services.”

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

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

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

(8) The term shall not include the providing of a motor vehicle to a nonprofit private or public school to be used by the school for the sole purpose of driver education.

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

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

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

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

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

(14) (Reserved).

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

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

(17) The obtaining by a construction contractor of tangible personal property or services provided to tangible personal property which will be used pursuant to a construction contract whether or not the tangible personal property or services are transferred.

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

“Used prebuilt housing.” Prebuilt housing that was previously subject to a sale to a prebuilt housing purchaser.

“Vendor.” Any person maintaining a place of business in this Commonwealth, selling or leasing tangible personal property, or rendering services, the sale or use of which is subject to the tax imposed by this chapter, but not including any employee who in the ordinary scope of employment renders services to the employer of the employee in exchange for wages and salaries.

#### SUBCHAPTER B IMPOSITION OF TAX

Sec.

1202. Imposition of tax.

1203. Computation of tax.

§ 1202. Imposition of tax.

(a) Sales tax.—There is hereby imposed upon each separate sale at retail of tangible personal property or services within this Commonwealth a tax of 6.5% of the purchase price. The tax shall be collected by the vendor from the purchaser and shall be paid over to this Commonwealth as provided in this chapter.

(b) Use tax.—There is hereby imposed upon the use within this Commonwealth of tangible personal property purchased at retail and on those services purchased at retail a tax of 6.5% of the purchase price. The tax shall be paid to the Commonwealth by the person who makes such use, except that such tax shall not be paid to the Commonwealth by that person where that person has paid the tax imposed by subsection (a) or has paid the tax imposed by this subsection to the vendor with respect to such use.

(c) Telecommunications services.—

(1) Notwithstanding any other provision of this chapter, the tax with respect to telecommunications service shall be computed at the rate of 6.5% upon the total amount charged to customers for such services, irrespective of whether that charge is based upon a flat rate or upon a message unit charge. Charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate shall not be subject to this tax.

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

(3) To prevent actual multistate taxation of interstate telecommunications service, a taxpayer, upon proof that the taxpayer has paid a similar tax to another state on the same interstate telecommunications service, shall be allowed a credit against the tax imposed by this section on the same interstate telecommunications service to the extent of the amount of the tax properly due and paid to the other state.

(d) Vending machine sales of food and beverages.—Notwithstanding any other provisions of this chapter, the sale or use of food and beverages dispensed by means of coin operated vending machines shall be taxed at the rate of 6.5% of the receipts collected from the machine which dispenses food and beverages heretofore taxable.



## (e) Prepaid telecommunications.—

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

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

(3) (i) Notwithstanding paragraph (2), the sale or use of prepaid telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of 6.5% of the receipts collected on each sale if the service provider elects to collect the tax imposed by this chapter on receipts of each sale.

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

## (e.1) Prepaid mobile telecommunications services.—

(1) Notwithstanding any other provision of this chapter, the sale or use of prepaid mobile telecommunications service evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b).

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

(3) (i) Notwithstanding paragraph (2), the sale or use of prepaid mobile telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of 6.5% of the receipts collected on each sale if the service provider elects to collect the tax imposed by this chapter on receipts of each sale.

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

## (f) Prebuilt housing.—

(1) Notwithstanding any other provision of this chapter, tax with respect to sales of prebuilt housing shall be imposed, subject to the provisions of paragraph (2), on the prebuilt housing builder at the time of the prebuilt housing sale within this Commonwealth and shall be paid and reported by the prebuilt housing builder to the department in the time and manner provided in this chapter.

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

(3) In any case where prebuilt housing is purchased and the tax is not paid by the prebuilt housing builder or precollected by the manufacturer, the prebuilt housing purchaser shall remit tax directly to the department if the prebuilt housing is used in this Commonwealth without regard to whether the prebuilt housing becomes a real estate structure.

(g) Mobile telecommunications services provided by home service provider.—Notwithstanding any other provisions of this chapter and in accordance with the Mobile Telecommunications Sourcing Act (Public Law 106-252, 4 U.S.C. § 116), the sale or use of mobile telecommunications services which are deemed to be provided to a customer by a home service provider under section 4 U.S.C. § 117(a) and (b) shall be subject to the tax of 6.5% of the purchase price. The tax shall be collected by the home service provider from the customer and shall be paid over to the Commonwealth as provided in this chapter if the customer's place of primary use is located within this

Commonwealth, regardless of where the mobile telecommunications services originate, terminate or pass through. The words and phrases used in this subsection shall have the same meanings given to them in the Mobile Telecommunications Sourcing Act.

## § 1203. Computation of tax.

The department shall promulgate regulations to assist in computing the amount of tax imposed by section 1202 (relating to imposition of tax) if the purchase price is less than or equal to a dollar. If the purchase price is more than \$1.00, 6.5% of each dollar of purchase price plus the charges set forth in this section upon any fractional part of a dollar in excess of even dollars shall be collected.

SUBCHAPTER C  
EXCLUSIONS FROM TAX

## Sec.

1204. Exclusions from tax.

1205. Alternate imposition of tax.

1206. Credit against tax.

## § 1204. Exclusions from tax.

The tax imposed by section 1202 (relating to imposition of tax) shall not be imposed upon any of the following:

(1) The sale at retail or use of tangible personal property, other than motor vehicles, trailers, semitrailers, motorboats, aircraft or other similar tangible personal property required under either Federal law or laws of this Commonwealth to be registered or licensed, or services sold by or purchased from a person that is not a vendor in an isolated transaction or sold by or purchased from a person that is a vendor but is not a vendor with respect to the tangible personal property or services sold or purchased in the transaction. Inventory and stock in trade sold at retail or used shall not be excluded from the tax by this paragraph.

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

(3) The use of tangible personal property in accordance with the following:

(i) The property is purchased outside this Commonwealth for use outside this Commonwealth by an individual or business entity that, at the time of purchase, is not:

(A) a resident of this Commonwealth;

nor

(B) actually doing business within this Commonwealth.

(ii) The purchaser later brings the tangible personal property into this Commonwealth in connection with the establishment of a permanent business or residence in this Commonwealth.

(iii) The property has been purchased more than six months prior to the earlier of:

(A) the date it was first brought into this Commonwealth; or

(B) the establishment of a business or residence under subparagraph (ii).

(iv) This paragraph does not apply to tangible personal property temporarily brought into this Commonwealth for the performance of contracts for the construction, reconstruction, remodeling, repairing and maintenance of real estate.

(4) The sale at retail or use of disposable diapers, premoistened wipes, incontinence products, colostomy deodorants, toilet paper, sanitary napkins, tampons or similar items used for feminine hygiene or toothpaste, toothbrushes or dental floss.

(5) The sale at retail or use of steam, natural and manufactured and bottled gas, fuel oil, electricity or intrastate

subscriber line charges, basic local telephone service or telegraph service when purchased directly by the user thereof solely for his own residential use and charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate.

(6) (Reserved).

(7) (Reserved).

(8) (Reserved).

(9) (Reserved).

(10) (i) The sale at retail to or use by:

(A) any charitable organization, volunteer firemen's organization or nonprofit educational institution; or

(B) a religious organization for religious purposes of tangible personal property or services other than pursuant to a construction contract.

(ii) The exclusion under this paragraph shall not apply with respect to any tangible personal property or services used in any unrelated trade or business carried on by such organization or institution or with respect to any materials, supplies and equipment used and transferred to the organization or institution in the construction, reconstruction, remodeling, renovation, repairs and maintenance of any real estate structure, other than building machinery and equipment, except materials and supplies when purchased by such organizations or institutions for routine maintenance and repairs.

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

(12) The sale at retail to, or use by the United States, this Commonwealth or its instrumentalities or political subdivisions of tangible personal property or services.

(13) The sale at retail or use of wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, nonreturnable containers and all other wrapping supplies, if the use is incidental to the delivery of personal property. This paragraph does not apply to a charge for wrapping or packaging.

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

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

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

(17) The sale at retail or use of any of the following:

(i) Prescription or nonprescription medicines, drugs or medical supplies.

(ii) Crutches and wheelchairs for the use of persons who are walking impaired.

(iii) Artificial limbs, artificial eyes and artificial hearing devices when designed to be worn on the person of the purchaser or user.

(iv) False teeth and materials used by a dentist in dental treatment.

(v) Eyeglasses when especially designed or prescribed by an ophthalmologist, oculist or optometrist for the personal use of the owner or purchaser.

(vi) Artificial braces and supports designed solely for the use of persons who are walking impaired or any other therapeutic, prosthetic or artificial device designed for the use of a particular individual to correct or alleviate a physical incapacity, including, but not limited to, hospital beds, iron lungs and kidney machines.

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

(19) (Reserved).

(20) (Reserved).

(21) (Reserved).

(22) (Reserved).

(23) (Reserved).

(24) The sale at retail or use of motor vehicles, trailers and semi-trailers, or bodies attached to the chassis of motor vehicles, trailers or semi-trailers which are:

(i) sold to a nonresident;

(ii) to be used outside of this Commonwealth; and

(iii) registered in another state within 20 days after delivery to the vendee.

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

(26) (i) The sale at retail or use of all vesture, wearing apparel, raiments, garments, footwear and other articles of clothing, including clothing patterns and items that are to be a component part of clothing, worn or carried on or about the human body.

(ii) This paragraph does not include accessories, ornamental wear, formal day or evening apparel, and articles made of fur on the hide or pelt or any material imitative of fur and articles of which such fur, real, imitation or synthetic, is the component material of chief value, but only if such value is more than three times the value of the next most valuable component material, and sporting goods and clothing not normally used or worn when not engaged in sports.

(27) (Reserved).

(28) (Reserved).

(29) (i) The sale at retail or use of food and beverages for human consumption.

(ii) This paragraph shall not apply to any of the following:

(A) Soft drinks.

(B) Malt and brewed beverages and spirituous and vinous liquors.

(iii) Food or beverages, whether sold for consumption on or off the premises or on a "take-out" or "to go" basis or delivered to the purchaser or consumer, when purchased from persons engaged in the business of catering; or from persons engaged in the business of operating establishments from which ready-to-eat food and beverages are sold.

(iv) (A) For purposes of this paragraph the term "establishments" includes, but is not limited to, restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels, night clubs, fast food operations, pizzerias, fairs, carnivals, lunch carts, ice cream stands, snack bars, cafeterias, employee cafeterias, theaters, stadiums, arenas, amusement parks, carryout shops, coffee shops and other establishments whether mobile or immobile.

(B) The term does not include bakeries, pastry shops, donut shops, delicatessens, grocery stores, supermarkets, farmer's markets, convenience stores or vending machines from

which food or beverages ready to eat are sold except for the sale of meals, sandwiches, food from salad bars, hand-dipped or hand-served ice-based products, including ice cream and yogurt, hot soup, hot pizza and other hot food items, brewed coffee and hot beverages.

(C) The term “beverages” does not include malt and brewed beverages and spirituous and vinous liquors, but shall include soft drinks.

(v) This paragraph does not apply to the sale at retail of food and beverages at or from a school or church in the ordinary course of the activities of such organization.

(30) (i) The sale at retail or use of newspapers.

(ii) For purposes of this paragraph, the term “newspaper” shall mean a legal newspaper or publication containing matters of general interest and reports of current events which qualifies as a newspaper of general circulation qualified to carry a legal advertisement as those terms are defined in 45 Pa.C.S. § 101 (relating to definitions), not including magazines.

(iii) This paragraph includes any printed advertising materials circulated with such newspaper regardless of where or by whom the advertising material was produced.

(31) The sale at retail or use of caskets and burial vaults for human remains and markers and tombstones for human graves.

(32) The sale at retail or use of flags of the United States of America and the Commonwealth.

(33) The sale at retail or use of textbooks for use in schools, colleges and universities, either public or private, that are recognized by the Department of Education, when the textbooks are purchased on behalf of or through such schools, colleges or universities.

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

(35) The sale at retail or use of mail order catalogs and direct mail advertising literature or materials, including electoral literature or materials, such as envelopes, address labels and a one-time license to use a list of names and mailing addresses for each delivery of direct mail advertising literature or materials, including electoral literature or materials, through the United States Postal Service.

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

(37) (Reserved).

(38) The sale at retail of horses, if at the time of purchase, the seller is directed to ship or deliver the horse to an out-of-State location, whether or not the charges for shipment are paid for by the seller or the purchaser. The seller must obtain a bill of lading, either from the carrier or from the purchaser, who, in turn has obtained the bill of lading from the carrier, reflecting delivery to the out-of-State address to which the horse has been shipped. The seller must execute a “Certificate of Delivery to Destination Outside of the Commonwealth” for each bill of lading reflecting out-of-State delivery. The seller shall retain the certificate of delivery form to justify the noncollection of sales tax with respect to the transaction to which the form relates. In transactions where a horse is sold by the seller and delivered to a domiciled person, agent or corporation prior to its being delivered to an out-of-State location, the “Certificate of Delivery to Destination Outside of the Commonwealth” form must have attached to it bills of lading both for the transfer to the domiciled person, agent or corporation and from the aforementioned to the out-of-State location.

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

(40) (Reserved).

(41) The sale at retail of supplies and materials to tourist promotion agencies which receive grants from the Commonwealth for distribution to the public as promotional material and the use of supplies and materials by the agencies for the purposes set forth in this paragraph.

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

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

(44) The sale at retail or use of firewood. For the purpose of this paragraph, “firewood” means the product of trees when severed from the land and cut into proper lengths for burning and pellets made from pure wood sawdust if used for fuel for cooking, hot water production or to heat residential dwellings.

(45) The sale at retail or use of materials used in the construction and erection of objects purchased by not-for-profit organizations for purposes of commemoration and memorialization of historical events, provided that the object is erected upon publicly owned property or property to be conveyed to a public entity upon the commemoration or memorialization of the historical event.

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

(47) (Reserved).

(48) (Reserved).

(49) The sale at retail or use of food and beverages by nonprofit associations which support sports programs. For purposes of this paragraph, the words and phrases shall have the following meanings:

“Nonprofit association.” An entity which is organized as a nonprofit corporation or nonprofit unincorporated association under the laws of this Commonwealth or the United States or any entity which is authorized to do business in this Commonwealth as a nonprofit corporation or unincorporated association under the laws of this Commonwealth, including youth or athletic, volunteer fire, ambulance, religious, charitable, fraternal, veterans or civic, or any separately chartered auxiliary of the association, if organized and operated on a nonprofit basis.

“Sports program.” Baseball (including softball), football, basketball, soccer and any other competitive sport formally recognized as a sport by the United States Olympic Committee as specified by and under the jurisdiction of the Amateur Sports Act of 1978 (Public Law 95-606, 36 U.S.C. § 371 et seq.), the Amateur Athletic Union or the National Collegiate Athletic Association. The term shall be limited to a program or that portion of a program which is organized for recreational purposes and the activities of which are substantially for such purposes and which is primarily for participants who are 18 years of age or younger or whose 19th birthdays occur during the year of participation or the competitive season, whichever is longer. There shall, however, be no age limitation for programs operated for persons with physical disabilities or persons with mental retardation.

“Support.” The funds raised from sales are used to pay the expenses of a sports program or the nonprofit association sells the food and beverages at a location where a sports program is being conducted under this act.

(50) The sale at retail or use of subscriptions for magazines. The term “magazine” refers to a periodical published at regular intervals not exceeding three months and which are circulated among the general public, containing matters of

general interest and reports of current events published for the purpose of disseminating information of a public character or devoted to literature, the sciences, art or some special industry. This paragraph includes any printed advertising material circulated with the periodical or publication, regardless of where or by whom the printed advertising material was produced.

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

(52) (Reserved).

(53) The sale at retail or use of candy or gum regardless of the location from which the candy or gum is sold.

(54) The sale at retail to or use by a producer of commercial motion pictures of any tangible personal property directly used in the production of a feature-length commercial motion picture distributed to a national audience as long as:

(i) the production of any motion picture for which the property will be used does not violate any Federal or State law; and

(ii) the purchaser furnishes to the vendor a certificate substantially in the form as the Department of Community and Economic Development may, by regulation, prescribe, stating that the sale is exempt from tax under this paragraph.

(55) The sale at retail or use of horses to be used exclusively for commercial racing activities and the sale at retail and use of feed, bedding, grooming supplies, riding tack, farrier services, portable stalls and sulkies for horses used exclusively for commercial racing activities.

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

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

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

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

(57) The sale at retail to or use by a construction contractor of building machinery and equipment and services thereto that are:

(i) Transferred pursuant to a construction contract for any charitable organization, volunteer firemen's organization, nonprofit educational institution or religious organization for religious purposes, if:

(A) The building machinery and equipment and services thereto are not used in any unrelated trade or business.

(B) Transferred to the United States or the Commonwealth or its instrumentalities or political subdivisions.

(58) (Reserved).

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

(60) The sale or use of used prebuilt housing.

(61) The sale at retail to or use of food and nonalcoholic beverages by an airline which will transfer the food or

nonalcoholic beverages to passengers in connection with the rendering of the airline service.

(62) The sale at retail or use of tangible personal property or services which are directly used in farming, dairying or agriculture when engaged in as a business enterprise whether or not the sale is made to the person directly engaged in the business enterprise or to a person contracting with the person directly engaged in the business enterprise for the production of food.

(63) The sale at retail or use of separately stated fees paid pursuant to 13 Pa.C.S. § 9525 (relating to fees).

(64) The sale at retail to or use by a construction contractor, employed by a public school district pursuant to a construction contract, of any materials and building supplies which, during construction or reconstruction, are made part of any public school building utilized for instructional classroom education within this Commonwealth, if the construction or reconstruction:

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

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

§ 1205. Alternate imposition of tax.

(a) Dealers of motor vehicles.—A person actively and principally engaged in the business of selling new or used motor vehicles, trailers or semitrailers, and registered with the department in the dealer's class who:

(1) acquires a motor vehicle, trailer or semitrailer for the purpose of resale; and

(2) prior to the resale, uses the motor vehicle, trailer or semitrailer for a taxable use under this chapter may pay a tax equal to 6.5% of the fair rental value of the motor vehicle, trailer or semitrailer during that use.

(b) Commercial aircraft operators.—A commercial aircraft operator who:

(1) acquires an aircraft for the purpose of resale, or lease, or is entitled to claim another valid exemption at the time of purchase; and

(2) subsequent to the purchase, periodically uses the same aircraft for a taxable use under this chapter may elect to pay a tax equal to 6.5% of the fair rental value of the aircraft during that use.

(c) Nonapplicability.—This section shall not apply to the use of a vehicle as a wrecker, parts truck, delivery truck or courtesy car.

§ 1206. Credit against tax.

(a) Prerequisites.—

(1) Subject to the provisions of paragraph (2), a credit against the tax imposed by section 1202 (relating to imposition of tax) shall be granted with respect to tangible personal property or services purchased for use outside this Commonwealth equal to the tax paid to another state by reason of the imposition by the other state of a tax similar to the tax imposed by this chapter.

(2) No credit shall be granted under this section unless the other state grants substantially similar tax relief by reason of the payment of tax under this chapter.

(b) Call center credit.—A credit against the tax imposed by section 1202 (relating to imposition of tax) on telecommunications services shall be granted to a call center for gross receipts tax paid by a telephone company on the receipts derived from the sale of incoming and outgoing interstate telecommunications services to the call center under section 1101(a)(2) of the Tax Reform Code. The following apply:

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

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

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

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

(5) The total amount of tax credits provided for in this subsection and approved by the department shall not exceed \$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.

#### SUBCHAPTER D LICENSES

Sec.

1208. Licenses.

§ 1208. Licenses.

(a) General rule.—Every person maintaining a place of business in this Commonwealth, selling or leasing services or tangible personal property, the sale or use of which is subject to tax and who has not obtained a license from the department, shall, prior to the beginning of business, make application to the department, on a form prescribed by the department, for a license. If the person maintains more than one place of business in this Commonwealth, the license shall be issued for the principal place of business in this Commonwealth.

(b) Conditions of licensure.—The department shall, after the receipt of an application, issue the license applied for under subsection (a), if the applicant has filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan. The license shall be nonassignable and valid for a period of five years.

(b.1) Grounds for refusal to issue license.—

(1) If an applicant for a license or any person holding a license has not filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan, the department may refuse to issue, may suspend or may revoke said license.

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

(3) An applicant or licensee aggrieved by the determination of the department may file an appeal pursuant to the provisions for administrative appeals in this chapter.

(4) In the case of a suspension or revocation which is appealed, the license shall remain valid pending a final outcome of the appeals process. Notwithstanding section 1274, and sections, 353(f), 408(b), 603, 702, 802, 904 and 1102 of the Tax Reform Code or any other provision of law to the contrary, if no appeal is taken or if an appeal is taken and denied at the

conclusion of the appeal process, the department may disclose, by publication or otherwise, the identity of a person and the fact that the person's license has been refused, suspended or revoked under this subsection. The department may include the basis for refusal, suspension or revocation in the disclosure.

(c) Penalties.—

(1) A person who maintains a place of business in this Commonwealth for the purpose of selling or leasing services or tangible personal property, the sale or use of which is subject to tax, without having first been licensed by the department shall be guilty of a summary offense and, upon conviction thereof, be sentenced to pay a fine of not less than \$300 nor more than \$1,500 and, in default thereof, to undergo imprisonment of not less than five days nor more than 30 days.

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

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

(4) The Secretary of Revenue may designate employees of the department to enforce the provisions of this subsection. Those employees shall exhibit proof of and be within the scope of the designation when instituting proceedings as provided by the Pennsylvania Rules of Criminal Procedure.

(d) Liability to pay tax remains.—The failure of any person to obtain a license shall not relieve that person of liability to pay the tax imposed by this chapter.

#### SUBCHAPTER E HOTEL OCCUPANCY TAX

Sec.

1209. Definitions.

1210. Imposition of tax.

1211. Seasonal tax returns.

§ 1209. Definitions.

(a) General rule.—For the purposes of this subchapter, the following words, terms and phrases shall have the meaning given to them in this subsection, unless the context clearly indicates otherwise:

“Hotel.” A building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term shall not include any charitable, educational or religious institution summer camp for children, hospital or nursing home.

“Occupancy.” The use or possession or the right to the use or possession by any person except a permanent resident of any room or rooms in a hotel for any purpose or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms.

“Occupant.” A person except a permanent resident who for a consideration, uses, possesses or has a right to use or possess any room or rooms in a hotel under a lease, concession, permit, right of access, license or agreement.

“Operator.” A person who operates a hotel.

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

“Rent.” The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever. The term shall not include a gratuity.

(b) Special definitions.—The following words and phrases, when used in Subchapters D (relating to licenses) and F (relating to returns), for the purposes of those subchapters only, shall, in addition to the meaning ascribed to them in section 1201 (relating to definitions), have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

“Maintaining a place of business in this Commonwealth.” Being the operator of a hotel in this Commonwealth.

“Purchase at retail.” Occupancy.

“Purchase price.” Rent.

“Purchaser.” An occupant.

“Sale at retail.” The providing of occupancy to an occupant by an operator.

“Services.” Occupancy.

“Tangible personal property.” Occupancy.

“Use.” Occupancy.

“Vendor.” Operator.

§ 1210. Imposition of tax.

There is hereby imposed an excise tax of 6.5% of the rent upon every occupancy of a room or rooms in a hotel in this Commonwealth, which tax shall be collected by the operator from the occupant and paid to the Commonwealth as provided by this chapter and the Tax Reform Code.

§ 1211. Seasonal tax returns.

Notwithstanding any other provision of this chapter or the Tax Reform Code, the department may, by regulation, waive the requirement for the filing of quarterly returns in the case of an operator whose hotel is operated only during certain seasons of the year, and may provide for the filing of returns by such persons at times other than those provided by section 1221 (relating to payment).

#### SUBCHAPTER F

#### RETURNS

Sec.

1215. Persons required to make returns.

1216. Form of returns.

1217. Time for filing returns.

1218. Extension of time for filing returns.

1219. Place for filing returns.

1220. Timely mailing treated as timely filing and payment.

§ 1215. Persons required to make returns.

A person required to pay tax to the department or collect and remit tax to the department shall file returns with respect to such tax.

§ 1216. Form of returns.

The returns required by section 1215 (relating to persons required to make returns) shall be on forms prescribed by the department and shall show such information with respect to the taxes imposed by this chapter as the department may reasonably require.

§ 1217. Time for filing returns.

(a) Quarterly and monthly returns.—

(1) A return shall be filed quarterly by every licensee on or before the 20th day of April, July, October and January for the three months ending the last day of March, June, September and December.

(2) A return shall be filed monthly with respect to each month by every licensee whose total tax reported, or in the event no report is filed, the total tax which should have been reported, for the third calendar quarter of the preceding year equals or exceeds \$650. The returns shall be filed on or before the 20th day of the next succeeding month with respect to which the return is made. Any licensee required to file monthly returns under this section shall be relieved from filing quarterly returns.

(b) Annual returns.—For the calendar year 1971 and for each year thereafter no annual return shall be filed except as may be required by rules and regulations of the department promulgated and published at least 60 days prior to the end of the year with respect to which the returns are made. Where annual returns are required, licensees shall not be required to file the returns prior to the 20th day of the year succeeding the year with respect to which the returns are made.

(c) Other returns.—A person, other than a licensee, who is liable to pay to the department any tax under this chapter, shall file a return on or before the 20th day of the month succeeding the month in which the person becomes liable for the tax.

(d) Small taxpayers.—The department, by regulation, may waive the requirement for the filing of a quarterly return in the case of any

licensee whose individual tax collections do not exceed \$80 per calendar quarter and may provide for reporting on a less frequent basis in such cases.

§ 1218. Extension of time for filing returns.

The department may on written application and for good cause shown grant a reasonable extension of time for filing any return required under this chapter. The time for making a return shall not be extended for more than three months.

§ 1219. Place for filing returns.

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

§ 1220. Timely mailing treated as timely filing and payment.

(a) General rule.—Notwithstanding the provisions of any State tax law to the contrary, when a report or payment of all or any portion of a State tax is required by law to be received by the department or other agency of this Commonwealth on or before a day certain, the taxpayer shall be deemed to have complied with that law if the letter transmitting the report or payment of the tax which has been received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

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

#### SUBCHAPTER G

#### PAYMENT

Sec.

1221. Payment.

1222. Time of payment.

1223. Other times for payment.

1224. Place for payment.

1225. Tax held in trust for Commonwealth.

1226. Local receivers of use tax.

1227. Discount.

§ 1221. Payment.

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

§ 1222. Time of payment.

(a) Monthly, bimonthly and quarterly payments.—The tax imposed by this chapter and incurred or collected by a licensee shall be due and payable by the licensee on the day the return is required to be filed under the provisions of section 1217 (relating to time for filing returns) and the payment must accompany the return for the preceding period.

(b) Annual payments.—If the amount of tax due for the preceding year as shown by the annual return of any taxpayer is greater than the amount already paid by the taxpayer in connection with the taxpayer's monthly or quarterly returns, the taxpayer shall send with such annual return a remittance for the unpaid amount of tax for the year.

(c) Other payments.—A person other than a licensee liable to pay any tax under this chapter shall remit the tax at the time of filing the return required by this chapter.

§ 1223. Other times for payment.

In the event that the department authorizes a taxpayer to file a return at other times than those specified in section 1217 (relating to time for filing returns), the tax due shall be paid at the time the return is filed.

§ 1224. Place for payment.

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

§ 1225. Tax held in trust for Commonwealth.

(a) General rule.—All taxes collected by any person from purchasers in accordance with this chapter and all taxes collected by any person from purchasers under color of this chapter which have not been properly refunded by the person to the purchaser shall constitute a trust fund for the Commonwealth. The trust shall be enforceable against that person, his representatives and any person, other than a purchaser to whom a refund has been made properly, receiving any part

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

(b) **Presumption.**—A person who receives payment of a lawful obligation of the taxpayer from the fund shall be presumed to have received the same in good faith and without any knowledge of the breach of trust.

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

§ 1226. Local receivers of use tax.

(a) **County treasurers.**—

(1) A county treasurer may receive use tax due and payable under the provisions of this chapter from any person other than a licensee. The receiving of the taxes shall be pursuant to rules and regulations promulgated by the department and upon forms furnished by the department.

(2) 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 1% of the amount of use taxes received, which amount shall be retained in lieu of any commission otherwise allowable by law for the collection of the tax.

(b) **Nonapplicability.**—This section shall not apply to counties of the first class.

§ 1227. Discount.

If a return is filed by a licensee and the tax shown to be due thereon less any discount is paid all within the time prescribed, the licensee shall be entitled to credit and apply against the tax payable by the licensee a discount of 1% of the amount of the tax collected by the licensee as compensation for the expense of collecting and remitting the same and as a consideration of the prompt payment thereof.

#### SUBCHAPTER H ASSESSMENT AND REASSESSMENT

Sec.

1230. Assessment.

1231. Mode and time of assessment.

1232. Reassessment.

1233. Assessment to recover erroneous refunds.

1234. Review by Board of Finance and Revenue.

1235. Appeal to Commonwealth Court.

1236. Burden of proof.

§ 1230. Assessment.

The department is authorized and required to make the inquiries, determinations and assessments of the tax, including interest, additions and penalties, imposed by this chapter.

§ 1231. Mode and time of assessment.

(a) **Underpayment of tax.**—Within a reasonable time after any return is filed, the department shall examine it and, if the return shows a greater tax due or collected than the amount of tax remitted with the return, the department shall issue an assessment for the difference, together with an addition of 3% of such difference, which shall be paid to the department within ten days after a notice of the assessment has been mailed to the taxpayer. If such assessment is not paid within ten days, there shall be added to the assessment and paid to the department an additional 3% of the difference for each month during which the assessment remains unpaid, but the total of all additions shall not exceed 18% of the difference shown on the assessment.

(b) **Understatement of tax.**—If the department determines that any return or returns of any taxpayer understates the amount of tax due, it shall determine the proper amount and shall ascertain the difference between the amount of tax shown in the return and the amount determined, the difference being hereafter sometimes referred to as the “deficiency.” A notice of assessment for the deficiency and the reasons for the deficiency shall then be sent to the taxpayer. The deficiency shall be paid to the department within 30 days after a notice of the assessment has been mailed to the taxpayer.

(c) **Failure to file return.**—In the event that any taxpayer fails to file a return required by this chapter, the department may make an estimated assessment, based on information available, of the proper amount of tax owing by the taxpayer. A notice of assessment in the estimated amount shall be sent to the taxpayer. The tax shall be paid within 30 days after a notice of the estimated assessment has been mailed to the taxpayer.

(d) **Authority to establish effective rates by business classification.**—The department is authorized to make the studies necessary to compute effective rates by business classification, based upon the ratio between the tax required to be collected and taxable sales and to use the rates in arriving at the apparent tax liability of a taxpayer. Any assessment based upon such rates shall be prima facie correct, except that the rate shall not be considered where a taxpayer establishes that the rate is based on a sample inapplicable to the taxpayer.

§ 1232. Reassessment.

(a) **Notice of intention to file petition.**—Any taxpayer against whom an assessment is made may petition the department for a reassessment. Notice of an intention to file such a petition shall be given to the department within 30 days of the date the notice of assessment was mailed to the taxpayer, except that the department for due cause may accept the notice within 90 days of the date the notice of assessment was mailed. The department by registered mail shall supply the taxpayer with a statement setting forth in reasonable detail the basis of the assessment within 30 days after receipt of the taxpayer’s notice of intention to file a petition for reassessment.

(b) **Petition for reassessment.**—A petition for reassessment shall be filed within 30 days after the basis of assessment has been mailed to the taxpayer. Such petition shall set forth in reasonable detail the grounds upon which the taxpayer claims that the assessment is erroneous or unlawful, in whole or in part, and shall be accompanied by an affidavit or affirmation that the facts contained in the petition are true and correct and that the petition is not interposed for delay. An extension of time for filing the petition may be allowed for cause but in no case shall the extension exceed 120 days.

(c) **Hearing.**—The department shall hold such hearings as may be necessary for the purpose, at such times and places as it may determine. Each taxpayer who has duly filed a petition for reassessment shall be notified by the department of the time when, and the place where, the hearing in the taxpayer’s case will be held.

(d) **Decision by department.**—It shall be the duty of the department, within six months after receiving a filed petition for reassessment, to dispose of the issue raised by the petition and mail notice of the department’s decision to the petitioner. The taxpayer and the department may, however, by stipulation, extend such disposal time by not more than six additional months.

§ 1233. Assessment to recover erroneous refunds.

The department may, within two years of the granting of any refund or credit, or within the period in which an assessment could have been filed by the department with respect to the transaction pertaining to which the refund was granted, whichever period occurs last, file an assessment to recover any refund or part thereof or credit or part thereof which was erroneously made or allowed.

§ 1234. Review by Board of Finance and Revenue.

(a) **Time limit.**—Within 60 days after the date of mailing of notice by the department of the decision on any petition for reassessment filed with it, the person against whom such assessment was made may, by petition, request the Board of Finance and Revenue to review such decision. The failure of the department to notify the petitioner of a decision within the time provided for by section 1232 (relating to reassessment) shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within 120 days of the date prior to which the department should have mailed to the petitioner its notice of decision.

(b) **Petition for review.**—Every petition for review filed hereunder shall state specifically the reasons on which the petitioner relies, or shall incorporate by reference the petition for reassessment in

which the reasons are stated. The petition shall be supported by affidavit that it is not made for the purpose of delay and that the facts set forth therein are true.

(c) Decision by Board of Finance and Revenue.—The Board of Finance and Revenue shall act finally in disposing of petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department, upon the petition for reassessment, shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on the petition for reassessment, or it may reassess the tax due on such basis as it deems according to law. The board shall give notice of its action to the department and to the petitioner.

§ 1235. Appeal to Commonwealth Court.

Any person aggrieved by the decision of the Board of Finance and Revenue or by the board's failure to act upon a petition for review within six months may appeal in the manner now or hereafter provided by law for appeals in the case of tax settlements.

§ 1236. Burden of proof.

In all cases of petitions for reassessment, review or appeal, the burden of proof shall be upon the petitioner or appellant, as the case may be.

#### SUBCHAPTER I COLLECTION

Sec.

1237. Collection of tax.

1238. Collection of tax on motor vehicles, trailers and semitrailers.

1239. Pre-collection of tax.

1240. Bulk and auction sales.

1241. Collection upon failure to request reassessment, review or appeal.

§ 1237. Collection of tax.

(a) Collection by department.—The department shall collect the tax in the manner provided by law for the collection of taxes imposed by the laws of this Commonwealth.

(b) Collection by persons maintaining a place of business in this Commonwealth.—Every person maintaining a place of business in this Commonwealth and selling or leasing tangible personal property or services, the sale or use of which is subject to tax shall collect the tax from the purchaser or lessee at the time of making the sale or lease, and shall remit the tax to the department, unless such collection and remittance is otherwise provided for in this chapter.

(c) Collection by persons delivering property in this Commonwealth.—Every person not otherwise required to collect tax that delivers tangible personal property to a location within this Commonwealth and that unpacks, positions, places or assembles the tangible personal property shall collect the tax from the purchaser at the time of delivery and shall remit the tax to the department if the person delivering the tangible personal property is responsible for collecting any portion of the purchase price of the tangible personal property delivered and the purchaser has not provided the person with proof that the tax imposed by this chapter has been or will be collected by the seller or that the purchaser provided the seller with a valid exemption certificate. Every person required to collect tax under this paragraph shall be deemed to be selling or leasing tangible personal property or services, the sale or use of which is subject to the tax imposed under section 1202 (relating to imposition of tax).

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

(e) Exemption certificates.—If the tax does not apply to the sale or lease of tangible personal property or services, the purchaser or lessee shall furnish to the vendor a certificate indicating that the sale is not legally subject to the tax. The certificate shall be in substantially the form as the department may, by regulation, prescribe. Where the tangible personal property or service is of a type that is never subject to the tax imposed or where the sale or lease is in interstate commerce, a

certificate need not be furnished. Where a series of transactions are not subject to tax, a purchaser or user may furnish the vendor with a single exemption certificate in substantially such form and valid for such period of time as the department may, by regulation, prescribe. The department shall provide all school districts and intermediate units with a permanent tax exemption number.

(f) Good faith reliance on exemption certificate.—An exemption certificate, which is complete and regular and on its face discloses a valid basis of exemption if taken in good faith, shall relieve the vendor from the liability imposed by this section. An exemption certificate accepted by a vendor from a natural person domiciled within this Commonwealth or any association, fiduciary, partnership, corporation or other entity, either authorized to do business within this Commonwealth or having an established place of business within this Commonwealth, in the ordinary course of the vendor's business, which on its face discloses a valid basis of exemption consistent with the activity of the purchaser and character of the property or service being purchased or which is provided to the vendor by a charitable, religious, educational or volunteer firemen's organization and contains the organization's charitable exemption number and which, in the case of any purchase costing \$200 or more, is accompanied by a sworn declaration on a form to be provided by the department of an intended usage of the property or service which would render it nontaxable, shall be presumed to be taken in good faith and the burden of proving otherwise shall be on the department.

(g) Direct payment permits.—The department may authorize a purchaser or lessee who acquires tangible personal property or services under circumstances that make it impossible at the time of acquisition to determine the manner in which the tangible personal property or service will be used, to pay the tax directly to the department, and waive the collection of the tax by the vendor. No such authority shall be granted or exercised, except upon application to the department and the issuance by the department, in its discretion, of a direct payment permit. If a direct payment permit is granted, its use shall be subject to conditions specified by the department, and the payment of tax on all acquisitions pursuant to the permit shall be made directly to the department by the permit holder.

§ 1238. Collection of tax on motor vehicles, trailers and semitrailers.

(a) Direct payment of tax.—Notwithstanding the provisions of section 1237(b) (relating to collection of tax), tax due on the sale at retail or use of a motor vehicle, trailer or semitrailer, except mobile homes as defined in 75 Pa.C.S. § 102 (relating to definitions) required by law to be registered with the department, shall be paid by the purchaser or user directly to the department upon application to the department for an issuance of a certificate of title upon such motor vehicle, trailer or semitrailer. The department shall not issue a certificate of title until the tax has been paid, or evidence satisfactory to the department has been given to establish that tax is not due.

(b) Failure to pay tax.—The department may cancel or suspend any record of certificate of title or registration of a motor vehicle, trailer or semitrailer when the check received in payment of the tax on such vehicle is not paid upon demand. Such tax shall be considered as a first encumbrance against such vehicle and the vehicle may not be transferred without first payment in full of such tax and any interest additions or penalties which shall accrue thereon in accordance with this chapter.

§ 1239. Pre-collection of tax.

(a) General rule.—The department may, by regulation, authorize or require particular categories of vendors selling tangible personal property for resale to precollect from the purchaser the tax which the purchaser will collect upon making a sale at retail of such tangible personal property. The department, however, may not pursuant to this section require a vendor to precollect tax from a purchaser who purchases for resale more than \$1,000 worth of tangible personal property from such vendor per year.

(b) License exception.—In any case in which a vendor has been authorized to prepay the tax to the person from whom the vendor purchased the tangible personal property for resale, the vendor so



authorized to prepay the tax may, under the regulations of the department, be relieved from his duty to secure a license if the duty shall arise only by reason of the vendor's sale of the tangible personal property with respect to which the vendor is, under authorization of the department, to prepay the tax.

(c) Sale at retail.—The vendor, on making a sale at retail of tangible personal property with respect to which the vendor has prepaid the tax, must separately state at the time of resale the proper amount of tax on the transaction, and reimburse himself on account of the taxes which he has previously prepaid. Should such vendor collect a greater amount of tax in any reporting period than the vendor had previously prepaid upon purchase of the goods with respect to which he prepaid the tax, the vendor must file a return and remit the balance to the Commonwealth at the time at which a return would otherwise be due with respect to such sales.

§ 1240. Bulk and auction sales.

A person that sells or causes to be sold at auction, or that sells or transfers in bulk, 51% or more of any stock of goods, wares or merchandise of any kind, fixtures, machinery, equipment, buildings or real estate, involved in a business for which the person is licensed or required to be licensed under the provisions of this chapter, or is liable for filing use tax returns in accordance with the provisions of this chapter, shall be subject to the provisions of section 1403 of the Fiscal Code.

§ 1241. Collection upon failure to request reassessment, review or appeal.

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

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

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

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

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

(b) Defenses.—In any such case in a proceeding for the collection of such taxes, the person against whom they were assessed shall not be permitted to set up any ground of defense that might have been determined by the department, the Board of Finance and Revenue or the courts. The defense of failure of the department to mail notice of assessment or reassessment to the taxpayer and the defense of payment of assessment or reassessment, however, may be raised in proceedings for collection by a motion to stay the proceedings.

SUBCHAPTER J  
NONPAYMENT

Sec.

1242. Lien for taxes.

1243. Suit for taxes.

1244. Tax suit comity.

1245. Service.

§ 1242. Lien for taxes.

(a) Lien imposed.—If any person liable to pay any tax neglects or refuses to pay the tax after demand, the amount, including any interest, addition or penalty, together with any costs that may accrue in addition thereto, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of the person but only after the lien has been entered and docketed of record by the prothonotary of the county where the property is situated. The department may, at any time, transmit, to the prothonotaries of the respective counties, certified copies of all liens for taxes imposed by this chapter and penalties and interest. It shall be the duty of each prothonotary receiving the lien to enter and docket the lien of record in the prothonotary's office, which lien shall be indexed as judgments are indexed. No prothonotary shall require, as a condition precedent to the entry of the liens, the payment of the costs incident to the liens.

(b) Priority of lien and effect on judicial date; no discharge by sale on junior lien.—The lien imposed under this section shall have priority from the date of its recording under subsection (a), and shall be fully paid and satisfied out of the proceeds of any judicial sale of property subject to the lien before any other obligation, judgment, claim, lien or estate to which the property may subsequently become subject, except costs of the sale and of the writ upon which the sale was made, and real estate taxes and municipal claims against the property, but shall be subordinate to mortgages and other liens existing and duly recorded or entered of record prior to the recording of the tax lien. In the case of a judicial sale of property, subject to a lien imposed under this section, upon a lien or claim over which the lien imposed under this section has priority, the sale shall discharge the lien imposed under this section to the extent only that the proceeds are applied to its payment, and the lien shall continue in full force and effect as to the balance remaining unpaid. There shall be no inquisition or condemnation upon any judicial sale of real estate made by the Commonwealth pursuant to the provisions hereof. The lien of the taxes, interest and penalties shall continue for five years from the date of entry, and may be revived and continued in the manner now or hereafter provided for renewal of judgments, or as may be provided in the Fiscal Code, and a writ of execution may directly issue upon the lien without the issuance and prosecution to judgment of a writ of scire facias. Not less than ten days before issuance of any execution on the lien, however, notice of the filing and the effect of the lien shall be sent by registered mail to the taxpayer at his last known post office address. The lien shall have no effect upon any stock of goods, wares or merchandise regularly sold or leased in the ordinary course of business by the person against whom the lien has been entered, unless a writ of execution has been issued and a levy made upon the stock of goods, wares and merchandise.

(c) Duty of prothonotary.—Any willful failure of any prothonotary to carry out any duty imposed upon the prothonotary by this section shall be a misdemeanor and, upon conviction, the prothonotary shall be sentenced to pay a fine not exceeding \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both.

(d) Priority of tax.—Except as otherwise provided in this section, in the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes imposed by this chapter which are due and unpaid and are not collectible under the provisions of section 1225 (relating to tax held in trust for Commonwealth) shall be paid from the first money available for distribution in priority to all other claims and liens, except insofar as the laws of the United States may give a prior claim to the Federal Government. Any person charged with the administration or distribution of any such property or estate, who shall violate the provisions of this section, shall be personally liable for any taxes imposed by this chapter, which are accrued and unpaid and are chargeable against the person whose property or estate is being administered or distributed.

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

§ 1243. Suit for taxes.

(a) Commencement.—At any time within three years after any tax or any amount of tax shall be finally due and payable, the department may commence an action in the courts of this Commonwealth, of any state or of the United States, in the name of the Commonwealth of Pennsylvania, to collect the amount of tax due together with additions, interest, penalties and costs in the manner provided at law or in equity for the collection of ordinary debts.

(b) Procedure.—The Attorney General shall prosecute the action and, except as provided in this chapter, the provisions of the Rules of Civil Procedure and the provisions of the laws of this Commonwealth

relating to civil procedures and remedies shall, to the extent that they are applicable, be available in such proceedings.

(c) Other remedies.—The provisions of this section are in addition to any process, remedy or procedure for the collection of taxes provided by this chapter or by the laws of this Commonwealth, and this section is neither limited by nor intended to limit any such process, remedy or procedure.

§ 1244. Tax suit comity.

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

§ 1245. Service.

Any person maintaining a place of business within this Commonwealth is deemed to have appointed the Secretary of the Commonwealth his agent for the acceptance of service of process or notice in any proceedings for the enforcement of the civil provisions of this chapter, and any service made upon the Secretary of the Commonwealth as such agent shall be of the same legal force and validity as if such service had been personally made upon such person. Where service cannot be made upon such person in the manner provided by other laws of this Commonwealth relating to service of process, service may be made upon the Secretary of the Commonwealth and, in such case, a copy of the process or notice shall also be personally served upon any agent or representative of such person who may be found within this Commonwealth, or where no such agent or representative may be found a copy of the process or notice shall be sent by registered mail to such person at the last known address of his principal place of business, home office or residence.

SUBCHAPTER K  
MISCELLANEOUS PROVISIONS

Sec.

1246. Collection and payment of tax on credit sales.

1247. Prepayment of tax.

1247.1. Refund of sales tax attributed to bad debt.

1248. Registration of transient vendors.

1248.1. Bond.

1248.2. Notification to department; inspection of records.

1248.3. Seizure of property.

1248.4. Fines.

1248.5. Transient vendors subject to chapter.

1248.6. Promoters.

§ 1246. Collection and payment of tax on credit sales.

If any sale subject to tax under this chapter is wholly or partly on credit, the vendor shall require the purchaser to pay in cash at the time the sale is made, or within 30 days thereafter, the total amount of tax due upon the entire purchase price. The vendor shall remit the tax to the department, regardless of whether payment was made by the purchaser to the vendor, with the next return required to be filed under section 1217 (relating to time for filing returns).

§ 1247. Prepayment of tax.

(a) General rule.—Whenever a vendor is forbidden by law or governmental regulation to charge and collect the purchase price in advance of or at the time of delivery, the vendor shall prepay the tax as required by section 1222 (relating to time of payment), but in such case if the purchaser fails to pay to the vendor the total amount of the purchase price and the tax, and such amount is written off as uncollectible by the vendor, the vendor shall not be liable for the tax and shall be entitled to a credit or refund of the tax paid. If the purchase price is thereafter collected, in whole or in part, the amount collected shall be applied first to the payment of the entire tax portion of the bill, and shall be remitted to the department by the vendor with the first return filed after the collection.

(b) Petition for refund.—Tax prepaid shall be subject to refund upon petition to the department under the provisions of section 1252 (relating to refunds) filed within 105 days of the close of the fiscal year in which the accounts are written off.

§ 1247.1. Refund of sales tax attributed to bad debt.

(a) Petition for refund.—A vendor may file a petition for refund of sales tax paid to the department that is attributed to a bad debt if all of the following apply:

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

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

(3) The bad debt has been deducted for Federal income tax purposes under section 166 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 166). The petition shall be filed with the department within the time limitations prescribed by section 3003.1 of the Tax Reform Code.

(b) Amount of refund.—The refund authorized by this section shall be limited to the sales tax paid to the department that is attributed to the bad debt, less any discount under section 1227 (relating to discount). Partial payments by the purchaser to the vendor shall be prorated between the original purchase price and the sales tax due on the sale. Payments made to a vendor on any transaction that includes both taxable and nontaxable components shall be allocated proportionally between the taxable and nontaxable components.

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

(d) Exclusions.—No refund shall be granted under this section for any of the following:

(1) Interest.

(2) Finance charges.

(3) Expenses incurred in attempting to collect any amount receivable.

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

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

(g) Interest.—Notwithstanding the provisions of section 806.1 of the Fiscal Code, no interest shall be paid by the Commonwealth on refunds of sales tax attributed to bad debt under this section.

(h) Exclusive remedy.—No refund or credit of sales tax shall be made for any uncollected purchase price or bad debt except as authorized by this section. No deduction or credit for bad debt may be taken on any return filed with the department. This section shall provide the exclusive procedure for claiming a refund or credit of sales tax attributed to uncollected purchase price or bad debt.

(i) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Affiliated entity.” Any corporation that is part of the same affiliated group as the vendor as defined by section 1504(a)(1) of the Internal Revenue Code of 1986.

§ 1248. Registration of transient vendors.

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

(b) Issuance of certificate.—Upon registration and the posting of the bond required by section 1248.1 (relating to bond), the department shall issue to the transient vendor a certificate, valid for one year. Upon renewal of registration, the department shall issue a new certificate, valid for one year, providing the department is satisfied that the transient vendor has complied with the provisions of this chapter.

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

(d) Notice on certificate.—The certificate issued by the department shall state that the transient vendor named therein has registered with the department and shall provide notice to the transient vendor that:

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

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

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

#### § 1248.1. Bond.

(a) Bond required.—Upon registration with the department, a transient vendor shall also post a bond with the department in the amount of \$500 as surety for compliance with the provisions of this chapter. After a period of demonstrated compliance with these provisions, or, if the transient vendor provides the license number of a promoter who has notified the department of a show, in accordance with the provisions of section 1248.6(a) (relating to promoters), the department may reduce the amount of bond required of a transient vendor or may eliminate the bond entirely.

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

#### § 1248.2. Notification to department; inspection of records.

(a) Notification to department.—Prior to entering this Commonwealth to conduct business, a transient vendor shall notify the department in writing of the location or locations where it intends to conduct business and the date or dates on which it intends to conduct business.

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

(c) Suspension or revocation of certificate.—The department may suspend or revoke a certificate issued to a transient vendor if the transient vendor:

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

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

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

(4) fails to file with the department a tax return as required by section 1217 (relating to time for filing returns).

(d) Rules and regulations.—The department shall promulgate the rules and regulations necessary to implement this section.

#### § 1248.3. Seizure of property.

(a) General rule.—If a transient vendor conducting business within this Commonwealth fails to exhibit a valid certificate upon demand by authorized employees of the department, those authorized employees shall have the authority to seize, without warrant, the tangible personal property and the automobile, truck or other means of transportation used to transport or carry that property. All property seized shall be deemed contraband and shall be subject to immediate forfeiture proceedings instituted by the department pursuant to

procedures adopted by regulation, except as otherwise provided by this section.

(b) Release of seized property.—Property seized pursuant to subsection (a) shall be released upon:

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

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

#### § 1248.4. Fines.

Any transient vendor conducting business within this Commonwealth while its certificate is suspended or revoked, as provided by sections 1248.1(b) (relating to bond) and 1248.2(c) (relating to notification to department; inspection of records), commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$2,500 for each offense.

#### § 1248.5. Transient vendors subject to chapter.

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

#### § 1248.6. Promoters.

(a) License application.—A promoter of a show or shows within this Commonwealth may annually file with the department an application for a promoter's license stating the location and dates of such show or shows. The application shall be filed at least 30 days prior to the opening of the first show and shall be in such form as the department may prescribe.

(b) Issuance of license.—Except as provided in this section, the department shall, within 15 days after receipt of an application for a license, issue to the promoter without charge a license to operate such shows. If application for a license under this section has been timely filed and if the license has not been received by the promoter prior to the opening of the show, the authorization contained in this section with respect to the obtaining of a promoter's license shall be deemed to have been complied with, unless or until the promoter receives notice from the department denying the application for a promoter's license.

(c) Compliance with vendor provisions.—Any promoter who is a vendor under the provisions of section 1201 (relating to definitions) shall comply with all the provisions of this chapter applicable to vendors and with the provisions of this section applicable to promoters.

(d) Duty of promoters at show.—No licensed promoter shall permit any person to display for sale or to sell tangible personal property or services subject to tax under section 1202 (relating to imposition of tax) at a show unless such person is licensed under section 1208 (relating to licenses) and provides to the promoter the information required under section 1271.1 (relating to reports and records of promoters).

(e) Denial or revocation of license.—Any licensed promoter who permits any person to display for sale or to sell tangible personal property or service without first having been licensed under section 1208 fails to maintain records of a show under section 1271.1, knowingly maintains false records or fails to comply with any provision contained in this section or any regulation promulgated by the department pertaining to shows shall be subject to denial of a license or the revocation of any existing license issued pursuant to this section. In addition, the department may deny such promoter a license certificate to operate a show for a period of not more than six months from the date of such denial. Such penalty shall be in addition to any other penalty imposed by this chapter. Within 20 days of notice of denial or revocation of a license by the department, the promoter may petition the department for a hearing, pursuant to 2 Pa.C.S. (relating to administrative law and procedure).

### SUBCHAPTER L REFUNDS AND CREDITS

Sec.

1250. Refund or credit for overpayment.

1251. Restriction on refunds.

1252. Refunds.

1253. Refund petition.

1254. Review by Board of Finance and Revenue.

1255. Appeal to Commonwealth Court.

1256. Extended time for filing special petition for refund.

§ 1250. Refund or credit for overpayment.

With respect to all taxes paid to a vendor or to the Commonwealth prior to April 5, 1957, in the case of any overpayment, the department, within the applicable period of limitations, may credit the amount of such overpayment against any liability in respect of the tax imposed by this chapter on the part of the person who made the overpayment, and shall refund any balance to such person.

§ 1251. Restriction on refunds.

No refund shall be made under section 1250 (relating to refund or credit for overpayment) without the approval of the Board of Finance and Revenue.

§ 1252. Refunds.

The department shall, pursuant to the provisions of sections 1253 (relating to refund petition) and 1254 (relating to review by Board of Finance and Revenue), refund all taxes, interest and penalties paid to the Commonwealth under the provisions of this chapter and to which the Commonwealth is not rightfully entitled. Refunds shall be made to the person, his heirs, successors, assigns or other personal representatives, who actually paid the tax. No refund shall be made under this section with respect to any payment made by reason of an assessment with respect to which a taxpayer has filed a petition for reassessment pursuant to section 1232 (relating to reassessment) to the extent that the petition has been determined adversely to the taxpayer by a decision which is no longer subject to further review or appeal. Nothing contained herein shall be deemed to prohibit a taxpayer who has filed a timely petition for reassessment from amending it to a petition for refund where the petitioner has paid the tax assessed.

§ 1253. Refund petition.

(a) Petition requirements and hearing.—Except as provided for in section 1256 (relating to extended time for filing special petition for refund) and in subsections (b) and (d), the refund or credit of tax, interest or penalty provided for by section 1252 (relating to refunds) shall be made only where the person who has actually paid the tax files a petition for refund with the department under section 3003.1 of the Tax Reform Code. The petition for refund must set forth in reasonable detail the grounds upon which the taxpayer claims that the Commonwealth is not rightfully entitled to such tax, interest or penalty, in whole or in part, and shall be accompanied by an affidavit affirming that the facts contained in the petition are true and correct. The department may hold hearings as necessary for the purpose at the times and places as it may determine, and each person who has filed a refund petition shall be notified by the department of the time when, and the place where, the hearing will be held.

(b) Refund upon assessment.—A refund or credit of tax, interest or penalty, paid as a result of an assessment made by the department under section 1231 (relating to mode and time of assessment), shall be made only where the person who has actually paid the tax files with the department a petition for a refund with the department under section 3003.1(d) of the Tax Reform Code. The filing of a petition for refund, under the provisions of this subsection, shall not affect the abatement of interest, additions or penalties to which the person may be entitled by reason of his payment of the assessment.

(c) Decision by department.—It shall be the duty of the department, within six months after receiving a petition for refund, to dispose of the issue raised by the petition, and mail notice of the department's decision to the petitioner. The taxpayer and the department may, however, by stipulation, extend such disposal time by not more than six additional months.

(d) Unconstitutional tax provision or erroneous interpretation of provision.—Notwithstanding any other provision of this section, where any tax, interest or penalty has been paid under a provision of this chapter subsequently held by final judgment of a court of competent

jurisdiction to be unconstitutional, or under an interpretation of such provision subsequently held by such court to be erroneous, a petition for refund may be filed either before or subsequent to final judgment, but such petition must be filed under section 3003.1 of the Tax Reform Code. The department shall have jurisdiction to hear and determine any such petition filed prior to such final judgment only if, at the time of filing of the petition, proceedings are pending in a court of competent jurisdiction wherein the claim of unconstitutionality or of erroneous interpretation, made in the petition for refund may be established, and in such case, the department shall not take final action upon the petition for refund until the judgment determining the question involved in such petition has become final.

§ 1254. Review by Board of Finance and Revenue.

Within 90 days after the date of mailing of notice by the department of the decision upon a petition for refund filed with it, pursuant to section 1253 (relating to refund petition), the petitioner may further petition the Board of Finance and Revenue to review the decision of the department. The failure of the department to notify the petitioner of its decision within the time provided for by section 1253 shall act as a denial of the petition, and a petition for review may be filed with the Board of Finance and Revenue within 120 days of the date prior to which the department should have mailed to the petitioner its notice of decision. Every petition for review filed with the Board of Finance and Revenue under the provisions of this section shall incorporate by reference the petition for refund. The petitioner may, in his petition for review, elect to withdraw one or more grounds as set out in the original refund petition. The Board of Finance and Revenue shall act finally in disposing of such petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department upon the petition for refund shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on a petition for refund, or it may redetermine whether a lesser or greater amount of refund is proper. Under no circumstances may the Board of Finance and Revenue authorize a refund greater than that originally applied for by the petitioner. The Board of Finance and Revenue shall give notice of its action to the department and to the petitioner.

§ 1255. Appeal to Commonwealth Court.

Any person aggrieved by the decision of the Board of Finance and Revenue under section 1254 (relating to review by Board of Finance and Revenue) or by the board's failure to act upon a petition for review within six months may appeal in the manner now or hereafter provided for by law for appeals in the case of tax settlements.

§ 1256. Extended time for filing special petition for refund.

Any party to a transaction who has paid tax by reason of a transaction with respect to which the department is assessing tax against another person may, within six months after the filing by the department of the assessment against such other person, file a special petition for refund, notwithstanding his failure to file a regular petition within three years of the payment. The provisions of sections 1253 (relating to refund petition), 1254 (relating to review by Board of Finance and Revenue) and 1255 (relating to appeal to Commonwealth Court) shall be applicable to such special petition for refund, except that the department need not act on such petition until there is a final determination as to the propriety of the assessment filed against the other party to the transaction. Where a petition is filed under this provision in order to take advantage of the extended period of limitations, overpayments by the petitioner shall be refunded but only to the extent of the actual tax, without consideration of interest and penalties, paid by the other party to the transaction. The purpose of this section is to avoid duplicate payment of tax where a determination is made by the department that one party to a transaction is subject to tax, and another party to the transaction has previously paid tax with respect to such transaction; and this section shall be construed as extending right beyond that provided for by section 1253, and not to limit such other section.

SUBCHAPTER M  
LIMITATIONS

Sec.

1258. Limitation on assessment and collection.

1259. Failure to file return.

1260. False or fraudulent return.

1261. Extension of limitation period.

§ 1258. Limitation on assessment and collection.

The amount of the tax imposed by this chapter shall be assessed within three years after the date when the return provided for by section 1217(a) or (c) (relating to time for filing returns) is filed or the end of the year in which the tax liability arises, whichever occurs last. The assessment may be made at any time during such period notwithstanding that the department may have made one or more previous assessments against the taxpayer for the year in question, or for any part of such year. In any such case, no credit shall be given for any penalty previously assessed or paid.

§ 1259. Failure to file return.

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

§ 1260. False or fraudulent return.

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

§ 1261. Extension of limitation period.

Notwithstanding any of the foregoing provisions of this chapter, where, before the expiration of the period prescribed therein for the assessment of a tax, a taxpayer has consented in writing that the period be extended, the amount of tax due may be assessed at any time within the extended period. The period so extended may be extended further by subsequent consents in writing made before the expiration of the extended period.

SUBCHAPTER N  
INTEREST, ADDITIONS, PENALTIES  
AND CRIMES

Sec.

1265. Interest.

1266. Additions to tax.

1267. Penalties.

1268. Crimes.

1269. Abatement of additions or penalties.

§ 1265. Interest.

If any amount of tax imposed by this chapter is not paid to the department on or before the last date prescribed for payment, interest on the amount at the rate of .75% per month for each month, or fraction thereof, from such date, shall be paid for the period from the last date to the date paid. The last date prescribed for payment shall be determined under section 1222(a) or (c) (relating to time of payment) without regard to any extension of time for payment. In the case of any amount assessed as a deficiency or as an estimated assessment, the date prescribed for payment shall be 30 days after notice of the assessment.

§ 1266. Additions to tax.

(a) Failure to file return.—In the case of failure to file any return required by section 1215 (relating to persons required to make returns) on the date prescribed for filing, determined with regard to any extension of time for filing, and in the case in which a return filed understates the true amount due by more than 50%, there shall be added to the amount of tax actually due 5% of the amount of such tax if the failure to file a proper return is for not more than one month, with an additional 5% for each additional month, or fraction thereof, during which the failure continues, not exceeding 25% in the aggregate. In every such case at least \$2 shall be added.

(b) Addition for understatement.—There shall be added to every assessment under section 1231(b) (relating to mode and time of assessment) an addition equal to 5% of the amount of the understatement and no addition to the tax shall be paid under section 1231(a).

(c) Interest.—If the department assesses a tax according to section 1231(a), (b) or (c), there shall be added to the amount of the deficiency interest at the rate of .75% per month for each month, or fraction thereof, from the date prescribed by section 1222(a) or (c) (relating to time of payment) for the payment of the tax to the date of notice of the assessment.

§ 1267. Penalties.

(a) Penalty assessed as tax.—The penalties, additions, interest and liabilities provided by this chapter shall be paid upon notice and demand by the department, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this chapter to “tax” imposed by this chapter shall be deemed also to refer to the penalties, additions, interest and liabilities provided by this chapter.

(b) Attempt to evade or defeat tax.—Any person who willfully attempts, in any manner, to evade or defeat the tax imposed by this chapter, or the payment thereof, or to assist any other person to evade or defeat the tax imposed by this chapter, or the payment thereof, or to receive a refund improperly, shall, in addition to other penalties provided by law, be liable for a penalty equal to one-half of the total amount of the tax evaded.

(c) Burden of proof.—In any direct proceeding arising out of a petition for reassessment or refund as provided in this chapter, in which an issue of fact is raised with respect to whether a return is fraudulent or with respect to the propriety of the imposition by the department of the penalty prescribed in subsection (b), the burden of proof with respect to such issue shall be upon the department.

§ 1268. Crimes.

(a) Fraudulent return.—Any person who with intent to defraud the Commonwealth shall willfully make, or cause to be made, any return required by this chapter, which is false, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding \$2,000 or to imprisonment for not more than three years, or both.

(b) Other crimes.—Except as otherwise provided by subsection (a), the following persons commit a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both:

(1) Any person who advertises or holds out or states to the public or to any purchaser or user, directly or indirectly, that the tax or any part thereof imposed by this chapter will be absorbed by such person, or that it will not be added to the purchase price of the tangible personal property or services described in paragraphs (2), (3), (4) and (11) through (18) under the definition of “sale at retail” in section 1201 (relating to definitions) sold or, if added, that the tax or any part thereof will be refunded, other than when the person refunds the purchase price because of the property being returned to the vendor.

(2) Any person selling or leasing tangible personal property or services the sale or use of which by the purchaser is subject to tax under this chapter, who shall willfully fail to collect the tax from the purchaser and timely remit the same to the department.

(3) Any person who shall willfully fail or neglect to timely file any return or report required by this chapter or any taxpayer who shall refuse to timely pay any tax, penalty or interest imposed or provided for by this chapter, or who shall willfully fail to preserve his books, papers and records as directed by the department.

(4) Any person who shall refuse to permit the department or any of its authorized agents to examine his books, records or papers, or who shall knowingly make any incomplete, false or fraudulent return or report, or who shall do, or attempt to do, anything whatever to prevent the full disclosure of the amount or character of taxable sales purchases or use made by himself or any other person, or shall provide any person with a false statement as to the payment of tax with respect to particular

tangible personal property or services, or shall make, utter or issue a false or fraudulent exemption certificate.

(c) Place of business outside Commonwealth.—Any person maintaining a place of business outside this Commonwealth may absorb the tax with respect to taxable sales made in the normal course of business to customers present at the place of business without being subject to the penalty and fines under subsection (b).

(d) Prepaid mobile telecommunications services.—Advertising tax-included prices shall be permissible, if the prepaid services are sold by the service provider, for prepaid telecommunications services not evidenced by the transfer of tangible personal property or for prepaid mobile telecommunications services.

(e) Other penalties.—The penalties imposed by this section shall be in addition to any other penalties imposed by any provision of this chapter.

§ 1269. Abatement of additions or penalties.

Upon the filing of a petition for reassessment or a petition for refund as provided under this chapter by a taxpayer, additions or penalties imposed upon such taxpayer by this chapter may be waived or abated, in whole or in part, where the petitioner has established that he has acted in good faith, without negligence and with no intent to defraud.

#### SUBCHAPTER O ENFORCEMENT AND EXAMINATIONS

Sec.

1270. Rules and regulations.

1271. Keeping of records.

1271.1. Reports and records of promoters.

1272. Examinations.

1273. Records and examinations of delivery agents.

1274. Unauthorized disclosure.

1275. Cooperation with other governments.

1276. Interstate compacts.

1277. Bonds.

§ 1270. Rules and regulations.

(a) General rule.—The department is charged with the enforcement of this chapter, and is authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations not inconsistent with the provisions of this chapter, relating to any matter or thing pertaining to the administration and enforcement of this chapter, and the collection of taxes, penalties and interest imposed by this chapter. The department may prescribe the extent, if any, to which its rules and regulations shall be applied without retroactive effect.

(b) Sales between affiliated interests.—In determining the purchase price of taxable sales where, because of affiliation of interests between the vendor and the purchaser or irrespective of any affiliation, if for any other reason, the purchase price of the sale is in the opinion of the department not indicative of the true value of the article or the fair price thereof, the department shall, pursuant to uniform and equitable rules, determine the amount of constructive purchase price upon the basis of which the tax shall be computed and levied. The rules shall provide for a constructive amount of a purchase price for each sale, which price shall equal a price for the article which would naturally and fairly be charged in an arm's-length transaction in which the element of common interests between vendor and purchaser, or, if no common interest exists, any other element causing a distortion of the price or value is absent. For the purpose of this chapter where a taxable sale occurs between a parent corporation and a subsidiary affiliate or controlled corporation of the parent, there shall be a rebuttable presumption that because of the common interest the transaction was not at arm's-length.

§ 1271. Keeping of records.

(a) General rule.—Each person liable for any tax imposed by this chapter, or for the collection of any tax imposed by this chapter, shall keep the records, render the statements, make the returns and comply with the rules and regulations that the department may, from time to time, prescribe regarding matters pertinent to the persons business. Whenever in the judgment of the department it is necessary, it may

require any person, by notice served upon the person, or by regulations, to make returns, render statements or keep records as the department deems sufficient to show whether or not the person is liable to pay or collect tax under this chapter.

(b) Persons collecting tax from others.—Any person liable to collect tax from another person under this chapter shall file reports, keep records, make payments and be subject to interest and penalties as provided for under this chapter, in the same manner as if the person were directly subject to the tax.

(c) Records of nonresidents.—A nonresident who does business in this Commonwealth as a retail dealer shall keep adequate records of the business or businesses and of the tax due with respect to the business or businesses, which records shall at all times be retained within this Commonwealth unless retention outside this Commonwealth is authorized by the department. No taxes collected from purchasers shall be sent outside this Commonwealth without the written consent of and in accordance with conditions prescribed by the department. The department may require a taxpayer who desires to retain records or tax collections outside this Commonwealth to assume reasonable out-of-State audit expenses.

(d) Keeping of separate records.—Any person doing business as a retail dealer who at the same time is engaged in another business or businesses which do not involve the making of sales taxable under this chapter shall keep separate books and records of the person's businesses so as to show the sales taxable under this chapter separately from the person's sales not taxable under this chapter. If the person fails to keep separate books and records, the person shall be liable for tax at the rate designated in section 1202 (relating to imposition of tax) upon the entire purchase price of sales from both or all of the person's businesses.

(e) Other methods.—

(1) In those instances where a vendor gives no sales memoranda or uses registers showing only total sales, the vendor must adopt some method of segregating tax from sales receipts and keep records showing the segregation, all in accordance with proper accounting and business practices.

(2) A vendor may apply to the department for permission to use a collection and recording procedure which will show the information as the law requires with reasonable accuracy and simplicity. A vendor's application must contain a detailed description of the procedure to be adopted. Permission to use the proposed procedure is not to be construed as relieving the vendor from remitting the full amount of tax collected. The department may revoke permission upon 30 days' notice to the vendor. Refusal of the department to grant permission in advance to use the procedure shall not be construed to invalidate a procedure which upon examination shows the information as the law requires.

§ 1271.1. Reports and records of promoters.

Each licensed promoter shall keep a record of the date and place of each show and the name, address, sales, use and hotel occupancy license number of each person whom the licensed promoter permits to display for sale or to sell tangible personal property or services subject to tax under section 1202 (relating to imposition of tax) at the show. The records shall be open for inspection and examination at any reasonable time by the department or its authorized representative, and the records shall, unless the department consents in writing to an earlier destruction, be preserved for three years after the date the report was filed or the date it was due, whichever occurs later, except that the department may by regulation require that they be kept for a longer period of time.

§ 1272. Examinations.

The department or any of its authorized agents are authorized to examine the books, papers and records of any taxpayer in order to verify the accuracy and completeness of any return made or, if no return was made, to ascertain and assess the tax imposed by this chapter. The department may require the preservation of any books, papers and records for any period deemed proper by it but not to

exceed three years from the end of the calendar year to which the records relate. Each taxpayer is required to give to the department, or its agent, the means, facilities and opportunity for examinations and investigation. The department is further authorized to examine any person, under oath, concerning taxable sales or use by any taxpayer or concerning any other matter relating to the enforcement or administration of this chapter, and to this end may compel the production of books, papers and records and the attendance of all persons whether as parties or witnesses whom it believes to have knowledge of such matters. The procedure for hearings or examinations shall be the same as that provided by the Fiscal Code, relating to inquisitorial powers of fiscal officers.

§ 1273. Records and examinations of delivery agents.

Each agent for the purpose of delivery of goods shipped into this Commonwealth by a nonresident including, but not limited to, common carriers, shall maintain adequate records of the deliveries pursuant to rules and regulations adopted by the department and shall make the records available to the department upon request after due notice.

§ 1274. Unauthorized disclosure.

Any information gained by the department as a result of any return, examination, investigation, hearing or verification, required or authorized by this chapter, shall be confidential, except for official purposes and except in accordance with proper judicial order or as otherwise provided by law, and any person unlawfully divulging the information commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000 and costs of prosecution, or to imprisonment for not more than one year, or both.

§ 1275. Cooperation with other governments.

Notwithstanding the provisions of section 1274 (relating to unauthorized disclosure), the department may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any state, or the authorized representative of either, to inspect the tax returns of any taxpayer, or may furnish to such officer or to an authorized representative an abstract of the return of any taxpayer, or supply the officer with information concerning any item contained in any return or disclosed by the report of any examination or investigation of the return of any taxpayer. This permission shall be granted only if the statutes of the United States or of the other state, as the case may be, grant substantially similar privileges to the proper officer of the Commonwealth charged with the administration of this chapter.

§ 1276. Interstate compacts.

The Governor, or an authorized representative, has the authority to confer with the governors and the authorized representatives of other states with respect to reciprocal use tax collection between Pennsylvania and the other states. The Governor, or a representative, is authorized to join with the authorities of other states to conduct joint investigations, to exchange information, to hold joint hearings and to enter into compacts or interstate agreements with the other states to accomplish uniform reciprocal use tax collections between those states who are parties to any compact or interstate agreement and the Commonwealth of Pennsylvania.

§ 1277. Bonds.

(a) Taxpayer to file bond.—

(1) Whenever the department, in its discretion, deems it necessary to protect the revenues to be obtained under this chapter, it may require any nonresident natural person or any foreign corporation, association, fiduciary, partnership or other entity not authorized to do business within this Commonwealth or not having an established place of business in this Commonwealth and subject to the tax imposed by section 1202 (relating to imposition of tax) to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in an amount as the department may fix, to secure the payment of any tax or penalties due, or which may become due, from the natural person or corporation.

(2) In order to protect the revenues to be obtained under this chapter, the department shall require any nonresident natural person or any foreign corporation, association, fiduciary, partnership or entity, who or which is a building contractor, or who or which is a supplier delivering building materials for work in this Commonwealth and is not authorized to do business within this Commonwealth or does not have an established place of business in this Commonwealth and is subject to the tax imposed by section 1202 to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in an amount as the department may fix, to secure the payments of any tax or penalties due, or which may become due, from the natural person, corporation or other entity.

(3) The department may also require a bond of any person petitioning the department for reassessment, in the case of any assessment over \$500 or where it is of the opinion that the ultimate collection is in jeopardy. The department may, for a period of three years, require a bond of any person who has on three or more occasions within a 12-month period either filed a return or made payment to the department more than 30 days late.

(4) In the event that the department determines that a taxpayer is to file a bond, it shall give notice to the taxpayer to that effect, specifying the amount of the bond required. The taxpayer shall file the bond within five days after the giving of notice by the department unless, within the five days, the taxpayer shall request, in writing, a hearing before the Secretary of Revenue or a representative at which hearing the necessity, propriety and amount of the bond shall be determined by the secretary or representative. The determination shall be final and shall be complied with within 15 days after notice of the determination is mailed to the taxpayer.

(b) Securities in lieu of bond.—In lieu of the bond required by this section, securities approved by the department, or cash in an amount as prescribed by the department, may be deposited. The securities or cash shall be kept in the custody of the department, which may, at any time, without notice to the depositor, apply them to any tax, interest or penalties due, and for that purpose the securities may be sold by the department, at public or private sale, upon five days' written notice to the depositor.

(c) Failure to file bond.—The department may file a lien pursuant to section 1242 (relating to lien for taxes) against any taxpayer who fails to file a bond when required to do so under this section. All funds received upon execution of the judgment on a lien shall be refunded to the taxpayer with 3% interest should a final determination be made that the taxpayer does not owe any payment to the department.

#### SUBCHAPTER P

#### APPROPRIATION; EFFECTIVE DATE

Sec.

1281. Appropriation for refunds.

1281.1. Construction of chapter.

1281.2. Transfers to Public Transportation Assistance Fund.

1281.3. Transfer to Property Tax Relief Fund.

§ 1281. Appropriation for refunds.

So much of the proceeds of the tax imposed by this chapter as shall be necessary for the payment of refunds, enforcement or administration under this chapter is hereby appropriated for such purposes.

§ 1281.1. Construction of chapter.

To the extent that the language of this chapter is identical to that of equivalent provisions in the former act of March 6, 1956 (1955 P.L.1228, No.381), known as the Tax Act of 1963 for Education, the language shall be deemed a reenactment of the identical provisions.

§ 1281.2. Transfers to Public Transportation Assistance Fund.

(a) Transfer from imposition of tax on periodicals.—All revenues received on or after July 1, 1992, from the imposition of the tax on

periodicals shall be transferred to the Public Transportation Assistance Fund according to the formula set forth in subsection (b).

(b) Transfer to Public Transportation Assistance Fund.—Within 30 days of the close of any calendar month, 0.44% of the taxes received in the previous month under this chapter, less any amounts collected in that previous calendar month under former 74 Pa.C.S. § 1314(d) (relating to Public Transportation Assistance Fund), shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code.

(c) Other transfer.—Within 30 days of the close of any calendar month, 0.09% of the taxes received in the previous month under this chapter shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code.

(d) Transfer after June 30, 2003.—Within 30 days of the close of a calendar month, 0.417% of the taxes received in the previous month under this chapter shall be transferred to the Public Transportation Assistance Fund established under Article XXIII of the Tax Reform Code. This subsection applies to deposits into the Public Transportation Assistance Fund made after June 30, 2003.

§ 1281.3. Transfer to Property Tax Relief Fund.

Within 30 days of the close of any calendar month, 7.692% of the taxes received in the previous month under this chapter shall be transferred to the Property Tax Relief Fund.

#### CHAPTER 13

#### SPECIAL SITUS FOR LOCAL SALES TAX

Sec.

1301. Definitions.

1302. Leased or rental vehicles or crafts.

1303. Construction materials.

1304. Mobile telecommunications services.

§ 1301. Definitions.

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

“Lease.” A contract for the use of a motor vehicle or other tangible personal property referred to in section 1302(a) (relating to leased or rental vehicles or crafts) for a period of 30 days or more.

“Rental.” A contract for the use of a motor vehicle or other tangible personal property referred to in section 1302(b) (relating to leased or rental vehicles or crafts) for a period of less than 30 days.

§ 1302. Leased or rental vehicles or crafts.

(a) Lease.—For purposes of this chapter, the lease of a motor vehicle, trailer, semitrailer or mobile home, as defined in 75 Pa.C.S. (relating to vehicles), or of a motorboat, aircraft or other similar tangible personal property required under either Federal or State laws to be registered or licensed shall be deemed to have been completed or used at the address of the lessee. In the case of a lease, the tax shall be paid by the lessee to the lessor.

(b) Rental.—For purposes of this chapter, the rental of a motor vehicle, trailer, semitrailer or mobile home, as defined in 75 Pa.C.S., or of a motorboat, aircraft or other similar tangible personal property required under either Federal or State laws to be registered or licensed shall be deemed to be consummated at the place of business of the retailer. In the case of a rental, the tax due shall be paid by the renter to the retailer.

(c) Applicability.—This chapter shall only apply to any sales tax imposed under Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code, and under the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

§ 1303. Construction materials.

(a) Final destination.—Notwithstanding the provisions of section 504 of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, the sale or use of road construction material, including recycled asphalt, recycled concrete, asphalt, concrete and road aggregates, shall be deemed to have been consummated at the

location of its final destination. Final destination will be determined by reference to delivery or shipping documents relating to such sales.

(b) Applicability.—This section shall apply to taxes levied under Chapter 5 of the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class. This section shall not apply to taxes levied under Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code. § 1304. Mobile telecommunications services.

(a) Primary use.—For purposes of this chapter, the situs of the sales or use of mobile telecommunications services which are deemed to be provided to a customer by a home service provider under section 117 of the Mobile Telecommunications Sourcing Act (4 U.S.C. § 117(a) and (b)) shall be the customer’s place of primary use regardless of where the mobile telecommunications services originate, terminate or pass through.

(b) Definitions.—For purposes of this section, words and phrases used in this section shall have the meanings given to them in the Mobile Telecommunications Sourcing Act.

#### PART III

#### TAX RELIEF

Chapter

21. Homeowner Property Tax Relief

#### CHAPTER 21

#### HOMEOWNER PROPERTY TAX RELIEF

Subchapter

A. General Provisions

B. Formula

C. School District Homestead and Farmstead Exclusion

D. Tax Relief in Cities of the First Class

E. Reserve Fund

#### SUBCHAPTER A

#### GENERAL PROVISIONS

Sec.

2101. Scope.

2102. Definitions.

§ 2101. Scope.

This chapter relates to the allocation of State funds for homestead and farmstead property tax reductions.

§ 2102. Definitions.

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

“Allocation maximum.” The Statewide average reduction plus a numerical value of 0.05. The allocation maximum shall not be greater than a numerical value of 0.65.

“Allocation minimum.” The Statewide average reduction minus a numerical value of 0.05. The allocation minimum shall not be less than a numerical value of 0.05.

“Assessor.” The term as it is defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Average daily membership.” All resident pupils of the school district for whom the school district is financially responsible. It shall be calculated by dividing the aggregate days membership for all children on active rolls by the number of days the school is in session.

“Department.” The Department of Education of the Commonwealth.

“Equalized millage.” The term shall have the same usage as defined in section 2501(9.2) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

“Farmstead.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Farmstead property.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Fund.” The Property Tax Relief Fund.

“Homestead.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).

“Homestead property.” As defined in 53 Pa.C.S. § 8582 (relating to definitions).



“Real property tax.” The total dollar value of real property taxes paid by property owners in a school district determined by adding the real property taxes collected by, or on behalf of, the school district plus all State allocations received pursuant to this chapter.

“Real property tax liability.” The assessed value of the real property of the taxpayer multiplied by the millage rate of the school district.

“Residential property tax.” The dollar value of real property taxes paid by residential property owners in a school district, determined by multiplying:

- (1) the real property taxes collected by the school district; by
- (2) the percentage of the total property value in the school district classified as residential by the State Tax Equalization Board.

“School district.” A school district of the first class, first class A, second class, third class or fourth class.

“School district of the first class.” Includes the governing body of a city of the first class.

“Secretary.” The Secretary of the Budget of the Commonwealth.

“Statewide Average Reduction.” The amount certified under section 2111 divided by the sum of all residential property taxes for all school districts collected during the third year immediately preceding the fiscal year for which the certification is being made, rounded to the nearest one-tenth of one percent.

“Taxpayer.” A person required to pay a real property tax.

SUBCHAPTER B  
FORMULA

Sec.

2111. Certification.

2112. Notification.

2113. State allocation.

§ 2111. Certification.

(a) Initial.—By April 15, 2007, the secretary shall certify the greater of the following:

- (1) The total amount of revenue that is reasonably projected to be deposited into the fund for the period through June 30, 2007.
- (2) \$400,000,000.

(b) Annual.—Beginning April 15, 2008, and each April 15 thereafter, the secretary shall certify the greater of the following:

- (1) The total amount of revenue that is reasonably expected to be deposited into the fund for the current fiscal year.
- (2) The amount certified by the secretary under this section for the prior fiscal year.

(c) Excess.—If the actual revenue deposited into the fund in any one fiscal year exceeds the amount certified in this section, any revenue in excess of projections shall remain in the fund and shall be included in the certification for the subsequent fiscal year.

(d) Shortage.—If the actual revenue deposited into the fund in any one fiscal year is less than the amount certified in this section, the secretary shall transfer from the Property Tax Relief Reserve Fund to the fund either of the following:

- (1) For calendar year 2007, the amount equal to the difference between the amount certified under subsection (a) and \$400,000,000.
- (2) For calendar year 2008 and each calendar year thereafter, the amount equal to the difference between the amount certified under subsection (b) and the amount certified under this section for the prior year.

§ 2112. Notification.

By April 20, 2007, and each April 20 thereafter, the secretary shall notify the department of the amount certified pursuant to section 2111 (relating to certification) for calculation of the allocation for each school district under section 2113 (relating to State allocation).

§ 2113. State allocation.

(a) Calculation.—The department shall calculate the State allocation for each school district as follows:

(1) For the 2007-2008 fiscal year:

(i) Multiply the school district’s 2004-2005 average daily membership by the school district’s 2004-2005 equalized millage.

(ii) Multiply the product under subparagraph (i) by the dollar amount necessary to allocate all of the money in the fund as certified under section 2111 (relating to certification).

(iii) If the allocation under this paragraph is less than the product of the residential property taxes collected during the 2004-2005 fiscal year and the allocation minimum for a school district, the school district shall receive an additional amount so that the total allocation under this paragraph is equal to the product of the residential property taxes collected during the 2004-2005 fiscal year and the allocation minimum.

(iv) If the allocation under this paragraph is greater than the product of the residential property taxes collected during the 2004-2005 fiscal year and the allocation maximum for a school district, the school district shall receive a total allocation equal to the product of the residential property taxes collected during the 2004-2005 fiscal year and the allocation maximum.

(2) For subsequent fiscal years:

(i) Multiply the school district’s average daily membership for the third fiscal year immediately preceding the fiscal year for which the allocation is being made by the school district’s equalized millage for the third fiscal year immediately preceding the fiscal year for which the allocation is being made.

(ii) Multiply the product under subparagraph (i) by the dollar amount necessary to allocate all of the money in the fund as certified under section 2111.

(iii) If the allocation under this paragraph is less than the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation minimum for a school district, the school district shall receive an additional amount so that the total allocation under this paragraph is equal to the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation minimum.

(iv) If the allocation under this paragraph is greater than the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation maximum for a school district, the school district shall receive a total allocation equal to the product of the residential property taxes collected during the third fiscal year immediately preceding the fiscal year for which the allocation is being made and the allocation maximum.

(b) Notice.—By May 15, 2007, and each May 15 thereafter, the department shall notify each school district of the amount of the State allocation it is eligible to receive.

(c) Payment.—Beginning 2007 and each year thereafter, the department shall pay from the fund to each school district a State allocation which shall be made concurrently with the first payment under section 2517 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

(d) Use of payments.—Except as provided in Subchapter D, the State allocation for a school district shall be used for homestead and farmstead exclusions under Subchapter C.

SUBCHAPTER C  
SCHOOL DISTRICT HOMESTEAD  
AND FARMSTEAD EXCLUSION

Sec.

2121. Homestead and farmstead applications.

2122. Homestead and farmstead exclusion process.

2123. School district tax notices.

§ 2121. Homestead and farmstead applications.

(a) Initial notification and application.—By October 18, 2004, a board of school directors shall notify by first class mail the owner of each parcel of residential property within the district that the owner must submit a completed application in accordance with 53 Pa.C.S. § 8584(a) (relating to administration and procedure). The board shall provide a second notice by first class mail no later than 60 days prior to the application deadline in subsection (c). Each notice shall include an application to be filed with the assessor of the county where the property is located, instructions for completing the application and the deadline to apply. A school district may limit the second notice to those owners of residential property that have not responded to the initial notification.

(b) Annual notification.—No later than 60 days prior to the application deadline in subsection (c), a board of school directors shall notify by first class mail the owner of each parcel of residential property within the district of the existence of the school district's homestead and farmstead exclusion program, the need to file an application in accordance with 53 Pa.C.S. § 8584(a) in order to qualify for the program and the application deadline. The annual notice shall include all information required under subsection (a). A school district may limit the annual notification to those owners of residential property:

- (1) who are not currently approved; or
- (2) whose approval is due to expire.

(c) Application deadline.—In accordance with 53 Pa.C.S. § 8584(b), the deadline for filing an application with the assessor shall be March 1.

(d) Action on application.—Real property for which an application has been filed by the application deadline shall be deemed to be a homestead or farmstead property which is eligible for a homestead or farmstead exclusion unless the assessor denies the application. Denials of application by the assessor and the right to appeal that decision shall be in accordance with 53 Pa.C.S. § 8584(d) and (e).

(e) Application review and submission.—Except as set forth in 53 Pa.C.S. § 8584(j), an assessor shall not require the owner of a previously approved property to resubmit an application more than one time every three years.

(f) Applicability.—The provisions of 53 Pa.C.S. § 8584(f), (g), (h) and (j) shall apply to any application filed under this section.

(g) Duties of assessors.—

(1) The assessor shall mail to the owner of property for which an application has been submitted and approved or denied under this section notice of such fact no later than 30 days after receipt of the application.

(2) The assessor shall notify the owner of any homestead or farmstead property designated as such under any other statute of the need, if any, to resubmit an application to maintain the property's eligibility as a homestead or farmstead property. Nothing in this paragraph shall prohibit a county assessor from designating property previously determined to be homestead or farmstead property under any other statute as homestead or farmstead property for purposes of this section.

(3) The assessor shall provide each school district with a certified report, as provided in 53 Pa.C.S. § 8584(i), no later than May 1 of each year.

(h) Uniform application and instructions.—The application to designate property as homestead or farmstead property shall be uniform and shall include instructions for completing the application.

The Department of Community and Economic Development shall develop the uniform application and instructions to be used by county assessors and shall publish the uniform application and instructions by September 20, 2004.

(i) Prohibitions.—A county shall not require an application fee for the filing or review of an application submitted under this section or under 53 Pa.C.S. § 8584(a).

§ 2122. Homestead and farmstead exclusion process.

(a) Calculation.—Each year in which a school district receives a State allocation under this chapter, the school district shall calculate a homestead and farmstead exclusion which is equal to the lesser of:

(1) the maximum amount of homestead and farmstead exclusion authorized by 53 Pa.C.S. § 8586 (relating to limitations); or

(2) the sum of:

(i) the amount of State allocation the district is eligible to receive.

(ii) any amount available to fund homestead and farmstead exclusions. This subparagraph shall include amounts available to fund homestead and farmstead exclusions under 24 Pa.C.S. Ch. 31 (relating to financing).

(b) Resolution.—The school district shall adopt a resolution implementing the homestead and farmstead exclusion calculated under subsection (a) no later than the last day of the fiscal year immediately preceding the fiscal year in which the homestead and farmstead exclusions shall take effect. The resolution shall state the maximum amount of homestead or farmstead exclusion an owner of a homestead or farmstead may receive. A resolution may not authorize a homestead or farmstead exclusion which exceeds the amount authorized by 53 Pa.C.S. § 8586.

§ 2123. School district tax notices.

(a) Tax notice.—School districts shall itemize the homestead and farmstead exclusion on tax bills sent to homestead and farmstead owners, indicating the original amount of tax liability, the amount of the exclusion and the net amount of tax due after the exclusion is applied. The tax bill shall be easily understandable and include a notice pursuant to subsection (b).

(b) Notice of property tax relief.—School districts shall include with the homestead or farmstead owner's tax bill a notice that the tax bill includes a homestead or farmstead exclusion. The notice shall at a minimum take the following form:

NOTICE OF PROPERTY TAX RELIEF

Your enclosed tax bill includes a tax reduction for your homestead and/or farmstead property. As an eligible homestead and/or farmstead property owner, you have received tax relief through a homestead and/or farmstead exclusion under a law passed by the Pennsylvania General Assembly designed to reduce your property taxes.

SUBCHAPTER D  
TAX RELIEF IN CITIES OF THE FIRST CLASS

Sec.

2131. Tax relief in cities of the first class.

§ 2131. Tax relief in cities of the first class.

(a) Tax rate reduction.—A city of the first class shall reduce the rate of wage and net profits tax on residents and nonresidents levied under the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act, in order to be eligible to receive a State allocation under this chapter. If the city elects to reduce taxes pursuant to this section, all money received from the fund under section 2113 (relating to State allocation) shall be used to offset a reduction by the city in the fiscal year in which a payment under section 2113 is received and each fiscal year thereafter in the rate of tax on wages and net profits for both residents and nonresidents as provided for in subsection (b). The reductions shall remain in effect for so long as a State allocation under section 2113 is paid to the city in an amount equal to the cost of such reductions.

## (b) Calculation of reduction.—

(1) The city shall calculate the amount of the tax rate reductions so that they equal, based on estimates certified by the city's director of finance and approved by the Pennsylvania Intergovernmental Cooperation Authority prior to the implementation of the reductions, in combination with any reduction in the rate of unearned income tax imposed by a school district in the city of the first class required by the act of August 9, 1963 (P.L.640, No.338), entitled "An act empowering cities of the first class, coterminous with school districts of the first class, to authorize the boards of public education of such school districts to impose certain additional taxes for school district purposes, and providing for the levy, assessment and collection of such taxes," as a result of the reduction in the rate of wage and net profits tax, the amount paid to the city from the fund for tax reductions. The city shall each year transfer to the school district an amount equal to the cost of any reduction in the rate of unearned income tax, and the transfer shall not be subject to the provisions of section 696(h) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

(2) The tax rate reductions implemented by a city of the first class pursuant to this section shall be in addition to the following schedule of percentages of wage and net profits tax rate reductions:

- (i) On January 1, 2007, 0.9533% for residents and 0.4216% for nonresidents.
- (ii) On January 1, 2008, 0.9624% for residents and 0.8387% for nonresidents.
- (iii) On January 1, 2009, 1.1851% for residents and 1.0526% for nonresidents.

(c) Exceptions.—The wage and net profits tax rates may only be raised above the rates specified in subsection (b)(2) if all of the following apply:

(1) The increase is approved by an affirmative vote of at least ten members of a city council of a city of the first class.

(2) The Pennsylvania Intergovernmental Cooperation Authority certifies that a condition under paragraph (3) exists.

(3) The increase is necessary to respond to any of the following:

(i) A fiscal threat or condition, as certified by the city's director of finance, that occurs to the city as set forth in 24 Pa.C.S. § 3122(f) (relating to public referendum requirements for levying and increasing certain taxes) or an equivalent fiscal threat that affects the citizens of the city. It shall be the responsibility of the city's director of finance with the approval of the Pennsylvania Intergovernmental Cooperation Authority to ensure that any additional tax revenue raised is equal to the amount expended to respond to the fiscal threat or condition. If the amount of revenue raised through rate adjustment exceeds the amount necessary to respond, over the course of the city's approved financial plan, to the fiscal threat, the excess amount shall be used for wage tax and net profits tax reduction in the immediately succeeding approved financial plan, but only if the tax rate reduction, expressed as the difference between the two tax rates, would exceed .0002.

(ii) A decrease of more than 2% in the amount of total tax collections plus any funds provided under this chapter from the preceding year's collections. Such a determination of a decrease must be attested to by the city's director of finance.

(iii) A declaration by the Pennsylvania Intergovernmental Cooperation Authority that the city's five-year plan is disapproved pursuant to section 209 of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

(iv) Federal or State law imposes a new unfunded mandate on the city that costs the city more than 1.5% of the city's total general fund expenditures in any fiscal year.

(v) The cost to the city of an existing mandate imposed by Federal or State law increases by more than 1.5% of the city's total general fund expenditures in any fiscal year and funds to pay for the increase are not appropriated to the city by the Federal or State government.

(vi) Existing Federal or State funding is decreased by 1.5% of the city's total general fund expenditures in any fiscal year.

(d) Excess funds.—If in any fiscal year the sums received by a city of the first class from the fund are in excess of the value of the tax rate reductions actually made by the city and the school district of the first class pursuant to subsection (a), the city shall, within 60 days following the certification by the director of finance, in consultation with the Secretary of the Budget and with the approval of the Pennsylvania Intergovernmental Cooperation Authority of the amount of the excess, do either of the following:

(1) repay to the fund the excess sums; or

(2) further reduce wage and net profits tax rates and unearned income tax rates, if required, in the fiscal year next following the determination of the excess, by an amount that will result in total tax rate reductions required for the amount received from the fund. To the extent the tax rate reduction provided for in this paragraph, expressed as the difference between the two tax rates, would not exceed .0002, this subsection shall not apply.

(e) Insufficient funds.—If in any fiscal year the director of finance certifies, in consultation with the Secretary of the Budget and with the approval of the Pennsylvania Intergovernmental Cooperation Authority, that the amount of sums received by the city from the fund are less than the value of the tax rate reductions actually made by the city and school district of the first class pursuant to subsection (a), the city may, in the fiscal year next following the determination of the amount, increase the city's wage and net profits tax rate above the rates specified in subsection (b)(2) by an amount that will result in an overall tax rate reduction equal to that required for the amount received by the city from the fund. To the extent the tax rate increase provided for in this subsection, expressed as the difference between the two tax rates, would not exceed .0002, this subsection shall not apply.

#### SUBCHAPTER E RESERVE FUND

Sec.

2141. Property Tax Relief Reserve Fund.

§ 2141. Property Tax Relief Reserve Fund.

(a) Fund established.—There is established within the fund a restricted receipts account to be known as the Property Tax Relief Reserve Fund. Interest which accrues on the Property Tax Relief Reserve Fund shall be credited to the fund.

(b) Receipts.—The secretary is authorized to transfer funds from the fund into the Property Tax Relief Reserve Fund necessary to comply with the requirements of subsection (c).

(c) Balance.—

(1) The secretary shall ensure that \$400,000,000 exists in the Property Tax Relief Reserve Fund prior to making a certification under section 2111 (relating to certification).

(2) If a transfer was made under section 2111(d), the secretary shall deposit funds necessary to ensure that \$400,000,000, is available in the Property Tax Relief Reserve Fund prior to making a certification under section 2111.

(d) Nonlapse.—The money in the Property Tax Relief Reserve Fund is continuously appropriated to the Property Tax Relief Reserve Fund and shall not lapse at the end of any fiscal year.

PART IV  
SENIOR CITIZENS

Chapter  
41. Senior Citizens Property Tax and Rent Rebate Assistance  
CHAPTER 41  
SENIOR CITIZENS PROPERTY TAX AND  
RENT REBATE ASSISTANCE

- Sec.  
4101. Scope.  
4102. (Reserved).  
4103. Definitions.  
4104. Property tax and rent rebate.  
4105. Filing of claim.  
4106. Proof of claim.  
4107. Incorrect claim.  
4108. Funds for payment of claims.  
4109. Claim forms and rules and regulations.  
4110. Fraudulent claims and conveyances to obtain benefits.  
4111. Petition for redetermination.  
4112. Review by Board of Finance and Revenue.  
4113. Appeal.  
§ 4101. Scope.

This chapter provides senior citizens with assistance in the form of property tax and rent rebates.

§ 4102. (Reserved).

§ 4103. Definitions.

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

“Board.” The Board of Finance and Revenue of the Commonwealth.

“Claimant.” A person who files a claim for property tax rebate or rent rebate in lieu of property taxes and:

(1) was at least 65 years of age, or whose spouse, if a member of the household, was at least 65 years of age during a calendar year in which real property taxes or rent were due and payable;

(2) was a widow or widower and was at least 50 years of age during a calendar year or part thereof in which real property taxes or rent were due and payable; or

(3) was a permanently disabled person 18 years of age or older during a calendar year or part thereof in which the real property taxes or rent were due and payable.

“Department.” The Department of Revenue of the Commonwealth.

“Homestead.” A dwelling, whether owned or rented, and so much of the land surrounding it, as is reasonably necessary for the use of the dwelling as a home, occupied by a claimant. The term includes, but is not limited to:

(1) Premises occupied by reason of ownership or lease in a cooperative housing corporation.

(2) Mobile homes which are assessed as realty for local property tax purposes and the land, if owned or rented by the claimant, upon which the mobile home is situated, and other similar living accommodations.

(3) A part of a multidwelling or multipurpose building and a part of the land upon which it is built.

(4) Premises occupied by reason of the claimant’s ownership or rental of a dwelling located on land owned by a nonprofit incorporated association, of which the claimant is a member, if the claimant is required to pay a pro rata share of the property taxes levied against the association’s land.

(5) Premises occupied by a claimant if the claimant is required by law to pay a property tax by reason of the claimant’s ownership or rental, including a possessory interest, in the dwelling, the land, or both. An owner includes a person in possession under a contract of sale, deed of trust, life estate,

joint tenancy or tenancy in common or by reason of statutes of descent and distribution.

“Household income.” All income received by a claimant and the claimant’s spouse while residing in the homestead during the calendar year for which a rebate is claimed.

“Income.” All income from whatever source derived, including, but not limited to:

(1) Salaries, wages, bonuses, commissions, income from self-employment, alimony, support money, cash public assistance and relief.

(2) The gross amount of any pensions or annuities including railroad retirement benefits for calendar years prior to 1999, and 50% of railroad retirement benefits for calendar years 1999 and thereafter.

(3) All benefits received under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.), except Medicare benefits, for calendar years prior to 1999, and 50% of all benefits received under the Social Security Act, except Medicare benefits, for calendar years 1999 and thereafter.

(4) All benefits received under State unemployment insurance laws and veterans’ disability payments.

(5) All interest received from the Federal or any state government, or any instrumentality or political subdivision thereof.

(6) Realized capital gains and rentals.

(7) Workers’ compensation.

(8) The gross amount of loss of time insurance benefits, life insurance benefits and proceeds, except the first \$5,000 of the total of death benefit payments.

(9) Gifts of cash or property, other than transfers by gift between members of a household, in excess of a total value of \$300.

The term does not include surplus food or other relief in kind supplied by a governmental agency, property tax or rent rebate or inflation dividend.

“Permanently disabled person.” A person who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to continue indefinitely, except as provided in section 4104(b)(3) and (c) (relating to property tax and rent rebate).

“Real property taxes.” All taxes on a homestead, exclusive of municipal assessments, delinquent charges and interest, due and payable during a calendar year.

“Rent rebate in lieu of property taxes.” Twenty percent of the gross amount actually paid in cash or its equivalent in any calendar year to a landlord in connection with the occupancy of a homestead by a claimant, irrespective of whether such amount constitutes payment solely for the right of occupancy or otherwise.

“Secretary.” The Secretary of Revenue of the Commonwealth.

“Widow” or “widower.” The surviving wife or the surviving husband, as the case may be, of a deceased individual and who has not remarried except as provided in section 4104(b)(3) and (c) (relating to property tax and rent rebate).

§ 4104. Property tax and rent rebate.

(a) Schedule of rebates.—

(1) The amount of any claim for property tax rebate or rent rebate in lieu of property taxes for real property taxes or rent due and payable during calendar years 1985 through 2005 shall be determined in accordance with the following schedule:

Household Income	Percentage of Real Property Taxes or Rent Rebate in Lieu of Property Taxes Allowed as Rebate
\$ 0 - \$4,999	100%
5,000 - 5,499	100
5,500 - 5,999	90
6,000 - 6,499	80
6,500 - 6,999	70
7,000 - 7,499	60

7,500 - 7,999	50
8,000 - 8,499	40
8,500 - 8,999	35
9,000 - 9,999	25
10,000 - 11,999	20
12,000 - 12,999	15
13,000 - 15,000	10

(2) The amount of any claim for property tax rebate for real property taxes due and payable during calendar year 2006 and thereafter shall be determined in accordance with the following schedule:

Household Income	Amount of Real Property Taxes Allowed as Rebate
\$ 0 - \$ 8,000	\$650
8,001 - 15,000	500
15,001 - 18,000	300
18,001 - 35,000	250

(3) The amount of any claim for rent rebate in lieu of property taxes for rent due and payable during calendar year 2006 and thereafter shall be determined in accordance with the following:

Household Income	Amount of Rent Rebate in Lieu of Property Taxes Allowed as Rebate
\$ 0 - \$ 8,000	\$650
8,001 - 15,000	500

(b) Limitations on claims.—

(1) No claim through calendar year 2005 shall be allowed if the amount of property tax or rent rebate computed in accordance with this section is less than \$10, and the maximum amount of property tax or rent rebate payable shall not exceed \$500.

(2) For calendar year 2006 and thereafter, the maximum amount of property tax or rent rebate in lieu of property taxes payable shall not exceed the lesser of:

- (i) the amount of a claim under subsection (a)(2) or (3);
- (ii) the amount of real property taxes actually paid; or
- (iii) 20% of gross rent actually paid.

(3) No claim shall be allowed if the claimant is a tenant of an owner of real property exempt from real property taxes.

(c) Apportionment and public assistance.—

(1) If any of the following exist relating to a claim:

- (i) a homestead is owned or rented and occupied for only a portion of a year or is owned or rented in part by a person who does not meet the qualifications for a claimant, exclusive of any interest owned or leased by a claimant's spouse;
- (ii) the claimant is a widow or widower who remarries; or
- (iii) the claimant is a formerly disabled person who is no longer disabled,

the department shall apportion the real property taxes or rent in accordance with the period or degree of ownership or leasehold or eligibility of the claimant in determining the amount of rebate for which a claimant is eligible.

(2) A claimant who receives public assistance from the Department of Public Welfare shall not be eligible for rent rebate in lieu of property taxes during those months within which the claimant receives public assistance.

(d) Government subsidies.—Rent shall not include subsidies provided by or through a governmental agency.

§ 4105. Filing of claim.

(a) General rule.—Except as otherwise provided in subsection (b), a claim for property tax or rent rebate shall be filed with the department on or before the 30th day of June of the year next succeeding the end of

the calendar year in which real property taxes or rent was due and payable.

(b) Exception.—A claim filed after the June 30 deadline until December 31 of such calendar year shall be accepted by the secretary as long as funds are available to pay the benefits to the late filing claimant.

(c) Payments.—No reimbursement on a claim shall be made earlier than the day following the 30th day of June provided in this chapter on which that claim may be filed with the department.

(d) Eligibility of claimants.—

(1) Only one claimant from a homestead each year shall be entitled to the property tax or rent rebate.

(2) If two or more persons are able to meet the qualifications for a claimant, they may determine who the claimant shall be.

(3) If they are unable to agree, the department shall determine to whom the rebate is to be paid.

§ 4106. Proof of claim.

(a) Contents.—Each claim shall include:

(1) Reasonable proof of household income.

(2) The size and nature of the property claimed as a homestead.

(3) The rent, tax receipt or other proof that the real property taxes on the homestead have been paid or rent in connection with the occupancy of a homestead has been paid.

(4) If the claimant is a widow or widower, a declaration of such status in such manner as prescribed by the secretary.

(b) Proof of disability.—

(1) Proof that a claimant is eligible to receive disability benefits under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) shall constitute proof of disability under this chapter.

(2) No person who has been found not to be disabled by the Social Security Administration shall be granted a rebate under this chapter.

(3) A claimant not covered under the Social Security Act shall be examined by a physician designated by the department and such status determined using the same standards used by the Social Security Administration.

(c) Direct payment of taxes or rent not required.—It shall not be necessary that such taxes or rent were paid directly by the claimant if the rent or taxes have been paid when the claim is filed.

(d) Proof of age on first claim.—The first claim filed shall include proof that the claimant or the claimant's spouse was at least 65 years of age, or at least 50 years of age in the case of a widow or widower during the calendar year in which real property taxes or rent were due and payable.

§ 4107. Incorrect claim.

Whenever on audit of a claim, the department finds the claim to have been incorrectly determined, it shall redetermine the correct amount of the claim and notify the claimant of the reason for the redetermination and the amount of the corrected claim.

§ 4108. Funds for payment of claims.

(a) Payment.—

(1) Except as provided in paragraph (2), approved claims shall be paid from the State Lottery Fund established by the act of August 26, 1971 (P.L.351, No.91), known as the State Lottery Law.

(2) Approved claims for calendar years 2006 and thereafter shall be paid from the Property Tax Relief Fund.

(b) Transfers.—Beginning July 1, 2007, the Secretary of the Budget shall annually transfer an amount equal to the amount of approved claims paid for calendar year 2005 from the State Lottery Fund to the Property Tax Relief Fund.

§ 4109. Claim forms and rules and regulations.

(a) General rule.—Necessary rules and regulations shall be prescribed by a committee consisting of the Secretary of Aging, the

Secretary of Revenue and the Secretary of Community and Economic Development. The Secretary of Aging shall serve as the chairman of the committee. The department shall receive all applications, determine the eligibility of claimants, hear appeals, disburse payments and make available suitable forms for the filing of claims.

(b) Report to General Assembly.—In addition to any rules and regulations prescribed under subsection (a), the department shall collect the following information and issue a report including such information to the chairman and minority chairman of the Appropriations Committee of the Senate and the chairman and minority chairman of the Appropriations Committee of the House of Representatives by September 30, 2006, and September 30 of each year thereafter.

(1) The total number of claims which will be paid in the fiscal year in which the report is issued with the information provided by school district, by county and for each household income level under section 4104(a)(2) (relating to property tax and rent rebate).

(2) The total amount of rebates paid in the fiscal year in which the report is issued with the information provided by school district, by county and for each household income level under section 4104(a)(2).

§ 4110. Fraudulent claims and conveyances to obtain benefits.

(a) Civil penalty.—In any case in which a claim is excessive and was filed with fraudulent intent, the claim shall be disallowed in full and a penalty of 25% of the amount claimed shall be imposed. The penalty and the amount of the disallowed claim, if the claim has been paid, shall bear interest at the rate of 1.5% per month from the date of the claim until repaid.

(b) Criminal penalty.—The claimant and any person who assisted in the preparation or filing of a fraudulent claim commits a misdemeanor of the third degree and, upon conviction thereof, shall be sentenced to pay a fine not exceeding \$1,000, or to imprisonment not exceeding one year, or both.

(c) Disallowance for receipt of title.—A claim shall be disallowed if the claimant received title to the homestead primarily for the purpose of receiving property tax rebate.

§ 4111. Petition for redetermination.

(a) Right to file.—A claimant whose claim is either denied, corrected or otherwise adversely affected by the department may file with the department a petition for redetermination on forms supplied by the department within 90 days after the date of mailing of written notice by the department of such action.

(b) Contents.—The petition shall set forth the grounds upon which the claimant alleges that such departmental action is erroneous or unlawful, in whole or part, and shall contain an affidavit or affirmation that the facts contained in the petition are true and correct.

(c) Extension of time for filing.—

(1) An extension of time for filing the petition may be allowed for cause, but may not exceed 120 days.

(2) The department shall hold such hearings as may be necessary for the purpose of redetermination, and each claimant who has duly filed such petition for redetermination shall be notified by the department of the time when, and the place where, such hearing in the claimant's case will be held.

(d) Time period for decision.—The department shall, within six months after receiving a filed petition for redetermination, dispose of the matters raised by such petition and shall mail notice of the department's decision to the claimant.

§ 4112. Review by Board of Finance and Revenue.

(a) Right to review.—Within 90 days after the date of official receipt by the claimant of notice mailed by the department of its decision on a petition for redetermination filed with it, the claimant who is adversely affected by the decision may by petition request the board to review such action.

(b) Effect of no decision from department.—The failure of the department to officially notify the claimant of a decision within the six-month period provided for by section 1411 (relating to petition for

redetermination) shall act as a denial of the petition, and a petition for review may be filed with the board within 120 days after written notice is officially received by the claimant that the department has failed to dispose of the petition within the six-month period.

(c) Contents of petition for redetermination.—A petition for redetermination filed shall state the reasons upon which the claimant relies or shall incorporate by reference the petition for redetermination in which such reasons were stated. The petition shall be supported by affidavit that the facts set forth therein are correct and true.

(d) Time period for decision.—The board shall act in disposition of petitions filed with it within six months after they have been received, and in the event of failure of the board to dispose of any petition within six months, the action taken by the department upon the petition for redetermination shall be deemed sustained.

(e) Relief authorized by board.—The board may sustain the action taken by the department on the petition for redetermination or it may take such other action as it shall deem necessary and consistent with provisions of this chapter.

(f) Form of notice.—Notice of the action of the board shall be given by mail to the department and to the claimant.

§ 4113. Appeal.

A claimant aggrieved by a decision of the board may appeal from the decision of the board in the manner provided by law for appeals from decisions of the board in tax cases.

Section 3. No school district which has not already made an election to adopt the provisions of 53 Pa.C.S. Ch. 87 may make an election to do so after the effective date of this section.

Section 4. The sum of \$3,000,000, or as much thereof as may be necessary, is hereby appropriated from the Property Tax Relief Reserve Fund to the Department of Community and Economic Development for the purpose of making one-time transition grants to counties, other than counties of the first class, for costs associated with implementing the Taxpayer Relief Act. Grants shall be made pursuant to guidelines adopted by the department and shall be limited to funds appropriated for this purpose. The Department of Community and Economic Development shall not draw a warrant upon the State Treasurer for a disbursement from this appropriation until the State Treasurer certifies that the Property Tax Relief Reserve Fund has at least a \$3,000,000 balance.

Section 5. A school district that has authorized the levy of a 0.1% earned income and net profits tax, by resolution or referendum, under the former act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act, is prohibited from levying, assessing or collecting the tax.

Section 6. The following shall apply:

(1) Except as provided in paragraph (2), the authority of any independent school district to levy, assess and collect any tax under the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, shall expire at midnight on December 31, 2011.

(2) The provisions of paragraph (1) shall not prevent or interfere with any action of any independent school district to collect any tax imposed under the authority of The Local Tax Enabling Act that is levied and assessed prior to January 1, 2012.

Section 7. The Department of Revenue shall promulgate regulations which are necessary for implementation of a local personal income tax. Proposed rulemaking shall be omitted under section 204 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law. The regulations shall be consistent with the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and shall be submitted as final-omit regulations under section 5(a) of the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 8. Repeals are as follows:

(1) The General Assembly declares that the repeals under paragraphs (2), (3), (4), (5), (6) and (7) are necessary to effectuate this act.

(2) Section 9 of the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, is repealed insofar as it is inconsistent with the provisions of section Pa.C.S. § 3161.

(3) Articles II and II-A of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(4) The act of March 11, 1971 (P.L.104, No.3), known as the Senior Citizens Rebate and Assistance Act, is repealed.

(5) The act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act, is repealed.

(6) 53 Pa.C.S. Ch. 89 Subch. B is repealed.

(7) Any act that provides for a register of municipal and school district withholding taxes is repealed insofar as it is inconsistent with the provisions of section 24 Pa.C.S. § 3161.

Section 9. Except as otherwise provided, actions, orders, regulations, rules, designations and decisions which were made by the Department of Education or by a school district under the former act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act, and which have been completed or are in effect on the effective date of section 8(5) shall continue and remain in full force and effect to the extent that such actions, orders, regulations, rules, designations and decisions apply to the 2006-2007 fiscal year unless revoked, vacated or modified by this act, the Department of Education or the school district.

Section 10. The addition of 72 Pa.C.S. Ch. 12 is a continuation of Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Ch. 12, all activities initiated under Article II of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 12. Orders, regulations, rules and decisions which were made under Article II of the Tax Reform Code of 1971 and which are in effect on the effective date of section 8 of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 12.

(2) Except as set forth in paragraph (3), any difference in language between 72 Pa.C.S. Ch. 12 and Article II of the Tax Reform Code of 1971 is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Article II of the Tax Reform Code of 1971.

(3) Paragraph (2) does not apply to the addition of any of the following provisions of Title 72:

(i) The definitions of “computer software,” “delivered electronically,” “prewritten computer software” and “tangible personal property” in section 1201.

(ii) Section 1202(a), (b), (c)(1), (d), (e)(3)(i), (e.1)(3)(i) and (g).

(iii) Section 1203.

(iv) Section 1204(28), (37), (47), (48) and (58).

(v) Section 1205(a)(2) and (b)(2).

(vi) Section 1210.

(vii) Section 1217(a)(2) and (d).

(viii) Section 1281.3.

Section 11. The addition of 72 Pa.C.S. Ch. 13 is a continuation of Article II-A of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. Except as otherwise provided in 72 Pa.C.S. Ch. 13, all activities initiated under Article II-A of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 13. Orders, regulations, rules and decisions which were made under Article II-A of the Tax Reform Code of 1971 and which are in effect on the effective date of section 8 of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 13.

Section 12. The addition of 72 Pa.C.S. § 2121 is a continuation of section 341 of the former act of July 5, 2004 (P.L.654, No.72), known as the Homeowner Tax Relief Act. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Ch. 21, all activities initiated under section 341 of the Homeowner Tax Relief Act shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 21. Orders, regulations, rules and decisions which were made under section 341 of the Homeowner Tax Relief Act and which are in effect on the effective date of section 8 of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 21.

(2) Any difference in language between 72 Pa.C.S. § 2121 and section 341 of the Homeowner Tax Relief Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of the Homeowner Tax Relief Act.

Section 13. The addition of 72 Pa.C.S. Ch. 41 is a continuation of the act of March 11, 1971 (P.L.104, No.3), known as the Senior Citizens Rebate and Assistance Act. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Ch. 41, all activities initiated under the Senior Citizens Rebate and Assistance Act shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Ch. 41. Orders, regulations, rules and decisions which were made under the Senior Citizens Rebate and Assistance Act and which are in effect on the effective date of section 8 of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Ch. 41.

(2) Except as set forth in paragraph (3), any difference in language between 72 Pa.C.S. Ch. 41 and the Senior Citizens Rebate and Assistance Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of the Senior Citizens Rebate and Assistance Act.

(3) Paragraph (2) does not apply to the addition of any of the following provisions of Title 72:

(i) Section 4104(a)(2) and (3), (b) and (d).

(ii) Section 4105(c).

(iii) Section 4108.

(iv) Section 4109(b).

Section 14. The Secretary of Revenue shall transmit notice to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin that revenue from gaming has exceeded \$100,000,000.

Section 15. This act shall take effect as follows:

(1) The addition of 24 Pa.C.S. § 3141 shall take effect upon publication of the notice in the Pennsylvania Bulletin required under section 14 of this act.

(2) Except as provided in paragraphs (1) and (3), the following provisions shall take effect January 1, 2007:

(i) The addition of 72 Pa.C.S. Ch. 12.

(ii) The addition of 72 Pa.C.S. Ch. 13.

(iii) Section 8(3) of this act.

(3) The addition of 72 Pa.C.S. § 1281.3 shall take effect February 1, 2007.

(4) The remainder of this act shall take effect immediately.

On the question recurring,  
Will the House agree to the amendment?

The SPEAKER. The Chair recognizes the majority leader.

Mr. S. SMITH. Thank you, Mr. Speaker.

On the amendment, just briefly since it is a little while since we were there and hopefully not to open up a major debate

again on this subject, it is significantly similar to the Pyle amendment that had been debated at great length with a few key differences. Number one, it is drafted with a half-percent increase in sales tax. Number two, it has the back-end referendum language in it that is substantially the same if not identical to that which was in special session HB 39 that we just passed, and it incorporates the essence of HB 39 into this sales tax. It does have a modified distribution plan that was closer to what was in the Pyle amendment as opposed to what was in HB 39.

So I just want members to be aware and to maybe set the record straight clearly as to what the amendment contained and hope that that will satisfy some of the questions that may be out there.

Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman, Mr. Levdansky.

Mr. LEVDANSKY. Thank you, Mr. Speaker.

Mr. Speaker, there is one really important difference about this amendment compared to the prior Pyle amendment that we considered that really I think is important for us to consider when we vote on this amendment, and that is this: Under this amendment, both the sales tax revenue that would result from this amendment and the gaming revenue would both be distributed under a new formula, the difference from the Pyle amendment insofar as under the Pyle amendment, the sales tax revenue would be distributed under the new formula and the gaming revenue would have been distributed under the Act 72 formula. What this does is combines both gaming and sales tax revenue and distributes under a new formula quite different from what was in Act 72.

It is because of that important difference that I would urge a “no” vote on this amendment.

The SPEAKER. The Chair thanks the gentleman.

The gentleman, Mr. Pyle.

Mr. PYLE. Mr. Speaker, I have listened for the last half-hour at how we have lamented we could have done better and had the chance and did not.

This is our chance, Mr. Speaker. We can drive back substantial savings on property for our seniors, for our workers, for everybody, and I would urge a positive vote.

Thank you.

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

YEAS—89

Allen	Feese	Hickernell	Ross
Argall	Flaherty	Maher	Rubley
Baker	Fleagle	Maitland	Samuelson
Baldwin	Freeman	Major	Santoni
Belardi	Gabig	Mann	Sather
Benninghoff	Geist	Markosek	Saylor
Beyer	Gillespie	McIlhattan	Scavello
Bianucci	Gingrich	McNaughton	Schroder
Boyd	Godshall	Millard	Siptroth
Buxton	Goodman	Miller, S.	Smith, S. H.
Caltagirone	Grell	Mundy	Solobay
Cappelli	Grucela	Nailor	Sonney
Cawley	Gruitza	Payne	Stevenson, T.
Corrigan	Haluska	Petrarca	Surra
Costa	Harhai	Petri	Tangretti

Crahalla	Harhart	Phillips	Tigue
Curry	Harris	Pickett	True
Dally	Hasay	Pyle	Turzai
DeLuca	Hennessey	Readshaw	Watson
DeWeese	Herman	Reed	Wojnaroski
Diven	Hershey	Reichley	Yewcic
Eachus	Hess	Roberts	Yudichak
Fairchild			

NAYS—109

Adolph	Forcier	McGeehan	Semmel
Armstrong	Frankel	McGill	Shaner
Barrar	Gannon	McIlhinney	Shapiro
Bastian	George	Melio	Smith, B.
Bebko-Jones	Gerber	Metcalfe	Staback
Belfanti	Gergely	Micozzie	Stairs
Bishop	Good	Miller, R.	Steil
Blackwell	Hanna	Mustio	Stern
Blaum	Harper	Myers	Stetler
Bunt	Hutchinson	Nickol	Stevenson, R.
Casorio	James	O'Brien	Sturla
Causar	Josephs	Oliver	Taylor, E. Z.
Civera	Kauffman	O'Neill	Taylor, J.
Clymer	Keller, M.	Pallone	Thomas
Cohen	Keller, W.	Parker	Veon
Creighton	Kenney	Petrone	Vitali
Cruz	Killion	Pistella	Walko
Daley	Kirkland	Preston	Wansacz
Denlinger	Kotik	Quigley	Waters
Dermody	LaGrotta	Ramaley	Wheatley
DiGirolamo	Leach	Rapp	Williams
Donatucci	Lederer	Raymond	Wright
Ellis	Lescovitz	Roebuck	Youngblood
Evans, D.	Levdansky	Rohrer	Zug
Evans, J.	Mackereth	Rooney	
Fabrizio	Manderino	Ruffing	
Fichter	Marsico	Sabatina	Perzel,
Flick	McCall	Sainato	Speaker

NOT VOTING—0

EXCUSED—5

Birmelin	Leh	Rieger	Wilt
Cornell			

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

BILL PASSED OVER

The SPEAKER. HB 859 will be passed over for the day.

There will be no further votes on the floor of the House this evening.

ANNOUNCEMENT BY MAJORITY LEADER

Mr. S. SMITH. Mr. Speaker?

The SPEAKER. The Chair recognizes the majority leader.

Mr. S. SMITH. Just for the purpose of an announcement.

Well, I am hard-pressed not to make a little editorial comment about that last vote. There would seem to be some disingenuousness that would be expressed if we compared some of these votes, but I do not want to open all that up; I apologize.



Mr. Speaker, for the purpose of an announcement, next week members should plan on 5 days. We have basically 2 full weeks in order to do a fair amount of work on the budget. So clearly I would ask members to plan on 5 days next week – it may end up 4 – but 5 days next week and a full week the following week, and I just wanted to share that with the members.

Thank you, Mr. Speaker.

The SPEAKER. The gentleman should have kept his remarks to the Senate.

### **RULES COMMITTEE MEETING**

The SPEAKER. The Chair recognizes the majority leader, who calls an immediate meeting of the Rules Committee.

### **BILL REREPORTED FROM COMMITTEE**

**HB 2544, PN 3750**

By Rep. S. SMITH

An Act amending the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code, further providing for county employee retirement allowances.

RULES.

### **BILL REPORTED FROM COMMITTEE, CONSIDERED FIRST TIME, AND RECOMMITTED TO COMMITTEE ON RULES**

**HB 1537, PN 4230 (Amended)**

By Rep. STAIRS

An Act establishing a program for obtaining information from institutions of higher education in a uniform manner to permit statistical comparison; and imposing additional powers and duties on the Department of Education and institutions of higher education.

EDUCATION.

### **BILL REMOVED FROM TABLE**

The SPEAKER. The Chair recognizes the majority leader.  
Mr. S. SMITH. Mr. Speaker, I move that HB 2563 be taken off the table.

On the question,  
Will the House agree to the motion?  
Motion was agreed to.

### **BILL ON SECOND CONSIDERATION**

The following bill, having been called up, was considered for the second time and agreed to, and ordered transcribed for third consideration:

**HB 2563, PN 3806.**

### **BILLS RECOMMITTED**

The SPEAKER. The Chair recognizes the majority leader.  
Mr. S. SMITH. Mr. Speaker, I move that HB 2563 and HB 2544 be recommitted to the Committee on Appropriations.

On the question,  
Will the House agree to the motion?  
Motion was agreed to.

The SPEAKER. Tomorrow will be a token session, for the information of the membership.

### **RECESS**

The SPEAKER. This House is in recess to the call of the Chair.

### **AFTER RECESS**

The time of recess having expired, the House was called to order.

### **THE SPEAKER PRO TEMPORE (RONALD I. BUXTON) PRESIDING**

### **BILLS AND RESOLUTIONS PASSED OVER**

The SPEAKER pro tempore. Without objection, any remaining bills and resolutions on today's calendar will be passed over. The Chair hears no objection.

### **RECESS**

The SPEAKER pro tempore. The Chair recognizes Mr. Flick of Chester County.

Mr. FLICK. Mr. Speaker, I move that this House do now recess until Thursday, June 15, 2006, at 11 a.m., e.d.t., unless sooner recalled by the Speaker.

On the question,  
Will the House agree to the motion?  
Motion was agreed to, and at 10:59 a.m., e.d.t., Thursday, June 15, 2006, the House recessed.